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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**[REDACTED] EXHIBITS 58-140 TO
REPLY DECLARATION OF GAY
CROSTHWAIT GRUNFELD IN
SUPPORT OF PLAINTIFFS' MOTION
TO STOP DEFENDANTS FROM
ASSAULTING, ABUSING, AND
RETALIATING AGAINST PEOPLE
WITH DISABILITIES**

Judge: Hon. Claudia Wilken
Date: October 6, 2020
Time: 2:30 p.m.
Crtrm.: Remote

Exhibit 58

DECLARATION OF [REDACTED]

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is [REDACTED]. I am currently housed at Kern Valley State Prison ("KVSP") in the Administrative Segregation Unit ("ASU"). I am 56 years old.

3. I am a *Coleman* class member. I am at the Clinical Case Management System ("CCCMS") level of care. At CCCMS, I am able to live and program on mainline CDCR yards, alongside incarcerated individuals who do not have a mental health condition. I suffer from depression and paranoid schizophrenia. I hear voices, and when I am feeling especially depressed, I feel like harming myself and/or those around me.

4. I have bone disease in my spine, which has caused weakness in both of my legs. I use a back brace and a left knee brace as support and have difficulty walking distances of more than 25 feet or so. I also have been wearing a left arm sling since March 2020, after sustaining injuries to my left elbow and shoulder in an incident where staff assaulted me on A-Yard around September 16, 2019. Because of my issues with my spine, back, and legs, I have a bottom bunk chrono saying I have to be housed on a lower bunk, as well as a lifting restriction chrono that prevents me from having to lift heavy things during a job assignment. I also have a "no prone down" chrono, which means that when officers or other staff members tell me and other incarcerated people to get down during an alarm, I do not have to lie down, because I cannot do so easily. I also have a special cuffing chrono, meaning I am not to be handcuffed behind my back. Instead, I am cuffed around my waist with waist chains.

5. I also suffer from incontinence due to irritable bowel syndrome. Over the last year or so, I have repeatedly asked to be celled alone, because my incontinence makes it hard to have a cellmate.

1 6. I have been housed at KVSP from August 19, 2019 to now, with the
2 exception of a few different stints ranging from a few days to a week. During these
3 periods, I have been housed at Salinas Valley State Prison (“SVSP”), for court
4 proceedings.

5 7. I am currently endorsed for transfer to California State Prison - Sacramento
6 (“SAC”), because I told my clinicians and my counselor that I cannot program at KVSP
7 any more due to my safety concerns and resulting mental health concerns, in part due to
8 the assault described below and past staff misconduct incidents. My transfer is currently
9 on hold due to the COVID-19 pandemic.

10 8. During my time at KVSP, I have been housed in the following locations: B-
11 Yard, Building 1, B-Yard, Building 5, B-Yard, Building 3, B-Yard, Building 7, A-Yard,
12 Building 7, A-Yard, Building 1, and the ASU.

13 9. I was a victim of staff misconduct at KVSP.

14 10. On June 6, 2020, around 8:30 p.m., I was getting in the line to get my
15 psychiatric medications on the B-Yard patio, where medications are administered. While I
16 was waiting in line, Officer J. Welch and Officer A. Reed, two of the officers who work on
17 the B-Yard patio, approached me. Another officer whose name I do not know was with
18 them, as well. Officer Welch told me to tuck in my T-shirt, which was sticking out a
19 couple of inches from under the state-issued jacket I was wearing. I told Officer Welch
20 that because I had my jacket on over my T-shirt, I did not have to tuck my T-shirt in.
21 Officer Welch said something along the lines of “if I have to tuck in my shirt, you have
22 to.” Not wanting to argue further, I tucked in my shirt. Officer Welch said, “now you look
23 like a presentable inmate.” I do not like being called inmate because it makes me feel less
24 than human, so I told him “I am not an inmate.” Officer Welch said, “yes, you are an
25 inmate.” I was getting angry and responded “that’s why you pigs are getting smashed on
26 the street, and that’s why prison pigs should be getting smashed too.”

27 11. After saying this, Officer Welch got up from the bench where he was sitting,
28 and said “oh yeah, why don’t you do it,” meaning why don’t I beat him up. Officer Reed

1 and the officer whose name I do not know got up from the bench as well and followed
2 behind Officer Welch. Officer Welch started walking toward me quickly and aggressively.
3 I was next in line, so I was very close to the medical window where pills are distributed.
4 He came very close to me and was not wearing a face mask despite the requirements that
5 everyone wear one due to the COVID-19 pandemic.

6 12. Officer Welch told me to turn around and cuff up. Before I could turn
7 around so that my back was towards him, Officer Welch grabbed me around my neck. His
8 grip on my neck slipped, so he then grabbed me around my ribs and proceeded to lift me
9 off my feet. He lifted me up then body slammed me onto the asphalt in front of the
10 medical window. His body landed on top of mine as I fell to the ground. My left shoulder
11 popped out of its socket due to the impact of his weight on my body. I did not have my
12 sling on at that time. Officer Welch loosened his grip on me slightly and I tried to get up
13 off the ground. As I was attempting to get up, Officer Reed and Officer Welch jumped on
14 my back together and they, along with the other officer whose name I do not know, started
15 punching me.

16 13. At least four or five other officers who had been standing near the patio gate
17 joined Officer Welch and Officer Reed in assaulting me. I was repeatedly hit in the head,
18 and they ground my head into the asphalt. As they were assaulting me, they were trying to
19 put handcuffs on me behind my back. I repeatedly yelled to them as I was lying on the
20 ground that my left shoulder does not have full range of motion and I have a waist restraint
21 chrono stating I cannot be handcuffed behind my back. They did not listen to me and kept
22 trying to force my hands together behind my back. Eventually, Officer Welch told one of
23 the officers who had responded to get a second pair of handcuffs and linked them with the
24 other pair of handcuffs to avoid cuffing me behind my back.

25 14. Once I was handcuffed with both sets of handcuffs, Officer Welch yelled at
26 me, "get your fucking ass up." As I was getting off the ground, he grabbed me by the back
27 of the neck and began pushing my head down into my chest. Officer Welch and Officer
28 Reed each grabbed one of my arms. Officer Welch grabbed my left arm and laced my arm

1 through his. He started trying to lift my shoulder upwards, further stretching my injured
2 shoulder. I was yelling that my shoulder was injured as he was stretching my shoulder.
3 He ignored me, and Officer Reed started to do the same with my right arm and shoulder.
4 During this, I felt my left shoulder pop back into its socket. As they got me to my feet,
5 they started walking me into the B-Yard program office at a pace so fast it felt like a run.

6 15. As we walked to the program office, Officer Welch and Officer Reed
7 continued to threaten me and whispered racial slurs into my ear. Officer Welch said, “wait
8 till we get your black ass inside the program office and we’ll see how tough you are then.”
9 He also called me “nigger” at least twice. Officer Reed was not talking. Officer Welch
10 also told me that, “you had your chance” on the patio. I believe he was saying that I had
11 had my chance to assault them.

12 16. Once we got into the program office and out of the view of the other
13 incarcerated people on the patio, Officer Welch and Officer Reed, with their arms still
14 laced through mine, started walking me down the B-Yard program office hallway towards
15 the holding cages. When we arrived at the door to the room where these holding cages are,
16 Officer Welch told me to face the wall. I faced the wall and Officer Welch suddenly
17 grabbed my head and neck and pushed my face into the clipboards that were hanging on
18 the door. When they pushed my face into the clipboards, my mouth was open. The metal
19 on the clipboard cut my right lip and the inside of my mouth and cracked two front teeth in
20 the top row.

21 17. Officer Welch placed me inside a holding cage and closed and locked the
22 door. After locking the door Officer Welch told me to put my hands through the holding
23 cage door slot. I put my hands through the slot, expecting him to take the handcuffs off
24 since I was now in the cage. When I placed my hands out, Officer Welch yanked on the
25 handcuffs, cutting into my wrists. My hands were swollen and bruised because the
26 handcuffs had been placed so tightly around my wrists.

27 18. From across the hall, I heard Sergeant Dyer, a B-Yard Sergeant, tell another
28 officer whose name I do not know to tell Officer Welch to come out of the holding cage

1 room and into his office. This officer came into the room, and Officer Welch left to speak
2 to Sergeant Dyer. After Officer Welch walked across the hall, this other officer told me to
3 put my hands through the slot to have my handcuffs removed. He removed my handcuffs
4 and I was told to strip out, meaning remove all my clothes. I did so and they performed a
5 full body cavity search on me. I had to lean over, with only my boxers on, while the
6 officers searched all the parts of my body. These searches always make me feel violated
7 and humiliated. I am a Muslim, and I am not supposed to be undressed in front of people
8 who are not my family, so I try to stay as clothed as possible during these searches. The
9 officers know this, but still make me fully strip out.

10 19. I was in the holding cage for about 45 minutes. I did not have any of my
11 clothes besides my boxers. I was very cold. During this time, a nurse who works on B-
12 Yard, Nurse C. White, came into the holding cage area to evaluate my injuries. She asked
13 me if I had any visible injuries. I showed her the blood on my knuckles and the cut on my
14 lip and mouth. Nurse White told me that she only needed to see "injuries with blood."
15 She wrote something down when I was standing there, as I showed her that my lip was
16 bleeding and showed her the abrasions on my right and left eye, and the back of the right
17 side of my neck. I also showed her the blood on my T-shirt. One of the officers that was
18 with her while I showed her the T-shirt left the room. After Nurse White left the room, the
19 T-shirt was taken from me by the same officer who had been near her and returned. It was
20 not given back to me, and I am not sure where it went.

21 20. I also told Nurse White about my left shoulder feeling dislocated, and the
22 pain in my back, legs, and collarbone. I told her that the pain felt like pins and needles.
23 She again told me "I'm not writing it down if it's not oozing blood." She asked me if I
24 wanted to make a statement, so that she could write it down on the 7219. I said yes but
25 told her I wanted to speak to her confidentially. At the time, many officers were standing
26 in the holding cage area, and I did not feel comfortable discussing the use of force incident
27 around them. She told me she could not speak to me without an officer present. I told her
28

1 that she should be able to see that I was a victim of excessive use of force. She said
2 “okay” and walked away.

3 21. Nurse White walked across the hall after meeting with me, into the
4 sergeant’s office. I heard her talking about my injuries with Sergeant Dyer. I presume that
5 she was showing him the 7219 report for his signature, but did not witness that directly.
6 At the end of the conversation, I heard Sergeant Dyer say, “don’t worry about it, I’ll take
7 care of it.” I believe he was referring to covering up my injuries, because I later received
8 the 7219, and it said that I had no injuries, even though I had seen Nurse White document
9 some of my injuries.

10 22. Shortly after she left, I overheard Officer Welch and Officer Reed in the
11 program office across the hall explaining to Sergeant Dyer their version of what had
12 happened. I overheard Sergeant Dyer instructing them on what to write and document in
13 their reports. What he was telling them sounded like he was instructing them on the best
14 ways to cover up what had happened.

15 23. After about fifteen minutes of talking with the officers, Sergeant Dyer came
16 into the holding cage area. When I reported that I was assaulted, Sergeant Dyer told me
17 “well, what do you expect to happen when you write thirteen letters to Associate Warden
18 Stark?” I believe he was referring to the various letters I have sent Associate Warden
19 Stark about uses of force and conditions at Kern Valley.

20 24. Sergeant Dyer then said he wanted to talk to me “uninterrupted.” He told me
21 he was going to “allow me to be escorted back to my housing unit” and told the officers to
22 give me my clothes back. He told me that from now on I needed to be properly dressed on
23 the patio with my shirt tucked in. I wanted to respond, but since he had requested to speak
24 uninterrupted, I told him I was waiting for him to finish. He told me “you will be getting a
25 write up for resisting a peace officer.” I asked him if he was done, and Sergeant Dyer said
26 “yes.” I then told him that I was not aware of any place in the Department Operations
27 Manual (“DOM”), the rules and regulations of CDCR, where it states that I have to have
28 my shirt tucked in. I told him that the DOM does not state that shirts need to be tucked in.

1 I asked Sergeant Dyer for a provision of the DOM or KVSP rules stating this, and he could
2 not provide me one. I said that I had complied with the officers' orders and had not
3 presented a threat and asked why I was assaulted. I told Sergeant Dyer that I wanted to file
4 a use of force complaint against the officers involved.

5 25. Sergeant Dyer said, "if I were you, I would reconsider that request to make a
6 use of force complaint, because the scope of the incident will drastically change to where
7 you will be placed in ASU and written up for battery on a peace officer." I took this as a
8 threat that he would charge me falsely with a very serious crime if I reported the use of
9 force. Sergeant Dyer also told me that reporting the incident would jeopardize my transfer
10 to CSP-Sacramento and my property would be lost. He also told me that as it stands he
11 would let me go back to my cell and "only be written up for resisting a peace officer," but
12 if I complained or reported the use of force incident he would "get started on generating
13 the paperwork," meaning charge me with the more serious charge of battery on a peace
14 officer.

15 26. I again stated that I had complied with the officers' orders and should not
16 have been assaulted. Sergeant Dyer responded, "okay, but it's over." I asked for my
17 clothes and was escorted back to my cell in B-7 without further medical attention.

18 27. In the hours and days after the assault, I defecated blood. My vision was
19 blurry and I had migraine headaches that felt like my brain was being crushed. My
20 collarbone, shoulders, and back were aching, and I had cuts and bruises on my legs and
21 arms. The abrasions on my face and neck were stinging. I also had periodic nose bleeds.
22 In the days after the assault, I filed five 7362 requests for medical care in the five or six
23 days after the assault, reporting the use of force, requesting medical attention, and
24 requesting X-rays. I was seen by nurses a few times during this period and told I would
25 have X-rays scheduled, but they did not provide me any treatment besides giving me some
26 pain medications. When I asked for more treatment, the nurses would say that my injuries
27 were "just abrasions."
28

1 28. I was eventually given X-rays on my collarbone and spine on June 24, 2020,
2 and a CT scan on my chest on June 26, 2020. The X-rays did not show any fractures. I
3 finally got X-rays on my shoulder on September 3, 2020, and am scheduled for a follow
4 appointment to discuss those results, but I do not know when this appointment will happen.
5 I am also scheduled for a nerve conductive study test on my shoulder, to assess possible
6 nerve damage, but I am unsure when this appointment will occur.

7 29. I believe I was assaulted for filing civil lawsuits and complaints against
8 officers and other staff members at KVSP. Since August 3, 2019, I have filed three use of
9 force complaints, and have filed several lawsuits and writs of mandates on Associate
10 Warden Elizabeth Stark about conditions at KVSP and use of force that I and other
11 individuals have experienced at KVSP.

12 30. I received a Rules Violation Report (“RVR”) on the day of the assault
13 charging me with “behavior which could lead to violence.” The RVR, written by Officer
14 Welch, says that Officer Welch approached me and told me to tuck in my shirt. According
15 to the RVR, I then asked him, “why the fuck I gotta do that?” The RVR says he explained
16 the policy to me, and I continued to yell at him. The RVR states that when he went to
17 handcuff me, I initially complied but then turned to face him and said, “what the fuck you
18 going to do now.” The RVR states that Officer Welch ordered me to get down, and I did,
19 but continued cursing at him. While Officer Welch and I did exchange words about my T-
20 shirt, I did not curse and yell at him like the RVR says. The RVR makes no attempt to
21 explain why force was used against me and why no injuries were reported on the 7219
22 filled out following the use of force. The RVR also is not consistent with my disability
23 issues and chronos. I would never have complied with lying down on the ground or being
24 handcuffed behind my back, as the officers said I did, because I cannot do so and have the
25 right to refuse these things because of my medical and disability issues.

26 31. I filed 602 staff complaints reporting the assault on June 8, June 10, June 16,
27 June 25, and July 6, 2020. I wrote it out five separate times because I had difficulty
28 getting the appeal processed, but it was finally processed on July 6, 2020. In the staff

1 complaint, I reported what had happened and the injuries I had sustained. On July 22,
2 2020, I received notice that the KVSP appeals office had cancelled this 602 at the first
3 level because I had not submitted my 602 within the thirty-day time limit. I was extremely
4 frustrated by this, because I attempted multiple times to submit the 602 within time limits.

5 32. In addition to use of force, I have experienced issues getting
6 accommodations for my disabilities at KVSP. Most recently, I was called out this morning
7 for my call with Rosen, Bien, Galvan, and Grunfeld, to discuss the issues described in this
8 declaration. The walk from the ASU where I am housed to office where the Board of
9 Parole Hearings (“BPH”) room is, where the phone calls take place, is over a quarter of a
10 mile. I asked the officers if I could use a wheelchair, because I cannot easily walk the
11 distance to the BPH room. Officer Keister asked me, “if you can walk from your cell to
12 law library, why can’t you walk from your cell to the board of prisons room?” The walk to
13 the law library is much shorter than my walk to the law library. I told them that I could
14 walk, but I would be in a lot of pain and would have to stop a lot of times. At that point,
15 Officer Keister brought me a wheelchair.

16 33. Officer Duran and Officer Cruz, two officers who work in the ASU, escorted
17 me to my call in the wheelchair. On the way to the BPH room, they started to threaten me,
18 saying that when they came back from my call, they would “make me walk” and would
19 “call B-Yard medical to see if you need to make these stops, or if you’re lying.”

20 34. This assault has made me feel extremely distrustful of staff and scared of
21 being assaulted again. The assault has also made me frustrated with medical and mental
22 health staff for not providing me the care I need. Medical staff have refused to fully
23 address my pain and injuries from the assault. Mental health staff refuse to report these
24 issues and use their influence to help me—instead, they tell me that I should deal with the
25 assault by “venting” to them. I have repeatedly told them about this assault and how I
26 have been feeling after the assault, and they do nothing about it except sit there.

27 35. Since the assault, I have been hearing voices more intensely and have
28 thought about hurting myself. I have repeatedly requested single cell status from custody,

1 ADA, and mental health staff, as I feel I cannot manage being in a cell with another person
2 due to my incontinence issues and the mental health crisis I have been going through since
3 the assault.

4 36. In my time at KVSP, there have been many times that I needed help but
5 didn't ask for it because I was afraid of what would happen to me. Because of my various
6 disabilities and my mental health issues, I rely on staff to assist me with things like
7 providing me supplies to deal with my incontinence and asking mental health staff to come
8 see me. Since this assault, I have been especially fearful of asking staff to help me. These
9 officers used something as inconsequential as not having my shirt tucked in as an excuse to
10 assault me, so I am very afraid to raise any issues with them directly. I figure they will
11 find some other excuse to assault me.

12 37. Though I am afraid to directly interact with staff, I know that filing appeals
13 and claims is the only way to report these actions and potentially get help, so I continue to
14 report these incidents via 602 and actions in the court. I am always scared of retaliation
15 when I do this, but I feel that it is worth the risk.

16 38. In my opinion, staff target people with disabilities and people with mental
17 health issues with staff misconduct because we are vulnerable. The staff at Kern Valley
18 also seem to target people in these groups based on race—most of the problematic officers
19 at KVSP are white or Hispanic, and they routinely assault black incarcerated people,
20 particularly black people who also have a disability or mental illness.

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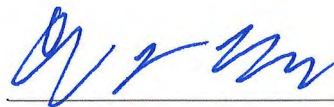
28 ///

1 39. I believe the reason there is so much staff misconduct at KVSP is because
2 there is no accountability of the officers on the part of the Warden or other leadership at
3 Kern Valley. The leadership at KVSP signs off on falsified reports without investigating
4 the complaints that I and other incarcerated people file and report. When complaints are
5 investigated, the investigations are one-sided in favor of the officers. Because of this,
6 officers run Kern Valley the way that they want to, with no supervision.

7 I declare under penalty of perjury under the laws of the United States of America
8 that the foregoing is true and correct, and that this declaration is executed at Delano,
9 California this 24th day of September, 2020.

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14 On September 24, 2020 due to the closure of KVSP in light of the COVID-19
15 pandemic and ongoing concerns that officers might retaliate against witnesses in support of
16 Plaintiffs' Motion, including ongoing concerns about the confidentiality of the legal mail
17 system at KVSP, I read the contents of this declaration, verbatim, to [REDACTED], by
18 telephone. [REDACTED] orally confirmed that the contents of the declaration were true
19 and correct. [REDACTED] also orally granted me permission to affix his signature to
20 the declaration and to file the declaration in this matter.

21
22 DATED: September 24, 2020



23 Emma Cook
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Exhibit 58a

Filed Under Seal

Exhibit 59

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation (“CDCR”) number is [REDACTED]. I am currently housed at High Desert State Prison (“HDSP”) on Facility D in Building 5. I am 29 years old.

3. I am a *Coleman* class member. I am currently at the Correctional Clinical Case Management System (“CCCMS”) level of care, which is the lowest level of mental health care in the CDCR. Patients at the CCCMS level of care live in general population units throughout the CDCR and receive infrequent contacts with their mental health case manager and treatment team. I suffer from schizoaffective disorder and bipolar disorder. As part of this, I experience mood swings. Since I was young, I have also had command auditory hallucinations, which means I regularly hear voices telling me to do things. I also have ongoing anxiety and depression. During my time at Kern Valley State Prison (“KVSP”), where I was housed prior to HDSP, my mental health issues were similar to today.

4. I was housed at KVSP from December 27, 2018 to March 4, 2020. On March 4, 2020, I was transferred to HDSP, where I have been since.

5. During my time at KVSP, I was housed in A-Yard, Building 7 and the Administrative Segregation Unit (“ASU”).

6. I was a victim of staff misconduct at KVSP.

7. On June 6, 2019, I attended my Institutional Classification Committee (“ICC”) hearing from 8:00 a.m. to 10:00 a.m. An ICC hearing is a hearing in which staff and incarcerated people discuss housing decisions. Up until the hearing, I was housed in A-7. At the hearing, I was placed on C-Status, which is a punishment status that consists of not having most privileges such as phone calls, yard, and canteen. As part of C-Status, you are also not allowed to have an appliance such as a radio or TV in your cell, even if

1 you need one to manage your mental health symptoms. I have usually had a TV or radio
2 in my cell to help me manage my voices. People on C-Status are generally housed in A
3 Yard, Building 1.

4 8. At ICC, I told the hearing officers that I was having mental health issues and
5 having a hard time focusing. I told them I was worried that I would not be able to handle
6 having a cellmate while I was on C-Status and not able to have my radio or TV to help me
7 manage my mental health symptoms. I said that I was worried that I would kill myself or
8 my cellmate. I asked if I could be housed in the Administrative Segregation Unit ("ASU")
9 so that I could be housed alone while on C-Status. I also expressed that I felt unsafe going
10 to A-1, as I knew there was an enemy of mine currently housed there on C-Status. He was
11 not documented as my enemy because we had gotten in a fight the week before and signed
12 a marriage chrono after the fight. Even though we signed the chrono, I still felt unsafe
13 around him, and was concerned I would be housed with him. Two correctional counselors,
14 whose names I do not remember, listened to my concerns and assured me that I would be
15 fine in A-1. They told me that there were lots of single cells in the building and the
16 officers there would make sure that I got my own cell. I felt better upon hearing this and
17 agreed to go to A-1. I left the meeting and went back to my building to wait for my
18 transfer to A-1.

19 9. After my ICC, I returned to A-7 and had yard time until about 3 p.m.
20 Shortly after getting back to my cell from yard, my cell door opened while I was inside the
21 cell. The officer in the control tower whose name I do not know told me to pack my
22 property and get ready to go to A-1. My property was already packed and ready to go. I
23 asked the tower officer if I could grab my CDs from another cell on the unit. Another
24 person on my unit had been borrowing them. The tower officer gave me permission to get
25 my CDs, and I started to walk over to the cell where they were. As I was getting close to
26 the cell with my CDs, Officer Jimenez, an officer that worked regularly in A-7 at the time,
27 walked over to me quickly and aggressively, as if he was charging me. As he approached
28 me, he yelled, "What the fuck are you doing?" I said, "Grabbing my CDs from this cell. I

1 got permission.” He said, “No you’re not! Get the fuck off the stairs.” I complied and
2 stepped down from the stairs toward him.

3 10. Officer Jimenez started to walk me away from the stairs back to where my
4 property was. I asked him if he knew what cell I would be going to in A-1. He said he did
5 not know, and that I would find out when I got there. I asked him if I was going to be
6 housed alone and told him that I was told at ICC that I would be in my cell by myself. I
7 told him I really wanted to know because I was very nervous about being housed with
8 someone.

9 11. Officer Jimenez became very agitated and started cursing at me. He told me
10 to “turn the fuck around, you little fag ass punk motherfucker, and cuff up.” I complied
11 and he grabbed my right arm to cuff me as my back was towards him and I was facing
12 away from him. Officer Jimenez suddenly grabbed my arm and twisted it around the
13 socket, above my head. I asked him, “Why are you acting as if I did something wrong?”
14 He moved to handcuff me and I complied. Once he locked the cuff on my wrists, I felt
15 him grab me and he smashed my face one time into the dayroom table. I blacked out.

16 12. After what I believe was a few seconds, I became conscious again, and saw
17 Officer Gonzalez, another officer on the unit, walking over. He was visibly angry and
18 upset. He said to Officer Jimenez, “What the fuck are you doing? You don’t have to do
19 all that.” He told Officer Jimenez to step away from me and grab the cart with my
20 property on it. They then both escorted me towards A-1. I felt like my mouth was bruised
21 and bleeding, and there was a knot on the top of my nose.

22 13. As we walked through the gate and into the patio area before entering A-1,
23 Officer Gonzalez and Officer Jimenez spoke into their radios and said that there was a
24 “hostile inmate en route to 1 block.” Suddenly, seven other officers, including three
25 sergeants, arrived at the gate and walked me, with Officer Jimenez and Officer Gonzalez,
26 into A-1. The group of officers walked me up to the door of the cell in which I was to be
27 housed. When I looked into the cell, I saw that the person already living in the cell, who
28 was to be my cellmate, was the enemy I had expressed concerns about at my ICC.

1 14. At this time, two sergeants were standing by the door with me and the rest of
2 the officers were a few feet behind me. One of the sergeants was named Sergeant True.
3 The other sergeant's name I did not know. I was feeling scared and stressed out about
4 having to go into the cell with someone I had fought with. I turned around back towards
5 the sergeants and officers and told everyone standing there that I had concerns for my
6 safety and that I was suicidal. I refused to go into the cell. Sergeant True and the other
7 sergeant both told me to go in the cell for now, and they would address my concerns later.
8 I refused again. I asked them to take me to a holding cage or to lock me up and take me to
9 the ASU.

10 15. Officer H. Arevalo, one of the officers behind me, started un-cuffing me.
11 One of the sergeants, I do not remember which one, asked Officer Arevalo, "What are you
12 doing? Leave the cuffs on and put him in the cell first." By that time, one of my hands
13 was already out of the cuffs, so Officer Arevalo proceeded to un-cuff me fully. Officer
14 Arevalo told me again to go in the cell. I again refused. Officer Arevalo told me to face
15 forward towards the cell. I turned around. Right after turning around, Officer Arevalo
16 punched me in the back of the head. He shoved me into the cell. The other officers and
17 the sergeants joined him and in the cell I was kicked, stomped, punched, and spit on. All
18 of the officers assaulted me, but I particularly remember Sergeant True and Officer
19 Arevalo repeatedly punching and kicking me.

20 16. By the end of the assault, my ears were bleeding and my lip was busted
21 open. I also had a black eye. The officers escorted me to a holding cage in the program
22 office in A-1.

23 17. A nurse came to evaluate me right after I got to the holding cage. KVSP
24 Investigative Services Unit ("ISU") staff also came to take pictures. While I was being
25 evaluated by the nurse, there were officers and ISU staff surrounding her. She saw all my
26 injuries but did not seem to be documenting them on the form she was filling out. I
27 believe she was being pressured by the officers around her not to write everything down.

28

1 18. The sergeant whose name I did not know told me while I was being
2 evaluated that I was “lucky to be walking out of there” and that he had seen much worse.

3 19. I asked the nurse and ISU for the 7219 Form she filled out documenting my
4 injuries, but ISU staff told me that I would have to request it from them later. Shortly after
5 the assault, I requested the 7219, along with other documents related to this incident, but
6 have not received these, over a year later.

7 20. After I was in the holding cage, I was taken to the ASU. In the days after the
8 assault, I continued to have pain in my back and neck. On June 13, 2019, a little over a
9 week after the assault, I submitted a 7362 Form reporting that I was assaulted and
10 requesting medical treatment for my pain. I was given some medication for the pain.
11 However, the pain continued and on June 21, 2019 I told officers my chest and neck were
12 really hurting. I have a history of asthma and chest pain, so that in combination with the
13 injuries from the assault was causing me lots of pain. I was taken to the Treatment and
14 Triage Area (“TTA”), a centralized medical clinic at KVSP. At the TTA, I was given a
15 chest X-ray, which did not find any significant injuries. Since the assault, I have had
16 ongoing sharp pain in my chest. I have also had migraine headaches, which I had never
17 experienced before the assault but have experienced multiple times since.

18 21. On that same day, June 6, 2019, I was charged with “Battery on a Peace
19 Officer.” The details in the RVR are completely different from what happened. The RVR
20 does not mention my safety concerns at all and does not mention that I repeatedly refused
21 to house because of these concerns. The RVR also does not mention that I was handcuffed
22 for much of the incident. The RVR states that I complied with going in the cell, and that
23 as I was walking in, I suddenly turned around and punched at the officers, striking Officer
24 Arevalo on the left side of his face. This does not make sense, as the officer involved had
25 no injuries, but I did. Despite these inconsistencies, I was found guilty of the charge, and
26 given a punishment of 10 months in segregation.

27 22. The District Attorney has decided to prosecute me for this charge. On April
28 3, 2020, I was called for a videoconference for my first court date. I have court again in

1 September or October 2020. Staff at HDSP have not been clear about what day I have
2 court.

3 23. I filed a 602 reporting this assault in early July 2019. I had an interview
4 about my 602 staff complaint with a lieutenant at KVSP whose name I do not remember,
5 about a month or two after I filed the 602. The lieutenant asked me questions about what
6 took place and asked me if I had any witnesses. I gave him all of the information he
7 requested. He told me they would talk to the officers and witnesses. Sometime in August
8 2019, a couple of weeks after my 602 interview, I received the response to my 602 at the
9 second level and the results of the investigation they had done. The officers involved in
10 my assault were cleared of wrongdoing. I then sent the 602 to the third and final level of
11 review. My appeal at the third level was denied recently. The appeals office in
12 Sacramento lost my paperwork, so I am currently attempting to get new copies of my
13 paperwork.

14 24. While I was in the ASU at KVSP for ten months, I experienced retaliation
15 for reporting the assault against me. Officers and staff there constantly antagonized me by
16 searching my cell, threatening me, and doing other things to provoke me. Often when
17 something happened, I wrote to the Office of Internal Affairs and/or filed a 602. It seemed
18 like reporting these issues made things worse.

19 25. Shortly after sending one of these letters to OIA, in October or November
20 2019, I was being walked back to my cell after yard by two officers. I was handcuffed, as
21 everyone is during transport in the ASU. Suddenly, I was rushed from behind by another
22 incarcerated person who was also coming back from yard. This person slipped out of his
23 handcuffs and ran at me with a weapon that he had manufactured. One of the officers
24 escorting me shielded me, and ended up getting the other incarcerated person down on the
25 ground and assaulting him, taking his knife from him. They took me back to my cell and
26 told me they were not going to write up the person who attacked me for this incident
27 because he had not ended up assaulting me.

1 26. After I was almost assaulted, my neighbor told me that the day before the
2 assault he had heard Officer Castellano talking to the person that had tried to assault me,
3 asking him to assault me. I believe Officer Castellano tried to have me attacked because I
4 had filed at least three separate 602s reporting Officer Castellano's misconduct. One of
5 the 602s was because he searched my cell, stole my property and cord for my TV and gave
6 them to another incarcerated person. I also submitted a 602 about him not giving me my
7 halal meal.

8 27. I also filed a 602 after witnessing Officer Castellano slice another
9 incarcerated person's leg with a knife in November or December 2019. This incarcerated
10 person was refusing to cuff up and exit his cell. Officer Castellano opened the door
11 without warning, handcuffed the incarcerated person, and had another officer get a knife
12 for him. I saw the other officer hand Officer Castellano a knife as Officer Castellano was
13 pinning the incarcerated person down in his cell while in handcuffs. When he had the
14 knife, Officer Castellano started cutting this person's leg. Officer Castellano was yelling,
15 "You want to mess with me? I'll kill you! I'll kill you! I'll have your family on the streets
16 killed!" as he cut this person.

17 28. When I was released from segregation on March 3, 2020, I was sent to
18 HDSP, even though I have hardships in my file that should have prevented my transfer
19 there. I believe this was further retaliation. The officers just wanted to get me out of
20 KVSP.

21 29. In my time at KVSP, there were many times that I needed help but did not
22 ask for it because I was afraid of what would happen to me. I was reluctant to ask for
23 anything there from the officers, and rarely did. If I needed to see mental health, I would
24 not ask the officers. I would wait until I was scheduled to see mental health. After the
25 assault, I have felt paranoid about talking to any officer about my issues. I am scared to
26 even look at them sometimes.

27 30. Even at HDSP, where nothing bad has happened to me, I am still fearful of
28 the staff here. I had to ask a counselor at HDSP, whose name I do not know, to print my

1 medical records to submit with my lawsuit about the assault at KVSP. He told me that I
2 had to go through ISU to the get paperwork. At the same meeting, he said, "So you suing
3 my officers?" I said yes, and he said, "You know what comes with that right?" I said no, I
4 did not know what came with that. He said, "You'll soon find out, you'll soon find out." I
5 took this as a threat. I went through ISU to ask for the paperwork and they have not gotten
6 back to me. That interaction made me even more scared to ask for help.

7 31. Since the assault, I have had ongoing medical issues. The most significant is
8 that I have gradually lost hearing in my left ear. I went to an outside hospital twice already
9 to get evaluated for a hearing aid. I believe that my hearing loss was at least partially
10 caused by the assault.

11 32. After the assault, my mental health symptoms have worsened. My voices
12 increased greatly, and I have had recurring nightmares of being assaulted and killed, which
13 has caused issues with my sleep. I still struggle with my sleep and periodically have these
14 nightmares. I am trying to get on some sort of medication to help with this.

15 33. In my opinion, staff target vulnerable people and people with mental health
16 issues with staff misconduct. In units with people with mental health issues and
17 disabilities, officers have developed a system where they can target people in these units
18 by assaulting us and then charging us with assault to cover it up. Because we are
19 vulnerable and not as believable due to our issues, they can justify the force used against
20 us without anyone questioning it. At Kern Valley, there were many of us at the time in the
21 ASU waiting to go to court in Kern County after being falsely charged with assaulting
22 staff.

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Emma Cook

Exhibit 59a

Filed Under Seal

Exhibit 60

**Kern Valley State Prison
Armstrong Monitoring – Document Review
December 2015**

Plaintiffs' counsel conducted a document review to monitor Kern Valley State Prison's (KVSP) compliance with the *Armstrong* Remedial Plan (ARP) and the Americans with Disabilities Act (ADA). The information in this report is based upon review of documents received during this monitoring period (May 2 – November 1, 2015) and the noncompliance logs from the relevant time period. In December 2015, the prison housed 114 people identified by CDCR as *Armstrong* class members, according to DECS.

KVSP currently is not in compliance with the ADA, the ARP, and court orders in the following areas:

- Improper removal of assistive devices by custody staff;
- Failure of custody staff to honor disability chronos;
- Failure to properly document allegations of non-compliance in the accountability logs;
- Failure of medical staff to comply with the Durable Medical Equipment formulary and provide wheelchair users with wheelchair gloves
- Failure to properly process and respond to 1824 requests for accommodations;

I. CUSTODY STAFF RESPONSIBILITIES

Plaintiffs' counsel identified multiple allegations that custody staff verbally harassed class members, failed to honor chronos prescribing disability accommodations, and improperly confiscated or failed to transfer assistive devices. In several cases, the RAP response is inadequate, and/or the allegation has not been documented in the accountability logs. These allegations should be investigated and documented on the logs. **If the allegations are found to be true, they implicate serious violations of the ARP, ADA, and court orders, and significant action should be taken to prevent future violations.**

A. Failure to Transfer Assistive Devices or Improper Removal of Devices

In June 2015, Plaintiffs' counsel reported multiple instances when prisoners' assistive devices were improperly taken or when prisoners moved between prisons or facilities without their devices. (*See* June 2015 KVSP Report, p. 3.) During this time period, we again identified allegations that staff deprived disabled persons of their prescribed assistive devices, in violation of ARP § IV.F.3. Class members' accommodations should not be removed without a medical evaluation and confirmation that the accommodation is no longer necessary. ARP § IV.F.2.

- **Mr. [REDACTED], [REDACTED], 15-01715**, reported that his vibrating watch was taken during a cell search. The response, issued on 7/7/15, inappropriately denies the request, stating that the watch is not classified as DME. However, the vibrating watch is a device used to accommodate Mr. [REDACTED]'s hearing impairment. As such, the allegation should have been investigated. **The allegation is not listed in the accountability logs that we have been provided to date. .**
- **Mr. [REDACTED], [REDACTED], 15-01708**, reported that the supplies for his prosthetic leg were taken when he transferred to the ASU. The response, issued on 7/7/15, inappropriately

instructs Mr. [REDACTED] to complete a 7362 to address the concern. **The allegation is not listed in the accountability logs that we have been provided to date.**

- The accountability logs confirm that Mr. [REDACTED]'s, [REDACTED], appliances were improperly removed while he was in the ASU on 5/13/15.
- The accountability logs document that Mr. [REDACTED], [REDACTED], alleged on 8/3/15 that his appliances were not transferred with him from SATF. The investigation remained pending in the logs.

B. Failure to Honor Disability Chronos

Plaintiffs' counsel identified three allegations that custody staff failed to honor disability chronos. The CDCR is required to provide reasonable accommodations to prisoners with disabilities to ensure access to programs, services and activities. ARP § I.

- **Mr. [REDACTED], [REDACTED], 15-01278**, reported that custody staff did not honor his waist chains chrono. The response, issued on 5/19/15, inappropriately states that he had not submitted any 7362 for related problems. The RAP response should have initiated the disability verification process to evaluate his need for the accommodation. **The allegation is not listed in the accountability logs that we have been provided to date.**
- **Mr. [REDACTED], [REDACTED], 15-01760**, reported that custody staff refused to allow him to use the transport lift. The response, issued on 7/10/15, confirms that he has a transport lift chrono, and states that staff will honor them. It fails to investigate his claim of staff misconduct. **The allegation is not listed in the accountability logs that we have been provided to date.**
- **Mr. [REDACTED], [REDACTED], 15-02037**, alleged that he was not transported in a wheelchair-accessible vehicle. The response, issued on 8/24/15, states that he is designated DPO, but fails to assess the need for the accommodation, or state how transportation staff will accommodate him and his wheelchair in the future.

C. Allegations of Harassment by Custody Staff

Plaintiffs' counsel identified two allegations that custody staff verbally harassed prisoners because of their disabilities:

- **Mr. [REDACTED], [REDACTED], 15-02104**, reported that custody staff called him a derogatory name because he is disabled. The response, issued on 8/24/15, improperly instructs Mr. [REDACTED] to speak with the facility supervisor. The allegation should have been answered by the RAP. This allegation was listed in the accountability logs, but was "not confirmed."
- According to the accountability logs, on 6/29/15, **Mr. [REDACTED], [REDACTED]**, alleged he was verbally harassed by staff as a result of his disability. The investigation is pending in the logs.

D. Access to Educational/Vocational Programs

Plaintiffs' counsel identified two instances when prisoners alleged that they were denied access to educational or vocational programs because of their disabilities. The CDCR is required

Exhibit 61



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October 5, 2016

Ms. Russa Boyd
CDCR Office of Legal Affairs

RE: Armstrong Monitoring Tour Report
KVSP, August 2016 tour

Dear Russa,

Attached is our report from the recent Armstrong monitoring tour of Kern Valley State Prison. Our information requests are bolded throughout the report, and repeated at the end of the report.

Sincerely yours,

/s/ Corene Kendrick

Corene Kendrick, Staff Attorney

cc: Ed Swanson
Plaintiffs' Counsel
Katie Riley, Andrea Moon, Wendy Locke, OLA
Vince Cullen, Cathy Etchebehere, Sadie Richmond, CAMU
Alma Underwood, Laura Campoy, Davies Sasere, Daniel Warstler, DAPO
Lori Zamora, Lois Welch, OACC
Danielle O'Bannon, Bryan Kao, Sharon Garske, Janet Chen, AG's Office
John Dovey, Evelyn Matteucci, Don Meier, Jacob Heringer, udy Burleson, Anastasia Bartle

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Marshall Krause, Treasurer • Christiane Hipps • Margaret Johns
Cesar Lagleva • Laura Magnani • Michael Marcum • Ruth Morgan • Dennis Roberts

**Kern Valley State Prison
Armstrong Monitoring Tour
August 2016**

Prison Law Office attorney Corene Kendrick, Investigator Amber Norris, and Litigation Assistant Isaac Dalke conducted a tour of Kern Valley State Prison (KVSP) on August 15-16, 2016, to monitor the prison's compliance with the *Armstrong* Remedial Plan ("ARP"), *Armstrong* court orders, and the Americans with Disabilities Act. At the time of the tour, 130 class members were housed at the institution. The information in this report is based upon formal interviews with class members, interviews with staff, and review of documents received during this monitoring period (November 2, 2015 – July 15, 2016).

KVSP remains in violation of the *Armstrong* Remedial Plan and *Armstrong* Court orders in several ways, including:

- Inadequate training of staff on the ADA and how to accommodate prisoners with disabilities;
- Failure to investigate allegations of noncompliance with the ARP and ADA, and/or to document the results of such investigations on the employee noncompliance logs;
- Inadequate training and supervision of ADA workers; and
- Inappropriate processing of requests for disability accommodation.

I. CUSTODY STAFF RESPONSIBILITIES

A. Culture of violence and intimidation toward prisoners

As we have in past visits to KVSP to interview class members, we received a number of reports of abusive staff behavior toward prisoners with disabilities that included both verbal and physical harassment. Although many prisoners did not wish for us to use their names in this report for fear of retaliation from staff, some were willing to share their experiences, which we include below. Public entities and their employees may not "coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of [...] any right granted or protected" by the Americans with Disabilities Act. *See* Sect. 12203 of the ADA; 35 C.F.R. § 35.134(b). CDCR's Disability Placement Program (DPP) was created to "assure nondiscrimination against inmates/parolees with disabilities." ARP § I.A. We note that we previously raised similar concerns after our December 2015 report, when we identified two allegations that custody staff verbally harassed prisoners because of their disabilities. (p.2)

We ask that the following allegations raised during this monitoring period be investigated, and that they be documented on the employee accountability logs.

Allegations of excessive use of force

1. Mr. [REDACTED], [REDACTED], 16-00776, reported that on 2/22/16 two custody officers (COs Keynaga and Dinis) used excessive force when placing him in waistchains. The response states that the concern will be addressed via 602 #KVSP-O-16-00670. Records from

2/22/16 indicate that Mr. ██████ sought medical attention following the incident. **The allegation from the 1824 does not appear in the employee accountability logs.**

2. Mr. ██████, ██████, DNM, D7/THU, reported that on 7/1/16 he was called for a urine test. When Mr. ██████ had difficulty urinating, the custody officer with him ordered him to tuck in his shirt to leave. Mr. ██████ reported that he had difficulty tucking in his shirt while trying to keep his balance and manage his cane. He reported that the officer became impatient and yelled at him. Mr. ██████ made comments to the officer who then threw Mr. ██████ against the wall and onto the ground at which point the officer stomped on his back. Mr. ██████ lost a tooth during the incident. Health records confirm that Mr. ██████ requested dental care for losing a tooth the following day.
3. Mr. ██████ ██████, DPO, ASU, reported that on 3/16/16 on C Yard he asked to go to suicide watch, but instead he was taken in his wheelchair to a program office in waist and leg restraints. In the program office he reports being punched in the face and thrown out of his wheelchair, and subsequently staff stomped on his legs. He reports that his prosthesis broke during the incident, and he has been unable to get it replaced or repaired since, as discussed in Part II of this report.
4. ██████ ██████, DPO, Z, reported that in mid-May his wheelchair-accessible housing chrono was rescinded and staff re-housed him in a non-ADA cell. He reports that he did not want to go to the non-ADA cell but staff pulled him out of his wheelchair and dragged him into the cell. He reports that he subsequently went to a mental health crisis bed as a direct result of being re-housed.

Harassment / failure to assist disabled prisoners

1. Mr. ██████, ██████, DPM, 15-03134, reported that there was an alarm on the upper yard while he was on the lower yard (A2). Upon hearing the alarm he sat down on the ground. A CO instructed him to prone out, and Mr. ██████ explained that he could not because of his disability. The CO then instructed the CO working in the tower to point his gun at Mr. ██████, who was then made to prone out. The response, issued on 12/11/15, issued Mr. ██████ a “no prone chrono” and a mobility vest. **The allegation from the 1824 does not appear in the employee accountability logs.**
2. Mr. ██████, ██████, B6, 15-03383, reported that he could not walk to the CTC because he had a problem with his air cast. He requested a wheelchair, but a CO told him to go back to his building and that he was refusing the medical appointment. Mr. ██████ claims that he was not refusing the appointment, but instead was asking for assistance to get to the appointment. The response, issued on 12/24/15, states that an inquiry would be completed through the “appropriate division.”
3. Mr. ██████, ██████, 16-00963, reported that staff said that it was not their job to help him read or write. The response, issued on 4/11/16, states that staff would assist him **The allegation from the 1824 does not appear in the employee accountability logs.**

Allegations that custody staff failed to appropriately respond to medical emergencies

1. Mr. ██████, ██████, 15-02989, reported that in C5 on 10/11/15, he reported to CO Hernandez that he needed to see medical. Mr. ██████ alleges that the CO told Mr. ██████ that there was no “man down” [going to medical] or Sergeant on first watch. **The allegation from the 1824 does not appear in the employee accountability logs.**

2. Mr. [REDACTED], [REDACTED], EOP, 16-00329, reported that custody staff in C7 do not call his doctor when he needs medical attention. The response, issued on 2/9/16, states that the allegation would be sent to the appropriate authority. **The allegation from the 1824 does not appear in the employee accountability logs.**

Staff Targeting Prisoners of Certain Races

1. Mr. [REDACTED], [REDACTED], 16-01028, reported that he hurt his back while removing his brace in a strip search. He further alleged that only black people were made to strip. The response, issued on 4/11/16, states that he was transferred to SAC. **The allegation from the 1824 does not appear in the employee accountability logs.**

B. Custody Staff's Lack of Knowledge About Disability Accommodations

We identified multiple ways in which custody staff showed insufficient knowledge of disability issues. Institution staff must receive training on ADA regulations and DPP requirements. (ARP Section IV.T.) The failure to train staff has been highlighted in past reports. *See, e.g.*, March 2014 at 1-2; June 2015 at 3-4. Below are representative examples of how the failure to train staff about disability accommodations adversely affects class members at KVSP:

First, as we interviewed prisoners and toured facilities, it became clear that some KVSP custody staff discourage class members from requesting disability accommodations. In most housing units, 1824 disability accommodation request forms are kept in the officers' station, and prisoners across the institution reported that staff often (a) prohibit prisoners from stopping at the office door to request a blank form, (b) demand to know why the prisoner wants a form, and/or (c) refuse to provide the blank forms. When we asked custody staff in various buildings about requesting forms, they all reassured us that they always give forms to prisoners who asked for them. However, we saw in several buildings (for example, A-1, D-7) signs prominently posted in the windows of several officer's stations that said things such as, "keep moving" or "During Release (yard, work, etc.) DO NOT STOP!!" implying that prisoners could not come to the office to request the forms, when they were out of their cells.

Second, staff failed to provide housing appropriate for people with disabilities. For example, Mr. [REDACTED], [REDACTED], is DPO and did not have access to an accessible shower in building B-1 because his cell is in A section and the accessible shower is in B section, which is Ad Seg overflow, and according to staff, Mr. [REDACTED] cannot enter B section pursuant to OP 200, § IX. He reported that he had been housed in the building for more than two months, and had repeatedly asked custody staff to move him to a building where he could use a shower. Mr. [REDACTED] reported, and the building staff confirmed, that he had not showered for approximately 75 days. The custody officers should have immediately taken steps to move Mr. [REDACTED], as it was not until we brought the ADA staff to the building that efforts began to move him. We also requested that Mr. [REDACTED] be moved immediately to a building where he could use the ADA shower, and that no mobility-impaired prisoners be placed in A section or C section of the building, so long as the only ADA shower is in an Ad Seg overflow. **Please provide an update on when Mr. [REDACTED] was re-housed, and confirm whether A or C sections of B-1 will no longer house any DPW, DPO, DPM, or DNM prisoners. Please investigate why Mr.**

Exhibit 62

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : May 12, 2017

To : SANDRA ALFARO
Associate Director
High Security Mission
Division of Adult Institutions

CHRIS PODRATZ
Region III Health Care
Executive

Subject: **KVSP RESPONSE TO THE ARMSTRONG MONITORING TOUR –AUGUST 2016**

Please find the attached information to the Prison Law Office report from the Armstrong Monitoring Tour, which took place at Kern Valley State Prison (KVSP) in August 2016. The documentation provided includes a response to the report from the institution, to include Health Care Services Response as well, and the Request for Information and supporting documentation the Prison Law Office asked for in their report.

The response that follows has been organized to follow the format of the Prison Law Office report. The response and "Request for Information" provide information and rebuttal to some points raised in the Prison Law Office report. While it is recognized that there were some areas of concern raised in the report that show room for improvement by the institution, it should be noted that the tour report shows Kern Valley State Prison has made marked improvements by all staff to be in compliance with the Armstrong Remedial Plan and departmental policy regarding the care and treatment of incarcerated inmate-patients who are identified as Armstrong class members.

Prison Law Office attorney Corene Kendrick, Investigator Amber Norris, and Litigation Assistant Isaac Dalke conducted a tour of Kern Valley State Prison (KVSP) on August 15-16, 2016, to monitor the prison's compliance with the *Armstrong* Remedial Plan ("ARP"), *Armstrong* court orders, and the Americans with Disabilities Act. At the time of the tour, 130 class members were housed at the institution. The information in this report is based upon formal interviews with class members, interviews with staff, and review of documents received during this monitoring period (November 2, 2015 – July 15, 2016).

KVSP remains in violation of the Armstrong Remedial Plan and *Armstrong* Court orders in several ways, including:

- Inadequate training of staff on the ADA and how to accommodate prisoners with disabilities;
- Failure to investigate allegations of noncompliance with the ARP and ADA, and/or to document the results of such investigations on the employee noncompliance logs;
- Inadequate training and supervision of ADA workers; and
- Inappropriate processing of requests for disability accommodation.

Associate Directors, Division of Adult Institutions
Wardens,
Americans with Disabilities Act Coordinators

Page 2

I. CUSTODY STAFF RESPONSIBILITIES

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As we have in past visits to KVSP to interview class members, we received a number of reports of abusive staff behavior toward prisoners with disabilities that included both verbal and physical harassment. Although many prisoners did not wish for us to use their names in this report for fear of retaliation from staff, some were willing to share their experiences, which we include below. Public entities and their employees may not "coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of [...] any right granted or protected" by the Americans with Disabilities Act. See Sect. 12203 of the ADA; 35 C.F.R. § 35.134(b).

CDCR's Disability Placement Program (DPP) was created to "assure nondiscrimination against inmates/parolees with disabilities." ARP § I.A. We note that we previously raised similar concerns after our December 2015 report, when we identified two allegations that custody staff verbally harassed prisoners because of their disabilities. (p.2)

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Allegations of excessive use of force

1. [REDACTED], 16-00776, reported that on 2/22/16 two custody officers (COs Keynaga and Dinis) used excessive force when placing him in waist chains. The response states that the concern will be addressed via 602 #KVSP-O-16-00670. Records from 2/22/16 indicate that Mr. [REDACTED] sought medical attention following the incident. **The allegation from the 1824 does not appear in the employee accountability logs.**

KVSP Response: Mr. [REDACTED] submitted a Health Care Services Request Form, (7362) on 2/22/16, claiming his lower back and right foot were injured during his encounter with custody. During his appointment with the RN on 2/24/16, regarding his 7362, Mr. [REDACTED] stated that he had chronic back pain. The RN noted on the 7362, that Mr. [REDACTED] was alert and ambulatory with a cane and that there was no injury due to any trauma. Per his CDC 1845 dated 6/22/12, Mr. [REDACTED] has a mobility issue and is currently classified as DLT. He was issued a cane per the CDC 7410 on June 19, 2012, due to his history of chronic back and feet problems and is receiving medical care for these conditions.

[REDACTED]' allegation regarding staff misconduct was forwarded to the hiring authority for further inquiry #KVSP-O-16-00670. The allegation was placed on the KVSP's October 2016 DPP Allegation of Non-Compliance Log. The allegation will be further assessed through the DPP Non-Compliance Inquiry Process. Any employee action as a result of the inquiry will be taken through the Staff Accountability Process.

2. Mr. [REDACTED], DNM, D7/THU, reported that on 7/1/16 he was called for a urine

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test. When Mr. [REDACTED] had difficulty urinating, the custody officer with him ordered him to tuck in his shirt to leave. Mr. [REDACTED] reported that he had difficulty tucking in his shirt while trying to keep his balance and manage his cane. He reported that the officer became impatient and yelled at him. Mr. [REDACTED] made comments to the officer who then threw Mr. [REDACTED] against the wall and onto the ground at which point the officer stomped on his back. Mr. [REDACTED] lost a tooth during the incident. Health records confirm that Mr. [REDACTED] requested dental care for losing a tooth the following day.

KVSP Response: Mr. [REDACTED] submitted a 7362 dated 7/2/16, in which he requested to be seen by dental due to missing one half of a tooth that was knocked out on 7/1/16. Per the Supplemental Dental Progress Notes (237C-1) dated 7/7/16, Mr. [REDACTED] was seen by the dentist, evaluated for a fractured tooth, and a plan was discussed to restore the tooth if possible. On the 237C-1 dated 8/4/16, a visual exam was again completed on the fractured tooth and the restoration process began by completing a composite buildup in order to place a crown on the tooth. Per the 237C-1 dated 8/25/16 a crown was placed on the fractured tooth completing the restoration process. This allegation was placed on KVSP's October 2016 DPP Allegation of Non-Compliance Log. The allegation will be further assessed through the DPP Non-Compliance Inquiry Process. Any employee action as a result of the inquiry will be taken through the Staff Accountability Process.

3. Mr. [REDACTED], DPO, ASU, reported that on 3/16/16 on C Yard he asked to go to suicide watch, but instead he was taken in his wheelchair to a program office in waist and leg restraints. In the program office he reports being punched in the face and thrown out of his wheelchair, and subsequently staff stomped on his legs. He reports that his prosthesis broke during the incident, and he has been unable to get it replaced or repaired since, as discussed in Part II of this report.

KVSP Response: Mr. [REDACTED] transferred to KVSP on 3/3/16 with his DME which included two left prosthetic legs, per the Health Care Transfer Information (7371). Mr. [REDACTED] was seen on 4/15/16, 4/19/16 and 5/5/16; however there is no indication in the PCP's Progress Notes that Mr. [REDACTED] brought up any problems regarding his prosthetic leg. When Mr. [REDACTED] was seen again on 5/24/16, it is noted in the PCP's progress notes that a new leg will not be ordered until his second prosthetic leg could be evaluated. On 6/23/16, Mr. [REDACTED] relinquished both prosthetic legs and a Referral for Services (7243) to orthotics was generated on 6/28/16 for both legs to be evaluated for repair. The first evaluation for repair was on 7/21/16. The notes on the 7243 dated 7/22/16, indicated that the prosthetic leg needed to be replaced. The CME requested a second evaluation be completed by a different orthotic specialist and this occurred on 8/23/16 per the 7243. On 8/30/16 a 7243 was generated so Mr. [REDACTED] would receive a replacement prosthetic leg. Mr. [REDACTED] transferred to SVSP on 9/1/16, this information was forwarded to the SVSP Specialty Clinic OT on 9/8/16 and Mr. [REDACTED] was scheduled to receive his replacement prosthetic leg on 10/13/16. This allegation was placed on KVSP's October 2016 DPP Allegation of Non-Compliance Log. The allegation will be further assessed through the DPP Non-Compliance Inquiry Process. Any employee action as a result of the inquiry will be taken through the Staff Accountability Process.

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4. [REDACTED], DPO, Z, reported that in mid-May his wheelchair-accessible housing chrono was rescinded and staff re-housed him in a non-ADA cell. He reports that he did not want to go to the non-ADA cell but staff pulled him out of his wheelchair and dragged him into the cell. He reports that he subsequently went to a mental health crisis bed as a direct result of being re-housed.

KVSP Response: Mr. [REDACTED] was evaluated on 4/15/16 for his housing restrictions. The Disability Placement Program Verification (1845) dated 4/15/16 confirmed his disability as DPO which does not require a wheelchair accessible cell, the Comprehensive Accommodation Chrono (7410) generated 4/15/16 corrected his housing restrictions. On 5/10/16 Mr. [REDACTED] was brought to the Treatment and Triage Area (TTA), for an examination where he denied any trauma and refused to be evaluated per the PCP's Progress Note. He was examined by Mental Health Staff on 5/11/16, and informed them he was angry and suicidal due to his housing change, as recorded on the Suicide Risk Evaluation (7447). Subsequently he was transferred to a Mental Health Crisis Bed. This allegation was placed on KVSP's October 2016 DPP Allegation of Non-Compliance Log. The allegation will be further assessed through the DPP Non-Compliance Inquiry Process. Any employee action as a result of the inquiry will be taken through the Staff Accountability Process.

Harassment / failure to assist disabled prisoners

1. Mr. [REDACTED], DPM, 15-03134, reported that there was an alarm on the upper yard while he was on the lower yard (A2). Upon hearing the alarm he sat down on the ground. A CO instructed him to prone out, and Mr. [REDACTED] explained that he could not because of his disability. The CO then instructed the CO working in the tower to point his gun at Mr. [REDACTED] who was then made to prone out. The response, issued on 12/11/15, issued Mr. [REDACTED] a "no prone chrono" and a mobility vest. **The allegation from the 1824 does not appear in the employee accountability logs.**

KVSP Response: Mr. [REDACTED] was scheduled to be evaluated on 11/19/15, for his mobility concerns, due to his 1824 dated 11/10/15. According to the 7225 that was signed and dated by Mr. [REDACTED] he refused that examination but was subsequently seen by his PCP on 11/24/15. During the exam the PCP was able to confirm Mr. [REDACTED]'s disability as DPM and both his 7410 and 1845 were updated. The PCP's Progress Note confirmed his mobility problems and Mr. [REDACTED] was issued a mobility vest as indicated on the 7536 dated 11/25/15.

This allegation was placed on the August 2016 accountability log. It was also addressed through two separate Advocacy Letters to the PLO on January 27, 2016 and March 8, 2016.

2. Mr. [REDACTED], B6, 15-03383, reported that he could not walk to the CTC because he had a problem with his air cast. He requested a wheelchair, but a CO told him to go back to his building and that he was refusing the medical appointment. Mr. [REDACTED] claims that he was not refusing the appointment, but instead was asking for assistance to

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get to the appointment. The response, issued on 12/24/15, states that an inquiry would be completed through the "appropriate division."

KVSP Response: Mr. [REDACTED] was scheduled to report to the TTA on 12/3/15, for an interview regarding effective communication during an appointment with Mental Health staff on 9/15/15. This appointment was scheduled in error and cancelled since the alleged non-compliance occurred while Mr. [REDACTED] was housed at CEN. The interview was conducted on 12/3/15 via telephone as noted on the Interdisciplinary Progress Note for Mental Health (7230A) dated 12/3/15. Due to his concerns regarding transportation to medical appointments in the CTC/TTA area, Mr. [REDACTED] was evaluated by his PCP on 12/7/15, and an updated 7410 was generated indicating Mr. [REDACTED] requires a wheelchair for long distances such as CTC/TTA visits.

Inmate [REDACTED]' allegation was placed on the December 2015 accountability log.

3. Mr. [REDACTED], 16-00963, reported that staff said that it was not their job to help him read or write. The response, issued on 4/11/16, states that staff would assist him. **The allegation from the 1824 does not appear in the employee accountability logs.**

KVSP Response: Inmate [REDACTED] is not an Armstrong class member; therefore the allegation will not be added to the accountability log.

Allegations that custody staff failed to appropriately respond to medical emergencies

Mr. [REDACTED], 15-02989, reported that in C5 on 10/11/15, he reported to CO Hernandez that he needed to see medical. Mr. [REDACTED] alleges that the CO told Mr. [REDACTED] that there was no "man down" [going to medical] or Sergeant on first watch. **The allegation from the 1824 does not appear in the employee accountability logs.**

KVSP Response: It should be noted, Mr. [REDACTED] is not an Armstrong class member; therefore no allegation was placed on the accountability log.

Per a Triage & Treatment Service Flow Sheet, (7464), Mr. [REDACTED] was brought to the TTA for lower back pain on 10/12/15 at 7:36 a.m. via a wheelchair. On the 7464 it is noted that Mr. [REDACTED] told the RN that he fell off the toilet the previous night and his back had been hurting ever since. He was evaluated by the PCP and an x-ray was completed on his back. Per the PCP's Progress Note and the Radiology Report dated 10/12/15, there were no acute findings and the alignment of Mr. [REDACTED]'s spine was within normal limits. Mr. [REDACTED] was given pain medication and returned to his housing unit.

1. Mr. [REDACTED] EOP, 16-00329, reported that custody staff in C7 do not call his doctor when he needs medical attention. The response, issued on 2/9/16, states that the allegation would be sent to the appropriate authority. **The allegation from the 1824 does not appear in the employee accountability logs.**

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KVSP Response: Within the CDCR-1824, [REDACTED] states staff did not call his clinician, and they did not call his Doctor when he asks them to do so. [REDACTED] does not say he needs medical attention only that he wants staff to call a doctor. KVSP was aware of the allegation during the RAP. However, after discussion with medical, it was determined the request was not related to his DPP code of DNH, but instead related to a PLATA issue. Therefore the allegation will not be placed on the accountability log.

On 1824, 16-00329, dated 1/28/16, Mr. [REDACTED] is speaking to his issues regarding his EOP status. He was requesting access to "The full spectrum of EOP programs" including easy access to the doctors. After careful review of the eUHR, since Mr. [REDACTED]'s arrival on 1/22/16, to KVSP, he was seen multiple times by Mental Health staff as noted below:

1. 1/26/16 seen by a Clinical Social Worker per the 7230A and Mental Health Evaluation (7386B).
2. 2/1/16 Recreational Therapy Service (7230I), Mr. [REDACTED] refused this opportunity for Recreational Therapy.
3. 2/2/16, refused Group Therapy per the Interdisciplinary Program Notes for Group Therapy (7230C),
4. 2/3/16, seen by a psychiatrist as indicated on the Interdisciplinary Progress Note for General Psychiatry (7230F)
5. 2/4/16 seen by a Clinical Social Worker as indicated on the 7230A.
6. 2/9/16 seen by a Clinical Social Worker as indicated on the 7230A.
7. 2/9/16 attended Group Therapy as noted on the 7230C.

Due to his mental health status Mr. [REDACTED] is seen by clinical staff weekly and he has regular scheduled Group Therapy in the interim.

Staff Targeting Prisoners of Certain Races

1. Mr. [REDACTED], 16-01028, reported that he hurt his back while removing his brace in a strip search. He further alleged that only black people were made to strip. The response, issued on 4/11/16, states that he was transferred to SAC. **The allegation from the 1824 does not appear in the employee accountability logs.**

KVSP Response: The allegation [REDACTED] raises is not an access issue. KVSP DOM Supplement 52020.7., Titled, "General Movement-Daily Activity Schedule" states, "All inmates (regardless of their destination or job designation) are required to submit to an unclothed body search. When ordered, the inmates will hand the inspecting officer all of his

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clothing shoes and socks; no exceptions." The allegation will not be added to the accountability log.

Custody Staff's Lack of Knowledge About Disability Accommodations

We identified multiple ways in which custody staff showed insufficient knowledge of disability issues. Institution staff must receive training on ADA regulations and DPP requirements. (ARP Section IV.T.) The failure to train staff has been highlighted in past reports. See, e.g., March 2014 at 1-2; June 2015 at 3-4. Below are representative examples of how the failure to train staff about disability accommodations adversely affects class members at KVSP:

First, as we interviewed prisoners and toured facilities, it became clear that some KVSP custody staff discourage class members from requesting disability accommodations. In most housing units, 1824 disability accommodation request forms are kept in the officers' station, and prisoners across the institution reported that staff often (a) prohibit prisoners from stopping at the office door to request a blank form, (b) demand to know why the prisoner wants a form, and/or (c) refuse to provide the blank forms. When we asked custody staff in various buildings about requesting forms, they all reassured us that they always give forms to prisoners who asked for them. However, we saw in several buildings (for example, A-1, D-7) signs prominently posted in the windows of several officer's stations that said things such as, "keep moving" or "During Release (yard, work, etc.) DO NOT STOP!!" implying that prisoners could not come to the office to request the forms, when they were out of their cells.

KVSP Response: *The CDCR 1824s are in fact kept in the staff office. And, as noted as above, staff reassured the PLO that the forms are given to the inmates when requested. The staff office is located in the rotunda of the housing unit. For safety and security of staff and inmates, during times of mass movement it is critical the inmates remain moving through that area and not congregate at the staff office. The availability of the CDCR-1824's has not been brought to the attention of the ADA Coordinator or CAMU CCII. Staff are continually inside the housing unit and are present on the tiers throughout the day. Inmates may ask for an 1824 at times other than mass movement.*

Second, staff failed to provide housing appropriate for people with disabilities. For example, Mr. [REDACTED], is DPO and did not have access to an accessible shower in building B-1 because his cell is in A section and the accessible shower is in B section, which is Ad Seg overflow, and according to staff, Mr. [REDACTED] cannot enter B section pursuant to OP 200, § IX. He reported that he had been housed in the building for more than two months, and had repeatedly asked custody staff to move him to a building where he could use a shower. Mr. [REDACTED] reported, and the building staff confirmed, that he had not showered for approximately 75 days. The custody officers should have immediately taken steps to move Mr. [REDACTED], as it was not until we brought the ADA staff to the building that efforts began to move him. We also requested that Mr. [REDACTED] be moved immediately to a building where he could use the ADA shower, and that no mobility-

Exhibit 63

**Kern Valley State Prison
Armstrong Monitoring Tour
June 2017**

Prison Law Office Legal Fellow Sia Henry, Litigation Assistants Meg O'Neill and Ehsan Sadeghi, and Law Student Intern Bernadette Rabuy ("Plaintiffs' counsel") conducted a tour of Kern Valley State Prison ("Kern Valley" or "KVSP") on June 5-7, 2017, to monitor the prison's compliance with the *Armstrong* Remedial Plan ("ARP"), *Armstrong* court orders, and the Americans with Disabilities Act ("ADA"). The information in this report is based upon interviews with class members and institution staff as well as a review of documents received during this monitoring period (July 16, 2016 – April 24, 2017).

Kern Valley has a capacity to house 2,448 people. During the week of our visit, the prison was at 150.3% capacity, housing 3,680 people¹. According to the June 1, 2017 DECS, the facility housed approximately 140 individuals identified by CDCR as *Armstrong* class members. During the monitoring tour, Plaintiffs' counsel interviewed approximately 43 incarcerated individuals (or 30% of class members) with mobility and hearing impairments.

The institution remains in violation of the *Armstrong* Remedial Plan and the ADA in a number of areas, including:

- Inadequate staff training on ADA/ARP requirements resulting in a failure of custody staff to provide persons with disabilities reasonable accommodations and access to the appeals process;
- Custody staff removal of assistive devices;
- Failure to provide equal access to showers;
- Delays in providing assistive devices and accessories;
- Failure to transfer assistive devices between institutions;
- Problematic processing of reasonable accommodation requests.

I. CUSTODY STAFF RESPONSIBILITIES

A. Failure to Provide Disabled Individuals with Equal Access to Showers (*)²

Plaintiffs' counsel identified a number of class members who indicated they have difficulty accessing the ADA-accessible showers in their buildings. Custody staff must provide mobility-impaired individuals access to showers in accordance with their disability needs. (CCHCS P&Ps 4.23.1.) Moreover, the ARP requires that facilities be made accessible to people with disabilities and prohibits discrimination on the basis of disability in the provision of access

¹ CDCR, *Weekly Population Report as of Midnight June 7, 2017* (June 7, 2017), http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad170607.pdf.

² Asterisks denote allegations that should be added to the employee noncompliance logs. An asterisk for a section header means that all allegations contained in the section should be investigated and added to the noncompliance logs.

2. [REDACTED], [REDACTED], DPO (D3), reported that when he has seizures and has to go to the CTC, staff regularly take off his glasses, wheelchair gloves, helmet, vest, and other DME and do not always return all of these items. This happened most recently on April 17, 2017 and when Mr. [REDACTED] requested that staff replace the DME they had removed and failed to return, officers tossed his cell before replacing his assistive devices.
3. [REDACTED], [REDACTED], 16-02072, reported that when he returned to KVSP from an outside hospital on June 29, 2016, Officer Baker disconnected and subsequently lost the leg supports for his assigned wheelchair. The RAP response indicates Mr. [REDACTED] transferred to High Desert State Prison on July 6, 2016.
4. [REDACTED], [REDACTED], 16-02095, reported on July 4, 2016 that he had received special Velcro shoes for his wide, flat feet and arthritis when he was on Facility C. When he transferred to Facility D, staff took Mr. [REDACTED] shoes from him, stating that he was no longer on Facility C and his RAP response (to appeal number 15-02175) permitting him to have the Velcro shoes was not applicable to Facility D. The RAP response instructs Mr. [REDACTED] to submit a Form 22 to laundry for shoes.

REQUEST: Please ensure Mr. [REDACTED] is given a hearing impaired vest.

C. Intentional Endangerment and Excessive Use of Force

Similar to past tours, Plaintiffs' counsel identified instances in which class members reported abusive staff behavior toward individuals with physical disabilities. Public entities and their employees may not "coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of [...] any right granted or protected" by the Americans with Disabilities Act. (*See* Sect. 12203 of the ADA; 35 C.F.R. § 35.134(b).) CDCR's Disability Placement Program ("DPP") was created to "assure nondiscrimination against . . . [individuals] with disabilities." (ARP § I.A.) Plaintiffs' counsel raised similar concerns in past reports. (*See, e.g.*, August 2016 report at 1-3; December 2015 report at 2.) For example:

1. [REDACTED], [REDACTED], DPM (D3), said that about four months prior to this tour he heard his newly assigned cellmate say that he does not want to live with Mr. [REDACTED] because of Mr. [REDACTED]'s mobility impairment. Mr. [REDACTED] then heard Control Officer Martinez tell the new cellmate: "put him out, then you won't have to [live with him]." Mr. [REDACTED] said that he submitted an 1824 reporting this incident but never received a response, which raises a concern about whether there had been interference in the appeals process.
2. [REDACTED], [REDACTED], DLT, 17-00043, reported that on December 28, 2016 his PCP requested that custody staff replace his seated walker with a non-seated walker. As a result, on December 30, 2016, Mr. [REDACTED] had to stop several times on his way to the pill call line because of pain in his lower back and legs. While returning from the pill call line, Mr. [REDACTED] was in so much pain that he sat down and told officers

he needed a wheelchair or time to rest in order to make it back to his cell. Officer Conception told Mr. [REDACTED] to “stop faking” and that nothing was wrong with his back. A sergeant then gave Officer Conception and other staff permission to drag Mr. [REDACTED] back to his cell. While they were dragging him, Mr. [REDACTED] repeatedly asked the officers to slow down because they were hurting his back and legs but, instead of slowing down, Officer Conception punched Mr. [REDACTED] in the back. The RAP response states that Mr. [REDACTED]’s allegations of staff misconduct and unnecessary use of force will be sent to the Hiring Authority for further inquiry (log number 17-00053)

- This allegation appears on the Employee Non-Compliance logs but was not confirmed.

D. Failure to Ensure Effective Communication with Hearing Impaired Persons

Staff are not providing appropriate accommodations to individuals with hearing impairments. Staff must accommodate hearing impaired persons by ensuring effective communication during announcements and alarms. (ARP § IV.I.2.b.) Failure to comply with this requirement has been an ongoing issue at KVSP. (*See, e.g.*, August 2016 report at 5.) During the June 2017 tour, a number of class members indicated staff do not utilize different approaches to communicate alarms and announcements to hearing impaired individuals. For example:

1. (*) [REDACTED], [REDACTED], DNH, 16-03319, reported on October 25, 2016 that he was unable to hear custody staff open his cell door for pill call and the officers in his housing unit (C4) did not make an effort to alert him. As a result, Mr. [REDACTED] missed his noon medication. The RAP response incorrectly instructs Mr. [REDACTED] to submit a 7362 to “request to be evaluated for an Inmate Caregiver.”
2. [REDACTED], [REDACTED], DPW/DNH (C4), reported that he is unable to hear announcements made over the loudspeaker in his housing unit and staff do not check to ensure he has heard what they said. Instead, Mr. [REDACTED] often has to get into his wheelchair and wheel himself to the podium to ask staff to repeat themselves.
3. (*) [REDACTED], [REDACTED], DNH (D2), reported that in February 2017 an officer in his housing unit used the loudspeaker to inform Mr. [REDACTED] that he had an appointment. Since Mr. [REDACTED] had difficulty hearing the officer, he did not attend his appointment. As a result, the officer issued Mr. [REDACTED] a 128-A. Mr. [REDACTED] appealed the 128-A and it was ultimately dismissed.
4. [REDACTED], [REDACTED], DPM/DNH (D3), reported that since he is unable to hear announcements staff make over the loudspeakers, housing unit officers yell at him on nearly a weekly basis for not complying with the announcements.
5. [REDACTED], [REDACTED], DNH (C3), reported that he often has difficulty hearing announcements staff make over the loudspeaker in his housing unit. Since staff do not

Exhibit 64

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : January 31, 2018

To : SANDRA ALFARO
Associate Director
High Security Mission
Division of Adult Institutions

CHRIS PODRATZ
Region III Health Care
Executive

Subject: **KVSP RESPONSE TO THE ARMSTRONG MONITORING TOUR –JUNE 2017**

Please find the attached information to Prison Law Office report from the Armstrong Monitoring Tour, which took place at Kern Valley State Prison (KVSP) in June 2017. The documentation provided includes a response to the report from the institution, to include Health Care Services Response as well, and the Request for Information and supporting documentation the Prison Law Office has asked for in their report.

The response that follows has been organized to follow the format of the Prison Law Office report. The response and "Request for Information" provide information and rebuttal to some points raised in the Prison Law Office Report. While it is recognized that there were some areas of concern raised in the report that show room for improvement by the institution, it should be noted that the tour report shows Kern Valley State Prison has made marked improvements by all staff to be in compliance with the *Armstrong* Remedial Plan and departmental policy regarding the care and treatment of incarcerated inmate-patients who are identified as *Armstrong* class members.

Prison Law Office Legal Fellow Sia Henry, Litigation Assistants Meg O'Neill and Ehsan Sadeghi, and Law Student Intern Bernadette Rabuy ("Plaintiffs' counsel") conducted a tour of Kern Valley State Prison ("Kern Valley" or "KVSP") on June 5-7, 2017, to monitor the prison's compliance with the Armstrong Remedial Plan ("ARP"), Armstrong court orders, and the Americans with Disabilities Act ("ADA"). The information in this report is based upon interviews with class members and institution staff as well as a review of documents received during this monitoring period (July 16, 2016 – April 24, 2017).

Kern Valley has a capacity to house 2,448 people. During the week of our visit, the prison was at 150.3% capacity, housing 3,680 people¹. According to the June 1, 2017 DECS, the facility housed approximately 140 individuals identified by CDCR as Armstrong class members. During the monitoring tour, Plaintiffs' counsel interviewed approximately 43 incarcerated individuals (or 30% of class members) with mobility and hearing impairments.

The institution remains in violation of the Armstrong Remedial Plan and the ADA in a number of areas, including:

- Inadequate staff training on ADA/ARP requirements resulting in a failure of custody staff to provide persons with disabilities reasonable accommodations and access to the appeals process;
- Custody staff removal of assistive devices;
- Failure to provide equal access to showers;
- Delays in providing assistive devices and accessories;
- Failure to transfer assistive devices between institutions;
- Problematic processing of reasonable accommodation requests.

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KVSP, Jun 2017

was not applicable to Facility D. The RAP response instructs Mr. [REDACTED] to submit a Form 22 to laundry for shoes.

KVSP Response: Mr. [REDACTED] is not a class member under the Armstrong Remedial Plan. Therefore this will not be added to the Non-compliance log. Per the CDCR-1845 dated 2-12-16, no disability is noted.

REQUEST: Please ensure Mr. [REDACTED] is given a hearing impaired vest.

KVSP Response: Per the 7536 dated 6-14-17, Mr. [REDACTED] has been issued a Hearing Impaired Vest.

C. Intentional Endangerment and Excessive Use of Force

Similar to past tours, Plaintiffs' counsel identified instances in which class members reported abusive staff behavior toward individuals with physical disabilities. Public entities and their employees may not "coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of [...] any right granted or protected" by the Americans with Disabilities Act. (See Sect. 12203 of the ADA; 35 C.F.R. § 35.134(b).) CDCR's Disability Placement Program ("DPP") was created to "assure nondiscrimination against . . . [individuals] with disabilities." (ARP § I.A.) Plaintiffs' counsel raised similar concerns in past reports. (See, e.g., August 2016 report at 1-3; December 2015 report at 2.) For example:

1. [REDACTED], [REDACTED], DPM (D3), said that about four months prior to this tour he heard his newly assigned cellmate say that he does not want to live with Mr. [REDACTED] because of Mr. [REDACTED]'s mobility impairment. Mr. [REDACTED] then heard Control Officer Martinez tell the new cellmate: "put him out, then you won't have to [live with him]." Mr. [REDACTED] said that he submitted an 1824 reporting this incident but never received a response, which raises a concern about whether there had been interference in the appeals process.

KVSP Response: Per the Inmate/Parolee Appeals Tracking System, Mr. [REDACTED] has not submitted any CDCR 1824's. It has been determined that the remaining allegations are more appropriate for referral to the processes articulated in Chapter 3, Articles 14 and 22 of CDCR's Operations Manual, rather than the Armstrong tour report response and non-compliance log processes. Defendants take allegations concerning staff misconduct very seriously and Plaintiff's allegations have been forwarded on to be addressed through the proper channels. Defendants will not be providing a response to these allegations in this document. An attorney from the Office of Legal Affairs will provide you a response

2. [REDACTED], [REDACTED], DLT, 17-00043, reported that on December 28, 2016 his PCP requested that custody staff replace his seated walker with a non-seated walker. As a result, on December 30, 2016, Mr. [REDACTED] had to stop several times on his way to the pill call line because of pain in his lower back and legs. While returning from the pill call line, Mr. [REDACTED] was in so much pain that he sat down and told officer she needed a wheelchair or time to rest in order to make it back to his cell. Officer Conception told Mr. [REDACTED] to "stop faking" and that nothing was wrong with his back. A sergeant then gave Officer Conception and other staff permission to drag Mr. [REDACTED] back to his cell. While they were dragging him, Mr. [REDACTED] repeatedly asked the officers to slow down because they were hurting his back and legs but, instead of slowing down, Officer Conception punched Mr. [REDACTED] in the back. The RAP response states that Mr. [REDACTED]'s allegations of staff misconduct and unnecessary use of force will be sent to the Hiring Authority for further inquiry (log number 17-00053)

o This allegation appears on the Employee Non-Compliance logs but was not confirmed.

KVSP Response: Mr. [REDACTED] was examined by his PCP on 12-28-16. Per the 7221-

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KVSP, Jun 2017

DME, the PCP discontinued the wheeled-walker and ordered a regular walker for Mr. [REDACTED]. The regular walker was given to Mr. [REDACTED] on 12-28-16, however the wheeled-walker was not removed until 12-30-16. These encounters were recorded on the 7536's of the same dates.

Mr. [REDACTED] was given the option to send his wheeled walker home, destroy it, or donate it to the institution but refused to give direction regarding the disposition of his wheeled walker. Upon speaking with an SRN II, Mr. [REDACTED] indicated he would just like to be refunded the \$130.00 for the wheeled walker. After additional research, it was discovered that the wheeled walker was issued to Mr. [REDACTED] temporarily on 1-29-16, and he should not have been charged. The accounting office was contacted and Mr. [REDACTED] was refunded the \$130.00 on 4-18-2017.

The remaining allegations are more appropriate for referral to the processes articulated in Chapter 3, Articles 14 and 22 of CDCR's Operations Manual, rather than the Armstrong tour report response and non-compliance log processes. Defendants take allegations concerning staff misconduct very seriously and Plaintiff's allegations have been forwarded on to be addressed through the proper channels. Defendants will not be providing a response to these allegations in this document.

D. Failure to Ensure Effective Communication with Hearing Impaired Persons

Staff are not providing appropriate accommodations to individuals with hearing impairments. Staff must accommodate hearing impaired persons by ensuring effective communication during announcements and alarms. (ARP § IV.I.2.b.) Failure to comply with this requirement has been an ongoing issue at KVSP. (See, e.g., August 2016 report at 5.) During the June 2017 tour, a number of class members indicated staff do not utilize different approaches to communicate alarms and announcements to hearing impaired individuals. For example:

1. (*) [REDACTED], [REDACTED], DNH, 16-03319, reported on October 25, 2016 that he was unable to hear custody staff open his cell door for pill call and the officers in his housing unit (C4) did not make an effort to alert him. As a result, Mr. [REDACTED] missed his noon medication. The RAP response incorrectly instructs Mr. [REDACTED] to submit a 7362 to "request to be evaluated for an Inmate Caregiver."

KVSP Response: This allegation was placed on the July 2017 DPP Allegation of Non Compliance log and an inquiry was conducted. [REDACTED] was interviewed and said he remembered the date in question, October 25, 2016 and that he didn't receive his noon medications. There were no additional documents provided during the inquiry process. Nursing staff assigned to Facility C were interviewed and verified through the Medication Administration Record (MAR) that [REDACTED] actually did receive his medications on October 25, 2016. Housing unit staff recall going to [REDACTED] cell regularly to make sure he heard all announcements made in the housing unit. This allegation was not confirmed.

2. [REDACTED], [REDACTED], DPW/DNH (C4), reported that he is unable to hear announcements made over the loudspeaker in his housing unit and staff do not check to ensure he has heard what they said. Instead, Mr. [REDACTED] often has to get into his wheelchair and wheel himself to the podium to ask staff to repeat themselves.

KVSP Response: The ADA staff interviewed [REDACTED] regarding this issue. [REDACTED] stated he was unable to hear the announcement that was made over the loudspeaker. However, housing unit staff are aware of any hearing impaired inmates in their unit and are present in the dayroom to assist these inmates during any and all announcements made over the public address system.

Exhibit 65

Kern Valley State Prison
Armstrong Monitoring Tour Report
August 2018

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I. INTRODUCTION

Representatives from the Prison Law Office visited Kern Valley State Prison (KVSP) on August 14-16, 2018 to evaluate compliance with the requirements of *Armstrong v. Newsom*, the *Armstrong* Remedial Plan (ARP), and the Americans with Disabilities Act (ADA).

At the time of our visit, approximately 200 class members lived at the prison. The information in this report is based upon formal interviews with approximately 40 class members, interviews with staff, and review of documents received during this monitoring period (January 11, 2018 to July 2, 2018). This report does not contain an exhaustive list of every class member who raised a concern. Some class members, including some reporting staff misconduct and fearing retaliation, did not authorize us to use their names.

Some of the problems listed in this report were presented to KVSP and headquarters staff throughout the tour and during the exit interview. We have indicated with an asterisk (*) the allegations of noncompliance that we believe should be documented on the accountability logs and investigated. Throughout this report, we make recommendations and requests for information. These requests and recommendations are summarized again at the end of the report.

II. HEADQUARTERS STAFF RESPONSIBILITIES

A. Stringent definition of vision disabilities

On July 23, 2018, CDCR reinstated an additional DPP code for low-vision class members. We are hopeful that the DNV code will help solve problems created by CDCR's sole reliance on a narrowly defined DPV code. For example, Mr. [REDACTED], [REDACTED], O-18-00390, reported on 1/15/18 that he was previously designated with the DPV code for a vision impairment and that the code was removed. He reported that he has fallen while trying to ambulate without assistance. He requested access to an ADA worker. The RAP response dated 2/14/18 indicate that Mr. [REDACTED] does not have a vision impairment "per criteria used by CDCR." The RAP response fails to consider what accommodations might be appropriate for Mr. [REDACTED]' vision impairment despite the lack of a DPV code. Subsequent to the RAP response, a memo was issued by CCHCS, expanding the definition of vision impaired patients and reinstating the DNV DPP code. See CDCR Memorandum, Expansion of Vision-Impaired Patient Definition (April 2018).

REQUEST:

Please evaluate Mr. [REDACTED] for the DNV code and assess whether he requires accommodations for his vision impairment.

The Inmate Property Matrix Schedule permits Wardens to seek exemptions to the Schedule.

REQUEST:

We request an exemption to the Property Matrix Schedule as a reasonable accommodation to allow class members with hearing aids to have equal access to the use radios, televisions, and Talking Books players in the SHU and other high security settings.

If no exemption will be sought, please provide Plaintiffs' counsel with a detailed explanation for the refusal to seek an exemption, and how these prisoners will be accommodated since they cannot physically use the in-ear hearing buds.

IV. Staff conduct

During the monitoring tour, class members reported widespread concerns about staff misconduct at KVSP. In particular, as they have in previous monitoring periods, class members reported concerns about bullying, harassment, retaliation, and violence. *See, e.g.*, June 2017 KVSP Report at 4; August 2016 Report at 1-3; December 2015 Report at 2. Many class members declined to authorize Plaintiffs' counsel to use their names due to fear of retaliation. Some representative examples are set forth below:

1. Mr. [REDACTED], [REDACTED], DLT, C2, reported that in July 2018, he was on the patio of C yard during medical line, when an incarcerated transgender person arrived. Mr. [REDACTED] reported that CO Stark ordered the person off the patio because she was using lipstick. He reported that the situation escalated and the incarcerated person yelled but did not become physical with CO Stark. CO Stark then used force against the incarcerated person, placing his knee on the person's neck and twisting the person's arm backward.
2. Mr. [REDACTED], [REDACTED], DPO, C5, reported that in approximately June 2018 on third watch, he returned to his building but the officer in the tower would not let him into his cell right away even though he needed a snack because his blood sugar was dropping and he is diabetic. He reported that CO Atkins approached him from behind and kned him in the back through his wheelchair, causing injury to his back.(*)

3. Mr. [REDACTED], [REDACTED], DLT, C1, reported that between April or June 2018 on second watch, somebody was out of line in the medical line and a CO threw the person up against the wall.
4. Mr. [REDACTED], [REDACTED], DPO, C2, reported that the week of August 6, 2018, he was in the afternoon SAP classroom and witnessed through the window on C Yard around 12pm that three officers (who typically work on the patio) kicked a prisoner on the ground in the mouth.

V. HEALTH CARE STAFF RESPONSIBILITIES

A. Incontinence Supplies

Class members with incontinence reported that they were not always appropriately accommodated with supplies. For example:

1. Mr. [REDACTED], [REDACTED], DPO, D7 reported that he is not receiving sufficient incontinence supplies. Mr. [REDACTED] only receives seven pairs of diapers but reported that he needs 14 pairs. Mr. [REDACTED]'s medical record confirms that he receives seven diapers per week. The record indicates that in June 2018, when he was at HDSP, he received nine diapers per week. According to Mr. [REDACTED]'s medical record, he has nocturnal incontinence. It is conceivable that Mr. [REDACTED] would need more than seven diapers per week because if he has an accident in the middle of the night, he would need to change the soiled diaper for a clean one. **Please evaluate Mr. [REDACTED]'s need for additional diapers.**
2. Mr. [REDACTED], [REDACTED], DPO, D5, reported that he is not receiving his incontinence supplies. Mr. [REDACTED] reported that he is supposed to get weekly incontinence supplies (wipes) and has not received his supplies since 3/13/18. Mr. [REDACTED] reported that he also used to have a "sitz bath" that allowed him clean himself after having night accidents. Mr. [REDACTED] submitted an 1824 on 8/12/18 about his incontinence supplies. The RAP response dated 8/22/18 notes that "personal wipes and colostomy supplies are not needed" per medical. According to an LVN Progress Note dated 8/21/18, "wipes were not a medical necessity." **Medical staff should evaluate whether issuing wipes to Mr. [REDACTED] would be a reasonable accommodation which could facilitate access to programs and services. (*)**
3. Mr. [REDACTED], [REDACTED], D7, suffers from incontinence. On August 15, 2018, Mr. [REDACTED] submitted an 1824 requesting more pull-up briefs. He wrote, "I am in need of addition (10) pull-up diapers which would be 40 a month." At that time, Mr. [REDACTED] was receiving 30 pull ups per month or one per calendar day. Mr. [REDACTED] indicated

Exhibit 66

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : August 5, 2019

To : GEORGE JAIME
Associate Director (A)
High Security Mission

CHRISTOPHER PODRATZ
Region III Health Care Executive

Subject: **KVSP RESPONSE TO THE *ARMSTRONG* MONITORING TOUR –AUGUST 2018**

Please find the attached information to Prison Law Office (PLO) report from the *Armstrong* Monitoring Tour, which took place at Kern Valley State Prison (KVSP) in August 2018. The documentation provided includes a response to the report from the institution, to include Health Care Services Response as well.

The response that follows has been organized to follow the format of the PLO report. The response provides information and rebuttal to some points raised in the PLO report. While it is recognized that there were some areas of concern raised in the report that show room for improvement by the institution, it should be noted that the tour report shows KVSP has made marked improvements by all staff to be in compliance with the *Armstrong* Remedial Plan and departmental policy regarding the care and treatment of incarcerated inmate-patients who are identified as *Armstrong* class members.

**Kern Valley State Prison
Armstrong Monitoring Tour Report August
2018**

I. INTRODUCTION

Representatives from the Prison Law Office visited Kern Valley State Prison (KVSP) on August 14-16, 2018 to evaluate compliance with the requirements of *Armstrong v. Newsom*, the *Armstrong* Remedial Plan (ARP), and the Americans with Disabilities Act (ADA).

At the time of our visit, approximately 200 class members lived at the prison. The information in this report is based upon formal interviews with approximately 40 class members, interviews with staff, and review of documents received during this monitoring period (January 11, 2018 to July 2, 2018). This report does not contain an exhaustive list of every class member who raised a concern. Some class members, including some reporting staff misconduct and fearing retaliation, did not authorize us to use their names.

Some of the problems listed in this report were presented to KVSP and headquarters staff throughout the tour and during the exit interview. We have indicated with an asterisk (*) the allegations of noncompliance that we believe should be documented on the accountability logs and investigated. Throughout this report, we make recommendations and requests for information. These requests and recommendations are summarized again at the end of the report.

II. HEADQUARTERS STAFF RESPONSIBILITIES

██████ was advised to remove the hearing aids and put the earbuds in and turn up the volume on the radio. The institution at this time elected to not file an exemption to the property matrix for ASU inmates to be allowed over the ear headphones.

Plaintiffs' counsel has raised this concern at other high security units in CDCR. See May 2014 COR Tour Report at 1; February 2015 COR Tour Report at 1; October 2015 COR Tour Report at 3. December 2014 SQ Tour Report; January 2017 SQ Tour Report; May 2014 COR Tour Report; February 2015 COR Tour Report; October 2015 COR Document Production Report; March 2016 COR Tour Report. In addition, on 4/28/16, the RAP at HDSP granted a class member in the ASU over-the-ear headphones to accommodate his hearing disability. See Log No. B-16-01054, Mr. ██████ ██████

The Inmate Property Matrix Schedule permits Wardens to seek exemptions to the Schedule.

REQUEST:

We request an exemption to the Property Matrix Schedule as a reasonable accommodation to allow class members with hearing aids to have equal access to the use radios, televisions, and Talking Books players in the SHU and other high security settings.

If no exemption will be sought, please provide Plaintiffs' counsel with a detailed explanation for the refusal to seek an exemption, and how these prisoners will be accommodated since they cannot physically use the in-ear hearing buds.

Response: DAI has included language in proposed changes to regulations that will require institutions to provide over the ear headphones to hearing impaired inmates housed in high security housing areas. The regulations are currently pending approval at the level of the Secretary of CDCR. The first purchase of over the ear head phones has already been procured and will be sent to institutions upon approval of the proposed changes to regulations. In the interim, the institution will review each request independently, and afford hearing impaired inmates an interim accommodation on a case by case basis.

IV. Staff conduct

During the monitoring tour, class members reported widespread concerns about staff misconduct at KVSP. In particular, as they have in previous monitoring periods, class members reported concerns about bullying, harassment, retaliation, and violence. See, e.g., June 2017 KVSP Report at 4; August 2016 Report at 1-3; December 2015 Report at 2. Many class members declined to authorize Plaintiffs' counsel to use their names due to fear of retaliation. Some representative examples are set forth below:

1. Mr. ██████ ██████ DLT, C2, reported that in July 2018, he was on the patio of C yard during medical line, when an incarcerated transgender person arrived. Mr. ██████ reported that CO Stark ordered the person off the patio because she was using lipstick. He reported that the situation escalated and the incarcerated person yelled but did not become physical with CO Stark. CO Stark then used force against the incarcerated person, placing his knee on the person's neck and twisting the person's arm backward.

2. Mr. [REDACTED] DPO, C5, reported that in approximately June 2018 on third watch, he returned to his building but the officer in the tower would not let him into his cell right away even though he needed a snack because his blood sugar was dropping and he is diabetic. He reported that CO Atkins approached him from behind and kneed him in the back through his wheelchair, causing injury to his back.(*)
3. Mr. [REDACTED] DLT, C1, reported that between April or June 2018 on second watch, somebody was out of line in the medical line and a CO threw the person up against the wall.
4. Mr. [REDACTED] DPO, C2, reported that the week of August 6, 2018, he was in the afternoon SAP classroom and witnessed through the window on C Yard around 12pm that three officers (who typically work on the patio) kicked a prisoner on the ground in the mouth.

Response: Defendants have determined that these allegations are more appropriate for referral outside of the Armstrong tour report response and non-compliance log processes. Defendants take allegations concerning staff misconduct very seriously and Plaintiff's allegations have been forwarded on to be addressed through the proper channels. Defendants will not be providing a response to these allegations in this document. An attorney from the Office of Legal Affairs will provide you a response to these allegations.

5. HEALTH CARE STAFF RESPONSIBILITIES

A. Incontinence Supplies

Class members with incontinence reported that they were not always appropriately accommodated with supplies. For example:

1. Mr. [REDACTED] DPO, D7 reported that he is not receiving sufficient incontinence supplies. Mr. [REDACTED] only receives seven pairs of diapers but reported that he needs 14 pairs. Mr. [REDACTED]'s medical record confirms that he receives seven diapers per week. The record indicates that in June 2018, when he was at HDSP, he received nine diapers per week. According to Mr. [REDACTED]'s medical record, he has nocturnal incontinence. It is conceivable that Mr. [REDACTED] would need more than seven diapers per week because if he has an accident in the middle of the night, he would need to change the soiled diaper for a clean one. **Please evaluate Mr. [REDACTED]'s need for additional diapers.**

Response: [REDACTED] was referred to the gastroenterology and examined on 8/23/2018. It was determined a colonoscopy was needed. The procedure occurred on 9/20/2018. Both of the encounters addressed [REDACTED]'s incontinence issues. Due to [REDACTED]'s suboptimal preparation for the colonoscopy on 9/20/2018, per the Colonoscopy Note, the procedure was rescheduled and conducted on 11/7/2018. The PCP's note dated 11/21/2018, indicates there was no medical reason that [REDACTED] should have an issue with nocturnal incontinence and no additional incontinent supplies were ordered. Based off his exams listed above, [REDACTED] continues to receive seven diapers per week. [REDACTED] is seen regularly by his PCP, most recently on 3/3/2019.

2. Mr. [REDACTED] DPO, D5, reported that he is not receiving his incontinence supplies. Mr. [REDACTED] reported that he is supposed to get weekly incontinence supplies (wipes) and has not received his supplies since 3/13/18. Mr. [REDACTED] reported that he also used to have a "sitz bath" that allowed him clean himself after having night accidents. Mr. [REDACTED] submitted an 1824 on 8/12/18 about his incontinence supplies. The RAP response dated 8/22/18 notes that

Exhibit 67

DECLARATION OF

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation (“CDCR”) number is [REDACTED]. I am currently at Mule Creek State Prison (“MCSP”) on Facility B in Building 6. I am 59 years old.

3. I am an *Armstrong* class member. I am designated as DPM and DNH, which means I have a mobility and hearing disability, respectively. Because of my mobility disability, I need the following durable medical equipment (“DME”) to help me walk: a walker and compression stockings. I used to have a back brace and orthotic foot-wear but I lost these when I first transferred to MCSP. I have been trying to get them back because I need them for my disability, but medical staff have refused to give them to me. I also have a mobility disability vest that I wear outside of my cell. My mobility vest is to alert staff that I am unable to get down on the ground during alarms. Because I am classified as DPM, I can only be housed in a lower bunk on the ground floor with no stairs. For my hearing disability, I wear hearing aids in both ears. I also wear a hearing disability vest outside of my cell if my hearing aids are not working. I was supposed to get an operation on my knee, because I have arthritis. However, it was cancelled due to COVID-19 movement restrictions.

4. Although CDCR has not verified me with a learning disability, I believe I have one. I struggle to read and to write on my own. I took special education classes when I was a teenager. I use an ADA worker, another incarcerated person employed by CDCR, to help me read and fill out prison forms or grievances. I also sometimes ask my neighbor for help.

5. I am a *Coleman* class member. I am at the Enhanced Outpatient Program (“EOP”) level of mental health care. I live in a special housing unit with other EOP patients, and I am supposed to receive about 10 hours of structured groups and other

1 mental health care each week. My mental health symptoms include depression, anxiety,
2 and Post Traumatic Stress Disorder (“PTSD”). I have struggled to sleep in the past
3 because I have nightmares.

4 6. I have been housed mainly at MSCP since April 5, 2018. On March 12,
5 2020, I transferred to a mental health crisis bed (“MHCB”), a short-term intensive care unit
6 for people experiencing mental health crises, at the California Medical Facility (“CMF”). I
7 stayed at CMF until March 24, 2020, before transferring back to MCSP.

8 7. During my time at MCSP, I have been housed in the following locations: B-
9 Yard, Building 6, C-Yard, Building 12, and D-Yard, Building 17.

10 8. I was a victim of staff misconduct at MSCP. On August 12, 2020, around
11 8:00 a.m., I asked the control booth officer in the tower to let me out of my cell because I
12 had a doctor’s appointment that morning. I had to yell up to the officer to ask permission
13 to be let out because that is the only way I can get the officer’s attention. Floor Officer
14 Linerman then approached my cell and told me to “shut the fuck up.” He was visibly
15 angry when he said this. Suddenly, he took my walker and threw it against the wall. I
16 keep my walker outside of my cell door because it cannot fit in my cell. My cell door, like
17 all other doors in my housing unit, is perforated, so I was able to see Officer Linerman
18 throw my walker in plain sight. My walker landed in front of my cell door.

19 9. I was in complete shock after this happened. I was not expecting it and I had
20 no idea what to say. I never had problems with Officer Linerman.

21 10. A minute later, the control booth officer then opened my cell door. I got my
22 walker and started to go to the clinic for my medical appointment.

23 11. When I was getting ready to walk out of the rotunda, Officer Linerman
24 approached me again. He leaned his stomach against my arm and pushed my walker away
25 from me. I cannot stand up without my walker, so I was trying to hold on to it as he did
26 this. I believe Officer Linerman was trying to intimidate me. Officer Linerman then said
27 angrily, “Motherfucker take that walker and put it over there and we can do this right
28 now.” That was when I asked him, “Are you threatening me?” He replied, “Yeah, you

1 can't prove it. I've got green on and you've got blue." I believe he was saying that no one
2 would believe me if I reported this, because he is the correctional officer, and I am an
3 inmate.

4 12. The next morning, I was going to get my breakfast tray. All incarcerated
5 people in my housing unit eat in our cells due to COVID-19 precautions. We grab our
6 trays from the dayroom and go back to our cells to eat. As I was grabbing my tray, Officer
7 Linerman was staring at me the whole time. The way he was looking at me, I cannot
8 describe it. It was a really bad look—like he wanted to hurt me.

9 13. He has been looking at me like that every day since he threw my walker
10 against the wall. When he looks at me like that, I will not even eat. Sometimes, I do not
11 leave my cell to go eat, because I am afraid to see that look in his eyes. Ever since this
12 incident, I have flashbacks to when Officer Linerman put his stomach on my arm. Before
13 this, I had been programming well. I did not bother anyone, incarcerated person or
14 custody staff. I tried to follow the rules and keep my head down.

15 14. I had my neighbor help me file a 602 staff misconduct complaint against
16 Officer Linerman. I do not remember the exact date when I submitted the 602. On August
17 18, 2020, I discussed my plans to file a 602 grievance in a confidential session with my
18 clinician. My clinician agreed with me and said I should file one.

19 15. Since I filed the 602, I have been interviewed twice by staff about the August
20 12, 2020 incident.

21 16. First, a few weeks ago, a Sergeant conducted a videotaped interview with
22 me. He asked me questions about the incident and I told him the answers. I told the
23 Sergeant that I had a witness to the interview. The witness was my neighbor who was in
24 the cell above me on the second tier. He could see Officer Linerman approach me while I
25 was leaving the rotunda. He saw Officer Linerman lean his stomach against my arm and
26 push my walker away from me. I do not believe staff have interviewed him as a witness
27 yet.

1 17. Around a week later, an officer from MCSP's Investigative Services Unit
2 ("ISU") interviewed me as well. The officer interviewed me over the phone and took
3 down my statement. I repeated what I wrote down on my original complaint. The officer
4 said MCSP's Warden would see my complaint.

5 18. I am still waiting to receive a response to my 602.

6 19. I have experienced retaliation from staff after filing the 602 grievance. My
7 family sent me a care package last month. My care package had food and a CD player. I
8 spoke with them over the phone and they tracked the package, so they know it arrived at
9 the prison. However, custody staff have refused to take me to pick up my package despite
10 me asking. They keep saying my package has not arrived yet, even though I have
11 confirmed with my family that it has. Officer Linerman is the correctional officer typically
12 in charge of escorting incarcerated people to pick up their packages sent from friends and
13 family. I believe Officer Linerman has taken my name off the list, withholding my
14 package, in retaliation for filing a staff misconduct complaint against him.

15 20. This incident has changed forever how I interact with custody staff. I am
16 now afraid to ask for help from custody staff. I would rather ask medical or mental health
17 staff for help than custody officers. If my walker were broken, I would not tell
18 correctional officers. Officer Linerman continues to work in my unit. I avoid him and do
19 not talk to him.

20 21. I am trying to program safely at MCSP. I am preparing to go to the Board of
21 Parole Hearings ("BPH") in five years. I hope to qualify for elder parole. Issues with
22 custody staff make it more difficult for me to stay focused on my release.

23 ///

24 ///

25 ///

26 ///




27 ///

28 ///

1 22. In my opinion, staff target people with disabilities at MCSP. I believe
2 custody staff project all of their anger from the outside world onto us. I think incarcerated
3 people with disabilities rely on officers for help more than other people in prison do. For
4 whatever reason, custody staff do not want to provide that help and so they mistreat us.
5 Many incarcerated people have disabilities, both physical and mental, at this prison. They
6 always appear to have the hardest time with custody staff.

7 I declare under penalty of perjury under the laws of the United States of America
8 that the foregoing is true and correct, and that this declaration is executed at Ione,
9 California this 3rd day of September 2020

10
11 
12

13
14 On September 3, 2020, due to the closure of MCSP in light of the COVID-19
15 pandemic and ongoing concerns that officers might retaliate against witnesses in support of
16 Plaintiffs' Motion, including ongoing concerns about the confidentiality of the legal mail
17 system at MCSP, I read the contents of this declaration, verbatim, to  by
18 telephone. Mr.  orally confirmed that the contents of the declaration were true and
19 correct. Mr.  also orally granted me permission to affix his signature to the
20 declaration and to file the declaration in this matter.

21
22 DATED: September 3, 2020

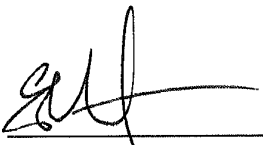
23 
24 Ellie Heywood
25
26
27
28

Exhibit 67a

Filed Under Seal

Exhibit 68

DECLARATION OF [REDACTED]

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is [REDACTED]. I am currently housed at Mule Creek State Prison ("MCSP") on Facility A in Building 5. I am 34 years old.

3. I am a *Coleman* class member. I am at the Enhanced Outpatient Program ("EOP") level of care, which means I am housed in a special housing unit with other EOP patients, and that I am supposed to receive about 10 hours of groups and other mental health care each week. I struggle with anxiety and depression.

4. I am a *Clark* class member. I am part of the developmental disability program ("DDP") and am designated as DD2. I am part of the DDP because I have Asperger's Syndrome. As part of my DD2 status, I am supposed to receive treatment for my Asperger's. Because of my Asperger's, I can come off as angry and agitated when I am not. As part of the DDP, I am supposed to receive assistance from staff who are trained to understand how my Asperger's manifests.

5. I have been housed at MCSP from May 6, 2020 to now.

6. During my time at MCSP, I have been housed solely in Facility A, Building 5 ("A-5").

7. On August 27, 2020, staff at MCSP abused me.

8. I was working as a porter in A-5. I had just finished mopping and sweeping the tier and was playing chess with the other porters at the table in the dayroom, as we often do. Several officers, including Officer Medina, Officer Cook, Officer Laughlin, Officer Beckham, and Sergeant McTarg, called me over to the podium, the area where they sit. When I got to the podium, Officer Cook said, "You're fired. Go upstairs and lock it up." I tried to talk to Sergeant McTarg, and she said, "Whatever they say goes", referring to the officers.

1 9. I was really upset about being fired and started feeling suicidal. I sat down
2 on the ground with my legs crossed. I did this because I figured if I was standing up, staff
3 could falsely claim that I had assaulted them or done something I did not do. After I sat
4 down, I told the officers that I was feeling suicidal and stressed. Instead of handcuffing
5 me, Officer Beckham and Officer Cook, without warning, grabbed my arms and twisted
6 my arms behind my back. When they twisted my arms behind my back, they pushed me
7 down to the ground. One of the officers, I could not see who, put his or her foot on my
8 neck once I was on the ground. I did not resist, but they continued to twist and contort my
9 arms. Because the officer's foot was on my neck, I was gasping for air. I yelled, "I can't
10 breathe!" The officer drove his knee further into my neck, as the other officers continued
11 twisting my arms and ankles.

12 10. The other incarcerated people on the unit, seeing that I was struggling to
13 breathe with the knee on my neck, started yelling "stop!" and saying things such as, "Don't
14 you watch the news? Black lives matter!" in an attempt to get the officers to stop
15 assaulting me. A few moments after the other incarcerated people started yelling, the
16 officer stopped assaulting me.

17 11. After the assault ended, the officers picked me up and dragged me to the
18 program office. I could not walk because my leg restraints were so tight. I told them I
19 could not walk, and they glared at me and continued to drag me. About halfway to the
20 program office, an officer whose name I do not know came with a wheelchair. I was
21 slammed down into the wheelchair. The officers put my handcuffed arms behind the chair,
22 which was extremely painful because that stretched my arms very wide. They continued
23 to yank my arms as they wheeled me to the program office.

24 12. On the way to the program office, the officers taunted and mocked me.
25 Officer Brazil, an officer who was not originally involved in my assault, but had responded
26 to it, said to me, "that George Floyd shit is played out." He seemed to be referencing me
27 gasping for air and yelling that I could not breathe while there was a knee on my neck.
28 Officer Brazil also said, "I'll knock your front teeth out." The officers also made

1 comments like, “This is our house! You should have stayed in general population.” I took
2 this as them saying that in order to not be harassed by them, I should have refused to get
3 the help I need in the EOP and DDP programs, whose participants are housed in special
4 units, and instead suffered without these programs in general population.

5 13. When we arrived at the program office, the officers opened the holding cage
6 door. They told me to get on the ground. I was not able to get down on my knees without
7 falling, as I was still handcuffed. Seeing that I could not get down to my knees, the
8 officers, I could not see which ones, kicked the back of my knees so that I fell to my knees.
9 Without warning, one of the officers, I cannot remember who, started trying to cut my shirt
10 off with scissors. The other officers were holding me down and pushing me to the ground
11 while this was happening, even though I was handcuffed and was not resisting. I asked
12 why they were doing this, and one of the officers said, “Well you refused to strip out.” I
13 had not refused to strip out—I had never been asked to strip, and even if I had, I would
14 have been unable to take my clothes off because I was still handcuffed.

15 14. While the officers cut my shirt off, another officer, who had only just arrived
16 to the program office and had not been present for my assault, said, “Be careful, he’s
17 DDP.” He was telling them to handle me more carefully because of my developmental
18 disability. However, they ignored him, and continued to cut my shirt off and push me
19 around. Once my shirt was off, they pulled my pants off and left me in the cage, without
20 searching me.

21 15. While I was in holding cage, a nurse came to see me. My shoulders and back
22 were in a lot of pain. My ankles also hurt from the leg restraints. I still have bumps and
23 bruises on my ankles. The nurse documented my injuries on a 7219 Form.

24 16. Two sergeants whose names I do not know came and did a videotaped
25 interview. They videotaped my injuries and asked me some questions, but when I would
26 start to explain fully what happened in response to their questions, they told me to “stick to
27 the question I asked.” This cut out a lot of the story, and made it seem to me that they
28

1 were trying to shape the narrative in favor of the officers. I never received any follow up
2 from this interview.

3 17. I was in the holding cage for about four hours, until a clinician came to speak
4 with me about my statement that I was suicidal that I had made right before I was
5 assaulted. After discussing these issues with her, she left. Shortly after she left, I was
6 taken back to my housing unit without further mental health treatment.

7 18. I was never given any reason for being fired from my job. I have not
8 received another job assignment since this incident.

9 19. A day or two after the assault, I filed a 602 staff complaint reporting this
10 incident and reporting that I had unjustly been fired from my job. I have not yet received a
11 response to this 602.

12 20. I received a Rules Violation Report ("RVR") for "Delaying a Peace Officer."
13 The RVR states that after I was told I was fired from my job I became agitated and was
14 calling the officers racial slurs. The RVR states that they approached me and I sat down.
15 The RVR states that the officers went to grab my arms and I yanked my arms away from
16 them, leading them to use force on me to restrain me. I did not call the officers racial slurs,
17 and I did not yank my arms away from them. The RVR also fails to mention that I was
18 suicidal at the time and had reported this to the officers.

19 21. I had my RVR hearing yesterday, September 16, 2020. Lieutenant Cochran,
20 who was leading the RVR hearing, did not call any of the witnesses that I listed. I was
21 found guilty, and I had 90 days of dayroom and 90 days of time credit taken from me.

22 22. I believe that I was assaulted because I have Asperger's Syndrome. I believe
23 the assault is part of the ongoing campaign to remove me from the DDP program and
24 punish me for being developmentally disabled. Because I have Asperger's and mental
25 health issues, I think that staff believed they could retaliate against me and assault me
26 without being able to defend myself because of my disability.

27 23. In my time at MCSP there have been many times that I needed help but
28 didn't ask for it because I was afraid of what would happen to me. Staff at MCSP and

1 other prisons at which I have been housed refuse to believe that I have Asperger's and am
2 part of the DDP, because I am high functioning. Because of this, I cannot get the help that
3 I need. In my time at MCSP specifically, I have received little assistance or treatment for
4 my Asperger's. The clinicians at MCSP have tried to force me out of the developmental
5 disability program by giving me three different developmental disability evaluations in the
6 last four months, without reason. I have rarely been given an evaluation for my
7 developmental disability without reason prior to being at MCSP.

8 24. There is effectively no DDP program in my building. There are no
9 designated DDP officers on A-Yard—when I have asked who the DDP officers are, MCSP
10 staff claim that every officer is trained to address DDP issues. However, none of the
11 officers on A-Yard at MCSP appear to be trained for DDP issues. Officers make fun of me
12 and others in the DDP by saying in front of other inmates mockingly, “Are you being
13 victimized? Do you need any help?” Not only does this mean I do not get the help that I
14 need, but it puts my life at risk because other incarcerated people are told that I have this
15 disability. Because of this, I no longer ask for assistance and substantive treatment with
16 my Asperger's.

17 25. I also believe that I was assaulted in part in retaliation for a lawsuit I filed
18 and a settlement I obtained against CDCR.

19 26. On January 1, 2017, I was housed at California State Prison-Sacramento
20 (“SAC”). Around 10:30 a.m., I was on the phone with my family, who told me that my
21 brother had passed away. I started crying and feeling very anxious and sad. Officer
22 Kendall, an officer at SAC at the time, came over to the phone and told me to hang up. I
23 asked him to give me a moment. As I began to talk on the phone again, Officer Kendall
24 slammed me to the ground while my back was towards him, then jerked my arms behind
25 my back as I was on the ground, causing permanent damage to my shoulder and elbow. I
26 filed a lawsuit about this incident in December 2017, and in January 2020, the lawsuit
27 reached a settlement.

1 27. Officer Kendall currently works at MCSP. When I first got to MCSP,
2 Officer Kendall was working in my building one day a week, but now he works in another
3 unit on A-Yard. I have seen him several times since I moved to MCSP, most recently a
4 couple of days ago. When I first got to MCSP, Officer Kendall asked me how much
5 money I had gotten from CDCR. I did not really want to tell him, but due to my
6 Asperger's I have difficulty lying. I told him the amount of money. He then asked, "Was
7 it worth it?" I shrugged and walked away, not knowing how to respond.

8 28. On another occasion, I asked Officer Kendall if I could use the phone. He
9 said, "No, you can't use the phone, we're not on good terms with phones." These
10 interactions made it clear to me that he was still thinking about my lawsuit against him and
11 holding this against me.

12 29. Other incarcerated people at MCSP have asked me about my lawsuit against
13 Officer Kendall. The incarcerated people who have asked me about my lawsuit are porters
14 who work closely with the officers, or otherwise appear very close with the officers. I do
15 not speak openly about the lawsuit, so learning that other incarcerated people knew about
16 this made me feel that Officer Kendall and possibly other officers were sharing
17 information about my lawsuit.

18 30. Since the settlement, I have lost my jobs and program assignments multiple
19 times, without explanation. Not being able to continually hold a job or program
20 assignment has prevented me from being able to rehabilitate myself while in prison and
21 earn credits.

22 31. I still interact with the officers that were involved in the staff misconduct
23 against me nearly every day, even after they were accused of staff misconduct. I see the
24 officers involved in my assault every day. They frequently deprive me of basic things such
25 as yard and dayroom. For instance, Officer Beckham walks by my door every day, and
26 often does not let me out for yard, even though I stand at the door waiting to be let out. I
27 have to kick on the door to get the other officers' attention. Even the officers who were
28

1 not involved in my assault have been refusing to help me with basic things like getting out
2 to yard and dayroom.

3 32. In my opinion, staff target people with disabilities with staff misconduct.
4 When I and others with disabilities and mental health issues ask staff for help, staff
5 become angry and frustrated with us. In my case, I have been refused the services I need
6 for my developmental disability, simply because the officers get angry that they have to do
7 extra work to help me. Staff also know they can target me and others with disabilities
8 because we are less likely to be believed.

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1 33. I believe there is so much staff misconduct in CDCR and at MCSP because it
2 is an authoritarian environment where rules and regulations do not matter and because we
3 are incarcerated, no one believes us. There is a culture of intimidation in CDCR that
4 creates a hostile environment and makes it an environment where I and others cannot get
5 the rehabilitative services we need for our disabilities and mental health issues.

6 I declare under penalty of perjury under the laws of the United States of America
7 that the foregoing is true and correct, and that this declaration is executed at Ione,
8 California this 17th day of September, 2020.

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12 On September 17, 2020, due to the closure of MCSP in light of the COVID-19
13 pandemic and ongoing concerns that officers might retaliate against witnesses in support of
14 Plaintiffs' Motion, including ongoing concerns about the confidentiality of the legal mail
15 system at MCSP, I read the contents of this declaration, verbatim, to [REDACTED], by
16 telephone. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and
17 correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the
18 declaration and to file the declaration in this matter.

19
20 DATED: September 17, 2020

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22 Emma Cook
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Exhibit 68a

Filed Under Seal

Exhibit 69

1 **DECLARATION OF** [REDACTED]

2 I, [REDACTED] declare:

3 1. I have personal knowledge of the matters set forth herein, and if called as a
4 witness, I could and would competently so testify.

5 2. My California Department of Corrections and Rehabilitation ("CDCR")
6 number is [REDACTED]. I am currently housed California State Prison, Sacramento ("SAC")
7 on Facility Z in Short Term Restrictive Housing ("STRH") in Building D-1. I am 41 years
8 old.

9 3. I am not an *Armstrong* class member designated with a DPP code, but I do
10 have disability related limitations including a bottom bunk chrono, work restrictions, a
11 permanent knee and ankle brace, and incontinence supplies. Prior to my incarceration,
12 back in 2013, I was shot in my lower leg, near my calf, and the bullet is still lodged in my
13 leg. This has caused me mobility limitations including difficulty climbing. On August 31,
14 2019, when I was housed in C-3 here at SAC, Officer J. Stratton forced me to use a shower
15 on the upper tier, and while climbing the stairs, I fell, and went "man-down." Since then, I
16 have sustained injuries, and still have had a lot of pain and swelling in my right ankle and
17 foot. Even to this day the swelling and pain have not diminished. Despite my mobility
18 impairment, I have never been evaluated for a DPP code.

19 4. I am a *Coleman* class member. I am at the CCCMS level of care. Patients at
20 the CCCMS level of care live in general population units throughout the CDCR, and
21 receive infrequent contacts with their mental health case manager and treatment team. I
22 have been diagnosed with Major Depressive Disorder. I am currently housed in Short
23 Term Restrictive Housing ("STRH") at SAC, a unit designated for people at the CCCMS
24 level of care who are locked up in a segregation unit. When I first arrived at SAC, I was
25 receiving more mental health care at the EOP level of care. In May of 2017, I was
26 discharged to CCCMS against my wishes. I was told that due to my ability to advocate for
27 myself through the 602 process, I did not need EOP level of treatment. During my time at
28

1 SAC, my depression has gotten worse due to the retaliation that I have experienced for
2 filing 602 appeals and advocating for myself.

3 5. I also struggle with medical concerns including asthma, glaucoma,
4 chondromalacia in my right knee, and joint pain in both knees. My knee and joint pain has
5 gotten worse in the past year, as I have not received proper physical therapy or medical
6 attention.

7 6. I have been at SAC since February 19, 2016.

8 7. During my time at SAC, I have been housed in the PSU, on general EOP
9 population B yard, general CCCMS population C yard, and am now housed in the STRH.

10 8. I was a victim of staff misconduct at SAC.

11 9. On August 15, 2020, between 8 and 8:30pm (HS pill call), Correctional
12 Officers Simpson and Desimone assaulted an EOP class member who was temporarily
13 housed in the STRH after there was a riot in his housing unit.

14 10. I heard the entire assault from my cell. I'm currently in cell [REDACTED] at the end of
15 D row, and this person was in cell [REDACTED], at the end of C row. All of the fans and air
16 conditioning had gone out almost two weeks earlier, and this person has asthma. During
17 HS pill call, I overheard this person tell the nurse, LVN A. Gorrell, that he has asthma and
18 was having trouble breathing due to the extreme heat. The nurse replied that she would
19 leave his food port open to increase the circulation, even though this is against the
20 protocols in the STRH. I then overheard Officers Desimone and Simpson talking.
21 Desimone and Simpson are notoriously racist officers. They have called me and other
22 black people racial slurs countless times, and I have written multiple 602 appeals against
23 them for these reasons. Desimone always wears a white rubber bracelet that says "Blue
24 Lives Matter" in blue writing on it. They have a "Blue Lives Matter Flag" hung above the
25 entrance to the STRH building. As a black man, I feel very unsafe around these officers.
26 This person is also black, and I knew at this point that they were going to give him trouble.

27 11. I overheard Officer Desimone say "fuck that, turn around and cuff up."
28 Next, I heard him saying "hit him" to Officer Simpson and the sound of batons hitting this

1 person and him screaming in pain, shouting, "Why are you hitting me? I didn't do
2 nothing." Finally, the beating stopped, and other incarcerated people started banging on
3 their cell doors screaming "man down" and asking staff to get this person medical
4 attention. Staff made several rounds, but no one stopped to call in this person's injuries or
5 get him medical attention.

6 12. Finally, at around 11 pm, I heard medical staff come and get him. Officer
7 Davis, a night staff officer, told me that this person was sent to an outside hospital. I saw
8 him a couple days later and he had a cast and sling on his arm.

9 13. The following day on August 16, 2020, I mentioned what had happened to
10 the psych techs who were doing their rounds. Then, during second watch, Sgt. Flores
11 came to my cell to ask me questions about the assault on this person. At this time, I
12 provided a witness statement about what I had heard the previous evening. While I was
13 providing a witness statement about the assault on him, I noticed that Officer Arther was
14 listening.

15 14. A few hours later, during third watch, at approximately 6:45 pm, Officers
16 Simpson, Jones, and Arther ordered my cell door to be opened, without proper warning,
17 and without handcuffs. CO Simpson stated, "You snitched on me from last night. This is
18 Blue Lives. Fuck Black Lives Matter," and then to my astonishment, punched me in the
19 mouth, splitting open my upper right lip. Before I could react, an officer in the tower
20 closed my cell door. CO Jones then said, "We'll fuck your ass up right now," and CO
21 Arther said, "Don't snitch on cops." At this point the officers were outside, and I was on
22 the inside of my cell.

23 15. I realized that my mouth was bleeding and I asked the officers to call
24 medical staff to examine my lip, but the officers all said, "No, you aren't getting shit." At
25 around 8 to 8:30pm, psych tech Whitecotton came around with HS pill call and saw that I
26 was bleeding. I explained what happened. He left and returned with a 7219 injury report
27 and documented my injuries.

1 16. At around 9:00 pm, Sgt. Uribe approached my cell in a very hostile manner
2 without a mask, accompanied by Officers Jones and Arther. She was holding a camera
3 and said, "Come out, turn around, we're having a use of force interview." I said that I was
4 not refusing the use of force interview, but that I was not comfortable going anywhere with
5 these correctional officers after what happened earlier. I was also uncomfortable because
6 it was so late, and they never do use of force interviews that late. On a level 4 yard,
7 everyone is supposed to be secured in their cell before 9 pm. I've never seen an
8 incarcerated person come out of their cell past 9 pm. I was scared and my heart was
9 racing. I thought that they were going to bring me out of my cell and kill me. Luckily,
10 they turned away and left my cell.

11 17. Then, at approximately 9:30 pm, Sgt. Uribe came back to my cell, this time
12 accompanied by Sgt. Scholett, and again attempted to extract me from my cell, again
13 holding a camera. Sgt. Scholett said, "All the staff are gone now, there's nothing to worry
14 about" but I knew that the staff do not leave until they do their last walk and they hadn't
15 done that yet. Once again, I said that I was not comfortable going anywhere with them,
16 out of fear of what was going to happen.

17 18. The next day, on Monday August 17, Captain Riley and Associate Warden J.
18 Stewart came to my cell and told me that they were going to move me because I am on
19 heat meds and the air conditioning was still out. While they were at my cell, I explained
20 the assault on the incarcerated person and the assault that I experienced after providing a
21 witness statement to Sgt. Flores. On August 18, I was pulled out of my new cell, B-8-█,
22 where I was now being housed after the move, for a use of force interview with two
23 Sergeants. At this time, an RN, Mozinsky, completed an additional 7219. They
24 documented swelling to my right upper lip, and cuts and swelling above my lip. On
25 August 24, I was moved back to STRH D-█, because the air was fixed.

26 19. On August 25, 2020, CO Johnson ran phone calls for the entire D row, and I
27 was skipped. I was the only person who was not let out of my cell to have my phone call.
28 CO Johnson is a known racist officer as well, who I often see interacting with officers

1 Simpson, Desimone, Arther, Jones, and Vasquez. This group of officers only give
2 problems to black incarcerated people, never to white or Hispanic people.

3 20. Later that day, CO Johnson knocked on my door. I was taking a “bird bath”
4 in my sink at that time, and told him that. He walked away, mumbling something. I later
5 found out from my neighbors that he said that he was going to move me to cell G-[REDACTED],
6 with an incarcerated person who is a known racist Nazi with a propensity for violence
7 towards black people. A few days later, I received a 115 for “Refusing Assigned Housing,
8 Delaying a Peace Officer for Performing his Assigned Duty.” This 115 ended up being
9 suspended by the AW.

10 21. On August 26, Captain Riley came to my cell, and I explained that I had
11 been subjected to reprisal and retaliation after giving a witness statement regarding another
12 person’s assault. Later that day, I heard from other incarcerated people that Officers
13 Simpson, Desimone, Johnson, and Arther were spreading around that I was a “rat” and a
14 “snitch.”

15 22. On August 27, an officer from the Office of Internal Affairs (“OIA”), Lt. J.
16 Sally, and Lt. Brunkhorst, interviewed me about what happened. I had a witness who saw
17 officer Simpson punch me. He came forward and spoke with internal affairs as a witness
18 for me. This person later told me that CO Jones and Arther had threatened him before he
19 went to interview with the OIA, saying “you better watch what you say in there.”

20 23. On August 28, at around 10 a.m., the Chief Deputy Warden, Gina Jones,
21 came to my cell, and I told her what was going on. She had her phone with her, and pulled
22 up the 602s that I had filed. She told me that she was going to look into it. Later that day, I
23 had a meeting with my mental health primary clinician, MHPC Jebanathan. While I was
24 being escorted to my mental health checkup, CO Vasquez and Johnson came up to me, and
25 Johnson said, “We’re going to set your ass up,” and then Vasquez said, “Set that ass up,
26 watch and see.” Right before going into the treatment room for my checkup, I saw Sgt.
27 Collingsworth, and told him what Johnson and Vazquez had just said to me. He replied
28 that I had brought it on myself by filing 602s against them.

1 24. I went into my MHPC checkup. During my checkup I explained everything
2 that had happened. I talked through my fear and anxiety about the whole situation, and
3 how it was making me depressed. I told Jebanathan about the comments that Johnson and
4 Vasquez had made to me earlier. She told me to continue filing 602 appeals.

5 25. When I got back to my cell after speaking with my MHPC, my neighbors
6 said that they saw Officer Vasquez searching my cell while I was out. I got a cell search
7 receipt about 30 minutes later, even though they are supposed to leave the receipt in the
8 cell immediately after they search it. The cell search receipt said that at 12:05, CO
9 Vasquez, supervised by Sgt. Collingsworth, had searched my cell, and that they had found
10 a knife, an "Inmate Manufactured Weapon." This is inconsistent with Sgt.
11 Collingsworth's incident packet which was sent to the DA. On this incident packet, it
12 states that Collingsworth was not part of the cell search. I had no knowledge about any
13 sort of weapon in my cell, and I knew that this was a setup because of what CO Vasquez
14 and Johnson had said to me on my way to my mental health checkup. I have been
15 incarcerated since 2013 and I have never possessed a weapon. I am SNY, and have never
16 participated in a riot, and there is no need for me to have a weapon.

17 26. Over the past month, it has been increasingly hard to keep myself together
18 and maintain my mental stability. The anxiety and stress that I have been experiencing has
19 been pushing me to the edge. I have racing thoughts. I don't come out of my cell. I am
20 nervous around all correctional officers. I have been refusing my food trays, because I am
21 scared that these officers will contaminate my food. I've only been eating food that I buy
22 from canteen. I am afraid to report anything that officers do. A few days ago, Officers
23 Arther and Jones dragged a trashcan in front of my door from outside, which is covered in
24 bird droppings. Every time they walk by, they spit in the trashcan to harass and antagonize
25 me. There are no cameras, so no-one can see what's going on. It's my word against theirs.

26 27. I have a wife and a release date. I would never jeopardize all of that by
27 making a weapon and getting a write up. I believe that all of the retaliation that I have
28

1 experienced is because I provided a witness statement about another person's assault, and
2 then spoke up about my own assault.

3 28. The officers here in the STRH at SAC use our mental illnesses against us.
4 They can say that we are being "hostile" or "threatening" because of our mental health
5 concerns. They justify their actions against us by blaming it on our mental illness. The
6 staff who work with us mental health incarcerated people are not trained on how to deal
7 with mental illness.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration is executed at Folsom, California this 21st day of September, 2020.

/s/

On September 21, 2020, due to the closure of SAC in light of the COVID-19 pandemic and ongoing concerns that officers might retaliate against witnesses in support of Plaintiffs' Motion, including ongoing concerns about the confidentiality of the legal mail system at SAC, I read the contents of this declaration, verbatim, to [REDACTED] by telephone. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the declaration and to file the declaration in this matter.

Heather Gans

Exhibit 69a

Filed Under Seal

Exhibit 70

DECLARATION OF

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is [REDACTED]. I am currently housed at California Substance Abuse Treatment Facility and State Prison -Corcoran ("SATF") on Facility D in Building 2. I am 36 years old.

3. I am an *Armstrong* class member. I am designated as DNH, which means I have a hearing disability. I would describe myself as mostly deaf in my right ear and partially deaf in my left ear. I use hearing aids to help me hear. I also wear a hearing disability vest outside of my cell when I am not using my hearing aids. Even with my hearing aids on, I am unable to hear things clearly in crowded and loud environments. For example, I cannot hear my mother and grandmother over the phone when I call them during regular dayroom hours. My hearing aids amplify the background noise of other incarcerated people speaking loudly in the dayroom, such that I cannot distinguish between the voices of my loved ones and others. The hearing aids also cause static in loud environments. It sounds like the static from a walkie-talkie in my ears. I constantly have to ask my mother and grandmother to repeat themselves, which makes phone calls with my family especially difficult. Because phone calls at CDCR are monitored and recorded, there is a voice recording that plays during calls and reminds incarcerated people of this procedure. This recording also takes time away from my phone calls with family, cutting into conversations I have with them.

4. My hearing aids do help me hear in quieter environments with fewer people. When I go to the medical clinic on my yard, I can understand what medical staff say to me. I have also been able to speak with Plaintiffs' counsel in a private room with the door closed and the volume on the telephone turned up. When I am unable to hear in loud places, I either try to read lips, or rely on body language and gestures to help me

1 understand. I also require others to raise their voices when they speak with me and repeat
2 what they are saying. In my experience, both staff at SATF and other incarcerated people
3 get frustrated and upset when they have to repeat themselves. They feel disrespected
4 because they think I'm playing around with them, or they do not understand my hearing
5 disability.

6 5. Although CDCR has not given me a mobility disability code, I use knee
7 braces to help me walk. I use these knee braces sometimes when my knees swell up or are
8 in pain.

9 6. I am also a *Coleman* class member. I am at the CCCMS level of mental
10 health care. When my mental health suffers, I feel depressed and anxious. I have
11 struggled with my mental health since I was little. I thought I would receive help at the
12 CCCMS level of care while in prison, but I have found that not to be the case. I do not
13 think my clinicians have been very helpful in dealing with my stress and depression.
14 When I feel this way, I try to pray or study to cope.

15 7. I have been housed at SATF from February 13, 2020 to now. Previously, I
16 was housed at SATF for almost a year, from March 28, 2018 until March 7, 2019.

17 8. During my time at SATF, I have been housed in the following locations:
18 Facility E, Building 1, and Facility D, Buildings 5 and 2.

19 9. While at SATF, I have faced ongoing harassment and discrimination from
20 staff because of my hearing disability.

21 10. As explained above, I have struggled to talk to my family over the phone
22 because of my hearing issues. Given the COVID-19 pandemic, it has been especially
23 important for me to communicate with my mother and grandmother. It would be easier for
24 me to speak with my family if staff at SATF would allow me to take calls in the evening
25 when the dayroom is quieter.

26 11. Since the beginning of 2018, while I was at SATF, Plaintiffs' counsel
27 advocated on my behalf for CDCR to provide me with access to either nightly calls, the
28 Telecommunication Device for the Deaf ("TDD") phone, or a captioned phone. The TDD

1 is a special device, almost like a typewriter, that allows speech to text communication. It
2 is only located in specific housing units within CDCR institutions. Trained staff are meant
3 to help incarcerated people use the TDD. It is not a service incarcerated people can access
4 unless staff make them aware of it.

5 12. For example, in March 2019, when I first transferred to Pleasant Valley State
6 Prison ("PVSP"), staff did not make me aware that they had TDD services. There was no
7 phone in my housing unit and staff did not let me know that I had access to these services,
8 so I did not ask for them. I was not aware I could ask for these services until Plaintiffs'
9 counsel sent me a letter around November 2019 asking if I had access to them. I was told
10 that CDCR had approved my access in response to an advocacy letter Plaintiffs' counsel
11 sent. I did not know CDCR approved my access to the TDD phone, among a few other
12 accommodations, until after Plaintiffs' counsel had sent me this letter.

13 13. I then asked staff at PVSP about the TDD, but the floor staff simply said they
14 did not know how it worked, and that they did not even know if I was approved for it.
15 Next, I filed a Form 1824, with an attached medical slip, requesting access to the phone,
16 but staff did not accommodate me. I felt that staff at PVSP became more hostile toward
17 me after I filed the ADA grievance. Staff began speaking to me meanly. They would
18 make comments like, "you wanna get petty with us, we'll get petty with you." One officer
19 in particular started to make me take my hearing aids out multiple days in a row,
20 explaining that it was procedure. However, this officer only started making me do this
21 after I filed the grievance. On the 1824, I had asked them to provide services they were
22 already supposed to be providing me with. By filing the 1824, I believe staff became
23 defensive with me, and treated me badly, because they had not given me those services in
24 the first place. I believe they also were upset with me because I had filed other grievances
25 about separate issues with staff at PVSP. One of those appeals was about job
26 discrimination because of my disability.

27 14. After I filed these grievances, I was soon transferred back to SATF. When I
28 arrived back to SATF in February 2020, I was placed in Facility D, Building 5. Once I

1 arrived, I knew I was supposed to have access to certain phone services because of my
2 hearing disability. I immediately started filing 7362 Forms, and Form 22s, at least four of
3 those, requesting access to the TDD phone. I also requested to be moved to Building 2. I
4 knew that Building 2 on Facility D was an ADA-designated block. At the time, I still did
5 not know how to use the TDD. I believed by moving to Building 2, I would have access to
6 the TDD and be around staff who could show me how to use it. All of my requests went
7 unanswered.

8 15. I then went to speak with the Associate Warden (“AW”) and a Lieutenant.
9 The AW told me that I only had access to the TDD phone and that they would provide
10 those services. That was all he said—that they would “figure something out” to allow me
11 to use the TDD in Building 2. But this did not turn out to be the case. During my time in
12 Building 5, staff did not give me access to the TDD. I then filed a 602 grievance on or
13 around June 8, 2020, requesting access to the TDD as well as nightly phone calls. I had
14 attached to the grievance Plaintiffs’ counsel 2018 advocacy showing that SATF had
15 already agreed to provide me with these services.

16 16. SATF’s response to my grievance was that this issue did not have to do with
17 the institution, and that I should instead forward the grievance to PVSP. They completely
18 screened out my grievance, and some of the pages of Plaintiffs’ counsel’s advocacy I had
19 attached to my original 602 were missing. I re-submitted the 602 to the first level, again
20 explaining how my phone issues had to do with accommodations denied at SATF. I have
21 not received a response to this 602. I don’t know what happened to it.

22 17. After I filed my grievance, SATF then moved me to Building 2. I am not
23 sure exactly when they transferred me. Now that I am in Building 2, custody staff
24 continue to refuse to accommodate my hearing disability.

25 18. On June 15, 2020, around 2:00 pm, I was finally provided access to the TDD
26 phone. After two years of trying to access it, this was my first time being shown how to
27 actually use it. Staff were brought on to set up the phone for me and show me how to use
28

1 it. These were two female staff members. I am not sure who they were, but they were
2 trying to help me use the phone.

3 19. At the same time, floor staff approached. These were Officers Pano and
4 Sanchez. They started to say things like, "Why do you even need to use that thing,"
5 referring to the TDD. One of the officers, Officer Pano, looked at me and said, "You're
6 not even deaf," and, "You can hear me, right?" And then another officer said, "We can
7 make things harder for you." I replied, "If I'm not deaf, why do I need use this phone in
8 the first place and why do I have hearing aids?" Officer Pano then told me, "You're not
9 special," and said he did not understand why I even had to use that phone. By making
10 these comments, it was clear that officers did not understand or care about the importance
11 of these ADA services for my hearing disability. Instead, they were putting me down
12 because of my disability.

13 20. I then told Officer Pano that it was up to the Warden, AW, or Plaintiffs'
14 Counsel to determine whether or not I could access these services. At the same time, the
15 two women still could not figure out how to use the TDD, even with the manual. After
16 failing to get it to work, one of the women said, "Let me call the AW." This woman came
17 back and explained that the AW agreed I could make phone calls at night because the TDD
18 was not working. I asked her how I would get these services, but she said I would have to
19 speak with the floor staff in my unit. I then turned back to Officer Pano and asked about
20 signing up for night calls. Officer Pano got visibly angry with me and said, "You're not
21 going to get night calls until I get it in writing." He was saying he was not going to give
22 me these accommodations until he got written permission from the AW. I wanted to
23 deescalate the situation, because Officer Pano was already upset, so I replied that I would
24 get it in writing for him.

25 21. After my conversation with Officer Pano, I immediately filed an 1824
26 summarizing my interaction with custody staff and requesting that I needed the AW's
27 written confirmation that I could make phone calls at night. I was doing this not because I
28

1 needed written confirmation, but because custody staff were saying they would not
2 accommodate me without it.

3 22. The next day, on June 16, 2020, SATF's AW/ADA Coordinator came to
4 help the two female staff members get the TDD phone to work for me. They were
5 unsuccessful. At that time, the AW had a conversation with the floor staff in the staff
6 office on Building 2. He then spoke with me and explained that I could only access the
7 TDD phone or nightly calls at SATF, because other accommodations were unavailable to
8 me. Since staff were unable to get the TDD phone to work, I said I would take nightly
9 calls. I also explained to him that staff were refusing night calls unless the AW gave me
10 written permission. He told me that he already took care of it and spoke with custody. I
11 reiterated that I wanted his written permission to prevent any further problems with staff,
12 but he did not give it to me. He explained again that the problem with my night calls was
13 "taken care of."

14 23. I was able to call my family in the evening between 8:30 and 8:45 pm for
15 two days, on June 16, 2020 and June 17, 2020. I had the feeling that something bad was
16 going to happen. I did not think staff would accommodate me with these night calls for
17 long. I had the feeling they were going to retaliate against me for requesting these
18 services.

19 24. On June 17, 2020, I was in my cell when I saw Third Watch Officer
20 Hinojosa talking to my cellmate. Other incarcerated people were around them at the same
21 time. I could tell that the conversation was not a positive one, because one of the other
22 incarcerated people looked towards my cell and shook his head. My cellie came back to
23 our cell and we got into an argument. My cellie explained that Officer Hinojosa was
24 letting other incarcerated people know that I had filed an appeal complaining that others
25 were getting extra privileges like calls and extra showers. According to my cellie, Officer
26 Hinojosa had told him that they would be losing their privileges because "of the guy with
27 the hearing aids," referring to me. My cellie told me that everyone was very upset with me
28 upon hearing this. He was insinuating that I was going to get beaten up because of what

1 other incarcerated people overheard Officer Hinojosa tell him. I explained that Officer
2 Hinojosa was lying and that I had never filed such an appeal. I ended the argument by
3 saying it was up to him to believe whatever he wanted, because I knew what the truth was
4 and I had my paperwork to show that I never filed an appeal like that.

5 25. Later that day, we all went out to yard. When I came back, my cellie told me
6 that Officer Hinojosa had approached him after yard recall and said, "I don't know how
7 your cellie goes out like everything's all good." In my opinion, Officer Hinojosa said this
8 because she expected that other incarcerated people would attack me after she spread the
9 lie about me filing an appeal.

10 26. While I don't know exactly what she said to my cellie that morning, I believe
11 Officer Hinojosa's comments were knowingly putting my life in danger. She was trying to
12 influence other incarcerated people to beat me up. I believe she also singled me out for my
13 disability by referring to me "as the guy with the hearing aids."

14 27. The following day, five different incarcerated people approached me asking
15 whether what Officer Hinojosa said about me was true, because they had apparently heard
16 the same rumors from two other officers about losing their privileges because of "the guy
17 with the hearing aids filing a 602."

18 28. About a week later, I filed a staff misconduct complaint against Officer
19 Hinojosa. It was Log No. 000000009351. In its response to my 602 appeal, SATF told me
20 that no staff misconduct had taken place. They argued that my original complaint had
21 been about Officer Hinojosa not giving me extra privileges. That was not the case. I
22 clearly explained on my 602 that Officer Hinojosa was spreading a false rumor about me
23 and putting my life in danger.

24 29. I am in the process of appealing SATF's response to my 602. I have not
25 received a response yet to it, but I believe it will be denied like all of my other appeals.

26 30. I have faced more serious harassment since filing the staff misconduct
27 complaint against Officer Hinojosa.

1 31. On June 26, 2020, around noon, staff called me to the program office and
2 told me that they had found a “kite” about me in the medical box outside the yard. A kite
3 is a note written anonymously. It typically reveals information about another person that
4 could be false or true. Staff told me that the note had my name on it and said something
5 like my life was in danger. They never directly showed me the note. After hearing about
6 this, I said to custody staff that it was convenient for this kite to appear right after I had
7 filed something. They then told me that this happens all the time. But I had never
8 personally had issues with anyone on my yard or building before Officer Hinojosa started
9 spreading rumors about me.

10 32. One officer whose name I don’t remember then interviewed me in the
11 program office and asked if I had any safety concerns or enemies on Facility D. A
12 Sergeant then told me that I would have to sign a chrono stating I did not have any safety
13 concerns or else they would me move to an administrative segregation unit (“ASU”). I
14 believe the officers did not want to send me to the ASU solely to protect my safety. I think
15 they wanted to send me there so that they would not have to accommodate my hearing
16 disability and answer to the appeals I had filed about them. I believe they wanted to get rid
17 of me. The ASU is an extremely restrictive environment, where I would not be able to call
18 my family with the same frequency I can on Facility D. At the time, it would have been a
19 worse situation for me to move there, so I signed the chrono stating that I did not have any
20 enemies.

21 33. I also believe the kite was dropped on me because I had filed the staff
22 misconduct complaint on Officer Hinojosa. I do not know who wrote the kite, but this
23 incident did not just occur out of nowhere. I believe it had to do with officers retaliating
24 against me for filing ADA complaints about my hearing disability and the staff misconduct
25 complaint I filed against Officer Hinojosa.

26 34. Next, on or around July 14, 2020, a fight broke out between multiple
27 incarcerated people in my housing unit. I am not sure what the fight was about it. I did
28 not think much of it, as I myself was not involved in the fight. I was in my cell when it

1 took place. However, a day or two later, on July 16, 2020, staff called me in to the
2 program office and told me they had received a second kite about me. They said they had
3 found it in another incarcerated person's cell. This kite said that there was a green dot, or
4 electronic transfer, for \$300 to be paid to the name "[REDACTED]." This was an alias I had
5 used on the mainline back in 2017. They told me that the fight that had broken out two
6 days ago was also about money. I believe they called me in because they thought I was
7 involved in these dealings.

8 35. I told the officers that I had not used that particular alias since 2017, and I
9 was not involved in any money transactions in my building. I said I do not use drugs or
10 owe money to anyone. I had no idea where this kite came from. Staff did not believe me
11 and kept telling me that this alias was my own, so I had to be involved. I explained again
12 that I was not involved, and that alias had been dead for many years. I told them to run the
13 other name that the money was sent from on the green dot, so that they could see that I did
14 not have any prior associations or contacts with that person.

15 36. Staff then placed me in a holding cage and asked me to sign another chrono
16 stating that I had no safety concerns. They told me I could go back to my housing unit
17 after I signed the chrono, but I was left standing in the holding cage for at least four hours.

18 37. I believe staff were harassing me by trying to insinuate that I had been
19 involved in criminal activities and that this alias, which I had not used for over three years,
20 belonged to me. I think they were trying to get me in trouble as retaliation for me filing a
21 staff misconduct complaint against one of their fellow officers, as well as for requesting
22 ADA accommodations in general.

23 38. After learning of both of these kites, I felt very sad and worried for my
24 safety. I felt even more targeted than I already had when Officer Pano spoke harshly to me
25 when I first tried to use the TDD in June. The words of the other officer echoed in my
26 mind: "We're going to make this difficult for you." Staff definitely have.

27 39. I believe custody staff have endangered my life by spreading false rumors
28 about me to other incarcerated people and singling me out for my disability. I have been

1 expecting another incarcerated person to assault me, but thankfully it has not happened yet.
2 I am on a Level IV yard and I've seen a lot of violence here, and so I believe my life could
3 still be danger. Because staff have singled me out, I do not think there is any officer left
4 who I could go to if that threat on my life became immediate.

5 40. In my time at SATF, there have been a many times that I needed help but
6 didn't ask for it because I was afraid of what would happen to me. For example, the issue
7 with my phone calls has still not been resolved. I no longer get nightly phone calls and I
8 have stopped asking for them from staff. I had already faced retaliation when asking for
9 help multiple times over. Staff never accommodate me even when I do ask for help.
10 When I previously asked to use the phone in the evenings, they would tell me not to bother
11 them and to "get out of here." I also had asked for a cell move because water leaks
12 through the walls and the light fixture in my cell, but staff denied me my request. Staff
13 know about all of the leaks in my cell, but they have done nothing to help fix it. It feels
14 like I cannot ask for anything from staff, and so I do not now.

15 41. I still interact with the officers that have been involved in the staff
16 misconduct against me. Except for Officer Hinojosa, they all still work in my housing
17 unit. I try to avoid them as much as I can. I only ever ask them for forms if I need to.

18 42. My experience with the grievance process, and how staff have retaliated
19 against me for filing complaints, has made me doubt the success of filing appeals. If I do
20 file an 1824 about my hearing issues, I do not believe that staff will make an effort to
21 better understand my disability and the accommodations I need. Past experience has
22 shown that staff would rather put my life in danger than help fulfill my simple request to
23 take phone calls at night.

24 43. In my opinion, staff target people who complain or ask for accommodations
25 with staff misconduct. A majority of these people requesting accommodations are people
26 with disabilities, because they need the extra help.

27 44. I believe staff target people with disabilities because there are certain laws
28 and regulations, like the ARP and the ADA, that govern how they interact with these

1 people. Custody staff do not want to follow these rules, because they have their own belief
2 system for how they think they should treat incarcerated people. They do not think that
3 we're entitled to accommodations, services or privileges to help us with our disabilities.
4 They are trying to dictate their own agenda behind the prison walls. If custody staff
5 followed the rules, corruption would not take place. Staff took an oath to follow those
6 laws even within the prison, but that is clearly not happening.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration is executed at Corcoran, California this 14th day of August, 2020.

/s/ _____

On August 14, 2020, due to the closure of SATF in light of the COVID-19 pandemic and ongoing concerns that officers might retaliate against witnesses in support of Plaintiffs' Motion, including ongoing concerns about the confidentiality of the legal mail system at SATF, I read the contents of this declaration, verbatim, to [REDACTED], by telephone. [REDACTED] orally confirmed that the contents of the declaration were true and correct. [REDACTED] also orally granted me permission to affix his signature to the declaration and to file the declaration in this matter.



Ellie Heywood

Exhibit 71

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : January 17, 2020

To : Jared Lozano
Associate Director (A)
High Security Missions
Division of Adult Institutions

Christopher Podratz
Region III Health Care Executive

Subject: **SATF RESPONSE TO THE ARMSTRONG MONITORING TOUR – APRIL/JUNE 2019**

Please find the attached information to Prison Law Office (PLO) report from the *Armstrong* Monitoring Tour, which took place at California Substance Abuse Treatment Facility and State Prison at Corcoran (SATF) in April and June of 2019. The documentation provided includes a response to the report from the institution, to include Health Care Services Response as well, and the Request for Information and supporting documentation PLO has asked for in their report.

The response that follows has been organized to follow the format of the PLO report. The response and "Request for Information" provide information and rebuttal to some points raised in the PLO report. While it is recognized that there were some areas of concern raised in the report that show room for improvement by the institution, it should be noted that the tour report shows SATF has made marked improvements by all staff to be in compliance with the *Armstrong* Remedial Plan and departmental policy regarding the care and treatment of incarcerated inmate-patients who are identified as *Armstrong* class members.

I. INTRODUCTION

In April and June 2019, a team from the Prison Law Office visited the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF) to monitor the prison's compliance with the *Armstrong* Remedial Plan (ARP), *Armstrong* court orders, and Americans with Disabilities Act (ADA).¹ The tours focused, in large part, on blind and low-vision class members. **We were joined by Scott Blanks, Senior Programs Director, LightHouse for the Blind and Visually Impaired**, for several class member interviews in June 2019. Tamiya Davis, Office of Legal Affairs, and Captain Teauna Miranda, Class Action Management Unit, also participated in those interviews. We thank AW Smith, CCI Gonzalez, CCI Davis, and OT Smith for their assistance during the tour.

Defendants designate people "who have a severe vision impairment which is NOT correctable to 20/200 with corrective lenses in at least one eye and/or has a visual field of 20 degree or less" as DPV. R. Steven Tharratt, Director, CCHCS Health Care Operations, & Vincent S. Cullen, Director, CCHCS Corrections Services, Memorandum: Expansion of Vision-Impaired Patient Definition at 1 (July 17, 2018) (emphasis omitted). SATF houses the largest population of people designated DPV within the California prison system.

¹ Rita Lomio, Attorney; Tania Amarillas, Investigator; Skye Lovett and Gabby Sergi, Litigation Assistants; and Elizabeth Crivaro, Legal Intern.

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provide health care assistance. This would include handling or administering of insulin or glucose meter reading.

REQUEST: Defendants should identify accessible glucose test meters for blind and low-vision class members and update the local operating procedure accordingly. (We note that Mr. [REDACTED] is no longer incarcerated in a California prison.)

RESPONSE: The request to identify accessible glucose test meters for blind and low-vision class members has been forwarded to the SATF Medical Sub-Committee for discussion and recommendation. Upon request for additional information, it was discovered that none of the eight institutions with a Diabetic Self-Testing Program have verbiage relating to options for vision impaired inmates. Furthermore, the HCDOM, section 3.2.4 (B) cites the requirement of Nurse Administered medications for patients whom, "...cannot safely or properly self-administer medications."

VI. STAFF MISCONDUCT

Finally, we received several reports that some staff made inappropriate comments to and about people with disabilities, suggesting a lack of understanding and empathy. This makes it less likely that people with disabilities will ask staff for the accommodations they need. See Letter from Penny Godbold, Rosen Bien Galvan & Grunfeld LLP, to Russa Boyd & Joanne Chen, Office of Legal Affairs, Staff Misconduct Accountability at 2 (Aug. 28, 2017) ("Defendants cannot meet their responsibility for providing required disability accommodations if class members are too afraid to ask"). For example:

1. Mr. [REDACTED] DPV, A2, reported that staff talk negatively about people with disabilities, saying that they complain a lot, get too much, or improperly think they have "got stuff coming." He also reported that he has heard staff refer to people with disabilities as "frequent whiners." He and others are afraid to report issues to ADA auditors out of fear of retaliation.

RESPONSE: On October 3, 2019, [REDACTED] was interviewed regarding his allegations. During the interview, [REDACTED] reported he is no longer experiencing issues since his move to Building 2. However, he did wish to reiterate his claim of staff referring to inmates with disabilities as "whiners." [REDACTED] also made allegations staff have broken his TV and misplaced property.

[REDACTED] did not provide information that met the threshold for placement on the non-compliance log; however, [REDACTED] was advised of the avenues available to him to address staff complaints or issues with property, through the submission of a 602 to the Inmate Appeals Office. [REDACTED] was also informed of his ability to submit Requests for Reasonable Accommodation to address requests or concerns related to his disability.

2. Mr. [REDACTED] DPV, B2, reported that he has been mocked by staff for being low vision, particularly at noon and evening pill call. Staff

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(particularly Sgt. Roche) reportedly have threatened to take his DME, including his white cane. Staff reportedly also have prevented him from getting assistance from ADA workers like Mr. [REDACTED] DPM, B2, with reading, writing, and legal work.

RESPONSE: Due to the allegation of staff misconduct based on [REDACTED] disability, this report was placed on the non-compliance log and an inquiry was initiated.

On August 25, 2019, [REDACTED] was interviewed regarding his allegations and claimed the identified staff member threatened to generate paperwork indicating he did require a tapping cane in an attempt to have the cane rescinded. [REDACTED] also claimed the identified staff members are denying him access to a specific ADA Worker. [REDACTED] claims the identified staff members do not allow him to wait to receive assistance from the ADA Worker who also receives medication. When asked if staff are preventing him from other assistance, [REDACTED] stated no.

Through the inquiry process, it was determined there was no evidence to substantiate [REDACTED]'s allegations of being mocked. It was also determined [REDACTED] is requesting assistance exclusively from one ADA worker, which is against policy.

3. Mr. [REDACTED] DNM, DPV, B3, reported that officers in work change purposefully shout different directions at him to confuse him when he asks to be guided through the metal detector. Mr. [REDACTED] has also heard officers say, "Oh no, not this guy again," when he arrives to work change. He also reported that officers do not offer to guide him through the metal detector because they do not want to touch him.

RESPONSE: Due to the allegation of staff misconduct based on [REDACTED] disability, this report was placed on the non-compliance log and an inquiry was initiated.

On August 24, 2019, [REDACTED] was interviewed regarding the allegations. During the interview, [REDACTED] stated he did not request assistance through the metal detector and did not file any paperwork on this issue because he did not believe it was, "that big of a deal."

One staff member regularly assigned to the work change area in question, recalled only one vision impaired inmate accessing work change and receiving assistance through the metal detector from the Work Change Porter.

On August 28, 2019, the Work Change Porter was interviewed regarding the claims and confirmed he provided [REDACTED] with assistance through the metal detector. The porter went on to say he has never witnessed staff conduct themselves unprofessionally in their dealings with [REDACTED] or any inmate. Based on these reports, the allegation was not confirmed.

4. Mr. [REDACTED] DPV, B3, reported that a custody officer accused him of being able to see. During a search on his housing unit, the custody officer

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reportedly said, "I know you can still see because I've seen you in the yard working out." Mr. [REDACTED] reported that, as a result of this incident, he stopped going to the yard to work out because he is afraid other custody officers would not believe he is unable to see.

RESPONSE: On October 3, 2019, [REDACTED] was interviewed regarding his allegation. [REDACTED] reported he no longer has issues with staff. [REDACTED] went on say he utilizes ADA workers when needed and staff in his current building are helpful. [REDACTED] concluded, adding a custody staff member in the past had repeatedly told him, "I know you can see." Unfortunately, [REDACTED] was unsure of the identify of this staff member.

[REDACTED] did not provide information that met the threshold for placement on the non-compliance log; however, [REDACTED] was advised of the avenues available to him to address staff complaints through the submission of a 602 to the Inmate Appeals Office. [REDACTED] was also informed of his ability to submit Requests for Reasonable Accommodation to address requests or concerns related to his disability.

5. Mr. [REDACTED] [REDACTED] DPM, DPV, D2, reported that because he wears an eye patch, he is mocked and name called by custody staff in his building. For example, he has recently been called "[REDACTED]" a "[REDACTED]" and "[REDACTED]" by housing officers. Mr. [REDACTED] feels these comments are "childish" and felt it was indicative of a broader lack of understanding of how staff should treat people with disabilities.

RESPONSE: Due to the allegation of staff misconduct based on [REDACTED] disability, this report was place on the non-compliance log and an inquiry was initiated.

On August 26, 2019, [REDACTED] was interviewed regarding the allegations. [REDACTED] stated, "I am unclear what you are talking about, I didn't file anything." When further advised of the information presented in the report, [REDACTED] replied, "No staff on Facility D has done this. If they had, I would have filed the staff compliant myself."

Several staff regularly assigned to Facility D were interviewed regarding this issue. All reported they have never mocked [REDACTED] because of his eyepatch or disability. Based on the reports from [REDACTED] and staff, this allegation was not confirmed.

6. Mr. [REDACTED] [REDACTED] DPV, F2, reported that he has been rapidly losing his vision since mid-2018. When he arrived at SATF in 2017, he reportedly could see out of his left eye, but he now has no vision in the center of the field, and can see only out of his peripheral vision. He reported that he is unable to read independently, even in very large print. Because of the decline, he reported that he has had a difficult time proving that his vision is "going downhill," and that he has been challenged by staff who think he is lying about his vision impairment. Mr. [REDACTED] reported that Officer Cummings implied at committee that he does not have a vision impairment. In particular, Mr. [REDACTED] tripped over a bench, and Officer Cummings said in front of the committee, "Stop making it up."

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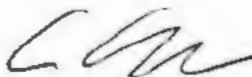
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RESPONSE: On October 3, 2019, [REDACTED] was interviewed regarding his allegations. During the interview, [REDACTED] claimed CCI Cunningham did not believe his vision issues, once allegedly stating, "Stop hamming it up" when [REDACTED] tripped entering the committee office.

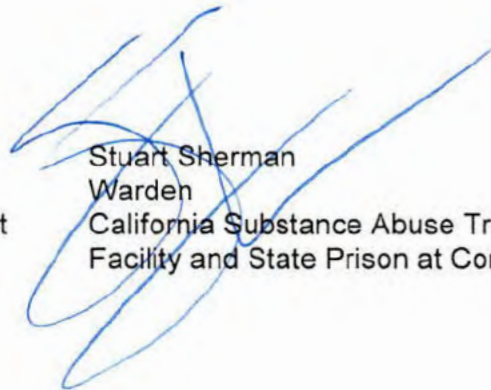
[REDACTED] reported he was issued a vision impaired vest and a cane one week after the alleged incident. [REDACTED] went on to say he no longer has any issue with staff; now all staff recognize his disability due to the issuance of disability equipment.

[REDACTED] did not provide information that met the threshold for placement on the non-compliance log; however, [REDACTED] was advised of the avenues available to him to address Staff Complaints through the submission of a 602 to the Inmate Appeals Office. [REDACTED] was also informed of his ability to submit Requests for Reasonable Accommodation to address requests or concerns related to his disability. He was encouraged to submit a 7362 to Health Care Services for any medical related requests.

RECOMMENDATION: Defendants should re-evaluate their staff training related to people who are blind or have low vision and ensure that staff interact with people with disabilities in a respectful and appropriate manner.



Clarence Cryer
Chief Executive Officer
California Substance Abuse Treatment
Facility and State Prison at Corcoran



Stuart Sherman
Warden
California Substance Abuse Treatment
Facility and State Prison at Corcoran

Cc: Connie Gipson, Director
Division of Adult Institutions

Vincent Cullen, Director-Corrections Services
California Correctional Health Care Services

Exhibit 72

**SUBSTANCE ABUSE TREATMENT FACILITY AND STATE PRISON,
CORCORAN**

Armstrong Monitoring Tour Report (Mobility)

October 2019 / February 2020

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I. INTRODUCTION

In October 2019, a team from the Prison Law Office visited the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF) to monitor the prison's compliance with the *Armstrong* Remedial Plan (ARP), *Armstrong* court orders, and Americans with Disabilities Act (ADA). The tour focused, in part, on class members with mobility disabilities. We thank AW Smith, CCII Gonzalez, CCI Davis, and OT Smith for their assistance during the tour.

This report focuses on issues related to mobility disabilities. The information in this report is based upon interviews with class members, interviews with staff, a walk-through of the facility, and review of documents received during this monitoring period of May 2019 to August 2019. This report does not contain an exhaustive list of every class member who raised a concern; some class members, including those fearing retaliation, did not authorize us to use their names. Many of the issues raised in this report were presented to institution and headquarters staff during the October 2019 tour. Plaintiffs' counsel visited SATF again in February 2020 to investigate non-mobility issues and received a handful of reports related to mobility issues. Those have been incorporated into this report.

II. HEADQUARTERS AND INSTITUTION RESPONSIBILITIES

A. Water Intrusion and Unsafe and Unsanitary Conditions

We continue to receive reports of dangerous weather-related conditions at SATF. These concerns have been extensively documented for years. *See, e.g.*, April-June 2019 SATF DPV Tour Report at 9; June-September 2018 SATF DPV Tour Report at 34-38; Letter from Don Specter, Prison Law Office, to Scott Kernan, Secretary, Dangerous Weather-Related Conditions in California Prisons (Dec. 6, 2017); October 2017 SATF Tour Report at 29-32; Email from Rita Lomio, Prison Law Office, to Joanne Chen, Office of Legal Affairs, SATF Physical Plant Letter (Aug. 16, 2017); Email from Rita Lomio, Prison Law Office, to Russa Boyd, Office of Legal Affairs, SATF Physical Plant Letter (July 6, 2017); Letter from Rita Lomio, Prison Law Office, to Katie Riley & Joanne Chen, Office of Legal Affairs, Physical Plant Problems Observed During March 27-30, 2017, SATF Tour (Apr. 21, 2017); Letter from Rita Lomio, Prison Law Office, to Katie Riley, Office of Legal Affairs, Severe and Persistent Leaking at SATF (Feb. 16, 2017); Email from Don Specter, Prison Law Office, to Scott Kernan, Secretary, Leaking at SATF (Feb. 9, 2016); October 2016 SATF Tour Report at 24; March 2016 SATF Tour Report at 1; November 2015 SATF Tour Report at 2; Email from Don Specter, Prison Law Office, to Jeff Beard, CDCR, Leaking at SATF (Nov. 10, 2015); April 2014 SATF Tour Report at 9.

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the RAP response is “highly inadequate” because it is too small and would not be able to fit his supplies. He reported that he wants to be able to ambulate independently without assistance from an ADA worker, and would like an accommodation like the basket available on some walkers. In the meantime, he reported that he has strapped a bag to the back of his wheelchair, which causes the backrest to rip off its posts. He reported that he recently had to get a new wheelchair because the backrest had ripped off and he was using cardboard instead, making the chair painful to sit in. Officer Smith in his housing unit told him he could be written up for modifying the wheelchair. Four to five months ago, the same officer told him he could also be written up for modifying a bag he purchased at canteen. Mr. [REDACTED] reported appealing the RAP response on or shortly after September 11, 2019, but said that he did not get a copy of his appeal.

RECOMMENDATION: SATF should issue bags to indigent class members who use walkers and wheelchairs so they can carry their property, including reading materials and incontinence supplies, independently throughout the prison.

IV. CUSTODY STAFF RESPONSIBILITIES

A. Showers and Toileting Accommodations

Custody staff should provide toileting supplies, showers, and clean clothing and linens to class members when appropriate, including after a person has a toileting accident. Kelly Harrington, Memorandum: Durable Medical Equipment Policy (Feb. 9, 2015); *see also* M.D. Stainer, Memorandum: Revised Durable Medical Equipment Policy at 2 (Mar. 5, 2020) (discussing additional showers for people who experience incontinence).

Class members housed on C yard reported that they do not always timely receive a shower after a toileting accident. For example:

1. [REDACTED], DPW, C2, 57 years old, reported that the new tower officer has been denying showers to class members after they have a toileting accident. He reported this is particularly problematic for him because his mobility disability makes it difficult for him to clean himself in the cell sink: “I can’t clean myself up properly without messing up the floor”—that is, causing water to spill on the floor resulting in a slipping hazard, which he cannot clean up without assistance from a caregiver.

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2. [REDACTED], DPW, C2, 48 years old, reported that if the housing officer is in a bad mood, particularly if he has recently been challenged or written up, he will deny people as-needed shower for incontinence. He also reported that Officer Turner on Third Watch has let him out for a shower, then locked him in the shower for up to two hours. He said this last happened to him two weeks before the October 2019 tour. Officer Turner reportedly is the Tower Office and asks people to tell porters if they need an ADA shower. He then reportedly will wait to act on a request until it is too late, and dayroom is closed for showers. Mr. [REDACTED] reported that this had been happening for the last five months. He said that if he has an accident, he will try to get Officer Turner's attention and just hope he will let him out. He finds it embarrassing that he needs to tell an ADA worker or porter that he has soiled himself.
3. [REDACTED], DPM, DNH, C8, 66 years old, reported that officers deny him showers after an incontinence accident and tell him, "There's no such thing as an ADA shower." He reported that he usually can get a shower for incontinence on Second Watch, but that he is always denied on Third Watch. If he has an accident, he reported, he changes his clothing, uses wipes, and waits until the showers are open as part of the regular shower program.

In addition, a class member in F1, who uses a wheelchair and wishes to remain anonymous, reported that Officers Miguel and Licea on Third Watch repeatedly denied him showers after toileting accidents over the summer of 2019. On one occasion, Officer Miguel reportedly said to him, "What, did you shit yourself, or are you faking it?" Officer Miguel also reportedly told him, "If you're faking it, I'm going to put you in that bathroom, and I'm going to check." The class member told us that he is concerned that he has no documentation to prove he has incontinence aside from weekly supply receipts. He reported that he has not filed any paperwork about the incident as he fears retaliation and instead tries to ask for a shower on a different watch, which he can usually get. He reported that, more recently, he has not been denied a shower but Officer Miguel still acts disrespectfully towards him, saying things like, "I'll let you get the shower this time, but don't make this a regular thing," or telling him to hurry up.

RECOMMENDATION: Custody staff should be retrained on the provision of showers after a toileting accident.

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days.” Mr. [REDACTED] reported that he asked for his property back, but that only a few items were returned to him.

2. [REDACTED], DNH, DPV, A2, reported that his accessible key lock had been removed during the mass searches. The cell search worksheet he was issued reportedly listed only trash and did not mention his accessible lock. He spoke to an officer later that night and to a sergeant several days later, who said she would try to get an accessible key lock for him. At the time he shared this concern with us in early April 2020, Mr. [REDACTED] reported that he still did not have any lock available to him.
3. [REDACTED], DPM, A1, reported that during the search, the gallon of distilled water he uses for his BiPAP machine was thrown away. He reported that the confiscation was not reflected on his cell search receipt.

REQUEST: Please provide all documentation related to the manner in which mass searches are conducted, including where people are moved during the searches; whether and what disability accommodations are allowed and/or provided while searches are being conducted; and whether and how DME, associated supplies, and disability accommodations can be removed.

D. Staff Misconduct

Officers may not “coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of . . . any right granted or protected” by the ADA. 42 U.S.C. § 12203; *see also* 35 C.F.R. § 35.134(b); ARP § I.A (noting that the Disability Placement Program was created to “assure nondiscrimination against inmates/parolees with disabilities”). Unfortunately, we received several reports that custody staff retaliate against or dismiss class members who ask for help:

1. [REDACTED], C2, reported that four months prior to the interview in October 2019, a new Second Watch Tower Officer refused to let him take a shower after a toileting accident. The regular floor staff, Second Watch Officer McKenna, reportedly tried unsuccessfully to persuade the Tower Officer to permit the shower. Mr. [REDACTED] reported that he became frustrated and spoke loudly to the Tower Officer. Two days later, he reported, his cell was searched, and officers claimed they found heroin in his property. Mr. [REDACTED] is

Armstrong Monitoring Tour Report
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certain the substance found was not heroin. He was concerned that the cell search was in retaliation for his heated conversation with the Tower Officer. He had not heard back about the results of the test by the time of the interview. He said of the incident, "That's the repercussions of telling them they're wrong."

2. [REDACTED], DPW, DNH, DPV, E5, reported that after the Deaf Culture Town Hall in October 2019, which Plaintiffs' counsel observed, he was harassed by officers for speaking up publicly and passionately about the lack of accommodations on his yard. Mr. [REDACTED] reported that officers took everything off his wheelchair and threw his property on the ground as he was exiting the chow hall for breakfast on October 15, 2019, the morning after the Town Hall. The officers then reportedly threatened to give Mr. [REDACTED] an RVR for being in possession of a torn piece of towel. Mr. [REDACTED] explained that he had the towel because he was going to show the people in charge of laundry how old his towel was and request a new one.
3. A DPO class member in F1 described the Second Watch housing officers in his building as "bad actors." He said they have been in the unit for many years, and that when a class member asks them for something, they will say, "You know how it works around here, go away," accompanied by a shooing motion.

E. Program Assignments

SATF must provide reasonable accommodations to people with disabilities to ensure equal access to programs, services, and activities. ARP § I. Class members who use wheelchairs reported that staff told them that they are unable to hold certain work assignments because of their disability. For example:

1. [REDACTED], DPO, F1, reported that he has asked repeatedly for a job assignment, including one with a pay number. He said he could be on the yard, for example, working as a porter. He reported that the CCI, CCII, and officers on the yard have told him that he is very limited in what job he can do because he is in a wheelchair.

REQUEST: Please explain whether Mr. [REDACTED] is eligible for a porter assignment. If he is not, please explain why and list what other assignments he is eligible for. If he is, we request that he be added to the waitlist, if he is not on it already.

Exhibit 73

State of California

Department of Corrections and Rehabilitation

Memorandum**Date :** August 27, 2020**To:** Jared Lozano
Associate Director
High Security MissionChristopher Podratz
Region III Health Care Executive**Subject:** **SATF RESPONSE TO THE ARMSTRONG MONITORING TOUR – OCTOBER 2019**

Please find the attached information to Prison Law Office (PLO) report from the *Armstrong* Monitoring Tour, which took place at California Substance Abuse Treatment Facility and State Prison at Corcoran (SATF) in October 2019. The documentation provided includes a response to the report from the institution, to include Health Care Services Response as well, and the Request for Information and supporting documentation PLO has requested in their report.

The response that follows has been organized to follow the format of the PLO report. The response and "Request for Information" provide information and rebuttal to some points raised in the PLO report. While it is recognized that there were some areas of concern raised in the report that show room for improvement by the institution, it should be noted that the tour report shows SATF has made marked improvements by all staff to be in compliance with the *Armstrong* Remedial Plan and departmental policy regarding the care and treatment of incarcerated inmate-patients who are identified as *Armstrong* class members.

I. INTRODUCTION

In October 2019, a team from the Prison Law Office visited the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF) to monitor the prison's compliance with the *Armstrong* Remedial Plan (ARP), *Armstrong* court orders, and Americans with Disabilities Act (ADA). The tour focused, in part, on class members with mobility disabilities. We thank AW Smith, CCI Gonzalez, CCI Davis, and OT Smith for their assistance during the tour.

This report focuses on issues related to mobility disabilities. The information in this report is based upon interviews with class members, interviews with staff, a walk-through of the facility, and review of documents received during this monitoring period of May 2019 to August 2019. This report does not contain an exhaustive list of every class member who raised a concern; some class members, including those fearing retaliation, did not authorize us to use their names. Many of the issues raised in this report were presented to institution and headquarters staff during the October 2019 tour. Plaintiffs' counsel visited SATF again in February 2020 to investigate non-mobility issues and received a handful of reports related to mobility issues. Those have been incorporated into this report.

II. HEADQUARTERS AND INSTITUTION RESPONSIBILITIES**A. Water Intrusion and Unsafe and Unsanitary Conditions**

We continue to receive reports of dangerous weather-related conditions at SATF. These concerns have been extensively documented for years. See, e.g., April-June 2019 SATF DPV Tour Report at 9; June-September 2018 SATF DPV Tour Report at 34-38; Letter from Don Specter, Prison Law Office, to Scott Kernan, Secretary, Dangerous Weather-Related Conditions

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permitted to use laundry bags to transport items and providers also can order bags through the non-formulary process. See Defendants' Response to February 2019 MCSP Tour Report at 12 (Jan. 8, 2020).

SATF appears not to provide wheelchair or walker bags to indigent class members. In particular, Mr. [REDACTED] DPO, F1, 62 years old, reported that he filed a Form 1824 in August 2019, asking for a bag or backpack to use with his wheelchair so that he can carry his incontinence supplies, books for his programs, his diabetic test kit, and other personal items. He reported that his wheelchair has a small pocket on the backrest but that it rips easily if he tries to put something even as small as his diabetic test kit into it. Furthermore, without a bag, he reported that he cannot protect property like books for his education classes from the rain. The RAP response (Log No. 19-04830) directed him to buy a bag to attach to his wheelchair via the Special Purchase Order process. He found the response unsatisfactory, however, because he reportedly does not have the money to buy a backpack. Furthermore, he said that the vendor-approved backpack mentioned in the RAP response is "highly inadequate" because it is too small and would not be able to fit his supplies. He reported that he wants to be able to ambulate independently without assistance from an ADA worker, and would like an accommodation like the basket available on some walkers. In the meantime, he reported that he has strapped a bag to the back of his wheelchair, which causes the backrest to rip off its posts. He reported that he recently had to get a new wheelchair because the backrest had ripped off and he was using cardboard instead, making the chair painful to sit in. Officer Smith in his housing unit told him he could be written up for modifying the wheelchair. Four to five months ago, the same officer told him he could also be written up for modifying a bag he purchased at canteen. Mr. [REDACTED] reported appealing the RAP response on or shortly after September 11, 2019, but said that he did not get a copy of his appeal.

RECOMMENDATION: SATF should issue bags to indigent class members who use walkers and wheelchairs so they can carry their property, including reading materials and incontinence supplies, independently throughout the prison.

RESPONSE: SATF Medical Warehouse does not keep stock of walker/wheelchair bags as they are not included in the standardized medical supply catalog, nor are they considered an associated supply or accessory to a walker or wheelchair according to the Durable Medical Equipment and Medical Supply Formulary. As noted in the RAP response (Log No. 19-04830), [REDACTED] may request to purchase a bag to attach to his wheelchair from the approved vendor through the Special Purchase Order Process. [REDACTED] may also request assistance in carrying his items from ADA workers

IV. CUSTODY STAFF RESPONSIBILITIES

A. Showers and Toileting Accommodations

Custody staff should provide toileting supplies, showers, and clean clothing and linens to class members when appropriate, including after a person has a toileting accident. Kelly Harrington, Memorandum: Durable Medical Equipment Policy (Feb. 9, 2015); see also M.D. Stainer, Memorandum: Revised Durable Medical Equipment Policy at 2 (Mar. 5, 2020) (discussing additional showers for people who experience incontinence).

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Class members housed on C yard reported that they do not always timely receive a shower after a toileting accident. For example:

1. Mr. [REDACTED] DPW, C2, 57 years old, reported that the new tower officer has been denying showers to class members after they have a toileting accident. He reported this is particularly problematic for him because his mobility disability makes it difficult for him to clean himself in the cell sink: "I can't clean myself up properly without messing up the floor"—that is, causing water to spill on the floor resulting in a slipping hazard, which he cannot clean up without assistance from a caregiver.

RESPONSE: Due to the allegation of staff misconduct based on inmate [REDACTED]'s disability, this report was placed on the non-compliance log and an inquiry was initiated.

On June 16, 2020, inmate [REDACTED] was interviewed regarding his allegation of being denied a shower after an episode of incontinence. [REDACTED] identified an officer and that officer was subsequently interviewed. The identified officer stated that "he accommodates inmate [REDACTED] with a shower as long as time permits and it does not jeopardize the safety and security of the institution." An additional staff member was interviewed and stated they could not recall [REDACTED] ever being denied a shower due to incontinence. An ADA worker was also interviewed. The ADA worker stated that he has no issue assisting [REDACTED] with his ADA needs. The ADA worker also stated he has never seen [REDACTED] be denied an ADA shower. OP-403 states that the "specific time of showering will be conducted at the earliest opportunity available, at the discretion of custody staff, when safety and security concerns permit. Based on these reports, the allegation is not confirmed.

2. Mr. [REDACTED] DPW, C2, 48 years old, reported that if the housing officer is in a bad mood, particularly if he has recently been challenged or written up, he will deny people as-needed shower for incontinence. He also reported that Officer Turner on Third Watch has let him out for a shower, then locked him in the shower for up to two hours. He said this last happened to him two weeks before the October 2019 tour. Officer Turner reportedly is the Tower Office and asks people to tell porters if they need an ADA shower. He then reportedly will wait to act on a request until it is too late, and dayroom is closed for showers. Mr. [REDACTED] reported that this had been happening for the last five months. He said that if he has an accident, he will try to get Officer Turner's attention and just hope he will let him out. He finds it embarrassing that he needs to tell an ADA worker or porter that he has soiled himself.

RESPONSE: Due to allegations of staff misconduct based on inmate [REDACTED]'s disability, this report was placed on the non-compliance log and an inquiry was initiated.

On June 15, 2020, inmate [REDACTED] was interviewed regarding his allegations of being denied an ADA shower on several occurrences during Third Watch. To ensure Effective Communication was achieved, the Sergeant spoke slowly and clearly in plain English. It was noted inmate [REDACTED] provided appropriate, substantive responses to all questions asked. During his interview inmate [REDACTED] could not recall any specific dates of occurrence, but identified an Officer on Third Watch and alleged he locked him in the shower for up to two hours. On June 15, 2020 the identified officer was interviewed regarding the allegations. The officer responded "No" to denying inmate

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█████ an ADA shower after incontinence. The officer responded "Never" to intentionally leaving inmate █████ in the shower for a period of two hours. He stated "Inmate █████ rarely asked for ADA accommodation showers during third watch." Additional staff members and inmates were interviewed and denied witnessing inmate █████ being denied an ADA shower after incompetence. OP-403 states that the "specific time of showering will be conducted at the earliest opportunity available, at the discretion of custody staff, when safety and security concerns permit." It was determined that staff have continued to offer █████ ADA showers per OP 403. Based on these reports, the allegations are not confirmed.

3. Mr. █████ DPM, DNH, C8, 66 years old, reported that officers deny him showers after an incontinence accident and tell him, "There's no such thing as an ADA shower." He reported that he usually can get a shower for incontinence on Second Watch, but that he is always denied on Third Watch. If he has an accident, he reported, he changes his clothing, uses wipes, and waits until the showers are open as part of the regular shower program.

RESPONSE: Due to the allegation of staff misconduct based on █████ disability, this report was placed on the non-compliance log and an inquiry was initiated. On June 17, 2020, █████ was interviewed about the allegation of being denied a shower after an episode of incontinence. █████ stated that he did not recall custody staff ever denying him a shower after incontinence. Furthermore, █████ stated he did not remember submitting paperwork or stating to anyone that he was being denied showers. █████ requested to withdraw the complaint and concluded the interview. Based on these reports, the allegation was found to be not confirmed.

In addition, a class member in F1, who uses a wheelchair and wishes to remain anonymous, reported that Officers Miguel and Licea on Third Watch repeatedly denied him showers after toileting accidents over the summer of 2019. On one occasion, Officer Miguel reportedly said to him, "What, did you shit yourself, or are you faking it?" Officer Miguel also reportedly told him, "If you're faking it, I'm going to put you in that bathroom, and I'm going to check." The class member told us that he is concerned that he has no documentation to prove he has incontinence aside from weekly supply receipts. He reported that he has not filed any paperwork about the incident as he fears retaliation and instead tries to ask for a shower on a different watch, which he can usually get. He reported that, more recently, he has not been denied a shower but Officer Miguel still acts disrespectfully towards him, saying things like, "I'll let you get the shower this time, but don't make this a regular thing," or telling him to hurry up.

RECOMMENDATION: Custody staff should be retrained on the provision of showers after a toileting accident.

RESPONSE: Training was provided to supervisory staff which in turn trained custody staff on Facility C and Facility F were provided training on incontinence showers and when it is appropriate to provide inmates with an extra shower or linens. Custody staff were advised to provide inmates with extra showers, in-linens, and linens due to medical necessity or hygienic needs. This information is also available in OP-403 and the expectation to staff is they be familiar with the policies and procedures of the institution. Training was completed on 7/6/2020.

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D. Staff Misconduct

Officers may not "coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of . . . any right granted or protected" by the ADA. 42 U.S.C. § 12203; see also 35 C.F.R. § 35.134(b); ARP § 1.A (noting that the Disability Placement Program was created to "assure nondiscrimination against inmates/parolees with disabilities"). Unfortunately, we received several reports that custody staff retaliate against or dismiss class members who ask for help:

1. Mr. [REDACTED], [REDACTED] DPW, C2, reported that four months prior to the interview in October 2019, a new Second Watch Tower Officer refused to let him take a shower after a toileting accident. The regular floor staff, Second Watch Officer McKenna, reportedly tried unsuccessfully to persuade the Tower Officer to permit the shower. Mr. [REDACTED] reported that he became frustrated and spoke loudly to the Tower Officer. Two days later, he reported, his cell was searched, and officers claimed they found heroin in his property. Mr. [REDACTED] is certain the substance found was not heroin. He was concerned that the cell search was in retaliation for his heated conversation with the Tower Officer. He had not heard back about the results of the test by the time of the interview. He said of the incident, "That's the repercussions of telling them they're wrong."

RESPONSE: Due to allegations of staff misconduct based on [REDACTED]'s disability, this report was placed on the non-compliance log and an inquiry was initiated. In addition, on August 18, 2020, the ADAC reviewed SOMS and located a RVR dated June 17, 2020 for the specific act of, "Possession of a Controlled Substance in an Institution." Specifically, the RVR stated, "This Rule Violation Report is being entered on behalf of Correctional Officer C. McKenna due to him not having access to the Strategic Offender Management System (SOMS) his report is typed verbatim as: On Wednesday, June 17, 2020, at approximately 0800 hours, the Investigative Services Unit (ISU) received written notification from the Department of Justice (DOJ) located in Fresno, CA 93740, noting the toxicology results, submitted by California Substance Abuse Treatment Facility and State Prison (CSATF/SP) at Corcoran. The respective identification laboratory test results are as follows: The suspected controlled substance submitted to the DOJ Lab Number FR-19-004965-0003

Submission 01:

Item 1: Contains controlled substance(s) listed below:

Heroin: 0.137 grams gross

On Thursday, July 18, 2019, at approximately 1020 hours, while performing my duties as Facility C, Building 2 Floor Officer 2, I was conducting a daily random cell search of Facility C, Building C2 Cell [REDACTED]. While performing a systematic search of Cell [REDACTED], occupied solely by Inmate [REDACTED] (C2-[REDACTED]) I discovered three (3) kites on the bottom right cubicle of the lower shelving unit. I maintained sole possession of the three (3) kites and placed them in my right cargo pocket and continued to search the cell. After continuing the systematic search of Cell [REDACTED] I discovered one (1) bindle containing a black tar like substance wrapped in clear packaging, suspected to be heroin sitting on the top of the desk. I maintained sole possession of the contraband and placed it in my left cargo pocket and continued to search the cell for further contraband with negative results. It should be noted that Inmate [REDACTED] was on the recreation yard at the time of the search.

Thereafter, I notified my immediate supervisor Correctional Sergeant A. Jimenez of my findings and was instructed to escort Inmate [REDACTED] off the recreation yard into a holding cell. I placed Inmate

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█████ in waist restraints and escorted him to the Facility C Medical Clinic for a CDCR 7219 Medical Report of Injury. Prior to securing █████ inside Medical Wet Cell █████ I conducted a search of Medical Wet Cell █████ for contraband with negative results. I secured █████ inside Medical Wet Cell █████ and conducted an unclothed body search and discovered one (1) black SD memory card, and one (1) white Subscriber Identity Module (SIM) card hidden under the seat cushion on his state assigned wheelchair. I maintained sole possession of the one (1) black SD memory card, and one (1) white sim card and placed them in my right cargo pocket. I then initiated a Facility Isolation Log Sheet and exited the medical clinic. I proceeded to the Investigative Services Unit and at approximately 1056 hours, I relinquished possession of the bindle to ISU Officer A. Flores. A Narcotics Identification Kit (NIK) tested the aforesaid bindle Positive for heroin, weight 0.2 grams with packaging." The RVR has yet to be adjudicated as █████ postponed the hearing pending the outcome of the District Attorney decision to prosecute.

Regarding the allegation of non-compliance, on June 14, 2020, █████ was interviewed regarding his allegations of being denied an ADA shower on the Second Watch, sometime in June of 2019. To ensure Effective Communication was achieved, the Sergeant spoke slowly and clearly in plain English. It was noted █████ provided appropriate, substantive responses to all questions asked. During his interview █████ stated there is no longer any issues regarding his ADA showers and he does not wish to continue further with this Non-Compliance report. On June 19, 2020 an officer was interviewed regarding the allegations. The officer responded "No" to witnessing █████ or any ADA inmate being denied an ADA shower. In addition on June 26, 2020 a neighboring inmate and an ADA inmate were interviewed. Both were asked if ADA workers are afforded showers as needed and both responded "Yes". OP-403 states that the "specific time of showering will be conducted at the earliest opportunity available, at the discretion of custody staff, when safety and security concerns permit." It was determined that staff have continued to offer █████ ADA showers per OP 403. Based on these reports, the allegation is not confirmed.

2. Mr. █████ DPW, DNH, DPV, E5, reported that after the Deaf Culture Town Hall in October 2019, which Plaintiffs' counsel observed, he was harassed by officers for speaking up publicly and passionately about the lack of accommodations on his yard. Mr. █████ reported that officers took everything off his wheelchair and threw his property on the ground as he was exiting the chow hall for breakfast on October 15, 2019, the morning after the Town Hall. The officers then reportedly threatened to give Mr. █████ an RVR for being in possession of a torn piece of towel. Mr. █████ explained that he had the towel because he was going to show the people in charge of laundry how old his towel was and request a new one.

RESPONSE: █████ was interviewed regarding his allegation that staff was throwing his belongings from his wheelchair to the ground. █████ stated it was a one-time occurrence and he has no issues with anyone that works on his yard. █████ was advised on how he could address staff complaints in the future utilizing the 602 grievance process. He was also informed of the Reasonable Accommodation process should he have a request related to his disability. The ADAC reviewed SOMS and did not locate an RVR in issued to █████ in October 2019, as █████ claims. However, an RVR was located dated September 5, 2019, for the specific charge of, "Destruction of State Property valued less than \$400." Specifically, the RVR states █████ was observed exiting the Facility E Dining Hall sitting in his wheelchair wherein staff discovered an altered and / or destroyed state laundry bag tied onto his wheelchair. The altered state laundry bag was cut and / or torn apart. The Reporting Employee (RE) states █████ cut the state issued laundry bag in half and tied onto his wheelchair with shoe strings. The RE confiscated the altered and / or destroyed laundry

SATF Armstrong Monitoring Tour Report Response
April / June 2019

Page 32

bag from [REDACTED]. The RE allowed [REDACTED] to remove his personal belongings from the inmate-manufactured pouches attached to his wheelchair. The RE states the Materials and Stores Supervisor indicated the price to replace one (1) destroyed state laundry bag is six dollars (\$6.00). [REDACTED] was found guilty of the above-mentioned RVR.

An additional RVR was discovered dated November 1, 2019, for the specific act of, "Delaying a Peace Officer in the Performance of Duties." Specifically, the RVR states that at about 0700 hours, the control booth officer advised [REDACTED] to report to work change for an out to medical appointment. Approximately 15 minutes passed, and the control booth officer announced for the second time for [REDACTED] to report to work change for an out to medical appointment, with negative results. The RE stated that as [REDACTED] is designated DNH and utilizes hearing aids, they approached his cell and advised him that transportation was waiting for him at work change for his medical appointment. [REDACTED] stated, "I refuse, I am not going nowhere." Following his response, the RE advised [REDACTED] that he needed to sign a refusal in the Facility 'E' Medical Clinic for his appointment that was scheduled. [REDACTED] stated, "I ain't signing nothing and I ain't going nowhere." The RE gave [REDACTED] a direct order to go to medical and sign a refusal with negative results. The RE documented that [REDACTED] delayed staff in completing their normal duties for approximately 25 minutes. [REDACTED] was found guilty of the above-mentioned RVR.

3. A DPO class member in F1 described the Second Watch housing officers in his building as "bad actors." He said they have been in the unit for many years, and that when a class member asks them for something, they will say, "You know how it works around here, go away," accompanied by a shooing motion.

RESPONSE: Staff and inmates from F1 were interviewed regarding this allegation. No claims that further confirmed this claim was given.

E. Program Assignments

SATF must provide reasonable accommodations to people with disabilities to ensure equal access to programs, services, and activities. ARP § 1. Class members who use wheelchairs reported that staff told them that they are unable to hold certain work assignments because of their disability. For example:

1. Mr. [REDACTED] [REDACTED] DPO, F1, reported that he has asked repeatedly for a job assignment, including one with a pay number. He said he could be on the yard, for example, working as a porter. He reported that the CCI, CCII, and officers on the yard have told him that he is very limited in what job he can do because he is in a wheelchair.

REQUEST: Please explain whether Mr. [REDACTED] is eligible for a porter assignment. If he is not, please explain why and list what other assignments he is eligible for. If he is, we request that he be added to the waitlist, if he is not on it already.

RESPONSE: [REDACTED] [REDACTED] is currently eligible to work in any assignment on the facility in a Limited Duty functional capacity pursuant to his most recent Medical Classification Chrono (MCC) dated June 4, 2020. Although designated limited duty, he can be assigned to any Support Services position. His ADA needs can and will be accommodated in the event he is given a work

Exhibit 74



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Margot Mendelson

VIA EMAIL ONLY

June 12, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong Advocacy Letter*
[REDACTED], [REDACTED], DNH, SATF

Dear Ms. Davis:

We write on behalf of [REDACTED], an *Armstrong* class member. He is housed in Building D2 at the California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF). Mr. [REDACTED] is hard of hearing; he describes himself as partially deaf in his left ear and mostly deaf in his right ear. We spoke with him by phone last week. He relayed several concerns regarding disability accommodations during the COVID-19 pandemic, which we outline below.

1. Phone Access

As you know, people with disabilities must have equal access to telephones. This is of particular importance during the COVID-19 pandemic. In fact, Secretary Diaz told the incarcerated population in a video address that CDCR is “doing everything we can to increase the communication opportunities and availability for you. . . . I need you in contact with your family because your family needs to be aware how you’re doing.”¹

Mr. [REDACTED] reported that he calls his mother and grandmother during regular dayroom hours. He reported, however, that he cannot hear clearly due to his disability and instead constantly must ask them to repeat themselves because he cannot distinguish their voices on the phone from the many other loud sounds in the background.

Notwithstanding technological advances, it remains a common complaint—particularly among those using state-issued hearing aids—that hearing aids amplify background noise and make it difficult to discern speech except in quiet environments.

¹ Secretary Diaz, Population Message, <https://vimeo.com/400758862/824c4cf567> (Mar. 25, 2020).

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

June 12, 2020

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There are a number of different accommodations that may allow Mr. [REDACTED] equal access to the phone. We outline several here, and ask that the institution work with Mr. [REDACTED] to determine which would best accommodate him. We note that Mr. [REDACTED] may require a combination of the accommodations listed below.

Option A: Evening Phone Time

Mr. [REDACTED] believes that he may be able to hear more clearly during the evening, particularly between 8:30 and 9:00 pm, when the dayroom is quieter because there are not as many people playing games and talking, doors slamming, notifications over the public announcement system, and orders by the tower officer.

Mr. [REDACTED] already has requested this accommodation. He reported that he first filed a 22 requesting that he be permitted evening phone calls. When he did not receive a timely response, he filed an 1824. He reported that, on April 20, 2020, a floor officer asked him what was wrong with his hearing aids. Mr. [REDACTED] explained that his concern was with ambient noise, not with his hearing aids, and asked if the officer's question was related to his 1824. The officer reportedly told him that he did not know. When Mr. [REDACTED] later returned from yard, the officer reportedly told him that he wanted to speak to him about his 1824. He said that the medical department was asking if Mr. [REDACTED] wanted to use the phone at night. When Mr. [REDACTED] again explained his request, the floor officer directed him to file a 7362. Mr. [REDACTED] reported that he already unsuccessfully had filed a 7362 about his concern; in his words, "I believe thats [sic] what a 1824 is [for]."² However, when he explained that to the officer, the officer reportedly responded, "Okay, whatever," and walked away.

The next day, on April 21, 2020, Mr. [REDACTED] was called to the clinic to speak with a nurse. He reported that the nurse first asked whether his hearing aids were working, without explaining why he had been called. He again explained that his concern was not with his hearing aids (although one hearing aid was not working at the time), but with ambient noise in the dayroom. The nurse reportedly directed him to file paperwork and ended the encounter.³

² There is a 7362 in the medical record from Pleasant Valley State Prison dated September 7, 2019, where he writes, in relevant part: "[You] just said your hearing aids work that's all you need. But I said they don't when I use the phone when it's loud. Sounds—talking." Mr. [REDACTED] was seen by an RN two days later. The RN wrote: "Ip states he has no issues with current hearing aids, however is unable to hear while on the phone due to excessive noise in the housing unit." The RN wrote a diagnosis of "Deficient Knowledge."

³ The medical record contains only a TB Screening Evaluation on this date. The LVN wrote: "patient has his hearing aid on. States he can hear me clear [sic]. No difficult [sic], states he only has trouble hearing when there is loud noise [sic] around. Patient tates [sic] that

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

June 12, 2020

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These and other encounters understandably have left Mr. [REDACTED] disillusioned with the 1824 process. He does not believe that staff make an effort to better understand his disability and the accommodations he needs. He has no confidence that staff attempt to understand his concerns, and he believes that staff only listen for what they want to hear. In this case, for example, he believes that staff simply wanted to hear him say that his hearing aids were working so that they could respond that he was appropriately accommodated.⁴

But, as he has explained, he is able to hear clearly with hearing aids only when he is in a quiet environment; for example, he is able to understand medical staff during encounters at the clinic, where he is in a room with one or two other people. And he was able to speak with us by telephone (with the volume turned up) in a private room with the door closed. In loud environments, however, his hearing aids amplify background noise. Any sound in the background becomes as loud as the sound in the foreground, such that he cannot distinguish it from whatever he might be trying to listen to. His hearing aids also cause static in loud environments, “like a walkie-talkie.” Loud voices in the background are particularly problematic.

In addition to attempting to resolve the matter through the 1824 process, Mr. [REDACTED] has asked housing unit officers for permission to use the phones in the evening. However, he was told that he cannot sign up for the phone in the evening because the time is reserved for Prison Industry Authority workers who do not have access to the phones during the day.

hearing aid has batterie [sic] and is working at time of comunication [sic] between he [sic] and I.”

⁴ We have not seen the Reasonable Accommodation Panel’s (RAP) response to his 1824. Mr. [REDACTED], however, reported that his request was denied, that he was told he was reasonably accommodated with his hearing aids, and that he was directed to file a 7362. See Log No. SATF-D-20-02465. Mr. [REDACTED] stated that he appealed the RAP response but that it was inappropriately screened out as pertaining to PVSP, where he previously was housed. He reported that he refiled his appeal approximately two weeks prior to our conversation with him and had received a receipt saying that his appeal had been accepted. At the time of our conversation, he had not yet received a response.

We note that in response to another of Mr. [REDACTED]’s requests for phone access, the RAP stated, “Health Care Services provided the RAP with a Disability Verification Process (DVP) Worksheet indicating that you are currently being appropriately accommodated for your disability. Your primary method of communication is the use of your hearing aids. You have access to regular dayroom phones which also have adjustable volumes to meet your needs.” Log No. SATF-S-20-0919. If the RAP responded similarly to his request for evening phone calls, it did not meaningfully address his request.

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

June 12, 2020

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Option B: Pocket Talker or Telecoil System

If he still cannot hear using the regular phones in the evening, Mr. [REDACTED] may benefit from a pocket talker or telecoil.

Mr. [REDACTED] has repeatedly requested a pocket talker since at least May 2018. *See* Letter from Gabby Sergi & Rita Lomio, Plaintiffs' Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED], [REDACTED], SATF (Mar. 1, 2019); Letter from Alexander Powell, CDCR Office of Legal Affairs, to Rita Lomio, Plaintiffs' Counsel, [REDACTED], [REDACTED], SATF (Oct. 31, 2019).⁵ He believes a pocket talker would amplify the sound on the phone so that he could hear it over background noise, even in the busy dayroom. He has not personally used a pocket talker, but he has seen another person use one, and heard from that person that using a pocket talker is better.

If a pocket talker does not work, Mr. [REDACTED] may benefit from a telecoil (also known as a t-coil) system. A telecoil is a small wire coiled inside hearing aids. When activated, the telecoil picks up electromagnetic signals from a loop system and converts them into sound. Many phones already contain an inductive coupler, which creates a loop system with a hearing aid's telecoil. Using a telecoil system with a phone amplifies sound from the phone, while shutting out interference and background noise.

Option C: Captioned Phone

If the above accommodations do not fully address the problem, Mr. [REDACTED] should be provided a captioned phone. He explained that in loud, busy environments, he often relies on supplementary information, through captions, lip (or speech) reading, gesture, and body language, in addition to his hearing aids and residual hearing. (His request to access the videophone to be able to read his family's lips, gestures, and body language was denied.) With this additional

⁵ On February 21, 2020, Mr. [REDACTED] again filed an 1824 requesting a pocket talker. The RAP denied the request five days later, stating, in relevant part:

You have access to regular dayroom phones which also have adjustable volumes to meet your needs. . . . You have also requested a pocket talker, however you are already appropriately accommodated with hearing aids.

Log No. SATF-D-20-01029. Again, it is not clear how the RAP made this determination. Mr. [REDACTED] repeatedly has explained that his hearing aids and the adjustable volume of the regular phone are not adequate accommodations for his disability.

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]
June 12, 2020
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information, he is able to understand much more of a conversation. Captioned phones would provide him with this support.

“For deaf and hard of hearing people with intelligible speech, captioned telephones provide far superior telephone access than a TDD. Captioned telephones such as CapTel are a more modern technology, are easier to use, have a faster connection, have a larger font size, and allow multiple lines of text to be viewed at one time.” *See* Letter from Rita Lomio, Plaintiffs’ Counsel, to Tamiya Davis, CDCR Office of Legal Affairs, Accommodations for Deaf and Hard of Hearing Class Members Who Do Not Know Sign Language at 8 (Nov. 27, 2019); *see also Cal. Council of the Blind v. County of Alameda*, 985 F. Supp. 2d 1229, 1240 (N.D. Cal. 2013) (“The legislative history of the ADA reveals that Congress intended for accommodations provided to individuals with disabilities to ‘keep pace with the rapidly changing technology of the times.’” (quoting H.R. Rep. 101-485(II), at 108 (1990), reprinted in 1990 U.S.C.C.A.N.303, 391)). Additionally, captioned telephones allow both parties to speak at a normal rate and to interrupt one another, and only the captioned telephone user (here, Mr. [REDACTED]) requires special equipment.

Mr. [REDACTED] speaks primarily in Spanish and Spanish-English vernacular with his family. The California Captioned Telephone Service (CapTel) provides Spanish caption services 24 hours/day. *See* Deaf and Disabled Telecommunications Program, Captioned Telephone Service, <https://ddtp.cpuc.ca.gov/default.aspx?id=1490> (last visited June 11, 2020).

Option D: Telecommunication Device for the Deaf (TDD)

We previously have explained that “TDD devices are antiquated, outmoded, and becoming obsolete,” and that TDD relay services are “time-consuming due to the need to type back and forth between the relay operator and the [caller].” *See* Letter from Rita Lomio, Plaintiffs’ Counsel, to Alexander Powell, CDCR Office of Legal Affairs, Accessible Phones for Deaf and Hard of Hearing Class Members at 3 (March 27, 2020) (quoting Irene W. Leigh & Jean F. Andrews, *Deaf People and Society* 210 (2016)); *see also Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 207 (4th Cir. 2017) (“TTY is old technology that is fast becoming obsolete.”). When calls take place through a relay service, which allows the other person to use a regular telephone and to speak, this person must speak at an abnormally slow pace to allow the relay operator time to type their statement verbatim on a standard keyboard. Interruptions are not possible—each side must wait until the other cedes the floor by saying “go ahead.”

As an interim accommodation, Mr. [REDACTED] should be provided access to the TDD. We first requested this accommodation for him over a year ago. *See* Letter from Gabby Sergi & Rita Lomio, Plaintiffs’ Counsel, to Russa Boyd, CDCR Office of Legal Affairs, [REDACTED], [REDACTED], SATF (Mar. 1, 2019). He subsequently was transferred to PVSP. When he returned to

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

June 12, 2020

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SATF, he was moved to D5. He reported that no one provided him any instructions on how to use the TDD and he did not believe one was available. He reported that he did not request help from housing officers because he felt that he already had filed a significant amount of paperwork to make his request known. He reported that because of that, he left it alone; in his words, “if you get confrontational with these guys, they’re going to get confrontational back with you.”

During our call with him last week, it was clear that he did not fully understand what a TDD is and how it functions.⁶ For example, he said that his mother and grandmother do not know how to type, so he was not sure whether they would be able to use it; he did not understand that he could call them through the TDD relay service, which would not require them to type. He also reported that he did not know if he could use it because his family speaks Spanish. The TDD relay service, however, provides a Spanish-language line, which can be reached by dialing 1-800-855-3000. He also believed that his family would not be able to hear his voice if he used the TDD; when they do not hear his voice, he said, “I know they’re sad sometimes.” It appears that Mr. [REDACTED] did not know of the voice carry-over (VCO) capabilities of a TDD.

We therefore ask that staff immediately meet with Mr. [REDACTED] and show him how to utilize VCO and Spanish relay services.

2. Access to 1824s and CDCR Video Programming in D5

Mr. [REDACTED] reported that while housed in Building D5, he did not have ready access to 1824 or 22 forms. Typically, the forms are kept in the office in the housing unit and are available upon request from housing unit officers. However, Mr. [REDACTED] reported that when he requested an 1824, he was told that they were not available, or, “We’ll get it later.” He resorted to filing 7362s requesting the forms. *See, e.g.*, CDCR 7362 Health Care Services Request Form (Apr. 3, 2020); CDCR 7362 Health Care Services Request Form (Apr. 29, 2020) (stating, “I need access to ADA forms. . . [a]s they don’t have them in our building ahead [sic] for 3 weeks.”).⁷ He also reported that he requested an 1824 in-person at the clinic, but was told they should be available in his building. When he explained that they were not, the nurse directed him to go to the program office and ask the Captain. On one occasion, he went to Building D3 on his way to the clinic for a medical encounter to get 1824s. He estimates that he requested an 1824 from housing unit officers

⁶ Mr. [REDACTED] reported that until recently, he did not realize that a TDD and videophone were different, which caused some miscommunications between him and ADA staff. This is not surprising; “it often takes late-deafened adults years to learn about coping strategies, assistive technology, and their basic rights to communication access.” Marylyn Howe, *Meeting the Needs of Late-Deafened Adults*, 19 *Am. Rehabilitation* 25, *3 (Winter 1993).

⁷ Mr. [REDACTED] shared copies of these 7362s with us. It does not appear that they were scanned into his medical record.

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

June 12, 2020

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at least six times and was denied each time. Fortunately, Mr. [REDACTED] reported that 1824s are more readily available in Building D2, where he currently is housed.

Mr. [REDACTED] also reported that the cable television in Building D5 did not work. The institutional channels reportedly were unavailable, both on the dayroom television and for anyone with an analog (as opposed to digital) cable connection on their personal television. As a result, he reported, he could not watch CDCR's COVID-19 educational videos. He wrote to Plaintiffs' counsel that without recreational or educational materials, "were [sic] basically like the adseg w our cells alot [sic] with a mest [sic] up program." Mr. [REDACTED] was able to watch the COVID-19 educational videos, with captions, when he moved to Building D2.

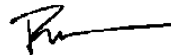
* * * * *

We request that institution staff:

- (1) evaluate what accommodation(s) would facilitate Mr. [REDACTED]'s ability to conduct phone calls with his family and loved ones, including evening phone time, a pocket talker, a telecoil system, and a captioned phone;
- (2) in the interim, train Mr. [REDACTED] on how to use the TDD, including the VCO and Spanish relay features; and
- (3) ensure that class members in Building D5 have ready access to 1824s and CDCR educational videos, and provide appropriate training to housing officers in that unit.

Thank you for your prompt attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney



Skye Lovett
Litigation Assistant

cc: Mr. [REDACTED]

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

June 12, 2020

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Robinson, Ngoc Vo, Robin Hart, Steven Blum, Joseph Williams (CCHCS)

Adriano Hrvatin, Joanna Hood, Damon McClain, Sean Lodholz (DOJ)

Exhibit 75



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VIA EMAIL ONLY

June 22, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong* Advocacy Letter
[REDACTED], DNH, SATF

Dear Ms. Davis:

I write to follow-up on the advocacy letter we sent on behalf of Mr. [REDACTED] on June 12, 2020. We received two letters from him on June 19 and 22, 2020, and are deeply concerned about the allegations in them, which I outline below.

Mr. [REDACTED] reported that, on June 15, 2020, he tried to use the TDD, but staff did not know how to use it. He reported that two women came to help, but they also did not know how to use it, even with the manual, and told him that they would come back the next day. He reported that housing officers got very upset with him and told him that he's not really deaf: "You're not even deaf, and you can hear me, right?"

He reported that one of the women said that he would be accommodated with night calls, but that he had to ask the housing officer about that. He reported that when he did, the housing officer got upset with him and told him, "You're not going to get night calls. You're not special." He reported that when he told the housing officer that it was up to the warden, the housing officer called him disrespectful, refused to allow him to sign up for evening calls, and said that he would not get "special privileges."

Mr. [REDACTED] reported that he spoke with the ADA Coordinator the following day, on June 16, 2020. He reported that, again, they could not get the TDD to work.

Mr. [REDACTED], who is housed on a Level IV yard, also reported that the housing officers are telling incarcerated people in the unit that their phone privileges "are going to be taken away because of the guy with the hearing aids." He reported that he already has been approached by incarcerated people who are upset about that.*

* Two people housed on Level IV yards at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF), have been killed in the last two weeks; two *Armstrong* class members at SATF also were killed in January of this year; and one *Armstrong* class member at SATF was killed in September 2019. Three were deaf or hard of hearing.

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Ms. Tamiya Davis

Re: [REDACTED]

June 22, 2020

Page 2

We are deeply alarmed by these reports. This is exactly why many people with disabilities are reluctant to request accommodations. You and I have witnessed firsthand during monitoring tours—most recently in February of this year—that housing staff at SATF too often do not understand the diverse nature of hearing disabilities and the fact that people may require accommodations in certain contexts and not others. Suggesting to other people that accommodations for a person with a disability will disrupt their access to critical phone time puts the person with a disability at risk (as, in fact, we reported in 2017 after a deaf class member at SATF was assaulted for the same reason). Unfortunately, we have received reports from at least three other people housed in D2 that housing officers there are disrespectful to incarcerated people and recently made inappropriate comments about the death of George Floyd.

Please refer these allegations to the accountability process and direct ADA staff at the institution to closely monitor these issues. We request a phone call with ADA staff next week to discuss the issues in this letter and how Mr. [REDACTED]'s disability will be accommodated when using the phone. Thank you for your immediate attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney

cc: Co-Counsel
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Exhibit 76



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VIA EMAIL ONLY

September 10, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong Advocacy Letter*
[REDACTED], [REDACTED], DNH, SATF

Dear Ms. Davis:

We write again on behalf of [REDACTED], a hard-of-hearing class member housed at the California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF). We first wrote to you about his disability-related phone access problems over a year ago, on March 1, 2019. We did not receive a response until eight months later, after Mr. [REDACTED] had been transferred to another institution. The response was incomplete and did not resolve the issue.¹

After Mr. [REDACTED] returned to SATF, we sent letters on June 12, 2020, and June 22, 2020, explaining that he still was not receiving appropriate accommodations to access the phone and that he may have been retaliated against by housing officers for requesting such accommodations. We attempted to speak with ADA staff about Mr. [REDACTED]'s concerns on July 17, 2020; ADA staff informed us that they had sent a response to Headquarters and that we should expect a response soon. We have not yet received a response.

A representative from the Prison Law Office spoke with Mr. [REDACTED] again on July 31, 2020, and we have received several letters from Mr. [REDACTED] since that time. We also have spoken with his family members.² We write to supplement our previous letters.

¹ Among other things, we had noted in our letter that a social worker simply selected "Yes" for all "Accommodations EC Grid" options, even ones that did not apply to Mr. [REDACTED] and had not been provided, such as "speech language interpreter." Defendants' response did not acknowledge that report, and it does not appear any corrective action was taken. That same social worker continued to select all options, including "speech language interpreter," for other people designated DNH well after we put Defendants on notice of the problem. *See, e.g.,* Effective Communication Documentation for [REDACTED], [REDACTED] (Aug. 7, 2019); [REDACTED], [REDACTED] (May 20, June 19, and July 10, 2019).

² Our conversations with Mr. [REDACTED]'s mother and grandmother were conducted in Spanish. We provide the English translation in this letter.

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Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]
September 10, 2020
Page 2EQUAL ACCESS TO TELEPHONES

Mr. [REDACTED] reported that he still does not have equal access to the phone. Mr. [REDACTED] reported that, even with Spanish-language relay services, the TDD is not an effective accommodation. He reported that letters get “chopped up,” and that he often “loses his grasp” on the conversation, particularly if either party needs information to be repeated. He reported difficulty reading the text on the screen. Mr. [REDACTED] reported that his elderly grandmother has trouble focusing on the topic of conversation because of time-consuming delays in communication. Mr. [REDACTED] reported that using the TDD is even less effective as a means to communicate with his family than making calls in the busy and loud dayroom. *See Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 207 (4th Cir. 2017) (“TTY is old technology that is fast becoming obsolete.”).

In addition, Mr. [REDACTED]’s family confirmed that it is difficult to have a conversation with him on the regular phone during busy dayroom hours or through the TDD. His mother said, in August: “All of the recent calls have been coming through the TDD but the calls often don’t go through. They’ll ask me if I want to accept his call, I press #5 as indicated, and then the call falls through. This has happened at least 5-6 times.” His 86-year-old grandmother stated:

If he calls early in the day, he can’t really hear what I’m saying, but later in the evening it’s better. He doesn’t hear very well. Early in the day there’s a lot of noise. Maybe that’s why when he calls early he can’t hear me well. When he calls me in the evening he seems to hear better. . . . Sometimes he repeats and repeats things to me when he’s trying to tell me things, he asks me, “Are you hearing what I’m saying, grandma? Can you hear me?” I can hear him, but I think sometimes he can’t hear me. “Grandma, I don’t hear very well.” He’s told me he has problems with his ears because he has problems. . . . Sometimes it gets hard for me to understand him. Sometimes I can’t understand him, like he gets confused. But then I ask him again and he tries to repeat what he said so I understand what he is saying. . . . In the evening hour we talk better. He sometimes asks to call me later because he says it’s harder for him to hear him in the day. . . . He called me today. But he couldn’t really talk because of how loud it was.

His sister also explained how it can be difficult to have a conversation: “He’ll ask me a question, ‘Hey, did you get my paperwork?’ And I won’t even start talking, and he’ll say, ‘What, speak up,’ but I haven’t even said anything.” She explained that Mr. [REDACTED] will say, “It’s loud over here, I can’t really hear you.”

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Re: [REDACTED], [REDACTED]
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His family also explained the importance of phone calls during the pandemic. His mother told us: “Since we can’t see him, we need to be in communication with him so that we know what’s going on with him. What are we supposed to do? We’re all very worried about him. My mother is older, she’s really worried about him, and I naturally worry about him and her for worrying about him.” When we asked why it was important to hear Mr. [REDACTED]’s voice, his mother started crying and told us, “I get really depressed. It hurts to think about the conditions he’s experiencing. It’s hard being out here, and I just think about how much harder it is for him inside - without being able to go anywhere. It’s hard. I try to take comfort in God, to move forward. But it really hurts me to know he’s in there.”

His grandmother similarly explained:

I get worried about him when I don’t hear from him. . . . It’s definitely important for me to hear his voice. I worry about him a lot. He’s my grandson. That boy was with me since he was little; it’s as if he were my son. . . . I also worry about his safety. In that place he is, I think of all the things that could happen to him or worry that he’s sick and think about how we’re not there, and he’s alone, and we can’t check in on him. . . . The pandemic really worries me. He told me he was really sick. He thinks it might have been the pandemic. I was very worried. I worried that they might have done something to him, thinking God knows what. I was just wondering what was going on with him. I get worried every time he goes a long time without talking to me. Even getting a five or ten minute phone call makes me feel a huge amount of relief and comfort. It lets me know that at least he’s safe and okay.

See Secretary Diaz, Population Message, <https://vimeo.com/400758862/824c4cf567> (Mar. 25, 2020) (stating that CDCR is “doing everything we can to increase the communication opportunities and availability for you. . . . I need you in contact with your family because your family needs to be aware how you’re doing.”).

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Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

September 10, 2020

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STAFF MISCONDUCT

Mr. [REDACTED] continues to report that he is being retaliated against for requesting disability accommodations. He reported that on June 17, he witnessed a Third Watch officer speaking to his cellmate and a group of four to five other people, who then turned and looked at his cell, shaking their heads. His cellmate later explained that the officer was telling them that they were going to lose phone, shower, and other privileges “because of the guy with the hearing aids.” The officer reportedly also told his cellmate, “I don’t know how your cellie goes out like nothing’s going to happen to him.” Mr. [REDACTED] reported that he and his cellmate then got into an argument, and his cellmate was moved that evening. Mr. [REDACTED] suspected that his cellmate moved because he feared retaliation from custody staff. He reported that he was later approached by five different individuals, who told him to watch his back because the Second Watch officer and a captain were saying similar things about him to other incarcerated people.

Mr. [REDACTED] filed a 602 about the conduct of the Third Watch officer in late June. He reported that he was called to the program office. He was told that officers found a kite in the locked box use for 7362s, which said that Mr. [REDACTED]’s life was in danger. A man with glasses asked him whether he had any enemies or safety concerns, and made a dismissive comment about the seriousness of the issue: “They find these all the time on A Yard here too.” (As you know, Facility A is a Level II yard; Facility D is a Level IV yard.) Mr. [REDACTED] reported that a sergeant told him that he would need to sign a CDCR 128-B saying he had no safety or enemy concerns, or he would be moved to administrative segregation. Mr. [REDACTED] signed the chrono, but is concerned that the kite may have been an attempt by housing unit officers to have him moved from the unit due to safety concerns, and is worried that he might be attacked.³

Mr. [REDACTED] reported that his relationships with his housing unit officers are tense. He said that some officers appear to be “holding a grudge.” He reported that the partner of the Second Watch officer who told him he is “not even deaf” told him to come to her with concerns, not her partner, because of her partner’s feelings towards Mr. [REDACTED]. He reported that on at

³ In mid-July, Mr. [REDACTED] was again called into the program office due to safety concerns. He reported that a day or two prior, there was a “melee” in Building D2 over money. He was not involved in the fight, but was called to speak with officers because they had found a kite alleging that Mr. [REDACTED]’s alias from a GP yard in 2016 or 2017 was connected to a Green Dot routing number with \$300. Mr. [REDACTED] informed the officers that the alias is a “dead name” that he no longer uses. However, officers told him that they had to “run the numbers,” and placed him in a holding cage for four hours. He then had to sign another CDCR 128-B attesting that he had no safety or enemy concerns. Mr. [REDACTED] fears that this encounter was an attempt to involve him in the “melee” and have him moved off the yard.

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Re: [REDACTED], [REDACTED]

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least three occasions, officers have said he could use only the TDD (and not the regular phone), claiming that the ADA Coordinator said he was only allowed to use the TDD and not the phones in the dayroom. He reported that officers repeatedly have told him since mid-June, “Don’t ask us for nothing.” He reported that he also has had to repeatedly ask for indigent envelopes. As a result, Mr. [REDACTED] fears that he could not safely report any immediate threats against him to any officer.

These are serious reports of staff misconduct. The significance of officers telling the incarcerated population that they will lose privileges because of a person with a disability cannot be overstated. *See* Doc. 3025 at 25 (Order). Similarly, the officers’ apparent refusal to entertain accommodation requests and reliance on so-called marriage-chronos in an attempt to absolve themselves of liability, a practice we have objected to many times, including at Salinas Valley State Prison, are particularly disturbing.

Mr. [REDACTED] reported that an incarcerated person (Person A) told him on September 3, 2020, that Officer Mejia told him (Person A) that Mr. [REDACTED] had “812’d” Person A’s friend (Person B). The interaction between Person A and Officer Mejia reportedly happened around a week before Person A approached Mr. [REDACTED] with the information. Person A reportedly told Mr. [REDACTED] that Officer Mejia identified Mr. [REDACTED] as “the guy in your building who 602’d Pano,” the Second Watch officer who previously told Mr. [REDACTED] that he is “not even deaf.” When Person A did not recognize Mr. [REDACTED] by that description, Officer Mejia then reportedly explained that he was the person who is “always 602’ing things. . . the one that comes out to yard always wearing a beanie.”

Mr. [REDACTED] reported that in order to have Person B added to his 812 enemy list, he would have needed to provide confidential information to staff about Person B or otherwise tell staff that Person B was endangering his safety. Mr. [REDACTED] fears that Officer Mejia may have been spreading false rumors about him in an attempt to set him up to be assaulted by other incarcerated people. He also is apprehensive that multiple officers on the yard have now spread false rumors about him to jeopardize his safety. He witnessed Officer Hinojosa do so when speaking to a group of incarcerated people, and heard secondhand that Officers Pano and Mejia spread rumors about him as well. *See* Doc. 3025 at 24 (Order) (noting that reporting “misconduct by staff or other inmates” “can invite acts of violence or other forms of retaliation against the person reporting misconduct”); Doc. 3059 at 61 (Order) (“When . . . staff frustrate the effectiveness of that system by threatening, coercing, or intimidating class members into foregoing their rights to request reasonable accommodations or file ADA-related grievances, that constitutes a violation of the ARP and the Court’s prior orders and injunctions regarding the same.”). Mr. [REDACTED] wrote to us: “They been trying for three months now so Im [sic] wondering whats [sic] next?”

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Re: [REDACTED], [REDACTED]

September 10, 2020

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CDCR 1824 PROCESS

We have reviewed several CDCR 1824s submitted by Mr. [REDACTED] in an attempt to resolve problems with phone access. We are disappointed to see that his requests are being denied based on the same inappropriate reasoning we challenged over a year ago in our March 1, 2019 letter. Among other things, Mr. [REDACTED] still is being denied accommodations to access telephone calls, including a pocket talker, simply because he is prescribed hearing aids.

Mr. [REDACTED] reported that, on or around June 16, 2020, the ADA Coordinator told him that if the TDD was not operable or did not accommodate him, he would be allowed evening phone time. Mr. [REDACTED] thereafter filed a CDCR 1824 to request written documentation of that agreement. *See* Log No. SATF-D-20-03489. Mr. [REDACTED] reported that he filed the CDCR 1824 in part because a Second Watch officer said of evening phone calls, “I’m not going to give you shit until I get it on paper.” That proved true; Mr. [REDACTED] reported that he was allowed evening calls only during his assigned dayroom hours.

In response to his CDCR 1824, on June 24, 2020, the Reasonable Accommodation Panel (RAP) denied his request for evening phone calls, explaining that “inmates are only permitted to sign up to use the phones during their dayroom time” due to social distancing measures. In addition, the RAP response stated, “[Facility D] staff indicated all inmates get equal access to all phone call times in accordance with their [privilege group] and facility program.”

The RAP’s conclusory finding, based on assertions of building staff, that “all inmates get equal access to all phone call times” misses the point entirely. Because of his disability, Mr. [REDACTED] cannot benefit from the phone time he is offered because he cannot hear well in a busy dayroom. He therefore is not similarly situated to other people in his housing unit without hearing disabilities. He requested a reasonable accommodation of evening phone call times—which he cannot sign up for without written permission—because it would afford him a quiet location for his calls. Without this accommodation, he does not get equal access to phone calls unless he is given an alternative means of using a phone in a quiet location, including by allowing him to use a phone in the counselor’s office. The RAP response fails to address his underlying disability accommodation need: the need for a quiet location for phone calls.

Mr. [REDACTED] reported that a different Associate Warden interviewed him again on July 30, to ask him how he could be accommodated with phone access. He asked Mr. [REDACTED] “Why do you feel you should get 8:30-8:45 p.m. phone calls?” because, “We’re trying to be fair.” Mr. [REDACTED] reported that he explained his hearing disability and the history of the issue, and told the Associate Warden that the previous Associate Warden assured him he would be accommodated with evening phone calls if the TDD did not work. The Associate Warden reportedly responded, “Did he put that in writing?” Mr. [REDACTED] has explained his hearing

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Re: [REDACTED], [REDACTED]

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disability and needed accommodations to ADA staff at SATF several times, and reported that he was frustrated with the interaction because of how long he has been requesting accommodation.

Finally, Mr. [REDACTED] also has requested a pocket talker as an accommodation if the institution will not provide him with evening calls. He has done so on February 21, April 8, June 16, and June 25, 2020. The RAP summarily denied each request:

- “You have also requested a pocket talker, however you are already appropriately accommodated with hearing aids.” Log No. SATF-D-20-01029.
- “[Y]ou are currently properly accommodated with Durable Medical Equipment (DME) consistent with your DNH status. Your primary method of communication is your hearing aids with the alternate method of being spoken to loud and clear. Therefore, you do not require a pocket talker.” Log No. SATF-D-20-02465.
- “Due to your hearing aids being functional, a pocket talker was not deemed necessary.” Log No. SATF-D-20-03489.
- “Due to your hearing aids being functional, a pocket talker was not deemed necessary.” Log No. SATF-D-20-03514.

Again, the RAP misses the mark entirely. The fact that Mr. [REDACTED] has and uses hearing aids in one context does not necessarily mean the hearing aids meet all his needs and that he does not require additional accommodations (e.g., a pocket talker) in other contexts. Here, the pocket talker would allow Mr. [REDACTED] to hear on the telephone while eliminating the background noise that makes him unable to understand the people he has called. His hearing aids do not have this capacity. And the institution will not allow him to place calls in a quiet location, making the pocket talker a necessary accommodation for his disability needs.⁴

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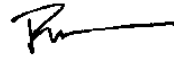
⁴ The RAP responses also are troubling in light of Mr. [REDACTED]'s report that the volume of his hearing aids cuts out, and that his hearing aids have been broken for a while. He reported that he has filed several 7362s and an 1824 regarding his broken hearing aids. *See* Log No. SATF-D-20-03679. However, he was told that he cannot see the audiologist due to pandemic-related restrictions, something that institution staff confirmed last month. According to the electronic medical record, it appears that an RFS for audiology was submitted in June 2020, for “[l]eft hearing aid malfunction,” and was modified on August 19, 2020. It does not appear he has yet been seen over 90 days later.

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Re: [REDACTED], [REDACTED]
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In sum, Mr. [REDACTED] continues to suffer from serious and longstanding disability-related issues. We request a response to our letters on behalf of Mr. [REDACTED] as soon as possible. Thank you for your immediate attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney



Skye Lovett
Litigation Assistant

cc: Mr. [REDACTED] (footnote 1 redacted)
Ed Swanson, Court Expert
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez,
Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Teauna Miranda, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Donald
Meier, Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson,
Vincent Cullen, Joseph Edwards, Lynda Robinson, Barb Pires, Ngoc Vo, Miguel Solis,
Olga Dobrynina, Dawn Stevens, Alexandria Tonis, Gently Armedo (CCHCS)
Jeremy Duggan, Damon McClain, Joanne Hood, Sean Lodholz, Anthony Tartaglio,
Trace Maiorino (OAG)

Exhibit 77



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VIA EMAIL ONLY

July 9, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong Advocacy Letter*
[REDACTED], DPH, SATF

Dear Ms. Davis:

I write to follow-up on an advocacy letter I sent on behalf of [REDACTED] on July 2, 2020. Mr. [REDACTED] is a 26-year-old *Armstrong* class member. I interviewed Mr. [REDACTED] yesterday, with the assistance of a sign language interpreter.

Mr. [REDACTED] is designated DPH. That means that he does not hear well enough to understand speech without some kind of visual support, such as sign language, written notes, or lip-reading. *See Armstrong Remedial Plan § II.C.2.* It appears that medical and ADA staff at the California Substance Abuse Treatment Facility and State Prison, Corcoran (SATF), are disputing this conclusion without appreciating the reality and complexity of his disability.

The U.S. Department of Justice has advised state governments that “the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective.” *See* U.S. Dep’t of Justice, Title II Technical Assistance Manual § II-7.100. For this reason, federal regulations implementing Title II require public entities to “give primary consideration to the requests of individuals with disabilities” when “determining what types of auxiliary aids and services are necessary.” 28 C.F.R. § 35.160(b)(2). SATF does not appear to be following this important federal mandate.

For the reasons outlined in this letter, I request that Defendants:

- (1) update Mr. [REDACTED]’s effective communication documentation to reflect hearing aids and/or sign language as his primary form of communication, with the other listed as his secondary;
- (2) dismiss any disciplinary action taken in response to Mr. [REDACTED] requesting disability accommodations;
- (3) retrain medical and ADA staff on the diverse nature of hearing disabilities and the heightened need for effective communication during medical encounters;
- (4) direct his counselor to meet with him, using a sign language interpreter, to discuss what happened at his last committee and answer any questions he may have; and
- (5) allow Mr. [REDACTED] access to a videophone.

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Re: [REDACTED], DPH, SATF
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Methods of Communication

Like many deaf and hard of hearing people, Mr. [REDACTED] communicates using a variety of modalities. Although he can speak, he cannot hear well enough to understand all speech unless he has hearing aids. He knows sign language, as reflected by his ability to communicate with a sign language interpreter during our interview. Currently, Mr. [REDACTED] does not have hearing aids, even though he has been in custody since January 2020. It is imperative that SATF staff acknowledge this lack of durable medical equipment and defer to Mr. [REDACTED]'s account of his communication needs, especially the need for sign language or written notes.

During the interview, Mr. [REDACTED] described a history consistent with using both speech and sign language. He became hard of hearing at the age of 4 and has used hearing aids or "cheap amplifiers" ever since. This means he learned to talk when he could hear fully, making his speech much clearer than the speech he can hear. He also reported receiving speech therapy growing up, which maintained the clarity of his speech. However, he still has a hearing disability. Like many people with some residual hearing, he has more difficulty hearing some frequencies and voices than others. This means that he can (and, by his report, does) miss key words and phrases even under ideal listening conditions. In typical listening conditions, especially without hearing aids, he reports regularly missing important information.

Mr. [REDACTED] also reported that, from an early age, he learned sign language. He reported that he views sign language and English both as his primary languages, and that he received sign language interpretation when in jail and during court proceedings. He reported that he is teaching his 3-year-old daughter sign language. Our certified sign language interpreter signed to Mr. [REDACTED] using grammatical American Sign Language and without mouth supports. Mr. [REDACTED] responded back appropriately (our interpreter said that Mr. [REDACTED] "didn't miss a beat"). Mr. [REDACTED] himself uses an English signing system.

Mr. [REDACTED] reported that without hearing aids, he needs information provided in sign language because "I don't want to miss out on key point words and important information." He reported that he can hear common words and phrases, but requires sign language so he can fill in the gaps when he is not sure what someone said. With hearing aids, he reported, he sometimes does not need an interpreter. He reported, of his current situation without hearing aids or a sign language interpreter: "It's stressful. I don't really be grasping everything that a person say. A lot of times person has attitude when I ask them to repeat themselves."

Disciplinary Action

Mr. [REDACTED] reported that he may have received a rule violation report or other written warning based on an incident with a nurse who accused him of "trying to pretend like [he] couldn't hear that well." (On July 2, 2020, I requested all disciplinary paperwork that has been

Ms. Tamiya Davis
 Re: [REDACTED], DPH, SATF
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issued to Mr. [REDACTED] I have not yet received responsive documents.) Mr. [REDACTED] explained to us that he has a hard time understanding the nurse due to the volume and pitch of her voice—a situation that is common for people like Mr. [REDACTED] who have some residual hearing. According to Mr. [REDACTED] she would “get attitude” when he asked her to repeat herself. The second time this happened, he reported, he requested a sign language interpreter. After he returned to his housing unit, he learned that she had responded with disciplinary action.

An Outpatient Progress Note, dated April 14, 2020, appears in the electronic medical record and is reprinted below (emphasis in original). It is consistent with Mr. [REDACTED]’s account of the interaction, including that medical staff may have believed he was faking his disability, based on inappropriate assumptions from lay observation:

Pt presents on exam ambulatory. ON indirect visualization pt was observed in the patient holding therapeutic module talking to other inmates and verbalized understanding by answering them back in a normal voice tone pattern. pt then was asked by custody to come down to the nurses line and he came out of the holding module and stated he wanted a SLI and or someone to write notes to him. Pt was informed by his writer on a written piece of paper that he would be rescheduled after his audiology eval for his doctors visit. pt verbalized understanding and stated ok, and signed the form. Pt then turned to the Custody officer Martinez and stated I have a rash and he agreed to see the nurse for his rash, which was visualized on exam with the yard RN as no apparent exanthem on his thighs (custody officer present on exam , pt lifted his boxers) Pt was informed by the yard RN he would obtain hydrocortisone cream for itching areas to his thighs, as he claims the skin area itches at times. Pt appears in NAD at this time. Pt is aware he will be re scheduled for pcp visit when his audiology eval has been completed as he states he cannot hear and his secondary form of communication is not designated at this time as written form of communication. Prior to pt leaving he stated to the CO. that he was told by other inmates to play like he cannot hear at all, officer Martinez, informed the inmate that he should **not pretend he is deaf or play like he cannot hear as it will not help him to do this type of behavior**. Pt said oh ok and exited the clinic.

HEENT: deferred as pt claims he cannot hear.

Mr. [REDACTED] reported that he did not “play deaf.” Instead, he reported, he was frustrated during the encounter because he felt his request for a disability accommodation was not taken seriously and he felt, based on medical staff’s facial expressions, that she thought he was a joke: “I told them why would I pretend to hear. Inmates tell me all the time to play deaf, and I’m not going to. I’m going to be myself. I’m hearing impaired. . . . I’m the happiest man on earth when I have hearing aids, because I’m thankful to hear birds chirping, to be able to understand everything that’s going on. But apparently they consider me as a joke. . . . I did tell them why would I pretend I’m deaf, and inmates tell me all the time that I’m deaf.”

Ms. Tamiya Davis
 Re: [REDACTED], DPH, SATF
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We are particularly concerned by the medical record notation that: “patient holding therapeutic module talking to other inmates and verbalized understanding by answering them back in a normal voice tone pattern.” That is an inappropriate basis to deny disability accommodations during a medical encounter. Mr. [REDACTED] informed me: “When I was talking to an inmate, the inmate was talking to me in a holding cell. I couldn’t fully hear him. I had to ask him to repeat himself.” Medical staff’s apparent disbelief that Mr. [REDACTED] had a disability that required accommodation based on her perception of his informal interaction with another incarcerated person in a different setting illustrates the all-too-common dilemma for deaf and hard of hearing people: They are labeled hearing if they use their voice and residual hearing, and they are labeled pretending if they do not. Or, in Mr. [REDACTED]’s words: “They took that into consideration: ‘He’s talking to another inmate in a cell. He’s pretending.’ I’d rather not just talk as well. Why put myself out there? I never put myself out there that I’m fully deaf. In that case, I wouldn’t talk to nobody. I’m hearing impaired. I come from deaf and hearing impaired community. . . . Somebody gets into some trouble in the yard, people still need to tell me to get down because I might not hear the frequency on the alarm. I still got to put the closed caption on the TV because the TV doesn’t have surround sound like speakers and old-school box TV.”

The medical record entry also indicates that the author does not understand the diverse nature of hearing disabilities and the heightened need for effective communication during medical encounters. “Foremost, the deaf population is not a monolith. The only common trait among its members is an inability to hear well enough to understand spoken language, and even this similarity can vary in degree. The problematic treatment of deaf people by legislatures and courts stems from the basic failure to recognize the tremendous diversity within the deaf population.” Deirdre M. Smith, *Confronting Silence: The Constitution, Deaf Criminal Defendants, and the Right to Interpretation During Trial*, 46 Me. L. Rev. 87, 91-92 (1994).

Effective Communication with Counselors and During Committee

Mr. [REDACTED] reported that he missed the most important information shared during committee because, without hearing aids or a sign language interpreter, he could not understand the counselors. He reported: “I still don’t know what programs I qualify for because I couldn’t really understand what happened at committee.” He did not understand whether he was eligible for early parole and said: “I don’t really understand why I’m still here when I thought I qualified for halfway house. . . . [It is] stressful not being able to hear and not having clear understanding of what’s going on around me.”

. . . .

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Access to the Videophone

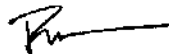
Mr. [REDACTED] also requires access to a videophone when, as now, he does not have hearing aids. Mr. [REDACTED] reported that he cannot understand much of what his family says over the regular phone. He described concern about what is going on with his family, including his mom, daughter, and newborn baby, during the COVID-19 pandemic. He believes that, if he had his hearing aids, he might be able to hear clearly on the regular phone, which he would prefer to use so that he could hear his loved ones' voices. But at present, he requires sign language access through a videophone to understand his family members on phone calls.

He reported that the officers in his housing unit, and in particular Officers McDonald and Gillis, do a good job in trying to accommodate him and in fact contacted the ADA office to see if he could get access to the videophone. Mr. [REDACTED] reported that he met with ADA staff regarding this request, but they told him "that because I could talk, I'm hearing impaired, my first primary language isn't sign language," and that "I had to be all the way deaf."

* * * * *

Thank you for your prompt attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney

cc: Mr. [REDACTED]
Ed Swanson, Court Expert
Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson, Amber Lopez,
Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Chance Andes, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Donald
Meier, Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson,
Vincent Cullen, Joseph Edwards, Lynda Robinson, Barb Pires, Ngoc Vo, Miguel Solis,
Olga Dobrynina, Dawn Stevens, Alexandria Tonis, Gently Armedo (CCHCS)
Jeremy Duggan, Damon McClain, Joanne Hood, Sean Lodholz, Anthony Tartaglio,
Trace Maiorino (OAG)

Exhibit 78



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Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

August 25, 2020

Ms. Tanüya Davis
CDCR Office of Legal Affairs

RE: *Armstrong Advocacy Letter*
[REDACTED] DPW, DNH, LD (unverified), SATF

Dear Ms. Davis:

We write to follow-up on the advocacy letter we sent on behalf of Mr. [REDACTED] over three months ago, on May 22, 2020, regarding his access to the courts and effective communication of written medical information during the pandemic. We have not received a response to that letter. The letter raises significant issues that affect not just Mr. [REDACTED] but also, potentially, a number of other class members throughout the California prison system. During an interview on August 10, 2020, Mr. [REDACTED] reported that the problems have not yet been resolved.

Effective Communication of Written Medical Information

In our May 22 letter, we reported that Mr. [REDACTED] is prescribed phenytoin, an anti-epileptic drug that he takes to control seizures. On May 6, 2020, his health care provider apparently sent him a patient letter informing him that his phenytoin level “has decreased significantly,” asking whether he was taking his medication “three times a day,” and directing him to let medical staff know. There was no indication in the medical record regarding how, if at all, the letter was effectively communicated to Mr. [REDACTED] who has a TABE reading score of 00.0. He reported that he had not received the letter or been informed of its content.

According to the electronic medical record, the provider has sent Mr. [REDACTED] at least four additional patient letters since then—on June 18, June 26, July 7, and July 23, 2020. Two letters concerned his phenytoin levels. Mr. [REDACTED] reported during the August 10 interview that he had not received effective communication of any of these letters. We again read the letters to him.

This problem is not limited to Mr. [REDACTED]. Deaf and blind class members at SATF also reported this month that they have not received effective communication of written medical information, including patient letters, which Defendants now rely on due to pandemic-related restrictions on in-person encounters. **Please explain how Mr. [REDACTED] and other class members with limited reading ability will receive effective communication of written medical information during the pandemic, as well as copies of any relevant policies or procedures.**

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Ms. Tamiya Davis

Re: [REDACTED] [REDACTED]

August 25, 2020

Page 2

Access to the Courts

In addition, as we wrote previously, Mr. [REDACTED] requires access to a word processing program as an accommodation for his reading disability. This would allow him to draft court filings independently, which is particularly important given his conviction.¹

Mr. [REDACTED] reported that he still is not receiving adequate access to a word processing program. Mr. [REDACTED] also reported that since our May 22 advocacy letter, he could not recall any institution staff interviewing him about accommodations for court access. He reported that his J-Pay tablet is now functional, and that with the new LexisNexis application on the tablet, he is able to use the text-to-speech function to conduct legal research. He also is able to type his legal work on his J-Pay tablet. However, he reported that he cannot print his work from his J-Pay tablet, and so he cannot use his tablet to meet the deadlines in his active cases.² As a result, he reported that he has had to file a handwritten document with the court. During our interview, he shared that, “I feel sorry for the court,” and said that he even wrote a letter to the court clerk to apologize for his handwriting and to explain that “this is all that I have.”

Mr. [REDACTED] reported that since our May 22 advocacy letter, he was granted Priority Legal User (PLU) access to the law library, where he is able to print for free because he is indigent. However, due to the pandemic-related modified programming, he was able to visit the law library only three times and to use the ADA computer for an hour each time. He reported that one hour of computer access each week is not adequate for him to type his legal work. He has used his time on the ADA computer to transcribe his previous handwritten filing with the court so that it will be legible (or in his words, “in English.”). However, he reported that “it’s not easy for me to read my own writing either. . . I can, but sparingly,” because “it’s all blurry and crossing-over.” As a result, he reported that during his last visit to the law library, he was able to transcribe only one page of his 25-page filing. Furthermore, he was concerned that he would no longer have access to the ADA computer after August 17, when his PLU status was set to expire.

¹ Mr. [REDACTED] reported to us that he is the target of harassment due to his underlying conviction. He reported that bullying, name-calling, and people “pushing on him” have been a regular part of his daily life since a 2014 ABC News broadcast aired in his housing unit. The broadcast covered the arrest of his son (who shares his name) for sexual abuse of children, and named Mr. [REDACTED] and his conviction offense. We previously reported that Mr. [REDACTED] has heard from others that officers share information and spread rumors about his underlying conviction, and that he does not go to yard as a precaution against “havoc.”

² Mr. [REDACTED] reported that to print a filing that he typed on his J-Pay tablet, he would have to send an email to a loved one with the document, which costs 35 cents. He reported that he cannot afford to do this regularly.

Ms. Tamiya Davis

Re: [REDACTED]
August 25, 2020
Page 3

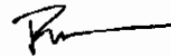
On August 13, 2020, Defendants issued a memorandum entitled, "Access to Auxiliary Devices in Libraries for Inmates with Vision Impairment Impacting Placement During COVID-19 Pandemic." The memorandum noted that "[l]ack of access to auxiliary devices may impair the ability of DPV inmates to read legal mail, court transcripts, and complete personal correspondence, CDCR forms, and other documentation." The memorandum directed institutions housing people with DPV codes to "develop a schedule to allow DPV inmates access to auxiliary devices located in the libraries for . . . up to four hours per week for priority legal users, during the modified programs caused by the COVID-19 pandemic" The memorandum further noted that "[a]lternative locations, such as classrooms and gyms, may be utilized to allow for more flexible scheduled and increased access to auxiliary devices."

The memorandum, however, does not apply to Mr. [REDACTED] who does not have a DPV code but still requires access to auxiliary aids in the law library due to his learning disability.

Please explain how Mr. [REDACTED]'s learning disability will be accommodated to allow him equal access to the courts during the COVID-19 pandemic, including how frequently he will be able to access a word processor.

Thank you for your prompt attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney



Skye Lovett
Litigation Assistant

cc: Mr. [REDACTED]
Ed Swanson, Court Expert
Tamiya Davis, Alexander Powell, Nicholas Meyer, Patricia Ferguson, Erin Anderson,
Amber Lopez, Robin Stringer, OLAArmstrongCAT@cdcr.ca.gov (OLA)
Lois Welch, Steven Faris (OACC)
Adam Fouch, Teauna Miranda, Landon Bravo, Laurie Hoogland (DAI)
Bruce Beland, Robert Gaultney, Sandra Alvarez, Tabitha Bradford, John Dovey, Donald
Meier, Robin Hart, Cindy Flores, Joseph (Jason) Williams, Kelly Allen, Cathy Jefferson,

Ms. Tamiya Davis

Re: [REDACTED]
August 25, 2020
Page 4

Vincent Cullen, Joseph Edwards, Lynda Robinson, Barb Pires, Ngoc Vo, Miguel Solis,
Olga Dobrynina, Dawn Stevens, Alexandra Tonis, Gently Armedo (CCHCS)
Jeremy Duggan, Damon McClain, Joanne Hood, Sean Lodholz, Anthony Tartaglio, Trace
Maiorino (OAG)
Brantley Choate, Hillary Iserman, Shannon Swain, Rod Braly, Jennifer Winistorfer, Martin
Griffin, Alicia Legarda (OCE)

Exhibit 79



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Rita Lomio
Margot Mendelson

VIA EMAIL ONLY

September 8, 2020

Ms. Tamiya Davis
CDCR Office of Legal Affairs

RE: *Armstrong Advocacy Letter*
[REDACTED], [REDACTED], DLT, SATF

Dear Ms. Davis:

We write on behalf of [REDACTED], an *Armstrong* class member at the California Substance Abuse Treatment Facility and State Prison, Corcoran (“SATF”). Mr. [REDACTED] is housed in D3, on a Level IV yard. Mr. [REDACTED] is issued permanent incontinence supplies. During a legal interview on August 10, 2020, Mr. [REDACTED] reported problems with accommodations for his incontinence and the CDCR 1824 process. We outline those concerns below. We are particularly concerned to again receive reports of retaliation by housing officers on Facility D at SATF after people with disabilities request accommodations.

ACCESS TO SHOWERS AFTER TOILETING ACCIDENTS

Mr. [REDACTED] reported that he often requires showers due to his incontinence. He reported that before March 2020, he had little difficulty receiving such showers upon request. He reported that in March, however, several new officers rotated into his unit. At that time, housing unit officers began to deny or substantially delay his requests for as-needed showers, sometimes for several hours. He estimated that his requests had been denied or delayed between ten and fifteen times. He estimated that almost all of these denials and delays have taken place without an apparent reason, security or otherwise. Mr. [REDACTED] reported that he often is not able to clean himself in a timely manner, and that he has started to develop a rash between his buttocks as a result.

Mr. [REDACTED] reported that each time he has been denied or delayed in receiving a shower, he has filed a CDCR 1824, 602, or 602-HC.¹ We received several of these forms as part of the

¹ Mr. [REDACTED] also has reported his concerns to medical staff. *See, e.g.*, Nursing Face-to-Face (July 14, 2020) (“Pt states rash started a few days ago, pt asked when the last time he had a shower, pt states, ‘Miraculously they gave me a shower today.’ Pt asked prior to this day when was the last shower and pt states it has been two weeks.”).

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Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
September 8, 2020
Page 2

document production for our August 2020 *Armstrong* monitoring tour.² We have concerns with how these forms were responded to, as outlined below.

1. 1824 Log No. SATF-D-20-01954

On March 27, 2020, Mr. [REDACTED] filed a CDCR 1824 reporting that he was denied a timely shower. He stated that at approximately 11:40 am, he asked another incarcerated person to tell the Tower Officer that he needed a shower, as he was locked in his cell. He reported that the Tower Officer then told Officer Zarate, a floor officer, that Mr. [REDACTED] needed a shower. However, Officer Zarate stated he did not “have the buttons.” Log No. SATF-D-20-01954.

The RAP issued the following written response:

On 4/16/2020, you were interviewed regarding your allegations. During the interview, you stated that you asked another inmate to tell an officer of your need for a shower due to an episode of incontinence. You also stated that the aforementioned inmate returned and said that the officer he spoke to did not have control to open your assigned unit.

On 4/16/2020, three staff members were interviewed. The staff members were able to recall your request for a shower due to incontinence. Two of the staff members interviewed were unable to assist with your request. However, the third staff member confirmed that you were provided a shower. This staff member also stated that you have been provided multiple showers due to incontinence issues and the building officers are aware of your medical condition.

Based on these findings, it was determined your allegation of being denied showers due to incontinence is not confirmed. you [sic] are encourage [sic] to follow shower procedures as outlined in Operational Procedure (OP) 403, Disability Placement Program. Pursuant to OP 403, *Although all inmates are allowed to use the ADA Showers, the ADA Inmates shall be given priority use. If there is an ADA Inmate waiting to use the shower, that inmate shall be allowed to use the ADA accessible shower before a non-ADA inmate.* You are encouraged to notify custody if you are unable to use the ADA Accessible shower ahead of non-ADA inmates.

Log No. SATF-D-20-01954 (italics in original).

² As we informed Defendants last month, in lieu of a traditional tour report, we have been and will be sending a handful of advocacy letters based on this abbreviated tour.

Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
September 8, 2020
Page 3

This response is inadequate. **First**, like many other responses we have reviewed from SATF over the past several months, the response is untimely. *See* 1824 Desk Reference Manual at 9 (Oct. 2, 2017).

Second, the response does not explain why “[t]wo of the staff members interviewed were unable to assist with [Mr. [REDACTED]]’s] request.” If those officers are the Tower Officer and Officer Zarate, they should have been able to provide Mr. [REDACTED] access to a shower.

The appeals package we received from the institution does not provide documentation of the staff interviews that the RAP used as a basis for its decision. Mr. [REDACTED] told us that he was interviewed in response to his CDCR 1824 and that he told the interviewer that he did ultimately receive a shower but that he “didn’t get the shower for several hours.” The RAP response does not address the delay in providing Mr. [REDACTED] a shower or document any corrective action. At a minimum, it appears that the two officers should have been retrained on the Revised Durable Medical Equipment Policy (Mar. 5, 2020).

Third, the response’s discussion of OP 403 is irrelevant and confusing. Mr. [REDACTED]’s concern was not that he was being denied priority access to the ADA shower over non-class members, it was that he was being denied access to *any* shower after experiencing incontinence. The relevant policy and procedure therefore is the Revised Durable Medical Equipment Policy (Mar. 5, 2020), which provides that people “who receive incontinence supplies shall be provided additional showers and hygiene supplies on an individualized basis as needed.”

REQUEST: Please provide an explanation of why “[t]wo of the staff members interviewed were unable to assist with [Mr. [REDACTED]]’s] request” and all documentation available to the RAP in making that determination, including documentation of staff interviews. Please retrain the housing officers and ADA staff on the Revised Durable Medical Equipment Policy, and update OP 403 to include that information. Please explain why the RAP response was untimely, and what training has been provided to ADA staff to ensure that the errors identified above will be corrected. Finally, please add Mr. [REDACTED]’s allegations to the accountability log.

2. 1824 Log No. SATF-D-20-02631

On March 22, 2020, Mr. [REDACTED] submitted a CDCR 602 that was converted to a CDCR 1824. Mr. [REDACTED] reported that he “suffers from a known incontinence ailment,” that he repeatedly requested a shower from housing officers earlier that day without success, and that “this is a recurring problem.” Log No. SATF-D-20-02631.

Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
September 8, 2020
Page 4

The RAP processed Mr. [REDACTED]'s request as a duplicate to the CDCR 1824 described above, and issued him an identical response. This was inappropriate. The events Mr. [REDACTED] described in his CDCR 602 were distinct from the events described in his previous CDCR 1824; one involved an allegation that staff improperly denied him access to the shower on March 22, and the other involved an allegation that staff improperly denied him access to the shower on March 27. They should have been investigated and documented as separate allegations of noncompliance. Inexplicably, this response also was untimely; ADA staff had requested and received an extension due to the "[c]omplexity of the decision, action, or policy."

REQUEST: Please provide an explanation of why Mr. [REDACTED]'s CDCR 602 dated March 22, 2020, was treated as a duplicate of his CDCR 1824 dated March 27, 2020. Please explain why the response was untimely. Finally, please add Mr. [REDACTED]'s allegations to the accountability log.

3. 1824 Log No. SATF-D-20-02780

Mr. [REDACTED] again reported a delay in receiving a shower on April 26, 2020. In a CDCR 602-HC filed on that date, he wrote that on April 25, at 9 a.m., he asked another incarcerated person to inform the Tower Officer that he needed a shower due to a continence accident. The Tower Officer denied Mr. [REDACTED]'s request. Mr. [REDACTED] then clarified with the other incarcerated person that he should receive "medical showers." The other incarcerated person approached Officer Zarate to convey Mr. [REDACTED]'s request, and returned to tell Mr. [REDACTED] that Officer Zarate had responded, "did he shit on himself again, does he think that he can get out of his cell whenever." Mr. [REDACTED] reported that was delayed from taking a shower for an hour and fifteen minutes. During that time, he observed the dayroom from his cell, and noted no apparent security interests. At 10:15 a.m., he asked a different incarcerated person who was working in the dayroom to convey his request for a shower. He was unlocked two minutes later. *See* Log No. SATF-D-20-02780.

Mr. [REDACTED]'s CDCR 602-HC was converted to a CDCR 1824. The RAP did not send a written response to Mr. [REDACTED] until June 12. The response stated:

On 5/10/2020, you were interviewed regarding your allegation. During the interview, you stated you asked two inmates to advise to different officers of your need of a shower due to incontinence on 4/25/2020. You then stated you were denied a shower by both officers. The identified inmates were also interviewed on 5/10/2020. Both inmates stated they did recall telling the officers of your need of a shower. Furthermore, both inmates stated that you were provided a shower on the date in question.

Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
September 8, 2020
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On 5/10/2020, two staff members were interviewed. The staff members were able to recall your request for a shower due to incontinence. The first staff member stated he was unable to immediately give you a shower because he was releasing inmates for dayroom. However, when he completed his duties approximately five minutes later. The staff member stated you were released to utilize the shower.

Based on these findings, it was determined your allegation of being denied showers due to incontinence is not confirmed.

The RAP then cited the section of OP 403 directing that class members shall be given priority use of the accessible shower. Again, this policy is not relevant to Mr. [REDACTED]'s complaint.

The RAP response appears to assume that if staff deny that they violated policy, then there is nothing more for ADA staff to do. We saw a similar posture by the institution in response to our *Armstrong* tour report. See SATF Response to the *Armstrong* Monitoring Tour – October 2019 at 23-25 (Aug. 27, 2020). But, as Plaintiffs repeatedly explained over the last several years, Defendants' accountability system is broken; it improperly relies on corroboration by others (usually staff) and fails to take corrective action in response to repeated and consistent allegations. See *Mann v. Failey*, 578 F. App'x 267, 272 n.2 (4th Cir. 2014) ("an inmate has . . . few means of establishing facts, other than recounting evidence himself." (quotation marks and brackets omitted)).

REQUEST: Please provide all documentation, including notes, from the interviews with Mr. [REDACTED] staff, and other incarcerated people in response to Mr. [REDACTED]'s CDCR 602-HC (converted to a CDCR 1824).

4. Lack of Confidence in the RAP Process

Mr. [REDACTED] expressed frustration with how the RAP has characterized his allegations. Mr. [REDACTED] reported that since early July, he has refused appeals interviews because staff often misrepresent his words. For example, Mr. [REDACTED] reported that within the last few months, a housing unit officer has twice refused to give him additional toilet paper upon request. The first time, the officer directed Mr. [REDACTED] to the clinic to ask for more toilet paper. A custody officer at the clinic told Mr. [REDACTED] that he should have received more toilet paper in the housing unit. Mr. [REDACTED] was then directed to the program office, where the sergeant gave him an additional roll.

The second time, on June 26, the officer directed Mr. [REDACTED] to the program office, where the sergeant told Mr. [REDACTED] that he should have received additional toilet paper in the housing unit.

Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
September 8, 2020
Page 6

However, when Mr. [REDACTED] returned to his housing unit, the officer again refused to give him another roll of toilet paper. Mr. [REDACTED] was sent to the clinic, where nursing staff told Mr. [REDACTED] that they do not keep toilet paper. Mr. [REDACTED] filed a Form 7362 asking to see his primary care provider, so that he could be given a chrono for additional toilet paper, then returned to his housing unit. Mr. [REDACTED]'s request for additional toilet paper was denied for a third time, and he reported that he ultimately had to tear up a sheet to use.

Mr. [REDACTED] reported filing a CDCR 1824 regarding these events. However, he reported that the response he received from the RAP misstated the date of the incident as June 25. When the officer was interviewed, he responded that he was not working on June 25, and so Mr. [REDACTED]'s allegation was not substantiated.

REQUEST: Please provide all documentation related to this CDCR 1824, including the RAP response and notes from the interviews with Mr. [REDACTED] staff, and other incarcerated people.

It is degrading, unsafe, unhygienic, and unacceptable to deny or unreasonably delay the showers and other accommodations that people require to manage their incontinence. Delays and denials of Mr. [REDACTED]'s requests for continence accommodations have persisted for at least five months, despite his repeated attempts to find resolution from ADA staff, and it appears no corrective action has been taken. Mr. [REDACTED] reported that as a result, he now requests in almost all of his 1824s that his allegations be referred to Plaintiffs' counsel and the *Armstrong* court.

Unfortunately, Mr. [REDACTED]'s situation is not unique. We have heard from other class members that they have lost faith in the CDCR 1824 process at SATF over the last several months, and we have noticed a significant decline in the quality of RAP responses over that time.

A robust and well-run CDCR 1824 process is key to ensuring that people with disabilities are afforded equal access to prison programs, services, and activities. *See* ARP § IV.I.23.a; 28 C.F.R. §35.107(b) (requiring "prompt and equitable resolution of" disability-related complaints). We have found that often the institutions that struggle the most with compliance have a perfunctory CDCR 1824 review process, which results in individual and prison-wide issues not being promptly identified and addressed, and which also discourages class members from requesting reasonable accommodations.

REQUEST: We ask that Defendants provide all necessary training, support, and oversight to and of the RAP to improve the CDCR 1824 process at SATF, particularly in light of the departure of the previous ADA Coordinator and ADA OT.

Ms. Tamiya Davis
 Re: [REDACTED], [REDACTED]
 September 8, 2020
 Page 7

RETALIATION, HARASSMENT, AND OTHER STAFF MISCONDUCT

Mr. [REDACTED] reported that staff have become increasingly hostile towards him since mid-March, in part due to his requests for accommodation. In his words, “Everything I’m doing is being met with aggravation and resistance by choice officers.” He reported that in late March, after filing his first 602 about delays in receiving a continence shower, he was called to the program office because custody staff reportedly had found a kite alleging that his safety may be at risk. He told officers that he had no safety concerns. He reported that he was later approached by several white and Hispanic individuals who said that officers had told them about Mr. [REDACTED] and had said that they (the officers) wanted Mr. [REDACTED] to be moved off the yard. Mr. [REDACTED] who is Black, feared that officers were attempting to incite race-based violence in order to have him rehoused. He reported that the situation fortunately was diffused because he frequently helps people of all races with legal work, and that several individuals said they would defend him.³

³ Mr. [REDACTED] reported that he recently was directed to undergo a Computer Voice Stress Analysis (“CVSA”) in response to a kite alleging that he was conspiring with other Black individuals against staff. As we have repeatedly stated, CVSA is an unreliable method that Defendants appear to use only in an attempt to discredit incarcerated people. *See, e.g.*, Letter from Don Specter, Plaintiffs’ Counsel, to Patrick R. McKinney II, CDCR Office of Legal Affairs, CDCR’s Use of the Computer Voice Stress Analysis During Investigations of Staff Misconduct (Jan. 23, 2018); Letter from Rita Lomio and Megan Lynch, Plaintiffs’ Counsel, to Patrick R. McKinney II, CDCR Office of Legal Affairs, Investigations at Salinas Valley State Prison at 5 (Nov. 14, 2017).

No component of “the long chain of assumptions that would have to be met for CVSA to work” “has actually been proven.” F. Lacerda, Voice Stress Analysis: Science and Pseudoscience, 19 Proc. Mtgs. Acoust. 2, 4 (2013). To the contrary, studies consistently have shown “that the system performs at chance level, or below.” *Id.* (observing that “voice stress analyses . . . fall clearly in the category of pseudoscientific methods”). For example, one study funded by the U.S. Department of Justice tested the accuracy of CVSA by questioning over 300 people in jail about their recent drug use and then comparing the CVSA results—a determination of “deceptive” or “non-deceptive”—against urine drug test results. The researchers found that CVSA was “no better in determining deception about recent drug use among arrestees than flipping a coin.”

To put it simply, “the CVSA arguably takes junk science inside the interrogation room to new heights. There is no evidence that inaudible micro-tremors even exist in the human voice, much less that the CVSA can measure them. Therefore there is no evidence or reason to believe that the CVSA can identify differences in stress reflected in the human voice or that a CVSA examiner can reliably infer truth or deception from the CVSA’s

Ms. Tamiya Davis
Re: [REDACTED], [REDACTED]
September 8, 2020
Page 8


Mr. [REDACTED] fears that staff have attempted to have him removed from the yard at least three times in the last two months through similar means. He reported, "I'm constantly on my guard and on pins and needles." As you know, we have reported that another *Armstrong* class member in a different housing unit on Facility D also reported that housing officers told incarcerated people that he had requested a disability accommodation, apparently in an attempt to retaliate against him for making such a request and then reporting their failure to provide it—a strikingly similar allegation to that made by Mr. [REDACTED]

Finally, Mr. [REDACTED] also expressed concern that he was discriminated against in these instances not only due to his disability, but also due to his race. He reported that he has witnessed many instances of racial discrimination against Black people on the Level IV yard; for example, he reported that staff recently used excessive force against another Black individual in his building, and that he witnessed someone being handcuffed and taken across the yard, allegedly for involvement in the Black Lives Matter movement. We have previously written to you about inappropriate comments from officers on Facility D regarding the death of George Floyd. We also have heard reports from our clients about staff mistreatment and harassment of Black people at SATF, and those reports have only increased during 2020.

REQUEST: Please investigate Mr. [REDACTED]'s claims of retaliation and race-based discrimination and report on what, if any, corrective action will be taken.

Thank you for your immediate attention to this matter.

Sincerely yours,



Rita Lomio
Staff Attorney



Skye Lovett
Litigation Assistant

cc: Mr. [REDACTED]

charts." Richard A. Leo, *Police Interrogation and American Justice* 93 (2008) ("The voice stress lie test has roughly zero validity." (citation omitted)).

Ms. Tamiya Davis

Re: [REDACTED], [REDACTED]

September 8, 2020

Page 9

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Jeremy Duggan, Damon McClain, Joanne Hood, Sean Lodholz, Anthony Tartaglio, Trace

Maiorino (OAG)

Exhibit 80

REASONABLE ACCOMMODATION PANEL (RAP) RESPONSE

RAP Meeting Date: 4/29/2020

Date IAC Received 1824: 4/1/2020

1824 Log Number: SATF-D-20-01954

Inmate's Name: [REDACTED]

CDCR #: [REDACTED]

Housing: D3-[REDACTED]

RAP Staff Present: ADA Coordinator J. Ourique, Custody Appeals Representative C. Ramos, Doctor G. Ugwueze, Health Care Grievance Coordinator S. Garza-Toone, Health Care Compliance Analyst A. Adney, Psychologist B. Hill, Student Services Coordinator S. Spencer

Summary of Inmate's 1824 Request: Inmate alleges he was denied access to shower after episodes of incontinence.

Interim Accommodation:

☒ No interim accommodation required: You are safely accessing programs, services, and activities.

RAP RESPONSE:

RAP is able to render a final decision on the following: Inmate alleges he was denied access to shower after episodes of incontinence.

Response: On 4/8/2020, the RAP met and discussed your 1824, Reasonable Accommodation Request. Due to its nature, the RAP determined more time was required to review your allegation and conduct an inquiry. Your request was scheduled to be seen again in RAP on 4/29/2020.

On 4/29/2020, the RAP reconvened to discuss your request. On 4/16/2020, you were interviewed regarding your allegations. During the interview, you stated that you asked another inmate to tell an officer of your need for a shower due to an episode of incontinence. You also stated that the aforementioned inmate returned and said that the officer he spoke to did not have control to open your assigned housing unit.

On 4/16/2020, three staff members were interviewed. The staff members were able to recall your request for a shower due to incontinence. Two of the staff members interviewed were unable to assist with your request. However, the third staff member confirmed that you were provided a shower. This staff member also stated that you have been provided multiple showers due to incontinence issues and the building officers are aware of your medical condition.

Based on these findings, it was determined your allegation of being denied showers due to incontinence is not confirmed. you are encourage to follow shower procedures as outlined in Operational Procedure (OP) 403, Disability Placement Program. Pursuant to OP 403, *Although all inmates are allowed to use the ADA Showers, the ADA Inmates shall be given priority use. If there is an ADA Inmate waiting to use the shower, that inmate shall be allowed to use the ADA accessible shower before a non-ADA inmate.* You are encouraged to notify custody if you are unable to use the ADA Accessible shower ahead of non-ADA inmates.

You may request an extra shower if needed, notifying custody staff of the reason for requiring an extra shower. Custody staff will facilitate the accommodation in a timely manner as safety and security permits. If you disagree with this determination, you may submit a CDCR 602 (or 602A if more room is required) and your concerns will be addressed through the Appeals Process.

Direction if dissatisfied: If you disagree with this decision and want to file an appeal/grievance, be sure to attach a copy of this response along with your CDCR 1824 as supporting documents.

J. Ourique
ADA Coordinator/Designee


Signature

Date sent to inmate:

CSATF APPEALS**MAY 05 2020**

INSTITUTION (Staff use only) SOUTH-D	LOG NUMBER (Staff Use Only) 201954	DATE RECEIVED BY STAFF: CSATF APPEALS APR 01 2020
*****TALK TO STAFF IF YOU HAVE AN EMERGENCY***** DO NOT use a CDCR 1824 to request health care or to appeal a health care decision. This may delay your access to health care. Instead, submit a CDC 7362 or a CDCR 602-HC		
INMATE'S NAME (Print) [REDACTED]	CDCR NUMBER [REDACTED]	ASSIGNMENT [REDACTED]
		HOUSING [REDACTED]
INSTRUCTIONS: • You may use this form if you have a physical or mental disability or if you believe you have a physical or mental disability. • You may use this form to request a specific reasonable accommodation which, if approved, will enable you to access and/or participate in a program, service or activity. You may also use this form to submit an allegation of disability-based discrimination. • Submit this form to the Custody Appeals Office. • The 1824 process is intended for an individual's accommodation request. Each individual's request requires a case-by-case review. • The CDCR 1824 is a request process, not an appeal process. All CDCR 1824 requests will receive a response. • If you have received an 1824 decision that you disagree with, you may submit an appeal (CDCR 602, or CDCR 602-HC if you are disagreeing with a medical diagnosis/treatment decision).		
WHAT CAN'T YOU DO / WHAT IS THE PROBLEM? On 3/27/20, at approx. 11:40 AM, the staff member [REDACTED] failed to provide me with my medication as ordered. I was told by the staff member that they were going to get it for me, but they never did. This is a violation of my rights under the ADA and the Prison Rape Elimination Act (PREA). I am moving back home/family location. Available at [REDACTED] button, failed to state the violation, and did not [REDACTED].		
WHY CAN'T YOU DO IT? I am being deprived of my medication, which is causing me significant pain and discomfort. I have been told by the staff that they are going to get it for me, but they never do. It is not fair that I am being treated this way. I am being treated unfairly for this federal [REDACTED] violation, and/or a sci-		
WHAT DO YOU NEED? The ADA violations to cease and desist, and the prison rape elimination act. I need the staff to stop harassing me and to provide me with my medication. I need the staff to stop treating me unfairly. I need the staff to stop treating me differently than other inmates. I need the staff to stop treating me like a criminal. I need the staff to stop treating me like a prisoner. I need the staff to stop treating me like a person who is not allowed to move freely and/or transferred to [REDACTED]. (Use the back of this form if more space is needed)		
DO YOU HAVE DOCUMENTS THAT DESCRIBE YOUR DISABILITY? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not Sure <input type="checkbox"/> List and attach documents, if available: See Medical Files. February 20, 2020, DMS/SA [REDACTED] ATTACHED! RIGHTS AND RESPONSIBILITY STATEMENT ATTACHED AND COMPLETED! CC: Retained.		
I understand that staff have a right to interview or examine me, and my failure to cooperate may cause this request to be disapproved. [REDACTED SIGNATURE] INMATE'S SIGNATURE Assistance in completing this form was provided by: Last Name First Name Signature MAY 05 2020		

Name: [REDACTED]

CDC #: [REDACTED] PID #: 11141526

CHSS035C **DPP Disability/Accommodation Summary** Wednesday April 01, 2020 08:35:45 AM

As of: 04/01/2020 ➡

OFFENDER/PLACEMENT

CDC#: [REDACTED]

Name: [REDACTED]

Facility: SATF-Facility D

Housing Area/Bed: D 003 1, [REDACTED]

Placement Score: 69

Custody Designation: Medium (A)

Housing Program: Sensitive Needs Yard

Housing Restrictions: Ground Floor-Limited Stairs
Lower/Bottom Bunk Only

Physical Limitations to Job/Other:

DISABILITY ASSISTANCE

Current DDP Status: NCF

DDP Adaptive: None

Support Needs:

Current DDP Status Date: 04/05/2016

DPP Codes: DLT

DPP Determination Date: 07/19/2017

Current MH LOC: CCCMS

Current MH LOC Date: 04/01/2016

SLI Required: Undetermined

Interview Date: 07/19/2017

Primary Method:

Alternate Method:

Learning Disability:

Initial TABE Score: 09.2

Initial TABE Date: 04/04/2016

Durable Medical Equipment: Eyeglass Frames

Incontinence Supplies

Therapeutic Shoes/Orthotics

Languages Spoken:

IMPORTANT DATES

Date Received: 06/03/2015

Last Returned: 04/01/2016

Date:

Release Date: 10/16/2042

Release Type: Minimum Eligible Parole Date

WORK/VOCATION/PIA

Privilege Group: A

Work Group: A1

AM Job Start: 06/01/2019

Date:

Status: Full Time

Position #: REC.001.003

Position Title: D-3 2/W REC WRKR

Regular Days On: Sunday through Thursday (07:30:00 -
11:00:00)Sunday through Thursday (11:30:00 -
14:30:00)

Interim Accommodation Procedure (IAP) / Interview Worksheet

Upon receipt of a CDCR 1824, the Institution Appeals Coordinator (IAC) shall complete Step 1 below within 1 working day.

Step 2 should be completed whenever the inmate's request is unclear or when additional input from the inmate and/or staff will help understand the request.

Inmate: [REDACTED]

CDCR # [REDACTED]

CDCR 1824 Log #:

20-1954

STEP 1 INTERIM ACCOMMODATION ASSESSMENT

Date CDCR 1824 received by IAC: 4/1/2020

Does the inmate raise issues on the CDCR 1824 that may cause the inmate injury or other serious harm while it is being processed? **Base your assessment solely on the inmate's claim, assuming the claim is true.**

☐ Yes / Unsure (Complete Steps 2 &/or 3)

☒ No. None of the issues below are present) [Note: IAC may still obtain information for RAP by completing Step 2]

Issues that may cause the inmate injury or other serious harm include, but are not limited to:

- Falling or the potential for falling.
- Cannot safely access upper bunk.
- Workplace safety concerns.
- Inability to perform essential manual tasks e.g., access dining hall, carry food tray, shower, use toilet).
- Maintenance, repair, or replacement of health care appliances which involve safety concerns.
- Cannot safely navigate stairs.
- Seizure disorder and is assigned an upper bunk.
- Hearing or vision claims that may jeopardize safety.

C. Ramis
Person Completing Step 1

Title

Signature

Date Completed 4/1/2020

STEP 2 CDCR 1824 INTERVIEWS

Note: Be sure to complete Step 3 when Step 1 was "Yes/Unsure"

Date assigned: ___/___/___

Due back to IAC ___/___/___

Returned to IAC: ___/___/___

Assigned to: _____

Title: _____

Information needed: _____

Note 1: Attach a DECS printout listing inmate's current status including CPP codes, DDP codes, TABE score, etc.)

Note 2: IAC and/or RAP may assign to self and obtain information either telephonically or in person.

Inmate Interview Date/Time: _____ Location: _____

Interviewer notes: _____

Staff Interviewed: _____ Title: _____ Interview date: ___/___/___

Interviewer Notes: _____

Staff Interviewed: _____ Title: _____ Interview date: ___/___/___

Interviewer Notes: _____

Notes: _____

Interviewer (Print Name)

Title

Signature

Date Completed ___/___/___

IAP / Interview Worksheet

Inmate: [REDACTED]

CDCR: [REDACTED]

CDCR 1824 Log #: 201954

Step 3: DECISION REGARDING WHETHER AN INTERIM ACCOMMODATION IS NECESSARY (See Note below)☐ An Interim Accommodation IS NOT required

Reason: _____

☐ An Interim Accommodation IS required

Reason: _____

Accommodation(s) provided: _____

Date provided: _____

Comments: _____

Person Completing Step 3

Title

Signature

Date Completed

Note: When information is unable to prove or disprove a claim, provide an interim accommodation as a precautionary measure

IAP processing instructions for the Appeals Coordinator

- Step 1 must always be completed prior to the initial RAP.
- Step 2 should be completed whenever the inmate's request is unclear, or when additional input from the inmate and/or staff will help the RAP better understand the request.
- If Step 1 is "Yes/Unsure," proceed to Steps 2 and/or 3. The interviews conducted in Step 2 will help with the decision in Step 3. Step 3 documents the decision. When the IAC is not able to complete steps 2 & 3 prior to the RAP (e.g. the request was received the day before the RAP) steps 2 and 3 may be completed during the RAP or shortly thereafter. Under no circumstances shall a decision regarding the need for an IAP exceed 5 working days.
- Consult with the ADA Coordinator when unsure which box to check in Step 1.
- Maintain ongoing communication with the ADA Coordinator regarding the interim accommodation process.

Step 2 Interviewer Instructions

- Your task is to obtain additional information that will assist the Reasonable Accommodation Panel (RAP) better understand issues raised by an inmate on a CDCR 1824, Reasonable Accommodation Request Form.
- Take a moment to read the CDCR 1824 and then review the information being requested in Step 2. If you need clarification, contact the Appeals Office or the ADA Coordinator.
- Interview the inmate who filed the CDCR 1824 and/or staff who may have knowledge about the inmate's request.
- Inmates often have difficulty expressing themselves in writing. Your interview notes should try to clarify what the problem is, and what the inmate wants (e.g., cane, lower bunk, shower chair, job modification, etc.).
- Reminder. Be sure to return this form to the Inmate Appeals Coordinator by the due date listed in Step 2.

**Disability Verification Process (DVP)
Worksheet
SIDE 1**

INMATE'S NAME (Print)

CDCR 1824 LOG NUMBER
20-01954

CDCR NUMBER

INSTRUCTIONS

- A SME Shall **COMPLETE SECTION 1** prior to or during the **INITIAL** RAP.
- When the RAP needs more information, the ADA Coordinator shall complete Section 2 during the RAP and assign the DVP for Section 3 to be completed (See back of form).

SECTION 1 – SME FINDINGSPerson completing worksheet: G. Ugwueze, MDTitle: CME

Type of Review: ☒ Health care review ☐ Mental Health review ☐ Education / learning disability review
☐ Other review: _____

☒ File Review conducted. Documents obtained:

☒ CDCR 1845 dated: 07 / 19 / 17 ☐ CDCR 7410 dated: ____ / ____ / ____ ☐ CDCR 128-C2: dated: ____ / ____ / ____
☒ CDCR 7536 dated: 04 / 01 / 20 ☐ CDC 7221-DME dated: ____ / ____ / ____
☐ CDCR 128-C3: dated: ____ / ____ / ____ ☐ CDCR 7386: dated: ____ / ____ / ____ ☐ CDCR 7388: dated: ____ / ____ / ____
☐ Other: _____ dated: ____ / ____ / ____ ☐ Other: _____ dated: ____ / ____ / ____

☐ Recently evaluated for this issue. Date seen: ____ / ____ / ____☐ Evaluation (exam/interview) scheduled. Anticipated date to be seen: ____ / ____ / ____

Disability indicated: ☒ Yes ☐ No ☐ Unable to Determine

DLT

Summary of findings: _____
 DME: eyeglass frames; Incont. Supp.; therapeutic shoes.

Summary of limitations: bottom bunk; ground floor - limited stairs.

Comments: The issue raised is not a health care related issue.


 Signature of Subject Matter Expert

04/08/2020
 Date Signed

Disability Verification Process (DVP)
Worksheet
 SIDE 1

INMATE'S NAME (Print)

CDCR 1824 LOG NUMBER

CDCR NUMBER

20.01954

INSTRUCTIONS

- A SME Shall **COMPLETE SECTION 1** prior to or during the **INITIAL** RAP.
- When the RAP needs more information, the ADA Coordinator shall complete Section 2 during the RAP and assign the DVP for Section 3 to be completed (See back of form).

SECTION 1 – SME FINDINGS

Person completing worksheet: Rhoads Title: OT

Type of Review: ☐ Health care review ☐ Mental Health review ☐ Education / learning disability review

☒ Other review: HCITD

☐ File Review conducted. Documents obtained:

☐ CDCR 1845 dated: ___/___/___ ☐ CDCR 7410 dated: ___/___/___ ☐ CDCR 128-C2: dated: ___/___/___
☐ CDCR 7536 dated: ___/___/___ ☐ CDC 7221-DME dated: ___/___/___ ☐ CDCR 7388: dated: ___/___/___
☐ CDCR 128-C3: dated: ___/___/___ ☐ CDCR 7386: dated: ___/___/___ ☐ Other: dated: ___/___/___
☐ Other: dated: ___/___/___

☐ Recently evaluated for this issue. Date seen: ___/___/___

☐ Evaluation (exam/interview) scheduled. Anticipated date to be seen: ___/___/___

Disability indicated: ☐ Yes ☐ No ☐ Unable to Determine DLT

tabe 9.2
not getting showers when
needed

Summary of findings: monetary damages

Summary of limitations: transferred to federal prison

Comments: [Signature]

[Signature]
 Signature of Subject Matter Expert

4-1-20
 Date Signed

REASONABLE ACCOMMODATION PANEL (RAP) RESPONSE

RAP Meeting Date: 4/29/2020

Date IAC Received 1824: 4/1/2020

1824 Log Number: SATF-D-20-02631

Inmate's Name: [REDACTED]

CDCR #: [REDACTED]

Housing: D3-[REDACTED]

RAP Staff Present: ADA Coordinator J. Ourique, Custody Appeals Representative C. Ramos, Doctor G. Ugwueze, Health Care Grievance Coordinator S. Garza-Toone, Health Care Compliance Analyst A. Adney, Psychologist B. Hill, Student Services Coordinator S. Spencer

Summary of Inmate's 1824 Request: Inmate alleges he was denied access to shower after episodes of incontinence.

Interim Accommodation:

☒ No interim accommodation required: You are safely accessing programs, services, and activities.

RAP RESPONSE:

RAP is unable to process the following request(s): Inmate alleges he was denied access to shower after episodes of incontinence.

☒ Duplicate request. See CDCR 1824 log #: SATF-D-20-01954. On 4/8/2020, the RAP met and discussed your 1824, Reasonable Accommodation Request. Due to its nature, the RAP determined more time was required to review your allegation and conduct an inquiry. Your request was scheduled to be seen again in RAP on 4/29/2020.

On 4/29/2020, the RAP reconvened to discuss your request. On 4/16/2020, you were interviewed regarding your allegations. During the interview, you stated that you asked another inmate to tell an officer of your need for a shower due to an episode of incontinence. You also stated that the aforementioned inmate returned and said that the officer he spoke to did not have control to open your assigned housing unit.

On 4/16/2020, three staff members were interviewed. The staff members were able to recall your request for a shower due to incontinence. Two of the staff members interviewed were unable to assist with your request. However, the third staff member confirmed that you were provided a shower. This staff member also stated that you have been provided multiple showers due to incontinence issues and the building officers are aware of your medical condition.

Based on these findings, it was determined your allegation of being denied showers due to incontinence is not confirmed. you are encourage to follow shower procedures as outlined in Operational Procedure (OP) 403, Disability Placement Program. Pursuant to OP 403, *Although all inmates are allowed to use the ADA Showers, the ADA inmates shall be given priority use. If there is an ADA Inmate waiting to use the shower, that inmate shall be allowed to use the ADA accessible shower before a non-ADA inmate.* You are encouraged to notify custody if you are unable to use the ADA Accessible shower ahead of non-ADA inmates.

You may request an extra shower if needed, notifying custody staff of the reason for requiring an extra shower. Custody staff will facilitate the accommodation in a timely manner as safety and security permits. If you disagree with this determination, you may submit a CDCR 602 (or 602A if more room is required) and your concerns will be addressed through the Appeals Process.

Direction if dissatisfied: If you disagree with this decision and want to file an appeal/grievance, be sure to attach a copy of this response along with your CDCR 1824 as supporting documents.

J. Ourique
ADA Coordinator/Designee


Signature

Date sent to inmate: CSATF APPEALS

MAY 01 2020

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

REASONABLE ACCOMMODATION REQUEST

CDCR 1824 (Rev. 09/17)

Page 1 of 1

INSTITUTION (Staff use only) SATF-D	LOG NUMBER (Staff Use Only) 20-2631 2019100	DATE RECEIVED BY STAFF: CSATF APPEALS APR 01 2020
*****TALK TO STAFF IF YOU HAVE AN EMERGENCY***** DO NOT use a CDCR 1824 to request health care or to appeal a health care decision. This may delay your access to health care. Instead, submit a CDC 7362 or a CDCR 602-HC		
INMATE'S NAME (Print)	CDCR NUMBER	ASSIGNMENT
HOUSING		
INSTRUCTIONS: <ul style="list-style-type: none"> You may use this form if you have a physical or mental disability or if you believe you have a physical or mental disability. You may use this form to request a specific reasonable accommodation which, if approved, will enable you to access and/or participate in a program, service or activity. You may also use this form to submit an allegation of disability-based discrimination. Submit this form to the Custody Appeals Office. The 1824 process is intended for an individual's accommodation request. Each individual's request requires a case-by-case review. The CDCR 1824 is a request process, not an appeal process. All CDCR 1824 requests will receive a response. If you have received an 1824 decision that you disagree with, you may submit an appeal (CDCR 602, or CDCR 602-HC if you are disagreeing with a medical diagnosis/treatment decision) 		
WHAT CAN'T YOU DO / WHAT IS THE PROBLEM? <div style="text-align: right; transform: rotate(-15deg); opacity: 0.5;"> See Attached Dated CDC 1824 / 602 </div>		
WHY CAN'T YOU DO IT? <div style="text-align: right; transform: rotate(-15deg); opacity: 0.5;"> See Attached Dated CDC 1824 / 602 </div>		
WHAT DO YOU NEED? <div style="text-align: right; transform: rotate(-15deg); opacity: 0.5;"> See Attached Dated CDC 1824 / 602 </div>		
(Use the back of this form if more space is needed)		
DO YOU HAVE DOCUMENTS THAT DESCRIBE YOUR DISABILITY? Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure <input type="checkbox"/> List and attach documents, if available:		
I understand that staff have a right to interview or examine me, and my failure to cooperate may cause this request to be disapproved.		
INMATE'S SIGNATURE		DATE SIGNED
Assistance in completing this form was provided by:		
Last Name	First Name	Signature

CSATF APPEALS

MAY 01 2020

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL
CDCR 602 (REV. 08/09)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

IAB USE ONLY

Institution/Parole Region:

Log #:

Category:

2631
SMTF-D-2019600-18

FOR STAFF USE ONLY

You may appeal any California Department of Corrections and Rehabilitation (CDCR) decision, action, condition, policy or regulation that has a material adverse effect upon your welfare and for which there is no other prescribed method of departmental review/remedy available. See California Code of Regulations, Title 15, Section (CCR) 3084.1. You must send this appeal and any supporting documents to the Appeals Coordinator (AC) within 30 calendar days of the event that lead to the filing of this appeal. If additional space is needed, only one CDCR Form 602-A will be accepted. Refer to CCR 3084 for further guidance with the appeal process. No reprisals will be taken for using the appeal process.

Appeal is subject to rejection if one row of text per line is exceeded.

WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First):

CDC Number:

Unit/Cell Number:

Assignment:

D3-

Unassigned

State briefly the subject of your appeal (Example: damaged TV, job removal, etc.):

CSATF APPEALS

MAR 23 2020

A. Explain your issue (If you need more space, use Section A of the CDCR 602-A):

This inmate suffers from a known incontinence ailment, and is a Class Member governed by the Federally imposed/protected Americans with a Disability Act Armstrong Remedial Plan. On 03/22/2020, as a result of having a mi shap,

B. Action requested (If you need more space, use Section B of the CDCR 602-A): Assurance reprisals will not be sought for this appeal. Officer's penalized/trained Assurance that my Serious Medical needs will be accommodated beginning immediately. Monetary Damages/Treble, as this is a recurring problem.

Supporting Documents: Refer to CCR 3084.3.

☐ Yes, I have attached supporting documents.

List supporting documents attached (e.g., CDC 1083, Inmate Property Inventory; CDC 128-G, Classification Chrono):

☐ No, I have not attached any supporting documents. Reason:

Inmate/Parolee Signature:

Date Submitted:

03/22/2020

☐ By placing my initials in this box, I waive my right to receive an interview.

C. First Level - Staff Use Only

Staff - Check One: Is CDCR 602-A Attached? ☐ Yes ☐ No

This appeal has been:

☒ Bypassed at the First Level of Review. Go to Section E.☐ Rejected (See attached letter for instruction) Date: _____ Date: _____ Date: _____ Date: _____☐ Cancelled (See attached letter) Date: _____☐ Accepted at the First Level of Review.

Assigned to: _____ Title: _____ Date Assigned: _____ Date Due: _____

First Level Responder: Complete a First Level response. Include Interviewer's name, title, interview date, location, and complete the section below.

Date of Interview: _____ Interview Location: _____

Your appeal issue is: ☐ Granted ☐ Granted in Part ☐ Denied ☐ Other: _____

See attached letter. If dissatisfied with First Level response, complete Section D.

Interviewer: _____ Title: _____ Signature: _____ Date completed: _____

(Print Name)

Reviewer: _____ Title: _____ Signature: _____

(Print Name)

Date received by AC: _____

AC Use Only

Date mailed/delivered to appellant ____/____/____

STAFF USE ONLY

STATE OF CALIFORNIA
INMATE/PAROLEE APPEAL FORM ATTACHMENT
 CDCR 602-A (REV. 03/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Side 1

IAB USE ONLY	Institution/Parole Region	Log #: 2631	Category:
	SAT# D-2019600		18
FOR STAFF USE ONLY			

Attach this form to the CDCR 602, only if more space is needed. Only one CDCR 602-A may be used.

Appeal is subject to rejection if one row of text per line is exceeded. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First):	CDC Number:	Unit/Cell Number:	Assignment:
[REDACTED]	[REDACTED]	D3-[REDACTED]	Unassigned

A. Continuation of CDCR 602, Section A only (Explain your issue): this inmate has since approximately 1:30 PM repeatedly asked D3's Floor Officers for a Medical Shower therefore, both personally, and via inmates. Chillingly, said Officer have failed to accommodate this inmate's serious medical need; thereby, subjecting him to inhumane treatment.
 The Appellant reserves his right to amend this appeal.

STAFF USE ONLY

Inmate/Parolee Signature: [REDACTED]

Date Submitted: 03/22/2020

B. Continuation of CDCR 602, Section B only (Action requested):

Inmate/Parolee Signature: _____

Date Submitted: _____

STATE OF CALIFORNIA
RIGHTS AND RESPONSIBILITY STATEMENT
 CDCR 1858 (Rev. 10/06)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

RIGHTS AND RESPONSIBILITY STATEMENT

The California Department of Corrections and Rehabilitation has added departmental language (shown inside brackets, in non-boldface type) for clarification purposes

Pursuant to Penal Code 148.6, anyone wishing to file an allegation of misconduct by a departmental peace officer must read, sign and submit the following statement:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER [this includes a departmental peace officer] **FOR ANY IMPROPER POLICE** [or peace] **OFFICER CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS'** [or inmates'/parolees'] **COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN** [or inmate/parolee] **COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.**

COMPLAINANT'S PRINTED NAME [REDACTED]	COMPLAINANT'S SIGNATURE [REDACTED]	DATE SIGNED March 22, 2020
INMATE/PAROLEE PRINTED NAME [REDACTED]	INMATE/PAROLEE'S SIGNATURE [REDACTED]	CDC NUMBER [REDACTED] DATE SIGNED 03/22/20
RECEIVING STAFF'S PRINTED NAME	RECEIVING STAFF'S SIGNATURE	DATE SIGNED

DISTRIBUTION:

ORIGINAL -

Public - Institution Head/Parole Administrator

Inmate/Parolee - Attach to CDC form 602

Employee - Institution Head/Parole Administrator

COPY - Complainant

Name: [REDACTED]

CDC #: [REDACTED] PID #: 11141526

CHSS035C **DPP Disability/Accommodation Summary** Wednesday April 01, 2020 11:29:27 AM

As of: 04/01/2020 ➡

OFFENDER/PLACEMENT

CDC#: [REDACTED]

Name: [REDACTED]

Facility: SATF-Facility D

Housing Area/Bed: D 003 1 [REDACTED]

Placement Score: 69

Custody Designation: Medium (A)

Housing Program: Sensitive Needs Yard

Housing Restrictions: Ground Floor-Limited Stairs
Lower/Bottom Bunk Only

Physical Limitations to Job/Other:

DISABILITY ASSISTANCE

Current DDP Status: NCF

DDP Adaptive: None

Support Needs:

Current DDP Status Date: 04/05/2016

DPP Codes: DLT

DPP Determination Date: 07/19/2017

Current MH LOC: CCCMS

Current MH LOC Date: 04/01/2016

SLI Required: Undetermined

Interview Date: 07/19/2017

Primary Method:

Alternate Method:

Learning Disability:

Initial TABE Score: 09.2

Initial TABE Date: 04/04/2016

Durable Medical Equipment: Eyeglass Frames

Incontinence Supplies

Therapeutic Shoes/Orthotics

Languages Spoken:

IMPORTANT DATES

Date Received: 06/03/2015

Last Returned: 04/01/2016

Date:

Release Date: 10/16/2042

Release Type: Minimum Eligible Parole Date

WORK/VOCATION/PIA

Privilege Group: A

Work Group: A1

AM Job Start: 06/01/2019

Date:

Status: Full Time

Position #: REC.001.003

Position Title: D-3 2/W REC WRKR

Regular Days On: Sunday through Thursday (07:30:00 -
11:00:00)Sunday through Thursday (11:30:00 -
14:30:00)

Interim Accommodation Procedure (IAP) / Interview Worksheet

Upon receipt of a CDCR 1824, the Institution Appeals Coordinator (IAC) shall complete Step 1 below within 1 working day. Step 2 should be completed whenever the inmate's request is unclear or when additional input from the inmate and/or staff will help the IAC better understand the request.

Inmate: [REDACTED] CDCR # [REDACTED] CDCR 1824 Log # 2019606

STEP 1 INTERIM ACCOMMODATION ASSESSMENT

Date CDCR 1824 received by IAC: 4/1/2020

Does the inmate raise issues on the CDCR 1824 that may cause the inmate injury or other serious harm while it is being processed? **Base your assessment solely on the inmate's claim, assuming the claim is true.**

- ☐ Yes / Unsure (Complete Steps 2 &/or 3) ☒ No (None of the issues below are present) [Note: IAC may still obtain information for RAP by completing Step 2]

Issues that may cause the inmate injury or other serious harm include, but are not limited to:

- Falling or the potential for falling.
- Cannot safely access upper bunk.
- Workplace safety concerns.
- Inability to perform essential manual tasks (e.g., access dining hall, carry food tray, shower, use toilet).
- Maintenance, repair, or replacement of health care appliances which involve safety concerns.
- Cannot safely navigate stairs.
- Seizure disorder and is assigned an upper bunk.
- Hearing or vision claims that may jeopardize safety.

Person Completing Step 1

Title

Signature

Date Completed

STEP 2 CDCR 1824 INTERVIEWS**Note: Be sure to complete Step 3 when Step 1 was "Yes/Unsure"**

Date assigned: ___/___/___ Due back to IAC: ___/___/___ Returned to IAC: ___/___/___

Assigned to: _____ Title: _____

Information needed: _____

Note 1: Attach a DECS printout listing inmate's current status (including DPP codes, DDP codes, TABE score, etc.)

Note 2: IAC and/or RAP may assign to self and obtain information either telephonically or in person.

Inmate Interview Date/Time: _____ Location: _____

Interviewer notes: _____

Staff Interviewed: _____ Title: _____ Interview date: ___/___/___

Interviewer Notes: _____

Staff Interviewed: _____ Title: _____ Interview date: ___/___/___

Interviewer Notes: _____

Notes: _____

Interviewer (Print Name)

Title

Signature

Date Completed

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : 04/28/2020

To : Associate Warden
Complex III

Subject : REQUEST FOR EXTENSION FOR APPEAL: SATF-D-20-02631

I would like to request an extension for the above listed appeal re;
The response has been delayed for the following reason: [REDACTED]

☐ Unavailability of appellant, staff, or inmate witness.

☒ Complexity of the decision, action, or policy.

☐ Involvement of other agencies or jurisdictions.

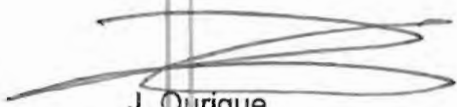
Requested extension until: 05/29/2020

Request being made pursuant to California Code of Regulations Title 15 Section 3084.8(d).

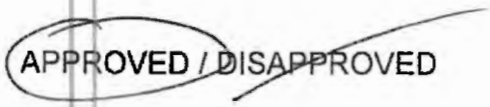
You must provide an explanation for your request in the below space

Requesting additional time due to completion of a Non-Compliance.

REQUESTED BY:


J. Ourique
Associate Warden- ADA


P. Brightwell
Associate Warden/Complex III


APPROVED / DISAPPROVED

Distribution:
Original: Retain in Appeals Office
Cc: Inmate

2631
801960

IAP / Interim Accommodation Worksheet

Inmate

CDCR

CDCR 1824 Log #:

Step 3: DECISION REGARDING WHETHER AN INTERIM ACCOMMODATION IS NECESSARY (See Note below)☐ An Interim Accommodation IS NOT required.

Reason: _____

☐ An Interim Accommodation IS required.

Reason: _____

Accommodation(s) provided: _____

Date provided: _____

Comments: _____

Person Completing Step 3

Title

Signature

Date Completed

Note: When information is unable to prove or disprove a claim, consider an interim accommodation as a precautionary measure.

IAP processing instructions for the Appeals Coordinator

- Step 1 must always be completed prior to the initial RAP
- Step 2 should be completed whenever the inmate's request is unclear, or when additional input from the inmate and/or staff will help the RAP better understand the request.
- If Step 1 is "Yes/Unsure," proceed to Steps 2 and/or 3. The interviews conducted in Step 2 will help with the decision in Step 3. Step 3 documents the decision. When the IAC is not able to complete steps 2 & 3 prior to the RAP (e.g., the request was received the day before the RAP) steps 2 and 3 may be completed during the RAP or shortly thereafter. Under no circumstances shall a decision regarding the need for an IAP exceed 5 working days.
- Consult with the ADA Coordinator when unsure which box to check in Step 1.
- Maintain ongoing communication with the ADA Coordinator regarding the interim accommodation process.

Step 2 Interviewer Instructions

- Your task is to obtain additional information that will assist the Reasonable Accommodation Panel (RAP) better understand issues raised by an inmate on a CDCR 1824, Reasonable Accommodation Request Form.
- Take a moment to read the CDCR 1824 and then review the information being requested in Step 2. If you need clarification, contact the Appeals Office or the ADA Coordinator.
- Interview the inmate who filed the CDCR 1824 and/or staff who may have knowledge about the inmate's request.
- Inmates often have difficulty expressing themselves in writing. Your interview notes should try to clarify what the problem is, and what the inmate wants (e.g., cane, lower bunk, shower chair, job modification, etc.).
- Reminder. Be sure to return this form to the Inmate Appeals Coordinator by the due date listed in Step 2.

Disability Verification Process (DVP)
Worksheet
SIDE 1

INMATE'S NAME (Print) [REDACTED]	CDCR 1824 LOG NUMBER 20-04966 2631
CDCR NUMBER [REDACTED]	

INSTRUCTIONS

- A SME Shall **COMPLETE SECTION 1** prior to or during the **INITIAL RAP**.
- When the RAP needs more information, the ADA Coordinator shall complete Section 2 during the RAP and assign the DVP for Section 3 to be completed (See back of form).

SECTION 1 – SME FINDINGS

Person completing worksheet: G. Ugwueze, MD Title: CME
 Type of Review: ☒ Health care review ☐ Mental Health review ☐ Education / learning disability review
☐ Other review: _____

☒ File Review conducted. Documents obtained:
☒ CDCR 1845 dated: 07 / 19 / 17 ☐ CDCR 7410 dated: ____ / ____ / ____ ☐ CDCR 128-C2: dated: ____ / ____ / ____
☒ CDCR 7536 dated: 04 / 01 / 20 ☐ CDC 7221-DME dated: ____ / ____ / ____
☐ CDCR 128-C3: dated: ____ / ____ / ____ ☐ CDCR 7386: dated: ____ / ____ / ____ ☐ CDCR 7388: dated: ____ / ____ / ____
☐ Other: _____ dated: ____ / ____ / ____ ☐ Other: _____ dated: ____ / ____ / ____

☐ Recently evaluated for this issue. Date seen: ____ / ____ / ____

☐ Evaluation (exam/interview) scheduled. Anticipated date to be seen: ____ / ____ / ____

Disability indicated: ☒ Yes ☐ No ☐ Unable to Determine

Summary of findings: DLT
DME: eyeglass frames; Incont. Supp.; therapeutic shoes.

Summary of limitations: bottom bunk; ground floor - limited stairs.

Comments: The issue raised is not a health care related issue.

G. Ugwueze
 Signature of Subject Matter Expert

04/08/2020
 Date Signed

Disability Verification Process (DVP)
Worksheet
SIDE 1

INMATE'S NAME (Print) [REDACTED]	CDCR 1824 LOG NUMBER [REDACTED]
CDCR NUMBER [REDACTED]	20.01954

INSTRUCTIONS

- A SME Shall **COMPLETE SECTION 1** prior to or during the **INITIAL** RAP.
- When the RAP needs more information, the ADA Coordinator shall complete Section 2 during the RAP and assign the DVP for Section 3 to be completed (See back of form).

SECTION 1 – SME FINDINGS

Person completing worksheet: Rhoads Title: DT

Type of Review: ☐ Health care review ☐ Mental Health review ☐ Education / learning disability review
☒ Other review: Heur

☐ File Review conducted. Documents obtained:

<input type="checkbox"/> CDCR 1845 dated: ___/___/___	<input type="checkbox"/> CDCR 7410 dated: ___/___/___	<input type="checkbox"/> CDCR 128-C2 dated: ___/___/___
<input type="checkbox"/> CDCR 7536 dated: ___/___/___	<input type="checkbox"/> CDC 7221-DME dated: ___/___/___	
<input type="checkbox"/> CDCR 128-C3 dated: ___/___/___	<input type="checkbox"/> CDCR 7386 dated: ___/___/___	<input type="checkbox"/> CDCR 7388 dated: ___/___/___
<input type="checkbox"/> Other: _____ dated: ___/___/___	<input type="checkbox"/> Other: _____ dated: ___/___/___	

☐ Recently evaluated for this issue. Date seen: ___/___/___

☐ Evaluation (exam/interview) scheduled. Anticipated date to be seen: ___/___/___

Disability indicated: ☐ Yes ☐ No ☐ Unable to Determine DLT fake 9.2

Summary of findings: showers when needed
monetary damages
treated humanely
transfer to federal custody

Summary of limitations: _____

Comments: [Signature]

[Signature] 4-8-20

Signature of Subject Matter Expert Date Signed

Disability Verification Process (DVP)
Worksheet
SIDE 1

INMATE'S NAME (Print) [REDACTED]	CDCR 1824 LOG NUMBER [REDACTED]
CDCR NUMBER [REDACTED]	20.01960

INSTRUCTIONS

- A SME Shall **COMPLETE SECTION 1** prior to or during the **INITIAL RAP**.
- When the RAP needs more information, the ADA Coordinator shall complete Section 2 during the RAP and assign the DVP for Section 3 to be completed (See back of form).

SECTION 1 - SME FINDINGS

Person completing worksheet: Rhoads Title: OT

Type of Review: ☒ Health care review ☐ Mental Health review ☐ Education / learning disability review
☐ Other review: HELD

☐ File Review conducted. Documents obtained:

<input type="checkbox"/> CDCR 1845 dated: ___/___/___	<input type="checkbox"/> CDCR 7410 dated: ___/___/___	<input type="checkbox"/> CDCR 128-C2: dated: ___/___/___
<input type="checkbox"/> CDCR 7536 dated: ___/___/___	<input type="checkbox"/> CDC 7221-DME dated: ___/___/___	
<input type="checkbox"/> CDCR 128-C3: dated: ___/___/___	<input type="checkbox"/> CDCR 7386: dated: ___/___/___	<input type="checkbox"/> CDCR 7388: dated: ___/___/___
<input type="checkbox"/> Other: _____ dated: ___/___/___	<input type="checkbox"/> Other: _____ dated: ___/___/___	

☐ Recently evaluated for this issue. Date seen: ___/___/___

☐ Evaluation (exam/interview) scheduled. Anticipated date to be seen: ___/___/___

Disability indicated: ☐ Yes ☐ No ☐ Unable to Determine DLT tabe 9.2
shower not accomodated

Summary of findings: _____

Summary of limitations: _____

Comments: [Signature]

 Signature of Subject Matter Expert

4860
 Date Signed

Exhibit 81

SUPPLEMENTAL DECLARATION OF [REDACTED] [REDACTED]

I, [REDACTED] [REDACTED] declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is [REDACTED]. I am currently housed at Richard J. Donovan Correctional Facility ("RJD") in administrative segregation on Facility B in Building 6.

3. I previously submitted a declaration about my experiences with staff misconduct at RJD, which I signed on January 8, 2020. I submit this supplemental declaration about abuse I experienced at RJD on August 21, 2020.

4. About a week before August 21, 2020, Officer Camacho opened the door to my cell, cell [REDACTED] in Building 15 on Facility C. Officer Camacho is a regular floor officer in Building 15 on Facility C. Officer Camacho asked me to come out of my cell to help another person, [REDACTED] [REDACTED] who was in cell [REDACTED], to write a health care grievance against Mr. [REDACTED] mental health clinician. I believe that Mr. [REDACTED] may have a developmental disability because, in my interactions with him, he has a hard time processing and remembering information. I talked with Mr. [REDACTED] about the problems he was having, helped him get a CDCR Form 7362, and wrote out a request for him. I also told Mr. [REDACTED] that I would later provide him with some additional notes about how to pursue grievances. I also provided him with the contact information for Jack Gleiberman, a paralegal at Rosen Bien Galvan & Grunfeld LLP, who I had previously written to about problems at RJD. I told Mr. [REDACTED] that he should write to Mr. Gleiberman about the problems he was having with his clinician. I also told Mr. [REDACTED] to write to Mr. Gleiberman about problems that he was having with Officer Camacho. In the week prior, I had observed Officer Camacho repeatedly harass Mr. [REDACTED] by taking him out of his cell in handcuffs.

1 5. On or around August 19, 2020, I wrote by hand a three-page note to provide
2 to Mr. [REDACTED]. On the first page I provided contact information for Mr. Gleiberman. I
3 suggested that Mr. [REDACTED] report to Mr. Gleiberman that officers in Building 15 use
4 incarcerated people as enforcers and that officers interfere with mental health care
5 treatment. The note specifically recommended that Mr. [REDACTED] report to Mr. Gleiberman
6 that in 2019 Officer Camacho had used a very large incarcerated person named [REDACTED]
7 [REDACTED] to beat up a small incarcerated person who is known as "[REDACTED]" because [REDACTED] had
8 called a nurse, Ms. Milton, a "bitch." My understanding was that at the time, Ms. Milton
9 was dating a correctional officer and that the assault orchestrated by Officer Camacho was
10 in retaliation for [REDACTED] calling her a "bitch." I saw this incident happen first hand. I
11 signed the note to Mr. [REDACTED] with my name and cell number and then had a porter bring it
12 from me to Mr. [REDACTED]. It is customary to sign notes like these when we send them from
13 one incarcerated person to another so that the recipient knows who wrote the note.

14 6. On August 21, 2020, at around 7:00 p.m., I was in my cell when I saw five
15 officers—Officers Camacho, Bailey, Kako, Gutierrez, and Galaviz—approach Mr. [REDACTED]
16 cell. It was unusual for five officers to approach a person's cell unless there was an
17 emergency, but as far as I knew, no alarm or other emergency related to Mr. [REDACTED] was
18 happening at the time. Because I was worried about this gathering of officers, I yelled
19 through my cell door, "Don't use excessive force, whatever you do, we're watching you."
20 After I made this comment, Officer Bailey walked all the way around the top tier of the
21 unit from Mr. [REDACTED] cell [REDACTED] to my cell ([REDACTED]). Officer Bailey looked through my cell
22 window. He asked me what I had said. I told him that all I had said was that the officers
23 should not use excessive force. He kept looking in my cell and nodding up and down in a
24 threatening manner, like he was coming up with a plan to do something. He also said two
25 times "I thought I saw something," with a smirk on his face. I interpreted these statements
26 as a threat, like Officer Bailey was planning to retaliate against me for yelling for staff not
27 to use excessive force. Officer Bailey then went back to Mr. [REDACTED] cell.

1 7. Around the same time, Sergeant Cervantes entered the building and went up
2 to Mr. [REDACTED] cell. The officers then placed Mr. [REDACTED] in handcuffs. Officers Galaviz
3 and Gutierrez and Sergeant Cervantes escorted Mr. [REDACTED] out of the building. Officers
4 Camacho, Kako, and Bailey stayed in Mr. [REDACTED] cell, inventorying and packing up
5 Mr. [REDACTED] property.

6 8. I then observed Officers Camacho, Kako, and Bailey suddenly stop
7 inventorying Mr. [REDACTED] property. The three of them walked directly from Mr. [REDACTED]
8 cell to my cell. Officer Camacho said the he found the note that I had provided to
9 Mr. [REDACTED] with the address for Mr. Gleiberman. He also said that there was an Instagram
10 address written on the note, and so he needed to search my cell for a cell phone. I denied
11 that I had a cell phone or that I had written any Instagram address on the paper. I also told
12 Officer Camacho that once I gave the paper to Mr. [REDACTED] I was not responsible for
13 anything Mr. [REDACTED] wrote on the paper. I asked him to show me the note. Officer
14 Camacho refused. I then told Officer Camacho that I was not going to come out of the cell
15 unless a sergeant was present. I was concerned that staff were going to beat me up if I
16 went with them. I was especially concerned after the threatening interaction with Officer
17 Bailey that had occurred a few minutes earlier. However, my cell mate, [REDACTED],
18 [REDACTED], and I ultimately agreed to leave the cell and be locked in the showers so that
19 officers could search our cell.

20 9. We were in the showers for about 20-30 minutes. While I was locked in the
21 shower, Officer Camacho came and spoke to me about the note. I again asked to see the
22 note, but Officer Camacho refused.

23 10. Officers then took us from the showers and placed us back in our cell. When
24 I arrived at the cell, I saw that the officers had completely trashed it. A full box of my
25 legal documents had been spread throughout the cell. Two photo albums filled with family
26 photos were completely torn apart and ruined. Most of my other property was on the cell
27 floor or bunk. The officers even put some of my property in the toilet. The sheets and
28

1 blankets were ripped off of the mattresses and strewn on the floor. The mattresses were
2 also on the cell floor. It appeared to me that some of my property was also missing. In the
3 nineteen years I've been in CDCR prisons, I've been through many cell searches. This
4 search was something completely different, intended to send a threatening message to my
5 cell mate and me. I believe that the officers trashed my cell because in my note to
6 Mr. [REDACTED] I had identified Officer Camacho by name as having engaged in misconduct
7 and had encouraged Mr. [REDACTED] to report the misconduct to Mr. Gleiberman.

8 11. I started yelling and banging on the door to the cell because I was upset
9 about what the officers had done to my property. Officers Camacho and Bailey then
10 walked up to my cell from the podium in the center of the dayroom. We began talking
11 through the cell door, which was closed. I asked them why they ripped up my photo
12 albums. Officer Camacho said that Sergeant Cervantes had given him permission to
13 destroy my cell. Officer Camacho said that if I continued complaining about what
14 happened to my cell and property, he would write my cell mate and me up for having
15 contraband in our cell, but that if we dropped the issue, he would not write us up. I told
16 him that I was going to file a complaint and that I would "take the write up."

17 12. When I said that I was going to file a complaint, I could see from Officer
18 Camacho's facial expression that he had become even more upset. One of the officers then
19 unlocked the tray slot to the cell. I backed about two or three away from the door. Officer
20 Camacho then crouched down and stuck a pepper spray canister through the tray slot.
21 Without saying anything or giving any warning, he shot me directly in the face with pepper
22 spray. I turned around and got down on the ground. He kept shooting me in the back with
23 the pepper spray. He then started shooting my cell mate, who was standing in the back of
24 the cell, with the pepper spray. I was not wearing a shirt at the time so my skin was
25 burning everywhere. I was in incredible pain and had trouble breathing because the spray
26 got in my mouth. My cell mate and I were yelling at Officer Camacho that we had not
27 done anything wrong. My cell mate also said that he only had one functioning eye and
28

1 was concerned the spray would hurt his vision in his good eye. Officer Camacho said “I
2 don’t give a fuck about your one eyeball.”

3 13. Officer Camacho stopped shooting us for a moment and yelled at us to get
4 down on the ground even though I was already on the ground. My cell mate got on the
5 ground. Then Officer Camacho started shooting us with pepper spray again. He shot me
6 on my back because I had turned away from the door. I tried crawling under the bed to
7 protect myself from the pepper spray so it would not get in my eyes. Officer Camacho
8 then stopped spraying us. He then asked Officer Bailey for another can of pepper spray.
9 Though I could not see what happened because I was turned away from the door, I do
10 know that a few seconds later he started shooting me with pepper spray again. At this
11 point I was covered in pepper spray all over my body. I could not breathe or see. I was
12 gagging, disoriented, and in tremendous pain.

13 14. While we were being sprayed, many of the other people in the building were
14 yelling at the officers to stop. I heard one person, Mr. [REDACTED] who lives in cell [REDACTED], say
15 “Stop spraying them, leave them alone, they’re not doing anything.” The window of cell
16 [REDACTED] has a clear view of the front of my cell, cell [REDACTED] Camacho responded, “Shut the fuck
17 up, get off your door or I’ll spray you too.”

18 15. Once Officer Camacho finally stopped spraying us, the cell door opened.
19 Officer Camacho instructed us to crawl back out of the cell one at a time. I did so and one
20 of the officers placed me in hand cuffs. Officers Galaviz and Gutierrez escorted me out of
21 Building 15. I could not see anything at the time because of the pepper spray that had
22 gotten into my eyes. I knew that Officers Galaviz and Gutierrez were escorting me
23 because I recognized their voices. Once we got outside, the two officers intentionally
24 walked me directly into one of the outside walls of Building 15. I could not see the wall
25 because of the pepper spray in my eyes. I hit my forehead very hard on the wall, causing
26 me a lot pain. It felt like I had been punched in the face. Officer Galaviz immediately said
27 “Oops, I did that. You fucking piece of shit [REDACTED] you’re snitching on us.” The
28

1 officers then had me stand with the front of my body up against the wall. I asked them
2 repeatedly to let me wash off the pepper spray, but they said no each time.

3 16. The two officers then escorted me to the gym on Facility C. During the long
4 walk from Building 15 to the Facility C Gym, they kept shoving and pushing me. Officer
5 Gutierrez repeatedly told me to stop resisting even though I was not resisting at all and was
6 completely compliant with the escort. I believe they were trying to bait me into fighting
7 back so that they could hurt me even more.

8 17. Once we reached the gym, they placed me in a holding cage. I again asked
9 for medical attention because I could not breathe. Officer Galaviz kept telling me, "You
10 refused [REDACTED] don't say anything." He also told a nurse who had arrived to examine me
11 that I had refused medical attention. I said, "I didn't refuse it, he's trying to refuse it for
12 me. I cannot breathe." I was on my knees on the bottom of the cage doing my best to
13 breathe. I kept saying over and over again to the officers that I could not breathe. At one
14 point, the officers started laughing at me.

15 18. After about fifteen minutes in the gym, I was placed in an ambulance and
16 transported to the Treatment and Triage Area ("TTA"). Officers Galaviz and Gutierrez
17 came in the ambulance with me. Once inside the TTA, a male medical staff member
18 started asking me question about what happened. I couldn't see his name because at the
19 time I still could not see. I told him that I was assaulted with pepper spray by Officer
20 Camacho. Either Officer Gutierrez or Officer Galaviz said to the male medical staff
21 member that "he refused, he doesn't want to be seen." I kept saying that I was not
22 refusing, that I was in pain, and that I could not breathe. Officer Galaviz also quietly said
23 to me in my ear, "Shut the fuck up, don't say anything." I kept asking for decontamination
24 but Officers Galaviz and Gutierrez refused my request. The male medical staff member
25 took a rag and wiped the pepper spray from my eyes. He also took my vitals. He then
26 discharged me.

1 19. The officers than walked me back to the gym on Facility C. The placed me
2 back in a holding cage. Only then did they finally take the handcuffs off of me. They
3 informed me that I was being sent to administrative segregation for battery on a peace
4 officer. They told me that I would be charged with breaking the window of my cell and
5 that a part of the broken glass hit Officer Camacho in the eye. I was then transferred to
6 administrative segregation where I am still housed. I still have not received a copy of any
7 Rules Violation Report for the incident.

8 20. Up until the moment that I was pepper sprayed and stopped being able to
9 see, there was absolutely nothing wrong with the glass in the door to my cell. Neither my
10 cell mate nor I ever hit the window, let alone broke it. If officers are claiming that I broke
11 the window and that a piece of glass hit Officer Camacho in the eye, then those officers are
12 lying.

13 21. At around midnight on August 22, 2020 (late-Saturday night, early-Sunday
14 morning), I was in cell [REDACTED] in administrative segregation. Three officers woke me up and
15 told me through the cell door that I had an appointment at the TTA. I had no idea what
16 they were talking about and had never heard of a midnight TTA appointment except in
17 cases of emergency. I refused the appointment. I told them that I was afraid that they
18 were setting me up to be attacked again by staff from Facility C.

19 22. On August 23, 2020, I filed a CDCR Form 602 staff complaint about Officer
20 Camacho using pepper spray on me. I also filed a CDCR Form 22 requesting to speak to
21 Sergeant Waters and sent him a letter as well.

22 23. I have not been interviewed about my staff complaint yet. However, on
23 August 25, 2020, I was called in to the office in administrative segregation to speak with
24 Sergeant Waters and another person who was wearing a suit. Sergeant Waters identified
25 himself as being from AIMS, though I do not know what that stands for. Sergeant Waters
26 said that he was only there to interview me about the allegedly broken window. I showed
27 him both of my hands so that he could see that I did not have any injuries consistent with
28

1 having broken the window with my hands. He took pictures of both of my hands. I asked
2 him if he had received my letter or the Form 22 I addressed to him. Sergeant Waters said
3 no. I told Sergeant Waters all about the pepper spray incident. I also told him that I never
4 broke a window and that the staff were lying. Sergeant Waters told me to not tell him the
5 details about the incident yet because he would be back to interview me later. I have not
6 yet been interviewed by Sergeant Water again.

7 24. I am afraid that officers are going to try to hurt me more or have me killed. I
8 feel somewhat more safe in administrative segregation, however, because there a many
9 cameras in the unit. But I should not have to be kept in administrative segregation, where I
10 have very limited access to programs, in order to be and feel safe from staff.

11 25. Officer Camacho's assault on me and my cell mate has made me extremely
12 paranoid and made my mental health even worse. I feel like I have no idea which officers

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 I can trust. Officers are supposed to protect me, and yet these officers attacked me over
2 nothing.

3
4 I declare under penalty of perjury under the laws of the United States of America
5 that the foregoing is true and correct, and that this declaration is executed at San Diego,
6 California this 1st day of September 2020.

7
8
9 /s/ [REDACTED]
10 [REDACTED]

11 On September 1, 2020, due to the closure of RJD in light of the COVID-19
12 pandemic and ongoing concerns that officers might retaliate against witnesses in support of
13 Plaintiffs' Motion, including ongoing concerns about the confidentiality of the legal mail
14 system at RJD, I read the contents of this declaration, verbatim, to [REDACTED] [REDACTED] by
15 telephone. [REDACTED] [REDACTED] orally confirmed that the contents of the declaration were true
16 and correct. [REDACTED] [REDACTED] also orally granted me permission to affix his signature to the
17 declaration and to file the declaration in this matter.

18
19 DATED: September 1, 2020

20 [Signature]
21 [REDACTED]

22 Michael Freedman
23
24
25
26
27
28

Exhibit 81a

Filed Under Seal

Exhibit 82

1 **SECOND SUPPLEMENTAL DECLARATION OF** [REDACTED] [REDACTED]

2 I, [REDACTED] [REDACTED] declare:

3 1. I have personal knowledge of the matters set forth herein, and if called as a
4 witness, I could and would competently so testify.

5 2. My California Department of Corrections and Rehabilitation ("CDCR")
6 number is [REDACTED] I am currently housed at Richard J. Donovan Correctional Facility
7 ("RJD") on Facility C in Building 15.

8 3. I previously submitted two declarations about staff misconduct that I
9 experienced at R.J. Donovan Correctional Facility ("RJD"), which I signed on January 30,
10 2020 and May 13, 2020. I submit this second supplemental declaration about recent
11 misconduct I have experienced at RJD.

12 4. On July 31, 2020, at around 8:00 a.m., I left my cell for morning pill call in,
13 Building 14 on Facility C. As I walked up to the window to get my medication, I
14 overheard the nurse distributing pills, I do not know her name, talking about another
15 incarcerated person to Nurse Hayes and Nurse Rose. I felt uncomfortable because that
16 nurse was talking disrespectfully about other incarcerated people right in front of
17 me. Once the nurse realized that I could hear her, she told me to back away from the
18 window. I backed away, waited for a few seconds, and then walked back to the window to
19 get my medication.

20 5. Through the window, I told Nurse Hayes that I did not feel comfortable with
21 the new nurse passing out my medication. I asked Nurse Hayes for him to give me the
22 medication instead of the new nurse. In response, Nurse Hayes told me that the new nurse
23 would give me the medication. I protested, and he ordered me to get back from the
24 window and threatened to push his alarm.

25 6. We got into a verbal altercation. As we were arguing, the two floor officers
26 approached me and ordered me to go to my cell. I tried to explain to them that I just
27 wanted to get my medication, but they were not having it. I then approached the tower
28

1 unit, where Officers Zambrano and Hernandez were stationed. I do not know why there
2 were two officers there because there is usually only one officer in the tower unit. I asked
3 Officers Zambrano and Hernandez to tell the medical staff to give me my
4 medication. They denied me, and again told me to return to my cell without my
5 medication. I responded that I wanted to go to the shower to wait until they called a
6 sergeant to deal with my issues. I then walked over to the shower to wait. I saw that
7 Nurse Rose started walking over to the shower to talk to me.

8 7. As soon as Nurse Rose approached the shower, I saw that Officer Zambrano
9 was pointing the mini-14 block gun at me. I called over to the two floor officers and told
10 them that Officer Zambrano was pointing the gun at me. They just told me to calm
11 down. I was feeling extremely anxious because of my past trauma with police: in February
12 2019, I was shot in the back by police officers in Oakland. While Officer Zambrano
13 pointed his gun at me, I spoke with Nurse Rose for about five minutes. With his gun
14 pointed at me, Officer Zambrano mocked me, saying things like, "I want my medication, I
15 want my medication," through the window of the control tower. As I was speaking with
16 Nurse Rose, my friend, Mr. [REDACTED] approached the shower and helped calm me
17 down. Eventually, I started to feel better and Nurse Rose helped me out of the shower to
18 get my medication. As soon as I left the shower, I saw that Officer Zambrano had put the
19 gun down. I got my medication and returned to my cell.

20 8. There was no reason for Officer Zambrano to have pointed the gun at me in
21 the first place. He never issued me an order to get down on the ground or to cuff up, and
22 he did not sound the alarm in the building. At no point did I threaten Nurse Rose or
23 anyone else. I do not know why Officer Zambrano pointed the gun at me. There was no
24 reason to do that other than to terrorize and intimidate me.

25 9. When I returned to my cell, I started having flashbacks of being shot by the
26 Oakland police. I started to feel suicidal, and I covered my cell window with
27 cardboard. When a recreational therapist ("RT") came by my cell, I told him that I was
28

1 feeling suicidal because Officer Zambrano had pointed his gun at me. The RT told me to
2 come out of my cell to talk to him. My door popped open, and I exited my cell. Six or
3 seven officers were standing by the entrance to the building; a few other officers were
4 standing by the podium. The officers did not cuff me once I exited the cell or escort me
5 out, even though I was feeling suicidal. They just let me walk out of my cell, as if nothing
6 had happened. One of the officers standing by the entrance, who I believe was a sergeant,
7 called out and asked me to talk to him. I told him that I did not want to talk, and that I was
8 feeling suicidal. I told him that I was planning to jump off the second tier of the housing
9 unit. The sergeant then told me, "Well, jump off the tier then."

10 10. I was so angry and suicidal that I ran up the stairs, and climbed over the
11 second tier railing to jump. As soon as I was about to jump, three incarcerated people –
12 Mr. [REDACTED] (cell [REDACTED]), Mr. [REDACTED] (cell [REDACTED]), and a person named [REDACTED] (cell [REDACTED]) – grabbed
13 me and pulled me over the railing and back onto the tier. They saved my life. After I
14 walked down to the ground floor, the sergeant ordered me to go to the gym.

15 11. Without cuffing me, the officers opened the front door of the housing unit
16 and the sergeant then began escorting me to the gym. I told the sergeant that I was not
17 comfortable going to the gym without another incarcerated person accompanying me. He
18 allowed me to bring Mr. [REDACTED] with me. I took Mr. [REDACTED] along with me because I was
19 afraid that I would get jumped in the gym; officers on Facility C are commonly known to
20 jump people in the gym. Once I was in the gym, the sergeant had me wait on the bench for
21 a few minutes, before he came over and tried to get me to return to Building 14. I told him
22 that I would not return to that unit because I was terrified that Officer Zambrano would try
23 to shoot me again. The sergeant made me walk to Building 14, where my clinician,
24 Doctor Sharp, was waiting for me. I told Doctor Sharp about what had happened, and that
25 I was still feeling very suicidal. He was not helpful at all. As we were talking,
26 Doctor Beyer came over and I told her what was going on. Doctor Beyer then decided to
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1 place me on suicide watch. The officers then cuffed me and returned me to the gym. Later
2 that day, I was transferred to a crisis bed, where I stayed for the next few weeks.

3 12. As a result of this incident, I have become much more paranoid and
4 depressed. I keep getting flashbacks and nightmares of getting shot by Oakland police, as
5 well as Officer Zambrano pointing the gun at me. While I am much more comfortable
6 now that I am housed in Building 15, away from Officer Zambrano, I am still feeling
7 depressed and scared of staff as a result of this incident.

8
9 I declare under penalty of perjury under the laws of the United States of America
10 that the foregoing is true and correct, and that this declaration is executed at San Diego,
11 California this 18th day of August, 2020.

12
13 /s/ [REDACTED]
14 [REDACTED]

15 On August 18, 2020, due to the closure of RJD in light of the COVID-19 pandemic
16 and ongoing concerns that officers might retaliate against witnesses in support of
17 Plaintiffs' Motion, including ongoing concerns about the confidentiality of the legal mail
18 system at RJD, I read the contents of this declaration, verbatim, to [REDACTED] [REDACTED] by
19 telephone. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and
20 correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the
21 declaration and to file the declaration in this matter.

22
23 DATED: August 18, 2020

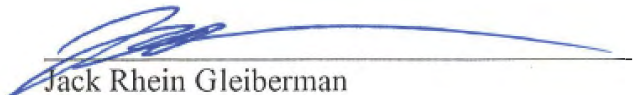
24 
25 Jack Rhein Gleiberman
26
27
28

Exhibit 82a

Filed Under Seal

Exhibit 83

SUPPLEMENTAL DECLARATION OF [REDACTED]

I, [REDACTED], declare:

1. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify.

2. My California Department of Corrections and Rehabilitation ("CDCR") number is [REDACTED]. I am currently housed at Richard J. Donovan Correctional Facility ("RJD") on Facility A in Building 5. I am 76 years old.

3. I previously submitted a declaration about my experiences with staff misconduct at RJD, which I signed on January 7, 2020. I submit this supplemental declaration about recent staff misconduct I have experienced at RJD.

4. On July 4, 2020, I was assaulted in my cell by my cell-mate at the time. My cell-mate is a young man and a drug user. I am almost 50 years older than my cell-mate. I observed him shooting-up drugs almost every day in our cell. He assaulted me because I refused to divert my prescribed pain medication by "cheeking" it (hiding the medication in my mouth and pretending to ingest it) for his use. I know this is the reason he assaulted me because, right before he assaulted me, he had been pressuring me to give up my medication. He frequently threatened me in an effort to get me to divert the medication for his abuse. On this instance, my cell mate slapped me across the left hand side of my face. I did not tell staff about this attack because I hoped it would not happen again.

5. I was again assaulted by my cell-mate on or around July 14, 2020. Before I was assaulted, my cell-mate was again pressuring me for my pain medication. I told him that I would not give him my pain medication, and he became very angry. He climbed down from the lower bunk and started punching me in the face. He punched me in the face multiple times. As a result of the assault, I lost one of my teeth and suffered significant bruising and swelling on my face. My arms and hands were also covered in bruises because I attempted to defend myself from my cell-mate's attack. For weeks after the incident, I regularly experienced blurred vision and severe migraines. Because of these

1 symptoms, I believe that I suffered a concussion as a result of this assault. I also lost part
2 of my hearing for several weeks. To this day, I sometimes experience those symptoms.

3 6. I was then called out of my cell to talk with staff about what had happened. I
4 learned later on that another incarcerated person had seen my cell mate attack me through
5 my cell window and had told floor staff about the incident. Within earshot of my cell-mate,
6 staff asked me whether I was assaulted by my cell-mate. I told them that I had been, and
7 then Officer Salazar told me that he would take care of it. About ten minutes later, my
8 cell-mate was called to the podium, where he talked with Officer Salazar for a few
9 minutes. Officer Salazar then approached my cell and asked me whether I was okay with
10 my cell-mate being housed in the same building as me. I told him that I was not
11 comfortable with that. Officer Salazar responded, "so you're going to snitch on him?"
12 This comment made me very uncomfortable because it was made within earshot of
13 multiple incarcerated people. "Snitching" is considered a very serious offense in prison
14 culture. A mere accusation of snitching is enough to make you a target of an assault by
15 incarcerated people.

16 7. After I told Officer Salazar that I could not live with or around my cell-mate,
17 he ordered me to cuff up. I complied and was then escorted to the ADA shower by Officer
18 Salazar. Officer Salazar left, and then returned a few minutes later and asked me
19 something to the effect of, "is this the way you want it?" I took this to mean that he was
20 asking me whether I wanted to continue "snitching" on my cell-mate. I told him yes, and
21 that my cell-mate had to be moved. A few minutes later, three officers came to escort me.
22 As they were pushing me in my wheelchair out of the building, one officer told me that I
23 would be better-off if I did not report the assault to a sergeant. When I asked him why, he
24 told me that if I said anything about what happened to a sergeant, I would be taken to
25 administrative segregation. I became very scared because, in my eleven years of
26 incarceration, I have never been placed in administrative segregation. I have heard
27 horrible stories about people being abused by staff in administrative segregation.

1 8. I was then taken to the mental health building and placed in a cage. While in
2 the cage, one officer told me that, when the nurses arrived to document my injuries, I
3 should hide my bruising and swelling as much as possible and downplay what happened.
4 Another officer said that I should downplay the assault because I may be charged with a
5 rules violation report (“RVR”) for “mutual combat” and be sent to administrative
6 segregation. When I asked the officers why they could not move my cell-mate to the
7 administrative segregation unit, they told me that he was “maxed-out” and that they could
8 not do anything about him. While I don’t understand exactly what the term “maxed-out”
9 means, I took that comment to mean in context that my cell-mate was untouchable and that
10 they could not punish him. After I argued with them, one officer finally told me that they
11 would try to move my cell-mate to Building 3 on Facility A. When I was eventually
12 examined by a nurse, I did not report my serious injuries, including: extreme pain in my
13 nose, my blurred vision, and my severe headache.

14 9. Eventually, Sergeant Jackson came to the cage to speak with me. He asked
15 me whether I was hurt, and, at the advice of staff, I said no. He briefly examined me for
16 injuries and then left. Approximately twenty minutes later, I was escorted to the program
17 office, where I met Sergeant Jackson in an office. Sergeant Jackson told me to sign
18 paperwork that said that my cell-mate and I could be safely housed in the same yard. I did
19 not want to sign that paperwork, but I felt that there was no choice because, if I did not
20 sign it, I would be sent to administrative segregation. I ended up signing the paperwork
21 and then returned to my housing unit.

22 10. When I returned to my housing unit, my cell-mate’s property was gone and
23 he was not in the building. Based on the officer’s comments, I believe that he was moved
24 to Building 3. Since the incident, I have also seen him going to and from Building 3.
25 While I feel much safer now that he is no longer in my building, I am still uncomfortable
26 about us being housed on the same yard.

27

28

1 11. I do not understand why this person was allowed to be re-housed in a regular
2 housing unit instead of administrative segregation after he battered me twice. In fact, just
3 a week or so after the second assault, my wheelchair pusher told me that my cell-mate had
4 been involved in a fight in Building 3. The fact that this person has engaged in so many
5 violent incidents in such a short timeframe suggests to me that this person poses a
6 continuing danger to incarcerated people with disabilities.

7 12. When I was taken out of Building 5 to a holding cage in the mental health
8 building, one of the officers told me that they were “very aware” of my cell-mate’s drug
9 use and fights. Staff clearly knew that my cell mate was dangerous and they decided it
10 was ok to cell him with me, a 76-year old man with disabilities and multiple medical
11 conditions.

12 13. It is very concerning to me that staff were pressuring me to not report what
13 happened to me because I would get sent to the administrative segregation unit. I do not
14 understand why I, a victim of abuse, would have to go to administrative segregation if I
15 refused to be housed in the same living quarters as the person who assaulted me.

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1 14. As someone who is nearly 80 years old and uses a wheelchair to get around,
2 I am at risk in prison of physical assault by other incarcerated people. I have requested
3 multiple times to be single-celled because I am at risk, but staff at RJD have denied me my
4 requests. The fact that RJD was not willing to take action to protect me from my abuser
5 makes me feel that this prison does not care about the dangers faced by elderly people and
6 people with disabilities in prison.

7 I declare under penalty of perjury under the laws of the United States of America
8 that the foregoing is true and correct, and that this declaration is executed at San Diego,
9 California this 10th day of September 2020.

10
11
12
13 On September 10, 2020, due to the closure of RJD, in light of the COVID-19
14 pandemic and ongoing concerns that officers might retaliate against witnesses in support of
15 Plaintiffs' Motion, including ongoing concerns about the confidentiality of the legal mail
16 system at RJD, I read the contents of this declaration, verbatim, to [REDACTED] by
17 telephone. Mr. [REDACTED] orally confirmed that the contents of the declaration were true and
18 correct. Mr. [REDACTED] also orally granted me permission to affix his signature to the
19 declaration and to file the declaration in this matter.

20
21 DATED: September 10, 2020

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23
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25
26
27
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Ellie Heywood

Exhibit 84

From: [Gay C. Grunfeld](#)
To: [Trace Maiorino](#); [Ed Swanson](#)
Cc: [Joanna Hood](#); [Damon McClain](#); [Armstrong Team - RBG only](#); [Davis, Tamiya@CDCR](#); [Ferguson, Patricia@CDCR](#); [Sean Lodholz](#); [Jeremy Duggan](#); [Anthony Tartaglio](#); [Alicia Bower](#); [rlomio](#); [Margot Mendelson](#); [Donald Specter](#); [Corene Kendrick](#)
Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]
Date: Wednesday, August 26, 2020 5:55:40 PM
Attachments: [42318530.docx](#)

Dear Trace,

The proposed notice is acceptable to Plaintiffs' counsel. Please let us know how quickly you will be able to place the notices at the prisons and the locations within the prisons you plan to target.

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>
Sent: Monday, August 24, 2020 3:35 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Ed Swanson <ed@smllp.law>
Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Alicia Bower <Alicia.Bower@doj.ca.gov>
Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]

Hello Gay,
Here is a proposed draft for your review.

Thank you very much, Trace

Trace O. Maiorino
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7002

(415) 510-3594

(415) 703-5843 facsimile

trace.maiorino@doj.ca.gov

From: Gay C. Grunfeld <G.Grunfeld@rbgg.com>

Sent: Friday, August 21, 2020 1:01 PM

To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Ed Swanson <ed@smllp.law>

Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>;
Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR
<Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean
Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony
Tartaglio <Anthony.Tartaglio@doj.ca.gov>

Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]

Importance: High

Dear Trace et al.,

Please send us a draft of the anti-retaliation notices you intend to use in connection with the Court's attached order.

Thank you, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld

Sent: Tuesday, August 4, 2020 5:34 PM

To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Ed Swanson <ed@smllp.law>

Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>;
Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR
<Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean
Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony
Tartaglio <Anthony.Tartaglio@doj.ca.gov>

Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]

Dear Trace,

Thank you for letting me know. We will e-file it shortly.

We look forward to working with you to confirm that anti-retaliation posters have been placed at the applicable prisons.

Warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>
Sent: Tuesday, August 4, 2020 5:27 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Ed Swanson <ed@smllp.law>
Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>;
Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR
<Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean
Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony
Tartaglio <Anthony.Tartaglio@doj.ca.gov>
Subject: Proposed Stipulation and Order

Hello Gay,

We have conferred with our clients and they have approved the attached proposed stipulation and order. You have Joanna's permission to affix her e-signature and file the attached with the Court.
Thank you, Trace

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Wednesday, July 22, 2020 9:40 AM
To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Ed Swanson <ed@smllp.law>; Joanna Hood
<Joanna.Hood@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Sean Lodholz
<Sean.Lodholz@doj.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis,
Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>
Cc: Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Jessica Winter <JWinter@rbgg.com>;
Margot Mendelson <mmendelson@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>; Anthony
Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Damon
McClain <Damon.McClain@doj.ca.gov>

Exhibit 85

Notice: Retaliation Not Allowed

***Armstrong v. Newsom*, 94-cv-2307 (N.D. Cal.) (“*Armstrong*”)**

Armstrong is a class action lawsuit on behalf of all incarcerated people in CDCR with mobility, hearing, vision, learning, and kidney disabilities.

On June 3, 2020, the Plaintiffs in *Armstrong* filed a Motion to Stop Defendants from Assaulting, Abusing and Retaliating Against People with Disabilities (“Motion”). In their Motion, Plaintiffs allege that correctional officers have retaliated against incarcerated people for complaining about staff misconduct or about failures to provide disability accommodations.

It would violate federal law if California Department of Corrections and Rehabilitation (“CDCR”) staff were to retaliate against incarcerated persons for being part of the Motion (including being a witness or speaking to Plaintiffs’ counsel) or for exercising their federal rights (including the right to request help with a disability).

If you believe that staff have retaliated against or harmed you, you can file a CDCR 602 Form or a CDCR 1824 Form. You can also write to or call counsel for the *Armstrong* class:

Rosen Bien Galvan & Grunfeld LLP
P.O. Box 390
San Francisco, CA 94104
415-433-6830 (collect calls accepted)

Exhibit 86

From: [Gay C. Grunfeld](#)
To: [Trace Majorino](#); [Ed Swanson](#)
Cc: [Joanna Hood](#); [Damon McClain](#); [Armstrong Team - RBG only](#); [Davis, Tamiya@CDCR](#); [Ferguson, Patricia@CDCR](#); [Sean Lodholz](#); [Jeremy Duggan](#); [Anthony Tartaglio](#); [Alicia Bower](#); [rlomio](#); [Margot Mendelson](#); [Donald Specter](#); [Corene Kendrick](#)
Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]
Date: Wednesday, September 2, 2020 12:08:42 PM
Attachments: [\[SIGNED\] Declaration of \[REDACTED\] \(COR, LAC\), 08-14-2020.pdf](#)
[\[Dkt. 3032\] Stipulation + Proposed Order Prohibiting Retaliation in Prisons Subject to Statewide Motion, 08-04-2020, 581-3.PDF](#)

Dear Trace, et al.

I am writing to request an update on when Defendants will post the anti-retaliation notices at the 6 prisons covered by the attached anti-retaliation Order.

I am sorry to report that retaliation is ongoing, notwithstanding the Court's Orders, including the Preliminary Injunction Order of July 30. You probably have not yet reviewed the declarations uploaded yesterday, so I bring to your especial attention the attached declaration of [REDACTED], who was a victim of staff misconduct based on his disability at both Corcoran and LAC. After being assaulted at Corcoran and receiving a retaliatory RVR, for which he filed a 602, Mr. [REDACTED] was moved to LAC. There, he reports that officers came to his cell and one said: "Oh, you think you can just rat on my friends at Corcoran and try to get them fired and move to Lancaster thinking it's over? You fucked up every day while you're here, I'm going to give you hell until you do something." After speaking with members of my law firm, the officer searched his cell multiple times. Mr. [REDACTED] also reports that, "[o]n June 19, 2020, I had a confidential call with staff at Rosen, Bien, Galvan, and Grunfeld ("RBGG").... Later in the day after this call with RBGG, one of the floor officers, who I call Officer P, because I do not know how to spell her last name exactly, asked me why I was reporting staff. She told me, "It's best if you refuse talking to them", meaning the RBGG attorneys, "so that you can make it home." I asked her, "What do you mean by that?" She said, "Take it how you want to." I took this as a threat that she and other staff were going to harm me or set me up if I continue to report these issues. I believe that some of the officers heard my call with RBGG because I was talking on speakerphone and they were walking by the door constantly during the call, even though it was supposed to

be confidential.” *Id.*

As this declaration and others attest, posting the anti-retaliation notices at the 6 prisons is urgent. Please let us know the status.

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Wednesday, August 26, 2020 5:56 PM
To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Ed Swanson <ed@smllp.law>
Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>;
Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR
<Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean
Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony
Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Alicia Bower <Alicia.Bower@doj.ca.gov>; rlomio
<rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>; Donald Specter
<dspecter@prisonlaw.com>; Corene Kendrick <ckendrick@prisonlaw.com>
Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]

Dear Trace,

The proposed notice is acceptable to Plaintiffs’ counsel. Please let us know how quickly you will be able to place the notices at the prisons and the locations within the prisons you plan to target.

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>
Sent: Monday, August 24, 2020 3:35 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Ed Swanson <ed@smllp.law>
Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>;
Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR
<Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean
Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony
Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Alicia Bower <Alicia.Bower@doj.ca.gov>
Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]

Hello Gay,
Here is a proposed draft for your review.

Thank you very much, Trace

Trace O. Maiorino

Deputy Attorney General
Office of the Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7002
(415) 510-3594
(415) 703-5843 facsimile
trace.maiorino@doj.ca.gov

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Friday, August 21, 2020 1:01 PM
To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Ed Swanson <ed@smllp.law>
Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>;
Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR
<Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean
Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony
Tartaglio <Anthony.Tartaglio@doj.ca.gov>
Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]
Importance: High

Dear Trace et al.,

Please send us a draft of the anti-retaliation notices you intend to use in connection with the Court's attached order.

Thank you, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld
Sent: Tuesday, August 4, 2020 5:34 PM
To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Ed Swanson <ed@smllp.law>
Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>;
Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR
<Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean
Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony
Tartaglio <Anthony.Tartaglio@doj.ca.gov>
Subject: RE: Proposed Stipulation and Order [IWOV-DMS.FID3579]

Dear Trace,

Thank you for letting me know. We will e-file it shortly.

We look forward to working with you to confirm that anti-retaliation posters
have been placed at the applicable prisons.

Warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>
Sent: Tuesday, August 4, 2020 5:27 PM
To: Gay C. Grunfeld <G.Grunfeld@rbgg.com>; Ed Swanson <ed@smllp.law>

Cc: Joanna Hood <Joanna.Hood@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>
Subject: Proposed Stipulation and Order

Hello Gay,

We have conferred with our clients and they have approved the attached proposed stipulation and order. You have Joanna's permission to affix her e-signature and file the attached with the Court. Thank you, Trace

From: Gay C. Grunfeld <G.Grunfeld@rbgg.com>

Sent: Wednesday, July 22, 2020 9:40 AM

To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Ed Swanson <ed@smllp.law>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>

Cc: Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Jessica Winter <JWinter@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>

Subject: RE: Armstrong; Discovery and Reply Issues, Request for a Call with the Court Expert and Defendants' Counsel [IWOV-DMS.FID3579]

Hi Trace, et al.,

We look forward to your response later today regarding the page limit stipulation. Another issue we had asked to be addressed by today is whether the attached anti-retaliation stipulation is acceptable.

One other issue to add to Friday's discussion is the request to rescind the RVRs.

See attached letter. According to your court filing yesterday, the hearings must occur before July 25 and 30, yet it is July 22 and no date has been set. Putting aside the merits, which we strongly contest, it will be very difficult if not impossible for Mr. [REDACTED] to defend against these RVRs from a [REDACTED] MHC, especially when his witnesses are at other prisons and we do not even know when the hearings are. The fairest outcome is to abandon these RVRs.

Thank you, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>
Sent: Tuesday, July 21, 2020 5:49 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Ed Swanson <ed@smllp.law>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>
Cc: Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Jessica Winter <JWinter@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>
Subject: RE: Armstrong; Discovery and Reply Issues, Request for a Call with the Court Expert and Defendants' Counsel [IWOV-DMS.FID3579]

Hello Gay,

Thank you for agreeing to speak with us and Mr. Swanson on Friday, at 11:00 a.m., we look forward to the call. We understand that you need a response concerning your request related to an augmented reply before Friday and we are working on getting you an answer as soon as we can. We need to confer with our clients and hope to have a response for you by tomorrow, July 22. Thank you, Trace

Trace O. Maiorino

Deputy Attorney General
Office of the Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7002
(415) 510-3594
(415) 703-5843 facsimile
trace.maiorino@doj.ca.gov

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Tuesday, July 21, 2020 2:16 PM
To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Ed Swanson <ed@smllp.law>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Sean Lodholz

<Sean.Lodholz@doj.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>

Cc: Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Jessica Winter <JWinter@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>

Subject: RE: Armstrong; Discovery and Reply Issues, Request for a Call with the Court Expert and Defendants' Counsel [IWOV-DMS.FID3579]

Dear Joanna, Trace, et al.,

We appreciate the offer to speak with you and Ed on Friday at 11 and have blocked the calendar for that time/date. However, we cannot wait that long to learn Defendants' position on the oversized brief. Would you be willing to stipulate to a 25-page reply brief in light of the many declarations included in the opposition pleadings and the need to respond to a 45-page opposition brief?

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>

Sent: Tuesday, July 21, 2020 1:47 PM

To: Ed Swanson <ed@smllp.law>; Gay C. Grunfeld <GGrunfeld@rbgg.com>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>

Cc: Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Jessica Winter <JWinter@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>

Subject: RE: Armstrong; Discovery and Reply Issues, Request for a Call with the Court Expert and Defendants' Counsel [IWOV-DMS.FID3579]

Hello Ed and Counsel,

We are available on Friday, at 11:00 a.m., to discuss. Thank you, Trace

From: Ed Swanson <ed@smllp.law>

Sent: Tuesday, July 21, 2020 1:35 PM

To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Gay C. Grunfeld <GGrunfeld@rbgg.com>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis,

Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>

Cc: Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Jessica Winter <JWinter@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>

Subject: RE: Armstrong; Discovery and Reply Issues, Request for a Call with the Court Expert and Defendants' Counsel [IWOV-DMS.FID3579]

I'm available tomorrow at 2 or 5 pm, but it sounds like defendants are working to resolve some of these matters without need for a call. I can talk on Friday morning between 8 and 11 am, if we'd like to schedule a time then to discuss any outstanding issues.

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>

Sent: Tuesday, July 21, 2020 1:23 PM

To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Ed Swanson <ed@smllp.law>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>

Cc: Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Jessica Winter <JWinter@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>

Subject: RE: Armstrong; Discovery and Reply Issues, Request for a Call with the Court Expert and Defendants' Counsel [IWOV-DMS.FID3579]

Hello Gay,

We would be happy to meet and confer with you regarding these issues. However, we think that it may be premature to schedule a conference for tomorrow. We are diligently working on these issues and hope to have them resolved, or to have provided you with updated information, so as no telephone call will be necessary. Of course, we will continue to provide you with information concerning the individual issues as soon as we can. To the extent that we can't resolve certain issues, we suggest putting the conference off until Friday which should narrow the amount of time that we will need to spend on outstanding issues. Thank you for your consideration. Trace

Trace O. Maiorino

Deputy Attorney General

Office of the Attorney General

455 Golden Gate Ave., Suite 11000

San Francisco, CA 94102-7002

(415) 510-3594

(415) 703-5843 facsimile

trace.maiorino@doj.ca.gov

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>

Sent: Tuesday, July 21, 2020 12:33 PM

To: Joanna Hood <Joanna.Hood@doj.ca.gov>; Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Ed Swanson <ed@smllp.law>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>

Cc: Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Jessica Winter <JWinter@rbgg.com>; Margot Mendelson <mmendelson@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>

Subject: Armstrong; Discovery and Reply Issues, Request for a Call with the Court Expert and Defendants' Counsel [IWOV-DMS.FID3579]

Dear Joanna and Ed,

We would like to schedule a call tomorrow afternoon if possible to discuss the topics below. We are available at any time after the 1:00 p.m. COVID-19 call.

1. We request that Defendants stipulate to providing Plaintiffs with ten additional pages for their reply brief, for a total of 25 pages.
2. Defendants appear to have objected to producing any documents related to the McGinnis deposition. You have now clarified that you will produce certain documents by July 24 in native format.
3. Cell phone video from RJD of June 17, 2020 incident – Trace Maiorino and Mike Freedman have been communicating about the existence of a video of the June 17, 2020 incident. Do you have any updates?
4. Updates regarding uploading to Plaintiffs the [REDACTED] videos of Mr. [REDACTED] being provided with his property and providing staff with the threatening note
5. Production to Plaintiffs of documents related to AVSS that were referenced in Secretary Diaz and Undersecretary Macomber's declarations, as requested in Mike Freedman's attached letter of July 20, 2020.
6. The LAC document production—status and protective order
7. DOJ00120111 – This attached document produced by Defendants is a May 2019 email exchange between Warden Covello and the FBI about introducing a "covert recording device into RJD." It is not designated as confidential. We wanted to confirm with Defendants that they had not

made a mistake and did not wish to designate the document as confidential.

8. Redaction of officer names and Plaintiffs' Public Record Act Requests; response to my attached letter of July 10, 2020.
9. Confirming the litigation hold; see attached letter from me dated July 17, 2020.

We look forward to speaking with you regarding these topics as soon as possible. Thank you, Gay

Gay Crosthwait Grunfeld

ROSEN BIEN GALVAN & GRUNFELD LLP

101 Mission Street, Sixth Floor

San Francisco, CA 94105

(415) 433-6830 (telephone)

(415) 433-7104 (fax)

ggrunfeld@rbgg.com

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Exhibit 87

From: [Trace Maiorino](#)
To: [Jack Gleiberman](#); [Joanna Hood](#)
Cc: [Ed Swanson](#); [Sean Lodholz](#); [Alicia Bower](#); [Anthony Tartaglio](#); [Jeremy Duggan](#); [Damon McClain](#); [Ferguson, Patricia@CDCR](#); [Davis, Tamiya@CDCR](#); [CDCR OLA Armstrong CAT Mailbox](#); [Armstrong Team - RBG only](#); [Armstrong Team](#)
Subject: RE: Armstrong v. Newsom: RJD Orders and Other Outstanding Issues [IWOV-DMS.FID3579]
Date: Wednesday, September 9, 2020 3:09:59 PM

Mike,

In response to your September 8, 2020 letter, please note the following:

1. We appreciate your offer to meet and confer on the progress of the RJD remedial plan. We tentatively agree to have a call on September 21 to discuss the progress of the plan.
2. We do not agree to withdraw the notices of deposition, although we would be open to rescheduling them. While you are correct that these depositions will occur after Friday's opposition filing, that does not demonstrate there is no possible use for the deposition transcripts. Plaintiffs' continued assertions that CDCR systematically discriminates against Armstrong class members suggests that there might be additional motion practice from Plaintiffs in the future. Furthermore, Defendants are contemplating moving the Court for relief (such as a motion to reconsider the September 8, 2020 orders), and it would certainly be relevant if the declarants contradict their declarations during their depositions. Additionally, Plaintiffs' counsel has repeatedly requested that CDCR thoroughly investigate the allegations made by the inmate-declarants. Depositions are a legitimate, commonplace, and effective way of investigating allegations of staff complaints. Your assertion that depositions would "harass and penalize the incarcerated people" is speculative and unfounded. I and my colleagues routinely depose inmates alleging excessive force and retaliation, and it cannot possibly be the rule that an inmate is immune from deposition merely because he accuses prison staff of misconduct. As to your claim that many of the declarants are mentally ill, we are not sure what the relevance of that claim is. If you are suggesting that they are not competent to provide testimony, then Plaintiffs should notify the Court immediately that the Court should disregard the declarations due to the incompetency of the declarants.
3. Defendants have not refused to produce witnesses for deposition, but have been working extremely hard to prepare and produce witnesses. Plaintiffs' August 6, 2020 interrogatories and person-most-knowledge (PMK) deposition notice (topics 1-3) seek extensive information regarding staff discipline at four prisons. Plaintiffs have been repeatedly informed of the difficulty associated with obtaining this information, as staff must pull and review every individual case for responsiveness. This process is extremely time consuming, but necessary to avoid the errors present in Defendants' responses to Plaintiffs' interrogatories for R. J. Donovan. There, Plaintiffs served similar interrogatories on February 6 and Defendants attempted to use EAPT logs to screen out cases to expedite their response, but this resulted in inaccuracies that were not fully corrected until July 17, 2020. This underscores the importance of a complete review of all cases to ensure correct responses. We anticipate having substantive responses for Corcoran completed on or before September 23, LAC by September 30, CCI by October 14, and KVSP before October 21. This information must also

be collected to cover overlapping topics in the PMK depositions, and we anticipate having at least one PMK for each of the four prisons. These depositions can proceed on a rolling basis as Defendants complete collecting necessary information for each of the prisons. The potential timing issues this may present highlight the difficulty of attempting to complete discovery in the middle of briefing a motion, and the importance of a discovery schedule, which Plaintiffs rejected. Plaintiffs' PMK topics 4-10 are extremely broad and Defendants urge Plaintiffs to narrow the topics or withdraw them. We are working to prepare the witness on all of these topics and to offer a deposition date as soon as we can, but Plaintiffs did not serve their deposition notice until August 6. Given the severe time constraints caused by Plaintiffs, we cannot commit to produce a witness by September 18. We will, however, agree to provide a tentative deposition date on, or before September 11.

4. Of the three cell phones confiscated at RJD on July 16, 2020, only two were able to be cracked and searched for a video of the June 17, 2020 incident involving [REDACTED]. No video of this incident was located and no data related to this incident was identified. Defendants anticipate providing the Court with an update that may require up to five declarations to explain the complicated process taken to search the phones for footage related to the June 17, 2020 incident. But since [REDACTED] RVRs have been dismissed, we believe that this issue is nearly fully resolved as it relates to him.
5. We will not abide by your unilaterally imposed deadline that is not supported by any rule or notion of professional courtesy and we will not disclose the names of our three experts until after Defendants have filed their opposition to Plaintiffs' motion on September 11, 2020. At that time, Plaintiffs can decide if they wish to pursue their depositions. But to be cooperative, we are conferring with our experts about their availability for a deposition between September 16 and September 23. We attempted to demonstrate some professional courtesy by including provisions for expert depositions before we filed our administrative motion for an extension of time. Our proposal would have accommodated the concerns you now express in your letter.
6. We are not inclined to agree to additional pages in your reply brief. Again, we attempted to demonstrate some professional courtesy by including provisions for extra pages before we filed our administrative motion for an extension of time. Our proposal would have accommodated the concerns you now express in your letter.
7. The ADA Coordinators have been advised of the anti-retaliation notices and the process to ensure that the signs are properly posted, and remain so, at the prisons identified in the Court's order is being finalized. To date, posting is complete at KVSP, LAC, and SATF. We will provide an update with more information no later than Monday, September 14, 2020.
8. As explained in Deputy Lodholz's September 8, 2020 email, the staff tasked with collecting the requested documents are the same staff currently focused on pulling and reviewing documents to collect the necessary information to respond to Plaintiffs' four sets of interrogatories for CCI, KVSP, COR, and LAC. We anticipate producing responsive documents—if any exist—by September 21, 2020. It should be noted, however, that CDCR's eDiscovery

team is comprised of a separate set of staff, and the collection and review of custodians' emails for responsive documents has not been impacted.

We look forward to discussing these topics with you today, at 5:00 p.m., with the Court's Expert, Mr. Swanson.

Thank you, Trace

From: Jack Gleiberman <JGleiberman@rbgg.com>

Sent: Tuesday, September 8, 2020 3:29 PM

To: Joanna Hood <Joanna.Hood@doj.ca.gov>

Cc: Ed Swanson <eswanson@swansonmcnamara.com>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Alicia Bower <Alicia.Bower@doj.ca.gov>; Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Damon McClain <Damon.McClain@doj.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; CDCR OLA Armstrong CAT Mailbox <OLAArmstrongCAT@cdcr.ca.gov>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; Armstrong Team <arm-plo@prisonlaw.com>

Subject: Armstrong v. Newsom: RJD Orders and Other Outstanding Issues [IWOV-DMS.FID3579]

Dear Joanna,

Please see the attached letter from Mike Freedman.

Thank you,

Jack Rhein Gleiberman
Paralegal

ROSEN BIEN GALVAN & GRUNFELD LLP

101 Mission Street, Sixth Floor

San Francisco, CA 94105

(415) 433-6830 (telephone)

(415) 433-7104 (fax)

jgleiberman@rbgg.com

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Exhibit 88

From: [Gay C. Grunfeld](#)
To: [Armstrong Team - RBG only](#); [0581.03 \(0581.03.DMS@DMS.rbg-law.com\)](#); [0581.04 Workspace](#)
Subject: FW: Armstrong, et al. [IWOV-DMS.FID3579]
Date: Tuesday, September 15, 2020 8:28:50 AM

From: Anthony Tartaglio
Sent: Tuesday, September 15, 2020 8:28:23 AM (UTC-08:00) Pacific Time (US & Canada)
To: Gay C. Grunfeld; Trace Maiorino; Michael Freedman; Penny Godbold; Ed Swanson
Cc: Damon McClain; Joanna Hood; Sean Lodholz; Jeremy Duggan; Alicia Bower; Davis, Tamiya@CDRC; Ferguson, Patricia@CDRC; Donald Specter; rlomio; Margot Mendelson
Subject: Re: Armstrong, et al. [IWOV-DMS.FID3579]

Hi Gay, we will make Baldwin available for 9/21

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Monday, September 14, 2020 9:37:35 AM
To: Trace Maiorino; Michael Freedman; Penny Godbold; Ed Swanson
Cc: Damon McClain; Joanna Hood; Sean Lodholz; Jeremy Duggan; Anthony Tartaglio; Alicia Bower; Davis, Tamiya@CDRC; Ferguson, Patricia@CDRC; Donald Specter; rlomio; Margot Mendelson
Subject: RE: Armstrong, et al. [IWOV-DMS.FID3579]

Dear Trace and Tony,

Any word on Mr. Baldwin's availability? We would like to take the deposition no later than September 21 to ensure we have a rough transcript for the Court.

Please also provide us the "proof of practice."

Thank you, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld
Sent: Saturday, September 12, 2020 3:51 PM
To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Michael Freedman <MFreedman@rbgg.com>; Penny Godbold <PGodbold@rbgg.com>; Ed Swanson <ed@smlp.law>
Cc: Damon McClain <Damon.McClain@doj.ca.gov>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Alicia Bower <Alicia.Bower@doj.ca.gov>; Davis,

Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR
<Patricia.Ferguson@cdcr.ca.gov>; Donald Specter <dspecter@prisonlaw.com>; rlomio
<rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>
Subject: RE: Armstrong, et al. [IWOV-DMS.FID3579]

Trace,

Attached are the courtesy copies of the Notices and Subpoenas. They will be hand served to your Sacramento address Monday morning.

Thanks, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Saturday, September 12, 2020 3:20 PM
To: Trace Maiorino <Trace.Maiorino@doj.ca.gov>; Michael Freedman <MFreedman@rbgg.com>; Penny Godbold <PGodbold@rbgg.com>; Ed Swanson <ed@smlp.law>
Cc: Damon McClain <Damon.McClain@doj.ca.gov>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Alicia Bower <Alicia.Bower@doj.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Donald Specter <dspecter@prisonlaw.com>; rlomio <rlomio@prisonlaw.com>; Margot Mendelson <mmendelson@prisonlaw.com>
Subject: RE: Armstrong, et al. [IWOV-DMS.FID3579]

Dear Trace,

We will shortly provide you with courtesy copies of the deposition notices and subpoenas for Mr. Cate and Mr. Warner. Any update on when and where Mr. Baldwin will appear?

Also, could you please send over the "proof of practice" you mention below?

Thanks, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Trace Maiorino <Trace.Maiorino@doj.ca.gov>

Sent: Friday, September 11, 2020 11:59 PM

To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>; Penny Godbold <PGodbold@rbgg.com>; Ed Swanson <ed@smllp.law>

Cc: Damon McClain <Damon.McClain@doj.ca.gov>; Joanna Hood <Joanna.Hood@doj.ca.gov>; Sean Lodholz <Sean.Lodholz@doj.ca.gov>; Jeremy Duggan <Jeremy.Duggan@doj.ca.gov>; Anthony Tartaglio <Anthony.Tartaglio@doj.ca.gov>; Alicia Bower <Alicia.Bower@doj.ca.gov>; Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>

Subject: Armstrong, et al.

Hello Gay,

1. Defendants' Expert Mathew Cate is available for a deposition on September 17, 2020, will likely be seated in Sacramento on that date, and we will accept a conforming subpoena for him.
2. Defendants' Expert Bernard Warner is available for a deposition on September 18, 2020, will likely be seated in Sacramento on that date, and we will accept a conforming subpoena for him.
3. We will provide you with a date for the deposition of Defendants' Expert John Baldwin as soon as we can.
4. Attached are courtesy copies of the rescheduled deposition notices for Inmates [REDACTED], [REDACTED], [REDACTED]. We will advise the Court of these deposition notices in our September 15 opposition.
5. We continue to work on the outstanding discovery issues, including the PMK depositions, and will provide you with an update as soon as we can.
6. The posting of anti-retaliation notices have been completed in accordance with the order, with receipt of a proof of practice from the respective prisons.
7. Finally, we hope to have a response to your inquiry about the proposed briefing schedule related to a supplemental reply and sur-reply by early next week.

Trace O. Maiorino

Deputy Attorney General
Office of the Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7002
(415) 510-3594
(415) 703-5843 facsimile

trace.maiorino@doj.ca.gov

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

Exhibit 89

FACILITY PLANNING, CONSTRUCTION AND MANAGEMENT

9838 Old Placerville Road, Suite B
Sacramento, CA 95827



MAR 01 2016

Mr. Patrick Gould
Verizon Business
11080 White Rock Road, Suite 100G
Rancho Cordova, CA 95670

Dear Mr. Gould:

ACKNOWLEDGEMENT OF FULL SITE COMPLETION – CALIFORNIA STATE PRISON, LOS ANGELES COUNTY – LAC VIDEO SURVEILLANCE

In accordance with CALNET 2 - MSA 3 Contract #5-06-58-22, this letter serves as our Acceptance and Acknowledgement of Full Site Completion for the purchase of material and labor associated with the installation of data drops for the Video Surveillance Project at the California State Prison, Los Angeles County, Form 65:#4500308011, SOW: #1-146WLOA.

This acknowledgement is based upon all documentation received, including your letter of certification and completed As-Built drawings delivered in print and on CD in both .pdf and .dwg formats. This is our acknowledgement that all documents have been received and reconciled, all work has been completed, and all deliverables have been met.

The contractually required warranty period begins the day of acceptance and lasts for one year. Your invoice must be submitted within 90 days from the date of this acknowledgement.

If you have any questions regarding this project, please contact Deric Johnson, Project Manager, at (916) 255-3042.

Sincerely,

A handwritten signature in black ink that reads "Craig Martinez".

CRAIG MARTINEZ,
SSM I, IT Procurement Unit
Contracts and Procurement
Capital Planning and Project Services Branch

cc: Deric Johnson, Infrastructure Estimating & Construction Support
Ross Shapiro, Verizon
Susan Young, Verizon
Michael Zancanella, Verizon
Daniel Scanlan, Verizon

(Charlene Grimes, if an IWL project)

Patrick Gould

Page 2

bcc: Craig Martinez
Chron

JOHNSON/dj

T:/PROJECTS/Video Surveillance Project/LAC/Video Surveillance Full Site



California Department of Corrections and Rehabilitation

ROUTE SLIP

(Please Type)

Date: February 29, 2016

1. <u>DERIC JOHNSON</u>	(Initials/Date) ²⁹ <u>RM 2/29/16</u>	6. _____	(Initials/Date) _____
2. <u>PAUL CALONDER</u>	<u>PC 3/1</u>	7. _____	_____
3. <u>CORINNE DEACON</u>	<u>CD 3/1/16</u>	8. _____	_____
4. <u>CRAIG MARTINEZ</u>	<u>CM</u> <u>MAR 01 2016</u>	9. _____	_____
5. _____	_____	10. _____	_____

LIST OFFICES WHERE REVIEW AND APPROVAL IS NEEDED - INCLUDING THOSE IN CHAIN OF COMMAND AND STAKEHOLDERS

FAMB INFRASTRUCTURE ESTIMATING & CONSTRUCTION SUPPORT

FROM:

SUBJECT: Acknowledgement of Full Site Completion (LAC Video Surveillance)

- | | |
|---|---|
| <input checked="" type="checkbox"/> Approval/Signoff (initials) | <input type="checkbox"/> Information |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Do Not Release - Call When Signed- |
| <input type="checkbox"/> Hand Carry or Call for Pick Up | <input type="checkbox"/> Release When Signed |

COMMENTS:

GR # 500 B14259



8457 Specialty Circle
Sacramento, CA 95828

tel. (916) 383-7900
fax (916) 383-4774

February 11, 2016

Mr. Jon Giltner
Project Manager
CDCR
9828 Old Placerville Rd
Rancho Cordova, CA

RECEIVED FEB 11 2016

Subject: Completion Certification for the LAC Video Surveillance
Form 20 4500308011
Verizon Quote 1-146WLOA

Jon

Irish Communications is certifying that the LAC Video Surveillance has been completed

Attached are the test results, as built, and pictures.

I am requesting that no later than Friday February 26, 2016 any discrepancies be brought to my attention or otherwise the submission will be considered accepted. I am also requesting that I receive the full site completion no later than March 4, 2016

Sincerely

Frank Diano
Project Manager

C: w/o attachments
Corinne Deacon, CDCR

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

EDMUND G. BROWN JR., GOVERNOR

FACILITY PLANNING, CONSTRUCTION AND MANAGEMENT
9838 Old Placerville Road, Ste. B
Sacramento, CA 95827



November 4, 2015

Mr. Patrick Gould
MCI Network Services, Inc.
On behalf of MCI Communications Services, Inc. ...
dba Verizon Business Services
11080 White Rock Road
Rancho Cordova, CA 95670

Dear Mr. Gould:

**NOTICE TO PROCEED – CALIFORNIA STATE PRISON, LOS ANGELES COUNTY –
VIDEO SURVEILLANCE**

In accordance with Contract #5-06-58-22, this letter is your Notice to Proceed for the Video Surveillance project at California State Prison, Los Angeles County (LAC).

Attached is Form 20 #LAC VS D65, STD 65: #4500308011, and SOW#1-146WLOA to complete this project. Per mutual agreement on November 4, 2015, between Dan Scanlan on behalf of MCI Communications Services, Inc. dba Verizon Business Services, Inc., and Jon Giltner, Infrastructure Estimating & Construction Support, the Certification Date for this project is prior to or no later than November 4, 2016. Upon completion of this work, you must certify that the project is complete and request the California Department of Corrections and Rehabilitation's (CDCR) acknowledgement of completion. Your invoice must be submitted within 90 days of CDCR's issuance of the Acknowledgement of Full Site Completion.

If you have questions regarding this project, please contact Jon Giltner, Project Manager, at (916) 255-0539.

Sincerely,

A handwritten signature in black ink that reads "Craig Martinez". The signature is fluid and cursive, with a large loop at the end of the last name.

CRAIG MARTINEZ
Staff Services Manager I
IT Procurement Unit
Contracts and Procurement Section
Capital Planning and Project Services Branch

Attachment

cc: Jon Giltner, Infrastructure Estimating & Construction Support
Ross Shapiro, Verizon
Christine Porter, Verizon
Daniel Scanlan, Verizon

STATE OF CALIFORNIA TELECOMMUNICATIONS SERVICE REQUEST (Attach additional information as needed)				1. AGENCY REQUEST NO. LAC VS D65 2. DATE 11/04/2015
3. REQUEST IS FOR:	<input checked="" type="checkbox"/> SERVICE	<input checked="" type="checkbox"/> EQUIPMENT (needs a Form 65)	<input type="checkbox"/> OTHER	
4. AGENCY INFORMATION	DEPARTMENT California Dept. of Corrections and Rehabilitation	DIVISION, BUREAU, ETC. LAC	PERSON TO CONTACT FOR ACCESS Jon Giltner	
	E-MAIL ADDRESS Jon.giltner@cdcr.ca.gov	TELEPHONE NO. (916) 255-0539	FAX NO. (916) 255-6050	
	ADDRESS OF <u>PRESENT</u> SERVICE (Include City, Zip Code, Room #s) California State Prison, Los Angeles County 44750 60 th Street West Lancaster, CA 93536		ADDRESS OF <u>REQUESTED</u> SERVICE (Include City, Zip Code, Room #s) California State Prison, Los Angeles County 44750 60 th Street West Lancaster, CA 93536	
	BILLING ADDRESS (Include City, Zip Code, Room #s) California Department of Corrections & Rehabilitation Attn: Craig Martinez, Contracts and Procurement Section 9838 Old Placerville Rd, Suite B, Sacramento, CA 95827		C60 Account Number Billing Code: 16879 FY/Fund 15G001000 Cost Center: 0656200000 GL: 9032944700 Functional Area: 1010008	
	TELEPHONE NUMBER(S) INVOLVED	UTILITY PRIMARY BILL NO.	REQUESTED DATE OF SERVICE	GENERAL SERVICES AGENCY CODE
5. ELIGIBILITY	<input checked="" type="checkbox"/> STATE AGENCY		Must complete <u>Authorization to Order</u> (ATO) to obtain eligibility prior to first Form 20 request	
	<input type="checkbox"/> NON-PROFIT & TAX-SUPPORTED <input type="checkbox"/> FEDERAL		<input type="checkbox"/> LOCAL GOVERNMENT (i.e. city, county) <input type="checkbox"/> JOINT POWERS AGREEMENT	
6. CHECK TYPE OF REQUEST (Describe in Section 7)	<input type="checkbox"/> BUSINESS SERVICE <input type="checkbox"/> SINGLE LINE <input type="checkbox"/> KEY SYSTEM <input type="checkbox"/> PBX <input type="checkbox"/> TRUNKS		<input type="checkbox"/> CENTREX SERVICE <input type="checkbox"/> SINGLE LINE (s) <input type="checkbox"/> ISDN (Integrated Services Digital Network) <input type="checkbox"/> ACD (Automatic Call Distribution)	
	<input type="checkbox"/> DATA SERVICE		<input type="checkbox"/> CALNET CALLING CARD (Include TD-907)	<input type="checkbox"/> LONG DISTANCE SERVICE
	<input type="checkbox"/> CELLULAR TELEPHONE		<input checked="" type="checkbox"/> OTHER (Please Describe)	
	<input type="checkbox"/> DGS-TD MASTER CONSULTING CONTRACT		CALNET 2 – MSA 3– Contract#: 5-06-58-22	
7. ADDITIONAL INFORMATION	BRIEFLY DESCRIBE <u>PRESENT</u> SERVICE (Attach page as needed)		BRIEFLY DESCRIBE SERVICE <u>REQUESTED</u> (Attach page as needed.) LAC VS D65 Quote #1-146WLOA, dated 11/04/2015 Note: Please remit invoice to: Craig Martinez, Contracts and Procurement Section. For prompt payment, please ensure PO number 4500308011 is stated in the name of account field on the invoice.	
	SERVING UTILITY Verizon			
	TOTAL COST OF REQUESTED SERVICE RECURRING NON-RECURRING \$ 75,112.32		METHOD OF ACQUISITION <input checked="" type="checkbox"/> PURCHASE <input type="checkbox"/> INSTALLMENT PURCHASE <input type="checkbox"/> RENT <input type="checkbox"/> OTHER (Describe)	
8. CATR/ATR INFORMATION	NAME (PLEASE PRINT) Craig Martinez		E-MAIL ADDRESS Craig.Martinez@cdcr.ca.gov	
	ADDRESS 9838 Old Placerville Rd.	CITY Sacramento	STATE CA	ZIP CODE 95827
	TITLE SSM I, IT Procurement Unit, Contracts and Procurement Section		TELEPHONE NO. CALNET: PUBLIC: (916) 255-2235	
	SIGNATURE <i>Craig Martinez</i> *This request complies with SAM Chapter 4500, and state telecommunications policies.*		DATE NOV 04 2015	

STATE OF CALIFORNIA - GENERAL SERVICES PROCUREMENT DIVISION

PURCHASING AUTHORITY PURCHASE ORDER

STD. 65 (REV. 7/2003)

CONTRACT REGISTRATION NUMBER EP 1454492	AGENCY ORDER NUMBER 4500308011	AMENDMENT NO. 00000000
SUPPLIER: The numbers identified above MUST be shown on Invoice & Packing Slip.	DATE 11/04/2015	PAGE OF PAGE 1 1

SHIP TO California State Prison, LA County 44750 60th Street West Lancaster, CA 93536 Attn: Jon Giltner, 916-255-0539	BILL TO CA DEPT OF CORR & REHAB Attn: Accounts Payable 9838 Old Placerville Road, Suite B Sacramento, CA 95827	AGENCY BILLING CODE 16879
		PURCHASING AUTHORITY NUMBER 9G-0615-DCR-HQ1
		LEVERAGED PROCUREMENT AGREEMENT NO. 5-06-58-22

TO
SUPPLIER
ADDRESS
(Type or
Print
Legibly)

**VERIZON BUSINESS NETWORK SERVICES
ON BEHALF OF MCI COMM SRVS
11080 WHITE ROCK RD STE 200
RANCHO CORDOVA, CA 95670-6351**

INFORMATION TECHNOLOGY PROJECT IDENTIFICATION NUMBER	
AGENCY OR BUYER INFORMATION CDJR	AGENCY TRACKING/REQUISITION NUMBER (Optional) 10346570
CONTACT NAME Colleen Rice	CONTACT E-MAIL ADDRESS colleen.rice@cdjr.ca.gov
CONTACT PHONE NUMBER 916-255-3012	CONTACT FAX NUMBER 916-255-2626

SUPPLIER CONTACT NAME Patrick Gould	SUPPLIER PHONE NUMBER 916-779-1271	SUPPLIER FAX NUMBER 916-779-1350	SUPPLIER E-MAIL ADDRESS douglas.vance@verizon.com
---	--	--	---

PAYMENT TERMS Net 45	CERTIFICATION NUMBER	<input type="checkbox"/> Certified Small Business	<input type="checkbox"/> Certified Microbusiness	EXPIRATION DATE	<input type="checkbox"/> Certified DVBE	EXPIRATION DATE
--------------------------------	----------------------	---	--	-----------------	---	-----------------

REQUIRED DELIVERY DATE Nov 18, 2015	SHIPPING INSTRUCTIONS	<input checked="" type="checkbox"/> F.O.B. Destination FRT. PPD	<input type="checkbox"/> F.O.B. Destination FRT. PPD/ADD Freight not to exceed cost stated on P.O.	<input type="checkbox"/> F.O.B. ORIGIN	CITY OF ORIGIN	STATE	ZIP CODE
---	-----------------------	---	--	--	----------------	-------	----------

ITEM NUMBER	QUANTITY	UNIT	COMMODITY CODE or PRODUCT CODE or SERVICES ID NUMBER	RECYCLED PRODUCT	PRODUCT OR SERVICES DESCRIPTION	UNIT PRICE	EXTENSION TOTAL
					LAC VS D65, 1-146WLOA		
1	1	EA			6.3.8.1.2 CPDS0000 Premise Dist. Sys.	40,471.2	40,471.20
2	1	EA			6.3.8.1.2 CPDS0000 Premise Dist. Sys.	2,356.00	2,356.00
3	1	EA			6.3.8.1.2 ICHC0006 Station Wiring Svcs.	25,994.15	25,994.15
4	1	EA			6.3.8.1.2 ICHC0006 Station Wiring Svcs.	5,577.00	5,577.00

A-1 ☐ General Provisions are incorporated herein by reference to:☐ Form GSPD - 401 Non-IT Commodities (revision date _____) OR ☐ Form GSPD - 401 IT (revision date _____)☐ ATTACHED OR ☐ Published at website: www.dgs.ca.gov/odTAXABLE SUBTOTAL **7,933.00**

TERMS

AND
CONDITIONSA-2 ☒ This order is issued under a Department of General Services (DGS) Leveraged Procurement Agreement (LPA). Terms and Conditions set forth in that agreement (LPA number referenced in the block titled Leveraged Procurement Agreement No.) are incorporated herein by reference as if set forth in full text.B ☐ Agency Special Provisions are attached and titled _____C ☐ Any other attachments, such as specifications, Statement of Work, or Information Technology Model Language Modules, are identified in the product or services description area or on continuation pages.

* NOTE: If there are variable charges for installation, shipping or freight, or other Non-Taxable Services, detail per line item and enter total here.

TAX RATE **9** SALES TAX **713.97*** INSTALLATION **0.00*** SHIPPING/FREIGHT **0.00*** OTHER NON-TAXABLE **66,465.35**

PROCUREMENT METHOD

☐ COMPETITIVE: Solicitation Number (if applicable) _____☒ LEVERAGED ☐ DVBE / SMALL BUSINESS (GC 14836.5(a)) ☐ NON-COMPETITIVELY BID ☐ EXEMPTPROGRAM / CATEGORY (Code and Title)
INFORMATION TECHFUND TITLE
15 GEN FUND 001VERIFIED NO STATE SURPLUS AVAILABLE ☒ YES ☐ NOPAID BY CAL-CARD ☐ YES ☒ NOGRAND TOTAL **75,112.32**ITEM
5225-2015-0001-001CHAPTER
10/15STATUTE
2015FISCAL YEAR
2015/2016OBJECT OF EXPENDITURE (CODE AND TITLE)
447.00 DATA LINES☒ O.E.
☐ EQ.

CERTIFICATION AND APPROVAL OF EXECUTIVE OFFICER

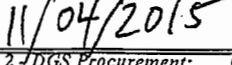
I HEREBY CERTIFY, on personal knowledge, that this order for purchasing the items specified above is issued in accordance with the procedure prescribed by law governing the purchase of such items for the State of California; and that all such legal requirements have been fully complied with.

AUTHORIZING NAME (Print or Type)

Craig Martinez

TITLE
BIS

AUTHORIZING SIGNATURE

UNENCUMBERED REMAINDER AFTER POSTING THIS ORDER TO ALLOTMENT EXPENDITURE LEDGER

ADJUSTMENT INCREASING ENCUMBRANCES

ADJUSTMENT DECREASING ENCUMBRANCES

CERTIFIED CORRECT (SIGNATURE)

Routing Code: 5CPE

**STATEMENT OF WORK (SOW) NO. 1-146WLOA
TO VERIZON CONTRACT WITH STATE OF CALIFORNIA
Structured Cabling Services**

Customer: California Department of Corrections and Rehabilitation – California State Prison – Los Angeles County (LAC)	Quote: 1-146WLOA
Contract ID: CALNET 2 (5-06-58-22)	Date: 11/4/2015

Verizon Business Network Services Inc., on behalf of
Verizon Select Services Inc.
One Verizon Way
Basking Ridge, N.J. 07920

By: Anthony Recine
Name: Anthony Recine
Title: Vice President
Date: 11/11/2015

CUSTOMER'S LEGAL NAME:
California Department of Corrections and Rehabilitation
Address: 9838 Old Placerville Road
Sacramento, CA 95827

By: _____
Name: _____
Title: _____
Date: _____

This Statement of Work ("SOW") is a part of the Verizon contract with the State of California, Contract ID number as shown above ("Agreement"). The parties to this SOW are **Verizon, as listed in CalNet 2** ("Verizon"), and the **California Department of Corrections and Rehabilitation** ("Customer"). The terms of this SOW will not alter any of the terms and conditions of the CALNET 2 contract, as awarded.

Description of Project**1. Services.**

This SOW defines the structured cabling services and deliverables that Verizon will provide to Customer under the terms of the Agreement ("Structured Cabling Services") and forms the basis for the pricing in the quote referenced above (the "Quote"). Verizon will perform the Structured Cabling Services at the locations listed in the Quote. Certain Structured Cabling Services detail may be provided for Customer's reference in additional documentation separate from this Agreement.

Scope of Work - CDCR – California State Prison – Los Angeles County (LAC)
44750 60th Street, Lancaster, CA 93536

Verizon proposes the following structured cabling installation services for Customer. Verizon has based the Quote on the cabling solution and technical specifications* described below. Structured Cabling Services will include:

Site: – CDCR – CALIFORNIA STATE PRISON (LAC) – "LAC Video Surveillance"

PM: Jon Giltner

2. Scope of Work.**Scope of work: PDS: CPDS0000**

1. Provide and install approximately 230 feet of 1" EMT and associated hardware for pathways.
2. Provide and install three (3) NEMA 1 pull boxes.
3. Install eight (8) 2-1/2" cores and sleeves.
4. Install two (2) 1-1/2" cores and sleeves.
5. Provide and install two (2) hinged wall brackets.
6. Provide and install two (2) wire managers.
7. Provide as built drawings in CAD format.

CALNET 2 Section 6.3.8.1.2 – Premise Distribution System (PDS)

Feature Identifier: CPDS0000

Unit of Measure – Per Occurrence as a Non-Recurring Charge (NRC)

Labor	\$ 40,471.20
Material	\$ 2,356.00
Sales Tax	\$ 212.04 (Estimated 9%)
Material Total	\$ 2,568.04

PDS Total \$ 43,039.24

Estimated taxes only, subject to final billing of applicable taxes at the time of invoicing.

If there are any changes in costs to the ICB associated with this SOW, a new ICB and SOW will be submitted.

Routing Code: 5CPE

Scope of work: SWS: ICHC0006

1. Furnish and install sixty-five (65) Category 6 cable to CDCR identified location.
2. Terminate and test sixty-five (65) Category 6 cable.

CALNET 2 Section 6.3.8.1.2 – Station Wiring Services**Feature Identifier: ICHC0006****Unit of Measure – Per Occurrence as a Non-Recurring Charge (NRC)****(NRC of \$ 485.71 X 65 units = \$ 31,571.15)**

Labor	\$ 25,994.15
Material	\$ 5,577.00
Sales Tax	\$ 501.93 (Estimated 9%)
Material Total	\$ 6,078.93

SWS Total	\$ 32,073.08
------------------	---------------------

Project Total

Labor.....	\$ 66,465.35
Material.....	\$ 7,933.00
Tax.....	\$ 713.97 (Estimated 9%)
Total.....	\$ 75,112.32

Estimated taxes only, subject to final billing of applicable taxes at the time of invoicing.

The "System", as used within this SOW, means the structured cabling solution provided under this SOW, e.g. CPE, including without limitation, cables and other related materials.

3. Deliverables and Documentation (if any) to be Produced by Verizon and Verizon Obligations.

Verizon will:

3.1. Provide installation which complies with standards and codes, including as applicable:

- NFPA 70 – National Electric Code
- ANSI/TIA-568-C.0 – Generic Telecommunications Cabling for Customer Premises
- ANSI/TIA-568-C.1 – Commercial Building Telecommunications Cabling Standard
- TIA-569-B – Commercial Building Standard for Telecommunications Pathways and Spaces
- ANSI/TIA-606-A – Administration Standard for Commercial Telecommunications Infrastructure
- ANSI-J-STD-607-A – Commercial Building Grounding (Earthing) and Bonding Requirements for Telecommunications
- TIA-526-7 – Measurement of Optical Power Loss of Installed Single-Mode Fiber Cable Plant
- TIA-526-14-A – Optical Power Loss Measurements of Installed Multimode Fiber Cable Plant
- ANSI/TIA-758-A – Customer-Owned Outside Plant Telecommunications Infrastructure Standard
- ANSI/TIA-942 – Telecommunications Infrastructure Standard for Data Centers

- 3.2. Provide a single point of contact ("SPOC") who will be responsible and authorized to (i) make all decisions and give all approvals which Customer may need from Verizon, and (ii) provide Customer's personnel on a timely basis with all information, data, and support reasonably required for its performance under this SOW, including but not limited to making available appropriate personnel to work with the Customer as the Customer may reasonably request. (iii) manage and participate in the kickoff discussion, schedule coordination, and acceptance testing.
- 3.3. Contact the Customer prior to install in order to confirm site readiness;
- 3.4. Apply Customer provided asset tags, as required.
- 3.5. Provide the labor to complete the project in a good and workmanlike manner ;
- 3.6. Provide progress updates to review actual progress with the Customer SPOC;
- 3.7. Coordinate access to the building, daily parking, access to materials, and material storage with the Customer SPOC;
- 3.8. Additional Verizon Deliverables and Documentation:
 - Verify that the Customer's equipment room meets the environmental recommendations of the System manufacturer.
 - Verify that the Customer's systems power and ground meets the recommendations of the System manufacturer.
 - Conduct Customer Acceptance Testing as set forth herein.
 - A CALNET 2 Excel report shall accompany each invoice for payment that specifies type of work performed by Verizon representative(s) and number of units expended.
 - A Certification Package to include:
 - Letter of Certification acknowledging that the work is completed.
 - As-Built Drawings (add new construction layer to existing drawings on the most recent .dwg provided from the CDCR.
 - Accurate Red Line Drawings
 - Test results
 - CDs (separate) of the As-Built drawings (.pdf and .dwg).
 - After receipt of Letter of Certification, CDCR PM will review the deliverables.
 - If correct and sufficient, the PM will write an Acknowledgement of Full Site Letter, asking to be invoiced for 100% of the job.
 - If insufficient, the CDCR PM shall notify Verizon in writing, by a Letter of Rejection of the Certification package. When the package is complete, the CDCR PM will send Verizon an Acknowledgement of Full Site Letter, asking to be invoiced for 100% of the work.

4. Documentation to be Produced by Customer and Customer Obligations.

Customer must:

- 4.1 Designate a SPOC who will be responsible and authorized to (i) make all decisions and give all approvals which Verizon may need from Customer, and (ii) provide Verizon's personnel on a timely basis with all information, data, access and support reasonably required for its performance under this SOW, including but not limited to making available appropriate personnel to work with Verizon as Verizon may reasonably request.
- 4.2 Provide a soft copy of all related plans clearly depicting installation locations and features that is sufficiently recent, accurate, and detailed to allow Verizon to install the System;
- 4.3 Provide the appropriate security clearances, access badges, and access to buildings and any other structures related to the Project ("Locations") and Training as defined below, if required.. It is the Customer's sole responsibility to provide the necessary means of access to Locations;
- 4.4 Provide prompt physical and electronic access to Locations where Verizon will install the System. NOTE: Wait time in excess of 60 minutes may result in a time and material charge. Verizon will coordinate Project activities in advance in order to allow for timely access and avoid delay.

- 4.5 Remove or move any obstacles required to implement this Project at a Location in a timely manner.
- 4.6 Dispose of all decommissioned equipment, unless provided otherwise in the Quote.
- 4.7 Additional Responsibilities:
- Existing conduit must be usable and have pull lines in place.
 - Ceiling areas will be left open until all work is complete.
 - Customer will provide conduit stubs in walls to a level of one foot above ceiling.
 - Customer will be responsible for identifying all areas containing asbestos and / or other hazardous materials; Customer will also be responsible for the removal and / or abatement of all hazardous materials.
 - Customer will provide backboards and clear space for working areas.
 - Customer will provide acceptable ground within twenty-five feet of all terminals.
 - Customer will be responsible for all required cores and sleeves.
 - All existing and/or customer-provided conduit will be installed per industry standards, will be sized to accommodate proposed cable placements and will have pull lines in place.

5. Acceptance Testing Criteria for the Service or Deliverable(s).

Customer will have thirty business days after the In-Service Date, as defined below, to test the System (the "Test Period"). Customer may indicate their approval of the System by its signature on the Verizon-provided acceptance document or other mutually agreed upon means. Customer will document any issues with the System in writing to Verizon and provide those issues to Verizon within the Test Period. Upon receipt of the issues list, Verizon will have ten business days to respond and remediate any issues, as required.

6. Term of SOW.

This SOW is effective upon full execution by the parties and will remain in effect during the delivery of the Structured Cabling Services. This SOW will terminate upon final delivery and acceptance of the Structured Cabling Services.

Exhibit 90

FACILITY PLANNING, CONSTRUCTION AND MANAGEMENT9838 Old Placerville Road, Suite B
Sacramento, CA 95827

SEP 13 2016

Mr. Patrick Gould
Verizon Business
11080 White Rock Road, Suite 100G
Rancho Cordova, CA 95670

Dear Mr. Gould:

ACKNOWLEDGEMENT OF FULL SITE COMPLETION – CALIFORNIA STATE PRISON, LOS ANGELES COUNTY – LAC VS D4 C1

In accordance with CALNET 2 - MSA 3 Contract #5-06-58-22, this letter serves as our Acceptance and Acknowledgement of Full Site Completion for the purchase of material and labor associated with the installation of 4 data drops for the Video Surveillance Project at the California State Prison, Los Angeles County, Form 65:#4500308732, SOW: #1-1497VB3.

This acknowledgement is based upon all documentation received, including your letter of certification and completed As-Built drawings delivered in print and on CD in both .pdf and .dwg formats. This is our acknowledgement that all documents have been received and reconciled, all work has been completed, and all deliverables have been met.

The contractually required warranty period begins the day of acceptance and lasts for one year. Your invoice must be submitted within 90 days from the date of this acknowledgement.

If you have any questions regarding this project, please contact Deric Johnson, Project Manager, at (916) 255-3042.

Sincerely,

A handwritten signature in black ink that reads "Craig Martinez". The signature is written in a cursive, flowing style.

CRAIG MARTINEZ,
SSM I, IT Procurement Unit
Contracts and Procurement
Capital Planning and Project Services Branch

cc: Deric Johnson, Infrastructure Estimating & Construction Support
Ross Shapiro, Verizon
Susan Young, Verizon
Daniel Scanlan, Verizon

(Charlene Grimes, if an IWL project)

Patrick Gould
Page 2

bcc: Craig Martinez
Chron

JOHNSON/dj

T:PROJECTS/Video Surveillance Project/LAC/LAC VS D4 C1 Full Site



California Department of Corrections and Rehabilitation

ROUTE SLIP

(Please Type)

Date: Sept 9, 2016

	(Initials/Date)		(Initials/Date)
1. <u>DERIC JOHNSON</u>	<i>DM</i> 9/9/16	6. _____	_____
2. <u>PAUL CALONDER</u>	<i>PC</i> 9/9/16	7. _____	_____
3. <u>CORINNE DEACON</u>	<i>CD</i> 9/12/16	8. _____	_____
4. <u>CRAIG MARTINEZ</u>	<i>CM</i> SEP 13 2016	9. _____	_____
5. _____	_____	10. _____	_____

LIST OFFICES WHERE REVIEW AND APPROVAL IS NEEDED – INCLUDING THOSE IN CHAIN OF COMMAND AND STAKEHOLDERS

FAMB INFRASTRUCTURE ESTIMATING & CONSTRUCTION SUPPORT

FROM:

SUBJECT: Acknowledgement of Full Site Completion (LAC VS D4 C1 FULL SITE)

☒ Approval/Signoff (initials)☐ Information☐ Signature☐ Do Not Release – Call When Signed-☐ Hand Carry or Call for Pick Up☐ Release When Signed

COMMENTS:

GR # 5001442507



8457 Specialty Circle
Sacramento, CA 95828

tel. (916) 383-7900
fax (916) 383-4774

July 5, 2016

Mr. Jon Giltner
Project Manager
CDCR
9828 Old Placerville Rd
Rancho Cordova, CA

RECEIVED JUL 05 2016

Subject: Completion Certification for LAC VS D4 C1
Form 20 4500308732
Verizon Quote 1-1497VB3

Jon

Irish Communications is certifying that the LAC VS D4 C1 has been completed

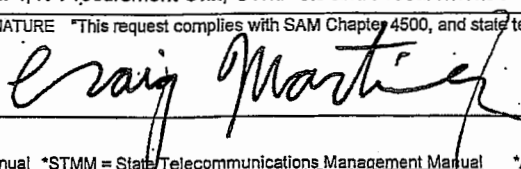
There are no test results, as built, pictures and files. There were included in the previous submission Form 65 4500308011 LAC Video Surveillance

I am requesting that no later than Friday July 22, 2016 any discrepancies be brought to my attention or otherwise the submission will be considered accepted. I am also requesting that I received the full site completions no later than July 29, 2016

Sincerely

Frank Diano
Project Manager

C: w/o attachments
Corinne Deacon, CDCR

STATE OF CALIFORNIA TELECOMMUNICATIONS SERVICE REQUEST (Attach additional information as needed)				1. AGENCY REQUEST NO. LAC VS D4 C1 2. DATE 11/05/2015
3. REQUEST IS FOR:	<input checked="" type="checkbox"/> SERVICE		<input checked="" type="checkbox"/> EQUIPMENT (needs a Form 65)	<input type="checkbox"/> OTHER
4. AGENCY INFORMATION	DEPARTMENT California Dept. of Corrections and Rehabilitation		DIVISION, BUREAU, ETC. LAC	
	PERSON TO CONTACT FOR ACCESS Deric Johnson			
	E-MAIL ADDRESS Deric.Johnson@cdcr.ca.gov		TELEPHONE NO. (916) 255-3042	
	FAX NO. (916) 255-6050			
	ADDRESS OF PRESENT SERVICE (Include City, Zip Code, Room #s) California State Prison, Los Angeles County 44750 60 th Street West Lancaster, CA 93536		ADDRESS OF REQUESTED SERVICE (Include City, Zip Code, Room #s) California State Prison, Los Angeles County 44750 60 th Street West Lancaster, CA 93536	
	BILLING ADDRESS (Include City, Zip Code, Room #s) California Department of Corrections & Rehabilitation Attn: Craig Martinez, Contracts and Procurement Section 9838 Old Placerville Rd, Suite B, Sacramento, CA 95827		C&D Account Number Billing Code: 16879 FY/Fund 15G001000 Cost Center: 0656200000 GL: 9032944700 Functional Area: 1010008	
TELEPHONE NUMBER(S) INVOLVED		UTILITY PRIMARY BILL NO.	REQUESTED DATE OF SERVICE	GENERAL SERVICES AGENCY CODE
5. ELIGIBILITY	<input checked="" type="checkbox"/> STATE AGENCY		Must complete <u>Authorization to Order (ATO)</u> to obtain eligibility prior to first Form 20 request	
	<input type="checkbox"/> NON-PROFIT & TAX-SUPPORTED		<input type="checkbox"/> LOCAL GOVERNMENT (i.e. city, county)	
	<input type="checkbox"/> FEDERAL		<input type="checkbox"/> JOINT POWERS AGREEMENT	
6. CHECK TYPE OF REQUEST (Describe in Section 7)	<input checked="" type="checkbox"/> BUSINESS SERVICE <input type="checkbox"/> SINGLE LINE <input type="checkbox"/> KEY SYSTEM <input type="checkbox"/> PBX <input type="checkbox"/> TRUNKS		<input checked="" type="checkbox"/> GENTREX-SERVICE <input type="checkbox"/> SINGLE LINE (s) <input type="checkbox"/> ISDN (Integrated Services Digital Network) <input type="checkbox"/> ACD (Automatic Call Distribution)	
	<input type="checkbox"/> DATA SERVICE		<input type="checkbox"/> CALNET CALLING CARD (include TD-907)	
	<input type="checkbox"/> CELLULAR TELEPHONE		<input type="checkbox"/> LONG DISTANCE SERVICE	
	<input type="checkbox"/> DGS-TD MASTER CONSULTING CONTRACT		<input type="checkbox"/> LOCAL TOLL SERVICE	
			<input checked="" type="checkbox"/> OTHER (Please Describe) CALNET 2 – MSA 3– Contract#: 5-06-58-22	
7. ADDITIONAL INFORMATION	BRIEFLY DESCRIBE PRESENT SERVICE (Attach page as needed)		BRIEFLY DESCRIBE SERVICE REQUESTED (Attach page as needed.) LAC VS D4 C1 Quote #1-1497VB3, dated 11/09/2015 Note: Please remit invoice to: Craig Martinez, Contracts and Procurement Section. For prompt payment, please ensure PO number 4500308732 is stated in the name of account field on the invoice.	
	SERVING UTILITY Verizon			
	TOTAL COST OF REQUESTED SERVICE		METHOD OF ACQUISITION	
	RECURRING NON-RECURRING \$2,233.92		<input checked="" type="checkbox"/> PURCHASE <input type="checkbox"/> INSTALLMENT PURCHASE <input type="checkbox"/> RENT <input type="checkbox"/> OTHER (Describe)	
8. CATR/ATR INFORMATION	NAME (PLEASE PRINT) Craig Martinez		E-MAIL ADDRESS Craig.Martinez@cdcr.ca.gov	
	ADDRESS 9838 Old Placerville Rd.		CITY Sacramento	STATE CA
	ZIP CODE 95827		TELEPHONE NO. CALNET: PUBLIC: (916) 255-2235	
	TITLE SSM I, IT Procurement Unit, Contracts and Procurement Section		DATE NOV 10 2015	
SIGNATURE "This request complies with SAM Chapter 4500, and state telecommunications policies." 				

STATE OF CALIFORNIA - GENERAL SERVICES PROCUREMENT DIVISION

PURCHASING AUTHORITY PURCHASE ORDER

STD. 65 (REV. 7/2003)

CONTRACT REGISTRATION NUMBER	AGENCY ORDER NUMBER 4500308732	AMENDMENT NO. 00000000
SUPPLIER: The numbers identified above MUST be shown on Invoice & Packing Slip.	DATE 11/10/2015	PAGE OF PAGE 1 1

SHIP TO	California State Prison, LA County 44750 60th Street West Lancaster, CA 93536	BILL TO CA DEPT OF CORR & REHAB Attn: Accounts Payable 9838 Old Placerville Road, Suite B Sacramento, CA 95827	AGENCY BILLING CODE 16879
			PURCHASING AUTHORITY NUMBER 9G-0615-DCR-HQ1
	Attn: Derj Johnson, 916-255-3042		LEVERAGED PROCUREMENT AGREEMENT NO. 5-06-58-22

TO SUPPLIER ADDRESS <i>(Type or Print Legibly)</i>	VERIZON BUSINESS NETWORK SERVICES ON BEHALF OF MCI COMM SRVS 11080 WHITE ROCK RD STE 200 RANCHO CORDOVA, CA 95670-6351	
	INFORMATION TECHNOLOGY PROJECT IDENTIFICATION NUMBER	
	AGENCY OR BUYER INFORMATION	AGENCY TRACKING/REQUISITION NUMBER (Optional) 10347636
	AGENCY NAME CDCR	CONTACT NAME Colleen Rice
	CONTACT E-MAIL ADDRESS colleen.rice@cdcr.ca.gov	
CONTACT PHONE NUMBER 916-255-3012		CONTACT FAX NUMBER 916-255-2626

SUPPLIER CONTACT NAME Patrick Gould		SUPPLIER PHONE NUMBER 916-779-1271	SUPPLIER FAX NUMBER 916-779-1350	SUPPLIER E-MAIL ADDRESS douglas.vance@verizon.com	
PAYMENT TERMS Net 45	CERTIFICATION NUMBER	<input type="checkbox"/> Certified Small Business	<input type="checkbox"/> Certified Microbusiness	EXPIRATION DATE	<input type="checkbox"/> Certified DVB/E

[illegible]

TERMS AND CONDITIONS	A-1 <input type="checkbox"/> General Provisions are incorporated herein by reference to: <input type="checkbox"/> Form GSPD - 401Non-IT Commodities (revision date _____) OR <input type="checkbox"/> Form GSPD - 401IT (revision date _____) <input type="checkbox"/> ATTACHED OR <input type="checkbox"/> Published at website: www.dgs.ca.gov/bid	TAXABLE SUBTOTAL	343.20
	A-2 <input checked="" type="checkbox"/> This order is issued under a Department of General Services (DGS) Leveraged Procurement Agreement (LPA). Terms and Conditions set forth in that agreement (LPA number referenced in the block titled Leveraged Procurement Agreement No.) are incorporated herein by reference as if set forth in full text.	TAX RATE 9'	SALES TAX 30.89

B <input type="checkbox"/> Agency Special Provisions are attached and titled _____		NOTE: If there are variable charges for Installation, Shipping or Freight, or Other Non-Taxable Services, detail per line item and enter total here.	* INSTALLATION	0.00
C <input type="checkbox"/> Any other attachments, such as specifications, Statement of Work, or Information Technology Model Language Modules, are identified in the product or services description area or on continuation pages.			SHIPPING/ FREIGHT	0.00
PROCUREMENT METHOD <input type="checkbox"/> COMPETITIVE: Solicitation Number (if applicable) _____			* OTHER NON-TAXABLE	1,859.83
<input checked="" type="checkbox"/> LEVERAGED	<input type="checkbox"/> DBBE / SMALL BUSINESS [GC 14838.5(a)]	<input type="checkbox"/> NON-COMPETITIVELY BID	<input type="checkbox"/> EXEMPT	

PROGRAM / CATEGORY (Code and Title) INFORMATION TECH		FUND TITLE 15 GEN FUND 001		VERIFIED NO STATE SURPLUS AVAILABLE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		PAID BY CAL-CARD <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		GRAND TOTAL	2,233.92
ITEM		CHAPTER	STATUTE	FISCAL YEAR	OBJECT OF EXPENDITURE (CODE AND TITLE)			<input checked="" type="checkbox"/> O.E.	
5225-2015-0001-001		10/15	2015	2015/2016	447.00 DATA LINES			<input type="checkbox"/> EQ.	

CERTIFICATION AND APPROVAL OF EXECUTIVE OFFICER		UNENCUMBERED REMAINDER AFTER POSTING THIS ORDER TO ALLOTMENT EXPENDITURE LEDGER	
I HEREBY CERTIFY, on personal knowledge, that this order for purchasing the items specified above is issued in accordance with the procedure prescribed by law governing the purchase of such items for the State of California; and that all such legal requirements have been fully complied with.		ADJUSTMENT INCREASING ENCUMBRANCES	
AUTHORIZING NAME (Print or Type) Craig Martinez	TITLE BIS	ADJUSTMENT DECREASING ENCUMBRANCES	
AUTHORIZING SIGNATURE <i>Craig Martinez</i> 11/10/2015		CERTIFIED CORRECT (SIGNATURE)	

DISTRIBUTION: Copy 1 - Supplier; Copy 2 - DGS Procurement; Copy 3 - Packing Slip; Copies 4-6 - Agency Procurement File

**STATEMENT OF WORK (SOW) NO. 1-1497VB3
TO VERIZON CONTRACT WITH STATE OF CALIFORNIA
Structured Cabling Services**

Customer: California Department of Corrections and Rehabilitation – California State Prison – Los Angeles County (LAC)	Quote: 1-1497VB3
Contract ID: CALNET 2 (5-06-58-22)	Date: 11/9/2015

Verizon Business Network Services Inc., on behalf of
Verizon Select Services Inc.
One Verizon Way
Basking Ridge, N.J. 07920

By: Anthony Recine
Name: Anthony Recine
Title: Vice President
Date: 11/11/2015

CUSTOMER'S LEGAL NAME:

California Department of Corrections and Rehabilitation
Address: 9838 Old Placerville Road
Sacramento, CA 95827

By: _____
Name: _____
Title: _____
Date: _____

This Statement of Work ("SOW") is a part of the Verizon contract with the State of California, Contract ID number as shown above ("Agreement"). The parties to this SOW are **Verizon, as listed in CalNet 2 ("Verizon")**, and the **California Department of Corrections and Rehabilitation ("Customer")**. The terms of this SOW will not alter any of the terms and conditions of the CALNET 2 contract, as awarded.

Description of Project**1. Services.**

This SOW defines the structured cabling services and deliverables that Verizon will provide to Customer under the terms of the Agreement ("Structured Cabling Services") and forms the basis for the pricing in the quote referenced above (the "Quote"). Verizon will perform the Structured Cabling Services at the locations listed in the Quote. Certain Structured Cabling Services detail may be provided for Customer's reference in additional documentation separate from this Agreement.

Scope of Work - CDCR – California State Prison – Los Angeles County (LAC)
44750 60th Street, Lancaster, CA 93536

Verizon proposes the following structured cabling installation services for Customer. Verizon has based the Quote on the cabling solution and technical specifications* described below. Structured Cabling Services will include:

Site: – CDCR – CALIFORNIA STATE PRISON (LAC) – "LAC Video Surveillance Change 1"

PM: Jon Giltner

2. Scope of Work.**Scope of work: SWS: ICHC0006**

1. Furnish and install four (4) Category 6 cable to CDCR identified location.
2. Terminate and test four (4) Category 6 cable.

CALNET 2 Section 6.3.8.1.2 – Station Wiring Services

Feature Identifier: ICHC0006

Unit of Measure – Per Occurrence as a Non-Recurring Charge (NRC)

(NRC of \$ 485.71 X 4 units = \$ 1,942.84)

Labor	\$	1,599.64
Material	\$	343.20
Sales Tax	\$	30.89 (Estimated 9%)
Material Total	\$	374.09

SWS Total \$ 1,973.73

Scope of work: SWS: ICHC0006

1. Provide as built drawings in CAD format.

CALNET 2 Section 6.3.8.1.3 – Station Wiring Services

Feature Identifier: CIOT0000

Unit of Measure – Hourly

(NRC of \$ 86.73 X 3 units = \$ 260.19)

CIOT Total \$ 260.19

Project Total	
Labor.....	\$ 1,859.83
Material.....	\$ 343.20
Tax.....	\$ 30.89 (Estimated 9%)
Total.....	\$ 2,233.92

Estimated taxes only, subject to final billing of applicable taxes at the time of invoicing.

The "System", as used within this SOW, means the structured cabling solution provided under this SOW, e.g. CPE, including without limitation, cables and other related materials.

3. Deliverables and Documentation (if any) to be Produced by Verizon and Verizon Obligations.

Verizon will:

3.1. Provide installation which complies with standards and codes, including as applicable:

- NFPA 70 – National Electric Code
- ANSI/TIA-568-C.0 – Generic Telecommunications Cabling for Customer Premises
- ANSI/TIA-568-C.1 – Commercial Building Telecommunications Cabling Standard
- TIA-569-B – Commercial Building Standard for Telecommunications Pathways and Spaces
- ANSI/TIA-606-A – Administration Standard for Commercial Telecommunications Infrastructure
- ANSI-J-STD-607-A – Commercial Building Grounding (Earthing) and Bonding Requirements for Telecommunications
- TIA-526-7 – Measurement of Optical Power Loss of Installed Single-Mode Fiber Cable Plant
- TIA-526-14-A – Optical Power Loss Measurements of Installed Multimode Fiber Cable Plant
- ANSI/TIA-758-A – Customer-Owned Outside Plant Telecommunications Infrastructure Standard
- ANSI/TIA-942 – Telecommunications Infrastructure Standard for Data Centers

3.2. Provide a single point of contact ("SPOC") who will be responsible and authorized to (i) make all decisions and give all approvals which Customer may need from Verizon, and (ii) provide Customer's personnel on a timely basis with all information, data, and support reasonably required for its performance under this SOW, including but not limited to making available appropriate personnel to work with the Customer as the Customer may reasonably request. (iii) manage and participate in the kickoff discussion, schedule coordination, and acceptance testing.

3.3. Contact the Customer prior to install in order to confirm site readiness;

3.4. Apply Customer provided asset tags, as required.

3.5. Provide the labor to complete the project in a good and workmanlike manner ;

3.6. Provide progress updates to review actual progress with the Customer SPOC;

3.7. Coordinate access to the building, daily parking, access to materials, and material storage with the Customer SPOC;

3.8. Additional Verizon Deliverables and Documentation:

- Verify that the Customer's equipment room meets the environmental recommendations of the System manufacturer.
- Verify that the Customer's systems power and ground meets the recommendations of the System manufacturer.
- Conduct Customer Acceptance Testing as set forth herein.

- A CALNET 2 Excel report shall accompany each invoice for payment that specifies type of work performed by Verizon representative(s) and number of units expended.
- A Certification Package to include:
 - Letter of Certification acknowledging that the work is completed.
 - As-Built Drawings (add new construction layer to existing drawings on the most recent .dwg provided from the CDCR.
 - Accurate Red Line Drawings
 - Test results
 - CDs (separate) of the As-Built drawings (.pdf and .dwg).
 - After receipt of Letter of Certification, CDCR PM will review the deliverables.
 - If correct and sufficient, the PM will write an Acknowledgement of Full Site Letter, asking to be invoiced for 100% of the job.
 - If insufficient, the CDCR PM shall notify Verizon in writing, by a Letter of Rejection of the Certification package. When the package is complete, the CDCR PM will send Verizon an Acknowledgement of Full Site Letter, asking to be invoiced for 100% of the work.

4. Documentation to be Produced by Customer and Customer Obligations.

Customer must:

- 4.1 Designate a SPOC who will be responsible and authorized to (i) make all decisions and give all approvals which Verizon may need from Customer, and (ii) provide Verizon's personnel on a timely basis with all information, data, access and support reasonably required for its performance under this SOW, including but not limited to making available appropriate personnel to work with Verizon as Verizon may reasonably request.
- 4.2 Provide a soft copy of all related plans clearly depicting installation locations and features that is sufficiently recent, accurate, and detailed to allow Verizon to install the System;
- 4.3 Provide the appropriate security clearances, access badges, and access to buildings and any other structures related to the Project ("Locations") and Training as defined below, if required.. It is the Customer's sole responsibility to provide the necessary means of access to Locations;
- 4.4 Provide prompt physical and electronic access to Locations where Verizon will install the System. NOTE: Wait time in excess of 60 minutes may result in a time and material charge. Verizon will coordinate Project activities in advance in order to allow for timely access and avoid delay.
- 4.5 Remove or move any obstacles required to implement this Project at a Location in a timely manner.
- 4.6 Dispose of all decommissioned equipment, unless provided otherwise in the Quote.
- 4.7 Additional Responsibilities:
 - Existing conduit must be usable and have pull lines in place.
 - Ceiling areas will be left open until all work is complete.
 - Customer will provide conduit stubs in walls to a level of one foot above ceiling.
 - Customer will be responsible for identifying all areas containing asbestos and / or other hazardous materials; Customer will also be responsible for the removal and / or abatement of all hazardous materials.
 - Customer will provide backboards and clear space for working areas.
 - Customer will provide acceptable ground within twenty-five feet of all terminals.
 - Customer will be responsible for all required cores and sleeves.
 - All existing and/or customer-provided conduit will be installed per industry standards, will be sized to accommodate proposed cable placements and will have pull lines in place.

5. Acceptance Testing Criteria for the Service or Deliverable(s).

Customer will have thirty business days after the In-Service Date, as defined below, to test the System (the "Test Period"). Customer may indicate their approval of the System by its signature on the Verizon-provided acceptance document or other mutually agreed upon means. Customer will document any issues with the System in writing to Verizon and provide those issues to Verizon within the Test Period. Upon receipt of the issues list, Verizon will have ten business days to respond and remediate any issues, as required.

6. Term of SOW.

This SOW is effective upon full execution by the parties and will remain in effect during the delivery of the Structured Cabling Services. This SOW will terminate upon final delivery and acceptance of the Structured Cabling Services.

Exhibit 91

FACILITY PLANNING, CONSTRUCTION AND MANAGEMENT9838 Old Placerville Road, Suite B
Sacramento, CA 95827

AUG 01 2017

Mr. Ken Burdine
Verizon Business
11080 White Rock Road, Suite 100G
Rancho Cordova, CA 95670

Dear Mr. Burdine:

**ACKNOWLEDGEMENT OF FULL SITE COMPLETION – CALIFORNIA
CORRECTIONAL INSTITUTION – CCI VS L4B FV D7**

In accordance with MiCTA Contract #STPD-SW-MICTA-002, this letter serves as our Acceptance and Acknowledgement of Full Site Completion for the purchase of material and labor associated with the installation of 7 Category 6 cables in Level 4B Family Visiting for IP Video Surveillance Cameras project at California Correctional Institution, Form 65: #4500389029, SOW: #1-1879SXF.

This acknowledgement is based upon all documentation received, including your letter of certification and completed As-Built drawings delivered in print and on CD in both .pdf and .dwg formats. This is our acknowledgement that all documents have been received and reconciled, all work has been completed, and all deliverables have been met.

The contractually required warranty period begins the day of acceptance and lasts for one year. Your invoice must be submitted within 90 days from the date of this acknowledgement.

If you have any questions regarding this project, please contact Ade Akilo, Project Manager, at (916) 255-3111.

Sincerely,

A handwritten signature in black ink that reads "Craig Martinez". The signature is stylized with a large, looping "C" and "M".

CRAIG MARTINEZ,
SSM I, IT Procurement Unit
Contracts and Procurement
Capital Planning and Project Services Branch

cc: Ade Akilo, Infrastructure Estimating & Construction Support
Stephen Matthews, Verizon
Susan Young, Verizon
Daniel Scanlan, Verizon
Courtney Weatherman, Verizon



California Department of Corrections and Rehabilitation

ROUTE SLIP

(Please Type)

Date:

7/28/2017

	(Initials/Date)		(Initials/Date)
1. ADE AKILO	AA/7-28	6.	
2. PAUL CALONDER	PC 7/31	7.	
3. CORINNE DEACON	cd 7/31/17	8.	
4. CRAIG MARTINEZ	CM AUG 01 2017	9.	
5.		10.	

LIST OFFICES WHERE REVIEW AND APPROVAL IS NEEDED - INCLUDING THOSE IN CHAIN OF COMMAND AND STAKEHOLDERS

FAMB INFRASTRUCTURE ESTIMATING & CONSTRUCTION SUPPORT

FROM:**Acknowledgement of Full Site Completion For CCI VS L4B FV D7****SUBJECT:**

- | | |
|---|---|
| <input checked="" type="checkbox"/> Approval/Signoff (initials) | <input type="checkbox"/> Information |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Do Not Release - Call When Signed- |
| <input type="checkbox"/> Hand Carry or Call for Pick Up | <input type="checkbox"/> Release When Signed |

COMMENTS: 4500389029

GR # 5001654342



8457 Specialty Circle
Sacramento, CA 95828

tel. (916) 383-7900
fax (916) 383-4774

July 27, 2017

RECEIVED JUL 28 2017

Mr. Ade Akilo
Project Manager
CDCR
9828 Old Placerville Rd
Rancho Cordova, CA

Subject: Completion Certification for CCI VS L4B FV D7

Form 65 4500389029
Verizon Quote 1-1879SXF

Ade

Irish Communications is certifying that the CCI VS L4B FV D7 has been completed

Attached are the as built, pictures, test results, and files.

I am requesting that no later than August 24, 2017 any discrepancies be brought to my attention or otherwise the submission will be considered accepted. I am also requesting that I received the full site completions no later than August 31, 2017

Sincerely

Frank Diano
Project Manager

C: w/o attachments
Corinne Deacon, CDCR

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

EDMUND G. BROWN JR., GOVERNOR

FACILITY PLANNING, CONSTRUCTION AND MANAGEMENT
9838 Old Placerville Road, Ste. B
Sacramento, CA 95827



June 8, 2017

Mr. Ken Burdine
MCI Network Services, Inc.
On behalf of MCI Communications Services, Inc.
dba Verizon Business Services
11080 White Rock Road
Rancho Cordova, CA 95670

Dear Mr. Burdine:

**NOTICE TO PROCEED – CALIFORNIA CORRECTIONAL INSTITUTION – CCI VS
L4B FV D7**

In accordance with Contract #STPD-SW-MICTA-002, this letter is your Notice to Proceed for the installation of 7 Category 6 cables in Level 4B Family Visiting for IP Video Surveillance Cameras project at California Correctional Institution.

Attached is the STD 65: #4500389029 and SOW#1-1879SXF to complete this project. Per mutual agreement on May 16, 2017, between MCI Communications Services, Inc. dba Verizon Business Services, Inc., and Ade Akilo, Infrastructure Estimating & Construction Support, the Certification Date for this project is prior to or no later than May 16, 2018. Upon completion of this work, you must certify that the project is complete and request the California Department of Corrections and Rehabilitation's (CDCR) acknowledgement of completion. Your invoice must be submitted within 90 days of CDCR's issuance of the Acknowledgement of Full Site Completion.

If you have questions regarding this project, please contact Ade Akilo, Project Manager, at (916) 255-3111.

Sincerely,

A handwritten signature in black ink that reads "Craig Martinez". The signature is fluid and cursive, with the first name "Craig" and last name "Martinez" clearly distinguishable.

CRAIG MARTINEZ
Staff Services Manager I
IT Procurement Unit
Contracts and Procurement Section
Capital Planning and Project Services Branch

Attachment

STATE OF CALIFORNIA - GENERAL SERVICES PROCUREMENT DIVISION

PURCHASING AUTHORITY PURCHASE ORDER

STD. 65 (REV. 7/2003)

CONTRACT REGISTRATION NUMBER	AGENCY ORDER NUMBER 4500389029	AMENDMENT NO. 00000000
SUPPLIER: The numbers identified above MUST be shown on Invoice & Packing Slip.	DATE 06/08/2017	PAGE OF PAGE 1 2

S H I P T O California Correctional Institution 24900 Highway 202 Tehachapi, CA 93561 Ade Akilo, 916-255-3111	B I L L T O Dept. of Corrections and Rehabilitation Attn: Accounts Payable 9838 Old Placerville Road, Suite B Sacramento, CA 95827	AGENCY BILLING CODE 17030 PURCHASING AUTHORITY NUMBER CDCR-5225 LEVERAGED PROCUREMENT AGREEMENT NO. STPD-SW-MICTA-002
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TO
SUPPLIER
ADDRESS(Type or
Print
Legibly)
VERIZON BUSINESS SERVICES
500 TECHNOLOGY DR
WELDON SPRING, MO 63304

INFORMATION TECHNOLOGY PROJECT IDENTIFICATION NUMBER

AGENCY OR BUYER INFORMATION	AGENCY TRACKING/REQUISITION NUMBER (Optional) 10437674
AGENCY NAME CDCR	CONTACT NAME Colleen Rice
CONTACT EMAIL ADDRESS colleen.rice@cdcr.ca.gov	
CONTACT PHONE NUMBER 916-255-3012	CONTACT FAX NUMBER

SUPPLIER CONTACT NAME Ken Burdine	SUPPLIER PHONE NUMBER 916-779-1939	SUPPLIER FAX NUMBER	SUPPLIER E-MAIL ADDRESS KEN.BURDINE@VERIZON.COM
---	--	---------------------	---

PAYMENT TERMS Net 45	CERTIFICATION NUMBER	<input type="checkbox"/> Certified Small Business	<input type="checkbox"/> Certified Microbusiness	EXPIRATION DATE	<input type="checkbox"/> Certified D/VBE	EXPIRATION DATE
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REQUIRED DELIVERY DATE 2017-06-21	SHIPPING INSTRUCTIONS <input checked="" type="checkbox"/> F.O.B. Destination FRT. PPD <input type="checkbox"/> F.O.B. Destination FRT. PPD/ADD Freight not to exceed cost stated on P.O.	<input type="checkbox"/> F.O.B. ORIGIN	CITY OF ORIGIN	STATE	ZIP CODE
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ITEM NUMBER	QUANTITY	UNIT	COMMODITY CODE OR PRODUCT CODE OR SERVICES ID NUMBER	RECYCLED PRODUCT	PRODUCT OR SERVICES DESCRIPTION	UNIT PRICE	EXTENSION TOTAL
1	1,500	FT			#139 4-PAIR CAT6 CABLE	0.48	720.00
2	1,500	FT			#139 4-PAIR CAT6 CABLE	1.62	2,430.00
3	14	EA			#155 CAT6 JACK INSERT	12.48	174.72
4	14	EA			#155 CAT6 JACK INSERT	6.09	85.26
5	7	EA			#130 CAT6 TERMINATION AND TESTING	81.12	567.84
6	24	EA			#169 1" EMT CONDUIT	17.40	417.60
7	24	EA			#169 1" EMT CONDUIT	370.80	8,899.20
8	24	EA			#183 1" COMPRESSION CONNECTOR	0.90	21.60
9	24	EA			#183 1" COMPRESSION CONNECTOR	15.48	371.52
10	15	EA			#184 1" COMPRESSION COUPLER, EMT	0.99	14.85
11	15	EA			#184 1" COMPRESSION COUPLER, EMT	15.48	232.20

A-1 ☐ General Provisions are incorporated herein by reference to:
☐ Form GSPD - 401 Non-IT Commodities (revision date _____) OR ☐ Form GSPD - 401 IT (revision date _____)
☐ ATTACHED OR ☐ Published at website: www.dgs.ca.gov/pd
TAXABLE SUBTOTAL **3,830.51**TERMS
AND
CONDITIONSA-2 ☒ This order is issued under a Department of General Services (DGS) Leveraged Procurement Agreement (LPA). Terms and Conditions set forth in that agreement (LPA number referenced in the block titled Leveraged Procurement Agreement No.) are incorporated herein by reference as if set forth in full text.B ☐ Agency Special Provisions are attached and titled _____C ☐ Any other attachments, such as specifications, Statement of Work, or Information Technology Model Language Modules, are identified in the product or services description area or on continuation pages.TAX RATE **7.25** SALES TAX **277.73**

PROCUREMENT METHOD

☐ COMPETITIVE: Solicitation Number (if applicable) _____☒ LEVERAGED ☐ D/VBE / SMALL BUSINESS [GC 14838.5(a)] ☐ NON-COMPETITIVELY BID ☐ EXEMPT

* NOTE: If there are variable charges for installation, shipping or freight, or other Non-Taxable Services, detail per line item and enter total here.

* INSTALLATION	0.00
* SHIPPING/FREIGHT	0.00
* OTHER NON-TAXABLE	19,214.94

PROGRAM / CATEGORY (Code and Title) FACILITIES OPERATIONS	FUND TITLE 16 GEN FUND 001	VERIFIED NO STATE SURPLUS AVAILABLE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	PAID BY CAL-CARD <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	GRAND TOTAL 23,323.18
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ITEM 5225-2016-0001-001	CHAPTER 23/16	STATUTE 2016	FISCAL YEAR 2016/2017	OBJECT OF EXPENDITURE (CODE AND TITLE) 436.00 SUPPLIES	<input checked="" type="checkbox"/> O.E. <input type="checkbox"/> EQ.
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CERTIFICATION AND APPROVAL OF EXECUTIVE OFFICER


I HEREBY CERTIFY, on personal knowledge, that this order for purchasing the items specified above is issued in accordance with the procedure prescribed by law governing the purchase of such items for the State of California; and that all such legal requirements have been fully complied with.

AUTHORIZING NAME (Print or Type)

Craig Martinez

TITLE
BIS

AUTHORIZING SIGNATURE


06/08/2017

UNENCUMBERED REMAINDER AFTER POSTING THIS ORDER TO ALLOTMENT EXPENDITURE LEDGER

ADJUSTMENT INCREASING ENCUMBRANCES

ADJUSTMENT DECREASING ENCUMBRANCES

CERTIFIED CORRECT (SIGNATURE)

DISTRIBUTION: Copy 1 - Supplier; Copy 2 - DGS Procurement; Copy 3 - Packing Slip; Copies 4-6 - Agency Procurement File

23,323.18

MiCTA Participating Addendum ID:	Vendor Quote:1-1879SXF	Date: 5-16-17
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Description of Project**1. Project Name**

CCI VS L4B FV D7 Please see attachment "CDCR FPCM Infrastructure Estimating & Construction Support REQUEST FOR QUOTE - SPECIFICATIONS" for description of project.

2. Purpose

This SOW defines the structured cabling services and deliverables that Vendor will provide to Customer ("Customer") under the terms of the Agreement ("Structured Cabling Services") and forms the basis for the pricing in the quote referenced above (the "Quote"). Vendor will perform the Structured Cabling Services at the locations listed in the Quote. Certain Structured Cabling Services detail may be provided for Customer's reference in additional documentation separate from this Agreement.

3. Point of Contact/Project Manager

Vendor Name: Verizon Business Network Services, Inc. on behalf of MCI Communications Services Inc. d/b/a Verizon Business Services	Customer Name:
Contact Person: Courtney Weatherman	Contact Person: Ade Akilo
Contact Title: Principal Cslt – Prof Services	Contact Title: Project Manager
Address: 505 Hwy 169 N	Address: 9838 Old Placerville Rd., Ste. B
City, State, Zip: Plymouth, MN 55441	City, State, Zip: Sacramento, CA 95827
Phone Number: 763-267-8236	Phone Number: (916) 255-3111
Email Address: Courtney.m.weatherman@one.verizon.com	Email Address: Ade.Akilo@cdcr.ca.gov

4. Site Location

CCI – 24900 Highway 202, Tehachapi, CA 93561

5. Project Timeframe

STATEMENT OF WORK (SOW) #
Structured Cabling Services

All work must be completed and Vendor Deliverables provided within one year of the issuance of the Purchase Authority Purchase Order (Std. 65).

Projected installation date for this project is May 18, 2017 Timeline is subject to change.

STATEMENT OF WORK (SOW) #
Structured Cabling Services

6. Scope of Work

Job 1-1879SXF – Refer to Attachment 1, SCS Cost Quote for total cost.

Task #	Description/Activity
1.	Furnish and Install 7 plenum rated category 6 cables per plan
2.	Rm 101 Contact visiting: Build new EMT 1" pathway as per plan. Use partial existing pathway as per plan. Back pull (8) existing cables to allow combing new with existing EMT pathway as per plan, reinsert (8) existing cables, terminate and test. Install (6) new plenum rated cables per plan.
3.	Control: Install (1) new plenum rated category 6 line, override with existing JK #120537
4.	TTB-2.1: Provide a new 2" EMT pathway exiting TTB in the direction of Contact Visiting room 101.
5.	Provide (1) 2" Core on common wall between Contact Visiting room 101 and Mechanical room.
6.	Terminate, test and label.
7.	Provide as-built drawings in CAD format.
8.	2 Technicians travel 2 ½ - 3 hrs. per man one way, 12 hrs.
9.	4 over-night and per diem x 2 techs for a total of 8
10	Fire Marshall Drawings required.
11.	No shroud was requested for this project.

**STATEMENT OF WORK (SOW) #
Structured Cabling Services**

7. Vendor Deliverables, Obligations, and Documentation (if any)

Vendor will:

A. Provide installation which complies with standards and codes, including as applicable:

- NFPA 70 – National Electric Code
- ANSI/TIA-568-C.0 – Generic Telecommunications Cabling for Customer Premises
- ANSI/TIA-568-C.1 – Commercial Building Telecommunications Cabling Standard
- TIA-569-B – Commercial Building Standard for Telecommunications Pathways and Spaces
- TIA-570 – Telecommunications Wiring Standard
- ANSI/TIA-606-A – Administration Standard for Commercial Telecommunications Infrastructure
- ANSI-J-STD-607-A – Commercial Building Grounding (Earthing) and Bonding Requirements for Telecommunications
- TIA-526-7 – Measurement of Optical Power Loss of Installed Single-Mode Fiber Cable Plant
- TIA-526-14-A – Optical Power Loss Measurements of Installed Multimode Fiber Cable Plant
- ANSI/TIA-758-A – Customer-Owned Outside Plant Telecommunications Infrastructure Standard
- ANSI/TIA-942 – Telecommunications Infrastructure Standard for Data Centers

B. Provide a single point of contact (“SPOC”) who will be responsible and authorized to:

- i. Make all decisions and give all approvals which Customer may need from Vendor;
- ii. Provide Customer’s personnel on a timely basis with all information, data, and support reasonably required for its performance under this SOW, including but not limited to making available appropriate personnel to work with the Customer as the Customer may reasonably request;
- iii. Manage and participate in the kickoff discussion, schedule coordination, and acceptance testing.

C. Contact the Customer prior to install in order to confirm site readiness;

D. Apply Customer provided asset tags, as required.

**STATEMENT OF WORK (SOW) #
Structured Cabling Services**

- E. Provide the labor to complete the project in a good and workmanlike manner;
- F. Provide progress updates to review actual progress with the Customer SPOC;
- G. Coordinate access to the building, daily parking, access to materials, and material storage with the Customer SPOC;
- H. Additional Vendor Deliverables and Documentation to be provided no more than ninety (90) days after Project completion:
 - i. Conduct Customer Acceptance Testing as set forth herein.
 - ii. An Excel report shall accompany each invoice for payment that specifies type of work performed by Vendor representative(s) and number of units expended.
 - iii. A Certification Package to include:
 - a. Letter of Certification acknowledging that the work is completed.
 - b. Test results (hard and softcopy).
 - c. Additional items as requested by Customer:
 - Photos of the completed work (.jpg format).
 - As-Built Drawings (add new construction layer to existing drawings on the most recent .dwg provided from the Customer).
 - Accurate Red Line Drawings.
 - CDs (separate) of the As-Built drawings (.pdf and .dwg).
 - d. After receipt of Letter of Certification, Customer Project Manager (PM) will review the deliverables for acceptance within 45 calendar days.
 - If correct and sufficient, the PM will write an Acknowledgement of Full Site Completion Letter, asking to be invoiced for 100% of the job. Vendor's warranty period begins upon date of signature on the Letter.
 - If insufficient, the Customer PM shall notify Vendor in writing, by a Letter of Rejection of the Certification package. When the package is complete, the Customer PM will send Vendor an Acknowledgement of Full Site Completion Letter, asking to be invoiced for 100% of the work.

I. General Provisions – Information Technology

This Agreement incorporates the State of California, General Provisions – Information Technology, (GSPD 401IT), Revised and Effective (9/5/2014).

J. Special Provisions

Special provisions apply per Department policy. Such provisions will be provided by the customer at time of request for quote and shall be listed and incorporated in this section of the SOW.

**STATEMENT OF WORK (SOW) #
Structured Cabling Services**

8. Customer Deliverables, Obligations, and Documentation

Customer must:

- A. Designate a SPOC who will be responsible and authorized to:
 - i. Make all decisions and give all approvals which Vendor may need from Customer;
 - ii. Provide Vendor's personnel on a timely basis with all information, data, access and support reasonably required for its performance under this SOW, including but not limited to making available appropriate personnel to work with Vendor as Vendor may reasonably request.
- B. Provide a soft copy of all related plans (if available) clearly depicting installation locations and features that is sufficiently recent, accurate, and detailed to allow Vendor to install the System;
- C. Provide the appropriate security clearances, access badges, and access to buildings and any other structures related to the Project ("Locations") and Training as defined below, if required. It is the Customer's sole responsibility to provide the necessary means of access to Locations; Vendor will coordinate Project activities in advance in order to allow for timely access and avoid delay.
- D. Remove or move any obstacles required to implement this Project at a Location in a timely manner.
- E. Dispose of all decommissioned equipment, unless provided otherwise in the Quote.

9. Acceptance Testing Criteria for the Service or Deliverable(s)

Customer will have thirty business days after the In-Service Date, as defined below, to test the System (the "Test Period"). Customer may indicate their approval of the System by its signature on the Vendor-provided acceptance document or other mutually agreed upon means. Customer will document any issues with the System in writing to Vendor and provide those issues to Vendor within the Test Period. Upon receipt of the issues list, Vendor will have ten business days to respond and remediate any issues, as required.

10. Term of SOW

This SOW is effective upon full execution by the parties and will remain in effect during the delivery of the Structured Cabling Services. This SOW will terminate upon final delivery and acceptance of the Structured Cabling Services.

Exhibit 92



**ROSEN BIEN
GALVAN & GRUNFELD LLP**

101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
T: (415) 433-6830 ▪ F: (415) 433-7104
www.rbgg.com

Michael Freedman
Email: MFreedman@rbgg.com

September 17, 2020

VIA ELECTRONIC MAIL ONLY

Joanna B. Hood
Sean Lodholz
Office of the Attorney General
1300 I Street
Sacramento, CA 95814
Joanna.Hood@doj.ca.gov
Sean.Lodholz@doj.ca.gov

Re: *Armstrong v. Newsom*: Defendants' Failure to Timely Produce Responses
to Interrogatories
Our File No. 0581-03

Dear Joanna and Sean:

I write regarding Defendants' continued failure to provide timely responses to the interrogatories served by Plaintiffs on August 6, 2020.

Yesterday, in response to a deposition subpoena served on Matthew Cate, Defendants produced three spreadsheets that appear to provide details about every instance of sustained discipline against officers at CSP – Los Angeles County ("LAC") in 2018, 2019, and 2020. I have attached these documents for reference. These spreadsheets provide sufficient information for Defendants to either answer Interrogatories 13(a), 14(a), 15, 16, 17, 18, and 19 regarding LAC for 2018-2020 or to answer those interrogatories with relatively minimal additional effort. These spreadsheets strongly suggest that Defendants—who have repeatedly stated that they cannot produce any responses to the interrogatories until after Plaintiffs' reply brief is due on September 25, 2020—are not attempting to respond to Plaintiffs' interrogatories in good faith. Defendants have the information to respond to some of Plaintiffs' interrogatories, yet have not done so.

The information in the spreadsheets provides a possible reason why Defendants have not been forthcoming about discipline at LAC. The spreadsheets indicate that since

Joanna B. Hood
Sean Lodholz
September 17, 2020
Page 2

2018 at most six officers (and in all likelihood only four officers) have been disciplined at LAC for harming incarcerated people.

Plaintiffs demand that Defendants immediately produce any similar documents or spreadsheets that exist for CSP – Corcoran (“COR”), Kern Valley State Prison (“KVSP”), and California Correctional Institution (“CCI”).

In addition, Plaintiffs demand that Defendants provide responses to Interrogatories 13(a), 14(a), 15, 16, 17, and 18 regarding LAC for 2018, 2019, and 2020 by no later than September 21, 2020.

If similar documents or spreadsheets exist for COR, KVSP, and CCI, Plaintiffs also demand that Defendants produce responses to Interrogatories 6(a), 7(a), 8, 9, 10, 11, and 12 for the interrogatories requesting information about those three institutions.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Michael Freedman

By: Michael Freedman
Senior Counsel

MLF:can
Enclosure
cc: Ed Swanson
Alicia Bower
Trace Maiorino
Anthony Tartaglio
Jeremy Duggan
Damon McClain
Patricia Ferguson
Tamiya Davis
OLA *Armstrong* CAT
Co-Counsel

Enclosure

2018 CSP-LAC SUSTAINED DISCIPLINE

Case #	Case Type	Subject	Class	Allegation (s)	S O L	CMS Notice/ OIA Report Rec'd	402/403	Results (ADV, COR, TRN, No Action, Non-Pun)	Penalty	Action Served	Skelly	Skelly Results	NOAA Effective	Action to SPB & IPO	VA / ERO	OIG	Comments
S-LAC-057-18-A	ADM		CO	INOD (Failed to conduct proper count) [I/M death]	8/20/18	7/12/18	7/27/18	ADV	10%-6 QPP	8/29/18	Waived*	N/A	10/1/18	9/26/18	Fisher	Bates	*No Skelly Requested=Waived
S-LAC-381-18-D	SOI		CO	Controlled Substances/ Positive UA (Marijuana)	10/18/19	2/22/19	3/25/19	ADV	Dismissal	4/18/19	4/23/19	Sustained	4/26/19	4/25/19	Fisher	Bates	SPB #19-0726 SUSTAINED
S-LAC-103-18-D	DAA		CO	Arrest (DUI w/collision)	2/11/19	5/2/18	10/18/18	ADV	5%-18 QPPs	11/18/18	Waived*	N/A	11/30/18	12/3/18	ERO	N/A	*No Skelly Requested=Waived.
S-LAC-307-18-A	ADM		CO	Controlled Substances/ Positive UA (Barbiturates)	8/16/19	12/28/18	1/24/18	ADV	10%-3 QPPs	2/21/19	Waived*	N/A	3/1/19	3/1/19	Fisher	N/A	*No Skelly Requested=Waived. 2/11/19: OIG no longer monitoring.
S-LAC-057-18-A	ADM		CO	INOD (Failed to conduct proper count) [I/M death]	8/20/18	7/12/18	7/27/18	ADV	Susp 48 WD*	8/30/18	9/7/18	Settled	9/17/18	9/17/18	Fisher	Bates	*9/17/18: SETTLEMENT=10%-20 QPPs eff. 10/1/18.
S-LAC-306-18-A	ADM		LT	Overfamiliarity, Dishonesty	7/26/19	5/23/19	6/19/19	ADV	Susp 12 WD*	N/A	N/A	N/A	N/A	N/A	Fisher	Bates	*5/1/19: EE Retired prior to service of NOAA. 6/28/19: UUC to IPO for OPF.
S-LAC-206-18-D	DAA		CO	Arrest (DUI), Misuse of Authority	4/20/19	7/3/18	11/20/18	ADV	5%-18 QPPs*	12/19/18	1/7/19	Settled	1/31/19	1/16/19	Fisher	Bates	*1/15/19: SETTLEMENT=5%-15 QPPs.
S-LAC-057-18-A	ADM		SGT	INOD (I/M housing error) [I/M death]	8/20/18	7/12/18	7/27/18	ADV	Susp 2 WD*	8/29/18	9/10/18	Sustained	9/11/18	9/11/18	Fisher	Bates	*11/7/18: SETTLEMENT @ Investigatory Hearing= LOR / No backpay/ OPF Removal 6 mos.
S-LAC-387-18-A	ADM		CO	Dishonesty/INOD (Falsified swap request)	9/23/19	8/20/19	9/11/19	COR	LOI	9/26/19	N/A	N/A	N/A	N/A	Fisher	N/A	
S-LAC-160-18-A	ADM		CO	Overfamiliarity	1/10/20	10/20/19	10/11/19	ADV	Dismissal	11/20/19	11/25/19	Sustained	11/27/19	11/27/19	Sullivan	Bates	10/21/19: EE placed on ATO. 10/18/19: Exec. Review by AD Alfaro-5 allegations sustained. 10/18/19: Per EAPT & OIG SOL=1/10/20. 4/16/19: Per VA Sullivan, SOL (w/tolling) is 10/20/19 vs. 5/3/19. HA=SANDRA ALFARO
S-LAC-057-18-A	ADM		CO	INOD (Failed to conduct proper count) [I/M death]	8/20/18	7/12/18	7/27/18	ADV	10% - 3 QPP	8/30/18	Waived*	N/A	10/1/18	9/26/18	Fisher	Bates	*No Skelly Requested=Waived.
S-LAC-387-18-A	ADM		CO	Dishonesty/INOD (False statements to supv's re swap)	9/23/19	8/20/19	9/11/19	COR	LOI	9/24/19	N/A	N/A	N/A	N/A	Fisher	N/A	
S-LAC-268-18-D	DAA		CRM	AWOL (Unauthorized Absence)	6/12/21	8/29/18	10/30/18	ADV	LOR	11/16/18	11/27/18	Sustained	11/30/18	12/3/18	ERO (CIW)	N/A	*2/21/19: SETTLEMENT= LOR w/ Removal fr/OPF 11/29/19 upon request. 9/19/18: LAC HA recused. Reassigned to CIW Warden.
S-LAC-088-18-D	DAA		SCEP	INOD (Failure to report lost State cell phone)	12/9/20	4/18/18	6/4/18	ADV	10%-6 QPP*	N/A	N/A	N/A	N/A	N/A	ERO	N/A	*9/1/18: EE retired prior to service of NOAA.

2018 CSP-LAC SUSTAINED DISCIPLINE

Case #	Case Type	Subject	Class	Allegation (s)	S O L	CMS Notice/ OIA Report Rec'd	402/403	Results (ADV, COR, TRN, No Action, Non-Pun)	Penalty	Action Served	Skelly	Skelly Results	NOAA Effective	Action to SPB & IPO	VA / ERO	OIG	Comments
S-LAC-246-18-A	ADM	[REDACTED]	CO	Dishonesty, Insubordination (Refused supv order-I/M transport)	3/29/19	2/25/19	3/5/19	ADV	Dismissal	3/27/19	3/29/19	Settled	4/4/19	4/3/19	Doelfs	N/A	*4/3/19: SETTLEMENT=Susp 30 QWD/ Waived Appeal Rights.
S-LAC-050-18-D	DAA	[REDACTED]	OT	Arrest (DUI), Failure to Report	10/31/20	2/28/18	3/15/18	ADV	5%-13 QPP*	N/A	N/A	N/A	N/A	N/A	ERO	N/A	*3/5/18: AWOL separated prior to service of NOAA. If re- employed, penalty to be imposed.
S-LAC-116-18-A	ADM	[REDACTED]	CO	Assault, Battery, Discrimination/ Harassment, DT	12/24/18	11/19/18	12/3/18	ADV	5%-24 QPP*	1/9/19	1/23/19	Sustained	1/31/19	1/29/19	Doelfs	N/A	*3/28/19: SETTLEMENT @ PHSC=5%-13 QPPs.
S-LAC-201-18-D	DAA	[REDACTED]	CO	Weapons (Negligent discharge of duty weapon)	5/14/19	7/3/18	7/31/18	ADV	Susp 1 WD	8/29/18	Waived*	N/A	9/19/18	9/14/18	Fisher	Bates	*No Skelly Requested=Waived.
S-LAC-046-18-D	SOI	[REDACTED]	CO	Arrest (Domestic Violence)	10/28/19	7/25/18	4/3/19	ADV	Dismissal	4/3/20	Waived*	N/A	4/17/20	4/20/20	Williams	Bates	*4/17/20: No Skelly Requested/Waived. 4/3/20: Served NOAA via GSO/Certified Mail/USPS to LA & Palmdale address. .

2019 CSP-LAC SUSTAINED DISCIPLINE

Case #	Case Type	Subject (LAST, First Name)	Class	Allegation (s)	S O L	Assigned to LAC	402/403	Results (ADV, COR, TRN, No Action, Non-Pun)	Penalty	Action Served	Skelly	Skelly Results	Action Effective	Action to SPB & IPO	VA / ERO	OIG	Column1
S-LAC-362-19-D	DAA		SGT	Abandoned Post/ Willful Disobedience	08/18/20	10/02/19	10/28/19	ADV	10%-6 QPPs*	11/18/19	12/04/19	Settled	01/01/20	12/04/19	ERO	N/A	*LOR per SETTLEMENT signed 12/4/19.
S-LAC-364-19-A	ADM		CO	Dishonesty	07/27/20	07/10/20	07/23/20	ADV	Dismissal*	N/A	N/A	N/A	N/A	N/A	Adams	N/A	*EE resigned eff. 2/3/20, prior to notice of investigation and service of NOAA. If re-employed, penalty to be imposed.
S-LAC-009-19-A	ADM		CO	Contraband/Distracted (Possession of personal cell phone)	11/24/19	11/13/19	11/20/19	COR	LOI	01/03/20	N/A	N/A	N/A	N/A	Adams	Bates	
S-LAC-1522-19-D	DAA		CO	INOD (Failed to notify Central Control Family Visit Canceled)	11/04/20	12/31/19	01/31/20	COR	LOI	02/25/20	N/A	N/A	N/A	N/A	ERO	N/A	
S-LAC-1522-19-D	DAA		CO	INOD (Failed to conduct proper count)	11/04/20	12/31/19	01/31/20	COR	LOI	02/25/20	N/A	N/A	N/A	N/A	ERO	N/A	
S-LAC-009-19-A	ADM		CO	Battery, Contraband, Discrimination/ Harassment	11/24/19	11/13/19	11/20/19	ADV	Dismissal*	12/13/19	N/A	N/A	12/23/19	N/A	Adams	Bates	*12/13/19: EE retired cob prior to effective date of NOAA. 9/23/19: EE placed on ATO.
S-LAC-364-19-A	ADM		CO	Discrimination / Harassment	07/27/20	07/10/20	07/23/20	ADV	Dismissal*	N/A	N/A	N/A	N/A	N/A	Adams	N/A	*EE retired 12/13/19, under unfavorable circumstances prior to completion of investigation.
S-LAC-194-19-D	SOI		CO	Controlled Substances (Positive UA-Barbiturate)	04/22/20	10/24/19	11/19/19	ADV	Dismissal*	12/09/19	12/16/19	Sustained	12/18/19	12/19/19	Adams	Bates	*Suspension 12/18/19-4/30/20 per Settlement at PHSC on 3/25/20, & no back pay/benefits, removal NOAA fr/OPF at 2 years upon request. 11/25/19: EE placed on ATO.
S-LAC-369-19-A	ADM		SGT	Dishonesty / Discourteous Treatment	07/31/20	07/08/20	07/27/20	ADV	Dismissal	8/19/20	N/A	Waived*	08/27/20	08/25/20	Adams	Bates	*EE/Rep waived right to Skelly. 7/17/20: Case File sent to AD Lozano. 7/16/20: OIG Req'd Exec. Rev.
S-LAC-280-19-A	ADM		CO	INOD (Failed to conduct proper count)	06/09/20	06/02/20	06/05/20	COR	Training	N/A	N/A	N/A	N/A	N/A	Sullivan	N/A	
S-LAC-1561-19-D	DAA		CO	INOD (Failed to report change in Weapons due to EPO)	12/04/20	01/22/20	04/03/20	ADV	10%-6 QPPs	05/01/20	N/A	Waived*	06/01/20	06/01/20	ERO	Bates	*No Skelly Requested=Waived.
S-LAC-231-19-A	ADM		CO	UOF/Dishonesty	04/09/20	01/15/20	01/31/20	ADV	5%-18 QPPs*	02/26/20	03/11/20	Sustained	04/01/20	03/30/20	Adams	N/A	*5%-14 QPPs per SETTLEMENT at PHSC on 6/24/20, & remove NOAA fr/OPF 04/01/21 upon request no earlier than 03/01/20.
S-LAC-1522-19-D	DAA		CO	INOD (Incorrect SOMS entry)	11/04/20	12/31/19	01/31/20	COR	LOI	02/25/20	N/A	N/A	N/A	N/A	ERO	N/A	
S-LAC-1522-19-D	DAA		CO	INOD (Failed to conduct proper count)	11/04/20	12/31/19	01/31/20	COR	LOI	N/A	N/A	N/A	N/A	N/A	ERO	N/A	
S-LAC-1515-19-A	ADM		CO	UOF (Unreasonable Force)	10/02/20	04/22/20	05/14/20	ADV	5%-6 QPPs	06/13/20	06/29/20	Sustained	07/01/20	07/02/20	Adams	Woodward	6/15/20: OIG no longer monitoring.
S-LAC-015-19-A	ADM		CO	UOF (Unnecessary)	10/08/19	05/01/19	05/29/19	ADV	Susp 2 WD*	06/26/19	07/08/19	Settled	07/16/19	07/15/19	Fisher	Bates	*LOR per SETTLEMENT signed 7/15/19, & remove NOAA fr/OPF 1/16/20 upon request. 2/11/19: OIG no longer monitoring.
S-LAC-280-19-A	ADM		CO	INOD (Failed to Conduct Proper Count)	06/09/20	06/02/20	06/05/20	COR	Training	06/10/20	N/A	N/A	N/A	N/A	Sullivan	N/A	
S-LAC-114-19-A	ADM		MM	Threat/Intimidation, Discourteous Treatment	12/02/21	09/05/19	10/08/19	ADV	5%-18 QPPs*	04/21/20	05/21/20	Sustained	05/01/20	05/26/20	ERO	N/A	*5%-8 QPPs per SETTLEMENT at PHSC on 7/14/20, & remove NOAA from OPF 5/1/21 upon req.
S-LAC-027-19-D	DAA		CO	Attendance (Excessive Absenteeism)	12/20/19	02/06/19	02/20/19	ADV	10%-9 QPPs*	03/07/19	03/27/19	Settled	04/01/19	04/02/19	ERO	N/A	*5%-9 QPPs per SETTLEMENT signed 4/1/19, & remove NOAA fr/OPF on or after 4/1/20.

2019 CSP-LAC SUSTAINED DISCIPLINE																	
Case #	Case Type	Subject (LAST, First Name)	Class	Allegation (s)	S O L	Assigned to LAC	402/403	Results (ADV, COR, TRN, No Action, Non-Pun)	Penalty	Action Served	Skelly	Skelly Results	Action Effective	Action to SPB & IPO	VA / ERO	OIG	Column1
S-LAC-1517-19-D	DAA		CO	Attendance (Excessive Absenteeism)	10/24/20	12/24/19	01/24/20	ADV	10%-18 QPPs	02/21/20	Waived*	N/A	04/01/20	03/30/20	ERO	N/A	*No Skelly Requested=Waived.
S-LAC-276-19-D	DAA		CO	Insubordination	06/02/20	07/31/19	08/29/19	ADV	10%-3 QPPs*	10/07/19	10/17/19	Settled	10/31/19	10/31/19	ERO	N/A	*5%-3 QPPs per SETTLEMENT signed 10/31/19, & remove NOAA fr/OPF 10/31/20 upon request.

2020 CSP-LAC SUSTAINED DISCIPLINE

Case #	Subject (LAST, First)	Class	Allegation (s)	S O L	CMS Notice/ OIA Report Rec'd	402/403	Results (ADV, COR, TRN, No Action, Non-Pun)	Penalty	Action Served	Skelly/ Coleman	Skelly/ Coleman Results	Action Effective	Action to SPB/CalHR & IPO	VA / ERO	OIG	Comments
(H)S-LAC-246-20-S		CO	INOD (Insensitive social media post re George Floyd murder)	05/25/21	08/07/20	08/25/20	ADV	5%-6 QPPs	Pending					Nathan Elmer	Marta Barlow	
S-LAC-119-20-D		CO	Contraband (Personal cell phone in secured perimeter)	02/05/21	03/25/20	04/27/20	ADV	10%-12 QPPs	Pending					ERO	N/A	EE OFF WORK (WC-TTD) NEXT APPT 7/23
S-LAC-149-20-D		CO	Less than Alert, Non-Compliance w/Uniform Standards, Failure to Sign Post Orders	02/13/21	04/15/20	05/15/20	ADV	10%-12 QPPs*	06/15/20	06/23/20	Settled	07/01/20	07/09/20	ERO	N/A	*10%-6 QPPs per STIPULATION SIGNED 7/8/20 & Remove NOAA fr/OPF 1 yr upon request.
S-LAC-043-20-D		CO	Arrest (Domestic Violence)	01/13/21	03/04/20	04/03/20	ADV	5%-6 QPPs*	04/22/20	05/13/20	Settled	06/01/20	06/01/20	Thurman	Bates	*5%-3 QPPs per STIPULATION SIGNED 5/28/20.
S-LAC-159-20-D		CO	INOD (Lost Badge)	03/10/21	04/29/20	05/28/20	COR	LOI	06/04/20	N/A	N/A	N/A	N/A	ERO	N/A	
S-LAC-285-20-D		CO	Insubordination/WD (Refusal to wear a face	06/01/21	07/08/20	08/04/20	ADV	10%-3 QPPs	Pending					ERO	Le	
S-LAC-037-20-A		CO	Arrest (Domestic Violence)	12/29/20	06/11/20	07/06/20	ADV	5%-12 QPPs	08/06/20	N/A	Waived*	09/01/20	08/31/20	Thurman	Sanchez	*No Skelly requested=Waived. No SPB appeal filed.
S-LAC-183-20-S		CO	Contraband (Personal Cell Phone on Duty) Distraction from duty	03/17/21	05/06/20	06/05/20	ADV	10%-6 QPPs*	07/03/20	07/27/20	Settled	07/31/20	08/04/20	ERO	N/A	*5%-3 QPPs per STIPULATION signed 8/3/20 & remove NOAA fr/OPF 01/31/21 upon request.
S-LAC-189-20-D		CO	Willful Disobedience/DT	12/20/20	05/20/20	06/19/20	ADV	10%-12 QPPs	07/31/20	N/A	Waived*	09/01/20	08/31/20	ERO	N/A	*EE Canceled Skelly=Waived. Consolidated w/190-20-D.
S-LAC-190-20-D		CO	INOD (AWOL/Failure to follow protocol to report absence)	03/26/21	05/20/20	06/19/20	ADV	5%-9 QPPs	07/31/20	N/A	Waived*	09/01/20	08/31/20	ERO	N/A	*EE Canceled Skelly=Waived. Consolidated w/189-20-D. Penalty in 189 controls.
S-LAC-044-20-D		CO	Arrest (DUI w/Collision)	01/18/21	03/11/20	04/10/20	ADV	5%-24 QPPs*	05/11/20	05/27/20	Settled	06/01/20	06/02/20	ERO	N/A	*5%-13 QPPs per STIPULATION SIGNED 6/2/20.
S-LAC-228-20-D		LT	Arrest (Obstruction of PO), Failure to cooperate with Kern Co SO	03/22/21	05/27/20	06/22/20	ADV	Demotion	07/16/20	07/22/20	Sustained	07/31/20	07/27/20	Adams	Sanchez	Demotion to Sergeant.
S-LAC-113-20-D		CO	Arrest (DUI)	02/15/21	03/18/20	04/17/20	ADV	5%-12 QPPs*	05/14/20	05/22/20	Settled	06/01/20	06/01/20	ERO	N/A	*5%-5 QPPs per STIPULATION SIGNED 5/28/20 & remove NOAA fr/OPF on/after 6/1/21 upon request.
S-LAC-149-20-D		CO	Less than alert, Non-compliance w/Uniform Standards, failure to sign Post Orders	02/13/21	04/15/20	05/15/20	ADV	10%-6 QPPs*	06/16/20	06/19/20	Sustained	07/01/20	06/29/20	ERO	N/A	*10-4 QPPS per STIPULATION SIGNED 8/18/20 & Remove NOAA fr/OPF on/after 7/1/21 upon request.

2020 CSP-LAC SUSTAINED DISCIPLINE

Case #	Subject (LAST, First)	Class	Allegation (s)	S O L	CMS Notice/ OIA Report Rec'd	402/403	Results (ADV, COR, TRN, No Action, Non-Pun)	Penalty	Action Served	Skelly/ Coleman	Skelly/ Coleman Results	Action Effective	Action to SPB/CalHR & IPO	VA / ERO	OIG	Comments
S-LAC-228-20-D	[REDACTED]	CO	Off Duty (Unnecessarily id'd herself as law enforcement)	03/22/21	05/27/20	06/22/20	ADV	10%-9 QPPs	07/21/20	08/18/20	Sustained	09/01/20	08/24/20	Adams	Sanchez	
S-LAC-229-20-D	[REDACTED]	CO	Failure to report change in driving status	03/08/21	06/03/20	07/03/20	ADV	5%-9 QPPs*	08/07/20	08/20/20	Settled	09/01/20	08/26/20	ERO	N/A	*LOR per STIPULATION SIGNED 08/25/20.

Exhibit 93



XAVIER BECERRA
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State of California
DEPARTMENT OF JUSTICE

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September 18, 2020

VIA ELECTRONIC MAIL ONLY

Michael Freedman
Rosen Bien Galvan & Grunfeld LLP
101 Mission Street, Sixth Floor
San Francisco, California 94105-1738

RE: *John Armstrong, et al. v. Gavin Newsom, et al.*
United States District Court, Northern District of California, Case No. C 94-2307 CW

Dear Michael:

This letter is in response to your September 17, 2020 letter regarding logs from LAC produced in response to a deposition subpoena served on Mathew Cate. Therein, you contend that these logs contain sufficient information to respond to *portions* of Plaintiffs' interrogatories regarding LAC.

As Defendants previously explained, staff must pull and review the individual cases at the four prisons which are the subject of Plaintiffs' interrogatories to ensure full and accurate responses. As you know, when Defendants previously responded to interrogatories at R. J. Donovan, they attempted to expedite responses by using logs. This resulted in the need to amend the interrogatory responses several times. Given these issues, CDCR cannot attest to the accuracy of these logs under the penalty of perjury without first directly verifying the information contained therein. Defendants are under no obligation to provide Plaintiffs partial or incomplete interrogatory responses.

Defendants anticipate having substantive responses for Corcoran completed on or before September 23, 2020, any may have responses for LAC completed by that date as well. CCI responses should be completed by October 14, 2020, and responses for KVSP by October 21, 2020. I have also submitted your request for any similar logs from the other prisons to CDCR and will provide them, if any exist.

September 18, 2020

Page 2

Sincerely,

/s/ Sean W. Lodholz
SEAN W. LODHOLZ
Deputy Attorney General

For XAVIER BECERRA
Attorney General

SWL:

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Exhibit 94

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IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

C 94-2307 CW

**DEFENDANTS' SUPPLEMENTAL
 RESPONSES TO PLAINTIFFS'
 SPECIAL INTERROGATORIES, SET
 TWO**

LAC

PROPOUNDING PARTY: Plaintiffs JOHN ARMSTRONG, et al.

RESPONDING PARTY: Defendants GAVIN NEWSOM, et al.

SET NO.: Two (2)

Defendants respond to Plaintiffs' second set of special interrogatories to Defendants as follows:

PRELIMINARY STATEMENT

The information provided in these responses is true and correct, according to Defendants' best knowledge at this time, but it is subject to future correction for omissions, errors, or mistakes. Defendants reserve the right to produce evidence of any subsequently discovered facts or interpretations thereof, and to amend, modify, or otherwise change the responses, in accordance with applicable discovery rules.

LAC

INTERROGATORY NO. 8:

For each year from 2017 to the present, indicate the number of STAFF MISCONDUCT incidents that the LAC hiring authority referred to OIA.

RESPONSE TO INTERROGATORY NO. 8:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague

1 and ambiguous as to the phrase “harmed an incarcerated person” in the definition of “STAFF
 2 MISCONDUCT” because it is not clear whether Plaintiffs are seeking only instances in which a
 3 finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking
 4 instances in which an allegation of harm to an incarcerated person was made, but not sustained.
 5 The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking
 6 only instances in which a finding of staff misconduct was sustained, as the term “STAFF
 7 MISCONDUCT incidents” implies, or whether Plaintiffs are seeking both sustained and not
 8 sustained instances in which the hiring authority referred the matter to the OIA.

9 Subject to those objections, and without waiving them, Defendants respond as follows:
 10 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
 11 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
 12 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
 13 Defendants are diligently searching all available sources for responsive information, but have not
 14 yet located the information Plaintiffs’ seek. Defendants will continue to search for such
 15 information and provide it to Plaintiffs once the information is located.

16 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:**

17 Subject to and incorporating all previously asserted objections, Defendants respond as
 18 follows:

19 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 20 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 21 regulation, or procedure, or appeared contrary to an ethical or professional standard.
 22 INCIDENTS refers to the number of cases that the California State Prison, Lancaster’s (LAC)
 23 hiring authority submitted to the Office of Internal Affairs (OIA) and ALLEGATIONS refers to
 24 the number of staff members referred. STAFF includes custody, non-custody, and medical
 25 classifications. If OIA added a staff member to a case, the allegation was counted as a referral by
 26 the LAC hiring authority. If OIA removed a staff member from the case, the allegation was
 27 counted as a referral by the LAC hiring authority. If OIA initiated the case, the case was counted
 28 as a referral by the LAC hiring authority.

In 2017, the LAC hiring authority referred two (2) incidents of staff misconduct to OIA. Within the two (2) cases, there were eleven (11) allegations.

2017 Incidents	2017 Allegations
2	11

In 2018, the LAC hiring authority referred two (2) incidents of staff misconduct to OIA. Within the two (2) cases, there were five (5) allegations.

2018 Incidents	2018 Allegations
2	5

In 2019, the LAC hiring authority referred seven (7) incidents of staff misconduct to OIA. Within the seven (7) cases, there were twenty-two (22) allegations.

2019 Incidents	2019 Allegations
7	22

In 2020, the LAC hiring authority referred one (1) incident of staff misconduct to OIA. Within the one (1) case, there were four (4) allegations.

2020 Incidents	2020 Allegations
1	4

INTERROGATORY NO. 9:

For each year from 2017 to the present, indicate the OIA case number for all STAFF MISCONDUCT incidents that the LAC hiring authority referred to OIA that involved an *Armstrong* or *Coleman* class member.

RESPONSE TO INTERROGATORY NO. 9:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object to providing information regarding *Coleman* class members who are not parties to this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify

1 which allegations involved class members. Defendants object to the definition of the term
2 “STAFF MISCONDUCT incidents” as vague, ambiguous, and incomprehensible because the
3 definition of “STAFF MISCONDUCT” Plaintiffs use cites to Title 15, § 3084(g), and
4 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
5 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
6 incomprehensible because Plaintiffs’ definition of STAFF MISCONDUCT “includes [Plaintiffs’
7 definition of] EXCESSIVE USE OF FORCE.” It is unclear whether Plaintiffs mean that in order
8 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
9 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be
10 a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE
11 meets Plaintiffs’ definition of STAFF MISCONDUCT, regardless of whether the other two
12 criteria are met. The request is also vague and ambiguous as to the phrase “harmed an
13 incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether
14 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
15 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
16 incarcerated person was made, but not sustained. The request is also vague and ambiguous
17 because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff
18 misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether
19 Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority
20 referred the matter to the OIA.

21 Subject to those objections, and without waiving them, Defendants respond as follows:
22 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
23 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
24 provide responsive information, which Defendants believe provide information Plaintiffs are
25 attempting to seek. Defendants are diligently searching all available sources for responsive
26 information, but have not yet located the information Plaintiffs’ are attempting to seek.
27 Defendants will continue to search for such information and provide it to Plaintiffs once the
28 information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF includes custody, non-custody, and medical classifications. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Lancaster's (LAC) hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the LAC hiring authority. If OIA initiated the case it was counted as a referral by the LAC hiring authority.

In 2017, the LAC hiring authority did not referred any cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA.

In 2018, the LAC hiring authority referred one (1) case of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The one (1) case is:

2018 OIA Referral Case Number
S-LAC-166-18-A

In 2019, LAC referred six (6) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The six (6) cases are:

2019 OIA Referral Case Numbers
S-LAC-015-19-A
S-LAC-037-19-D
S-LAC-369-19-A
S-LAC-379-19-A
S-LAC-1515-19-A
S-LAC-1522-19-D

In 2020, LAC referred one (1) case of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The one (1) case is:

2020 OIA Referral Case Numbers
S-LAC-121-20-R

INTERROGATORY NO. 10:

For each year from 2017 to the present, indicate the number of referrals to OIA made by the LAC hiring authority in which OIA (a) rejected the referral, (b) approved direct adverse action, and (c) opened an investigation.

RESPONSE TO INTERROGATORY NO. 10:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object that the interrogatory is not limited to on-duty instances, and not limited to instances involving inmates. Requiring Defendants to review and categorize all such instances is overly burdensome and not proportional to the needs of the case. Defendants object that the interrogatory includes a total of three discrete subparts, and should be counted toward Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows: Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, number of cases includes custody, non-custody, and medical classifications. Cases counted as an investigation include administrative investigations, criminal investigations, and all subject only interviews. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Lancaster's (LAC) hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the LAC hiring authority. If OIA initiated the case it was counted as a referral by the LAC hiring authority. The numbers reflect the initial OIA determination for the case. If a case was initially opened as a criminal investigation and later split into an administrative investigation the case was only counted as one (1) investigation opened.

In 2017, the LAC hiring authority referred twenty (20) cases to OIA. Out of the twenty (20) cases, OIA approved direct action on eight (8) and opened an investigation on twelve (12).

2017 Total Cases Referred	Cases Rejected	Approved for Direct Action	Investigations Opened
20	0	8	12

In 2018, the LAC hiring authority referred twenty-one (21) cases to OIA. Out of the twenty-one (21) cases, OIA approved direct action on eight (8) and opened an investigation on thirteen (13).

2018 Total Cases Referred	Cases Rejected	Approved for Direct Action	Investigations Opened
21	0	8	13

In 2019, the LAC hiring authority referred twenty-three (23) cases to OIA. Out of the twenty-three (23) cases, OIA rejected one (1), approved direct action on eight (8) and opened fourteen (14) investigations.

2019 Total Cases Referred	Cases Rejected	Approved for Direct Action	Investigations Opened
23	1	8	14

In 2020, the LAC hiring authority referred thirteen (13) cases to OIA. Out of the thirteen (13) cases, OIA rejected one (1), approved direct action on seven (7) and opened five (5) investigations.

2020 Total Cases Referred	Cases Rejected	Approved for Direct Action	Investigations Opened
13	1	7	5

INTERROGATORY NO. 11:

For each year from 2017 to the present, indicate the OIA case numbers of all referrals of STAFF MISCONDUCT involving *Armstrong* or *Coleman* class members in which OIA (a) rejected the referral, (b) approved direct adverse action, and (c) opened an investigation.

RESPONSE TO INTERROGATORY NO. 11:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object to providing information regarding *Coleman* class members who are not parties to this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by

1 the subject of the allegations, not the reporting individual or alleged victim. Each file must be
2 pulled and reviewed in order to determine whether the incident central to an allegation of staff
3 misconduct involved an inmate. Once that determination is made, the Department can identify
4 which allegations involved class members. Defendants object to the definition of the term
5 “STAFF MISCONDUCT incidents” as vague, ambiguous, and incomprehensible because the
6 definition of “STAFF MISCONDUCT” Plaintiffs use cites to Title 15, § 3084(g), and
7 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
8 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
9 incomprehensible because Plaintiffs’ definition of STAFF MISCONDUCT “includes [Plaintiffs’
10 definition of] EXCESSIVE USE OF FORCE.” It is unclear whether Plaintiffs mean that in order
11 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
12 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be
13 a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE
14 meets Plaintiffs’ definition of STAFF MISCONDUCT, regardless of whether the other two
15 criteria are met. The request is also vague and ambiguous as to the phrase “harmed an
16 incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether
17 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
18 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
19 incarcerated person was made, but not sustained. The request is also vague and ambiguous
20 because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff
21 misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether
22 Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority
23 referred the matter to the OIA. Defendants object that the interrogatory includes a total of three
24 discrete subparts, and should be counted toward Plaintiffs’ limit in accordance with Federal Rule
25 of Civil Procedure 33(a)(1).

26 Subject to those objections, and without waiving them, Defendants respond as follows:
27 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
28 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will

provide responsive information, which Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF includes custody, non-custody, and medical classifications. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Lancaster's (LAC) hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the LAC hiring authority. If OIA initiated the case it was counted as a referral by the LAC hiring authority.

In 2017, the LAC hiring authority did not refer any cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA.

In 2018, the LAC hiring authority referred one (1) case of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The one (1) case number and OIA action is:

2018 OIA Referral Case Numbers	OIA Action
S-LAC-166-18-A	Administrative Investigation

In 2019, the LAC hiring authority referred six (6) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The six (6) case numbers are:

2019 OIA Referral Case Numbers	OIA Action
S-LAC-015-19-A	Administrative Investigation
S-LAC-037-19-D	Direct Action
S-LAC-369-19-A*	Subject Only Interview
S-LAC-379-19-A	Administrative Investigation
S-LAC-1515-19-A	Administrative Investigation
S-LAC1522-19-D	Direct Action

*Case S-LAC-369-19-A was accepted initially by OIA as a subject only interview. It was opened later as an administrative investigation.

In 2020, the LAC hiring authority referred one (1) case of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The one (1) case number is:

2020 OIA Referral Case Numbers	OIA Action
S-LAC-121-20-R	Reject

INTERROGATORY NO. 12:

For each year from 2017 to the present, indicate the number of (a) administrative investigations and (b) criminal investigations opened by OIA following a referral from the LAC hiring authority.

RESPONSE TO INTERROGATORY NO. 12:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object that the interrogatory is not limited to on-duty instances, and not limited to instances involving inmates. Requiring Defendants to review and categorize all such instances is overly burdensome and not proportional to the needs of the case. Defendants object that the interrogatory includes a total of two discrete subparts, and should be counted toward Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows: Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, number of cases includes custody, non-custody, and medical classifications. Cases the Office of Internal Affairs (OIA) opened as subject only interviews were counted as administrative investigations. The numbers reflect the initial OIA determination for

the case. If OIA initially opened a case as a criminal investigation and during the investigative process split it into an administrative investigation, the case was counted as a criminal case only. If OIA added a staff member to the case, the allegation was counted as a referral by the California State Prison, Lancaster's (LAC) hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the LAC hiring authority. If OIA initiated the case it was counted as a referral by the LAC hiring authority.

In 2017, OIA opened twelve (12) investigations for cases referred by the LAC hiring authority. Out of the twelve (12) cases, nine (9) cases were opened as administrative investigations and three (3) were opened as criminal investigations.

2017 Investigations Open	Administrative Investigation	Criminal Investigation
12	9	3

In 2018, OIA opened thirteen (13) investigations for cases referred by the LAC hiring authority. Out of the thirteen (13) cases, ten (10) were opened as administrative investigations and three (3) were open as criminal investigations.

2018 Investigations Open	Administrative Investigation	Criminal Investigation
13	10	3

In 2019, OIA opened fourteen (14) investigations for cases referred by the LAC hiring authority. Out of the fourteen (14) cases, twelve (12) were opened as administrative investigations and two (2) were opened as criminal investigations.

2019 Investigations Open	Administrative Investigation	Criminal Investigation
14	12	2

In 2020, OIA opened five (5) investigations for cases referred by the LAC hiring authority. Out of the five (5) cases, three (3) were opened as administrative investigations and two (2) were opened as criminal investigations.

2020 Investigations Open	Administrative Investigation	Criminal Investigation
5	3	2

INTERROGATORY NO. 13:

For each year from 2017 to the present, indicate the number of STAFF MISCONDUCT incidents from LAC (a) for which the LAC hiring authority sustained the allegations, (b) for which the LAC hiring authority did not sustain the allegations, and (c) which remain open.

RESPONSE TO INTERROGATORY NO. 13:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations involved class members. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff misconduct was sustained, as the term "STAFF

MISCONDUCT incidents” implies, or whether Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority referred the matter to the OIA. Defendants object that the interrogatory includes a total of three discrete subparts, and should be counted toward Plaintiffs’ limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows: Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will provide responsive information, which Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs’ seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. Staff includes custody, medical and non-custody classifications. If the Office of Internal Affairs (OIA) added a staff member to the case it was counted as a referral by the California State Prison, Lancaster’s (LAC) hiring authority. If OIA removed a staff member from the case it was counted as a referral by the LAC hiring authority. If OIA initiated the case it was counted as a referral by the LAC hiring authority. Cases rejected by OIA were counted as not sustained by the hiring authority.

In 2017, the LAC hiring authority referred two (2) cases of staff misconduct to OIA. Within the two (2) cases, there were eleven (11) allegations. Out of the eleven (11) allegations the LAC hiring authority sustained four (4) allegations and did not sustain seven (7) allegations.

2017 Sustained Allegations	2017 Not Sustained Allegations
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4	7
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In 2018, the LAC hiring authority referred two (2) cases of staff misconduct to OIA. Within the two (2) cases, there were five (5) allegations. Out of the five (5) allegations the LAC hiring authority sustained four (4) allegations and did not sustain one (1) allegation.

2018 Sustained Allegations	2018 Not Sustained Allegations
4	1

In 2019, the LAC hiring authority referred seven (7) cases of staff misconduct to OIA. Within the seven (7) cases, there were twenty-two (22) allegations. Out of the twenty-two (22) allegations the LAC hiring authority sustained nine (9) allegations and did not sustain thirteen (13) allegations.

2019 Sustained Allegations	2019 Not Sustained Allegations
9	13

In 2020, the LAC hiring authority referred one (1) case of staff misconduct to OIA. Within the one (1) case, there were four (4) allegations. The LAC hiring authority did not sustain the four (4) allegations.

2020 Sustained Allegations	2020 Not Sustained Allegations
0	4

INTERROGATORY NO. 14:

For each year from 2017 to the present, indicate the OIA case number for all STAFF MISCONDUCT incidents that involved an *Armstrong* or *Coleman* class member and (a) for which the LAC hiring authority sustained the allegations, (b) for which the LAC hiring authority did not sustain the allegations, and (c) which remain open.

RESPONSE TO INTERROGATORY NO. 14:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object to providing information regarding *Coleman* class members who are not parties to this case. The request is also burdensome and not

1 proportional to the needs of the case. The Department tracks allegations of staff misconduct by
2 the subject of the allegations, not the reporting individual or alleged victim. Each file must be
3 pulled and reviewed in order to determine whether the incident central to an allegation of staff
4 misconduct involved an inmate. Once that determination is made, the Department can identify
5 which allegations involved class members. Defendants object to the definition of the term
6 “STAFF MISCONDUCT incidents” as vague, ambiguous, and incomprehensible because the
7 definition of “STAFF MISCONDUCT” Plaintiffs use cites to Title 15, § 3084(g), and
8 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
9 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
10 incomprehensible because Plaintiffs’ definition of STAFF MISCONDUCT “includes [Plaintiffs’
11 definition of] EXCESSIVE USE OF FORCE.” It is unclear whether Plaintiffs mean that in order
12 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
13 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be
14 a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE
15 meets Plaintiffs’ definition of STAFF MISCONDUCT, regardless of whether the other two
16 criteria are met. The request is also vague and ambiguous as to the phrase “harmed an
17 incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether
18 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
19 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
20 incarcerated person was made, but not sustained. The request is also vague and ambiguous
21 because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff
22 misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether
23 Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority
24 referred the matter to the OIA. Defendants object that the interrogatory includes a total of three
25 discrete subparts, and should be counted toward Plaintiffs’ limit in accordance with Federal Rule
26 of Civil Procedure 33(a)(1).

27 Subject to those objections, and without waiving them, Defendants respond as follows:
28 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of

1 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
 2 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
 3 Defendants are diligently searching all available sources for responsive information, but have not
 4 yet located the information Plaintiffs' seek. Defendants will continue to search for such
 5 information and provide it to Plaintiffs once the information is located.

6 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:**

7 Subject to and incorporating all previously asserted objections, Defendants respond as
 8 follows:

9 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 10 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 11 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
 12 includes custody, non-custody, and medical classifications. If the Office of Internal Affairs
 13 (OIA) added a staff member to the case, the allegation was counted as a referral by the California
 14 State Prison, Lancaster's (LAC) hiring authority. If OIA removed a staff member from the case,
 15 the allegation was counted as a referral by the LAC hiring authority. If OIA initiated the case it
 16 was counted as a referral by the LAC hiring authority. Cases rejected by OIA were counted as
 17 not sustained by the hiring authority.

18 In 2017, the LAC hiring authority did not refer any cases of staff misconduct involving an
 19 *Armstrong* or *Coleman* class member to OIA.

20 In 2018, the LAC hiring authority referred one (1) case of staff misconduct involving an
 21 *Armstrong* or *Coleman* class member to OIA. Within the one (1) case, there was one (1) subject.
 22 Below is a chart showing the OIA case number, the number of subjects, and if the allegation was
 23 sustained, not sustained or remains open.

2018 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision
S-LAC-166-18-A	1	Administrative Investigation	Not Sustained

26 In 2019, the LAC hiring authority referred six (6) cases of staff misconduct involving an
 27 *Armstrong* or *Coleman* class member to OIA. Within the six (6) cases, there were twenty (20)
 28

1 subjects. Below is a chart showing the OIA case number, the number of subjects, and if the
 2 allegation was sustained, not sustained or remains open.

2019 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision
S-LAC-015-19-A	1	Administrative Investigation	Sustained
S-LAC-037-19-D	1	Direct Action	Not Sustained
	2	Direct Action	Not Sustained
	3	Direct Action	Not Sustained
S-LAC-369-19-A	1	Direct Action	Sustained
S-LAC-379-19-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative Investigation	Not Sustained
	4	Administrative Investigation	Not Sustained
S-LAC-1515-19-A	1	Administrative Investigation	Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative Investigation	Not Sustained
	4	Administrative Investigation	Not Sustained
S-LAC-1522-19-D	1	Direct Action	Sustained
	2	Direct Action	Sustained
	3	Direct Action	Sustained
	4	Direct Action	Not Sustained
	5	Direct Action	Not Sustained
	6	Direct Action	Not Sustained
	7	Direct Action	Sustained

22 In 2020, the LAC hiring authority referred one (1) case of staff misconduct involving an
 23 *Armstrong* or *Coleman* class member to OIA. Within the one (1) case, there were four (4)
 24 subjects. Below is a chart showing the OIA case number, the number of subjects, and if the
 25 allegation was sustained, not sustained or remains open.

2020 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision
S-LAC-121-20-R	1	Reject	Not Sustained
	2	Reject	Not Sustained
	3	Reject	Not Sustained

	4	Reject	Not Sustained
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INTERROGATORY NO. 15:

For each year from 2017 to the present, indicate the number of STAFF MISCONDUCT incidents from LAC for which the LAC hiring authority sustained the allegations and imposed (a) adverse action and (b) corrective action.

RESPONSE TO INTERROGATORY NO. 15:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations involved class members. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained.

1 The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking
 2 only instances in which a finding of staff misconduct was sustained, as the term “STAFF
 3 MISCONDUCT incidents” implies, or whether Plaintiffs are seeking both sustained and not
 4 sustained instances in which the hiring authority referred the matter to the OIA. Defendants
 5 object that the interrogatory includes a total of two discrete subparts, and should be counted
 6 toward Plaintiffs’ limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

7 Subject to those objections, and without waiving them, Defendants respond as follows:
 8 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
 9 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
 10 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
 11 Defendants are diligently searching all available sources for responsive information, but have not
 12 yet located the information Plaintiffs’ seek. Defendants will continue to search for such
 13 information and provide it to Plaintiffs once the information is located.

14 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 15:**

15 Subject to and incorporating all previously asserted objections, Defendants respond as
 16 follows:

17 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 18 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 19 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
 20 includes custody, non-custody, and medical classifications. If the Office of Internal Affairs
 21 (OIA) added a staff member to the case, the allegation was counted as a referral by the California
 22 State Prison, Lancaster’s (LAC) hiring authority. If OIA removed a staff member from the case,
 23 the allegation was counted as a referral by the LAC hiring authority. If OIA initiated the case it
 24 was counted as a referral by the LAC hiring authority. Cases rejected by OIA were counted as
 25 not sustained by the hiring authority and no action imposed.

26 In 2017, the LAC hiring authority referred two (2) cases of staff misconduct to OIA.
 27 Within the two (2) cases, there were eleven (11) allegation. The LAC hiring authority sustained
 28

four (4) of the staff misconduct allegations and did not sustain seven (7). Adverse action was imposed on the four (4) of the sustained allegations.

2017 Sustained Allegations	Adverse Action Imposed	Corrective Action Imposed
4	4	0

In 2018, the LAC hiring authority referred two (2) cases of staff misconduct to OIA. Within the two (2) cases, there were five (5) allegations. The LAC hiring authority sustained four (4) of the staff misconduct allegations and did not sustain one (1). Adverse action was imposed on the four (4) for the sustained allegations.

2018 Sustained Allegations	Adverse Action Imposed	Corrective Action Imposed
4	4	0

In 2019, the LAC hiring authority referred seven (7) cases of staff misconduct to OIA. Within the seven (7) cases, there were twenty-two (22) allegations. The hiring authority sustained nine (9) of the staff misconduct allegations and did not sustain thirteen (13). Out of the nine (9) sustained allegations adverse action was imposed on five (5) and corrective action was imposed on four (4).

2019 Sustained Allegations	Adverse Action Imposed	Corrective Action Imposed
9	5	4

In 2020, the LAC hiring authority referred one (1) case of staff misconduct to OIA. Within the one (1) case, there were four (4) allegations of staff misconduct. The LAC hiring authority did not sustain the four (4) allegations and no disciplinary action was imposed.

2020 Sustained Allegations	Adverse Action Imposed	Corrective Action Imposed
0	0	0

INTERROGATORY NO. 16:

For each year from 2017 to the present, indicate the OIA case number for all STAFF MISCONDUCT incidents that involved an *Armstrong* or *Coleman* class member and for which the LAC hiring authority sustained the allegations and imposed (a) adverse action and (b) corrective action.

RESPONSE TO INTERROGATORY NO. 16:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object to providing information regarding *Coleman* class members who are not parties to this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations involved class members. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff misconduct was sustained, as the term "STAFF MISCONDUCT incidents" implies, or whether Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority referred the matter to the OIA. Defendants object that the interrogatory includes a total of two

discrete subparts, and should be counted toward Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows: Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs' definition of STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will provide responsive information, which Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF includes custody, non-custody, and medical classifications. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Lancaster's (LAC) hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the LAC hiring authority. If OIA initiated the case it was counted as a referral by the LAC hiring authority. Cases rejected by OIA were counted as not sustained by the hiring authority and no action imposed.

In 2017, the LAC hiring authority did not refer any cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA.

In 2018, the LAC hiring authority referred one (1) case of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the one (1) case, there was one (1) allegation. The hiring authority did not sustained the allegation and no disciplinary action was imposed. Below is a chart showing the OIA case number, the number of allegations, the hiring authority decision, and the type of disciplinary action imposed.

2018 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision	Disciplinary Action Imposed
S-LAC-166-18-A	1	Administrative Investigation	Not Sustained	No Action

In 2019, the LAC hiring authority referred six (6) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the six (6) cases, there were twenty (20) allegations. The hiring authority sustained seven (7) of the allegations. Below is a chart showing the OIA case number, the number of allegations, the hiring authority decision, and the type of disciplinary action imposed.

2019 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision	Disciplinary Action Imposed
S-LAC-015-19-A	1	Administrative Investigation	Sustained	Adverse Action
S-LAC-037-19-D	1	Direct Action	Not Sustained	No Action
	2	Direct Action	Not Sustained	No Action
	3	Direct Action	Not Sustained	No Action
S-LAC-369-19-A	1	Direct Action	Sustained	Adverse Action
S-LAC-379-19-A	1	Administrative Investigation	Not Sustained	No Action
	2	Administrative Investigation	Not Sustained	No Action
	3	Administrative Investigation	Not Sustained	No Action
	4	Administrative Investigation	Not Sustained	No Action
S-LAC-1515-19-A	1	Administrative Investigation	Sustained	Adverse Action
	2	Administrative Investigation	Not Sustained	No Action
	3	Administrative Investigation	Not Sustained	No Action
	4	Administrative Investigation	Not Sustained	No Action
S-LAC-1522-19-D	1	Direct Action	Sustained	Corrective Action
	2	Direct Action	Sustained	Corrective Action
	3	Direct Action	Sustained	Corrective Action

	4	Direct Action	Not Sustained	No Action
	5	Direct Action	Not Sustained	No Action
	6	Direct Action	Not Sustained	No Action
	7	Direct Action	Sustained	Corrective Action

In 2020, the LAC hiring authority referred one (1) case of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the one (1) case, there were four allegations. The LAC hiring authority did not sustain the four (4) allegations and no disciplinary action was imposed. Below is a chart showing the OIA case number, the number of allegations, the hiring authority decision, and the type of disciplinary action imposed.

2020 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision	Disciplinary Action Imposed
S-LAC-121-20-R	1	Reject	Not Sustained	No Action
	2	Reject	Not Sustained	No Action
	3	Reject	Not Sustained	No Action
	4	Reject	Not Sustained	No Action

INTERROGATORY NO. 17:

For each year from 2017 to the present, indicate the number of STAFF MISCONDUCT incidents at LAC where the LAC hiring authority sustained and issued (a) a Level 1 penalty (official reprimand), (b) a Level 2 penalty (1-2 day suspension without pay), (c) a Level 3 penalty (5% salary reduction for 3-12 months or suspension without pay for 3-12 work days), (d) a Level 4 penalty (salary reduction 10% for 3-12 months or suspension without pay for 6-24 work days), (e) a Level 5 penalty (salary reduction 5% for 13-36 months or suspension without pay for 13-36 work days), (f) a Level 6 penalty (salary reduction 10% for 13-24 months or suspension without pay for 26-48 work days), (g) a Level 7 penalty (suspension without pay for 49-60 work days), (h) a Level 8 penalty (demotion to a lower class), or (e) a Level 9 penalty (dismissal), as those levels are defined in the Employee Disciplinary Matrix, Department of Operations Manual, § 33030.16.

RESPONSE TO INTERROGATORY NO. 17:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations involved class members. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff misconduct was sustained, as the term "STAFF MISCONDUCT incidents" implies, or whether Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority referred the matter to the OIA. Defendants object that the interrogatory includes a total of nine discrete subparts, and should be counted toward Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows:

Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs' definition of STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will provide responsive information, which Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF includes custody, non-custody, and medical classifications. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Lancaster's (LAC) hiring authority. If OIA removed a staff member from the case, the allegation, was counted as a referral by the LAC hiring authority. If OIA initiated the case it was counted as a referral by the LAC hiring authority. Cases rejected by OIA were counted as not sustained by the hiring authority and no action imposed.

In 2017, the LAC hiring authority sustained four (4) allegations of staff misconduct. All four (4) sustained allegations results in adverse action being imposed by the hiring authority.

Below is a list of the Employee Disciplinary Matrix (EDM) from the California Department of Corrections and Rehabilitations (CDCR) Department Operations Manual (DOM) followed by how many times the adverse action penalty was imposed on sustained allegations of staff misconduct.

Employee Disciplinary Matrix Code	Times Penalty Imposed
1	0
2	0
3	4

4	0
5	0
6	0
7	0
8	0
9	0

In 2018, the LAC hiring authority sustained four (4) allegations of staff misconduct. All four (4) of the sustained allegations resulted in adverse action being imposed by the hiring authority.

Below is a list of the EDM from the CDCR DOM followed by how many times the adverse action penalty was imposed on sustained allegations of staff misconduct.

Employee Disciplinary Matrix Code	Times Penalty Imposed
1	0
2	1
3	0
4	2
5	0
6	1
7	0
8	0
9	0

In 2019, the LAC hiring authority sustained nine (9) allegations of staff misconduct. Five (5) of the sustained allegations resulted in adverse action being imposed by the hiring authority. Four (4) of the sustained allegations of staff misconduct resulted in corrective action being imposed by the hiring authority.

Below is a list of the EDM from the CDCR DOM followed by how many times the adverse action penalty was imposed on sustained allegations of staff misconduct.

Employee Disciplinary Matrix Code	Times Penalty Imposed
1	0
2	1
3	2
4	0
5	1
6	0
7	0
8	0
9	1

1 In 2020, the LAC hiring authority has not sustained any allegations of staff misconduct.

2
3 **INTERROGATORY NO. 18:**

4 Indicate the names of all officers against whom a warden at LAC has, since January 1,
5 2017, imposed adverse action for STAFF MISCONDUCT.

6 **RESPONSE TO INTERROGATORY NO. 18:**

7 Defendants object to this interrogatory as not seeking information relevant to any party's
8 claims or defenses in this case. Defendants further object to this interrogatory as intended to
9 harass non-party officers and former officers. Defendants further object to the interrogatory as
10 unduly burdensome and disproportional to the needs of the case. Defendants further object to the
11 interrogatory as seeking information that is protected from disclosure by official information
12 privilege and California Penal Code section 832.7. Defendants object to the definition of the term
13 "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the
14 definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and
15 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
16 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
17 incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs'
18 definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order
19 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
20 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be
21 a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE
22 meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two
23 criteria are met. The request is also vague and ambiguous as to the phrase "harmed an
24 incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether
25 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
26 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
27 incarcerated person was made, but not sustained. The request is also vague and ambiguous
28 because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff

misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority referred the matter to the OIA.

Subject to those objections, and without waiving them, Defendants respond as follows: Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of STAFF MISCONDUCT for this interrogatory. This interrogatory seeks confidential information contained in California Department of Corrections and Rehabilitation employee files, and is not limited to incidents involving class members. Because there is no demonstrated need for this confidential, protected information regarding incidents not involving *Coleman* and *Armstrong* class members, Defendants decline to produce it. Subject to that exclusion, Defendants will provide responsive information, which Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs’ seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 18:

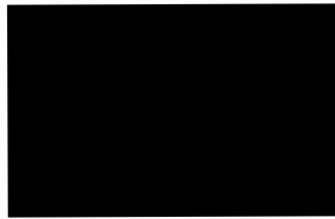
Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. The names of staff only include custody staff, including Officer, Sergeant, Lieutenant, and Captain. These staff member named were sources from confidential records and protected by the Court’s August 12, 2020 Order at ECF No. 3039. These names are **HIGHLY CONFIDENTIAL** and **ATTORNEYS’ EYES ONLY**.

In 2017 the California State Prison, Lancaster (LAC) hiring authority imposed adverse action on the following custody staff members for sustained allegations of staff misconduct:



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In 2018, the LAC hiring authority imposed adverse action on the following custody staff members for sustained allegations of staff misconduct:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

In 2019, the LAC hiring authority imposed adverse action on the following custody staff members for sustained allegations of staff misconduct:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

In 2020, the LAC hiring authority has not imposed any adverse action on custody staff.

INTERROGATORY NO. 19:

For each officer identified in response to Interrogatory 18, indicate:

1. The level of adverse action imposed by the hiring authority
2. Whether the incarcerated person involved in the incident that gave rise to the adverse action was a *Coleman* or *Armstrong* class member
3. The date the hiring authority imposed adverse action
4. The OIA case number associated with the adverse action
5. Whether the officer was placed on administrative time off for any time period before

the adverse action was imposed, and, if yes, the dates on which the administrative time off began and ended

6. Whether the officer appealed the adverse action in any forum (e.g., *Skelly* hearing, State Personnel Board proceeding, or state court proceeding)

7. Whether the officer's appeal of the adverse action, if any, is complete

8. If the officer is no longer appealing the adverse action, the final adverse action imposed on the officer

9. Whether the officer was permitted to retire in lieu of being dismissed

10. Whether the officer resigned in lieu of being dismissed

11. Whether the officer faced criminal prosecution for the conduct for which the warden decided to impose adverse action

12. Whether the officer is still being paid by CDCR and, if not, when CDCR ceased paying the officer

RESPONSE TO INTERROGATORY NO. 19:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants further object to this interrogatory as intended to harass non-party officers and former officers. Defendants further object to the interrogatory as unduly burdensome and disproportional to the needs of the case. Defendants further object to the interrogatory as seeking information that is protected from disclosure by official information privilege and California Penal Code section 832.7. Defendants object to this interrogatory as seeking information regarding non-party *Coleman* class members. Defendants object that the interrogatory includes a total of twelve discrete subparts, which should be counted toward Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows: This interrogatory seeks confidential information contained in California Department of Corrections and Rehabilitation employee files, and is not limited to incidents involving class members. Because there is no demonstrated need for this confidential, protected information regarding incidents not involving *Coleman* and *Armstrong* class members, Defendants decline to

1 produce it. Subject to that exclusion, Defendants will provide responsive information, which
 2 Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all
 3 available sources for responsive information, but have not yet located the information Plaintiffs'
 4 seek. Defendants will continue to search for such information and provide it to Plaintiffs once the
 5 information is located.

6 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 19:**

7 Subject to and incorporating all previously asserted objections, Defendants respond as
 8 follows:

9 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 10 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 11 regulation, or procedure, or appeared contrary to an ethical or professional standard. Cases
 12 rejected by the Office of Internal Affairs (OIA) were counted as not sustained and no disciplinary
 13 action imposed by the hiring authority. STAFF only includes custody staff, including Officer,
 14 Sergeant, Lieutenant and Captain. The date reported for "the date the hiring authority imposed
 15 adverse action" is the beginning of business date noted on the Notice of Adverse Action (NOAA).

16 For the information requested, please refer to Exhibit A.

17 **INTERROGATORY NO. 20:**

18 For each year from 2017 to the present, please indicate the number of STAFF
 19 MISCONDUCT allegations that were referred to OIA by the LAC hiring authority, where OIA
 20 conducted a criminal investigation and made a referral to a criminal prosecuting agency.

21 **RESPONSE TO INTERROGATORY NO. 20:**

22 Defendants object to this interrogatory as not seeking information relevant to any party's
 23 claims or defenses in this case. Defendants further object to the interrogatory as unduly
 24 burdensome and disproportional to the needs of the case. Defendants further object to the
 25 interrogatory as seeking information that is protected from disclosure by official information
 26 privilege and California Penal Code section 832.7. Defendants object to the definition of the term
 27 "STAFF MISCONDUCT allegations" as vague, ambiguous, and incomprehensible because the
 28 definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and

1 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
 2 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
 3 incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs'
 4 definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order
 5 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
 6 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be
 7 a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE
 8 meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two
 9 criteria are met. The request is also vague and ambiguous as to the phrase "harmed an
 10 incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether
 11 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
 12 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
 13 incarcerated person was made, but not sustained.

14 Subject to those objections, and without waiving them, Defendants respond as follows:
 15 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs' definition of
 16 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
 17 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
 18 Defendants are diligently searching all available sources for responsive information, but have not
 19 yet located the information Plaintiffs' seek. Defendants will continue to search for such
 20 information and provide it to Plaintiffs once the information is located.

21 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 20:**

22 Subject to and incorporating all previously asserted objections, Defendants respond as
 23 follows:

24 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 25 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 26 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
 27 includes custody, non-custody, and medical classifications.
 28

1 In 2017, the California State Prison, Lancaster (LAC) hiring authority referred zero (0) staff
2 misconduct allegations where the Office of Internal Affairs (OIA) conducted a criminal
3 investigation and made a referral to a criminal prosecuting agency.

4 In 2018, LAC hiring authority referred zero (0) staff misconduct allegations where OIA
5 conducted a criminal investigation and made a referral to a criminal prosecuting agency.

6 In 2019, LAC hiring authority referred zero (0) staff misconduct allegations where OIA
7 conducted a criminal investigation and made a referral to a criminal prosecuting agency.

8 In 2020, LAC hiring authority referred zero (0) staff misconduct allegations where OIA
9 conducted a criminal investigation and made a referral to a criminal prosecuting agency.

10 **INTERROGATORY NO. 21:**

11 For each year from January 1, 2017 to the present, please indicate the number of STAFF
12 MISCONDUCT allegations referred to OIA by the LAC hiring authority that were then referred
13 by OIA to a criminal prosecuting agency and where the agency decided to prosecute the subject
14 of the investigation.

15 **RESPONSE TO INTERROGATORY NO. 21:**

16 Defendants object to this interrogatory as not seeking information relevant to any party's
17 claims or defenses in this case. Defendants further object to the interrogatory as unduly
18 burdensome and disproportional to the needs of the case. Defendants further object to the
19 interrogatory as seeking information that is protected from disclosure by official information
20 privilege and California Penal Code section 832.7. Defendants object to the definition of the term
21 "STAFF MISCONDUCT allegations" as vague, ambiguous, and incomprehensible because the
22 definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and
23 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
24 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
25 incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs'
26 definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order
27 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
28 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be

a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. Defendants further object to this interrogatory because their records may be incomplete as they do not keep records of other agencies' decisions.

Subject to those objections, and without waiving them, Defendants respond as follows: Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs' definition of STAFF MISCONDUCT for this interrogatory. Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 21:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF includes custody, non-custody, and medical classifications.

In 2017, the California State Prison, Lancaster (LAC) hiring authority referred zero (0) staff misconduct allegations that were referred by the Office of Internal Affairs (OIA) to a criminal prosecuting agency, and the agency decided to prosecute the subject.

In 2018, LAC hiring authority referred zero (0) staff misconduct allegations that were referred by the Office of Internal Affairs (OIA) to a criminal prosecuting agency, and the agency decided to prosecute the subject.

1 In 2019, LAC hiring authority referred zero (0) staff misconduct allegations that were
2 referred by the Office of Internal Affairs (OIA) to a criminal prosecuting agency, and the agency
3 decided to prosecute the subject.

4 In 2020, LAC hiring authority referred zero (0) staff misconduct allegations that were
5 referred by the Office of Internal Affairs (OIA) to a criminal prosecuting agency, and the agency
6 decided to prosecute the subject.

7
8
9 Dated: September 23, 2020

Respectfully submitted,

10 XAVIER BECERRA
11 Attorney General of California
12 JOANNA B. HOOD
13 Supervising Deputy Attorney General



14 SEAN W. LODHOLZ
15 Deputy Attorney General
16 *Attorneys for Defendants Gavin Newsom and*
17 *the California Department of Corrections*
18 *and Rehabilitation*

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VERIFICATION OF KIMBERLY SEIBEL
TO PLAINTIFFS' SPECIAL INTERROGATORIES (SET 2)

John Armstrong, et al. v. Gavin Newsom, et al.

USDC, Northern District, Case No. C 94-2307 CW

I, Kimberly Seibel, declare under penalty of perjury that I have read and reviewed the above supplemental response to Plaintiffs' Special Interrogatories, Set Two, for California State Prison, Lancaster, and that the response is true and correct based on my own knowledge, or based on information that is available to me.

Executed this 23 day of September, 2020, in Sacramento, California.



Kimberly Seibel

EXHIBIT A

EXHIBIT A - Interrogatory Number 12 for California State Prison, Lancaster (LAC)														
HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – ARMSTRONG V. NEWSOM (C 94-2307 CW)														
Case Number	Staff Name	Armstrong or Coleman Class Member Involved	Level Adverse Action Imposed	Effective Date of Adverse Action (Beginning of Business)	Placed on Administrative Time (ATO) Off	Dates of ATO	Appealed Adverse Action	Appeal of Adverse Action Complete	Final Action Imposed	Retire in Lieu of Dismissal	Resign in Lieu of Dismissal	Criminal Prosecution	Staff Still Being Paid	Date CDCR Ceased Paying
2017														
S-LAC-216-17-A		No Class Member	3	July 1, 2018	No	N/A	No	N/A	5% for 12 Months	N/A	N/A	No	Yes	N/A
S-LAC-216-17-A		No Class Member	3	July 1, 2018	No	N/A	Yes	Yes	5% for 11 Months	N/A	N/A	No	Yes	N/A
S-LAC-216-17-A		No Class Member	3	July 1, 2018	No	N/A	Yes	Yes	5% for 3 Months	N/A	N/A	No	Yes	N/A
S-LAC-216-17-A		No Class Member	3	July 1, 2018	No	N/A	Yes	Yes	Letter of Instruction	N/A	N/A	No	Yes	N/A
2018														
S-LAC-057-18-A		No Class Member	3	September 11, 2018	No	N/A	Yes	Yes	Letter of Reprimand	N/A	N/A	No	Yes	N/A
S-LAC-057-18-A		No Class Member	4	October 1, 2018	No	N/A	No	N/A	10% for 3 Months	N/A	N/A	No	Yes	N/A
S-LAC-057-18-A		No Class Member	4	October 1, 2018	No	N/A	No	N/A	10% for 6 Months	N/A	N/A	No	Yes	N/A
S-LAC-057-18-A		No Class Member	6	9/17/2018 on Initial NOAA Changed to 1/1/2018	No	N/A	Yes	Yes	10% for 20 Months	N/A	N/A	No	Yes	N/A
2019														
S-LAC-015-19-A		Coleman Class Member	2	July 16, 2019	No	N/A	Yes	Yes	Letter of Reprimand	N/A	N/A	No	Yes	N/A
S-LAC-231-19-A		No Class Member	5	April 1, 2020	No	N/A	Yes	Yes	5% for 14 Months	N/A	N/A	No	Yes	N/A
S-LAC-231-19-A		No Class Member	3	April 1, 2020	No	N/A	Yes	Yes	Letter of instruction	N/A	N/A	No	Yes	N/A
S-LAC-369-19-A		Coleman Class Member	9	August 27, 2020	No	N/A	No	N/A	Dismissal	No	No	No	No	Dismissed on August 27, 2020
S-LAC-1515-19-A		Coleman Class Member	3	July 1, 2020	No	N/A	Yes	Yes	5% for 6 Months	N/A	N/A	No	Yes	N/A
2020														
None														
HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – ARMSTRONG V. NEWSOM (C 94-2307 CW)														

Exhibit 95

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Gavin Newsom and California Department of
Corrections and Rehabilitation

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

C 94-2307 CW

**DEFENDANTS' SUPPLEMENTAL
RESPONSES TO PLAINTIFFS'
SPECIAL INTERROGATORIES, SET
ONE**

CSP-CORCORAN

PROPOUNDING PARTY: Plaintiffs JOHN ARMSTRONG, et al.

RESPONDING PARTY: Defendants GAVIN NEWSOM, et al.

SET NO.: One (1)

Defendants respond to Plaintiffs' first set of special interrogatories to Defendants as follows:

PRELIMINARY STATEMENT

The information provided in these responses is true and correct, according to Defendants' best knowledge at this time, but it is subject to future correction for omissions, errors, or mistakes. Defendants reserve the right to produce evidence of any subsequently discovered facts or interpretations thereof, and to amend, modify, or otherwise change the responses, in accordance with applicable discovery rules.

COR

INTERROGATORY NO. 1:

For each year from 2017 to the present, indicate the number of STAFF MISCONDUCT incidents that the COR hiring authority referred to OIA.

RESPONSE TO INTERROGATORY NO. 1:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF

MISCONDUCT” because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority referred the matter to the OIA.

Subject to those objections, and without waiving them, Defendants respond as follows: Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will provide responsive information, which Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs’ seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. INCIDENTS refers to the number of cases that the California State Prison, Corcoran (COR) hiring authority submitted to the Office of Internal Affairs (OIA) and ALLEGATIONS refers to the number of staff members referred. STAFF includes custody, non-custody, and medical classifications. If OIA added a staff member to a case, the allegation was counted as a referral by the COR hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the COR hiring authority. If OIA initiated the case, the case was counted as a referral by the COR hiring authority.

In 2017, the COR hiring authority referred ten (10) incidents of staff misconduct to OIA. Within the ten (10) cases, there were twenty-four (24) allegations.

2017 Incidents	2017 Allegations
10	24

In 2018, the COR hiring authority referred twelve (12) incidents of to OIA. Within the twelve (12) cases, there were forty (40) allegations.

2018 Incidents	2018 Allegations
12	40

In 2019, the COR hiring authority referred eighteen (18) incidents of staff misconduct to OIA. Within the eighteen (18) cases, there were fifty-four (54) allegations.

2019 Incidents	2019 Allegations
18	54

In 2020, the COR hiring authority referred twelve (12) incidents of staff misconduct to OIA. Within the twelve (12) cases, there were twenty-seven (27) allegations.

2020 Incidents	2020 Allegations
12	27

INTERROGATORY NO. 2:

For each year from 2017 to the present, indicate the OIA case number for all STAFF MISCONDUCT incidents that the COR hiring authority referred to OIA that involved an *Armstrong* or *Coleman* class member.

RESPONSE TO INTERROGATORY NO. 2:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object to providing information regarding *Coleman* class members who are not parties to this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify

1 which allegations involved class members. Defendants object to the definition of the term
2 “STAFF MISCONDUCT incidents” as vague, ambiguous, and incomprehensible because the
3 definition of “STAFF MISCONDUCT” Plaintiffs use cites to Title 15, § 3084(g), and
4 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
5 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
6 incomprehensible because Plaintiffs’ definition of STAFF MISCONDUCT “includes [Plaintiffs’
7 definition of] EXCESSIVE USE OF FORCE.” It is unclear whether Plaintiffs mean that in order
8 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
9 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be
10 a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE
11 meets Plaintiffs’ definition of STAFF MISCONDUCT, regardless of whether the other two
12 criteria are met. The request is also vague and ambiguous as to the phrase “harmed an
13 incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether
14 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
15 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
16 incarcerated person was made, but not sustained. The request is also vague and ambiguous
17 because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff
18 misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether
19 Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority
20 referred the matter to the OIA.

21 Subject to those objections, and without waiving them, Defendants respond as follows:
22 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
23 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
24 provide responsive information, which Defendants believe provide information Plaintiffs are
25 attempting to seek. Defendants are diligently searching all available sources for responsive
26 information, but have not yet located the information Plaintiffs’ are attempting to seek.
27 Defendants will continue to search for such information and provide it to Plaintiffs once the
28 information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF includes custody, non-custody, and medical classifications. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Corcoran (COR) hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the COR hiring authority. If OIA initiated the case it was counted as a referral by the COR hiring authority.

In 2017, the COR hiring authority referred eight (8) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The eight (8) case numbers are:

2017 OIA Referral Case Numbers
C-COR-014-17-D
C-COR-101-17-D
C-COR-211-17-A
C-COR-258-17-R
C-COR-287-17-D
C-COR-359-17-D
C-COR-458-17-A
C-COR-542-17-A

In 2018, the COR hiring authority referred twelve (12) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The twelve (12) cases are:

2018 OIA Referral Case Numbers
C-COR-143-18-A
C-COR-161-18-A
C-COR-196-18-A
C-COR-217-18-D
C-COR-243-18-C/A
C-COR-276-18-D

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C-COR-351-18-A
C-COR-364-18-D
C-COR-370-18-C/A*
C-COR-430-18-D
C-COR-452-18-A
C-COR-511-18-D

*Case C-COR-370-18-C/A was initiated by OIA, not the hiring authority at COR.

In 2019, COR referred seventeen (17) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The seventeen (17) cases are:

2019 OIA Referral Case Numbers
C-COR-039-19-D
C-COR-056-19-D
C-COR-121-19-A
C-COR-107-19-A
C-COR-223-19-D
C-COR-214-19-D
C-COR-225-19-A
C-COR-103-19-A
C-COR-391-19-D
C-COR-124-19-A
C-COR-248-19-A
C-COR-245-19-A
C-COR-192-19-S
C-COR-305-19-C/A*
C-COR-355-19-A
C-COR-356-19-A
C-COR-1547-19-A

*Case C-COR-305-19-C/A was initiated by OIA, not the hiring authority at COR.

In 2020, COR referred eleven (11) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The eleven (11) cases are:

2020 OIA Referral Case Numbers
C-COR-080-20-R
C-COR-196-20-R

C-COR-038-20-A
C-COR-040-20-A
C-COR-082-20-A
C-COR-083-20-A
C-COR-126-20-A
C-COR-272-20-A
C-COR-271-20-S
C-COR-273-20-P
C-COR-291-20-P

INTERROGATORY NO. 3:

For each year from 2017 to the present, indicate the number of referrals to OIA made by the COR hiring authority in which OIA (a) rejected the referral, (b) approved direct adverse action, and (c) opened an investigation.

RESPONSE TO INTERROGATORY NO. 3:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object that the interrogatory is not limited to on-duty instances, and not limited to instances involving inmates. Requiring Defendants to review and categorize all such instances is overly burdensome and not proportional to the needs of the case. Defendants object that the interrogatory includes a total of three discrete subparts, and should be counted toward Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows: Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, number of cases includes custody, non-custody, and medical classifications. Cases counted as an investigation include administrative investigations, criminal investigations, and all subject only interviews. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Corcoran (COR) hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the COR hiring authority. If OIA initiated the case it was counted as a referral by the COR hiring authority. The numbers reflect the initial OIA determination for the case. If a case was initially opened as a criminal investigation and later split into an administrative investigation the case was only counted as one (1) investigation opened.

In 2017, the COR hiring authority referred eighty-one (81) cases to OIA. Out of the eighty-one (81) cases, OIA rejected five (5), approved direct action on fifty-one (51), and opened an investigation on twenty-five (25).

2017 Total Cases Referred	Cases Rejected	Approved for Direct Action	Investigations Opened
81	5	51	25

In 2018, the COR hiring authority referred seventy-one (71) cases to OIA. Out of the seventy-one (71) cases, OIA rejected three (3), approved direct action on forty-six (46), and opened an investigation on twenty-two (22). Case C-COR-370-18-C was initiated by OIA; however, it was counted as a case referred by the COR hiring authority.

2018 Total Cases Referred	Cases Rejected	Approved for Direct Action	Investigations Opened
71	3	46	22

In 2019, the COR hiring authority referred seventy-six (76) cases to OIA. Out of the seventy-six (76) cases, OIA rejected two (2), approved direct action on forty-three (43), and opened twenty-nine (29) investigations. Two (2) cases are pending OIA. Case C-COR-305-19-C/A was initiated by OIA; however, it was counted as a case referred by the COR hiring authority.

2019 Total Cases Referred	Cases Rejected	Approved for Direct Action	Investigations Opened	Cases Pending
76	2	43	29	2

In 2020, the COR hiring authority referred thirty-seven (37) cases to OIA. Out of the thirty-seven (37) cases, OIA rejected two (2), approved direct action on thirteen (13) and opened fifteen (15) investigations. Seven (7) cases are pending OIA.

2020 Total Cases Referred	Cases Rejected	Approved for Direct Action	Investigations Opened	Cases Pending
37	2	13	15	7

INTERROGATORY NO. 4:

For each year from 2017 to the present, indicate the OIA case numbers of all referrals of STAFF MISCONDUCT involving *Armstrong* or *Coleman* class members in which OIA (a) rejected the referral, (b) approved direct adverse action, and (c) opened an investigation.

RESPONSE TO INTERROGATORY NO. 4:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object to providing information regarding *Coleman* class members who are not parties to this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations involved class members. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two

1 criteria are met. The request is also vague and ambiguous as to the phrase “harmed an
 2 incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether
 3 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
 4 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
 5 incarcerated person was made, but not sustained. The request is also vague and ambiguous
 6 because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff
 7 misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether
 8 Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority
 9 referred the matter to the OIA. Defendants object that the interrogatory includes a total of three
 10 discrete subparts, and should be counted toward Plaintiffs’ limit in accordance with Federal Rule
 11 of Civil Procedure 33(a)(1).

12 Subject to those objections, and without waiving them, Defendants respond as follows:
 13 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
 14 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
 15 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
 16 Defendants are diligently searching all available sources for responsive information, but have not
 17 yet located the information Plaintiffs’ seek. Defendants will continue to search for such
 18 information and provide it to Plaintiffs once the information is located.

19 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:**

20 Subject to and incorporating all previously asserted objections, Defendants respond as
 21 follows:

22 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 23 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 24 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
 25 includes custody, non-custody, and medical classifications. If the Office of Internal Affairs
 26 (OIA) added a staff member to the case, the allegation was counted as a referral by the California
 27 State Prison, Corcoran (COR) hiring authority. If OIA removed a staff member from the case, the
 28

allegation was counted as a referral by the COR hiring authority. If OIA initiated the case it was counted as a referral by the COR hiring authority.

In 2017, the COR hiring authority referred eight (8) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The eight (8) case numbers and OIA action are:

2017 OIA Referral Case Numbers	OIA Action
C-COR-014-17-D	Direct Action
C-COR-101-17-D	Direct Action
C-COR-211-17-A	Administrative Investigation
C-COR-258-17-R	Rejected
C-COR-287-17-D	Direct Action
C-COR-359-17-D	Direct Action
C-COR-458-17-A	Administrative Investigation
C-COR-542-17-A	Administrative Investigation

In 2018, the COR hiring authority referred twelve (12) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The twelve (12) case numbers and OIA action are:

2018 OIA Referral Case Numbers	OIA Action
C-COR-143-18-A	Administrative Investigation
C-COR-161-18-A	Administrative Investigation
C-COR-196-18-A	Administrative Investigation
C-COR-217-18-D	Direct Action
C-COR-243-18-C/A	Criminal Investigation Later Split to an Administrative Investigation Due to Lack of Evidence
C-COR-276-18-D	Direct Action
C-COR-351-18-A	Administrative Investigation
C-COR-364-18-D	Direct Action
C-COR-370-18-C/A	Criminal Investigation Later Split to an Administrative Investigation Due to the Criminal Investigation Clearing the Deadly Force Investigative Team (DFIT)
C-COR-430-18-D	Direct Action
C-COR-452-18-A	Administrative Investigation
C-COR-511-18-D	Direct Action

In 2019, the COR hiring authority referred seventeen (17) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The seventeen (17) case numbers are:

2019 OIA Referral Case Numbers	OIA Action
C-COR-039-19-D	Direct Action
C-COR-056-19-D	Direct Action
C-COR-121-19-A	Administrative Investigation
C-COR-107-19-A	Administrative Investigation
C-COR-223-19-D	Direct Action
C-COR-214-19-D	Direct Action
C-COR-225-19-A	Administrative Investigation
C-COR-103-19-A	Administrative Investigation
C-COR-391-19-D	Direct Action
C-COR-124-19-A	Administrative Investigation
C-COR-248-19-A	Administrative Investigation
C-COR-245-19-A	Administrative Investigation
C-COR-192-19-S	Subject Only Interview
C-COR-305-19-C/A	Criminal Investigation Later Split to an Administrative Investigation Due to the Criminal Investigation Clearing the Deadly Force Investigative Team (DFIT)
C-COR-355-19-A	Administrative Investigation
C-COR-356-19-A	Administrative Investigation
C-COR-1547-19-A	Administrative Investigation

In 2020, the COR hiring authority referred eleven (11) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. The eleven case numbers are:

2020 OIA Referral Case Numbers	OIA Action
C-COR-080-20-R	Rejected
C-COR-196-20-R	Rejected
C-COR-038-20-A	Administrative Investigation
C-COR-040-20-A	Administrative Investigation
C-COR-082-20-A	Administrative Investigation
C-COR-083-20-A	Administrative Investigation
C-COR-126-20-A	Administrative Investigation
C-COR-272-20-A	Administrative Investigation
C-COR-271-20-S	Subject Only Interview
C-COR-273-20-P	Pending OIA

C-COR-291-20-P

Pending OIA

INTERROGATORY NO. 5:

For each year from 2017 to the present, indicate the number of (a) administrative investigations and (b) criminal investigations opened by OIA following a referral from the COR hiring authority.

RESPONSE TO INTERROGATORY NO. 5:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object that the interrogatory is not limited to on-duty instances, and not limited to instances involving inmates. Requiring Defendants to review and categorize all such instances is overly burdensome and not proportional to the needs of the case. Defendants object that the interrogatory includes a total of two discrete subparts, and should be counted toward Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows: Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, number of cases includes custody, non-custody, and medical classifications. Cases the Office of Internal Affairs (OIA) opened as subject only interviews were counted as administrative investigations. The numbers reflect the initial OIA determination for the case. If OIA initially opened a case as a criminal investigation and during the investigative process split it into an administrative investigation, the case was counted as a criminal case only. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Corcoran (COR) hiring authority. If OIA

removed a staff member from the case, the allegation was counted as a referral by the COR hiring authority. If OIA initiated the case it was counted as a referral by the COR hiring authority.

In 2017, OIA opened twenty-five (25) investigations for cases referred by the COR hiring authority. Out of the twenty-five (25) cases, eighteen (18) cases were opened as administrative investigations and seven (7) were opened as criminal investigations.

2017 Investigations Open	Administrative Investigation	Criminal Investigation
25	18	7

In 2018, OIA opened twenty-two (22) investigations for cases referred by the COR hiring authority. Out of the twenty-two (22) cases, eighteen (18) were opened as administrative investigations and four (4) were open as criminal investigations.

2018 Investigations Open	Administrative Investigation	Criminal Investigation
22	18	4

In 2019, OIA opened twenty-nine (29) investigations for cases referred by the COR hiring authority. Out of the twenty-nine (29) cases, twenty-four (24) were opened as administrative investigations and five (5) were opened as criminal investigations.

2019 Investigations Open	Administrative Investigation	Criminal Investigation
29	24	5

In 2020, OIA opened fifteen (15) investigations for cases referred by the COR hiring authority. Out of the fifteen (15) cases, twelve (12) were opened as administrative investigations and three (3) were opened as criminal investigations.

2020 Investigations Open	Administrative Investigation	Criminal Investigation
15	12	3

INTERROGATORY NO. 6:

For each year from 2017 to the present, indicate the number of STAFF MISCONDUCT incidents from COR (a) for which the COR hiring authority sustained the allegations, (b) for which the COR hiring authority did not sustain the allegations, and (c) which remain open.

RESPONSE TO INTERROGATORY NO. 6:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations involved class members. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff misconduct was sustained, as the term "STAFF MISCONDUCT incidents" implies, or whether Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority referred the matter to the OIA. Defendants object that the interrogatory includes a total of three discrete subparts, and should be counted toward Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

1 Subject to those objections, and without waiving them, Defendants respond as follows:
 2 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs' definition of
 3 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
 4 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
 5 Defendants are diligently searching all available sources for responsive information, but have not
 6 yet located the information Plaintiffs' seek. Defendants will continue to search for such
 7 information and provide it to Plaintiffs once the information is located.

8 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 6:**

9 Subject to and incorporating all previously asserted objections, Defendants respond as
 10 follows:

11 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 12 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 13 regulation, or procedure, or appeared contrary to an ethical or professional standard. Staff
 14 includes custody, medical and non-custody classifications. If the Office of Internal Affairs (OIA)
 15 added a staff member to the case it was counted as a referral by the California State Prison,
 16 Corcoran (COR) hiring authority. If OIA removed a staff member from the case it was counted
 17 as a referral by the COR hiring authority. If OIA initiated the case it was counted as a referral by
 18 the COR hiring authority. Cases rejected by OIA were counted as not sustained by the hiring
 19 authority.

20 In 2017, the COR hiring authority referred ten (10) cases of staff misconduct to OIA.
 21 Within the ten (10) cases, there were twenty-four (24) allegations. Out of the twenty-four (24)
 22 allegations the COR hiring authority sustained fifteen (15) allegations and did not sustain nine (9)
 23 allegations.

2017 Sustained Allegations	2017 Not Sustained Allegations
15	9

24 In 2018, the COR hiring authority referred twelve (12) cases of staff misconduct to OIA.
 25 Within the twelve (12) cases, there were forty (40) allegations. Out of the forty (40) allegations
 26
 27
 28

the COR hiring authority sustained nineteen (19) allegations and did not sustain twenty-one (21) allegations.

2018 Sustained Allegations	2018 Not Sustained Allegations
19	21

In 2019, the COR hiring authority referred eighteen (18) cases of staff misconduct to OIA. Within the eighteen (18) cases, there were fifty-four (54) allegations. Out of the fifty-four (54) allegations the COR hiring authority sustained thirteen (13) allegations and did not sustain thirty-two (32) allegations. Nine (9) allegations are pending at the OIA.

2019 Sustained Allegations	2019 Not Sustained Allegations	Allegations Pending OIA
13	32	9

In 2020, the COR hiring authority referred twelve (12) cases of staff misconduct to OIA. Within the twelve (12) cases, there were twenty-seven (27) allegations. Out of the twenty-seven (27) allegations the COR hiring authority did not sustain two (2) allegations. Twenty-five (25) allegations are pending completion of the OIA investigation or intake process.

2020 Not Sustained Allegations	Allegations Pending OIA
2	25

INTERROGATORY NO. 7:

For each year from 2017 to the present, indicate the OIA case number for all STAFF MISCONDUCT incidents that involved an *Armstrong* or *Coleman* class member and (a) for which the COR hiring authority sustained the allegations, (b) for which the COR hiring authority did not sustain the allegations, and (c) which remain open.

RESPONSE TO INTERROGATORY NO. 7:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants specifically object to providing information regarding *Coleman* class members who are not parties to this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be

1 pulled and reviewed in order to determine whether the incident central to an allegation of staff
2 misconduct involved an inmate. Once that determination is made, the Department can identify
3 which allegations involved class members. Defendants object to the definition of the term
4 “STAFF MISCONDUCT incidents” as vague, ambiguous, and incomprehensible because the
5 definition of “STAFF MISCONDUCT” Plaintiffs use cites to Title 15, § 3084(g), and
6 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
7 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
8 incomprehensible because Plaintiffs’ definition of STAFF MISCONDUCT “includes [Plaintiffs’
9 definition of] EXCESSIVE USE OF FORCE.” It is unclear whether Plaintiffs mean that in order
10 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
11 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be
12 a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE
13 meets Plaintiffs’ definition of STAFF MISCONDUCT, regardless of whether the other two
14 criteria are met. The request is also vague and ambiguous as to the phrase “harmed an
15 incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether
16 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
17 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
18 incarcerated person was made, but not sustained. The request is also vague and ambiguous
19 because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff
20 misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether
21 Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority
22 referred the matter to the OIA. Defendants object that the interrogatory includes a total of three
23 discrete subparts, and should be counted toward Plaintiffs’ limit in accordance with Federal Rule
24 of Civil Procedure 33(a)(1).

25 Subject to those objections, and without waiving them, Defendants respond as follows:
26 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
27 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
28 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.

Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs' seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:

Subject to and incorporating all previously asserted objections, Defendants respond as follows:

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF includes custody, non-custody, and medical classifications. If the Office of Internal Affairs (OIA) added a staff member to the case, the allegation was counted as a referral by the California State Prison, Corcoran (COR) hiring authority. If OIA removed a staff member from the case, the allegation was counted as a referral by the COR hiring authority. If OIA initiated the case it was counted as a referral by the COR hiring authority. Cases rejected by OIA were counted as not sustained by the hiring authority.

In 2017, the COR hiring authority referred eight (8) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the eight (8) cases, there were twenty-two (22) subjects. Below is a chart showing the OIA case number, the number of subjects, and if the allegation was sustained, not sustained or remains open.

2017 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision
C-COR-014-17-D	1	Direct Action	Sustained
	2	Direct Action	Sustained
C-COR-101-17-D	1	Direct Action	Sustained
C-COR-211-17-A	1	Administrative Investigation	Sustained
	2	Administrative Investigation	Sustained
C-COR-258-17-R	1	Rejected	Not Sustained
	2	Rejected	Not Sustained
C-COR-287-17-D	1	Direct Action	Sustained
C-COR-359-17-D	1	Direct Action	Sustained
C-COR-458-17-A	1	Administrative Investigation	Not Sustained

	2	Administrative Investigation	Sustained
C-COR-542-17-A	1	Administrative Investigation	Sustained
	2	Administrative Investigation	Sustained
	3	Administrative Investigation	Sustained
	4	Administrative Investigation	Sustained
	5	Administrative Investigation	Not Sustained
	6	Administrative Investigation	Not Sustained
	7	Administrative Investigation	Not Sustained
	8	Administrative Investigation	Sustained
	9	Administrative Investigation	Sustained
	10	Administrative Investigation	Not Sustained
	11	Administrative Investigation	Sustained

In 2018, the COR hiring authority referred twelve (12) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the twelve (12) cases, there were forty (40) subjects. Below is a chart showing the OIA case number, the number of subjects, and if the allegation was sustained, not sustained or remains open.

2018 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision
C-COR-143-18-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative Investigation	Sustained
C-COR-161-18-A	1	Administrative Investigation	Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative Investigation (OIA Added Subject)	Not Sustained
	4	Administrative Investigation (OIA Added Subject)	Not Sustained
	5	Administrative Investigation (OIA Added Subject)	Not Sustained

	6	Administrative Investigation (OIA Added Subject)	Not Sustained
	7	Administrative Investigation (OIA Added Subject)	Not Sustained
C-COR-196-18-A	1	Administrative Investigation	Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative Investigation	Sustained
	4	Administrative Investigation	Sustained
	5	Administrative Investigation (OIA Added Subject)	Not Sustained
	6	Administrative Investigation (OIA Added Subject)	Not Sustained
	7	Administrative Investigation (OIA Added Subject)	Not Sustained
C-COR-217-18-D	1	Direct Action (OIA Removed Subject)	Not Sustained
	2	Direct Action (OIA Removed Subject)	Not Sustained
	3	Direct Action (OIA Removed Subject)	Not Sustained
	4	Direct Action	Sustained
C-COR-243-18-C/A	1	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Split to an Administrative Investigation Due to Lack of Evidence Administrative Investigation – Sustained
C-COR-276-18-D	1	Direct Action	Sustained
	2	Direct Action	Not Sustained
C-COR-351-18-A	1	Administrative Investigation	Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative Investigation	Not Sustained
	4	Administrative Investigation	Sustained
C-COR-364-18-D	1	Direct Action	Sustained
	2	Direct Action	Sustained
C-COR-370-18-C/A	1	Criminal Investigation Split to an Administrative	Criminal Investigation - Split to an Administrative

		Investigation (OIA Removed Subject on the Administrative Investigation)	Investigation Due to Clearing the Deadly Force Investigative Team (DFIT). Administrative Investigation – Not Sustained
	2	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained
	3	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained
C-COR-430-18-D	1	Direct Action	Sustained
C-COR-452-18-A	1	Administrative Investigation	Sustained
	2	Administrative Investigation	Sustained
	3	Administrative Investigation	Sustained
C-COR-511-18-D	1	Direct Action	Sustained
	2	Direct Action	Sustained
	3	Direct Action	Sustained

In 2019, the COR hiring authority referred seventeen (17) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the seventeen (17) cases, there were fifty-one (51) subjects. Below is a chart showing the OIA case number, the number of subjects, and if the allegation was sustained, not sustained or remains open.

2019 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision
C-COR-039-19-D	1	Direct Action	Not Sustained
	2	Direct Action	Not Sustained
	3	Direct Action	Not Sustained
C-COR-056-19-D	1	Direct Action	Not Sustained
	2	Direct Action	Not Sustained
C-COR-121-19-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative	Not Sustained

		Investigation (OIA Removed Subject)	
C-COR-107-19-A	1	Administrative Investigation	Sustained
C-COR-223-19-D	1	Direct Action	Sustained
C-COR-214-19-D	1	Direct Action	Sustained
	2	Direct Action	Sustained
C-COR-225-19-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Not Sustained
C-COR-103-19-A	1	Administrative Investigation	Sustained
C-COR-391-19-D	1	Direct Action	Sustained
	2	Direct Action	Sustained
	3	Direct Action	Not Sustained
C-COR-124-19-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Sustained
	3	Administrative Investigation	Sustained
	4	Administrative Investigation	Not Sustained
C-COR-248-19-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Not Sustained
C-COR-245-19-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative Investigation	Not Sustained
	4	Administrative Investigation	Not Sustained
	5	Administrative Investigation	Not Sustained
	6	Administrative Investigation	Not Sustained
C-COR-192-19-S	1	Subject Only Interview	Sustained
C-COR-305-19-C/A	1	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained
	2	Criminal Investigation Split to	Criminal Investigation – Spilt

		an Administrative Investigation	to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained
	3	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained
	4	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained
	5	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained
	6	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained
C-COR-355-19-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Not Sustained
C-COR-356-19-A	1	Administrative Investigation	Not Sustained
	2	Administrative Investigation	Not Sustained
	3	Administrative Investigation	Not Sustained
C-COR-1547-19-A	1	Administrative Investigation	Pending OIA
	2	Administrative Investigation	Pending OIA
	3	Administrative Investigation	Pending OIA

	4	Administrative Investigation	Pending OIA
	5	Administrative Investigation	Pending OIA
	6	Administrative Investigation	Pending OIA
	7	Administrative Investigation	Pending OIA
	8	Administrative Investigation	Pending OIA
	9	Administrative Investigation	Pending OIA

In 2020, the COR hiring authority referred eleven (11) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the eleven (11) cases, there were twenty-five (25) subjects. Below is a chart showing the OIA case number, the number of subjects, and if the allegation was sustained, not sustained or remains open.

2020 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision
C-COR-080-20-R	1	Rejected	Not Sustained
C-COR-196-20-R	1	Rejected	Not Sustained
C-COR-038-20-A	1	Administrative Investigation	Pending OIA
	2	Administrative Investigation	Pending OIA
C-COR-040-20-A	1	Administrative Investigation	Pending OIA
	2	Administrative Investigation	Pending OIA
	3	Administrative Investigation	Pending OIA
	4	Administrative Investigation	Pending OIA
C-COR-082-20-A	1	Administrative Investigation	Pending OIA
	2	Administrative Investigation	Pending OIA
	3	Administrative Investigation	Pending OIA
C-COR-083-20-A	1	Administrative Investigation	Pending OIA
	2	Administrative Investigation	Pending OIA
	3	Administrative Investigation	Pending OIA
C-COR-126-20-A	1	Administrative Investigation	Pending OIA
	2	Administrative Investigation	Pending OIA
	3	Administrative Investigation	Pending OIA

		Investigation	
	4	Administrative Investigation	Pending OIA
C-COR-272-20-A	1	Administrative Investigation	Pending OIA
C-COR-271-20-S	1	Subject Only Interview	Pending OIA
C-COR-273-20-P	1	Pending OIA	Pending OIA
	2	Pending OIA	Pending OIA
	3	Pending OIA	Pending OIA
	4	Pending OIA	Pending OIA
C-COR-291-20-P	1	Pending OIA	Pending OIA

INTERROGATORY NO. 8:

For each year from 2017 to the present, indicate the number of STAFF MISCONDUCT incidents from COR for which the COR hiring authority sustained the allegations and imposed (a) adverse action and (b) corrective action.

RESPONSE TO INTERROGATORY NO. 8:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations involved class members. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF

1 MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague
 2 and ambiguous as to the phrase “harmed an incarcerated person” in the definition of “STAFF
 3 MISCONDUCT” because it is not clear whether Plaintiffs are seeking only instances in which a
 4 finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking
 5 instances in which an allegation of harm to an incarcerated person was made, but not sustained.
 6 The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking
 7 only instances in which a finding of staff misconduct was sustained, as the term “STAFF
 8 MISCONDUCT incidents” implies, or whether Plaintiffs are seeking both sustained and not
 9 sustained instances in which the hiring authority referred the matter to the OIA. Defendants
 10 object that the interrogatory includes a total of two discrete subparts, and should be counted
 11 toward Plaintiffs’ limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

12 Subject to those objections, and without waiving them, Defendants respond as follows:
 13 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
 14 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
 15 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
 16 Defendants are diligently searching all available sources for responsive information, but have not
 17 yet located the information Plaintiffs’ seek. Defendants will continue to search for such
 18 information and provide it to Plaintiffs once the information is located.

19 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:**

20 Subject to and incorporating all previously asserted objections, Defendants respond as
 21 follows:

22 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 23 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 24 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
 25 includes custody, non-custody, and medical classifications. If the Office of Internal Affairs
 26 (OIA) added a staff member to the case, the allegation was counted as a referral by the California
 27 State Prison, Corcoran (COR) hiring authority. If OIA removed a staff member from the case, the
 28 allegation was counted as a referral by the COR hiring authority. If OIA initiated the case it was

counted as a referral by the COR hiring authority. Cases rejected by OIA were counted as not sustained by the hiring authority and no action imposed.

In 2017, the COR hiring authority referred ten (10) cases of staff misconduct to OIA. Within the ten (10) cases there were twenty-four (24) allegations of staff misconduct. The COR hiring authority sustained fifteen (15) of the staff misconduct allegations and did not sustain nine (9). Out of the fifteen (15) sustained allegations adverse action was imposed on fourteen (14) and corrective action was imposed on one (1).

2017 Sustained Allegations	Adverse Action Imposed	Corrective Action Imposed
15	14	1

In 2018, the COR hiring authority referred twelve (12) cases of staff misconduct involving an inmate to OIA. Within the twelve (12) cases, there were forty (40) allegations of staff misconduct. The COR hiring authority sustained nineteen (19) of the staff misconduct allegations and did not sustain twenty-one (21). Out of the nineteen (19) sustained allegations adverse action was imposed on thirteen (13), corrective action was imposed on five (5), and no action was taken on one (1). No action was taken on the one (1) case because the staff member resigned during the investigative process. It is unknown if the staff member's resignation was related to the investigation.

2018 Sustained Allegations	Adverse Action Imposed	Corrective Action Imposed	No Action Imposed
19	13	5	1

In 2019, the COR hiring authority referred eighteen (18) cases of staff misconduct involving an inmate to OIA. Within the eighteen (18) cases, there were fifty-four (54) allegations of staff misconduct. The hiring authority sustained thirteen (13) of the staff misconduct allegations and did not sustain thirty-two (32). Nine (9) allegations are pending at the OIA. Out of the thirteen (13) sustained allegations adverse action was imposed on five (5) and corrective action was imposed on eight (8).

2019 Sustained Allegations	Adverse Action Imposed	Corrective Action Imposed
13	5	8

In 2020, the COR hiring authority referred twelve (12) cases of staff misconduct involving an inmate to OIA. Within the twelve (12) cases, there were twenty-seven (27) allegations of staff misconduct. Two (2) of the staff misconduct allegations were not sustained by the COR

1 hiring authority and twenty-five (25) are pending OIA. No adverse or corrective action have been
 2 imposed.

2020 Sustained Allegations	Adverse Action Imposed	Corrective Action Imposed
0	0	0

4
 5 **INTERROGATORY NO. 9:**

6 For each year from 2017 to the present, indicate the OIA case number for all STAFF
 7 MISCONDUCT incidents that involved an *Armstrong* or *Coleman* class member and for which
 8 the COR hiring authority sustained the allegations and imposed (a) adverse action and (b)
 9 corrective action.

10 **RESPONSE TO INTERROGATORY NO. 9:**

11 Defendants object to this interrogatory as not seeking information relevant to any party's
 12 claims or defenses in this case. Defendants specifically object to providing information regarding
 13 *Coleman* class members who are not parties to this case. The request is also burdensome and not
 14 proportional to the needs of the case. The Department tracks allegations of staff misconduct by
 15 the subject of the allegations, not the reporting individual or alleged victim. Each file must be
 16 pulled and reviewed in order to determine whether the incident central to an allegation of staff
 17 misconduct involved an inmate. Once that determination is made, the Department can identify
 18 which allegations involved class members. Defendants object to the definition of the term
 19 "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the
 20 definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and
 21 Department Operations Manual § 54110.25, neither of which exist in the current versions of those
 22 documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and
 23 incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs'
 24 definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order
 25 to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF
 26 FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be
 27 a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE
 28 meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two

1 criteria are met. The request is also vague and ambiguous as to the phrase “harmed an
 2 incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether
 3 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
 4 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
 5 incarcerated person was made, but not sustained. The request is also vague and ambiguous
 6 because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff
 7 misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether
 8 Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority
 9 referred the matter to the OIA. Defendants object that the interrogatory includes a total of two
 10 discrete subparts, and should be counted toward Plaintiffs’ limit in accordance with Federal Rule
 11 of Civil Procedure 33(a)(1).

12 Subject to those objections, and without waiving them, Defendants respond as follows:
 13 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
 14 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
 15 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
 16 Defendants are diligently searching all available sources for responsive information, but have not
 17 yet located the information Plaintiffs’ seek. Defendants will continue to search for such
 18 information and provide it to Plaintiffs once the information is located.

19 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:**

20 Subject to and incorporating all previously asserted objections, Defendants respond as
 21 follows:

22 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
 23 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
 24 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
 25 includes custody, non-custody, and medical classifications. If the Office of Internal Affairs
 26 (OIA) added a staff member to the case, the allegation was counted as a referral by the California
 27 State Prison, Corcoran (COR) hiring authority. If OIA removed a staff member from the case, the
 28 allegation was counted as a referral by the COR hiring authority. If OIA initiated the case it was

counted as a referral by the COR hiring authority. Cases rejected by OIA were counted as not sustained by the hiring authority and no action imposed.

In 2017, the COR hiring authority referred eight (8) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the eight (8) cases, there were twenty-two (22) allegations. The hiring authority sustained fifteen (15) of the allegations. Below is a chart showing the OIA case number, the number of allegations, the hiring authority decision to sustain or not sustain the allegation, and the type of disciplinary action imposed.

2017 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision	Disciplinary Action Imposed
C-COR-014-17-D	1	Direct Adverse Action	Sustained	Adverse Action
	2	Direct Adverse Action	Sustained	Adverse Action
C-COR-101-17-D	1	Direct Adverse Action	Sustained	Corrective Action
C-COR-211-17-A	1	Administrative Investigation	Sustained	Adverse Action
	2	Administrative Investigation	Sustained	Adverse Action
C-COR-258-17-R	1	Rejected	Not Sustained	No Action
	2	Rejected	Not Sustained	No Action
C-COR-287-17-D	1	Direct Adverse Action	Sustained	Adverse Action
C-COR-359-17-D	1	Direct Adverse Action	Sustained	Adverse Action
C-COR-458-17-A	1	Administrative Investigation	Not Sustained	No Action
	2	Administrative Investigation	Sustained	Adverse Action
C-COR-542-17-A	1	Administrative Investigation	Sustained	Adverse Action
	2	Administrative Investigation	Sustained	Adverse Action
	3	Administrative Investigation	Sustained	Adverse Action

	4	Administrative Investigation	Sustained	Adverse Action
	5	Administrative Investigation	Not Sustained	No Action
	6	Administrative Investigation	Not Sustained	No Action
	7	Administrative Investigation	Not Sustained	No Action
	8	Administrative Investigation	Sustained	Adverse Action
	9	Administrative Investigation	Sustained	Adverse Action
	10	Administrative Investigation	Not Sustained	No Action
	11	Administrative Investigation	Sustained	Adverse Action

In 2018, the COR hiring authority referred twelve (12) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the twelve (12) cases, there were forty (40) allegations. The hiring authority sustained nineteen (19) of the allegations. Below is a chart showing the OIA case number, the number of allegations, the hiring authority decision, and the type of disciplinary action imposed.

2018 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision	Disciplinary Action Imposed
C-COR-143-18-A	1	Administrative Investigation	Not Sustained	No Action
	2	Administrative Investigation	Not Sustained	No Action
	3	Administrative Investigation	Sustained	Adverse Action
C-COR-161-18-A	1	Administrative Investigation	Sustained	Adverse Action
	2	Administrative Investigation	Not Sustained	No Action
	3	Administrative Investigation (OIA Added Subject)	Not Sustained	No Action
	4	Administrative Investigation (OIA Added Subject)	Not Sustained	No Action
	5	Administrative Investigation (OIA Added Subject)	Not Sustained	No Action

		Subject)		
	6	Administrative Investigation (OIA Added Subject)	Not Sustained	No Action
	7	Administrative Investigation (OIA Added Subject)	Not Sustained	No Action
C-COR-196-18-A	1	Administrative Investigation	Sustained	Adverse Action
	2	Administrative Investigation	Not Sustained	No Action
	3	Administrative Investigation	Sustained	Adverse Action
	4	Administrative Investigation	Sustained	Adverse Action
	5	Administrative Investigation (OIA Added Subject)	Not Sustained	No Action
	6	Administrative Investigation (OIA Added Subject)	Not Sustained	No Action
	7	Administrative Investigation (OIA Added Subject)	Not Sustained	No Action
C-COR-217-18-D	1	Direct Action (OIA Removed Subject)	Not Sustained	No Action
	2	Direct Action (OIA Removed Subject)	Not Sustained	No Action
	3	Direct Action (OIA Removed Subject)	Not Sustained	No Action
	4	Direct Action	Sustained	Adverse Action
C-COR-243-18-C/A	1	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Split to an Administrative Investigation Due to Lack of Evidence Administrative Investigation – Sustained	Adverse Action
C-COR-276-18-D	1	Direct Action	Sustained	Adverse Action
	2	Direct Action	Not Sustained	No Action
C-COR-351-18-A	1	Administrative Investigation	Sustained	Corrective Action

	2	Administrative Investigation	Not Sustained	No Action
	3	Administrative Investigation	Not Sustained	No Action
	4	Administrative Investigation	Sustained	Corrective Action
C-COR-364-18-D	1	Direct Action	Sustained	Adverse Action
	2	Direct Action	Sustained	Adverse Action
C-COR-370-18-C/A	1	Criminal Investigation Split to an Administrative Investigation (OIA Removed Subject on the Administrative Investigation)	Criminal Investigation - Split to an Administrative Investigation Due to Clearing the Deadly Force Investigative Team (DFIT). Administrative Investigation – Not Sustained	No Action
	2	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained	No Action
	3	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained	No Action
C-COR-430-18-D	1	Direct Action	Sustained	No Action (Staff Resigned During the Investigative Process)
C-COR-452-18-A	1	Administrative Investigation	Sustained	Adverse Action
	2	Administrative Investigation	Sustained	Adverse Action
	3	Administrative Investigation	Sustained	Adverse Action
C-COR-511-18-D	1	Direct Action	Sustained	Corrective Action
	2	Direct Action	Sustained	Corrective

				Action
	3	Direct Action	Sustained	Corrective Action

In 2019, the COR hiring authority referred seventeen (17) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the seventeen (17) cases, there were fifty-one (51) allegations. The hiring authority sustained ten (10) of the allegations. Below is a chart showing the OIA case number, the number of allegations, the hiring authority decision, and the type of disciplinary action imposed.

2019 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision	Disciplinary Action Imposed
C-COR-039-19-D	1	Direct Action	Not Sustained	No Action
	2	Direct Action	Not Sustained	No Action
	3	Direct Action	Not Sustained	No Action
C-COR-056-19-D	1	Direct Action	Not Sustained	No Action
	2	Direct Action	Not Sustained	No Action
C-COR-121-19-A	1	Administrative Investigation	Not Sustained	No Action
	2	Administrative Investigation	Not Sustained	No Action
	3	Administrative Investigation (OIA Removed Subject)	Not Sustained	No Action
C-COR-107-19-A	1	Administrative Investigation	Sustained	Adverse Action
C-COR-223-19-D	1	Direct Action	Sustained	Adverse Action
C-COR-214-19-D	1	Direct Action	Sustained	Corrective Action
	2	Direct Action	Sustained	Corrective Action
C-COR-225-19-A	1	Administrative Investigation	Not Sustained	No Action
	2	Administrative Investigation	Not Sustained	No Action
C-COR-103-19-A	1	Administrative Investigation	Sustained	Adverse Action
C-COR-391-19-D	1	Direct Action	Sustained	Corrective Action
	2	Direct Action	Sustained	Correction Action
	3	Direct Action	Not Sustained	No Action
C-COR-124-19-A	1	Administrative Investigation	Not Sustained	No Action
	2	Administrative Investigation	Sustained	Adverse Action

1		3	Administrative Investigation	Sustained	Adverse Action
2		4	Administrative Investigation	Not Sustained	No Action
3	C-COR-248-19-A	1	Administrative Investigation	Not Sustained	No Action
4		2	Administrative Investigation	Not Sustained	No Action
5	C-COR-245-19-A	1	Administrative Investigation	Not Sustained	No Action
6		2	Administrative Investigation	Not Sustained	No Action
7		3	Administrative Investigation	Not Sustained	No Action
8		4	Administrative Investigation	Not Sustained	No Action
9		5	Administrative Investigation	Not Sustained	No Action
10		6	Administrative Investigation	Not Sustained	No Action
11	C-COR-192-19-S	1	Subject Only Interview	Sustained	Corrective Action
12	C-COR-305-19-C/A	1	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained	No Action
13		2	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained	No Action
14		3	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained	No Action
15		4	Criminal	Criminal	No Action

		Investigation Split to an Administrative Investigation	Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained	
	5	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained	No Action
	6	Criminal Investigation Split to an Administrative Investigation	Criminal Investigation – Spilt to an Administrative Investigation Due to Clearing DFIT. Administrative Investigation – Not Sustained	No Action
C-COR-355-19-A	1	Administrative Investigation	Not Sustained	No Action
	2	Administrative Investigation	Not Sustained	No Action
C-COR-356-19-A	1	Administrative Investigation	Not Sustained	No Action
	2	Administrative Investigation	Not Sustained	No Action
	3	Administrative Investigation	Not Sustained	No Action
C-COR-1547-19-A	1	Administrative Investigation	Pending OIA	Pending OIA
	2	Administrative Investigation	Pending OIA	Pending OIA
	3	Administrative Investigation	Pending OIA	Pending OIA
	4	Administrative Investigation	Pending OIA	Pending OIA
	5	Administrative Investigation	Pending OIA	Pending OIA
	6	Administrative Investigation	Pending OIA	Pending OIA
	7	Administrative Investigation	Pending OIA	Pending OIA

	8	Administrative Investigation	Pending OIA	Pending OIA
	9	Administrative Investigation	Pending OIA	Pending OIA

In 2020, the COR hiring authority referred eleven (11) cases of staff misconduct involving an *Armstrong* or *Coleman* class member to OIA. Within the eleven (11) cases, there were twenty-five (25) allegations. The COR hiring authority did not sustain two (2) allegations and twenty-three (23) allegations are pending at the OIA. Below is a chart showing the OIA case number, the number of allegations, the hiring authority decision, and the type of disciplinary action imposed.

2020 OIA Referral Case Numbers	Subject Number	OIA Decision	Hiring Authority Decision	Disciplinary Action Imposed
C-COR-080-20-R	1	Rejected	Not Sustained	No Action
C-COR-196-20-R	1	Rejected	No Sustained	No Action
C-COR-038-20-A	1	Administrative Investigation	Pending OIA	Pending OIA
	2	Administrative Investigation	Pending OIA	Pending OIA
C-COR-040-20-A	1	Administrative Investigation	Pending OIA	Pending OIA
	2	Administrative Investigation	Pending OIA	Pending OIA
	3	Administrative Investigation	Pending OIA	Pending OIA
	4	Administrative Investigation	Pending OIA	Pending OIA
C-COR-082-20-A	1	Administrative Investigation	Pending OIA	Pending OIA
	2	Administrative Investigation	Pending OIA	Pending OIA
	3	Administrative Investigation	Pending OIA	Pending OIA
C-COR-083-20-A	1	Administrative Investigation	Pending OIA	Pending OIA
	2	Administrative Investigation	Pending OIA	Pending OIA
	3	Administrative Investigation	Pending OIA	Pending OIA
C-COR-126-20-A	1	Administrative Investigation	Pending OIA	Pending OIA
	2	Administrative Investigation	Pending OIA	Pending OIA
	3	Administrative Investigation	Pending OIA	Pending OIA

	4	Administrative Investigation	Pending OIA	Pending OIA
C-COR-272-20-A	1	Administrative Investigation	Pending OIA	Pending OIA
C-COR-271-20-S	1	Subject Only Interview	Pending OIA	Pending OIA
C-COR-273-20-P	1	Pending OIA	Pending OIA	Pending OIA
	2	Pending OIA	Pending OIA	Pending OIA
	3	Pending OIA	Pending OIA	Pending OIA
	4	Pending OIA	Pending OIA	Pending OIA
C-COR-291-20-P	1	Pending OIA	Pending OIA	Pending OIA

INTERROGATORY NO. 10:

For each year from 2017 to the present, indicate the number of STAFF MISCONDUCT incidents at COR where the COR hiring authority sustained and issued (a) a Level 1 penalty (official reprimand), (b) a Level 2 penalty (1-2 day suspension without pay), (c) a Level 3 penalty (5% salary reduction for 3-12 months or suspension without pay for 3-12 work days), (d) a Level 4 penalty (salary reduction 10% for 3-12 months or suspension without pay for 6-24 work days), (e) a Level 5 penalty (salary reduction 5% for 13-36 months or suspension without pay for 13-36 work days), (f) a Level 6 penalty (salary reduction 10% for 13-24 months or suspension without pay for 26-48 work days), (g) a Level 7 penalty (suspension without pay for 49-60 work days), (h) a Level 8 penalty (demotion to a lower class), or (e) a Level 9 penalty (dismissal), as those levels are defined in the Employee Disciplinary Matrix, Department of Operations Manual, § 33030.16.

RESPONSE TO INTERROGATORY NO. 10:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. The request is also burdensome and not proportional to the needs of the case. The Department tracks allegations of staff misconduct by the subject of the allegations, not the reporting individual or alleged victim. Each file must be pulled and reviewed in order to determine whether the incident central to an allegation of staff misconduct involved an inmate. Once that determination is made, the Department can identify which allegations involved class members. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF

MISCONDUCT” Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs’ definition of STAFF MISCONDUCT “includes [Plaintiffs’ definition of] EXCESSIVE USE OF FORCE.” It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs’ definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase “harmed an incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff misconduct was sustained, as the term “STAFF MISCONDUCT incidents” implies, or whether Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority referred the matter to the OIA. Defendants object that the interrogatory includes a total of nine discrete subparts, and should be counted toward Plaintiffs’ limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

Subject to those objections, and without waiving them, Defendants respond as follows: Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will provide responsive information, which Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all available sources for responsive information, but have not yet located the information Plaintiffs’ seek. Defendants will continue to search for such information and provide it to Plaintiffs once the information is located.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:

Subject to and incorporating all previously asserted objections, Defendants respond as

1 follows:

2 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
3 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
4 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
5 includes custody, non-custody, and medical classifications. If the Office of Internal Affairs
6 (OIA) added a staff member to the case, the allegation was counted as a referral by the California
7 State Prison, Corcoran (COR) hiring authority. If OIA removed a staff member from the case, the
8 allegation, was counted as a referral by the COR hiring authority. If OIA initiated the case it was
9 counted as a referral by the COR hiring authority. Cases rejected by OIA were counted as not
10 sustained by the hiring authority and no action imposed.

11 In 2017, the COR hiring authority sustained fifteen (15) allegations of staff misconduct.
12 Fourteen (14) of the sustained allegations resulted in adverse action being imposed by the hiring
13 authority. One (1) of the sustained allegations resulted in corrective action being imposed by the
14 hiring authority.

15 Below is a list of the Employee Disciplinary Matrix (EDM) from the California Department
16 of Corrections and Rehabilitations (CDCR) Department Operations Manual (DOM) followed by
17 how many times the adverse action penalty was imposed on sustained allegations of staff
18 misconduct.

19 Employee Disciplinary Matrix Code	Times Penalty Imposed
20 1	1
21 2	0
22 3	9
23 4	0
24 5	0
25 6	0
26 7	1
27 8	0
28 9	3

29 In 2018, the COR hiring authority sustained nineteen (19) allegations of staff misconduct.
30 Thirteen (13) of the sustained allegations resulted in adverse action being imposed by the hiring
31 authority. Five (5) of the sustained allegations resulted in corrective action being imposed by the

1 hiring authority. One (1) of the sustained allegations of staff misconduct resulted in no action
2 being taken because the staff member resigned while the investigation was being conducted.

3 Below is a list of the EDM from the CDCR DOM followed by how many times the adverse
4 action penalty was imposed on sustained allegations of staff misconduct.

Employee Disciplinary Matrix Code	Times Penalty Imposed
1	3
2	0
3	5*
4	1
5	0
6	0
7	1
8	0
9	3*

10 *One (1) EDM level three (3) and one (1) level nine (9) penalty imposed was on a staff
11 member who was dismissed in case C-COR-458-17-A. The level three (3) and level (9) penalties
12 would be imposed if the State Personnel Board (SPB) reinstated the staff member during their
13 appeal in case C-COR-458-17-A.

14 In 2019, the COR hiring authority sustained thirteen (13) allegations of staff misconduct.
15 Five (5) of the sustained allegations resulted in adverse action being imposed by the hiring
16 authority. Eight (8) of the sustained allegations of staff misconduct resulted in corrective action
17 being imposed by the hiring authority.

18 Below is a list of the EDM from the CDCR DOM followed by how many times the adverse
19 action penalty was imposed on sustained allegations of staff misconduct.

Employee Disciplinary Matrix Code	Times Penalty Imposed
1	1
2	0
3	1
4	0
5	1
6	0
7	0
8	0
9	2

26 In 2020, the COR hiring authority has not sustained any allegations of staff misconduct.
27 Twenty-five (25) allegations are pending at the OIA.

INTERROGATORY NO. 11:

Indicate the names of all officers against whom a warden at COR has, since January 1, 2017, imposed adverse action for STAFF MISCONDUCT.

RESPONSE TO INTERROGATORY NO. 11:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants further object to this interrogatory as intended to harass non-party officers and former officers. Defendants further object to the interrogatory as unduly burdensome and disproportional to the needs of the case. Defendants further object to the interrogatory as seeking information that is protected from disclosure by official information privilege and California Penal Code section 832.7. Defendants object to the definition of the term "STAFF MISCONDUCT incidents" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. The request is also vague and ambiguous because it is not clear whether Plaintiffs are seeking only instances in which a finding of staff misconduct was sustained, as the term "STAFF MISCONDUCT incidents" implies, or whether

1 Plaintiffs are seeking both sustained and not sustained instances in which the hiring authority
2 referred the matter to the OIA.

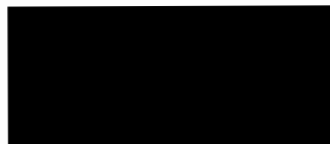
3 Subject to those objections, and without waiving them, Defendants respond as follows:
4 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs' definition of
5 STAFF MISCONDUCT for this interrogatory. This interrogatory seeks confidential information
6 contained in California Department of Corrections and Rehabilitation employee files, and is not
7 limited to incidents involving class members. Because there is no demonstrated need for this
8 confidential, protected information regarding incidents not involving *Coleman* and *Armstrong*
9 class members, Defendants decline to produce it. Subject to that exclusion, Defendants will
10 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
11 Defendants are diligently searching all available sources for responsive information, but have not
12 yet located the information Plaintiffs' seek. Defendants will continue to search for such
13 information and provide it to Plaintiffs once the information is located.

14 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

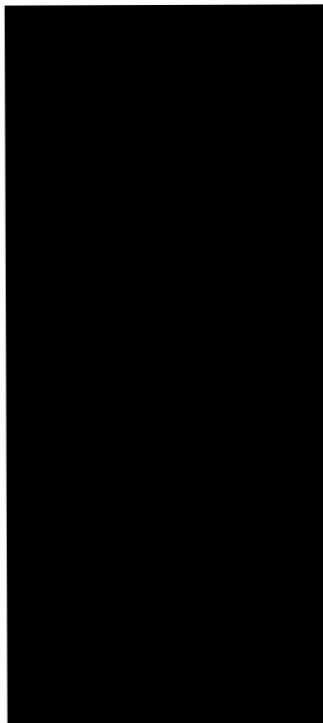
15 Subject to and incorporating all previously asserted objections, Defendants respond as
16 follows:

17 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
18 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
19 regulation, or procedure, or appeared contrary to an ethical or professional standard. The names
20 of staff only include custody staff, including Officer, Sergeant, Lieutenant, and Captain. These
21 staff member named were sources from confidential records and protected by the Court's August
22 12, 2020 Order at ECF No. 3039. These names are **HIGHLY CONFIDENTIAL** and
23 **ATTORNEYS' EYES ONLY**.

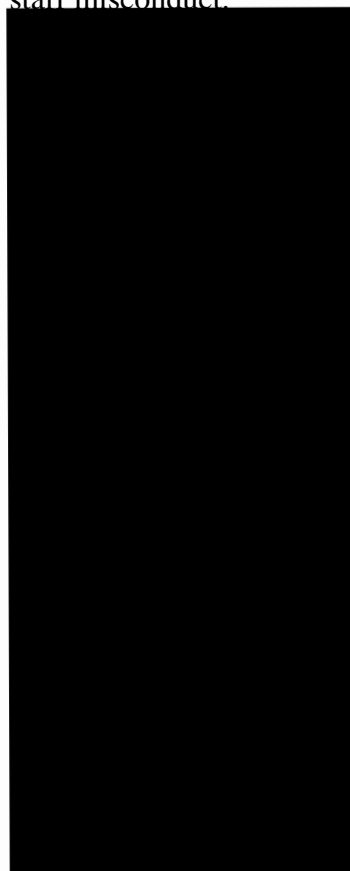
24 In 2017 the California State Prison, Corcoran (COR) hiring authority imposed adverse
25 action on the following custody staff members for sustained allegations of staff misconduct:



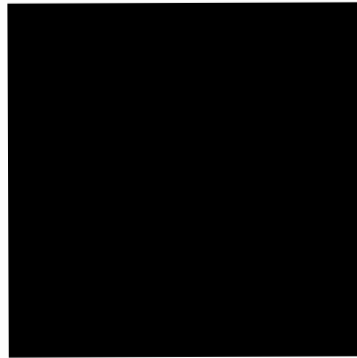
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In 2018, the COR hiring authority imposed adverse action on the following custody staff members for sustained allegations of staff misconduct:



1 In 2019, the COR hiring authority imposed adverse action on the following custody staff
2 members for sustained allegations of staff misconduct:



3
4
5
6
7
8 In 2020, the COR hiring authority has not imposed any adverse action on custody staff for
9 sustained allegations of staff misconduct. Twenty-five (25) allegations are pending at the OIA.
10

11 **INTERROGATORY NO. 12:**

12 For each officer identified in response to Interrogatory 11, indicate:

- 13 1. The level of adverse action imposed by the hiring authority
- 14 2. Whether the incarcerated person involved in the incident that gave rise to the adverse
15 action was a *Coleman* or *Armstrong* class member
- 16 3. The date the hiring authority imposed adverse action
- 17 4. The OIA case number associated with the adverse action
- 18 5. Whether the officer was placed on administrative time off for any time period before
19 the adverse action was imposed, and, if yes, the dates on which the administrative time
20 off began and ended
- 21 6. Whether the officer appealed the adverse action in any forum (e.g., *Skelly* hearing,
22 State Personnel Board proceeding, or state court proceeding)
- 23 7. Whether the officer's appeal of the adverse action, if any, is complete
- 24 8. If the officer is no longer appealing the adverse action, the final adverse action
25 imposed on the officer
- 26 9. Whether the officer was permitted to retire in lieu of being dismissed
- 27 10. Whether the officer resigned in lieu of being dismissed
- 28

1 11. Whether the officer faced criminal prosecution for the conduct for which the warden
2 decided to impose adverse action

3 12. Whether the officer is still being paid by CDCR and, if not, when CDCR ceased
4 paying the officer

5 **RESPONSE TO INTERROGATORY NO. 12:**

6 Defendants object to this interrogatory as not seeking information relevant to any party's
7 claims or defenses in this case. Defendants further object to this interrogatory as intended to
8 harass non-party officers and former officers. Defendants further object to the interrogatory as
9 unduly burdensome and disproportional to the needs of the case. Defendants further object to the
10 interrogatory as seeking information that is protected from disclosure by official information
11 privilege and California Penal Code section 832.7. Defendants object to this interrogatory as
12 seeking information regarding non-party *Coleman* class members. Defendants object that the
13 interrogatory includes a total of twelve discrete subparts, which should be counted toward
14 Plaintiffs' limit in accordance with Federal Rule of Civil Procedure 33(a)(1).

15 Subject to those objections, and without waiving them, Defendants respond as follows:
16 This interrogatory seeks confidential information contained in California Department of
17 Corrections and Rehabilitation employee files, and is not limited to incidents involving class
18 members. Because there is no demonstrated need for this confidential, protected information
19 regarding incidents not involving *Coleman* and *Armstrong* class members, Defendants decline to
20 produce it. Subject to that exclusion, Defendants will provide responsive information, which
21 Defendants believe Plaintiffs are attempting to seek. Defendants are diligently searching all
22 available sources for responsive information, but have not yet located the information Plaintiffs'
23 seek. Defendants will continue to search for such information and provide it to Plaintiffs once the
24 information is located.

25 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

26 Subject to and incorporating all previously asserted objections, Defendants respond as
27 follows:
28

For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy, regulation, or procedure, or appeared contrary to an ethical or professional standard. Cases rejected by the Office of Internal Affairs (OIA) were counted as not sustained and no disciplinary action imposed by the hiring authority. STAFF only includes custody staff, including Officer, Sergeant, Lieutenant and Captain. The date reported for “the date the hiring authority imposed adverse action” is the close of business date noted on the Notice of Adverse Action (NOAA).

For the information requested, please refer to Exhibit A.

INTERROGATORY NO. 13:

For each year from 2017 to the present, please indicate the number of STAFF MISCONDUCT allegations that were referred to OIA by the COR hiring authority, where OIA conducted a criminal investigation and made a referral to a criminal prosecuting agency.

RESPONSE TO INTERROGATORY NO. 13:

Defendants object to this interrogatory as not seeking information relevant to any party’s claims or defenses in this case. Defendants further object to the interrogatory as unduly burdensome and disproportional to the needs of the case. Defendants further object to the interrogatory as seeking information that is protected from disclosure by official information privilege and California Penal Code section 832.7. Defendants object to the definition of the term “STAFF MISCONDUCT allegations” as vague, ambiguous, and incomprehensible because the definition of “STAFF MISCONDUCT” Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs’ definition of STAFF MISCONDUCT “includes [Plaintiffs’ definition of] EXCESSIVE USE OF FORCE.” It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs’ definition of STAFF MISCONDUCT, regardless of whether the other two

1 criteria are met. The request is also vague and ambiguous as to the phrase “harmed an
2 incarcerated person” in the definition of “STAFF MISCONDUCT” because it is not clear whether
3 Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was
4 made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an
5 incarcerated person was made, but not sustained.

6 Subject to those objections, and without waiving them, Defendants respond as follows:
7 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs’ definition of
8 STAFF MISCONDUCT for this interrogatory. In the interests of efficiency, Defendants will
9 provide responsive information, which Defendants believe Plaintiffs are attempting to seek.
10 Defendants are diligently searching all available sources for responsive information, but have not
11 yet located the information Plaintiffs’ seek. Defendants will continue to search for such
12 information and provide it to Plaintiffs once the information is located.

13 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:**

14 Subject to and incorporating all previously asserted objections, Defendants respond as
15 follows:

16 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
17 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
18 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
19 includes custody, non-custody, and medical classifications.

20 In 2017, the California State Prison, Corcoran (COR) hiring authority referred zero (0) staff
21 misconduct allegations to where the Office of Internal Affairs (OIA) conducted a criminal
22 investigation and made a referral to a criminal prosecuting agency.

23 In 2018, COR hiring authority referred zero (0) staff misconduct allegations where OIA
24 conducted a criminal investigation and made a referral to a criminal prosecuting agency.

25 In 2019, COR hiring authority referred one (1) staff misconduct allegations where OIA
26 conducted a criminal investigation and made a referral to a criminal prosecuting agency.

27 In 2020, COR hiring authority referred zero (0) staff misconduct allegations where OIA
28 conducted a criminal investigation and made a referral to a criminal prosecuting agency.

INTERROGATORY NO. 14:

For each year from January 1, 2017 to the present, please indicate the number of STAFF MISCONDUCT allegations referred to OIA by the COR hiring authority that were then referred by OIA to a criminal prosecuting agency and where the agency decided to prosecute the subject of the investigation.

RESPONSE TO INTERROGATORY NO. 14:

Defendants object to this interrogatory as not seeking information relevant to any party's claims or defenses in this case. Defendants further object to the interrogatory as unduly burdensome and disproportional to the needs of the case. Defendants further object to the interrogatory as seeking information that is protected from disclosure by official information privilege and California Penal Code section 832.7. Defendants object to the definition of the term "STAFF MISCONDUCT allegations" as vague, ambiguous, and incomprehensible because the definition of "STAFF MISCONDUCT" Plaintiffs use cites to Title 15, § 3084(g), and Department Operations Manual § 54110.25, neither of which exist in the current versions of those documents. The definition of STAFF MISCONDUCT is also vague, ambiguous, and incomprehensible because Plaintiffs' definition of STAFF MISCONDUCT "includes [Plaintiffs' definition of] EXCESSIVE USE OF FORCE." It is unclear whether Plaintiffs mean that in order to meet the definition of STAFF MISCONDUCT there must be an EXCESSIVE USE OF FORCE (in addition to the requirements that an incarcerated person be harmed, and that there be a violation of law, policy, regulation, or procedure) or whether an EXCESSIVE USE OF FORCE meets Plaintiffs' definition of STAFF MISCONDUCT, regardless of whether the other two criteria are met. The request is also vague and ambiguous as to the phrase "harmed an incarcerated person" in the definition of "STAFF MISCONDUCT" because it is not clear whether Plaintiffs are seeking only instances in which a finding of harm to an incarcerated person was made, or whether Plaintiffs are also seeking instances in which an allegation of harm to an incarcerated person was made, but not sustained. Defendants further object to this interrogatory because their records may be incomplete as they do not keep records of other agencies' decisions.

Subject to those objections, and without waiving them, Defendants respond as follows:

1 Due to the myriad problems noted above, Defendants decline to adopt Plaintiffs' definition of
2 STAFF MISCONDUCT for this interrogatory. Defendants are diligently searching all available
3 sources for responsive information, but have not yet located the information Plaintiffs' seek.
4 Defendants will continue to search for such information and provide it to Plaintiffs once the
5 information is located.

6 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:**

7 Subject to and incorporating all previously asserted objections, Defendants respond as
8 follows:

9 For purposes of this response, Defendants interpret STAFF MISCONDUCT to mean on-
10 duty staff behavior that is alleged to have harmed an incarcerated person and violated law, policy,
11 regulation, or procedure, or appeared contrary to an ethical or professional standard. STAFF
12 includes custody, non-custody, and medical classifications.

13 In 2017, the California State Prison, Corcoran (COR) hiring authority referred zero (0) staff
14 misconduct allegations that were referred by the Office of Internal Affairs (OIA) to a criminal
15 prosecuting agency, and the agency decided to prosecute the subject.

16 In 2018, COR hiring authority referred zero (0) staff misconduct allegations that were
17 referred by the Office of Internal Affairs (OIA) to a criminal prosecuting agency, and the agency
18 decided to prosecute the subject.

19 In 2019, COR hiring authority referred zero (0) staff misconduct allegations that were
20 referred by the Office of Internal Affairs (OIA) to a criminal prosecuting agency, and the agency
21 decided to prosecute the subject.

22 In 2020, COR hiring authority referred zero (0) staff misconduct allegations that were
23 referred by the Office of Internal Affairs (OIA) to a criminal prosecuting agency, and the agency
24 decided to prosecute the subject.

1 Dated: September 23, 2020

Respectfully submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 JOANNA B. HOOD
5 Supervising Deputy Attorney General



6 SEAN W. LODHOLZ
7 Deputy Attorney General
8 *Attorneys for Defendants Gavin Newsom and
the California Department of Corrections
and Rehabilitation*

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VERIFICATION OF KIMBERLY SEIBEL
TO PLAINTIFFS' SPECIAL INTERROGATORIES (SET 1)

John Armstrong, et al. v. Gavin Newsom, et al.

USDC, Northern District, Case No. C 94-2307 CW

I, Kimberly Seibel, declare under penalty of perjury that I have read and reviewed the above supplemental response to Plaintiffs' Special Interrogatories, Set One, for California State Prison, Corcoran, and that the response is true and correct based on my own knowledge, or based on information that is available to me.

Executed this 23 day of September, 2020, in Sacramento, California.



Kimberly Seibel

EXHIBIT A

Exhibit 96

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

Case No.:
C94 2307 CW

GAVIN NEWSOM, et al.,

Defendants.

EXPERT DEPOSITION OF MATTHEW CATE
APPEARING REMOTELY FROM SACRAMENTO, CALIFORNIA

September 17, 2020

9:32 a.m.

REPORTED BY:

Siew G. Ung

CSR No. 13994, RPR, CSR

APPEARING REMOTELY FROM MARIN COUNTY, CALIFORNIA

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EXPERT

MATTHEW CATE

John Armstrong v. Gavin Newsom

THURSDAY, SEPTEMBER 17, 2020

Siew G. Ung CSR No. 13994, RPR

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1 REPORTED REMOTELY FROM MARIN COUNTY, CALIFORNIA

2 THURSDAY, SEPTEMBER 17, 2020, 9:32 A.M.

3 ***

4 THE REPORTER: The attorneys participating
5 in this deposition acknowledge that I'm not
6 physically present in the deposition room and that I
7 will be reporting this deposition remotely. They
8 further acknowledge that, in lieu of an oath
9 administered in person, the witness will verbally
10 declare his or her testimony in this matter is under
11 penalty of perjury. The parties and their counsel
12 consent to this arrangement and waive any objection
13 to this manner of reporting. Please indicate your
14 agreement by stating your name and your agreement on
15 the record.

16 MS. GRUNFELD: Gay Grunfeld for the
17 plaintiff class. I agree.

18 MR. DUGGAN: This is Jeremy Duggan for the
19 defendants. I agree.

20 MATTHEW CATE,
21 having been first duly sworn, was examined and
22 testified as follows:

23 EXAMINATION BY MS. GRUNFELD

24 Q. Good morning, Mr. Cate. I'm Gay Grunfeld.
25 I represent Plaintiff John Armstrong and the

1 plaintiff class in this class action, Armstrong
2 versus Newsom.

3 I know you have been deposed and also
4 testified in court many times, so I don't see the
5 need to go through the deposition rules at this
6 time, do you?

7 A. I don't. That's fine.

8 Q. Thank you.

9 I know for me this is my first remote
10 deposition, so I will do my best to conduct it as
11 well as I can, but -- it may be your first as well.
12 But, of course, during the pandemic, this is the
13 best way to proceed.

14 And I did --

15 MS. GRUNFELD: Ms. Ung -- Ms Ung, I did
16 send my first three exhibits to you via email, and I
17 also sent them to Mr. Duggan, so that part should be
18 easy. When we get to the later exhibits, I hope
19 everyone can bear with me as I attempt to share my
20 screen.

21 BY MS. GRUNFELD:

22 Q. Mr. Cate, can you see a computer screen
23 where you are?

24 A. All I have is the video screen in front of
25 me.

1 MS. GRUNFELD: Mr. Duggan, how will we
2 share exhibits? What do you propose?

3 MR. DUGGAN: Well, we've only got the one
4 screen, so I suppose you'll be able to share it on
5 that screen. I do -- I am concerned about this
6 because I worry that it will be difficult to
7 determine what people are talking about if we've
8 only got the -- the one document on the screen.

9 If you have an opportunity at the break to
10 email me the exhibits instead, we'd rather do it
11 that way.

12 MS. GRUNFELD: Very good. We'll start
13 with what we've got and then later we can email you
14 things to -- you have a printer there, right?

15 MR. DUGGAN: Yes.

16 MS. GRUNFELD: Very good.

17 BY MS. GRUNFELD:

18 Q. Mr. Cate, are you taking any medication or
19 is there any reason that you cannot give your best
20 testimony today?

21 A. No.

22 Q. Great.

23 Our case is governed by three protective
24 orders. Have you been made aware of those
25 protective orders?

1 A. At the beginning, Mr. -- or the department
2 sent me protective orders.

3 THE REPORTER: Sorry. I can't hear you,
4 Mr. Cate. Can you --

5 THE WITNESS: At the beginning of the
6 case, I was given protective orders by the counsel
7 for the defense.

8 BY MS. GRUNFELD:

9 Q. And did you sign an acknowledgement of
10 those protective orders?

11 A. I did.

12 Q. Thank you.

13 MS. GRUNFELD: There will be certain
14 points in this deposition, Ms. Ung, that we have to
15 mark as confidential pursuant to the protective
16 orders that govern the case.

17 I'd like to mark our first exhibit now; it
18 is the notice of deposition of Matthew Cate with a
19 subpoena and request for documents attached.

20 (Whereupon, Exhibit 1 was marked for
21 identification.)

22 MS. GRUNFELD: Is that exhibit marked?

23 THE REPORTER: Yes, it is.

24 MS. GRUNFELD: Thank you.

25 MR. DUGGAN: Has it been given number or

1 letter?

2 MS. GRUNFELD: It's Exhibit 1.

3 BY MS. GRUNFELD:

4 Q. And, Mr. Cate, do you have that document
5 in front of you?

6 A. I do.

7 Q. Have you seen that document before?

8 A. Just this morning.

9 Q. This morning.

10 I'll represent to you that yesterday
11 your -- well, Mr. Duggan and the attorneys for
12 defendants produced to us certain documents that
13 were responsive to this request for production.

14 Did you play any role in providing your
15 file to defendant's counsel?

16 MR. DUGGAN: Objection. Expert-attorney
17 privilege and work product.

18 You can answer.

19 THE WITNESS: Mr. Duggan just explained
20 what was -- and asked me -- sent me a couple of
21 emails asking me specific questions to fill in.

22 THE REPORTER: It's really hard for me to
23 hear you. Is there a microphone that's picking you
24 up, or is there -- where's the device that is
25 picking him up?

1 (Discussion held off the record.)

2 MS. GRUNFELD: We were discussing
3 Exhibit 1, which is the deposition notice and
4 subpoena for documents, and I was asking Mr. Cate
5 what steps you took to provide your file in this
6 matter to counsel for defendants.

7 MR. DUGGAN: Objection. Work product and
8 attorney-expert privilege.

9 THE WITNESS: I just -- I provided
10 everything that Mr. Duggan asked me to provide.

11 BY MS. GRUNFELD:

12 Q. We went through the documents last night,
13 and we did not see any notes. Do you take notes
14 when you're working on a project like this?

15 A. I do.

16 Q. Did you provide your notes to Mr. Duggan?

17 A. No.

18 Q. And why is that?

19 MR. DUGGAN: Objection.
20 Attorney-client -- attorney-expert and work product.

21 THE WITNESS: I -- I wasn't asked for
22 them.

23 BY MS. GRUNFELD:

24 Q. So can you tell me how extensive the notes
25 were?

1 MR. DUGGAN: Objection. Work product.

2 THE WITNESS: Twenty pages of handwritten
3 notes.

4 BY MS. GRUNFELD:

5 Q. And is it your practice to take notes when
6 you're interviewing people in a -- in a project like
7 this?

8 MR. DUGGAN: Objection. Work product.

9 THE WITNESS: It depends on whether it's
10 an extensive conversation or something short.

11 BY MS. GRUNFELD:

12 Q. So -- and -- and were the notes taken
13 during your tour of LAC?

14 MR. DUGGAN: Objection. Work product.

15 THE WITNESS: Some were.

16 BY MS. GRUNFELD:

17 Q. But you've preserved those notes?

18 A. Yes.

19 Q. And can you tell me anything else about
20 the notes, whether they were at the tour, based on
21 conversations, or anything like that?

22 MR. DUGGAN: Objection. Work product.

23 THE WITNESS: I took notes in the
24 administration building in my conversations with the
25 warden, chief deputy warden, ADA coordinator, and

1 grievance coordinator. I didn't take notes based on
2 my tour of the facility.

3 BY MS. GRUNFELD:

4 Q. Other than the notes you took at LAC, are
5 there other notes that you took in connection with
6 this project?

7 MR. DUGGAN: Objection. Work product.

8 THE WITNESS: I took notes during the
9 conversation I had with Amy Miller at CDCR. I
10 believe I took extensive notes on the materials I
11 reviewed.

12 BY MS. GRUNFELD:

13 Q. And the purpose of the notes of the
14 conversations with the ADA coordinator, the warden,
15 Mr. Wesley, and Ms. Miller, was the purpose of that
16 to learn the facts of this case?

17 MR. DUGGAN: Objection. Work product.

18 THE WITNESS: The purpose of the notes
19 were to remind me of the conversations so that I
20 could write my report.

21 BY MS. GRUNFELD:

22 Q. And were you retained in this case for
23 litigation purposes?

24 A. Yes.

25 Q. Was the purpose to defend CDCR against a

1 statewide motion for further relief?

2 A. Yes.

3 Q. And do you know the day that you started
4 working on this project?

5 A. Late July of 2020.

6 Q. What were the circumstances that led you
7 to be retained to defend the State from the
8 statewide motion?

9 MR. DUGGAN: Objection. Work product.
10 Attorney-expert privilege.

11 If you can answer without revealing our
12 conversations, I -- I guess it would be all right.
13 I'm not sure how you can.

14 MS. GRUNFELD: You're asserting -- wait.
15 Are you asserting attorney-client privilege, Mr. --
16 Mr. Duggan? There's no attorney-client privilege
17 here.

18 MR. DUGGAN: No. Attorney-expert
19 communications.

20 MS. GRUNFELD: Are you asserting a
21 work-product privilege over your conversation with
22 Mr. Cate about this -- this assignment?

23 MR. DUGGAN: I'm thinking about it. No, I
24 suppose he -- I suppose he can go ahead and answer
25 that one.

1 THE WITNESS: I received a call from
2 someone at the Department of Justice, I don't
3 remember now which counsel it was, and over a series
4 of several phone calls, I was notified about the
5 litigation, asked if I had any interest in working
6 as an expert.

7 There was some conversation that -- about
8 the -- the nature of the allegations, and then
9 details around how the -- the process of being
10 retained as an expert would work and details around
11 how the relationship and -- and what the
12 expectations were.

13 BY MS. GRUNFELD:

14 Q. Were those conversations with Mr. Duggan?

15 A. Mostly.

16 Q. Anyone else?

17 A. I had -- I had coffee with a -- a lawyer
18 whose name I should recall from the Sacramento
19 office, similarly about whether I was interested in
20 the nature of the -- of the -- of the work.

21 Q. And what -- what did interest you about
22 this project?

23 A. Well, I was interested professionally in
24 being -- being an expert. I hadn't been an expert
25 before, and so I thought it would be interesting to

1 expand my practice in that way. I was familiar with
2 the Armstrong case generally from my work at the
3 inspector general's office and Department of
4 Corrections. I'm interested in correctional policy
5 in general.

6 Q. Did you keep contemporaneous time records
7 in connection with this assignment?

8 A. Yes. Some more contemporaneous than
9 others, meaning in -- in my -- in the course of my
10 day, I just would keep scratch notes of how many
11 hours I'd worked on this project.

12 Q. I did not see those in the production
13 either. Do you still have those in your possession?

14 MR. DUGGAN: Objection. Work product.

15 THE WITNESS: I'll have to go back and
16 look. I don't recall exactly. Basically I worked
17 on this case any time I wasn't working on something
18 else, and so for a number of days, I just relied
19 on -- on the -- on my calendar to know when I was
20 going to be able to work on the case.

21 BY MS. GRUNFELD:

22 Q. Have you submitted an invoice in the case
23 to date?

24 A. No.

25 Q. Do you know how many hours you've worked

1 on the case?

2 A. I don't know.

3 Q. Can you estimate?

4 MR. DUGGAN: Objection. Calls for
5 speculation.

6 THE WITNESS: Certainly more than 100 and
7 less than 200, I would think.

8 BY MS. GRUNFELD:

9 Q. By the way, Mr. Duggan and I tentatively
10 agreed -- or one of his co-counsel and I tentatively
11 agreed that we would send you a check for your
12 testimony today by Federal Express after you give us
13 an invoice. Is that okay with you?

14 A. Yes.

15 Q. So you worked on the -- on this assignment
16 for somewhere between 100 and 200 hours from late
17 July until you submitted the report in September --
18 on September 11, 2020; is that correct?

19 A. And I've continued to work on the case
20 since then.

21 Q. You've continued to work on it since you
22 submitted your report. What work have you done on
23 the assignment after submitting your report?

24 MR. DUGGAN: Objection. Work product.

25 THE WITNESS: Conversations with

1 Mr. Duggan to prepare me for the deposition.

2 Reviewing my report. I went back and reviewed the
3 investigations of Armstrong class members that had
4 occurred at LAC to remind myself of the facts of
5 those cases. I reviewed other materials that I
6 thought would be helpful to have fresh in my mind
7 for the deposition today.

8 BY MS. GRUNFELD:

9 Q. Did you -- did you review materials other
10 than what you list in the Exhibit B to your
11 declaration in this case?

12 A. No. Everything was -- everything was a
13 review of materials I had reviewed previously. Or
14 that are in the declaration, I should say.

15 THE REPORTER: Can you say the last part
16 of your sentence after "I had reviewed previously"?

17 THE WITNESS: I -- or -- I said, "Or that
18 are in the declaration, I should say."

19 THE REPORTER: Thank you.

20 MS. GRUNFELD: Yes. And I'd like to
21 correct my statement. I don't think this is an
22 exhibit, it's a list of documents reviewed at the
23 end of your declaration.

24 BY MS. GRUNFELD:

25 Q. So just to -- to clarify, in preparing for

1 today's deposition, you re-reviewed documents that
2 are listed in your declaration; is that a fair
3 statement?

4 A. Yes.

5 Q. Great.

6 Other than what you've already described,
7 did you do any other work after you finished and
8 submitted your declaration in opposition to the
9 statewide motion?

10 MR. DUGGAN: Objection. Work product.

11 THE WITNESS: Yes.

12 BY MS. GRUNFELD:

13 Q. What was that?

14 A. I had a brief conversation with Amy
15 Miller.

16 Q. And what did you discuss with Amy Miller?

17 MR. DUGGAN: Objection. Work product.

18 MS. GRUNFELD: It's absolutely not work
19 product, so -- it's factual predicate for an opinion
20 and work that he did.

21 THE WITNESS: I asked her whether there
22 was policies in place regarding the -- the time
23 frames in which to submit an incident package
24 following the use of force in a CDCR facility.

25 ///

1 BY MS. GRUNFELD:

2 Q. And what did Ms. Miller tell you?

3 A. There's no formal time frames in their
4 policies.

5 Q. Do you think that would be a good idea to
6 have a time frame?

7 A. I do.

8 Q. What would you recommend?

9 MR. DUGGAN: Objection. Calls for
10 speculation. Incomplete hypothetical.

11 THE WITNESS: It depends on the case. But
12 in general, something in the -- in the neighborhood
13 of two weeks is -- should be ample for the initial
14 incident package, but I would make the policy as
15 soon as possible and then have some kind of a -- a
16 limit in the area, two weeks for that initial
17 package, and then allow the staff to make a request
18 to -- to spend more time on it, if it's complex.

19 BY MS. GRUNFELD:

20 Q. The purpose of the time limit would be to
21 ensure that the reports were made while the incident
22 was fresh on everyone's mind; is that correct?

23 MR. DUGGAN: Objection. Calls for
24 speculation. Compound.

25 THE WITNESS: Yes.

1 BY MS. GRUNFELD:

2 Q. Any other reason you believe that the time
3 frame should be as soon as possible and not to
4 exceed two weeks?

5 A. Well, if you have a -- if the initial
6 inquiry uncovers serious misconduct, it puts the
7 safety of staff or inmates at risk, you need to act
8 on that as soon as possible.

9 Q. Did you do any research on what the time
10 frame -- or the time period, I should say, that is
11 currently typically -- let me start over.

12 Do you know, as you sit here, how long it
13 typically takes for an incident package to be
14 prepared in CDCR after an incident of force occurs?

15 MR. DUGGAN: Objection. Outside the scope
16 of Mr. Cate's assigned task.

17 THE REPORTER: Can you repeat your
18 objection again? I'm sorry.

19 MR. DUGGAN: Objection. Outside the scope
20 of Mr. Cate's assigned task.

21 THE REPORTER: Thank you.

22 THE WITNESS: So, Ms. Grunfeld, if I'm
23 going to -- is it okay if I just clarify and make
24 sure I understand?

25 ///

1 BY MS. GRUNFELD:

2 Q. Absolutely.

3 A. Is the -- so the question is, do I know if
4 there's a -- a typical time frame for --

5 Q. Yes.

6 A. -- incident packages to be completed and
7 sent it?

8 Q. Or -- or do you know what it usually
9 takes? You've -- you've said that you did research
10 to find out if there is a time frame, and Ms. Miller
11 told you there wasn't, so I'm curious as to why you
12 asked the question and whether you have any
13 information about how long it's currently taking,
14 typically, to complete that paperwork.

15 A. In -- in --

16 MR. DUGGAN: Objection. Incomplete
17 hypothetical. Outside the scope of Mr. Cate's
18 assignment.

19 THE WITNESS: The reason I asked is that
20 in one of the ADA inmate use-of-force investigations
21 that I reviewed, a staff member, I believe it was a
22 sergeant was the incident commander, and that
23 sergeant submitted the incident package in 13 days
24 and received some kind of a reprimand for that, and
25 so that made me curious as to whether -- I had --

1 I -- I didn't believe it was in the policies, that
2 there was a specific time frame, but when I saw
3 that -- that -- I guess it was -- it may have been
4 informal training, now that I think about it. But
5 anyway, there was some -- that -- that came up in
6 that investigation, and so it made me curious.

7 BY MS. GRUNFELD:

8 Q. Did you ask Ms. Miller about that
9 particular case?

10 A. No.

11 Q. Did you have any other discussion with
12 Ms. Miller about the issue of the time frame for
13 submitting incident reports?

14 A. No.

15 Q. Did she say anything about whether she
16 thought there should be a deadline?

17 MR. DUGGAN: Objection. Outside the scope
18 of Mr. Cate's assigned task.

19 THE WITNESS: I believe she thought there
20 should be. I'm -- I'm just hesitating because I
21 don't remember exactly what she said about it. But
22 I came away with [sic] the conversation with the
23 understanding that she agreed there should be some
24 time frame in place. Either that or I read that in
25 a -- in a previous statement of hers or in -- in a

1 deposition, I -- I can't recall.

2 BY MS. GRUNFELD:

3 Q. Other than the incident you read about
4 where a sergeant received informal counseling for
5 submitting the paperwork 13 days after the incident,
6 are you aware of any information about how long it
7 takes for CDCR employees to complete this kind of
8 paperwork?

9 MR. DUGGAN: Objection. Outside the scope
10 of Mr. Cate's assigned task.

11 THE WITNESS: I read the LAC letter to the
12 security describing a number of investigations that,
13 in the opinion of the inspector general, took too
14 long.

15 BY MS. GRUNFELD:

16 Q. Do you remember which report that was?

17 A. It wasn't a report, it was a letter.

18 Q. Do you remember the date of the letter?

19 A. I don't remember the exact date, but
20 beginning of 2020, I think.

21 Q. So in that letter, the inspector general
22 states that it's taking too long, essentially?

23 MR. DUGGAN: Objection. Misstates prior
24 testimony.

25 THE WITNESS: In particular, the -- as I

1 recall, the -- the report's main thrust was
2 regarding the time it was taking to review
3 allegations that were coming out of Armstrong tours
4 by the plaintiffs' attorneys.

5 THE REPORTER: Allegations that were
6 coming out of Armstrong?

7 THE WITNESS: Tours.

8 THE REPORTER: Sorry. What -- what is
9 that again? Armstrong --

10 THE WITNESS: Tours.

11 THE REPORTER: Tours?

12 THE WITNESS: Armstrong tours.

13 THE REPORTER: Okay. Thank you.

14 THE WITNESS: T-O-U-R-S.

15 And that were conducted by plaintiffs'
16 counsel.

17 BY MS. GRUNFELD:

18 Q. Yes, I'm familiar with that letter. And
19 Mr. Diaz wrote back and said, "How dare you send
20 this letter."

21 Did you see his response?

22 MR. DUGGAN: Objection. Mis- -- misstates
23 the letter.

24 THE WITNESS: No, I don't recall the
25 response.

1 BY MS. GRUNFELD:

2 Q. Actually, he wrote before he saw the draft
3 and then he wrote.

4 Great.

5 Did you bring any documents with you today
6 for the deposition?

7 A. I did. My report.

8 Q. What did you bring?

9 A. Just my report.

10 Q. And by your report, you mean the
11 declaration in support of defendants' opposition to
12 plaintiffs' motion for a permanent injunction at
13 seven additional prisons and statewide; is that
14 correct?

15 A. Yes.

16 MS. GRUNFELD: And may we refer to this
17 document, which will be marked as Exhibit 3 in this
18 deposition.

19 May we refer to it as either your report
20 or your declaration?

21 A. Yes.

22 Q. And we'll -- we'll both know what you're
23 talking about, right?

24 MR. DUGGAN: Gay, just clarify, we're
25 going -- we're going to be looking at the one that

1 you provided, not that one he brought with him.

2 THE REPORTER: I can't hear you,
3 Mr. Duggan.

4 MR. DUGGAN: Oh, sorry.

5 Gay, just to clarify, we're going to be
6 looking at the copy that -- that you provided by --
7 by email. I don't think there's going to be any
8 differences, but if we're looking at an exhibit,
9 let's all have the same exhibit.

10 MS. GRUNFELD: Sure. The version that I
11 emailed you is the unredacted version that you
12 sought to have sealed by the court that was
13 submitted on September 11th or 12th, depending on
14 whether it was part of the -- I think you served it
15 on us on the 12th, in the early hours, so I think
16 we're all talking about the same document.

17 Before we get to that, I would just like
18 to confirm with the witness that we can use the
19 following definition and time period.

20 BY MS. GRUNFELD:

21 Q. Mr. Cate, when I talk about staff
22 misconduct, I'm referring to on-duty staff behavior
23 that harmed an incarcerated person and violated law,
24 policy, regulation, or procedure or appeared
25 contrary to an ethical or professional standard.

1 That is the definition that is found in Title 15 in
2 the department operations manual.

3 Is that consistent with your understanding
4 of the term "staff misconduct" as used in this case?

5 MR. DUGGAN: Objection. Vague. Compound.

6 THE WITNESS: Well, it's -- my only
7 question -- my only question about that is that it
8 doesn't -- I always refer to staff misconduct to
9 include misconduct that occurred that didn't involve
10 inmates as well, so I don't know if that -- the
11 definition's quite long. If you don't want me to
12 consider all types of misconduct that -- that don't
13 involve inmates or that don't occur on the facility,
14 then that's fine.

15 BY MS. GRUNFELD:

16 Q. I think, today, we'll mostly be talking
17 about staff misconduct against incarcerated people
18 because of the nature of this case. But if I have a
19 question about other types of staff misconduct, I
20 will certainly clarify that.

21 And -- and we may not even need this
22 definition that much, but I just wanted to get it
23 out on the record, it is the CDCR's own definition.

24 In terms of the time period, we're looking
25 at the period January 1, 2017, to present. Is that

1 consistent with your understanding of what our
2 motion is about?

3 MR. DUGGAN: Objection. Just before we go
4 on to that, I don't think we're agreeing on this
5 definition, right? We're going to -- I mean, yeah,
6 it seems like we haven't agreed on a definition, and
7 you said "we might not need it that much," so we're
8 not agreeing on a definition, correct?

9 MS. GRUNFELD: Oh. So you don't agree
10 with that definition of staff misconduct?

11 MR. DUGGAN: I think it's kind of
12 unwieldy, and it might not fit. It might be better
13 just to say "staff misconduct" but not have an
14 agreed definition.

15 MS. GRUNFELD: Okay.

16 BY MS. GRUNFELD:

17 Q. What about you, Mr. Cate, do you
18 understand the definition of staff misconduct as
19 used in the DOM and Title 15?

20 A. I do -- I believe I do, yes.

21 Q. And is your understanding of the events
22 and issues at -- that we are addressing today to
23 be -- the time periods to be January 1, 2017, to
24 present?

25 A. I wasn't aware of the -- of the time

1 frames that were set in the litigation. I'm happy
2 to answer -- I know that most of the documents I
3 reviewed fit in that time frame, and I'm happy to
4 answer questions about any -- about any time frame
5 you have for me.

6 Q. Thank you.

7 In late July, around the time you were
8 retained for this assignment, Judge Wilken issued a
9 preliminary injunction order of approximately 50
10 pages, transferring two prisoners away from
11 RJ Donovan Correctional Facility.

12 Have you read that decision?

13 A. No.

14 Q. Did you become aware of that decision in
15 the course of your work on this case?

16 A. Yes.

17 Q. And what did you learn about the
18 preliminary injunction order?

19 A. Only that it existed and that -- and that
20 inmates had been moved. I -- I didn't read it.

21 Q. Do you recall who told you about it?

22 A. I think Mr. Warner told me it had come
23 out.

24 Q. And what do you recall discussing with
25 Mr. Warner about the preliminary injunction order?

1 A. Only that, that it had -- that there had
2 been something issued. Mr. Duggan had mentioned it
3 to me as well.

4 Q. On September 8, 2020, the court issued a
5 permanent injunction regarding RJ Donovan. Did you
6 read that decision?

7 A. No.

8 Q. When did you learn of that decision?

9 A. I think shortly after -- after it was
10 issued. I did -- I -- I -- I did receive a copy, I
11 believe, from counsel, and I looked at it very
12 briefly just to see what the nature of the remedies
13 were.

14 Q. In -- in that order, at page 35, the Court
15 states that, "The ineffectiveness of the policies
16 and procedures currently in place appears to be the
17 consequence of two factors." And I'm quoting.
18 "First is the deeply engrained staff culture at RJD
19 of looking the other way, so to speak, whenever
20 staff misconduct occurs or is alleged by an inmate,
21 notwithstanding any official requirements to report
22 and investigate the misconduct."

23 I was wondering, during your time as
24 inspector general and secretary of CDCR, if you ever
25 became aware of a staff culture at CDCR of looking

1 the other way?

2 MR. DUGGAN: Objection. Compound.

3 Outside the scope of Mr. Cate's assigned task.

4 THE WITNESS: When I was an inspector
5 general, one of the issues that we focused on was
6 the allegations of a code of silence, which I think
7 fits in that definition. It was particular, though,
8 to a few institutions that were particularly
9 problematic at that time, but it was something that
10 the secretary and the governor wanted to have
11 removed to the greatest extent possible across the
12 department.

13 BY MS. GRUNFELD:

14 Q. And are you referring to [REDACTED]?

15 A. No.

16 MR. DUGGAN: Objection.

17 THE WITNESS: Sorry.

18 MR. DUGGAN: Outside the scope of
19 Mr. Cate's assigned task.

20 THE WITNESS: No. I'm referring to the --
21 a -- a more general concern about officers and staff
22 not reporting misconduct that's committed by fellow
23 officers, generally.

24 BY MS. GRUNFELD:

25 Q. And what prisons was that code of silence

1 found at?

2 MR. DUGGAN: Objection. Vague as to time.
3 Outside the scope of Mr. Cate's assigned task.

4 THE WITNESS: I don't recall all of them,
5 but I know Salinas Valley, at the time, was -- was
6 seen as one of the worst.

7 BY MS. GRUNFELD:

8 Q. Okay. Any others you recall?

9 MR. DUGGAN: Objection. Vague as to time.
10 And outside the scope of Mr. Cate's assigned task.

11 THE WITNESS: The -- no. The -- the
12 problem is is that it -- it -- it changed. So when
13 I was a prosecutor, for example, I was worried about
14 Corcoran State Prison. As inspector general, I was
15 worried about Salinas Valley. Meanwhile, Corcoran
16 may have gotten better. I don't -- I don't recall
17 now as I sit here.

18 THE REPORTER: Can you -- you -- when you
19 were a prosecutor -- "So when I was a prosecutor,
20 for example, I was worried about" -- what state
21 prison?

22 THE WITNESS: Corcoran.

23 THE REPORTER: Could you spell that for
24 me? I'm sorry. I couldn't --

25 THE WITNESS: C-O-R-C-O-R-A-N.

1 THE REPORTER: And then when you were
2 inspector general?

3 THE WITNESS: I was concerned about
4 Salinas Valley State Prison.

5 THE REPORTER: Did you say anything after
6 that?

7 THE WITNESS: I don't think so.

8 THE REPORTER: Okay. I just want to make
9 sure I got what you said. Thank you.

10 BY MS. GRUNFELD:

11 Q. And how about when you were secretary of
12 CDCR, was there a particular prison where you were
13 concerned about the code of silence?

14 MR. DUGGAN: Objection. Vague as to time.
15 Outside the scope of Mr. Cate's assigned task.

16 THE WITNESS: The prison that concerned me
17 the most in 2008 was -- was probably Pelican Bay
18 State Prison, but that's because it's so
19 complicated, the secured housing unit is there. It
20 had been the subject of the Madrid litigation. And
21 so it just got special attention from me generally.

22 I -- the code of silence wasn't something
23 that we worked on or worried about a great deal from
24 2008 to 2012 because we didn't have much evidence
25 that it was as much of a problem as it had been in

1 the past.

2 BY MS. GRUNFELD:

3 Q. And after 2012, when you left the
4 department, you wouldn't have any information
5 whatsoever about it, would you?

6 MR. DUGGAN: Objection. Outside the scope
7 of Mr. Cate's assigned task.

8 THE WITNESS: Only based on what I
9 reviewed for my work as an expert.

10 BY MS. GRUNFELD:

11 Q. This assignment that we're here about
12 today?

13 A. Yes.

14 Q. Just returning for a moment, if I may, to
15 Judge Wilkin's September 8th order. She states,
16 "This culture is enforced through retaliatory acts
17 by staff who wish to maintain the culture against
18 inmates and other staff who might report acts of
19 misconduct and by CDCR's failure to conduct prompt
20 and effective investigations of allegations of
21 misconduct, particularly where there is no video
22 evidence or corroboration by staff of the
23 misconduct."

24 Do you agree that cameras can help reduce
25 staff misconduct?

1 MR. DUGGAN: Objection. Vague. Compound.

2 THE WITNESS: I'll -- I'll speak in terms
3 of have to have and nice to have, if that's okay, as
4 a start.

5 So I've -- I've toured and inspected every
6 prison in California. At one time, I had vetted, I
7 think, almost every warden, and I can tell you that
8 there were some really well-run facilities without
9 cameras, and so I don't believe it was necessary.

10 That said, it's -- it's nice to have.
11 Fixed cameras, in particular, and in places where
12 there are the most vulnerable inmates, I think every
13 warden would say they would welcome those.

14 BY MS. GRUNFELD:

15 Q. Just returning again, to Judge Wilkin's
16 order. She says -- well, she's talking about why
17 there are so many violations. "Second is the
18 reluctance of inmates and staff at RJD to assist
19 with the documentation and investigation of acts of
20 misconduct by staff for fear of retaliation."

21 When you were inspector general, did you
22 observe any instances where incarcerated people were
23 fearful of documenting staff misconduct?

24 MR. DUGGAN: Objection. Vague. It's
25 compound.

1 THE WITNESS: Yes.

2 BY MS. GRUNFELD:

3 Q. And can you tell me about those examples?

4 A. Again, at -- at Salinas Valley State
5 Prison in particular, but at, you know, every
6 facility at one time or another, frankly, around the
7 country, there are individual officers who met
8 misconduct, and who would try to avoid detection
9 through intimidating inmates.

10 Similarly, there are situations where
11 officers try to intimidate one another from
12 reporting misconduct.

13 That's true in corrections. It's also
14 true in every field, every professional field in the
15 world that happens.

16 Q. Of course, in corrections, there is more
17 license to use force, and it's a more closed
18 environment than a typical office in -- in -- or
19 corporate setting; is that correct?

20 A. That's correct. It's -- it's also true
21 those officers are sworn to tell the truth and
22 they're sworn to uphold justice, and so one would
23 hope that they'd feel a higher obligation than one
24 store clerk to another at Safeway, right, who
25 doesn't have that sworn obligation. And so

1 there's -- there's -- in some ways, you know, you
2 would hold -- you would think you would have a
3 higher standard, and in other ways, you're right,
4 the facilities are closed, and they're -- they're
5 high pressure. Officers are at risk. Inmates are
6 at risk. They're very difficult jobs, and so that
7 probably has to be taken into account as well.

8 Q. Well, when you were a prosecutor, you
9 successfully prosecuted two CDCR officers who
10 falsified reports; is that correct?

11 MR. DUGGAN: Objection. Outside the scope
12 of Mr. Cate's assigned task.

13 MS. GRUNFELD: It's taken directly from
14 his report in this case. It's in -- in there. So
15 I -- I -- I think it's fair game to ask about it.

16 MR. DUGGAN: I didn't instruct him not to
17 answer.

18 THE WITNESS: I did.

19 BY MS. GRUNFELD:

20 Q. Can you tell us about that case?

21 THE REPORTER: Sorry. Somebody said
22 something and somebody said "I did." I couldn't
23 hear, and could you repeat what hap- -- what went
24 on?

25 MR. DUGGAN: I talked fast. I said "I

1 didn't instruct him not to answer."

2 THE REPORTER: Okay.

3 MS. GRUNFELD: Well, you can't instruct
4 him in this deposition, so...

5 Anyway, Madam Reporter, could you please
6 read my question back?

7 THE REPORTER: Okay. "Well, when you were
8 a prosecutor, you successfully prosecuted two CDCR
9 officers who falsified reports; is that correct?"

10 And then Mr. Duggan had an objection:
11 "Outside the scope of Mr. Cate's assigned task."

12 And Ms. Grunfeld said, "It's taken
13 directly from his report in this case. It's in
14 there, so I think it's fair game to ask about it."

15 BY MS. GRUNFELD:

16 Q. Can you tell us about that case?

17 MR. DUGGAN: Objection. Outside the scope
18 of Mr. Cate's assigned task.

19 THE WITNESS: At High Desert State Prison,
20 there was a situation wherein the prison had
21 received intelligence that tar heroin was going to
22 be trafficked into the prison via individually
23 wrapped pieces of Hershey's Kisses. These were the
24 days when you could send family packages like that,
25 as an example of how old I am.

1 And so there was a package of Hershey's
2 Kisses that had come into the prison. They had --
3 it had been placed in a bin for incineration. An
4 officer removed that package from the bin. And the
5 captain of the facility's office assistant opened it
6 and began to eat those candies. And she took some
7 home to her children.

8 An inmate notified the captain and the
9 sergeant that he was worried about the -- the -- the
10 woman who was eating the candies and her children.
11 So an investigation took place. She was instructed
12 to bring the candies back, don't eat anymore. By
13 some miracle, there was -- she had only eaten the
14 candies that didn't contain the heroin, because
15 there was heroin in a large number of those
16 Hershey's Kisses, and then they were rewrapped.

17 And when -- so when the report was
18 written, in order to shield the officer from being
19 disciplined for removing candy from the incineration
20 bin, the sergeant and the captain's reports left out
21 that part.

22 And so instead, the reports read that an
23 inmate had tipped off the -- had given a -- a
24 confidential statement that there were narcotics in
25 the incineration bin, the Hershey's Kisses were --

1 were removed from the bin, the -- the narcotics were
2 found, and basically left out of the chain of
3 custody the captain's secretary and her family.

4 BY MS. GRUNFELD:

5 Q. So you prosecuted the report writers?

6 A. I -- right, I prosecuted the captain and
7 the sergeant for making a false statement on a 837
8 police report.

9 Q. And were -- were they convicted?

10 A. They were by jury in -- in that -- in
11 Lassen County. Subsequently, that conviction was
12 overturned for jury miss- -- jury instruction error.
13 And then by that time, the sergeant -- I mean, the
14 captain had retired and the sergeant had quit, and
15 so the office just decided not to prosecute again.

16 I considered it successful because of the
17 message it sent to the institution and the
18 department, and because those -- those individuals
19 had lost their jobs. And I understood my
20 supervisor's decision not to spend more time on
21 retrying the case.

22 THE REPORTER: And you what your
23 supervisor's decision?

24 THE WITNESS: I understood my supervisor's
25 decision not to retry the case.

1 THE REPORTER: Thank you.

2 BY MS. GRUNFELD:

3 Q. So you would agree that criminal
4 prosecution can be an effective tool in reducing
5 staff misconduct in a prison system like CDCR?

6 MR. DUGGAN: Objection. Calls for
7 speculation. Incomplete hypothetical.

8 THE WITNESS: It -- the -- the purpose of
9 criminal prosecution is to enforce the law and --
10 and not just send a message throughout CDCR. So,
11 you know, even though I held that view as a
12 prosecutor, I think those -- the decision to -- to
13 send a case to the DA's office or the Department of
14 Justice should be made based upon the individual
15 facts and -- and what justice dictates for that
16 officer and those victims and what can be proven as
17 opposed to sending a message.

18 But it's also true that it has side
19 effects in terms of -- of -- officers talk, inmates
20 talk, everyone is aware of what happens in those
21 kind of situations.

22 BY MS. GRUNFELD:

23 Q. Well, would you agree that upholding the
24 criminal laws with regard to employees of CDCR will
25 enhance adherence over time?

1 MR. DUGGAN: Objection. Incomplete
2 hypothetical.

3 THE WITNESS: The -- the case in Lassen
4 County is a little bit unusual because it's -- it's
5 a very small community, there's three prisons there,
6 most of the community is made up of people who work
7 at the prison or are family members of -- of -- of
8 prisoners or family members of inmates, and so I
9 think it had a particular effect there.

10 I don't believe that -- that an officer at
11 Ironwood would be aware of a prosecution coming out
12 of San Quentin, for example. But within an
13 individual prison, certainly the word would get out.

14 BY MS. GRUNFELD:

15 Q. Well, but today we have the internet,
16 Instagram, Twitter, many means of spreading
17 information that were not available in the time
18 period when you prosecuted those individuals. So
19 I'm -- I'm not sure you're correct that they won't
20 know about it.

21 And by the way, do you ever follow any
22 CDCR sites on Instagram?

23 MR. DUGGAN: Objection. Compound.
24 Outside the scope of Mr. Cate's assigned task.

25 THE WITNESS: Most of the officers I know

1 show up for work and go home and don't read or care
2 about anything else that happens statewide in
3 corrections.

4 I would be surprised to hear that a
5 majority or even a significant minority of inmate --
6 or the officers are reading about corrections during
7 their off hours.

8 I understand your point that there's more
9 information throughout our society as a whole, I
10 just haven't run into many officers who care enough
11 to spend their off time, you know, reviewing those
12 kinds of things.

13 And to answer your second question, I
14 haven't read any of the social media of the --
15 related to the department.

16 BY MS. GRUNFELD:

17 Q. Did you hear recently about the need for
18 the secretary of the department to apologize because
19 the social media posts about George Floyd were --
20 the CDCR's social media posts, some of them were
21 highly inappropriate?

22 MR. DUGGAN: Objection. Outside the scope
23 of Mr. Cate's assigned task.

24 THE WITNESS: The -- the secretary told me
25 that.

1 BY MS. GRUNFELD:

2 Q. Okay. So when did you speak to Mr. Diaz?

3 A. June of this year, maybe early July.

4 Before I was retained.

5 Q. And what were the circumstances under
6 which you spoke to Mr. Diaz earlier this year?

7 MR. DUGGAN: Objection. Outside the scope
8 of Mr. Cate's assignment.

9 THE WITNESS: We met for a cup of coffee
10 and to catch up.

11 BY MS. GRUNFELD:

12 Q. What did Mr. Diaz tell you about the
13 George Floyd issue at CDCR?

14 MR. DUGGAN: Objection. Outside the
15 scope.

16 THE WITNESS: He said that it had a
17 personal effect on him as a person of color. I -- I
18 told him that most men I had talked to,
19 African-American men in particular, had had an
20 experience where they had been stopped without
21 cause, where they had been followed in a -- in a
22 retail establishment, where they had heard racial
23 epithets yelled at them, and so I have a personal
24 belief that those things are real and happen and
25 need to be dealt with in our society.

1 I asked him about whether his experience
2 as a Latino growing up in central California, and he
3 described being pulled over without cause on
4 numerous occasions.

5 He then said that he was -- that -- that
6 there was an officer, or multiple officers, I
7 don't -- I don't remember if he said one or
8 several -- that had made comments that he found
9 abhorrent on social media. That he disciplined
10 those staff and apologized on their behalf.

11 BY MS. GRUNFELD:

12 Q. Did he tell you anything else about that
13 incident?

14 MR. DUGGAN: Objection. Outside the
15 scope.

16 THE WITNESS: No.

17 BY MS. GRUNFELD:

18 Q. When you met with Mr. Diaz for a cup of
19 coffee, did he tell you he was planning to retire?

20 MR. DUGGAN: Objection. Outside the scope
21 of Mr. Cate's assigned task.

22 THE WITNESS: Not at that time.

23 BY MS. GRUNFELD:

24 Q. Do you know why he retired?

25 MR. DUGGAN: Objection. Calls for

1 speculation. Outside the scope of Mr. Cate's
2 assigned task.

3 THE WITNESS: He just -- I -- I don't -- I
4 think we just had a very brief phone conversation
5 where he said he was, you know, done with the --
6 with the -- with the difficult- -- the difficulties
7 of the job. He was frustrated. Missed his family.
8 The best way I could describe it is he was kind of
9 burned out on the -- on the whole thing.

10 BY MS. GRUNFELD:

11 Q. Did he give you any specifics of different
12 issues that had burned him out in that conversation?

13 MR. DUGGAN: Objection. Outside the scope
14 of Mr. Cate's assigned task.

15 THE WITNESS: No.

16 BY MS. GRUNFELD:

17 Q. And when you met with him for a cup of
18 coffee to catch up earlier in the summer, can you
19 tell me, how do you know Ralph Diaz?

20 MR. DUGGAN: Objection. Outside the scope
21 of Mr. Cate's assigned task.

22 THE WITNESS: We met briefly when I was
23 the secretary of corrections. He was on his way up
24 but at a very low level. I don't -- I don't -- I
25 think he was still at the prisons. He remembered

1 the -- the meeting, I -- I didn't. And so then when
2 he became the undersecretary, as I recall, I
3 reintroduced myself to him. And then as a
4 secretary, we would meet for coffee every quarter,
5 probably, just to see how he was doing and to catch
6 up on -- on our lives. Mostly as a way to have
7 someone to talk to that's been through what he's
8 been through.

9 BY MS. GRUNFELD:

10 Q. Did you serve as an informal mentor to
11 him?

12 MR. DUGGAN: Objection. Outside the scope
13 of Mr. Cate's assigned task.

14 THE WITNESS: You know, I describe it that
15 way, but in truth --

16 BY MS. GRUNFELD:

17 Q. During the course --

18 THE REPORTER: Can you repeat -- wait,
19 wait. Sorry. Can you repeat your answer, Mr. Cate?

20 THE WITNESS: I said he might -- he might
21 refer to it that way, meaning as a mentor
22 relationship, but really, I -- or maybe he wouldn't.
23 I don't know. It really wasn't. I didn't give him
24 advice very often. Mostly, I just listened and --
25 and sympathized.

1 BY MS. GRUNFELD:

2 Q. And during the course of your meetings
3 with Mr. Diaz while he was secretary, did he ever
4 mention to you an issue with staff misconduct
5 against incarcerated people with disabilities?

6 A. No.

7 Q. Other than the meeting earlier this -- or
8 this -- during -- early in the summer, did Mr. Diaz
9 ever talk to you about problems with CDCR's culture?

10 MR. DUGGAN: Objection. Outside the scope
11 of Mr. Cate's assigned task. Vague.

12 THE WITNESS: Well, I don't believe so.
13 Other than in our last coffee conversation, he had
14 also made the comment that he felt like the vast
15 majority of his staff were good people, and he was
16 just all the more disgusted by these guys who had
17 written these blog posts.

18 BY MS. GRUNFELD:

19 Q. And I think, as we'll see later today, he
20 did discipline one of the officers at LAC for making
21 comments about Mr. Floyd. So we'll get to that a
22 little later.

23 I'd like you to -- oh, before we do that.
24 One of the things that Judge Wilken wrote about in
25 her September 8 order is the strike team that was

1 deployed to RJD to investigate allegations of staff
2 misconduct. While you were secretary, did you ever
3 deploy the strike team approach to solve problems?

4 MR. DUGGAN: Objection. Compound.
5 Outside --

6 THE REPORTER: Can you repeat your
7 objection again, please?

8 MR. DUGGAN: I'll do that. Compound and
9 outside the scope of Mr. Cate's assigned task.

10 THE WITNESS: I -- I -- as inspector
11 general, I took part in the -- one occurred at
12 California Institution for Men following the
13 homicide of a correctional officer. As the
14 secretary, I -- I don't recall utilizing a task
15 force.

16 BY MS. GRUNFELD:

17 Q. Or "strike force" is, I think, what they
18 call it.

19 A. Strike force.

20 Q. Do you -- do you have -- do you think
21 that's a good approach in certain circumstances?

22 MR. DUGGAN: Objection. Outside the scope
23 of Mr. Cate's assigned task. And incomplete
24 hypothetical.

25 THE WITNESS: I do.

1 BY MS. GRUNFELD:

2 Q. Did you read the Bishop report that was
3 issued after the strike force investigation at RJD?

4 A. I read a number of reports concerning the
5 conditions at RJD. I believe the Bishop report was
6 one of those.

7 Q. And in the Bishop report, he talks about
8 allegations of prisoner-on-prisoner violence
9 directed by officers in a gang. And he names the
10 two gangs of officers.

11 Did that shock you?

12 MR. DUGGAN: Objection. Incomplete
13 hypothetical.

14 THE WITNESS: I guess -- I -- I wondered
15 how extensive it could be. It -- I would have -- I
16 was surprised, yes, that -- that that would even
17 come up at all. And I -- to some extent, right? I
18 mean, there's always -- it's -- at CDCR, I used to
19 talk about the "law of big numbers." And so with
20 hundreds of thousands of inmates, and with -- at
21 least when I was there -- and with tens of thousands
22 of staff, everything happens. There's just -- at
23 one time or another, literally everything. It's one
24 of the things that makes the job so interesting.
25 But also frustrating, right? Because a few staff

1 will do things that would shock anyone, I think.
2 And so I thought that -- I thought [REDACTED]
3 was overplayed at Salinas Valley when I was the
4 inspector general. I thought it was a relatively
5 small number of idiots who really didn't have a lot
6 of power and it was overplayed. And I was surprised
7 that there was any reference to officers being
8 involved in those kinds of organizations, still
9 today.

10 BY MS. GRUNFELD:

11 Q. Have you read this book? It's called "[REDACTED]
12 [REDACTED]" by D. J. Vodicka.

13 MR. DUGGAN: Objection. Outside the scope
14 of Mr. Cate's assigned task.

15 THE WITNESS: I have not.

16 BY MS. GRUNFELD:

17 Q. Have you heard of the book?

18 A. I have, and I've heard of Mr. Vodicka.

19 Q. Were you at any of the hearings before the
20 legislature concerning [REDACTED] at Salinas
21 Valley?

22 MR. DUGGAN: Objection. Outside the scope
23 of Mr. Cate's assigned task.

24 THE WITNESS: I probably was. I don't
25 recall specifically, though.

1 BY MS. GRUNFELD:

2 Q. Now, according to the Bishop report,
3 officers at RJD were wearing [REDACTED] scarves to
4 signify their adherence to that gang.

5 Do you have any -- have you ever heard of
6 that before at CDCR, this [REDACTED] scarf?

7 MR. DUGGAN: Objection. Outside the scope
8 of Mr. Cate's assigned task.

9 THE WITNESS: I -- I didn't -- I didn't
10 read that to believe that those officers necessarily
11 were part of [REDACTED] because they were
12 wearing a [REDACTED] scarf.

13 These men and women work together every
14 day. They go to pizza together. They watch
15 football together. Their families -- their kids
16 play on the same baseball teams. They develop close
17 rapport with one another. And so you'll see
18 situations where they will wear a similar piece of
19 clothing that signifies their -- their closeness.
20 That doesn't necessarily mean they are in an
21 organized threat group or gang of any kind.

22 Not to say that none of them were, but
23 it's not necessarily that all of them were.

24 BY MS. GRUNFELD:

25 Q. Well, wearing such a scarf would violate

1 CDCR policy, wouldn't it?

2 A. It would, yes.

3 Q. And -- so, and as I understand your
4 testimony, you are saying that people might have
5 worn the [REDACTED] scarf, not knowing what it was, just
6 to be friendly?

7 MR. DUGGAN: Ob- -- objection. Misstates
8 prior testimony.

9 THE WITNESS: I just don't know that there
10 was -- there was any kind of a connection between
11 wearing the [REDACTED] scarf and being in an organized
12 gang of officers. You could wear -- you can decide
13 to wear a scarf that matches everybody else's just
14 as a sign of solidarity with your fellow officer
15 without having that mean that you are in any kind of
16 gang or threat group.

17 BY MS. GRUNFELD:

18 Q. Are you aware that at Salinas Valley, the
19 officers in [REDACTED] used [REDACTED] ink to write
20 their reports?

21 A. Yes.

22 Q. And how about the [REDACTED] pins, are you
23 aware of that?

24 MR. DUGGAN: Objection. Outside the scope
25 of Mr. Cate's assigned task.

1 THE WITNESS: I don't recall the [REDACTED]
2 pins. You'll have to remind me.

3 BY MS. GRUNFELD:

4 Q. Are you aware that certain officers wore
5 pins to signify they were part of a riot in which
6 many people were killed on Thanksgiving Day at
7 Salinas Valley?

8 MR. DUGGAN: Objection. Outside the scope
9 of Mr. Cate's assigned task.

10 THE WITNESS: I don't recall that.

11 BY MS. GRUNFELD:

12 Q. Other than what we have talked about, are
13 you aware of any clothing or pins or other insignia
14 of gang -- officer gang involvement at CDRC?

15 MR. DUGGAN: Objection. Outside the scope
16 of Mr. Cate's assigned task.

17 THE WITNESS: I recall that there was an
18 incident involving an officer's car in a parking lot
19 being marked with [REDACTED] paint. But again, I don't
20 remember. It's been a number of years ago. I don't
21 recall exactly what the details of that were, but
22 that's the only other incident I can recall as I sit
23 here.

24 BY MS. GRUNFELD:

25 Q. And was it your understanding of the [REDACTED]

1 paint that the purpose of that was to intimidate the
2 officer from sharing information about misconduct?

3 MR. DUGGAN: Objection. Outside the scope
4 of Mr. Cate's assigned task.

5 THE WITNESS: I don't recall specifically,
6 but it was -- it was -- it was either that there was
7 something specific going on with that officer or
8 they just believed that officer was, you know,
9 particularly -- they just didn't like that person or
10 he wasn't part of their club or whatever was
11 happening. It was at that time that Secretary
12 Hickman was really pushing on the issue of the "code
13 of silence." It was one of his primary goals as the
14 secretary was to end that. And so there was some
15 notoriety around it. I just don't remember
16 specifically. I'd -- I'd be speculating as to what
17 that message was supposed to mean on that particular
18 car on that day. Generally, it's something that is
19 done to intimidate, though.

20 BY MS. GRUNFELD:

21 Q. Are you aware that --

22 THE REPORTER: Wait. Hold on. Hold on.

23 BY MS. GRUNFELD:

24 Q. -- one of the witnesses in the RJD motion
25 received a threatening note signed "[REDACTED]" as

1 he was being transferred out of RJD?

2 MR. DUGGAN: Objection. Outside the scope
3 of Mr. Cate's assigned task.

4 THE WITNESS: I -- I saw a note in the
5 materials, a photograph of a note. I think it
6 just -- it was written in red or orange crayon and
7 had the initials "■" at the bottom. That -- that
8 may be the same one. I don't -- I didn't read
9 anything that made me conclude that it had been
10 determined that was from an officer.

11 BY MS. GRUNFELD:

12 Q. So as you sit here today, do you know one
13 way or another if ■ is active in CDCR
14 currently?

15 MR. DUGGAN: Objection. Outside the scope
16 of Mr. Cate's assigned task.

17 THE WITNESS: I didn't see any evidence of
18 it at -- at LAC. But I don't know whether it exists
19 anywhere in CDCR. It could be.

20 BY MS. GRUNFELD:

21 Q. You don't know whether it does or does
22 not?

23 A. Correct.

24 (Whereupon, Exhibit 2 was marked for
25 identification.)

1 BY MS. GRUNFELD:

2 Q. I'd like to turn, if we could, to a
3 document that should be marked as Exhibit 2. It's
4 the September 8th "Order for Additional Remedial
5 Measures," Docket No. 3060, in Armstrong versus
6 Newsom. This is a six-page order issued by Judge
7 Wilken. Mr. Cate, do you have a copy of that
8 available?

9 A. I do.

10 Q. Did you read this order prior to today?

11 A. I recall looking at it briefly again to
12 see whether it was -- to look at the remedies and
13 see whether they were consistent with the proposed
14 order that I had read before. But I didn't read it
15 in detail.

16 Q. Did you make any conclusion about whether
17 the remedies were consistent with the proposed
18 order?

19 A. It looked to me they were pretty
20 consistent.

21 Q. Okay.

22 If you could please take a look at the
23 bottom of page 3, where the court orders, "Reforms
24 to the Staff Complaint, Investigation, and
25 Discipline Process at RJD." Do you see that?

1 A. I do.

2 Q. And then carrying onto page 4, the court
3 is requiring a plan "...to ensure that CDCR
4 completes unbiased comprehensive investigations into
5 all allegations of staff misconduct violative of the
6 rights of any class member under the Armstrong
7 remedial plan or the ADA."

8 And then she goes on to order consistent
9 discipline and criminal misconduct prosecutions.

10 Do you agree that these measures are
11 needed at RJD?

12 MR. DUGGAN: Objection. Compound.
13 Outside the scope of Mr. Cate's assigned task.

14 THE WITNESS: No.

15 BY MS. GRUNFELD:

16 Q. And why is that?

17 A. It appears that the department has taken
18 steps to uncover the problems through the strike
19 force and to address what I thought was really
20 leadership issues at that institution and to enforce
21 much stricter compliance with its policies. And so
22 I -- I don't believe that ad- -- additional steps
23 are needed to -- to run a -- a good system of -- of
24 staff complaint, investigation, and discipline
25 processes at RJD.

1 Q. Did you read all of the materials
2 regarding RJD, the underlying declarations and other
3 materials?

4 MR. DUGGAN: Objection. Compound.

5 THE WITNESS: No.

6 BY MS. GRUNFELD:

7 Q. Now, you just testified that you felt the
8 strike force addressed the leadership issues. The
9 strike force, of course, was in December 2018, and
10 the prisoners were transferred in July 2020.

11 Do you have any basis for believing that
12 these issues were addressed?

13 A. Well, I don't believe I said that the
14 issues were addressed by the strike force. I think
15 they were effectively uncovered by the strike force,
16 and then over the course of time, the leadership was
17 replaced, and it appeared to me, based upon reading
18 Ken McGinnis's report, that the -- that particular
19 institution was making steps to improve these areas.
20 But I didn't read the underlying cases in -- in the
21 RJD case.

22 Q. The next part of Judge Wilken's order
23 calls for: Third-party expert monitoring of the
24 investigation and discipline section of the remedial
25 plan and delegates that task to Edward Swanson, the

1 court expert. Do you see that on page 4, lines 21
2 through 24?

3 A. I do.

4 Q. And do you object to that remedy?

5 MR. DUGGAN: Objection. Outside the scope
6 of Mr. Cate's assigned task. Compound.

7 THE WITNESS: The -- can I read -- read
8 the entire -- should I read the entire paragraph
9 related to Mr. Swanson? Let me make sure I
10 understand it.

11 BY MS. GRUNFELD:

12 Q. Sure. Take your time.

13 A. As I said, I -- I don't believe that the
14 additional investigative and discipline work is
15 needed. And as I understand it, Mr. Swanson is
16 already working on the matter. I have -- generally,
17 when I was the secretary of corrections, I was
18 frustrated by the numbers of experts, the numbers of
19 monitors, the numbers of cases and the numbers and
20 the amount of intrusion into our ability to run the
21 department day to day. So every additional request
22 is that much more burdensome when considered with
23 the other 18 class actions or whatever the current
24 number is. It's helpful that it's someone the
25 department is familiar with and is already working

1 on the case.

2 Q. I read your article called "Beyond
3 Litigation" that you wrote with Stanford professor
4 Bob Weisberg. Do you -- are you familiar with that
5 article?

6 A. Yes.

7 Q. And as I understood the article, you were
8 arguing for informal mediation of prison disputes as
9 you seemed to say happened in Madrid. Is that an --
10 an approach that you advocate to reducing problems
11 in the prisons?

12 MR. DUGGAN: Hey, could we take a break?
13 I have just been informed that someone wants to come
14 into the -- this room.

15 MS. GRUNFELD: Okay. Sure.

16 MR. DUGGAN: Thank you. I appreciate it.

17 (Recess taken.)

18 MS. GRUNFELD: Back on the record after a
19 brief break. And we were just discussing before
20 break, Mr. Cate, you wrote an article with Mr. --
21 with Professor Weisberg at Stanford Law School
22 called "Beyond Litigation: A Promising Alternative
23 to Resolving Disputes Over Conditions of Confinement
24 in American Prisons and Jails." Are you familiar
25 with that article?

1 THE WITNESS: Yes.

2 BY MS. GRUNFELD:

3 Q. In your article, you referenced the
4 "Madrid process," and call it "creative" and applaud
5 the fact that the court and the special master were
6 actually acting as arbitrators or mediators to coach
7 the parties into changing their behavior. So in
8 that context, I wondered if you thought that the
9 court's order, having Mr. Swanson oversee the RJD
10 discipline process, would perform a similar function
11 to what you advocate for in your article?

12 MR. DUGGAN: Objection. Compound.
13 Outside the scope of Mr. Cate's assigned task.

14 THE WITNESS: The problems in Madrid were
15 profound and longstanding and -- and had -- had -- I
16 think everyone agreed were -- were difficult to --
17 to manage. And so I thought that court's processes
18 there were -- were particularly adept at addressing
19 those problems. As I've said, I don't think that
20 the problems at RJD related to allegations of abuse
21 of ADA inmates merit the same remedies. And having
22 said that, it's, I think, generally true that an
23 informal approach in which, ideally, the Court, or
24 someone very close to the Court, was involved in
25 helping to mediate problems is a good thing.

1 BY MS. GRUNFELD:

2 Q. And would it be a fair statement to say
3 that you knew a lot more about the issues that led
4 to the Madrid process than you know about the abuse
5 of prisoners with disabilities at RJD?

6 MR. DUGGAN: Objection. Misstates prior
7 testimony. Outside the scope of Mr. Cate's assigned
8 task.

9 THE WITNESS: I think I know as much or
10 more about the process. And I know less about the
11 individual cases.

12 BY MS. GRUNFELD:

13 Q. And what do you mean by "the process"?

14 A. Meaning I'm still very familiar -- the
15 process of -- of -- of a case moving from an -- an
16 al- -- initial allegation of misconduct through the
17 individual institution to central intake, to
18 investigation, and through discipline and the
19 oversight of that process, I'm still very familiar
20 with all of that. As I said, I didn't review the
21 individual facts of the cases at RJD. But, that
22 said, I didn't review all of the facts in 2004 to
23 2008 when I was the inspector general either, but I
24 reviewed a large number of -- of the statewide, for
25 sure.

1 Q. But it's your opinion that the issues that
2 were addressed in Madrid were more serious than the
3 issues addressed here, and I'm trying to understand
4 the basis for that opinion.

5 MR. DUGGAN: Objection. Outside the scope
6 of Mr. Cate's assigned task. Vague.

7 MS. GRUNFELD: It's in his declaration.
8 So -- I -- I don't really agree, but let's just keep
9 moving here.

10 THE WITNESS: So I -- I think that the
11 reforms that were ultimately agreed to between
12 the -- the State and the plaintiffs in that case and
13 that were -- and that the Court assisted in -- in
14 crafting were effective. And so I think they're
15 still effective. And so without those reforms, the
16 Madrid case is based upon facts that occurred before
17 the Madrid case was terminated and before those
18 reforms were in place. And so the situation absent
19 those reforms was worse than it is now because the
20 reforms, I think, have been very helpful.

21 BY MS. GRUNFELD:

22 Q. Did you read Donald Specter's declaration
23 in support of the RJD motion in which he testifies
24 that the Madrid process is broken and not working?

25 A. I recall that, yes.

1 Q. And do you -- have you discussed that with
2 him at any time recently?

3 A. I don't believe so.

4 Q. Okay. And do you -- do you disagree with
5 his testimony?

6 A. I do.

7 Q. And what do you base your disagreement on?

8 A. On my review of -- of the process as it
9 played out at LAC. My review of the inspector
10 general's reports, my reviews of the other expert
11 reports, my reviews of CompStat reports, my reviews
12 of my -- my conversations with the people that were
13 involved. Basically, all of the materials that I
14 reviewed led me to the conclusion that the Madrid
15 process is still very strong. And I -- I don't --
16 so I don't agree with Mr. Specter that -- that it's
17 broken; although it, of course, can be -- it's --
18 it's less effective if you have poor leadership at a
19 particular institution or if you have a number of
20 staff who are doing a -- a bad job and -- and aren't
21 being properly supervised. It's a human system and
22 so it can break down.

23 Q. As you sit here today, are you aware of
24 any breakdowns in the Madrid process in CDCR?

25 MR. DUGGAN: Objection. Vague.

1 THE WITNESS: I think the process broke
2 down at RJD for -- for a period of time. I think
3 that's what the strike force uncovered, and mostly
4 on the front end. The discovery of the use of force
5 and those initial investigations regarding the use
6 of force, there just wasn't enough oversight of
7 that.

8 BY MS. GRUNFELD:

9 Q. Okay. Let's take a look at your statewide
10 declaration.

11 MS. GRUNFELD: Madam Reporter, if you
12 could please mark that as Exhibit 3.

13 (Whereupon, Exhibit 3 was marked for
14 identification.)

15 BY MS. GRUNFELD:

16 Q. And Mr. Cate, I hope you have what's been
17 marked as Exhibit 3 before you.

18 A. Declaration -- my declaration?

19 Q. Yes.

20 A. Yes.

21 Q. Very good. So you testified earlier today
22 that you were retained in late July of this year and
23 that you took some notes. Could you tell me about
24 the process for writing this declaration?

25 A. I reviewed the materials or began to

1 review the materials. And as questions -- as I had
2 questions or as I wanted clarification, I jotted
3 those questions down. I subsequently tried to get
4 those answered through conversations with the people
5 that are listed there, Amy Miller and others. And
6 then I would go back to reading and taking notes on
7 what I had read. I handled the investigations kind
8 of separately in that I didn't need a lot of input
9 on -- on those. The records kind of speak for
10 themselves. So I read those and took notes and then
11 wrote this up as I went.

12 Q. And so you -- you -- you drafted the first
13 draft?

14 A. Yes.

15 Q. And did counsel for defendants make
16 comments on that draft?

17 MR. DUGGAN: Objection. Work product.

18 THE WITNESS: Yes.

19 BY MS. GRUNFELD:

20 Q. And can you give me an estimate of how
21 many versions of the draft you went through?

22 MR. DUGGAN: Objection. Work product.

23 THE WITNESS: There were -- there was my
24 original draft. Counsel sent me back some proposed
25 changes. We talked through those proposed changes

1 and created, I guess what you could call a third
2 draft that I -- I agreed with, and then -- and then
3 we had some subsequent drafts around formatting and
4 those kinds of things that were inconsequential.

5 BY MS. GRUNFELD:

6 Q. When you talk about the transition from
7 the original draft to the third substantive draft,
8 were there topics or opinions that you and counsel
9 for defendants needed to talk through on which there
10 were disagreements?

11 MR. DUGGAN: Objection. Work product.

12 THE REPORTER: Wait. Can you say your
13 objection again?

14 MR. DUGGAN: Yes. Objection. Work
15 product.

16 THE WITNESS: I don't recall any
17 disagreements, meaning -- or things that they
18 objected to in my report. Where they
19 particularly --

20 THE REPORTER: Wait. Mr. Who disagreed
21 with? Sorry.

22 THE WITNESS: Counsel, Mr. Dugger -- did I
23 pronounce that right?

24 MR. DUGGAN: Duggan.

25 THE WITNESS: Duggan. Gosh, sorry.

1 Duggan. Gosh, I've been saying Dugger the whole
2 time. So anyway, so Mr. Duggan made suggestions to
3 me about areas that I could expand upon and other
4 ways to edit the report that he thought would be
5 more effective. But I don't -- and then we had
6 differences in -- there were some stylistic
7 differences that we worked through. But --

8 BY MS. GRUNFELD:

9 Q. I'm more interested in the areas of
10 expansion that -- that perhaps were not covered in
11 the original report.

12 MR. DUGGAN: Objection. Attorney --
13 attorney expert communications. Work product.

14 THE WITNESS: The -- in particular, I
15 don't think I had addressed every one of the
16 proposed statewide remedies. And he asked me
17 whether I had opinions about all of them and -- or
18 if I -- if I hadn't done that work yet, if I would
19 go back and review and see if I would come to an
20 opinion about them. And so I went back and did some
21 additional work and wrote up an opinion about the
22 remainder of the statewide remedies. Some of
23 them -- I don't remember which ones, but some I
24 hadn't addressed.

25 ///

1 BY MS. GRUNFELD:

2 Q. Now, in writing your report and pursuing
3 this assignment, I think you've testified already
4 that you had conversations with some of your former
5 colleagues at CDCR and OIG. Can you tell me who you
6 spoke to?

7 A. I spoke to Amy Miller. I spoke to
8 Kathleen Allison. I spoke to Roy Wesley. And then
9 I spoke to a number of individuals at LAC.

10 Q. Now, Ms. Allison is the incoming secretary
11 of CDCR. Can you tell me what you discussed with
12 her about this assignment?

13 A. She wasn't the incoming secretary when we
14 had the discussions. She was the undersecretary. I
15 just notified her of what I was working on. And
16 I -- based on -- I asked her some questions about
17 budgeting. And I made some recommendations to her
18 about things to do, that she might want to consider
19 doing before the case resolved.

20 Q. Can you tell me what those recommendations
21 were?

22 MR. DUGGAN: Objection. Outside the scope
23 of Mr. Cate's assigned task.

24 THE WITNESS: I think I made two in
25 particular. One was to install cameras at LAC

1 facility D housing unit 5.

2 THE REPORTER: B or D?

3 THE WITNESS: D -- D as in dog, facility
4 5.

5 Another was a recommendation that whenever
6 possible, they shouldn't -- they -- the -- the case
7 coordinator in a use of force should come from a
8 different facility than a facility where the force
9 took place. And then we had a general conversation
10 about budget and cameras.

11 BY MS. GRUNFELD:

12 Q. What do you recall you and Ms. Allison
13 discussing about budget and cameras?

14 A. That she indicated that she was in favor
15 of having additional fixed cameras in the facilities
16 and was aware that a budget line item for those --
17 for that purchase had been taken out during a later
18 revision of the -- of the budget. And we discussed
19 the scope of the State's fiscal hole -- and that I
20 think at the time, we thought it was about
21 50 billion in the red -- and the costs associated
22 with providing for the -- for the health and welfare
23 of Californians during COVID. And the governor's
24 priorities were providing personal protection
25 equipment and other things that were life

1 threatening for the -- for the citizens.

2 Q. Did you discuss the fact that LAC has
3 already been cabled for cameras?

4 A. No.

5 Q. During the course of your assignment, did
6 anyone give you any documents indicating that many
7 of the prisons have already been cabled pursuant to
8 a 2016 contract?

9 A. No.

10 Q. Is there a reason that you reached out to
11 Ms. Allison and not to Mr. Diaz in -- in terms of
12 writing this report?

13 MR. DUGGAN: Objection. Calls for
14 speculation.

15 THE WITNESS: I think I reached out to Mr.
16 Diaz too, now that you mention it, just to tell him
17 that I had been retained. But we didn't discuss any
18 of the details.

19 BY MS. GRUNFELD:

20 Q. Thank you.

21 A. I'm vague on that. I may have just asked
22 Kathy to tell Ralph, to -- the undersecretary to
23 tell the secretary, or I may have mentioned to him
24 in passing at some point. I don't -- I don't
25 recall. But I -- I endeavored to make sure that

1 both of them were aware. So those are the people at
2 CDCR that I talked to.

3 Q. Now, you recommended to Ms. Allison that
4 she install cameras on D5. Why is that?

5 A. It's a administrative segregation unit in
6 a facility that houses mentally ill inmates.

7 Q. Any other reason?

8 A. I just found those inmates to be
9 particularly in a vulnerable position. And inmates
10 in an administrative segregation or any kind of
11 segregated housing have less access to the entire
12 facility, and so I think need the highest level of
13 care and concern when it comes to use of force or
14 ADA accommodation or anything else that -- that
15 needs the -- the -- that is a health and safety
16 issue for those inmates.

17 Q. Did Ms. Allison agree with your
18 recommendation?

19 A. She did.

20 Q. Did she tell you the time frame for
21 implementing it?

22 MR. DUGGAN: Objection. Outside the scope
23 of Mr. Cate's assigned task.

24 THE WITNESS: She didn't.

25 ///

1 BY MS. GRUNFELD:

2 Q. Are you aware that Undersecretary
3 Macomber, M-A-C-O-M-B-E-R, has filed a declaration
4 in opposition to our motion stating that not only
5 will D, as in dog, but also B, as in boy, have
6 cameras at LAC?

7 A. I wasn't aware, or if I was, I -- I had
8 forgotten.

9 Q. Did you discuss installation of cameras
10 with Jeff Macomber?

11 A. I don't -- I don't believe so.

12 I talk to Jeff once in a while too, a cup
13 of coffee, those kinds of things, but I -- I don't
14 think I have had any conversations with him since
15 I've been retained. And I just don't recall, as I
16 sit here, whether I did or I didn't.

17 Q. You testified that you recommended to
18 Ms. Allison that the case coordinator in a
19 use-of-force conference be from a different facility
20 from where the -- the force occurred. Why did you
21 recommend that?

22 MR. DUGGAN: Objection. Misstates prior
23 testimony.

24 THE WITNESS: In -- in my mind, it could
25 be an improvement on the current system to have a

1 supervisor from a different part of the prison
2 conduct those inquiries. That way, you are -- you
3 know that that person was neither involved in the
4 use of force, nor a percipient witness to the use of
5 force. And then it also -- it eliminates some of
6 the -- even the -- the perception of bias because of
7 the additional distance in working relationships
8 between the different facilities within a prison.

9 BY MS. GRUNFELD:

10 Q. And making that change would require a
11 change in regulation or how would that come about?

12 A. Well, I believe Warden Johnson at the
13 facility told me that -- that that's something
14 that -- that he does on a fairly regular basis
15 anyway. So I don't believe it requires -- I think
16 it's a practice and training as opposed to a change
17 in policy.

18 Q. But you were recommending to Ms. Allison
19 that it be implemented systemwide, right?

20 A. I -- I recommended that she evaluate it.
21 And I made the same recommendation to Amy Miller.
22 And she pointed out that there are a number of --
23 you know, she was a warden, I wasn't. And so she
24 pointed out a number of the difficulties associated
25 with that, including the fact that there are a

1 number of supervisors who rotate and who cover
2 different facilities and that if you don't allow
3 some flexibility, that you'll -- you could be in a
4 situation where you have -- you've got a -- a
5 technical violation of that new policy because
6 someone had worked at that facility at some point in
7 the past or worked there regularly, but not every
8 day, and she just kindly pointed out to me it's more
9 complicated than I thought.

10 Q. So as you sit here today, do you think
11 CDCR is going to implement that recommendation?

12 MR. DUGGAN: Objection. Calls for
13 speculation. Outside the scope of Mr. Cate's
14 assigned task.

15 THE WITNESS: I don't know.

16 BY MS. GRUNFELD:

17 Q. Now, when you were secretary, did you work
18 with Kathy Allison?

19 A. I think Kathy Allison was a chief deputy
20 warden at the substance abuse treatment facility
21 when I was the secretary and may have worked her way
22 up from there, but we did not work together a great
23 deal.

24 Q. But you were her boss?

25 A. Yes.

1 Q. And how about Amy Miller? Did she work at
2 CDCR while you were secretary?

3 A. I believe she did.

4 Q. And did you know her at that time?

5 A. As I recall, she says we had met. I don't
6 recall the meeting.

7 Q. And you've testified a little bit about
8 what you discussed with Ms. Miller to prepare this
9 report. Other than the use-of-force issue that we
10 have been talking about, what else did you discuss
11 with Amy Miller?

12 A. I made one additional recommendation to
13 Ms. Miller. I -- I told her that if I were in her
14 shoes, I would sit down and try to figure out which
15 housing units housed the most vulnerable inmates and
16 put together her own recommendation for -- if -- if
17 cameras were ordered or if cameras were -- if the
18 State decided to install cameras, that she should
19 prepare by figuring out which institutions or which
20 housing units would be in the greatest -- would be
21 serving the greatest need.

22 Q. And what did Ms. Miller say about that?

23 MR. DUGGAN: Objection. Outside the scope
24 of Mr. Cate's assigned task.

25 THE WITNESS: I got the impression that

1 she -- that's something that she could figure out
2 off the top of her head.

3 BY MS. GRUNFELD:

4 Q. How long did you speak to Ms. Miller about
5 this assignment?

6 A. All told, three hours.

7 Q. And you took notes on the conversation.

8 A. I did.

9 Q. And can you tell me anything else you can
10 recall, since I don't have the notes, about what you
11 discussed with Ms. Miller?

12 A. Yes, I used her as -- to be all about the
13 allegation inquiry management system, or
14 investigation management system. I can never seem
15 to remember the acronym. AIMS.

16 Q. AIMS.

17 MS. GRUNFELD: Madam Reporter, that's
18 A-I-M-S, all caps.

19 BY MS. GRUNFELD:

20 Q. And so you were saying you used her to
21 learn about AIMS?

22 A. Yes.

23 Q. Any other topics you discussed with
24 Ms. Miller? Other than what we have already talked
25 about.

1 A. I asked her what her role was at CDCR. I
2 asked her to explain which units within CDCR were
3 under her supervision. So background, things like
4 that.

5 Q. Anything else you can recall?

6 A. No.

7 Q. You also spoke with Roy Wesley. How long
8 have you known Roy Wesley?

9 A. I'm not sure exactly, but I would -- I
10 would estimate maybe 10, 12 years.

11 Q. Did you hire Roy Wesley when you were
12 inspector general?

13 A. I'm not positive. I think so. I think at
14 the end of my term, so that would be 2008 or 2007.
15 It may have been he was hired shortly thereafter. I
16 don't recall exactly.

17 Q. And did he succeed you -- or is he the
18 attorney -- excuse me -- is he the in- -- inspector
19 general of California today?

20 A. He is.

21 Q. And how do you think he's doing as
22 inspector general?

23 MR. DUGGAN: Objection. Outside the scope
24 of Mr. Cate's assigned task.

25 THE WITNESS: It's -- it's difficult for

1 me to judge. The reports I have read appear to be
2 comprehensive and thorough. He seemed knowledgeable
3 about the extent of -- of his job when we spoke and
4 enthusiastic, intelligent. I don't know much more
5 about how he runs his office or his relationships
6 within the capital or his expertise. We haven't
7 spent very much time together, but from the evidence
8 that I reviewed, he seems to be doing a good job.

9 BY MS. GRUNFELD:

10 Q. Well, what have you heard about his
11 performance, in conversations with CDCR people?

12 MR. DUGGAN: Objection. Outside the scope
13 of Mr. Cate's assigned task.

14 THE WITNESS: I -- I haven't heard
15 anything about his performance, only that he seems
16 to be affable, well liked. But I -- I haven't asked
17 anybody: Is Roy doing a good job? or What do you
18 think of the OIG right now? I didn't have those
19 conversations.

20 BY MS. GRUNFELD:

21 Q. Do you ever meet with Mr. Wesley for
22 coffee?

23 A. No. I -- I wouldn't say we never have,
24 but not -- I don't -- I don't believe we -- I don't
25 believe we ever have. Maybe -- maybe we -- maybe we

1 went to lunch one time a number of years ago, but
2 I'm not positive, and certainly nothing recently.

3 Q. And on how many occasions did you speak to
4 him about this assignment?

5 A. One.

6 Q. And when was that?

7 A. Two weeks ago.

8 Q. What did you discuss with Mr. Wesley?

9 A. It was a very brief conversation. I just
10 asked him about the -- some details about his -- his
11 report -- his reports, particularly around the use
12 of force, and then I asked him about the AIMS
13 implementation.

14 Q. What -- what did you discuss with
15 Ms. Wesley about the use-of-force reports?

16 A. I just read that his -- two things,
17 really. One was that I just confirmed that, in his
18 view, in 95 percent of the cases he reviewed, the
19 officer's use of force was appropriate. And then
20 secondly, I asked him about whether he was going to
21 have the budget or the ability to do more of that
22 work and whether he was going to be able to oversee
23 the investigative process in the prisons themselves,
24 because I thought that was a good idea.

25 Q. So let's start with that first. What did

1 he say about that?

2 A. He said yes, he is -- he's been instructed
3 to -- to create a unit that will provide oversight
4 of the investigations done on -- on use-of-force
5 matters in the institutions.

6 Q. Okay. Was that not cut in the May revise?

7 A. I don't believe so. I -- I think he -- he
8 said he wanted more staff to do that, and that he --
9 he needed more money and more staff to do that
10 function, but that he did get some and he is hiring
11 positions and setting up that unit.

12 Q. And that would be to over- -- oversee ISU
13 investigations, right?

14 A. I'm not sure about that. I don't know if
15 it's ISU investigations only or if it would also
16 include investigations related to use of force
17 conducted by case coordinators.

18 Q. What did you discuss with Mr. Wesley about
19 the 95 percent number that you just referenced?

20 A. I -- I just asked him about the -- the
21 error rate on reports was high to me, than -- than
22 the -- meaning, the -- the error rate of -- in the
23 IG's reports post use of force was, as I recall,
24 35 percent. And so I asked him a little bit about
25 what that entailed and how concerning he felt that

1 was. And -- and of course, he was concerned and
2 wanted the department to do better, but I wanted to
3 understand the nature of those. And he said they
4 related to timing, related to details around the
5 investigations themselves but that the -- the use of
6 force and the officers' actions leading up to the
7 use of force, that in most of those cases, he
8 thought that the department made the right decision
9 about the use of force, that the use of force was
10 either justified or it wasn't, and allegations were
11 sustained. And he felt like the department got that
12 decision right most of the time. But he was
13 concerned. He thought improvement needed to happen
14 in terms of the -- the post -- the -- the
15 investigations that occurred thereafter.

16 Q. Was it clear from your --

17 THE REPORTER: Please hold on a sec. Wait
18 a sec. You said an air rate or error rate? Can I
19 just double-check what kind of rate that was?

20 THE WITNESS: An error rate.

21 THE REPORTER: Okay. Thank you.

22 BY MS. GRUNFELD:

23 Q. To be clear, in discussing use of force
24 incidents with Mr. Wesley, you are discussing those
25 that are reported through these CDCR processes; is

1 that correct?

2 A. Yes, and in particular, the -- the report
3 that -- the latest six-month annual report that have
4 come out [sic].

5 Q. Right. So we were discussing reported use
6 of force reviewed by the OIG in his most recent six
7 months' report; is that correct?

8 A. Yes, yes.

9 Q. How long did you speak to Mr. Wesley?

10 A. Ten or 15 minutes.

11 Q. And you said you talked about AIMS. What
12 did you discuss about AIMS with Mr. Wesley?

13 A. I asked him how implementation was going
14 and whether he thought it might help.

15 Q. Yeah.

16 A. You are going to ask me what did he say,
17 undoubtedly.

18 He -- he said that he -- he thought the
19 implementation was going slower than he had hoped.

20 Q. What else did he say?

21 A. And that he felt that the -- initially,
22 the AIMS investigators were rejecting too many cases
23 and that he thought that needed to be improved.

24 Q. Did he have any other comments on the AIMS
25 process?

1 A. Not that I recall.

2 Q. Have you told me everything you can recall
3 about your conversation with Roy Wesley?

4 A. Yes.

5 Q. Are you aware that Roy Wesley testified to
6 the Senate assembly budget subcommittee that he
7 believed the staff complaint process is entirely
8 driven by the purpose of exonerating staff?

9 A. I did read that.

10 Q. Do you agree with that?

11 A. Not from what I saw. And -- and in
12 reading his -- his testimony and his comments in
13 context and reading the reports, I'm not even sure
14 that -- the implication was that somehow this entire
15 system is -- is put in place to exonerate staff or
16 committee misconduct, and I -- I don't see any
17 evidence of that. And I'm not sure he does. I'd --
18 I'd like to know if he would really reiterate that
19 statement or whether it was taken out of context.
20 It seemed unusual to me.

21 Q. Well, did you read his report on the
22 Salinas Valley State Prison investigation system?

23 MR. DUGGAN: Objection. Vague.

24 THE WITNESS: I -- I may have reviewed it,
25 yes.

1 BY MS. GRUNFELD:

2 Q. I believe that's what led to his
3 testimony. And in that report, he found widespread
4 problems with the investigation system at Salinas
5 Valley.

6 A. I -- I don't recall the specifics.

7 Q. He also wrote in that report that the
8 system that was in place at Salinas Valley was in
9 place throughout CDCR and that there were multiple
10 issues with how complaints were investigated and
11 widespread bias against incarcerated people. Have
12 you read the OIG's report on High Desert State
13 Prison?

14 MR. DUGGAN: Objection. Compound.

15 THE WITNESS: No.

16 BY MS. GRUNFELD:

17 Q. No. Are you aware that in the OIG's
18 semiannual report issued in September 2016, the OIG
19 recommended both audio-visual surveillance and
20 body-worn cameras be installed at CDCR?

21 A. No.

22 MR. DUGGAN: Same objection. As- --
23 assumes facts.

24 BY MS. GRUNFELD:

25 Q. I'm sorry. I didn't hear the answer.

1 A. The answer is no.

2 Q. Are you aware of a study that violence has
3 significantly been reduced at High Desert Prison
4 after audio-visual surveillance was installed at
5 that prison?

6 MR. DUGGAN: Objection. Assumes facts.

7 THE WITNESS: I'm not aware of the study.

8 BY MS. GRUNFELD:

9 Q. In 2020, the OIG has issued a number of
10 sentinel reports about staff misconduct and
11 investigations at the department. Have you read any
12 of the sentinel reports?

13 A. I believe I read the -- the introduction
14 and the -- and summary at the beginning, but I -- I
15 didn't read the details in those -- the sentinel
16 reports.

17 Q. Do you think the sentinel report process
18 is a good idea?

19 MR. DUGGAN: Objection. Outside the scope
20 of Mr. Cate's assigned task.

21 THE WITNESS: I think having an unfettered
22 inspector general, like California has, that has a
23 fixed term and has the ability to review matters
24 within his or her discretion is a good thing,
25 including the ability to write reports like the

1 sentinel report.

2 BY MS. GRUNFELD:

3 Q. In August, the OIG issued a sentinel
4 report about discipline at [REDACTED]
5 [REDACTED]. Did you read that report?

6 A. I did not.

7 Q. According to the report, two officers who
8 beat up a prisoner and lied about it, the warden
9 wanted to fire them, but someone higher up in the
10 department prevented the termination. Would that
11 concern you in terms of accountability?

12 MR. DUGGAN: Objection. Incomplete
13 hypothetical. Assumes facts.

14 THE WITNESS: It depends on the reasons
15 and the -- the underlying rationale that went behind
16 that decision and who made it.

17 I agree that, typically, officers who
18 commit serious misconduct, especially those who lie
19 about it, should be subject to very strong
20 discipline up to and including termination. But I
21 don't know, for example, how strong the facts were
22 or the background of those staff or the underlying
23 circumstances that may have made it difficult to get
24 that -- those -- that discipline sustained at the
25 state personnel board. So there's -- there's all

1 kinds of reasons why someone might decide to take
2 less than a full termination in a case like that.

3 BY MS. GRUNFELD:

4 Q. Have you ever heard criticism of the
5 department's employee relations lawyers, that they
6 are not fierce advocates in pursuing terminations
7 and discipline against officers?

8 MR. DUGGAN: Objection. Outside the scope
9 of Mr. Cate's assigned task.

10 THE WITNESS: Yes.

11 BY MS. GRUNFELD:

12 Q. And what have you heard in that regard?

13 A. There's -- there's criticisms of all parts
14 of the department. And so from -- when the -- when
15 the Madrid reforms were put in place, the EADT was
16 put in place to strengthen the department's ability
17 to represent itself at SPB hearings, in part.

18 Before that, it was -- nonlawyers did that
19 work, and were routinely outclassed by sophisticated
20 lawyers for staff members who were provided by
21 CCPOA, for example. And so EADT lawyers were
22 brought in to try to -- to try to improve the -- the
23 advocacy at State Personnel Board and to try to get
24 a lawyer's viewpoint during the course of a serious
25 investigation, and so I think having them involved

1 in the case as early as possible is smart. I think
2 having a trained employment lawyer or someone who
3 has worked in this field advocate for the department
4 and its views on discipline is smart. I've heard
5 complaints about it, but there -- I've never seen or
6 heard anything that made me think that those lawyers
7 weren't professional, that they weren't trying to do
8 a good job. These are just difficult cases. And so
9 I didn't take those -- those complaints or -- very
10 seriously.

11 And -- and then the last part is, is the
12 IG's office is there every step of the way looking
13 over their shoulder and writing reports on whether
14 one lawyer disagrees with another lawyer's tactics
15 or abilities. It's a really hard position to be in.
16 And I don't know of any other jurisdiction that goes
17 to that trouble to hire someone, like, for example,
18 a lawyer at the Bureau of Independent Review who's
19 overseeing the work of an employment lawyer for the
20 department and then publicly criticizing anything
21 that they see as a failure. I think it's an
22 extraordinary amount of transparency. And so I -- I
23 think that system is -- is -- is good despite the
24 fact that are undoubtedly situations where the
25 lawyer -- where we could all say he or she should

1 have done this or should have done that or they
2 failed to do x, y, and z. I don't know what more
3 you could do.

4 Q. So from your perspective, the system of
5 accountability is working perfectly?

6 MR. DUGGAN: Objection. Misstates prior
7 testimony.

8 THE WITNESS: I think the system is -- is
9 working as well as one could expect with dealing
10 with human beings and in a system that large.

11 BY MS. GRUNFELD:

12 Q. Okay. Let's turn to your report. On
13 page 2, paragraph 2, you lay out eight matters on
14 which you were asked to give opinions.

15 Do you see that?

16 A. I do.

17 Q. And who drafted these questions or issues?

18 MR. DUGGAN: Objection. Attorney-expert
19 communications. Work product.

20 THE WITNESS: These were provided to me by
21 defense counsel.

22 BY MS. GRUNFELD:

23 Q. Were there any other opinions you were
24 asked to provide that are not discussed here?

25 A. I don't believe so.

1 Q. If you could turn to page 5, paragraph 7
2 of your report, you state that since 2012, you have
3 served as a law and policy fellow at Stanford
4 University School of Law and that your work now
5 focuses on collaborating with local government
6 leaders to determine the impact of public safety
7 realignment on the front end of the criminal justice
8 system.

9 Do you see that?

10 A. I do.

11 Q. And can you tell me, on this public safety
12 realignment, what are you -- what are you working on
13 there?

14 A. This is just my most recent work for them.
15 It's been several years since I worked on this
16 project. It's just the most recent.

17 I pulled together a group of prosecutors,
18 police chiefs, sheriffs, probation chiefs, and local
19 officials to discuss the impacts of -- of
20 realignment and how it was impacting local law
21 enforcement and the criminal justice system. A
22 judge as well, as I recall. And then we wrote a
23 report and submitted that to the governor's office
24 in terms of -- of how the system was working and
25 ways to address post-realignment challenges. It's

1 been several years ago, though.

2 Q. Do you remember what year you wrote that
3 report?

4 MR. DUGGAN: Objection. Misstates prior
5 testimony.

6 THE WITNESS: I don't recall specifically.
7 It would have been probably at least four or five
8 years ago. So now is probably not -- not as
9 accurate as it could be. It's been a while.

10 BY MS. GRUNFELD:

11 Q. Okay. Yeah. I just didn't -- I didn't
12 see it in your publications.

13 A. That report, it was drafted by the -- by
14 the -- by the same group that -- that
15 Professor Weisberg worked for and -- and Professor
16 Peter Cecilia. There is a -- they have -- there's
17 an institute whose name I'm -- I'm blanking on right
18 now that produced that report.

19 Q. I see.

20 A. I was the convenor.

21 Q. I see. Okay. And then --

22 THE REPORTER: Wait. Can you repeat that?
23 Sorry.

24 BY MS. GRUNFELD:

25 Q. Now, are you also a lobbyist for a

1 counties group or something?

2 A. No. From 2000 -- from December or late --
3 late November of 2012 until May of 2018, I was the
4 executive director of the California State
5 Association of Counties.

6 Q. What does that group do?

7 A. They do three primary -- they represent
8 all 58 counties in California. They provide -- they
9 lobby on behalf of county government as a -- as a
10 whole. They provide public information about the
11 role of counties and what they do in California
12 government. And they run a -- an institute to train
13 local leaders in better governance and leadership.

14 Q. And do you do any lobbying at the present
15 time?

16 A. No.

17 Q. Were you involved in a recent re- --
18 reentry contract that was awarded by the governor, a
19 \$15 million reentry contract?

20 MR. DUGGAN: Objection. Outside the scope
21 of Mr. Cate's assigned task.

22 THE WITNESS: I was aware of it, and I
23 know that it went to the Amity Foundation, and I
24 provide consulting services to them, but I wasn't
25 involved in that grant or in Amity's work in that

1 regard.

2 THE REPORTER: Entity or Amity?

3 THE WITNESS: A-M-I-T-Y.

4 THE REPORTER: Okay.

5 BY MS. GRUNFELD:

6 Q. What is Amity?

7 A. Amity Foundation is a nonprofit that
8 provides rehabilitative services to inmates in
9 California prisons. They also work as a
10 coordination agency providing -- distributing funds
11 and contracts to community rehabilitation providers
12 and treatment providers in a couple of different
13 regions in California. And they run a men's
14 community reentry program in Southern California.

15 Q. And -- and what -- what do you do for
16 them?

17 MR. DUGGAN: Objection. Beyond the scope
18 of Mr. Cate's assigned task.

19 THE WITNESS: I provide them with
20 information about how corrections works, and I help
21 them problem-solve. I help them strategize on
22 issues related to their work with CDCR. I introduce
23 them to corrections directors in other states. I
24 work as a -- an informal advocate in -- on their
25 behalf in terms of extolling their virtues and what

1 I think the -- the good job that they do to -- to
2 folks. Those kinds of things.

3 BY MS. GRUNFELD:

4 Q. And how many hours a week do you work for
5 them?

6 MR. DUGGAN: Objection. Outside the scope
7 of Mr. Cate's assigned task.

8 THE WITNESS: This week, ten. Most weeks,
9 just a few.

10 BY MS. GRUNFELD:

11 Q. Why so many this week?

12 MR. DUGGAN: Objection. Outside the
13 scope.

14 THE WITNESS: I arranged for the CEO to --
15 to have meetings with the Department of Finance,
16 with the secretary of -- with the undersecretary of
17 corrections, Kathy Allison, and with the deputy
18 cabinet secretary at the governor's office.

19 BY MS. GRUNFELD:

20 Q. And what was the purpose of those
21 meetings?

22 MR. DUGGAN: Objection. Outside the scope
23 of Mr. Cate's assigned task.

24 THE WITNESS: To introduce them to Doug.
25 They were all either in transition or moving into

1 new positions, and make sure they were aware of who
2 Doug was and the work being done by the Amity
3 Foundation.

4 BY MS. GRUNFELD:

5 Q. And who is Doug?

6 A. Doug Bond is the CEO of the Amity
7 Foundation.

8 Q. Now, how much time do you spend at
9 Stanford?

10 MR. DUGGAN: Objection. Outside the scope
11 of Mr. Cate's assigned task.

12 MS. GRUNFELD: Respectfully, Jeremy, I
13 don't think it's outside the scope to ask an expert
14 about his background and experience when he has put
15 it at issue in his declaration, so let's try to move
16 through this quickly and we'll get it done today.

17 MR. DUGGAN: Okay.

18 THE WITNESS: So since the death of
19 Dr. Peter Cecilia, a couple years ago, I spent very
20 little time on -- on -- excuse me -- Stanford
21 issues. I work with Mike Romano and Milena Blake on
22 projects from time to time. The last one was
23 helping to get information from the state department
24 of mental health that -- that the researchers needed
25 to work on a project. Since Joan's [sic] death, I

1 don't -- I haven't lectured. I always did that
2 in -- in a combination with her, in partnership with
3 her.

4 BY MS. GRUNFELD:

5 Q. Okay. And were you paid for your work at
6 Stanford?

7 A. Only on a project-by-project basis.

8 Q. So what -- what was the project with the
9 mental health?

10 A. You know, I -- I don't recall what
11 Ms. Blake needed that information for. It was
12 related to reentry in some way and providing for
13 mental health services for people in the community.
14 I -- I can't recall exactly what the issue was, but
15 she needed access to more information than was
16 readily available, but it was also information that
17 was accessible to the public. It's just -- I just
18 helped with communication between the department and
19 her.

20 I -- I can't recall now what the exact
21 nature of her work was in that regard.

22 Q. Other than the Amity Foundation and
23 Stanford, do you have any other current assignments
24 or work that you are pursuing or involved in?

25 A. Yes.

1 Q. What are those?

2 A. I'm a -- I'm of counsel in litigation
3 involving the -- the suing of opioid manufacturers
4 and distributors.

5 Q. And where -- which -- what case is that?

6 A. It's a -- it's a case out of Cleveland,
7 Ohio. And it's a -- it's the primary -- it's the
8 largest case. The lawyers represent cities and
9 counties in suing the opioid manufacturers, and so
10 I'm part of that plaintiffs' group.

11 Q. Are you affiliated with a law firm?

12 A. I'm not affiliated with them. There are
13 two firms, one in New York and one in Wisconsin that
14 do the lion's share of the work, though.

15 Q. Have you made an appearance in the case?

16 A. No.

17 Q. Are you retained by one of the law firms?

18 A. I have an of-counsel agreement with one of
19 the firms. And my primary role is to make sure they
20 were able to meet county officials and -- and talk
21 to county officials about the lawsuit. Ultimately,
22 two counties decided to sign on to the lawsuit as
23 plaintiffs I had introduced them to. That was my
24 primary role.

25 Q. Do you have any other work other than what

1 we've already talked about?

2 A. Yes. I work for WestCare.

3 Q. And what do you do for WestCare?

4 A. The same things as with the Amity
5 Foundation, they're also a nonprofit providing
6 rehabilitative services.

7 Q. So you're a consultant?

8 A. Yes.

9 Q. And WestCare provides drug treatment and
10 that kind of thing here in California, right?

11 A. Yes. And they also run a women's reentry
12 facility, two of them.

13 Q. Do they have contracts with the State of
14 California?

15 A. They do.

16 Q. Any other work you have?

17 A. Yes. I'm a -- a consultant to a group of
18 philanthropists who do -- who build and restore
19 facilities for the use of -- of Amity and other
20 nonprofits in providing rehabilitative services.

21 Q. And what's the name of that group?

22 A. Upward Housing.

23 Q. And you are a consultant to them as well?

24 A. Yes.

25 Q. Any other work?

1 A. I'm a consultant to NextEra Energy.

2 They're --

3 Q. What do -- what do they do?

4 A. They're a producer of -- of solar and wind
5 power.

6 Q. Okay. And what do you do for them?

7 A. I help them with issues they have in
8 counties, for example, in placement of facilities.
9 I provide consulting services about the -- how local
10 government works in California, things they can do
11 to help to work with local government in -- in -- in
12 growing their -- their portfolio of wind and power
13 in California.

14 Q. Any other clients or jobs or work?

15 A. I'm the executive director of a nonprofit
16 called the Alliance for Climate Resistant
17 California.

18 THE REPORTER: Alliance for what?

19 THE WITNESS: For Climate Resistant
20 California.

21 THE REPORTER: Okay. Thank you.

22 BY MS. GRUNFELD:

23 Q. And what do they do?

24 A. They provide public service, and they
25 communicate with Californians regarding the

1 importance of our climate goals, supporting SB100
2 requiring us to be 100 percent green energy by 2045.
3 So that's -- they're primarily a public information
4 organization.

5 Q. Anything else?

6 A. I work for GTL. They're a company that
7 provides telephone and technology services in
8 prisons and jails.

9 Q. What do you do for GTL?

10 A. Consulting services. Make sure that they
11 understand the processes, how government works in
12 California and across the country, in jails. I'm an
13 advisory member on their -- for their board to
14 provide public policy information on inmate
15 communication.

16 Primarily I advise on how to increase and
17 focus on the provision of communication between
18 inmates and their families and friends.

19 Q. And they have a lot of contracts with the
20 State of California; is that correct?

21 A. They do. Or at least one --

22 Q. Pardon?

23 A. One for the state and then sev- -- and
24 multiple counties as well. And throughout the
25 country.

1 Q. Any other work?

2 A. I represent the Union Supply Group.
3 They're a commissary company that does business
4 throughout the US in prisons and jails. They
5 provide inmate packages that inmates can purchase,
6 and then they have them packages off site --
7 packaged off site. Sometimes by former inmates or
8 by special needs members of the communities and then
9 those are shipped back into the facilities for the
10 inmates. Again, I provide consulting services.

11 Q. Any others?

12 A. Wellpath. The healthcare company. They
13 provide mental health care, medical care, and
14 community behavioral health and mental health care.
15 They're primarily in jails, also in six prisons
16 throughout the US, as I recall the number, and then
17 in a number of community mental health programs that
18 they run. And I provide consulting services to
19 them.

20 Q. Anyone else?

21 A. The -- the Building Industry Association
22 of Southern California.

23 Q. Any others?

24 A. I -- I don't believe so.

25 Q. Returning for a moment to your

1 declaration, page 5.

2 A. I forgot one. A company called Indibior,
3 I-N-D-I-B-I-O-R. They're a pharmaceutical company
4 that provides a medication called Sublocade that is
5 used in medically assisted treatment for opioid use
6 disorder. And I've just started working for them
7 again as a consultant. I think that's it.

8 Q. Do they have a contract with the
9 State of California?

10 A. No.

11 Q. Are they interested in contracting with
12 CDCR to address its opioid problem?

13 A. Yes.

14 Q. Is that one of your assignments, to help
15 them with that?

16 A. No. I -- I don't work in sales in
17 particular. My job is more to help them understand
18 the environment that they're going into and the
19 processes and also the -- you know, to try to make
20 sure that, to the extent I can, that I extol the
21 virtues of medically assisted treatment in -- in
22 confined settings. But I'm not -- I'm not
23 associated with the sales in particular. They're a
24 national firm.

25 Q. Is part of your work for these various

1 organizations introducing them to people in charge
2 of CDCR and other government functions in
3 California?

4 MR. DUGGAN: Objection. Misstates prior
5 testimony.

6 THE WITNESS: That's one -- I do that
7 sometimes. In some cases. For example, like with
8 Doug, yesterday, there's someone new that's working
9 in the governor's office that I happened to know,
10 I'll make -- I'll try to facilitate an introduction
11 so that they can get to know each other and
12 understand that -- you know, what services Amity
13 provides, who Doug is, how to reach him, what -- any
14 information they might need from him to do their
15 jobs and hopefully help build a relationship.

16 BY MS. GRUNFELD:

17 Q. If we could please turn back to your
18 declaration at page 5. I was reading paragraphs 9
19 and 10. You state that, "I was impressed to learn
20 that at LAC there are approximately 200 inmates who
21 serve as ADA workers and are paid to provide
22 assistance to the inmates with disabilities."

23 Do you see that sentence?

24 A. I do.

25 Q. Do you know how much the ADA workers at

1 LAC are paid?

2 A. I don't.

3 Q. Would it surprise you to learn that it's
4 between 13 and 18 cents an hour?

5 MR. DUGGAN: Objection. Assumes facts.

6 THE WITNESS: I -- I -- I wouldn't -- I
7 thought that they were -- that they were making
8 either a very small wage like that or perhaps
9 even -- not much more, if they were involved in
10 prison industries. I didn't know exactly kind of
11 how that worked, or -- I knew they weren't, for
12 example, minimum wage workers or paid a great deal
13 of money. It doesn't surprise me to learn that
14 they're paid so little.

15 BY MS. GRUNFELD:

16 Q. So an eight-hour shift would be less than
17 \$2 a day; is that correct?

18 MR. DUGGAN: Objection. Incomplete
19 hypothetical.

20 THE WITNESS: You know, based on what
21 you've told me they make, then, yes, that would be
22 correct.

23 BY MS. GRUNFELD:

24 Q. And is that consistent with your
25 understanding of the pay rates that were in effect

1 when you were secretary of CDCR?

2 A. Again, outside of the men's and women's
3 community reentry programs, and outside of prison
4 industries, yes.

5 Q. Now, did you observe any ADA workers when
6 you toured LAC?

7 A. No.

8 Q. And you -- you state a little later in
9 paragraph 10 that the ADA workers, "...performed the
10 actual writing of the Form 602."

11 Did you observe any ADA workers write up a
12 602 while you were at LAC?

13 A. No.

14 Q. And what do you base your statement that
15 they wrote 602s on?

16 A. Only that -- it was based upon the -- the
17 statement of the warden and the ADA coordinator that
18 they -- those inmates were allowed to do things like
19 that.

20 Q. They were allowed to, but did they tell
21 you that they actually did that?

22 A. That was certainly the inference I got
23 from our conversation, is that there was -- that
24 they did whatever the inmates -- the disabled
25 inmates needed, including those tasks, yes. I don't

1 remember the exact verbiage now, but I certainly
2 came away from the conversation with that impression
3 from -- from my conversations.

4 Q. And other than the warden and the ADA
5 coordinator, do you have any -- those conversations
6 with them, do you have any other basis for the
7 statement here in paragraph 10?

8 A. No.

9 Q. Okay. In paragraph 10, you also refer to
10 placing grievances in "locked collection boxes."

11 Do you see that?

12 A. Yes.

13 Q. Are you aware that in California
14 grievances are shown to the accused officers?

15 MR. DUGGAN: Objection. Assumes facts.

16 THE WITNESS: I'm -- I'm aware that
17 they -- they can be. If an officer is in a
18 formal -- for a formal interview that they, under
19 their contract, are able to see the complaints
20 against them, yes.

21 BY MS. GRUNFELD:

22 Q. So the locked box doesn't prevent the
23 accused officer from knowing that he's been accused
24 by the prisoner; is that correct?

25 MR. DUGGAN: Object- -- objection.

1 Misstates prior testimony.

2 THE WITNESS: It -- it does initially, but
3 not in -- not until later until the -- during the
4 formal disciplinary process in the investigation.

5 THE REPORTER: Could you repeat that
6 answer, please?

7 THE WITNESS: It does initially, but not
8 in -- but not until later during the -- during the
9 disciplinary process in -- in the investigation.

10 BY MS. GRUNFELD:

11 Q. During any disciplinary process, an
12 officer has a right under the CCPOA contract to see
13 the grievance. Is that a correct statement?

14 A. I believe it is.

15 MR. DUGGAN: Objection --

16 THE WITNESS: Oh, sorry. I'll slow down.

17 MR. DUGGAN: Objection. Misstates prior
18 testimony.

19 THE WITNESS: I believe it is.

20 BY MS. GRUNFELD:

21 Q. I'd like to direct your attention, if I
22 may, to paragraph 11. At the end of that sentence,
23 you state, "...most of the declarations submitted by
24 plaintiffs are from individuals who are not
25 Armstrong class members."

1 I wondered, I mean, do you consider mental
2 illness a disability?

3 MR. DUGGAN: Objection. Outside the scope
4 of Mr. Cate's assigned task.

5 THE WITNESS: Yes.

6 BY MS. GRUNFELD:

7 Q. So earlier in the paragraph when you say
8 that you've, "...found disabled inmates are not
9 being targeted for abuse," do you include Coleman
10 class members as not being targeted?

11 THE REPORTER: What class members?

12 MS. GRUNFELD: Coleman.

13 THE WITNESS: In -- in the investigations
14 I reviewed, many of them were both Coleman class
15 members and Armstrong class members. I just didn't
16 review all of the -- all of the investigations of
17 inmates who were Coleman class members but were not
18 Armstrong class members.

19 BY MS. GRUNFELD:

20 Q. But do you consider those Coleman class
21 members to have a disability?

22 MR. DUGGAN: Objection. Incomplete
23 hypothetical. Calls for speculation.

24 THE WITNESS: I don't know that they have
25 a disability as defined by the ADA, but mental --

1 mental illness is certainly a disability.

2 BY MS. GRUNFELD:

3 Q. In the next paragraph, paragraph 12, you
4 state that you found, "...most were good solid
5 police reports."

6 This is in reference to the investigation
7 files that you reviewed in connection with your
8 assignment. As you sit here today, were there any
9 that were not good solid police reports that you can
10 share with me?

11 A. Yes.

12 Q. Which ones?

13 A. I was concerned in particular with the
14 [REDACTED] investigation.

15 Q. Any others?

16 A. I had concerns about the [REDACTED], [REDACTED],
17 investigation, although for a different reason.

18 Q. Any others?

19 A. No.

20 Q. You also state that, "Where allegations of
21 staff misconduct were not sustained, the conclusion
22 was typically based not only on the officer's word
23 but on some other physical or testimonial evidence
24 that made the accusing inmate's story unlikely."

25 Do you see that?

1 A. Yes.

2 Q. Did you review any reports in which staff
3 misconduct was sustained?

4 A. No.

5 Q. Did you review the declaration of Tom
6 Nolan in support of our motion?

7 A. Yes.

8 Q. Now, in that declaration, he talks about
9 140 examples of staff misconduct against people with
10 disabilities at LAC. Do you believe that all of
11 those are unfounded?

12 MR. DUGGAN: Objection. Assumes facts.

13 THE WITNESS: I don't -- I don't know. As
14 I said, there were two that concerned me of the ones
15 I reviewed.

16 BY MS. GRUNFELD:

17 Q. Well, you reviewed 12 cases, I think; is
18 that right?

19 THE WITNESS: Jeremy, do you have a -- the
20 list that we provided of --

21 THE REPORTER: I can't hear you. Can you
22 repeat what you said about the list?

23 THE WITNESS: I asked Jeremy -- I asked --
24 I said, Jeremy, do you have the list that he
25 provided to defense counsel -- I mean to plaintiffs'

1 counsel.

2 MR. DUGGAN: Do you want to go off the
3 record?

4 Can we go off the record, Gay?

5 MS. GRUNFELD: Yes.

6 (Discussion held off the record.)

7 BY MS. GRUNFELD:

8 Q. Okay. We are back on the record.

9 How many LAC cases did you review?

10 A. Fifteen individuals. Some of those had
11 multiple allegations within them.

12 Q. And those are the 15 prisoners listed at
13 pages 4 through 8 of the list at the end of your
14 declaration; is that correct?

15 A. Yes.

16 Q. As you sit here today, are you aware of
17 any officers from LAC who have faced discipline as a
18 result of any investigations into any of the
19 misconduct that plaintiffs have raised at LAC?

20 MR. DUGGAN: Objection. Vague. Compound.

21 THE WITNESS: I know that a couple of
22 cases are still ongoing, but I don't know that any
23 discipline has been meted out in those cases.

24 BY MS. GRUNFELD:

25 Q. Which ones are ongoing?

1 A. Yes. I'm sorry.

2 Q. I'm sorry. Which ones are ongoing?

3 A. I believe it's the -- the allegations
4 related to Inmate 4, those related to Inmate [REDACTED].

5 Q. Do you have an opinion about whether
6 misconduct -- excuse me. Whether discipline is
7 warranted in either of those cases?

8 A. No, I don't have enough information to
9 know for sure one way or the other in -- in at least
10 the [REDACTED] case.

11 Q. Do you think it would be beneficial with
12 regard to some of these officers who've been accused
13 of multiple incidents to keep track of the
14 allegations against the officers?

15 MR. DUGGAN: Objection. Assumes facts.

16 THE WITNESS: My experience is, is that
17 wardens at these facilities know which officers have
18 been accused of misconduct and they know already
19 which officers are involved in allegations of --
20 related to the use of force.

21 And so on an institutional basis, my
22 experience has been that those wardens already have
23 that information and know that.

24 If -- if I were running CDCR, it would be
25 helpful to have that information at my fingertips as

1 well.

2 BY MS. GRUNFELD:

3 Q. Because wardens change, right?

4 A. They do.

5 Q. And officers transfer, right?

6 A. They do.

7 Q. Are you aware of provisions of the CCPOA
8 contract that allow discipline to be purged from
9 personnel files at regular intervals?

10 MR. DUGGAN: Objection. Outside the scope
11 of Mr. Cate's assigned task. Assumes facts.

12 THE WITNESS: You know, I don't recall
13 exactly what the contract says about that.

14 BY MS. GRUNFELD:

15 Q. If that were true, would it make it hard
16 to keep track of prior incidents if it was able to
17 be purged from your personnel file?

18 MR. DUGGAN: Objection. Incomplete
19 hypothetical. Outside the scope of Mr. Cate's
20 assigned task.

21 THE WITNESS: If -- if you could --
22 assuming that you still have information regarding
23 the number of incidents that the officer was
24 involved in, period, meaning the -- the officer's
25 personnel file is not the only place that you have

1 information about who's involved in use of force and
2 who's involved in allegations of misconduct.
3 That's -- that -- the IG's office keeps that
4 information. For example, CDCR has the ability
5 to -- as I understand it, to gather and keep that
6 information. So I guess the -- if it was serious
7 misconduct, it could be purged [sic]. If it was a
8 low-level reprimand and you wanted to encourage
9 staff to -- to be able to earn their way to a clean
10 bill of health, I could see some benefits to the
11 system to allowing that. But for serious
12 misconduct, I wouldn't want those purged.

13 BY MS. GRUNFELD:

14 Q. You mentioned that the personnel file is
15 not the only place where that information is stored.
16 Where else would it be stored?

17 MR. DUGGAN: Objection. Outside the scope
18 of Mr. Cate's assigned task.

19 THE WITNESS: Well, for example, I'm -- in
20 AIMS all those allegations are going into SOMS.

21 THE REPORTER: Going into?

22 THE WITNESS: The Strategic Offender
23 Management System. SOMS.

24 BY MS. GRUNFELD:

25 Q. But those allegations not founded

1 discipline?

2 A. That's -- that's --

3 MR. DUGGAN: Objection. Outside the scope
4 of Mr. Cate's assigned task.

5 THE WITNESS: That's true.

6 BY MS. GRUNFELD:

7 Q. Are you aware of any other place where
8 discipline against officers is stored in CDCR's
9 system?

10 MR. DUGGAN: Objection. Outside the scope
11 of Mr. Cate's assigned task. Vague as to time.

12 THE WITNESS: I -- I don't know if it's
13 kept at -- at EAPT or -- or OIA or any of those
14 record systems. I'm also not sure whether the IG's
15 office has access to -- to those, meaning by -- I --
16 I think we had all of that information at the IG's
17 office, including the names of the -- of the people,
18 we just redacted all that. So I'm -- I'm not sure,
19 to answer your question, exactly where that would
20 be. I just don't know. It might exist elsewhere
21 besides the officer's personnel file.

22 BY MS. GRUNFELD:

23 Q. Well, when you were at the IG, did you
24 have a database with that information?

25 A. Yes.

1 Q. What -- what was the database called?

2 A. I don't -- I don't recall the name -- we
3 didn't -- we didn't name every database at the IG's
4 office in the same way that CDCR does. And I -- I
5 don't know how long those were kept. I just know
6 that, for example, Roy Wesley is able to gather that
7 information and make determinations about which
8 officers have been used in -- in -- in use of force
9 and which have allegations against them of
10 misconduct.

11 So that's the basis of that opinion.

12 Q. I'd like to turn to paragraph 26, if we
13 could, please. Actually paragraph 25. And once we
14 finish 25 and 26, then we'll move to -- I hope --
15 everyone I'm sure would like a break, a meal break,
16 so if we could get through this, then we'll take a
17 break. Is that okay?

18 MR. DUGGAN: Yeah, that sounds good.

19 BY MS. GRUNFELD:

20 Q. Okay. In paragraph 25, lines 15 through
21 18 of -- Mr. Cate, you state that, "I attempted to
22 have a conversation with one inmate in a wheelchair
23 in D5, I had a difficult time understanding his
24 speech from behind the cell door."

25 Do you see that sentence?

1 A. Yes.

2 Q. Do you know the name of that person?

3 A. No.

4 Q. Do you know if he was an Armstrong class
5 member?

6 A. No.

7 Q. But you know he had a wheelchair?

8 A. I knew he was in one at that time.

9 Q. He was one of several prisoners you spoke
10 to during your tour of LAC; is that correct?

11 A. Yes.

12 Q. And in paragraph 26, you state that you
13 spoke to two disabled inmates.

14 Do you see that?

15 A. I do.

16 Q. And were they Armstrong class members?

17 A. I don't know.

18 Q. And do you have their names?

19 A. I don't. I didn't ask.

20 Q. Did you speak to any Coleman class
21 members, people with mental health issues, during
22 your tour of LAC?

23 A. Not to my knowledge.

24 Q. Prior to speaking to the three disabled
25 inmates, did you contact me or my co-counsel to

1 obtain permission to speak to them?

2 A. No.

3 MR. DUGGAN: Objection. Assumes facts.

4 BY MS. GRUNFELD:

5 Q. Did you discuss with counsel for CDCR
6 whether it would be appropriate to speak with
7 Armstrong class members without their counsel
8 present?

9 A. I -- I -- I talked to counsel and -- about
10 going to LAC and asked whether I could speak to --
11 to inmates that I ran across, and he said that would
12 be fine. As I recall, he said I -- I -- I
13 definitely shouldn't try to speak to inmates who
14 were involved in the litigation.

15 Q. Do you recall anything else about that
16 conversation?

17 MR. DUGGAN: Objection. Attorney work
18 product.

19 THE WITNESS: That was the -- the -- the
20 basics of it.

21 BY MS. GRUNFELD:

22 Q. Are you familiar with California Rule of
23 Professional Conduct 4.2, the so-called no contact
24 rule?

25 MR. DUGGAN: Objection. Calls for

1 speculation.

2 THE WITNESS: I'm -- I'm not familiar with
3 the number of it, but I'm familiar with the rule in
4 general.

5 BY MS. GRUNFELD:

6 Q. Are you aware that Judge Karlton struck
7 expert testimony after experts went into prisons and
8 spoke to Coleman class members about the subject of
9 their -- test -- of their reports?

10 MR. DUGGAN: Objection. Assumes facts.

11 THE WITNESS: No.

12 BY MS. GRUNFELD:

13 Q. Did you discuss with the prisoners with
14 disabilities with whom you met at LAC whether they
15 had issues of staff misconduct?

16 A. I just asked them how they were doing in
17 general, and one -- this one inmate brought up he
18 wanted -- he had a classification committee concern.

19 Q. Can you be more specific?

20 A. He said he needed to speak to a
21 correctional counselor, and he -- he didn't like the
22 results of his last correction -- the -- his last
23 committee meeting.

24 Q. Do you recall anything else that you
25 discussed with the three prisoners with disabilities

1 that you write about in your report in paragraphs 25
2 and 26?

3 MR. DUGGAN: Objection. Misstates prior
4 testimony. Assumes facts.

5 THE WITNESS: The only comment -- the only
6 question I had about -- with an -- was with an
7 inmate, I believe I -- he had made a comment about
8 his wheelchair, and I said, you know, "What's going
9 on with that?" And he said, "Well, they replaced it
10 for me. I'm happy with this one." And that was
11 unprompted by me. Again, I just asked him how he
12 was doing, how things were going, and that's what he
13 said.

14 BY MS. GRUNFELD:

15 Q. In these conversations, did you introduce
16 yourself as the former secretary of CDCR?

17 A. No.

18 Q. How did you identify yourself in the
19 conversations?

20 A. As Mr. Cate.

21 Q. Did you explain why you were there at LAC?

22 A. No.

23 Q. Um --

24 A. Well, I guess I said I'm -- I'm there -- I
25 introduced myself to the staff as -- as working with

1 State, but I don't think I introduced myself to the
2 inmates in that way.

3 Q. Do you recall anything else you discussed
4 with the prisoners?

5 A. No.

6 MS. GRUNFELD: Let's go off the record.

7 (Lunch recess.)

8 BY MS. GRUNFELD:

9 Q. Mr. Cate, you understand you're still
10 under oath after our lunch break?

11 A. Yes.

12 Q. And during the lunch break, counsel for
13 defendants and I discussed your request to place the
14 discussion of your work -- your current work as a
15 consultant, to mark that as confidential, and we
16 will continue to meet and confer on that topic and
17 resolve it shortly.

18 MS. GRUNFELD: Is that a correct
19 statement, Mr. Duggan?

20 MR. DUGGAN: Yes. But it's Duggan
21 (different pronunciation).

22 BY MS. GRUNFELD:

23 Q. Before the break, Mr. Cate, we were
24 discussing your declaration, so I'd like you to
25 return to that if you would, please. And in

1 particular, I was curious about your comments in
2 paragraph 23 on page 10 of the declaration, if you
3 could find that.

4 A. Okay.

5 Q. So you state in here that you reviewed the
6 Armstrong noncompliance logs from March 1, 2020, to
7 present; is that correct?

8 A. Yes.

9 Q. I'm sorry. I couldn't hear that.

10 A. Yes.

11 Q. Thank you.

12 Is there a reason that you chose March 1?

13 A. It was -- no. I had just asked the ADA
14 coordinator at LAC if they could give me the most
15 recent data regarding noncompliance logs, and that's
16 what they provided to me.

17 Q. And when you said "March 1, 2020, to
18 present," in fact, the logs only go to
19 approximately July; is that correct?

20 A. Correct.

21 Q. They're backward looking, right?

22 A. Right.

23 Q. So was there a reason you didn't look at
24 the previous years?

25 A. No. Other than I was -- I was satisfied

1 just to understand the process and to see how the
2 logs worked and to ensure that -- to learn what I
3 could about the nature of the noncompliance logs and
4 the process that the ADA -- the ADA coordinator had
5 described by reviewing those logs, so I just didn't
6 feel the need to review previous time frames.

7 Q. And in this paragraph, when you say,
8 "During the last six months," what you really mean
9 is the three months between March and July; is that
10 right?

11 A. Yes, that's right.

12 Q. And when you talk about the 29 allegations
13 by disabled inmates that are on the log, is it fair
14 to say that none of those allegations involve the
15 declarations that we filed in support of this
16 motion; is that correct?

17 A. Yes.

18 Q. And is it your view that the allegations
19 contained in the declarations that you reviewed in
20 support of this motion should have been included on
21 the accountability logs?

22 MR. DUGGAN: Objection. Vague. Compound.

23 THE WITNESS: It appeared to me that they
24 used the noncompliance logs for what I would call
25 more traditional ADA issues related to durable

1 medical equipment and placement and access to cells
2 and bunks, and that they didn't use it for the
3 allegations related to use of force and officer
4 discipline.

5 BY MS. GRUNFELD:

6 Q. Do you contend that none of the
7 allegations in the declaration in support of our
8 motion that you reviewed should have been on the
9 logs?

10 MR. DUGGAN: Objection. Calls for
11 speculation.

12 THE WITNESS: I think you have to document
13 the allegations in one way or the other, and so I
14 don't have an opinion as to whether they should be
15 in these logs or they should be organized and kept
16 on -- in some other way as long as those issues
17 are -- are recorded and tracked. And I also didn't
18 know whether there had been an agreement regarding
19 what kind of allegations should be on the
20 noncompliance logs or not, so I -- if that makes
21 sense.

22 Q. Do you know whether the allegations
23 contained in the declarations in support of our
24 motion have been recorded anywhere?

25 MR. DUGGAN: Objection. Calls for

1 speculation.

2 THE WITNESS: Well, I know that a number
3 were recorded because they were -- they referenced
4 matters that had been investigated previously. And
5 then I saw also a number of investigative reports
6 that appeared to be -- have been written following
7 the submission of the declarations, or based on
8 them. And so those -- so those were obviously
9 recorded. I don't know whether there's something
10 similar to the noncompliance logs where all of those
11 matters were gathered though.

12 BY MS. GRUNFELD:

13 Q. Is it your understanding of the
14 noncompliance logs, that that's a way to track
15 whether officers or -- and other staff are
16 repeatedly failing to comply with the Armstrong
17 remedial plan?

18 MR. DUGGAN: Objection. Calls for
19 speculation.

20 THE WITNESS: It appears that the logs are
21 there for -- to track whether there are -- I don't
22 know about repeated, but I -- I think any
23 allegations that Armstrong inmates have as -- their
24 rights under the ADA are not being met.

25 ///

1 BY MS. GRUNFELD:

2 Q. And although you referred to it as the
3 noncompliance logs, have you ever heard them
4 referred to as accountability logs?

5 MR. DUGGAN: Objection. Calls for
6 speculation.

7 THE WITNESS:

8 I hadn't heard that term before, no.

9 BY MS. GRUNFELD:

10 Q. Prior to your assignment in this case, had
11 you ever heard of the court's accountability orders?

12 MR. DUGGAN: Objection. Assumes facts.
13 Vague.

14 THE WITNESS: I don't think so.

15 BY MS. GRUNFELD:

16 Q. To your knowledge, has any CDCR staff
17 person ever been disciplined for violations listed
18 on the accountability logs in our case?

19 MR. DUGGAN: Objection. Calls for
20 speculation.

21 THE WITNESS: Well, the -- the account- --
22 the accountability logs that I reviewed showed that
23 some officers received a -- a formal -- I don't even
24 know if the term was "reprimand." It -- I guess
25 I'll say this, it -- it appeared to me that some

1 were informal instructional results, and some
2 were -- let me just look at this section so I
3 remember the right language.

4 Yeah. So four received a formal employee
5 counseling record. And as I recall, some employee
6 counseling records are a part of -- an employee's
7 file and are considered formal discipline, and the
8 informal training is not.

9 BY MS. GRUNFELD:

10 Q. Do you have any information about the
11 circumstances under which an employee can have
12 employee counseling records purged from their
13 personnel file under the CCPOA contract?

14 MR. DUGGAN: Objection. Outside the scope
15 of Mr. Cate's assigned task.

16 THE WITNESS: Only based on our previous
17 conversation.

18 BY MS. GRUNFELD:

19 Q. When you state here that the employee
20 counseling record, "...stays in the staff member's
21 personnel record," what do you base that comment on?

22 A. On the -- the fact that it's a formal
23 counseling record, which, based on my experience,
24 was something that was placed in the record and
25 generally stayed in the record.

1 Whether they are now expunged after some
2 period of time, as I said, I don't know.

3 Q. You were secretary of CDCR, did you ever
4 review personnel files?

5 A. Rarely. Maybe a couple of times.

6 Q. Did you ever see an employee counseling
7 record in a personnel file?

8 MR. DUGGAN: Objection. Outside the scope
9 of Mr. Cate's assigned task.

10 THE WITNESS: I don't recall.

11 BY MS. GRUNFELD:

12 Q. Page 11 of your report, paragraph 24,
13 line 10, you discuss a mental health clinician who
14 told you that she has filled out forms for
15 incarcerated people with disabilities.

16 What was the name of that person?

17 A. I didn't ask her her name.

18 Q. And where did you meet her?

19 A. In Facility D1.

20 Q. B or D?

21 A. D as in dog.

22 Q. Thank you. Yes.

23 Did you speak to anyone else who told you
24 they filled out forms for people with disabilities?

25 A. No.

1 Q. And how long did you speak with the mental
2 health clinician about that topic?

3 A. Five minutes, approximately.

4 Q. Paragraph 26 of your report, you noted
5 that, quote: Numerous inmates and staff in housing
6 units D1 and D5 recognized the warden and chief
7 deputy warden. Do you see that?

8 A. Yes.

9 Q. That would be Warden Johnson, and --
10 what's the name of the chief deputy?

11 A. Don Olstadt.

12 Q. How do you know the incarcerated people
13 recognized those two men?

14 A. I just heard people call out to the
15 warden, and the staff know -- knew their positions
16 and names. And the inmates recognized that they
17 were -- at least that Mr. Johnson -- Warden Johnson
18 was the warden. They used that term, "warden."

19 Q. Had you met Warden Johnson before your
20 tour of LAC?

21 A. No.

22 Q. Did -- did he work for CDCR when you were
23 secretary?

24 A. Yes.

25 Q. In what capacity?

1 A. I think he was -- he came up through
2 custody, so either an officer, sergeant, lieutenant,
3 counselor, something. He was working on kind of a
4 line -- or line supervisory level, I think he said.
5 We -- I don't -- we hadn't -- he -- he didn't know
6 me and I didn't know him.

7 Q. Did any of the incarcerated people
8 recognize you as you walked around LAC?

9 A. No, not to my knowledge.

10 Q. How many days were you at LAC?

11 A. One.

12 Q. And when was that?

13 A. Less than that.

14 I arrived around lunch hour and left
15 around 5:00 o'clock.

16 Q. And when was that tour?

17 A. Approximately two to three weeks ago.

18 Q. And who accompanied you on the tour?

19 A. The warden, the chief deputy warden, and
20 the ADA coordinator.

21 Q. How about defendant's counsel?

22 A. No.

23 Q. Can you tell me how much of the time was
24 spent walking the facility and how much in meetings?

25 A. Probably three hours in meetings and one

1 hour walking the facility, approximately, and then
2 some time processing, getting my temperature taken,
3 all those kinds of things.

4 Q. What do you mean, getting your temperature
5 taken?

6 A. They took my temperature before I could go
7 into the administration building, and then before --
8 again, before I could go into the -- to the prison
9 itself.

10 Q. As a COVID precaution?

11 A. Yes.

12 Q. Now, was the grievance coordinator, Monty
13 Fordham, with you during the tour?

14 A. I don't believe so. I met with him in
15 warden's office.

16 Q. And what about the use-of-force
17 coordinator, Mr. Martin?

18 A. I think the coordinator that I went --
19 that went with me on the tour was Mr. Billa.

20 THE REPORTER: Could you please spell
21 that?

22 THE WITNESS: B-I-L-L-A.

23 THE REPORTER: Thank you.

24 BY MS. GRUNFELD:

25 Q. I skipped back to paragraph 17 of your

1 report where you discuss the interviews you
2 conducted, and maybe I made an assumption I
3 shouldn't.

4 On the day that you visited LAC, did you
5 meet with use-of-force coordinator Enrique Martin?

6 A. No, I -- oh, yes, I did.

7 Q. Okay. What do you recall about your
8 discussions with Mr. Martin?

9 A. I just asked him to describe the -- the
10 process to me and his role in that. And I -- I
11 asked him for -- well, either him or -- or the
12 warden or deputy warden for recent data regarding
13 use of force at the facility.

14 Q. Is that the same as the CompStat data you
15 list in your report?

16 A. I don't know if it's the same. The -- an
17 email with data with use-of-force records, as I
18 recall. And I didn't go back to check if those were
19 exactly the same as were in the CompStat report.

20 Q. Did Mr. Martin feel there was any problem
21 with use of force at LAC?

22 A. He didn't ex- -- he didn't express any to
23 me.

24 Q. Did you discuss the 140 allegations of
25 unnecessary or excessive use of force that

1 plaintiffs have alleged with Mr. Martin?

2 MR. DUGGAN: Objection. Assumes facts.

3 THE WITNESS: Yes, I did.

4 BY MS. GRUNFELD:

5 Q. In -- in what context?

6 A. I believe it was with Mr. Martin I had
7 a -- I believe it was with Mr. Martin that I had
8 this conversation. It may have been with warden or
9 the deputy warden, but I think it was with
10 Mr. Martin. They discussed the -- the -- the
11 difficulties that the -- dealing with the numbers of
12 investigations provided. He said that as the
13 allegations came in, there were so many they had to
14 bring in investigative lieutenants from throughout
15 the state to deal with the numbers that came in
16 after the tour.

17 Q. Which tour?

18 A. The -- the Armstrong tour that generated
19 the -- the declarations.

20 Q. That generated what?

21 A. The declarations.

22 Q. So they said they were having to do a lot
23 of internal investigations on-site there?

24 A. There was too many for them to do by
25 themselves. They brought in lieutenants from three

1 or four other facilities -- or institutions around
2 the state to help to try to work through the numbers
3 of declarations and assertions that were provided.

4 Q. As of the time you met with either the
5 warden, deputy warden, or Mr. Martin about these
6 issues, had they found any of the allegations to be
7 substantiated or warranting an OIA investigation?

8 MR. DUGGAN: Objection. Calls for
9 speculation.

10 THE WITNESS: I didn't ask that, but I --
11 I do know that cases have -- or at least a case has
12 been sent to OIA.

13 BY MS. GRUNFELD:

14 Q. Which one?

15 A. Mr. [REDACTED].

16 Q. That's very interesting. I thought
17 Mr. [REDACTED] was closed with no action, but we'll maybe
18 find some documents on that.

19 So your understanding is that one was sent
20 to OIA and the rest were found unsubstantiated or
21 have not been completed?

22 MR. DUGGAN: Objection. Misstates prior
23 declaration.

24 THE WITNESS: I didn't ask that specific
25 question, so right.

1 BY MS. GRUNFELD:

2 Q. You didn't ask whether -- whether any had
3 been found substantiated?

4 A. I -- I didn't ask him to go into the
5 results of the -- of the allegations at LAC, no.

6 Q. Now, in your report, including in
7 paragraph 28 and elsewhere, you criticize LAC
8 management because 1824s were not at the lecturn on
9 the day that you toured. Do you know whether the
10 warden has instructed his staff to put those forms
11 at the lecturn?

12 A. I don't know.

13 Q. Did you discuss that fact with the warden?

14 A. I did mention it to the warden. I didn't
15 give -- I didn't ask for a response and I don't -- I
16 don't remember what he said, if anything.

17 Q. Did you send your report -- this report we
18 are talking about to the warden?

19 A. I'm sorry. If I could correct that. I --
20 I don't remember if I was with the warden or with --
21 or with the officers in the -- in the housing units
22 that I was walking through. I'm not positive. The
23 warden was with me, but I directed my conversation
24 to the officers. I'm not sure if the warden was a
25 part of that conversation or not.

1 Q. Thank you for clarifying that. After
2 completing this report on September 11th, did you
3 send it to Warden Johnson?

4 A. No.

5 Q. Do you know if anyone has sent him this
6 report?

7 A. I don't know.

8 Q. You also say in paragraph 28 that, quote,
9 "...it would be good practice for ADA staff to
10 follow the lead of Mr. Billa and spend some time
11 every week walking through other housing units to
12 make sure that all inmates have access to the ADA
13 accommodation system." Close quote.

14 Who -- who do you mean by "ADA staff"?

15 A. There are three or four employees that
16 work as ADA coordinators, as I recall, in LAC. And
17 I only spoke to Mr. Billa, so I just didn't know
18 whether the rest of them were -- were as active as
19 he claimed to be.

20 Q. Who told you there were three or four
21 more?

22 A. I believe Mr. Billa said that -- or maybe
23 three or four total. I think he said there were --
24 that there were three or four people in his office.

25 Q. Okay. I'd like you to turn, if you could,

1 please, to paragraph 30, page 13, of your report.
2 Lines 19, et seq, you say that, quote, "...every
3 day, the captain's office assistant collects the
4 forms from the housing units and the captain's
5 assigned facility and takes the forms to the
6 grievance office in the administration building."
7 Close quote. This is, of course, in reference to
8 AIMS.

9 Are you saying what you understand the
10 policy to be?

11 THE WITNESS: Yes.

12 BY MS. GRUNFELD:

13 Q. Do you have any information one way or
14 another on whether this actually happens?

15 A. Ms. Miller said that -- that that's how it
16 works in all the facilities that she's aware of.
17 And then I confirmed with a -- with a grievance
18 coordinator at LAC that that's the process they use.

19 Q. So the grievance coordinator is -- what
20 was the name of that person?

21 A. Mr. Fordham.

22 Q. Mr. Fordham. Mr. Fordham told you that's
23 the process at LAC?

24 A. Yeah. So I believe it was Mr. Fordham who
25 said that. I talked about that process with the

1 warden as well, but I think it was Mr. Fordham who
2 described that as happening.

3 Q. Did you ask Mr. Fordham if the process has
4 ever failed?

5 A. No.

6 Q. Did you ask Mr. Fordham how long this
7 process has been in place?

8 A. I didn't. I remember that when I was a
9 secretary, they didn't have lockboxes. And I
10 remember thinking it was a good idea at the time.
11 For whatever reason, that -- it didn't happen when I
12 was there, as I recall. So it was new to me, but I
13 don't know when it -- when it started exactly.

14 Q. Do you know when AIMS was rolled out at
15 LAC?

16 A. April 1st, I believe.

17 Q. Did you review any AIMS inquiry documents
18 during your tour of LAC or your assignment in this
19 case?

20 A. I don't believe so.

21 Q. On page 14 of your report, paragraph 31
22 discusses your conversation with Monty Fordham. And
23 you were discussing the alleged improvements to the
24 system, and you say that Mr. Fordham said that:
25 It's, quote, "...actually become a problem because

1 it is not possible to screen out grievances that are
2 illegible or only contain random writing or nonsense
3 claims." Close quote. Do you see that?

4 A. I do.

5 Q. What was Mr. Fordham talking about there?

6 A. Basically just what it says, that there
7 were some -- there are some claims that are very
8 difficult to determine what exactly is being said or
9 what exactly the claim is at all. And so it's --
10 the grievance coordinator has a difficult time
11 knowing even how to assign the case.

12 Q. So that's a problem, according to
13 Mr. Fordham?

14 A. Yes.

15 Q. Did he describe any other problems that
16 he's having with the AIMS rollout?

17 A. Workload.

18 Q. What do you mean by that?

19 A. He said that -- he says fewer grievances
20 were screened out or rejected, that he and the other
21 grievance coordination staff -- that's probably not
22 the right word for it -- spend a -- a lot more time
23 than they have in the past documenting and inputting
24 those grievances into the system and then trying to
25 get them assigned out and tracking them, just

1 because the numbers are -- total -- total issues are
2 up. And no -- and grievances aren't, he said,
3 resolved informally any longer, which exacerbates
4 that problem of workload.

5 Q. So was it your sense he's having trouble
6 keeping up with the grievance process?

7 MR. DUGGAN: Objection. Misstates prior
8 testimony.

9 THE WITNESS: I wouldn't say he -- he
10 indicated to me that he's -- he's keeping up, but he
11 definitely indicated that -- that he and the fellow
12 grievance coordinators are stressed under the
13 current workload. But he didn't say: We're falling
14 behind, or we can't do our jobs, or -- or it's --
15 it's urgent. Only that they are definitely feeling
16 the work. And the warden recognized that as well.

17 BY MS. GRUNFELD:

18 Q. You think they need more staff there?

19 A. Sounded like it. Or the system needs to
20 be improved, right, or made more efficient, or
21 there's lots of ways, of course, to deal with --
22 to -- to help someone get their job done in a timely
23 way or not to be overwhelmed. But more staffing
24 would definitely be one way.

25 Q. At the bottom of page 14, you state that,

1 quote, "If the inquiry reveals evidence
2 demonstrating that there is a reasonable belief that
3 misconduct occurred, then it is returned to the
4 hiring authority who can use this information to
5 discipline the staff member," close quote.

6 Are you sure about that? Because I
7 thought that if the grievance process found that
8 there was a reasonable belief, then it had to go to
9 OIA first.

10 A. Yeah, you are right.

11 Q. I'm sorry.

12 A. You are right. I missed that step.

13 Q. And it goes to OIA and then it comes back
14 to the hiring authority, who then gets to decide
15 whether to impose discipline?

16 A. Correct.

17 Q. Is that correct?

18 A. Yes.

19 Q. On the next page, paragraph 33, line 11,
20 we are talking about the exceptions to AIMS, which
21 is the use-of-force process. And you say, quote,
22 "That incident commander is instructed to conduct a
23 videotaped interview of the alleged victim as soon
24 as possible, but no later than 48 hours after the
25 incident" -- do you see that --

1 A. Yes.

2 Q. -- close quote. Yes.

3 Do you know if the use-of-force videos are
4 conducted within 48 hours at LAC?

5 MR. DUGGAN: Objection. Incomplete
6 hypothetical.

7 THE WITNESS: I don't know that all of
8 them are, and I know from the IG's reports that they
9 list failure to comply with that policy as one of
10 the problems they found in the system in the past.

11 BY MS. GRUNFELD:

12 Q. What's your understanding of why the
13 videotaped interview needs to occur as soon as
14 possible?

15 A. It -- it provides the inmate an
16 opportunity to tell his or her story with a fresh
17 mind, you know, while it's still fresh in their
18 mind. It provides an opportunity to get a -- to
19 observe the injuries while they are fresh and
20 preserves the evidence of the case.

21 Q. And as you mentioned, in the OIG's 2019
22 annual use-of-force report on page 69, "The OIG
23 found that performance of staff when conducting
24 video-recorded interviews following allegations of
25 unnecessary or excessive force was poor." Do you

1 think those allegations apply -- or that -- those
2 findings, the OIG's findings apply to LAC?

3 MR. DUGGAN: Objection. Misstates prior
4 testimony. Calls for speculation.

5 THE WITNESS: My reading of the report is
6 that the OIG found a number of issues. One of them
7 was the timeliness of the report. Another was
8 ensuring that an uninvolved person conducted the
9 investigation or did the interview and other
10 procedural problems around that process. And that's
11 why they found it -- they -- they described that as
12 poor.

13 In the -- in the matters that I saw, there
14 may have been -- there may have been one that was
15 not conducted timely, again, in the -- in the sample
16 size that I saw. So I -- I don't know whether it's
17 a problem throughout LAC.

18 BY MS. GRUNFELD:

19 Q. Well, of the 29 declarations that were
20 filed on June 3rd, 24 involve allegations that a
21 person with a disability was subjected to an
22 excessive or unnecessary force or that staff used
23 force that resulted in great bodily injury. And
24 video interviews were conducted in only 21 cases.
25 In two of those, we couldn't tell when they were

1 done. In one, staff failed to conduct a video
2 interview. And according to our analysis, six of
3 the 21 were not within 48 hours. Do you -- so
4 that's 71.5 percent noncompliance.

5 Do you think that's a satisfactory
6 compliance rate?

7 MR. DUGGAN: Objection. Assumes facts.

8 THE WITNESS: I think you always want the
9 system to -- you want your officers to comply with
10 your policies as often as possible for the reasons I
11 stated. There are -- again, I'm not sure how you
12 conducted your analysis because there were -- there
13 were some cases that weren't reported as use of
14 force at all, and then there was a 602 layer, which
15 led there to be a -- a use-of-force investigation.
16 So I guess that case would go to AIMS now. But you
17 wouldn't -- you know, it would obviously be too late
18 to conduct the -- the interview of the -- of the
19 inmate involved in that kind of case. But
20 there's -- there's no question that you want
21 100 percent compliance if you can get it. Again,
22 the -- the key question is: Did the institution get
23 it right? Does the State get it right? And the
24 IG's office says 95 percent of the time, it does.
25 ///

1 BY MS. GRUNFELD:

2 Q. Well, I -- I don't agree with that reading
3 of the OIG's report. But that's your reading.
4 That's your view. I think you are referring to
5 Mr. Diaz' case where he was interviewed 67 days
6 after he filed -- or after -- after the excessive
7 use of force, which occurred in August 2019, and he
8 was interviewed on video on May 2020.

9 Do you find that problematic?

10 MR. DUGGAN: Objection. Assumes facts.
11 Misstates prior testimony.

12 THE WITNESS: Sorry. I just want to look
13 over my notes on Mr. Diaz.

14 That's not the case I was referring to. I
15 was referring to situations where the -- where the
16 officers don't report use of force at all.

17 BY MS. GRUNFELD:

18 Q. Well, right. For those, there's not going
19 to be a videotaped interview.

20 A. Right.

21 Q. Right. Turning to page 16, paragraph 36
22 of your report, you are continuing to discuss your
23 conversations with Monty Fordham. You state, quote,
24 "...ensuring access to the grievance process can be
25 challenging. This is even more difficult in the

1 case of reporting staff misconduct because some
2 inmates can feel nervous or intimidated about filing
3 a staff complaint."

4 What do you think that CDCR should do
5 about the fact that it's very challenging to file a
6 staff complaint?

7 MR. DUGGAN: Objection. Miss- --
8 misstates the document.

9 THE WITNESS: Well, as I said, I -- I
10 think that the -- it's a leadership issue. They
11 should ensure that the administration, the warden,
12 deputy warden, the grievance coordinator tour those
13 facilities, speak to those inmates, spend time at
14 the cell fronts getting to know them and finding out
15 if their -- if their needs are being met, find out
16 if they have been, in their view, the victim of --
17 of misconduct by staff.

18 So just to provide us every opportunity
19 possible for those -- for those inmates to be able
20 to report misconduct.

21 BY MS. GRUNFELD:

22 Q. Page 17, paragraph 39, you again,
23 review -- referred to the conversations you had with
24 inmates, line 8 and 9.

25 We talked earlier today about your

1 conversations with three people with disabilities --
2 three incarcerated people with disabilities. Did
3 you talk to any other incarcerated people about your
4 assignment in this case?

5 MR. DUGGAN: Objection. Misstates prior
6 testimony.

7 THE WITNESS: I had just conversations as
8 I was in the housing unit with just inmates: How
9 are you doing? Everything going okay for you? Just
10 walking by, not any kind of extended conversation.
11 It's just a way to see if anybody yells: Hey, I've
12 got a particular problem, because you're usually
13 walking by close enough to -- make eye contact, wave
14 and say hello. Just being polite and seeing if
15 somebody, you know, is urgently trying to get your
16 attention about something. That just didn't -- that
17 didn't happen.

18 BY MS. GRUNFELD:

19 Q. Looking at page 17, paragraph 41, you are
20 describing the prevalence of use of force involving
21 people with disabilities. And again, you -- you
22 count people with physical and developmental
23 disabilities, but you don't count people with mental
24 illness; is that correct?

25 A. Yes.

1 Q. Would the numbers that you calculate here
2 change if you included people with mental illness?

3 A. Yes.

4 Q. And the numbers that you're using do not
5 include uses of force that were not reported into
6 the CompStat data; is that correct?

7 MR. DUGGAN: Objection. Calls for
8 speculation.

9 THE WITNESS: I don't -- I didn't include
10 anything that was given -- I mean, that -- that
11 wasn't provided to me by the institution or in
12 CompStat. So no verbal reports of force or anything
13 like that.

14 BY MS. GRUNFELD:

15 Q. Now, if you were just standing back and
16 looking at use-of-force numbers, and you know that
17 people with disabilities tend to be older, in
18 wheelchairs, with walkers, and that kind of thing,
19 wouldn't you expect the use-of-force numbers to be
20 lower in housing units with large numbers of people
21 with disabilities?

22 MR. DUGGAN: Objection. Calls for
23 speculation.

24 THE WITNESS: It depends on all the other
25 characteristics of those inmates. And a housing

1 unit itself is a pretty small measure. And so if
2 you have -- if you have -- if the mission is
3 administrative segregation, for example,
4 historically, there is more uses of force in
5 disciplinary or in segregated housing than there is
6 otherwise. There is -- there -- there can be
7 certain inmates who are particularly difficult and
8 may cause the numbers of uses of force to go up at a
9 particular place at a particular time. But
10 generally, with all -- all things being equal, you
11 would certainly hope that the numbers of use of
12 force with inmates who are -- especially profoundly
13 disabled would be lower.

14 BY MS. GRUNFELD:

15 Q. Looking at your comments on the bottom of
16 page 18, top of page 19, where you're discussing a
17 conversation you had with Warden Johnson in which he
18 informed you that he had heard from multiple
19 developmentally disabled inmates who explained that
20 they had fought with other inmates because they were
21 instructed to do so by a third inmate or group of
22 inmates. Do you see that?

23 A. Yes.

24 Q. Did Warden Johnson tell you when that kind
25 of behavior was happening?

1 A. He said it was -- well, said it was
2 something he addressed in the fall of '19 or began
3 addressing in the fall of '19. And so I didn't ask
4 him specifically when it occurred, but I assumed it
5 had occurred before that time.

6 Q. Did you discuss with him whether this
7 behavior was resulting in use of force against
8 incarcerated people?

9 MR. DUGGAN: Was that a question?

10 BY MS. GRUNFELD:

11 Q. Yes.

12 A. Could you say it -- I'm sorry. Could you
13 repeat it, please?

14 Q. Did you discuss with Warden Johnson
15 whether this problem that you describe here was
16 resulting in uses of force against incarcerated
17 people?

18 A. It was implied in the conversation because
19 my experience is that when -- when inmates are
20 involved in physical altercations with one another,
21 staff typically have to uti- -- utilize some kind of
22 force to protect the inmates and break up the fight.

23 Q. Did you get a sense from Warden Johnson
24 how many of these kinds of fights were happening on
25 a regular basis at LAC?

1 A. I -- again, from the context, it didn't
2 seem like that many, but it seemed like enough that
3 he noted it. I think, in particular, he was
4 referring to when he would be the chair of a
5 committee reviewing those incidents, and -- and --
6 and relaying those incidents with inmates, that he
7 heard that explanation enough times that it bothered
8 him. I don't know how many times.

9 Q. Do you know if that behavior is still
10 occurring at LAC or not?

11 A. The warden indicated that it had improved.

12 THE REPORTER: The what indicated? The
13 warden indicated that it improved?

14 THE WITNESS: Indicated that it had
15 improved.

16 THE REPORTER: Who indicated?

17 THE WITNESS: The warden.

18 THE REPORTER: Okay. Sorry.

19 THE WITNESS: Okay. I'm --

20 BY MS. GRUNFELD:

21 Q. Did he provide any specifics beyond saying
22 "improved"?

23 A. No, he didn't.

24 Q. Generally when there are fights,
25 especially involving developmentally disabled

1 prisoners, does that suggest a prison that is
2 somewhat out of control to you?

3 MR. DUGGAN: Objection. Incomplete
4 hypothetical.

5 THE WITNESS: Not necessarily. It depends
6 on how often it happens. It depends on the -- on
7 the reaction of the administrators. The fact that
8 the warden identified it as a problem himself and
9 then sought a solution with the help of his
10 colleagues in -- in the mental health department, I
11 thought was a sign of healthy leadership.

12 BY MS. GRUNFELD:

13 Q. Other than the fights among the
14 developmentally disabled prisoners, did the warden
15 tell you about any other fights or gang activity or
16 problems at LAC?

17 MR. DUGGAN: Objection. Misstates prior
18 testimony.

19 THE WITNESS: No, he didn't.

20 BY MS. GRUNFELD:

21 Q. So did the warden seem aware that the
22 plaintiffs had filed a motion to stop the abuse and
23 retaliation against people with disabilities at his
24 prison?

25 A. Yes. I think he was aware.

1 Q. And did you discuss the motion with him?

2 A. Only -- only to the extent that I told him
3 the reason for my being there and the kind of
4 information I was looking for and asked for his
5 assistance in providing the information I needed.
6 And then I talked to him generally about his
7 facility.

8 Q. Did the warden feel there had been any
9 problem over the last couple of years with excessive
10 or unnecessary force against incarcerated people at
11 LAC?

12 MR. DUGGAN: Objection. Calls for
13 speculation.

14 THE WITNESS: The -- the -- in context, he
15 mentioned the problem with the inmates improperly
16 housed in section D trying to take advantage of
17 developmentally disabled inmates. He mentioned that
18 as a problem in -- in particular. I -- he's aware
19 that there's use of force being used. An
20 investigation is being done on staff on a -- on a --
21 on a regular basis. He didn't describe any other
22 prison systemic problems, though, with those
23 programs.

24 BY MS. GRUNFELD:

25 Q. So from your conversation with Warden

1 Johnson, he doesn't feel there's any problem at the
2 prison?

3 MR. DUGGAN: Objection. Misstates prior
4 testimony.

5 THE WITNESS: The warden is aware that he
6 has a complicated mission, especially at a B
7 facility, and that he's trying to implement a new
8 process in AIMS, and that he has the challenges that
9 go with every prison that is a high-security
10 facility that also houses inmates at the EOP level
11 of care and disabled inmates. And it's a very
12 difficult, challenging mission. And so he didn't
13 try to indicate that he didn't have any problems at
14 that prison to work on. He just -- it -- it sounded
15 to me like he had the same problems as any other
16 warden in a similar situation around the country, a
17 very difficult job to do.

18 BY MS. GRUNFELD:

19 Q. So the letters that we have been sending,
20 pointing out multiple incidents of violence against
21 people with disabilities, is just typical for any
22 prison with a high-security mission?

23 MR. DUGGAN: Objection. Misstates
24 facts -- assumes facts.

25 THE WITNESS: No, that's not typical.

1 But he also didn't assume that those
2 declarations were true, right? So --

3 BY MS. GRUNFELD:

4 Q. Right. Because it's just inmate
5 testimony, so -- and letters from plaintiff's
6 counsel.

7 MR. DUGGAN: Objection. Compound.

8 THE REPORTER: "Objection, compound"?

9 MR. DUGGAN: Yes.

10 THE REPORTER: Thank you.

11 MS. GRUNFELD: Let's take a brief break,
12 shall we? Five minutes?

13 MR. DUGGAN: Okay.

14 (Recess taken.)

15 MS. GRUNFELD: Okay. We are back on the
16 record after a brief recess. Mr. Cate, you
17 understand you are still under oath?

18 THE WITNESS: Yes.

19 BY MS. GRUNFELD:

20 Q. Before we return to your report, I was
21 curious whether you had a chance to read the
22 reports, first, of Jeffrey Schwartz?

23 A. Yes.

24 Q. And do you know Mr. Schwartz -- Dr.
25 Schwartz?

1 A. I should because he indicates, I think, in
2 his report that we worked on the same issues at the
3 same time. I -- I'm embarrassed to say I don't
4 remember Dr. Schwartz.

5 Q. Do you have any opinion of his
6 professional capabilities?

7 A. No.

8 Q. Okay. And do you have any comments on his
9 report?

10 A. Only those that are listed in my
11 declaration and that we disagreed on some of the
12 issues regarding statewide -- on the remedies and --
13 and the nature of the problem as I -- as I -- as I
14 recall.

15 Q. By the way, if there were a problem with
16 excessive staff misconduct, or abuse or retaliation,
17 which I understand you believe there's not, but if
18 there were, do you think having additional sergeants
19 assigned would be helpful?

20 MR. DUGGAN: Objection. Calls for
21 speculation. Incomplete hypothetical.

22 THE WITNESS: At a place like RJD, for
23 example, I don't think it would have helped. And
24 the reason is is you have -- you had bad -- you had
25 ineffective leader -- senior leadership was the

1 primary problem. And adding another staff member
2 who is not held accountable and is not being
3 properly managed can help with workload, but not --
4 it's not, otherwise, a panacea.

5 The only -- the only staffing suggestion
6 that I thought could -- would -- would -- might be
7 considered by the department, again, under your
8 hypothetical where we're looking for ways -- nice to
9 have, would be in a place like LACD5, which is an
10 ad seg unit. And the amount of work that sergeants
11 do now on paperwork and on their computers is more
12 than when I was there, and again, I'm in -- in favor
13 of giving staff -- supervisors in particular -- time
14 to walk the housing units, talk to their officers,
15 watch them in the performance of their duties, speak
16 to inmates, ask them how their experience has been,
17 et cetera. And so, really my opinion is the same as
18 with cameras. If I was going to pick, I would pick
19 the places where the most vulnerable inmates are
20 located.

21 BY MS. GRUNFELD:

22 Q. And when you say the problem at RJD was
23 "ineffective senior leadership," does that mean that
24 you blame the wardens there for what happened?

25 MR. DUGGAN: Objection. Misstates prior

1 testimony.

2 THE WITNESS: I don't necessarily blame
3 wardens plural -- in plural. There may have been
4 good wardens, bad wardens along the way. But
5 there's -- the -- my -- reading the reports
6 indicated that facility had gotten into
7 mismanagement. And so the -- the buck stops with
8 the warden. It may have been there were poor
9 deputies below the warden. I don't know. But it
10 doesn't really matter, right? The -- the warden in
11 the California system and most systems is
12 accountable in that situation. So at some point
13 along the way, that -- that management team needed
14 to have discovered those problems themselves. They
15 needed to have dealt with them themselves.

16 BY MS. GRUNFELD:

17 Q. And -- and what is the process for getting
18 rid of a warden who is not taking care of those
19 problems?

20 MR. DUGGAN: Objection. Outside the scope
21 of Mr. Cate's assigned task.

22 THE WITNESS: Those -- those wardens are
23 gubernatorial appointees. And so ultimately, it's
24 the -- it's the governor's decision on which
25 appointees to keep and which ones not to. My

1 experience has been that if the secretary of
2 corrections tells a -- a governor -- and it's --
3 it's never the governor himself, right, it's the
4 governor's office -- that I've got a problem warden.
5 I've got a situation that I believe this warden is
6 not representing the governor well, or us; I think
7 the inmates or staff are at risk, et cetera, I've
8 never seen a situation where the governor's office
9 didn't act on the -- at the recommendation of the
10 secretary.

11 BY MS. GRUNFELD:

12 Q. So ultimately, it's up to the secretary to
13 decide whether a warden who is not managing the
14 prison properly would be replaced, right?

15 MR. DUGGAN: Objection. Misstates
16 testimony.

17 THE WITNESS: It would depend on -- in
18 practice, yes.

19 BY MS. GRUNFELD:

20 Q. I'd like to turn to part of your report
21 that involves the allegations regarding staff
22 misconduct investigations at LAC. It starts on
23 page 19. And you reviewed the investigative files
24 only for the Armstrong class members; is that right?

25 A. I believe Mr. [REDACTED] was a -- was not an

1 Armstrong class member and he was just a Coleman
2 class member.

3 Q. And by the way, I have not placed this
4 transcript under seal, but when we mention the
5 prisoners' names, we all agree that those will be
6 redacted from the transcript that is ultimately
7 filed with the court, right?

8 MR. DUGGAN: Yes, in the --

9 MS. GRUNFELD: Okay.

10 THE REPORTER: I can't hear you.

11 MR. DUGGAN: I'm sorry. In the event that
12 we file this transcript with the court, those names
13 should be redacted. That's right.

14 MS. GRUNFELD: I'm just turning up my
15 volume so I can hear you better.

16 BY MS. GRUNFELD:

17 Q. Okay. So other than Mr. [REDACTED], all the
18 investigations you reviewed were of the allegations
19 involving Armstrong class members; is that right,
20 Mr. Cate?

21 MR. DUGGAN: Objection. Asked and
22 answered.

23 THE WITNESS: Some were -- some were
24 Armstrong and Coleman. Most, I think, were both
25 Armstrong and Coleman. And some were officially in

1 the Armstrong case, I think, at least, ac- --
2 according to the inmate's statements, that there
3 were -- they had some kind of a -- a physical
4 disability. I don't know whether it was transitory
5 or they were or weren't part of the -- of the
6 Armstrong class. So I can't say as to all of them
7 being official members of the Armstrong class or
8 not.

9 BY MS. GRUNFELD:

10 Q. On page 21, paragraph 50, you state,
11 quote, "Given more time, I would have been able to
12 provide detailed reviews of additional incidents."
13 Do you see that?

14 A. I do.

15 Q. How much additional time would you have
16 needed to review the additional cases?

17 A. Well, it -- it depends on -- I could have
18 written up all of the Armstrong cases. So it
19 depends on if you mean writing up the 15 that I -- I
20 actually reviewed thoroughly. And then others, the
21 the Coleman cases, I just reviewed topically, just
22 quickly to see what the nature of it was, not
23 sufficient to come to any conclusion about it. And
24 so another couple of weeks probably would be
25 necessary, of concentrated effort.

1 Q. Uh-huh. Uh-huh. Okay.

2 And the investigations that you reviewed
3 were conducted by the ISU at LAC; is that correct?

4 A. No. Some were conducted by sergeants or
5 lieutenants, and -- within the housing units, and
6 some were conducted by ISU.

7 Q. But they were all local staff to the
8 prison; is that correct?

9 MR. DUGGAN: Objection. Compound.

10 THE WITNESS: Except for those where there
11 were staff from other facilities that came in. But
12 the -- the majority were local, yes.

13 BY MS. GRUNFELD:

14 Q. Okay.

15 Did you listen to the audiotapes?

16 A. I did.

17 Q. Back on page 20, paragraph 48, line 13 to
18 14, you state that: Plaintiff's, quote,
19 allegations, were looked into when those letters
20 were received. Do you see that?

21 How do you know that?

22 MR. DUGGAN: Objection. Compound.

23 THE WITNESS: I'm sorry. It should have
24 said before those letters were received. What I was
25 intending to say there is that a number of the

1 allegations involved incidents that the inmates
2 themselves had complained of in previous 602s or in
3 previous use-of-force cases, and so those had
4 already been looked into. In some cases, there were
5 additional allegations made in the declaration and
6 in other cases, the -- the allegations changed
7 somewhat. But a number of these had reports that
8 were based -- that were -- that predated the
9 declaration.

10 BY MS. GRUNFELD:

11 Q. And what is the point of that?

12 Just that -- you're just giving background
13 or what -- what are you -- what inference are you
14 drawing from that?

15 MR. DUGGAN: Objection. Vague. Compound.

16 BY MS. GRUNFELD:

17 Q. All right. Well, let's move on.

18 A. Sorry. I'm reading that paragraph for --
19 to try to answer that question.

20 Q. Yeah. Okay. I'd like to turn now to what
21 I'd like to mark as Exhibit 4 in this deposition.

22 THE REPORTER: Oh, wait. Hold on a
23 second.

24 BY MS. GRUNFELD:

25 Q. It's a letter from --

1 THE REPORTER: Hold on a second. I didn't
2 get the answer. I got the objection for -- just --
3 oh, wait. It doesn't matter. It doesn't matter.
4 Sorry. I found it.

5 MS. GRUNFELD: Okay. I'd like to mark as
6 Exhibit 4 in this exhibit [sic] a March 27 letter
7 from Thomas Nolan to a number of lawyers in CDCR
8 legal affairs.

9 (Whereupon, Exhibit 4 was marked for
10 identification.)

11 MS. GRUNFELD: Madam Court Reporter, do
12 you have that letter?

13 THE REPORTER: Let me check.

14 MS. GRUNFELD: It's in the chat also. Do
15 you see it, where I downloaded it?

16 THE REPORTER: The problem is I'm not sure
17 which one is which.

18 MS. GRUNFELD: Can you look in the chat
19 and you'll see?

20 THE REPORTER: Okay. Is -- it's -- is it
21 attachment 1, March 1st, administrative review --

22 MS. GRUNFELD: No.

23 THE REPORTER: Which one?

24 MS. GRUNFELD: No. It's -- let me see if
25 I can hold it up to the screen.

1 THE REPORTER: Okay.

2 MS. GRUNFELD: Okay. It looks like this.

3 Did you receive this by email earlier today?

4 THE REPORTER: I received -- yeah, I
5 received all the emails. It's just I don't know
6 which one is which and I can't look at it at the
7 same time that I'm typing. So afterwards, what I'll
8 do is I'll put them -- we're not on the record right
9 now.

10 (Discussion held off the record.)

11 (Whereupon Exhibit 4 was marked for
12 identification.)

13 Q. Mr. Cate, I have just marked as an exhibit
14 a letter from Mr. Nolan, a colleague in my office,
15 about Mr. ■■■. You discussed Mr. ■■■'s case
16 starting at page 25 of your report. This letter
17 from March 2020 describes Mr. ■■■. He was
18 recovering from chemotherapy at the time of the
19 incident. He was in a wheelchair, and he was
20 seeking an accommodation to be housed in a place
21 where it would be a -- a shorter walk for him to get
22 from his housing unit to the medication line so he
23 could receive morphine for his cancer.

24 Do you consider that request a request for
25 an accommodation under the ADA?

1 MR. DUGGAN: Objection. Assumes facts.
2 Incomplete hypothetical. Calls for a legal
3 analysis.

4 THE WITNESS: His -- his statement to the
5 officer that he wanted to be housed somewhere else,
6 to be closer to the -- I'm -- I'm sorry, he wanted
7 -- he --

8 BY MS. GRUNFELD:

9 Q. You wrote in your report that this was not
10 an ADA issue, and I'm asking you whether a person
11 who is asking to be closer to pill line so he can
12 get there easier, who's on chemotherapy and he needs
13 to get his pills, whether that would be a request
14 for accommodation under the Americans with
15 Disabilities Act.

16 MR. DUGGAN: Objection. Assumes facts.
17 Incomplete hypothetical.

18 THE WITNESS: I don't know. And that's
19 not what I was trying to opine on. I was just
20 saying that there didn't appear to be a connection
21 between the use of force and an ADA accommodation
22 request or his disability, if there is one.

23 BY MS. GRUNFELD:

24 Q. So you don't believe that's what he was
25 asking for?

1 A. I don't -- I don't know. I know that's
2 what he says he asked for.

3 Q. And what do you think he was doing at
4 the -- at the podium at that time?

5 A. I don't know.

6 MR. DUGGAN: Objection. Assumes facts.
7 Argumentative.

8 BY MS. GRUNFELD:

9 Q. If we had cameras that day at the podium,
10 would we have known what happened?

11 MR. DUGGAN: Objection. Calls for
12 speculation. Incomplete hypothetical.

13 THE WITNESS: If your -- if cameras would
14 have provided an additional view, yes.

15 BY MS. GRUNFELD:

16 Q. Because as I understand this incident, the
17 officer in question was by himself at the time the
18 force was used. Is that your understanding as well?

19 MR. DUGGAN: Objection. Assumes facts.

20 MS. GRUNFELD: It doesn't assume facts.
21 I'm asking him what his understanding is of this
22 incident based on all the records that he's
23 reviewed.

24 THE WITNESS: No, there were -- there was
25 an officer in the -- in the control tower. And

1 as -- and there were other officers in the housing
2 unit, as I recall, although maybe not with him or
3 at -- at that moment.

4 BY MS. GRUNFELD:

5 Q. Okay. So you are right, this -- this
6 involved two uses of force, one at the podium and
7 one in the gym. But I'm focused right now on when
8 Mr. [REDACTED] asked -- came to ask -- according to him, he
9 came to ask for a change in his housing so he could
10 have easier access to the pill line because of his
11 disability, and then force was used. So as to that
12 force, my understanding is that the officer was the
13 only one present at that moment. And -- and if you
14 look at Exhibit 4, if you turn to the crime incident
15 report at the back of it.

16 A. Okay.

17 Q. I'm looking at this document that was
18 filled out on August 28th, 2019, it says, "Officer
19 C. Spencer utilized physical force." Do you see
20 that?

21 MR. DUGGAN: Objection. Compound.

22 THE WITNESS: Which exhibit are you on?
23 Is it B?

24 BY MS. GRUNFELD:

25 Q. It's Exhibit B as in boy --

1 A. Okay.

2 Q. -- to the Nolan letter?

3 A. Okay.

4 Q. And it's the "Crime Incident Part A1
5 Supplement." CDCR837-A1. Is that in your copy?

6 A. Yeah, I'm looking at Exhibit 6 at the top?

7 Q. Yes.

8 A. Okay.

9 Q. Yes. So about a third of the way down the
10 page, right here --

11 A. Yes. I see that.

12 Q. -- it says, "Use of force: Officer C.
13 Spencer utilized physical force." Do you see that?

14 Now, if you look further down the page,
15 under video interviews, this report states: No
16 condition exists that would warrant a video record
17 interview, close quote. Do you see that?

18 A. Yes.

19 Q. Do you have any understanding as to why
20 there was no video record interview done at that
21 time?

22 A. Presumably because there was no complaint
23 by the -- by the inmate.

24 Q. And one of the issues in this case is that
25 the psych tech wrote "no comment" on the 7219. Do

1 you remember that fact?

2 A. Yes.

3 Q. And interestingly -- and interestingly,
4 that same phrase, "no comment," was also written in
5 the case of Mr. [REDACTED]; do you remember that?

6 MR. DUGGAN: Objection. Assumes facts.

7 THE WITNESS: Yes.

8 BY MS. GRUNFELD:

9 Q. Have you read Homer Venter's book, "Life
10 and Death on Riker's Island"?

11 A. No.

12 Q. Have you ever heard of psychiatric and
13 mental health and medical staff at prisons or other
14 correctional facilities being less than truthful on
15 injury reports?

16 MR. DUGGAN: Objection. Outside the scope
17 of Mr. Cate's assigned task.

18 THE WITNESS: Have I ever heard of it
19 anywhere, yes.

20 BY MS. GRUNFELD:

21 Q. Can it be a problem? Can medical and
22 mental health staff sometimes underplay the injuries
23 out of a deference to custody staff?

24 MR. DUGGAN: Objection. Vague and outside
25 the scope of Mr. Cate's assigned task.

1 THE WITNESS: My experience is that health
2 care staff work for a different hiring authority,
3 and they typically do their jobs very
4 professionally. Not to say that there aren't
5 situations like you described, because, again, with
6 that many human beings doing a job, undoubtedly,
7 there will be situations where that occurs, but that
8 has not been my common experience.

9 BY MS. GRUNFELD:

10 Q. When Mr. Nolan's letter arrived at LAC in
11 early April 2020 regarding Mr. [REDACTED], do you know if
12 Warden Johnson took any steps to investigate what
13 had happened?

14 MR. DUGGAN: Objection. Assumes facts.
15 Calls for speculation.

16 *****

17 THE WITNESS: I don't know if he took
18 additional steps beyond what had already been done.

19 BY MS. GRUNFELD:

20 Q. And what had already been done?

21 A. The investigation in front of us.

22 Q. You are referring to Exhibit B, the Nolan
23 letter?

24 A. Yes.

25 Q. And the outcome of that investigation was

1 to issue a rules violation report to Mr. [REDACTED]; is
2 that correct?

3 MR. DUGGAN: Objection. Assumes facts.

4 THE WITNESS: I believe so, yes.

5 BY MS. GRUNFELD:

6 Q. And Mr. [REDACTED] was found guilty on that RDR;
7 is that correct?

8 A. That's my recollection, yes.

9 Q. Now in your review of Mr. [REDACTED]'s case,
10 paragraph 64 of your report, you state that the
11 witness statements are inconsistent, specifically
12 that Mr. [REDACTED] and Mr. [REDACTED] claimed that the officer
13 pulled Mr. [REDACTED] from the wheelchair while Mr. [REDACTED]
14 said he was dumped to the ground using the
15 wheelchair handles.

16 Isn't it normal in investigations to have
17 eye witnesses with slightly varying observations of
18 what happened?

19 A. It is, in this case the inconsistencies
20 were just one of the factors that I looked at. But
21 I did find that the difference between being pulled
22 from a wheelchair and being dumped out by the
23 handles is pretty dramatic difference -- enough that
24 a person would -- would under normal circumstances
25 notice, recognizing that sometimes people miss

1 recollect things and are still telling the truth.

2 Q. So based on that inconsistency you
3 disregard all the witness' testimony.

4 MR. DUGGAN: Objection. Misstates.

5 THE WITNESS: I'm not saying -- I don't.
6 I'm just saying they are -- any trier of fact would
7 have to deal with those inconsistencies in trying to
8 reach a determination as to the truth of the
9 allegations.

10 BY MS. GRUNFELD:

11 Q. Again, if cameras had been there, we could
12 have seen exactly what happened. You did say you
13 thought there were some problems with the
14 investigation here. You say that in paragraph 66.

15 A. Yes.

16 Q. You said the lieutenant conducting the
17 use-of-force investigation seemed hurried and failed
18 to follow up and used leading questions.

19 What -- what -- what do you think should
20 have been done differently here?

21 MR. DUGGAN: Objection. Compound.

22 THE WITNESS: Well, the -- I -- I thought
23 the lieutenant would benefit from training. It
24 would have been better if the lieutenant had asked
25 open-ended questions more often. He didn't lead all

1 the time. And some of the witness statements were
2 good. Others were just okay. But he seemed -- he
3 seemed to be trying to get through the witnesses in
4 too hurried a fashion for -- for my liking,
5 including when one -- one inmate didn't mention a
6 wheelchair at all in his initial statement, then the
7 officer said, "Well, what about a wheelchair? Did
8 you see a wheelchair?" And then he said, "Oh, yeah,
9 there was a wheelchair." And so it's fine, but it
10 would have been far better if he would have allowed
11 the witness to -- to bring that himself, and --
12 rather than be led to that. Because then it's --
13 it's harder to assess the credibility of that
14 witness.

15 The -- the biggest problem with his
16 investigation though was -- was the discrepancy
17 between the injuries that should have -- if Mr. [REDACTED]
18 was telling the truth, would have been on his body
19 and what was found by the psych tech.

20 BY MS. GRUNFELD:

21 Q. Right. Another thing that could have been
22 determined, though, by cameras in the gym and at the
23 podium, instead of relying on one psych tech's
24 comment, no comment, we could have had a camera view
25 of the two alleged uses of force.

1 I was curious about your impression of the
2 next exhibit, this is Exhibit 5 to the declaration
3 of Mr. Siino, S-I-I-N-O, in opposition to our
4 motion.

5 MS. GRUNFELD: And, Madam Court Reporter,
6 it's an allegation inquiry memo regarding Officer
7 Chad Spencer.

8 Yes, thank you. Thank you, Ms. Heywood.
9 This is the document that I'd like to ask some
10 questions about.

11 (Whereupon, Exhibit 5 was marked for
12 identification.)

13 BY MS. GRUNFELD:

14 Q. Mr. Cate, do you have this document in
15 front of you?

16 A. I do.

17 Q. Now, this was some kind of investigation
18 that was conducted on July 3, 2020, after my
19 colleagues and I shared Mr. [REDACTED]'s declaration with
20 defendants in this case; is that correct?

21 A. Yes.

22 Q. Now, you probably aren't aware of this
23 fact, but when I shared that declaration, I asked
24 that there be no interview of the declarants without
25 the presence of plaintiffs' counsel.

1 Did you know that we had made that
2 request?

3 A. I don't believe so.

4 Q. Okay. Now, if you -- did you speak to the
5 investigator who did this memo? Michael Melendrez.

6 A. No.

7 Q. He states that he is a correctional
8 lieutenant with the LAC ISU.

9 And in your comments in your report, are
10 you criticizing his investigation? Is that the one
11 that you're referring to where you felt he was
12 hurried?

13 MR. DUGGAN: Objection. Compound.

14 THE WITNESS: I believe so, yes. I think
15 it was this -- I think it was this lieutenant that
16 took the statements from the -- from the other
17 individuals who witnessed the events, including the
18 inmates that I had mentioned previously.

19 BY MS. GRUNFELD:

20 Q. If you could turn to page 8 of the memo.
21 At the bottom, there's a Bates number,
22 Defendants 713. This is the part about the
23 interview with Inmate [REDACTED]. It occurred on June 11,
24 2020, which, by my estimate, is approximately eight
25 months after the incident in question and in

1 violation of my letter.

2 If you could just refresh your memory here
3 at the bottom of page 8 and the beginning of page 9.

4 A. Okay.

5 Q. The investigator says, "It is noted [REDACTED]
6 did not file any appeals until six months after the
7 date of the incident."

8 Do you see that?

9 A. Yes.

10 Q. Are you aware that Mr. [REDACTED] states that he
11 waited to file an appeal until he was out of LAC?

12 MR. DUGGAN: Objection. Calls for
13 speculation.

14 THE WITNESS: If it's in his declaration,
15 then I read that. I don't recall that specifically.

16 BY MS. GRUNFELD:

17 Q. Would that would be a reasonable approach,
18 to wait until you were out of the place where the
19 staff misconduct occurred to you if you were very
20 fearful?

21 MR. DUGGAN: Objection. Calls for
22 speculation. Incomplete hypothetical.

23 THE WITNESS: There's -- there's all kinds
24 of reasons why people would not want to give a
25 statement if they felt that they were at risk, of

1 course.

2 BY MS. GRUNFELD:

3 Q. This investigator says, "He asked [REDACTED] if
4 he recalled how his interview with the PLO was
5 initiated." And [REDACTED] replied, "I would rather not
6 say."

7 Do you find it strange that an
8 investigator is demanding to know information about
9 the prisoner's contact with his attorney as part of
10 this investigation?

11 MR. DUGGAN: Objection. Misstates the
12 document.

13 THE WITNESS: I didn't -- he says it was
14 to -- to set up a time frame for the reporting of
15 the alleged incident. The contents of his
16 statements to counsel weren't -- I didn't find to be
17 something that were relevant to the officer's
18 investigation and shouldn't have been asked.

19 BY MS. GRUNFELD:

20 Q. As you note in the middle -- or as -- as
21 he notes in the middle of this page 9, the
22 investigator says, "During my interview, [REDACTED] seemed
23 to be evasive when answering questions. [REDACTED] would
24 often start his response by utilizing the words 'um'
25 or 'uh.'"

1 In your experience, Mr. Cate, is that an
2 unusual way to answer questions?

3 A. No.

4 Q. And does that show evasiveness?

5 A. By itself, it does not.

6 Q. The investigator also seems to draw
7 conclusions from Mr. [REDACTED]'s decision not to say when
8 he spoke to his lawyers. I think you've already
9 testified that that would not be a basis to discount
10 Mr. [REDACTED]'s testimony.

11 Am I right?

12 MR. DUGGAN: Objection. Misstates prior
13 testimony.

14 THE WITNESS: The -- yeah, the -- the
15 statement that you'd rather not say what you said to
16 your lawyers isn't relevant to the decision about
17 his credibility.

18 BY MS. GRUNFELD:

19 Q. If you turn to the next page, page 10, the
20 investigator says, "Based on the information during
21 this inquiry, to include documents reviewed and
22 inmate witness interviews, it is evident Inmate
23 [REDACTED]'s allegations to the PLO were overembellished."

24 Is that evident to you, Mr. Cate?

25 A. I -- I came away with the belief that this

1 case could not be proved, but the misconduct could
2 not be proved based upon the evidence that I saw,
3 particularly with regards to the difficulties with
4 the -- with the injuries that don't match the -- the
5 allegations that the -- that Mr. [REDACTED] made, the
6 difficulties with the inmate statements, all the
7 things -- I'm sorry -- the witness statements. All
8 the things that I mentioned in here, in my view,
9 would have made it very difficult to sustain an
10 allegation against this officer in this case
11 regardless of the -- the particular conclusions that
12 the investigating officer made here.

13 Q. And, in part, that's because we don't have
14 cameras to tell us what really happened, right?

15 MR. DUGGAN: Objection. Calls for
16 speculation. Incomplete hypothetical.

17 THE WITNESS: Cameras wouldn't have --
18 cameras would definitely add to our factual
19 knowledge of this case, yes. Whether that would
20 have addressed all the issues in light of Mr. [REDACTED]'s
21 statements and the physical evidence, I don't know,
22 but it certainly would have added one potential
23 additional evidence source.

24 BY MS. GRUNFELD:

25 Q. Now, I just want to bring your attention

1 to one last thing with Mr. [REDACTED]. To paragraph 68 of
2 your declaration on page 28.

3 You state that, "No witness states that
4 the dispute or the use of force was about the
5 wheelchair or had anything to do with Mr. [REDACTED]'s use
6 of the wheelchair."

7 Do you see that?

8 A. I do.

9 Q. And previously you say, "He does not
10 assert that the incident occurred because of his
11 disability."

12 A. Yeah. What I -- what I meant by that
13 paragraph is that it appeared that this dispute was
14 not over whether he was -- in Mr. [REDACTED]'s view, was
15 not over whether he was using this wheelchair or
16 not. And, of course, the officers don't say there
17 was a wheelchair there at all.

18 So what I'm -- was trying to say here is
19 that, in my view, this wasn't about -- this wasn't
20 an officer trying to pick on him because of his
21 disability.

22 Q. Yes. I'm -- I'm very confused by that
23 testimony, though, because when I read his
24 declaration, he -- he says that he asked the
25 officers if he could move to the D yard building

1 because nursing staff conducted pill call inside
2 those units rather than at the yard's pill call
3 window. And because of his chemotherapy, he
4 struggled to walk across the yard to pill call.

5 And when he asked for that change, one of
6 the officers said to him, "So you shaved your
7 eyebrows like a queer," because his face was shaved
8 due to his chemotherapy.

9 So, to me, that is a request for
10 accommodation based on disability. I -- I never
11 claimed it was about the wheelchair. It's about
12 needing an accommodation and what happened after
13 that.

14 So I don't really understand how you could
15 write what you did in paragraph 68 if we're talking
16 about the same incident.

17 MR. DUGGAN: Objection. Well, is -- is
18 there a question?

19 MS. GRUNFELD: Yeah. I'm asking why he --
20 why Mr. Cate found that this did not occur because
21 of his disability.

22 MR. DUGGAN: Objection. Assumes facts.
23 Argumentative. Compound.

24 THE WITNESS: The -- it was difficult here
25 because the officer, in my experience, has no

1 ability, authority, to -- to deal with that -- with
2 a housing request. And it would be really unusual
3 for me to find an officer who cares whether you're
4 assigned to one housing unit or another. And I know
5 I -- I see now you're saying that Mr. ■■■ believes
6 it was the officer's somehow anger over his housing
7 request that lead to the use of force. If that
8 were -- I -- I suppose if -- if that were -- those
9 were the facts then you could make that assertion.
10 I see your point. I -- I just found that to be not
11 particularly credible.

12 BY MS. GRUNFELD:

13 Q. Why not?

14 A. Well, he lied about his injuries it
15 appeared to me. And again, I -- I haven't --
16 haven't talked to any officers who care whether an
17 inmate -- whether an inmate is housed in one place
18 or another. That's a -- that's a correctional
19 counselor's issue and an administrator's issue. And
20 so it just seemed so unusual to me that this officer
21 would be angered enough over a housing request this
22 inmate made in the yard to then throw him out of --
23 out of his wheelchair onto the ground with no other
24 provocation. But if you assume all those facts are
25 true, then I can see your point that there would

1 have been a relation.

2 Q. And when you say that Mr. [REDACTED] lied about
3 his injuries, you're relying on the psych tech's
4 report?

5 A. All things considered, it appeared to me
6 that it -- he was likely not truthful. I don't know
7 for sure, but the evidence appeared to me that -- I
8 don't see why the psych tech would ignore what
9 should have been massive injuries to this person's
10 face and body if this occurred the way he described
11 it. And once he makes the statement that says he
12 was bound and beaten and there are no injuries
13 found, then it -- it hurts his entire credibility.
14 That's just the nature of -- of any trier of fact's
15 view, I think.

16 So I don't -- I don't -- obviously I
17 wasn't there, I don't know for sure, I'm just
18 telling you that my view was it -- it made him less
19 than credible.

20 Q. Again, though, it's based on your reading
21 of the psych tech report and no other medical
22 records. Am I right?

23 MR. DUGGAN: Objection. Misstates prior
24 testimony.

25 THE WITNESS: The -- the -- the medical

1 portion of this is based upon the psych tech's
2 report, yes.

3 BY MS. GRUNFELD:

4 Q. And is there another portion of this that
5 supports your view that Mr. [REDACTED] was lying about his
6 injuries?

7 A. Well, the -- the officers' statements were
8 consistent, particularly with the fact that there
9 was no wheelchair there. I found that really
10 unusual, that none of the officers would have
11 mentioned a wheelchair in any way, if there had been
12 a wheelchair there. Not -- I mean, I could see a
13 situation where officers had -- would allegedly get
14 together and try to fabricate some -- some use of
15 force by the inmate to try to justify an officer's
16 actions, but to ignore the existence of a wheelchair
17 altogether is odd.

18 And -- and the -- the inmate statements
19 that it was there is odd too. It's a -- it's a very
20 difficult case to know what happened.

21 But Mr. [REDACTED]'s testimony, I think is --
22 is -- it's hard not to discount it a great deal
23 because of the discrepancies regarding his injuries.
24 Again, unless the psych tech is involved in this
25 conspiracy as well.

1 Q. Uh-huh. You mentioned that you thought
2 the ISU lieutenant needed training on how to
3 investigate.

4 Would that training be beneficial
5 statewide?

6 MR. DUGGAN: Objection. Calls for
7 speculation.

8 THE WITNESS: The -- for officers or for
9 supervisors who are investigating uses of force, I
10 think they could benefit from regular training on
11 conducting investigations, yes.

12 BY MS. GRUNFELD:

13 Q. I'd like to turn to the [REDACTED] case now.
14 This is discussed in your report at pages 28 and 29.
15 And I believe I have some documents to introduce
16 here.

17 MS. GRUNFELD: I'd like to mark as next in
18 order the declaration of [REDACTED]. I'm hoping
19 you have a copy -- not [REDACTED], excuse me, [REDACTED]
20 [REDACTED].

21 I'm hoping you have a copy of that there,
22 Jeremy.

23 MR. DUGGAN: We do. Is that going to be
24 No. 6?

25 MS. GRUNFELD: That will be 6.

1 (Whereupon, Exhibit 6 was marked for
2 identification.)

3 MS. GRUNFELD: Exhibit 7 starts with an
4 attachment like this, Attachment 1, and it is the
5 confidential supplement to appeal.

6 (Whereupon, Exhibit 7 was marked for
7 identification.)

8 MR. DUGGAN: I don't think we have that
9 one yet, Gay.

10 MS. GRUNFELD: You didn't get that one?

11 MR. DUGGAN: Well, at lunch when I was
12 printing things out, we didn't have it yet, so...

13 Do you want to take a break, and I'll go
14 see if I have it in my email now, and we'll print
15 it?

16 MS. GRUNFELD: Well, let me ask you, do
17 you have -- the next exhibit was going to be the
18 February 27, 2019, inquiry closure.

19 MR. DUGGAN: Okay. No, I'm not seeing
20 that one either.

21 MS. GRUNFELD: Okay.

22 MR. DUGGAN: Oh, it's February, yeah.

23 MS. GRUNFELD: Okay. All right. Well,
24 let's go off the record for just a moment, please.

25 (Discussion held off the record.)

1 BY MS. GRUNFELD:

2 Q. Exhibit 6, Mr. Cate, is the declaration of
3 Mr. [REDACTED]. Have you had a chance to refresh your
4 memory on this one?

5 A. Yes.

6 Q. And according to Mr. [REDACTED], he was thrown
7 from his cell, pushed to the ground, and a guard
8 kneeled on his back causing him serious injury that
9 required two back surgeries.

10 There are a number of prisoner -- prisoner
11 statements and officer statements about the
12 incident. He's still in significant pain from this
13 incident.

14 The officer, Officer Gollette, as of the
15 time of the declaration, still serves Mr. [REDACTED]
16 breakfast five days of the week and Officer Bolton,
17 he sees on Fridays and Saturdays.

18 You would seem to agree that this
19 investigation was one in which further inquiry
20 should have occurred.

21 Can you explain why you thought that?

22 MR. DUGGAN: Objection. Compound.
23 Assumes facts.

24 THE WITNESS: Yes. My review of the
25 investigation showed inconsistencies in the

1 officers' reports that weren't followed up on. In
2 particular related to Officer Gollette's statement
3 initially to his sergeant and then subsequently to
4 the investigator. And similarly, his -- the other
5 officer, his partner who was with him, made one
6 statement to the sergeant and a different statement
7 subsequently.

8 And -- and then, finally, I found the
9 entire circumstance to be questionable in the nature
10 of the way the officers described it. And so I
11 would have liked to have seen them have to
12 demonstrate exactly how this happened because it's
13 difficult to imagine this in your head, right,
14 without being there or seeing a model or something
15 else.

16 So for all those reasons, I thought the
17 case should be reopened and -- and reinvestigated.

18 BY MS. GRUNFELD:

19 Q. Is this not another situation where a
20 camera would have shown us in much greater detail
21 than we have from these witness statements what
22 exactly happened on that day?

23 MR. DUGGAN: Objection. Calls for
24 speculation. Incomplete hypothetical. Assumes
25 facts.

1 THE WITNESS: It's possible. I -- as I
2 recall, Officer Gollette says he was -- he was in
3 the doorway. He may have blocked the view. But
4 it's possible a camera would have added additional
5 evidence to this, yes.

6 BY MS. GRUNFELD:

7 Q. And what about a body-worn camera? That
8 would have added even more, wouldn't it?

9 MR. DUGGAN: Objection. Calls for
10 speculation. Incomplete hypothetical.

11 THE WITNESS: I don't know whether it
12 would have added anything more in a particular --
13 this particular case, but it's possible that it
14 would have.

15 BY MS. GRUNFELD:

16 Q. And because the investigators did not
17 follow up, this allegation was closed and Officer
18 Gollette had no consequences from what happened; is
19 that right?

20 MR. DUGGAN: Objection. Assumes facts.
21 Calls for speculation.

22 THE WITNESS: It's -- my understanding is
23 that the -- is that the allegation was denied, and
24 so one would assume that he had no consequences,
25 yes.

1 BY MS. GRUNFELD:

2 Q. What is the -- what is the impact on
3 correctional policy when an officer is allowed to
4 get away with something like this? Does it have a
5 corrosive effect on the overall compliance, in your
6 opinion?

7 MR. DUGGAN: Objection. Outside the scope
8 of Mr. Cate's assigned task. Incomplete
9 hypothetical.

10 THE WITNESS: Again, my -- my statement
11 was [sic] is that this needed to be looked at
12 because it was possible that additional evidence
13 would -- would prove that Mr. [REDACTED] was telling the
14 truth here and the officer was not. I don't know
15 that. But if you're -- if you're asking that -- if
16 we found, through additional evidence, that this
17 officer had committed this misconduct and then filed
18 a false report in support of it and -- and that had
19 not been found, if that happens over and over again,
20 it can have a corrosive effect on, first of all,
21 that unit and then that yard, right, and maybe even
22 an entire prison if it was widespread enough.

23 BY MS. GRUNFELD:

24 Q. On page 29 of your report, paragraph 72,
25 you state, "Inmates" -- "Inmates do embellish proper

1 use of force incidents and allege they involved
2 staff misconduct."

3 What do you base that claim on?

4 A. My experience as the inspector general, my
5 experience as the secretary of corrections, and the
6 investigations and -- and work I did in this case.

7 Again, careful to say that not all inmates
8 do that, but inmates -- I have seen numerous cases
9 where that's occurred, or it appeared to me that
10 that's what occurred, inmates have told me that
11 that's what they have done in the past.

12 Again, as I've said, I've prosecuted
13 officers for not telling the truth in their reports
14 as well. Both sides are human beings and they have
15 different motivations and -- and -- and they're in
16 different situations, and so, you know, it's not --
17 it's nothing you wouldn't expect.

18 Q. And -- and so it's your view, though, that
19 the 29 allegations -- or the 29 declarations that
20 we've submitted in support of this motion are
21 embellished. Is that a fair statement?

22 MR. DUGGAN: Objection. Misstates prior
23 testimony.

24 THE WITNESS: No.

25 ///

1 BY MS. GRUNFELD:

2 Q. So you believe some of them happened?

3 MR. DUGGAN: Objection. Misstates prior
4 testimony.

5 THE WITNESS: I believe that -- first of
6 all, I wasn't trying to make a determination
7 about -- about who -- as the final trier of fact. I
8 was trying to look to see was this -- were the
9 evidence -- or the investigations done well or not,
10 and then -- and how well. And then secondly, did
11 it -- did they appear to reach the right results.

12 And there were two cases where I had
13 serious questions about -- well, I shouldn't say
14 that.

15 In the [REDACTED] case, I have concerns about
16 whether they reached the right result. And in the
17 [REDACTED] case, I -- there were enough facts there that I
18 agreed with the warden's decision to send this to
19 OIA, and I don't know the results yet. You may know
20 them, but I don't. I -- I thought that that case
21 had enough factual evidence that I would have sent
22 that to OI- -- OIA if I had been the warden.

23 BY MS. GRUNFELD:

24 Q. So of the 29, there are two that you felt
25 warranted further investigation?

1 A. I only reviewed 15 in enough detail to
2 come up with that. And -- and, again, I -- most of
3 the ones that I reviewed had been investigated
4 already, but out of -- out of the 15, there were two
5 that particularly concerned me and made me think
6 that, perhaps, either in the [REDACTED] case, the wrong
7 result happened, possibly, or in the [REDACTED] case that
8 we needed more investigation through the internal
9 affairs process.

10 Q. On page 30 of your declaration, you begin
11 to opine on statewide issues. Paragraph 75,
12 lines 16 through 19, you state that, "Based on my
13 tour at LAC, my discussions with CDCR management,
14 and the defendants' other experts, Mr. John Baldwin
15 and Mr. Bernard Warner, I found that disabled
16 inmates have multiple ways to address any issues
17 they may have and to request a reasonable
18 accommodation."

19 Is that conclusion based on those -- those
20 are your only sources of evidence for that
21 conclusion, right?

22 A. And my experience with CDCR, in that
23 their -- their policies apply across the State, and
24 so if you can see that inmates have access in these
25 facilities, then you have a pretty good sense of

1 what the policies are throughout the State, but it
2 doesn't involve the tours of my- -- of myself or the
3 other experts, I don't believe, in the rest of the
4 state.

5 Q. But the policies and procedures that CDCR
6 follows are generally applied at all 35 prisons; is
7 that correct?

8 A. Generally, yes.

9 Q. And that would be true of their
10 investigation and discipline system as well, right?

11 MR. DUGGAN: Objection. Misstates prior
12 testimony.

13 THE WITNESS: Yes, it would.

14 BY MS. GRUNFELD:

15 Q. Now, when you talk about Mr. Bernard
16 Warner, he is the person that you approved to be the
17 department of juvenile justice head during your
18 tenure as secretary; is that correct?

19 A. He was hired by my predecessor, but I
20 retained him.

21 Q. And why did you retain him?

22 MR. DUGGAN: Objection. Outside the scope
23 of Mr. Cate's assigned task.

24 THE WITNESS: I thought he was a good
25 administrator with a tremendous amount of knowledge

1 regarding corrections and juvenile justice, and I
2 wanted to see his progress that he had made under
3 the previous secretary continue.

4 BY MS. GRUNFELD:

5 Q. And by "progress," you mean he was
6 embroiled in two large class action-type lawsuits,
7 Farrell and LH, right?

8 MR. DUGGAN: Objection.

9 THE WITNESS: That's not what I meant by
10 progress, no.

11 BY MS. GRUNFELD:

12 Q. But that's what he spent most of his time
13 addressing, right, the Farrell remedial plans and
14 the LH reforms?

15 A. The Farrell and -- and LH reforms covered
16 almost everything that happened at the division of
17 juvenile justice, and so he couldn't work on
18 anything without working with the Farrell or LH
19 claims.

20 Q. Okay. Now, Mr. Warner's never worked
21 inside a CDCR prison, has he?

22 A. No.

23 Q. And after the juvenile justice, he went on
24 to work for private prisons; is that right?

25 A. He first became the secretary of

1 corrections in Washington State and then
2 subsequently, went to work for MTC, which is a
3 privately held private prison company.

4 Q. And have you stayed in touch with him
5 regularly since you left CDCR?

6 MR. DUGGAN: Objection. Outside the scope
7 of Mr. Cate's assigned task.

8 THE WITNESS: Yeah. Maybe every month or
9 two.

10 BY MS. GRUNFELD:

11 Q. Are you-all friends?

12 A. Yes.

13 Q. Do you socialize?

14 MR. DUGGAN: Objection. Outside the scope
15 of Mr. Cate's assigned task.

16 THE WITNESS: Occasionally.

17 BY MS. GRUNFELD:

18 Q. Okay. How many occasions did you talk to
19 him about this motion since you were retained to be
20 an expert?

21 A. Two or three.

22 Q. Okay. Were those in-person or telephonic?

23 A. Both.

24 Q. Okay.

25 A. Maybe, if I think about it, we had a

1 conversation with defense counsel and the experts,
2 and so that happened twice, I believe, and then
3 Mr. Warner and I had conversations probably two or
4 three times separately. So it's more like four or
5 five.

6 Q. And all told, how much time did you spend
7 talking to Mr. Warner about your assignments in this
8 case?

9 A. I think each of the calls with all the
10 experts and defense counsel lasted about an hour
11 each, so that's two, and then another, you know,
12 half hour, an hour, total, between the other three.

13 Q. So is it fair to say you spent about three
14 hours talking to Mr. Warner about the statewide
15 issues?

16 A. Well, the first two hours, we were both on
17 the call together, but other people were talking
18 during those -- during those times.

19 Q. And the third hour -- or was it just half
20 an hour? I'm just trying to understand.

21 A. Thirty minutes and -- and an hour with --
22 I'm sorry. Maybe I misunderstood. Did you mean
23 when we were just talking one on one?

24 Q. Yes.

25 A. Yeah. Somewhere between, as I recall,

1 maybe, again, 30 minutes to an hour between the
2 three all together.

3 Q. Now, Mr. Warner toured other prisons. As
4 I understand it, he toured SADAf, SVSP, and Kern
5 Valley. Is that your understanding?

6 A. Yes.

7 Q. And do you know when he did that?

8 A. I don't know exactly. Around probably
9 two -- two or three weeks ago.

10 Q. Do you know if he went to those prisons
11 before or after you went to LAC?

12 A. It was near the same time. I don't know
13 if it was before or after.

14 Q. And the two -- and the three conversations
15 you had with him, were they before he toured or
16 after or both?

17 A. One was before, maybe two before, and one
18 after, or -- that may be -- you might flip that.
19 I'm not -- I don't remember exactly which was two
20 and which was one, but I know there was at least one
21 conversation before and at least one after.

22 Q. And can you tell me what you discussed
23 with Mr. Warner pertinent to this motion?

24 A. I specifically asked him whether he had
25 seen the -- the forms for inmate grievances, the 602

1 forms, and whether he had seen the 1824 forms and
2 whether there were appropriate boxes for those forms
3 to be -- to be placed in the -- in the housing units
4 that he toured. And he said, "Yes, there were."

5 And then I asked him whether he had
6 reviewed any use of force or investigations and
7 whether it appeared they had followed policy and --
8 and process in those cases, and he said, "For the
9 most part." He said he had -- there were little --
10 there were things that he said he thought could be
11 improved on in the cases he reviewed.

12 Q. Did he tell you how many cases he reviewed
13 at each prison?

14 A. I think he just reviewed a few cases. I
15 don't remember the number exactly.

16 Q. Did he tell you how many?

17 A. He did. I don't recall. It was a
18 hand- -- it was less than a handful, I think. But I
19 may -- again, I may be mistaken. That may be just
20 what he wrote up. I'm -- I'm not sure.

21 Q. Did he tell you how many use of force
22 incidents he reviewed?

23 A. Again, I'm -- I -- I think that he --
24 those are -- I think he just reviewed a few, and I
25 think those were -- they were provided to him by

1 defense counsel. And I think he said there were
2 only a few. But again, I may be mistaken about
3 that.

4 Q. And based on -- on that, he told you
5 everything was fine at those prisons?

6 A. No.

7 MR. DUGGAN: Objection. Misstates prior
8 testimony.

9 THE WITNESS: No. He just said that -- he
10 said they -- he did see the -- the forms, as I said,
11 and -- and in his case, I think he said they were at
12 the podium as opposed to in the office and that
13 there were locked receptacle boxes. And he said the
14 cases that he reviewed weren't perfect, but they
15 were -- they did generally a good job on those
16 cases. And that was the nature of our conversation.

17 BY MS. GRUNFELD:

18 Q. Did he tell you anything else about the
19 three prisons that he was reviewing?

20 A. He told me which prisons. He told me he
21 didn't spend a great deal of time with them because
22 of time constraints, but -- but he told me he did
23 tour them.

24 Q. Anything else?

25 A. Not that I recall.

1 Q. Now, Mr. John Baldwin, did you know him
2 prior to this case?

3 A. I did.

4 Q. How did you know Mr. Baldwin?

5 A. He was the director in Iowa when I was the
6 secretary in California, I believe.

7 Q. So you became friendly at that time?

8 MR. DUGGAN: Objection. Misstates prior
9 testimony.

10 THE WITNESS: Well, we were acquaintances
11 and knew one another, had talked to each other
12 multiple times at training events and those kinds of
13 things. We didn't socialize or talk to each other
14 outside of that setting.

15 BY MS. GRUNFELD:

16 Q. And on how many occasions did you speak to
17 Mr. Baldwin about your assignment in this case?

18 A. He was on both calls that we had with
19 plaintiffs' counsel -- I mean -- sorry. Defendants'
20 counsel, and I didn't talk to him other than that.

21 Q. Okay. Well, what do you recall him
22 telling you about the circumstances at Corcoran,
23 CIW, and CCI?

24 A. He did not tour those facilities. He said
25 that he had reviewed the policies and procedures,

1 they looked to be in order, and that he had reviewed
2 the number of investigations and that while
3 imperfect, they were basically good investigative
4 work being done in the officer discipline and use of
5 force process.

6 Q. Did he tell you how many cases he
7 reviewed?

8 A. I didn't -- I don't recall that, no.

9 Q. Did he tell you anything else about
10 Corcoran, CCI, and CIW?

11 A. I don't -- I don't recall every detail of
12 our conversations together, but it was primarily
13 around the existence of the policies and the quality
14 of the investigations that he reviewed.

15 And then -- I take that back. Because on
16 those -- on the defense counsel calls, he expressed
17 his opinions about some of the statewide remedies as
18 well.

19 Q. And what were his opinions of the
20 statewide remedies?

21 A. As I recall, he -- he agreed that it would
22 be -- that the installation of cameras is generally
23 a good thing, especially the fixed cameras. I think
24 he on the whole felt that the complaint,
25 investigation and discipline process was working. I

1 don't remember any comments about body cameras. He
2 talked about staffing, increase supervisory staff in
3 housing units. That is something that could be
4 helpful.

5 Q. Now, are you reading from your notes of
6 your conversation with him right now?

7 A. No. I'm reading from my declaration to
8 just refresh my memory about what they -- statewide
9 proposed remedies were and to refresh my memory
10 about which -- which ones he just -- he mentioned in
11 particular.

12 THE REPORTER: Can you repeat your answer,
13 Mr. Cate? "No. I'm reading from my declaration to
14 just refresh my memory about what they -- statewide
15 proposed remedies were." And then I couldn't hear
16 you.

17 THE WITNESS: I think that's all I said.

18 THE REPORTER: Okay.

19 THE WITNESS: If I said anything else, it
20 was not pertinent, I guess. I don't remember.

21 MS. GRUNFELD: I think that's all he said.

22 THE REPORTER: Okay.

23 THE WITNESS: And then I believe we talked
24 about the weighing of OC spray. Mr. Warner said he
25 had some experience with that in Washington State.

1 BY MS. GRUNFELD:

2 Q. Did he express a positive view of the
3 weighing of OC spray?

4 A. I -- I think it was also done in -- in --
5 in the division of juvenile justice. And so -- and
6 I don't know if his opinion was based upon
7 Washington State or DJJ, but in a -- certainly in
8 the DJJ setting, yeah, he thought it seemed to be a
9 good idea.

10 Mr. Baldwin and I expressed concern about
11 whether it would be overly burdensome to add that
12 to -- in a prison as large -- as large as we have in
13 California.

14 Q. Do any of the three of you believe that OC
15 spray is overused in CDCR?

16 MR. DUGGAN: Objection. Compound. Calls
17 for speculation.

18 THE WITNESS: I didn't -- I don't recall
19 either of them saying that, and I don't have that
20 opinion. If you're referring to the department as a
21 whole and as a general matter.

22 BY MS. GRUNFELD:

23 Q. Well, as you may recall, Judge Wilken
24 ordered reforms to that process without specificity
25 as to what exactly those would be, so...

1 Many of our declarations allege excessive
2 use of OC spray, so I just wondered if you had
3 formed any opinion one way or another about its use,
4 and it sounds like you have not; is that correct?

5 MR. DUGGAN: Objection. Assumes facts.
6 Misstates prior testimony.

7 THE WITNESS: It may have been the
8 sampling that I had at LAC, but I didn't see an
9 overuse in those particular cases. I certainly know
10 from my experience that there are staff who use it
11 more often than others. And so, again, it's a
12 training issue, it's a supervisory issue. The -- I
13 think -- I always get concerned about any sweeping
14 order that doesn't include a pilot first, for
15 example, to understand the -- the impacts of a
16 particular idea. One, to know whether it will work
17 at all, and, two, whether it will be burdensome.

18 BY MS. GRUNFELD:

19 Q. Did you feel that way about the
20 three-judge order reducing the population of
21 California's prisons in 2009?

22 MR. DUGGAN: Objection. Outside the scope
23 of Mr. Cate's assigned task.

24 THE WITNESS: Did I find that -- what --
25 I'm sorry. Did I find it to be...

1 BY MS. GRUNFELD:

2 Q. I thought you testified that you're always
3 concerned about sweeping orders, so I was asking you
4 about that one.

5 A. Yes, that concerned me.

6 Q. But it worked out pretty well, didn't it?

7 MR. DUGGAN: Objection. Compound.

8 Outside the scope of Mr. Cate's assigned task.

9 THE WITNESS: Well, you can thank Jerry
10 Brown and realignment in my view for that.

11 BY MS. GRUNFELD:

12 Q. Pardon?

13 A. You can thank Jerry Brown and realignment
14 and many reforms that have come up along the way.
15 There's no -- there's no question, Counsel, that the
16 prisons were overcrowded and that they're much
17 easier to manage at this crowding level than they
18 were before.

19 Q. And, in fact, to Mr. Duggan's point that
20 this is outside the scope, on page 44 of your
21 declaration, you state, "It was well documented that
22 this level of population was unsustainable."
23 Referring to prior to the three-judge order.

24 Do you recall that testimony?

25 MR. DUGGAN: Objection. Vague.

1 THE WITNESS: I was actually referring to
2 the -- to the situation when I was the secretary.
3 When I took over in 2008, it was 162,000, I think,
4 and -- and scheduled to grow to 210,000 if
5 population estimates held true. And that was
6 unsustainable for sure, very difficult.

7 BY MS. GRUNFELD:

8 Q. Yes. And that's why there was a
9 three-judge court convened, right?

10 MR. DUGGAN: Objection. Misstates prior
11 testimony. Calls for speculation. Calls for legal
12 analysis. Outside the scope of Mr. Cate's assigned
13 task.

14 THE WITNESS: Well, the -- the court was
15 convened because the -- the plaintiffs asserted that
16 the unconstitutional conditions related to medical
17 and mental healthcare were as a result of the
18 crowding, as I recall, and could not be alleviated
19 otherwise, and the court agreed with that.

20 BY MS. GRUNFELD:

21 Q. And you testified against the order in
22 that case, right?

23 MR. DUGGAN: Objection. Argumentative.

24 THE WITNESS: I believed that we could
25 manage without that prisoner release order as we

1 were driving the population down through other
2 reforms.

3 BY MS. GRUNFELD:

4 Q. I'd like to turn back to page 33 of your
5 declaration. You conclude that, "Statewide,
6 investigations were generally professional and
7 reached the correct result."

8 Do you see that conclusion there?

9 A. I'm sorry. Which line?

10 Q. Lines 15 through 16.

11 A. And we're on page 33?

12 Q. Yes.

13 A. Oh, I see the heading. Yes.

14 Q. Yes, that is your conclusion, right?

15 A. Yes.

16 Q. And that is based on the conversations
17 with Mr. Warner and Mr. Baldwin and your review of
18 the 15 cases from LAC; is that correct?

19 A. And the inspector general's reports.

20 Q. The ones you looked at?

21 A. Yes.

22 Q. Any other basis for that opinion?

23 A. Again, my experience with the -- in
24 corrections and -- and the materials in the case as
25 a whole, but yes, my -- my views are largely based

1 on the IG's reports, my -- what I -- what I saw at
2 LAC and what the other experts reported at the other
3 high-security prisons and then also the -- the
4 statements made by Mr. McGinnis concerning the --
5 the changes at RJD.

6 Q. On page 34, lines 4 through 5, you state
7 that, "The AIMS investigations of use of force are
8 documented in SOMS" -- S-O-M-S -- "thereby allowing
9 for the tracking of investigations and data mining
10 for trends."

11 Do you see that sentence?

12 A. Yes.

13 Q. Have you seen any tracking reports from
14 SOMS about AIMS investigations?

15 A. No. I got -- Ms. Miller said that was
16 possible to do with the -- with the technology in
17 AIMS.

18 Q. Do you know if Ms. Miller has that data?

19 A. I don't think she's -- I don't think she's
20 conducted that data mining, at least in my last
21 conversation with her.

22 MS. GRUNFELD: I'd like to take a break so
23 we can copy some exhibits, please.

24 (Discussion held off the record.)

25 (Recess taken.)

1 MS. GRUNFELD: We are back on the record
2 after a brief recess.

3 BY MS. GRUNFELD:

4 Q. Mr. Cate, you are still under oath. Do
5 you understand that?

6 A. Yes.

7 Q. I'd like to turn, if we could, please, to
8 your declaration at page 37.

9 A. Okay.

10 Q. In paragraph 92, beginning at line 13, you
11 state, "Contrary to the views of plaintiffs, wardens
12 are very well suited to make disciplinary decisions
13 following a finding of staff misconduct."

14 In your experience, have you ever
15 encountered a warden who failed to adequately hold
16 officers accountable?

17 MR. DUGGAN: Objection. Incomplete
18 hypothetical.

19 THE WITNESS: Yes, there are wardens who
20 have done every possible thing well, and poorly, I'm
21 sure. I -- I know that when I was the inspector
22 general that -- that we would disagree with wardens
23 and raise it above their level to have -- to appeal
24 that decision to the secretary's office. So, yes,
25 that happens.

1 BY MS. GRUNFELD:

2 Q. Do you have any knowledge of what's
3 happening right now about that in CDCR?

4 MR. DUGGAN: Objection. Compound.

5 THE WITNESS: What's happening about --
6 about -- about what?

7 BY MS. GRUNFELD:

8 Q. Are there any wardens currently at CDCR
9 who are not holding staff accountable for staff
10 misconduct? Do you have any knowledge about that?

11 A. Only from the IG's reports in terms of
12 what's happening statewide.

13 Q. Is there a specific discussion of that in
14 an investigator general report?

15 A. Yes. They -- they review the -- the
16 warden's findings and discipline in their public
17 reports.

18 Q. And again, you haven't read all of the
19 reports over the last two to four years, but the
20 ones you have read is what you're relying on for
21 that conclusion?

22 A. About those issues, yes.

23 Q. Okay. Any other information you have
24 about whether wardens today in CDC are -- are
25 holding staff accountable for staff misconduct?

1 MR. DUGGAN: Objection. Vague. Compound.

2 THE WITNESS: Only that the process for
3 transparency and accountability of those decisions
4 is the same as it was, and so that gives me some
5 confidence in that overall, those decisions are
6 either well made or they're appealed up to a higher
7 level, or if the inspector general disagrees
8 ultimately, that those get a public hearing.

9 BY MS. GRUNFELD:

10 Q. You say here in paragraph 92, that -- or
11 that the, "Disciplinary matrix was a national
12 model."

13 Are you referring there to the Department
14 of Corrections and Rehabilitation Operations Manual
15 employee disciplinary matrix penalty levels?

16 A. Yes.

17 Q. And that's in the D-O-M Section 33030.16
18 et seq., right?

19 MR. DUGGAN: Objection. Calls for
20 speculation.

21 THE WITNESS: I'll take your word for it.

22 BY MS. GRUNFELD:

23 Q. According to the matrix -- we'll call it
24 the matrix -- "Unreasonable use of force, if proven,
25 is punishable with a Level 1 penalty, which is an

1 official reprimand."

2 Do you consider that appropriate?

3 A. It depends on the circumstances. And
4 again, there's aggravating factors that have to be
5 applied as well.

6 Q. Well, even with the aggravating factors,
7 according to the matrix, the highest discipline
8 could be salary reduction of 5 percent for 3 to
9 5 months or suspension without pay for 3 to 12
10 workdays.

11 Do you feel that's appropriate?

12 MR. DUGGAN: Objection. Assumes facts.
13 Incomplete hypothetical.

14 THE WITNESS: If -- if an officer commits
15 an assault on -- on an inmate, then that's a
16 different violation. An officer who commits a --
17 a -- an act of -- of battery on an inmate un- --
18 unprovoked or not as part of any normal use of force
19 can be fired for that. Officers have been fired for
20 all kinds of assaults on inmates.

21 BY MS. GRUNFELD:

22 Q. Do you have any examples of that?

23 A. Sure. Officers in Pelican Bay when I was
24 there as the inspector general, that's -- that's
25 what led to Madrid.

1 Q. They were fired, and that led to the
2 lawsuit?

3 A. No. That was just part of the -- of
4 the -- of what happened is that there was all kinds
5 of use of force happening in the department that
6 wasn't being punished and some of it was officers
7 shooting inmates from -- from a -- on the yard
8 without cause. And those inmates -- those officers
9 needed to be fired. And so --

10 Q. My question, though, Mr. Cate, was not
11 what happened related to the Madrid case but whether
12 you are aware of an -- of an officer who's been
13 dismissed for using force against a prisoner?

14 MR. DUGGAN: Objection. Misstates prior
15 testimony. Argumentative.

16 BY MS. GRUNFELD:

17 Q. If you can think of a specific example.

18 A. I -- I don't have an example in mind, but
19 I -- I am aware of officers who have done outrageous
20 things over the course of the years at CDCR who have
21 been fired, and they -- some of those involved
22 assaulting inmates.

23 Q. And you feel the matrix that exists for
24 punishment is appropriate and working well?

25 A. I do.

1 Q. So you disagree with Dr. Schwartz on that
2 point?

3 A. I think Dr. Schwartz looked at that one
4 issue in isolation. Again, there are many things an
5 officer can be -- can be alleged to have -- have
6 done in an incident like that. And so oftentimes
7 what you'll see is what appears to be a normal use
8 of force get ratcheted up because of the serious
9 nature of it, because he lied, because he failed to
10 follow a policy on multiple occasions. All of those
11 factors can go into the -- the matrix. Now, that
12 said, it doesn't mean that it -- you know, it's not
13 subject to continual improvement over time. That's
14 all -- that's true of every -- everything the
15 department does.

16 Q. On paragraph -- again, continuing with
17 paragraph 92 of your report, at the bottom of the
18 page, you state, "No less than eight officers at RJD
19 were fired for misconduct involving disabled inmates
20 in 2018-2019 based on the CDCR discipline matrix, a
21 signal as to the strength of the existing system."
22 Is that your view?

23 A. Yes.

24 Q. Did counsel for defendants tell you that
25 of those eight terminations, only two were actually

1 final all the way through the system?

2 MR. DUGGAN: Objection. Attorney-expert
3 communication. Work product.

4 THE WITNESS: The -- the fact that the --
5 that the hiring authority or the department made a
6 decision to terminate those officers is a good sign
7 to me. That's a -- that is a signal of strength.
8 Now, if they ultimately -- if those cases get
9 overturned for some reason or something else happens
10 along the way, then that can be a signal of --
11 that -- that something needs to be improved. I was
12 trying to make the point that -- that I thought that
13 was a -- a strong statement of the -- by the hiring
14 authority and the department to -- to at least move
15 towards firing those officers.

16 BY MS. GRUNFELD:

17 Q. And if the -- if it were only two officers
18 over that time period, would your opinions about the
19 signal of strength be the same?

20 A. Let me answer you, if any officer gets
21 fired from an institution for -- for this kind of
22 behavior, it sends shock waves through that
23 institution. Everybody knows it. And so -- you --
24 you don't want a situation where -- where, you know,
25 they're beating these cases altogether and coming

1 back and -- you know, that's -- that's not a good
2 sign, but I -- I do like the fact that they fired
3 these officers or are trying to fire those officers.

4 Q. Let's look at the statistics for Lancaster
5 on terminations over this time period, 2018 through
6 2020. Did you review that data?

7 MR. DUGGAN: Are we going to mark an
8 exhibit, Gay?

9 MS. GRUNFELD: Well, first, I just want to
10 ask if Mr. Cate reviewed data on terminations of
11 officers at LAC between 2018 and 2020.

12 THE WITNESS: Yes, I've seen these.

13 BY MS. GRUNFELD:

14 Q. So you are -- are referencing what I'd
15 like to mark in this case as Exhibits 8 through 11.

16 (Whereupon, Exhibits 8 to 10 were
17 marked for identification.)

18 MS. GRUNFELD: The first is a two-page
19 spreadsheet entitled "2018 CSP-LAC Sustained
20 Discipline." Exhibit 9 is another two-page document
21 entitled "2019 CSP-LAC Sustained Discipline."
22 Exhibit 10 is a two-page document entitled "2020
23 CSP-LAC Sustained Discipline."

24 (Whereupon, Exhibit 11 was marked for
25 identification.)

1 MS. GRUNFELD: And Exhibit 11 is a
2 document that my office compiled using the previous
3 three documents to seg- -- segregate out certain
4 data from these three spreadsheets reflected in
5 Exhibits 8, 9, and 10.

6 BY MS. GRUNFELD:

7 Q. I believe you testified, Mr. Cate, that
8 you had reviewed this data.

9 A. I -- I think the -- the -- the discipline
10 charts that -- that are from the department, yes.
11 There's a -- there's a third one here that says,
12 "2019 LAC Sustained Discipline." And so I'm not
13 sure if there's actually three 2019 pages or -- I
14 have three 2019 pages. One of them is loose and the
15 others are stapled.

16 MR. DUGGAN: That's -- that's my fault.
17 That's -- that's all together there. You don't have
18 to worry with that.

19 THE WITNESS: Okay.

20 MS. GRUNFELD: Yes. The -- what should be
21 marked as 8, 9, and 10 are the data from the
22 department.

23 THE WITNESS: Okay.

24 BY MS. GRUNFELD:

25 Q. And then the fourth one-page document

1 should be a document that my office created.

2 A. All right.

3 Q. Great. So prior to today, you received
4 the data on discipline at LAC; am I right?

5 A. Yes.

6 Q. Okay. Now, of course, 2020 is a partial
7 year. But for the other two, it's a full year. In
8 reviewing this data, did you see any examples of
9 discipline imposed on staff at LAC for staff
10 misconduct against incarcerated people?

11 MR. DUGGAN: Objection. Assumes facts.
12 Outside the scope.

13 THE WITNESS: Well, the -- the first one
14 is a -- is a failure to conduct proper count that
15 had an inmate death involved. So again, I -- I
16 didn't review that -- the underlying facts. But
17 it -- it appears from the context that it was --
18 that the inmate died as a result of -- of someone
19 failing to conduct a proper count, or at least the
20 death was related to that. And so it may have been
21 that -- that the inmate had died and they just found
22 out later than they should have that the inmate
23 died. I don't know that it's causally related,
24 right? But there's two of those.

25 Overfamiliarity, I think is a -- is -- is

1 something that puts an inmate at risk. There's
2 inmate housing error, inmate death. I'm not sure
3 what INOD means. Again, overfamiliarity. Failure
4 to conduct proper count, inmate death.

5 There's an allegation of dishonesty and
6 insubordination during an inmate transport.

7 Q. Where do you see that?

8 A. On the first line of the second page of
9 2018, there's an assault battery, discrimination
10 harassment DT. I don't know if the -- who that's --
11 who the victim of that was. And that's all in 2018.

12 Q. Yeah, let me ask you a question, as you
13 look at the chart, where it says "SOL" next to the
14 allegations, what does that stand for?

15 MR. DUGGAN: Object. Calls for
16 speculation.

17 THE WITNESS: It would -- it would appear
18 to be statute of limitations. I would -- that's
19 what I would assume.

20 BY MS. GRUNFELD:

21 Q. Yes, there was something else I wanted to
22 ask you about, which is that under the CCPOA
23 contract, all investigations of staff misconduct
24 must occur within one year of discovery; is that
25 your understanding?

1 MR. DUGGAN: Objection. Calls for
2 speculation.

3 THE WITNESS: I think that was the -- that
4 is -- I believe that's my understanding, yes. I
5 think that's still true.

6 BY MS. GRUNFELD:

7 Q. In other words, the department has to
8 investigate and impose discipline within a certain
9 time period or they lose their right to do so; is
10 that correct?

11 A. Right.

12 Q. And that statute of limitations there is
13 because if -- is related to each of these incidents
14 of discipline, right?

15 MR. DUGGAN: Objection. Calls for
16 speculation.

17 THE WITNESS: Do you mean that the ones
18 that are listed here are related to the ones that
19 are in the same row?

20 BY MS. GRUNFELD:

21 Q. Yes. I'm asking you why you think they
22 are tracking the SOL on this chart.

23 MR. DUGGAN: Objection. Calls for
24 speculation.

25 THE WITNESS: Well, presumably so that

1 they don't violate it.

2 BY MS. GRUNFELD:

3 Q. All right. Now, you've just speculated
4 that certain of these disciplines here, such as the
5 allegations related to improper counting, are
6 related to prisoners. I'm wondering, did you ever
7 discuss this data that you have in front of you with
8 anyone else before today?

9 A. I don't believe so.

10 Q. Did you ask anyone what these different
11 incidents were?

12 A. No.

13 Most are -- most are -- are pretty
14 self-evident.

15 Q. Do you know, as you sit here, whether any
16 person has been dismissed for their treatment of an
17 incarcerated person at LAC in the last three years?

18 MR. DUGGAN: Objection. Compound. Calls
19 for speculation.

20 THE WITNESS: There were individuals
21 dismissed for dishonesty. I don't know whether
22 those were related to inmate use-of-force cases or
23 not.

24 BY MS. GRUNFELD:

25 Q. And how would we go about finding out what

1 those cases were about?

2 MR. DUGGAN: Objection. Calls for
3 speculation.

4 THE WITNESS: There's a case number and --
5 and the subject's name, all the information that --
6 that you have before you.

7 BY MS. GRUNFELD:

8 Q. So that would be on file at the prison?

9 MR. DUGGAN: Objection. Calls for
10 speculation.

11 Outside the scope of Mr. Cate's
12 assignment.

13 THE WITNESS: Either at the prison or
14 headquarters.

15 BY MS. GRUNFELD:

16 Q. Okay. If you take a look at the fourth
17 document, it's a one-page compilation that my office
18 prepared. It should be Exhibit 11 to this
19 deposition. And we've titled it "2019 CSP-LAC
20 Sustained Discipline." Do you see that?

21 A. I do.

22 Q. So this is our best estimate of discipline
23 for incidents involving incarcerated people, staff
24 misconduct against incarcerated people.

25 We -- we don't really know what happened

1 with two of them. So we are estimating there were
2 four -- between four and six incidents in which
3 discipline was imposed over the years 2018 to 2020.

4 Does that strike you as adequate --

5 MR. DUGGAN: Objection.

6 BY MS. GRUNFELD:

7 Q. -- based on the allegations that you've
8 reviewed in this case?

9 MR. DUGGAN: Objection. Assumes facts.
10 Incomplete hypothetical.

11 THE WITNESS: So these -- you are basing
12 on that they happened in -- they look like they all
13 happened in 2019, is that not true?

14 BY MS. GRUNFELD:

15 Q. That -- that -- these are the ones -- yes,
16 that we can tell -- either from documents we
17 received in this case or from the description --
18 involved incarcerated people, in other words, not a
19 DUI, not a domestic violence in your own home, but
20 rather, what we are talking about in this case,
21 which is abuse and retaliation against incarcerated
22 people. Use of force, you see this person appears
23 to have received a suspension and then there was a
24 settlement. Those are -- those are our estimates of
25 between four and six impositions of discipline at

1 LAC. Does that seem about right to you, or do you
2 think that's kind of low?

3 MR. DUGGAN: Objection. Calls for
4 speculation. Assumes facts. Outside the scope of
5 Mr. Cate's assignment. It's an incomplete
6 hypothetical.

7 MS. GRUNFELD: I'm just contrasting this,
8 of course, with your comments about RJD and
9 wondering why you didn't comment on the discipline
10 at LAC since that was the prison that you were
11 tasked with reviewing and you had this data.

12 THE WITNESS: I -- I'm not able to
13 determine from this data whether there is anything
14 wrong with the disciplinary process at -- I mean,
15 that -- that there is something wrong with the --
16 with this part of the disciplinary process at LAC.
17 This doesn't tell me that the warden is -- is wrong.

18 BY MS. GRUNFELD:

19 Q. What would you need to determine that?

20 A. I'd need to know the underlying facts
21 of -- well, first: Is force being reported and/or
22 inmate harm being reported, so that we know what are
23 all the cases that happened. Secondly, are the
24 investigations being done in a professional manner,
25 such that the cases provide the factual

1 underpinnings for the warden to be able to review.
2 Third, for those cases that need investigation, are
3 those going to OIA and the quality of those
4 investigations. And then finally, is the warden
5 making an appropriate choice based upon all the
6 information before him or her -- him in this case --
7 regarding what actually happened at LAC. And
8 that -- that is -- that's a -- a big process. And I
9 didn't -- I did some of that work, meaning I looked
10 at the availability of -- of access to the officer
11 discipline process. I looked at the investigations
12 locally. I read the IG's report about the quality
13 of investigations at the office -- I mean at the
14 internal affairs office, which appear to be very
15 good. And I looked at the determinations by the
16 IG's office that the wardens are doing a good job in
17 identifying these issues, sending them up. And then
18 as I recall, they -- I only saw one or -- one of
19 these where the inspector general's office asked for
20 executive review on the punishment.

21 Q. What -- you are referring, again, to these
22 charts?

23 A. Yes.

24 Q. Okay. Now, this data that we have in
25 front of us for LAC, did you request it for any of

1 the other prisons at issue in Plaintiff's motion?

2 A. I did not.

3 Q. So as we sit here today, do you know how
4 many terminations of staff there have been for staff
5 misconduct against an inmate at any of the other
6 prisons at issue in the motion?

7 A. No. I based my opinions on the --
8 regarding the discipline from the IG reports.

9 Q. By the way, in -- in thinking about AIMS
10 as one aspect of the disciplinary system, are you
11 aware that it was changed by CDCR at the last minute
12 to allow the warden to decide which allegations go
13 to AIMS?

14 MR. DUGGAN: Objection. Assumes facts.

15 THE WITNESS: I know the warden has to
16 decide whether to send the case to OIA, if there's
17 that level of evidence, as we discussed earlier. It
18 was my understanding that if you have an allegation
19 that -- of officer misconduct that involves the use
20 of force that is not reported or involves a use of
21 force that is -- results in serious bodily injury,
22 that those cases are -- are sent to AIMS directly
23 from the grievance coordinator's office. So it -- I
24 don't -- I'm not aware that the wardens can -- other
25 than sending them to OIA directly -- keep them

1 locally.

2 BY MS. GRUNFELD:

3 Q. Are you aware that AIMS is limited to
4 written prisoner grievances?

5 MR. DUGGAN: Objection. Assumes facts.

6 THE WITNESS: I'm aware that it has to be
7 in writing from some source.

8 BY MS. GRUNFELD:

9 Q. But you didn't know it has to be the
10 prisoner himself?

11 MR. DUGGAN: Objection. Assumes facts.

12 THE WITNESS: No, I -- I don't think
13 that's true. I think if the inmate has -- needs
14 assistance in writing it -- or a grievance, that
15 that has to be provided to that inmate and that that
16 inmate, that still counts for the -- for the
17 process. Even if an ADA helper or a staff member or
18 someone else fills it out on the -- on the person's
19 behalf, that that still triggers the grievance
20 process.

21 BY MS. GRUNFELD:

22 Q. Right. But it can't come from a family
23 member or a plaintiff's counsel or the community,
24 right?

25 MR. DUGGAN: Objection. Assumes facts.

1 THE WITNESS: That can lead to a grievance
2 and that -- that can -- if you get that kind of
3 report, they can speak to the -- to the individual
4 and that can -- then a grievance can be created, but
5 generally it comes from the -- the inmate's desire
6 to grieve the process him or herself.

7 Q. Do you think incidents involving
8 nonserious bodily injury, so in other words,
9 something less than serious bodily injury, should go
10 to AIMS?

11 MR. DUGGAN: Objection. Calls for
12 speculation. Incomplete hypothetical.

13 THE WITNESS: The use-of-force process, I
14 think, does a -- a sufficient job in a -- a normally
15 well-run prison to manage those cases because it
16 goes not only to the -- to the case coordinator, but
17 then to the facility captain and then to the
18 associate warden and then to the institution
19 executive review committee, which is a
20 multidisciplinary committee involving, for example,
21 administrators outside of the warden's chain of
22 command. I think that's a pretty good, solid system
23 for your normal use-of-force case, particularly
24 because there are -- there can be, you know, 700 of
25 these in a month. And so it's -- it's a large

1 volume to handle, and so many are very minor.
2 And -- and I'm sorry, there can be -- I'm sorry, 700
3 and 800 in a year, and they're -- some of them are
4 very minor. And so they don't need to go to
5 Sacramento. And they can be handled, I think,
6 appropriately in -- at the prison level.

7 BY MS. GRUNFELD:

8 Q. Did you ever become aware of a trial held
9 in the Coleman case in 2013 involving cell
10 extractions?

11 MR. DUGGAN: Objection. Assumes facts.

12 THE WITNESS: I don't believe so.

13 BY MS. GRUNFELD:

14 Q. Okay. Did you know that some of the cell
15 extractions were shown on video to Judge Karlton and
16 reforms were made to the cell extraction process?

17 MR. DUGGAN: Objection. Assumes facts.

18 THE WITNESS: I wasn't aware of that.

19 BY MS. GRUNFELD:

20 Q. Did you read Eldon Vail's declaration in
21 this case?

22 A. I did.

23 Q. Do you know Eldon Vail?

24 A. I do.

25 Q. What do you think of his work?

1 A. I disagree with it in large part.

2 Q. Okay. I mean, just generally or is there
3 something in specific that you disagree with?

4 A. In particular, with -- with regard to
5 the -- to his determinations as to the quality of
6 the officer discipline process, investigation and
7 discipline process and with regard to many of the
8 statewide remedies.

9 Q. And you basically created the statewide
10 investigation and discipline system and so you are
11 very proud of that work, right?

12 MR. DUGGAN: Objection. Assumes facts.

13 THE WITNESS: Well, it was -- it was as
14 much Don Specter and Michael Bean as me. We all sat
15 in a room together with John Hagar and then we met
16 with Judge Henderson every week until we got to a
17 place -- and the department -- until we got to place
18 where we thought it was really good. And I do think
19 it was really good.

20 BY MS. GRUNFELD:

21 Q. And you still think it's really good,
22 right?

23 A. I still think it's very good.

24 Q. Have you ever heard of officers getting
25 around some of use-of-force requirements by shouting

1 "inmate unresponsive" and "stop resisting"?

2 MR. DUGGAN: Same objection. Assumes
3 facts.

4 THE WITNESS: No.

5 BY MS. GRUNFELD:

6 Q. Looking for just a moment at some of your
7 comments on the statewide remedies. You talk about
8 body-worn cameras on page 40 of your report. In
9 line 10, page 40, you state that body-worn cameras,
10 "...the cost would be prohibitive." Do you see
11 that?

12 A. I do.

13 Q. What do you base that on?

14 A. The -- generally my understanding of -- of
15 the way technology procurement works in California,
16 what I've seen in a number of statewide procurements
17 relating to technology, the costs are always really
18 high. And I read -- or I listened to the Alameda
19 County Sheriff's office talk about just the -- the
20 burdensomeness of putting 400 cameras on their
21 staff. And to do that for 30,000-plus officers in
22 California, or even just the officers at the seven
23 high-security prisons, I think I -- I estimated that
24 there would be 40 videos for every officer. That
25 would be a quarter million videos per day.

1 It's just a much bigger task than anyone
2 who hadn't experienced it can -- can estimate. Very
3 difficult, in a vacuum, to understand how big a
4 process that is.

5 Q. Have you ever overseen a correctional
6 institution using body-worn cameras?

7 A. No. But I've worked with street officers
8 and -- on some -- on a few occasions, but never have
9 in a -- in a prison or jail setting, no.

10 Q. And what do you mean, you've worked with
11 street officers?

12 A. During my time at the inspector general's
13 office, during my time at -- as the secretary --
14 well, not as the secretary of corrections -- at the
15 department of justice, there were -- even the
16 nascent days of officers beginning to wear body
17 cameras, they were first beginning to be discussed.
18 But I haven't worked on them in any kind of a
19 systemwide way.

20 Q. Okay. Have you done any estimates of the
21 cost?

22 A. No.

23 Q. You state, "I am aware that Los Angeles
24 County and other jails employ body cameras." Los
25 Angeles County Jail is the largest jail in the

1 country with over 5,000 prisoners. Why would it
2 work at Los Angeles County Jail and not at a CDCR
3 prison?

4 MR. DUGGAN: Objection. Assumes facts.

5 THE WITNESS: I don't know the cost at the
6 LA County Jail, and I certainly do know that that's
7 a system that has its problems and has for a long
8 time. So I'm just saying it's not a panacea for all
9 things. And again, I -- I think it's going to be
10 expensive and burdensome when rolled out at a system
11 the size of -- of our system.

12 BY MS. GRUNFELD:

13 Q. In thinking, though, about George Floyd
14 and some of the other terrible incidents that have
15 come to light this year, do you agree that body-worn
16 cameras are becoming a more accepted and demanded
17 remedy in policing in the United States today?

18 MR. DUGGAN: Objection. Calls for
19 speculation. Outside the scope of Mr. Cate's
20 assignment.

21 THE WITNESS: As I understand it, more
22 corrections system are beginning to experiment with
23 body-worn cameras. I think I've read four or five
24 different examples where they are trying it in one
25 part of the system or another. And it's certainly

1 true that more and more officers who worked in -- on
2 the streets are using them, which makes sense
3 because you can't have a -- you can have a fixed
4 camera in a patrol car, but you cannot have as many
5 as we can have in a prison setting, for example.

6 BY MS. GRUNFELD:

7 Q. The OIG recently issued a report about an
8 incident that happened behind a tarp at [REDACTED]. And I
9 guess you didn't read that report so you wouldn't
10 know whether body-worn cameras would have helped in
11 that situation with the sound, so I won't ask about
12 that.

13 You state that "fixed cam-" -- "fixed
14 camera systems can also include audio recording
15 ability, and" -- and you refer to CCWF. Have you
16 seen the prison -- the -- the cameras in -- in
17 action there at CCWF?

18 A. No. That was based on my interview of Amy
19 Miller.

20 Q. I see. So she told you about CCWF. Okay.
21 Have you ever heard sound in a recording
22 of an incident in a prison?

23 A. Yes.

24 Q. When -- when was that?

25 A. I don't remember exactly. I've -- I've

1 seen dozens of -- of video clips over the years
2 that -- that include sound. I -- I don't recall now
3 exactly where I was or what I was doing, whether
4 that was here or somewhere else, but I've definitely
5 experienced that, and they're of various quality,
6 right.

7 Q. Right. I mean, depending on where the
8 camera is and how much ambient noise there is, it
9 could be easy or hard to -- to hear what's
10 happening?

11 A. Right.

12 Q. What about your fellow experts? Did
13 Mr. Baldwin say he supports body-worn cameras?

14 MR. DUGGAN: Objection. Calls for
15 speculation.

16 THE WITNESS: I think everybody was
17 concerned with the fact that it's nascent in the
18 correctional setting.

19 BY MS. GRUNFELD:

20 Q. And so -- okay. By "nascent," you mean
21 new?

22 A. Yeah. It's -- it's untested largely.
23 And -- and the -- not only the cost but the --
24 the -- the process of -- of providing for the
25 technology, the process of training on it, the

1 process of -- of setting up policies regarding when
2 it should turn on and when it shouldn't. I was
3 impressed by the materials -- I think in Eldon
4 Vail's expert report, he included a seminar on body
5 cameras that included Alameda County and other
6 individuals talking about the strengths and
7 weaknesses of it. And it's certainly nothing to
8 take on lightly. There are -- it's a -- it's a big
9 investment both in time and energy. And so that's
10 all I was trying to point out.

11 Q. It sounds like you feel there are problems
12 at LA County Jail but not at CDCR, so it's worth it
13 for LA County Jail. Am I right that that's what
14 you're thinking?

15 MR. DUGGAN: Objection. Misstates prior
16 testimony.

17 THE WITNESS: That's not what I'm
18 thinking.

19 BY MS. GRUNFELD:

20 Q. Okay. You just -- I thought you said
21 there are problems in LA County Jail, so...

22 A. There are. I was just pointing out it
23 doesn't -- it didn't solve them. It may help in
24 some circumstances, but no one should expect that it
25 will do -- it will solve any problem that someone is

1 trying to solve or that it will do that in a better
2 way than fixed cameras would.

3 Q. On page 41 of your declaration, you state,
4 at Lines 3 and 4, "Actual evidence of serious
5 misconduct by an officer already triggers a change
6 in assignment or provision of administrative time
7 off by the warden in most cases."

8 What do you base that on?

9 A. That's based on my conversation with CDCR
10 administrators as well as Warden Johnson.

11 Q. Did they provide you a specific statute or
12 policy that provides for that?

13 A. I just asked where they -- where the
14 decision lied, and they all said it was with warden,
15 and that warden has the discretion to -- to suspend
16 someone, put them on administrative leave, or move
17 them, and that that was common in the department.

18 Q. On page 43 of your declaration, you
19 discuss the proposed 90-day check-in for retaliation
20 like PREA?

21 A. Yes.

22 Q. And you reject that proposal, stating, "It
23 would be a massive administrative burden if applied
24 statewide to every staff misconduct allegation. I
25 did not find any evidence of a retaliation problem

1 justifying that burden here and, therefore,
2 plaintiffs' proposal is not necessary."

3 When you wrote this, had you read the
4 decision by Judge Wilken transferring two prisoners
5 out of RJD because they were retaliated against?

6 A. I mean, again, I had only heard about it,
7 I hadn't -- I hadn't read it, and I -- I don't know
8 the facts behind it.

9 Q. Well, the allegation was that they were
10 retaliated against for filing declarations in the
11 case, so...

12 A. Was that the finding of the department or
13 the court?

14 Q. The court.

15 A. Okay.

16 Q. So -- all right. So you don't agree
17 that -- that there should be a PREA check-in for
18 people who allege to have misconduct?

19 A. There are thousands of staff misconduct
20 allegations, and they occur all the time and with --
21 each one would set a new 90-day requirement in
22 place, and some inmates make staff misconduct
23 allegations every week. They -- they could be
24 manipulated to the point where everybody is getting
25 a PREA check-in every week across an enormous

1 system. Again, within PREA, and even for those
2 inmates who are particularly vulnerable, the idea
3 has some merit, but I just don't think it's
4 practical systemwide.

5 MS. GRUNFELD: Okay. Let's take a brief
6 break and then I'll wrap it up.

7 (Recess taken.)

8 MS. GRUNFELD: We are back on the record
9 after a brief recess. Mr. Cate, you're still under
10 oath.

11 BY MS. GRUNFELD:

12 Q. One other area I failed to ask you about
13 that I was wondering your views on, that is
14 antinepotism rules. Do you know if CDCR has any
15 rules against family members working together?

16 MR. DUGGAN: Objection. Outside the scope
17 of Mr. Cate's assignment.

18 THE WITNESS: As -- as I recall, there are
19 rules around supervising family members. I don't
20 recall, as I sit here, how broad that goes.

21 BY MS. GRUNFELD:

22 Q. And, in fact, many -- many members of the
23 same family do work for CDCR frequently; is that
24 right?

25 A. Yes.

1 MR. DUGGAN: Objection. Outside the
2 scope.

3 THE WITNESS: Yes, that's true.

4 BY MS. GRUNFELD:

5 Q. And do you think a reduction in that kind
6 of nepotism would improve staff accountability?

7 MR. DUGGAN: Objection. Outside the scope
8 of Mr. Cate's assignment. Calls for speculation.

9 THE WITNESS: I don't have any evidence
10 that family members are -- are involved in one
11 another's disciplinary processes.

12 BY MS. GRUNFELD:

13 Q. Are you -- do you recall the testimony or
14 the report of the OIG about the different family
15 cars up at High Desert and how that had effect -- an
16 effect on accountability?

17 MR. DUGGAN: Objection. Assumes facts.

18 THE WITNESS: I -- I don't -- I -- I must
19 not have read that part of the report. I don't
20 recall that.

21 MS. GRUNFELD: Okay. Subject to my
22 getting more documents that I may have further
23 questions about, I have no further questions about
24 what's been produced to date.

25 I thank Mr. Cate for his patience and

1 availability today.

2 If you could please send me the invoice, I
3 will send you a check.

4 And I thank everyone for their forbearance
5 with the Zoom platform. And I conclude my
6 questions. Thank you.

7 THE WITNESS: Thank you, Counsel.

8 MS. GRUNFELD: Thank you, Counsel. I have
9 no questions.

10 (Discussion held off the record.)

11 MS. GRUNFELD: And we would like an
12 expedited transcript, please.

13 THE REPORTER: Do you need a rough draft?

14 MS. GRUNFELD: Yes.

15 THE REPORTER: Okay. Mr. Duggan -- Duggan
16 (different pronunciation), do you need a copy?

17 MR. DUGGAN: Yes, we will be wanting a
18 copy. Yes.

19 THE REPORTER: Do you need it -- a rough
20 draft or an expedite as well?

21 MR. DUGGAN: Yeah, we'll go ahead and do
22 that, yeah. Sure.

23 THE REPORTER: Okay. Thank you. Let me
24 make sure I have your emails. It will probably be
25 to you -- you'll probably have a rough draft

1 tonight.

2 MR. DUGGAN: Will it have a tally of the
3 time on it?

4 THE REPORTER: I can put time codes if you
5 want. Do both of you want time codes on the
6 transcript?

7 MR. DUGGAN: We do.

8 MS. GRUNFELD: Does that cost extra?

9 THE REPORTER: No -- at least I don't
10 think so.

11 MS. GRUNFELD: Sure. Put them on.

12 (Deposition concluded at 4:56 p.m.

13 Declaration under penalty of perjury
14 on the following page hereof.)

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DEPOSITION OFFICER'S CERTIFICATE

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand, which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript [] was [X] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 9/21/2020

Siew Ung, RPR, CSR No. 13994

Exhibit 97

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiff,

vs.

Case No. C94 2307 CW

GAVIN NEWSOM, et al.,

Defendants.

EXPERT DEPOSITION OF BERNARD WARNER

CONFIDENTIAL PORTIONS EXCERPTED

APPEARING REMOTELY FROM

SACRAMENTO COUNTY, CALIFORNIA

September 18, 2020

10:08 A.M.

REPORTED BY:

Robin A. Elawady

CSR No. 10863

APPEARING REMOTELY FROM CONTRA COSTA COUNTY, CALIFORNIA

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WITNESS: BERNARD WARNER

EXAMINATION

PAGE

BY MS. GRUNFELD

7

CONFIDENTIAL TESTIMONY
(Bound Separately)

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BERNARD WARNER

Armstrong, et al. vs. Newsom, et al.

September 18, 2020

Robin A. Elawady, CSR No. 10863

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(Note: All exhibits were electronically provided to the
reporter.)

1 REPORTED REMOTELY FROM CONTRA COSTA COUNTY, CALIFORNIA

2 FRIDAY, SEPTEMBER 18, 2020, 10:08 A.M.

3
4 THE REPORTER: The attorneys participating in this
5 deposition acknowledge that I am not physically present in
6 the deposition room and that I will be reporting this
7 deposition remotely, pursuant to Federal Rule of Civil
8 Procedure 29. They further acknowledge that, in lieu of
9 an oath administered in person, the witness will verbally
10 declare his testimony in this matter is under penalty of
11 perjury. The parties and their counsel consent to this
12 arrangement and waive any objections to this manner of
13 reporting.

14 Please indicate your agreement by stating your
15 name and your agreement on the record.

16 THE WITNESS: Bernard Warner, and I'm in
17 agreement.

18 MS. GRUNFELD: Good morning. Gay Grunfeld, for
19 the plaintiffs, I am in agreement.

20 MR. MAIORINO: Good morning. Trace Maiorino with
21 the Attorney General's office, for the defendants, I'm in
22 agreement.

23 THE REPORTER: Will the witness kindly present
24 his government-issued identification by holding it up to
25 the camera for verification.

1 (Witness presents government-issued identification
2 and identity is verified.)

3 THE REPORTER: It's a little blurry.

4 Gay, does that work for you?

5 MS. GRUNFELD: Yes, and I know the witness. He
6 is who he says he is.

7 THE REPORTER: Okay. Thank you.

8 Mr. Warner, please raise your right hand.

9 Do you solemnly state that the testimony you are
10 about to give in the cause now pending will be the truth,
11 the whole truth, and nothing but the truth, so help you
12 God.

13 THE WITNESS: I do.

14 EXAMINATION

15 BY MS. GRUNFELD:

16 Q. Good morning, again, Mr. Warner.

17 A. Good morning.

18 Q. As you know, I'm Gay Grunfeld, and I represent
19 John Armstrong in the plaintiff class in this class
20 action, Armstrong versus Newsom. I took your deposition
21 13 years ago when you were the head of the DJJ and I was
22 representing the plaintiff class in LH versus
23 Schwarzenegger. Since then, I can imagine you have been
24 deposed or given testimony in court on a number of
25 occasions; is that correct?

1 A. I would not say a number of occasions, but
2 actually fairly infrequently.

3 Q. Would you like me to go over the rules of
4 depositions, or are you familiar with those?

5 A. I believe I'm -- well, you might want to
6 reference the rules so that I clearly understand them.

7 Q. Sure. The court reporter will be taking down our
8 testimony today when -- your testimony today when we are
9 on the record, so it is very important that you answer
10 audibly so she can get a clear record of your testimony.
11 If you need a break, please wait until the question has
12 been answered and then we can take a break. And as I
13 discussed with counsel for the defendants a little
14 earlier, due to the COVID-19 epidemic, the BlueJeans
15 platform we're using, there may be some technical glitches
16 with exhibits that may slow us down a little bit today,
17 but we'll do our best to get through that.

18 Is there any reason, such as medication or a lack
19 of sleep that you would be unable to give your best
20 testimony today?

21 A. No.

22 Q. If I ask you a question that you don't
23 understand, please ask me to clarify it, and I will, I'll
24 do my best. And I think that's really all we need to go
25 over in terms of procedure, except that this case is

1 governed by a number of protective orders. Have you
2 received the protective orders from Defendant's counsel?

3 A. I have.

4 Q. There's three in particular that are important to
5 this motion. Did you acknowledge and agree to be bound by
6 those protective orders?

7 A. I did.

8 Q. Very good. Our first exhibit this morning is
9 Exhibit 1, the notice of deposition and subpoena to you as
10 an expert witness to produce certain documents and to
11 appear today.

12 MS. GRUNFELD: Madam reporter, can you please
13 mark that document, and Mr. Maiorino, can you please hand
14 that document to the witness.

15 (Exhibit 1, remotely introduced and identified.)

16 MR. MAIORINO: Yes, I'll do that.

17 MS. GRUNFELD: Thank you.

18 MR. MAIORINO: Okay. So Plaintiffs' notice of
19 depo. I'm going to hand this to you, Mr. Warner.

20 BY MS. GRUNFELD:

21 Q. Mr. Warner, have you seen this document before?

22 A. Yes, I have.

23 Q. When did you receive it?

24 A. I believe perhaps last Friday or Monday. I
25 cannot remember the exact date, but it was earlier in the

1 week, I believe.

2 Q. Upon receipt of this document, did you take steps
3 to produce the documents that are referenced herein?

4 MR. MAIORINO: We will object to the extent it
5 calls for work product documents that we've already
6 previously served objections to.

7 BY MS. GRUNFELD:

8 Q. Even when Mr. Maiorino objects, you can and
9 should answer the question.

10 A. I am looking through it now.

11 (Reviewing.)

12 I believe that all of the documents that are
13 identified here have been produced. I do have a working
14 draft of a document that was not produced.

15 Q. What's the working draft?

16 A. It's just my notes and outline of the issues
17 that -- that I prepared as part of my final declaration.

18 Q. And why did you not produce that?

19 MR. MAIORINO: It's protected -- we would object
20 to the extent that it's protected by attorney work
21 product.

22 THE WITNESS: I think that it's -- it's certainly
23 consistent with the information that's in the
24 deposition -- excuse me -- in the declaration that I
25 provided. And my understanding was that those notes

1 and/or outline of my report was something that I did not
2 have to submit to.

3 BY MS. GRUNFELD:

4 Q. And did you take notes in longhand or on the
5 computer?

6 A. Longhand.

7 Q. And can you give me an estimate of how many notes
8 you took?

9 MR. MAIORINO: Objection. Vague and ambiguous,
10 to the extent it calls for attorney work product, we'd
11 also object.

12 THE WITNESS: So just in terms of any notes that
13 I took in preparation for my declaration, is that the
14 question?

15 MS. GRUNFELD: Yes.

16 THE WITNESS: So as you know, I did three site
17 visits. I probably have a couple pages of notes, rough
18 notes that I took. I have some notes from discussions
19 that I had with Amy Miller from the CDCR, but most of them
20 are just sort of notes for myself so that I could organize
21 my thoughts in terms of the information that's provided in
22 the declaration.

23 BY MS. GRUNFELD:

24 Q. What is your report writing process like? Do you
25 use a computer? longhand? How did you go about writing

1 your declaration in opposition to Plaintiff's motion for
2 statewide relief?

3 A. I use a computer for the most part.

4 Q. And who drafted the first draft of this
5 declaration?

6 MR. MAIORINO: Objection. Vague and ambiguous.

7 THE WITNESS: Again, I submitted kind of a
8 working draft, and then worked with Department of Justice
9 attorneys in the final preparation of the declaration.

10 BY MS. GRUNFELD:

11 Q. You listed some documents that you reviewed in
12 your declaration, and when we went through what you
13 produced last night, which is what the defendants' lawyers
14 produced last night, we did not see the KVSP use of force
15 outline. Can you tell me what that document is?

16 A. As I recall, that would be information about
17 incidents of use of force within Kern Valley State Prison.

18 MS. GRUNFELD: Mr. Maiorino, is there a reason
19 that was not produced to us?

20 THE WITNESS: I believe the information -- excuse
21 me for interrupting.

22 MS. GRUNFELD: Go ahead.

23 THE WITNESS: -- is -- is the date is consistent
24 with what is in -- provided by CDCR Office of Research and
25 data that's in COMPSTAT, which I believe is one of the

1 documents that Plaintiffs have access to.

2 BY MS. GRUNFELD:

3 Q. We did get some COMPSTAT data from your file, but
4 I'm curious as to what this other document is, it seems
5 highly relevant.

6 A. Again, it's the same information that is
7 identified from -- from those documents by looking at
8 years 2017, '18, and 2019.

9 MS. GRUNFELD: Okay. Mr. Maiorino, can we have a
10 copy of that?

11 MR. MAIORINO: I'll certainly look into it, but I
12 understood that may have been an outline that was reviewed
13 or -- at the prison during the tour, but we'll follow up,
14 and if there's a copy to produce, and if it's not
15 protected, we'll produce it.

16 BY MS. GRUNFELD:

17 Q. Was this a document that was given to you at the
18 prison, Mr. Warner?

19 A. I'm not familiar with that document. Could you
20 repeat the name of the document again.

21 Q. According to your report, it's one of the last
22 bullet points in the Exhibit B to your report. It says,
23 KVSP, use of force outline. And this is one of the
24 documents that was provided by Defendants to you that we
25 were unable to locate in the production last night.

1 A. I'm sorry. I believe that -- in looking at that
2 again -- it may be my identification of that. It is a
3 form that's used by -- there's -- there's a use of force
4 class counselor specialist at the facility, and they have
5 a checklist that they go through to make sure that when
6 you look at use of force, you check the box for those
7 relevant elements. It's a check and balance of, was the
8 report -- use of force report investigation done in a
9 thorough and appropriate way.

10 Q. So is it a form that the prison has created for
11 their internal use?

12 A. My sense of that form is that it's one that is
13 universally used, but I can certainly make sure that I
14 provide that to Defendants' counsel and make that
15 available to you.

16 Q. Great. So just to recap and move on, this is a
17 form that you believe is used within CDCR prisons to
18 ensure that use of force reports are completed in a proper
19 manner?

20 MR. MAIORINO: Objection. Misstates prior
21 testimony.

22 THE WITNESS: It's a -- it's a form that --
23 again, staff uses a checklist to make sure that all the
24 appropriate elements of use and force investigation are
25 applied. And I believe it's -- it's reviewed also as part

1 of the investigative process. If you look at the
2 investigation process, you'll see a variety of items
3 checked: was a medical report done, was the inmate
4 interviewed, those kind of things.

5 MS. GRUNFELD: Very good.

6 BY MS. GRUNFELD:

7 Q. Now, when were you retained for this assignment?

8 A. Toward the beginning of August, last month.

9 Q. What were the circumstances under which you were
10 retained to write your declaration?

11 MR. MAIORINO: Objection. Vague and ambiguous.

12 THE WITNESS: Circumstances, in terms of how I
13 was engaged into the --

14 MS. GRUNFELD: Yes.

15 THE WITNESS: -- the position?

16 I was initially involved a few months ago when
17 DOJ was looking for experts; and I was asked, is there
18 anyone that I would recommend. And so I recommended, at
19 that point, a few people, but Ken McGinnis was the person
20 that I was familiar with that I knew did that work.
21 Subsequent to that, the case expanded into more
22 facilities, and I worked with Joanna Hood, and ultimately
23 Trace and went through a process of discussion with them
24 before being engaged.

25 ///

1 BY MS. GRUNFELD:

2 Q. But I guess I'm wondering how DOJ contacted you
3 in the first place?

4 A. Oh, the original contact was from Monica
5 Anderson, who, as you recall, we worked together in the
6 Farrell case.

7 Q. And when Ms. Anderson contacted you, what did you
8 discuss?

9 MR. MAIORINO: Objection. To the extent it calls
10 for attorney work product, that's protected from
11 disclosure.

12 THE WITNESS: Again, initially it was a
13 discussion around, did I know experts, and I -- I
14 identified at that point Ken McGinnis. And again, the
15 second conversation was in pursuing more experts. If I
16 was interested, then I should work through Ms. Hood to
17 ensure that I go through the appropriate process within
18 DOJ.

19 BY MS. GRUNFELD:

20 Q. Now, how do you --

21 MS. GRUNFELD: Let's go off the record for just a
22 moment, please.

23 (Discussion held off the record.)

24 MS. GRUNFELD: Back on the record.

25 ///

1 BY MS. GRUNFELD:

2 Q. Mr. Warner, when Ms. Anderson first spoke to you
3 about this matter, what did she tell you about the facts?

4 A. Very, very little description. It was,
5 essentially, looking for someone to be involved in the
6 Armstrong case, and looking at issues in terms of the --
7 the -- I'm trying to remember the exact details -- but
8 it -- there was no great detail in terms of the facts of
9 the case. It really was around, who do I know who's a
10 court expert who's had experience in litigation. And I
11 would say there were not -- facts of the case were not
12 gone into much detail, because it really was something
13 that I was only giving a reference of people who might be
14 interested in doing it.

15 Q. How did you know Ken McGinnis?

16 A. I know Ken -- there's a National Professional
17 Association of Correctional Administrators, it used to be
18 called ASCA, Association of State Correctional
19 Administrators, it's now called CLA, Correctional Leaders
20 Association. That collegial professional group meets
21 anywhere from four -- around four times a year for
22 business meetings. Ken is an associate member as the
23 former director in Illinois and in Michigan.

24 Q. So you --

25 A. I also know Mr. McGinnis because he was involved

1 as an expert in a case in Mississippi as well.

2 Q. And that was when you were in the private prisons
3 in Mississippi?

4 A. Yes.

5 Q. Now, did anyone at the DOJ tell you why
6 Mr. McGinnis is not currently serving as an expert on the
7 statewide motion?

8 MR. MAIORINO: Objection. To the --

9 THE WITNESS: No.

10 MR. MAIORINO: -- extent it calls for attorney
11 work product.

12 BY MS. GRUNFELD:

13 Q. Do you know if anyone at DOJ was disappointed in
14 Mr. McGinnis's report?

15 MR. MAIORINO: Objection. Vague and ambiguous.

16 THE WITNESS: No.

17 MR. MAIORINO: Objection to the extent it calls
18 for attorney -- excuse me -- work product.

19 BY MS. GRUNFELD:

20 Q. Have you read Mr. McGinnis's report in opposition
21 to the RJD motion?

22 A. I have.

23 Q. And Mr. McGinnis, of course, agrees that there
24 were problems at RJD. Do you see that point?

25 MR. MAIORINO: Objection. Misstates,

1 mischaracterizes the document that counsel is referring
2 to.

3 (Discussion held with court reporter.)

4 THE WITNESS: I apologize, Robin.

5 Could you repeat the question, Gay.

6 MS. GRUNFELD: Robin will read it back. And
7 there is no need to restate the objection. It's on the
8 record.

9 MR. MAIORINO: Thank you.

10 (Record read.)

11 THE WITNESS: Well, what I would say in terms of
12 that question is that he did identify issues of concern at
13 RJD, and clearly identified a history of problems and made
14 some recommendations in terms of how those were addressed
15 at the institution.

16 BY MS. GRUNFELD:

17 Q. Including agreeing that cameras would be a good
18 idea there; right?

19 MR. MAIORINO: Objection. Misstates,
20 mischaracterizes the opinions submitted by Mr. McGinnis;
21 and it's beyond the scope of the designation for this
22 particular witness.

23 THE WITNESS: My recollection is that
24 Mr. McGinnis identified that having more cameras at RJD
25 would improve the operation of the facility.

1 MS. GRUNFELD: Let's mark next in order Exhibit 2
2 to this deposition, a six-page order by the Honorable
3 Claudia Wilken, issued on September 8th, 2020, entitled
4 Order for Additional Remedial Measures.

5 (Exhibit 2, remotely introduced and identified.)

6 BY MS. GRUNFELD:

7 Q. Just before we review this document together,
8 Mr. Warner, I want to confirm on the record that you were
9 retained by DOJ for purposes of defending against
10 litigation; is that correct?

11 A. I was retained by DOJ to certainly prepare
12 information for the defense as part of their response to
13 the court's order and the plaintiff's order.

14 Q. To oppose that motion; right?

15 A. I -- I'm not sure I was brought in to say, you
16 need to oppose the motion. I think it was to assess the
17 institutions and the processes around accommodation and
18 grievance process and other systemic issues.

19 Q. But you understood that you were retained as an
20 expert to serve a purpose in litigation; is that correct?

21 A. That's correct. I was retained by defense
22 counsel to prepare a report for them.

23 Q. Looking for a moment at Exhibit 2, the order for
24 remedial measures, have you seen this document before?

25 A. I have not reviewed this -- this document.

1 Q. Were you aware that Judge Wilken issued two
2 orders on September 8th involving R.J. Donovan Prison,
3 which we'll refer to in this deposition as RJD?

4 A. I'm familiar with one document. Can you refresh
5 my memory in terms of the second document.

6 Q. In front of you is one of the two orders which
7 you stated you had not read yet; the other was a longer
8 order. Did you read that order?

9 A. No, I did not.

10 Q. Were you aware of the two orders?

11 A. I was -- I was aware that the judge had issued an
12 order. I did not read her -- the complete order. I've
13 had some discussions with the attorneys at DOJ that
14 outline some of the elements, but I have not read the
15 entire document.

16 Q. What is your understanding of the court's order?

17 MR. MAIORINO: Objection. Vague and ambiguous,
18 beyond the scope of his designation.

19 THE WITNESS: May I have a minute to look at the
20 document?

21 BY MS. GRUNFELD:

22 Q. Not -- I'm just asking, before we look at the
23 document, you mentioned that you were aware --

24 A. Yeah, so my -- my understanding -- there was some
25 discussion around ordering cameras, both fixed cameras and

1 body cameras, and that, I think, piece was most relevant
2 in terms of that same question in looking at the other
3 three facilities that I looked at.

4 Q. Okay. So turning to the judge's order for
5 further remedial -- additional remedial measures, if you
6 could please take a look at page three of the document.
7 If you look at lines 3 through 12 -- could you take a look
8 at those, please.

9 A. Yes.

10 (Reviewing.)

11 I'm done reading.

12 Q. Thank you. So as you can see, Judge Wilken has
13 ordered that operational surveillance cameras shall be
14 installed at RJD within 90 days. Do you have any reason
15 to think that's a good or bad idea? Do you have any
16 opinion on that?

17 MR. MAIORINO: Objection. Beyond the scope of
18 his designation.

19 THE WITNESS: Well, as I commented in my
20 declaration, and I think that would be the sort of similar
21 thoughts in terms of RJD, is that I don't think any --
22 well, I can't dispute that adding cameras at high-secure
23 facilities provides you better ability to provide
24 surveillance, forensic information and would contribute to
25 the ongoing security and safety of the facility. I think

1 the issue is the scope and the time frame to be able to do
2 that.

3 My opinion would be that 90 days would be very
4 ambitious, but I'm not aware of all the planning that CDCR
5 has done to be able to make an informed decision in terms
6 of -- I know that there, obviously, has been some work,
7 there was a BCP that was prepared that outlined the
8 utilization of cameras. So I would just, I guess, raise
9 some concerns about the time frame, the numbers of
10 cameras. As I said in my report, I think it's important
11 to target cameras in the right area of the prison, look at
12 those that have the highest rate of incidents, that have
13 the poorest coverage.

14 I think I also referenced that implementation
15 means you have to train staff appropriately as well.
16 You've added a new piece of technology to the institution,
17 and so that -- they need to understand -- whereas they
18 weren't looking at cameras before, who is designated to
19 observe them, and make sure that -- I also mention that
20 one has to be careful, because I think it's been certainly
21 demonstrated direct supervision of inmates and engaging
22 with inmates is the best strategy to improve the culture
23 of a prison; and when you rely too much on technology,
24 sometimes you -- the -- it ends up, unfortunately,
25 creating distance between staff and inmates as well.

1 So I think -- I certainly would agree that
2 cameras would be helpful. It's really around the
3 implementation and kind of the strategic focus on what's
4 the time frame, what's the training, and what does the
5 implementation look like.

6 BY MS. GRUNFELD:

7 Q. And you fear that 90 days is ambitious. Have you
8 personally ever overseen a camera deployment project?

9 A. I have not.

10 Q. Now, after DJJ, you were part of a private prison
11 corporation called MTC; is that correct?

12 A. After DJJ I became a secretary of the Department
13 of Corrections in Washington --

14 Q. Of course.

15 A. -- for five years --

16 Q. And then --

17 A. -- and then from there, then I went to a private
18 prison. Yes, ma'am.

19 Q. And private prisons have extensive camera
20 coverage; is that correct?

21 MR. MAIORINO: Objection. Vague and ambiguous,
22 overbroad.

23 THE WITNESS: There were 25 facilities, but what
24 I would say -- and there were different security levels
25 and different housing units, and design, but I would say

1 there was more utilization of cameras in MTC facilities.

2 BY MS. GRUNFELD:

3 Q. More than what?

4 A. More than what is available in high security
5 facilities and prisons in California.

6 Q. While you were with MTC, and we'll come back to
7 this later in more detail, did you hear of anyone
8 installing cameras? Did you talk to anyone about how long
9 it took to get cameras up and running in a facility?

10 MR. MAIORINO: Objection. Vague and ambiguous,
11 compound, overbroad.

12 THE WITNESS: Not in any detail. I was involved
13 in -- an example would be, if there was a pre-audit and
14 the pre-auditor identified an area that didn't have camera
15 coverage, and there may be allegations or data, then the
16 recommendation would be to provide -- to enhance camera
17 coverage. And so I couldn't tell you the exact time
18 frame, but I think there's -- there's a lot of variables
19 in which I don't know in terms of RJD and the
20 infrastructure of wiring; the broadband capacity to retain
21 information in cameras; again, the training of staff.

22 So without really sufficiently looking at a
23 detailed work plan, it would be hard for me to say whether
24 90 days is possible. My -- my opinion is that that would
25 be ambitious, and I think that the parties would be

1 interested in having something that contributes to the
2 safety and security of the facilities. So all those
3 issues around implementation are very important.

4 BY MS. GRUNFELD:

5 Q. Absolutely. Did Defendants give you a copy of
6 their 2016 contract in which they laid out the plan to put
7 cameras in every prison in the state?

8 A. I did not have access to that.

9 Q. Did Defendants give you copies of documents
10 showing that LAC, for example, is already cabled for
11 cameras?

12 A. I did not receive that.

13 Q. You did, however, look at the BCP; is that
14 correct?

15 A. That's correct.

16 Q. So since that BCP was issued, there's been a plan
17 to put cameras at RJD, Salinas Valley, and CIW, those
18 three were chosen in the BCP for rollout; right?

19 A. That's my understanding.

20 Q. Was anyone -- did you receive any information
21 about why those three prisons were chosen for the budget
22 change proposal?

23 MR. MAIORINO: Objection. Beyond the scope of
24 designation.

25 THE WITNESS: I was not.

1 BY MS. GRUNFELD:

2 Q. Did you read the declaration of Jeff McComber in
3 opposition to the statewide motion?

4 A. I did.

5 Q. Do you know why Mr. McComber says that he wants
6 to put cameras in two facilities at LSC?

7 MR. MAIORINO: Objection. Goes beyond the scope
8 of designation.

9 THE WITNESS: I don't recall the specifics of
10 those statements.

11 BY MS. GRUNFELD:

12 Q. If you could return for a moment to Judge
13 Wilken's order, and the paragraph we were looking at, you
14 will see that the Court has also ordered that within 60
15 days of the finalization of the remedial plan, CDCR must
16 begin using body-worn cameras for all correctional
17 officers at RJD who have interaction with class members.

18 Do you see that?

19 A. I do.

20 Q. And do you think that's a good idea?

21 MR. MAIORINO: Objection. Beyond the scope of
22 designation, vague and ambiguous.

23 THE WITNESS: Again, I would reference my -- my
24 declaration and opinion that fixed cameras are a much
25 better remedial solution. I think that they provide a

1 much wider lens, they're much, I would say, more proven in
2 terms of their use within a correctional facility. My
3 concern about body cameras is that it is new technology.
4 I'm not aware of other large correctional systems that
5 have used body cameras, and I guess I would worry -- my --
6 my opinion would be that I have, again, seen cases where
7 technology is introduced too quickly for staff to use and
8 use appropriately in terms of training.

9 And so my recommendation, in terms of my opinion
10 in my report, was that you should start with fixed
11 cameras. You should look at their implementation and how
12 they are working and maybe consider body cameras at some
13 point down the road. But I think introducing both at the
14 same time at a complex operation would be very
15 challenging.

16 BY MS. GRUNFELD:

17 Q. Are you aware that LA county jail is using
18 body-worn cameras?

19 A. I'm not.

20 Q. You mentioned in your report that you spoke to
21 someone at the Florida Department of Corrections, which
22 has begun using body-worn cameras. Did you take any notes
23 on that conversation?

24 A. I took some notes on that, yes.

25 Q. Did you produce those to us?

1 MR. MAIORINO: Objection, to the extent it calls
2 for --

3 THE WITNESS: No.

4 MR. MAIORINO: -- work product.

5 BY MS. GRUNFELD:

6 Q. As you sit here today, what do you recall about
7 your conversation with a person, whose name I've
8 forgotten, and you can tell us --

9 A. Ricky --

10 Q. -- at the DOC for Florida?

11 A. Yeah. His name is Ricky Dixon. He's the deputy
12 secretary for the Florida Department of Corrections. He
13 shared with me that they did it as a pilot, and they
14 terminated the pilot. He said there were concerns
15 around -- that some attorneys represented concerns around
16 HIPAA, potential HIPAA violations, and I did not get into
17 a detailed discussion with him about what -- what some of
18 those privacy issues might have been. He expressed
19 concern about their bandwidth and the technology itself
20 and being able to store the information. He did say that
21 they were open to reconsidering that in the future, but
22 did not have any specific details around that.

23 Q. Have you told me everything that you can recall
24 about your conversation with Ricky Dixon?

25 A. I think I outlined most of it. Again, I think

1 he -- he said that they did provide some value, but the
2 barriers, in terms of the pilot, outweighed their ability
3 to implement it appropriately, but that he -- he did say,
4 too, that he would be open at some point to using them.

5 Q. Now, your former boss, Eldon Vail, has
6 recommended body-worn cameras for CDCR. Are you aware of
7 that?

8 A. I am aware of that.

9 Q. Did you read Mr. Vail's report on that topic?

10 A. I did.

11 Q. And you understand that body-worn cameras would
12 give us sound and interactions and a closer view of
13 certain interactions; right?

14 MR. MAIORINO: Objection. Vague and ambiguous,
15 assumes facts.

16 THE WITNESS: Yes, I did read that in his
17 testimony -- or his declaration report.

18 BY MS. GRUNFELD:

19 Q. Okay. And do you personally have any experience
20 overseeing correctional officers using body-worn cameras?

21 A. I do not.

22 Q. Is there a reason that you reject Mr. Vail's
23 recommendation?

24 A. I'm not sure I would characterize it as rejecting
25 his recommendation. My opinion was based on what I

1 thought would be, at least in the facilities that I looked
2 at, and I was not asked to look at RJD, so I don't really
3 have an opinion on -- an informed opinion on RJD, but my
4 opinion was that it's new technology; that if you are
5 adding cameras, and depending on the scope, but my
6 experience around a facility as large and complex as SATF
7 or Salinas Valley, that you're probably talking about 800
8 to a one thousand cameras, which is a massive change in
9 making sure that staff are using those cameras, observing
10 them, being able to do what other post-order requirements
11 they have as staff, that they're functional and that that
12 should be the -- the priority in what I think would be the
13 greatest opportunity to provide security in facilities.

14 And my response specifically to body cameras is,
15 it is, from my experience, untested, and that my
16 recommendation to CDCR would be that they start with fixed
17 cameras.

18 BY MS. GRUNFELD:

19 Q. Is it possible for the largest correctional
20 organization in the county to do two things at once?

21 MR. MAIORINO: Objection. Vague and ambiguous,
22 incomplete hypothetical.

23 THE WITNESS: I -- I think that being the largest
24 also means, in many cases, it's the most complex. And my
25 experience around implementation of technology is that you

1 test things in incremental pilots and you prove the
2 practice, and you -- so I think that you have to look at
3 what's the scope in front of you. Cameras will be added
4 value, which I've already testified to, and I would say
5 that doing both simultaneously, we -- we know CDCR has a
6 lot of complex initiatives. It's a -- it's a very
7 complex, large system, and I think that, in my experience,
8 I've learned that you do fewer things well and right and
9 thoroughly, and I think the best value is fixed cameras.

10 BY MS. GRUNFELD:

11 Q. Have you been following national trends with the
12 death of George Floyd and police accountability which call
13 for body-worn cameras as standard operational procedure
14 for all police interactions?

15 MR. MAIORINO: Objection. Incomplete
16 hypothetical, overbroad.

17 THE WITNESS: Sometimes I forget the question by
18 the time Trace is finished -- no, I have -- I have. I
19 think we all have, unfortunately, seen the tragedies that
20 exist in communities around the country.

21 BY MS. GRUNFELD:

22 Q. And so there is a growing national consensus that
23 body-worn cameras should be on officers and activated
24 during certain interactions, would you agree with that?

25 MR. MAIORINO: Objection. Incomplete

1 hypothetical, vague and ambiguous, assumes facts.

2 THE WITNESS: From -- from my viewing of it, I
3 think law enforcement is certainly moving toward increased
4 use of body cameras for officers to get a more detailed
5 view of incidents that occur.

6 BY MS. GRUNFELD:

7 Q. Have you seen or -- let me start with, have you
8 read the Office of Inspector General's report about the
9 prison we all call [REDACTED] involving two officers who
10 beat a person with mental illness behind a tarp recently,
11 it's called the Sentinel Report from August 2020. Did you
12 have a chance to read that report?

13 A. I did not.

14 Q. Do you know if body-worn cameras are a way to get
15 footage on -- video footage on situations that occur
16 behind blind spots in audio -- in larger video
17 surveillance?

18 MR. MAIORINO: Objection. Vague and ambiguous,
19 assumes facts, incomplete hypothetical.

20 THE WITNESS: Yeah, I don't, again, know the
21 details of that specific incident, and I would hate to say
22 what -- what could have improved that, what sounds like a
23 very tragic event. What I would say is that, again, I
24 still look at the greater benefit of looking at fixed
25 cameras. And if -- if there was, again, more information

1 or some testing or piloting of body-worn cameras, of
2 course, that could be considered. But I would -- for
3 reasons I've stated, I think there's -- the greatest value
4 in improving safety and security and having a forensic
5 record of events in sort of the broadest scope would be
6 fixed cameras.

7 BY MS. GRUNFELD:

8 Q. And your main concerns are bandwidths, which is
9 another word for money and complexity?

10 MR. MAIORINO: Objection. Argumentative,
11 misstates prior testimony, mischaracterizes prior
12 testimony.

13 THE WITNESS: Bandwidth is literal, although, I
14 would say two things, literal and figurative. Literal
15 bandwidth is the storage space, the number of officers you
16 have at a large, high security institution, and you want
17 to keep the videotape from -- the -- sort of -- the range
18 varies, nationally, from 30 to 90 days for forensic
19 purposes. The ability to have the capacity to store that
20 information requires significant literal bandwidth in the
21 infrastructure of the facilities.

22 The figurative bandwidth is to focus on, again, a
23 solution of increasing cameras, increasing the forensic
24 ability through fixed cameras in -- in facilities.

25 ///

1 BY MS. GRUNFELD:

2 Q. Let's turn to a new exhibit that I'd like to --

3 THE WITNESS: Gay, before we do that, can I just
4 go fill my water. Can we take three minutes?

5 MS. GRUNFELD: Let's go off the record.
6 Absolutely.

7 (Deposition in recess, 10:56 a.m. to 11:06 a.m.)

8 BY MS. GRUNFELD:

9 Q. Mr. Warner, we are back on the record after a
10 brief break. You understand you are still under oath;
11 right?

12 A. Yes, I do.

13 Q. Prior to the break, we were discussing new
14 technology during your experience with CDCR. Has it,
15 historically, been resistant to new technology?

16 MR. MAIORINO: Objection. Vague and ambiguous,
17 overbroad, argumentative, incomplete hypothetical, beyond
18 the scope of his designation.

19 THE WITNESS: To clarify, I never worked for
20 Adult Corrections and CDCR, which is, obviously, the topic
21 we're talking about. When I came to DJJ and we were in
22 the middle of implementing remedial plans, there were,
23 again, often challenges in terms of being able to
24 implement many different initiatives in terms of how to
25 prioritize and what the approval process is and making

1 sure that one gets the right funding. So I have no direct
2 experience with CDCR in knowing what their specific
3 barriers might be, but I would just -- again, my own
4 experience around implementing technology is that it is
5 more than just putting the tools in place, that it really
6 encompasses the implementation of that, the training of
7 staff, and, you know, working out how they actually become
8 part of the operations of the facility.

9 BY MS. GRUNFELD:

10 Q. Around the time I deposed you in 2007, do you
11 recall the Court in Armstrong issuing an order requiring
12 CDCR to track people with disabilities using a real-time
13 networked computer system?

14 MR. MAIORINO: Objection. Overbroad, goes beyond
15 the scope of designation, vague and ambiguous.

16 THE WITNESS: I'm not sure I can remember the --
17 that day 13 years ago. I'm sorry.

18 BY MS. GRUNFELD:

19 Q. Have you ever heard of something called DECS, the
20 Disability and Effective Communication System?

21 A. No, I have not.

22 Q. In general, in the prisons that you oversaw, the
23 private prisons, did they employ computerized technology
24 to track the various offenders and their whereabouts and
25 their disabilities codes and those kinds of issues?

1 MR. MAIORINO: Objection. Vague and ambiguous,
2 overbroad.

3 THE WITNESS: So it's important to understand
4 that when we contract and -- Management & Training
5 Corporation contracted with, I believe, 13 different
6 jurisdictions, we would follow the contractual
7 requirements of the contract; and, of course, that would
8 be certainly to follow all ADA expectations. But in terms
9 of the technology used, the tracking of those inmates in
10 the system, many of those functions -- most of those
11 functions were state functions in which they had staff who
12 would manage and track those who are disabled.

13 BY MS. GRUNFELD:

14 Q. Now, in terms of your interactions with CDCR, do
15 you know Secretary Ralph Diaz?

16 A. I do.

17 Q. And how do you know him?

18 A. Same as mentioned earlier about Ken McGinnis,
19 through the Correctional Leadership Association, formerly
20 known as the Association of State Correctional
21 Administrators.

22 Q. Are you friendly with Mr. Diaz?

23 MR. MAIORINO: Objection. Vague and ambiguous.

24 THE WITNESS: I'd say my interactions at those
25 meetings were friendly.

1 BY MS. GRUNFELD:

2 Q. And do you know why he's resigning?

3 MR. MAIORINO: Objection. Vague and ambiguous,
4 overbroad, goes beyond the scope of his designation, calls
5 for speculation.

6 THE WITNESS: I have not had a conversation with
7 Mr. Diaz about that. But if you recall in my tenure with
8 CDCR in five years there were five different secretaries.
9 So it's -- it's not -- it's a very high stress, demanding
10 job, and I would imagine at some point it -- it weighs on
11 people, but I -- that's purely speculation on my part. I
12 have not spoken to him.

13 BY MS. GRUNFELD:

14 Q. And do you have any perception, one way or
15 another, as to whether CDCR currently has a culture
16 problem?

17 MR. MAIORINO: Objection. Vague and ambiguous,
18 overbroad, calls for speculation, goes beyond the scope of
19 his designation.

20 THE WITNESS: I'm not sure I have -- other than
21 the three prisons that I visited, I don't really have much
22 information to determine -- to be able to answer that
23 question in an informed manner.

24 BY MS. GRUNFELD:

25 Q. Are you aware that Mr. Diaz had to apologize for

1 inappropriate social media posts following the death of
2 George Floyd?

3 MR. MAIORINO: Objection. Vague and ambiguous as
4 to "had."

5 THE WITNESS: I was not aware of that.

6 BY MS. GRUNFELD:

7 Q. Now, are you friendly with Matthew Cate?

8 MR. MAIORINO: Objection. Vague and ambiguous.

9 THE WITNESS: I've -- I've known Matt for 15
10 years going back to a time when he was OIG during the
11 Farrell case and ultimately secretary.

12 BY MS. GRUNFELD:

13 Q. And do you all socialize?

14 A. Occasionally, we socialize. I've moved back to
15 Sacramento in the last month and a half, so we've seen
16 each other a couple of times.

17 Q. Where did you move back to Sacramento from?

18 A. Salt Lake City.

19 Q. Did you recommend Matthew Cate for the expert
20 position in this case?

21 A. I did not.

22 Q. Do you know who did?

23 MR. MAIORINO: Objection. Vague and ambiguous,
24 overbroad, goes beyond the scope of his designation.

25 THE WITNESS: I do not.

1 BY MS. GRUNFELD:

2 Q. Did you recommend James Baldwin for the expert
3 position in this case?

4 A. I did not.

5 Q. Do you know James Baldwin?

6 A. I do.

7 Q. How do you know him?

8 A. Similar as professional association when he was
9 the director of Iowa originally and then the state of
10 Illinois.

11 Q. How often do you go to these conferences with the
12 heads of the correctional organizations?

13 A. Yeah, I'm not sure I'd characterize them as
14 conferences. They're -- they're meetings, and a large
15 part of that is business meetings. There's committees
16 that exist as part of their structure. They're in
17 association with the American Correctional Association
18 meetings, so I guess you could broadly say that they're
19 associated with a conference, but it's more of a
20 professional association.

21 And to answer your question specifically, it
22 would vary year to year, but I would say four to five
23 times a year.

24 Q. It sounds like a great networking opportunity?

25 MR. MAIORINO: Objection. Vague and ambiguous.

1 THE WITNESS: It's an opportunity to share best
2 practices, to learn from the experiences of colleagues in
3 the field.

4 BY MS. GRUNFELD:

5 Q. And does that group issue any policy
6 recommendations or endorsements of different correctional
7 approaches?

8 A. They have on occasion issued white papers. The
9 ones I can recall were around gender responsive
10 programming. So there are -- there are specific
11 initiatives they look at, but there are committees that,
12 again, look at sort of the policy and practice around the
13 country and engage in continued learning in the field.

14 Q. Are there any committees on camera surveillance
15 in prisons?

16 A. Not that I'm aware of.

17 Q. Have they issued any white papers on that topic?

18 A. Not that I'm aware of.

19 Q. How about accountability for staff misconduct?

20 MR. MAIORINO: Objection. Vague and ambiguous.

21 THE WITNESS: I'm not aware of any.

22 BY MS. GRUNFELD:

23 Q. How about investigating allegations of staff
24 abuse?

25 A. I'm not aware of any.

1 MS. GRUNFELD: If you could please take a quick
2 look at Exhibit 3, your resumé, which is also, as
3 Mr. Maiorino pointed out, attached to your declaration in
4 opposition to the statewide motion.

5 (Exhibit 3, remotely introduced and identified.)

6 BY MS. GRUNFELD:

7 Q. Looking at the resumé, are you still Senior Vice
8 President, Management & Training Corporation?

9 A. No, I'm not.

10 Q. And when did you leave that position?

11 A. The 31st of July 2020.

12 Q. Did you begin discussing this expert opinion with
13 CDCR prior to leaving Management & Training Corporation?

14 MR. MAIORINO: Objection. Vague and ambiguous,
15 overbroad to the extent it calls for work product
16 protected from disclosure.

17 THE WITNESS: My recollection is, the only
18 discussion prior to me leaving was just in terms of
19 initial conversations in more of the vetting of me and
20 having the attorneys have a chance to engage in the
21 discussion about retaining me as a -- as an expert.

22 BY MS. GRUNFELD:

23 Q. You list being the Secretary of Washington State
24 Department of Corrections starting in 2010, but it's my
25 understanding that Eldon Vail left in 2011. Could you

1 explain that difference?

2 A. Yes. And you were correct, I came to the
3 department in 2010, and was hired by Mr. Vail to be the
4 director of prisons.

5 Q. And then in July 2011, you became the secretary;
6 is that correct?

7 A. That's correct.

8 Q. And my understanding is that you've known our
9 expert, Mr. Vail, for many years?

10 A. That's correct.

11 Q. And what is your professional opinion of him?

12 A. As you stated, I've known Mr. Vail for 35 years.
13 We've worked together in various institutions and as -- as
14 more direct staff and then, obviously, worked with each
15 other, as you referenced, back to division of prisons.

16 I think Mr. Vail was a good secretary of
17 corrections in Washington, he was -- he was well-liked, he
18 was well-respected, he has tremendous value of being sort
19 of a person that came up through the ranks of the
20 department, knew it well, and was able to provide good
21 leadership for that agency.

22 Q. It would be fair to say that he has more
23 corrections -- direct adult corrections experience than
24 you do?

25 MR. MAIORINO: Objection. Argumentative,

1 overbroad, vague and ambiguous.

2 THE WITNESS: Maybe you could clarify what you
3 mean by direct experience?

4 BY MS. GRUNFELD:

5 Q. Sure. Have you ever served as a correctional
6 officer?

7 A. I served as a correctional counselor, though,
8 it's a line-staff position, different designation.

9 Q. Different designation. Have you ever served as a
10 commander?

11 A. Yes, I have.

12 Q. Okay. And what's the next rank up from that?

13 A. It would be director of prisons.

14 Q. Now, the command manager position, how long did
15 you hold that?

16 A. I'm trying to recall. It was probably nine
17 months.

18 Q. And what happened after that?

19 A. I'd have to -- my -- my recollection is that I
20 then worked in -- the secretary asked me to serve as
21 assistant director of community corrections.

22 Q. And you mentioned being a counselor, being an
23 assistant director, being a secretary, are those
24 administrative-type positions?

25 MR. MAIORINO: Objection. Vague and ambiguous.

1 THE WITNESS: I wouldn't call them
2 administrative. Classification counselor is a person who
3 has a direct caseload of inmates, and so at the
4 penitentiary I had both inmates on death row and
5 administrative segregation, so it's not -- so it's not
6 purely paperwork. You're directly involved and engaged in
7 the operations of the facility.

8 BY MS. GRUNFELD:

9 Q. Would a correctional counselor ever be asked to
10 use force?

11 MR. MAIORINO: Objection. Vague and ambiguous,
12 incomplete hypothetical.

13 THE WITNESS: They could be if a situation
14 occurred where you needed staff assistance.

15 BY MS. GRUNFELD:

16 Q. But typically the use of force issues in prisons
17 come up with correctional officers, not correctional
18 counselors; correct?

19 MR. MAIORINO: Objection. Incomplete
20 hypothetical, overbroad, vague.

21 THE WITNESS: Again, I think all staff are --
22 will respond to an incident, if necessary; but given
23 the -- the post-orders of a correctional officer, they
24 would most likely be involved in direct use of force
25 issues.

1 BY MS. GRUNFELD:

2 Q. Were any of the use of force issues you reviewed
3 in connection with this case, were there any correctional
4 counselors involved?

5 A. I don't recall any.

6 MS. GRUNFELD: I would like to mark as Exhibit 4,
7 if it has not already been marked, the unredacted version
8 of the declaration of Eldon Vail --

9 MR. MAIORINO: I thought you wanted --

10 MS. GRUNFELD: Excuse me. Bernard Warner --

11 MR. MAIORINO: Okay.

12 MS. GRUNFELD: -- in Support of Defendants'
13 Opposition to Plaintiffs' Motion for a Permanent
14 Injunction at Seven Additional Prisons and Statewide.

15 (Exhibit 4, remotely introduced and identified.)

16 BY MS. GRUNFELD:

17 Q. Mr. Warner, do you have Exhibit 4 in front of
18 you?

19 A. I do.

20 Q. Are you aware that Plaintiffs' motion was not
21 called motion for permanent injunction?

22 A. I'm not aware.

23 Q. In the first paragraph here it says that you've
24 been retained to review and assess Plaintiffs' motion
25 alleging abuse, assault, retaliation against people with

1 disabilities at three different prisons. And we'll be
2 talking about these a lot today. The Substance Abuse
3 Treatment Facility, we will refer to as SATF; the Salinas
4 Valley State Prison, we will refer to as SVSP; and Kern
5 Valley State Prison, we will refer to as KVSP.

6 Mr. Warner, do you know why you were chosen to
7 review these three prisons?

8 A. I do not.

9 Q. Before this work, beginning in August of this
10 year, had you ever been to those three prisons?

11 A. No.

12 Q. Prior to commencing this assignment in this case,
13 what had you heard about SATF?

14 MR. MAIORINO: Objection. Vague and ambiguous.

15 THE WITNESS: I really had no information about
16 any of the three prisons.

17 BY MS. GRUNFELD:

18 Q. Looking at paragraph seven, page three of your
19 report, you state that you, quote, Have been retained to
20 assess and opine on, the processes in place for inmates to
21 access requests for accommodations for their disabilities
22 and to determine if there is sufficient evidence that
23 supports Plaintiffs' allegations that they are
24 systematically being denied or discouraged from requesting
25 accommodations; and whether they are targeted for abuse,

1 retaliation, and harassment for doing so, or on the basis
2 of their disabilities, close quote.

3 Does that statement accurately reflect the
4 assignment that you undertook in this case?

5 A. Yes.

6 Q. Was there any opinions that you discussed with
7 Defendants' counsel that you decided not to opine upon?

8 MR. MAIORINO: Objection to the extent it calls
9 for work product.

10 THE WITNESS: I think there were -- I recall two
11 areas. One is around the staffing in housing units that
12 was in the Eldon Vail expert report; and then I did some
13 review around use of force data.

14 BY MS. GRUNFELD:

15 Q. Anything else that you did not opine upon?

16 A. No.

17 Q. Let's start with the staffing and housing units.
18 What were you asked to look at?

19 MR. MAIORINO: Objection to the extent that it
20 calls for work product, goes beyond the scope of his
21 designation.

22 THE WITNESS: Yes, so let me clarify because I
23 may have misstated it. It -- it wasn't -- the scope was
24 not to -- for me to go out and do an analysis of the
25 staffing. I just did some review of that based on my

1 experience around the information that was in Mr. Vail's
2 report.

3 BY MS. GRUNFELD:

4 Q. Can you explain what you mean by that?

5 MR. MAIORINO: Objection to the extent it calls
6 for work product, and goes beyond the scope of his
7 designation.

8 THE WITNESS: If I recall your question, it was,
9 did I look at anything else that wasn't in my report?

10 MS. GRUNFELD: Yes.

11 THE WITNESS: And so part of that was to just
12 understand a little bit more in terms of the staffing and
13 facilities and -- and perhaps what the -- for lack of a
14 better term, unit team approach that I believe Mr. Vail
15 referred to in his report would look like in CDCR in the
16 three facilities that I looked at.

17 BY MS. GRUNFELD:

18 Q. And that unit team approach was applied in
19 Washington, when you were there; right?

20 A. Correct.

21 Q. And what was your experience with it?

22 MR. MAIORINO: Objection. Goes beyond the scope
23 of his designation.

24 THE WITNESS: My -- my experience was that it --
25 it was designed to have a person that oversaw both custody

1 and noncustody functions in a housing unit. And I think
2 similar to what Mr. Vail talked about, would increase
3 potentially communication with inmates, and that's where I
4 looked at how that might apply in the three facilities
5 that I looked at.

6 BY MS. GRUNFELD:

7 Q. And as I understand your opinions, you generally
8 believe that increasing communication is a good idea;
9 right?

10 A. Absolutely.

11 Q. So do you support Mr. Vail's recommendation to
12 have additional staffing in the units?

13 MR. MAIORINO: Objection. Goes beyond the scope
14 of his designation.

15 THE WITNESS: Again, I -- I wouldn't -- you
16 can -- you can look at more staff and more resources, or
17 my comment on it is that many of the things that happen in
18 those housing units are around training staff and
19 providing staff with their expectations and communication
20 skills to engage with those who are on the housing unit.
21 So I'm not sure you need -- that individual needs to be a
22 noncustody person. I think it's more around the skill set
23 that staff have in engaging those who are in the living
24 units.

25 ///

1 BY MS. GRUNFELD:

2 Q. Are you aware that Judge Wilken has ordered
3 additional training for staff at RJD?

4 MR. MAIORINO: Objection. Goes beyond the scope
5 of his designation.

6 THE WITNESS: I'm not, and I'm sorry, I did not
7 get to look at the entire exhibit that was earlier, but --
8 no, I wasn't aware of specifics of that.

9 BY MS. GRUNFELD:

10 Q. Are you aware that Mr. Vail recommended
11 additional training on human rights, whistleblowing,
12 de-escalation, and other topics for CDCR staff?

13 MR. MAIORINO: Objection. Vague and ambiguous.

14 THE WITNESS: I remember seeing that in his
15 report.

16 BY MS. GRUNFELD:

17 Q. And would you agree that's a good idea?

18 MR. MAIORINO: Objection. Incomplete
19 hypothetical, vague and ambiguous, goes beyond the scope
20 of his designation.

21 THE WITNESS: I think to continue to provide
22 staff with training about those issues and -- and inmate
23 rights, engagement, communication, all those things make
24 staff better in doing -- in being able to do their jobs
25 and being able to work with the inmate population.

1 BY MS. GRUNFELD:

2 Q. What about anti-retaliation training? Have you
3 had any experience with that in correctional facilities?

4 MR. MAIORINO: Objection. Incomplete
5 hypothetical, vague and ambiguous, overbroad.

6 THE WITNESS: I can't think of specific training
7 modules, but I think, obviously, my experience is around
8 clarifying to staff that retaliation under any
9 circumstances is not something acceptable in a
10 correctional facility.

11 BY MS. GRUNFELD:

12 Q. I think you did list as having reviewed Judge
13 Wilken's preliminary injunction; is that right?

14 A. That --

15 Q. That was the order that -- when she had two
16 prisoners transferred out of RJD who had been retaliated
17 against?

18 A. I do not recall reviewing those documents.

19 Q. Are you aware that there are orders up at each of
20 the seven prisons involved in the statewide motion
21 prohibiting retaliation for participating in the motion?

22 MR. MAIORINO: Objection. Vague and ambiguous,
23 assumes facts.

24 THE WITNESS: I'm not aware of that.

25 ///

1 BY MS. GRUNFELD:

2 Q. Did you reach any conclusions about the level of
3 staffing at the three prisons that you reviewed in
4 connection with your declaration?

5 MR. MAIORINO: Objection. Goes beyond the scope
6 of his designation.

7 THE WITNESS: I did -- I did not really do a
8 thorough staffing analysis, and so I would -- I would
9 just -- the context in which I was talking about it is the
10 recommendation of Mr. Vail that the opportunity to -- for
11 staff to engage more with the inmate population, and so
12 the recommendation, I believe, in his report was to
13 provide a noncustody staff to do that. And so my, again,
14 opinion, and -- and, again, that's -- that's a lot of
15 staff resources in those housing units. I think there are
16 ways of doing that to improve the training and
17 communication of staff in those units that would have a
18 similar impact.

19 BY MS. GRUNFELD:

20 Q. So as I understand what you're saying here today,
21 is that you think the staff that exists could be improved
22 through training so that you wouldn't need to bring in
23 nonuniform staff; is that correct?

24 MR. MAIORINO: Objection. Misstates prior
25 testimony, mischaracterizes prior testimony.

1 THE WITNESS: I think my testimony is that I --
2 that obviously the value of providing additional training
3 for CDCR staff would help them in their culture in
4 communications with inmates in -- in the prison system.

5 BY MS. GRUNFELD:

6 Q. And you also said that you looked at but did not
7 opine on use of force data. Can you explain what you mean
8 by that?

9 MR. MAIORINO: Objection. Goes beyond the scope
10 of his designation.

11 THE WITNESS: It was part of the Office of
12 Research information, and I did a review of that data to
13 see if there was anything that -- that may have stood out
14 as being exceptional that could indicate some systemic
15 issues.

16 BY MS. GRUNFELD:

17 Q. So you asked that question, or -- I don't
18 understand what you're saying.

19 A. No, I just looked at the -- the Office of
20 Research had information as part of -- as part of a data
21 set that I received that had use of force tables in it,
22 similar to what would be, I imagine, extracted from
23 COMPSTAT.

24 Q. Did you keep a copy of that information? Is that
25 in your file?

1 MR. MAIORINO: Objection. Vague and ambiguous,
2 goes beyond the scope of his designation.

3 THE WITNESS: I believe I have those charts.
4 Again, it should be in the data that was provided by
5 Office of Research.

6 BY MS. GRUNFELD:

7 Q. We can look at those, perhaps, in more detail
8 later. But in general, was it your impression that use of
9 force has been going up at the three prisons you were
10 asked to review?

11 MR. MAIORINO: Objection. Vague and ambiguous,
12 overbroad --

13 BY MS. GRUNFELD:

14 Q. Over the period 2017 to present?

15 MR. MAIORINO: Objection. Vague and ambiguous,
16 goes beyond the scope of his designation, incomplete
17 hypothetical.

18 THE WITNESS: I would want to refer to that --
19 those documents again, but my recollection is that in both
20 the non-Armstrong and Armstrong population, there were
21 some increases in uses of force, but I didn't see anything
22 dramatic. I was looking for, you know, maybe some
23 disproportionately between those who are part of the
24 Armstrong class and those that were not.

25 ///

1 BY MS. GRUNFELD:

2 Q. Now, in general, given that the Armstrong class
3 includes people in wheelchairs and elderly individuals
4 with serious mobility issues, would it be your impression
5 that there should be less use of force among those class
6 members than the typical general population?

7 MR. MAIORINO: Objection. Incomplete
8 hypothetical, assumes facts, vague and ambiguous, goes
9 beyond the scope of his designation.

10 THE WITNESS: I think what you look at is --
11 in -- as a case-by-case basis, and what are the
12 circumstances around the use of force and what kind of
13 accommodations can be made, should be made, if there needs
14 to be either a planned or unplanned use of force to
15 certainly consider Armstrong class members and their
16 disabilities.

17 BY MS. GRUNFELD:

18 Q. So you would expect the use of force rates to be
19 the same among Armstrong class members as among the
20 general population?

21 MR. MAIORINO: Objection. Misstates,
22 mischaracterizes prior testimony; goes beyond the scope of
23 his designation.

24 THE WITNESS: I would -- I'm not sure I heard
25 your question to be that it was the -- the rate. I think

1 I understood your question to be the -- the type of force
2 used to -- in those who are part of the Armstrong class.

3 BY MS. GRUNFELD:

4 Q. Sure. I was asking more -- if you had a group of
5 prisoners, one group Armstrong class members in
6 wheelchairs, mobility impairments, et cetera, versus a
7 typical general population prison group, which group would
8 you expect to have to use force more often --

9 MR. MAIORINO: Objection. Vague and --

10 BY MS. GRUNFELD:

11 Q. -- upon?

12 MR. MAIORINO: Objection. Vague and ambiguous,
13 incomplete hypothetical, goes beyond the scope of his
14 designation, asked and answered.

15 THE WITNESS: Again, any -- any use of force is
16 traumatic for staff or -- and for inmates, so I'm not
17 condoning use of force as necessary, provide the policy,
18 to be able to manage an incident safely in a facility.
19 And how you do that will be different for Armstrong class
20 members, should there be some accommodations that you need
21 to consider, than -- than the general population.

22 It's difficult for me to opine on what the rate
23 should be, because I haven't reviewed all the different
24 use of force incidents to say whether or not it was an
25 appropriate use of force or not.

1 BY MS. GRUNFELD:

2 Q. Generally, as a correctional officer -- well, I
3 know you were not a correctional officer, but as a
4 correctional counselor, would you be more afraid of a
5 prisoner in a wheelchair versus someone who's not in a
6 wheelchair in a use of force situation?

7 MR. MAIORINO: Objection. Incomplete
8 hypothetical, vague and ambiguous, goes beyond the scope
9 of his designation, assumes facts.

10 THE WITNESS: I don't -- I guess I can't -- it's
11 a difficult question to answer, about being afraid of
12 them. I think it has to do with what you're trained to do
13 to manage an incident and keep the -- the facility and the
14 inmates and staff safe.

15 BY MS. GRUNFELD:

16 Q. Sure. Back in Washington State, when you were
17 secretary of the Department of Corrections, did you have a
18 high use of force rate?

19 MR. MAIORINO: Objection. Vague and ambiguous,
20 overbroad, incomplete hypothetical.

21 THE WITNESS: I -- it's difficult to quantify
22 high. I don't know what that means. And it's difficult
23 to get data to compare, state to state. And so I couldn't
24 tell you whether it's high compared to any other
25 jurisdiction. I know that it's a matrix now that the

1 department looks at to try to identify and -- and
2 strategies to reduce use of force and reduce violence in
3 institutions, but I -- I don't have a basis to compare.

4 BY MS. GRUNFELD:

5 Q. So as you sit here today, you don't know whether
6 Washington State or California has a higher use of force
7 rate in their prisons?

8 MR. MAIORINO: Objection. Vague and ambiguous,
9 goes beyond the scope of his designation.

10 THE WITNESS: I don't.

11 BY MS. GRUNFELD:

12 Q. How about use of pepper spray? Do you have any
13 information about the comparison of the two states?

14 MR. MAIORINO: Objection. Vague and ambiguous,
15 as --

16 THE WITNESS: No, I don't. I know that there was
17 some reluctance to use OC in Washington. I think that
18 practice has now changed more broadly, because I think
19 what -- what people observed was that it was -- there was
20 decreasing use of physical force associated with that, and
21 that it was the -- sort of the least -- the extent of use
22 of force in -- to be managed in most instances, but I
23 can't answer the question in terms of a comparative rate.

24 BY MS. GRUNFELD:

25 Q. Now, when you were with the MTC, at the East

1 Correction -- East Mississippi Correctional facility, did
2 they require the pepper spray cans to be weighed before
3 and after use?

4 MR. MAIORINO: Objection. Vague and ambiguous.

5 THE WITNESS: I do not recall that.

6 BY MS. GRUNFELD:

7 Q. Have you ever worked in a correctional
8 organization or facility that required the weighing of
9 pepper spray cans?

10 A. My recollection as part of Farrell was that there
11 was a -- a negotiated, and I'm -- for lack of a better
12 term, I believe it was for a pilot for an indefinite
13 period of time at one facility, and my -- my recollection
14 is it may have been CHAD, where canisters were weighed.

15 Q. And did that decrease the use?

16 A. I recall no data that pointed to any specific
17 outcome.

18 Q. As you know, Eldon Vail has recommended the CDCR
19 be required to weigh the canisters of pepper spray as a
20 way to decrease unnecessary use of those canisters. Did
21 you form an opinion on the validity of that approach?

22 A. Yeah, my opinion was -- I guess I looked at the
23 logistics of weighing a canister at the beginning and end
24 of every shift with a significant number of correctional
25 staff going in and out of the facility, and the logistics,

1 ability to be able to do that and do that effectively.

2 My opinion on that is, is that you look at it on
3 a case-by-case basis, what was the use of force and what
4 was the response by staff. And in -- in most reports they
5 will -- they -- how much pepper spray they discharged, not
6 necessarily by quantity, but by a burst and the extent of
7 that burst. I think the -- the challenge is that all use
8 of force is different. So you've got variability between
9 whether they're inside or outside, and whether or not the
10 OC could disburse in an outdoor area. You'd have
11 variability in terms of the number of inmates. There's a
12 different tolerance by inmates in terms of how they
13 respond to OC. There's difference in terms of the number
14 of staff who are there and the number of inmates who are
15 involved.

16 But my opinion is, the variability of that
17 doesn't really get to the point of the -- the logistical
18 challenge of how do you weigh facilities in three shifts,
19 24 hours a day, seven days a week at correctional
20 facilities, and that the better value would be to look at
21 more detailed scrutiny of the actual use of force events
22 and see what you could determine from there in terms of
23 whether it was excessive or not.

24 Q. Are you aware that a number of people with
25 disabilities have claimed in this case that they have been

1 sprayed with pepper spray unnecessarily, for longer than
2 necessary, and not allowed to clean it off afterwards?

3 MR. MAIORINO: Objection. Vague and ambiguous,
4 overbroad, assumes facts, incomplete hypothetical.

5 THE WITNESS: I'm -- I'm not aware of all -- of
6 those allegations.

7 MS. GRUNFELD: I'd like to go off the record for
8 just a moment and look at the exhibits for just a moment.

9 (Brief pause.)

10 BY MS. GRUNFELD:

11 Q. We're back on the record after a brief recess.
12 Mr. Warner, you understand you are still under oath?

13 MR. MAIORINO: Okay. There we go. We are back
14 on, unmuted.

15 THE WITNESS: I do.

16 MS. GRUNFELD: Thank you.

17 BY MS. GRUNFELD:

18 Q. We are still looking at Exhibit 4, your
19 declaration. Before we leave page three of your
20 declaration, you mentioned in paragraph six here that you
21 are a board member of the international prisons and
22 corrections association. Did we already discuss that
23 organization this morning?

24 A. We did not.

25 Q. Tell me what that is.

1 A. It's a professional association that incorporates
2 membership of -- I'm not sure the total number, but close
3 to 100 countries around the world. And again, sort of
4 similar to what I mentioned to the Correctional Leadership
5 Association. They have an annual meeting that brings
6 different countries together, talks about best practices,
7 identifies things such as human rights issues, and they
8 have been very involved, for example, during COVID and
9 looking at best practices. So it's a professional
10 association with a much broader scope in terms of
11 international range, as opposed to just within the U.S.

12 Q. Do you know if the association has taken a
13 position on video surveillance in correctional facilities?

14 MR. MAIORINO: Objection. Vague and ambiguous,
15 overbroad.

16 THE WITNESS: I'm not aware of that.

17 BY MS. GRUNFELD:

18 Q. How about body-worn cameras?

19 A. I'm not aware of that.

20 Q. Have they issued any guidance on staff
21 accountability or staff misconduct?

22 A. Not that I recall.

23 Q. In paragraph eight of your declaration you state
24 that you personally visited SVSP, KVSP, and SATF as part
25 of your assessment. Let's start with your visit to SATF.

1 When did you go to SATF?

2 A. I do not have the date in front of me, but I can
3 find that quickly. Let me look and see if it's in my
4 report.

5 I believe it was the 18th of August.

6 Q. And how long were you on-site at the prison?

7 A. About a half a day.

8 Q. And how was the day divided, in terms of your
9 activities?

10 A. I had a chance to meet with the warden, the
11 deputy warden, the AW in charge of ADA, another AW who
12 used to be responsible for ADA. We had a chance to -- to
13 meet initially, and then went to the -- some of the
14 offices where the ADA coordinator, as well as the person
15 who used to be the AW ADA coordinator, and a walk-through,
16 similar detail in terms of processes in place. We went to
17 the facility; it's, as you know, a massive facility, so we
18 had a chance to go to, I believe, a couple of housing
19 units, and then met with the grievance coordinator and the
20 AW over the grievance process.

21 Q. Okay. What's the name of the warden there?

22 A. Stu Sherman.

23 Q. And the deputy warden you met with?

24 A. I -- I don't recall her name.

25 Q. And the AW in charge of ADA?

1 A. Is Rick -- I'm going to confuse those, so let me
2 think for a moment, and I'll come up with the names.

3 I -- I have -- I can't recall that right now.

4 Q. How about the former ADA person?

5 A. I'm sorry. I have those -- just names written
6 down in my notes, and I did not bring them with me to
7 refer to.

8 Q. Okay. And the grievance coordinator?

9 A. Again, I don't have the names -- the specific
10 names written down in front of me.

11 Q. Do you recall which housing units you visited?

12 A. I have that information as well, but I believe it
13 was Charlie -- I'll -- if we have a break, I can -- I can
14 try to get that information for you.

15 Q. You think it was two or three housing units, or
16 what does a couple mean?

17 A. Well, we walked through a couple of areas on the
18 way to the grievance coordinator's office, and so I'll
19 have to refresh my memory on which of the two that I went
20 to, but I don't have that in front of me.

21 Q. Did you interview any prisoners?

22 A. I did not.

23 Q. Did you review any documents on-site at the
24 prison?

25 A. There's some general information on the facility

1 that I looked at, but I did not look at any specific
2 documents.

3 Q. You state in your declaration that your, quote,
4 On-site visits were important to help you understand the
5 operations of the facilities and to observe interactions
6 between staff members and interactions between inmates and
7 staff so that you could assess the culture at the prisons,
8 close quote; that's paragraph eight.

9 Can you tell me at SATF what it is you observed
10 that helped you understand the culture?

11 A. Well, again, it's a -- it's a -- what I look for
12 in an institution, I think everything starts from the
13 warden to, in this case, his leadership team. It's
14 important, I think, again, given not a lengthy amount of
15 time in a half a day but to understand their transparency,
16 their commitment to their work and providing the right
17 environment in the institution, their knowledge of and --
18 of their scope of work, and their, I think, ability to
19 function together as a team to accomplish the mission of
20 the facility.

21 Q. Well, I -- I'm sorry. I thought I was asking
22 about the observation of interactions. Did you observe
23 any interaction between inmates and staff when you were at
24 SATF?

25 A. I -- only indirectly. I did not stay in a

1 particular area and observe interactions. But as you're
2 walking through the areas, you were seeing interactions.
3 There's -- there's no doubt, I think all of us who have
4 looked at cultural assessments, the best way to understand
5 those would be to interview inmates in terms of those
6 interactions, to interview correctional officers, but I
7 did not do it in this case. I was told that I could not
8 interview inmates and get a sense in terms of what their
9 perception was of the interactions. And I refrained from
10 interviewing staff directly as well, other than the
11 leadership team at the facility itself.

12 Q. Why did you refrain from interviewing staff?

13 A. I -- I think it was a function of time available.
14 I think it's -- as I just described by the date, that was
15 August 14th and 15th, and because of COVID and other
16 issues, access to the facilities was challenging. I
17 wanted to be careful and respectful in terms of having
18 access to the facility, but one -- one could have spent a
19 week there and probably get a much better barometer. But
20 I'm sort of looking at my sort of assessment of the
21 culture, at least what I saw, from the leadership
22 perspective.

23 Q. Now, you previously said you were there on the
24 18th of August for half a day; is that correct?

25 A. Was that Tuesday -- yes, I believe that's

1 correct.

2 Q. And when you say half a day, are you suggesting
3 you were there for about five hours?

4 A. Yeah, it was probably three to four hours.

5 Q. And of those three to four hours, how much time
6 was spent in a housing unit?

7 A. Passing through.

8 Q. So minutes?

9 A. Yes.

10 Q. And in those minutes, what did you observe about
11 the interactions between staff and leadership -- excuse me
12 between leadership and the incarcerated people?

13 A. I don't -- I don't think that I formed -- could
14 you clarify the question again?

15 Q. Absolutely. I'm trying to understand whether you
16 observed any interactions between SATF staff members and
17 incarcerated people?

18 A. I did not witness any conversations between staff
19 and between inmates. I think staff were doing their job.
20 I didn't notice anything that was -- I guess I would say,
21 notable in terms of the direct interactions between staff
22 and inmates.

23 Q. You wouldn't expect to see a use of force walking
24 by in a few minutes; right?

25 MR. MAIORINO: Objection. Vague and ambiguous --

1 THE WITNESS: Could you repeat the question?

2 MR. MAIORINO: -- incomplete hypothetical.

3 BY MS. GRUNFELD:

4 Q. Well, I'm just --

5 A. I wouldn't what?

6 Q. -- pointing out the obvious, that in walking
7 through a housing unit over the course of a few minutes
8 you would not expect to see any use of force or other
9 issues occur; is that correct?

10 MR. MAIORINO: Objection. Vague and ambiguous,
11 incomplete hypothetical.

12 THE WITNESS: It's difficult to know what to
13 expect when you walk through an institution, but in this
14 particular case, I did not see a use of force.

15 BY MS. GRUNFELD:

16 Q. Or any interaction, is what I'm understanding as
17 to --

18 A. General interactions --

19 MR. MAIORINO: Objection. Misstates prior
20 testimony, mischaracterizes prior testimony.

21 THE WITNESS: General interactions, obviously,
22 staff were -- there was movement, in walking through
23 different yards, you will -- you will observe, but I did
24 not notice anything that was, I guess, notable in terms of
25 a negative culture or environment.

1 BY MS. GRUNFELD:

2 Q. Did you notice anything positive?

3 A. I think people -- the -- from what I saw, staff
4 were doing their job, and so I didn't -- again, there's
5 inmate movement. They were -- I didn't get a sense of --
6 that there was -- it was a disruptive environment, that
7 there was anything that -- that stood out. But again,
8 my -- my approach was to be able to look at the facility
9 and, again, from more of a systemic, where are the people
10 who are in charge of those areas; what was their -- their
11 transparency; their ability to understand their work;
12 their expectation, in terms of appropriate access to
13 Armstrong class members.

14 It was not an overall cultural assessment of a
15 prison, that would take quite a bit of time and involve
16 significant interviews with a variety of people.

17 Q. Right. When you were overseeing the Farrell
18 remedial plans, experts were embedded in those juvenile
19 facilities for many weeks; is that a fair statement of how
20 that process went?

21 A. They had certainly much more time to be able to
22 spend understanding the details of their specific remedial
23 plan responsibilities.

24 Q. Sure. So let's talk about your analysis of
25 SATF's grievance process. If you turn to paragraph 14 of

1 your declaration, lines 23 through 27. You state, quote,
2 I personally observed that various documents, including
3 Form 1824 Desk Manual and Disability Placement Program
4 Operational Procedure Manual, and Appeals Process were
5 readily available.

6 Did you observe that at SATF?

7 A. I -- I believe as I am looking at that, I said, I
8 observed or confirmed with staff, unless your copy is
9 different than mine. So in some cases, what I was trying
10 to understand is I know there were some issues in terms of
11 having a lockbox available, the security of that, making
12 sure that there was a specific sort of chain of 1824s or
13 602s that would be filed, they couldn't be tampered with.
14 So in the housing units that I walked through, I did see
15 those boxes.

16 And in talking with staff, there were different
17 processes in place. Some housing units would have the
18 forms available in the rotunda, some would have actual
19 slots where they had the forms in, but the assurances I
20 had from both those who oversaw the program and then in
21 just sort of discussing with them, is that forms are
22 readily available. They did not recall specific
23 complaints being made that those forms are not accessible
24 to Armstrong members.

25 Q. Now, you talk about seeing the boxes where people

1 can put complaints about staff misconduct. Are you aware
2 that under the CCPOA contract officers accused of
3 misconduct can see the complaints against them?

4 A. I'm not aware of that.

5 Q. So having the locked box does not protect the
6 class member from the officer, who now will know that he's
7 been accused in the California system.

8 MR. MAIORINO: Objection. Argumentative,
9 incomplete hypothetical.

10 BY MS. GRUNFELD:

11 Q. I think we were talking about two different parts
12 of paragraph 14, also. You say the forms you observed --
13 or you confirmed with staff that the forms were readily
14 available; and then there was a designated office area
15 with these -- these reference materials. So that was when
16 you went to the grievance offices or the appeals
17 coordinator offices, you saw these reference manuals; is
18 that right?

19 A. Yeah, I think what -- let me just look at this
20 for a minute. Okay.

21 (Reviewing.)

22 So the -- the tours were different in each
23 facility, and so some of the things that were available,
24 like, the -- the disability placement program operational
25 procedure manual, the desk manual, those things were

1 provided to me in the actual office area, meeting area.
2 They weren't in the actual housing unit itself. So these
3 are -- they -- these are blended together in terms of my
4 observations, and it will be different for each of the
5 three facilities because the meetings were a little bit
6 different, and so the process itself, in terms of access,
7 would be different.

8 Q. And in your review, did you look at whether a
9 process existed only, or did you also look at whether the
10 process was effective?

11 A. What process, specifically?

12 Q. Let's talk first about the 1824 Reasonable
13 Accommodation process.

14 A. Right. So again, I had them -- the staff
15 responsible walk through the receipt of the 1824s. They
16 explained about documentation of receipt. They explained
17 about the 24-hour review if there was something that
18 involved a safety or security issue, then those would be
19 forwarded to the hiring authority. They explained about
20 the five-day process to do the -- the RAP meeting, the
21 multi-disciplinary review process. I did not sit through
22 a RAP meeting or observe anything directly. It was more
23 referencing people explaining the processes to me that are
24 in place.

25 Q. The staff who oversee that?

1 A. Correct.

2 Q. And did you review any 1824s?

3 A. There were a couple that were sort of shown to me
4 as an example, but I cannot remember the specific names or
5 the circumstances around it. It was more just a
6 referencing of this is what it looks like. Things would
7 vary. As you know, there's a -- there's a change --
8 the -- that occurred in July, around the -- formerly
9 appeals, now grievance process, and -- so they were
10 explaining differences between Form 22, that used to be
11 used in triplicate, and now there's -- essentially,
12 anything in writing can be used to submit. So it was
13 really kind of a -- again, reviewing the processes in
14 place, not looking at individual requests.

15 Q. Did you review whether people, in fact, are able
16 to obtain reasonable accommodations in these prisons?

17 MR. MAIORINO: Objection. Vague and ambiguous.

18 THE WITNESS: I did not.

19 BY MS. GRUNFELD:

20 Q. And did you assess whether or not the three
21 prisons that you were assigned are logging noncompliance
22 with the Armstrong remedial plan on what's called the
23 noncompliance or accountability logs?

24 MR. MAIORINO: Objection. Goes beyond the scope
25 of his designation.

1 THE WITNESS: Yeah, the ADA coordinator was able
2 to show the noncompliance files. His -- his comment to me
3 in discussing those, is that if he looks over his
4 experience in -- over the course of the last two years
5 that those numbers have decreased from what was a volume
6 of maybe 30 every few months to five. So he felt like
7 their staff was doing a better job of managing
8 noncompliance issues, but I don't have any specific
9 backing data around that.

10 BY MS. GRUNFELD:

11 Q. Are you referring to SATF now?

12 A. No, I -- I jumped to a different prison. Salinas
13 Valley.

14 Q. So the ADA coordinator at Salinas Valley informed
15 you that the number of incidents on their noncompliance
16 logs had decreased recently; is that a fair statement?

17 A. In recent time, yeah, he didn't give me a time
18 period.

19 Q. Did you discuss the noncompliance logs with the
20 SATF personnel?

21 A. I did not.

22 Q. How about Kern Valley?

23 A. No.

24 Q. Did you look at the noncompliance logs for any of
25 the three prisons?

1 A. I briefly looked at, again, a couple of examples
2 at Salinas Valley, but I don't recall, again, the specific
3 elements of them.

4 Q. Do you have any understanding of what the purpose
5 of the noncompliance log is?

6 A. Well, I think it's to ensure that if there are
7 not appropriate accommodation, then the noncompliance
8 would be a means of ensuring every effort is made to
9 provide the appropriate accommodation to the inmates and
10 track that.

11 Q. Is it also a way to track repeat offenders among
12 staff who are not complying with the allegations?

13 MR. MAIORINO: Objection. Vague and ambiguous,
14 overbroad, incomplete hypothetical, it goes beyond the
15 scope of his designation.

16 THE WITNESS: I had no discussion with anyone
17 around that.

18 MS. GRUNFELD: Why don't we go off the record?

19 MR. MAIORINO: Okay.

20 (Discussion held off the record.)

21 (Deposition in recess, 12:16 p.m. to 12:57 p.m.)

22 BY MS. GRUNFELD:

23 Q. We are back on the record after a lunch recess.

24 Mr. Warner, do you understand that you are still
25 under oath?

1 A. I do.

2 Q. Before the recess, we were discussing your tours
3 of the three prisons that you were asked to assess, that
4 of KVSP and Salinas Valley. For purposes of this
5 deposition, if I use the phrase "your prisons," do you
6 understand me to mean the three prisons that you assessed
7 in your declaration?

8 A. I do.

9 Q. That may shortcut things just a little bit.

10 Before we move into a general discussion of what
11 you concluded, I'd like to address your other tours. You
12 indicated before the lunch break that you went on a
13 three-to-four-hour tour of SATF on or about August 18th.
14 Did you also visit Salinas Valley?

15 A. I did.

16 Q. What date did you go to Salinas Valley?

17 A. It was the day before, so that would make it
18 August -- sorry. My calendar is not cooperating with
19 me -- the 17th, Monday afternoon.

20 Q. How long were you at Salinas Valley?

21 A. The same amount of time, I think, probably I was
22 there in the morning, no more than four hours.

23 Q. Was it in the morning or afternoon?

24 A. It was in the morning. I think I arrived at 8:30
25 or 9:00 and left around 12:30.

1 Q. Who did you meet with at Salinas Valley? And if
2 you know their name, please state their name, and if you
3 don't know their name, just say their position.

4 A. I met with Matt, the warden, Matt Atchley, I
5 believe. I'm trying to remember his last name. I met
6 with the deputy warden as well. I met with Rick Mojica,
7 who was the AW ADA coordinator, and then we went through
8 the facility. So I'm not going to remember their names,
9 but there was at least in the ADA area a CC2, and I
10 believe an AGPA or some similar position as a -- sort of a
11 staff analyst. From there, we went inside the facility
12 and walked through. And again, I don't have the -- I
13 think it was Facility A in the -- or Facility 1 and I
14 think Unit A toward that unit. There were various other
15 staff who I met that were involved in processing
16 grievances, but I cannot remember their specific names.

17 Q. Did you go inside the housing unit at Facility
18 1-A of Salinas Valley?

19 A. Yes, I did.

20 Q. And how long were you inside that housing unit?

21 A. Probably no more than 20 minutes or so, something
22 around there.

23 Q. Were you in a dorm or a cell or celled housing
24 unit? What kind of housing unit were you in?

25 A. It was a -- I believe that's a 180 design, so it

1 was a living -- housing unit.

2 Q. I'm sorry. Could you repeat your answer.

3 A. Yeah. It was in the housing unit.

4 Q. But was it a dormed housing unit or cell?

5 A. Cell, excuse me.

6 Q. Cell. Yeah. Any special needs in that housing
7 unit, or just general population? What kind of housing
8 unit?

9 A. I'd have to speculate as to the mix in the
10 population there. I -- I do know that there were a couple
11 cells that were modified for accommodations, so I'm
12 assuming there were some Armstrong inmates in there.

13 Q. And did you go into those cells that are
14 modified, or how do you know they were modified?

15 A. I went by and just did sort of a quick
16 observation, but I remember staff pointing them out as
17 well, so -- but there was -- again, I didn't want to
18 interact with any of the potential Armstrong class
19 members, so I was -- sort of kept a distance.

20 Q. How did you choose that housing unit to visit?

21 A. It was random. We just went in --

22 Q. What was the purpose?

23 A. The purpose was to, again, familiarize myself a
24 little bit with the facility, had some brief conversations
25 with the staff there. I wanted to just, again, be able to

1 walk through and familiarize myself with the institution.

2 Q. Did you check to see if any 1824 forms were
3 available while you were in that housing unit?

4 A. I know that there was a lockbox there, and I
5 asked staff, I cannot recall specifically whether there
6 were forms or -- but when I asked staff, they said that
7 they were available in the rotunda and were given to
8 members upon request.

9 Q. Can you recall anything else about your visit to
10 the housing unit at Salinas Valley?

11 A. Yeah. Sort of a normal activity in the housing
12 unit, in the common area. I didn't -- you just get
13 different impressions when you walk in. In some cases,
14 here's a visitor, what are they looking at, what are they
15 for. I felt like it was sort of a normal environment.
16 There were two staff there, as well as someone who was in
17 sort of a control area above the actual main level of the
18 housing unit.

19 Q. And you were walking around with the warden at
20 that time?

21 A. No, I was with the associate warden, Mojica.

22 Q. Any other comments or observations from that
23 visit to the housing unit?

24 A. Not really. Yeah, I -- I think, again, it was --
25 I don't think there was anything of distinction that came

1 out. It didn't look to me to be -- you know, very tense
2 or like there were sort of issues there. It seemed like
3 sort of a normal housing unit.

4 Q. During your 20 minutes?

5 A. Correct.

6 Q. Other than visiting the housing unit, what other
7 areas of the prison did you visit?

8 A. Again, as we were walking through, I went to the
9 area where staff process the 1824s, and had a chance to
10 have the -- and I'm not sure whether AGPA is the right
11 designation or staff assistant, but be able to -- for him
12 to show me, and I believe it's changed a little bit, but
13 just in terms of the tracking process on the computer. I
14 went into warden -- or Associate Warden Mojica's office,
15 and he showed me the files that were for those cases that
16 were still -- and I'm just blanking on the term. I'm
17 sorry. We talked about it earlier. Different processes,
18 I think, that sort of he went through. He -- he told me
19 the 602 process, he walked through the 1824 process, and
20 how they conduct them and manage them. Briefly talked to,
21 I believe, the grievance coordinator, again, sort of
22 passing through, and talked a little bit about their
23 management. We -- we went into a -- in the grievance area
24 and spent some time with not only the grievance
25 coordinator, but there's a CC2 that -- a specialist that

1 focuses on use of force, and so we talked a little bit
2 about the -- the processing, if there's -- that complaint
3 comes in that she would look at it, they would, again,
4 would then -- within 24 hours process that to the hiring
5 authority. The staff in the grievance office talked about
6 if -- if a 602 came in and was more relevant to ADA, that
7 they would forward it to the ADA office for their review.

8 Q. In terms of the 24-hour --

9 A. I'm sorry. Excuse me, Gay. Just the -- the
10 compliance files is what I was trying to think of,
11 Assistant Warden Mojica's office.

12 Q. Yes. Mr. Warner, you mentioned the 24-hour
13 deadline. Did you also -- did you discuss with the people
14 at Salinas Valley the 48-hour use of force video
15 requirement?

16 A. They -- they did mention that to me, that that's
17 a requirement that the inmate be videotaped within a
18 48-hour period of time.

19 Q. Did you ask them whether they are in compliance
20 with that requirement?

21 MR. MAIORINO: Objection. Overbroad, beyond the
22 scope of his designation.

23 THE WITNESS: I did not.

24 BY MS. GRUNFELD:

25 Q. And did you take any other -- did you take any

1 independent steps to determine if Salinas Valley is
2 compliant with the 48-hour video interview requirement?

3 MR. MAIORINO: Objection. Beyond the scope of
4 his designation.

5 THE WITNESS: I did not.

6 BY MS. GRUNFELD:

7 Q. How about for SATF?

8 MR. MAIORINO: Objection. Beyond the scope of
9 his designation.

10 THE WITNESS: And the question, again, is?

11 BY MS. GRUNFELD:

12 Q. Whether you took any steps to determine whether
13 SATF is in compliance with the 48-hour videotaped
14 interview requirement?

15 MR. MAIORINO: Same objection.

16 THE WITNESS: That information was not available
17 to me.

18 BY MS. GRUNFELD:

19 Q. Did you ask for that information?

20 A. I did not.

21 Q. How about for Kern Valley?

22 MR. MAIORINO: Objection. Beyond the scope of
23 his designation.

24 THE WITNESS: No.

25 ///

1 BY MS. GRUNFELD:

2 Q. Other than what you've already testified to, did
3 you have any other discussions with staff at Salinas
4 Valley?

5 MR. MAIORINO: Objection. Overbroad, compound.

6 THE WITNESS: Well, what -- I -- I did, you know,
7 I spent some time with the warden, and I noticed on his
8 board of -- board of things that he's looking at, Norway
9 was on there. And so I asked him, in having been familiar
10 with Brie Williams' work in the -- in, I know, prison law
11 office, and maybe yourself, as well, exposing U.S.
12 Correctional systems to the Norwegian system of engaging
13 inmates and trying to apply those approaches to reduce
14 violence in the -- in the facilities.

15 So we spent some time talking about it, his --
16 his trip. I think he was very excited about the
17 opportunity and very disappointed that COVID had kind of
18 put a damper on the ability to implement some of those
19 things that he saw.

20 But I guess those -- when I -- when I -- I have
21 tried to be responsive to your question about things you
22 look for, again, it's commitment to leadership, to look at
23 the facility. I -- I raised issues -- one of the things
24 that he talked about is staff accountability and holding
25 people accountable, and that's been a focus of his since

1 he's been warden.

2 My sense is, is that while there may be
3 historical issues at that prison, then he had a very
4 strong commitment and his team had a strong commitment to
5 running a good institution.

6 Q. How long has he been warden?

7 A. I don't think over a year, because I don't
8 believe he's been confirmed yet. He mentioned that, that
9 he hadn't been confirmed, and I think you have to be
10 confirmed within a year of appointment, so -- I don't know
11 the exact time frame.

12 Q. Did he go to Norway with Don Specter last fall,
13 or what -- what are you talking about with Norway?

14 A. Yeah, he -- I believe he went on a tour.
15 California joined another state, and I'm not sure who they
16 went with, but I know Washington has gone, Oregon. So he
17 was part of the California delegation that went to Norway.
18 And then as an exchange process where the staff from
19 Norway would come over and they would spend time with --
20 in this case, CDCR staff and talk about their approach to
21 corrections.

22 Q. Norway has a very low use of force rate; is that
23 correct?

24 MR. MAIORINO: Objection. Overbroad, beyond the
25 scope of his designation.

1 THE WITNESS: I don't -- I haven't done an
2 analysis in terms of what their rate is, but I know that
3 there's a lot of interest in looking at, again, some of
4 the techniques they utilize in an effort to avoid use of
5 force.

6 BY MS. GRUNFELD:

7 Q. And have you been to Norway on one of these
8 trips?

9 A. I have not. I've seen several presentations by
10 Brie Williams and others. There's videotapes that kind of
11 identify interviews with -- with inmates, with prison
12 staff, both in Norway and in the U.S., where they have
13 gone through that experience and they talk about it in a
14 favorable way.

15 Q. And what steps are you aware of that the
16 Norwegian model uses to reduce force?

17 A. Well, I -- I can't give you a sort of specific
18 step-by-step, but I think the overall approach is to -- is
19 really around engagement, and in being able to sort of
20 create a dynamic to defuse situations that could
21 potentially result in use of force.

22 Q. So de-escalation is an important part of the
23 Norwegian approach; is that right?

24 A. Yes.

25 Q. Has any of the training from the Norwegian

1 approach been applied in CDCR, to your knowledge?

2 MR. MAIORINO: Objection. Beyond the scope of
3 his designation, overbroad.

4 THE WITNESS: I do not know.

5 BY MS. GRUNFELD:

6 Q. You made a reference to the history of Salinas
7 Valley. Are you aware that this was the prison where the
8 [REDACTED] first surfaced back in the 2000s?

9 MR. MAIORINO: Objection. Argumentative, assumes
10 facts.

11 THE WITNESS: I -- that had been mentioned to me,
12 but I really didn't have any knowledge of that at the time
13 I visited and during my discussion with the staff there.

14 BY MS. GRUNFELD:

15 Q. Who mentioned it to you?

16 MR. MAIORINO: Objection. Misstates his prior
17 testimony.

18 THE WITNESS: I really do not recall. It was no
19 one at that prison. I think just through the course of
20 discussion it came up.

21 BY MS. GRUNFELD:

22 Q. What is your understanding of what the [REDACTED]
23 is?

24 MR. MAIORINO: Objection. Beyond the scope of
25 his designation, argumentative, assumes facts.

1 THE WITNESS: Again, I would hate to characterize
2 it in too much detail, but just my general sense is that
3 it's something about a staff code perhaps, or something to
4 that extent. But I -- I don't have enough information to
5 respond to it, so -- in any specificity.

6 BY MS. GRUNFELD:

7 Q. Over your time in corrections, both in California
8 and in Washington, did you ever hear discussion about
9 officer gangs?

10 MR. MAIORINO: Objection. Vague and ambiguous.

11 THE WITNESS: No.

12 BY MS. GRUNFELD:

13 Q. Are you aware that the Bishop report at RJD found
14 that there were allegations of officer gang activity at
15 that prison?

16 MR. MAIORINO: Objection. Beyond the scope of
17 his designation.

18 THE WITNESS: I didn't read the Bishop report.
19 As you're saying it now, I recall something in Ken
20 McGinnis's report where there was information about staff
21 gang behavior, and that was one of the things that was
22 being addressed at the institution.

23 BY MS. GRUNFELD:

24 Q. Is it your practice to read the reports of the
25 inspector general of California?

1 A. I have read some.

2 Q. Did you read the report that the inspector
3 general made on the [REDACTED] back in the 2000s?

4 A. I did not.

5 Q. Did you read the report issued in January 2019 by
6 the inspector general about Salinas Valley?

7 A. And this is a report on -- in terms of staff
8 investigations?

9 Q. Yes.

10 A. Yes, I did not go through the entire report in
11 detail, but I read a good portion of that in terms of the
12 methodology, the observations, and some of the conclusions
13 that the inspector general made.

14 Q. And are you aware that the inspector general
15 concluded that the local investigations were faulty and
16 biased against incarcerated people?

17 MR. MAIORINO: Objection. Beyond the scope of
18 his designation.

19 THE WITNESS: What I remember is that there was
20 criticisms in terms of the quality, thoroughness, the
21 compliance with policy, and following appropriate CDCR
22 guidelines. I don't remember any statements that it was
23 intentional behavior toward ADA class members.

24 BY MS. GRUNFELD:

25 Q. That wasn't my question, but --

1 A. Okay.

2 Q. Did you -- did you read the report as -- you
3 didn't read all of the report; is that right?

4 A. Correct, I read probably the first third of the
5 report.

6 Q. And why did you only read the first third?

7 A. I think I got sort of a -- at least, some context
8 of the criticism, and I think it was -- well, I just got a
9 sense of some of the findings of the inspector general.

10 Q. Are you aware that one of the issues in the
11 inspector general's investigation of Salinas Valley was a
12 claim that retaliation was occurring when people made
13 complaints?

14 MR. MAIORINO: Objection. Beyond the scope of
15 his designation.

16 THE WITNESS: I remember that reference in terms
17 of the -- the summary of the report and some of the
18 specific methodology and findings.

19 BY MS. GRUNFELD:

20 Q. And if a person who makes a complaint is
21 retaliated against, that pretty much undercuts the whole
22 complaint process, right, because no one is going to use
23 it if -- if they have that fear; is that your
24 understanding?

25 MR. MAIORINO: Objection. Incomplete

1 hypothetical, assumes facts, argumentative.

2 THE WITNESS: Obviously in -- any potential
3 retaliation or retribution would have an effect on someone
4 coming forward.

5 BY MS. GRUNFELD:

6 Q. And possibly others as well; right?

7 MR. MAIORINO: Objection. Incomplete
8 hypothetical, assumes facts, argumentative.

9 THE WITNESS: It could, yeah. Again, it depends
10 on kind of the basis of that, but yes, it could.

11 BY MS. GRUNFELD:

12 Q. When you met with the warden of Salinas Valley,
13 did you discuss the inspector general's Salinas Valley
14 report with him?

15 A. I did not.

16 Q. Did you read the report before you visited
17 Salinas Valley?

18 A. I did not.

19 Q. Did the topic of retaliation against incarcerated
20 people come up on the tour of Salinas Valley?

21 A. I don't recall it coming up on the tour.

22 Q. Other than what we've already discussed today,
23 are there any aspects of your tour of Salinas Valley that
24 stand out in your mind as you sit here?

25 MR. MAIORINO: Objection. Overbroad.

1 THE WITNESS: No. Again, I felt, as I have
2 stated, that -- that it -- I don't think of the tour as a
3 compliance audit. I don't even -- wouldn't even define it
4 as a thorough cultural assessment. It was a -- an
5 opportunity given very limited amount of time to go to the
6 facility, discuss with staff, and understand the processes
7 that occur in those institutions.

8 BY MS. GRUNFELD:

9 Q. What day did you visit Kern Valley?

10 A. That was on a Tuesday, is that the 17th?

11 Q. You currently testified that you went to SATF on
12 the 18th. Did you do two prisons in one day?

13 A. Correct.

14 Q. So did you go to Kern Valley in the morning and
15 SATF in the afternoon?

16 A. Yes, I did.

17 Q. And how long were you at Kern Valley?

18 A. For the course of the morning until -- from 8:30
19 to 12:30.

20 Q. And did you travel there by yourself?

21 A. I did not.

22 Q. Who was with you?

23 A. Monica Anderson.

24 Q. From the Attorney General's office?

25 A. Correct.

1 Q. And was Ms. Anderson with you for all three
2 tours?

3 A. She did not participate in the tours.

4 Q. Oh, she just drove you there?

5 A. She didn't drive me there, no.

6 Q. Did she drive there with you?

7 A. Yes.

8 Q. And what was the purpose of that, just to --

9 A. I can't --

10 Q. -- talk about it on the way?

11 A. I can't --

12 Q. Pardon?

13 A. No, there was no discussion around the Armstrong
14 case.

15 Q. Okay. So you arrived at Kern Valley at around
16 8:30 in the morning. Who did you meet with?

17 A. I met with the warden, initially.

18 Q. And who is that?

19 A. Christian Pfeiffer.

20 Q. Okay.

21 A. Then he brought me into a conference room where
22 he had assembled some staff, and it was -- it was the --
23 probably ten staff, the deputy warden, the investigator,
24 the grievance coordinator, several additional staff, head
25 of training, and -- and that's what I can recall offhand.

1 Essentially, staff who were involved in the process --
2 processes that I wanted to get a better understanding of.

3 Q. So basically grievance and ADA appeals staff; is
4 that a correct statement?

5 A. Investigation -- investigations and training.

6 Q. Investigations and training, also. So were
7 representatives of the local ISU in the conference room?

8 A. The lieutenant -- the investigator -- the
9 investigator lieutenant was there.

10 Q. Okay. And after meeting initially with the
11 warden, you met in the conference room with ten staff
12 members. How long did that meeting last?

13 A. I was probably there for an hour and a half.

14 Q. And what do you recall discussing with those
15 staff members; and was the warden there during that
16 meeting?

17 A. He was. So initially how it started was the
18 warden was there with the team. They introduced
19 themselves. We had some general discussion, and then we
20 broke up into individual meetings with the individual
21 staff and kind of walking through their areas of
22 responsibility.

23 Q. I'm sorry. You said you were there with the
24 warden and the dean?

25 A. No, the team. Sorry.

1 Q. The team.

2 A. Team.

3 Q. Okay. Team. So when you talk about the breakout
4 meetings, were those during the 1.5 hours?

5 A. Yes.

6 Q. In other words --

7 A. Yes --

8 Q. -- initially you stated --

9 A. -- that's correct.

10 Q. That you met with these folks for about an hour
11 and a half?

12 A. Correct.

13 Q. It wasn't a big group thing, it was breakout
14 meetings; is that right?

15 A. Initially, the first half hour was a larger
16 group, and then the follow-up meetings were individual.

17 Q. And did you take notes during the meetings?

18 A. No. I basically had them sort of walk through --
19 I may have written -- scratched down a couple of notes
20 just to kind of try to trigger my memory, but I don't have
21 detailed notes from each interview.

22 Q. And do you know the names of the people you met
23 with?

24 A. I do not have the names of all the people written
25 down.

1 Q. And you don't remember them, off the top of your
2 head?

3 A. No, I don't.

4 Q. What did you learn from the meetings at Kern
5 Valley?

6 A. Similar kind of questions from the others, you
7 know, how do they manage the 1824s, the request for
8 accommodations; how they manage the grievance process;
9 talked a little bit with the training officer about some
10 of the annual training that occurs at the facility; you
11 know, specifically talked about what he described as
12 partnership training, which is how do you work together,
13 more of a multi-disciplinary approach with healthcare
14 staff; went through kind of a discussion around the -- the
15 staff complaint process. Similar to each institution, I
16 had people kind of walk through their process that exist.

17 Q. Okay. Did you do any kind of walking around at
18 Kern Valley?

19 A. Yes, I did. We went into a housing unit, and,
20 again, I don't have the information. I realize it would
21 have been, perhaps, helpful to put all those in the
22 report, then I could refer to it. But we went into a
23 housing unit in one of the facilities. We walked through
24 with the warden and with a couple other staff, and I'm not
25 going to recall who those specific staff were. We talked

1 to the captain in the -- in the facility. I believe the
2 deputy warden joined us as well.

3 Q. And how long were you in the particular housing
4 unit?

5 A. Not very long, maybe 10 or 15 minutes.

6 Q. Was it a cell or dorm housing?

7 A. It was celled housing.

8 Q. Do you know what kind of population was housed
9 there?

10 A. Actually, it was in transition. So they were
11 planning it to be a housing unit for quarantine. So there
12 weren't inmates in the housing unit. To me, sort of out
13 of respect to each of the facilities I went to, I sort of
14 used the best judgment in terms of, you know, what kind of
15 interface you have with inmates and the institution. So I
16 just kind of wanted to get a representative picture of
17 what the housing units looked like.

18 Q. So that one you went to at Kern Valley was empty
19 because they were transitioning it to a quarantine unit?

20 A. Correct.

21 Q. Did you look at anything else at Kern Valley?

22 MR. MAIORINO: Objection. Vague and ambiguous.

23 THE WITNESS: I cannot recall anything.

24 BY MS. GRUNFELD:

25 Q. Now, returning to your report, page four --

1 THE WITNESS: Can we take a five-minute break so
2 I can fill up again, two minutes?

3 MS. GRUNFELD: Sure. Two minutes.

4 (Deposition in recess, 1:33 p.m. to 1:39 p.m.)

5 A. Let's go back on the record.

6 BY MS. GRUNFELD:

7 Q. Mr. Warner, you understand that you are still
8 under oath after a brief recess?

9 A. I do.

10 MS. GRUNFELD: Madam reporter, can you please
11 read back the last question before we took the break or
12 the last colloquy, if that's what it was.

13 (Record read.)

14 BY MS. GRUNFELD:

15 Q. Mr. Warner, do you have your report, page four,
16 in front of you?

17 A. Page four, yes.

18 Q. On page four you summarize what you believe to be
19 the percentage of the total population of each of your
20 prisons. You summarized the percentage of Armstrong class
21 members in paragraphs 10, 11, and 12. Do you see that?

22 A. Yes.

23 Q. Now, in making that calculation, you used only
24 the prisoners who have received what we call DPP codes
25 from CDCR; is that correct?

1 A. It was the information provided to me, and so I'm
2 not sure of their coding process on it.

3 Q. Did they give you the percentages, or did you
4 calculate the percentages?

5 A. I may have calculated it on my own. I don't
6 recall that they gave me an actual percentage number.

7 Q. Do you recall what kind of figures they gave you
8 on the class members on how many there are?

9 A. For which facility?

10 Q. Well, we can start with SATF.

11 A. Okay. So yeah, SATF would be 919.

12 Q. Yes. My question is, in using that 919 number,
13 did you receive that from someone at SATF?

14 A. I -- I -- it sort of was -- getting the actual
15 detailed numbers were a little tricky, because, as you
16 know, during COVID, the populations of prisons have
17 changed significantly, and so there's different sources of
18 information that's available. One has to do with the sort
19 of overall movement in the prison, so that would sort of
20 misrepresent the total number, because it's inmates coming
21 and going and it doesn't give you an average daily
22 population.

23 So in some cases I would ask the institution
24 specifically, what is your count now? And in some cases,
25 I was provided by the Office of Research number, so it

1 could be -- there could be some variability between what
2 the point in time today is and what the information that I
3 have. If that answers your question at all?

4 Q. My question goes not to the count of the prison,
5 but to the number of Armstrong class members and how you
6 determined that number. Do you recall who gave you that
7 information for each of the three prisons?

8 A. Again, in some cases I asked the prison
9 specifically, and in other cases I would rely on Office of
10 Research, and so I cannot remember whether the 919 -- I
11 believe the 919 was given to me by the institution.

12 Q. Do you recall who at the institution gave you
13 that number for SATF?

14 A. I do not.

15 Q. How about the number you used for Salinas Valley,
16 which is 371?

17 A. Again, I -- I believe -- I don't think it was the
18 institution. I think it was from Office of Research data
19 source.

20 Q. And then finally, with Kern Valley, you assert
21 that there are 225 Armstrong class members. Do you recall
22 where you received that data?

23 A. I believe I got that directly from the facility,
24 because originally I had a larger number, but it included
25 movement of people in and out of the facility. So my

1 recollection is that they -- that was a point in time in
2 which they gave me that number.

3 Q. Now, that number that you got from each of the
4 prisons or the Office of Research does not include people
5 who have disabilities that have not been documented by
6 CDCR; is that correct?

7 MR. MAIORINO: Objection. Vague and ambiguous,
8 overbroad.

9 THE WITNESS: I'm not sure what the criteria
10 would be in terms of what they don't -- what the number
11 doesn't include. It was represented to me that these were
12 the number of Armstrong class members at the facility.

13 BY MS. GRUNFELD:

14 Q. Do you know how CDCR decides who it considers to
15 be members of the Armstrong member class?

16 A. I do not.

17 Q. Do you consider mental illness to be a
18 disability?

19 MR. MAIORINO: Objection. Overbroad, vague and
20 ambiguous.

21 THE WITNESS: I think that -- yes, mental illness
22 is a disability.

23 BY MS. GRUNFELD:

24 Q. Would members of the Coleman class have a
25 disability, in your opinion?

1 MR. MAIORINO: Objection. Overbroad, vague and
2 ambiguous, calls for a legal conclusion.

3 THE WITNESS: Yeah, I'm not familiar enough with
4 the Coleman class, the specifics around that to be able to
5 answer that question.

6 BY MS. GRUNFELD:

7 Q. If I represent to you that those are people with
8 mental illness, would you be able to answer whether you
9 think they have disabilities?

10 MR. MAIORINO: Objection. Vague and ambiguous,
11 overbroad --

12 THE WITNESS: Again, I know there are specifics
13 around the Armstrong and the Coleman cases, and so I would
14 be reluctant to say they should fit in either one of those
15 categories. Obviously, there's an impairment that needs
16 to be understood by the facility and have a plan that
17 addresses those impairments.

18 BY MS. GRUNFELD:

19 Q. Are you aware that Plaintiffs' motion in this
20 case argues that all people with disabilities, not just
21 members of the Armstrong class, are being targeted for
22 discrimination, abuse, and retaliation?

23 A. I'm not aware of that.

24 Q. Do you think that those kinds of behaviors
25 against a person with mental illness would be relevant to

1 the issues affecting the Armstrong class?

2 MR. MAIORINO: Objection. Vague and ambiguous,
3 overbroad, calls for a legal conclusion.

4 THE WITNESS: Would those members -- those
5 categories be relevant to the Armstrong case, that was --
6 BY MS. GRUNFELD:

7 Q. My question to you would be whether the treatment
8 of individuals with disabilities, even if they are not
9 members of the Armstrong class, be relevant to how the
10 Armstrong class is being treated?

11 MR. MAIORINO: Objection. Vague and ambiguous,
12 overbroad, calls for a legal conclusion.

13 THE WITNESS: Again, I'm just not familiar enough
14 with those distinctions between the two class actions to
15 be able to comment on that.

16 BY MS. GRUNFELD:

17 Q. Now, if you could please turn to page six of your
18 report, paragraph 16. You state that you were, quote,
19 Provided data for a three-year period of the total number
20 of ADA-related grievances, Form 602s, and Requests for
21 Accommodation, Form 1824s, submitted at the three prisons,
22 SATF, SVSP, and KVSP by class members and nonclass
23 members, close quote.

24 Do you see that statement?

25 A. I do.

1 Q. And then below you have created some tables. The
2 first one is the number of ADA Grievances and Requests for
3 Accommodation at SATF.

4 Now, did you create this table on page six?

5 A. I -- I did.

6 Q. And --

7 A. Well, let me put it this way, I recreated it
8 based on data that I got from the CDCR Office of Research.

9 Q. Now, what do they mean by ADA-related Form 602s?
10 Who decided what those were?

11 A. Well, my interpretation of that would be that
12 these would be 602s that relate to an accommodation that
13 are redirected through the ADA staff to address.

14 Q. So they're screened out of the 602 process?

15 MR. MAIORINO: Objection. Misstates,
16 mischaracterizes prior testimony.

17 MS. GRUNFELD: Well, I just want to make sure
18 we're all on the same page. Did you produce to us
19 documents that show where this number -- these three
20 numbers come from 1,072 in 2017, Trace?

21 MR. MAIORINO: Yes, I believe those are in the
22 COMPSTAT documents that were filed from the Office of
23 Research in support of our opposition.

24 BY MS. GRUNFELD:

25 Q. Okay. So, Mr. Warner, you took this data from

1 COMPSTAT, and Mr. Maiorino is telling me it's in the
2 opposition pleadings, and then you compared it to these
3 historical numbers that you got from somebody, either at
4 the Office of Research or maybe at the prison, and you
5 divided these class member numbers into the total number
6 of grievances; is that the methodology that was applied
7 here?

8 A. Again, I'm assuming that those documents are
9 shared between plaintiffs and defendants. They came from
10 the Office of Research, and the categories are defined as
11 on the table, and so my -- my reading of that is that the
12 total number submitted is from the entire population of
13 the institution, the total Armstrong class members are
14 those submitted by Armstrong class members, and then the
15 percentage of that would be as -- obvious, the difference
16 between the total and the Armstrong class members.

17 Q. So isn't it true, though, that disability
18 grievance is for a person with a disability?

19 MR. MAIORINO: Objection. Vague and ambiguous,
20 it's overbroad.

21 THE WITNESS: I think the scope that I was
22 looking for was specific to Armstrong class members, but
23 that was part of my assignment.

24 BY MS. GRUNFELD:

25 Q. Well, if you look at paragraph 17, you say that

1 the tables show that, quote, Armstrong class members filed
2 the majority of ADA appeals and requests for
3 accommodations.

4 A. Mm-mm (affirmative).

5 Q. Do you see that language?

6 A. I do.

7 Q. Is that a surprise to you?

8 MR. MAIORINO: Objection. Vague and ambiguous.

9 THE WITNESS: No, it's not a surprise to me.

10 BY MS. GRUNFELD:

11 Q. And you state that those numbers remain
12 consistent with fluctuations in the population. What is
13 the meaning of that observation?

14 A. Well, there would be some variability, again,
15 depending on kind of the mission. So I think that is to
16 assume that this isn't a rate, it's a total. So if you
17 wanted to account for the change in population, you would
18 do more of a rate analysis. And so it's -- it's just to
19 make the statement that I recognize that there may be some
20 variation between the prison population in 2017, 2018, and
21 2019 in each of these data sets. But I'm not sure
22 that's -- I think that may be, to some extent, overstated.
23 What you're looking -- or what I was looking at is, is
24 there -- is the ADA grievance and request for
25 accommodation process used by Armstrong class members? Is

1 it something that people do not utilize in the -- as a --
2 as a tool for them.

3 Q. And what does the data tell us about that?

4 A. Well, I would say that, again, there's a slight
5 increase in -- in terms of the percent of Armstrong cases
6 versus the overall number of ADA grievances submitted, but
7 that my view of that is that class members were not
8 discouraged from filing ADA grievance requests over the
9 last three-year period of time. I would expect that
10 the -- if the number went down or there were significant
11 outliers or changes, then that would be a commentary
12 that -- that people were not comfortable with utilizing
13 it, it was not sort of a viable tool for them.

14 Q. Well, with respect to Salinas Valley and Kern
15 Valley, the percentage number did go down over time,
16 didn't it?

17 A. As a percentage of the overall number of
18 grievances submitted, but if you look at the actual
19 number, the number increased. If you want to use Kern
20 Valley, it went from 145 to 157 to 204.

21 Q. But to be clear, this is not a table about
22 grievances, this is about 1924s; right?

23 MR. MAIORINO: Objection. Misstates prior
24 testimony.

25 MS. GRUNFELD: Well, I don't think it does

1 misstate the prior testimony. We're looking at page six,
2 Table 1, Number of ADA Grievances, slash, Request for
3 Accommodation. I want to make sure we're talking about
4 1824s here.

5 THE WITNESS: I think we're talking about both.
6 I think it's 602s and 1824s.

7 BY MS. GRUNFELD:

8 Q. I see. So you lumped them together, and then you
9 looked at whether they're increasing over time at the
10 three prisons, and then you looked at whether the
11 percentage filed by Armstrong class members, what that
12 number was. So I don't really see why this Table 1 tells
13 us that Armstrong class members feel comfortable filing
14 grievances and 1824s, do you?

15 A. Again, I'll restate. I think that it shows --
16 continues to increase in utilization of that process, of
17 those processes.

18 Q. By people at the prison?

19 A. Correct.

20 Q. Not necessarily by class members?

21 A. No, class members as well. Armstrong class
22 members would reflect those -- those -- grievance and
23 request for accommodations.

24 Q. Well, it went up -- I mean, I'm looking at SATF,
25 76.6 for 2019, and 72.5 for 2017, so that went up. But at

1 the other two prisons, would you agree that the percentage
2 of Armstrong grievances or appeals went down?

3 A. What I would say is that the utilization by
4 Armstrong class members went up in both -- in -- in all
5 three facilities as identified. So it -- it may not be in
6 terms of an overall percentage. So you could have a
7 larger number of grievances from non-Armstrong members
8 that may skew the percentage of Armstrong members'
9 request. So this really looks at the utilization of these
10 by Armstrong class members, and in each of the three
11 cases, they've increased.

12 Q. Why does Salinas Valley show that the percentage
13 for Armstrong in 2017 was 73 percent, and the percentage
14 in 2019 was 67 percent?

15 A. Well, because the -- the total submitted, the
16 end, the -- the -- is far greater in the facility. So you
17 went from 467 to 805, which is a significant increase of
18 those submitted outside of Armstrong class members.

19 Q. Do you agree that the percentage of Armstrong
20 class members in 2019 is lower than in 2017?

21 MR. MAIORINO: Objection. Vague and ambiguous.

22 THE WITNESS: Of the total -- what I would
23 continue to state is that the utilization by Armstrong
24 class members at Salinas Valley has increased over that
25 three-year period of time. 345 to 528 to 542. So the 73

1 percent or the 67 percent is of the total number
2 submitted, and if that number increases -- so there may be
3 some reasons outside of Armstrong that people are
4 requesting that information, and I'm not sure what that
5 might be. I did not look at that population.

6 BY MS. GRUNFELD:

7 Q. And did you look at -- did you get any data or
8 look at whether any of these grievances or appeals had
9 been withdrawn?

10 A. I did not have that data.

11 Q. Do you have any data on the class members that
12 are not filing grievances or appeals?

13 A. Only the aggregate data here. The class
14 members -- I'm sorry. Could you repeat the question, Gay.
15 I'm not sure I heard it right.

16 Q. So did you receive any information on the number
17 of class members at the prisons that did not file
18 grievances or appeals at all?

19 A. I'm not sure I understand how that would be
20 possible. If they didn't file it, then I'm not sure what
21 would be captured to identify that. I think the only way
22 you can identify that is to do individual -- I'm not sure
23 how you get that information.

24 Q. Well, let me put it to you like this. If there's
25 778 class members at the prison in 2017, do you know

1 whether all 778 filed one grievance each, or some filed
2 zero, some filed 100? Do you have any data on the
3 individual people and how they filed?

4 A. No, I did not have that information.

5 Q. And what caused you to go back only these three
6 years? How did you decide that?

7 A. That was the information that was provided to me,
8 and I -- I -- you know, my, I guess, view of that is in
9 relationship to looking at the plaintiffs' examination of
10 what's happened in the last one- to three-year period,
11 perhaps so; that was the information that was given to me.

12 Q. Now, returning to your paragraph 17, at the end
13 of it you say, quote, There is no indication that class
14 members are refraining from requesting accommodations or
15 unable to access the grievance process, period, close
16 quote.

17 What is the basis for that statement?

18 A. It's based on the -- the absence of any
19 information that I was provided or able to obtain that
20 would show that there -- there's cause for class members
21 to refrain from requesting accommodations. So it's a
22 combination of the data, it's a combination of some
23 discussions with staff involved, but I have no evidence
24 that class members are not requesting accommodations or
25 unable to access those accommodations.

1 Q. And did you discuss with the staff at the prison
2 whether they have any information about class members
3 deciding not to file grievances?

4 A. My discussions, again, mostly with the ADA
5 staffing, and to some extent, the grievance staff was --
6 did -- were there -- did they have concerns about
7 accessibility? Did they see any changes in terms of the
8 numbers of grievances that are filed and utilized? Again,
9 we're in a bit of a change in the system because of the
10 revisions in June. So my visits were after that occurred.
11 But I know there's been some changes to the -- to the
12 grievance process, narrowing the number of objections to
13 being able to file grievances and a variety of things,
14 which staff believe, you know, could -- could potentially
15 increase the number of grievances as well.

16 But I didn't receive any information from staff
17 that they felt like there were specific barriers to class
18 members filing requests for accommodation or for 602s.

19 Q. And did you ask them if any class members are
20 afraid to file those documents?

21 MR. MAIORINO: Objection. Vague and ambiguous,
22 overbroad.

23 THE WITNESS: I didn't ask them if -- if they
24 were aware of any inmates afraid. I asked from -- in
25 terms of the process in place, were there specific

1 barriers or concerns, and I -- I did not identify any.

2 BY MS. GRUNFELD:

3 Q. Table 4 on page eight, you look at the number of
4 staff complaints at SATF. Are these 602s that you're
5 looking at now or what are you talking about?

6 A. Yeah, I think that would be through the 602
7 process.

8 Q. And this, again, was from the Office of Research,
9 this data?

10 A. Correct.

11 Q. In paragraph 20, you state, quote, It is my
12 opinion that Armstrong class members are utilizing the
13 staff complaint process at a greater rate than nonclass
14 members, period, close quote.

15 Do you see that statement?

16 A. Yes, I do.

17 Q. Now, you conclude that that means they're not
18 refraining from accessing the processes due to
19 discrimination. Isn't it also possible that they are, in
20 fact, utilizing the process because they need more help
21 with the activities of daily living due to their
22 disabilities?

23 MR. MAIORINO: Objection. Incomplete
24 hypothetical.

25 THE WITNESS: So the question is, are staff -- or

1 excuse me -- are class members filing complaints because
2 they need more help?

3 BY MS. GRUNFELD:

4 Q. Is that a possible explanation for what you've
5 observed here with the data that you were given?

6 A. Well, I guess my opinion would be that that is --
7 I don't know because I can't really determine the choice
8 an inmate could make, but I would probably look at the
9 1824 process if I felt like I wasn't getting the
10 accommodations that I was entitled to, being an Armstrong
11 class member. So I don't have the specific categories in
12 terms of what the specific complaints were.

13 My -- my point to this chart was to look at the
14 fact that it is utilized by Armstrong members, and it's
15 utilized at a higher percentage, so I would come, at least
16 based on this data set, and, again, seeing nothing to the
17 contrary, that as a percentage, Armstrong class members
18 are using the staff complaints at a -- at a greater
19 percentage than the general population in the prison. I
20 don't have any specific information that will tell me why.

21 Q. Isn't it possible that they're interacting with
22 staff more because they need to ask for help for their
23 activities in prison, such as showering, toileting, and
24 other activities that they have to ask for more help and,
25 therefore, have to interact with staff on a more frequent

1 basis, and so could be more vulnerable to staff abuse than
2 the typical prisoner?

3 MR. MAIORINO: Objection. Incomplete
4 hypothetical, vague and ambiguous.

5 THE WITNESS: I think if I'm an Armstrong class
6 member, I have a variety of tools. I would have the 602
7 process, I have the 1824 process, and if I feel like there
8 are issues in terms of fulfilling some of the -- the
9 appropriate needs of class members, then I would file a
10 staff complaint, if that was a grievance that I had.

11 BY MS. GRUNFELD:

12 Q. What if someone had previously threatened you or
13 beaten you up, would you still file a staff complaint
14 after that?

15 MR. MAIORINO: Objection. Incomplete
16 hypothetical, vague and ambiguous.

17 THE WITNESS: Yeah, I can't speak to that
18 specific issue.

19 BY MS. GRUNFELD:

20 Q. As with the 1824s, did you receive any data that
21 showed you who filed specific complaints? For example, of
22 the 100 -- excuse me -- of the 354 staff complaints at
23 SATF in 2019, do you know whether they were filed by one
24 Armstrong class member, or whether each of the 100 that
25 you state here was one per person, or some people might

1 have filed five? Do you have any information like that?

2 A. I don't have a break down, individual. I think
3 those -- I think those variances could be the case, and in
4 2019, 2018, 2017, as well as you could have some -- an
5 individual file many staff complaints in any one of those
6 period of time, so it's difficult without having that
7 individual data for the past three years to be able to
8 answer that question.

9 Q. Now, in the next section of your report,
10 entitled, Class-Member Declaration Alleging Improper Use
11 of Force, begins on page nine. My understanding is that
12 you reviewed three declarations submitted by the plaintiff
13 class or by Plaintiffs, we'll call prisoner declarations,
14 and then you reviewed certain documents that were provided
15 to you by the prisons to analyze these declarations; is
16 that a correct statement of this section of your report?

17 MR. MAIORINO: Objection. Vague and ambiguous.

18 THE WITNESS: Yes, this part of the report does
19 focus on -- on three declarations. There was a fourth
20 declaration, I believe, and the quick review of that was
21 that it was a PREA, a case in investigation, and -- and I
22 did not do the review of all the documents that are
23 available, and I believe that was [REDACTED]

24 BY MS. GRUNFELD:

25 Q. With regard to the three that you did review,

1 prior to this assignment, have you had experience
2 reviewing discipline and investigation files?

3 A. I think in a variety of capacities I've had to
4 review discipline files. It -- it may not be a specific
5 part of my role, whether I was secretary, in some cases as
6 command manager, if they were appealed to -- from a prison
7 to a central office. With MTC, I would be involved in
8 investigations around use of force.

9 Q. What did you do at MTC when you investigated use
10 of force?

11 A. I did not personally investigate use of force.
12 I -- just because of the chain of command, if there were
13 specific use of force incidents that they would be
14 reviewed by sort of a series of people going from the
15 warden to vice president to myself. But again, not in
16 every single case.

17 Q. Was MTC sued for use of force incidents?

18 MR. MAIORINO: Objection. Vague and ambiguous,
19 overbroad, assumes facts, compound.

20 THE WITNESS: I'm not aware if MTC was sued
21 specifically. MTC is a contractor with particular states,
22 so there may have been some suits, but I believe they
23 would have been toward the agency, government agency, not
24 to the company individually.

25 ///

1 BY MS. GRUNFELD:

2 Q. Have you ever testified in a use of force case?

3 A. No.

4 Q. Have you ever been involved in a use of force
5 lawsuit?

6 MR. MAIORINO: Objection. Vague and ambiguous,
7 overbroad.

8 THE WITNESS: Not that I recall.

9 BY MS. GRUNFELD:

10 Q. What was your general opinion of the use of force
11 reviews at MTC?

12 MR. MAIORINO: Vague and ambiguous, overbroad.

13 THE WITNESS: It is broad because it would depend
14 on the jurisdiction. In some cases the investigations
15 were done by the specific state we would contract with.
16 So if it was Texas, Texas may have their own investigative
17 process. We would provide them information and documents,
18 but they would be the jurisdiction that would do the
19 actual investigation. We did have an investigator in all
20 of our facilities who would be responsible for forensic
21 information and would engage with the customers that we
22 worked with.

23 BY MS. GRUNFELD:

24 Q. Did you have general policies around the
25 collection of evidence in use of force?

1 MR. MAIORINO: Objection. Vague and ambiguous,
2 overbroad, assumes facts.

3 THE WITNESS: Standard rules, I think, around
4 collection of information depending on the incident,
5 establishing a crime scene, making sure that all
6 documents, materials were in place, so yes.

7 BY MS. GRUNFELD:

8 Q. For example, if a prisoner in your jurisdiction
9 while you were at MTC was accused of manufacturing pruno,
10 would it be the policy of MTC to collect the pruno to test
11 it?

12 MR. MAIORINO: Objection. Vague and ambiguous,
13 incomplete hypothetical, goes beyond the scope of his
14 designation.

15 THE WITNESS: Again, each -- each customer has
16 their own policies and practice, so it's difficult to
17 generalize. But I think if it's evidence that relates to
18 a -- an infraction or violation, then that -- that
19 information would be collected or documented in some way.

20 BY MS. GRUNFELD:

21 Q. And use of force would be videotaped always;
22 right?

23 MR. MAIORINO: Objection. Incomplete
24 hypothetical, assumes facts, vague and ambiguous, goes
25 beyond the scope of his designation.

1 THE WITNESS: Could you specifically state the
2 question again?

3 MS. GRUNFELD: Sure.

4 BY MS. GRUNFELD:

5 Q. When you were at MTC, reviewing these use of
6 force issues that you described, would it be the normal
7 course of business to have a video of what happened as
8 part of the investigation?

9 MR. MAIORINO: Objection. Compound, goes beyond
10 the scope of his designation.

11 THE WITNESS: Again, depending on the facility
12 and depending on the jurisdiction we were working with,
13 and in many facilities we would have fixed cameras, so you
14 would have videotape to look at as part of the review
15 processes, and other cases that would not be the case, so
16 you'd look for witnesses and testimony from inmates,
17 staff, or anyone who had an associate involvement in the
18 incident.

19 BY MS. GRUNFELD:

20 Q. In the majority of the cases that you looked at
21 while you were at MTC, was there video?

22 MR. MAIORINO: Objection. Overbroad, vague and
23 ambiguous.

24 THE WITNESS: I couldn't give you a percentage.
25 I couldn't say whether it was a majority or not.

1 BY MS. GRUNFELD:

2 Q. Do you know how many cases you were involved in
3 while you were at MTC?

4 MR. MAIORINO: Objection. Vague and ambiguous.

5 THE WITNESS: In cases --

6 BY MS. GRUNFELD:

7 Q. Use of force reviews. We'll just call it that.

8 A. As a responsible official, or just that I was
9 associated with?

10 Q. Well, we can start with responsible official.

11 A. Right. Again, it wouldn't -- it would be
12 generally between the -- involvement in -- the warden and
13 the vice president who oversaw those facilities. Again,
14 many of the investigations are turned over to the agencies
15 that we contract with, so they would be the ones that have
16 direct involvement. I would be involved in associated
17 disciplinary issues and review evidence associated with
18 that.

19 Q. Did MTC have any general policies regarding
20 whether use of force -- let's rephrase that.

21 Did MTC have any general policies regarding
22 whether unreasonable or excessive use of force would
23 result in discipline for a particular officer?

24 MR. MAIORINO: Objection. Goes beyond the scope
25 of his designation.

1 THE WITNESS: Again, I think the policies are --
2 will vary somewhat to the jurisdiction involved, but
3 certainly a necessary excessive use of force would be an
4 incident that would be reviewed for disciplinary action.

5 BY MS. GRUNFELD:

6 Q. So you don't have any specifics about how many
7 people during your tenure at MTC would be disciplined for
8 using excessive or unnecessary force?

9 A. I do not have any specific numbers.

10 Q. Do you remember if anyone was terminated for that
11 during your time at MTC?

12 MR. MAIORINO: Objection. Overbroad, vague and
13 ambiguous, goes beyond the scope of his designation.

14 THE WITNESS: Yes.

15 BY MS. GRUNFELD:

16 Q. Do you remember how many people were terminated
17 for using excessive or unnecessary force on incarcerated
18 people during your time at MTC?

19 MR. MAIORINO: Objection. Vague and ambiguous,
20 overbroad, goes beyond the scope of his designation.

21 THE WITNESS: I don't have a specific number.

22 BY MS. GRUNFELD:

23 Q. Can you estimate whether it was more than five or
24 ten?

25 MR. MAIORINO: Objection. Vague and ambiguous,

1 overbroad, goes beyond the scope of his designation.

2 THE WITNESS: I would say there are a number of
3 instances and circumstances, but I couldn't tell you
4 exactly what the number is.

5 BY MS. GRUNFELD:

6 Q. Well, let's look at the three prisons that you
7 were asked to review for this case. Did you ask CDCR to
8 provide you with the number of officers against whom a
9 warden at Salinas Valley has imposed adverse action for
10 staff misconduct since January 1, 2017?

11 MR. MAIORINO: Objection. Vague and ambiguous.

12 THE WITNESS: I did not.

13 BY MS. GRUNFELD:

14 Q. And why not?

15 A. Again, with -- within my scope, I was looking at
16 the processes, not necessarily the disciplinary action
17 around use of force against officers at CDCR.

18 BY MS. GRUNFELD:

19 Q. And did you ask for that data with regard to SATF
20 or Salinas Valley?

21 A. No.

22 Q. And do you know if CDCR has that data?

23 MR. MAIORINO: Objection. Vague and ambiguous,
24 goes beyond the scope of his designation.

25 THE WITNESS: The information specifically being

1 disciplinary action against staff regarding use of force?

2 BY MS. GRUNFELD:

3 Q. Essentially, yes.

4 A. Yeah. I'm not sure. I believe in -- in COMPSTAT
5 there is some information around that discipline, but I'm
6 not sure to what extent it's broken down by specific
7 areas.

8 Q. But as you sit here today, you do not know
9 whether adverse action has been imposed at your prisons
10 for staff misconduct against incarcerated people during
11 the time period January 1, 2017, to present?

12 MR. MAIORINO: Objection. Goes beyond the scope
13 of his designation, vague and ambiguous, compound.

14 THE WITNESS: Correct, I do not have that
15 information.

16 BY MS. GRUNFELD:

17 Q. Do you have information on how many referrals to
18 the office of internal affairs were made by your prisons
19 during this time period, January 1, 2017, to present?

20 MR. MAIORINO: Objection. Goes beyond the scope
21 of his designation.

22 THE WITNESS: I do not.

23 BY MS. GRUNFELD:

24 Q. Do you know if your prisons have taken any steps
25 in the last three years to reduce staff misconduct against

1 incarcerated people?

2 MR. MAIORINO: Objection. Vague and ambiguous,
3 goes beyond the scope of his designation.

4 THE WITNESS: No, I'm not aware.

5 BY MS. GRUNFELD:

6 Q. Do you know if there are any video or other types
7 of cameras being used at your prisons currently?

8 A. There are -- at least, my understanding, and I
9 did not tour entire facilities, but most of the high
10 secure areas have cameras around sally port and egress and
11 access to the facility. But I'm not aware of any in the
12 housing units or in the yard, in general.

13 Q. You think they're around the sally ports at those
14 three prisons?

15 A. Where there is movement in and out of the
16 institution, I was told by staff that they have cameras
17 available to look at people -- access coming in and out.

18 Q. You mean at the gate?

19 A. Yeah, I call it the sally port, where you have
20 vehicles coming in, making deliveries, those kind of
21 things.

22 Q. I see. So the basic entrance to the prison is
23 videotaped?

24 A. There's cameras there that are available for
25 staff to observe. It's a -- would be a security issue.

1 Q. Sure. That would be people driving up; right?

2 A. It would be deliveries of goods and services, it
3 would be chain buses, it would be all the activity outside
4 of the main entryway into the institution.

5 Q. Other than that, are you aware of any cameras at
6 your prisons?

7 A. I'm not aware.

8 Q. Did you discuss with any of the wardens or staffs
9 at your prisons any plans to install surveillance cameras
10 at those prisons?

11 A. I did at -- I did speak to the warden and the AW
12 at Salinas Valley, because I believe they were part of the
13 BCP, and I think that they were positive about the
14 introduction of cameras as part of that BCP.

15 Q. Were they disappointed that it was withdrawn?

16 MR. MAIORINO: Objection. Vague and ambiguous,
17 calls for speculation.

18 THE WITNESS: I don't want to speak for them, but
19 I think that they were, again, looking forward to having
20 that as part of the plan that was in the BCP.

21 BY MS. GRUNFELD:

22 Q. Did you discuss with them why their prison was
23 chosen for that BCP?

24 MR. MAIORINO: Objection. Goes beyond the scope
25 of his designation.

1 THE WITNESS: I did not.

2 BY MS. GRUNFELD:

3 Q. And did you discuss with them when the cameras
4 might come in?

5 MR. MAIORINO: Objection. Goes beyond the scope
6 of his designation.

7 THE WITNESS: Yeah, it seemed like all the
8 understanding was that because of COVID, budget issues,
9 the BCP was put on hold. This is prior to, again, any
10 action by the court. So it was -- I think there was not a
11 sense in terms of when it might happen.

12 MS. GRUNFELD: Okay. Let's go off the record to
13 mark some exhibits, please.

14 (Exhibits 5 through 10, remotely introduced and
15 identified.)

16 (Deposition in recess, 2:29 p.m. to 2:47 p.m.)

17 BY MS. GRUNFELD:

18 Q. We are back on the record after a brief recess.
19 Mr. Warner, do you understand that you are still under
20 oath?

21 A. I do.

22 (Whereupon the testimony from pages 128 - 182 has
23 been marked confidential, excerpted, and bound
24 separately.)
25

1 BY MS. GRUNFELD:

2 Q. If you could please take a look at what's been
3 marked as Exhibit 15 in this deposition (indicating).
4 This is a chart my office prepared showing documented use
5 of force incidents at KVSP, SATF, and SVSP using CDCR
6 COMPSTAT data from 2017 to 2019.

7 According to this data, Mr. Warner, the
8 documented use of force is rising at all three prisons.
9 Is that consistent with the data that you looked at?

10 MR. MAIORINO: Objection. Vague and ambiguous,
11 assumes facts, beyond the scope of designation for this
12 witness.

13 THE WITNESS: So a couple of questions. It's
14 unclear to me, the copy -- is there something above -- I
15 don't see the other two prisons, all I see is Salinas
16 Valley.

17 MR. MAIORINO: Gay, I think we may have to --
18 this is what came out on ours, so the print may be a
19 little -- do you see what we see (indicating)? I think we
20 may be missing some information on this copy.

21 MS. GRUNFELD: Yes, your version is not the --
22 didn't print right.

23 MR. MAIORINO: Let me see.

24 MS. GRUNFELD: I'll just represent to you, that
25 the chart that I have in my hand shows an increase of

1 between 17 and 45 percent in documented use of force at
2 the three prisons that you went to. If that is true,
3 would that trend be of concern?

4 MR. MAIORINO: Objection. Vague and ambiguous,
5 assumes facts, goes beyond the scope of designation for
6 this witness.

7 THE WITNESS: So can I ask, is this total use of
8 force, or is this for Armstrong class members?

9 MS. GRUNFELD: Total use of force at the three
10 prisons.

11 THE WITNESS: I -- I think it would be consistent
12 with my viewing that there has been an increase in use of
13 force. The -- I think numbers would vary between
14 institutions. I -- I asked staff about that, in terms of
15 what -- what they're seeing in the institutions around
16 violence, and there was some mention that there's -- I
17 would say, in the -- in their reference in the last 12 to
18 18 months, some increases in the facility. They
19 speculated that some of it had to do with some changes in
20 the inmate population, maybe moving some inmates out of
21 restricted housing environments, and I would say that
22 that's sort of consistent with what the experience was in
23 Washington. But when we tried to reduce restricted
24 housing, then there was, for a period of time, some
25 increased violence in the institutions.

1 BY MS. GRUNFELD:

2 Q. Is use of force something that correctional
3 facilities should work hard to reduce?

4 MR. MAIORINO: Objection. Vague and ambiguous,
5 overbroad, assumes facts, incomplete hypothetical, goes
6 beyond the scope of this witness's designation.

7 THE WITNESS: Absolutely.

8 BY MS. GRUNFELD:

9 Q. And do you have any experience, for example, at
10 DJJ trying to reduce force in the correctional
11 environment?

12 MR. MAIORINO: Objection. Goes beyond the scope
13 of designation.

14 THE WITNESS: I think as you mentioned earlier, a
15 lot can be done in terms of increasing the skills of staff
16 around defusing incidents, in terms of improving
17 communication, in terms of changing the relationship
18 between staff and inmates in a way where there's more open
19 dialogue. I think we mentioned earlier, that's a bit of a
20 snapshot of the Norway approach. And so I think any
21 system should continue to improve those, and, obviously,
22 there are incidents in the large complex California
23 Department of Corrections and Rehabilitation, so I would
24 think that would be a paramount thing to focus on is to
25 continue to develop strategies, training, skills for staff

1 to reduces violence and reduce then any commensurate use
2 of force.

3 BY MS. GRUNFELD:

4 Q. Sure. Is accountability for staff part of a
5 reduction of use in force?

6 MR. MAIORINO: Objection. Vague and ambiguous,
7 assumes facts, incomplete hypothetical, goes beyond the
8 scope of witness's designation.

9 THE WITNESS: Is accountability -- what was your
10 question?

11 BY MS. GRUNFELD:

12 Q. Yes, accountability. Holding staff accountable,
13 firing them when they use excessive force. Is that a part
14 of an approach to reducing use of excessive force that you
15 recommend, in your experience?

16 MR. MAIORINO: Objection. Incomplete
17 hypothetical, assumes facts, goes beyond the scope of
18 designation of this witness.

19 THE WITNESS: I think staff needs to understand
20 that there's consequences for inappropriate conduct.

21 BY MS. GRUNFELD:

22 Q. In your assignment in this case, did anyone give
23 you any investigative files that showed that an allegation
24 of staff misconduct had been sustained by CDCR?

25 MR. MAIORINO: Objection. Vague and ambiguous.

1 THE WITNESS: I don't recall any.

2 BY MS. GRUNFELD:

3 Q. Did you see any cases in which a prison
4 committee, called an IERC, I-E-R-C, found the use of force
5 at one of your prisons was excessive?

6 MR. MAIORINO: Objection. Vague and ambiguous,
7 assumes facts, overbroad, goes beyond the scope of
8 designation.

9 THE WITNESS: Not that specifically. I did see
10 in some of the reviews some questions in the IERC around
11 the documents provided, the thoroughness of the
12 investigation. There was one specifically around time
13 frames in which a medical video was done. So my sense is
14 that there's a level of accountability with those, but not
15 specifically to your question around staff discipline.

16 BY MS. GRUNFELD:

17 Q. Now, how many hours did you spend writing your
18 declaration and touring the prisons in this case?

19 A. I have not done a tabulation. I think the last
20 time I looked at it, it was probably 100, 125 hours.

21 Q. Have you submitted a bill to CDCR yet for your
22 time?

23 A. I have not.

24 Q. And is this your first time to serve as an expert
25 witness?

1 A. It is. I served -- in terms of an expert witness
2 in terms of the court, it is. I have done work, which I
3 would consider expert correctional work, in -- with
4 working with other correctional systems around
5 implementing best practices and implementing reforms on
6 restricted housing and other initiatives, but this would
7 be the first designated specifically as a court expert.

8 Q. Are you involved in a romantic relationship with
9 Monica Anderson of the DOJ?

10 MR. MAIORINO: Objection. That's not an
11 appropriate question, but we will assert an objection. It
12 goes beyond the scope of his designation, it's harassing,
13 obnoxious. And I don't think you have to answer that, and
14 he's not going to answer that.

15 MS. GRUNFELD: All right. Subject to my --

16 MR. MAIORINO: Are you finished -- are you
17 finished with your deposition? Is that your last
18 question? Because we would like a tally of the total
19 hours so that he can submit an invoice to you for payment.

20 MS. GRUNFELD: Subject to any documents that I
21 would move to compel, I have completed my questioning
22 today.

23 Thank you very much, Mr. Warner.

24 MR. MAIORINO: Thank you.

25 THE WITNESS: Thank you.

1 MR. MAIORINO: Can we get a tally on the time so
2 that he can get paid.

3 THE REPORTER: Yes, one moment.

4 So I have, and this is not exact, approximately 5
5 hours and 55 minutes.

6 MR. MAIORINO: Okay. We'll round up to six
7 hours. Can you send him a check?

8 MS. GRUNFELD: Of course. We had asked for an
9 invoice, but I'll be happy to do it orally.

10 MR. MAIORINO: Thank you.

11 THE REPORTER: Trace, you asked for -- and also,
12 Gay, you asked for, a rough draft for tomorrow; is that
13 correct?

14 MS. GRUNFELD: Yes.

15 MR. MAIORINO: Yes.

16 THE REPORTER: Okay. Do you want the final
17 transcript on Tuesday morning, mid-morning still? That
18 was the information --

19 MS. GRUNFELD: That was the -- yeah. Sure.

20 (The deposition was concluded at 5:11 p.m.)
21
22
23
24
25

1 UNITED STATES DISTRICT COURT)
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA)

3
4 I, Robin A. Elawady, a Certified Shorthand
5 Reporter, do hereby certify:

6 That the foregoing proceedings were remotely
7 taken before me at the time and place therein set forth,
8 at which time the witness was put under oath by me;

9 That the testimony of the witness, the questions
10 propounded, and all objections and statements made at the
11 time of the examination were recorded stenographically by
12 me and were thereafter transcribed;

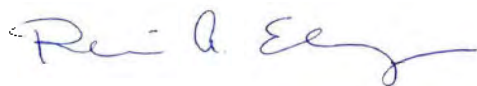
13 That a review of the transcript by the deponent
14 was not requested;

15 That the foregoing is a true and correct
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative or
18 employee of any attorney of the parties, nor financially
19 interested in the action.

20 I declare under penalty of perjury under the law
21 of California that the foregoing is true and correct.

22 Dated this 22nd day of September, 2020.

23 

24 Robin A. Elawady
25 CSR No. 10863

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiff,

vs.

Case No. C94 2307 CW

GAVIN NEWSOM, et al.,

Defendants.

CONFIDENTIAL EXPERT DEPOSITION OF BERNARD WARNER

APPEARING REMOTELY FROM

SACRAMENTO COUNTY, CALIFORNIA

Pages 128 - 182

September 18, 2020

10:08 A.M.

REPORTED BY:

Robin A. Elawady

CSR No. 10863

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BERNARD WARNER

Armstrong, et al. vs. Newsom, et al.

September 18, 2020

Robin A. Elawady, CSR No. 10863

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(Note: All exhibits were electronically provided to the reporter.)

1 (Confidential testimony commences.)

2 BY MS. GRUNFELD:

3 Q. We've been reviewing together your report,
4 Exhibit 4, and in that report are declarations at pages 13
5 and 14. And you discuss a declaration of a prisoner --
6 and we'd like to mark this section of the deposition
7 confidential -- and we are going to discuss the deposition
8 of [REDACTED], that's spelled [REDACTED].

9 Do you recall that declaration, Mr. Warner?

10 A. I do. Can I refer to it?

11 Q. Please, that is what we are marking as Exhibit 5,
12 is the Confidential Declaration of [REDACTED], which
13 concerns staff misconduct he experienced at Kern Valley
14 State Prison, which is one of the prisons you were asked
15 to assess.

16 A. Correct.

17 Q. Now, [REDACTED] [REDACTED] is a Coleman class member at the EOP
18 level of care. Do you understand what that means?

19 A. I do.

20 Q. It means that he has special treatment because of
21 his mental illness disability; is that right?

22 A. Correct.

23 Q. He's entitled to special treatment and
24 programming to address those issues and --

25 MR. MAIORINO: Vague and ambiguous.

1 BY MS. GRUNFELD:

2 Q. -- he states also that he has a seizure disorder,
3 that he sometimes has to go to the hospital about that,
4 and that he has eye and vision problems, and that he is
5 currently housed at Lancaster prison. Do you see that in
6 paragraph four of his declaration?

7 A. I do.

8 Q. And he was housed at Kern Valley for
9 approximately two years, according to paragraph five of
10 his declaration. Do you see that?

11 A. I do.

12 Q. So [REDACTED] [REDACTED] alleges that Officer Hunt excessively
13 pepper-sprayed him on August 27, 2019, after he was
14 involved in a fight with [REDACTED] [REDACTED] and [REDACTED] [REDACTED] and he
15 alleges that he was pepper-sprayed while he was prone down
16 and handcuffed. And he further alleges that after being
17 pepper-sprayed, Officer Hunt told him quote, That's how we
18 do things here, close quote, and, quote, Welcome to Kern
19 Valley, close quote.

20 Now in your declaration you wrote that you,
21 quote, Formed no evidence to suggest that Officer Hunt
22 improperly used pepper spray when [REDACTED] was cuffed and in a
23 prone position; is that correct?

24 A. I'm just reading through it now.

25 (Reviewing.)

1 Q. That's in paragraph 32 of your declaration.

2 A. Correct, yes.

3 Q. And what did you rely on to reach that
4 conclusion?

5 A. Primarily the investigative report, which
6 included a variety of staff, as well as inmate witnesses.

7 Q. And was there any video of the incident available
8 to you?

9 A. Not that -- not that I'm aware of.

10 Q. And when you say you relied on the investigative
11 report, would that be Exhibit 6 in this deposition, the
12 document entitled, Confidential Supplement to Appeal
13 Inquiry, dated October 23rd, 2019?

14 A. Yes.

15 Q. Exhibit 6 is a multi-page document signed by
16 Lieutenant Fitzpatrick, and the hiring authority reporting
17 on an investigation; is that correct?

18 A. Correct.

19 Q. Now, if you look through Exhibit 6, do you see
20 any interview with an incarcerated person named [REDACTED] [REDACTED]

21 A. [REDACTED] [REDACTED]

22 Q. Yes.

23 A. I do not.

24 Q. And if I understand the facts of this case, the
25 allegation was that [REDACTED] [REDACTED] [REDACTED], and [REDACTED] [REDACTED] were

1 engaged in an altercation; is that correct?

2 A. That's correct.

3 Q. And does it trouble you at all that [REDACTED] was
4 not interviewed in connection with the investigation of
5 this event?

6 MR. MAIORINO: Objection. Vague and ambiguous.

7 THE WITNESS: I would say that in any
8 investigation you want to try to get as much information
9 as possible, and I'm not aware as to why [REDACTED] was not
10 interviewed.

11 BY MS. GRUNFELD:

12 Q. And the other person, [REDACTED], quote, refused
13 to participate. Is that correct? It's what it says here
14 on page three?

15 A. Correct.

16 Q. So the two incarcerated people, other than
17 [REDACTED], who would have the most information about what
18 happened among the incarcerated people, are not reflected
19 in this report; is that correct?

20 MR. MAIORINO: Objection. Vague and ambiguous,
21 argumentative.

22 THE WITNESS: That's correct.

23 BY MS. GRUNFELD:

24 Q. I'd like you to take a look, if you could,
25 please, at what's been marked as Exhibit 7 in this

1 deposition. This is the declaration of [REDACTED]. Do
2 you see that document, Mr. Warner?

3 A. I do.

4 Q. Have you ever seen this document before?

5 A. I have not.

6 Q. I'll represent to you that this is a declaration
7 that was uploaded to Defendants' counsel in July of this
8 year by [REDACTED], a Coleman class member at KVSP. If you
9 could just take a moment to review the declaration.

10 A. (Reviewing.)

11 The entire declaration, or just parts of it for
12 the purposes of this discussion?

13 Q. At this time, I think if you just read through
14 paragraph eight, that would be sufficient.

15 A. Okay.

16 (Reviewing.)

17 Okay.

18 Q. So as you can see from paragraph eight of
19 [REDACTED] declaration, which was not provided to you
20 previously, he completely corroborates the declaration of
21 [REDACTED] in that he states that Officer Hunt pepper-sprayed
22 them after they were handcuffed, and said something like,
23 welcome to Kern Valley. Do you see that?

24 MR. MAIORINO: Objection. Vague and ambiguous,
25 argumentative.

1 THE WITNESS: Yes.

2 BY MS. GRUNFELD:

3 Q. Now, does it concern you that this case was
4 closed without ever hearing [REDACTED] version of the
5 story?

6 A. Well, again, I guess I would say that both the --
7 the inmate has the opportunity to identify any witnesses
8 that could be part of the investigative process and
9 provide statements and be part of a -- again, to complete
10 the investigation. Though, it is -- it is difficult.
11 I -- I see the declaration and [REDACTED] comments. As I
12 said in my report, I based my view of this on -- in terms
13 of the information that was provided to me, and as part of
14 the investigation process. And in line with that, there
15 were no other witnesses or -- either staff or inmate
16 witnesses were identified as part of that investigative
17 process.

18 Q. Well, you seem to be indicating that [REDACTED]
19 should have brought forward [REDACTED]; is that what you're
20 saying?

21 MR. MAIORINO: Objection. Vague and ambiguous,
22 mischaracterizes prior testimony.

23 THE WITNESS: Well, I'm not suggesting that he --
24 he should have. I don't know the --

25 MS. GRUNFELD: By the way, you are not in the

1 camera anymore, so if you could scoot over.

2 THE WITNESS: Sorry. I'm trying to read several
3 different documents.

4 MS. GRUNFELD: I'm sorry. Go ahead with your
5 testimony.

6 THE WITNESS: No, I would -- I would say this
7 would have been information to look at.

8 BY MS. GRUNFELD:

9 Q. So do you think CDCR should have reopened the
10 investigation once they received [REDACTED] declaration?

11 MR. MAIORINO: Objection. Overbroad, vague and
12 ambiguous.

13 THE WITNESS: I don't know to what -- what CDCR
14 has in terms of [REDACTED] declaration, so I can't comment
15 on that.

16 BY MS. GRUNFELD:

17 Q. Well, I'm representing to you they have it, and
18 they've had it since July. So my question is, whether in
19 light of this corroborating, consistent declaration, they
20 should reopen the investigation into what happened to
21 Mr. [REDACTED]

22 MR. MAIORINO: Objection. Vague and ambiguous,
23 argumentative.

24 THE WITNESS: It -- it could be information
25 that -- that could be followed up on as part of the record

1 in the final determination around the use of force.

2 BY MS. GRUNFELD:

3 Q. Well, the final determination has been made by
4 CDCR, but it would seem to me that it would be time to
5 reopen that because they did not talk to two other
6 witnesses --

7 A. Right.

8 Q. -- who would have relevant information.

9 MR. MAIORINO: Objection. Argumentative.

10 BY MS. GRUNFELD:

11 Q. Do you think that you would have had a different
12 opinion of what happened if you had had [REDACTED]
13 declaration at the time?

14 A. I think it would have been good information for
15 me to have in considering my opinion on the investigative
16 process.

17 Q. Now, you indicated that you relied on the
18 investigative reports. Why don't you take a look at
19 what's been marked as Exhibit 8, which is called a
20 Crime/Incident Report, Part A, Cover Sheet, CDCR 837-A.

21 A. Okay.

22 (Reviewing.)

23 Q. And if you turn to page 11 of this document.

24 A. I'm sorry. I'm looking for page numbers.

25 Q. I know, me too.

1 I think the page that I'm trying to direct you to
2 is Part C, Staff Report, it's -- Mr. Warner, if you look
3 at the camera, it looks like this (indicating) and it is
4 about 11 pages in.

5 A. I think I have it. It's -- is it the report on
6 Romero Hernandez -- oh, no, wait. What is that? I'm
7 sorry.

8 Q. No, I think it's the report by Hunt, signed off
9 on by Sergeant Hernandez.

10 A. Yeah, but that's in the top.

11 Q. And the top of it says, Kevin Hunt. So if you
12 take the exhibit and you count --

13 A. Okay. I see one with the top saying Kevin Hunt,
14 page one of two --

15 Q. Yes, yes.

16 A. -- incident report, staff incident report.

17 Q. And if you look here (indicating), if you look at
18 the little writing at the bottom it says -- this is Mr. --
19 this is Officer Hunt's report of what happened. He
20 states, quote, I gave multiple orders to get down with
21 negative effect. Inmates [REDACTED] and [REDACTED] continued to fight
22 with Inmate [REDACTED] striking each other in the head and
23 torso with their fists. Once responding staff arrived,
24 Inmate [REDACTED] prone down on his stomach; Inmates [REDACTED] and
25 [REDACTED] moved east toward the mental health building, still

1 refusing direct orders to get down. I utilized my MK 9 OC
2 pepper spray streamer and sprayed both Inmate [REDACTED] and [REDACTED]
3 in the facial area with one, five-second burst from
4 approximately eight feet away striking both Inmate [REDACTED] and
5 [REDACTED] in the facial area, close quote. Do you see that
6 sentence?

7 A. I do.

8 Q. So Officer [REDACTED] is claiming that he used pepper
9 spray after responding staff arrived on the scene; is that
10 correct?

11 A. Yes, according to his statement here, he --
12 Officer -- Officer Hunt says that they still refused
13 direct orders to get down, and he used his OC spray.

14 Q. Now, if you look at the page before that, we have
15 a report by Officer Veronica Gonzalez. Would you take a
16 moment to read the narrative section of that report.

17 A. (Reviewing.)

18 Q. Now, as you will see, Officer Gonzalez reports
19 that she, quote, observed Inmates [REDACTED] and [REDACTED] on
20 the ground in a prone position in front of Charlie
21 building 8, close quote. Do you see that?

22 A. I do.

23 Q. And if you look at page 15 of the document, and I
24 apologize there's no Bates numbers on here, but page 15
25 has the report of Officer Luke Lane. And if you look down

1 and read his narrative, he says, quote, Upon my arrival, I
2 observed all the inmates in the prone position with what
3 appeared to be OC spray on two of the inmates' upper torso
4 and facial area. Do you see that?

5 A. I do.

6 Q. So according to Gonzalez and Lane, they did not
7 observe any use of force, and all the people were on the
8 ground when they arrived on the scene; right?

9 A. At least what this says, the inmates involved in
10 the incident were in a prone position --

11 MS. GRUNFELD: Wait. You're cutting out.

12 THE REPORTER: Mr. --

13 MR. MAIORINO: I'm sorry. Can you give him time
14 to read the report, and if you have a question, please
15 state the question.

16 THE REPORTER: I'm sorry. The witness was
17 quoting something and while he was looking down he cut
18 out. This is what I have: At least what this says, the
19 inmates involved in the incident were in a prone
20 position -- and he cut out.

21 MS. GRUNFELD: Yeah, did you mute him?

22 MR. MAIORINO: No.

23 THE WITNESS: -- with what appeared to be OC
24 spray on two of the inmates' upper torso and facial area.

25 ///

1 BY MS. GRUNFELD:

2 Q. So my question is whether the descriptions by
3 these two officers are inconsistent with Officer Hunt's
4 description where he says that responding staff were
5 already on the scene when he used force?

6 MR. MAIORINO: Objection. Vague and ambiguous;
7 assumes facts; argumentative; mischaracterizes the
8 document, which is part of the exhibit. He may need
9 additional time to read the exhibit.

10 THE WITNESS: (Reviewing.)

11 Well, I'm reviewing it, but I'm not quite --
12 there's, like, a lot of information here and I think I
13 would want to compare it to the investigation that I read
14 and -- as well as with the officer's statement to look at
15 any inconsistency.

16 MR. MAIORINO: And he may need to read the entire
17 incident report, too, before responding to your question.

18 MS. GRUNFELD: Well, let me clarify.

19 BY MS. GRUNFELD:

20 Q. Is this the first time you've seen this incident
21 report?

22 A. I believe that the staff reports were included in
23 the information I received, this -- I'd want to verify
24 they all were.

25 MR. MAIORINO: But even if he had, it's fair to

1 let him review the entire incident report if you're going
2 to ask specific questions between the different reports
3 submitted by different officers.

4 THE WITNESS: (Reviewing.)

5 MS. GRUNFELD: How much time do you need,
6 Mr. Warner? Maybe we should go off the record?

7 MR. MAIORINO: No, I think it's part of your
8 question, and we should stay on the record so he can
9 review the exhibit that you've put in front of him and are
10 asking him specific questions about. We should remain on
11 the record.

12 MS. GRUNFELD: Well, how many minutes? I mean,
13 if you haven't read it before and you can't answer it,
14 that's okay, just say that.

15 THE WITNESS: Yeah, I -- I -- my recollection --

16 MS. GRUNFELD: I don't have that much time left.

17 MR. MAIORINO: I think there's plenty of time to
18 allow the witness to review an exhibit that you've put in
19 front of him and that you're asking specific questions
20 about.

21 THE WITNESS: So again, my review and what I
22 recall with reading the investigative report that did
23 provide summaries of the staff report, this is more
24 detailed information. I do not recall seeing this from
25 Officer Lane.

1 MR. MAIORINO: He should be permitted to review
2 the entire report included in the exhibit.

3 MS. GRUNFELD: Why? He hasn't seen it.

4 MR. MAIORINO: Because you're asking him specific
5 questions.

6 MS. GRUNFELD: I withdraw the question. He's
7 already said he hasn't read this previously. That's okay.

8 MR. MAIORINO: I don't know if that accurately --

9 THE WITNESS: Well, I would -- I would, I guess,
10 interpret the -- what the staff report you're talking
11 about says, with no OC spray with Inmate [REDACTED] whether
12 that was specific to just Inmate [REDACTED] or that states --
13 that it applies to all three inmates that were involved in
14 the fight.

15 BY MS. GRUNFELD:

16 Q. Well, that wasn't my -- my question was -- my
17 question was, that the incident report reflects different
18 versions of what happened among the three officers who
19 filed reports and whether that concerned you?

20 MR. MAIORINO: Objection. Vague and ambiguous,
21 argumentative, misstates the document to the extent it's
22 an exhibit.

23 And are you going to withdraw the question or
24 not? If you're not going to withdraw the question, he
25 should be permitted time to review the entire report

1 before you continue with your questions related to the
2 specifics in the report.

3 BY MS. GRUNFELD:

4 Q. I don't think there's a question pending, but to
5 the extent there is, my only question at this moment is
6 whether, Mr. Warner, you have ever seen this
7 Crime/Incident Report marked as Exhibit 8 before?

8 A. I do not recall seeing this one.

9 Q. So in your report in this case, when you
10 concluded that there is no evidence in the materials I
11 reviewed demonstrating that the incident was related to
12 [REDACTED] disability or that it occurred, that was based on
13 your review of Exhibit 6; is that a fair statement?

14 MR. MAIORINO: Objection. Misstates prior
15 testimony, mischaracterizes prior testimony, vague and
16 ambiguous.

17 THE WITNESS: Where is Exhibit 6 -- that's
18 correct.

19 BY MS. GRUNFELD:

20 Q. Other than Exhibit 6, was there any information
21 you reviewed to assess Mr. [REDACTED] declaration?

22 A. I looked at -- so essentially, if -- if there was
23 an RVR involved, I would look at the violation report, I
24 would have access to the medical report that would be done
25 afterward as well.

1 Q. Anything else --

2 A. But the -- the summary, again, is that -- my view
3 is that the Exhibit 6, which is the investigative report
4 identifies the characterization of -- of witnesses in
5 terms of their -- if you could just bear with me for one
6 minute.

7 (Reviewing.)

8 The officer you talked about, Officer Lane, when
9 you look at the investigative report on page two of six in
10 Exhibit No. 6, Officer Lane talks about the -- he was
11 responding to a code. When he arrived, he saw the
12 appellant and two other inmates in a prone position on the
13 ground. He then was involved in the transport of him.
14 There's no -- he said he had nothing to add, and there was
15 no information in terms of whether or not the OC spray had
16 been used or not used when he arrived at the scene.

17 Q. I'm confused. Officer Lane said he secured the
18 appellant in handcuffs and escorted him to Housing Unit 8
19 where he was decontaminated in the housing unit shower.

20 Doesn't that indicate that there was a reason to
21 decontaminate?

22 MR. MAIORINO: Objection. Argumentative, vague
23 and ambiguous.

24 THE WITNESS: Yes, but it doesn't -- it doesn't
25 necessarily then describe the time frame of Officer Hunt

1 using OC spray to get them in a -- well, let me read this.

2 (Reviewing.)

3 It doesn't necessarily identify the time frame, I
4 guess, in which OC spray was -- was used.

5 BY MS. GRUNFELD:

6 Q. It says, Officer Lane said he did not see or hear
7 anything like that happen; and added, when he arrived, the
8 appellant and Inmate [REDACTED] were not in handcuffs. Is that
9 what you base your testimony on, that it didn't happen the
10 way Inmate [REDACTED] said?

11 MR. MAIORINO: Objection. Vague and ambiguous,
12 argumentative.

13 THE WITNESS: No, I'm just saying it's different
14 information in the document -- in the staff report that
15 you provided than I had seen before.

16 BY MS. GRUNFELD:

17 Q. So to really assess whether circumstances were as
18 Mr. [REDACTED] claims or as Officer Hunt claims, other than
19 having a video of what happened out on the yard, how could
20 we assess -- what would a good investigation look like, in
21 your opinion?

22 MR. MAIORINO: Objection. Vague and ambiguous,
23 argumentative, incomplete hypothetical.

24 THE WITNESS: Again, a good investigation would
25 be to ensure a process in which there are appropriate

1 witnesses to the event, and hopefully some corroboration
2 on any evidence that supports the inmate appeal -- the --
3 their concern about use of force, as well as be able to
4 look at corroboration between the officers who are
5 witnesses as well to the incident.

6 BY MS. GRUNFELD:

7 Q. In your experience as a correctional official,
8 have you ever been informed that correctional officers
9 sometimes collaborate on their stories to avoid
10 discipline?

11 MR. MAIORINO: Objection. Incomplete
12 hypothetical, assumes facts.

13 THE WITNESS: I don't think I, as a correctional
14 official, ever received that information. I probably
15 would initiate some kind of investigation or review to
16 determine if there was any merit to that or not.

17 BY MS. GRUNFELD:

18 Q. But you've never received a report of that
19 nature?

20 MR. MAIORINO: Objection. Incomplete
21 hypothetical, vague and ambiguous.

22 THE WITNESS: I don't recall a report where I
23 received information that staff has specifically
24 corroborated information in a report, and certainly for
25 the purposes of -- I think staff can sort of talk about

1 the event, but not for the purposes of misleading the --

2 BY MS. GRUNFELD:

3 Q. Well, I'm not talking about what is supposed to
4 happen. I'm asking you about --

5 A. Okay.

6 Q. -- whether on occasion that kind of collaboration
7 has occurred, to your knowledge?

8 MR. MAIORINO: I'm sorry. Could you please let
9 him finish his answer before you interrupt him.

10 THE WITNESS: I would -- again, I -- I don't
11 recall information coming to me about specific staff
12 colluding to represent a specific story for an event, an
13 incident in a facility.

14 BY MS. GRUNFELD:

15 Q. Well, having learned that there is a declaration
16 by an eyewitness and there are inconsistent incident
17 reports, do you still believe there's no evidence to
18 suggest there was an improper use of pepper spray in
19 Mr. [REDACTED] case?

20 MR. MAIORINO: Objection. Mischaracterizes the
21 exhibits, argumentative, assumes facts.

22 THE WITNESS: So again, I will qualify because
23 I've looked at this very quickly, and there's a lot of
24 information around a specific event, and -- but what I
25 would say is it is new information that I think deserves

1 closer attention in terms of what my conclusion was. My
2 conclusion was based on the information that I had
3 available, and this staff report is different information
4 than -- than what I had available.

5 BY MS. GRUNFELD:

6 Q. And what about Mr. [REDACTED] declaration; do you
7 give that any credence?

8 MR. MAIORINO: Objection. Vague and ambiguous,
9 argumentative.

10 THE WITNESS: Of course I would give his
11 declaration consideration. He was the participant in the
12 actual event and was a witness to it. So yeah, I think
13 that that's certainly appropriate. But I did not have
14 access to the declaration before -- before my review. I
15 think it would have perhaps been very useful information
16 to have and be able to follow up on.

17 BY MS. GRUNFELD:

18 Q. If what Mr. [REDACTED] says is true, that he and
19 Mr. [REDACTED] were already pruned out and handcuffed at the
20 time Officer Hunt arrived, in your opinion, would it have
21 been appropriate for him to pepper spray them in the face?

22 MR. MAIORINO: Objection. Incomplete
23 hypothetical, assumes facts, argumentative.

24 THE WITNESS: I guess my belief is that if they
25 were pruned out and did not present any risk to the

1 facility, risk to each other, an immediate threat to
2 staff, then I'm not sure why OC spray would be used.

3 BY MS. GRUNFELD:

4 Q. Mr. [REDACTED] describes another incident in his
5 declaration. If you could take a look, please, at the
6 second half of that. And I recognize that we have a lot
7 of different documents here in front of us, making it more
8 challenging by remote circumstances, but Mr. [REDACTED]
9 declaration was marked as Exhibit 5.

10 If you could take a look, if you would, please,
11 at paragraph 12.

12 A. (Reviewing.)

13 Okay.

14 Q. So according to paragraph 12, Mr. [REDACTED] was taken
15 to an area holding cage in the rotunda where two officers
16 and two sergeants spoke to him. He informed them that he
17 felt unsafe in his current housing unit. Sergeant Alvarez
18 said to him, quote, You want to run for us for help now?
19 You should have thought about that before you 602'd
20 Officer Hunt. This is [REDACTED], bitch. We stick
21 together. Now go back and take what your rat ass got
22 coming to you, close quote. Do you see that comment?

23 A. What was the --

24 Q. It's page three, paragraph 12, lines 16 through
25 20, of Mr. [REDACTED] declaration.

1 A. Yes, I see that.

2 Q. Would this be an example of a fear of retaliation
3 by a class member?

4 MR. MAIORINO: Objection. Vague and ambiguous,
5 overbroad, incomplete hypothetical.

6 THE WITNESS: Certainly if -- if it was
7 substantiated that Sergeant Alvarez was sort of implying
8 that -- that Inmate [REDACTED] should change his behavior or his
9 request because he's worried about retaliation, then I
10 think that that would have an effect on him.

11 BY MS. GRUNFELD:

12 Q. Yes. I mean, Mr. [REDACTED] claims that after the
13 pepper spray he filed a staff complaint against Officer
14 Hunt, and he also claims that his -- numerous officers
15 searched his cell, and that this remark was made to him as
16 a threat not to file 602s. So would you perceive this
17 allegation as an example of someone who has a fear of
18 retaliation for filing a 602?

19 MR. MAIORINO: Objection. Incomplete
20 hypothetical, assumes facts, argumentative, asked and
21 answered.

22 THE WITNESS: Again, if you -- I found nothing in
23 the reports where that was at all information that -- that
24 witnessed Sergeant Alvarez's statement, but I understand
25 your point, that when the sergeant says that you should

1 have thought of something before you filed a staff
2 complaint against Officer Hunt, that that could be
3 intimidating.

4 BY MS. GRUNFELD:

5 Q. If you could please take a look at paragraph 15
6 on page four.

7 A. Paragraph 15, yes.

8 Q. Yes, starting on page four.

9 A. Mm-mm (affirmative).

10 It's a long paragraph, so give me a second.

11 (Reviewing.)

12 Q. Yes, and it goes onto page five.

13 MR. MAIORINO: Do you want him to read the entire
14 paragraph, is that what you're asking him to do?

15 MS. GRUNFELD: Yes.

16 THE WITNESS: (Reviewing.)

17 Okay.

18 BY MS. GRUNFELD:

19 Q. So this is a second serious incident that Mr. [REDACTED]
20 was -- describes at Kern Valley. In your report at
21 paragraph 33, you state, quote, In my opinion, since there
22 are no credible witnesses to dispute the use of force, it
23 is reasonable to conclude that staff was trying to control
24 an inmate who was aggressively resisting a staff order,
25 period, close quote.

1 So as I understand your opinion, you do not
2 believe that excessive force was used against Mr. [REDACTED] and
3 my question is, what do you base that on?

4 MR. MAIORINO: Objection. Assumes facts,
5 argumentative.

6 THE WITNESS: Again, the -- the investigative
7 report. There were officers, I think, as I state in my
8 report, six inmates were interviewed, but I did not see
9 any factual evidence, is my -- as I recall there was an
10 inmate in Mr. [REDACTED] cell, and the inmate's testimony was
11 that he did not want Inmate [REDACTED] in the cell. That inmate
12 who was in the cell was ordered to leave the cell and exit
13 to another area. And when Inmate [REDACTED] was directed to go
14 into the cell, he resisted, and twisted and threw his
15 elbow toward Sergeant Lerma as part of the process, so
16 they used restraints to be able to stop -- or they used
17 force to stop his resistant behavior.

18 BY MS. GRUNFELD:

19 Q. Now, of course, at the time you made that
20 conclusion, you had not read the declaration of [REDACTED] [REDACTED]
21 that is marked as Exhibit 7 here; is that correct?

22 A. That is correct.

23 Q. And Mr. [REDACTED] in his declaration, tells a very
24 different version of events than the officers. According
25 to Mr. [REDACTED] --

1 MR. MAIORINO: Objection --

2 BY MS. GRUNFELD:

3 Q. -- paragraph 14, he states that Sergeant Lerma
4 and Alvarez started kicking and punching him repeatedly
5 all over his body, and he saw Sergeant Alvarez stick her
6 fingers in Mr. [REDACTED] mouth, that's paragraph 14 of the
7 [REDACTED] declaration.

8 MR. MAIORINO: Objection. Argumentative, assumes
9 facts. Is there a question pending?

10 BY MS. GRUNFELD:

11 Q. My question is, whether this information would
12 have been helpful to you in assessing whether what
13 happened to Mr. [REDACTED] according to his declaration, in
14 fact, happened or not?

15 A. I think any information that a person gets that
16 provides a more complete record of the actual incident is
17 helpful to come up with the best determination in terms of
18 the appropriateness of any use of force incident. And I
19 did not have this declaration from Mr. [REDACTED] so it was not
20 factored into the consideration in terms of whether or not
21 there are different versions to the story.

22 Q. And would camera surveillance video have helped
23 us understand what happened on September 16, 2019?

24 MR. MAIORINO: Objection. Vague and ambiguous,
25 assumes facts, incomplete hypothetical.

1 THE WITNESS: Assuming that the camera is able to
2 record the incident, it certainly provides an additional
3 tool to be able to look at the sequencing of events that
4 happened.

5 BY MS. GRUNFELD:

6 Q. According to [REDACTED] [REDACTED] Sergeant Lerma and Alvarez
7 were walking behind the officers and [REDACTED] [REDACTED] and as they
8 were passing the table in the day room he saw two officers
9 who were on either side of [REDACTED] lift [REDACTED] up by the
10 arms and then slam him face first to the floor. That is
11 alleged to have occurred in the day room. Would cameras
12 in the day room have been helpful to know whether that is
13 a truthful act or not?

14 MR. MAIORINO: Objection. Vague and ambiguous,
15 assumes facts, argumentative, incomplete hypothetical.

16 THE WITNESS: Again, I think having any forensic
17 information to include -- a fixed camera would be helpful
18 to complete the investigation.

19 Can we take a break before we jump into the next
20 one, or do you want to maybe just take two minutes, a
21 quick break.

22 MS. GRUNFELD: Sure. Sure.

23 THE WITNESS: All right.

24 (Deposition in recess 3:39 p.m. to 3:56 p.m.)

25 (Exhibits 11 through 15, remotely introduced and

1 identified.)

2 BY MS. GRUNFELD:

3 Q. We are back on the record. Mr. Warner, you
4 understand you are still under oath?

5 A. I do.

6 Q. Now, while we were on the break did you discuss
7 this case with counsel for Defendants?

8 MR. MAIORINO: Objection to the extent it calls
9 for work product.

10 THE WITNESS: There was -- no, not in terms of
11 any specifics around the case. What I said to them, and
12 it's -- and what I inferred previously, but I'll state it
13 again, I didn't see the declaration of Mr. [REDACTED]. And as I
14 mentioned to you -- I think your question to me was, would
15 that information be helpful to complete your understanding
16 of the incident in use of force, and my answer is -- is
17 yes, that any additional information would be helpful. So
18 I -- I think that was sort of the extent of that. I'm, of
19 course, answering based on my knowledge in review of the
20 documents, but that I had not seen that document before.

21 BY MS. GRUNFELD:

22 Q. Did you discuss with counsel for Defendants why
23 you were not given that document?

24 MR. MAIORINO: Objection to the extent it calls
25 for any work product.

1 THE WITNESS: I think that's a work in progress
2 to understand the communication of what was provided and
3 what wasn't. It may be in documents and it may be
4 something that I did not see, so I don't know the answer
5 to that. There -- there was no answer given other than
6 there's a lot of documents, and I think that needs to be
7 reviewed.

8 BY MS. GRUNFELD:

9 Q. Well, as we were discussing, Mr. [REDACTED] describes
10 two very serious incidents of staff misconduct at Kern
11 Valley. With regard to the second one, you concluded that
12 that also is not substantiated. And I guess I'm trying to
13 understand the basis for your conclusion. If you could
14 take a look, please, at what's been marked as Exhibit 10,
15 this is a Crime/Incident Report from KVSP dated September
16 16, 2019. And my question is, whether -- first if you
17 could just show me what you're looking at to make sure
18 we're looking at the same document.

19 A. (Indicating.)

20 MR. MAIORINO: Are you able to see that?

21 MS. GRUNFELD: Okay. It looks like we are,
22 although yours looks a little smaller than mine, but okay.

23 BY MS. GRUNFELD:

24 Q. So with regard to this document, which I will
25 call the second incident report, did you have an

1 opportunity to review this document prior to completing
2 your declaration in this case?

3 MR. MAIORINO: Objection. Vague and ambiguous,
4 argumentative.

5 THE WITNESS: I'm looking through it now.

6 (Reviewing.)

7 I believe so; and again, I'm just sort of
8 confirming that I did get a copy of the incident report,
9 some of the follow-up documents. Again, looking at all of
10 the staff reports.

11 (Reviewing.)

12 Again, I can't -- I've reviewed most of this and
13 seen most of this information. Again, I want to go back
14 to some of the specific staff reports outside of the -- or
15 the investigative summary for inclusiveness, and so I
16 cannot recall -- I want to just review some of the
17 individual staff reports in terms of their review of the
18 incident.

19 BY MS. GRUNFELD:

20 Q. And in addition to Exhibit 10, did you also look
21 at Exhibit 9, the Confidential Supplemental to Appeal
22 inquiry in reaching your conclusion that the use of force
23 was appropriate against Mr. [REDACTED]

24 MR. MAIORINO: Wait, that's 13.

25 THE WITNESS: Oh.

1 MS. GRUNFELD: No, 9 is what I'm talking about
2 now (indicating).

3 MR. MAIORINO: Let us find 9 -- here it is.

4 Okay.

5 THE WITNESS: I believe I received the appeal
6 inquiry.

7 BY MS. GRUNFELD:

8 Q. Now, if you could please turn to -- in the appeal
9 inquiry, Exhibit 9, if you could please turn to the bottom
10 of page seven, the top of page eight, it starts with
11 [REDACTED].

12 A. (Reviewing.)

13 Okay.

14 Q. So Inmate [REDACTED] stated during his interview he
15 saw Inmate [REDACTED] brought out of his cell and slammed to the
16 ground, stomped, kicked and punched by a female sergeant,
17 Alvarez. I asked Inmate [REDACTED] who he alleges was kicking
18 the appellant. Inmate [REDACTED] said Officer Ga was kicking
19 the appellant. Inmate [REDACTED] statement conflicts with
20 appellant's account of the incident, which is documented
21 on his appeal. The appellant makes no mention of Officer
22 Ga using any force on him, nor does he indicate Sergeant
23 Alvarez punched him. Therefore, Inmate [REDACTED] statement
24 should be considered unreliable. Do you see that?

25 A. I do.

1 Q. And did you rely on that, in part, in deciding
2 appropriate force had been used?

3 A. Yes, in terms of the -- the credibility of the --
4 the inmate witness consistent with the --

5 THE REPORTER: I cannot see you and I can't hear
6 you when the papers are ruffling. "Yes, in terms of the --
7 the credibility of the inmate witness consistent with
8 the" --

9 THE WITNESS: -- witness reports and to conclude
10 that inmate report's different than what -- what the
11 appellant had described as -- in his appeal.

12 BY MS. GRUNFELD:

13 Q. So Mr. [REDACTED] and Mr. [REDACTED] agree on the essential
14 facts, though, which is that he was slammed to the ground,
15 stomped, and kicked; is that right?

16 MR. MAIORINO: Objection. Argumentative,
17 misstates facts, assumes facts, hypothetical.

18 THE WITNESS: I'm sorry. The question is Inmate
19 [REDACTED] agrees with --

20 BY MS. GRUNFELD:

21 Q. Well, what I'm asking you is, this investigator
22 discounts Inmate [REDACTED] testimony because he says it was
23 Officer Ga instead of Officer Alvarez. And I'm asking
24 you, in your opinion, whether that is an appropriate basis
25 to completely discount eyewitness testimony? In other

1 words, couldn't he have just gotten the name wrong but the
2 facts correct?

3 MR. MAIORINO: Objection. Incomplete
4 hypothetical, misstates facts, argumentative.

5 THE WITNESS: He may have. He goes on to say
6 Inmate [REDACTED] was brought out of the cell and slammed to the
7 ground. My understanding was that there was resistance to
8 Mr. [REDACTED] going into the cell.

9 BY MS. GRUNFELD:

10 Q. But that's not what the investigator relied on
11 here, is it?

12 MR. MAIORINO: Objection, argumentative.

13 BY MS. GRUNFELD:

14 Q. According to the investigator, the appellant
15 makes no mention of Officer Ga using any force on him, nor
16 does he indicate that Sergeant Alvarez punched him. Do
17 you see that?

18 A. Under --

19 Q. That's on the top of page eight.

20 A. Sorry.

21 (Reviewing.)

22 Correct.

23 Q. Do you think that's an appropriate basis to
24 discount Mr. [REDACTED] testimony?

25 A. Again, I think you would take into consideration

1 if they've identified the wrong officer who was not part
2 of the inmate complaint and the -- and the staff use of
3 force, then it needs to be considered.

4 Q. Sure. But should it be considered unreliable
5 testimony?

6 MR. MAIORINO: Objection. Argumentative.

7 THE WITNESS: Well, yeah, maybe a better term
8 would be -- it could be considered not necessarily
9 unreliable, but it's factually not -- not correct
10 testimony.

11 BY MS. GRUNFELD:

12 Q. The investigator also says that Inmate [REDACTED] said
13 during his interview he saw ten officers drag the
14 appellant. Inmate [REDACTED] statement contradicts the
15 appellant's allegation. Inmate [REDACTED] statement should
16 be considered fabricated. Do you agree with that
17 analysis?

18 A. What page is that on?

19 Q. It's also on page eight right under the [REDACTED] --

20 A. Back to page five -- okay. So you're talking
21 about the summary.

22 (Reviewing.)

23 Again, it's -- it's -- certainly the statement is
24 not consistent with the event, so, you know, it was an
25 opinion of the lieutenant that it's fabricated, but I

1 would say it is unreliable when you are a witness and you
2 misrepresent -- or at least the opinion of this
3 investigator was that it misrepresents the -- the facts of
4 the incident and what the inmate actually saw.

5 Q. But you would expect some discrepancy among
6 eyewitness accounts during an investigation, wouldn't you?

7 MR. MAIORINO: Objection. Argumentative,
8 incomplete hypothetical, assumes facts.

9 THE WITNESS: Expect some discrepancy, did you
10 say?

11 BY MS. GRUNFELD:

12 Q. Some minor discrepancies in their recollection of
13 the events, especially many weeks afterwards.

14 MR. MAIORINO: Objection. Argumentative, assumes
15 facts, incomplete hypothetical.

16 THE WITNESS: Yeah, I think that's part of a --
17 should be part of the investigative process, to be able to
18 ferret out those discrepancies and determine which ones
19 provide a factual basis to make a determination.

20 BY MS. GRUNFELD:

21 Q. So as you sit here today -- well, not as you sit
22 here today, because you now know about the [REDACTED]
23 declaration, but at the time that you wrote your report,
24 you felt it was reasonable to conclude that staff was
25 trying to control an inmate who was aggressively resisting

1 a staff order. What did you base that conclusion on?

2 A. Well, again, part of the -- the inmate, I
3 believe, in his own -- although I'd have to refresh my
4 memory, in his declaration said that there was perhaps an
5 outstanding debt or there was some issue in which there
6 was concern about the particular inmate. I think he was
7 then in a position of being resistive when given a direct
8 order to go into the cell and resisted, and force was used
9 to control the inmate.

10 Q. So you base your conclusion on the reports, the
11 incident report and the investigator's report, that we've
12 been discussing?

13 MR. MAIORINO: Objection. Misstates prior
14 testimony, mischaracterizes his prior testimony.

15 MS. GRUNFELD: In what way? I'm just trying to
16 understand what he based his conclusion on.

17 THE WITNESS: Yes, I did base it on -- on the
18 conclusions in this report.

19 BY MS. GRUNFELD:

20 Q. Let's turn to Mr. [REDACTED] shall we, on -- this
21 is marked as Exhibit 11, the Declaration of [REDACTED]
22 It also describes staff misconduct at Kern Valley.

23 MR. MAIORINO: You want Exhibit 11 next?

24 MS. GRUNFELD: Yes, please.

25 ///

1 BY MS. GRUNFELD:

2 Q. Mr. Warner, do you have Exhibit 11, the
3 Declaration of [REDACTED] [REDACTED] in front of you?

4 A. I do.

5 Q. Have you previously reviewed this declaration in
6 connection with your report in this case?

7 A. I have.

8 Q. I would like to draw your attention to the first
9 of three incidents that Mr. [REDACTED] discusses, that would
10 be on page three of his declaration in paragraphs 9 and
11 10, lines 12 through 20.

12 According to Mr. [REDACTED] quote, Officer Orosco
13 started yelling at him to get down. I told him that I am
14 mobility impaired, so I could not get down on the floor.
15 I sat down at the table instead of lying down. Officer
16 Orosco then handcuffed me behind my back while I was in my
17 seat at the table. After he handcuffed me, he grabbed my
18 head with at least one of his hands and slammed my head
19 face first into the table two or three times. After he
20 slammed my face into the table, Officer Orosco, Officer
21 Olmeda, and one or two other officers whose name I do not
22 recall forced me to stand up and walk without my cane
23 while still handcuffed to the holding cage. Do you see
24 that?

25 A. Yes.

1 Q. Now, do you consider this to be a complaint that
2 force was used in a reaction to a request for a disability
3 accommodation?

4 MR. MAIORINO: Objection. Argumentative, assumes
5 facts.

6 THE WITNESS: Can you repeat the question?

7 MS. GRUNFELD: Can you read it back, please.

8 (Record read.)

9 THE WITNESS: I'm not sure I'm understanding the
10 question. So you're suggesting this is a nexus to an
11 incident around use of force with Inmate [REDACTED]

12 BY MS. GRUNFELD:

13 Q. Yes. Are you familiar with something called a
14 get down chrono?

15 A. I'm not.

16 Q. In the Armstrong case, some people have trouble
17 getting down on the floor because of their mobility issues
18 and they're allowed to take a different stance in response
19 to officers' orders to get down. So according to
20 Mr. [REDACTED] the officer told him to get down, and he
21 said, I am mobility impaired, so I could not get down on
22 the floor.

23 And my question to you is, would you consider
24 this, if true, to be a request for an accommodation based
25 on Mr. [REDACTED] disability?

1 MR. MAIORINO: Objection. Assumes facts,
2 argumentative, incomplete hypothetical.

3 THE WITNESS: It's -- could you refer back to the
4 page on the -- on the declaration that you're referring
5 to? Because I know there's a couple of different
6 incidents around Mr. [REDACTED]. This is the incident in the
7 yard, and what -- what section is it in that you're
8 referring to.

9 Q. It's on page three, paragraphs nine and ten.
10 Page three, lines 12 through 20.

11 A. Well, again, as I read the information around
12 this, Mr. [REDACTED] was -- there was an incident in the
13 yard -- several incidents in the yard, I believe. He was
14 asked -- everyone was given a get down order. He said
15 that he could not. And from what I review and -- reviewed
16 in the staff reports, they were approaching him -- in
17 addition to the -- the incidents in the yard, that
18 Mr. [REDACTED] was being disruptive and was perceived to be
19 agitating several incidents that were occurring at the
20 same time.

21 Q. I'm asking you specifically about page three,
22 lines 12 through 20, and whether this request to get down
23 and Mr. [REDACTED] response that I am mobility impaired so I
24 could not get down on the floor, whether that is a request
25 for a reasonable accommodation based on a disability?

1 MR. MAIORINO: Objection. Asked and answered,
2 assumes facts, argumentative, incomplete hypothetical.

3 THE WITNESS: So again, as I'm -- as I'm reading
4 this, he's stating he could not get down, and was
5 impaired, so I would expect that some kind of
6 accommodation could be provided. I know that there's
7 different means of responding to inmates who cannot lie
8 prone, they can sit down, they can have different options
9 depending on their mobility.

10 BY MS. GRUNFELD:

11 Q. Yes. Now, according to Mr. [REDACTED] Officer
12 Orosco handcuffed him, grabbed his head and slammed it
13 into the table two or three times and then forced him to
14 stand up and walk without his cane, that's in paragraph
15 ten. And you state that it was appropriately determined
16 that Officer Orosco did not improperly use force on
17 [REDACTED] in this incident.

18 My question is, what do you base your conclusion
19 on?

20 A. I think there's some disputes in the facts
21 between the declaration and what I recall from staff
22 reports. I think that, again, the order was given because
23 of the disturbances for inmates to get down, he could not,
24 staff were approaching him. And as they approached him,
25 he used his cane as a weapon and was flailing it at staff,

1 and I believe made contact with a staff member, so they
2 used force to control him.

3 Q. That was a different incident, I believe. I'm
4 asking about the January 29th incident. Was there
5 something in particular --

6 A. Oh, I'm sorry. I'm sorry.

7 Q. -- about that incident?

8 MR. MAIORINO: Objection. Vague and ambiguous.
9 Is there a question pending?

10 THE WITNESS: I think the question pending is,
11 was he asking for an accommodation, or -- could you refer
12 to my report in which I come to a conclusion on this.
13 What page is that?

14 BY MS. GRUNFELD:

15 Q. Sure. Sure. Page 11, paragraph 28, this is
16 where you discuss the January 29th incident.

17 A. Okay.

18 Q. And this is where you say, quote, It was
19 appropriately determined that Officer Orosco did not
20 improperly use force on [REDACTED]. And the question is,
21 what do you base that on?

22 A. I would have to pull out the staff reports and
23 investigation. But as I recall this, I think there was
24 much different testimony in terms of to what extent that
25 incident -- what the facts of that incident were. I

1 believe that the dispute is that there was no force used
2 by staff, and there was a dispute in terms of what
3 happened in the interactions between staff. But I don't
4 think there was an actual -- any specific testimony by
5 staff, as I recall, that -- that force was used.

6 Q. As you sit here today, are you certain that you
7 saw incident reports about this particular incident,
8 because I don't have any in my pile here, but I'm trying
9 to understand whether you might have received documents
10 about the January 29th incident?

11 A. If I recall this correctly from the documents, I
12 believe this was a staff complaint that was withdrawn by
13 Mr. [REDACTED]. But I believe that there was an
14 investigation into it, but there was no evidence that
15 could confirm that actual use of force was used.

16 MS. GRUNFELD: Mr. Maiorino, do we have a copy of
17 the withdrawn 602 and the investigation into it?

18 MR. MAIORINO: I believe there was a confidential
19 inquiry. Do you have that for Orosco? And I think your
20 client misspells Orosco. I believe it starts with an O.
21 And I think that's the responsive document. You should
22 have that, if it's a confidential inquiry.

23 MS. GRUNFELD: Well, I don't have it right now,
24 so we'll have to move on.

25 ///

1 BY MS. GRUNFELD:

2 Q. I'd like to turn to your discussion, Mr. Warner,
3 on page 12 -- starting on page 12, paragraph 30, of the
4 third [REDACTED] incident. This is the August 27, 2009,
5 incident, also involving a proning out or get down issue.

6 THE REPORTER: Gay, the year of that was 2009 or
7 2019?

8 MS. GRUNFELD: I'm sorry. '19.

9 THE WITNESS: '19.

10 BY MS. GRUNFELD:

11 Q. Now, with regard to the August 27, 2019,
12 incident, Mr. [REDACTED] alleges that, quote, After I told
13 them I could not prone out because of my disability,
14 Officer Campbell and Officer Gonzalez rushed at me and
15 started punching me and hitting me with their batons.
16 They also kicked me a number of times. The assault lasted
17 about two minutes. Do you see that on page seven of
18 Mr. [REDACTED] declaration?

19 A. Under 20 or 19?

20 Q. Paragraph 20.

21 A. Paragraph 20.

22 (Reviewing.)

23 Yes.

24 Q. And you conclude that staff -- quote, staff did
25 not use excessive force, that's your conclusion on page 13

1 of your report. I wondered if you ever looked at the
2 medical records for when Mr. [REDACTED] was taken to the
3 Delano Regional Medical Center after this incident?

4 A. I believe the medical reports were included in
5 the information that I got and reviewed. I'm not sure of
6 the specific hospital report or not.

7 Q. Okay. If you could take a look at what's been
8 marked as Exhibit 14 to this deposition, the top of it is
9 called KVSP Community ER Visit, it's dated August 28th,
10 2019. If you could please turn to page four of seven of
11 that report.

12 THE WITNESS: Do I have that?

13 MR. MAIORINO: I thought you did.

14 THE WITNESS: I apologize.

15 Okay.

16 BY MS. GRUNFELD:

17 Q. If you look sort of three quarters of the page
18 down you can see that the findings are -- well, let me
19 represent to you that this was produced in discovery by
20 Defendants' counsel, and it is an inmate patient record
21 for [REDACTED] at the Delano Regional Medical Center on
22 August 28th, 2019, the day after the incident in question.
23 And on page four of seven there is a finding of a, quote,
24 nondisplaced fracture of the anterior nasal bone. Is that
25 medical lingo for a broken nose, as far as you know?

1 MR. MAIORINO: Objection. Vague and ambiguous,
2 assumes facts, argumentative, incomplete hypothetical.

3 I think he needs an opportunity to review the
4 exhibits, if you're going to ask him questions related to
5 it.

6 THE WITNESS: (Reviewing.)

7 So I'm not a doctor and don't know whether that
8 term refers to a broken nose, but certainly it refers to a
9 fracture -- some kind of fracture in the nasal area, yes.

10 BY MS. GRUNFELD:

11 Q. And would that kind of an injury be consistent
12 with the officers' reports about what they did in this
13 case?

14 MR. MAIORINO: Objection. Incomplete
15 hypothetical, assumes facts, argumentative.

16 THE WITNESS: Well, as I recall, the officer's
17 report was that when he used the cane against staff that
18 there was, obviously, use of force bringing him to the
19 ground. And if I recall correctly, he went down into a
20 facial position on the cement, so that could result in a
21 broken nose.

22 BY MS. GRUNFELD:

23 Q. Okay. Well, let's take a look at the incident
24 report that's been marked as Exhibit 12. That's this one
25 (indicating).

1 A. (Reviewing.)

2 Q. Do you have Exhibit 12 in front of you?

3 A. I do.

4 Q. I would like to draw your attention to the second
5 page of it where we have the -- [REDACTED]. Do
6 you see that part that starts Specifically?

7 A. Mm-mm (affirmative).

8 Q. Mr. [REDACTED] --

9 A. I do.

10 Q. -- reports that, quote, Staff utilized physical
11 force to stop Inmate [REDACTED] assaultive actions.

12 A. Correct.

13 Q. And there is no discussion of what that force
14 was, but Mr. [REDACTED] alleges that he was punched in the
15 face.

16 A. The -- the -- the --

17 MR. MAIORINO: Let me give an objection.

18 Vague and ambiguous, assumes facts, misstates
19 Exhibit 12, argumentative.

20 THE WITNESS: My review of this is that -- that
21 suddenly without warning or provocation raised his cane
22 with his left hand and violently swung his cane in a
23 downward motion striking staff in the left knee.
24 Utilizing immediate physical force, staff forced Inmate
25 [REDACTED] to the ground. Inmate [REDACTED] went to the ground

1 and began thrashing his upper body from side to side and
2 kicking his legs in an attempt to further batter staff,
3 striking staff.

4 So you are right, it is difficult to know the
5 specific details in terms of the application of use and
6 force, but it is possible, given there's a lot of cement
7 in the yard, so that could have resulted in him turning
8 over on his face and causing abrasions and potentially a
9 broken nose.

10 BY MS. GRUNFELD:

11 Q. How would he break his nose on the ground
12 without --

13 MR. MAIORINO: Objection. Argumentative,
14 incomplete hypothetical, assumes facts.

15 THE WITNESS: Well, again, I'm not a qualified
16 medical expert, so I'm -- I can't necessarily say
17 specifically, but if your face -- if you're thrashing and
18 you go down and you hit your face directly on the cement,
19 then you could fracture your nose or fracture your jaw or
20 any other facial feature.

21 BY MS. GRUNFELD:

22 Q. If you were thrown to the cement you could. I
23 don't think it --

24 MR. MAIORINO: Objection --

25 ///

1 BY MS. GRUNFELD:

2 Q. -- would happen in a fall, do you?

3 MR. MAIORINO: Objection. Incomplete
4 hypothetical, assumes facts, argumentative.

5 THE WITNESS: The -- the information I reviewed
6 said that they used the force to be able to control Inmate
7 [REDACTED] and that -- that during the process that he was
8 resistive, and from the staff report, continued to batter
9 staff, striking staff with his left leg -- with his right
10 leg. So I'm not sure it was an easy, controlled use of
11 force, but I can't state specifically about how he -- how
12 he broke his nose. There are -- I believe there are
13 probably a variety of methods outside of punching in the
14 face.

15 BY MS. GRUNFELD:

16 Q. Do you remember in this incident package that we
17 have in our hands here that Officer Campbell and Officer
18 Gonzalez both wrote reports stating that they could not
19 see what the other did during the incident?

20 MR. MAIORINO: Objection. Vague and ambiguous,
21 assumes facts, mischaracterizes Exhibit 12.

22 THE WITNESS: I would have to refer back to
23 that -- to those specific staff reports.

24 BY MS. GRUNFELD:

25 Q. Well, if you -- unfortunately, of course, these

1 are not paginated, making it very difficult to review
2 them, but if you keep pursuing it until you get to Darius
3 Campbell's report, I think I can show you what I'm talking
4 about. It's about two thirds of the way in here.

5 A. And this is a staff report?

6 Q. It's an incident -- yes, it's a staff report by
7 someone named Darius Campbell.

8 A. Okay. I believe I have it. It says in the upper
9 right, page seven of ten.

10 Q. My copy does not.

11 A. Okay. I'll continue to look. Yeah, that says
12 seven of ten.

13 Q. Mine says page one of two.

14 A. Okay. It looks like -- okay. I have several
15 Darius, page seven of eleven, but I'm continuing to go
16 through.

17 I believe I have it in front of me.

18 MS. GRUNFELD: I need to take a brief break. I
19 just received some difficult news, and I'll be back in a
20 moment.

21 (Deposition in recess, 4:43 p.m. to 4:49 p.m.)

22 BY MS. GRUNFELD:

23 Q. We are back on the record after a brief recess.

24 Mr. Warner, do you understand that you are still under
25 oath?

1 A. I do.

2 Q. We were looking at what's been marked as Exhibit
3 12 to this deposition, a Crime/Incident Report, CDCR
4 837-A, and you had located a portion of this document
5 entitled, Crime/Incident Report, Part C, Staff Report,
6 CDCR 837-C, with the name Campbell, Darius, at the top.

7 A. Correct.

8 Q. I would like to call your attention to the
9 narrative description from Mr. Campbell -- Officer
10 Campbell at the bottom of the page. Officer Campbell
11 claims that, quote, Due to my position and focus on
12 [REDACTED] left arm, I could not see Officer Gonzalez hand
13 placement on [REDACTED]. Do you see that sentence?

14 A. Mm-mm (affirmative).

15 Q. Is that a yes?

16 A. Yes, I do. Yes, it is.

17 Q. Did you find that strange that two officers
18 restraining a prisoner, to have one of them claim that he
19 can't see what the other one is doing?

20 MR. MAIORINO: Objection. Vague and ambiguous,
21 argumentative.

22 THE WITNESS: Again, I'm -- I'm -- it would be
23 making a judgment about an active use of force to control
24 the behavior of the inmate. I don't know to what
25 extent -- he's flailing, moving his arms, there's a lot of

1 activity, so I'm not sure I would -- just sort of looking
2 at the documentation of staff, I think there are a lot of
3 things that officers, when they're emersed and doing their
4 work, may not see or may not be aware of.

5 BY MS. GRUNFELD:

6 Q. So you find it perfectly normal that this officer
7 is claiming he didn't see the other officer right next to
8 him --

9 MR. MAIORINO: Objection --

10 BY MS. GRUNFELD:

11 Q. -- in this report?

12 MR. MAIORINO: Objection. Argumentative --

13 THE WITNESS: No, I said --

14 MR. MAIORINO: -- vague and ambiguous.

15 THE WITNESS: I never said it was normal or
16 typical. I said that it -- basically, in situations where
17 use of force occurs, there's a lot of activity, and so
18 being aware -- even if you're right next to someone who is
19 thrashing and moving, you're trying to manage the
20 situation, you may or may not know what the other
21 officer -- I think the statement you said is, did not --
22 did not see his hand placement on [REDACTED]. So he just may
23 have had a blind spot, and when they were involved in a --
24 in a use of force.

25 ///

1 BY MS. GRUNFELD:

2 Q. He also states further on in his narrative,
3 quote, Due to my position and focus on [REDACTED] I did not
4 observe if Officer Gonzalez assisted me forcing [REDACTED] to
5 the ground or the techniques he used to maintain control
6 of [REDACTED] right arm. Do you see that?

7 A. Due to my position and focus on [REDACTED] left arm,
8 I could not see Officer Gonzalez hand placement on
9 [REDACTED]

10 Q. And then he says it again later on, two sentences
11 later he makes a similar assertion. He says he did not
12 observe if Officer Gonzalez assisted him or not. Do you
13 see that second assertion?

14 A. I did not observe if Officer Gonzalez assisted me
15 forcing Quarles to the -- [REDACTED] to the ground or
16 techniques he utilized to maintain control of [REDACTED]
17 right arm.

18 Yes, I -- again, I think you have what -- what
19 could be three people involved in trying to contain a
20 disruptive inmate, and so I think that there's -- to be
21 able to sort of recount who was -- what the other officer
22 was doing, I think in many cases you're trying to just
23 focus on your own sort of individual involvement.

24 Q. Is this incident packet, Exhibit 12, what you
25 relied on to determine that staff did not use excessive

1 force here?

2 MR. MAIORINO: Objection. Misstates prior
3 testimony.

4 THE WITNESS: (Reviewing.)

5 Again, what I relied on, and I have not gone
6 through the entire packet and -- every item, but I relied
7 on the documents received, the incident report, the
8 investigation.

9 BY MS. GRUNFELD:

10 Q. In your report, page 13, lines 11 and 12, you
11 state, quote, There is no indication that the inmate was
12 being targeted for harassment or because of a disability,
13 close quote.

14 And as you sit here today, do you stand by that
15 statement, even though he was asking for an accommodation
16 of the get down policy?

17 MR. MAIORINO: Objection. Vague and ambiguous,
18 assumes facts, argumentative.

19 THE WITNESS: Well, I guess from my perspective
20 of the incident, there were active incidents on the yard.
21 Mr. [REDACTED] was, according to reports, very agitated.
22 There were reports from staff that he was walking
23 toward -- he was in the vicinity around the mental health
24 building, around the area where there was another
25 disturbance; staff approached him --

1 THE REPORTER: I'm sorry. Mr. Warner, you froze
2 again. I can read the last sentence for you. One moment.

3 MR. MAIORINO: Could you read the entire response
4 that he recorded, and then he can pick it up from there.

5 THE REPORTER: Certainly.

6 (Record read.)

7 THE WITNESS: So my -- my review of the -- was
8 that staff were approaching him, and I think you're
9 certainly right from your perspective, my perspective as
10 well, when he says, I cannot go prone, that I would hope
11 and anticipate that staff approaching him would look for
12 some kind of accommodation to help him if he could not go
13 prone, that there could be some kind of engagement with
14 him. And my understanding of reviewing the documents is
15 that when they did approach him, then he used his cane and
16 swung at that staff and staff felt that it was a
17 threatening situation and used force to control
18 Mr. [REDACTED]

19 BY MS. GRUNFELD:

20 Q. Is this another situation that would have
21 benefited from surveillance cameras?

22 MR. MAIORINO: Objection. Argumentative, assumes
23 facts, incomplete hypothetical.

24 THE WITNESS: Yeah. I will continually say that
25 the -- the value of having more forensic information to be

1 able to determine real circumstances is another piece of
2 information as part of the investigation would be helpful.

3 BY MS. GRUNFELD:

4 Q. Could you turn to page 15 of your report. This
5 is the section of your report where you comment on the
6 remedial measures requested by Plaintiffs. At lines 12
7 through 13 you stated, quote, I noted during my tours of
8 KVSP, SVSP, and SATF that these facilities had limited
9 camera coverage, period, close quote.

10 I just want to clarify with you that -- because
11 we discussed this earlier today, that the limited camera
12 coverage is the coverage you discussed at the gate area to
13 the prison?

14 A. So I did not get a complete tour of all
15 facilities, and I did not have -- have a detailed
16 blueprint or review of all the security cameras that are
17 available in every institution. When I asked staff what
18 kind of coverage is available now, they said it's -- it's
19 limited. They did not say there were any in the housing
20 units or in the yard, in that it was really in a couple of
21 areas around the -- the sally ports and -- and security of
22 people coming in and out of the institution in vehicles,
23 et cetera.

24 So that's a long answer to say that the -- the
25 report from staff was that there were -- I'm not aware of

1 additional cameras that exist. I did not see any
2 additional cameras.

3 Q. Did you see any cameras?

4 A. Well, they're not always easy to detect. Some of
5 them are not as obvious. Outside fixed cameras are more
6 obvious than ones inside, but I don't recall seeing any.

7 (Confidential testimony concludes.)

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1 UNITED STATES DISTRICT COURT)
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA)
3

4 I, Robin A. Elawady, a Certified Shorthand
5 Reporter, do hereby certify:

6 That the foregoing proceedings were remotely
7 taken before me at the time and place therein set forth,
8 at which time the witness was put under oath by me;

9 That the testimony of the witness, the questions
10 propounded, and all objections and statements made at the
11 time of the examination were recorded stenographically by
12 me and were thereafter transcribed;

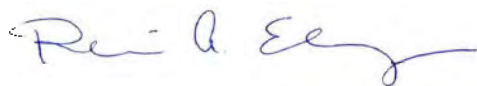
13 That a review of the transcript by the deponent
14 was not requested;

15 That the foregoing is a true and correct
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative or
18 employee of any attorney of the parties, nor financially
19 interested in the action.

20 I declare under penalty of perjury under the law
21 of California that the foregoing is true and correct.

22 Dated this 22nd day of September, 2020.

23 

24 Robin A. Elawady
25 CSR No. 10863

Exhibit 98

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,)
)
 Plaintiffs,)
)
 vs.) Case No.
) C94 2307 CW
)
 UNIVERSITY OF KANSAS, et al.,)
)
)
 Defendants.)

D E P O S I T I O N

The DEPOSITION of MR. JOHN R.
BALDWIN; taken on behalf of THE PLAINTIFF,
before:

DANA L. BURKDOLL, CSR, RPR, CCR
Certified Court Reporter #1364
Registered Professional Reporter
Certified Shorthand Reporter #1955

At COLORADO SPRINGS, COLORADO on the
21ST day of SEPTEMBER, 2020 at 10:30 a.m.,
Mountain Time.

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A P P E A R A N C E S

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1 STIPULATION

2 IT IS FURTHER STIPULATED AND AGREED

3 By and Between the Respective Parties Hereto

4 That Said Deposition Signature Shall Be

5 Reserved By the Witness.

6 P R O C E E D I N G S

7 Whereupon,

8 JOHN R. BALDWIN,

9 of lawful age, having sworn to tell the truth,

10 the whole truth, and nothing but the truth,

11 testified as follows:

12

13 THE COURT REPORTER: Please would

14 the parties present please introduce

15 themselves.

16 MR. NOLAN: Tom Nolan. T-O-M,

17 N-O-L-A-N, and I'm the attorney for the

18 plaintiff with the firm RBGG.

19 MR. TARTAGLIO: This is Anthony

20 Tartaglio, representing defendants. And I work

21 at the Attorney General's office in California.

22 MS. HOOD: Joan, muted there.

23 You have Joan Hood, also with the

24 attorney general's office representing

25 defendants.

1

2

DIRECT EXAMINATION

3

BY MR. NOLAN:

4

Q. Mr. Baldwin, I am Tom Nolan and I am here to
5 take your deposition today.

6

Have you ever had your deposition taken

7

before?

8

A. Yes.

9

Q. You've probably know the rules, but I will go
10 over them just remind you, if that is all
11 right.

12

The first one is you need answer audibly

13

because the reporter can't take down a nod of

14

the head. Do you understand that?

15

A. Yes, I am not -- if it, but yes.

16

Q. The next one is that -- the court reporter's
17 going to copy down your testimony you're going
18 to have the opportunity to make changes to the
19 written version but if you make changes I or
20 another attorney will be able to comment on
21 fact that I made those changes so it is very
22 important that you give your best answer. Is
23 there any reason you can't give your best
24 answer today?

25

A. No.

1 Q. Are you on any medications?

2 A. I'm on some medication yes. But nothing --

3 Q. Any medications that away effect your testimony
4 today?

5 A. No.

6 Q. And if you don't understand a question, I ask,
7 today, please ask me to clarify it. If you
8 don't ask for a clarification I'm going to
9 assume that you understood the question.

10 A. Okay.

11 Q. There are protective orders in this case. Did
12 your attorney share those with you? Are you
13 familiar with those?

14 A. I don't recall with them at this time.

15 Q. So the -- the protective orders provide that
16 information about class member names and
17 medical information, as well as certain
18 security information is confidential and needs
19 to be kept confidential?

20 A. Right.

21 Q. And you wouldn't share it with anybody else.

22 When we talked today about, you know,
23 the name of a prisoner or certain security
24 issues, we're to have the court reporter to
25 designate that portion of the transcript as

1 confidential.

2 A. Fair.

3 Q. Does that make sense?

4 A. Yes.

5 Q. Next, I would like to start with the documents.

6 Are they ready yet?

7 A. No.

8 Q. All right. Well, let's to go off the record
9 for a moment and wait for those documents?

10 (The Deposition Proceedings went off
11 the record at 10:50 a.m.; whereupon, back on
12 the record at 10:53 a.m.)

13 BY MR. NOLAN:

14 Q. So the Exhibit 1 is going to be the deposition
15 notice?

16 (Exhibit No. 1 was marked for the
17 record.)

18 BY MR. NOLAN:

19 Q. That is request for production the deposition
20 Exhibit No. 1. And is declarations to be
21 Deposition Exhibit No. 2. But I should do that
22 on record.

23 (Exhibit No. 2 was marked for the
24 record.).

25 BY MR. NOLAN:

1 Q. Great. We should back on the record.

2 I just wanted to remind you you're still
3 under oath. Do you understand that?

4 A. Yes.

5 Q. So, I would like to mark as Deposition Exhibit
6 1, Mr. Baldwin.

7 What did you do to prepare for this
8 deposition today?

9 A. I reviewed various documents provided to me by
10 defendants counsel. I did a phone calls with
11 three institutions. I did another phone call
12 with Amy Miller, who was in the CDCR.

13 Q. Okay. I -- I am curious, for right now. More
14 about, anything you did in the last few days
15 just to get ready for this deposition not in
16 the process not so much the process of the
17 declaration?

18 A. I reread my report several times. I talked
19 with the Attorney General's office and CDCR
20 attorneys.

21 Q. And gentleman, John real quick I'll caution you
22 not to talk about the substance of the
23 deposition to the lawyers?

24 A. Correct.

25 MR. NOLAN: Well, that is not

1 actually protected. But what did you talk
2 about with the lawyers?

3 MR. TARTAGLIO: Don't answer that.
4 I'm instructing him not to answer that.

5 BY MR. NOLAN:

6 Q. Well, at the meal if -- his conversations are
7 not protected it's work product protected?

8 MR. TARTAGLIO: No. Those
9 conversations that are protected unless it's
10 stacks that he relied upon in generating his
11 report or documents or assumptions. But the
12 conversations that we had with legal strategy
13 are protected, and he's not answering the
14 questions about that.

15 MR. NOLAN: All right.

16 BY MR. NOLAN:

17 Q. Did you guys discuss any of the factual
18 understanding of the declaration in preparing
19 for today?

20 A. Not that I recall. At this time, no.

21 Q. Did you bring any documents with you to the
22 deposition today?

23 A. No, sir.

24 Q. How did you go about collecting documents under
25 the deposition subpoena.

1 Did you collect those documents or did
2 your lawyer collect those documents?

3 A. They were provided.

4 MR. TARTAGLIO: Objection, compound.

5 A. I'm sorry. Please restate your question.

6 BY MR. NOLAN:

7 Q. How, did you go about collecting documents to
8 produce under the subpoena attached to the
9 deposition notice?

10 A. I relied on the -- the California Attorney
11 General office?

12 Q. I would like to mark as Exhibit 2, your
13 declaration.

14 A. I do not have it right now.

15 Q. I thought you had that?

16 A. He just had the notices.

17 THE COURT REPORTER: Let's just wait
18 for that.

19 (The Deposition Proceedings went off
20 the record at 11:00 p.m.; whereupon, back on
21 the record at 11:11 p.m.)

22 MR. NOLAN: Back on-the-record.

23 BY MR. NOLAN:

24 Q. Mr. Baldwin did you review Deposition Exhibit
25 No. 2 in preparation for your deposition; is

1 that right?

2 A. Yes, I do.

3 Q. And that is your declaration that you wrote in
4 this matter?

5 A. Yes. One moment. Close that door. House
6 copying. I am back.

7 Q. Mr. Baldwin, when were you retained for this
8 project?

9 A. I'm not certain of the exact date.

10 Q. Approximately when?

11 A. End of July, to the first full week in August
12 would be my estimate.

13 Q. My understanding, my notes are that you spoke
14 with the prisoners in early August. Does that
15 help refresh your recollection about what you
16 would have been retained?

17 A. Then it would have been in July, yes.

18 Q. What is the scope off of the project that you
19 were retained for?

20 A. My --

21 Q. I'll caution you not to talk about
22 conversations with lawyers. But go ahead and
23 answer that?

24 A. Thank you.

25 Q. A --

1 A. Thank you. My -- my task was to -- to
2 determine if the Armstrong class members had
3 access to the appeals process.

4 How staff misconduct is -- is handled in
5 the CDCR and if the -- the offenders' concerns
6 were being addressed?

7 Q. What were the steps you took to draft your
8 declaration?

9 A. I reviewed -- I reviewed many documents that
10 were provided to me. I reviewed those at some
11 level. I then go and requested interviews with
12 the three institutions that I was assigned.

13 And then I requested data from the CDCR
14 and the institutions. And with that I started
15 working on my report.

16 Q. What data did you request?

17 A. The data that I could use to see what the
18 trends were if the Armstrong class members were
19 singled out, as opposed --

20 Q.

21 A. I'm sorry --

22 Q. What data went to that issue?

23 MR. TARTAGLIO: Tom, please let him
24 continue finish his answer.

25 A. I'm sorry. Would you repeat the question, you

1 broke up. I apologize.

2 BY MR. NOLAN:

3 Q. What data did you use to determine what -- what
4 was the -- the question you wanted answered
5 with data from CDCR?

6 A. I asked for data regarding use of force
7 instances. They're on table -- I think, it's
8 pages 4 -- it's on 4 and 5 I believe.

9 Let me extract that, because this has
10 one more page in it, then I copied it at home.
11 But 5, 6, and then, 7. I requested information
12 about that about somethings that I found in the
13 -- both the offenders, written responses or --
14 602's. And the -- the state's response.

15 And so, I asked for information to see
16 if the statements made by the offenders were
17 supported by data from California.

18 Q. You mentioned that you asked for data from the
19 institution.

20 What time did you ask for from them?

21 A. It was about the number of offenders on a
22 certain day. Basic -- it was basic like
23 acreages, that the acres of the institution,
24 what types of security levels were housed
25 there. It was very -- it was very generic

1 data.

2 Q. All right. Demographic information?

3 A. It was more aggregate in the -- more aggregate
4 than demographic.

5 Q. What was your writing process for this
6 declaration?

7 MR. TARTAGLIO: I'm going to caution
8 you, not to discuss conversations with the
9 lawyers.

10 A. Okay. I gathered all the data that I thought
11 that I would need and I blocked out an
12 approach. And I started writing.

13 BY MR. NOLAN:

14 Q. Approximately, how many hours did you work on
15 the case?

16 A. Up until what point?

17 Q. Up until now?

18 A. I probably have somewhere around before this
19 day, I would say I've got somewhere in the 60
20 to 70-hour range.

21 Q. Okay. Yeah. In the course of preparing your
22 opinion in this matter have you had
23 conversations with former colleagues or other
24 correctional professionals about California?

25 A. Would you clarify that question?

1 Q. Sure.

2 In preparing your opinion, in this
3 matter, have you had conversations with other
4 correctional professionals about California in
5 and the issues?

6 A. Okay. I had one conversation that included the
7 other two expert witnesses and the state's
8 attorney office and attorneys from the CDCR.
9 Then I had a conversation with Bernie Williams
10 about how I got so far ahead in my writing.
11 And then we had a follow-up conversation with
12 Bernie that was only tangent ly related to this
13 case, but we talked mainly about the person
14 that was succeeding him at his former job.

15 Oh, I'm sorry. I -- I talked to Matt
16 Kate on Saturday about a question I had. He
17 did not know the answer and he referred me to
18 an Amy Miller and I have not spoken to her,
19 because I found the information I actually
20 need.

21 Q. What was the question?

22 A. Pardon me.

23 Q. What was the question you had for math Kate?

24 A. I wanted to know a little bit more about how
25 the Ames process worked some of document I had

1 I just wanted clarification and Matt defer to
2 do referred me to Amy who I spoke to earlier
3 and I have not spoken to her since Matt and I
4 talked.

5 Q. Specifically, what was it about Ames this you
6 wanted to learn more about?

7 A. I wanted to make sure my understanding was
8 correct as to how the case got through the Ames
9 system and I have reread their flow charts I
10 believe -- I believe, I can to be comfortable
11 with explaining that now.

12 Q. I will talk to you about that more a little bit
13 later.

14 When you talked to the two other
15 experts what was the -- what was the discussion
16 that you had? And again.

17 MR. TARTAGLIO: Again, I'll caution
18 you not to discuss conversations with lawyers
19 about legal strategies.

20 MR. NOLAN: Yeah. I was interested
21 in what the three experts shared and discussed.

22 A. I do not believe we discussed anything with
23 experts the conversation was run by the state's
24 attorney office.

25 BY MR. NOLAN:

1 Q. Did you discuss -- did video do monitoring?

2 A. I do not recall that, no.

3 Q. Are you aware that Matt Kate testified that you
4 talked about video monitoring during at that
5 call?

6 A. I am not.

7 Q. You don't have any recollection of discussing
8 the remedies during that call?

9 A. Remedies? Yes. We -- we did discuss remedies.

10 Q. Do you remember what was said about the
11 remedies in that call?

12 A. The only -- the only conversation that I can
13 recall at the moment with some accuracy is
14 cameras.

15 Q. And how did that discussion go?

16 A. It was, basically, I -- I believe Matt brought
17 it up and he was talking about his -- his
18 stance. And I chimed in with my stance on
19 cameras. It was.

20 Q. What did he say his was?

21 A. If I remember correctly. Matt thought, that
22 they were good limited use and there's a great
23 deal of staff and technology background that
24 needs to be done to run a successful camera
25 system.

1 Q. And what was your view?

2 A. It was -- I believe it was pretty close to
3 Matt's view. I think mine -- my view on
4 cameras is more expansive.

5 And my cameras I'm talking about fixed
6 position cameras I'm not talking about body
7 cameras.

8 My view is a bit more expansive than
9 Matt's on that. I had more experience with
10 stationary cameras. And so I -- I expressed
11 that during the call.

12 Q. Would you say that your experience with
13 stationary cameras has been favorable?

14 MR. TARTAGLIO: Objection, vague.

15 A. Your question let me repeat the question was it
16 about stationary cameras?

17 MR. NOLAN: Yes.

18 A. Yes. Yes.

19 BY MR. NOLAN:

20 Q. What was -- what has been favorable in your
21 experience about the preference of stationary
22 cameras in correctional institutions?

23 MR. TARTAGLIO: Objection, vague
24 outside the scope of his report.

25 A. It is -- it is outside of the scope of my

1 report yes. My -- cameras have in my opinion
2 provided a lot of support -- no I'm sorry.

3 Cameras have been overall beneficial. It
4 gives you a broad perspective on the incident.
5 And it -- it helps both the staff and the
6 offender. Conversely, it does not also help
7 the staff and the offender.

8 Q. What do you mean by each side of that I guess
9 initially your statement it helps both the
10 staff and the offender in what ways does it
11 help the staff to have cameras?

12 A. It.

13 MR. TARTAGLIO: Objection, outside
14 the scope of his report.

15 BY MR. NOLAN:

16 Q. A just to be clear his report says the
17 injunction that's requested is unnecessary.
18 This is part of the injunction.

19 MR. TARTAGLIO: We can have that
20 argument later we can have that objection. I
21 standby it.

22 A. Yeah. It is outside of the scope of my report.
23 The question as I'm interpreting it, it shows,
24 a wide range of the institution or the spot.
25 That is focused on. It gives, a very clear

1 picture of what happened. I understand f I
2 understand your question -- I'm sorry.

3 BY MR. NOLAN:

4 Q. Yeah. I'm sorry, you had that it both helps
5 the offenders and the employees the officers to
6 have the video recording. And is that
7 primarily that it gives kind of an objective
8 view of what happened?

9 A. Yes.

10 MR. TARTAGLIO: Objection,
11 argumentative. Outside the scope of the
12 report.

13 A. It is outside the scope of my report. And did
14 yes, it does give -- it does give a view of
15 what happened.

16 BY MR. NOLAN:

17 Q. And why is that favorable?

18 MR. TARTAGLIO: Objection, vague.

19 A. People can review it and have a much better
20 picture of what happened instead of relying on
21 either reports or witness statements.

22 BY MR. NOLAN:

23 Q. Do you consider it more reliable then reports
24 or witness statements?

25 MR. TARTAGLIO: Objection, outside

1 the scope of his report.

2 A. Thank you.

3 It is outside scope of my report. It is
4 an augmentation to what was written.

5 BY MR. NOLAN:

6 Q. You said that it also doesn't help prisoners
7 and staff what did you mean by that?

8 A. It's the same.

9 MR. TARTAGLIO: Objection, outside
10 scope of the report.

11 A. It is outside the scope of my report. And it
12 is the same statements about why it helps the
13 staff and the offender population.

14 BY MR. NOLAN:

15 Q. Can you explain that?

16 A. It shows -- it shows what happened in that
17 instance and in -- in certain situations, it
18 helps to see, because when you are in a
19 situation that is getting tense, your
20 perspective on odd event changes.

21 Not intentionally, it's just being in
22 the action.

23 Q. Did you discuss video monitoring with the
24 defendant's representative other than that
25 conversation with Matt Kate?

1 MR. TARTAGLIO: Hold on.

2 What do you mean by representative are
3 you talking about the lawyers?

4 MR. NOLAN: Other than the lawyers.

5 A. Let me ask -- let me ask a clarifying question
6 back are you putting cameras and video
7 monitoring?

8 MR. NOLAN: Yes.

9 A. Thank you. I was confused would you state the
10 question then please.

11 BY MR. NOLAN:

12 Q. Court reporter, could read back the question?

13 THE COURT REPORTER: "Question: Did
14 you discuss video monitoring with the
15 defendant's representative other than that
16 conversation with Matt Kate?"

17 (Read back the last question.)

18 A. At this time I do not recall having a second
19 conversation about video monitoring.

20 BY MR. NOLAN:

21 Q. Were you retained to review and provide --
22 review the proposed recommend and provide the
23 opinion about video monitoring and go other
24 aspects of the remedy?

25 MR. TARTAGLIO: Again, he cautioned

1 you not to talk about conversations with
2 lawyers.

3 A. I was -- no. I'm sorry. No.

4 BY MR. NOLAN:

5 Q. Were you ever asked to give your opinion about
6 the role of increased supervisory staff in
7 reducing staff misconduct?

8 A. He do not recall that at this time.

9 Q. Do you recall discussing that in your
10 conversation with the other two experts?

11 A. I do not recall that at this time.

12 Q. Are you aware that Matt Kate testified that you
13 had said that increased supervisory staff in
14 housing unit could decrease misconduct?

15 A. I'm up aware of that statement.

16 Q. Was there video monitoring system at the you
17 Cook County jail?

18 MR. TARTAGLIO: Objection, outside
19 scope of his report.

20 A. It is outside the scope of my report, and the
21 answer is, no.

22 BY MR. NOLAN:

23 Q. You have not Cook County jail and seen the
24 video monitoring systems?

25 MR. TARTAGLIO: Objection, outside

1 the scope of the report.

2 A. It is outside the scope of my report and I have
3 not toured Cook County jail.

4 BY MR. NOLAN:

5 Q. Were you aware of the video monitoring systems
6 that they have in place at Cook County jail?

7 MR. TARTAGLIO: Objection, outside
8 the scope.

9 A. It is outside the scope of my responsibilities
10 and I'm not aware of that.

11 BY MR. NOLAN:

12 Q. Were you ever on a panel with the head of the
13 Cook County jail where you discussed video
14 monitoring?

15 MR. TARTAGLIO: Objection, outside
16 the scope of the report.

17 A. Are -- I do not -- are you talking about Cook
18 County -- are you talking about the sheriff?
19 Of Cook County or the jail administrator.

20 Q. Either one?

21 A. I do not recall being on a -- on a panel with
22 Sheriff Dart. D-A-R-T.

23 Q. I may have been in a discussion with the head
24 of the jail.

25 A. At the moment, I do not recall that.

1 Q. You don't recall saying you're jealous of their
2 video monitoring system?

3 MR. TARTAGLIO: Objection, outside
4 scope of the report. And you're going to go
5 ask him about a document I think you need to
6 show him the document?

7 MR. NOLAN: I don't have a document
8 to show him.

9 A. I do not recall that will conversation at this
10 time.

11 BY MR. NOLAN:

12 Q. Have you ever served as an expert witness
13 before?

14 A. I have not.

15 Q. You indicate in pure report paragraph 3, that
16 your first job for forensic psychiatric
17 hospital in Iowa what was job there?

18 A. I was the business manager.

19 Q. Have you ever worked as a correctional officer?

20 A. I have not.

21 Q. Did you ever work as a security personality a
22 prisoner some?

23 A. No.

24 MR. TARTAGLIO: Objection, vague.

25 BY MR. NOLAN:

1 Q. Were you ever in a situation where you had to
2 use force against a prisoner?

3 A. May I ask the question back?

4 Q. Were you ever in a situation where you had to
5 participate in a use of force against a
6 prisoner?

7 A. May I ask you a question?

8 Q. Sure?

9 A. Are you referring to my on my paragraph 3?
10 That talks about my time at the -- in the
11 forensic psychiatric hospital.

12 Q. Those are questions about pure whole career did
13 you ever work a security person in a prisoner
14 -- so my question now did you ever participate
15 in a use of force at the correctional facility
16 in your old career in corrections?

17 A. Okay.

18 MR. TARTAGLIO: Objection, vague.

19 A. Would you repeat question then please.

20 MR. NOLAN: In your career in
21 corrections have you ever participated in
22 anyway in a use of force incident.

23 A. Yes.

24 MR. TARTAGLIO: Objection, vague
25 participate.

1 A. Yes.

2 BY MR. NOLAN:

3 Q. What was that incident? Or incidents?

4 A. It was an incident at the forensic psychiatric
5 hospital where a -- a -- a sudden individual
6 from another institution was in the -- lunch
7 line and I was two or three people behind him
8 and he drew a switch blade and threatened the
9 cook because he wanted two submarine sandwiches
10 and couple of intervened and we rolled on the
11 ground and over at the counter. It was -- yes.
12 It was a situation we had to protect the other
13 staff member.

14 Q. Were there any other instances like that you
15 were involved in a use of force incident during
16 your career?

17 A. That was the only one that I was personally
18 involved in.

19 Q. Did you ever work as a warden?

20 A. I did not.

21 Q. Did you ever conduct use of force reviews as a
22 supervisor?

23 MR. TARTAGLIO: Objection, vague.

24 A. I have -- as a supervisor as a direct
25 supervisor? Or otherwise.

1 BY MR. NOLAN:

2 Q. As -- as a custody supervisor yes in the chain
3 of command the sort of first level review did
4 you ever participate as a first level row
5 viewer for use of force incident?

6 MR. TARTAGLIO: Objection, vague.

7 A. No.

8 BY MR. NOLAN:

9 Q. Did you ever participate in those reviews at a
10 higher level?

11 A. Yes.

12 Q. What was the context for that participation?

13 A. Pleas help me to understand what you mean by
14 context?

15 Q. When did you parts separate in those reviews an
16 as a higher level person?

17 A. If it rows to an issue that my involvement in
18 reviewing use of force, and I used -- that use
19 of force in California in terms neither of my
20 states used use of force that in situation.
21 But in California terms, in my Iowa experience,
22 when it came to discipline, I would -- I would
23 depending on the discipline I would sometime
24 would be to be involved in the review of work
25 of force.

1 Q. Was that when you were an associate direct or
2 when you were director what was your job at the
3 time you were involved in those reviews?

4 MR. TARTAGLIO: Objection, compound.

5 A. Would you ask the question again please.

6 BY MR. NOLAN:

7 Q. What was your job when you was involved in
8 those use of force reviews?

9 A. Most of my reviews occurred when I was the --
10 the deputy director of administration for the
11 Iowa Department of Corrections. I occasionally
12 got involved when I was the director of the
13 Iowa Department of Corrections.

14 Q. When you were executive director of
15 administration. How often did you get involved
16 in those use of force reviews?

17 A. I do not recall an exact number.

18 Q. Was it frequent?

19 MR. TARTAGLIO: Objection, vague.

20 BY

21 BY MR. NOLAN:

22 Q. Was it more than ten times?

23 A. A year or total?

24 Q. Total?

25 A. Yes.

1 Q. Was it more than ten times a year?

2 A. No.

3 Q. Was it how many times a year typically would
4 you be involved?

5 A. My -- my estimate would be two to 4.

6 Q. And what was -- what was your role in reviewing
7 use of force incident?

8 A. I supervised the personnel department. And at
9 the time, any potential discipline was involved
10 it came through personnel.

11 Q. So is it fair to say you were deciding if the
12 discipline was appropriate?

13 MR. TARTAGLIO: Objection, misstates
14 evidence -- testimony I mean.

15 A. That did happen but it was fairly rare.

16 Q. It was fairly rare that you were assessing
17 whether the discipline was appropriate?

18 A. That's correct.

19 Q. That's right?

20 A. Yes.

21 Q. What was did purpose of the review then?

22 A. The purpose of the review when it came to me
23 was to make sure that the personnel person
24 responds for doing the write up had covered
25 everything. And that I would be supportive of

1 their proposed sanction.

2 Q. Do you consider yourself an expert on use of
3 force issues?

4 MR. TARTAGLIO: Objection, vague.

5 A. I consider myself.

6 MR. TARTAGLIO: Also calls.

7 A. I'm sorry.

8 MR. TARTAGLIO: Also calls for a
9 legal conclusion but go ahead.

10 A. I consider myself to have an a working
11 knowledge of use of force instances.

12 BY MR. NOLAN:

13 Q. Do you view yourself as being an expert on use
14 of force instances?

15 MR. TARTAGLIO: Objection, asked and
16 answered. Vague. Calls for a legal
17 conclusion.

18 A. I think I've answered that question once.

19 BY MR. NOLAN:

20 Q. You said you had a working knowledge of use of
21 force instances. What does that mean?

22 A. It means to me that I have reviewed multiple
23 use of force instances in my career. And I
24 feel comfortable looking at the documents and
25 any video that is part of that.

1 Q. You state in your declaration on page 2 in
2 paragraph 3, quote my focus from my tenure in
3 corrections with outcome comes and staff and
4 offenders. What do you mean by that?

5 A. It is it is my belief, that departments of
6 corrections should be more cognizant of
7 outcomes. Then as typically been case over my
8 42 years. I seen that start to shift in the
9 last, maybe ten years. The issue is, we have
10 to keep people safe. We have to make sure they
11 have -- do not return to us. And while people
12 are inside the institution, they have a
13 reasonable expectation of living a -- as normal
14 of a life as -- as the institutional setting
15 allows. And I would add to that, that keeping
16 track of data to report on outcomes, has always
17 been increasing the last ten years or so.

18 Q. And in that same paragraph you give us an
19 example reducing the incidents of correctional
20 staff use force to subduty an outbreak is that
21 an example of outcome that you were trying to
22 improve?

23 MR. TARTAGLIO: Objection, vague.

24 A. It is -- it is an example of an outcome that I
25 have been trying to improve upon.

1 BY MR. NOLAN:

2 Q. What are some of the ways you try to reduce use
3 of force incidents?

4 MR. TARTAGLIO: Objection, outside
5 the scope of the report.

6 A. It's outside scope of my report. Based on my
7 experience in corrections, for the last four
8 years, the what I have done to improve outcomes
9 for staff and offenders during that time, we
10 did staff -- let me backup.

11 As the numbers of people sentence to do
12 departments of corrections in Iowa, let me use
13 Iowa as an example started to increase and the
14 complexity of those people as far as
15 challenging for themselves and for staff
16 increased, the department and I saw fit to
17 increase training in cognitive behavioral
18 strategies. We started petting putting out
19 outcome data to staff. We increased the mental
20 health portion of the training. We had the
21 national alliance on mental illness or in NANI
22 come in and do multiple training sessions for
23 the entire staff. We started various self-help
24 programs for the -- the staff. We did
25 motivational interviewing, those types of

1 things.

2 Q. What kind of self-help programs for the staff?

3 MR. TARTAGLIO: Objection, beyond the
4 scope of the report.

5 A. It is outside the scope of my report and based
6 upon my 32 years experience we did what would
7 now to be called -- it started what this latest
8 version was started in -- in Montana. And it's
9 -- it's called -- fatigue to fulfillment. It
10 was called something else when I started I do
11 not recall it's name right now. But Iowa
12 sorted created it's own. In an Illinois we
13 were bringing on the -- fatigue to fulfillment
14 program while I was there. It was trying to
15 make sure that staff understood not to take
16 their issues home. That we had -- we would
17 have help for them if they needed it. It was
18 that tape of approach. And we went through
19 colors training. And that certainly helped
20 people to understand, who they were and who
21 other people might have who they worked with
22 were also. We did those kind of things I'm
23 leaving out some I just cannot recall the rest
24 off the top of my head right now.

25 Q. No, that it great. Thank you.

1 You mentioned that you shared outcome
2 data with staff. What kind of data did you
3 share?

4 MR. TARTAGLIO: Objection, outside
5 the scope of the report.

6 A. We basically shared success rates on resitism.

7 BY MR. NOLAN:

8 Q. He is the only data that you shared?

9 A. That is bulk of it we also just shared the
10 basic here's what budget here's what staffing
11 levels are -- it was mainly about trying to
12 drive the resitism rate down and that was in
13 Iowa and I started that in Illinois. But it
14 was mainly in Iowa.

15 Q. Focusing specifically on use of force issues
16 can you explain specifically what are some of
17 the things that you did as director of
18 correction to see reduce the number of force of
19 use incidents in Iowa?

20 MR. TARTAGLIO: Objection, outside
21 the scope of the report.

22 A. It is outside the scope of my report. What we
23 did if Iowa we did NAMI the national alliance
24 on mental illness. We did colors. We did
25 motivational before have you're going. We --

1 did, cognitive behavioral therapy. Trainings.
2 And we taught that to, the -- the -- the
3 offender population.

4

5 BY MR. NOLAN:

6 Q. Did you use the monitoring video cameras in
7 Iowa?

8 MR. TARTAGLIO: Objection, outside
9 the scope of the report.

10 A. And I'm you're -- your question was very
11 garbled on my end would you please repeat it.

12 BY MR. NOLAN:

13 Q. Did you use video cameras to reduce use of
14 force incidents when you were in Iowa?

15 MR. TARTAGLIO: Objection, outside
16 the scope.

17 A. It -- it was outside the scope of my report.
18 The -- the video -- monitoring, to use the
19 California term, we used in the for resonate
20 and at the hospital I started and then we added
21 cameras to -- to new institutions starting in
22 the mid '90s. And added cameras at various
23 locations throughout the institution. I'm
24 sorry institutions.

25 Q. So did you have blanket video monitoring by the

1 end of your term as director of Iowa Department
2 of Corrections?

3 MR. TARTAGLIO: Objection, vague
4 outside the scope of the report.

5 A. It is outside scope of my report and no, I did
6 not have blanket video monitoring.

7 BY MR. NOLAN:

8 Q. Did you have focus on high-risk areas for video
9 monitoring?

10 MR. TARTAGLIO: Objection, vague
11 6789. Outside the scope.

12 A. It's outside the scope of my assigned duties
13 and we did concentrate on higher levels 0
14 security.

15 BY MR. NOLAN:

16 Q. So, is your security system like in Iowa like
17 California you have levels 1 through 4? Or is
18 it a different system?

19 A. Outside of the scope of my report. But it is
20 different. It's called minimum medium and
21 maximum.

22 Q. Maximum is the highest security level?

23 A. Yes.

24 Q. Did you have video monitoring in all your max
25 pull security prisons by time I left as

1 director?

2 MR. TARTAGLIO: Objection, outside
3 the scope of the report.

4 A. It is outside the scope of my report and we had
5 individual tow monitoring in the newest maximum
6 security prison. In the old -- the other max
7 high medium prison in Iowa it had very few
8 cameras. I'm sorry had very few video
9 monitoring opportunities.

10 BY

11 BY MR. NOLAN:

12 Q. Which lead you choosing redid you seeing use of
13 this force incident in your career?

14 MR. TARTAGLIO: Objection, outside
15 the scope of the report.

16 Outside the scope of my report and I do
17 not think I -- so I focused solely on use of
18 force incidents. My issues were about
19 outcomes.

20 BY MR. NOLAN:

21 Q. About you testified and you wrote that on the
22 outcome is use of force. Yes.

23 MR. TARTAGLIO: There is in question
24 pending.

25 A. I'm sorry.

1 BY MR. NOLAN:

2 Q. Is it more common for there to be staff
3 misconduct in high security prisons?

4 MR. TARTAGLIO: Gentleman, objection.
5 Incomplete hypothetical. Outside the scope of
6 the report.

7 A. Based on my experience, in corrections it seems
8 that way. But I do not recall data
9 specifically at this time to verify my
10 assumption.

11 BY MR. NOLAN:

12 Q. But based on your experience that your beliefs
13 that are more staff misconduct problems in high
14 security prisons?

15 MR. TARTAGLIO: Objection, vague
16 misstates testimony.

17 A. In my -- based on my past experience, I do not
18 have the data in front of me. But I believe
19 the -- the -- the instances, might have been a
20 little higher in maximum security. But, it was
21 not a huge delta. I'm sorry a huge difference.

22 BY MR. NOLAN:

23 A. Iowa you're talking about very small numbers.

24 BY MR. NOLAN:

25 Q. Did you expand the use of video monitoring in

1 Illinois when you were the director of
2 corrections there?

3 MR. TARTAGLIO: Objection, outside
4 the scope of his analysis.

5 A. It is outside the scope of my analysis. And we
6 expanded it slightly. We did put it in, the
7 new hospital that's being built. And there was
8 some included in the behavioral health units
9 that I brought online.

10 BY MR. NOLAN:

11 Q. Did you expand video monitoring at Pontiac?

12 MR. TARTAGLIO: Objection, outside
13 the scope of his report.

14 A. It is outside the scope of my report. And I do
15 not recall specifically moment increasing the
16 video monitoring at Pontiac.

17 BY MR. NOLAN:

18 Q. Do you consider mental illness an availability?

19 MR. TARTAGLIO: Objection, vague
20 calls for legal conclusion.

21 A. It's outside the scope of my report. And I
22 would defer to a medical professional to
23 determine that.

24 BY MR. NOLAN:

25 Q. You don't know whether or not someone can have

1 a disability because of their mental illness?

2 MR. TARTAGLIO: Objection, vague
3 calls for a legal conclusion misstates the
4 testimony.

5 A. If some -- I do not diagnosis people. If that
6 is your question. If I've misunderstood please
7 repeat your request.

8 BY MR. NOLAN:

9 Q. I'm not asking you -- someone that's already
10 diagnosed with a mental illness do they also
11 have a disability because of that mental
12 illness?

13 MR. TARTAGLIO: Objection, incomplete
14 hypothetical vague outside the scope of his
15 report.

16 A. I do not -- I do not believe a -- a -- a mental
17 happily diagnosis automatically makes you a
18 disabled person as far as conducting ordinary
19 daily life skills.

20 BY

21 BY MR. NOLAN:

22 Q. Would you agree that if someone's mental
23 illness impairs their daily activities, and
24 daily living that they have a disability?

25 MR. TARTAGLIO: Objection, incomplete

1 hypothetical calls for a legal conclusion vague
2 outside the scope of this analysis.

3 A. I -- I believe in the situation you described
4 that could be possible.

5 MR. NOLAN:

6 BY MR. NOLAN:

7 Q. Are you familiar with the C. PPOA the
8 correctional officers union number California?

9 MR. TARTAGLIO: Objection, outside
10 the scope of his report.

11 A. I have very limited knowledge of the CC --
12 excuse CCPOA.

13 BY MR. NOLAN:

14 Q. Are you aware that there's provision in the
15 union contract for correctional officers that
16 requires all staff complaints by prisoners to
17 be shown to the staff member?

18 MR. TARTAGLIO: I object to this line
19 questioning unless you show him a document that
20 you're reading from.

21 MR. NOLAN: I mean the court report
22 could you mark Exhibit 4.

23 (Exhibit No. 4 was marked for the
24 record.)

25 A. Take this time light a slight five minute break

1 I would appreciate it.

2 MR. NOLAN: Absolutely. We're off
3 the record.

4 (The Deposition Proceedings went off
5 the record at 11:59 a.m.; whereupon, back on
6 the record at 12:05 p.m.)

7 (Exhibit No. 4 was marked for the
8 record.)

9 MR. NOLAN: Back on record.

10 BY MR. NOLAN:

11 Q. Do you Exhibit 4 in front of you?

12 A. Yes.

13 Q. So let's look at the second to last page. From
14 this which is thank you CCPOA contract.

15 A. Is it page 43?

16 Q. Yes. Page 43 is right. Item D it says, quote
17 whatever award inmate: Patient files submit
18 grievance 602. Inmate appeal any written
19 complaint or verbal complaint reduce to do
20 writing by either the inmate at the time or
21 escape which is found true could result in
22 adverse action against employee or contain a
23 that against the employee immediately notice
24 the employee to assess. The state degrees
25 provide the effected data copy of said document

1 if the employee said request. Would you agree
2 that provision could have a chilling impact on
3 incarcerated individuals to report misconduct?

4 MR. TARTAGLIO: Objection, vague.
5 Incomplete hypothetical. Calls for a legal
6 conclusion outside the scope of his report.

7 A. I do not know the answer to your question. I
8 am -- I am reading this -- I was following
9 along with you and that's first time I have
10 seen this. I do not know how the answer the
11 question. I have very little background to
12 answer your question.

13 Q. As a prison -- do you agree there are sick
14 instances where you might want to keep the
15 identity of someone making a complaint against
16 than the staff member's secret?

17 MR. TARTAGLIO: Objection, incomplete
18 hypothetical outside the scope his analysis.

19 A. Based on -- I am taking longer than it would be
20 normal to respond I'm trying to think of an
21 instance where that has happened. In my
22 career. I do -- there -- the only -- only time
23 that I have -- that I would consider it to be
24 dangerous is -- -- I'm sorry.

25 Let me reread the couple sentences again

1 I think that I've gotten confused.

2 BY MR. NOLAN:

3 Q. Would you agree that provision requires prisons
4 so share any prisoner complaints about a
5 specific officer with the officer?

6 MR. TARTAGLIO: Objection,
7 argumentative. Incomplete hypothetical.
8 Outside the scope of his report.

9 BY MR. NOLAN:

10 Q. Just assuming for the sake of argument, that
11 that's what it requires. Do you think that has
12 a chilling for people coming forward to report.

13 MR. TARTAGLIO: Objection, incomplete
14 hypothetical. Outside the scope of this
15 report.

16 A. In my past experience, when the name of the
17 person making the report, against the staff
18 member has gotten out, I have not experienced
19 -- I don't recall at this time any employee
20 retaliation.

21 But, again, I'm reading this for the
22 first time. At the moment why I don't recall
23 any. Therefore, my experience would lead May
24 to say it may not to be chilling or it -- it
25 may. I just don't have enough experience in

1 that to formulate any statement.

2 BY MR. NOLAN:

3 Q. Okay. Thank you. I want to turn now to your
4 opinions on the CPR you say in your declaration
5 in paragraph 14 which is on page 4. Do you
6 have your declaration?

7 A. Yeah. Hold on I put it slid it off to the
8 side. Page 4.

9 Q. Page 4.

10 A. Yes.

11 Q. You said based on the review of the documents
12 noted above examine before have you at the part
13 of the that share the opinion of expert witness
14 Mr. Ted Mac Mac quote it is clear some staff
15 had chosen not to comply with those pools is
16 that unusual even in the best run facilities?

17 A. I see that yes.

18 Q. What was the evidence you saw that some staff
19 had included not to comply with these policies?

20 MR. TARTAGLIO: Objection, vague.

21 A. Would you repeat the question please.

22 BY MR. NOLAN:

23 Q. Yeah. What is the evidence you saw in your
24 work as an expert on this be case that some
25 quote some staff had chosen not to comply with

1 these qualities?

2 A. There was a case that I reviewed, and I was
3 given all of the -- the 602's and then the
4 answers, the case -- let me stop for a minute.
5 And the ask this question of my attorney and
6 you. Do I not state the name of the offender
7 that I looked at or do you strike that out
8 electricity process I'm just confused by what
9 you want me to say.

10 MR. NOLAN: You're right flag that I
11 would like to ask the court reporter designate
12 this section of the section as confidential.
13 And I appreciate your highlighting that
14 Mr. Baldwin. And then you can and go ahead
15 answer.

16 A. Okay. Thank you.

17

18 CONFIDENTIAL.

19 The basis of the statement you read
20 that's contained in my report, was from one --
21 one of the -- use of force incidents that I was
22 provided. It was Mr. [REDACTED] and I believe he
23 was from -- well, I think he was -- I think
24 he's from CCI but I'm not positive of that
25 right at the moment.

1 BY MR. NOLAN:

2 Q. Yeah that it correct he was from CCI?

3 A. In my review I did not believe the initial
4 respondent, the -- the CO who responded, did a
5 very good job of explaining, the situation that
6 lead to use of force. And based on that and
7 then the concurring documents which I thought
8 as the process went on the people involved in
9 the appeal I thought did a very good job of
10 explaining the rational at a time. But that
11 was one out of I believe, 8 groups of use of
12 force documents that I reviewed. And it's my
13 experience that are if there's one out of 8
14 that's a reasonable expectation. It also, does
15 in my opinion reinforce what Ken said there are
16 sometimes staff that, could have done a better
17 job of A explaining, or B, handling the
18 situation. And so, I concurred based on that
19 with Mr. Baldwin.

20 BY MR. NOLAN:

21 Q. You also reviewed six cases correct not it?

22 A. There was six declarations yes. If I said 8 I
23 am sorry. I reviewed 6.

24 Q. You said there were 8 use of force packets but
25 there are only six declarations I believe two

1 of declarations didn't involve the use of
2 force; is that right?

3 A. I believe that to be accurate at this time yes.

4 Q. So does it change your opinion if in fact that
5 is only really one out of 4?

6 A. No. It would not.

7 Q. You also saying that in that sentence in the
8 best run facilities there are conferences when
9 staff do not comply with prison policies did
10 you see evidence of those consequences in your
11 review of the evidence for the case?

12 A. No that was based on my past experience.

13 Q. Okay. So you did not see any evidence of -- of
14 conferences when staff don't comply when you're
15 working on California?

16 MR. TARTAGLIO: Objection, vague.
17 Misstates the report.

18 A. I did not -- I did not sequences on any of the
19 document that I reviewed.

20 BY MR. NOLAN:

21 Q. During review any individual cases where staff
22 misconduct as alleged at the three prisons your
23 reviewed, other than the six cases discussed in
24 your report?

25 A. My -- my focus was on those three institutions.

1 Q. But were there any other individual use of
2 force or, misconduct allegations that you
3 looked at in other documents or other reviews?

4 A. I have question back to you. Are you talking
5 about the state generated reports or from
6 outside?

7 Q. Are both?

8 A. Either. Okay. Then -- I have received.
9 Copies 0 documents that were letters from a
10 legal firm to the CDCR talking about incidents
11 at those -- at -- at some of those
12 institutions. Yes.

13 BY MR. NOLAN:

14 Q. In paragraph 14. Which is on page 4 of
15 declaration. You said?

16 A. Yes.

17 Q. You said my opinion is that plaintiff's
18 evidence is not demonstrative the disability
19 inmate courtroom CIW or CTI are being
20 systematic bid staff or access to prisoner
21 programs?

22 A. I see that.

23 Q. What is opinion based on?

24 A. That opinion is based on the material I
25 received from the -- the -- the c state

1 attorney office. The CDCR and the CDCR.

2 Q. Is the problem that you see -- that there
3 aren't enough examples of staff abuse? The --
4 the decide that?

5 MR. TARTAGLIO: Objection --
6 objection, misstates the report.

7 A. I find my report to the documents that I had.

8 BY MR. NOLAN:

9 Q. If there were, another -- focusing for a moment
10 on Corcoran. You reviewed two declarations
11 from Corcoran, correct?

12 A. Yes.

13 Q. For 15 more declarations of similar nature from
14 Corcoran would that change your opinion?

15 MR. TARTAGLIO: Objection,
16 incomplete hypothetical. He -- I would be --
17 happy to review those. Right now. I just
18 don't have anyway of answering. That question.
19 He guess I'm interested to learn what would it
20 take to use there was a systemic problem with
21 abuse of prisoners by staff had a given a
22 prison?

23 MR. TARTAGLIO: Objection,
24 argumentative. Incomplete hypothetical.

25 A. I would -- I would need to see more information

1 from both sides. Of that issue.

2 Q. What kinds of information?

3 A. I think it what was provided, to me. It was
4 very -- was very good. And I think if there
5 are other allegations my assumption would be
6 that there are, CDR reports. And I would hope
7 to look at both and make a determination.

8 Q. I'm going to move onto exhibits 5 which I would
9 like to court reporter to please mark and?

10 (Exhibit No. 5 was marked for the
11 record.)

12 BY MR. NOLAN:

13 Q. I'm?

14 A. I am putting my expert testimony away for
15 second but it's right next to me I would be
16 mean to bring it out if you need it. Did.

17 Q. Yeah we'll definitely come back to it?

18 A. I have.

19 Q. And can you tell me what that document is?

20 A. This -- this Exhibit 5. Is, a copy of notes I
21 made. During an -- before have you with staff
22 from CCI.

23 Q. When did you talk to CCI staff?

24 A. 6 August 20.

25 Q. Who did you talk to?

1 A. The warden. Various staff.

2 Q. I tooling through and ask you about some of the
3 specific notes. On the first page do you see
4 where it says Ames and there's a colon and a
5 mark. And then there is the statement there
6 that it says no, far to criteria to send to
7 Ames.

8 Can you tell me what was being discussed
9 there?

10 A. I was asking them for their help and
11 understanding what the Ames system was. And
12 how it worked.

13 Q. What did they say? That is reflected in that
14 note?

15 A. Um, if I recall correctly, it had -- it had not
16 -- I recall the situation correctly it had not
17 been very long in use at CCI. And the no use
18 of force comment, was there their statement
19 about whether or not there was a use of force
20 that was supported by evidence or not. And so
21 that was one of the issues that lead me to have
22 in questions with about it I followed on
23 further I did not to get agent good
24 understanding from CCI of what the -- how they
25 were using the Ames system.

1 Q. So, I was going to ask you about the use of
2 force comment so that first comment so far no
3 criteria to send to Ames. Does that mean CCI
4 had not at this point sent any cases into Ames?

5 A. They had in their opinion not met the criteria
6 of Ames to send any information to it. That
7 why you understood from the conversation.

8 Q. So your understanding is, go in that they had
9 not sent a single case to Ames as to the date
10 of this conversation?

11 A. I certainly got that opinion from the
12 conversation.

13 Q. Right. Again, to based on this conversation
14 you -- you took away that they had in sentences
15 to Ames, correct?

16 A. I.

17 MR. TARTAGLIO: Objection, asked
18 answered.

19 A. I took away one. That I was confused by the
20 Ames system. And two I -- I believe they had
21 not sent anybody that met the criteria. To
22 Ames as of a time.

23 Bottom line is it was a confusing
24 conversation. And that's why I followed up it
25 on it later.

1 Q. Do you know what date Ames was implemented in
2 the southern region, the CDCR?

3 A. I do not recall actual date off the top of my
4 head.

5 THE COURT REPORTER: Could we briefly
6 just designate the next three exhibits, which
7 are also notes so it would be 6, 7 and 8. I'm
8 still going to ask you about this first one
9 mostly, but you want to call your attention to
10 one of the others notes.

11 A. Okay. Not yet.

12 Q. Keep other handy.

13 A. It is.

14 MR. TARTAGLIO: Housekeeping issue
15 when we take lunch I would like at least half
16 an hour for childcare stuff.

17 THE COURT REPORTER: 6, 7 and 8 were
18 marked for record.

19 (Exhibit Nos. 6, 7 and 8 were marked
20 for the record.)

21 Q. Thank you.

22 THE COURT REPORTER: I appreciate it.

23 BY MR. NOLAN:

24 Q. Just briefly looking at Exhibit 8. Mr. Baldwin
25 do you see that -- that, the if it will talk

1 more about this but just briefly this exhibits
2 is notes from your interview with Amy Miller,
3 correct?

4 A. That's correct.

5 Q. On the office; is that correct?

6 A. That is correct.

7 Q. And if you look about a third of the way down
8 there is a note that says Ames only at Northern
9 institutions since January 20th and it's set in
10 other April 20th; is that correct?

11 A. Yes.

12 Q. So have you find surprise that going between
13 April 20th and the 1st DTI did not have the
14 case as to refer to Ames?

15 MR. TARTAGLIO: Objection,
16 argumentative.

17 A. I did not find their statement um, I accepted
18 -- as a fact. That's what they said that's
19 what I wrote down.

20 BY MR. NOLAN:

21 Q. Okay. So going back to Exhibit 5. Which is,
22 from C the conversation with CCI?

23 A. I have that.

24 Q. In this same area we were looking at where
25 there's used to be discussion of Ames there is

1 a comment, it notes no use of force goes to
2 Ames.

3 A. Right.

4 Q. What is your understanding of what they meant
5 by that is?

6 A. That might have been my misinterpretation.
7 Because that was in -- in conflict with what I
8 -- that I recalled about Ames. That's why I
9 have my question mark outside there. And that
10 was one I had to clarify whether I understood
11 them right or not.

12 BY MR. NOLAN:

13 Q. Did I clarify with them?

14 A. No. I wanted to understand -- I wanted to
15 understand the same system better myself. So,
16 I took that is an opportunity to try to revisit
17 my knowledge about the Ames system.

18 Q. What is the rule with respect for use of force
19 incident than Ames?

20 A. Way I understand it, is if there is reasonable
21 expectation, that the incident happened, it
22 stays at the institution. If there is
23 otherwise it would go to Ames for
24 investigation.

25 Q. Also, physical it is an unreported uses of

1 force that always goes to Ames.

2 BY MR. NOLAN:

3 Q. Okay. So, the type of use of force is not the
4 factor that has to do with -- whether it's
5 believed it can to be substantiate is that is
6 what your testimony is?

7 A. I believe the wording in the Ames policy -- or
8 policies or the spreadsheet the flow sheet he
9 saw was if there was reasonable evidence -- if
10 there is reasonable expectation that the
11 statements are -- are true it state's
12 institution in not that it goes to the Ames
13 statement.

14 BY

15 BY MR. NOLAN:

16 Q. Are you aware of any distinction based on types
17 of use of force?

18 A. The only -- no. I am -- I am not aware of that
19 at this moment.

20 Q. Okay. Looking at your notes again moving down,
21 two lanes or so there is note that says cameras
22 and then it says colon how many and need more
23 and there is a question mark. What was the
24 discussion you had with them there?

25 A. I -- I was -- I asked them if they could use --

1 if he wanted more cameras and needed more
2 cameras, which is answered -- two more sections
3 down.

4 Q. And, if you want to take a minute to refresh
5 your recollection with your notes about how the
6 answer has been done and maybe you can tell me
7 how they answered based on your recollection.
8 I am ready to answer any questions you have
9 about that.

10 So what did they say -- the question so
11 -- so, I understand, in correct me if I'm wrong
12 from your testimony, that you asked them, if
13 they had cameras and whether they -- whether
14 they would like more cameras; is that right?

15 A. Yes, sir that is correct.

16 Q. And what did they answer?

17 A. Call your attention to down about, the -- the
18 -- the about three inches down to where it
19 cameras level 4 yards do you see that.

20 Q. I see your notes, he I would just like you to
21 tell me having read from your memory tell me
22 what they said?

23 A. They indicated that they are getting 30 more
24 cameras to replace some broken on ones on level
25 four yards. And that they have cameras in all

1 dorms in at all level 2. And, I asked if they
2 would like others and they want surface
3 cameras. And then, there is a brief discussion
4 about body cameras and Liz no, not much support
5 for that are came from them I don't believe I
6 asked that question.

7 Q. Do you remember who said who discussed these
8 camera issue ise it the warden?

9 A. My recollection it is it was the warden I would
10 say that it was a fairly open conversation. It
11 -- I don't know who else -- I didn't document
12 who else was speaking.

13 Q. Did the warden to say that you would want
14 surface cameras?

15 A. At this time. That is my recollection.

16 Q. What does that mean do you have an
17 understanding what I meant difficult surface
18 cameras?

19 A. It's my understanding of has a surface cram I
20 put my interpretation on this. Was it was --
21 as cameras that look at -- either the outside
22 grounds or the inside surfaces. But that is
23 how often and whatever said that I did not them
24 for your interpretation.

25 Q. I mean, does that mean sort of closer to action

1 cameras do you mean do you have sense about
2 that?

3 MR. TARTAGLIO: Objection, vague
4 compound.

5 A. I -- I took that to mean from my experience, it
6 would be cameras, that would cover, the -- the
7 surfaces of the yard. And -- in the
8 institution itself. Which is what I'm --
9 acquainted with.

10 Q. Okay. So I want to go up a little bit on that
11 set of notes. And do you have -- you have note
12 here that says [REDACTED] was there discipline.
13 Who is [REDACTED]?

14 A. As I was reading, through documents provided to
15 me at a time, his name appeared in one -- one
16 of them. And there was vague references to
17 discipline. And I just followed up on them.
18 On that.

19 Q. He would be officer right in the case that you
20 felt was not adequately documented? A case
21 involving Mr. [REDACTED]

22 A. I do not recall the CO's name at this time. I
23 would have to go back look.

24 Q. You weren't asking because you thought there
25 should have been discipline in that case?

1 MR. TARTAGLIO: Objection,
2 argumentative.

3 A. Hey, to you know if this was player case or
4 not. I was just -- it seemed to be a loose end
5 in one of the reports and I see just
6 questioning that.

7 Q. Okay. Well, we will go back and talk about the
8 [REDACTED] case in a little more detail. And maybe
9 you can point out where this the documentation,
10 you were unsure about discipline. Again, I'm
11 not sure it actually was?

12 MR. TARTAGLIO: Hold on John there is
13 no question pending.

14 A. Okay.

15 BY MR. NOLAN:

16 Q. So I will -- I will come back to that later.
17 When he talk about the -- it's in more details
18 so I want to move to -- to -- wait. I want to
19 ask you at the bottom. Of the -- first page.
20 There is a note that says being walled. What
21 was the discussion there. What is the [REDACTED]
22 [REDACTED].

23 MR. TARTAGLIO: Objection, outside
24 the scope of his report. Also, assumes facts
25 not established.

1 A. When.

2 BY MR. NOLAN:

3 Q. I'm asking what is the [REDACTED]

4 A. When I wrote that note.

5 MR. TARTAGLIO: Same objections.

6 A. When I wrote at that note I had no idea what
7 the [REDACTED] was. It came up in my review of
8 documents. And therefore I included th in I
9 questions to ask the CCI staff.

10 BY MR. NOLAN:

11 Q. You have no idea what it was?

12 A. I said that not heard that term in my career.

13 Q. Did you ask them do they tell you what the
14 [REDACTED] was?

15 MR. TARTAGLIO: Objection, compound.

16 BY MR. NOLAN:

17 Q. Did CC staff inform you of the meaning of that
18 person?

19 A. They gave me their interpretation of it.

20 Q. And what did they say?

21 A. That -- in the past, there was -- there was the
22 feeling does amongst some offenders that there
23 was a [REDACTED] meaning staff. And that the
24 warden didn't see any evidence at CCI at a
25 time. And --

1 Q. Okay. What is your understanding of what
2 [REDACTED] refers to?

3 A. Based on comments from offenders, it appears to
4 can, that the [REDACTED] is some sort of --
5 it's eater a -- a code of silence or it's --
6 staff at the institution where some sort of
7 group of some type.

8 Q. You're saying before you talked to CCI you
9 didn't know -- well first of all you said based
10 on offend t offender said did you talk to any
11 offenders about the [REDACTED]

12 A. I did not -- I have not talked to any offenders
13 in CDCR for this report.

14 Q. How did you become aware of the term [REDACTED]
15 [REDACTED]?

16 A. It was contained in one of the documents that I
17 was provided by the -- the California's
18 attorney's office.

19 Q. Do you know what the document was?

20 A. I didn't recall at this time.

21 Q. Okay. So, is your understanding now that
22 essentially the [REDACTED] the term for -- for,
23 sort of criminal gang of officers?

24 MR. TARTAGLIO: Objection, calls for
25 a legal conclusion. Assumes facts not in

1 evidence.

2 A. He do not -- I do not know what the [REDACTED]
3 was.

4 BY MR. NOLAN:

5 Q. Well, you were asking about it?

6 MR. TARTAGLIO: Hold on. Hold on.
7 Hold on. Objection, misstates testimony.

8 A. I asked the warden and staff when it was you
9 didn't see a lot of evidence and they said.
10 Inmates talk about I told lot.

11 MR. NOLAN: Sorry.

12 MR. TARTAGLIO: Let him continue
13 finish his answer. The warden did not sea any
14 evidence of a [REDACTED] at CCI. D is a
15 statement inmates talk about a lot. Do you see
16 who said that.

17 A. Is that from the warden.

18 Q. Who was saying inmates talking about their
19 being a [REDACTED] at CCI a lot; is that right?

20 A. Yes.

21 Q. And then there I see note there that says no
22 then what is that reference to?

23 A. That again was in an offender's words off of
24 the document I saw from CCI. And I was just
25 curious what that meant.

1 Q. Okay. And what did the warden to say about it?

2 A. Warden said there were no scarfs. I want to
3 turn to the second page. And in sort of the
4 second -- there is line across the page and
5 then the below that, there's a question in your
6 notes that says home staff fired for miss can
7 duct in the last two years, sign that.

8 Q. Do you recall that conversation? Is that part
9 of the conversation?

10 MR. TARTAGLIO: I asked that
11 question of CCI. That is correct.

12 BY MR. NOLAN:

13 Q. And do you do you recall how they responded?

14 A. They -- they responded that, at least the 20
15 staff had been terminated. Since 2017.

16 Q. And did you ask them any questions about --
17 about what the reasons are for termination?

18 A. The person who answered said it was -- usually
19 either for use of force or dishonesty.

20 Q. Do you know if that was just custody staff or
21 did that include medical staff or mental
22 happily staff?

23 MR. TARTAGLIO: Objection, compound.

24 BY

25 BY MR. NOLAN:

1 Q. Do you know if that was just custody staff?

2 A. I do not know that.

3 Q. Further down the page there is a note in the
4 little probably I guess it's the second box
5 from the bottom. Do you see where it says CCI
6 and there's triangle and then codes?

7 A. Yes.

8 Q. What does -- what is that in reference to?

9 A. Well, the triangle is my term for change so
10 it's -- the question was -- CCI changes codes.
11 I -- I do not recall this incident what those
12 codes were. I believe it was for -- if I think
13 about it. I'm not exactly sure what that
14 references to, again. But I just don't recall
15 at this time.

16 Q. And then just below that there is a note CDCR
17 warden says understand the equal access issue
18 and has work to do improve. Do you remember
19 halves being discussed threw?

20 A. That -- I believe if I recall correctly what
21 came out of the monitor's report for CCI.

22 Q. Okay.

23 A. And CCI at the time has did not respond to it.
24 I was -- I was just asking about than montos
25 report they had not respond on the 6th of

1 August.

2 Q. What was what had been send in the monitor's
3 report about equal access. Do you recall?

4 A. I just don't recall at this time.

5 Q. I'm going to move upon to the next exhibit
6 which is Exhibit 6.

7 A. Are a we done with 5?

8 Q. Yes, for now.

9 A. I'm just handing it back to the reporter.

10 Q. Exhibit do you have Exhibit 6 in front of you?

11 A. Yes.

12 Q. So do you recognize this document?

13 A. I do.

14 Q. What is it?

15 A. It's my notes from a conversation with the
16 warden and staff at Corcoran.

17 Q. Do you remember when this conversation took
18 place?

19 A. 31 July of 2020.

20 Q. And who did you speak to at Corcoran?

21 A. I spoke to the warden and various staff.

22 Q. And this is over the phone, correct?

23 A. Yes, sir.

24 Q. So, looking down these notes I see a third of
25 the way down it says hands out of pockets no

1 policy. What was are you asked about that?

2 A. There was an -- there was -- there was a -- an
3 incident that an offender was coming from one
4 point to another. And entered this womb Pat
5 tow for lack of a better word with hands in his
6 pockets. And in that -- that resulted in --
7 in, conversations with staff and lead to a
8 cross of force. And I was -- following up on
9 that.

10 Q. What was it about that issue that made it stand
11 out for you?

12 MR. TARTAGLIO: Objection, misstates
13 the testimony.

14 A. Would you ask the question again please.

15 BY MR. NOLAN:

16 Q. I'm sorry. So, were you surprised that there
17 was a rule about, the nurses having their hands
18 in their pockets when you read the document
19 where you saw that?

20 MR. TARTAGLIO: Objection.

21 Objection, misstates testimony assumes facts
22 not in evidence.

23 A. Would you ask the question again.

24 MR. NOLAN: Court reporter. Could
25 you read it back.

1 THE COURT REPORTER:

2 (The Court Reporter read the
3 question back into the record.)

4 BY MR. NOLAN:

5 Q. Court reporter. Do you let me to see if I like
6 try to get better sound.

7 BY MR. NOLAN:

8 Q. I can reask the question. The declaration
9 where the prisoner had his hands in his
10 pockets, did the declaration of Mr. [REDACTED]
11 [REDACTED]; is that correct?

12 A. I believe that it's the correct person.

13 Q. Did you have new concerns about the [REDACTED]
14 incident based on the fact at that where you
15 learned there was no policy about Hanson in
16 one's pocket?

17 MR. TARTAGLIO: Objection, assumes
18 facts not in evidence. Misstates testimony.

19 A. I did not have -- any type of maim or action to
20 -- to that there was no policy that said
21 handles out-of-pocket.

22 My question was more focused on was
23 there one? And my experience in institutions
24 in someplaces, you have to have your hands out
25 of your pockets because there are weapons. And

1 I was following on that line of questioning.

2 Q. Next further down be the page. There is a note
3 that says OAI. I assumed you meant office of
4 internal affairs there?

5 A. Yes.

6 Q. Is that correct?

7 A. I believe.

8 Q. So you were -- do you recall your discussion
9 with the warden and it's staff about the office
10 of internal affairs?

11 A. I -- I just don't recall at this time. What
12 that note was about.

13 Q. Do you see note below it where assess warden
14 and there is an arrow and then there is a note
15 that says, independent oversight is didn't.

16 A. Yes.

17 Q. Do you recall what the warden was talking about
18 there I assumed that it was the warden said
19 that independent oversight is good; is that
20 right?

21 A. Yes. I do recall that conversation. It was
22 part of the Ames conversation we had earlier
23 about -- part of Ames they're going to be
24 putting some of the investigations over to Ames
25 and the warden thought that was a good idea.

1 Q. Did he say why?

2 A. He just thought -- he thought independent
3 investigation would be a good idea.

4 Q. On the second page there is a note that reads,
5 note Gladiator by '96, '97, stopped or never
6 happened. Can you explain has the discussion
7 was there? Did you ask them about Gladiator
8 sites?

9 A. There was a reference in one.

10 MR. TARTAGLIO: Hold on objection
11 compound.

12 BY

13 BY MR. NOLAN:

14 Q. Did you ask him about Gladiator sites?

15 A. Yes.

16 Q. What made you ask about that?

17 A. There was a reference to that in one of the --
18 the offenders documents that I -- that I
19 reviewed. And that drove me to ask Corcoran
20 that statement.

21 Q. Prior to project were you aware that Corcoran
22 state prisoner did you know anything about
23 Corcoran State Prison?

24 A. No.

25 Q. You had not heard that there were Gladiator

1 fights there in the 1990s.

2 MR. TARTAGLIO: Objection, that --
3 that does is not in evidence?

4 BY MR. NOLAN:

5 Q. I mean, it's for the majority of Corcoran in
6 the 1990s, you had not heard about at that?

7 MR. TARTAGLIO: Objection,
8 argumentative. Hold, hold, hold on.
9 Objection, argumentative. Assumes facts not in
10 evidence.

11 A. I do not recall Corcoran and gladiator fights
12 in any conversation I had prior to being
13 retained for this particular expert witness
14 report.

15 BY MR. NOLAN:

16 Q. Have you ever heard in the past about
17 California and CDCR's shooting policy in the
18 1990s?

19 MR. TARTAGLIO: Objection, outside
20 scope of the report.

21 A. I could not recall any conversation about a
22 shooting policy in the '90s from California.
23 Looking back at your notes in Exhibit 6. On
24 page 2. Just below the note about gladiator
25 fights there is a note about cameras.

1 Q. Could you review that note and then tell me
2 what you recall about that conversation or that
3 part of the conversation?

4 A. I brought up the topic of cameras. And the
5 warden and then that's -- my writing is a
6 paraphrase of what the warden said. My
7 interpretation -- my interpretation said he
8 would like more cameras. And would like body
9 candid ramification with audio.

10 Q. Do you remember anything else you said about
11 that topic.

12 A. Not at the moment.

13 Q. Did he explain why he wanted body cameras with
14 audio?

15 A. I do not recall that conversation.

16 Q. You don't recall this discussion?

17 MR. TARTAGLIO: Objection, misstates
18 testimony.

19 A. I recall the discussion to Claude what I wrote
20 down. I not at the moment recall any other
21 part of that conversation.

22 BY MR. NOLAN:

23 Q. If next entry I wondered about just below the
24 discussion of cameras there is your sentence or
25 line that says, size of Shaw others what was

1 the discussion there? Do you remember?

2 A. In one of the reports that I read from an
3 offend every there was a conversation about
4 showers. And I believe but I'm not certain
5 that was also referenced in the monitors
6 report. And I was just curious what the size
7 of the showers were.

8 Q. And then the final there is a note at the end
9 of the set of notes that says warden night and
10 day difference do you recall what that was in
11 reference to?

12 A. As he recall the conversation that was about
13 the -- the -- the training that has been going
14 on at Corcoran. On did first page. The -- the
15 -- the verbal video. The motivational before
16 have you have going. And training that they
17 are receiving.

18 Q. He mean that is milo training or the --

19 A. It is --

20 Q. It's my understanding that is part of the may
21 low training. And then the -- the -- the
22 motivation before have you going or verbal judo
23 is part of their 55 hour offsite block.
24 Training.

25 A. Okay.

1 MR. TARTAGLIO: If we are at a good
2 pause it 104 here in rocky mountain high. We
3 would probably like a -- lunch break of 30
4 minutes.

5 Q. That would be great. Ment?

6 MR. NOLAN: If you want to say 40
7 minutes just make sure everybody can to get
8 food are you going to run into trouble at the
9 other end.

10 A. Me.

11 MR. NOLAN: Off record.

12 (The Deposition Proceedings went off
13 the record at 1:05 p.m.; whereupon, back on the
14 record at 2:05 p.m.)

15 THE COURT REPORTER: Back on record
16 at p.m.

17 BY MR. NOLAN:

18 Q. Please so he had.

19 Mr. Baldwin, do you understand that you
20 are still under oath, correct?

21 A. Yes, sir.

22 Q. We -- I want to do a little housekeeping first
23 of all. I think we had neglected to stop
24 designating the section as Confidential and I
25 think at least for the time being we can stop

1 designating it as confidential. And secondly
2 Tony. I would like to propose that, we
3 stipulate that all my questions are
4 objectionable for all the reasons that, you
5 have been providing.

6 A. I'm not.

7 MR. TARTAGLIO: I am still late to
8 that?

9 MR. NOLAN: Not.

10 MR. TARTAGLIO: Do you meaning
11 forward.

12 MR. NOLAN: Going forward it taking a
13 lot of time the witness forgets to get to the
14 questions often. It's going to make the
15 transport really hard to read. Yeah.

16 MR. TARTAGLIO: I'm going to continue
17 making objections, I think I'm make them pretty
18 quickly.

19 MR. NOLAN: I mean I don't think you
20 even need to make them just to the form.
21 Anyway I think we play need more than 7 hours.

22 MR. TARTAGLIO: It's my position that
23 today is your day so to suggest that we get
24 started.

25 BY MR. NOLAN:

1 Q. So, Mr. Baldwin do you have Exhibit 7 in front
2 of you?

3 A. Yes, I do.

4 Q. Do you recognizes this document?

5 A. Yes.

6 Q. What is it?

7 A. It's a -- a copy of the -- the minutes I took
8 or the notes I took from a -- call with CIW.

9 Q. And when the call take place?

10 A. 4 August of '20.

11 Q. A do you remember how long the call lasted?

12 A. The calls -- if my memory serves me right were
13 between an hour and an hour and a half.

14 Q. Who was present during this call with CIW?

15 A. The warden and a variety of staff.

16 Q. Okay. I want to call your attention to Exhibit
17 7 about, two-thirds of they was down the page
18 there's an note where you wrote how staff
19 misconduct. Do you remember that discussion
20 CIW?

21 A. Yes.

22 Q. Can you tell me what -- what you asked and what
23 they said?

24 A. I asked how did staff conduct I'm sorry how did
25 staff misconduct to get reported? And those

1 are the six things that staff there noted.
2 There could be more. But that was just what
3 let me show you the next page before I -- those
4 are the items that the staff on the phone call
5 mentioned.

6 Q. Okay. On the second page there is some notes
7 under heading staff misconduct. Including one
8 that says, five paid employee medical two to
9 three usually for dishonesty with reporting.
10 What are what were you asking about there?

11 A. How many employees had had been fired over the
12 last certain number of years I don't remember
13 the number.

14 Q. Who responded?

15 A. I do not recall at this time.

16 Q. Do you remember whether when they -- they -- is
17 your recollection based on reviewing these
18 notes that said 5 to 8 employees had been
19 fired?

20 A. Yes.

21 Q. Below that it says medical two to briefly. Do
22 you recall whether those were in addition or
23 whether those two to five were medical?

24 A. I do not recall for certain. If -- if the two
25 to three reported to 5 to 8 or not.

1 Q. Okay. Did you put in information into your
2 report?

3 A. No. I did not.

4 Q. Why snout?

5 A. My focus was on staff how the offenders would
6 send documents through for a staff misconduct
7 and how the state of the CDC are or the three
8 institutions that I was responsible for more
9 precisely handled that.

10 Q. Why were you asking about the numbers of
11 employees fired?

12 A. I was curious.

13 Q. Would you agree that the number of employees
14 fired at some indication whether there's the
15 functioning discipline system?

16 MR. TARTAGLIO: Objection,
17 argumentative vague calls for a legal
18 conclusion.

19 A. Would you restate the question so I'm sure --
20 I'm sorry.

21 MR. NOLAN: Court reporter read
22 please read back.

23 THE COURT REPORTER: "Question:

24 A. Thank you. It is my opinion, based on my
25 experience that is generally a true statement.

1 BY MR. NOLAN:

2 Q. Is that why you were asking about the number of
3 employees fired?

4 A. As I think about it a little more since your
5 earlier question. This -- I just -- I don't
6 recall off the top of my head. I think is also
7 some reference to some monitoring report. I
8 just -- am not sure. But the question I asked
9 I believe at least two of the three institutes
10 if not all three.

11 Q. You have in recollection I believe that you did
12 not ask that based on your notes of Corcoran,
13 does that sound right to you? Do you recall?

14 A. I don't recall right now sir I'm sorry.

15 Q. Continuing with these notes that are Exhibit 7.

16 On the second page a little further
17 down. There's a note that says cameras. And
18 then there's a couple of lines of notes below
19 that.

20 Could you take a minute to just read
21 through that.

22 A. Yes.

23 Q. Have you reviewed your notes do you recall that
24 the portion of the conversation with TIW?

25 A. In general yes.

1 Q. What was discussed there?

2 A. I asked do you have cameras. And think
3 responded, as noted there that they do have
4 cameras in the visiting room and? Sewing.

5 Q.

6 A. And I followed up do you think you need
7 cameras. And the discussion resolved around
8 would that decrease staff misconduct or not?
9 And I put my opinion out there as I stated
10 earlier, that it would both help and hurt staff
11 and help and hurt offenders. And then, we
12 moved onto, whether, body or stationary. And
13 the facility indicated they wanted the facility
14 cameras first if they were available.

15 Q. But it says both electric right? In your note?

16 A. It does. But -- it does and that's why I said
17 that they wanted the facility cameras first.

18 Q. But they -- but you didn't say that they
19 indicated that they wanted both body cameras
20 and stationary cameras; is that correct?

21 MR. TARTAGLIO: Objection, misstates
22 testimony.

23 BY MR. NOLAN:

24 Q. Did CIW staff tell you they wanted body
25 cameras?

1 A. They said they would want body cameras.

2 Q. Did they tell you they wanted stationary
3 cameras?

4 A. They wanted stationary cameras first yes.

5 Q. And did they agree with you that, having
6 cameras would reduce staff misconduct?

7 MR. TARTAGLIO: Objection, misstates
8 system.

9 BY

10 BY MR. NOLAN:

11 Q. Was your testimony that will you told them your
12 belief was that cameras reduced staff
13 misconduct?

14 A. My comments to them were, it helps and hurts
15 both parties. Depending on circumstance.

16 Q. Sorry you're -- you're bandwidth there is a
17 little low. I don't know if other people -- I
18 couldn't hear your full last response?

19 A. My response was, it helps and hurts both
20 parties. It depends on the circumstances.

21 Q. Do you agree that -- do you agree that cameras
22 help reduce staff misconduct?

23 MR. TARTAGLIO: Objection,
24 incomplete hypothetical. Outside thank you
25 copy of the report.

1 A. I believe as I hope they stated earlier that
2 cameras can have an impact in certain
3 situations in the institution.

4 BY MR. NOLAN:

5 Q. Was it not your testimony earlier that they are
6 helpful in addressing staff misconduct?

7 MR. TARTAGLIO: Objection, form
8 misstates testimony.

9 A. We did talk about that and I believe my
10 statement is mirrors what I said in the
11 previous statement.

12 Q. Okay. Did CIW staff express an opinion as to
13 whether having cameras would help reduce staff
14 misconduct?

15 A. I could not recall that will statement at this
16 time.

17 Q. Did they say anything about why they felt they
18 needed cameras?

19 MR. TARTAGLIO: Objection, misstates
20 evidence.

21 A. The -- the conversation about cameras, was
22 fairly brief and we spent more time on my
23 comments about it both helps and hurts
24 depending on the circumstances.

25 Q. What do you mean when you say it hurts what is

1 the circumstances where it hurts?

2 MR. TARTAGLIO: Objection, asked and
3 answered.

4 A. Well, cameras, put into focus, what happened.
5 At that instant. And when you're in an
6 incident, you have a different -- you have a
7 very different perspective sometimes. And
8 that's why I say, sometimes cameras help and
9 sometimes cameras hurt. But it does help set
10 the stage for -- for a better understanding of
11 what did happen. In that particular incident.

12 Q. Going a little further down on that same page
13 there is note that says Ames?

14 A. Yes, sir.

15 Q. And then second note under there it says only
16 two to three cases so far; is that right?

17 A. Yes, sir.

18 Q. Is it correct that CIW was saying they'd only
19 sent two to three cases to Ames so far?

20 A. That is my recollection.

21 Q. Who said that the warden?

22 A. I do not recall at this time.

23 Q. But somebody at CIW said that to you?

24 A. Yes, sir.

25 Q. Did you rely an this conversation with CIW

1 staff in forming your opinion on this case?

2 MR. TARTAGLIO: Objection, calls for
3 a legal conclusion.

4 A. I tried to incorporate all that I heard into my
5 -- decisions.

6 BY MR. NOLAN:

7 Q. So in that sense, you -- you were saying I did
8 rely on what you heard?

9 A. I relied on what I heard. And I read, yes.

10 Q. That is also true for Corcoran and CCI on than
11 the conversations you had?

12 MR. TARTAGLIO: Objection.

13 BY MR. NOLAN:

14 Q. For the staff. Did you also rely on your
15 conversation with staff at Corcoran in forming
16 your opinions?

17 A. Yes.

18 Q. Did you also rely on your conversation with
19 staff at CCI in forming your opinions?

20 A. Yes.

21 Q. Thank you.

22 So now I want to move on Exhibit 8.

23 I believe you also still have Exhibit 8. The
24 last set our irrelevant notes.

25 A. I do. And we'll pause for a minute. Okay.

1 Now at all sin Renes are gone okay.

2 BY MR. NOLAN:

3 Q. Do you recognize this document isn't it true?

4 A. Yes.

5 Q. What is it?

6 A. It's my notes from my interview with Amy
7 Miller.

8 Q. Who is Amy Miller?

9 A. She is the head I believe of the Ames section.
10 In the CDCR.

11 Q. And when did you speak with her?

12 A. 5, August, 20.

13 Q. Was there anybody else on the phone besides the
14 two of you?

15 A. It was two of us.

16 Q. So just going through these notes the first
17 note here says Ames not epiphany what was the
18 discussion there about?

19 A. I asked her how Ames got started and that was
20 her response.

21 Q. And so just to go through in a little detail it
22 looks like the first line she says you have a
23 note has says in response to many reviews by
24 PLO at all institutions and OIG. How did you
25 -- what was the response -- what did she say

1 that you took down in that note?

2 A. The -- part of the Ames creation was in
3 response to the PLO and the OIG.

4 Q. And then below that there's a note, look like
5 it says a lien OIG grove Ames. What did you
6 understand her to be saying about that?

7 A. That whatever the hospital was about Salinas
8 valley, helped drive the establishment of the
9 Ames unit.

10 Q. Okay. I want to go now to the top of the
11 second page of this have set of notes. There's
12 a comment right at the top it says Ames just
13 getting all staff positions filled. What was
14 the discussion there?

15 A. This is part of our discussion about how the
16 Ames section -- the Ames unit was functioning.
17 And she responded that she was just getting all
18 the staff jobs filled.

19 Q. Did she say anything else about that?

20 A. I think she did but it was very -- as I recall
21 it was very general in nature. It was -- I
22 think it was a comment about, just the process
23 of getting positions filled.

24 Q. And you don't have -- if they were struggling
25 with staff shortages at all in performing their

1 work?

2 MR. TARTAGLIO: Objection,
3 argumentative. Misstates the document.

4 A. I do not recall that tape of verbiage. In our
5 conversation with my conversation with Amy.

6 BY MR. NOLAN:

7 Q. Did she give you any sense of -- that she'd
8 been having trouble hiring staff?

9 MR. TARTAGLIO: Objection, vague.

10 A. Amy struck me as being somebody who would like
11 something done yesterday. And she was
12 expressing her frustration that it wasn't done
13 yesterday. And on the other hand I remember
14 saying that things are moving along in her
15 opinion okay.

16 BY MR. NOLAN:

17 Q. Is it fair to say she was expressing
18 frustration that approximately section months
19 after Ames had started she hadn't been able to
20 fill all the positions?

21 MR. TARTAGLIO: Objection,
22 argumentative misstates the document.

23 A. I do not know -- I just do not recall that
24 statement during our conversation.

25 BY MR. NOLAN:

1 Q. A little further down on that -- that second
2 page. There's a note that says biggest issue,
3 are correct cases getting referred? Was that
4 her statement or was that, a question?

5 MR. TARTAGLIO: Objection compound.

6 A. Oh. I'm sorry for the delay. I was going down
7 the page. And it's -- if as I remember the
8 conversation, this was about there is always
9 issues starting up some new system. And she
10 was very cognizant of her role to make sure the
11 right cases got referred to the Ames section.

12 Q. So was she saying she was having trouble
13 getting the right cases refer there?

14 MR. TARTAGLIO: Objection,
15 argumentative misstates document.

16 A. I think -- I think it was more of I want to get
17 this right comment.

18 MR. NOLAN: Oh, I'm sorry. I just
19 wanted to just put it on the record. I do have
20 Amy's official title in this second page if
21 that would be required for the report if not
22 we'll just move on.

23 Q. Yeah. No, we know her title thank you.

24 A. You're welcome.

25 Q. There's a note further down just below that it

1 says TLO concerned investigation conducted by
2 Lieutenant and not special agents. Lieutenant
3 still have bias for the institution staff?

4 A. Uh-huh.

5 Q. What was the discussion there?

6 A. That was -- I believe the conversation was
7 talking about how this is rolling out. And
8 have where the investigations were and the PLO
9 had concerns about the -- the investigations
10 being done by Licentiates. And not special
11 agents.

12 Q. Do you have an opinion about who should be
13 conducting that kind of investigation?

14 MR. TARTAGLIO: Objection,
15 hypothetical. Calls for a legal conclusion.

16 A. I do not know.

17 BY MR. NOLAN:

18 Q. I'm sorry what's the -- excuse me?

19 MR. NOLAN: What's legal conclusion.

20 A. Who should be conducting these?

21 MR. NOLAN: I'm asking his opinion as
22 a corrections expert who should be conducting
23 this kind of investigation?

24 MR. TARTAGLIO: I made me objection.
25 I don't have to explain it.

1 MR. NOLAN: I'm just you know these
2 objections are taking up time so.

3 BY MR. NOLAN:

4 Q. Will Baldwin, so, do you have an opinion about
5 who should conduct this the kind of
6 investigation?

7 MR. TARTAGLIO: Objection, incomplete
8 hypothetical.

9 A. I do not. To answer your question I would have
10 to better to understand what a special agent
11 job description was. That's a term in
12 corrections that I have not come across before.

13 BY

14 BY MR. NOLAN:

15 Q. Did you ask Amy Miller what she meant that way?

16 A. I think I did. But my -- my recollection is
17 that, these were special agents were still DOC
18 -- I'm sorry DDCR employees they were outside
19 of the -- the normal rank of you know
20 correctional officer up to major or whatever
21 the line is. In the CDCR.

22 BY MR. NOLAN:

23 Q. So you understand they wouldn't come from the
24 correctional staff in the institution; is that
25 right?

1 A. Is your question about were they ever
2 correctional officers or have they moved on to
3 be special agents?

4 Q. Have they moved on to be special agents?

5 A. I did not ask her but my background would say
6 positions like that would come from the ranks
7 of people who were on the security side at one
8 point or another.

9 Q. Okay. There's a comment right below what we
10 were just talking about that says, Lieutenant
11 -- well, we I guess, I read it to you before
12 but you wanted to focus on the comment that lot
13 lute still have bias for the institution staff?

14 A. Yes.

15 Q. What do you think about that -- what do you
16 think about that everybody or that concern?

17 A. That comment.

18 MR. TARTAGLIO: Objection, outside
19 the scope as reported.

20 A. The comment was in reference by Amy was made in
21 reference top what the PLO concerns were. And
22 she stated that, PLO believes the tenants have
23 bias toward the institution staff.

24 BY MR. NOLAN:

25 Q. Right.

1 Would you have a concern about -- do you
2 have a concern about people investigating their
3 colleagues and their home institutions?

4 MR. TARTAGLIO: Objection,
5 incomplete. Hypothetical vague.

6 A. It would depend on the training they were
7 given. And it would depend on the structure of
8 the Lieutenant in the institutions. I
9 generally have no problems with lute
10 Licentiates. Doing investigations.

11 Q. What do you mean when they're talking about
12 structure that is the jobs would make them more
13 independent?

14 MR. TARTAGLIO: Objection,
15 incomplete hypothetical. Incomplete beyond his
16 report.

17 A. My experience has been, that, the training of
18 lute Licentiates, in an investigations, is very
19 important. And that that really will help
20 differentiate them from the other staff so I
21 think it is possible for lute lute's to conduct
22 investigations in the institution. Next there
23 is a discussion it look like in these notes how
24 many staff misconduct investigation has been
25 done, correct?

1 A. Yes.

2 Q. Amy Miller. You some numbers for different
3 reasons, correct?

4 A. Yes.

5 Q. In that section of the notes to the right
6 there's a note that says quote no idea if staff
7 fired and report goes back to hiring authority.
8 What does that note reflect?

9 A. That was based on question I asked of what
10 happens when you finish your investigation.
11 What happens to it? And that was my notes from
12 our conversation.

13 Q. What do you think of the process that has the
14 warden making the final decision about
15 discipline?

16 MR. TARTAGLIO: Objection, vague
17 incomplete hypothetical.

18 A. I really don't have a strong opinion either
19 way. It gets back to my comment about the lute
20 Licentiates and their training if the car dens
21 are trained and if there is a clear scope of
22 options for the car den to pursue. And if the
23 warden can reach out for help top central
24 office and based on may experience those are
25 all things that would make that the warden

1 being the decision maker more comfortable in my
2 mind.

3 Q. In the Iowa system, would the warden to be the
4 decision maker in similar cases?

5 MR. TARTAGLIO: Objection, outside
6 the scope of the report.

7 A. The warden is the -- would be the final
8 decisionmaker unless there he or she had a
9 question about something in the -- if he or she
10 had a question about the length of let's say
11 for example, the suspension then than the
12 warden would contact central office for a
13 consultation.

14 Q. Did you tell Amy Miller when you talked to her
15 that you spoken with CIW the day before?

16 A. I do not recall that at this time.

17 Q. You don't recall whether you told her she'd --
18 they'd only for warred two or three complaints
19 to Ames?

20 A. I do not recall that will conversation at this
21 time.

22 Q. Are you aware of the fact use of force
23 complaints for instance incidents that do not
24 cause serious bodily injury did not go to Ames?

25 MR. TARTAGLIO: Objection, assumes.

1 Facts not in evidence.

2 A. I'm sorry I'm pausing I want to make sure --
3 I'm trying to remember the exact flowchart in
4 my mind. I believe that to be an accurate
5 statement.

6 BY MR. NOLAN:

7 Q. Okay. Do you have an opinion about whether
8 those such use of force instances that don't
9 cause serious bodily should be excluded from
10 Ames?

11 MR. TARTAGLIO: Objection, incomplete
12 hypothetical.

13 A. I do not have an opinion on that. My scope was
14 to figure out what the current Ames system was
15 about.

16 BY MR. NOLAN:

17 Q. Do you agree that the effectiveness of the Ames
18 system would depend on the significance degree
19 how well the investigators are trained?

20 MR. TARTAGLIO: Objection,
21 argumentative. Incomplete hypothetical.

22 A. It is my opinion that, any system, requires
23 trained investigators if you're talking about a
24 system like Ames.

25 BY MR. NOLAN:

1 Q. Are you familiar with the requirements in CRCO
2 use of policies for video before have you have
3 you with the inmates within 48 hours if there
4 is an injury?

5 MR. TARTAGLIO: Objection, assumes
6 facts not in evidence.

7 A. If -- if I recall my review of that information
8 correctly, there was a 48-hour requirement for
9 part of it. And have I believe that's a
10 correct statement but I'm thought a hundred
11 percent positive.

12 BY MR. NOLAN:

13 Q. Did you ask any of the officials the any of the
14 three prisoners that you spoke with whether
15 they were in compliance with that 48-hour time
16 frame?

17 MR. TARTAGLIO: Objection, calls for
18 legal conclusion.

19 A. I did not.

20 BY MR. NOLAN:

21 Q. Did you ask for date eight from the CDCR about
22 the number hours of fired for discipline for
23 staff misconduct in the last few years?

24 A. I did not. I tried to focus my report on the
25 three institutions that were assigned me.

1 Q. Did you ask for CDCR give you information about
2 the number of officers required of these three
3 institutions for staff misconduct?

4 A. I did not. I asked the institution -- or I --
5 I asked the institutions at least two or them
6 for that data.

7 Q. You asked CIW and CCI; is that right?

8 A. I believe that -- I -- I think that's -- I
9 think that's correct.

10 Q. John if you need to look at the.

11 MR. TARTAGLIO: John, if you need to
12 look at the document to answer you can?

13 A. Okay.

14 BY MR. NOLAN:

15 Q. Do you want look at Corcoran is Exhibit 6?

16 A. Yes. I'm sure I asked Corcoran I think -- no
17 wait a minute. That was CCI I did not ask
18 Corcoran it was CCI and CIW.

19 BY MR. NOLAN:

20 Q. Before you started working a unreported this
21 matter did you hear anything about the prisons
22 discussed in your reports?

23 A. No.

24 Q. Before you start working on your report did you
25 have any knowledge of impressions about

1 California prisons, in general?

2 A. Yes.

3 Q. What were those impressions?

4 A. I'm sorry. Would you ask that question would
5 you repeat that question.

6 Q. What was it that -- what was your impression of
7 California prisons before you started this
8 project?

9 MR. TARTAGLIO: Objection, outside
10 the scope.

11 A. My biggest impression was, of San Quinton that
12 I did you several years ago. And I was
13 surprised by at all different levels of
14 security in one place and I was very impressed
15 by the new medical unit that there.

16 Q. When did you to your San Quinton?

17 A. Some time between 2008, and probably 2013 or so
18 somewhere in that time range.

19 Q. Did you ever any other impressions of
20 California prisons?

21 A. Besides the fact that can it's a very large
22 system, no.

23 Q. Okay. Do you know what the offices of the
24 Inspector General is in California?

25 A. I have some knowledge of that.

1 Q. What is your understanding of what they do?

2 A. The one I'm speak a bout if there is -- that
3 there are two in this state.

4 One, I'm talking about is in corrections
5 I believe there is one when corrections. And
6 it provides some review of institutional
7 activities institutional life responds to
8 outside inquiries. Fairly typical of what, an
9 OIG's office would do in a setting like
10 corrections.

11 Q. Are you aware that the Dwight Wednesday it'll
12 current Inspector General testified in to the
13 state senate in 2019 the staff complaint
14 process used by CDCR.

15 He said quote the process appears
16 entirely exonerate staff?

17 MR. TARTAGLIO: Objection,
18 assumption. Facts not in evidence.

19 BY

20 BY MR. NOLAN:

21 Q. Have you heard of that?

22 A. I believe, I have heard that. And I'm not sure
23 what's from the senate report. I do not know
24 the source. The didn't he gave deposition?
25 Mr. -- was it Wesley?

1 Q. I don't know if he's given one in particular
2 matter, but...

3 A. I think.

4 Q. He may have written one?

5 A. I think I have either read that or heard that
6 during my time with case.

7 Q. Okay. Did that give you any concerns about the
8 investigation system in California?

9 MR. TARTAGLIO: Objection,
10 argumentative assumes facts not new evidence.

11 A. I try to -- I try to listen to all comments.
12 And take those into account as I look at what
13 information I was presented.

14 Q. Have you read the OIG's report on high concert
15 state prisons?

16 MR. TARTAGLIO: Objection, outside
17 the scope of his report.

18 A. I have seen something about high concert state
19 prison, but you do not recall if it's the OIG's
20 report or not.

21 BY

22 BY MR. NOLAN:

23 Q. Are you aware that the OIGN2016 recommended
24 that body worn cameras and housing unit cameras
25 to be installed throughout CDCR?

1 MR. TARTAGLIO: Objection, assumes
2 facts not in evidence.

3 A. I do not believe I was aware of that. I do not
4 recall that you will at this time.

5 BY MR. NOLAN:

6 Q. Have you read any study that -- that was done
7 for CDCR that much is done after they installed
8 a comprehensive video surveillance system at
9 high concert state prison violence as
10 significantly reduced at that prison?

11 MR. TARTAGLIO: Objection, assumes
12 facts not in evidence outside the scope of his
13 report.

14 A. I do not remember anything like that at this
15 time.

16 BY MR. NOLAN:

17 Q. In your personal experience have you ever seen
18 the insulation of a comprehensive video
19 monitoring system result in a reduction in use
20 of force and violence?

21 MR. TARTAGLIO: Objection, outside
22 scope of this report compound.

23 A. Restate question please.

24 BY

25 BY MR. NOLAN:

1 Q. In your experience as a prison administrator,
2 have you ever had an experience where video
3 monitoring was installed in a prison and you
4 were aware that violence was reduced after
5 insulation of the video monitoring system?

6 MR. TARTAGLIO: Objection, outside
7 the scope of his report.

8 A. No.

9 BY MR. NOLAN:

10 Q. Okay. Have you read any sentinel reports from
11 the office of the Inspector General?

12 A. I'm sorry. I lost one -- you said have you
13 read any blank reports from the office of
14 Inspector General I missed that word the blank.

15 Q. Sentinel reports?

16 A. Sentinel reports. I got it. I got it. Not
17 that I recall at this time.

18 Q. Okay.

19 THE COURT REPORTER: For this part I
20 am would to designate this as confidential.

21 A. And my I take a 33 minute break?

22 MR. NOLAN: Sure. I'll to be back
23 thank you very much.

24 THE COURT REPORTER: Off the record
25 the time is 2:58.

1 (The Deposition Proceedings went off
2 the record at 2:58 p.m.; whereupon, back on the
3 record at 3:07 p.m.)

4 MR. NOLAN: You understand that
5 still on the oath?

6 A. Yes.

7 MR. TARTAGLIO: To the next
8 discussion next exhibit should be marked
9 confidential. And that should be Exhibit 9.
10 (Exhibit No. 9 was marked for the
11 record.)

12 CONFIDENTIAL:

13 MR. NOLAN: That is public document
14 should be our discussion should be
15 confidential.

16 (Exhibit No. Was marked for the
17 record.)

18 BY MR. NOLAN:

19 Q. So Mr. Baldwin have you seen this document
20 before?

21 A. I saw this document this morning.

22 Q. Did you go a chance to read through it?

23 A. No, sir.

24 Q. You have not seen in document before this
25 morning?

1 A. I do not -- I do not recall at this time seeing
2 it prior to this morning.

3 Q. Okay. Well, I'm going to represent to you that
4 this is Aims report from the OIG that states
5 that it's -- it's a sentinel case which are
6 cases that they will periodically highlighted
7 that are raising public issues in tech and
8 there is a summary of the issue of the
9 investigation that they're -- that they're
10 interested in starting in the second paragraph.
11 And I'm just going to read that to you briefly.

12 The paragraph and I'm going to -- let a
13 you know this is a report although it doesn't
14 to say in the report this is about [REDACTED]. So,
15 the report says January through August of 2017,
16 ten officers at a prison in central California
17 allegedly engaged in conspiracy to open cell
18 door in particular housing unit to let called
19 the crew to enter cells and asphalt inmates
20 committed to sex offenders the officers
21 misconduct prevalent and widespread in the
22 housing units this crew inmate selected with
23 staff and other in a prison. The a member of
24 the crew came forward to report the officers
25 misconduct because he was afraid that other

1 inmates would attack him he through there was
2 variety of weapons in housing units.

3 So, there was some physical evidence
4 corroborating this inmates claim and some of
5 the other inmates came forward to. Ultimately,
6 six -- there were disciplinary charges against
7 six of the officers four of those six had left
8 for other reasons to it left two people and
9 ultimately, the office of legal affairs in the
10 CDCR decided that it didn't feel like it could
11 go to the personnel board solely with the
12 testimony of incarcerated individuals. And
13 this is what the OIG says about that. At the
14 end of this lower report. Quote the OIG is
15 concerned the department attorneys action
16 suggest apparent bias and say hostility against
17 inmate testimony and evidence provided by
18 inmates and set a dangerous precedent in which
19 widespread officer misconduct which in some
20 cases cannot to be prove evidence or testimony
21 provided by inmates will go you undiscovered
22 and unpurchased. So I note.

23 MR. TARTAGLIO:

24 BY MR. NOLAN:

25 Q. I know I wouldn't have knowledge about the

1 underlying facts. But I just wanted to ask
2 you, do you agree the good investigations and
3 staff misconduct be a employee and make
4 testimony -- hold on. Object?

5 MR. TARTAGLIO: Object. Assumes
6 facts not in evidence and incomplete
7 hypothetical outside the scope of this have
8 report.

9 A. I have a question back prior to my answer.

10 Q. Is this part -- is this part of the Armstrong
11 case? Well, to the extent staff misconduct
12 against people with disabilities in general is
13 part of the Armstrong case yes we believe it's
14 part of the Armstrong case?

15 A. Okay. Thank you.

16 The question let me repeat it back so I
17 have it right. The question you asked is do I
18 think that -- and I'm paraphrased do I think
19 when there are times when inmate testimony can
20 to be used in staff misconduct investigations?

21 MR. NOLAN: Yes.

22 MR. TARTAGLIO: Objection, incomplete
23 hypothetical.

24 A. Okay. If there is other evidence, that
25 substantiates the statements then, I have in

1 the past allowed that -- I've been in
2 departments in past that have allowed that to
3 happen.

4 BY MR. NOLAN:

5 Q. Do you believe that there's a tendency to
6 discount testimony from incarcerated
7 individuals?

8 MR. TARTAGLIO: Objection to form.

9 BY MR. NOLAN:

10 Q. In this kind of investigation?

11 MR. TARTAGLIO: Objection, outside
12 the scope of this report incomplete
13 hypothetical.

14 MR. TARTAGLIO: It's and in what
15 prison we're talking about now.

16 BY MR. NOLAN:

17 Q. I'm asking you generally your expertise you
18 managed two large prison systems in field of
19 corrections is there a tendency to discount
20 inmate testimony?

21 MR. TARTAGLIO: Objection, outside
22 the scope of this report incomplete
23 hypothetical.

24 A. I have in my career in corrections, I have seen
25 examples of a vat as well as inclusion. Of the

1 inmates testimony. It really is a case-by-case
2 basis from my experience.

3 BY

4 BY MR. NOLAN:

5 Q. Does the fact that this misconduct in the
6 report took place at [REDACTED] in 2017 change your
7 opinions about that prison?

8 MR. TARTAGLIO: Objection, assumes
9 facts not in evidence.

10 A. I was tasked for the Armstrong case. And I do
11 not know if this is in relation to the
12 Armstrong case except what you said earlier.
13 My focus was on the people that he had
14 information for from [REDACTED].

15 BY MR. NOLAN:

16 Q. Would you agree that even if a prison has a
17 good camera system still need to be a robust
18 discipline and investigation system?

19 MR. TARTAGLIO: Objection, incomplete
20 hypothetical. Vague. Outside the scope of
21 your report.

22 A. It is my opinion, that a -- a good personnel
23 system is -- is critical for any government
24 agency.

25 BY MR. NOLAN:

1 Q. Including corrections?

2 A. Yes, sir.

3 Q. He want to move on some of the data that you
4 reviewed, which I believe it stated that you
5 requested if the court reporter could make
6 Exhibit 10 and exhibit eleven.

7 (Off the record discussion.)

8 Thank you for understanding.

9 BY MR. NOLAN:

10 Q. No worries, so...

11 This is date add from, from that was
12 produced to us data that you reviewed.

13 (Exhibit No. 10 was marked for the
14 record.)

15 BY MR. NOLAN:

16 Q. From the office of research.

17 It was 00R is what it said on the file.
18 And that date I could probably share in the
19 chat this data if you want to. So that's
20 correct Exhibit 10.

21 Do you recollection that document; isn't
22 it true?

23 A. I recognize the document. I do not recognize
24 -- I do not believe I've got the January 1 to
25 2020 -- I recognize the document. It's the --

1 the time period that I'm not sure I recognize.

2 Q. What is that you believe you reviewed different
3 data so the folder of materials that
4 defendant's have produced to us, as materials
5 that you reviewed?

6 A. It was in there. Okay.

7 Q. It was in there. And I can share in the chat
8 if the that's helpful.

9 A. No. I believe -- I think I used data from 17,
10 18 and then 19 indeed I have seen that
11 information but it was -- it was not for a
12 complete year.

13 Q. So you don't recall seeing this research data
14 dated July 24th, 2020?

15 A. I may have I -- I do not recall it's right now.

16 Q. Okay. Did you ask for data from the office of
17 research? About use of force in CDCR?

18 A. He asked for them for data from -- CCI, CIW and
19 Corcoran.

20 Q. Okay. So, this data, this -- so let's just
21 look at Exhibit 10?

22 A. Okay.

23 Q. And this is pages 5 and 6 from the office of
24 research data that it was produced to us. As
25 part of what you had reviewed. And it is from

1 the division of correctional policy research
2 and be internal oversight. Do you see that and
3 then it says type of force used of OC. So,
4 this is -- a listing of incidents, involved in
5 the use of OC pepper spray. For the first six
6 months of 2020?

7 A. I see that.

8 Q. Does that seem right to you do you see that.
9 And then do you see it's there is a listing by
10 institution?

11 A. Yes.

12 Q. And, can you see, where CCI is?

13 A. Yes.

14 Q. Do you see what the total use of force
15 incidents for CCI is for those six months of
16 2020?

17 A. Yes.

18 Q. And what is that number?

19 A. 163.

20 Q. Okay. Do you see any other institutions, on
21 this page that have -- more than 100 incidents
22 this that time period?

23 A. Yes, I do.

24 Q. And what are those?

25 A. HDSP. KVSP. LAC. SAC. And VVSP. Those are

1 ones that I have over 100.

2 Q. And are you aware those institutions with the
3 possible exception of sack I believe are the
4 institutions that are most of the institutions
5 that are part of the requests for video?
6 Overage and for remedies in this case?

7 A. No.

8 Q. Okay. Do you -- agree that -- that, CCI has
9 the high use of OC pepper spray of any prison
10 listed here except for Salenous Valley?

11 A. Yes.

12 Q. Does that data change your opinion at all about
13 use of force at CCI?

14 A. At this moment it does not I would have to have
15 further investigation into what -- what use of
16 -- what the uses of force were.

17 Q. Okay. Do you think it valuable for
18 correctional -- for correctional department to
19 see collect this contained of Kate a?

20 A. Yes.

21 Q. And why is that what the value of this kind of
22 data?

23 MR. TARTAGLIO: Objection, vague as
24 to this kind of data.

25 A. If this data at were combined with other types

1 of data, you could over time, to get at picture
2 of what was transpiring at each institution for
3 in this case, use of force.

4 BY MR. NOLAN:

5 Q. As a director of corrections, would you have
6 used this kind of data not necessarily to draw
7 a constructions, but to spot institutions you
8 might want to look into further?

9 MR. TARTAGLIO: Objection for time
10 -- objection, vague. Incomplete hypothetical
11 outside the scope of this report?

12 A. I would have used this information. To look at
13 -- well look at the institution and the
14 offender mixes to if there was something that
15 needed to be looked at. And I would -- I'd
16 also want to know if California keep use of
17 force data by is it offender initiated or staff
18 initiated?

19 And report does not Kate which tape of
20 data that is.

21 BY MR. NOLAN:

22 Q. Okay. I'd like to -- have you take look at
23 Exhibit 11. So this is cases 12 and 13
24 electric that same office research a date set.
25 Do you see where this -- this it indicates that

1 this is -- number of incidents that have been
2 discovered and occurred between January 1st,
3 2020 and June of this, 2020. By institution
4 and month and then it goes to type of force
5 used 40 millimeter?

6 A. Yes.

7 Q. Do you have -- do you know what that 40
8 millimeters refers to?

9 A. I believe some type of less and let's see.
10 But I'm not positive.

11 Q. Do you have -- any familiarity with the kinds
12 of block guns that why used in some
13 correctional departments?

14 A. I have not -- I have no personal experience
15 with a 40 millimeter block gun.

16 Q. Okay. I mean, I believe, that in California
17 there's both block guns and then some project
18 tile, so sometimes used wooden blocks and they
19 sometimes used rubber projectiles?

20 A. The okay.

21 Q. But you understand it's a -- it's a -- it's a
22 measure it's a use of force device used by
23 correctional officers, correct?

24 MR. TARTAGLIO: Objection, assumes
25 facts not in evidence.

1 A. Based on this being a California report yes
2 California does use the 40 millimeter project
3 tile whatever the word is.

4 BY MR. NOLAN:

5 Q. When you -- when you upper corrector of
6 corrections in Illinois -- Illinois use devices
7 of this type?

8 A. Excuse me. No.

9 Q. Did they use any kind of project tile well upon
10 rubber bullets or wood block guns?

11 A. I do not believe Illinois used those at all.

12 Q. So, if you look at the report, can you tell me
13 what the data what it says for CTI? CCE for
14 the period between January -- January 20 and
15 June 20 total is 100.

16 A. Yes.

17 Q. Can look through the rest of the columns and to
18 see if there any other prisons that have 100
19 posterior more than 100?

20 A. I do not see any other institutions that have a
21 hundred or more than a hundred.

22 Q. Okay. Does that dealt an influence your or
23 change your opinion about CCI as pressed in
24 your report?

25 A. It does not. For reasons I stated earlier.

1 Q. Have you leader of the code of silence?

2 MR. TARTAGLIO: Objection, outside
3 the scoop of his report.

4 A. Yes, I have.

5 BY MR. NOLAN:

6 Q. What does that mean?

7 A. Each heard it in terms of that it is used to.

8 I'm sorry. Let me start over again
9 please. I've heard it used in places where
10 there is, an expectation if an employee sees
11 something wrong, that employee will not report
12 it. And hence at the code of silence.

13 Q. Did you ever experience problems with code of
14 silence when you were director in still?

15 MR. TARTAGLIO: Objection, outside
16 the scope of this report.

17 A. I did -- I did have a couple of instances in
18 Illinois where we suspected the code of I lens.
19 We didn't call it that. But that -- that was
20 possibly in play.

21 BY MR. NOLAN:

22 Q. Did you take any steps to combat that?

23 MR. TARTAGLIO: Objection. Outside
24 the scope of his report.

25 A. Yes.

1 BY MR. NOLAN:

2 Q. What did you do?

3 MR. TARTAGLIO: Same objection.

4 A. My most recent experience with that involved
5 coming up behind a transport van going from
6 Cook County jail to stateville which is about a
7 38-mile -- sorry, it's about a hither-mile
8 drive and they were doing 40 miles an hour down
9 than the freeway in Cook County and we turned
10 on the lights and siren and got them going a
11 little faster and radioed to them about they
12 were Alaska hazard. That's an example of code
13 of soy lens because, we had talked to the staff
14 there before and said that didn't happen. And
15 we came upon it about two weeks later. And so,
16 that was -- that was a more passive example.
17 Many and, another type -- we worked very hard
18 to insure that staff knew that they were
19 expected to tell the truth. And have the
20 another example you asked for two I'll give you
21 another one. The chief Federal judge in the
22 Central District of Illinois called May to his
23 office and said he was tired of the corrections
24 people filming the incident very carefully and
25 then at the moment of truth the battery would

1 run out or the camera to film floor.

2 And we talked about the war tens
3 about this at the next mating. Said you know I
4 don't really liking to the Chief Judges office
5 and having a conversation that I'm not going to
6 have a comment on so it wasn't more than two
7 weeks later that sure enough, a really, really
8 classic use of force at an institution called
9 men arrested in Illinois it was filmed at -- it
10 was classic corrections. You could teach from
11 it.

12 Except at the moment of truth, he filmed
13 the sun. And so, as luck would have it, that
14 came up to central office. A week or two later
15 there was the director's golf tournament. And
16 I was over giving the page from member arrested
17 a hard time about it you're going to get me in
18 trouble again. It turns out the camera
19 operator was one of their golfing group and we
20 had a conversation about that. And since at
21 that date he started to teach courses in and
22 other CO other Lieutenant about how to film and
23 how to do it correctly. So anecdotal evidence
24 I told not sure how relevant it is. Did point
25 is you have to in my opinion if that is

1 existing, you have to get in front of it as
2 best as you possibly can.

3 BY MR. NOLAN:

4 Q. And aside from personally intervening are other
5 techniques that you used more supervisory staff
6 that is going on helpful?

7 MR. TARTAGLIO: Objection incomplete
8 hypothetical outside the scope of the report.

9 A. I'm not convinced that supervisory staff would
10 always make a difference. It still gets down
11 to well trained staff. Doing their job
12 correctly.

13 BY MR. NOLAN:

14 Q. Did you speak with -- any of the wardens at the
15 three prisons about the code of sikh dense?

16 MR. TARTAGLIO: Objection, assumes
17 facts not in evidence.

18 A. I do not recall that conversation at this time.

19 BY MR. NOLAN:

20 Q. Did anyone during the course of this project
21 share with you that Coleman special master do
22 you know what the Coleman case is?

23 A. I have heard of the Coleman case. And I
24 believe it to be about mental health.

25 Q. That's correct. That's correct. So, did

1 anyone during the course of this project share
2 with you that the Coleman Special Master
3 recommended, and the Coleman court order the
4 special 2014 -- I'm sorry, 2004 and 2005,
5 because of the abuse of mentally ill prisoner?

6 MR. TARTAGLIO: Objection, assumes
7 fax not in evidence outside the scope of this
8 report.

9 BY MR. NOLAN:

10 Q. So if it will help, I -- I the court reporter
11 could mark Exhibit 12. That is actually the
12 special masters report and the court order.

13 THE COURT REPORTER:

14 (Exhibit No. 12 was marked for the
15 record.)

16 THE COURT REPORTER: Exhibit 12 has
17 been marked in the record.

18 A. I have Exhibit 12.

19 MR. NOLAN: Thank you.

20 BY MR. NOLAN:

21 Q. Did anyone share this information with you?

22 A. I do not recall seeing this at this moment.

23 Q. So, on the third page the relevance portion
24 from this special masters report. Do you see
25 where it says CSP Corcoran where it says the

1 defendants need contract for provision of the
2 cultural assessment within 60 days?

3 A. Oh. Yeah. Section 5 that is what we at on
4 page 3? Yes. Yes. I do see that.

5 Q. Yeah. Yes. Did well that was -- that's the
6 court order but it says the same thing?

7 A. Okay.

8 Q. Court report are could you mark Exhibit 13.

9 (Exhibit No. 13 was marked for the
10 record.)

11 A. Were he done with 12.

12 MR. NOLAN: We don't have to be
13 confidential. We're not talking about the
14 report.

15 MR. TARTAGLIO: I want to make a
16 comment with respect that last document this is
17 apparently 187 pages to this. This -- this,
18 warn report, but I have like three of them.
19 That go ahead.

20 MR. NOLAN: Okay.

21 Q. Cocounsel I'm just asking if it got shared with
22 them; and he said no.

23 BY MR. NOLAN:

24 Q. So, do you have Exhibit 13 Mr. Baldwin?

25 A. I do.

1 (Exhibit No. 13 was marked for the
2 record.)

3 BY MR. NOLAN:

4 Q. Have you seen this report before. Do you
5 recall this report?

6 MR. TARTAGLIO: I object to the
7 characterization of this report. I'm sorry.
8 Let me -- -- I have I have Exhibit 13 and
9 exhibit 80. Of when one.

10 BY MR. NOLAN:

11 Q. Okay. Here's -- sorry Exhibit 80 is Exhibit
12 13.

13 It should be the one it is an exhibit
14 this is originally an exhibit to, the Friedman
15 declaration because it's part of the January --
16 this was -- this was in the -- in the docket 9
17 -- 2922-2 this is from the R J D Martin. I
18 know that much there was quite a lot of those
19 documents, so if someone hadn't pointed this
20 out to you may not have focused on this.

21 MR. TARTAGLIO: Do you have question
22 pending?

23 MR. NOLAN: Yeah. I'm asking the
24 witness if he's familiar with this if he
25 remembers reading this.

1 A. I do not remember reading the verbiage on page
2 71. It's my Exhibit 13. It's labeled Exhibit
3 13.

4 BY MR. NOLAN:

5 Q. Sorry, on page 71.

6 A. That's what mine says. It's -- that I'm sorry,
7 you must be -- that's not the Exhibit 13 you
8 have can you lack at what you have in the
9 video?

10 MR. TARTAGLIO: He's talking about
11 the Freedom Declaration.

12 MR. NOLAN: If you go past that.

13 A. I'll hand that back to the court reporter.
14 Before I go on.

15 Now, Exhibit 80 "Dear Russa and Nick," it
16 starts on the next page am I correct.

17 Q. That is report that I'm talking about?

18 A. All right. Thank you.

19 Q. You may want to ask you a question about ti,
20 and reask the question. It's been a while.

21 MR. NOLAN: I'm letting Mr. Baldwin
22 take look at that.

23 A. Well now hold on I've got more I've got exhibit
24 80 and then skipping through pages I have
25 Exhibit 14 as well. Should I wait for that

1 until next conversation?

2 Q. Yeah. We sent these as a different PD's no,
3 this wouldn't happen.

4 A. Yeah. I think, this I'm asking about exhibit.

5 BY MR. NOLAN:

6 Q. Exhibit 80, which is Exhibit 13?

7 A. Let me just skim that one and tell you that
8 I've seen it or not.

9 Q. Yes.

10 A. Well, I have start going to worry there for a
11 second would you that is a lot of paper I don't
12 remember one being that big. All right. Are
13 you -- yeah.

14 Q. Should okay. I am making sure we're looking at
15 the same things the letter that we're looking
16 at the report on prison law office letterhead?

17 A. It is.

18 Q. Dated January 24th 2020?

19 A. Is.

20 Q. Letter memorized allegations of staff conduct
21 that the emerged from the prison law offices
22 tour on Californians for women on October 27th
23 to 29, 2019?

24 A. Yes, sir.

25 Q. Is that correct?

1 A. Yes.

2 Q. Have you familiarized yourself are with this
3 document?

4 A. Yes, sir.

5 Q. And did you did you review this before writing
6 your report and the take this into account?

7 A. I do not believe this document was in my
8 possession. It -- when I started may report,
9 it is in my possession now. I -- if memory
10 serves me correctly this report -- was
11 delivered to do me after my expert witness
12 report was completed.

13 Q. Okay. And did you read it when you got it?

14 A. I did not read it on that day but I have read
15 it yes.

16 Q. And did it raise concerns for you about staff
17 misconduct issues at CIW?

18 A. It raised issues only in the sense that I -- if
19 I was to include you this in a future report I
20 would have to have the other side of the
21 equation. In other words I wants to know what
22 the -- I want to know like I've said many times
23 already what the state has for documentation
24 about these accusations.

25 Q. So you would want to look at the incident

1 reports for example?

2 A. Yes, sir.

3 Q. And any appeals?

4 A. Right yes, sir.

5 Q. Related to it. And is anything else?

6 A. That would be.

7 Q. You want look at?

8 A. That would be a didn't starting point and I
9 would take Utah from there.

10 Q. Okay. Could you describe all the steps you
11 took to familiarize with CIW? Aside from what
12 we've already talked about I know we've already
13 talked about your conference call with CIW
14 warden and stuff?

15 A. Beyond that, and my conversations with them, I
16 -- I Googled CIW.

17 Q. And did you -- do you remember what you -- cab
18 you keep track of what you found do you
19 remember what you found?

20 A. Obviously he found it less than useful.

21 Q. Did you Google, Corcoran?

22 A. Yes.

23 Q. Did you find anything helpful about Corcoran
24 that way?

25 A. Honestly I just went to the -- the -- the

1 state's website and -- no. Nothing this was
2 helpful from my perspective.

3 Q. Okay. Did you read any press reports about
4 CIW?

5 A. I do not recall reviewing any reports from CIW.

6 Q. Did you read any press reports from CCI?

7 A. I do not recall reading any reports about CCI
8 in the press.

9 Q. Okay. Is there a super max unit at DCI
10 currently?

11 MR. TARTAGLIO: Objection, vague.

12 BY MR. NOLAN:

13 Q. Do you know what a security housing unit is in
14 the California system?

15 A. A shoe. There are two.

16 Q. Right?

17 A. The wardens said -- if I remember at that
18 conversation correctly I believe there are two
19 max security units at CCI.

20 Q. And are those shoe units?

21 A. I do not recall that at this time.

22 Q. So, do you still have your report?

23 A. Yes, sir.

24 Q. So, on page -- I'm sorry on page 4 new
25 paragraph 16. You say that the use of force

1 data that you reviewed for the three prisons
2 you focussed on quote suggest that at least at
3 CCICIW and the Corcoran CDR staff are not using
4 force against staff at a disproportionate rate?

5 A. Yes.

6 Q. So is it correct that can you found that they
7 were using force against disabled people at
8 roughly proportion nut rate?

9 A. If we're talking about the tables on page 5?

10 Q. I'm talking about the cables on page 5 and?

11 A. And 6.

12 Q. Page 6 -- yeah. Particularly?

13 A. And 7.

14 Q. Well, but no I'm talk 7 talking about
15 combination?

16 No it's on not ones 7?

17 A. Okay.

18 Q. That is a different issue?

19 A. Okay I want to make sure I answer your question
20 as best as I can could you please repeat.

21 Q. It so is your testimony and maybe we it would
22 be helpful to look at paragraph 17. Because
23 can you just read your paragraph 17 of your
24 declaration? To yourself? And am I right that
25 your testimony here is that, Armstrong class

1 members, are involved in use of force incidents
2 at a rate that is roughly proportional to their
3 incidents in the MA population at both Corcoran
4 and CCI and that, that, at CIW, the -- they're
5 involved in so much fewer use of force
6 incidents then the proportion of the
7 population?

8 MR. TARTAGLIO: Objection, compound.

9 A. To the first question of about CCI and Corcoran
10 then?

11 BY MR. NOLAN:

12 Q. Right?

13 A. Yes. Those would be roughly proportional and
14 then second question, the CIW would be less.

15 Q. Right.

16 Are you aware that plaintiffs motion in
17 this case are using all people with
18 disabilities not just Armstrong class members
19 are being target reasonable doubt
20 discrimination abuse and retaliation?

21 MR. TARTAGLIO: Objection, assumes
22 facts not in evidence.

23 A. My task was to look at for my opinion my task
24 was to look at the Armstrong people. This is
25 ran Armstrong case.

1 BY MR. NOLAN:

2 Q. Did you read plaintiff's motion did you read
3 plaintiff's motion?

4 MR. TARTAGLIO: Objection, which
5 motion?

6 BY MR. NOLAN:

7 Q. Did you read the June 2nd motion for statewide
8 relief that plaintiff's filed?

9 A. I think I did I have I have it right in front
10 of me but I believe I did.

11 Q. Okay. So, the question the question -- I
12 understand that you were told to focus on
13 Armstrong people; is that correct? Is your
14 understanding of your task?

15 A. I understand the task was -- I was to -- look
16 at the -- the Armstrong people.

17 Q. Are you aware that plaintiff's argument is also
18 concerns other people with other disabilities?

19 MR. TARTAGLIO: Objection, assumes
20 facts not in evidence.

21 A. Yes.

22 BY

23 BY MR. NOLAN:

24 Q. Now, focusing on the Armstrong class members,
25 in general given that the Armstrong class

1 includes people in wheelchairs and elderly
2 individuals with serious mobility issues.

3 Would it to be your impression that
4 there would less use of force amount class
5 members than typical general population for
6 them?

7 MR. TARTAGLIO: Objection,
8 incomplete hypothetical assumes facts not in
9 evidence.

10 A. No. No, I do what assume that. Many based an
11 on my past experience that are would not to be
12 an assumption that I would completely agree
13 with.

14 BY MR. NOLAN:

15 Q. Do you agree that, that individuals who are
16 elderly and will physically and firm have
17 diminished capacity to assault other people?

18 MR. TARTAGLIO: Objection, assumes
19 facts not in evidence incomplete hypothetical
20 calls for legal conclusion.

21 A. I would not make that blanket statement no.

22 BY MR. NOLAN:

23 Q. Would you agree someone in a whole chair is
24 less of a threat to custody that?

25 MR. TARTAGLIO: Objection, incomplete

1 hypothetical. Argumentative.

2 A. I would not always agree with that statement.

3 My experience shows me that there have been --

4 my experience has been everyone people in the

5 wheelchairs have -- have caused description in

6 on thank you unit.

7 BY MR. NOLAN:

8 Q. Do you believe that people in wheelchairs are

9 less dangerous?

10 MR. TARTAGLIO: Objection, incomplete

11 hypothetical.

12 A. As a -- as a general rule? In my experience,

13 wheelchair bound people can be less dangerous

14 than other people.

15 BY MR. NOLAN

16 Q. Do you think that people in cuffs are less

17 dangerous than people not cuffed?

18 MR. TARTAGLIO: Objection, incomplete

19 hypothetical.

20 A. Based on my experience I will -- I will tell

21 you that, cuffed or uncuffed, people -- some

22 people can still to be very dangerous.

23 BY MR. NOLAN:

24 Q. In general do you think people who are cuffed

25 are less dangerous?

1 MR. TARTAGLIO: Objection, incomplete
2 hypothetical asked and answered.

3 A. I'm sorry what was that last statement Tony.

4 MR. TARTAGLIO: The objection was
5 incomplete and hypothetical. Asked and
6 answered.

7 A. Okay. No. I do not think people in cuffs are
8 automatically less dangerous.

9 BY MR. NOLAN:

10 Q. So tell me when ewe ready to start a new line
11 of questioning I think that would be a didn't
12 time of short break?

13 MR. TARTAGLIO: Okay. Not just yet.

14 BY MR. NOLAN:

15 Q. A so, are you aware that the system of
16 disability -- well, actually, I will. This is
17 probably a good time to take a break.

18 A. Okay. Should 258 our time.

19 MR. TARTAGLIO: Can take 10 minute
20 break.

21 (The Deposition Proceedings went off
22 the record at 4:58 p.m. for a brief break.)

23 BY MR. NOLAN:

24 Q. Mr. Baldwin, we are back on the record and you
25 are still under oath right you're aware of

1 that.

2 A. Yes.

3 Q. Did you speak with anyone during the break?

4 A. Yes.

5 Q. Who did you speak to?

6 A. I spoke with to two people. One was the kind
7 person who gave me a Coke. And I spoke with --
8 a -- a California assistant Attorney General.

9 Q. What did you and -- who was the attorney
10 general?

11 A. Anthony.

12 Q. Who did you guys talk about?

13 MR. TARTAGLIO: I'll instruct him not
14 to answer that.

15 MR. NOLAN: What is reason for
16 instruct him being not to answer.

17 MR. NOLAN: He's not your client. -

18 MR. NOLAN: Attorney/client.

19 MR. TARTAGLIO: Work product
20 privilege.

21 MR. NOLAN: It's not work product.

22 MR. NOLAN: Who is work product.

23 MR. TARTAGLIO: Let me trade rule.

24 MR. TARTAGLIO: 26B3A and will B
25 protect communications between the attorney

1 acquired provide a report under A2B regardless
2 of the form of the communication sent extent
3 that the communications and then there is some
4 exceptions I don't think that are relevant
5 here.

6 MR. TARTAGLIO: An you read the
7 exception.

8 MR. NOLAN: Relate to compensation
9 for the expert's study or testimony.

10 And then the facts of data and the part
11 of the attorney provided and expert in opinions
12 to be expressed or identified assumptions to of
13 the party's attorney providing that the expert
14 relying on in forming the expressed.

15 That is protected information. But we
16 will proceed court reporter to mark -- you can
17 mark this police in the transcript so we can
18 just come back to it, and find it.

19 BY MR. NOLAN:

20 Q. So, Mr. Baldwin what was that I wanted to
21 clarify?

22 A. When I was -- as I was as I was holding you all
23 of those pieces of paper trying to get to the
24 right section so we had I think Exhibit 13.
25 And have 80, and 14. All sort of combined into

1 one. I wanted to make sure that on CIW I had
2 seen that report prior to it being handed to me
3 I just wanted to make sure that is clear on in
4 at all confusion in back and forth and back and
5 forth.

6 MR. NOLAN: You add seen the report
7 but I believe your testimony was that you had
8 seen it before you wrote finalized your report;
9 is that correct?

10 MR. TARTAGLIO: Objection, misstates
11 testimony.

12 A. Yeah. As I was looking at it again. I believe
13 I had it prior to my report.

14 BY MR. NOLAN:

15 Q. So your testimony that is did take it into
16 account. So it's allegation informing your
17 opinion in about CIW?

18 A. I took into account only information that had
19 -- both the -- the offender side and the staff
20 side. While I read the other documents that
21 had one side but not the other it did not
22 impact me and how I went boo my business. I
23 would be happy to review those at some length
24 to go try to -- look at that but that's --
25 that's what I did for this report.

1 BY MR. NOLAN:

2 Q. Did you ask the -- that was the allegations in
3 that report?

4 A. No, sir.

5 Q. Did you ask them if they had any inquiry
6 reports to use of force reports connected to
7 those incidents?

8 A. No. I did not.

9 Q. Thank you. I know I've had you answer this
10 question before but I'm frayed I'm really not
11 sure I understand your answers I'm going to ask
12 again. In general, given that Armstrong class,
13 includes people with wheelchairs, and elderly
14 individuals who have serious mobility issues
15 would to be your expectation that there be less
16 use of force against those class members, then
17 against the typical general population?

18 MR. TARTAGLIO: Objection,
19 argumentative. Incomplete hypothetical.

20 A. I will try to be more clear in my answer. It
21 was a case-by-case basis.

22 I do not believe that I can make a
23 statement that is blanket like that. It is a
24 case by case basis and my years of experience
25 I've seen in really unique things and even in

1 wheelchair bound people. I do not think I
2 could make that statement in good faith.

3 BY MR. NOLAN:

4 Q. So, in general, you do not agree that people
5 with mobility impairments have a diminished
6 ability to harm other people?

7 MR. TARTAGLIO: Objection, incomplete
8 hypothetical. Argumentative.

9 A. My point is that it was a case by case basis.

10 BY MR. NOLAN:

11 Q. Okay. But I'm asking you in general by not
12 case business case basis do you agree that in
13 general people with mobility impairments with a
14 diminished capacity to harm other people?

15 MR. TARTAGLIO: Objection, incomplete
16 hypothetical. Asked and answered.

17 A. In general, it's -- I believe still a case by
18 case-by-case. My experience shows me it has to
19 be a case-by-case basis.

20 BY MR. NOLAN:

21 Q. So, is it opinion that somebody in a wheelchair
22 is just as dangerous who somebody who doesn't
23 need a wheelchair?

24 MR. TARTAGLIO: Objection, incomplete
25 hypothetical. Asked and answered multiple

1 times.

2 A. It's still a case-by-case basis.

3 BY MR. NOLAN:

4 Q. How did you determine which use of force
5 incidents you reviewed in Armstrong class
6 members?

7 A. I reviewed the use of force documents that were
8 sent to me by the state's attorney office.

9 Q. But how did you decide -- how did you determine
10 whether the people involved were Armstrong
11 class members?

12 MR. TARTAGLIO: Objection, miss.

13 A. Most of the time in their declaration, the
14 person stated they were a Coleman member. And
15 beyond that I just went down the path of what
16 was in the record both from the offenders point
17 of view and staff's point of view.

18 BY MR. NOLAN:

19 Q. So can you rely on people having an Armstrong
20 vote in considering them a class member then?

21 A. I -- I looked at what the document said. Where
22 the Armstrong members or Coleman members but
23 they came from the Attorney General evaluated
24 them on the same -- on the same pattern.

25 Q. So of that 6, many of the 6 cases this you

1 reviewed were people that didn't have an
2 Armstrong code but who believed they were
3 Armstrong class members correct?

4 MR. TARTAGLIO: Objection, lack of
5 personal knowledge. Misstates the evidence.
6 Argumentative.

7 A. The -- the -- the offender in the case, made
8 that statement in their declaration.

9 BY MR. NOLAN:

10 Q. Okay. Well, we'll take a lack at these
11 declarations.

12 Are you aware that the -- some people
13 don't have an Armstrong code with you they're
14 Armstrong class members?

15 MR. TARTAGLIO: Objection,
16 argumentative. Assumes facts not in evidence.
17 Legal conclusion.

18 A. At this moment I do not specifically recall
19 that information.

20 BY MR. NOLAN:

21 Q. All right. Court reporter could you mark
22 Exhibit 15.

23 (Exhibit No. 15 was marked for the
24 record.)

25 BY MR. NOLAN:

1 Q. So, this exhibit has a few pages on top which
2 are meant to just show hopefully you have the
3 actual exhibit. But so if you want to look at
4 that time screen I can -- so this is Exhibit
5 15, right?

6 A. Yes.

7 Q. And then it has a couple pages that shows where
8 it is failed it is the cover page from a
9 declaration it's a page from the declaration
10 that shows where it was referenced in the
11 declaration and then there's a page that says
12 exhibit 54. And what that is just that's where
13 it was filed. It was filed as part of the
14 Friedman declaration I believe. As exhibit 54.
15 So we included that just so you could see where
16 it had come from. And then it says, and then
17 the actual declaration of [REDACTED] [REDACTED]
18 identities attached right do you see that?

19 A. Yes. But let me -- I got confused a bit. Let
20 me just make sure -- yes. Exhibit 54 the
21 bottom line is I have exhibit 54 with [REDACTED]

22 [REDACTED] --

23 Q. Right?

24 A. Declaration.

25 Q. So is just so you are record is complete it's

1 confusing to go refer to this is exhibit 54.

2 The point that this is actually Exhibit 15

3 prior for this declaration okay?

4 A. Okay. I have one question this is what you.

5 Q. It's not?

6 A. This is what you talked about this one confused

7 me this is just -- that is just part of that --

8 whoops sorry you can see it.

9 Q. Yeah can you put it back I can't read yeah that
10 -- that's just part of where this was filed?

11 A. Okay. All right.

12 Q. I need you to look at that and perhaps I should
13 not have clued that in the -- in the exhibit.

14 Did you see the declaration of [REDACTED] [REDACTED]

15 A. Yes. Starting on page 1 and going through page
16 6.

17 Q. Yes?

18 A. And dated 22 May, 20.

19 Q. That is going to be our Exhibit 15 and I have
20 some questions to ask you about that?

21 A. Okay. Thank you.

22 Q. So if you'll look at paragraph 3.

23 It says, I'm sorry. Paragraph 4.

24 A. Okay.

25 Q. Do you see it says quote I am not verified with

1 a disability but each a bad back and bursitis
2 in I shoulder that causes me a lot of pain. My
3 housing restrictions include a ground floor
4 limit stairs spring colon waist so I'm not
5 comfortable behind my back. I also am chronic
6 asthma. Based on that do you believe that will
7 Mr. [REDACTED] is a, has a mobility impairment?

8 MR. TARTAGLIO: Objection, calls for
9 a legal conclusion.

10 MR. NOLAN: Legal conclusion.

11 MR. NOLAN: Assuming that is a
12 description of his disability accurate. First
13 of all let me rephrase the question. First of
14 all assuming that this get up of his disability
15 is accurate, do you believe he's disabled?

16 MR. TARTAGLIO: Objection, vague.
17 Legal conclusion.

18 A. In my experience I have always deferred
19 disability decisions to qualified medical
20 people.

21 BY MR. NOLAN:

22 Q. That is not nay question. My question assuming
23 that this is true.

24 What he says do you think -- in a -- do
25 you believe that he has a disability?

1 MR. TARTAGLIO: Objection, incomplete
2 hypothetical. Calls for a legal conclusion.

3 A. In my experience in corrections. I learned
4 years ago not to -- to get into medical areas
5 and I think that required me to make a medical
6 statement. And I don't know. The -- how bad
7 the is back? I leave that to someone who could
8 figure that out better than I could.

9 BY MR. NOLAN:

10 Q. So in your declaration do you have that?

11 A. Yes.

12 Q. In paragraph 50 paragraph 50 on page 12 you
13 state [REDACTED] stated that he has not quote
14 verified with a disability which I interpret to
15 mean than [REDACTED] is not a member of the
16 Armstrong class accordingly I do what believe
17 that [REDACTED] allegations show that Armstrong
18 class member as CTI are being targeted for
19 harassment?

20 A. Yes, sir.

21 Q. So, are you aware at that time fact there are
22 certain am strong disabilities that seating
23 chart does not verify?

24 MR. TARTAGLIO: Objection, assumes
25 facts not in evidence.

1 MR. NOLAN: I'm asking if he's
2 aware.

3 MR. TARTAGLIO: I standby my
4 objection.

5 BY MR. NOLAN:

6 Q. Why you aware that? Armstrong there are
7 certain disability including upper extremity
8 and clearly a disability that the CDCR does not
9 verify?

10 MR. TARTAGLIO: Same objection.

11 A. I thought -- I thought I saw a list of the
12 Armstrong that had learning disabilities
13 included. I don't think it had the first one
14 you talked about.

15 BY MR. NOLAN:

16 Q. So, it includes both of those people as class
17 members but there is no verification process.
18 For those disabilities?

19 MR. TARTAGLIO: Hold on there is no
20 question pending.

21 BY MR. NOLAN:

22 Q. So, my question is. Were you aware that
23 Armstrong class members in certain categories
24 which get their disability verified gentleman
25 objection argumentative assumes facts not in

1 evidence?

2 A. No.

3 Q. You're not aware of that?

4 Are you aware that has anyone told you
5 during the course of your work that plaintiffs
6 have objected for several years in the
7 Armstrong proceedings that CDRC is not
8 verifying all class members in an appropriate
9 way?

10 MR. TARTAGLIO: Objection, assumes
11 facts not in evidence.

12 A. I do not recall that at this time.

13 BY MR. NOLAN:

14 Q. Nobody had told you that?

15 A. I do not recall I do not recall that
16 conversation at this time.

17 BY MR. NOLAN:

18 Q. So, I would like to go back for a minute to
19 exhibit -- let me find it. Exhibit 14 court
20 reporter do you have Exhibit 14.

21 (Exhibit No. 14 was marked for the
22 record.)

23 BY MR. NOLAN:

24 Q. Now?

25 A. I now have Exhibit 14.

1 Q. Okay.

2 A. Okay.

3 Q. And if you look at the -- the first page of
4 that exhibit what does it say?

5 A. Remedial plan. Policy scope standards on the
6 first page -- are underlined. Well qualified
7 inmate.

8 Q. I'll represent to you that is the Armstrong
9 remedial plan if you take look at page 4 for
10 that document.

11 MR. TARTAGLIO: I'm just going to
12 note for the record that there are multiple
13 Armstrong remedial plans.

14 BY MR. NOLAN:

15 Q. If you take look at impact 40 do you see number
16 2 where it says, permanent non tory
17 impairments?

18 A. Yes.

19 Q. And it says, inmates pro arm pre is messing
20 digits these inmates do not have a spec
21 category code do you see that?

22 A. I see that language, yes.

23 Q. So, does that inform you as far as whether
24 having a code is equivalent to being a member
25 of the class?

1 MR. TARTAGLIO: Objection, calls for
2 legal conclusion outside the scope of his
3 report.

4 A. And backtracking I didn't -- was this plan put
5 out the California Department of Corrections?
6 I mean this is remedial plan?

7 Q. Yes. It's a remedial plan that the parties
8 agreed to in the Armstrong case?

9 A. Okay.

10 Q.

11 A. Yes. I see that yeah. Item 2. The
12 nonpermanent nonambulatory impairment. I see
13 that and yes.

14 Q. And.

15 A. You read it correctly.

16 Q. So, would you it change your opinion if we
17 persuaded you that Mr. [REDACTED] and court
18 reporter, I think this should be Confidential
19 since, we're talking about Mr. [REDACTED].
20 Mr. [REDACTED] and Mr. [REDACTED]. Mr. [REDACTED].

21

22 CONFIDENTIAL

23 BY MR. NOLAN:

24 Q. Not Mr. [REDACTED] is an ADA worker, but the
25 other five individuals were disabled would that

1 change your opinion?

2 MR. TARTAGLIO: Objection, compound.

3 And incomplete hypothetical. Assumes facts not
4 in evidence.

5 A. It would not change my opinion. Like I stated
6 earlier, what I received from the Attorney
7 General's office, I treated as, part of the
8 Armstrong case. And in the sense of -- that
9 was may responsibility. So whether they were
10 inspector that or not I went ahead and read
11 their documents.

12 BY MR. NOLAN:

13 Q. Right.

14 I'm just a trying to understand in
15 forming your opinion that, for example, even to
16 point you to your declaration?

17 A. To my declaration I've got to go back.

18 Q. Okay.

19 A. Yes, sir.

20 Q. You say that, you found very limited evidence
21 the inmate as even allegedly singled out
22 because he was an Armstrong class member?

23 A. Uh-huh. I do.

24 Q. And then, and then I say in that same practice
25 even if true these isolated examples ever

1 misconduct that the can your in every state's
2 prison system. So, to the extent your opinions
3 are that this is not sort of systemic problem,
4 is it fair to say that your opinion is that he
5 is staff misconduct cases you've reviewed do
6 not establish that there is a systemic problem
7 with staff misconduct against Armstrong class
8 members; is that right? Is that your?

9 MR. TARTAGLIO: Objection, misstates
10 the report.

11 A. It is -- it's my opinion that based on the
12 information I had, that there -- they are not
13 -- the staff are not targeting Armstrong class
14 members above anybody else. And they just
15 aren't targeting them out of proportion to
16 their population in the institution. There is
17 no evidence that they were targeting people.

18 BY MR. NOLAN:

19 Q. Let's just assume for the sake of argument that
20 at given institution that there's a high level
21 of staff misconduct and it's not
22 disproportionate against the disabled
23 individuals.

24 Do you agree that, because of their need
25 for assistance and say accommodation and staff

1 that staff misconduct might have
2 disproportionate?

3 MR. TARTAGLIO: Objection,
4 argumentative. Calls for a legal conclusion.
5 Incomplete hypothetical.

6 A. Would you restate that. We can just agree to
7 those objections for every objection it would
8 save us all time.

9 MR. TARTAGLIO: I'm going to continue
10 making them.

11 A. Would you please restate the question. The so
12 I can to get strike at this.

13 MR. NOLAN: Sure. If the court
14 reporter could read it back that could be
15 great.

16 THE COURT REPORTER:
17 Read back.

18

19 BY MR. NOLAN:

20 Q. Her that repeat it back? She stopped when the
21 objection. Came out.

22 MR. NOLAN: I try reform that where
23 the objection.

24 BY MR. NOLAN:

25 Q. Assuming for the sake argument that there is a

1 CRDC prisoner that is a very high rate against
2 all prisoners and that, it is not
3 disproportionate against disabled prisoners at
4 that prison. They are experiencing that
5 misconduct at the same rate as everybody else.
6 Do you agree that the staff misconduct might to
7 be disproportionately harmful to the people
8 with disabilities?

9 MR. TARTAGLIO: Objection, incomplete
10 hypothetical. Argumentative. Calls for a
11 legal conclusion. Outside the scope of his
12 report.

13 A. I have -- I have no basis on which to answer
14 that question.

15 BY MR. NOLAN:

16 Q. Do you idea that people with disabilities have
17 to ask for help from staff members more than
18 nondisabled people?

19 MR. TARTAGLIO: Objection, incomplete
20 hypothetical. Outside the scope of his report.

21 A. My experience has been that, there are -- there
22 are people who ask for more help from staff
23 than others. Yes.

24 BY MR. NOLAN:

25 Q. My question wasn't whether there was some

1 people. My question was whether disabled
2 people, in general, required great assistance
3 from staff because of their need for
4 accommodations?

5 MR. TARTAGLIO: Objection, incomplete
6 hypothetical. Outside the scope of his report.

7 A. In my experience, the disabled typically need
8 more help from staff.

9 BY MR. NOLAN:

10 Q. Given that fact, if there's per staff
11 misconduct is it possible that will have a
12 disproportionate impact on the people with
13 disabled in that prison?

14 MR. TARTAGLIO: Objection,
15 argumentative, calls for a legal conclusion and
16 incomplete hypothetical.

17 A. From my personal experience, I have not
18 witnessed that.

19 BY MR. NOLAN:

20 Q. In your declaration you state that it's your
21 opinion that this is in photograph r paragraph
22 24. You state that it was opinion that you
23 quote sizeable number prisoners within
24 institutions are aware to submit a 1824 request
25 and are submitting such a request.

1 A. I see that.

2 Q. Do you see that?

3 So, and right above that there's a table
4 that shows different requests. 1824 requests
5 and proportion that are Armstrong class
6 members; is that right?

7 A. Yes, sir.

8 Q. You create this table on page 7. This table 5?

9 A. Did I get the actual table or the data behind
10 it?

11 Q. Both.

12 Did I mean guess one at a time did you
13 create the data behind the table?

14 A. I received the data from the CDCR. That I --

15 Q. Did you do any --

16 A. I received the data from the CDCR and I
17 extrapolated the data from the forms and
18 created the table that you are referencing.

19 Q. Okay. Did you do anything to go validate the
20 data?

21 MR. TARTAGLIO: Objection, vague.

22 A. I trusted the data that the CC are provided to
23 me.

24 BY MR. NOLAN:

25 Q. Was your review limited to whether a process

1 existed? As far as the 1824 process? Was your
2 review limited to whether a process existed or
3 did you also look at the equityiveness of the
4 process?

5 MR. TARTAGLIO: Objection, vague
6 compound.

7 A. I looked at the 1824 request and what
8 percentage are Armstrong members.

9 Q. Did you have review any 1824s in the course of
10 doing that?

11 A. I do not recall at this time. If I -- I
12 reviewed those are not.

13 Q. Do you recall if you looked at the number of
14 appeal as the a were granted and number that
15 were denied?

16 MR. TARTAGLIO: Objection, vague to
17 appeals.

18 BY MR. NOLAN:

19 Q. Did you look at the number of 1824 requests
20 that were granted and that the number of 1824
21 request requests that were denied?

22 A. I did not do that.

23 Q. So as far as you know, all of these 1824
24 requests could have been denied, right?

25 MR. TARTAGLIO: Objection,

1 argumentative. Outside the scope of his
2 report.

3 A. The question were me in my opinion was, did
4 class members know how to request accommodation
5 and I believe, that table shows clearly that
6 they know how to request accommodation.

7 BY MR. NOLAN:

8 Q. Did you assess whether in fact class members
9 are able to obtain reasonable accommodations
10 through 1824 process?

11 A. Again my -- I base my data on the requests for
12 accommodation.

13 Q. Did you -- did I obtain or review any
14 information that would tell you whether or not
15 people were actually able to obtain
16 accommodations through these requests?

17 A. No.

18 Q. Beyond people knowing about the process and
19 finally pales did you says whether the process
20 is working at each prison?

21 A. I.

22 MR. TARTAGLIO: Objection, vague to
23 see to working.

24 A. I did have some conversations with
25 institutional people about the three

1 institutions that is talked to. And I got the
2 opinion, that, they thought, it was performing,
3 satisfactorily. And I none of the -- I do not
4 recall at this time, any of the -- the
5 declarant in this case, raising that as a major
6 issue.

7 BY MR. NOLAN:

8 Q. So, did you personally evaluate whether the
9 1824 process actually worked at each prison?

10 MR. TARTAGLIO: Objection, vague as
11 to works.

12 A. I relied on staff. Comments and then what was
13 contained in the -- in the -- declarations. As
14 well as two reports from the monitor I believe.

15 That were responded to by CIW and COR.
16 And in there were several examples of what you
17 are citing and the state and the institution,
18 had a response for all of them in I remember
19 that correctly.

20 BY MR. NOLAN:

21 Q. Did you actually look at the 1824s or just at
22 the reports discussing them?

23 A. I looked at the reports for certain -- as I
24 said earlier I may have seen in 1824s. Right
25 now I just don't recall that.

1 BY MR. NOLAN:

2 Q. I don't believe we've had any produced from the
3 documents that you've reviewed. But I could be
4 wrong. There were quite few documents?

5 A. There were two of two pages.

6 Q. Did you review the 1824 desk manual?

7 A. 1824 desk manual? Let's see. At this time I
8 do not recall. I think I've seen parts of it
9 but I have I'll have refresh my memory. At
10 this time I'm going to have to say I don't
11 recall at this time.

12 Q. Did anybody complain that the wrap is to you?

13 A. Yes. Yes.

14 Q. And what is that?

15 A. I'm going to have to go back to go my notes one
16 of the institutions to make sure I get that
17 correct.

18 Q. Okay. Did you want look at those that is
19 Exhibit 567 and 8.

20 A. It's in 6. But the abbreviation what it stand
21 for.

22 But I did talk about it with Corcoran
23 people.

24

25 BY MR. NOLAN:

1 Q. Do you remember what it is?

2 A. It is a committee of institution folks who let
3 me -- I'm trying to get this right. Who
4 approved request for accommodation I believe.

5 Q. Do you do you recall how that process works?

6 MR. TARTAGLIO: Objection, outside
7 the scope of his report. Also calls for
8 narrative.

9 A. At this time I just don't -- I do not recall
10 enough about it to form a -- a, a solid answer.

11 BY MR. NOLAN:

12 Q. Do you know what DVP is that is part of the
13 1824 process?

14 MR. TARTAGLIO: Objection, beyond
15 scope of the report.

16 A. At this time I don't recall seeing that.

17 BY MR. NOLAN:

18 Q. Okay. Are you aware that in the Armstrong case
19 there is an order requiring allegations of
20 noncompliance of the ADA and the Armstrong
21 courts order to be logged investigated?

22 MR. TARTAGLIO: Objection, vague.
23 Assumes facts not in evidence argument it is.

24 A. I have seen the logs. And I reviewed those
25 logs at the moment. I can't remember what the

1 title was. On those logs.

2 BY MR. NOLAN:

3 Q. Do you know why you reviewed noncompliance log
4 for CTI Corcoran and CDIW?

5 A. I reviewed logs.

6 MR. TARTAGLIO: Outside the scope of
7 his report. But go ahead.

8 A. I did review some logs. Name, on them escapes
9 please -- I do not recall the names on the logs
10 at the moment.

11 BY MR. NOLAN:

12 Q. What were the logs that you reviewed?

13 A. There were multiple columns the names. Uh-huh.

14 Q. Well?

15 A. I should recall that you will I just don't know
16 I'm sorry.

17 I just cannot recall that at this time.

18 Q. Okay. Tom, if you're going to move on?

19 MR. TARTAGLIO: I'm going to need a
20 break now? I just have one last question on
21 this.

22 BY MR. NOLAN:

23 Q. You says whether each prison as placing
24 allegations razed through 1824 forms in
25 grievance processes on thighs noncompliance

1 laws?

2 A. No.

3 Q. Okay we can take break now.

4 (The Deposition Proceedings went off
5 the record at 5:08 p.m.; whereupon, back on the
6 record at 5:19 p.m..)

7 Back on the record. The time is
8 5:19 p.m.

9 BY MR. NOLAN:

10 Q. So, okay. And I believe we have about two more
11 hours have you been all right.

12 (Off the record discussion.)

13 BY MR. NOLAN:

14 Q. Mr. Baldwin. We're back on the record.

15 And do you realize that you are still
16 under oath?

17 A. Yes.

18 Q. And I want remind you. In this case records
19 you reviewed in connection with the six
20 declarations. From CCI Corcoran and CIW.

21 Were there detailed medical records?

22 MR. TARTAGLIO: Objection, misstates
23 the evidence also vague as to detailed. From
24 Corcoran and CCI. There were. There were some
25 charts that -- that probably were part of a

1 medical record. I'm sorry, let me rephrase
2 that. There were some pages that could have
3 come from a medical record.

4 BY MR. NOLAN:

5 Q. Are you aware there's -- there's an issue in an
6 in CDCR when there's -- a t use of force
7 incident, there is an initial nurse evaluation
8 that is done that's a one-page sheet where
9 injuries are visible injuries are document is
10 had -- is that has you are referring to?

11 A. I believe that to be the case.

12 MR. NOLAN: But there were no am I
13 correct that there is no medical records of
14 examination, for example, in the infirmary
15 examinations in outside hospitals or any
16 records like that? That you looked alt; is
17 that correct?

18 MR. TARTAGLIO: Objection, vague
19 compound.

20 A. There were there were no detailed medical
21 records in any of the documents that I saw.

22 BY MR. NOLAN:

23 Q. In your person in Illinois and in Iowa I can't,
24 were medical records apart of a typical use of
25 force analytics?

1 MR. TARTAGLIO: Objection, outside
2 of the scope of the review.

3 A. They were not typically part of the review.

4 BY MR. NOLAN:

5 Q. Do you think it would be helpful to have
6 medical records as a way to verify allegations
7 from incarcerated individuals?

8 MR. TARTAGLIO: Objection,
9 incomplete hypothetical. Outside the scope of
10 his report.

11 A. No. I do not believe -- medical records would
12 help in this process.

13 BY MR. NOLAN:

14 Q. Do you believe the seriousness of injuries in a
15 use of force is a relevant factor in assessing
16 the reasonableness of use of force?

17 MR. TARTAGLIO: Objection, and
18 incomplete hypothetical.

19 A. No, I do not.

20 BY MR. NOLAN:

21 Q. Well why snout?

22 MR. TARTAGLIO: Same objection.

23 A. I have in may experience, I have seen reports
24 and seen video where, a very contagious of
25 force results in a scratch or two. I have seen

1 many uses of forces that hardly look like use
2 of force that has resulted in broken limbs it's
3 hard to quantify again, a series of accidents
4 when there are so many different outcomes from
5 all the uses of force that I have seen.

6 BY MR. NOLAN:

7 Q. What if hypothetically in a particular yard in
8 a prison, there are extremely high numbers of
9 concussions being experienced by prisons over a
10 period of time? Is that suggest that there
11 might be a problem with the excessive force?

12 MR. TARTAGLIO: Objection,
13 argumentative. Incomplete hypothetical outside
14 the scope of his report.

15 A. It would -- it would certainly suggest that
16 that should be looked at to determine whether
17 it's use of force, whether it's a fender on a
18 fender or whether they're playing some games
19 and they run into the basketball standard. I
20 mean.

21 BY MR. NOLAN:

22 Q. Your revalue of this six class member
23 declarations did you note why any of them had
24 broken bones or fractured bones as a result of
25 the incidents they described?

1 A. Yes.

2 Q. Do you remember which ones or which one?

3 A. I would have to give some thought to that. But
4 off the top of my head, I got to remember names
5 now. One had his -- his jaw broken,
6 Mr. [REDACTED]. I think it's been an long day.

7 Q. Well, I'm not sure it's been marked yet to help
8 refresh your recollection it's been marked
9 Exhibit 18?

10 A. I think that is Mr. [REDACTED] I believe. I
11 think.

12 Q. Yeah. Sorry, I'm sorry. Mr. [REDACTED] is
13 Exhibit 20. I don't have Exhibit 20 right now
14 I'm trying to recall after all of these how
15 ares. Out of my own mind I think it was
16 Mr. [REDACTED] had a broken jaw?

17 A. Yeah, I believe that's correct.

18 Q. Were there any other broken won bones in the
19 cases you reviewed and fractures?

20 A. There was broken nose deviated septum. I
21 believe there was another one but I'm just not
22 now thinking of it.

23 Q. Sure. So I believe if you mean, I guess, I
24 could just represent to you. To Mr. [REDACTED]
25 had a broken jaw and that's discussed his

1 declaration at paragraph 18.

2 Plaintiff had a broken tailbone, which
3 is discussed in paragraph 17 of his declaration
4 and Mr. [REDACTED] had a fractured rib which was
5 discussed in, paragraph 18 of his declaration?

6 A. Yes.

7 Q. Does it -- does it seem like there's -- does it
8 give you any cause inform the six cases you
9 reviewed there were broken or fractured bones
10 in half of them?

11 MR. TARTAGLIO: Objection,
12 argumentative. Assumes facts not in evidence.
13 Not in the scope of the report.

14 A. I believe -- I believe the document showed that
15 there were two and not 3 of the 6. I believe
16 the broken rib was after it was sustained after
17 medical care. I think Mr. [REDACTED] I think
18 that's what the medical folks, if I remember
19 right put forward. It has been my stance over
20 the years. It's been my opinion that, any use
21 of force that results in serious bodily injury
22 should be reviewed very carefully F.

23 BY MR. NOLAN:

24 Q. And why is that?

25 A. It has been may standard that you want to

1 reduce the -- the -- you want to reduce the
2 amount of injuries sustained by staff and
3 offenders during any use of force.

4 Q. How do you go about doing that gentleman
5 objection outside of the scope of his report
6 calls for a narrative.

7 A. You -- we talked about earlier but you work
8 with staff and offenders on various skills that
9 you hope will lead to better communication.

10 Q. E want to move on and talk a little bit about
11 paragraph 28 on page 8 of your declaration?

12 A. Okay. Are we done with Exhibit 15 shall I
13 leave it close by me.

14 Q. I think you should leave close by we're going
15 to come back to be Exhibit 15.

16 A. Okay. I'm sorry.

17 Would you please say the paragraph again
18 on my report.

19 Q. Okay. On page 8 of your declaration paragraph
20 28?

21 A. Yes.

22 Q. You say there that, force should only to be
23 used in any institution when it was reasonably
24 necessary under the circumstances to respond to
25 an incident; is that right?

1 A. I see that language and yes. That is that is a
2 correct reading.

3 Q. That is your view?

4 A. Yes, it is.

5 Q. Having reviewed California's use of force
6 policies do you believe they accurate th
7 capture principals about use of force?

8 MR. TARTAGLIO: Objection, outside of
9 the scope of his report.

10 A. The sections of the -- DOM that I've reviewed
11 regarding use of force, I believe, I read and I
12 stated in my report are, are, very similar.

13 BY MR. NOLAN:

14 Q. Okay. Do you see on paragraph 28 where you
15 quote the -- the policy?

16 A. I do.

17 Q. On this third line where it says to accomplish
18 custodial and correctional functions with
19 minimal functions on the use of force. Do you
20 see that?

21 A. No. My -- I'm looking at section 510 -- I'm
22 sorry. 5100.1.

23 Q. Okay.

24 A. Yes. I'm sorry.

25 I was -- that's -- yes. I do. I

1 apologize.

2 Q. It's just that?

3 A.

4 Q. Type write it's actual minimal reliance, not
5 minimal resistance, right?

6 A. I believe reliance is correct and I apologize
7 for that.

8 Q. Both your formulation of what -- what, and the
9 CDCR is the simple way to say that is the can't
10 why should use the minimum use of force in any
11 given situation?

12 MR. TARTAGLIO: Objection
13 argumentative misstates the report calls for a
14 legal conclusion.

15 A. What I have what I have said over my career is
16 that, you should use the least force necessary
17 to resolve the situation.

18 BY MR. NOLA:

19 Q. I also write so moving to the next page and on
20 paragraph 31 you write. Quote as a general
21 matter, allegations of retaliation, or improper
22 use of force, are often difficult to again,
23 actively prove of disapprove. CDRC staff are
24 authorize to do use force in certain
25 circumstances in determining after the fact

1 whether that force is used proper or improper
2 is often difficult end quote.

3 Can you explain what you mean by this?

4 MR. TARTAGLIO: Objection, the
5 document speaks for itself.

6 A. My experience has shown me that allegations of
7 use -- improper use of force are very difficult
8 to prove or disapprove, because there are --
9 there are multiple -- there can to be multiple
10 conflicting stories. I don't mean that. Let
11 rephrase that. Often you hear multiple
12 conflicting versions of the events written
13 down. And that it's very difficult to go back
14 everyone hours later or days later and
15 reconstruct exactly what happens.

16 BY MR. NOLAN:

17 Q. Does having video cameras surveillance make the
18 it easier to determine what happened in those
19 situations?

20 MR. TARTAGLIO: Objection, outside
21 the scope of his report incomplete
22 hypothetical.

23 A. Video cameras, or video monitoring can provide
24 a basis on which to bring some clarity to the
25 situation in most instances.

1 BY MR. NOLAN:

2 Q. Moving down that same page to paragraph 35.

3 I'm sorry. I'm going to go to paragraph 33 at
4 the end of that paragraph you say ewe talking
5 about rules violation reports and you write,
6 quote when an inmate directly or indirectly
7 challenges a rules violation report. It is
8 appropriate to keep in mind the discipline
9 associated with the rules violation report
10 provides an inmate with insensitive fabricate
11 an allegation of staff misconduct. End quote.
12 So, I want to tray to understand the incentive
13 that you're talking with here. Because may
14 understanding is that when an inmate receives a
15 rule violation report, and there's excessive
16 force, the incarcerated individual still gets
17 the CRDR; is that incorrect?

18 MR. TARTAGLIO: Objection incomplete
19 hypothetical. Argumentative.

20 A. I believe that to be correct, yes.

21 BY MR. NOLAN:

22 Q. A so, where is the incentive?

23 A. It is and based on my extensive comes in from
24 as the RBR appeal process continues, it is eye
25 seen numerous examples of over stated facts in

1 an effort whether it was reasonable or not to
2 get the possible reduction of time which was
3 proposed reduced.

4 Q. So you think there is an incentive to get --
5 because the person might to get a lesser
6 sanction there is staff misconduct?

7 A. Yes.

8 Q. All right. I would like to go back to [REDACTED]

9 [REDACTED]

10 A. Okay.

11 Q. And the declaration, which is Exhibit 15 which
12 I think I kept nearby?

13 A. I did.

14 Q. And I also want to ask the corporate report are
15 to -- to mark Exhibit 21.

16 (Exhibit No. 21 was marked for the
17 record.)

18 A. I have Exhibit 21, and Exhibit 15 in my
19 possession.

20 BY MR. NOLAN:

21 Q. All right. So, do you recognize Exhibit 21?

22 A. One moment.

23 I looked at several of these. And I
24 believe -- it's -- I believe I have seen this
25 these set of documents.

1 Q. Do you know which inmates use out of force this
2 is related to this incident report package?

3 A. I believe this is Mr. [REDACTED]

4 MR. TARTAGLIO: R.

5 Q. That's correct do you see that on the first
6 page of this synopsis Mr. [REDACTED]'s name is
7 there?

8 A. Yes, I do.

9 Q. Okay. Before we -- before we get into it
10 details of what happened with Mr. [REDACTED] I just
11 want to go back to your declaration. So in
12 paragraph 35, on page 9. You said there, I
13 think the incident report concerning the
14 incident with inmate [REDACTED] would be more
15 thorough which make is harder to determine what
16 actually happened.

17 And so, I think we talked a little bit
18 about this earlier. But I just want you to
19 keep that in mind while we take a look at the
20 details of the [REDACTED] packet. Is that okay?

21 A. Yes, sir.

22 Q. So, your -- the only other places your
23 declaration talks about Mr. [REDACTED]'s case is
24 paragraph 49. Where in paragraph 49 you have
25 short statement about what is alleged to have

1 happened. And then paragraph 50, you say, that
2 Mr. [REDACTED] is not verified with the disability
3 which I interpret to mean that Mr. [REDACTED] is not
4 a member of the Armstrong class that is right?

5 A. Yes, sir.

6 Q. Were you aware that [REDACTED] does claim that he
7 has a bad back and shoulder injury that impacts
8 his mow built?

9 A. I was aware of that.

10 MR. TARTAGLIO: Assumes facts not in
11 evidence.

12

13 BY MR. NOLAN:

14 Q. Were I aware of that?

15 A. Yes.

16 Q. Were you aware that he also has a special proto
17 or cuffing so that he won't to be cuffed behind
18 his back?

19 MR. TARTAGLIO: Objection, assumes
20 facts not in evidence.

21 A. Yes.

22 BY MR. NOLAN:

23 Q. Were you -- you were aware of that?

24 A. Yes.

25 Q. The incident report so that's Exhibit 21. On

1 page 12 is I think the first full description
2 of the incident. That is -- so the page
3 numbers are on the upper right side.

4 A. I am at page 12.

5 Q. Okay. And I'll just read it to you. So it --
6 there's a paragraph a says precipitating events
7 under the phrase narrative. And Utah says on
8 21820 at 0755 hours, officers [REDACTED], and
9 [REDACTED] I can't. [REDACTED] were escorting
10 inmate [REDACTED] [REDACTED] [REDACTED]. That is his
11 housing. From his assigned cell to IEM Number
12 6. Do you know what IEM is?

13 A. Not off the top of my head.

14 Q. It's -- IEM is individual exercise module?

15 A. Thank you yes, sir.

16 Q. What it's a maul management yard essentially on
17 a -- outside typically used for people?

18 A. Yes I'm aware of that.

19 Q. The narrative continued that it says officers [REDACTED]
[REDACTED] [REDACTED]n and I [REDACTED] were in the us
21 process of placing [REDACTED] [REDACTED] inside IEM6
22 when [REDACTED] suddenly stated that he was not
23 going in there he suddenly stepped back and
24 turned into officer LPP had to use physical
25 toll stop. There is something missing there

1 but it is missing in the original. Had to use
2 of physical to stop [REDACTED] resistive behavior.
3 Officer LP forced [REDACTED] in the prone position
4 to [REDACTED] he's attack. Once officer P
5 physically forced [REDACTED] down to the ground in
6 the prone position he complied with all staff's
7 orders.

8 Do you, having read this account, could
9 you agree that on it's face this report does
10 not provide any basis for thinking any force
11 was necessary in this situation?

12 MR. TARTAGLIO: Objection,
13 argumentive also this is not scene by an
14 Eyewitness.

15 A. If your question solely billion this document?

16 Do you want me to comment on just the
17 words you read in that presit at a timing
18 events category.

19 Q. Yeah. You can do that and then if you want to
20 talk more broadly what you learned in reading
21 the rest of the package, that's fine too?

22 A. Yeah. I would expect more description about
23 suddenly step back and turned into office L
24 pan.

25 Q. Is the reason is the reason for that is it not

1 clear that was an attack?

2 MR. TARTAGLIO: Objection,

3 argumentative.

4 A. And in my opinion it's just not clear. No,
5 sir.

6 Q. You -- you said that, this report could have
7 been more thorough were you hearing to this
8 narrative of the whole package?

9 A. You thought as -- in my reading of this
10 narrative, I'm sorry let me start over again
11 please the initial parts of this narrative
12 raised in doubts in my mind because there
13 wasn't enough descriptors. And I think the
14 first -- I think -- yeah, anyway. Yes. It
15 raised -- it raised everybody's for me. That,
16 could have been addressed by more verbiage
17 badge.

18 BY MR. NOLAN:

19 Q. Isn't it suspicious that there's not more verb
20 badge?

21 MR. TARTAGLIO: Objection,

22 argumentative.

23 A. May years of experience tells me, no. It's --
24 etc. Not the -- the quantity of the -- the
25 narrative. It's the quality of the

1 narrative --

2 Q. All right. Well, maybe weak capping through
3 the -- the package a little bit. So if you go
4 to page 13 a little bit farther in the pack a
5 long?

6 A. -- yes. Yes, sir.

7 Q. There is the narrative from officer [REDACTED] Tests
8 officer right that go you'd asked if he had
9 been disciplined, correct?

10 A. Correct.

11 Q. And I guess, really the -- the issues that you
12 identified in that first discreditation has to do
13 with this sort of moment where he backs up and
14 the officer takes him will down; is that right
15 that is sort of the part of the incident that
16 you would like to have more information about;
17 is that correct?

18 A. The heart of the incident is, can what suddenly
19 stepped back and turned into.

20 Q. Right. So, so if he look at this narrative do
21 I read to you the account of that about that
22 part of the story from the officer? That it
23 says, I ordered [REDACTED] to step inside individual
24 exercise module Number 6 it is IEM Number 6.
25 But he stated quote, I'm not going in there and

1 step backed and turned body to the right facing
2 me. I ordered [REDACTED] to get down [REDACTED] did not
3 comply. In order to stop the resistance and
4 prevent an attack on me, I grabbed [REDACTED]'s
5 left arm with both hands applied downward
6 pressure as I simultaneously performed leg
7 sweep with my left foot to his leg, because him
8 to hit his face and say the left side of his
9 body. Does that narrative is added any helpful
10 detail or not really?

11 MR. TARTAGLIO: Objection, vague.

12 A. I would like you to read at that again I was
13 trying to find you and I finally found the
14 section that you were reading so if I wouldn't
15 find I would like read that again I can if iffy
16 want me to wait for me to get there.

17 BY MR. NOLAN:

18 Q. Yeah. If want to just read through it I
19 started reading where it says I ordered [REDACTED]
20 to step inside.

21 Do I want me read through or do you want
22 to read it yourself?

23 A. I'm sorry. I should have told you that yes.

24 Q. Okay.

25 A. I have read that.

1 Q. So, I have couple of questions first. In this
2 officer statement is there any evidence that
3 Mr. [REDACTED] attacked officer [REDACTED] like it said
4 in the first description?

5 A. There -- no there is nothing in here that says
6 he attacked him. It was the perception of the
7 CO that he was going to attack from the way I
8 read this.

9 Q. Okay. Secondly, isn't it true that inmate
10 [REDACTED] was coughed behind his back at the time?

11 MR. TARTAGLIO: Objection, assumes
12 facts not established.

13 A. The language says he was coughed when he was
14 leaving his housing unit for sale [REDACTED], I
15 believe. It doesn't to say in the this
16 statement where he took the handcuffs off when
17 he got to IEM.

18 BY MR. NOLAN:

19 Q. Right. So it reasonable right to assume he was
20 still in his handcuffs?

21 A. It was not stated so, I don't know.

22 Q. Well in the narrative it says in the third line
23 I applied handcuffs securing both hands?

24 A. Right right. No. Yes. I -- I mentioned that.
25 In the narrative it doesn't to say when I got

1 to IEM6 if he took them off or not. I don't
2 know whether they were on or off by think
3 narrative.

4 Q. Do you know what the CDCR policy is when they
5 put people in hand cuffs and when they take
6 them off gentleman objection, vague. Outside
7 the scope of this report?

8 A. I do recall reading some of the DOM operations
9 manual but at the moment, and time I do not
10 recall it.

11 Q. Have you taken to exercise module they put them
12 in and then the person backs up and puts them
13 through the food port in the car and are gets
14 unlocked?

15 A. Yeah.

16 Q. So, there was a request by reviews for more
17 information that have initial report right?

18 A. I believe -- I believe there was follow-up
19 after this report.

20 Q. Yeah. So -- so, there's that page 13 that we
21 were just looking at on the next page?

22 A. Yes.

23 Q. Do you see this did she this clarification this
24 is a called an incident report action taken and
25 it says, clarification requested, go action by

1 staff [REDACTED] der for reference to the
2 staff [REDACTED] and then it says action taken
3 comments please articulate the threat perceived
4 when the force was used do you see that?

5 A. Are you on page 14?

6 MR. TARTAGLIO: Yeah, which page are
7 you at that. So I apologize there ain't aren't
8 Bates numbers.

9 BY MR. NOLAN:

10 Q. So the first part of this have exhibit the
11 incident report is numbered 114 in the upper
12 right is in first page after that it actually
13 says 14 page is in this exhibit. But, do you
14 see that it lacks like the -- the?

15 A. I do not have that that.

16 Q. You don't have it?

17 A. No, sir. Let me look in the beginning I
18 skipped right to page 13. I am not sure
19 whether you're -- pointing to.

20 Q. Well, the --

21 A. I've looked through all of Exhibit 21. I'm --
22 I do not see that form, sir. I'll try it
23 again.

24 Q. Maybe the -- is that page 13 is the last page
25 of the exhibit?

1 A. No. Page -- there is page 14. And then it
2 goes onto -- incident report. Report package.
3 By second level elapsed date of incident report
4 I'm seeing the same person.

5 Yeah. But that have there's the medical
6 report of injury or unusual occurrence, the one
7 I described with the wiring diagram on it.

8 Q. Right?

9 A. So, it is [REDACTED] continuing and there is two
10 more pages that is an electronic document type.
11 But I see nothing like you showed us.

12 Q. Huh so it's earlier an page 14 in my set so?

13 A. I'll keep looking let me to go through it again
14 sir.

15 Q. Okay.

16 A. Well I'm.

17 MR. TARTAGLIO: I'm seeing the same
18 thing that John is seeing.

19 MR. NOLAN: All right. Let me look
20 at -- let me look. Maybe our -- let me take a
21 look at our share file.

22 (The Deposition Proceedings went off
23 the record at 5:59 p.m.; whereupon, back on the
24 record at 6:11 p.m.)

25 THE COURT REPORTER: Please proceed.

1 BY MR. NOLAN:

2 Q. All right. Mr. Baldwin, you are aware that you
3 are still under oath, correct?

4 A. Correct.

5 Q. And we have been discussing the -- the incident
6 report package, forever [REDACTED] incident,
7 correct?

8 A. Correct.

9 Q. And so, this page that I've put out which
10 actually might also exist in her packet. But,
11 is a -- a clarification requested document from
12 [REDACTED]. Correct? And in the action
13 taken comments she says please explain why you
14 requested that the inmate why you requested the
15 inmate to be placed into the IEM for the
16 interview. Right.

17 Then she says please explain why you
18 instructed the inmate to be placed. Handcuffs
19 for the escort are those questions that you had
20 read that going first incident report?

21 A. No. I think -- I think thinning is about the
22 follow-up, isn't it? Isn't this about the
23 follow-up?

24 Q. This is -- this is -- from my knowledge of CDCR
25 incident report this is a supervisor sending

1 paperwork back to the officer. Asking him to
2 explain why these things happened this way is
3 that not your understanding?

4 A. That is not my interpretation of what was said.
5 This strikes me being an after action report
6 based on taking the -- the interview with
7 Mr. [REDACTED]

8 Q. Okay. I plane this is -- gentleman John let
9 him ask him his next question.

10 BY MR. NOLAN:

11 Q. Either way.

12 Are these questions that are important
13 for answer there in understanding this use of
14 force?

15 MR. TARTAGLIO: Objection, vague.
16 Compound.

17 A. These two sentences, would make sense would
18 make more sense to me, if we now for certain
19 that these were either, if these were a part of
20 the investigation record, that that were
21 processing or if it was directly related to the
22 incident of moving him from the cell to the IEM
23 and I can't tell from this document where in
24 that chronological -- where in the chain of
25 events this happened.

1 BY MR. NOLAN:

2 Q. Okay. I mean, this is given to us as an
3 incident report related to Mr. [REDACTED] that you
4 had reviewed.

5 And so, my understanding is that if you
6 -- if you look in the following pages, of the
7 report there is clarification of the report on
8 the very following of the page. Do you see
9 that and it from the captain, so, I guess, that
10 clarification was directed at [REDACTED].

11 But he saw clarification from sergeant
12 use bar who was out on workman's comp. Examine
13 right. If you see on that page information
14 quote -- information received that inmate what
15 was a suspect for targeting staff for assault I
16 had inmate [REDACTED] escorted and IEM interview
17 into that information.

18 A. I see that.

19 Q. So does that clarify the issue?

20 A. No, sir.

21 MR. TARTAGLIO: Objection, vague.

22 BY MR. NOLAN:

23 Q. You said no?

24 A. Yes. I said, no.

25 BY MR. NOLAN:

1 Q. And why not? What is still confusing after
2 that answer or insufficient about that answer?

3 MR. TARTAGLIO: Objection, compound.
4 Misstates the testimony.

5 A. It is -- I still did not understand the
6 chronological sequence of events of these last
7 documents.

8 BY MR. NOLAN:

9 Q. Okay. I'm going to ask you look at comment a
10 little further in which is document that I'd
11 reading to I think it was on 16 two pages
12 further that document.

13 So, do you see this is the document to
14 get from [REDACTED] and
15 address to do officer an the officer you asked
16 about. And she says please articulate the
17 threat perceived when the force was used.

18 A. I do see that.

19 Q. You don't see these as questions that to go the
20 same issue you identified when you -- when you
21 determined this was insufficiently detailed
22 this write up of the incident?

23 MR. TARTAGLIO: Objection,
24 argumentative. Also we're not being shown all
25 the document.

1 BY MR. NOLAN:

2 Q. But I think this is actually -- this is
3 actually the same document that we have hard
4 copy of this is why the page numbers are
5 different from what I had?

6 A. I do not. I don't have that document.

7 Q. You don't have these pages?

8 A. No, sir.

9 Q. All right. And in your experience norm the
10 than incarcerated individual outdoors when
11 you're doing an individual?

12 MR. TARTAGLIO: Objection, incomplete
13 hypothetical. Outside the scope of the report.

14 A. Would you please repeat the question.

15 BY MR. NOLAN:

16 Q. Yeah. In your experience within normal before
17 have you and incarcerated individual outdoors
18 about an investigation into a possible threat
19 against staff.

20 MR. TARTAGLIO: Same objection.

21 A. I have an occasionally seen that happen.

22 Q. Where you spoke to CTI staff did you ask them
23 -- if, I guess first of all I should ask you,
24 do you recall that in Mr. [REDACTED]'s declaration,
25 he said he'd been told that the place where he

1 took him to the individual exercise module as a
2 ██████████ in the institution's camera system?

3 MR. TARTAGLIO: Objection, assumes
4 facts not in evidence argumentative.

5 BY MR. NOLAN:

6 Q. Do you recall reading that?

7 A. I believe it was Mr. ██████████ But I would have
8 toll double check. Yes, I do remember that.
9 Those sentences I believe it was Mr. ██████████ but
10 I would have to verify that.

11 Q. Okay. Well, represent to you that he does make
12 the allegation.

13 Did you ask DTI staff where there was
14 ██████████ where they attack him?

15 A. I did not.

16 Q. Okay. So, I want to ask you just one last
17 thing about this report and it's on the next
18 page 17 I can show it to you.

19 And this is from officer ██████████. And this
20 is -- in responding to the request for
21 additional information about why he felt
22 threatened by Mr. ██████████ and there is a
23 narrative there that inmate ██████████ escorted
24 store possible threats staff threats due to the
25 behavior refusal to individual exercise module

1 in order overcome re and attack on myself I
2 utilized physical force to stop [REDACTED]'s
3 actions. Does that narrative seem like an
4 adequate justification for using force against
5 Mr. [REDACTED]

6 MR. TARTAGLIO: Objection.
7 Argumentative. Also, wrote other reports that
8 we read the other one just now.

9 A. Well, this -- this response -- this narrative
10 is a little better the first one. It's still
11 lacks some of the information that I would
12 expect to see in an incident report.

13 BY MR. NOLAN:

14 Q. What is that information?

15 A. What resistance and what -- what about the
16 resistance thought -- what about resistance
17 indicated to Mr. [REDACTED] that attack could happen
18 on him.

19 Q. Is whether or not eased cuffed at the time
20 relevant to assess making that go assessment?

21 A. In my experience, no. It is not.

22 Q. Tom we're going to need wrap this up it almost
23 30 over there this Colorado?

24 Okay. We haven't been going for 7 hours.
25 So.

1 BY MR. NOLAN:

2 Q. Our [REDACTED] a potential problem deployment
3 in prisons?

4 MR. TARTAGLIO: Objection,
5 incomplete hypothetical. I've that scope of
6 this report.

7 A. [REDACTED] in an institution. Depending on
8 age of the institution are very hard to
9 sometimes monitor.

10 BY MR. NOLAN:

11 Q. That he one reason for having body cameras?

12 MR. TARTAGLIO: Objection, outside of
13 the scope of his report. And incomplete
14 hypothetical. Argumentative.

15 A. It is -- it's my opinion that, the answer to
16 that question is, no.

17 BY MR. NOLAN:

18 Q. Why not?

19 A. The --

20 MR. TARTAGLIO: Same objections.

21 A. The views from body camera that I have seen,
22 are very limited. And do not give you a full
23 picture of the events.

24 BY MR. NOLAN:

25 Q. Do you think that having audio might be helpful

1 in kind of situation that you might to get from
2 a body camera?

3 MR. TARTAGLIO: Objection, argue
4 argumentative, incomplete hypothetical. Not
5 wanting to discuss with his employers.

6 A. Having had based on my experience and having
7 worked in a facility that had auto I did not
8 think -- I do not believe audio would help in
9 most instances.

10 BY MR. NOLAN:

11 Q. And why that is?

12 MR. TARTAGLIO: Same objections.

13 A. I have seen -- sometimes, people in my
14 experience, when people know there's audio it
15 becomes very quiet. And you get no value from
16 quiet.

17 Okay. I actually have to go to the
18 bathroom examine hopefully it wouldn't to be
19 too much longer. So. Can he take a five
20 minute break.

21 A. Okay. That works for me.

22 (The Deposition Proceedings went off
23 the record at 7:25 p.m.; whereupon, back on the
24 record at 7:35 p.m.)

25 MR. NOLAN: That document is in back

1 on the record.

2 THE COURT REPORTER: Please proceed.

3 BY MR. NOLAN:

4 Q. Mr. Baldwin, during the course of your work as
5 an expert in matter did review all use of force
6 incidents, at the 33 prisoners for any time
7 period gentleman objection, vague. He openly
8 reviewed those documents sent to me.

9 Good review any force packages to
10 determine six individuals who declarations who
11 you reviewed?

12 A. I do not believe so...

13 Q. Did CDRC show you any investigate files where?

14 BY MR. NOLAN:

15 Q. CDCR show you any investigative fails where a
16 claim of staff misconduct was sustained?

17 A. At this time I do not recall seeing any of
18 those files.

19 Q. I just want to briefly ask you about, [REDACTED] [REDACTED]
20 [REDACTED] his declaration which you discuss in
21 your -- in your tech paragraphs 38 the 47 and
22 in particular in paragraphs 47.

23 A. Yes, sir.

24 Q. Oh, I'm sorry. I'm sorry that's wrong I wanted
25 you to look at paragraph 46?

1 And where it says, while I cannot say
2 definitively any of what happened in these
3 incidents I can conclude CDCR performed a
4 genuine investigation of Mr. [REDACTED]
5 allegations, correct?

6 A. Yes.

7 Q. Is there anything in the officers version of
8 what happened that gave you pause or that you
9 -- that you were uncertain was true?

10 MR. TARTAGLIO: Objection, vague
11 compound.

12 A. I'm taking a moment just refresh myself about
13 Mr. [REDACTED]

14 BY MR. NOLAN:

15 Q. Sure. Sure. That's probably worth doing I'm
16 --

17 Mr. [REDACTED] declaration is exhibit --
18 I think it's Exhibit 15. It's?

19 A. It's not 15.

20 (Exhibit No. 20 was marked for the
21 record.)

22 BY MR. NOLAN:

23 Q.

24 A. I have Exhibit 20 in front of me now.

25 Q. Okay.

1 BY MR. NOLAN:

2 Q.

3 A. It's on two pages. It's on the screen I right
4 in front of me here.

5 Q. Okay. So, in is account you can see that he
6 had several interactions with custodial on
7 September 30 that were at the negative and
8 there was swearing back and forth, right?

9 MR. TARTAGLIO: Objection.

10 BY MR. NOLAN:

11 Q. So, he gets searched early in the morning and
12 he has in paragraph 7 he has a conflict,
13 officer man; is that correct?

14 MR. TARTAGLIO: Object assumes facts
15 not in evidence. Not established.

16 A. Is there a question.

17 MR. NOLAN: I'm sorry.

18 MR. NOLAN: I got lost in the
19 conversation.

20 BY MR. NOLAN:

21 Q. Do you remember this incident these incidents?

22 A. I remember reading this and the -- CDCR
23 reports.

24 Q. Okay. I'm going to represent to you, that
25 there was several incidents in the morning.

1 There was an incident where he multiple
2 incidents three or four where he has
3 argumentative, negative interactions with staff
4 and that's in both the incidents report and his
5 account so they're consistent. And my question
6 is. Is it realistic that a prison who's had
7 these contained multiple negative interactions
8 with staff would later that same day walk
9 around and w shank and drugs on his person.

10 You cannot allegations of inmate are
11 true immaterial to going to what that question
12 is argumentative and argumentative as not
13 established.

14 BY MR. NOLAN:

15 Q. Do you remember the general narrative of this
16 incident based on your review of his
17 declaration and the review of the incident
18 reports?

19 A. Yes.

20 Q. Do you remember that he had several very
21 negative interactions with staff where there
22 was swearing back and forth?

23 A. I.

24 MR. TARTAGLIO: Objection, hold on.

25 Hold on. Objection, argumentative. Assumes

1 facts not established.

2 A. I remember that there were multiple arguments.

3 I do not -- I did not see anything in the
4 records that I reviewed that said that there
5 was swearing back and forth. The only person
6 that I would remember being swearing was

7 Mr. [REDACTED]

8 BY MR. NOLAN:

9 Q. That's correct on the incident reports.

10 Do you recall that he said that staff
11 swore in during these encounters?

12 A. At the moment I don't remember that being
13 stated.

14 By Mr. [REDACTED] I'm trying -- I -- I do
15 see that in his declaration on page 2.

16 Q. Okay.

17 A. And then your question was after that.

18 Q. Do you know I'm going to withdraw the question?

19 A. Okay.

20 Q. In your declaration you discussed the may low
21 training system?

22 A. Okay.

23 Q. Correct?

24 A. Yes, sir if you would pause for a minute
25 regretfully put in [REDACTED] on top of my --

1 declaration.

2 A. Could we take break. We can just state on the
3 record while I both look.

4 (Off record discussion.)

5 A. Now, we're on page 15.

6 BY MR. NOLAN:

7 Q. Yeah. How did you go learning about the milo
8 training system?

9 A. I believe it was referenced in some documents
10 that I was provided. It definitely came up in
11 my conversations with the -- the institutions.

12 Q. Did you actually observe a may low training?

13 A. I did not.

14 Q. Did you review any kind scripts for the Maylow
15 training?

16 A. I did not review descriptives I had -- one of
17 the warden's walk me through one of the
18 classes.

19 Q. Over phone?

20 A. Over the phone yes, sir.

21 Q. What was that class?

22 A. It -- I'm sorry you broke up just then.

23 Q. What was the class that the warden walked you
24 through; isn't it true?

25 A. The class was on the -- the part of the system

1 that has the staff member talk to an IA figure
2 talk to them it part of the computer system
3 that goes back and forth. And as the -- staff
4 member responds, to what is being said by the
5 -- IA figure, the responses from the IA figure
6 change based upon what the staff member says.

7 Q. What do you mean by IA?

8 A. Or that artificial intelligence where is like
9 some sort of figure on a screen.

10 Q. Oh you mean AI?

11 A. I'm sorry. Yes. It is it is AI. I'm sorry.
12 I think it's getting late in the day it's AI.

13 Q. Right. So...

14 A. Anyway the rest of that then would apply. That
15 they interact and the scenario changes based on
16 the staff's comments to this -- artificial
17 intelligence.

18 Q. So, you -- someone described how it works for
19 you but you couldn't -- it correct?

20 A. That's correct.

21 Q. Okay. And there was no way for you to -- to,
22 review a script or the content of it?

23 MR. TARTAGLIO: Objection, compound.
24 His testimony.

25 A. I was satisfied with the description that

1 warden gave me and I believe I talked about it
2 twice with warden's and got the same very
3 positive reaction to it.

4 Q. Okay.

5 A. I am sorry. I want clarify one thing the first
6 -- I the first warden he talked to about it was
7 the CIW warden.

8 And then I believe it was the CCI warden
9 but I would double check.

10 Q. Okay I want to shift and look at Exhibit 22.

11 (Exhibit No. 22 was marked for the
12 record.)

13 (Off the record.)

14 A. Just to make sure we don't mess this up.

15 Exhibit 22 is a fairly lengthy exhibit,
16 is correct?

17 Q. Yeah. Could you look at the first page of the
18 document?

19 A. I shall.

20 Q.

21 A. Yes. Yes.

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. What is it?

25 A. It is the mid it report of monitor Pablo

1 Stewart in the Bradshaw case versus John
2 Baldwin.

3 Q. What is the Rasha case?

4 A. At the Rasha case is in the Central District of
5 Illinois case that talks about that that -- is
6 about mental health.

7 Q. So, if you could go to page 10.

8 A. I am on page 10.

9 Q. And that so in that bottom paragraph on page
10 10, there is a -- a, it says about half way in
11 the paragraph it says, well so I guess -- do
12 you want to read that paragraph or I could read
13 send it to you?

14 A. Starts as monitor?

15 Q. Yeah. Go ahead?

16 A. The paragraph at that start as monitor I have
17 gained a much deeper appreciation.

18 Q. Yes?

19 A. I have read the previously but I do want to
20 skim it so I can reacquaint myself.

21 Q. It yeah if I want to just read that whole
22 paragraph that goes onto next page and then I
23 can ask you about it.

24 A. Yes.

25 Q. All right. So do you agree with the Federal

1 court monitor in this -- first of all what kind
2 of prisons in Pontiac?

3 A. It was a walled maximum security institution.

4 Q. I'm just going to object to this whole line
5 questioning about this has nothing to do with
6 Armstrong way outside the scope of the expert's
7 report?

8 BY MR. NOLAN:

9 Q. So, did you agree do you agree with the Federal
10 court monitor that there was a culture of abuse
11 retaliation at Pontiac during this time period?

12 A. I do not agree with his characterization of
13 Pontiac culture.

14 Q. Do you agree there was problem with staff
15 misconduct in Pontiac during this time period?

16 MR. TARTAGLIO: Or record I'm going
17 to repeat -- he going to maintain my objections
18 I just made as standing are objection but I
19 will spare everyone the agony of having me
20 repeat them over and over again.

21 MR. NOLAN: That is fine like I said
22 you don't need to repeat any of them. We'll
23 stipulate to them.

24 BY MR. NOLAN:

25 Q. So, do you agree there was a problem with staff

1 misconduct at Pontiac during 2018?

2 A. If I remember the dates correctly we did have
3 issues at Pontiac. That we addressed.

4 Q. What are the issues?

5 A. I came to believe that we need to do close down
6 one of the very old wings in one of the cell
7 houses. The -- we were building in Pontiac a
8 behavioral health -- a behavioral treatment
9 unit that became delayed for a variety of
10 reasons. And as the count dropped, in
11 Illinois, we were able to move a sizeable
12 number of people out of Pontiac and into other
13 institutions. We did that from a --
14 classification perspective. We hired somebody
15 to come in and do a security classification of
16 our system. And we were able to move people
17 out of Pontiac, therefore reducing, the number
18 of instances at Pontiac. And I -- take
19 exception and did when this report came out
20 from Dr. Stewart that his characterization of
21 events in my opinion, while accurate in some
22 respects was greatly over stated.

23 Q. Ma'am court report he we're going ask for a
24 characterization how long we've been
25 on-the-record.

1 (Off record discussion.)

2 BY MR. NOLAN:

3 Q. So, are he back on-the-record.

4 Back on the record 701. Thank you.

5 BY MR. NOLAN:

6 Q. So, Mr. Baldwin, just so I understand what you
7 said about the situation at Pontiac.

8 You agree there was a problem with the
9 staff at Pontiac? Therefore?

10 A. Whoa I -- what I hoped to have said and I try
11 to repeat myself as best as I can. There were
12 -- there were issues at that point that can we
13 became aware of. Issues including questionable
14 staff decisions. Questionable offender
15 decisions. The space they were housed in was
16 -- inappropriate. And those plus a couple more
17 than that I can't recall now lead us to the
18 decision to do what we did. And that is
19 depopulate the unit that Mr. Stewart had
20 problems with and redistribute those throughout
21 the state.

22 So, we could deal with, the situation of
23 all of those offenders we moved. In a more
24 appropriate fashion. Some stayed at Pontiac.
25 Some moved out.

1 Q. But that -- that behavior health unit was
2 closed as a result of those movements?

3 A. No the behavior health unit was so long getting
4 built, when I left it had still not opened.
5 But it was getting closer. And ill for some
6 reason before my time, had put these people in
7 a unit adjacent to what was becoming the
8 behavioral health unit closely adjacent to I
9 should say.

10 And that space had served it's purpose
11 and we needed to take in action while often
12 delayed construction was being completed. And
13 I -- I did want to the correct one statement I
14 made I do believe in may time the behavioral
15 health unit had been completed altered Pontiac
16 but it was late in my tenure.

17 Q. Okay. Was there a -- was one of the problems
18 in that unit, excessive force?

19 A. One of the problems in that units was there
20 were assaults on staff and -- and use of force
21 on offenders.

22 Q. Dr. Stewart in paragraph he says quote, this
23 situation cannot to be involved until such time
24 a kept leadership admits there is a problem
25 this starts with Mr. Baldwin. I available at

1 any time meet with the director discuss this
2 issue I Baldwin to tour back to me observation
3 this situation from my perspective.

4 Did you ever go tour Pontiac with the
5 Federal monitor?

6 A. Based on advice from the Illinois Attorney
7 General, I did not.

8 Q. Did you want to go tour with him?

9 A. There's two responses to that. One, we were in
10 the process of if not well, in -- well, into
11 the part I would have to get my dates more
12 accurately of moving these folks out and making
13 the accommodations that we had discussed with
14 Dr. Stewart long before this report came out.
15 And I fold direction of may legal counsel not
16 to the meet with Dr. Stewart F.

17 Q. Did you read the this section of his report on
18 verbal abuse in a unit?

19 A. At the moment, I do not recall that.

20 Q. Do you want just look at page 87 it starts just
21 why we need to read we obviously don't have
22 time for that it's quite long. And I object?

23 MR. TARTAGLIO: To what rushing
24 through the 106 page document that again has
25 absolutely nothing to do with this case.

1 MR. NOLAN: It has a lot to do with
2 this case.

3 BY MR. NOLAN:

4 Q. So, my understanding you went and read this
5 report right orderly in the course in your role
6 as director of the department corrections,
7 right?

8 A. I would have -- I would have read most of it.
9 I probably would not have read all of it.

10 Q. Did you search -- details on page 94. In the
11 subsection on findings.

12 There is a discussion of Dr. Stewart
13 talks about inspector of mentally staff at
14 Pontiac is that problem you were familiar with?

15 MR. TARTAGLIO: I'm objecting that
16 is assuming this based on the testimony of this
17 Dr. Stewart. Who I know nothing about there is
18 no facts in evidence to support that.

19 MR. NOLAN: This is a Federal court
20 monitor report on the Illinois prisons under
21 the witnesses watch.

22 MR. TARTAGLIO: And this represents
23 someone's person it's not establishes the
24 facts.

25 BY MR. NOLAN:

1 Q. I'm asking him what he thinks of his opinion.

2 Do you agree with Dr. Ncern about intimidation
3 of mental health by custody staff at Pontiac?

4 A. It's my understanding that go last paragraph is
5 solely directed at Dr. Stewart and not at the
6 treatment staff at Pontiac.

7 Q. I'm sorry I'm looking at the middle paragraph
8 under finding?

9 A. Oh, the middle paragraph.

10 Q. Intimidation of mental health by the custody
11 staff alt Pontiac?

12 A. Each read the paragraph.

13 Q. Is that an issue you looked into after this
14 report?

15 A. I believe we were looking into the issue long
16 before the report. And continued to look at
17 the issue repeatedly during my tenure.

18 Q. And did you find that was in fact a problem?

19 A. There were some instances where that was a
20 problem. He also went and talked to some of
21 the QMHP at Pontiac during during various tours
22 and I do not recall receiving any feedback from
23 them about this issue.

24 Q. What is the QMHP?

25 A. Qualified mental happily professional I believe

1 it stands for.

2 Q. Okay. But you said that you said that it was a
3 problem?

4 A. No. I.

5 MR. TARTAGLIO: Objection, misstates
6 testimony.

7 A. We were -- we were working on -- we were
8 working on the issue of across the system, in
9 Illinois, I had heard reports, of possible
10 intimidation by correctional staff of QMHP's.
11 We worked very hard on that. When I was there.

12 BY MR. NOLAN:

13 Q. What did you do?

14 A. We held multiple meetings. I'm sorry?

15 Q. All right. It's hard to tell on zoom when
16 someone finished what did you do to address
17 that issue?

18 A. We held matings with the union to talk about
19 this. Topic. We had our head of psychiatry
20 and our head of mental health to go out and
21 talk to people. We had cameras installed in
22 parking lots by the state police to see if the
23 statements were true with them confronting --
24 about correctional officers or the staff
25 confronting QMHP's in the parking lot. And I'm

1 sure there's more right now it been a long day
2 and those are the ones that I can remember.

3 Q. Do you recall investigating the allegation that
4 final paragraph on the page that custody staff
5 tried to intimidate the Federal court monitor?

6 A. First, I heard about it was when I read -- I am
7 sorry. I heard about it was when my general
8 counsel brought it to my attention after --
9 during this reporting time.

10 Q. And did you do anything to investigate that or
11 to address that?

12 A. I remember making -- let's see. I do not
13 recall at this time.

14 Q. Let me just take a look through my notes. All
15 right.

16 MR. NOLAN: I have no further
17 questions.

18 MR. TARTAGLIO: Conclusion of the
19 deposition.

20 (The Deposition Proceedings went off
21 the record at 8:15 p.m.)

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DEPONENT'S SIGNATURE

In re: John Armstrong, et al., vs. Gavin
Newsom, et al.
Case No. C94 2307 CW

Date: September 21st, 2020
Deponent: MR. JOHN R. BALDWIN

I, MR. JOHN R. BALDWIN; do hereby
state that I have read the foregoing questions
and answers appearing in this transcript of my
DEPOSITION, consisting of 239 pages; that this
is a true and accurate report of said answers
given in response to the questions appearing,

JOHN R. BALDWIN

Subscribed and sworn to
before me this _____ day of _____, 2020.

Notary Public within and for

County, _____

My commission expires:

1 ERRATA SHEET

2 In re: John Armstrong, et al., vs. Gavin
 3 Newsom, et al.
 Case No. C94 2307 CW

4 Date: September 21st, 2020
 5 Deponent: MR. JOHN R. BALDWIN

6 Page _____ line _____
 Should read: _____
 7 Reason: _____

8 Page _____ line _____
 Should read: _____
 9 Reason: _____

10 Page _____ line _____
 Should read: _____
 11 Reason: _____

12 Page _____ line _____
 Should read: _____
 13 Reason: _____

14 Page _____ line _____
 Should read: _____
 15 Reason: _____

16 Page _____ line _____
 Should read: _____
 17 Reason: _____

18 _____
 JOHN R. BALDWIN

19
 20 Subscribed and sworn to before
 21 me this _____ day of _____, 2020.

22 _____
 23 Notary Public within and for
 24 _____ County, _____

25 Commission expires:

1 C E R T I F I C A T E

2

3

4 I, DANA L. BURKDOLL, a Certified
5 Court Reporter (#1364), Registered Professional
6 Reporter (#830156) and Certified Shorthand
Reporter (#1955), do hereby certify that the
within-named witness was by me first duly sworn
to testify the truth.

7

8 That the testimony given in response
9 to the questions propounded, as herein set
10 forth, was first taken in machine shorthand and
reduced to writing with computer-aided
transcription, and is a true and correct record
of the testimony given by the witness.

11

12 I certify that review of the
13 testimony was requested by the witness or the
parties. If any changes are made by the
deponent during the time period allowed, they
will be appended to the transcript.

14

15 I further certify that I am not a
16 relative or employee or attorney or counsel of
any of the parties, or a relative or employee
of such attorney or counsel, or financially
17 interested in the action.

18

19 WITNESS my hand and official seal on
this 21st day of September, 2020.

20

21

22

23

24

25

DANA L. BURKDOLL, CSR, RPR, CCR
Certified Court Reporter #1364
MIDWEST REPORTERS, INC.

Exhibit 99

From: [Gay C. Grunfeld](#)
To: [Armstrong Team - RBG only](#); [0581.03 \(0581.03.DMS@DMS.rbg-law.com\)](#); [0581.04 Workspace](#)
Subject: FW: Armstrong - additional document production
Date: Wednesday, September 23, 2020 9:27:35 AM
Attachments: [Cate Notes 092320.pdf](#)

From: Jeremy Duggan
Sent: Wednesday, September 23, 2020 9:25:36 AM (UTC-08:00) Pacific Time (US & Canada)
To: Gay C. Grunfeld
Cc: Michael Freedman; Thomas Nolan; Penny Godbold; Sean Lodholz; Joanna Hood; Trace Maiorino
Subject: Armstrong - additional document production

Dear Gay –

Enclosed please find additional production in response to the subpoena to Matthew Cate. You will note two redacted sections in the document – the redactions cover Mr. Cate’s notes of conversations with attorneys from the Attorney General’s office, which are protected from disclosure under FRCP 26(b)(4). The document is being produced subject to the protective orders in this case.

Regards,

Jeremy Duggan
Deputy Attorney General
Sacramento Office
(916) 210-6008

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Amy Miller

- Discipline

- 989 central intake
- OIA, OIB, Vert. Advocates
- most serious cases are monitored
- 402 - sustained 403 disciplined
- If not monitored - the Employer Relations Officer reviews the Matrix and recommends including aggravators + mitigators
- Cite the violation, range of penalties and mitigated/aggravating factor
- OIB reviews the cases they monitor

- * Have ISU do it - Basic Investigated Cause
- * Uninvolved Supervisor


Recorded interview asap or no more than 48 hrs

~~wellpath~~

RVR ? Disobeying an order - he
slipped.

" Attempted to walk toward the
back of the cell and slipped and
fell - How did he get outside
the cell?

Off Tapia control booth. Observed
the inmate ~~at~~ on the ground
and being handcuffed - Why
handcuffed and not helped up?
How did he get outside the
cell ~~so~~ so they could handcuff
him
Why wasn't he watching?

Gollette said he fell in the
cell and his cellmate
starting putting on his boots
so he cutted 

Ferrero claims the inmate refused
orders to exit the cell. he
refused and somersaulted out of cell

According to Perez, Gollette and Ferso said, [REDACTED] stood up and tried to walk to the back of the cell and fell.

Walton lied - said that the inmate was ~~the~~ the last one ~~to~~ to go into his cell - Gollette was going toward the cell and the inmate fell on the ground.

[REDACTED]

Use of Force video 12/31/19
12/9/19
8:30 pm

Dayroom recall -

Gollette pulled him off

- didn't ask about the failure to speak to medical

Mills, Mera, Pepe, Harris, James

Don / RT.

B- 24 DPW
A- 18 DPW
C- 12 DPW
D- 4 ~~DPW~~

Appeals to Grievance

- In process.
- Electronic process is better via GOMS
 - Now there is a prompt.
 - 100 week grievance now 4 to 8 weeks
- Staff misconduct goes to Warden
 - 26 screen out categories to 5. No limit in each appeal
- Inadequate staff training
 - File as many as you want.

- Headed to 700

- Most common appeal re officer misconduct is disrespect or argument re showers, access 1/2 use of force.

Grievance 602 is scanned into GOMS and Logged. Then assigned to A/W electronically. Assigned to fact gatherer to Captain to Lt. or A/W to plant manager etc. --- FACT gatherer puts together grievance responses

then to CDW for review + decision. Inmate notified via SOMS print-out and sent via mail.

- Good process and every aspect is recorded in SOMS.
- Must be done in 60 days.
- Inmate ~~has~~ files 602-2 to appeal to OIA
- No modification, just a decision.
- Then they can go to court
- 602 HC. for healthcare.
- No longer an informal ~~602~~ 602 process
- Now microcos medical process
- Inmate ~~can~~ no longer withdraw their appeal, even if inmate wants to.
- All corrections now electronic
- CDW used to get 20 work 2nd level, now gets 100. Cumbersome b/c can't have multiple screens in SOMS.

Use of Force

- 48 hours to videotaped interview
- 5 days from date of discovery of interview victim; - 3013-1 (IBI) 3013-2 allegation, send to AIMS, investigation, back to institution.
- 3014 - investigation form filled out
- Warden can send to his inst. ISU.
- ~~Recommended~~ ^{as} Reported Use of Force ~~is~~ w/ 837, then handled locally.
- 2 or 3 then go to OIA via 989.

- Camera works well.
- Lease?

* ! - ~~But~~ ~~is~~ a supervisor for every yard just to tour. Check logs + speak to inmates
Now paperwork on Computer all day

ADA Coordinator CC II Acting A/C

~~Joe~~ Jose Villa

- 378 ADA inmates across all yards
 - ADA office 2 CCIs and O/A
 - Resemble accommodation Panel every ^{Tues.} ~~Monday~~
RAP response via Zoom
 - 1824 - request for accommodation thru Grievance
- (OR) Form 22 request of interview

Paperwork
shows how
often the officer
has been ~~for~~
responsible.

- Villa hasn't seen Use of force problem
- * He uses non compliance log to discipline officers
 - On all 1824 related to request for reasonable accommodation goes to RHP
 - 65% medical equipment or treatment
 - 35% alleging staff aren't complying w/ ADA
 - Goes ~~on~~ on non compliance logs
 - Goes to Captain, then ~~sgt~~ sgt or Lt respectively
 - Non compliance reviews (can go to vol. or grievance.)
 - HQ reviews random sample
 - * Five days to ensure a reasonable accommodation or Durable Medical Equip. Form 22 to reach anyone
 - 1824 Health Care appeal.
 - 7362 request for medical services
 - HC 602 rev.
 - 602 rev.
 - Speak to assigned cons. counsel.
 - open line 4 hours a week + open door policy.
 - Go to C/O, CC, ADA worker, ADA staff for help filling out the forms
 - H.C. staff - anyone, law library.
 - June 20 = 12 week
 - * ADA is still paper process - should be a part of SOMS
 - * over 200 ADA Worker Paid to assist ADA inmates. Pushing wheelchairs, taking, carrying trays, taking to/from appointments, advocacy. Writing 1824's!!

Deemed
critical
workers
in
Covid.

Dr. Schwartz

18. Investigations are necessary to determine whether misconduct occurred - Agree
AIMS addresses this problem
19. If rejected its because CIA believes no misconduct ~~has~~ has been proved.
Why would Institution, w/ less exp. officers conduct it again?

29 asserts the administration ~~is indifferent~~ participates or condones misconduct, yet notes that it was the RTD strike team convened and empowered by the administration that confirmed the existence of serious problems.

Am Miller ☐ 30. How many cases identified in the RTD strike team report resulted in action against officers?

A-M ☐ 31. Did CIA reject 7 of 9 from RTD and if so, why? No investigation?

32. Agree that cameras would be a significant step. Don't agree it demonstrates state's indifference due to COVID-19. (deaths)

33. In response to reports of misconduct COCR instituted AIMS.

36. Evidence of "gangs" 2 of staff?

37. "OIG ~~into~~ ~~is~~ has produced critical reports of misconduct... their role should be enhanced."
- It is now oversees and publicly reports on AIMS.

* ~~B~~ Problems w/ investigators conducting inquiries by institution staff and OIA.

4.9. Agree that medical staff should report trauma allegedly as a result of use of force by staff.

A.M

☒ Doesn't happen now? Should 7219 - medical report of injury or unusual occ

50. Staff discipline is inappropriate or inconsistent

Am

☒ - Staff disciplinary matrix
- Emp. Agency, Pros. Team reviewing.

51. Staff allowed to work during investigations - Warden decides - Redempt Bar
OIA when put on leave? serious misconduct during OIA inv.

A.M

A.M.

52. No referrals for criminal investigations (Thun cites 2)
- How many statewide?

A.M.

53. No discipline sustained based on inmate testimony alone.
☐ True?

OIA

by OIA

A.M.

54. Cases rejectedⁿ b/c there is no reasonable belief that misconduct occurred
☒ After what level of investigation?
☒ True that AIMS addresses this problem thru an "inquiry"

58-60 Inmates intimidated
- Addressed by AIMS.

AM

67. Staff access to allegations and evidence per CCPA contract.
☐ Timing?

A.M.
OIG

68 No Early Warning System

Admits UofF electronic tracking system

☐ - Is there a EWS

☐ - Compstat? Warden's?

☐ - Can we identify frequent flyers?

A. Two officers named in 10+ cases

B. One staff member - 4 referrals

☐ Can OIA consider history?

75-76 Emp. Dis Matrix

☐ - one example - inmate needed inhaler and C/O refused to allow him into his cell -

- Endangering an inmate should be hire than a 3 out of 10.

- Enhancements

- UofF + Li Rely it to lead to SBL
- intentional, premeditated, serious results

77-78 having warden decide discipline is inappropriate so the wrong punishment may be selected due to union pressure or staff pressure.

OIG

☐ Oversight of decision by OIG

7

AM

79-83 Case records are a bysomal

- Fixed by Acom S + Electronic System.

AM ☒ 88. AIMS will not fix the system.
 A. Should be used in all use of force
 B. SBI should ~~not~~ include 3 broken ribs
 All broken bones ~~are~~ are SBI

AM ☐ 91. Only inmate generated 602 trigger AIMS
 True? Family, lawyers...

92. CACR doesn't recognize the deficit
 - it does - Read the RJD report.

Must have culture change

93. Staff culture is bad (Based on one facility)

☐ 94. Install Cameras
 Agree

97. Camcorders?

Can't be done
 by OIA

AM ☐ 99-103 Use of force reviews.
 Agree? A. Subject interview w/in two hours
 B. Detailed descriptions
 C. 24 hour training of S.p.

D. External review - Agree OIG
April - E. Report by medical of doc. injuries

104 EWS

106 all staff alleged to have
committed serious misconduct by
inmates be reassigned ~~to~~ or placed
on leave !!!

- Clear he has never been an
administrator or worked in a prison

Veronica
775-673-7155

Eldon Vail

30-33 - Reduce the numbers of punches
and Kicks. - Training.
Kathleen Allison :

51 Vail agrees that outside investigations
would improve investigations

52. Need all Use of Force related
investigations to be investigated by
the outside investigation firms.

55 Fixed Camera's

64. No reliable means of tracking
incidents of misconduct.

81. Increased accountability for
RJD, from CPCR review.
- Cameras
- Prompt review of actuable info.
- STC review
- Increased management of Facility C
- Training re ADA inmates, comm.
- Don't allow ^{custody} staff to collect Appeals

82. other CDCR RX of RJD
- check key access, restrict access
to the gym, change Facility C
management, cameras, rehouse 516

~~82~~ 83. Cameras are single most
important thing.

85. RJD changed A/W, Capt, ISO Lt., Appeals Coord.
and Lit Coord.
* also put a new administrator over all.

89. Recommends getting one more
involved.

RX by Vail

94. Cameras

95. Body Cameras

96. Bring cameras to unplanned use
of force

102. Weighing pepper spray. (only after
documented and
alleged use)

103. assign non uniformed supervisors
to every living unit or additional
supervisory staff to each yard during
second and third watch.

110 Treatment team on the tiers

111 Training

114. Reports for the use
of force evidence from
medical team

116 EWS

117. PREA 90 day check for
retaliation

Comp Stat.

AM. True only 30 ADA inmates as of
1/13/20?

AM How many at LAC?

AM How many ^{Appeals} ~~reports~~ by ADA at
LAC in each year?
How many for the system?

Total inside prison 98,000
prison/camps 4,000

Amy Miller

Director Division of
Correctional Policy, Research
Internal Oversight
CPRIO

1. All ways ~~is~~ an
inmate can complain
or prison?

1. Grievance 2. OIG + ^{Abuse} Local
3. Anybody 4. Confidential ^{crises conf}
5. Ombudsman 5. Plaintiffs

P.C. 832.5 Allegations v. C/O

2 History of the Allegation Inquiry
Management Section -

- COST? Budget?

3. Deputy Director Brenda Crowding OIA
- 10/19

Armstrong Remedial Plan
- 1824

* - Trained OIA staff on the Arm. Rem Plan

- Aims started 1/27/20 Northern Reg. + RTO
- Southern Region 4/1/20

5. Need to observe Central Intake
and AIMS

6. Tracking system complete? ① Clark
Armstrong
Columbus
② staff reporter
- Armstrong/Columbus designator
- Not complete - all data in, < Public Facing

OACC review ready - for
entire grievance process 1/1/21

OIG started - meeting every other week for next
Familiar w/ Mac 2

Activated
NORCAL + RTO
in 1/20

2019 OIG report
of SVSP

AIMS

A. Disruptive likely
B. reasonable 4.
C. 30 days

2019 - 1700
allegations at
Ox of Fox

100 SBI
↓
Complaints
by inmates

Will review?
Call institution
to check on
AIMS whether
done correctly?

Grievance Process

A. 602 filed w/ Grievance Officer.

B. Grievance Coordinator

C. Warden's Office

A. Adverse Action + reasonable belief = 989 to OIA

B. Adverse Action + no reasonable belief = AIMS

C. No Adverse Action even if true = Local

* Ave # of
complaints against
staff is 7,000
years.

AIMS Process

1. Analyst logs it in - tracking number

2. Captain of unit reviews

a. If likely to result in adverse action it stays in AIMS

b. If not, returned to H.A. If it merits formal investigation, it is returned to H.A.

3. Issued to inv. Lieut. for inquiry.

* All allegations of Captain or higher to OIG?

4. If inquiry shows reasonable belief that misconduct occurred, it's reviewed by the Captain + C.A. Admin. and returned to H.A.

5. If no reasonable belief, it's terminated

95% July
85% Aug.
85% Sept. } MCRP

Reasons for AIMS

1. OIG report into staff misconduct at SVSP
2. Staff investigators were biased.
3. Ignored inmate witness testimony.
4. Staff compromised inmate confidentiality
5. Staff lacked training in investigations
6. Many inquiries were incomplete
7. Staff failed to ask relevant questions
8. CDCR concluded these problems likely existed elsewhere

Under AIMS

1. Staff are independent of the hiring authority
 2. Staff are not influenced by bias since they don't work together.
 3. AIMS investigators were ~~trained~~
 - Training including interviews,
 - 3.5 days of training.
 4. Dep. Director of OIA is in charge.
- * How often does OIA review?
- ☐ Interview Paul Edwards
5. CD Admin, Captains (6-7), Inv. Lieut. (37-38)
- * ☐ Hiring complete in the South? When?
- * ☐ How much time are investigators spending in the field vs office work?

Use of Force

1. Use of Force

- A. Incident Commander does eval.
- B. Captain's review
- C. A/W review
- D. Institution Exec. Review Comm.

up to 48 hours - Headed by the warden

2. Video tape the inmate interview and injuries

IG Review

- P. 577
- ① 45 days to complete
 - ② documented + summarized
 - ③ interviews of all reasonably identifiable witnesses and collection of all documentation likely to provide relevant info.
 - ④ Free from bias.

IG Questions

3. OIG publicly.

AIMS Tracking System

North -

South -

17/18

RJD - 115 → 17 UoF since 1/1/20

CSP Sac. 76

CTF ~~ESP~~ Soledad - 45

mule - 31

PBSP

Cos - 70 since 4/1/20

⚡

Cameras/audio - CCWIF pilot
 - 90 day override
 - Couple million annually

HDSP - Cameras

CSP-SAC - Camra

CAC - Cameras

~~HEC~~ CECF - Camras

CMF-vacant - Needs Cameras

RJD - CIW, SVSP. - Were supposed to

to

LAC
25 Aims Accepted
13. U of Force

0 Response to OIC

RTD 18
3/4
Warden Potamo retired

Pat Corello

Marcus Pollard

LAC Warden Raybon Johnson

Use of Force Process / Background

- Timing of process
- Training
- Identifying problems
- Data on UoF generally + Armstrong particularly.
- Cooperation from HQ

Background LAC

Medical hub for EOP and EOP Ad Sq.

- Reentry Hub.

- Facility A is a Progressive Programming Facility

D. EOP hub (533)

B. 6P

1.5 ASU EOP

C. SNY - CS was

→ a year ago

CCMS / ADA / EOP / some SNY

Pop. 1/19 = 3,127 136.1% 2300 8/19/20 3025 131.5

- 2017 - 506 UoF

18 - 555 UoF

19 - 568 UoF

20 -

□ Armstrong Inmates / UoF

Warden since 10/2018

Warden Johnson

U of F w/ ASA 48 hours of findings

- Captain of D
A/w C of D.
Chief Dep.
1. Video of inmate and report ~~in~~ ^{of findings} 48 hours
 - Done by SGT at the facility
 2. U of F ^{Coordinator logs.} report reviewed by Chief Deputy.
 - 3013/14 reports, video, incident packets
 3. IREC
 - Chief Dep., U of F coord, IST, MH. Nurses ~~Trainer~~, Capt, A/w
 4. Only 30 days to get thru IREC.
 5. If at any time there's misconduct they fill out a 989 to OIA
 6. Warden doesn't know the Alms process.

Grievance Process

- Captain's OT/OA picks them up. M-F
- Then to ~~U of F~~ ~~Captain~~ to admin
- Grievance O/A takes them back.
- Logged in by Grievance Coordinator
- Timely? assign
- Goes to SOMS - then Alms
- Goes to institution Lt's
 - ~~4~~ Could be their own EAC
- Appeals

*

Armstrong Class Tour

Bulk complaints w/ 100's allegations.
Each one assigned.

Urgent first

After several tours - 7/16/19, 8/28/19, 10/9/19, 11/5/19,
- 209 PLO Investigators 2/17/20
Called HQ.

- Sent LT CMF, Tolson, NKSP,
CRC, 2 Cal City on
special assignment.

Redacted

Greenwood. appeals small 2014

Monty Fordham CC II special
2 CC II, AGPA, O/A

Beginning
in June
2020

Now Grievance can be rejected for only
for reasons (used be 28)

1. duplicate
2. Late Claim 30 days
3. don't involve claimant
4. CDCR has no jurisdiction

Now allow multiple claims ~~one~~ one griev.

Now use the same system as HC Grievances

Now - New Grievance Forms coming.
- Scanned into SOMS
- SOMS generates a notice that grievance
has been resolved.

Now ~~Only~~ Statewide call every
Tuesday.

Now 32,000 statewide thru June
- at LAC 700 month, only 350
or 400 accepted
*- now 95% are accepted was 50%

Now - AIMS investigated claims against staff, instead of housing ~~unit~~ staff

* - AIMS should indicate whether "it appears" that misconduct has occurred

* Need to ask direct questions of staff, need to interview involved witnesses.

* EWS needs to recognize that some C/O's are targeted.

* Grievance office now flooded by forms + claims. Need more staff or reject for:

1. Indecipherable
2. inmate withdraws grievance.

AGPA
U of F coordinator Enrique Martin.
2 - AGPA's

- Now - Use of Force package in SOMS
- Incident Commander generates package w/ Captain
 - A/W is 2nd level.
 - 1. 48 hour interview of V
 - 2. Forms 3010 U of F critique
3012 A/W critique
 - 3. Email to U of F coordinator saying package is complete.
 - 4. U of F coordinator ensures package is complete + asks clarifying questions thru SOMS to incident commander
 - 5. U of F coordinator reviews and recommends corrective action of training.
 - 6. Looking for compliance w/ Dom + training, local operating procedures

Now - No staff who used or observed force are interviewing the inmate, but always a different housing unit.

Now AIM * Needs to give a recommendation as to whether there was a violation of prison

ALMS cart.

- ☐ How many opened?
How many returned to inst.?
How many to OIA?

- Emergency Regs submitted in March 20
and went into effect 6/1/20

- ☐ Can an inmate appeal the grievance outcome?

- ☐ need the training docs + other paperwork

- ☐ Use of force involving SBI?
 - why not other ^{user} use of force?
 - no allegation of misconduct
 - ~~because it~~
 - GBI goes to OIA

* CCR filed 8 staff for misconduct
against Armstrong inmates

* LAC Inmate Dec's 814-841

* LAC 1270 Chart

* LAC Row 1322

- Healthcare Appeal

☐ Call ADA coordinator

- Accommodation for ADA inmates

- Training - on U & F

- Training on ADA compliance

☐ AIMS Dashboard now tracks

☐ Diaz on Training.

Redacted

2474
987
18/4/5
Mod
June

111 111 111
2020

11 - c/o assault
11 - inmates fight
1 - resisting c/o
1 - self harm in cell

AOA

5,3,5
7,56
5535
4335
5465
2535
4644
2365
6573
4543
9423
435
7463
571

A. 10 Vol F 23 inches
B. 55 Vol F 117 inches
C. 57 Vol F 114 inches
D. 70 Vol F 127 / 11
192

AOA
9
11
11

C
111 111 1753
111 111 6475
111 111 3432
111 111 4934
111 111 5437
D 111 111 5656
3

6665
5654
6557
6533
5789
4742
3324

2474
9874
3346
7556
4565
5666

March 11
4641 JAN
234
789 FEB
1

6665
54
2584
6553

→ Armstrong & Coleman EOP

- interaction w/ C/O King. Coleman snitch 2013

Removed from medical appointment to beat him, then beaten again at his home
C/O says it was cell front resistance. Threatened to kill C/O King.

① C/O report consistent w/ medical ② [redacted] gave inconsistent statement

③ officer Williams not in the area ④ DA charged [redacted]

[redacted] - Coleman - C/O says [redacted] fell out of the cell; [redacted] says he was thrown down. C/O reports were poorly done & inconsistent. Other C/O said they didn't see it. Inmates were inconsistent - some said he fell others that he was pulled.

[redacted] - Coleman EOP; wheelchair at times. Claims C/O threw him from his chair and beat him. Then beat him at the gym. C/O says [redacted] wasn't in a wheelchair. ① Injuries inconsistent w/ alleged beating. ② C/O reports consistent / inmates inconsistent.

[redacted] - Coleman ccms. Angry over RVR, refused to relinquish cuffs. Admitted peeing over windows / refused to relinquish. Alleged gang rape. ① Threatened to "get back at C/O's" ② C/O statement consistent & coherent ③ inmate witness said no rape ④ Tied to ~~some~~ pay for a false witness ⑤ jumpsuit ⑥ medical exam did not show trauma

[redacted] - 9/19 Pulled from wheelchair & dumped onto ground
- Threw bag of soiled diapers and got up to fighting stance
- spit mask, threats (one inmate agreed w/ [redacted])
- 9/18 Ran out a C/O due to pill line dispute - hit staff

██████ - 2 complaints - One he claimed he had some DME taken. In two, he alleged he was assaulted by staff while holding the fence. C/O's said he was punched. C/O's said he left the chair and grabbed the fence. No injuries reported.

██████ - Armstrong/Coleman EOL
8/18 Fight w/ staff, then 2 days later beaten by staff in cell extraction - Admitted out of bounds, then denied memory problems, gave staff case. Admits he jerked away from staff hold. No use of force allegation for a month. Inmate's too.
Inmate said ██████ threw punch.

██████ 4/20 suicide, peppered over window; cell extraction
Baton used - cause broken bone, split head.
██████ had officer in choke hold, kicked.

PREA

██████ - 1/20 Armstrong/Coleman Claimed C/O entered cell and beat him. Digitally punishable. Then 2nd beating in gym. Refused to give a statement, C/O said ██████ gassed him. "Hitting, + forcing return" other witness
"I told you fuckers I can't programmed on this yard."

██████ - Armstrong/Coleman
9/17/ RVR for rolling over C/O foot
to 10/18

Wanted a specific inmate helper
Refused toilet paper (other inmates disagree)

on-going

Told psych tech he was dropped to gym and sexually assaulted

[REDACTED] Coleman EOP, ~~to~~ Armstrong. 7/18
Cell movement - leg in the door. Smashed window
w/ cane - inmate testified w/ C/O story.
4/18 I'm Big K Tray from Denver Bloods & the police
No injuries!
- Shot two cops

On-going

[REDACTED] - EOP/PIP Hallucinations/Armstrong
6/19 Staff assaulted him at cell front - Black Eye; split chin
Inconsistent statements re language from [REDACTED]
4/23 Inmate's statements witnesses saw punch + take down
Referred to OIA

[REDACTED] - Claims taken down + Beaton - 4/0
says he dropped to the floor and they helped
him up.
Allegation 3/4/20 - ~~no report until~~ PLO on
No Use of Force reported (AIMS)

[REDACTED]
Claims the SGT hit him in the office
- Nurse noted all injuries are old.
- SGT said he was hit by [REDACTED]
- [REDACTED] Bragged about it

Exhibit 100



6446048

FILED
ALAMEDA COUNTY

OCT 27 2008

CLERK OF THE SUPERIOR COURT

By Pam Williams
Deputy

SUPERIOR COURT, COUNTY ADMINISTRATION BUILDING
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

MARGARET FARRELL,

Plaintiff,

vs.

MATTHEW CATE,

Defendant.

) Case No. RG03-079344

)

) **ORDER**

)

)

)

)

)

)

)

In November 2004, this court issued a Consent Decree that required Defendant to develop and implement remedial plans in six areas: education, medical care, mental health care, safety and welfare, sex behavior treatment, and wards with disabilities. Those remedial plans were developed, but Defendant has not complied with the deadlines in any of them.

In the summer of 2007, having reviewed the Special Master's reports and other documents pertaining to the State's progress in reforming the conditions at its juvenile detention facilities, the court recognized a recurring pattern: that notwithstanding the manifest good intentions of some of the senior managers both within the headquarters of the Division of Juvenile Justice (DJJ) of the California Department of Corrections and Rehabilitation (CDCR)

1 and within the individual institutions themselves, the DJJ seemed unable to meet the deadlines
2 imposed by the six remedial plans, or even to explain why it was unable to meet these deadlines.

3 On August 6, 2007, the court expressed its concerns to the parties from the bench. The
4 court also expressed its belief that "the normal meet-and-confer process between the parties and
5 whatever other case management techniques have been employed until now [would not be]
6 adequate to ensure compliance with the Consent Decree." The court ordered the parties to meet
7 and confer regarding "what court ordered relief, if any, would improve compliance with a
8 Consent Decree by ameliorating or eliminating the problems in the areas of hiring, contracts, and
9 [policy] developments, and information technology," because the Special Master had identified
10 the problems in these areas as presenting the biggest, or at least most obvious, roadblocks to
11 reform.

12 In November 2007, after the parties were unable to agree on a joint proposal to remedy
13 those chronic problems, the court ordered separate briefing on the appointment of a Receiver and
14 other further remedies. The court instructed the parties to brief the extent to which "the record
15 demonstrates that Defendant has violated the Consent Decree, the Remedial Plans, and other
16 orders of this court"; whether a receiver was required to gain compliance with the court's orders
17 and if so, his or her authority and duties; whether as an alternative, Defendant should be given
18 specific new dates for those deadlines he has missed; and whether any other relief, such as
19 monetary sanctions, would be effective "within a reasonable time frame."

20 After preliminary briefing, the court held ten days of hearings on the matter, from April
21 21 to June 11, 2008.

22 At the hearing, Plaintiff called five witnesses, each of whom was a court-appointed,
23 neutral expert in one of the areas covered by the Consent Decree: Safety & Welfare, Sexual
24 Behavior Treatment, Health Care, and Mental Health Care. These experts were selected by both
25 parties for their skills and experience, with the explicit mandate to assist DJJ in the development

1 and implementation of the remedial plans as well as to monitor DJJ's progress. During the
2 hearing, no party challenged these experts' qualifications to construct the remedial plans in this
3 case, to express their opinions at the hearing (although the opinions themselves were
4 challenged), or to continue to assist the parties and the court in the future with reform of the
5 state's juvenile system.

6 The experts testified as to both the positive and negative aspects of DJJ's performance
7 and capabilities, but were uniform in their conclusion that Defendant has failed to comply with
8 fundamental court-ordered remedies and has failed to progress appropriately towards reform.
9 The experts further cited profound concerns over DJJ's leadership and commitment to and
10 capacity for change. Many of the experts also testified that they would have expected
11 substantially more progress from DJJ given the length of time since the signing of the Consent
12 Decree. Significantly, however, none of the experts testified that the appointment of a receiver –
13 at this time – was the best way of bringing the state into compliance with the deadlines imposed
14 by the remedial plans.

15 The Defendant, on the other hand, introduced almost no evidence concerning the
16 conditions at its juvenile facilities. Rather, DJJ's argument at the hearing and the testimony of its
17 witnesses fell into two broad categories: (1) that the deadlines imposed by the Consent Decree
18 were overly ambitious; and (2) that the principal reason the State had failed to accomplish more
19 of the reforms required by the Consent Decree was its lack of project management personnel and
20 planning, and that the State had now addressed these deficits by promoting experienced
21 personnel and hiring qualified consultants.

22 ///

23 ///

24 ///

25 ///

I. Findings of Fact

A. After Nearly Four Years of Reform, Many of the Conditions in DJJ That Gave Rise to the Consent Decree Remain the Same and DJJ is in Gross Violation of this Court's Orders

The court incorporates by reference and adopts as its findings of fact the proposed findings of fact set forth in Section A at pages 5-30 of Plaintiff's Second Corrected Proposed Findings of Fact and Conclusions of Law Re: Appointment of a Receiver or Other Relief ("Plf's Prop. Findings").¹

B. The Experiences of Other States Are of Limited Relevance

At the hearings, the State attempted to excuse its failure to comply with the deadlines set forth in the remedial plans by introducing evidence regarding reform efforts in other states. DJJ failed to demonstrate that other states' experiences are good benchmarks for assessing California's progress, for three reasons.

First, this argument depends on an assumption that is not supported by the facts – that DJJ's poor progress in implementing the remedial plans can only be explained by overly aggressive deadlines. In fact, DJJ's progress measured against *any* reasonable deadline has been inadequate. In other words, even if the deadlines had been set further away, the state's progress to this point would still be inadequate. In some areas, the State has failed to take even the most basic, foundational steps to implement reform. For example, the parties agree that the DJJ is a policy-driven agency, and the development of new policies is a prerequisite to implementation of

¹ For the most part, the content and tone of the Plaintiff's proposed findings in this section are well-founded and appropriate, even though they are harsh (e.g., "[t]he physical condition of many of the units remains deplorable"), and the court has adopted the Plaintiff's findings on that basis. The court does not adopt the phrase, "[a]lso subject to universal condemnation are the institutions that house youth," however, because the phrase is not in the language of a finding and does not assist the parties, the experts, or the court understand or evaluate the conditions at DJJ facilities.

1 reform. By its own witness' admission, however, DJJ has written only 12 policies in the last
2 year out of the 800 necessary for implementation of the remedial plans – and not all of those 12
3 even relate to the remedial plans. DJJ has neither a date to develop the remaining policies nor a
4 date to set a date to develop them.

5 Second, DJJ failed to demonstrate that the needs, experiences, and requirements of other
6 states' reform efforts are comparable to those in California. The other states have different ward
7 populations, different problems, and different goals. The fact that Missouri took twenty years to
8 reform, or Massachusetts took fifteen years, says little about how long reform in California
9 should take. The experts who testified on this point were not able to draw the "apples-to-apples"
10 comparisons that would enable anyone to determine whether other states' experiences are valid
11 benchmarks.
12

13 Lastly, Dr. Barry Krisberg, whose professional experience makes him able to compare
14 the various states' experiences, testified that DJJ's progress in making reform has been
15 unacceptably slow. Dr. Krisberg is a nationally recognized expert on juvenile reform, and is
16 knowledgeable regarding the reform efforts in other states, and the court attaches great weight to
17 his testimony.

18 **II. Conclusions of Law**

19 The evidence having established that the Defendant has failed to comply with the
20 Consent Decree, the court turns to the question of remedy.

21 **A. The Court Has The Authority To Appoint A Receiver**

22 As a preliminary matter, the court must address the State's argument that the court lacks
23 the authority to appoint a receiver to take control of the State's management of its juvenile
24
25

1 facilities. The court rejects this argument.²

2 **1. California law authorizes the appointment of a receiver in the present**
3 **case**

4 The plain language of Code of Civil Procedure Section 564 (Section 564) authorizes the
5 appointment of a receiver in this case. Under Section 564, receivers may be appointed in all
6 cases “where necessary to preserve the property or rights of any party” and “[a]fter judgment, to
7 carry the judgment into effect.” (Code of Civ. Proc. §§ 564(b)(9), 564(b)(3); see also *People v.*
8 *Black* (1982) 32 Cal. 3d 1, 5 [“in determining [legislative] intent the court turns first to the
9 words themselves for the answer”] [citations omitted].) Under the well-settled principle that a
10 statute should be construed in accordance with its ordinary meaning, Section 564 thus
11 empowers the court to install a receiver to preserve a party’s rights, not just limited to property.
12 (See e.g., *Jarrow Formulas, Inc., v. LaMarche* (2003) 31 Cal.4th 728, 733; see also *Davis v.*
13 *City of Berkeley* (1990) 51 Cal.3d 227, 234.) The legislature’s choice to authorize the
14 appointment of a receiver in cases that involve “property or rights” must not be ignored. (*Black,*
15 *supra*, 32 Cal.3d at 5 [“if possible, significance should be given to every word, phrase, sentence
16 and part of an act in pursuance of the legislative purpose”] [citations omitted].)

17 Even if Section 564 only allowed the appointment of a receiver in actions involving
18 property rights, it would authorize a receiver in the present case because property interests are,
19 in fact, at issue. Property interests are central to the present case because it is a taxpayer action,
20 brought to prevent Defendant from expending taxpayer funds on illegal policies, practices and
21 procedures. The receiver would take on the role of managing taxpayers funds – which is
22 unquestionably a matter of property. The receiver’s role to provide leadership and executive
23 management of DJJ would be analogous to that of receivers appointed to manage corporations

24 ² As stated later in this order, the court has determined that the appointment of a receiver is not,
25 at this point in time, the best way to protect the interests of California’s juvenile wards or its
taxpayers. The basis for this determination, however, is not that the court lacks the authority to
do so.

1 in imminent danger of insolvency who “stand in the shoes of the corporation.” (16 Fletcher
 2 Cyc. Corp. 2007 Receivers, § 7813 [“[w]here a receiver conducts the business of the
 3 corporation, that receiver takes the place of the directors in the management of the corporate
 4 affairs. Any legal duty of the company to perform or not to perform a certain act devolves upon
 5 the receiver. . . .”]; see also Code Civ. Proc., § 564(b)(6); *Boyle v. Superior Ct* (1917) 176 Cal.
 6 671, 674; *People v. Riverside University* (1973) 35 Cal. App. 3d 572, 577, 580 [court appointing
 7 receiver to operate and supervise university noted that “when a receiver is appointed to take
 8 possession of and operate a quasi-public corporation obligated to render continued service to the
 9 public . . . he may in the first instance be vested with broad authority to do anything the
 10 corporation might have done to make the most out of the assets in his hands”] [internal citations
 11 omitted].)

12 2. This court has the equitable power to appoint a receiver

13 In addition to its statutory authority, this court has broad equitable power to fashion a
 14 remedy to address the persistent violations at DJJ. As the California Supreme Court and
 15 appellate courts have repeatedly stated, the object of equity is to do right and justice. It

16 does not wait upon precedent which exactly squares with the facts in controversy,
 17 but will assert itself in those situations where right and justice would be defeated
 18 but for its intervention. It has always been the pride of courts of equity that they
 19 will so mold and adjust their decrees as to award substantial justice according to
 the requirements of the varying complications that may be presented to them for
 adjudication.

20 (*Times-Mirror Co. v. Superior Court* (1935) 3 Cal.2d 309, 331 [internal citations omitted];
 21 *Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 770). Indeed, “[t]he powers of a court of
 22 equity . . . are not cribbed or confined by the rigid rules of law. From the very nature of equity, a
 23 wide play is left to the conscience of the chancellor in formulating his decrees . . . It is of the
 24 very essence of equity that its powers should be so broad as to be capable of dealing with novel
 25 conditions.” (*Hirshfield, supra*, 91 Cal.App.4th at 770-71, citing *Bechtel v. Wier* (1907) 152 Cal.
 443, 446). Echoing the language of Section 564, California courts have held that “[t]he

1 jurisdiction of a court of equity to enforce its decrees is coextensive with its jurisdiction to
 2 determine the rights of the parties, and it has power to enforce its decrees as a necessary incident
 3 to its jurisdiction.” (*Ecker Bros. v. Jones* (1960) 186 Cal.App.2d 775, 786 [citations omitted].)

4 **3. The court’s authority to appoint a receiver is not limited as Defendant**
 5 **suggests**

6 Citing *Woodward v. Superior Court*, Defendant claims that “[i]t has long been the law
 7 that the superior court has no power to appoint a receiver except as authorized by the statute.”
 8 (Defendant’s Response to Order to Show Cause (Apr. 14, 2008) (“Def.’s Resp.”) at 6.) This is
 9 not correct. The *Woodward* court did appoint a receiver pursuant to statute. (*Woodward*, 95 Cal.
 10 272, 276 (1882); see also Cal. Code Civ. Proc., § 564.) It did not, however, state that the court’s
 11 authority was limited to statutory authority. To the contrary, the California Supreme Court in
 12 *Woodward* reasoned that the superior court’s action, “though regulated to a great extent by the
 13 statute, partakes more fully . . . of the principles and rules of equity than those of law.” (95 Cal.
 14 at 276, quoting *Gates v. Salmon* (1868) 35 Cal. 576, 593.)

15 Courts of equity have inherent power to appoint receivers in aid of their equity
 16 jurisdiction, and the exercise of the power rests very largely in the discretion of the chancellor.
 17 (*Misita v. Distillers Corp.* (1942) 54 Cal.App.2d 244, 252; *Davies v. Ramsdell* (1919) 40
 18 Cal.App.432, 432.) The power of courts of equity to appoint receivers is not dependent upon any
 19 statute. (*Nichols v. Superior Court* (1934) 1 Cal.2d 589, 596; *Murray v. Murray* (1896) 115
 20 Cal.266, 274.)

22 The California Code of Civil Procedure states that the court has power to appoint a
 23 receiver in any case in which the court is “empowered by law.” (Code Civ. Proc., § 564(a).) As
 24 the Court of Appeals of Michigan explained, interpreting the analogous statute in the State of
 25 Michigan:

1 Although there are several statutes which specifically allow appointment of a
 2 receiver, the phrase "allowed by law" is not limited to these statutes, since . . .
 3 there are cases where the trial court may appoint a receiver in the absence of a
 statute pursuant to its inherent equitable authority.

4 (*Wayne County Jail Inmates v. McNamara* (1989) 178 Mich.App. 634, 649 [interpreting MCL
 5 § 600.2926].) The phrase "empowered by law," as used in the California statute should be
 6 construed similarly.

7 **4. The appointment of a receiver does not violate the Separation of**
 8 **Powers doctrine**

9 Defendant also argues that the appointment of a receiver would violate the Separation of
 10 Powers doctrine. "The separation of powers doctrine limits the authority of one branch of
 11 government to appropriate the core powers of another branch." (*Zumbrun Law Firm v.*
 12 *California Legislature* (2008) 165 Cal.App.4th 1603, 1613.) The Defendant has not cited any
 13 case in which it was held that the appointment of a receiver over a government agency violated
 14 the Separation of Powers doctrine, and the court has not located any.

15 Defendant has already acceded to the court's authority by the entry of the Consent
 16 Decree. Defendant retains a degree of discretion regarding how that Decree is performed, but
 17 Defendant does not have the discretion to violate it. Because it is a function of the judicial
 18 branch to provide remedies for violations of law, including violations committed by the
 19 executive branch, the appointment of a receiver over a government agency would not violate the
 20 Separation of Powers doctrine.

21 The cases cited by Defendant are distinguishable. In *In re Ashley M* (2003) 114
 22 Cal.App.4th 125, 136-137, the court reversed a trial court order directing a social services agency
 23 to assign a particular social worker to a family that was receiving services. Similarly, in *In re*
 24 *Walter E.* (1992) 13 Cal.App.4th 125, 136-137, the court reversed a trial court order directing the
 25

1 social services agency to employ a particular expert. In both these cases, the court's rationale
2 was that selection of an individual case worker or expert "is essentially a ministerial function that
3 should be left to the agency with expertise in the area [a]s a matter of sound public policy."
4 (*Ashley M.*, 114 Cal.App.4th at 9, quoting *Walter E.* at 137.)

5 However, even the *Ashley M.* court distinguished the case involving the selection of a
6 particular agency employee from a situation involving agency-wide failure to comply with the
7 law, which is the situation presented here:

8
9 Upon finding that SMHSA's reports were incomplete or inaccurate, the court
10 could have directed the agency to submit additional or more detailed reports,
11 could have directed the social workers who prepared the reports to appear in court
12 for questioning, could have appointed an outside expert to review the parent-child
13 relationship, and could have fashioned other appropriate remedies directed to the
14 agency as a whole.

15 (*Ashley M.* at 9-10, footnote omitted.) Here, of course, the court is faced with a remedy that
16 must be "directed to the agency as a whole."

17 **B. The Court Will Not Appoint A Receiver At This Time**

18 Establishing that the court has the authority to appoint a receiver does not end the court's
19 inquiry. The court must also be able to conclude that the appointment of a receiver is necessary
20 for the enforcement of the Consent Decree, and is in the best interests of California's juvenile
21 wards and its taxpayers. Measured against this test, the court concludes that appointment of a
22 receiver may become necessary in the future, but is not warranted now.

23 In reaching this conclusion, the court is not signalling that Defendant's progress in
24 implementing the Consent Decree has been adequate or satisfactory. To the contrary, the court
25 agrees with Plaintiff that the Defendant's progress has been inadequate.

Rather, the court has concluded that even though Defendant has failed until now to take
adequate measures to implement the Consent Decree, divesting Defendant of the authority to do

1 so now is not in the best interests of California's juvenile wards, for the following reasons: (1)
2 the Defendant has undertaken substantial structural changes, which may now allow Defendant to
3 begin meeting the deadlines that are crucial to DJJ's reform efforts; (2) Defendant, who recently
4 took charge of the CDCR, should be given an opportunity to demonstrate his commitment to the
5 State's obligations under the Consent Decree before his authority is taken away by the court; and
6 (3) the appointment of a receiver is an expensive, intrusive measure that should be a measure of
7 last resort.

8
9 Turning to the first reason, Defendant has persuasively argued that it lacked the project
10 management capabilities necessary for reform when it signed the Consent Decree. (See, e.g.,
11 Defendant's Proposed Findings of Fact and Conclusions of Law Re: Appointment of A Receiver
12 and Compliance with Consent Decree and Remedial Plans ("Def. Prop. Findings") 17:6-9
13 ("[u]ncontroverted evidence indicates that the initial target dates for this first-of-its-kind project
14 were made with little time, under pressure, and without the benefit of a sound project planning
15 methodology to assure that adequate consideration had been given to task dependencies and
16 available resources").) Plaintiff agrees that Defendant's lack of project management has
17 hampered its ability to comply with the Consent Decree. (Plf's Prop. Findings 30:21-22 ("[f]rom
18 the very beginning of the remedial process Defendant has not had and does not currently have an
19 adequate project management process").) Defendant has now contracted with Delegata, a project
20 management firm, to give DJJ the project management capability it needs.

21
22 DJJ has also improved its ability to collect the data it needs to measure compliance with
23 the Consent Decree. Its historical deficit in this area has seriously hampered its reform efforts;
24 even if DJJ's project management skills had been sufficient to implement develop and
25 implement the remedial plans, its poor data collection mechanisms would have prevented it from

1 knowing whether it was succeeding.³ Now, however, DJJ consultant Chris Murray has DJJ's
2 staff, with the assistance of its planning consultant, Chris Murray, has developed a spreadsheet
3 reporting system that examines DJJ's compliance with individual audit items. This capability, in
4 tandem with DJJ's improved project planning, should permit DJJ finally to develop, implement,
5 and monitor compliance with the remedial plans.⁴

6 DJJ has also significantly enhanced its management capabilities. Until early 2008, key
7 positions in DJJ's management team were not filled. Brigid Hanson, DJJ's Director of
8 Administration-in charge of DJJ's Operations Support Unit was hired in August 2007. Doug
9 McKeever, DJJ's Director of Programs-responsible for DJJ's educational programs, health care
10 services, mental health, and all the programs encompassed by the integrated behavior treatment
11 model-started in January 2008. And Sandra Youngen, DJJ's Director of Facilities – responsible
12 for all facility operations – is new to DJJ's management team.

14 The second reason the court has deferred the appointment of a receiver is that the court
15 has concluded that the CDCR's new leadership should be given the opportunity to demonstrate
16 its commitment to reform of DJJ. Matthew Cate was appointed Secretary of the CDCR by
17 Governor Arnold Schwarzenegger on May 16, 2008, while the Order to Show Cause proceedings
18

19 ³ The DJJ's WIN Exchange software is one piece of the solution to this problem; DJJ's failure to
20 bring this software online was one of the bases of the court's original Order to Show Cause. The
21 system is now online.

22 ⁴ The court's comments should not be read as a wholesale endorsement of Mr. Murray's data as
23 presented at the hearings in this case. His data purports to demonstrate DJJ's overall level of
24 compliance with the Consent Decree by measuring its "substantial compliance" with all of the
25 audit items required by each of the plans. The Plaintiff has justifiably criticized this approach for
giving equal weight to all remedial plan requirements, although some are more important than
others. (Plf's Prop. Findings 29:16-17.) Nonetheless, the court's questioning from the bench
demonstrated that DJJ's new data-gathering capabilities could be deployed in a number of
different ways, including limiting measurement to those audit items that the parties, or the court,
found most important.

1 were underway. The pervasive problems within the DJJ, the entry of the Consent Decree, and
2 the DJJ's inadequate response to the Consent Decree, all took place prior to Secretary Cate's
3 appointment. Secretary Cate should be given a chance to demonstrate a new institutional
4 commitment to the Consent Decree. The appointment of a receiver would eliminate this chance.

5 Significantly, Secretary Cate has already demonstrated his commitment to reform of
6 DJJ's facilities and the safety of its wards in his prior position as Inspector General. In February
7 2007, he issued a "Special Review of High-Risk Issues at the Heman G. Stark Youth
8 Correctional Facility" ("Special Review"). In a press release dated February 27, 2007, then
9 Inspector General Cate summarized the Special Review's conclusions as follows:
10

11 The state's largest youth correctional facility—the Heman G. Stark Youth
12 Correctional Facility in Chino—still keeps large numbers of wards isolated for all
13 but two hours a day, fails to provide them with mandated counseling and
education, and has neglected to prevent them from covering their windows and
having ropes and other potentially dangerous materials in their rooms.

14 (Press Release, Office of the Inspector General, Feb. 27, 2007.) As the foregoing language
15 suggests, the Special Review shows the lengths the DJJ still must go to implement the reforms
16 required by the remedial plans. It also, however, demonstrates Secretary Cate's preexisting
17 awareness of the *need* for these reforms and his willingness to confront CDCR's leadership with
18 its failures of execution. Now that he *is* that leadership, the court hopes that CDCR will reflect
19 this same commitment to reform.
20

21 The final reason the court will not appoint a receiver at this time is that such a step, while
22 not final, is expensive and disruptive to undertake, and difficult and time-consuming to undo.
23 The court may yet appoint a receiver, but it must be convinced that all other remedies have been
24 tried, and failed. A receiver must be the remedy of last resort.
25

1 *District of Columbia v. Jerry M.* (D.C. App. 1999) A.2d 1206, 1208 is instructive. There,
2 a class of juvenile detainees sued the District of Columbia for failing to provide appropriate care,
3 rehabilitation and treatment. (*Id.* at 1208.) The D.C. Court of Appeals cited an “abysmal”
4 failure to comply with the requirements of the Consent Decree spanning 11 years. Still, the
5 appellate court was not persuaded that trial court had a sufficient basis for the imposition of a
6 receiver. (*Id.* at 1207, 1213.) The court reasoned that, “[t]he appointment of a receiver to act in
7 the place of elected and appointed officials is an extraordinary step warranted only by the most
8 compelling circumstances.” (*Id.* at 1213 (quoting *Morgan v. McDonough* (1st Cir. 1976) 540
9 F.2d 527, 535) (internal quotes omitted).) The appellate court found that, in appointing a
10 receiver, the trial court failed to consider the availability of new management and the prospect
11 that the new management would be just as effective as a receiver would be. (*Id.* at 1214.) Thus,
12 the appellate court held that the trial court abused its discretion, and reversed the trial court’s
13 order appointing a receiver. (*Id.*)

15 Like the trial court in *Jerry M.*, the court here must seriously consider Defendant’s claims
16 that the appointment of a receiver will likely impede progress, and that, with new project
17 management and planning consultants, DJJ can now accomplish the work that remains to be
18 done in implementing the Consent Decree. The Court should not appoint a receiver over DJJ
19 unless it finds that CDCR’s new leadership and DJJ’s new resources are unlikely to “turn the
20 tide,” and that compliance with the remedial plans can be achieved more speedily with the
21 appointment of a receiver than without one.⁵ Of course, if DJJ still fails to meet its obligations
22 even after a change in leadership and the deployment of new project planning efforts, the court
23 will be in a better position to conclude that only a receiver can bring about the needed reforms.

25 ⁵ As previously noted, no witness for the Plaintiff testified that appointment of a receiver at this time would achieve that result.

1 **C. Additional Orders To Ensure Compliance With The Consent Decree**

2 Having found that the DJJ has failed to comply with its obligations under the Consent
3 Decree, and in light of the evidence presented in response to its Order to Show Cause, the court
4 finds that the following additional orders are necessary to ensure compliance in the future.

5 **1. Modification of Deadlines**

6 Defendant argued repeatedly during these proceedings that a significant reason it has not
7 complied with the deadlines required by the Consent Decree and the remedial plans is that the
8 deadlines are not realistic. (Def.'s Prop. Findings 5:15-16 "[a]s might have been expected, these
9 target dates, established without adequate time and under pressure, were wildly optimistic".)
10 There is no way to know; if DJJ had done an adequate job of project planning, perhaps it could
11 have met these deadlines.
12

13 At this point, however, so much remains undone that no one – even a receiver, were the
14 court to appoint one – could meet the deadlines as they currently exist. Therefore, unless the
15 deadlines are adjusted, the court will have no way to enforce them. The parties are ordered to
16 meet and confer with each other and the court's experts, and to propose new deadlines according
17 to the following schedule.

18 By November 21, 2008, Defendant shall file the following with the Court:

19 a. Copies of the standards and criteria from each of the remedial plans, annotated to
20 show the following for each standard/criterion:

21 (i) Whether DJJ then intends to seek modification of the substance of the
22 standard/criterion (due to conflicts between plans or for any reason);
23

24 ///

25 ///

1 (ii) Whether DJJ believes that it has substantially complied with the
2 standard/criterion and the name and title of the individual who is responsible for the assessment
3 and familiar with the facts and evidence upon which it is based;

4 (iii) Whether DJJ anticipates compliance with the standard/criterion by the end
5 of fiscal year 2008-2009; and

6 (iv) The proposed compliance date based on the project management planning
7 that has been accomplished as of that time, i.e. for each of the standards and criteria with respect
8 to which the project management process has produced a projected compliance date.

9
10 Defendant will indicate in its filing whether the Plaintiff agrees to some or all of the
11 proposed schedule modifications. If Plaintiff disagrees with any of them, Plaintiff may file an
12 opposition or counterproposal not later than December 5, 2008.⁶

13 The court will hold a hearing on December 12, 2008 at 2:00 p.m. to determine what
14 modifications, if any, are necessary.

15 b. A list of the subset of standards and criteria with respect to which Defendant
16 considers progress during fiscal year 2008-2009 to be of the highest priority, with a project
17 management task breakdown and schedule based on the project management planning or
18 alternative planning that has been accomplished as of that time.

19
20
21 ⁶ While this order was being drafted, the court received Defendant's Notice of Filing Revised
22 Deadlines For Select Standards & Criteria and Remedial Plans. Whether Plaintiff will object to
23 this document remains to be seen. (Consent Decree, ¶ 18.) If Plaintiff objects, the court will rule
24 on the objections at a date to be set later.

25 To avoid redundancy, the parties are ordered to meet and confer regarding the most efficient
method of resolving the Defendant's request to modify the remedial plan deadlines, and
Defendant is ordered to advise the court by November 21, 2008 whether it will be seeking the
modification of any other deadlines beyond those set forth in its Notice of Filing Revised
Deadlines.

1 c. A list of written policies and procedures with respect to which progress during
2 fiscal year 2008-2009 is of the highest priority, with a schedule through full implementation of
3 each of them. Defendant shall include policies and procedures concerning classification, use of
4 force, grievances, discipline, and youth self-injurious behavior and suicide prevention or explain
5 in detail why these are not considered of the highest priority.

6 d. A detailed explanation of the steps that have been taken since April 1, 2008, and
7 that will be taken, to ensure that DJJ central office develops, finalizes and disseminates essential
8 policies and procedures to the field for implementation within a reasonable time frame, based on
9 an in-depth assessment of the record of DJJ's policy development since October 1, 2007 and an
10 analysis of the number and types of policies that are essential to implementation of the remedial
11 plans.
12

13 2. Compliance Monitoring

14 Although revised deadlines are required, the new deadlines must not become a reason for
15 complacency. Accordingly, the court concludes that prospective enforcement of the Consent
16 Decree requires more frequent compliance reporting, and more active case management.

17 The testimony of Chris Murray demonstrates that DJJ is capable of producing reports
18 showing DJJ's compliance with any particularized group of audit items. The parties are ordered
19 to meet and confer with each other, and the court's appointed experts, to develop a "snapshot"
20 list of the audit criteria that will be most helpful to the court in monitoring DJJ's compliance.⁷ If
21 the parties are able to agree on the criteria, they are ordered to file their agreement as a stipulated
22 proposed order by November 21, 2008. If they are not able to agree, they are ordered to submit
23

24
25 ⁷ The court will not set an arbitrary limit on the number of criteria. There must be enough of
them to convey a sense of DJJ's overall progress, but not so many that the report becomes
difficult to digest.

1 competing proposals by December 5, 2008. Either party may defend its proposal with briefing
2 or expert opinion, if he or she wishes, provided that the sum of such briefing and opinion does
3 not exceed 15 double-spaced pages. The court will then select the criteria it believes are most
4 helpful. Once the criteria have been selected, Defendant will be ordered to submit an updated
5 list of audit items, showing the level of compliance, every 30 days. As time goes on, the court
6 will modify the audit items to reflect changing circumstances.

7
8 Case Management Conferences will take place in this case at least every 90 days, and
9 more frequently when circumstances dictate. At each such hearing, the parties will propose a set
10 of expected goals or benchmarks for DJJ to meet prior to the next Conference. The court and the
11 parties will set a schedule of Conferences at the hearing on December 12, 2008.

12 3. Expert Involvement

13 The recent hearings demonstrated that DJJ has an adversarial relationship with the court's
14 appointed experts that is hindering meaningful reform. For example, DJJ has hired a number of
15 consultants to assist in project planning, the development of an integrated treatment model, and
16 the monitoring of DJJ's compliance with the Consent Decree. Yet DJJ has failed to involve the
17 court's appointed experts in any of these efforts, even though DJJ helped select these experts and
18 even though the experts work for the court.⁸

19
20
21 ⁸ In his testimony, Dr. Terry Lee noted that communication with DJJ staff had not been "what I
22 would have expected nor what I think would be optimal given that we're also the monitors."
23 (Reporter's Transcript, May 9, 2008, at 70.) In his view, some DJJ attorneys "were advising the
24 DJJ staff not to be open with us." (*Id.*) He noted that one DJJ psychiatrist informed him that, in
25 the past, he had been told by attorneys he could not speak openly. (*Id.*) Similarly, Dr. Eric
Trupin noted that, compared to other systems he had worked with, it was unusually difficult to
speak or collaborate with DJJ staff and contractors. (*Id.* at 20-21.) He attributed the difficulty to
a message from the department's leadership. (*Id.* p. 23.)

The following excerpt from the Plaintiff's Proposed Findings of Fact is illustrative:

1 This adversarial relationship and the attitude underlying it must stop. DJJ can only
2 achieve the reforms required by the remedial plans if it works in direct partnership with the
3 experts who wrote those plans. If DJJ is not able to see the court's appointed experts as partners
4 in reform, it will have demonstrated that reform can only be imposed from without.

5 In recognition of the role that the experts and the special master play in assisting DJJ to
6 achieve reform, the court makes the following additional orders:

7 1. The special master, her staff and the experts may speak to any DJJ staff or youth,
8 confidentially, at their discretion, unless the youth or staff member refuses consent. Defendant
9 and the Chief Deputy Secretary of DJJ shall encourage all staff to speak freely with the special
10 master, her staff and the experts. They shall also direct key staff, in writing, in each remedial
11 plan area to consult with the experts in the course of developing policies and procedures,
12 programs and plans to implement the remedial plans. This written directive must be written and
13 disseminated not later than November 21, 2008. A copy of this directive, with a list of the
14 persons to whom it was given, must be submitted to the Special Master and appended to the
15 Special Master's next report.
16
17

18
19 The most significant example of DJJ's exclusion of the experts is found in the
20 development of two of DJJ's most critical projects, a screening instrument known
21 as YASI and the Integrated Behavior Treatment Program. Despite repeated
22 requests to meet with the company hired to develop both projects, a meeting was
23 not arranged until after the current proceedings were underway, ten months after
24 the company started work. (Trupin at RT 698:18-24.) As a result of the delay,
25 the experts still have not gathered critical information about the program and have
serious concerns that the methodologies employed may not be appropriate for a
juvenile population. (Trupin RT at 703:25-705:12; Plaintiff's Trial Exhibit E.)
(Plf's Prop. Findings 42:9-17.) The court adopts Plaintiff's proposed language as its finding of
fact.

1 2. Within 20 days, Defendant shall disseminate a written directive, signed by him
2 and by the Chief Deputy Secretary for DJJ, that is directed at all of his agents and employees and
3 reasonably calculated to inform a majority of them effectively that they may and should speak
4 freely with the special master, her staff and the court-appointed experts, about any matters except
5 juvenile court record information about individual youth that is confidential by law. Contractors
6 may be advised to limit communications to those that can be accomplished without interfering
7 with their performance of their contract obligations. Within 10 days of the dissemination of the
8 directive, Defendant shall provide the special master with a copy of the directive and the
9 instructions governing its dissemination.
10

11 3. Effective immediately, Defendant shall schedule meetings or conference calls
12 between the safety and welfare and mental health experts and Orbis Partners and appropriate DJJ
13 staff as reasonably requested by the experts. Within 20 days, Defendant also shall instruct Orbis
14 Partners that they may have direct communication with the experts, initiated by either the experts
15 or by Orbis, as long as it does not interfere with their performance of their contractual
16 obligations within the terms of the contract. The experts shall advise DJJ of the fact, purpose and
17 general substance of their direct contacts with Orbis Partners in the absence of DJJ staff. The
18 experts shall advise the special master of any unreasonable impediments to communication with
19 Orbis Partners, and the special master shall report any unreasonable impediments to the Court.
20

21 4. The court finds that the procedures used by the experts and the Special Master to
22 involve the experts in DJJ's reform work have been inadequate and have resulted in the
23 exclusion of the experts and the loss of their expertise, to the detriment of California's juvenile
24 wards and its taxpayers. Henceforth, any court-appointed expert who believes he or she has been
25 excluded inappropriately from DJJ's reform efforts may notify the Special Master, who may seek

1 the court's intervention by ex parte application, pursuant to California Rules of Court, Rule
2 3.1200, et seq. The court may solicit letter briefs, conduct hearings on shortened time, or take
3 such other steps as are designed to ensure that the Consent Decree is implemented according to
4 its terms, consistent with notice and an opportunity to be heard.⁹

5 IT IS SO ORDERED.

6 DATED: October 27, 2008

ALAMEDA COUNTY SUPERIOR COURT

8 By: 
9

JUDGE JON S. TIGAR

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23 ⁹ The Defendant has requested that the court can help the Defendant comply with the Consent
24 Decree by "encouraging" more collaboration between DJJ's staff, its consultants, and the court's
25 appointed experts. The Defendant further objects that the court lacks the authority to do
anything more than encourage this cooperation, such as order that it take place. (Def. Prop.
Findings at 19:13-17, citing *In re Walter E.* (1992) 13 Cal.App.4th 125, 136-37.) This objection
and the citation to *Walter* misapprehend the role of the court's appointed experts in this
litigation.

(RCD-11/00)

CLERK'S CERTIFICATE OF SERVICE

I certify that the following is true and correct: I am the clerk in Dept. 21 of the Superior Court of California, County of Alameda and not a party to this cause. I served the Order by facsimile at Alameda County, California, following standard court practices.

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10/27/08

Pat Sweeten
Executive Officer/Clerk of the Superior Court


By 
Pam Drummer-Williams
Clerk, Dept. 21

Exhibit 101



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 07-16-2020

Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
KVSP	Appeals Per 100 Inmates	21.76	19.06	19.89	19.58	17.69	19.24	14.22	18.07	17.59	15.07	18.25	19.58	16.82
	Total Appeals Received - All Levels	800	692	718	709	634	694	519	655	631	535	665	701	621
	Appeals Received - 1st Level	565	490	498	502	467	518	389	493	477	412	483	537	503
	Appeals Received - 2nd Level	151	120	135	116	112	103	87	96	103	81	118	106	102
	Appeals Received - 3rd Level	84	82	85	91	55	73	43	66	51	42	64	58	16
	Total Screen Outs - All Levels	503	445	446	434	406	444	319	388	403	335	358	422	392
	Screen Outs - 1st Level	404	367	359	359	339	378	266	335	343	295	311	383	352
	Screen Outs - 2nd Level	57	46	57	43	43	35	37	33	40	27	36	32	27
	Screen Outs - 3rd Level	42	32	30	32	24	31	16	20	20	13	11	7	13
	Total Appeals Accepted - All Levels	297	247	272	275	228	250	200	267	228	200	307	279	229
	Total Overdue Appeals - All Levels	6	2	6	4	14	14	10	19	32	45	55	21	29
	Overdue Appeals (Monthly Cumulative) - 1st Level	2	0	0	0	0	0	0	0	1	0	0	0	0
	Overdue Appeals (Monthly Cumulative) - 2nd Level	1	1	1	1	1	1	1	1	1	2	1	1	1
	Overdue Appeals (Monthly Cumulative) - 3rd Level	3	1	5	3	13	13	9	18	30	43	54	20	28
	Total Overdue ADA Appeals - All Levels	0	0	0	0	0	0	0	0	0	0	0	0	0
	Overdue ADA Appeals (Monthly Cumulative) - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Overdue ADA Appeals (Monthly Cumulative) - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Overdue ADA Appeals (Monthly Cumulative) - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total Modification Orders Issued - All Levels	3	3	4	3	5	8	1	1	2	5	3	1	5
	Modification Orders Issued - 1st Level	0	0	0	1	0	0	0	0	0	0	0	0	0
	Modification Orders Issued - 2nd Level	2	2	1	1	2	4	0	1	0	4	1	1	3



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 07-16-2020
Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
KVSP	Modification Orders Issued - 3rd Level	1	1	3	1	3	4	1	0	2	1	2	0	2
	Total Appeals Granted - All Levels	25	14	15	13	9	12	13	21	14	15	13	19	14
	Appeals Granted - 1st Level	18	11	6	12	6	10	12	16	10	12	6	19	8
	Appeals Granted - 2nd Level	7	3	9	1	3	2	1	5	3	2	6	0	4
	Appeals Granted - 3rd Level	0	0	0	0	0	0	0	0	1	1	1	0	2
	Total Appeals Granted In Part - All Levels	63	61	71	50	44	54	37	54	55	33	47	61	76
	Appeals Granted In Part - 1st Level	37	35	37	25	19	22	13	26	28	15	20	38	32
	Appeals Granted In Part - 2nd Level	25	25	31	24	22	28	23	28	26	18	26	23	44
	Appeals Granted In Part - 3rd Level	1	1	3	1	3	4	1	0	1	0	1	0	0
	Total Appeals Cancelled - All Levels	5	5	4	5	4	3	4	0	3	3	2	2	2
	Appeals Cancelled - 1st Level	0	0	1	0	2	1	0	0	0	1	0	0	0
	Appeals Cancelled - 2nd Level	1	2	1	0	0	0	0	0	1	1	1	0	1
	Appeals Cancelled - 3rd Level	4	3	2	5	2	2	4	0	2	1	1	2	1
	Total Appeals Denied - All Levels	166	90	153	132	122	143	91	129	125	96	101	103	83
	Appeals Denied - 1st Level	85	38	62	60	50	60	40	64	66	46	42	44	46
	Appeals Denied - 2nd Level	55	38	47	35	29	43	19	39	38	35	40	49	23
	Appeals Denied - 3rd Level	26	14	44	37	43	40	32	26	21	15	19	10	14
	Total Appeals Withdrawn - All Levels	54	44	48	48	50	58	42	47	60	48	78	47	60
	Appeals Withdrawn - 1st Level	48	42	45	43	46	56	40	46	58	45	76	42	58
	Appeals Withdrawn - 2nd Level	6	2	3	5	3	2	2	1	2	3	2	5	2
	Appeals Withdrawn - 3rd Level	0	0	0	0	1	0	0	0	0	0	0	0	0
Inmate Appeal Breakdown														
Disciplinary		25	23	21	25	21	21	16	18	24	11	34	18	18
Custody/Classification		12	7	8	16	8	7	11	15	10	13	15	12	12



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 07-16-2020
 Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
KVSP	Mail	19	13	5	9	5	10	3	6	4	10	10	6	10
	Visiting	9	6	13	8	4	9	6	6	8	2	10	5	2
	Personal Property	48	38	35	58	53	53	47	53	41	55	73	52	65
	Case Records	21	8	6	12	6	8	11	7	8	7	16	12	11
	Staff Complaints	20	16	21	20	20	16	12	14	12	4	11	21	17
	Living Conditions	33	26	26	18	25	27	20	35	33	19	24	26	26
	Legal	6	8	11	4	7	7	10	10	12	9	11	5	12
	Program	8	11	9	12	8	6	4	9	9	10	13	9	15
	Segregation Hearings	0	0	0	0	0	0	0	0	0	0	3	4	0
	Work Incentive	13	12	9	11	7	11	4	14	6	7	7	8	11
	Re-Entry	0	0	0	0	0	0	0	1	0	0	0	0	0
	Transfer	2	2	0	2	2	1	3	0	0	3	4	0	0
	Funds	8	4	7	2	6	2	5	4	7	7	8	13	8
	ADA	29	21	42	18	25	25	19	26	23	12	15	30	16
	1824s	0	0	0	0	0	0	0	0	0	0	0	0	0
	Inmate Appeal Rejection and Cancellation Breakdown													
	Multiple 602-A's - 1st Level	12	10	7	12	12	7	7	5	5	3	2	2	7
	Multiple 602-A's - 2nd Level	2	4	1	0	1	0	1	1	0	0	0	0	0
	Multiple 602-A's - 3rd Level	0	0	0	0	0	1	0	0	0	0	0	0	0
	Lack of Supporting Documents - 1st Level	93	70	87	70	88	74	43	55	69	56	67	106	89
	Lack of Supporting Documents - 2nd Level	0	0	1	0	0	0	2	3	2	7	4	1	1
	Lack of Supporting Documents - 3rd Level	9	9	3	0	0	0	0	0	0	0	0	0	0
	Unrelated Documentation - 1st Level	53	49	52	45	34	46	35	57	51	47	30	44	73
	Unrelated Documentation - 2nd Level	3	1	4	1	0	0	1	0	1	0	0	0	0



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Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
KVSP	Unrelated Documentation - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Illegible Appeal - 1st Level	9	13	16	11	9	11	14	8	7	9	13	11	5
	Illegible Appeal - 2nd Level	0	0	0	0	0	1	0	2	1	0	2	0	0
	Illegible Appeal - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Defaced Documents - 1st Level	1	0	2	0	0	0	0	0	1	0	0	1	0
	Defaced Documents - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Defaced Documents - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Incomplete Appeal - 1st Level	6	4	5	11	3	9	4	10	2	1	1	6	4
	Incomplete Appeal - 2nd Level	1	0	0	0	0	0	1	0	0	0	0	0	0
	Incomplete Appeal - 3rd Level	2	3	3	0	0	0	0	0	0	0	0	0	0
	Wrong Form - 1st Level	9	5	5	8	7	8	4	13	10	8	12	13	7
	Wrong Form - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Wrong Form - 3rd Level	2	0	1	0	0	0	0	0	0	0	0	0	0
	Other Reasons for Rejection - 1st Level	17	34	34	23	30	37	21	27	38	14	10	21	18
	Other Reasons for Rejection - 2nd Level	3	4	5	0	0	0	5	1	1	1	1	0	0
	Other Reasons for Rejection - 3rd Level	2	1	1	0	0	0	0	0	0	0	0	0	0
	Duplicate Appeal - 1st Level	24	19	17	12	13	18	11	14	12	4	13	14	16
	Duplicate Appeal - 2nd Level	1	0	1	0	1	0	0	0	0	0	0	2	1
	Duplicate Appeal - 3rd Level	0	0	0	1	3	1	1	0	0	0	0	0	0
	Submittal for Another Person - 1st Level	0	1	1	0	0	0	0	0	0	0	0	0	0
	Submittal for Another Person - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Submittal for Another Person - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Time Constraints Not Met - 1st Level	14	13	9	12	9	7	10	10	7	9	9	21	6



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Data Analysis 13 Month as of 07-16-2020
Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
KVSP	Time Constraints Not Met - 2nd Level	2	0	1	1	0	2	1	1	1	2	0	1	0
	Time Constraints Not Met - 3rd Level	3	2	2	3	0	3	1	2	2	0	0	0	2
	Failure to Follow Instructions - 1st Level	0	0	0	2	0	0	0	0	0	0	0	0	0
	Failure to Follow Instructions - 2nd Level	0	0	0	0	1	0	0	0	0	0	0	0	0
	Failure to Follow Instructions - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Out of CDCR Jurisdiction - 1st Level	10	5	4	1	3	3	2	0	1	0	3	1	1
	Out of CDCR Jurisdiction - 2nd Level	3	3	1	4	2	1	3	0	3	4	4	0	5
	Out of CDCR Jurisdiction - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Issue Under Appeal Has Been Resolved - 1st Level	0	0	1	0	0	0	0	0	0	0	0	0	0
	Issue Under Appeal Has Been Resolved - 2nd Level	0	0	0	0	0	0	1	1	0	0	0	0	0
	Issue Under Appeal Has Been Resolved - 3rd Level	0	1	0	0	0	0	0	1	0	1	0	0	3
	Failure to Interview/Cooperate - 1st Level	0	0	1	0	0	0	0	0	1	0	0	0	0
	Failure to Interview/Cooperate - 2nd Level	5	4	3	2	0	0	2	0	2	1	0	1	2
	Failure to Interview/Cooperate - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 1st Level	0	0	1	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant/Appeal is Under Advisement or Appeal Restriction - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant/Appeal is Under Advisement or Appeal Restriction - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0



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Data Analysis 13 Month as of 07-16-2020
Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
KVSP	Appellant/Appeal is Under Advisement or Appeal Restriction - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Other - 1st Level	239	229	197	223	212	240	156	201	207	211	212	230	193
	Other - 2nd Level	46	38	51	38	40	35	22	25	34	18	31	28	20
	Other - 3rd Level	26	18	21	26	20	26	14	16	20	10	14	8	10
	Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Requests - Total	1	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests - RVR	1	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests - IR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests - Staff Complaints	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - Total	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - RVR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - IR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - Staff Complaints	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Recordings	1	0	0	0	0	0	0	0	0	0	0	0	0
	Inmate Disciplinary - Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Reviews - RVR	1	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Guilty	1	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Reduced	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Not Guilty	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - None	0	0	0	0	0	0	0	0	0	0	0	0	0
	No Audio/Video Evidence - RVR	17	12	18	24	11	11	17	16	31	19	54	175	59
	Incidents - Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Reviews - IR	0	0	0	0	0	0	0	0	0	0	0	0	0



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Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SATF	"In Cell" Incidents (Between Inmates of Same Race)	1	1	0	0	2	2	2	0	2	0	1	2	1
	"In Cell" Incidents (Between Inmates of Different Race)	2	1	0	2	1	1	1	2	0	0	1	0	1
	"In Cell" Battery w/SBI (Between Inmates of Same Race)	0	1	0	1	1	0	0	0	0	0	0	0	0
	"In Cell" Battery w/SBI (Between Inmates of Different Race)	0	0	0	0	0	0	0	0	0	0	0	0	0
	"In Cell" Homicide (Between Inmates of Same Race)	0	0	0	0	0	0	0	0	0	0	0	0	0
	"In Cell" Homicide (Between Inmates of Different Race)	0	0	0	0	0	0	0	0	0	0	0	0	0
	Indecent Exposure Incidents													
	Number of IEX incidents	4	3	2	4	0	1	3	2	0	1	2	0	3
	Number of D.A. Referrals	0	0	9	0	1	6	0	0	5	0	0	3	0
	Number of D.A. Referrals Accepted	0	0	0	0	0	5	0	0	0	0	2	3	1
	Number of D.A. Referrals Rejected	1	9	3	1	0	0	0	0	1	1	0	3	0
	Number of D.A. Referrals Pending	14	5	11	10	11	12	12	12	16	15	13	10	9
	Number of Sexual Disorderly Conduct Incidents (Masturbation w/o Exposure)	0	0	0	0	0	0	0	0	0	0	0	0	0
	Number of Documented Mental Health Referrals (Inmates)	4	3	2	4	0	1	3	2	0	1	2	0	0
	Total number of Victims	4	3	2	4	0	1	3	2	0	1	2	0	3
	Number of Victims - Peace Officer	1	1	1	4	0	0	2	0	0	1	0	0	2
	Number of Victims - Non-Prisoner	3	2	1	0	0	1	1	2	0	0	2	0	1
	Inmate Appeals													
	Appeals Per 100 Inmates	15.96	16.19	16.57	19.16	16.18	16.81	14.03	17.41	19.84	14.31	19.24	20.38	17.99
	Total Appeals Received - All Levels	885	891	923	1,072	894	912	759	931	1,061	765	1,024	996	879
	Appeals Received - 1st Level	477	545	530	693	507	502	451	583	669	483	668	591	526
	Appeals Received - 2nd Level	292	265	272	287	278	260	221	261	301	225	266	330	321



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Data Analysis 13 Month as of 07-16-2020

Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SATF	Appeals Received - 3rd Level	116	81	121	92	109	150	87	87	91	57	90	75	32
	Total Screen Outs - All Levels	434	373	428	571	423	432	399	450	454	282	450	442	409
	Screen Outs - 1st Level	245	229	258	400	268	248	242	297	304	189	341	300	248
	Screen Outs - 2nd Level	145	115	129	143	115	109	127	124	126	88	103	135	147
	Screen Outs - 3rd Level	44	29	41	28	40	75	30	29	24	5	6	7	14
	Total Appeals Accepted - All Levels	451	518	495	501	471	480	360	481	607	483	574	554	470
	Total Overdue Appeals - All Levels	7	4	12	17	15	31	25	36	60	94	98	57	54
	Overdue Appeals (Monthly Cumulative) - 1st Level	0	0	0	0	2	0	1	0	0	1	0	0	0
	Overdue Appeals (Monthly Cumulative) - 2nd Level	2	0	2	1	2	1	0	1	0	1	1	3	3
	Overdue Appeals (Monthly Cumulative) - 3rd Level	5	4	10	16	11	30	24	35	60	92	97	54	51
	Total Overdue ADA Appeals - All Levels	0	0	1	0	2	0	1	0	0	0	0	1	1
	Overdue ADA Appeals (Monthly Cumulative) - 1st Level	0	0	0	0	2	0	1	0	0	0	0	0	0
	Overdue ADA Appeals (Monthly Cumulative) - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	1
	Overdue ADA Appeals (Monthly Cumulative) - 3rd Level	0	0	1	0	0	0	0	0	0	0	0	1	0
	Total Modification Orders Issued - All Levels	9	11	12	13	12	20	14	15	17	13	21	16	3
	Modification Orders Issued - 1st Level	5	5	8	5	4	9	13	10	14	8	19	8	1
	Modification Orders Issued - 2nd Level	3	4	4	8	5	8	1	3	3	4	1	4	2
	Modification Orders Issued - 3rd Level	1	2	0	0	3	3	0	2	0	1	1	4	0
	Total Appeals Granted - All Levels	54	26	53	48	38	43	42	33	43	73	41	72	50
	Appeals Granted - 1st Level	48	21	33	33	30	28	38	24	32	49	35	45	36
	Appeals Granted - 2nd Level	6	5	20	15	8	15	4	8	11	23	6	24	14



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SATF	Appeals Granted - 3rd Level	0	0	0	0	0	0	0	1	0	1	0	3	0
	Total Appeals Granted In Part - All Levels	150	160	143	163	131	159	135	117	131	101	81	143	130
	Appeals Granted In Part - 1st Level	73	108	71	93	61	81	83	72	73	60	50	85	56
	Appeals Granted In Part - 2nd Level	76	50	72	70	67	75	52	44	58	41	30	57	74
	Appeals Granted In Part - 3rd Level	1	2	0	0	3	3	0	1	0	0	1	1	0
	Total Appeals Cancelled - All Levels	6	9	8	8	4	11	1	5	2	3	2	1	1
	Appeals Cancelled - 1st Level	1	0	0	0	1	0	0	0	1	0	2	1	0
	Appeals Cancelled - 2nd Level	1	1	1	2	2	5	1	1	0	2	0	0	1
	Appeals Cancelled - 3rd Level	4	8	7	6	1	6	0	4	1	1	0	0	0
	Total Appeals Denied - All Levels	179	134	274	209	147	183	162	224	236	182	245	269	185
	Appeals Denied - 1st Level	88	68	168	100	60	71	73	108	159	98	144	162	65
	Appeals Denied - 2nd Level	64	44	51	36	45	55	37	68	31	67	67	75	82
	Appeals Denied - 3rd Level	27	22	55	73	42	57	52	48	46	17	34	32	38
	Total Appeals Withdrawn - All Levels	90	76	92	68	98	84	74	42	90	73	99	124	96
	Appeals Withdrawn - 1st Level	59	44	67	46	72	57	50	31	69	52	77	103	64
	Appeals Withdrawn - 2nd Level	31	32	25	22	26	27	24	11	21	21	22	21	32
	Appeals Withdrawn - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Inmate Appeal Breakdown													
	Disciplinary	27	29	27	24	28	23	28	34	32	20	24	33	35
	Custody/Classification	21	12	19	19	23	24	15	17	28	20	19	25	21
	Mail	7	11	16	14	10	7	7	13	22	15	16	16	12
	Visiting	3	3	2	3	2	5	1	5	7	2	5	1	2
	Personal Property	55	40	33	51	36	30	33	39	55	71	88	74	65
	Case Records	21	22	17	22	18	22	15	17	23	19	16	11	19
	Staff Complaints	29	33	45	37	43	19	12	18	21	13	35	28	29



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SATF	Living Conditions	38	36	53	67	64	73	44	66	98	49	78	59	56
	Legal	18	22	16	16	21	28	9	26	33	30	18	35	36
	Program	20	58	14	16	18	13	16	13	20	13	20	22	18
	Segregation Hearings	1	3	1	3	1	0	0	0	1	1	3	1	0
	Work Incentive	12	11	8	12	11	14	8	16	23	28	24	24	16
	Re-Entry	0	0	1	0	1	0	0	0	1	0	0	0	1
	Transfer	6	5	5	8	4	4	4	3	5	8	10	5	3
	Funds	3	9	7	11	12	7	9	19	14	9	17	11	11
	ADA	111	164	145	123	99	129	98	134	155	132	111	125	106
	1824s	0	0	0	0	0	0	0	0	0	0	0	0	0
	Inmate Appeal Rejection and Cancellation Breakdown													
	Multiple 602-A's - 1st Level	1	1	1	0	0	1	0	2	3	0	3	0	0
	Multiple 602-A's - 2nd Level	0	0	1	1	0	1	1	1	0	0	0	0	1
	Multiple 602-A's - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Lack of Supporting Documents - 1st Level	31	21	21	28	19	22	33	40	22	22	74	56	42
	Lack of Supporting Documents - 2nd Level	10	6	7	5	6	9	6	4	8	6	2	7	5
	Lack of Supporting Documents - 3rd Level	6	4	6	0	0	0	0	0	0	0	0	0	0
	Unrelated Documentation - 1st Level	3	8	7	10	7	7	5	11	16	8	10	13	13
	Unrelated Documentation - 2nd Level	8	9	13	12	6	5	11	4	9	2	1	7	9
	Unrelated Documentation - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Illegible Appeal - 1st Level	32	30	23	33	13	17	22	28	24	17	18	20	17
	Illegible Appeal - 2nd Level	23	18	17	13	6	7	8	9	11	8	8	6	20
	Illegible Appeal - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Defaced Documents - 1st Level	4	5	3	4	2	3	2	0	7	0	2	1	3



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SATF	Defaced Documents - 2nd Level	0	0	2	3	3	3	2	1	0	2	0	1	0
	Defaced Documents - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Incomplete Appeal - 1st Level	9	8	16	18	14	8	5	9	11	6	9	12	6
	Incomplete Appeal - 2nd Level	5	2	3	6	4	6	2	2	5	2	3	2	1
	Incomplete Appeal - 3rd Level	2	0	0	0	0	0	0	0	0	0	0	0	0
	Wrong Form - 1st Level	10	10	19	18	7	10	9	10	9	19	13	22	16
	Wrong Form - 2nd Level	4	3	4	4	2	3	1	3	2	0	2	1	1
	Wrong Form - 3rd Level	1	0	0	0	0	0	0	0	0	0	0	0	0
	Other Reasons for Rejection - 1st Level	0	3	0	0	0	0	0	0	0	0	0	0	0
	Other Reasons for Rejection - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Other Reasons for Rejection - 3rd Level	0	0	0	0	1	6	0	0	0	0	0	0	0
	Duplicate Appeal - 1st Level	7	3	5	12	10	3	4	12	10	3	9	15	6
	Duplicate Appeal - 2nd Level	4	4	6	0	6	1	9	10	3	2	8	10	8
	Duplicate Appeal - 3rd Level	0	0	0	0	0	0	1	0	0	0	0	0	0
	Submittal for Another Person - 1st Level	0	0	1	0	0	0	2	5	3	0	1	0	0
	Submittal for Another Person - 2nd Level	0	1	1	0	0	0	1	1	0	0	0	0	0
	Submittal for Another Person - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Time Constraints Not Met - 1st Level	13	6	12	17	9	12	20	18	25	10	19	30	19
	Time Constraints Not Met - 2nd Level	28	14	15	27	17	23	17	18	19	12	11	7	9
	Time Constraints Not Met - 3rd Level	1	7	3	3	1	0	3	5	2	0	1	0	1
	Failure to Follow Instructions - 1st Level	10	12	6	7	12	8	5	4	7	3	6	7	9
	Failure to Follow Instructions - 2nd Level	6	3	4	7	5	0	2	1	1	0	4	5	4



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SATF	Failure to Follow Instructions - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Out of CDCR Jurisdiction - 1st Level	1	1	3	11	4	3	3	4	3	4	3	2	6
	Out of CDCR Jurisdiction - 2nd Level	2	0	0	1	0	1	0	2	0	1	2	1	0
	Out of CDCR Jurisdiction - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Issue Under Appeal Has Been Resolved - 1st Level	2	6	7	8	4	4	13	13	10	13	8	3	12
	Issue Under Appeal Has Been Resolved - 2nd Level	1	1	1	4	1	2	2	3	2	0	3	1	3
	Issue Under Appeal Has Been Resolved - 3rd Level	2	1	0	1	2	0	0	3	0	2	0	1	0
	Failure to Interview/Cooperate - 1st Level	1	1	0	2	4	1	0	1	2	0	1	1	0
	Failure to Interview/Cooperate - 2nd Level	1	1	2	0	2	6	1	1	2	3	2	1	2
	Failure to Interview/Cooperate - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant/Appeal is Under Advisement or Appeal Restriction - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant/Appeal is Under Advisement or Appeal Restriction - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant/Appeal is Under Advisement or Appeal Restriction - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Other - 1st Level	145	124	146	250	170	151	119	145	163	84	167	137	123
	Other - 2nd Level	58	54	60	66	64	43	66	65	67	52	58	91	108
	Other - 3rd Level	32	17	32	24	37	69	28	22	28	4	6	8	14



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SATF	Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Requests - Total	0	1	0	3	0	2	5	6	1	0	3	3	0
	AVSS Requests - RVR	0	1	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests - IR	0	0	0	3	0	2	5	6	1	0	3	3	0
	AVSS Requests - Staff Complaints	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - Total	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - RVR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - IR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - Staff Complaints	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Recordings	0	51	31	51	48	41	46	23	29	39	27	46	26
	Inmate Disciplinarys - Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Reviews - RVR	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Guilty	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Reduced	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Not Guilty	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - None	0	0	0	0	0	0	0	0	0	0	0	0	0
	No Audio/Video Evidence - RVR	351	318	275	366	353	326	283	264	282	295	328	287	264
	Incidents - Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Reviews - IR	0	1	3	3	1	2	5	6	1	0	3	0	1
	IERC - Impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	IERC - No Impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	No Audio/Video Evidence - IR	3	4	2	2	6	5	3	4	0	13	0	0	0
	Staff Complaint - Audio/Video Surveillance System (AVSS) Recordings													



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SATF	Evidence Reviewed with AVSS	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Granted	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Granted in Part	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Cancelled	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Denied	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - None	0	0	0	0	0	0	0	0	0	0	0	0	0
	Evidence Reviewed without AVSS	0	0	0	0	0	0	0	0	0	0	0	0	0
	Referred to Office of Internal Affairs	0	0	0	0	0	0	0	0	0	0	0	0	0
	No Audio/Video Evidence - Staff Complaints	0	0	45	0	43	20	12	18	21	12	33	27	30
Programs														
Inmate Work Assignments														
Available Assignments		4,085	4,098	4,181	4,234	4,234	4,234	4,234	3,233	3,101	3,078	3,085	3,094	3,097
Full Time		2,836	2,827	2,784	2,774	2,769	2,769	2,769	2,779	2,805	2,782	2,758	2,770	2,773
Half Time		1,249	1,271	1,397	1,460	1,465	1,465	1,465	454	296	296	327	324	324
Eligible Inmates		4,604	4,612	4,642	4,740	4,674	4,561	4,570	4,541	4,548	4,528	4,467	4,111	4,103
Inmates Assigned		3,318	3,414	3,465	3,520	3,469	3,484	3,398	2,518	2,508	2,506	2,655	2,514	2,516
Full Time		2,396	2,494	2,367	2,349	2,328	2,312	2,298	2,275	2,273	2,300	2,426	2,297	2,295
Half Time		922	920	1,098	1,171	1,141	1,172	1,100	243	235	206	229	217	221
One Half Time Assignment		883	898	1,056	1,131	1,114	1,126	1,069	232	225	197	219	207	211
Two Half Time Assignments		39	22	42	40	27	46	31	11	10	9	10	10	10
Vacant Work Assignments		767	684	716	714	765	750	836	715	593	572	430	580	581
Percent of Filled Work Assignments		81 %	83 %	83 %	83 %	82 %	82 %	80 %	78 %	81 %	81 %	86 %	81 %	81 %
Percent of Filled Work Assignments - Full Time		84 %	88 %	85 %	85 %	84 %	83 %	83 %	82 %	81 %	83 %	88 %	83 %	83 %
Percentage of Filled Work Assignments - Half-Time		77 %	74 %	82 %	83 %	80 %	83 %	77 %	56 %	83 %	73 %	73 %	70 %	71 %



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SVSP	Appeals Per 100 Inmates	29.09	23.13	27.83	25.48	26.54	33.00	23.28	27.53	25.37	24.53	24.13	33.47	22.44
	Total Appeals Received - All Levels	943	741	888	790	812	984	701	822	753	736	717	976	661
	Appeals Received - 1st Level	478	345	330	352	398	552	355	448	385	377	318	412	268
	Appeals Received - 2nd Level	346	297	456	328	317	341	275	285	291	285	329	491	378
	Appeals Received - 3rd Level	119	99	102	110	97	91	71	89	77	74	70	73	15
	Total Screen Outs - All Levels	361	274	313	288	258	305	244	296	255	259	264	286	244
	Screen Outs - 1st Level	185	149	150	157	139	191	127	186	146	145	118	109	63
	Screen Outs - 2nd Level	128	95	124	115	104	91	100	98	91	105	142	172	172
	Screen Outs - 3rd Level	48	30	39	16	15	23	17	12	18	9	4	5	9
	Total Appeals Accepted - All Levels	582	467	575	502	554	679	457	526	498	477	453	690	417
	Total Overdue Appeals - All Levels	16	12	17	17	20	23	33	49	75	94	107	54	59
	Overdue Appeals (Monthly Cumulative) - 1st Level	4	3	3	3	5	3	3	5	4	3	3	3	3
	Overdue Appeals (Monthly Cumulative) - 2nd Level	7	5	10	9	6	4	5	8	12	5	5	5	5
	Overdue Appeals (Monthly Cumulative) - 3rd Level	5	4	4	5	9	16	25	36	59	86	99	46	51
	Total Overdue ADA Appeals - All Levels	0	0	0	0	0	0	0	0	0	0	0	0	0
	Overdue ADA Appeals (Monthly Cumulative) - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Overdue ADA Appeals (Monthly Cumulative) - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Overdue ADA Appeals (Monthly Cumulative) - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Total Modification Orders Issued - All Levels	36	28	34	19	24	15	52	20	27	23	7	20	5
	Modification Orders Issued - 1st Level	23	22	25	11	12	8	46	14	22	13	0	0	0
	Modification Orders Issued - 2nd Level	12	5	7	7	7	7	4	4	3	3	6	11	2



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SVSP	Modification Orders Issued - 3rd Level	1	1	2	1	5	0	2	2	2	7	1	9	3
	Total Appeals Granted - All Levels	24	46	41	43	34	38	73	40	45	50	34	55	57
	Appeals Granted - 1st Level	17	28	29	24	21	26	65	33	35	36	22	42	42
	Appeals Granted - 2nd Level	7	18	12	19	13	12	7	7	9	9	12	7	12
	Appeals Granted - 3rd Level	0	0	0	0	0	0	1	0	1	5	0	6	3
	Total Appeals Granted In Part - All Levels	120	138	135	120	117	128	96	151	135	131	117	147	125
	Appeals Granted In Part - 1st Level	51	50	45	33	45	51	33	64	63	52	58	63	51
	Appeals Granted In Part - 2nd Level	68	87	88	86	67	77	62	85	71	77	58	81	74
	Appeals Granted In Part - 3rd Level	1	1	2	1	5	0	1	2	1	2	1	3	0
	Total Appeals Cancelled - All Levels	10	7	9	8	7	8	10	8	4	6	2	4	1
	Appeals Cancelled - 1st Level	0	0	0	1	0	1	1	0	1	2	1	0	0
	Appeals Cancelled - 2nd Level	0	0	1	0	3	1	0	2	0	4	1	2	0
	Appeals Cancelled - 3rd Level	10	7	8	7	4	6	9	6	3	0	0	2	1
	Total Appeals Denied - All Levels	193	177	192	183	162	179	184	163	160	155	157	163	159
	Appeals Denied - 1st Level	84	80	66	55	57	57	103	53	71	76	57	82	59
	Appeals Denied - 2nd Level	68	59	62	64	43	61	29	49	55	51	66	53	79
	Appeals Denied - 3rd Level	41	38	64	64	62	61	52	61	34	28	34	28	21
	Total Appeals Withdrawn - All Levels	82	73	74	88	77	68	59	89	102	58	71	115	78
	Appeals Withdrawn - 1st Level	49	48	30	49	37	35	35	47	43	40	42	71	46
	Appeals Withdrawn - 2nd Level	33	25	44	39	40	33	24	42	59	18	29	44	32
	Appeals Withdrawn - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
Inmate Appeal Breakdown														
Disciplinary		40	36	41	42	41	53	26	23	29	23	23	26	39
Custody/Classification		21	25	24	19	26	19	18	16	21	16	30	25	27



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SVSP	Mail	7	7	12	9	6	13	9	10	9	8	12	14	7
	Visiting	6	7	41	5	9	12	5	3	3	4	0	1	2
	Personal Property	47	51	57	60	72	69	40	60	75	50	53	61	54
	Case Records	24	23	23	36	23	17	13	14	21	19	22	49	32
	Staff Complaints	48	41	55	45	47	49	35	23	24	47	41	71	51
	Living Conditions	139	61	101	56	101	180	129	113	105	99	58	186	50
	Legal	17	10	9	8	18	10	5	6	24	10	12	19	9
	Program	33	42	18	35	34	31	22	61	20	54	24	33	28
	Segregation Hearings	0	0	8	4	4	3	2	0	0	4	1	0	0
	Work Incentive	22	17	16	14	22	10	15	17	7	10	15	28	12
	Re-Entry	0	0	2	1	0	1	0	1	1	0	0	0	0
	Transfer	4	8	13	4	14	7	9	15	6	10	3	2	3
	Funds	16	11	35	14	5	15	6	13	11	7	11	17	13
	ADA	82	54	53	48	47	117	67	68	82	51	80	79	65
	1824s	0	0	0	0	0	0	0	0	0	0	0	0	0
	Inmate Appeal Rejection and Cancellation Breakdown													
	Multiple 602-A's - 1st Level	0	0	0	0	0	2	1	1	2	1	0	1	0
	Multiple 602-A's - 2nd Level	0	0	0	0	0	1	2	0	1	1	2	0	6
	Multiple 602-A's - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Lack of Supporting Documents - 1st Level	11	9	9	8	8	4	4	5	6	2	0	0	5
	Lack of Supporting Documents - 2nd Level	3	1	2	3	1	2	1	1	0	1	3	9	7
	Lack of Supporting Documents - 3rd Level	15	6	9	0	0	0	0	0	0	0	0	0	0
	Unrelated Documentation - 1st Level	10	11	14	9	13	5	11	7	11	14	9	1	2
	Unrelated Documentation - 2nd Level	12	7	8	16	13	5	7	5	3	2	4	14	14



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SVSP	Unrelated Documentation - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Illegible Appeal - 1st Level	9	4	4	1	4	9	4	2	4	0	1	3	1
	Illegible Appeal - 2nd Level	8	5	7	2	2	1	1	0	3	0	1	5	2
	Illegible Appeal - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Defaced Documents - 1st Level	1	2	1	0	0	0	1	2	0	0	0	0	0
	Defaced Documents - 2nd Level	0	0	0	0	0	0	0	0	1	0	0	0	1
	Defaced Documents - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Incomplete Appeal - 1st Level	37	39	56	53	55	81	47	68	57	51	32	44	19
	Incomplete Appeal - 2nd Level	20	26	29	29	34	39	31	37	26	20	38	38	41
	Incomplete Appeal - 3rd Level	4	0	4	0	0	0	0	0	0	0	0	0	0
	Wrong Form - 1st Level	4	5	1	11	2	3	1	3	6	3	6	7	2
	Wrong Form - 2nd Level	1	0	1	2	0	2	1	0	3	3	7	5	5
	Wrong Form - 3rd Level	0	1	0	0	0	0	0	0	0	0	0	0	0
	Other Reasons for Rejection - 1st Level	4	3	4	1	0	0	0	0	0	0	0	0	0
	Other Reasons for Rejection - 2nd Level	0	2	1	0	0	0	1	1	0	0	0	0	0
	Other Reasons for Rejection - 3rd Level	1	2	0	0	1	0	0	0	0	0	0	0	0
	Duplicate Appeal - 1st Level	3	4	1	1	3	1	1	8	2	2	3	6	1
	Duplicate Appeal - 2nd Level	6	6	1	2	4	0	7	1	2	8	8	13	4
	Duplicate Appeal - 3rd Level	0	0	0	1	1	0	0	0	0	0	0	0	0
	Submittal for Another Person - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Submittal for Another Person - 2nd Level	1	0	1	0	0	0	1	1	2	0	2	0	0
	Submittal for Another Person - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Time Constraints Not Met - 1st Level	1	3	2	1	0	1	4	6	2	3	3	0	1



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SVSP	Time Constraints Not Met - 2nd Level	6	4	3	2	2	3	4	4	8	8	19	9	11
	Time Constraints Not Met - 3rd Level	7	8	8	1	1	5	1	1	1	0	0	0	1
	Failure to Follow Instructions - 1st Level	0	0	1	0	0	0	0	1	1	3	2	0	0
	Failure to Follow Instructions - 2nd Level	0	2	1	0	5	3	3	4	0	1	3	1	0
	Failure to Follow Instructions - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Out of CDCR Jurisdiction - 1st Level	3	5	0	2	1	3	1	5	2	2	5	1	1
	Out of CDCR Jurisdiction - 2nd Level	9	9	5	11	5	1	4	7	7	9	8	3	5
	Out of CDCR Jurisdiction - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Issue Under Appeal Has Been Resolved - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Issue Under Appeal Has Been Resolved - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Issue Under Appeal Has Been Resolved - 3rd Level	0	1	0	2	1	2	1	0	0	0	0	0	1
	Failure to Interview/Cooperate - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Failure to Interview/Cooperate - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Failure to Interview/Cooperate - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant Deceased - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant/Appeal is Under Advisement or Appeal Restriction - 1st Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Appellant/Appeal is Under Advisement or Appeal Restriction - 2nd Level	0	0	0	0	0	0	0	0	0	0	0	0	0



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		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SVSP	Appellant/Appeal is Under Advisement or Appeal Restriction - 3rd Level	0	0	0	0	0	0	0	0	0	0	0	0	0
	Other - 1st Level	119	78	68	78	63	99	62	92	65	73	68	53	33
	Other - 2nd Level	71	44	77	58	52	46	62	55	39	58	67	80	96
	Other - 3rd Level	22	13	19	10	10	16	14	10	18	10	4	4	8
	Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Requests - Total	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests - RVR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests - IR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests - Staff Complaints	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - Total	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - RVR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - IR	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Requests Denied - Staff Complaints	0	0	0	0	0	0	0	0	0	0	0	0	0
	AVSS Recordings	0	0	0	0	0	0	0	0	0	4	0	0	0
	Inmate Disciplinary - Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Reviews - RVR	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Guilty	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Reduced	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Not Guilty	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - None	0	0	0	0	0	0	0	0	0	0	0	0	0
	No Audio/Video Evidence - RVR	476	542	461	541	372	347	288	305	373	370	330	349	210
	Incidents - Audio/Video Surveillance System (AVSS) Recordings													
	AVSS Reviews - IR	0	0	0	0	0	0	0	0	0	0	0	0	0



COMPSTAT DAI Statistical Report - 13 Month

Data Analysis 13 Month as of 07-16-2020
Location(s): CAC, CCI, COR, HDSP, KVSP, LAC, PBSP, SAC, SATF, SVSP



		2019								2020				
		May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
SVSP	IERC - Impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	IERC - No Impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	No Audio/Video Evidence - IR	127	145	121	100	114	100	89	107	102	108	110	105	101
	Staff Complaint - Audio/Video Surveillance System (AVSS) Recordings													
	Evidence Reviewed with AVSS	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Granted	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Granted in Part	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Cancelled	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Denied	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0
	Impact - None	0	0	0	0	0	0	0	0	0	0	0	0	0
	Evidence Reviewed without AVSS	0	0	0	0	0	0	0	0	0	49	42	70	52
	Referred to Office of Internal Affairs	0	0	0	0	0	0	0	0	0	0	0	0	0
	No Audio/Video Evidence - Staff Complaints	52	43	61	47	40	49	40	23	24	49	42	70	52
	Programs													
	Inmate Work Assignments													
	Available Assignments	2,452	2,431	2,430	2,473	2,459	2,457	2,442	1,792	1,693	1,661	1,655	1,618	1,675
	Full Time	1,484	1,469	1,480	1,493	1,493	1,504	1,477	1,464	1,384	1,347	1,310	1,304	1,361
	Half Time	968	962	950	980	966	953	965	328	309	314	345	314	314
	Eligible Inmates	2,379	2,346	2,397	2,315	2,285	2,238	2,291	2,284	2,280	2,306	2,285	2,248	2,235
	Inmates Assigned	1,788	1,748	1,722	1,676	1,715	1,700	1,797	1,340	1,291	1,245	1,207	1,245	1,259
	Full Time	1,135	1,137	1,136	1,121	1,131	1,150	1,204	1,167	1,125	1,083	1,038	1,057	1,065
	Half Time	653	611	586	555	584	550	593	173	166	162	169	188	194
	One Half Time Assignment	644	602	577	547	567	532	576	162	158	152	155	172	179
	Two Half Time Assignments	9	9	9	8	17	18	17	11	8	10	14	16	15

Exhibit 102

California Substance Abuse Treatment Facility Investigating Inmate Death as a Homicide

JUNE 11, 2020

CORCORAN – Officials at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF) are investigating the June 10, 2020, death of 64-year-old inmate Danny Roman as a homicide.

On Wednesday at 10:44 a.m., correctional officers responded when two inmates began assaulting Roman. Staff immediately gave orders to stop and inmates Raul Alvarado and Edward Cisneros were placed in restraints.

Officers immediately began life-saving measures on Roman and 911 was called. Medical assistance continued as Roman was transported to the prison's medical facility. Roman sustained multiple stab wounds to his body and face. At 11:11 a.m. a doctor pronounced Roman deceased.

The California Department of Corrections and Rehabilitation received Roman from Los Angeles County on Jan. 11, 1985. He was sentenced to life without parole for first-degree murder. Cisneros, 31, and Alvarado, 47, were placed in segregated housing pending an investigation. Two stabbing weapons were recovered from the crime scene.

The Kings County District Attorney's Office is assisting SATF's Investigative Services Unit. The Office of the Inspector General has been notified.

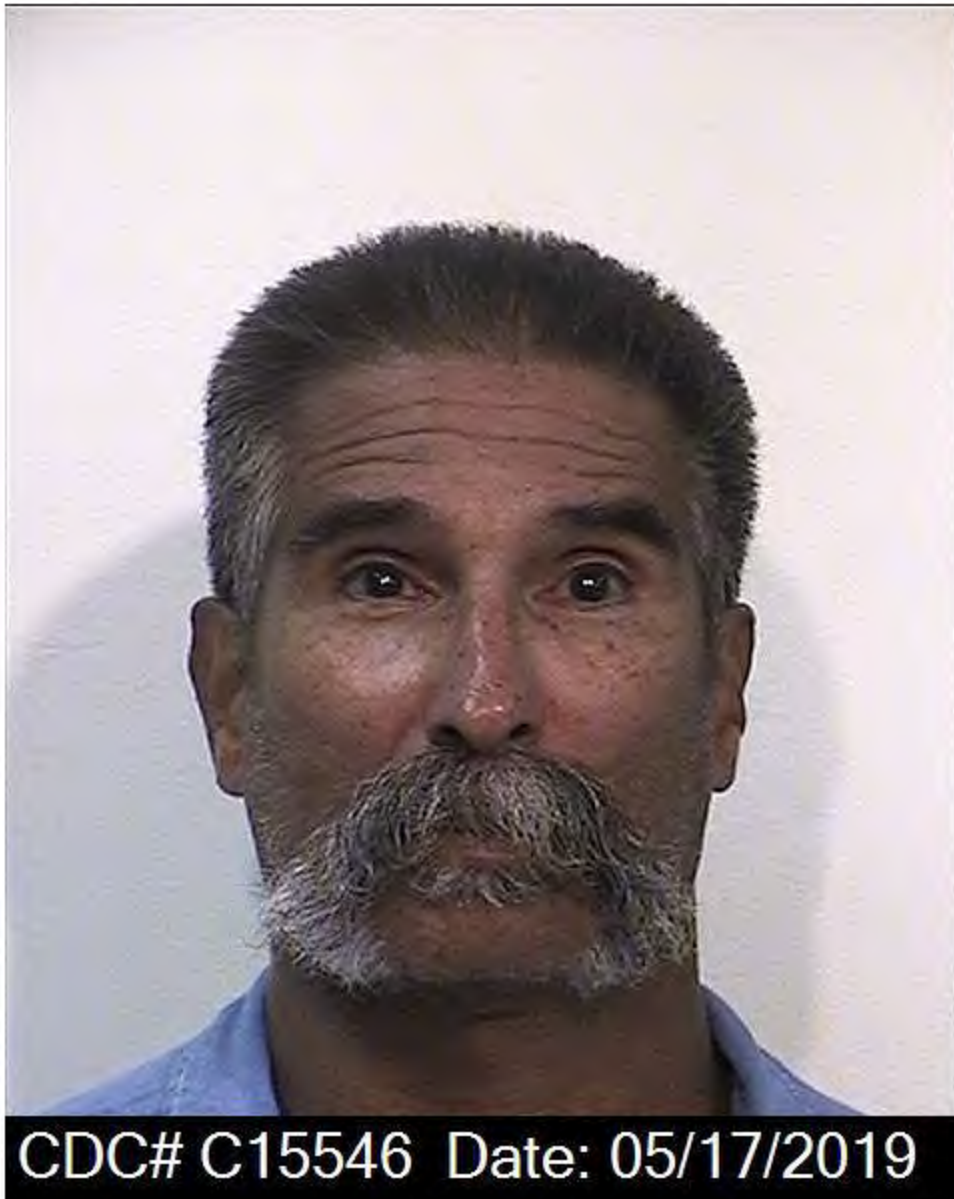
Cisneros was received from San Bernardino County on May 28, 2013. He was sentenced to life with the possibility of parole for attempted first-degree murder.

Alvarado was received from Los Angeles County on Feb. 15, 1994. He was sentenced to life with the possibility of parole for second-degree murder.

SATF opened in 1997 and has 1,921 employees. It houses and 4,875 minimum-, medium-, maximum-, and high-security custody inmates. The prison provides inmates with work, vocational, academic, educational, self-help, religious and other rehabilitative programs and has a fully licensed correctional treatment center.

FOR IMMEDIATE RELEASE

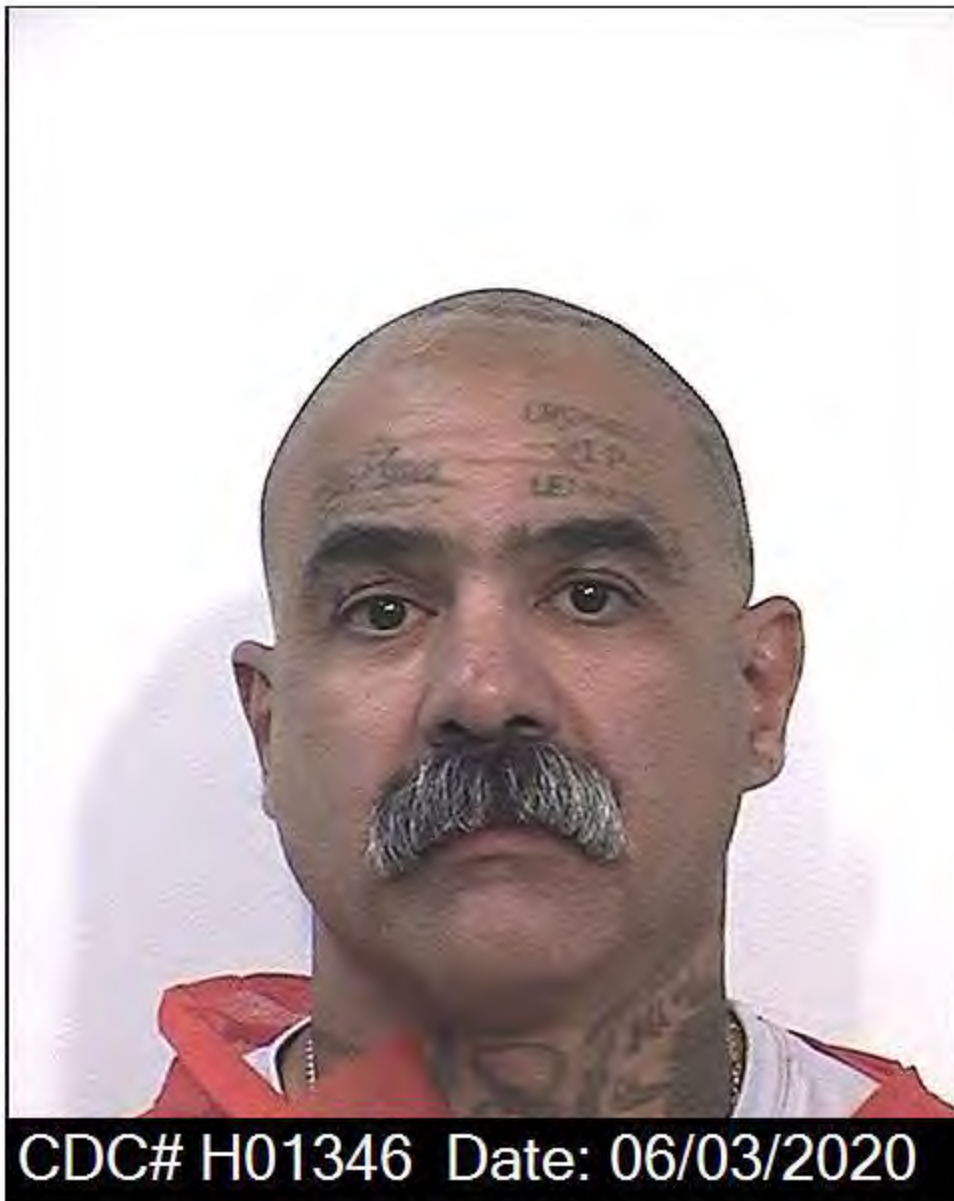
Contact: Terri Hardy (916) 307-0180



Roman



Cisneros



Alvarado

Exhibit 103

California Substance Abuse Treatment Facility Investigating Inmate Death as a Homicide

JUNE 12, 2020

CORCORAN – Officials at the Substance Abuse Treatment Facility and State Prison, Corcoran (SATF) are investigating the June 11, 2020, death of 30-year-old inmate Anthony Roberson-Anderson as a homicide.

On June 9 at 11:02 a.m., prison staff observed inmate Brandon Caine running from the prone form of Roberson-Anderson. Staff immediately responded to the area and discovered Roberson-Anderson with swelling and multiple lacerations to his face and head. Staff placed Caine in restraints.

Responding medical staff began life-saving measures and 911 was called. Medical assistance was provided as Roberson-Anderson was transported to the prison's medical facility. Roberson-Anderson was subsequently airlifted to a local hospital for a higher level of care.

On June 11 at 10:54 p.m., Roberson-Anderson succumbed to his injuries and was pronounced deceased at a local hospital.

This incident is not connected to a June 10 homicide investigation at SATF.

The California Department of Corrections and Rehabilitation received Roberson-Anderson from Los Angeles County on Dec. 4, 2014. He was sentenced to life without the possibility of parole for first-degree murder.

The Kings County District Attorney's Office is assisting SATF's Investigative Services Unit with its investigation. The Office of the Inspector General has been notified.

Caine, 38, was placed in segregated housing pending an investigation. He was received from Los Angeles County on March 27, 2013. He was sentenced to 12 years for first-degree robbery.

SATF opened in 1997 and has 1,921 employees. It houses and 4,875 minimum-, medium-, maximum-, and high-security custody inmates. The prison provides inmates with work, vocational, academic, educational, self-help, religious and other rehabilitative programs and has a fully licensed correctional treatment center.



Roberson-Anderson



Caine

FOR IMMEDIATE RELEASE

Contact: Terri Hardy (916) 307-0180

Exhibit 104

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

MARCIANO PLATA, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

CASE NO. 01-1351 JST

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: July 28, 2020

Time: 10:00 a.m.

Crtrm.: 6, 2nd Floor

Judge: Hon. Jon S. Tigar

Exhibit 105

6 AUG. 20

CCI - California Corr. Inst. - Tehachas

3:00 pm

Interview Q

→ current population
→ Armstrong pop.

'Statewide injunction'
↳

how things work in

Status of response to most recent monitors Report? ^{in a week or so yesterday}

→ are all units supermax? 2-level 4: 180 design each

→ AIMS: ^{so far no criteria to send to AIMS}
No use of force goes to AIMS

effectiveness will depend on Courts proceeding they are ~~neutral~~ neutral

→ MILO? Staff like the system

Δ att

→ CAMERAS: how many? need more

(1) education via supervisors going out and talking to staff

→ body cameras

(2) lab of? about why so info isn't complete + better writing of RVR

(3) CDCR pushes this

→ C.O. Pantoja → was there discipline?

→ in [REDACTED] active at CCI?

→ lots of monitoring issues page 8-10

CAMERAS: level 4 yards

- adding 30 more to level 4 yards to replace broken one
- all dorms in level 2. have cameras
- would want surface cameras
- not much support for body cameras

[REDACTED] probably no: Warden doesn't see evidence of it in CCI.
inmates talk about it a lot.

last monitor

- ADA is available in high security wards → A+B level 4
 - ↳ at least ³⁻⁵ years:
 - ↳ 4-5 live on units
 - ↳ have ~~a~~ criteria to provide for more opportunities - come from director
- →

June 25, 2020

how many staff fired for misconduct in past 2 yrs.

→ YES: at least 20 staff terminated since 2017 either for UOF or dishonesty. Regularly submit cases to CIA

Expedited transfer process is still on going - YES

↳ impacted by COVID

CCI: not a lot of level remain
↳ have concrete ADA paths

RAP: gives them an ~~adv~~ to ~~have~~ avenue as to how to submit grievance

↳ doing a lot more education to staff + inmates

- ↳ orientation manual for inmates
- ↳ posters thru out buildings
- ↳ guides ~~or~~ (inmate) helps out

STAFF: GLASS ACTION Unit

↳ tours + audits various inst.
↳ does audits monthly RE Armstrong.

CCF: Is codes?

increased from 88 to 113.

most changes are additions instead of removal

CDER: Warden JAYS understands the equal access issue and has worked to improve

↳ good things about monitoring - it sometimes gets over focused it takes away from other focuses.
↳ everybody competes to get to front of line

① 31 July 20

Concoran

Statewide injunction - big impacts for CCR
help to do analysis

② CIA

• Martin

• Clark Warden

• John

• Eric

ADN

Acres =

Bldgs = 50

• hands out of pockets: no policy
but would be concern for weapons

AFM 58

↳ good unit, independent

↳ 2 days of training - 1 person - what is expected

↳ 12 staff

OIA: → ~~to~~ to COR does invest + forward to OIA
on COR payroll

Warden ↳ independent oversight is good. Took staff from
first.

Training by Academy → central location

↳ in person

↳ LMS: training portal - during shift

3 yrs. ↳ breaks done

how many courses

16 hours/yr/staff

Armstrong - both in person
+ LMS

yes - motivational interview → counseling + educators - positive return
yes - verbal judo: Annually - part of 2 hour training

do - deescalation

MILU: Annual train

①

start
12:30

1:30

1:30

RAP - CORCORAN

- ADA coordinator
- Appeals ← health care
- Chief Med. ← compliance analyst
- psych
- edu

↳ look reference manual - PIO HACC agree

gladiator fights - 96-97 : stopped on news happened

Cameras: ~ 200 - no cameras in cell blocks or yard
in visiting
" CTC
15

Warden like more cameras -
more would like body cameras @ audio

→ size of showers
↳ 7'5" x 5'

~ warden night + day difference

① CFW: Interview: 4 AUG 20 11:30 AM

Ken Ward + Sean

- how to become an Armstrong:
 - ↳ Reviewed by medical staff
 - ↳ learning disability: TAFE SCORE:
 - ↳ mental health:

ADA: TRAINING

- ↳ annual training on Armstrong class:
- ↳ medical + durable equipment:
- ↳ 2 types of courses
 - ↳ initial: new employees
 - ↳ yearly for others
 - ↳ constantly updated
 - ↳ have learning management system - computer
- idea to improve staff training = simplify the training
- have physical therapy
- is O.T.?

how is staff misconduct

- ↳ appeal
- ↳ verbal
- ↳ staff
- ↳ 3rd party
- ↳ anonymous
- ↳ OIG @ hotline

②

staff misconduct:

↳ internal affairs: on site?

5-8 employees: } usually for dishonesty of reporting
medical 2-3

Cameras

↳ in visiting
in sewing factor

↳ need cameras
↳ ↓ staff misconduct

body + stationary = both - would facility cameras 1st

↳

AIMS:

- : very helpful
- : only 2-3 cases so far
- : training going on weekly right now
- : provides an avenue to be more ~~transparent~~ transparent

Golden Girls - Golden Program

↳ ~~could not have happened~~
would be very unusual

↳ she is 300 ft from canteen

↳ has walker

↳ could have walked back at any time

↳ could have gone back to ~~shop~~ shop
during the allotted time period

↳ and open shopping line

2 years

MICO: provides C.O. with various scenarios - and
how to de-escalate the situation

3.

③

CIW
[4 AUG 20]
- Milo: pushes staff out of their comfort zone
- multiple interactive learning objectives
- consistent management of team last 2-3 years.

⇒ - JCAHO for medical treatment = 1st in history

Amy Miller: interview

Allegation Inquiry Management Section

• AIMS: not an ~~epiphany~~ epiphany

↳ in ~~response~~ response to many reviews ^{by} PLO at all inst. and OIG

↳ Salinas Valley Report - ^{OIG} drove ~~the~~ AIMS

↳ grievance process broken particularly in relation to staff

↳ investigators not properly trained

↳ bias toward their institution

↳ AIMS only in Northern inst. since Jan 20

" in others in April 20

↳ gathering data for 1st audit - MORE of a process audit -

6 months is not long enough time to evaluate

Why only ³ 1/2 days training:

↳ sits outside of inst. division

↳ works for Office of Internal Affairs

↳ staff are at supervisor level

↳ not new to CDCR

↳ not " to employee discipline

↳ " " offender grievances

all have experience in staff misconduct experiences - Sergeant + Lt training

is AIMS a staff intent tool or inmate grievance tool.

looks at ~~conduct~~ staff misconduct + offender grievance system

↳ both

↳ must have fidelity + integrity so inmates can trust it

↳ particularly for staff ~~misconduct~~ misconduct +

↳ quicker response to offender grievance

Army

→ should get a good Review after June 2021.

Army Miller:

→ AIMS: just getting all staff positions filled.

→ would invite PLO to participate in June 2021 review
↳ wants people to hear first hand.

AIMS: almost all is computerized

→ biggest issue: one correct case getting referred.

⇒ Army Miller: Director of Division of Correctional Policy Research and Internal Oversight

PLO concerns

↳ conducted by Lts + not Special Agents
↳ still have bias for the inst staff

USE ⇒ how many staff misconduct investigations have been done since JAN. 20

Completed staff complaints:

South	482	Completed
Central		
North		

Received staff complaints:

South region	130
Center	138
North	266
	<u>534</u>

⇒ ASK employer relations

⇒ is inmate grievance system computerized - NO

• no idea if staff fired
↳ report goes back to hiring authority

2 year hiatus for ^{investigative} staff doing an invest at their most recent prison

AIMS not created to address every single complaint - not staffed to do that -
? where

482 completed

121 ~~100~~ in 10 days or less

88 btw 11-20 days

↳ benchmark in 30 days.

55 btw 21-~~25~~ days

106 - btw 26-30 days

100+ are longer than 30 days.

Exhibit 106

California Department of Corrections and Rehabilitation
 Division of Correctional Policy Research and Internal Oversight
 Office of Research
 July 24, 2020

**Number of Incidents That Have Been Discovered
 And Occurred Between January 1, 2020 and June 30, 2020
 By Institution and Month
 Type of Force Used of OC**

	Incident Date						TOTAL
	JAN20	FEB20	MAR20	APR20	MAY20	JUN20	
	N	N	N	N	N	N	
Institution							
ASP	14	9	7	7	4	2	43
CAC	5	5	2	4	6	7	29
CAL	11	10	6	3	6	4	40
CCC	9	5	7	5	4	4	34
CCI	29	22	26	22	30	34	163
CCWF	10	15	13	16	15	16	85
CEN	8	16	11	3	4	2	44
CHCF	12	10	12	13	5	5	57
CIM	4	2	4	5	3	3	21
CIW	0	1	2	1	2	3	9
CMC	5	7	13	6	5	4	40
CMF	8	9	16	7	5	7	52
COR	10	10	14	10	13	17	74
CRC	5	6	2	4	2	3	22
CTF	3	4	4	0	3	2	16
CVSP	1	2	1	3	0	0	7
DVI	2	3	4	6	1	3	19
FOL	5	8	4	3	3	8	31
HDSP	21	29	25	20	16	22	133
ISP	10	12	5	8	11	6	52
KVSP	22	30	17	44	23	23	159
LAC	29	25	25	13	24	16	132
MCSP	8	10	8	8	10	4	48
NKSP	11	8	19	10	8	7	63

(Continued)

CSR #: 2007-061

Data Source: BI Publisher Incidents as of July 21, 2020.

California Department of Corrections and Rehabilitation
 Division of Correctional Policy Research and Internal Oversight
 Office of Research
 July 24, 2020

**Number of Incidents That Have Been Discovered
 And Occurred Between January 1, 2020 and June 30, 2020
 By Institution and Month
 Type of Force Used of OC**

	Incident Date						TOTAL
	JAN20	FEB20	MAR20	APR20	MAY20	JUN20	
	N	N	N	N	N	N	
Institution							
PBSP	13	17	3	8	2	6	49
PVSP	15	11	7	4	5	7	49
RJD	6	11	7	6	4	11	45
SAC	20	23	28	20	35	24	150
SATF	14	9	9	17	8	14	71
SCC	10	4	10	4	6	11	45
SOL	17	11	11	7	11	4	61
SQ	8	5	2	6	6	2	29
SVSP	30	49	33	31	32	34	209
VSP	3	2	1	0	6	3	15
WSP	17	16	18	7	16	12	86
Total	395	416	376	331	334	330	2,182

California Department of Corrections and Rehabilitation
 Division of Correctional Policy Research and Internal Oversight
 Office of Research
 July 24, 2020

**Number of Incidents That Have Been Discovered
 And Occurred Between January 1, 2020 and June 30, 2020
 By Institution and Month
 Type of Force Used of 40mm**

	Incident Date						TOTAL
	JAN20	FEB20	MAR20	APR20	MAY20	JUN20	
	N	N	N	N	N	N	
Institution							
CAL	2	7	7	2	3	1	22
CCC	0	1	0	1	1	0	3
CCI	14	14	17	15	15	25	100
CCWF	0	0	0	2	1	1	4
CEN	2	2	2	0	0	1	7
CIM	1	0	3	1	0	1	6
CMC	0	0	0	1	0	0	1
COR	3	3	2	1	1	2	12
DVI	1	1	0	1	0	1	4
FOL	2	1	2	2	0	0	7
HDSP	7	9	9	4	6	9	44
ISP	6	3	3	0	1	5	18
KVSP	16	18	18	16	6	5	79
LAC	12	11	10	5	8	5	51
MCSP	4	6	0	1	3	2	16
NKSP	1	4	8	9	5	2	29
PBSP	6	4	0	2	2	2	16
PVSP	4	4	4	2	2	1	17
RJD	0	2	3	1	1	1	8
SAC	9	5	4	4	13	10	45
SATF	6	4	7	6	0	3	26
SCC	2	0	0	1	1	2	6
SOL	7	5	3	2	2	1	20
SQ	3	4	1	2	4	0	14

(Continued)

CSR #: 2007-061

Data Source: BI Publisher Incidents as of July 21, 2020.

California Department of Corrections and Rehabilitation
 Division of Correctional Policy Research and Internal Oversight
 Office of Research
 July 24, 2020

**Number of Incidents That Have Been Discovered
 And Occurred Between January 1, 2020 and June 30, 2020
 By Institution and Month
 Type of Force Used of 40mm**

	Incident Date						TOTAL
	JAN20	FEB20	MAR20	APR20	MAY20	JUN20	
	N	N	N	N	N	N	
Institution							
SVSP	14	14	9	9	9	11	66
VSP	0	0	1	0	0	0	1
WSP	5	1	9	2	2	2	21
Total	127	123	122	92	86	93	643

Exhibit 107

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**EXHIBITS 4, 5, 107, 108, 109, 110, 111, 112, AND 113 TO THE REPLY
DECLARATION OF GAY
CROSTHWAIT GRUNFELD IN
SUPPORT OF PLAINTIFFS' MOTION
TO STOP DEFENDANTS FROM
ASSAULTING, ABUSING, AND
RETALIATING AGAINST PEOPLE
WITH DISABILITIES**

Judge: Hon. Claudia Wilken
Date: October 6, 2020
Time: 2:30 p.m.
Crtrm.: Remote

Case No. C94 2307 CW

Manual Filing Notification

Regarding: Exhibits 4, 5, 107, 108, 109, 110, 111, 112, 113 to the Reply

Declaration of Gay Crosthwait Grunfeld

This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office. If you are a participant in this case, this filing will be served in hard-copy shortly. For information on retrieving this filing directly from the court, please see the court's main web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

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5. ☐ Conformance with the Judicial Conference Privacy Policy (General Order 53)
6. ☒ Other (please describe): **Exhibits 4, 5, 107, 108, 109, 110, 111, 112, AND 113 are also being filed under seal**

DATED: September 25, 2020

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

Attorneys for Plaintiffs

Exhibit 108

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. C94 2307 CW

**EXHIBITS 4, 5, 107, 108, 109, 110, 111, 112, AND 113 TO THE REPLY
DECLARATION OF GAY
CROSTHWAIT GRUNFELD IN
SUPPORT OF PLAINTIFFS' MOTION
TO STOP DEFENDANTS FROM
ASSAULTING, ABUSING, AND
RETALIATING AGAINST PEOPLE
WITH DISABILITIES**

Judge: Hon. Claudia Wilken
Date: October 6, 2020
Time: 2:30 p.m.
Crtrm.: Remote

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August 20, 2020

VIA ELECTRONIC MAIL ONLY

**PRIVILEGED AND
CONFIDENTIAL**
**SUBJECT TO
PROTECTIVE ORDERS**

Tamiya Davis
CDCR Office of Legal Affairs
Tamiya.Davis@cdcr.ca.gov

Joanna B. Hood
Office of the Attorney General
Joanna.Hood@doj.ca.gov

Re: *Armstrong v. Newsom*: Problems with AIMS
Our File No. 0581-03

Dear Tamiya and Joanna:

We write regarding Defendants' implementation of the Appeal Inquiry Management Section ("AIMS") within the CDCR investigative and disciplinary system.

In my letter of May 5, 2020 regarding the adoption of the AIMS regulations, I outlined the deficiencies in the AIMS process as described in the adopted emergency regulations. Among other things, we expressed concern that: (1) AIMS does not cover all allegations of serious staff misconduct; (2) AIMS constitutes a new staff misconduct grievance and investigative channel, in addition to the multiple existing channels, which may cause confusion, inconsistency, and duplicative efforts; and (3) AIMS does not reign in the degree to which the Hiring Authority controls decision-making in the investigative and disciplinary process. Defendants have not yet responded to my letter.

Although AIMS has only been in place statewide since April 1, 2020, Plaintiffs' counsel has already identified the following serious allegation of staff misconduct that was improperly handled under AIMS. An excerpted copy of the AIMS regulations is attached hereto as **Exhibit A**. Regardless of whether cases are mishandled unintentionally, because AIMS is complicated and confusing and staff are unsure which allegations should go in which process, or intentionally, because staff are attempting to circumvent the OIA inquiry process, this case illustrates that AIMS will not resolve longstanding problems with the staff misconduct process. Furthermore, this case

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Tamiya Davis
 August 20, 2020
 Page 2

illustrates the need for independent, third-party oversight over the staff misconduct investigation and disciplinary process.

On August 4, 2020, class member [REDACTED] filed a letter with the *Armstrong* court related to his experience with AIMS. The letter included two memoranda discussing the handling of a staff complaint he and another incarcerated person filed against High Desert State Prison (“HDSP”) Acting Warden Jason Pickett and other HDSP staff members. The letter and attached memoranda are attached hereto as **Exhibit B**. Although Mr. [REDACTED]’s underlying 602 was not included, it is summarized in the memoranda prepared by staff: “Subject claims COs J. Cabrera, D. Acosta, Lam and **Warden J. Pickett** conspired and lied in an effort to deny subject due process rights. CO Cabrera was instructed by Warden Pickett to stack RVRs as a form of retaliation when subject filed staff complaints against same. Subject claims corrupt actions are shielded by a crooked corrupt like [sic] Warden J. Pickett.” *See* Exhibit B, at 7 (emphasis added). Mr. [REDACTED] also filed a memoranda relating to a grievance filed by another incarcerated person, [REDACTED]; both appeals were assigned the same log number, HDSP-A-20-01297. *Id.*, at 8.

Inexplicably, Warden Pickett, the subject of the staff complaint, was assigned to review and assign these grievances to the appropriate disciplinary system. Despite the staff complaints meeting the criteria to be processed in AIMS, it appears Warden Pickett elected instead to process Mr. [REDACTED]’s complaint through the local “[s]upervisorial review” channel. *Id.*, at 7. Even worse, Warden Pickett determined that Mr. [REDACTED]’s grievance – which, involved the same staff members, and was assigned the same log number as Mr. [REDACTED]’s grievances – was to be processed as a routine grievance because, “even if facts as alleged are assumed to be true,” no misconduct could be identified. *Id.*, at 8.

These two memoranda raise serious concerns about the implementation of AIMS in the field. Firstly, the subject of a staff misconduct allegation should never be allowed to participate in the assignment of the inquiry or the inquiry itself. Indeed, the AIMS regulations clearly state “that any individual whose personal interaction with a claimant forms part of the claim is excluded from participating in the grievance process as to that claim.” **Exhibit A** § 3483(h). Yet, in reviewing the allegations and assigning them outside of AIMS, Warden Pickett clearly participated in the process for these grievances, despite being the subject of the claims. As far as Plaintiffs are aware, nothing has been done to correct that serious violation.

Secondly, these allegations should have been, but were not, routed to AIMS for an allegation inquiry. The standard for whether an allegation should be referred to AIMS is:

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“whenever the claim meets the definition of staff misconduct but the Reviewing Authority does not have a reasonable belief that the misconduct occurred.” **Exhibit A** § 3484(a)(1). Allegations of staff misconduct in turn are defined as “an allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse disciplinary action.” **Exhibit A** § 3480(14). The allegations at issue here – that staff are conspiring to issue incarcerated people RVRs in retaliation for staff complaints – meets the regulatory definition of staff misconduct and should have been addressed by outside investigators through AIMS. If true, a staff member could be subject to adverse disciplinary action for issuing retaliatory RVRs under the Department Operations Manual (“DOM”) disciplinary matrix for multiple different charges including falsification or making intentionally misleading statements in official reports or records which could result in termination. *See* DOM § 33030.19. Yet, it appears that, without explanation, the Warden circumvented AIMS in these cases and routed the allegations against himself to local prison staff for review. This is particularly troubling since this issue is at the heart of Plaintiffs’ Motions to Stop Defendants from Assaulting, Abusing and Retaliating Against People with Disabilities and Defendants have relied on AIMS as their defense to those motions.

What is worse, the routing of Mr. [REDACTED]’s appeal through the “supervisory review” process seems to represent a completely new branch in the ever-growing decision-tree of the CDCR investigative and disciplinary system. For example, the routing sheet that accompanies this case suggests that “supervisory review” is a discretionary option for *any* staff misconduct complaint. However, this is inconsistent with AIMS, which provides that the only allegations of staff misconduct to be locally investigated are use of force cases **not** involving great bodily injury. **Exhibit A** § 3484(d). Defendants must ensure that the various avenues through which a grievance may be routed, and the precise standards for routing them as such, are clearly elaborated on the paperwork used by the Reviewing Authority. The regulations do not allow for any discretion to be exercised by the Reviewing Authority when determining whether an allegation should be routed through AIMS: if an allegation is likely to result in adverse action, but there is not yet sufficient evidence to support a reasonable belief that the allegation is true, then the regulations clearly state that allegation “**shall** be referred to the Office of Internal Affairs, Allegation Inquiry Management Section.” **Exhibit A** § 348(a)(1) (emphasis added).

Defendants’ own AIMS regulations do not even mention the term, “supervisory review” and Plaintiffs are not aware of any such process as an alternative path for staff misconduct allegations. **Plaintiffs request an explanation of this process, including**

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the standard by which appeals are to be routed through the “supervisory review” process and the actual contours of the process itself.

Defendants acknowledge that AIMS is complicated. It is telling that, during the August 11, 2020 hearing on the RJD Motion, Defendants’ counsel had trouble explaining to the Court exactly which staff misconduct cases should be routed through AIMS. Not only is AIMS excessively complicated such that it is difficult for counsel to navigate, as this case illustrates, high level prison officials too are unable to adhere to the requirements. Without addressing this deficiency, AIMS cannot possibly be an effective solution to the problems plaguing the grievance and disciplinary process.

In addition to AIMS being excessively complicated, it appears that different institutions are using distinct forms in deciding whether to route a staff misconduct allegation through AIMS or the other possible branches in the investigative and disciplinary system. Staff at Richard J. Donovan Correctional Facility (“RJD”) and Mule Creek State Prison (“MCSP”), for example, appear to be using different forms and potentially different standards than those used by the Reviewing Authority at HDSP cited above. The RJD and MCSP routing sheet are more comprehensive than the one used at HDSP; they include additional avenues for a staff complaint to be routed through, and also clearly elaborate how to properly route a use of force complaint depending on whether it is reported and/or involves serious bodily injury/great bodily injury. A copy of those routing sheets is attached hereto as **Exhibit C**. The documents relied upon by reviewers to assign and route a complaint of staff misconduct should be standardized across all CDCR institutions and should be consistent with the AIMS regulations. Based on a review of documentation from these three prisons, it appears they are not.

Please ensure that these routing forms are analyzed for compliance with the new AIMS policy. Please also ensure that institutions are not given discretion to implement any local routing forms or any other local changes to the staff misconduct allegation review and assignment process. If they have not done so already, Defendants should issue a statewide memoranda to all Hiring Authorities outlining the new processes in the staff misconduct investigative and disciplinary system, the underlying regulations implementing those processes, and the forms to be used by staff in the field. Plaintiffs’ counsel also requests a copy of any Headquarters’ memoranda issued to institution staff regarding the implementation of AIMS.

With respect to the individual issues raised in the processing of Mr. [REDACTED] and Mr. [REDACTED]’s staff misconduct grievances, pursuant to § 3483(h)(1), these grievances must be reviewed and referred by an Associate Director, Deputy Director, or Director from the

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Division of Adult Institutions because the Warden is named as a subject of the grievance. Please ensure that these grievances are reviewed by an Associate Director, Deputy Director, or Director from the Division of Adult Institutions within 24 hours. Within 10 days, please provide Plaintiffs' counsel an update on the status of your efforts to ensure that both of these allegations are routed through AIMS. Please also review the direction being provided to staff and the routing instructions included with these cases to ensure compliance with AIMS. Please provide an update to Plaintiffs' counsel within 10 days regarding any changes made to staff direction regarding AIMS and any routing documentation being used in the field.

Lastly, Plaintiffs are also concerned that, in response to declarations from class members filed in support of Plaintiffs' motions regarding staff misconduct, yet another avenue for staff misconduct investigation, the Declaration Allegation Response Team ("DART"), has been created. The issues raised in our clients' declarations seem to fall squarely within AIMS, yet the DART interviewers are apparently separate from AIMS. Please explain the basis for the creation of this new process and what will be done with the information gathered from DART interviews.

We look forward to hearing from you.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold
Of Counsel

PMG:JRG
Exhibits A-C

cc: Ed Swanson	Anthony Tartaglio
Alexander Powell	Alicia Bower
Damon McClain	Patricia Ferguson
Sean Lodholz	Bruce Beland
Trace Maiorino	Nicholas Meyer
Anthony Tartaglio	OLA <i>Armstrong</i>
Jeremy Duggan	Co-counsel

EXHIBIT A

~~The remainder of my net wages after taxes shall be deposited in a mandatory savings account and will be available to me upon my release.~~

348677. Compliance.

If a JVE is found to be in non-compliance with PC section 2717.8 or the provisions of sections ~~34823473~~(a)(4) and ~~34823473~~(a)(12)(K), the JVP administrator shall issue a written notice requiring the JVE, within 30 days, to comply with the JVP contract. After 30 days, if the JVE remains non-compliant with the contract, the administrator shall issue to the JVE a written 30-day cancellation notice indicating that the JVE is in material breach of contract. Any bonds held pursuant to ~~34833474~~(a)(12)(J) shall be forfeited if the JVE is found to be non-compliant. At the close of the 30-day cancellation notice, if the JVE has not come into compliance with the contract, the JVE shall be terminated from the JVP.

Note: Authority cited: 2717.3 and 5058, Penal Code. Reference: Sections 2717.8 and 5054, Penal Code; and Vasquez v. State of California, 105 Cal.App.4th 849 (2003), Stipulated Injunction and Order, Superior Court of San Diego County, Case No. GIC-740832.

Subchapter 5.1. Inmate and Parolee Programs

Article 1. Administrative Remedies for Inmates and Parolees

3480. Implementation Date and Definitions.

(a) The provisions of this Article shall apply to all inmate and parolee grievances received by the Department of Corrections and Rehabilitation on or after June 1, 2020.

(b) For purposes of this article, the following definitions shall apply:

(1) "Administrative remedy" means the non-judicial process provided by the Department to address inmate and parolee complaints.

(2) "Allegation inquiry" refers to the process of gathering preliminary information concerning a claim that involves an allegation of staff misconduct.

(3) "Appeal" means a written request from a claimant for review by the Office of Appeals of a decision issued by the Institutional or Regional Office of Grievances.

(4) "Appeal package" means a CDCR Form 602-2 (03/20) and all of its supporting documents.

(5) "Claim" means a single complaint arising from a unique set of facts or circumstances.

(6) "Claimant" refers to an inmate or parolee under the custody or control of the Department who files a grievance or appeal with the Department.

(7) "Coordinator" means the official responsible for the administrative functions of the Office of Grievances or Office of Appeals, depending on their assignment.

(8) "Department" and "departmental staff" refers exclusively to the Department of Corrections and Rehabilitation and to all employees, contractors, and volunteers associated with the Department, respectively.

(9) "Formal investigation" refers to a criminal or administrative investigation by the Office of Internal Affairs concerning a claim that involves an allegation of staff misconduct.

(10) "Grievance" means a written request from a claimant for review by the Institutional or Regional Office of Grievances of one or more claims.

(11) "Grievance package" means a CDCR Form 602-1 (03/20) and all of its supporting documents.

(12) "Reviewing Authority" means the official at the Office of Grievances or Office of Appeals who is responsible for reaching a decision on each claim raised in a grievance or appeal, respectively.

(13) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(14) "Staff misconduct" means an allegation that departmental staff violated a law, regulation, policy, or procedure, or acted contrary to an ethical or professional standard, which, if true, would more likely than not subject a staff member to adverse disciplinary action.

(15) "Supervisory review" refers to the process of gathering preliminary information concerning a claim that does not involve an allegation of staff misconduct.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3481. Claimant's Ability to Grieve and to Appeal.

(a) A claimant has the ability to submit a written grievance containing one or more claims, subject to the requirements in section 3482, to dispute a policy, decision, action, condition, or omission by the Department or departmental staff that causes some measurable harm to their health, safety, or welfare. In response, a claimant shall receive a written decision as described in section 3483 from the Institutional or Regional Office of Grievances, hereby established in the Division of Adult Institutions and Division of Adult Parole Operations, respectively, clearly explaining the reasoning for the Reviewing Authority's decision as to each claim. A claimant also has the ability to submit a written appeal concerning one or more claims, subject to the requirements in section 3485, to dispute the decision by the Institutional or Regional Office of Grievances. In response, a claimant shall receive a written decision as described in section 3486 from the Office of Appeals clearly explaining the reasoning for the Reviewing Authority's decision as to each claim.

(b) The Director of the Division of Adult Institutions shall appoint Institutional Reviewing Authorities authorized to approve or disapprove each claim in a grievance received by an inmate, but in no case shall that official be of a rank lower than a Chief Deputy Warden. The Director of the Division of Adult Parole Operations shall appoint Regional Reviewing Authorities authorized to approve or disapprove each claim in a grievance submitted by a parolee, but in no case shall that official be of a rank lower than a Chief Deputy Parole Administrator. The Secretary shall appoint the Reviewing Authority authorized to grant or deny each claim in an appeal submitted by an inmate or a parolee, but in no case shall that official be of a rank lower than the Associate Director of the Office of Appeals.

(c) A claimant may choose to informally resolve a claim; however, any attempt to informally resolve a claim does not extend the time for submitting a grievance or an appeal.

(d) Staff shall not retaliate against a claimant for seeking to informally resolve a claim or for submitting a grievance or appeal.

(e) A claimant does not have the ability to submit a grievance or appeal to dispute a policy, decision, action, condition, or omission that was not made by the Department or

departmental staff but instead was made by an entity or official outside of the Department, including, but not limited to, a county jail, a private hospital, or the Interstate Commission for Adult Offender Supervision; nor by an entity or official that is quasi-independent of the Department, including, but not limited to, the Board of Parole Hearings, the Prison Industry Authority, or the Commission on Correctional Peace Officer Standards and Training. This article does not preclude a claimant from filing a complaint with the outside entity or official.

(f) CDCR Form 602-1 (03/20), "Grievance," hereby incorporated by reference, shall be made available to inmates in all housing units and in all prison law libraries and to parolees at all parole offices statewide.

(g) When submitting a grievance or appeal, or for purposes of a related interview, if a claimant requests assistance based on a disability, lack of literacy, or need for translation services, or departmental staff detect the need for such assistance, then staff shall provide reasonable accommodations and utilize effective communication techniques as required by the Americans with Disabilities Act.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3482. Preparation and Submittal of a Grievance.

(a) Where to Submit a Grievance.

(1) An inmate who wishes to submit a grievance shall do so in writing to the Institutional Office of Grievances at the prison, re-entry facility, or fire camp where they are housed. Every Warden, in consultation with the Director of the Division of Adult Institutions, shall issue a separate local rule in compliance with subdivision (c) of section 5058 of the Penal Code which shall be made available in all the law libraries at that institution, identifying the address where grievances may be mailed, the availability of electronic kiosks or tablets for submitting grievances, the physical location in each housing unit of all lock-boxes where grievances may be submitted, and the specific departmental staff permitted to collect grievances from those lock-boxes. Grievances shall be collected from lock-boxes at least once per business day by departmental staff not regularly assigned to that housing unit. Additional rules regarding the preparation and submittal of a grievance may be promulgated by the Division of Adult Institutions so long as they are consistent with this Article.

(2) A parolee who wishes to submit a grievance shall do so in writing to the Regional Office of Grievances in the parole region where they are supervised. Every Regional Parole Administrator, in consultation with the Director of the Division of Adult Parole Operations, shall issue a written advisement to a parolee within 15 calendar days of the parolee's release from prison identifying the address where grievances may be mailed, the availability of electronic kiosks or tablets for submitting grievances, and the physical location where grievances may be submitted. Additional rules regarding the preparation and submittal of a grievance may be promulgated by the Division of Adult Parole Operations so long as they are consistent with this Article.

(b) A claimant shall submit a claim within 30 calendar days of discovering an adverse policy, decision, action, condition, or omission by the Department. Discovery occurs when a claimant knew or should have reasonably known of the adverse policy, decision, action, condition, or omission. The time limit for a parolee to submit a grievance shall not be extended while the parolee is on suspended status, meaning the parolee has absconded. The deadline to submit a claim shall be extended for the period of time that a claimant is:

- (1) in the custody of another authority for court proceedings;
- (2) in the care of an outside hospital; or
- (3) temporarily housed in a medical or mental health crisis bed.
- (c) To submit a grievance, a claimant shall:
 - (1) type or print legibly on an official CDCR Form 602-1 (03/20) or complete the form electronically, if available;
 - (2) describe all information known and available to the claimant regarding the claim, including key dates and times, names and titles of all involved staff members (or a description of those staff members), and names and titles of all witnesses, to the best of the claimant's knowledge;
 - (3) describe any attempt to resolve the claim informally and, if there was such an attempt, provide the details of that attempt, including key dates and times, names and titles of all involved staff members (or a description of those staff members), and the results of that attempt, to the best of the claimant's knowledge;
 - (4) include all supporting documents available to the claimant related to the claim or identify to the best of the claimant's ability all relevant records with sufficient specificity for those records to be located; and
 - (5) sign and date the CDCR Form 602-1 (03/20).
- (d) When completing a CDCR Form 602-1 (03/20), a claimant shall not:
 - (1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;
 - (2) include information or accusations known to the claimant to be false; or
 - (3) contaminate the grievance package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the grievance shall be safely discarded and the entire grievance disallowed.
- (e) The grievance package submitted by the claimant shall be stored electronically by the Department. The CDCR Form 602-1 (03/20) shall contain a notification to the claimant that the documents submitted will not be returned to the claimant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3483. Grievance Review.

- (a) The Reviewing Authority for each Office of Grievances shall designate at least one official to assess each written grievance within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall immediately commence an appropriate response as required by all applicable laws and regulations. The claimant shall be notified of the Department's course of action within five business days. Regardless of such notification, the Reviewing Authority shall issue a written response to the claimant as required in subsection 3483(i).
- (b) The Grievance Coordinator shall ensure that claims meeting the following criteria are redirected to the appropriate authority described below to process according to all applicable laws and regulations.
 - (1) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division.

(2) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator.

(3) A request for an interview, item, assistance, or service shall be redirected to the Facility Captain or Parole District Administrator responsible for responding to such requests from the claimant in question.

(4) A request for records pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator.

(5) An allegation against an inmate or parolee shall be redirected to the Facility Captain or Parole District Administrator where the majority of the facts and circumstances that gave rise to the claim occurred.

(c) The Grievance Coordinator shall ensure that claims meeting the following criteria are reassigned to the appropriate authority described below who shall respond to the claim.

(1) The Grievance Coordinator shall ensure that a claim is reassigned to another Institutional or Regional Office of Grievances if a majority of the facts and circumstances that gave rise to the claim occurred there. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date that the sending Office of Grievances received it.

(2) The Grievance Coordinator shall ensure that a request to implement a remedy is reassigned to the Remedies Compliance Coordinator referred to in subsection 3483(k)(2).

(d) The Reviewing Authority shall refer claims alleging staff misconduct to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation pursuant to section 3484.

(e) A claim may be rejected as described in section 3487.

(f) The Grievance Coordinator shall ensure that an acknowledgment of receipt of a grievance is completed within 14 calendar days of its receipt indicating the date the grievance was received, whether it was disallowed pursuant to subsection 3482(d)(3), whether any particular claim was redirected or reassigned pursuant to this section, and the deadline for the Department's response to all remaining claims.

(g) A claimant or witness shall be interviewed if departmental staff responsible for reviewing a claim determine it would assist in resolving the claim. The interview shall be conducted in a manner that provides as much privacy for the claimant as operationally feasible. If a claimant is unavailable to be interviewed or refuses to be interviewed, then those facts shall be documented in the written response prepared by the Reviewing Authority.

(h) The Reviewing Authority shall ensure that any individual whose personal interaction with a claimant forms part of the claim is excluded from participating in the grievance process as to that claim, including any interview of a claimant conducted as part of the grievance process.

(1) If the individual in question is a Warden, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.

(2) If the individual in question is a Regional Parole Administrator, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.

(3) Participating in a committee meeting to discuss a claimant or that includes a claimant in attendance does not, by itself, constitute personal interaction.

(i) The Reviewing Authority shall ensure that a written response is completed no later than 60 calendar days after receipt of the grievance, unless other statutory or regulatory

authority requires a response in less than 60 calendar days, and approve one of the following decisions as to each claim in the grievance:

(1) "Disapproved," meaning that the Reviewing Authority found by a preponderance of the evidence available that all applicable policies were followed and that all relevant decisions, actions, conditions, or omissions by the Department or departmental staff were proper (whether substantively, procedurally, or both);

(2) "Approved," meaning that the Reviewing Authority did not find by a preponderance of the evidence available that all applicable policies were followed or that all relevant decisions, actions, conditions, or omissions by the Department or departmental staff were proper (whether substantively, procedurally, or both), in which case the Reviewing Authority shall order an appropriate remedy;

(3) "No Jurisdiction," meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity or official which requires that the claimant file a complaint with that entity or official, as described in subsection 3481(e);

(4) "Redirected," as described in subsection 3483(b);

(5) "Reassigned," as described in subsection 3483(c);

(6) "Rejected," as described in subsection 3487(a);

(7) "Disallowed," as described in subsection 3482(d)(3);

(8) "Under Inquiry or Investigation," meaning that the claim is under an allegation inquiry or formal investigation by departmental staff or another appropriate law enforcement agency;

(9) "Pending Legal Matter," meaning that the substance of the claim concerns pending litigation by a party other than the claimant (excluding class action litigation), pending legislation, or pending regulatory action; or

(10) "Time Expired," meaning that the Department was not able to respond to the claim in the time required pursuant to subsection 3483(i).

(j) The Reviewing Authority's written decision shall be mailed to the claimant and a copy placed in the claimant's central file.

(k) Implementation of Remedy.

(1) If the Reviewing Authority approves a claim, then the corresponding remedy shall be implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget authorization outside the Department's existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant.

(2) If the remedy has not been implemented and the applicable deadline has passed, then a claimant may submit a CDCR Form 602-3 (03/20), "Request to Implement Remedies," hereby incorporated by reference, directly to the Remedies Compliance Coordinator by regular mail sent to the "Remedies Compliance Coordinator, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811." Correspondence directed to this address shall not be opened by any departmental staff other than those in the unit.

(l) Additional rules may be promulgated by the Division of Adult Institutions and the Division of Adult Parole Operations so long as they are consistent with this Article.

(m) Exhaustion.

(1) Completion of the review process by the Institutional or Regional Office of Grievances resulting in a decision found in subsections 3483(i)(1) through 3483(i)(7) does not constitute exhaustion of all administrative remedies available to a claimant within the Department. Nor does completion of the review process resulting in a decision to reject a

claim pursuant to section 3487. Exhaustion requires a claimant to appeal such decisions as provided in section 3485.

(2) Completion of the review process by the Institutional or Regional Office of Grievances resulting in a decision found in subsections 3483(i)(8) through (i)(10) does constitute exhaustion of all administrative remedies available to a claimant within the Department. No appeal is available because the claim was exhausted at the conclusion of the review by the Institutional or Regional Office of Grievances.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; and Section 35.107, Title 28, Code of Federal Regulations.

3484. Allegations of Staff Misconduct.

(a) All claims alleging staff misconduct shall be presented by the grievance coordinator to the Reviewing Authority who shall review the claim and determine if:

(1) The claim warrants a request for an allegation inquiry in which case the claim shall be referred to the Office of Internal Affairs, Allegation Inquiry Management Section. An allegation inquiry shall be conducted whenever the claim meets the definition of staff misconduct but the Reviewing Authority does not have a reasonable belief that the misconduct occurred.

(2) The claim warrants a request for a formal investigation in which case the claim shall be referred to the Office of Internal Affairs, Central Intake Unit. A formal investigation shall be conducted whenever the claim meets the definition of staff misconduct and the Reviewing Authority has a reasonable belief that the misconduct occurred.

(b) A confidential report shall be prepared by the Office of Internal Affairs after the completion of an allegation inquiry or formal investigation summarizing all of the evidence that was gathered, including all significant factual findings. This document shall not be provided to the claimant and no other copies shall be kept or maintained except as needed by a Reviewing Authority or the staff working in an Office of Grievances or Office of Appeals in order to respond to a claim, after which the report shall be returned to the Office of Internal Affairs.

(c) Staff with the Office of Internal Affairs may interview the claimant and as many witnesses as necessary to help determine if the allegation is true. The subject of the allegation of staff misconduct may also be interviewed by staff with the Office of Internal Affairs trained to conduct administrative interviews and shall be given notice of the interview at least 24 hours in advance. If the subject chooses to waive the 24-hour notice requirement then the subject may be interviewed immediately.

(d) When the allegation of staff misconduct concerns a use of force incident, then the Reviewing Authority shall refer the claim to the Office of Internal Affairs for completion of an allegation inquiry or formal investigation if the alleged use of force by staff resulted in serious bodily injury or the alleged use of force was not reported in accordance with sections 3268.1 or 3268.3.

(e) If the staff misconduct in question involves a person who is employed by a different hiring authority than the Reviewing Authority, then it shall be the responsibility of the Reviewing Authority to confer with that hiring authority before the referral to the Office of Internal Affairs in order to avoid duplicative referrals.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3485. Preparation and Submittal of an Appeal.

(a) A claimant who wishes to appeal a decision made by an Institutional or Regional Office of Grievances concerning one or more claims they previously submitted in a grievance shall do so in writing by regular mail sent to the "Office of Appeals, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811" or by electronic kiosk or tablet, if available. Correspondence directed to this address shall not be opened by any departmental staff other than those in the Office of Appeals.

(b) A claimant who wishes to appeal a decision found in subsections 3483(i)(1) through 3483(i)(6) shall submit an appeal within 30 calendar days of discovering the decision by the Institutional or Regional Office of Grievances. Discovery occurs when a claimant knew or should have reasonably known of the decision. The time limit for a parolee to submit an appeal shall not be extended while on suspended status, meaning the parolee has absconded. The deadline to submit an appeal of a claim shall be extended for the period of time that a claimant is:

(1) in the custody of another authority for court proceedings;

(2) in the care of an outside hospital; or

(3) temporarily housed in a medical or mental health crisis bed.

(c) To submit an appeal, a claimant shall:

(1) type or print legibly on an official CDCR Form 602-2 (03/20), "Appeal of Grievance," hereby incorporated by reference, or complete the form electronically, if available;

(2) describe in detail why the decision provided by the Institutional or Regional Office of Grievances is inadequate; and

(3) sign and date the CDCR Form 602-2 (03/20).

(d) When completing a CDCR Form 602-2 (03/20), a claimant shall not:

(1) use threatening, obscene, demeaning, or abusive language, except when quoting persons involved in the claim;

(2) include information or accusations known to the claimant to be false; or

(3) contaminate the appeal package by including organic, toxic, or hazardous materials that may present a threat to the safety and security of staff, in which case the appeal shall be safely discarded and the entire appeal disallowed; or

(4) include new claims that were not included in the original grievance, in which case the claim shall be reassigned pursuant to subsection 3486(c)(1).

(e) The appeal package submitted by the claimant shall be stored electronically by the department. The CDCR Form 602-2 (03/20) shall contain a notification to the claimant that the documents submitted will not be returned to the claimant.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

3486. Appeal Review.

(a) The Reviewing Authority for the Office of Appeals shall designate at least one official to assess each written appeal within one business day of receipt to determine if it contains any information concerning personal safety, institutional security, or sexual misconduct, including acts of sexual misconduct as defined by the federal Prison Rape Elimination Act and the California Sexual Abuse in Detention Elimination Act. In those instances, the official shall refer the matter to the Institutional or Regional Office of Grievances where the majority of the facts and circumstances that gave rise to the claim occurred to be handled pursuant to subsection 3483(a).

(b) The Appeal Coordinator shall ensure that claims meeting the following criteria are redirected to the appropriate authority described below to process according to all applicable laws and regulations.

(1) An issue concerning medical, dental, or mental health services provided by the Correctional Health Care Services Division or a dispute concerning a policy, decision, action, condition, or omission by the Correctional Health Care Services Division or its staff shall be redirected to that Division.

(2) A request for a reasonable accommodation based on a disability shall be redirected to the Institutional or Regional Americans with Disabilities Act coordinator.

(3) A request for an interview, item, assistance, or a service shall be redirected to the Facility Captain or Parole District Administrator responsible for responding to such requests for the claimant in question.

(4) A request for records pursuant to the California Public Records Act or the California Information Practices Act shall be redirected to the Institutional or Regional Public Records Act coordinator.

(5) An allegation against an inmate or parolee shall be redirected to the Facility Captain or Parole District Administrator where the majority of the facts and circumstances that gave rise to the claim occurred.

(c) The Appeal Coordinator shall ensure that claims meeting the following criteria are reassigned to the appropriate authority described below who shall respond to the claim.

(1) A claim which was not first submitted in a grievance to an Institutional or Regional Office of Grievances shall be reassigned to the Institutional or Regional Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date the Office of Appeals received it.

(2) A claim which was first submitted in a grievance but not answered by an Institutional or Regional Office of Grievances shall be reassigned to the Institutional or Regional Office of Grievances where a majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances that is presented with the reassigned claim shall treat the claim as received on the date that the claim was first received but not answered by an Institutional or Regional Office of Grievances.

(3) A request to implement a remedy shall be reassigned to the Remedies Compliance Coordinator referred to in subsection 3486(k)(2).

(d) If the Office of Appeals determines that a claim involves staff misconduct and that claim was not referred to the Office of Internal Affairs for an allegation inquiry or formal investigation by the Office of Grievances, then the Office of Appeals shall refer that claim to the individuals below who shall consider whether completion of an allegation inquiry or formal investigation is required pursuant to section 3484.

(1) If the claim was made by an inmate, then an Associate Director, Deputy Director, or the Director from the Division of Adult Institutions shall serve as the Reviewing Authority for that claim.

(2) If the claim was made by a parolee, then a Deputy Director or the Director from the Division of Adult Parole Operations shall serve as the Reviewing Authority for that claim.

(e) A claim may be rejected as described in section 3487.

(f) The Appeal Coordinator shall ensure that an acknowledgment of receipt of the appeal is completed within 14 calendar days of its receipt indicating the date the appeal was received, whether it was disallowed pursuant to subsection 3485(d)(3), whether any particular claim was redirected or reassigned pursuant to this section, and the deadline for the Department's response to all remaining claims.

(g) The full record of each claim shall be made available to the Office of Appeals for purposes of conducting its reviews. The record shall include the claimant's grievance, the claimant's appeal, both acknowledgment letters, all related interviews conducted for the Institutional or Regional Office of Grievances, any relevant documentation prepared for the Office of Grievances, any allegation inquiry reports prepared for the Office of Grievances, any records contained in the Department's information technology system, and all Department rules and memoranda. The record shall not include any new information provided by the claimant to the Office of Appeals that was not made available to the Office of Grievances for their review.

(h) The Reviewing Authority shall exclude any individual whose personal interaction with the claimant forms part of the claim from participating in the appeal process as to that claim. If the individual in question is the Associate Director of the Office of Appeals, then the Director from the Division of Correctional Policy Research and Internal Oversight shall serve as the Reviewing Authority for that claim.

(i) The Reviewing Authority shall ensure that a written response is completed no later than 60 calendar days after receipt of the appeal, unless other statutory or regulatory authority requires a response in less than 60 calendar days, and approve one of the following decisions as to each claim in the appeal:

(1) "Denied," meaning that the Reviewing Authority found by a preponderance of the evidence available that the decision of the Institutional or Regional Office of Grievances was proper;

(2) "Granted," meaning that the Reviewing Authority did not find by a preponderance of the evidence available that the decision by the Institutional or Regional Office of Grievances was proper, in which case the Reviewing Authority shall set aside the decision of the Institutional or Regional Office of Grievances and order an appropriate remedy;

(3) "No Jurisdiction," meaning that the claim concerns a policy, decision, action, condition, or omission by an independent entity which requires that the claimant file a grievance with that entity, as described in subsection 3481(e);

(4) "Redirected," as described in subsection 3486(b);

(5) "Reassigned," as described in subsection 3486(c);

(6) "Rejected," as described in subsection 3487(a);

(7) "Disallowed," as described in subsection 3485(d)(3);

(8) "Under Inquiry or Investigation," meaning that the claim is under an allegation inquiry or formal investigation by departmental staff or another appropriate law enforcement agency;

(9) "Pending Legal Matter," meaning that the substance of the claim concerns pending litigation by a party other than the claimant (excluding class action litigation), pending legislation, or pending regulatory action; or

(10) "Time Expired," meaning that the Department was not able to respond to the claim in the time required pursuant to subsection 3486(i).

(j) The Reviewing Authority's written decision shall be mailed to the claimant and a copy placed in the claimant's central file. If the Reviewing Authority grants a claim, then a copy of the decision shall be simultaneously sent to the appropriate Institutional or Regional Grievance Coordinator.

(k) Implementation of Remedy.

(1) If the Office of Appeals grants a claim, then the Institutional or Regional Reviewing Authority shall ensure that the corresponding remedy is implemented no later than 30 calendar days after the decision was sent to the claimant. If the remedy requires budget

authorization outside the Department's existing authority, then it shall be implemented no later than one year after the decision was sent to the claimant.

(2) If the remedy has not been implemented and the applicable deadline has passed, then the claimant may submit a CDCR Form 602-3 (03/20) directly to the Remedies Compliance Coordinator by regular mail sent to the "Remedies Compliance Coordinator, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 95811." Correspondence directed to this address shall not be opened by any departmental staff other than those in the unit.

(l) Additional rules may be promulgated by the Office of Appeals so long as they are consistent with this Article.

(m) Completion of the review process by the Office of Appeals constitutes exhaustion of all administrative remedies available to a claimant within the Department. A claim is not exhausted if it was disallowed pursuant to subsections 3482(d)(3) or 3485(d)(3) or rejected pursuant to subsection 3487(a).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 832.5 and 5054, Penal Code; and Section 35.107, Title 28, Code of Federal Regulations.

3487. Rejection of a Claim.

(a) A claim shall only be rejected by an Institutional or Regional Office of Grievances or Office of Appeals for one or more of the following reasons:

(1) the claimant did not submit the claim within the timeframe required by subsection 3482(b) for grievances or subsection 3485(b) for appeals;

(2) the claim concerns an anticipated policy, decision, action, condition, or omission by the Department or departmental staff;

(3) the claim is substantially duplicative of a prior claim by the same claimant, except when the prior claim was rejected pursuant to subsection 3487(a)(2);

(4) the claim concerns harm to a person other than the person who signed the grievance or appeal; or

(5) the claim concerns the regulatory framework for the grievance and appeal process itself.

(b) If a claim is rejected as untimely under subsection (a)(1), then the claimant shall be notified of the following dates as determined by the Reviewing Authority: the date the claim was discovered, the date the claim was received, and the deadline for receipt of the claim pursuant to either subsection 3482(b) or 3485(b), whichever is applicable.

(c) A claim that is rejected may be appealed for review by the Office of Appeals pursuant to the procedures in section 3485. If the Office of Appeals grants the appeal, then the claim shall be reassigned to the Office of Grievances at the institution or region where the majority of the facts and circumstances that gave rise to the claim occurred. The Office of Grievances shall treat the claim as received on the date that the Office of Appeals issued its decision and shall issue its own decision in compliance with subsection 3483(i).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

Article 2. Research Involving Inmates or Parolees

EXHIBIT B

FILED

AUG 04 2020

7-29-20

SUSAN Y. SOLING
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
OAKLAND OFFICE

Honorable C. Wilken:

4-94-CV-02307-CW

EX-PARTE COMMUNICATION

Ms. Wilken:

N/C

I WROTE THIS LONG BEFORE P.L.O. FILED THE MOTION OF THE ONGOING ABUSE AT R.J.D. ITS NOT JUST RJD ITS EVERYWHERE. HERE'S WHERE MAJOR CORRUPTION (DWELLS) THE ADMINISTRATION SYSTEM THAT OCCASIONALLY WILL PROCESS A STARR COMPLAINT! NOW THE OFFICER WHOM WRITES A FRIVOLOUS REPORT IS OFTEN SUPPORTED BY SOMEONE OVER HIM/HER AND CROOKED! EVEN WHEN YOU CAN PROVE THESE OFFICERS ARE LYING ITS OF NO USE BY THE TIME YOU START TO ADDRESS YOU'VE ALREADY SUFFERED THE INJUSTICE AND OR THEIR FAVORITE GO TO IS YOUR APPEAL IS BEING REJECTED CAUSE TIME CONSTRAINTS. ANOTHER MAJOR AXIS OF EVIL IS THE CA DEPT OF CORR. & REHAB INTERNAL AFFAIR OFFICE THEY DO NOT FOLLOW THEIR OWN POLICY & PROCEDURE & MOST OF THE TIME THEY SHIELD THE OFFICERS MISCONDUCT BY WAY OF LINGUISTICS and OR THEIR SHEDDY METHOD OF INVESTIGATIONS. THE WAY ITS PRESENTED ON ITS FACE VALUE "THEY ALL COVER EACH OTHER" THE CROOKED COPS! I STRONGLY BELIEVE MOST OF THE INTERNAL AFFAIRS DEPT IS CROOKED & MORE THAN LIKELY THEY'LL BROKER A DEAL & GET PAID OFF BY THE ACCUSED OR HEN BUDDY

7-29-20

WE WERE IN THE ACADEMY TOGETHER I CAN LOSE MY JOB HELP ME! I STRONGLY BELIEVE AN INDEPENDENT AGENCY THATS NOT AFFILIATED WITH CDCR IN ANY WAY SHOULD OVERSEE THE APPEALS PROCESS / STAFF COMPLAINTS AND EVEN THEN THEY'LL STILL BE SOME CORRUPTION! FOR FAR TOO LONG THE COURTS HAVE ACCEPTED EVERY "CROCK OF DUNG" THE DEPT OF CORR & REARMS HAVE GIVEN THEM AT FACE VALUE! THE LINGUISTICS EXPERTS ALTER THE ACCOUNT WHICH FAVORS THE DEPT OF CORR; WHEREFORE THE ABUSE CONTINUES RIGHTS ARE VIOLATED! THE DEPT CONT. CONTINUES TO VIOLATE THEIR OWN POLICY + PROCEDURES! THE OPPRESSED REMAIN OPPRESSED! THE CYCLE CONT. INUES! LOOK THESE OVER PLEASE YOU'LL HAVE A GENERAL IDEA JUST HOW DEEP THE CORRUPTION IS EMBEDDED INTO THE SYSTEM. ROSEN, BIEH, GALVAN, GRINFELD NEED TO BE REPLACED BY FEDERAL ATTORNEYS WHO ARE GOING TO ENFORCE OUR RIGHTS! AT THE TIME MY BACK WAS BROKEN I REACHED OUT TO THE COLEMAN PEOPLE ONLY TO RECEIVE THEIR COVER LETTER. I WAS WALKING AROUND WITH A BROKEN BACK FOR OVER 1 YEAR FINALLY I GOT OPERATED ON & IM STILL SUFFERING PAIN NIGHTMARES ANXIETY P.T.S.D.

Respectfully [REDACTED]

Dear Main Branch F.B.I.

This letter is not intended to slander Mr. SEAN LISTER F.B.I. AGENT of the ROSEVILLE OFFICE IN CALIFORNIA. THIS LETTER IS TO POINT OUT MR. LISTER IS AN OFFICER WHO IS TO UPHOLD CONSTITUTIONAL LAWS. HERE IT APPEARS AS THOUGH NO FURTHER ACTION WILL BE TAKEN AGAINST [REDACTED] COPS WHOM WORK THE CA DEPT OF CORRA REHAB. WHEN MR. LISTER INTERVIEWED ME HE WAS ACCOMPANIED BY CHUCK KING AN INTERNAL AFFAIR AGENT WHO WORKED AT SACRAMENTO CA STATE PRISON "REPRESA" HOW CAN ACTS OF THESE JUST GO UNNOTICED OR NOT BE GIVEN ATTN: OVER 19 OF MY PEERS MYSELF INCLUDED WERE STILL LIVING IN FEAR OF THESE CROOKED COPS. IF PRISONERS HOLD NO CONSTITUTIONAL RIGHTS MAYBE CONGRESS SHOULD REVISE THE U.S. CONSTITUTION STATING SO. PRISONERS HAVE NO RIGHTS. THE MORE I LOOK BACK ON THE INTERVIEW THE FBI AGENT LISTER WAS JUST HELPING CHUCK KING COVER HIS ROLE CAUSE HE ALONG W/ OTHER DEFENDANTS FAILED TO PROTECT ME. I REALIZE I DIDN'T SIGN THE DECLARATION OF INDEPENDENCE NOR DO I HOLD AN OFFICIAL CAPACITY IN CA. THIS CASE IS NOT GIVEN THE ATTENTION IT WARRANTS SO WHAT AM I TO THINK. THE F.B.I. IS ON BOARD WITH VIOLATING CONSTITUTIONAL RIGHTS

I'M STRUGGLING TO UNDERSTAND THE CROOKED ACTS OF THOSE WHOM VIOLATE STATE LAW SO DID MR. LISTER GET PAID OFF? SINCERELY TROUBLED

DEAR MAIN BRANCH F.B.I.

3-28-19

MY NAME IS [REDACTED] @ H.D.S.P. CA STATE PRISON. ON 7-16-18 WHILE I WAS HOUSED AT K.V.S.P. DELAND. I MET WITH SEAN LISTER OF THE ROSEVILLE OFFICE FBI IN CA. HE WAS ACCOMPANIED BY AN INTERNAL AFFAIR AGENT WHO (IS WAS) EMPLOYED BY CSP-SACRAMENTO REPRESA' aka "New Folsom". THIS INTERVIEW WAS REGARDING MY BACK BEING BROKEN, MY RIBS BEING BROKEN I WAS ALSO FORCED TO SWALLOW PISS & SHIT WHILE I WAS BEING CHOKED. THE INTERNAL AFFAIR AGENT'S NAME IS CHUCK KING HE IS ALSO A DEFENDANT IN CASE 2:17-cv-00176-WBS-DMC. AS WE SPOKE I ALERTED THEM HOW OFFICERS @ CSP-SAC WOULD CUFF MY PEERS & BEAT THEM SEVERELY. I WAS BEAT PRETTY BAD AFTER THAT! 4-12-2016 MY BACK WAS BROKEN I WAS FORCED TO SWALLOW PISS & SHIT MY RIBS WERE BROKEN. THE I.A. GUY "KING" & SEAN LISTER OF THE F.B.I. NOTICED A PATTERN YET THEY DID NOT DISCLOSE WHAT IS WAS! ONE OF THE COMMON ILLEGAL PROCEDURES THAT PREVAIL @ CSP-SACRAMENTO IS OFFICERS WILL BEAT ^{YOU} THEN THEY'LL AUTHOR A FRIVOLOUS RULES VIOLATION REPORT ALLEGING THAT YOU THE INMATE ASSAULTED THE I WAS TOLD THAT I WOULD BE GIVEN A FOLLOW-UP VISIT BY THE F.B.I. IT HAS YET TO HAPPEN. ALTHOUGH I HOPE I'M WRONG; IT APPEARS AS THOUGH MR LISTER'S FRIENDSHIP W/ THE INTERNAL AFFAIR AGENT OVERRIDES MY CONSTITUTIONAL RIGHTS LAWS OF THE LAND! ALSO ON JAN 5TH 2017 WHILE HOUSED @ CSP-LAC. I MET WITH 2 (TWO) INTERNAL AFFAIR AGENTS FROM CDCR SAC DIVISION THEY WERE ACCOMPANIED BY A BLACK MAN FROM THE OFFICE OF INSPECTOR GENERAL'S OFFICE. I.A. AGENT "CERDA" ADMINISTERED THE TEST CALIBRATED VOICE STRESS ANALYZER HE WOULD ASK ME QUESTIONS IN A STEADY MANNER. WHEN WE GOT TO THE PART OF C.D. BURKE ORDERING C.D. J. LEWIS TO POUR PISS AND SHIT IN MY MOUTH; I.A. GUY CERDA AFTER I ANSWERED YES, BEGAN KEYING HIS LAPTOP & HE SAID NO, APPROX 9 TIMES WHILE KEYING HIS LAPTOP. THE TEST STOPPED. I WANT JUSTICE. THESE OFFICERS NEED TO BE INDICTED AND STAND TRIAL FOR THEIR

LEGAL MAIL
ATTORNEY CLIENT - COMMUNICATION
PRIVILEGE CONFIDENTIAL

THE
GREENWALL

GANG OF DIRTY
COPS EXIST

ACTS THAT VIOLATE THE CONSTITUTION. One of the 'Echelons' WHO ENFORCES THE CODE OF SILENCE IS LT. D. BALES! WHENEVER A PRISONER ATTEMPTS TO USE THE APPEAL PROCEDURE W/ RECORDS TO EXCESSIVE FORCE: LT. BALES WILL DEPLOY OFFICERS AT A SGT. RANK OR LOWER TO THREATEN THE PRISONER WITH MORE PHYSICAL HARM THATS APPLIED SADISTICALLY AND MALICIOUSLY FOR THE VERY PURPOSE OF CAUSING ONE HARM. One of the MAJOR PROBLEMS IS THE DISCIPLINARY PROCESS OF A RULES VIOLATION REPORT. THE DISCIPLINARY PROCESS IS ENACTED AFTER THE MENTAL HEALTH PATIENT HAS BEEN SUBJECTED TO CRUEL AN UNUSUAL PUNISHMENT THATS APPLIED SADISTICALLY AND MALICIOUSLY. THE DEFENDANTS IN THIS CIVIL ACTION ARE 'TARGETING AMERICAN' W/ DISABILITY AND MENTAL HEALTH PATIENTS. AT THE TIME I WAS SEVERELY BEAT FOR REPORTING THE MISCONDUCT I USED AN A.D.A. DEVICE "WALKER" NOW I USE A WHEELCHAIR. THIS LETTER IS IN HOPES THAT JUSTICE WILL BE SERVED UPON EACH AND EVERY DEFENDANT BE THOROUGHLY INVESTIGATED FOR THEIR ACTIVE ROLES INTO THESE ILLEGAL BEATINGS. EVEN MEDICAL PERSONNEL PLAY A ROLE BY NOT PROPERLY REPORTING INJURIES PSYCHOLOGIST PLAY A ROLE BY NOT FOLLOWING POLICY & PROCEDURE OR COURT ORDERS. IT'S A SICK DEMENTED TWISTED SYSTEM THAT IS NOT GIVEN ATTENTION WHEN MISCONDUCT ARISES! AS THE MISCONDUCT IS NOT PROPERLY ADDRESSED IT CONTINUES. EVEN THE OVER SEERS OF THE MENTAL HEALTH PROGRAM BROWN V. COLEMAN ARE AWARE OF THE ONGOING ABUSE YET THEY DO NOTHING TO STOP IT OR INTERVENE. IT APPEARS NO ACTION IS TAKEN! SO I ASK MYSELF HOW MUCH MONEY DOES C.D.C.R. KICK BACK TO ROSEN, BIEN, GALVAN, GRUNFELD & TO THE PRISON LAW OFFICE. I PRAY THAT FEDERAL AGENTS TAKE OVER THE STATE LAW SYSTEM UNDER C.D.C.R. MOST STATE EMPLOYEES ARE LAZY AND OVER PAID. THEY LITERALLY SLEEP ON THE JOB. I ALSO PRAY THAT BODY CAMS ARE MANDATED BY FEDERAL COURT ORDER AND OFFICERS UNDER C.D.C.R. THEIR UNION PAY FOR THESE BODY CAMS AS PART OF THEIR UNIFORMS. I HOPE MY PRAYERS ARE ANSWERED. I WANT JUSTICE I WANT THESE OFFICERS PROSECUTED TO THE FULLEST EXTENT OF THE LAW. IF I COMMIT A CRIME I GET A PRISON SENTENCE WHEN OFFICERS OF C.D.C.R. BREAK LAWS THEY GET PROMOTIONS AND PAYCHECKS. ITS TIME THESE CROOKED OFFICERS FACE JUSTICE... Respectfully [REDACTED]

e H.D.S.

State of California
 CDC FORM 695
 Screening For:
 CDC 602 Inmate/Parolee Appeals
 CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the FIRST Level

Friday, April 17, 2020

A 0041138001L

LIVING CONDITIONS, , 04/13/2020

Log Number: HDSP-A-20-01297

(Note: Log numbers are assigned to all appeals for tracking purposes. Your appeal is subject to cancellation for failure to correct noted deficiencies.)

The enclosed documents are being returned to you for the following reasons:

Your appeal has been rejected pursuant to the California Code of Regulations, Title 15, Section (CCR) 3084.6(b)(6). Your appeal makes a general allegation, but fails to state facts or specify an act or decision consistent with the allegation.

Inmate Gonzalez this appeal was review by the H/A, who elected not to process the appeal as a S/C. Additionally, you need to provide additionally information to support your claims

☒ G. Watkins, Lieutenant
☒ D. Espinoza, CCII Supervisor
☐ S. Barnes, CCII (A)
☐ B. Gevas, SSA
☐ M. Greer, OT
 Appeals Coordinator
 HDSP

*This 602 Log # got rejected
 I removed the Warden's Name
 Now it got processed to its 3rd level*

*Log # For the one that got processed only cause
 I removed the Warden's Name is*

HDSP-A-20-01699

NOTE: If you are required to respond/explain to this CDCR Form 695, use only the lines provided below.

Be advised that you cannot appeal a rejected appeal, but should take the corrective action necessary and resubmit the appeal within the timeframes specified in CCR 3084.6(a) and CCR 3084.8(b). Pursuant to CCR 3084.6(e), once an appeal has been cancelled, that appeal may not be resubmitted. However, a separate appeal can be filed on the cancellation decision. The original appeal may only be resubmitted if the appeal on the cancellation is granted.

NOTE THIS CDCR 695 IS A PERMANENT APPEAL ATTACHMENT AND IS NOT TO BE REMOVED

Memorandum

Date : April 17, 2020

To : AIMS

Subject: **ALLEGATION FOR POSSIBLE REFERRAL TO THE ALLEGATIONS INQUIRY MANAGEMENT SECTION (AIMS)**

Name of Employee: J. Cabrera, D. Acosta, T. Lam, J. Pickett
PERNR#: 100151, 118941, 120403, Unk
Classification: CO, CO, CO, Warden
Assignment/post: 221300 B SEC PAT 1, RO238-RDO Relief, 321312 B1 FLR 2
Shift hours: 06:00-14:00, 06:00-14:00, 14:00-22:00, Varies
RDOs: SS, TW, MT, Varies

The enclosed grievance contains allegations against the above listed employee by Inmate Name CDCR #: [REDACTED] HDSP Log # A-20-01297

Explanation of factors which warrant inquiry.

Issue: Subject claims COs J. Cabrera, D. Acosta, Lam and Warden J. Pickett conspired and lied in an effort to deny subject due process rights. CO Cabrera was instructed by Warden Pickett to stack RVRs as a form of retaliation when subject filed staff complaints against same. Subject claims corrupt actions are shielded by a crooked corrupt like Warden J. Pickett.

Request: Subject requests to meet with internal affairs, who are not afraid of liars like Cabrera, a full board panel investigation, for he above involved to waive POBOR and participate in voice stress analysis, J. Cabrera to be terminated.

*Do not refer to AIMS – Process as Supervisorial review

J. Pickett
Warden (A)

THE WARDEN WOULD NOT PROCESS THIS
CAUSE I ADDED HIS NAME. WHEN I REMOVED
HIS NAME IT WAS PROCESSED ITS AT 3RD level
NOW!

~~SEE REVERSE~~ →

State of California

Department of Corrections and Rehabilitation

Memorandum

Date : April 17, 2020

To : J. Pickett
Warden (A)

Subject: DETERMINATION OF GRIEVANCE AGAINST STAFF

RE: CO J. Cabrera, D. Acosta, T. Lam & Warden J. Pickett

WERE TWO SEPERATE PRISONERS IMPLICATING
THE SAME OFFICERS; WE HAVE THE SAME LOG #

The attached grievance from Inmate/Parolee, KL [REDACTED] alleges staff misconduct. Pursuant to Department policy, please review the attached grievance and determine the following:

Brackets () are for Grievance Coordinator (GC) recommendation, boxes ☐ are for Hiring Authority (HA) determination.

- () ☐ Refer to the Office of Internal Affairs (OIA), Central Intake Unit via CDCR Form 989 for **Investigation**/notification of direct adverse action (reasonable belief misconduct occurred and adverse action likely).
- () ☐ Refer to OIA, Allegation Inquiry Management Section (AIMS) for **Allegation Inquiry** (additional information needed to establish likelihood of adverse action per Department Operations Manual Section 31140.14.) The completed "Confidential Supplement to Grievance, 'Appeal Inquiry'" will be submitted by AIMS for confidential filing with the grievance. **Inmates/parolees will not be provided a copy of this confidential report.**
- [Signature]* (X) ☒ Refer to unit/facility for completion of a Supervisorial Review to be conducted by appropriate supervisory staff (adverse action unlikely).
- () ☒ **Process as a routine grievance.** Grievance does not meet criteria for assignment as a staff complaint (no misconduct identified, even if facts as alleged are assumed to be true) — accept, reject or cancel in accordance with CCR Title 15, Section 3084.5.

GRIEVANCE SUBJECT TO CANCELLATION IN ACCORDANCE WITH CCR, TITLE 15, SECTION 3084.6(c): REASON:

- () ☐ Cancel with no Investigation/Inquiry.
- () ☐ Cancel. Assign for review outside Grievance Process via an Inquiry or Investigation (Offender will *not* be notified, Attachment E not used).

Print name and sign below:Name: S. Barnes
Grievance CoordinatorSign *[Signature]*Date 4.17.20Name: J. Pickett
Hiring Authority (A)Sign *[Signature]*Date 4-17-20Grievance Log Number: HDSP-A-20-01297*See reverse*

RETURN TO HA BASED UPON NEW INFORMATION/OFFICE OF INTERNAL AFFAIRS (OIA) REJECTION

- () ☐ Reassign for an internal affairs investigation (adverse action likely based on new information).
() ☐ Reassign for an allegation inquiry.*
() ☐ Reassign to supervisory staff (adverse action unlikely based on new information).
() ☐ Use OIA memorandum in lieu of Attachment C.**
() ☐ Grievance does not meet criteria for a staff complaint.***

Name S. Barnes Sign _____ Date _____
Grievance Coordinator

Name J. Pickett Sign _____ Date _____
Hiring Authority

* Likelihood of adverse action cannot be determined based on available information.

** Retain in grievance file under red cover as confidential document.

***Alleged behavior no longer can be construed as misconduct based on new information.

Attachment(s) as noted.

High Desert State Prison

P.O. Box 3030

Susanville, CA 96127

Name

CDCR # A Bldg/Bed



California Dept. Of Corrections
and Rehabilitation

INDIGENT MAIL

*LEGAL MAIL
CONFIDENTIAL*

ADDRESS TO:

P.O. Box 3030 / All Mail To Inmates

P.O. Box 270249 / Money Orders Only

ATTN: SEAN LISTER
FEDERAL BUREAU of INVESTIGATIONS
2001 FREEDOM WAY
ROSEVILLE, CALIFORNIA
-95678-

5/30/19

Dear Mr. Sean Lister:

RE: Case No. 2:17-CV-0176-WBS-DMC-P

This is just a friendly reminder I'm still awaiting the follow up visit you promised me that you were coming back! That's a promise you made before you departed to Romania. I'd appreciate some form of a response. If you do not respond please send any and all documents back to me. This way you not holding on to anything & I'll be like we never met & [REDACTED] failure to protect claim will stand. Why do you think I kicked you under the table? The way I see it Chuck showed up with you just to cover his role. All the while posing as the Good Guy in your presence... I can only pray you do the right thing & if turning your back and failing to uphold CONSTITUTIONAL RIGHTS is right in your eyes then I'll continue to ask God to open your eyes! What those cops ARE DOING is Wrong & you know it! Set your friendship w/ Chuck King aside & go after the Bad Guys! Till then I'll keep you & your loved ones in prayer & hope they never have to endure what some of us went through.

P.S. JUDGE COTA

Sincerely, [REDACTED]

ALREADY SCREENED my Complaint
IT'S GOOD!

[REDACTED] @ H.D.S.P.

High Desert State Prison

P.O. Box 3030

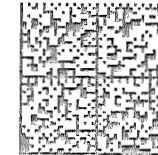
Susanville, CA 96127

Name

CDCR #

Blog/Bed

Personal &
CONFIDENTIAL



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California Dept. Of Corrections
and Rehabilitation

INDIGENT MAIL

*CONFIDENTIAL
LEGAL MAIL*

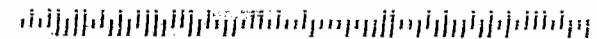
ADDRESS TO:

P.O. Box 3030 / All Mail To Inmates

P.O. Box 270249 / Money Orders Only

U.S.D.C. Northern District
of CALIFORNIA
CLERK OF THE COURT
TO: HONORABLE CLAUDIA WILKEN
1301 CLAY STREET # 4005
OAKLAND, CALIFORNIA
94612-5212

946125212-0037



MARTINEZ

02-624

170216

EXHIBIT C

State of California

Department of Corrections and Rehabilitation

Memorandum

Date: July 24, 2020

To: Patrick Covello
Warden (a)
[REDACTED]Subject: **DETERMINATION OF GRIEVANCE OR ALLEGATION AGAINST STAFF**
Log# 20785

RE: Lt. Alvis

The attached allegation or grievance from Inmate/Parolee, [REDACTED] alleges staff misconduct. Pursuant to Department policy, please review the attached grievance and determine the following:

Brackets () are for Grievance Coordinator (GC) or Allegation Reviewer recommendation, boxes ☐ are for Hiring Authority (HA) determination.

() ☐ Refer to the Office of Internal Affairs (OIA), Central Intake Unit via CDCR Form 989 for Investigation/notification of direct adverse action (reasonable belief misconduct occurred and adverse action likely).

(X) ☒ Refer to OIA, Allegation Inquiry Management Section (AIMS) for Allegation Inquiry (additional information needed to establish likelihood of adverse action per Department Operations Manual Section 31140.14). The completed "Confidential Supplement to Grievance, 'Allegation Inquiry'" will be submitted by AIMS for review and confidential filing. Inmates/Parolees will not be provided a copy of this confidential report.

() ☐ Refer to a Locally Designated Investigator (LDI) for an Institutional Inquiry (additional information needed to establish likelihood of adverse action per Department Operations Manual Section 31140.14). The completed "Confidential Institutional Inquiry" will be submitted by a LDI for confidential filing. (PREA and Use of Force Inquiries listed below) Inmates/Parolees will not be provided a copy of this confidential report.

() ☐ Refer to unit/facility for completion of a Supervisory Review to be conducted by appropriate supervisory staff (adverse action unlikely).

() ☐ Refer the allegation to unit/facility for completion of an Institutional Review to be conducted by appropriate supervisory staff (adverse action unlikely).

() ☐ Process as a routine grievance. Grievance does not meet criteria for assignment as a staff complaint (no misconduct identified, even if facts as alleged are assumed to be true) — accept, reject or cancel in accordance with CCR Title 1S, Section 3084.S.

() ☐ Refer to the institutional inquiry processes for the following allegations;

- ☐ PREA violation - All allegations of sexual violence, staff sexual misconduct, and sexual harassment shall be assigned to a Locally Designated Investigator (LDI) to conduct an inquiry until sufficient information is obtained to warrant an OIA investigation, or the information collected refutes the allegations, as determined by the Hiring Authority (DOM 54040.12). The LDI will address all associated misconduct within the PREA allegation.

Attachment A

Page 2

- ☐ **Unnecessary or excessive use of force allegations wherein an incident report has been submitted with no SBI/GBI** - will be reported and addressed in accordance with CCR 3268.1 Reporting and Investigating the Use of Force for Institution/Facility Staff. If, at any point in the review, staff discovers information that leads them to reasonably believe or suspect an employee has committed any serious misconduct, the staff shall immediately forward all information to the Institution Head via the chain of command, recommending an internal affairs investigation if appropriate.

Note: All grievances claiming unreported unnecessary/excessive allegations use of force allegations will be forwarded to AIMS, unless the Hiring Authority determines the allegation warrants a formal investigation by OIA.

Print name and sign below:

Name: Heather Fletes Sign:  Date: 07/24/2020
Grievance Coordinator or Assigned Inquiry Fact Gatherer

Name: Holmes Sign:  Date: 7/24/2020
Hiring Authority

Return to HA based upon new information/AIMS rejection

- () ☐ Reassign for an internal affairs investigation (adverse action likely based on new information).
() ☐ Reassign for an Institutional Inquiry.*
() ☐ Reassign to supervisory staff (adverse action unlikely based on new information) as a **Supervisory Review or Institutional Review**.
() ☐ Use OIA memorandum in lieu of Institutional Inquiry Report. **
() ☐ Grievance does not meet criteria for an allegation inquiry. ***

Name: _____ Sign: _____ Date: _____
Grievance Coordinator or Assigned Inquiry Fact Gatherer

Name: _____ Sign: _____ Date: _____
Hiring Authority

* Likelihood of adverse action cannot be determined based on available information.

** Retain in grievance file under red cover as confidential document.

*** Alleged behavior no longer can be construed as misconduct based on new information.

Attachment(s) as noted.

State of California

Department of Corrections and Rehabilitation

Memorandum

Date: July 17, 2020

To: M. Pollard
Warden
Richard J. Donovan Correctional Facility

Subject: **DETERMINATION OF ALLEGATION AGAINST STAFF – LOG# 17841 (CLAIM 7 OF 7)**

RE: Correctional Officer C. Meza

The attached allegation from Inmate/Parolee, [REDACTED] alleges staff misconduct. Inmate alleges Housing Unit 1 Control Officer Meza instructed an inmate to find an inmate to rush into claimant's cell and set an example while he opens the cell door. Pursuant to Department policy, please review the attached grievance and determine the following:

Brackets () are for Grievance Coordinator (GC) or Allegation Reviewer recommendation, boxes ☐ are for Hiring Authority (HA) determination.

() ☐ Refer to the Office of Internal Affairs (OIA), **Central Intake Unit** via CDCR Form 989 for **Investigation**/notification of direct adverse action (reasonable belief misconduct occurred and adverse action likely).

(X) ☒ Refer to OIA, **Allegation Inquiry Management Section (AIMS)** for **Allegation Inquiry** (additional information needed to establish likelihood of adverse action per Department Operations Manual Section 31140.14). The completed "Confidential Supplement to Grievance, 'Allegation Inquiry'" will be submitted by AIMS for review and confidential filing. **Inmates/Parolees will not be provided a copy of this confidential report.**

() ☐ Refer to a **Locally Designated Investigator (LDI)** for an **Institutional Inquiry** (additional information needed to establish likelihood of adverse action per Department Operations Manual Section 31140.14). The completed "Confidential Institutional Inquiry" will be submitted by a LDI for confidential filing. (PREA and Use of Force Inquiries listed below)

Inmates/Parolees will not be provided a copy of this confidential report.

() ☐ Refer to unit/facility for completion of a **Supervisory Review** to be conducted by appropriate supervisory staff (adverse action unlikely).

() ☐ Refer the allegation to unit/facility for completion of an **Institutional Review** to be conducted by appropriate supervisory staff (adverse action unlikely).

() ☐ **Process as a routine grievance.** Grievance does not meet criteria for assignment as a staff complaint (no misconduct identified, even if facts as alleged are assumed to be true) — **accept, reject or cancel in accordance with CCR Title 15, Section 3084.5.**

() ☐ Refer to the institutional inquiry processes for the following allegations;

- ☐ **PREA violation** - All allegations of sexual violence, staff sexual misconduct, and sexual harassment shall be assigned to a Locally Designated Investigator (LDI) to conduct an inquiry until sufficient information is obtained to warrant an OIA investigation, or the information collected refutes the

Attachment A


Page 2

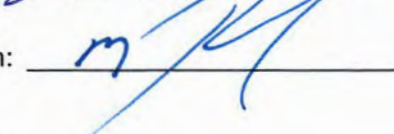
allegations, as determined by the Hiring Authority (DOM 54040.12). The LDI will address all associated misconduct within the PREA allegation.

Unnecessary or excessive use of force allegations wherein an incident report has been submitted with no SBI/GBI - will be reported and addressed in accordance with CCR 3268.1 Reporting and Investigating the Use of Force for Institution/Facility Staff. If, at any point in the review, staff discovers information that leads them to reasonably believe or suspect an employee has committed any serious misconduct, the staff shall immediately forward all information to the Institution Head via the chain of command, recommending an internal affairs investigation if appropriate.

Note: All grievances claiming unreported unnecessary/excessive allegations use of force allegations will be forwarded to AIMS, unless the Hiring Authority determines the allegation warrants a formal investigation by OIA.

Print name and sign below:

Name: R. CALVERT Sign:  Date: 7/17/20
 Grievance Coordinator or Assigned Inquiry Fact Gatherer

Name: M. POLARD Sign:  Date: 7/20/20
 Hiring Authority

Return to HA based upon new information/AIMS rejection

- () ☐ Reassign for an internal affairs investigation (adverse action likely based on new information).
 () ☐ Reassign for an Institutional Inquiry.*
 () ☐ Reassign to supervisory staff (adverse action unlikely based on new information) as a Supervisorial Review or Institutional Review.
 () ☐ Use OIA memorandum in lieu of Institutional Inquiry Report. **
 () ☐ Grievance does not meet criteria for an allegation inquiry. ***

Name: _____ Sign: _____ Date: _____
 Grievance Coordinator or Assigned Inquiry Fact Gatherer

Name: _____ Sign: _____ Date: _____
 Hiring Authority

* Likelihood of adverse action cannot be determined based on available information.

** Retain in grievance file under red cover as confidential document.

***Alleged behavior no longer can be construed as misconduct based on new information.

Attachment(s) as noted.

Exhibit 115

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Wednesday, August 5, 2020 9:39 PM
To: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>
Cc: Jack Gleiberman <JGleiberman@rbgg.com>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Caroline Jackson <CJackson@rbgg.com>; Receptionist <R@rbgg.com>
Subject: RE: Request to schedule OIA interviews timely [IWOV-DMS.FID3579]

CAUTION: This email originated from outside of CDCR/CCHCS. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Tamiya,

I participated in my first DART interview today. I would like to know the process for producing the tape of the interview to us. Also, Lt. Robinson had our client draw a schematic – may I have a copy of that and of the photo of the site of the incident that Lt. Robinson stated he would be taking?

What will CDCR do with the results of these interviews – will a report be issued?

Finally, would CDCR consider notifying declarants in advance of the interviews why they are being interviewed? My client did not know why he was being taken to the interview room and so did not bring his glasses today and therefore could not read his declaration. If you would consider a notification, we would like to review the wording before it is used.

We look forward to reviewing the next proposed schedule tomorrow.

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830

From: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>
Sent: Tuesday, August 04, 2020 11:22 PM
To: Gay C. Grunfeld <GGrunfeld@rbgg.com>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>
Cc: Jack Gleiberman <JGleiberman@rbgg.com>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Caroline Jackson <CJackson@rbgg.com>; Receptionist <R@rbgg.com>
Subject: RE: Request to schedule OIA interviews timely [IWOV-DMS.FID3579]

Dear Patricia and Tamiya,

Just following up on the below requests and questions, which remain unanswered. Also, could you please send us the diagram that Lt. Ramirez required Mr. [REDACTED] to mark during his August 20, 2020 DART interview?

Thanks and warm regards, Gay

Gay Crosthwait Grunfeld
ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 telephone
(415) 433-7104 facsimile

From: Gay C. Grunfeld

Sent: Thursday, August 20, 2020 6:47 PM

To: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>

Cc: Jack Gleiberman <JGleiberman@rbgg.com>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Caroline Jackson <CJackson@rbgg.com>; Rekha Arulanantham <RArulanantham@rbgg.com>; Thomas Nolan <TNolan@rbgg.com>; wesleyr@oig.ca.gov

Subject: RE: OIA interviews -- Request for Copies of Declarations to be made Available [IWOV-DMS.FID3579]

Dear Patricia and Tamiya,

In case it has not been clear from previous interviews, we need the DART investigators to come prepared with copies of the declarations or documents or videos they are asking about for our clients to review. This is basic fairness. Witnesses should be confidentially informed in advance of the purpose of the interview so they can bring their glasses, hearing aids, or other assistive devices if needed. The declarations should be taken back from the witnesses after the interviews so as to avoid any compromise to their safety.

In addition, we remain concerned about the purpose of these interviews. Are they part of AIMS? Will a report issue?

Thank you, Gay

Gay Crosthwait Grunfeld

Exhibit 116

From: [Davis, Tamiya@CDCR](mailto:Tamiya.Davis@cdcr.ca.gov)
To: [Gay C. Grunfeld](#); [Penny Godbold](#); [Michael Freedman](#)
Cc: [Jack Gleiberman](#); [Ferguson, Patricia@CDCR](mailto:Ferguson.Patricia@cdcr.ca.gov); [Caroline Jackson](#); [Rekha Arulanantham](#); [Thomas Nolan](#); wesleyr@oig.ca.gov; [Johnson, Gannon@CDCR](mailto:Johnson.Gannon@cdcr.ca.gov)
Subject: RE: OIA interviews -- Request for Copies of Declarations to be made Available [IWOV-DMS.FID3579]
Date: Thursday, September 10, 2020 10:20:20 PM

Gay,

Attached please find the diagram that inmate [REDACTED] marked during his August 20, 2020 interview.

Prior to the interviews, OIA agents are checking the inmates' ADA records to determine whether they will need glasses, hearing aids, or other assistive devices to participate in the interview. CDCR understands your request that copies of the declarations be provided to the inmate as a courtesy and then removed from the inmate's possession at the conclusion of the interview. Your request is being considered and CDCR has not yet made a final decision. However, I would like to remind you that these declarations were drafted and signed by these inmates under penalty of perjury and account their personal experiences, impressions and first-hand knowledge. Additionally, and as a professional courtesy, Plaintiffs' counsel is provided a pre-meeting with their clients immediately preceding the scheduled interview.

Lastly, I am unclear as to what is concerning you regarding the purpose of the interviews. CDCR has an obligation to review and investigate the serious allegations raised in the declarations, and is doing so. These interviews are part of that process.

I hope I have answered your outstanding questions.

Best,

Tamiya Davis
Attorney IV, Class Action Team
Office of Legal Affairs
California Department of Corrections and Rehabilitation
Cell: 916.247.5094

From: Gay C. Grunfeld <GGrunfeld@rbgg.com>
Sent: Friday, August 28, 2020 9:58 AM
To: Davis, Tamiya@CDCR <Tamiya.Davis@cdcr.ca.gov>; Penny Godbold <PGodbold@rbgg.com>; Michael Freedman <MFreedman@rbgg.com>
Cc: Jack Gleiberman <JGleiberman@rbgg.com>; Ferguson, Patricia@CDCR <Patricia.Ferguson@cdcr.ca.gov>; Caroline Jackson <CJackson@rbgg.com>; Rekha Arulanantham <RARulanantham@rbgg.com>; Thomas Nolan <TNolan@rbgg.com>; wesleyr@oig.ca.gov
Subject: RE: OIA interviews -- Request for Copies of Declarations to be made Available [IWOV-DMS.FID3579]

CAUTION: This email originated from outside of CDCR/CCHCS. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Exhibit 117

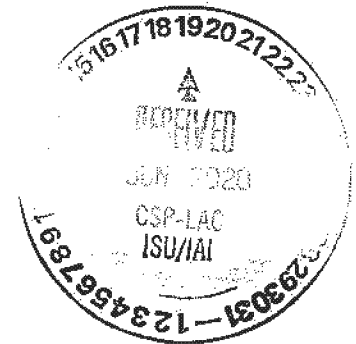
State of California

Department of Corrections and Rehabilitation

Memorandum

Date: June 17, 2020

To: R.C. JOHNSON
Warden
California State Prison - Los Angeles County



Subject: **ALLEGATION INQUIRY – ALLEGATIONS OF STAFF MISCONDUCT/EXCESSIVE FORCE MADE BY INMATE [REDACTED]**

On April 2, 2020, the California State Prison – Los Angeles County (LAC), Investigative Services Unit (ISU), received a copy of a report authored by attorneys representing the Coleman class members. The report contained fourteen individual advocacy letters on behalf of inmates housed at LAC. Specifically the Coleman class members are represented by the law firm of Rosen Bien Galvan & Grunfeld LLP (RBGG). For the purpose of this report the RBGG will be referred to as the Prison Law Office (PLO). The report contained multiple allegations of staff misconduct. Specifically, the report notes: ***“These letters describe fourteen horrifying incidents of officer brutality and abuse directed at incarcerated people with physical and mental disabilities at LAC. Most of these incidents were witnessed by other class members at LAC who—despite clear risk of retaliation—agreed to come forward and share their accounts to support efforts to end the pervasive culture of staff misconduct at LAC.”***

Based on these allegations the PLO, has requested that all the allegations of staff misconduct are fully investigated regardless of any informal fact-finding determinations that already may have been made by the institution. Additionally the PLO has requested that the investigations include reviews of any disciplinary actions taken against prisoners alleging staff misconduct, especially those who received Rules Violation Reports (RVRs) following physical confrontations with staff.

This memorandum is being submitted to request closure to the inquiry regarding the following subject(s) / allegation(s) 193-195:

- **Allegation #193.** Inmate [REDACTED] reported that on August 7, 2019, at the California State Prison-Los Angeles County (LAC), Facility 'D', Housing Unit D-3, he went over to first watch D-Yard, Building 3 Officer [REDACTED], who was near the podium on the dayroom floor, and asked for a shower. Mr. [REDACTED] also told Officer [REDACTED] that multiple supervisory staff had approved his previous requests for extra showers. Officer [REDACTED] replied ***“This is my house. I don't give a fuck what the Lieutenant or Sergeant say. I run this shit over here. You'll be lucky to get a shower over here when I let you out.”*** Mr. [REDACTED] reasserted his need for a shower and extra sheets due to his incontinence, but Officer [REDACTED] still refused Mr. [REDACTED] accommodation requests and told him to go back to his cell.

* CDC 1617 (3/89)

June 17, 2020

Inquiry into allegations of staff misconduct by Inmate [REDACTED]

Page 2 of 9

- **Allegation #194.** Inmate [REDACTED] [REDACTED] [REDACTED] reported that on August 7, 2019, at the California State Prison-Los Angeles County (LAC), Facility 'D', Housing Unit D-3, Officer [REDACTED] then came up to Mr. [REDACTED] and dumped him out of his wheelchair onto the ground. The officer then dragged him out onto the dayroom floor, put a knee into his back, and cuffed him up.
- **Allegation #195.** Inmate [REDACTED] [REDACTED] [REDACTED] reported that on August 7, 2019, at the California State Prison-Los Angeles County (LAC), Facility 'D', Housing Unit D-3, The nursing staff member who evaluated him only marked down that he had no injuries to his face or head and refused to note the scrapes on his legs and knees from being dumped out of his wheelchair.

Notification of Allegation:

The initial notification dated March 27, 2020, of staff misconduct allegation of unnecessary/excessive force was submitted by Inmate [REDACTED] to the PLO who subsequently assigned an inquiry to the LAC Investigative Services Unit (ISU).

Response to Allegation (s) #193-195:

Inmate Interviews:

Interview with Inmate [REDACTED] [REDACTED] [REDACTED] (KVSP [REDACTED]):

On June 10, 2020, while assigned as California State Prison-Los Angeles County (LAC) Special Assignment Sergeant, I (Sgt. [REDACTED]) conducted a telephonic interview with Inmate [REDACTED] [REDACTED] [REDACTED] in regards to the allegations he made to the PLO that excessive force was used against him by Facility 'D' Correctional staff on August 7, 2019. At the time that the allegation occurred on August 7, 2019, Inmate [REDACTED] was housed on LAC Facility 'D', Housing Unit D-3, Cell [REDACTED]. [REDACTED] was interviewed telephonically as he is currently housed at Kern Valley State Prison (KVSP) Facility 'D'. [REDACTED] originally refused to be interviewed and stated that he wanted to have his attorney present as he has filed a lawsuit in regards to this inquiry. [REDACTED] then agreed to be interviewed but did not want the interview recorded without an attorney present. [REDACTED] stated that on August 7, 2019, he spilled urine from his catheter on himself and his cell floor and requested to take a shower. [REDACTED] stated that he did receive a shower however, when he finished, he requested cleaning supplies to clean his cell. [REDACTED] stated that Officer [REDACTED] refused to give him cleaning supplies and stated to [REDACTED] "This is your mess, you made it you clean it." [REDACTED] stated that he then told Officer [REDACTED] that the Facility 'D' Sergeant stated that he is supposed to get extra showers and cleaning supplies due to his incontinence. [REDACTED] stated that Officer [REDACTED] then stated, "I don't give a fuck what the Sergeant said, I run this Building and you'll be lucky to get a shower when I'm here."

June 17, 2020

Inquiry into allegations of staff misconduct by Inmate [REDACTED]

Page 3 of 9

[REDACTED] stated that Officer [REDACTED] then approached him from behind and lifted the handles of his wheelchair forcing him to fall to the ground injuring his back. Once on the ground, [REDACTED] stated that Officer [REDACTED] put his knee on the middle of his back causing him pain as he was put into handcuffs. [REDACTED] stated that he was then placed back into his wheelchair as he was screaming in pain and escorted to Facility 'D' Medical. [REDACTED] stated that the force used by Officer [REDACTED] was unnecessary and excessive and that he still suffers from back pain as a result of the incident. The incident occurred at the cell front of D3-123. [REDACTED] had nothing further to add to the interview.

Investigators Note: Although [REDACTED] alleges that he was assaulted by Officer [REDACTED], causing injuries to his knees and back, the injuries noted on the 7219 dated August 7, 2019, are inconsistent with his claims. There are no noted injuries by Medical staff to the knees or back to support this allegation. Additionally, [REDACTED] did not admit or even mention throwing the bag of soiled diapers that struck Officer [REDACTED] which is what initiated the incident.

Interview with Inmate [REDACTED] ([REDACTED]): (Attachment 1)

On June 11, 2020, while assigned as California State Prison-Los Angeles County (LAC) Special Assignment Sergeant, I (Sgt. [REDACTED]) conducted an interview with Inmate [REDACTED] in regards to the allegations made by Inmate [REDACTED] to the PLO that excessive force was used against him by LAC Facility 'D' Correctional staff on August 7, 2019. At the time that the allegation occurred on August 7, 2019, Inmate [REDACTED] was housed on LAC Facility 'D', Housing Unit D-3, Cell [REDACTED]. [REDACTED] was interviewed in the LAC Facility 'C' Program Office. Inmate [REDACTED] stated that he remembered the incident and that he remembers Inmate [REDACTED] as the two were friends while housed at LAC. [REDACTED] stated that he viewed the incident from the Inmate Porter Janitorial station next to the Lower B-Section shower.

[REDACTED] stated that prior to the incident, he had volunteered to wash the bed sheets of Inmate [REDACTED] in the Porters station. [REDACTED] stated that he would wash [REDACTED] sheets if they were soiled as he ([REDACTED]) was physically unable to wash his own sheets. [REDACTED] stated that as he was washing the sheets, he heard Inmate [REDACTED] yelling to be "let go". [REDACTED] stated that he then looked out from the Porter station as his view was blocked by the wall, at which time he was ordered by staff to go sit on the B-Section stairwell nearest to the C-Section cells. [REDACTED] stated that as he sat on the stairwell, he observed Officer [REDACTED] lift [REDACTED] wheelchair from the back forcing him ([REDACTED]) to fall to the ground. [REDACTED] stated that he then observed Officer [REDACTED] place his knee on the middle of [REDACTED] back and place him into handcuffs. [REDACTED] stated that responding staff then placed [REDACTED] into a wheelchair while applying a spit mask as he was screaming in pain and subsequently wheeled him out of the Housing Unit. [REDACTED] had nothing further to add to the interview.

Exhibit 118

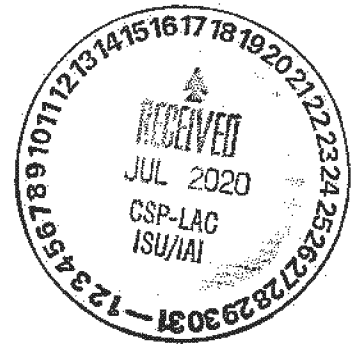
State of California

Department of Corrections and Rehabilitation

Memorandum

Date: July 15, 2020

To: R.C. JOHNSON
Warden
California State Prison - Los Angeles County



Subject: **ALLEGATION INQUIRY – ALLEGATIONS OF STAFF MISCONDUCT AGAINST CORRECTIONAL OFFICER [REDACTED]**

On April 2, 2020, the California State Prison – Los Angeles County (LAC), Investigative Services Unit (ISU), received a copy of a report authored by attorneys representing the Coleman class members. The report contained fourteen individual advocacy letters on behalf of inmates housed at LAC. Specifically, the Coleman class members are represented by the law firm of Rosen Bien Galvan & Grunfeld LLP (RBGG). For the purpose of this report, the RBGG will be referred to as the Prison Law Office (PLO). The report contained multiple allegations of staff misconduct. Specifically, the report notes: ***“These letters describe fourteen horrifying incidents of officer brutality and abuse directed at incarcerated people with physical and mental disabilities at LAC. Most of these incidents were witnessed by other class members at LAC who—despite clear risk of retaliation—agreed to come forward and share their accounts to support efforts to end the pervasive culture of staff misconduct at LAC.”***

Based on these allegations the PLO, has requested that all of the allegations of staff misconduct are fully investigated regardless of any informal fact-finding determinations that already may have been made by the institution. Additionally, the PLO has requested that the investigations include reviews of any disciplinary actions taken against prisoners alleging staff misconduct, especially those who received Rules Violation Reports (RVRs) following physical confrontations with staff.

This memorandum is being submitted to request closure to the inquiry regarding the following subject(s) / allegation(s):

- Inmate [REDACTED] alleges that on January 13, 2020, Officer [REDACTED] told Mr. [REDACTED] to cuff up. After Mr. [REDACTED] had cuffed up, Officer [REDACTED] began to walk him to the gym. As he did so, he gripped the handcuffs hard, pulling Mr. [REDACTED] hands backward, while telling him “I told you to take that shit off.” (referring to a religious head piece)
- [REDACTED] alleges Officer [REDACTED] led him into the gym, grabbed Mr. [REDACTED] Keffiyeh and pulled hard in an apparent attempt to rip it off of his head. The Keffiyeh, however, was wrapped around Mr. [REDACTED] neck, so as Officer [REDACTED] grabbed it he began to choke Mr. [REDACTED]. Next, Officer [REDACTED] brought him to a holding cage in the gym. As Mr. [REDACTED] stepped into the

July 15, 2020

Inquiry into allegations of staff misconduct against Officer [REDACTED]

Page 2 of 8

holding cage, Officer [REDACTED] used his right arm to slam Mr. [REDACTED] head into the wall of the cage. Mr. [REDACTED] briefly lost consciousness and woke up with Officer [REDACTED] on top of him. Officer [REDACTED] was telling him "Who's a bitch now? Who's a bitch now?" and moved to strike him.

- [REDACTED] alleges as Officer [REDACTED] moved to strike Mr. [REDACTED] another officer standing in the gym, Officer [REDACTED] shook his head at Officer [REDACTED]. Officer [REDACTED] then, while straddling him, took off his handcuffs and warned him "you turn around and I'll fuck you up." Officer [REDACTED] then closed the cage door.

Notification of Allegation:

It should be noted on January 17, 2020, the LAC, Inmate Appeals Office (IAO) received a CDCR 602 Appeal from Inmate [REDACTED] [REDACTED] containing allegations of staff misconduct. The appeal was assigned log number LAC-D-20-00334.

Document Review:

CDCR 7219 Medical Report of Injury or Unusual Occurrence (Attachment 01)

Lt. [REDACTED] conducted a review of the CDCR 7219 Report of Injury or Unusual Occurrence completed on [REDACTED] on the date of the allegation. The CDCR 7219 notes injuries consistent with his allegation.

Investigator's Note: Although the injuries documented on the CDCR 7219 are consistent with [REDACTED] allegation, there is no evidence indicating the injuries were caused by staff's use of force. It is noted during a videotaped interview, [REDACTED] claims his shoulder was dislocated. However, there is no mention of this on the CDCR 7219.

Rules Violation Report (RVR) Log #6953498 (Attachment 02)

I conducted a review of RVR log #6953498 issued to [REDACTED] for the specific act of Disrespect without Potential for Violence. In the RVR, Officer [REDACTED] documents his attempt to counsel Inmate [REDACTED] in regards to Dining Hall procedures. According to the RVR, [REDACTED] was not receptive to the counseling and stated, **"The fuck you know what I can wear for religious purposes, are you Muslim? The fuck out of here fat boy, you don't know shit."** [REDACTED] documents he ordered [REDACTED] to submit to handcuffs due to his unprovoked aggressive language and physical posture. According to [REDACTED] [REDACTED] refused the order and remained in a fighting stance. The RVR notes [REDACTED] repeated his order and [REDACTED] complied. [REDACTED] notes he placed [REDACTED] in handcuffs and escorted him to the Facility D Gym, along with Officer [REDACTED]. [REDACTED] documents while approaching the gym [REDACTED] stated, **"Take the cuffs off fat boy, see how tuff you really are."** According to [REDACTED] he then placed [REDACTED] in a holding cell inside the gym. [REDACTED] notes once inside the holding cell, he

July 15, 2020

Inquiry into allegations of staff misconduct against Officer [REDACTED]

Page 6 of 8

Interview with Inmate [REDACTED]

On July 7, 2020, I conducted an interview with Inmate [REDACTED] in regards to [REDACTED] allegations. For a complete detailed account of the interview you may review the audio recording (**Attachment 06 Audio CD titled Inmate Interviews**). I identified [REDACTED] for interview as he was assigned as a Facility D Yard Crew Worker on the date mentioned in [REDACTED] allegation (January 13, 2020). Due to [REDACTED] work assignment, I identified him as a possible witness to the allegations made. At the commencement of the interview, I showed [REDACTED] a picture of [REDACTED] and asked [REDACTED] if he recognized him. [REDACTED] stated, **"Yeah, I've seen the face before."** I then described [REDACTED] allegation to [REDACTED] and asked him if he recalled witnessing any of the events described. [REDACTED] replied, **"No, no sir."** As the interview continued, I verified with [REDACTED] that he was in fact assigned to work as a Yard Crew Worker during the time frame mentioned in the allegation. [REDACTED] stated, **"January 13? Monday; yeah I was working but I didn't see nothing."**

Interview with Inmate [REDACTED]

On July 8, 2020, I conducted an interview with Inmate [REDACTED] in regards to his allegations. For a complete detailed account of the interview you may review the audio recording (**Attachment 06 Audio CD titled Inmate Interviews**). At the commencement of the interview, I asked [REDACTED] to explain in detail, the events leading to his allegations. [REDACTED] stated he was walking out of the Facility D Dining Hall, when Office [REDACTED] ordered him to remove a head covering he was wearing. [REDACTED] stated he informed [REDACTED] he [REDACTED] was allowed to wear the head covering. According to [REDACTED] Taylor ordered him once more to remove the head covering from his head. [REDACTED] stated he refused to do so and asked [REDACTED] to call the Facility Sergeant. According to [REDACTED] [REDACTED] refused to do so and proceeded to place [REDACTED] in handcuffs. [REDACTED] stated [REDACTED] then escorted [REDACTED] to the Facility D Gym. [REDACTED] continued stating he was escorted into the gym. [REDACTED] stated, **"As soon as the door closes, he starts snatching my head gear off."** [REDACTED] continued to explain how in the process of removing his head covering, [REDACTED] choked him with the fabric. [REDACTED] then continued to explain how [REDACTED] forcefully pushed him into a holding cell inside the gym. [REDACTED] explained specifically, **"He's about two hundred and fifty pounds and he linebackers me into the back of the cage."** According to [REDACTED] his head hit the wall. [REDACTED] stated, **"I kinda blacked out. When I come to, he's on my back with his shoulder."** According to [REDACTED] his right shoulder was dislocated during this encounter. [REDACTED] stated he was able to put his shoulder back into place. [REDACTED] stated [REDACTED] then removed the handcuffs from [REDACTED] and closed the holding cell door. According to [REDACTED] he was left inside the gym for approximately two hours. [REDACTED] stated he was eventually released from the holding cell. As the interview continued, I asked [REDACTED] if [REDACTED] escorted him into the gym by himself or with the assistance of a partner. [REDACTED] stated [REDACTED] had a partner, however, he could not recall his name. I asked Taylor to explain how long he was inside the holding cell before medical staff evaluated him. According to [REDACTED] medical staff entered the gym to evaluate another inmate who was placed in a holding cell after [REDACTED] was. According to [REDACTED] he asked the nurse to be evaluated. According to [REDACTED] the nurse left and did not

July 15, 2020

Inquiry into allegations of staff misconduct against Officer [REDACTED]

Page 7 of 8

evaluate him. [REDACTED] stated he was eventually evaluated when his Housing Unit staff allowed him to walk to the Facility D clinic. As the interview continued, I asked [REDACTED] to explain how [REDACTED] threw him into the holding cell. According to [REDACTED] Taylor utilized a "football like" maneuver to strike [REDACTED] in his back area with his [REDACTED] shoulder.

Investigators Note: Information provided by [REDACTED] during my interview contained inconsistencies. During the interview, [REDACTED] stated [REDACTED] utilized a "football like" tackling maneuver to strike [REDACTED] in the back with his [REDACTED] shoulder. However, during a videotaped interview conducted on the date of the alleged incident, [REDACTED] stated [REDACTED] grabbed him by his coat and shoved him into the holding cell. It should be noted during my interview, [REDACTED] once again asserted there were no inmate witnesses to his allegations. This further discredits Inmate [REDACTED] testimony of what he allegedly observed. Additionally, [REDACTED] claims he was not evaluated by medical staff while he was inside the gym. However, I discovered a CDCR 7219 Medical Report of Injury or Unusual Occurrence dated January 13, 2020. The CDCR 7219 notes [REDACTED] name and time seen as 0734. It should be noted The CDCR 7219 notes the location of the evaluation as the Facility D Gym. This refutes [REDACTED] allegation indicating he was not evaluated while he was inside the gym.

CONCLUSION

Based on the information obtained during this inquiry, it is evident Inmate [REDACTED] allegation to the PLO is over embellished. Based on the information obtained during this inquiry and the lack of corroborating evidence, it is apparent [REDACTED] allegations of excessive force have no merit and are being driven by [REDACTED] not wanting to be held accountable for his actions, specifically, committing the act of disrespecting staff. Information collected and reviewed during this inquiry did not provide substantial evidence indicating staff utilized force on [REDACTED] as he alleges. Furthermore, the IERC conducted a thorough review of [REDACTED] allegations and determined there was no staff misconduct identified.

Based on totality of the circumstances, the preponderance of evidence and the information reviewed during this inquiry I find that the allegations and incident described herein lacks cause for further investigation.

THIS PORTION OF THE REPORT WAS INTENTIONALLY LEFT BLANK

Exhibit 119

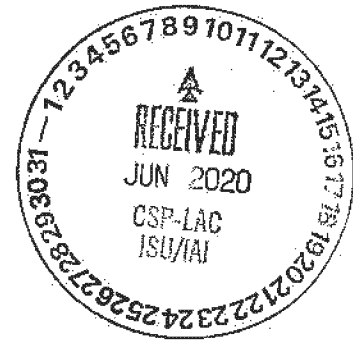
State of California

Department of Corrections and Rehabilitation

Memorandum

Date: June 5, 2020

To: R.C. JOHNSON
Warden
California State Prison - Los Angeles County



Subject: ALLEGATION INQUIRY – ALLEGATION OF UNNECESSARY / EXCESSIVE FORCE ON INMATE [REDACTED] BY OFFICERS [REDACTED] AND [REDACTED] AT THE CALIFORNIA STATE PRISON LOS ANGELES COUNTY

On April 2, 2020, the California State Prison – Los Angeles County (LAC), Investigative Services Unit (ISU), received a copy of a report authored by attorneys representing the Coleman class members. The report contained fourteen individual advocacy letters on behalf of inmates housed at LAC. Specifically the Coleman class members are represented by the law firm of Rosen Bien Galvan & Grunfeld LLP (RBGG). For the purpose of this report the RBGG will be referred to as the Prison Law Office (PLO). The report contained multiple allegations of staff misconduct. Specifically, the report notes: ***“These letters describe fourteen horrifying incidents of officer brutality and abuse directed at incarcerated people with physical and mental disabilities at LAC. Most of these incidents were witnessed by other class members at LAC who—despite clear risk of retaliation—agreed to come forward and share their accounts to support efforts to end the pervasive culture of staff misconduct at LAC.”***

Based on these allegations the PLO, has requested that all allegations of staff misconduct are fully investigated regardless of any informal fact-finding determinations that already may have been made by the institution. Additionally the PLO has requested that the investigations include reviews of any disciplinary actions taken against prisoners alleging staff misconduct, especially those who received Rules Violation Reports (RVRs) following physical confrontations with staff.

This memorandum is being submitted to request closure to the inquiry regarding the following subject(s) / allegation(s):

- On September 8, 2019, that day, at approximately 12:00 p.m., [REDACTED] walked to pill call to pick up his medications. While at pill call, Mr. [REDACTED] spoke with Officer [REDACTED] about some Rules Violation Reports (RVRs) that the Officer had given him recently. He told the officer that his mental health had played a role in the write-ups and that he was frustrated he had been written up. While picking up his medications, he argued with the Officer about the write-ups. After leaving the medication window, he started to walk back to his Housing Unit. While he walked away, Officer [REDACTED] suddenly charged him, hit his alarm, and tackled him to the ground.

June 5, 2020

Inquiry into allegation by [REDACTED] of Excessive and Unnecessary Use of Force.

Page 2 of 10

Officer [REDACTED] then cuffed up Mr. [REDACTED]. Two other Officers, Officer [REDACTED] and Officer [REDACTED], responded and began hitting Mr. [REDACTED] in the face and upper body, even though he was already handcuffed. After punching him numerous times, the Officers picked him up and took him to the Gym. After the Officers walked him into the Gym, they assaulted him again. They knocked him to the ground near one of the holding cages and repeatedly struck him as he lay on the ground. The Officers then picked him up and placed him into one of the holding cages in the Gym. During the evaluation, Officer [REDACTED] stood next to the evaluating nurse in a threatening manner and the nurse only recorded that he had minor scratches and abrasions from the assault.

- Mr. [REDACTED] records document that he sustained injuries consistent with the Department Operations Manual's ("DOM") Definition of "Serious Bodily Injury." See DOM 51020.4 ("Serious bodily injury means a serious impairment of physical conditions, including, but not limited to the following: Loss of consciousness; Concussion; Bone fracture; Protracted loss or impairment of any bodily member or organ; A wound requiring extensive suturing; and Serious disfigurement.") Despite the well-documented serious bodily injuries in Mr. [REDACTED] medical file, neither the 7219 medical evaluation nor the 837 incident report package from the incident document that Mr. [REDACTED] sustained serious bodily injuries from officers' use of force.

Notification of Allegation:

On September 11, 2019, the LAC, Institution Appeals Coordinator received an Inmate / Parolee Appeal CDCR 602 authored by [REDACTED] signed on September 9, 2019, noting the previous mentioned allegation. The CDCR 602 was designated log # LAC-D-19-04602 (**Attachment #1**). It was determined the allegation be referred to the Inmate Appeal Office (IAO) for an Appeal Inquiry.

Inmate Interviews:

Interview with Inmate [REDACTED]

On May 28, 2020, while assigned to the LAC, Investigative Services Unit (ISU), I (Lieutenant [Lt.] [REDACTED] interviewed Inmate [REDACTED] relevant to the allegation he reported to the PLO. [REDACTED] stated that on September 8, 2019, he was standing in the pill line speaking with Officer [REDACTED]. [REDACTED] stated that during their conversation [REDACTED] became disrespectful by stating he ([REDACTED] is a Sex Offender. [REDACTED] explained that he became upset and a verbal altercation followed. [REDACTED] further stated he proceeded to get his medication from the medical window. According to [REDACTED] once he received his medication he started walking back to his Housing Unit. As [REDACTED] walked pass [REDACTED] [REDACTED] made a comment however, [REDACTED] did not hear the specifics of the comments and ignored [REDACTED] and continued walking. [REDACTED] stated he then heard the yard alarm and was immediately tackled from behind taken to the ground causing him to hit his face on

June 5, 2020

Inquiry into allegation by [REDACTED] of Excessive and Unnecessary Use of Force.

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the ground. [REDACTED] added that once he was tackled, [REDACTED] began to punch him. [REDACTED] further stated he attempted to get [REDACTED] off of him by swinging his elbow in a backward motion towards his back and attempting to push himself up, as staff respond. [REDACTED] went on to say that, he did not know if it was an inmate or staff that tackled him or who was on his back. [REDACTED] explained that once Officers [REDACTED] and [REDACTED] responded and arrived to the incident site they joined in and began punching him. [REDACTED] stated that he was finally placed in handcuffs however, they continued to punch him. [REDACTED] added that he was then escorted to the Gym where [REDACTED] punched him in the right side of the head and [REDACTED] punched him and slammed him into the Holding Cell causing an injury to his wrist. Once secured in the Holding Cell both Officers left the Gym. [REDACTED] stated that once he was secured in the Holding Cell, Lieutenant [REDACTED] came into the Gym and remained there while Medical Staff medically evaluated him and completed CDCR 7219. According to [REDACTED] Psychiatric Technician (PT) [REDACTED] did not accurately document [REDACTED] statement or injuries because Lt. [REDACTED] intimidated [REDACTED]. [REDACTED] explained that Lt. [REDACTED] did not give [REDACTED] a directive not to accurately document the injuries or statement however; [REDACTED] believes [REDACTED] was intimidated by Lt. [REDACTED] based on [REDACTED] posture. [REDACTED] stated he was subsequently sent to an outside medical facility where he was diagnosed with a concussion, treated for abrasions, contusions to his face and sore ribs and wrist. [REDACTED] stated that during the incident he became dizzy but never lost conscious. [REDACTED] had nothing further to add.

Investigator Note: At the initial phases of the interview, [REDACTED] indicated he was resistive with the Officers because he did not know an Officer was assaulting him and stated he was only punched while on the ground. Additionally, when [REDACTED] was asked to reiterate his recollection of the incident, [REDACTED] began to over embellish and began providing contradicting information indicating he was punched and kicked by the Officers. [REDACTED] explained that he reported to the PLO that he lost consciousness however; he only was dizzy and was conscious throughout the incident. Additionally, [REDACTED] continued to provide contradicting information stating he was never taken to the ground while in the Gym, only punched while being escorted and thrown into the Holding Cell. When questioned about his inconsistencies, [REDACTED] stated he could not accurately remember due to the multiple hits he received and the PLO possibly misreported portions of the allegation.

Interview with Inmate [REDACTED]

On May 21, 2020, I interviewed Inmate [REDACTED]. [REDACTED] was identified as a witness to the incident by the PLO. [REDACTED] stated he arrived on Facility D on October 23, 2018. [REDACTED] further stated that although Facility D is an EOP Facility he is not EOP, does not take medication and has been misclassified by Mental Health. I explained to [REDACTED] that I was conducting an allegation inquiry into incident that occurred in September of 2019 on Facility D and that he was identified as a witness to the incident. [REDACTED] stated he knows what incident I was referring to and added that the incident involved Inmate [REDACTED] who was housed in cell 239 in

Exhibit 120

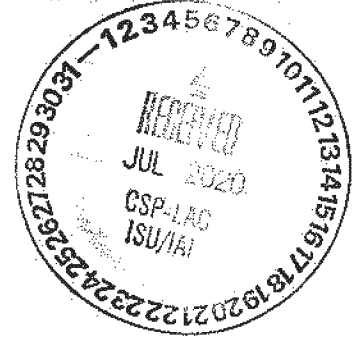
State of California

Department of Corrections and Rehabilitation

Memorandum

Date: July 3, 2020

To: R.C. JOHNSON
Warden
California State Prison - Los Angeles County



Subject: **ALLEGATION INQUIRY – ALLEGATIONS OF STAFF MISCONDUCT AGAINST OFFICER [REDACTED]**

On April 2, 2020, the California State Prison – Los Angeles County (LAC), Investigative Services Unit (ISU), received a copy of a report authored by attorneys representing the Coleman class members. The report contained fourteen individual advocacy letters on behalf of inmates housed at LAC. Specifically the Coleman class members are represented by the law firm of Rosen Bien Galvan & Grunfeld LLP (RBGG). For the purpose of this report the RBGG will be referred to as the Prison Law Office (PLO). The report contained multiple allegations of staff misconduct. Specifically, the report notes: ***“These letters describe fourteen horrifying incidents of officer brutality and abuse directed at incarcerated people with physical and mental disabilities at LAC. Most of these incidents were witnessed by other class members at LAC who—despite clear risk of retaliation—agreed to come forward and share their accounts to support efforts to end the pervasive culture of staff misconduct at LAC.”***

Based on these allegations the PLO, has requested that all of the allegations of staff misconduct are fully investigated regardless of any informal fact-finding determinations that already may have been made by the institution. Additionally the PLO has requested that the investigations include reviews of any disciplinary actions taken against prisoners alleging staff misconduct, especially those who received Rules Violation Reports (RVRs) following physical confrontations with staff.

This memorandum is being submitted to request closure to the inquiry regarding the following subject(s) / allegation(s):

- ***Inmate [REDACTED] alleges on August 27, 2019, Officer [REDACTED] utilized unnecessary force on him inside Housing Unit D4***
- ***[REDACTED] further alleges he was dragged by multiple officers across the yard***
- ***[REDACTED] alleges he was dropped to the ground and assaulted by staff***
- ***[REDACTED] alleges he was picked up and slammed into a holding cell***
- ***[REDACTED] alleges staff pressured him not to report his injuries***

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Inquiry into allegations of staff misconduct against Officer [REDACTED]

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ignored the order and stated, *"I ain't locking up. Fuck that, I ain't going in."* Reports indicate Officer [REDACTED] ordered [REDACTED] to submit to handcuffs as he [REDACTED] immediately placed his hand on [REDACTED] right wrist in order to place him in restraints. According to reports, [REDACTED] suddenly pulled his arm away from [REDACTED] grasp, necessitating the use of immediate, physical force to overcome resistance and effect custody of [REDACTED]. According to reports, [REDACTED] was taken to the ground, where [REDACTED] seized his active physical resistance. Reports indicate [REDACTED] was placed in handcuffs and escorted to the Facility D Gym where he was placed in a holding cell. This incident was reviewed at the Incident Commanders level, First Level Manager, and Second Level Manager. All levels of review indicate staff's actions prior, during, and after the use of force were in compliance with the current department use of force policy, procedures, and training. This incident was thoroughly reviewed by the Institutional Executive Review Committee (IERC) and closed on September 18, 2019, noting no further action warranted. A subsequent IERC review was conducted in regards to the same incident due to Inmate [REDACTED] making allegations of unnecessary/ excessive force. The subsequent IERC review indicated there was no violation of policy and the allegation was closed on May 21, 2020, noting no further action warranted.

CDCR 7219 Medical Report of Injury or Unusual Occurrence (Attachment 03)

I conducted a review of the CDCR 7219 Report of Injury or Unusual Occurrence completed on [REDACTED] on the date of the incident. The CDCR 7219 notes injuries to [REDACTED] which are consistent with the force reported.

Investigator's Note: In review of the CDCR 7219 completed on [REDACTED] on the date of the incident, [REDACTED] does not make allegations of unnecessary / excessive force.

CDCR 3014 Report of Findings relevant to LAC-D04-19-08-0762 (Attachment 04)

On May 5, 2020, Lt. [REDACTED] conducted an interview with Inmate [REDACTED] relevant to an allegation of Unnecessary and Excessive force used on him during incident #LAC-D04-19-08-0762 on August 27, 2019. Lt. [REDACTED] noted the following information in his CDCR 3014 Report of Findings (ROF) as a summary of statements made by [REDACTED] during his allegation interview:

Inmate [REDACTED] stated that on Tuesday, August 27, 2019 he was thrown out of a wheelchair and slammed face first on the floor landing on his chin. He was then dragged across the yard to the Facility D Gym. Once [REDACTED] was inside the gym, responding staff let [REDACTED] go causing him to hit the floor. [REDACTED] further stated that while he was on the ground, he was kicked and punched for approximately thirty (30) seconds. Once the kicking and punching stopped, he was placed in a holding cell. While he was being placed in the holding cell, he was slammed against the rear of the cell. [REDACTED] also alleges that his arms were raised so high that his shoulder was almost broken while removing the hand cuffs.

In his ROF, Lt. [REDACTED] documents an interview with an inmate witness. The following is a synopsis of the information provided by the inmate witness.

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Inquiry into allegations of staff misconduct against Officer [REDACTED]

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Inmate [REDACTED] stated he was housed on Facility D, Building 4, cell 121 at the time and date of the incident. [REDACTED] stated that he observed Correctional Officer [REDACTED] grab Inmate [REDACTED] out of a wheelchair; threw [REDACTED] on the ground; placed him back in restraints and then place him back on the same wheelchair. [REDACTED] was then escorted out of the building and subsequently returned.

Lt. [REDACTED] concluded the following in his ROF in regards to [REDACTED] allegation:

On August 27, 2019, Inmate [REDACTED] committed the act of Resisting a Peace Officer which resulted in the use of force. The circumstances evolving around the incident was captured on a Crime Incident report (CDCR837) log # LAC-D04-19-08-0762. The use of physical force was utilized as a result of the incident. Inmate [REDACTED] received an abrasion/ scratch (1) to his facial area. Correctional Officer [REDACTED] articulated the immediate use of force and any subsequent actions. [REDACTED] also articulated that during the use of physical force, he forced [REDACTED] to the floor causing [REDACTED] shoulder area and face to impact the floor. The Medical Report of Injury or Unusual Occurrence (CDCR 7219) and Crime Incident Report (837) was reviewed. Inmate [REDACTED] participated in the interview and his allegations and explanation has been captured. The responding staff involved in the incident utilized force in order to gain compliance with a lawful order, effect custody, overcome active physical resistance, subdue an attacker or prevent escape. Force was not utilized solely to gain compliance with a lawful order. The reviewer believes the allegations of unnecessary or excessive use of force do not meet the alleged injuries.

Rules Violation Report (RVR) Log #6896560 (Attachment 05)

I conducted a review of RVR log #6896560 issued to [REDACTED] for the specific act of Resisting Staff. In the RVR, Officer [REDACTED] documents [REDACTED] actions requiring immediate force to overcome his active physical resistance. [REDACTED] notes in the RVR he attempted to place [REDACTED] in restraints due to his refusal to return to his cell. [REDACTED] reports he placed his right hand on [REDACTED] right wrist in an attempt to place him in handcuffs. According to the RVR, [REDACTED] suddenly pulled his right arm away from [REDACTED] and twisted his shoulders and upper body towards [REDACTED]. [REDACTED] reports he utilized physical force on [REDACTED] to take him to the ground. Documents relative to the RVR indicate [REDACTED] attended the disciplinary hearing on September 16, 2019 and entered a plea of not guilty during the hearing. It is noted in the disciplinary hearing results form (**Attachment 06**), [REDACTED] requested the presence of two inmate witnesses. The disciplinary hearing results note Inmates [REDACTED] and [REDACTED] where made available and questioned as witnesses during the disciplinary hearing.

Investigator's Note: The PLO report provides [REDACTED] accounts of the incident as reported by him to the PLO. It should be noted, the PLO report indicates [REDACTED] reported he was denied witnesses during his disciplinary hearing. However, the disciplinary hearing results form, relative to his RVR hearing notes two inmate witnesses provided testimony during the disciplinary hearing. This directly refutes

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Inquiry into allegations of staff misconduct against Officer [REDACTED]

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a possible witness to the incident. As the interview commenced, I explained the circumstances surrounding the incident in question to [REDACTED]. I then asked [REDACTED] if he witnessed the incident in question. [REDACTED] answered, ***"I don't remember nothing about that."***

Interview with Inmate [REDACTED]

On May 27, 2020, I conducted an interview with Inmate [REDACTED] in regards to [REDACTED] allegations. For a complete detailed account of the interview you may review the audio recording (**Attachment 07 Audio CD titled Inmate Interviews**). I identified [REDACTED] for interview as he was housed in D4, cell [REDACTED] on the date of the incident. Based on the layout of the Housing Unit, I determined [REDACTED] to be a possible witness to the incident. As the interview commenced, I explained the circumstances surrounding the incident in question to [REDACTED]. I then asked [REDACTED] if he witnessed the incident in question. [REDACTED] replied, ***"I don't really recall any of that situation that happened."***

Interview with Inmate [REDACTED]

On May 27, 2020, I conducted an interview with Inmate [REDACTED] in regards to [REDACTED] allegations. For a complete detailed account of the interview you may review the audio recording (**Attachment 07 Audio CD titled Inmate Interviews**). I identified [REDACTED] for interview as he was assigned as a Housing Unit Porter on the date of the incident. As the interview commenced, I explained the circumstances surrounding the incident in question to [REDACTED]. I then asked [REDACTED] if he witnessed the incident in question. [REDACTED] replied, ***"I remember him just being disrespectful with the officers and uh, I can't remember what officer took him down. Uh, he walked up on him, you know what I mean and the officer told him to back up. He was just being stupid. As a matter of fact, he was in his wheelchair."*** As the interview continued, I asked [REDACTED] if he observed staff punch or kick [REDACTED]. [REDACTED] replied, ***"No. They actually made him prone out and they put the cuffs on him, and the picked him up and took him to the cages."*** According to [REDACTED], [REDACTED] returned to the Housing Unit later that day. As the interview continued, I asked [REDACTED] if he observed [REDACTED] being pushed by someone when he entered the Housing Unit. [REDACTED] answered, ***"No, he was pushing himself in."***

Interview with Inmate [REDACTED]

On June 11, 2020, I conducted an interview with Inmate [REDACTED] in regards to his allegations. For a complete detailed account of the interview you may review the audio recording (**Attachment 07 Audio CD titled Inmate Interviews**). At the commencement of the interview I asked [REDACTED] if he recalled being interviewed by PLO attorneys in regards to his allegations. [REDACTED] replied, ***"Uh. I was interviewed by several different officers I believe, since then."*** I then informed [REDACTED] that I was referring to him being interviewed by attorneys. [REDACTED] stated, ***"Oh, uh, yeah; correct."*** I then asked [REDACTED] if he recalled when he was interviewed by the PLO attorneys. [REDACTED] answered, ***"Uh, um, no I don't recall the exact date sir."*** I then asked [REDACTED] if he was interviewed by the PLO attorneys within the year (2020). [REDACTED] replied, ***"Uh, I don't***

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recall sir. I've got a lot going on. But I did speak with some attorneys. As the interview continued, I asked [REDACTED] if he recalled how his interview with the PLO was initiated. I specifically asked [REDACTED] if he was contacted by the PLO or if he contacted the PLO. [REDACTED] replied, ***"I'd rather not say."*** It should be noted my reason for the specific questioning was to establish a time frame for [REDACTED] reporting of the alleged staff misconduct. It is noted [REDACTED] did not file any appeals until six months after the date of the incident, on February 23, 2020. As the interview continued, I asked [REDACTED] to explain to me the events leading to his allegations. [REDACTED] replied, ***"Alright sir, to be honest, I keep talking about this with different officers. I was already interviewed twice by two sets of officers. Two at a time, and it's starting to make me uncomfortable that I have to keep disclosing the story to different officers. I'm not sure what's the purpose of that if I was recorded two different times already."*** At this point in the interview, I explained to [REDACTED] the purpose of my interview was to gather additional information in regards to his allegations. During the interview, I referenced the information via the PLO report in regards to his allegations. [REDACTED] stated he filed an appeal as well. [REDACTED] stated specifically, ***"The initial 602 and the report from the attorneys office; I'd like that to be my statement sir. I'd like to confirm what that says because it's a long story."*** As the interview continued, I asked [REDACTED] if he would agree to answer a couple of questions regarding his allegations that staff utilized force on him while he was inside the Facility D Gym. [REDACTED] agreed to answer my questions. I asked [REDACTED] if Sgt. [REDACTED] was present when staff allegedly assaulted [REDACTED] inside the gym. [REDACTED] replied, ***"[REDACTED] was there, yes."***

Investigator's Note: During my interview, [REDACTED] seemed to be evasive when answering questions. [REDACTED] would often start his response by utilizing the words "um" or "uh." By doing this, it seemed like [REDACTED] was searching for the right answer or an answer which would corroborate his allegations. During the initial portion of my questioning, [REDACTED] refused to disclose how his interview with the PLO attorney was initiated. This was a simple question which [REDACTED] refused to answer by stating, "I'd rather not say." It should be noted it was not documented that [REDACTED] reported any of his allegations until approximately six months after the incident. Although not proven, it is reasonable to assume [REDACTED] is attempting to circumvent established reporting guidelines. There is no documentation, prior to the PLO report indicating [REDACTED] made allegations of excessive/ unnecessary force. Given [REDACTED] history of filing appeals, it is reasonable to conclude he would have filed an appeal within the established time constraints had his allegations actually occurred.

Staff Interviews:

On Monday, June 29, 2020, I conducted an interview with Licensed Psychiatric Technician (LPT) [REDACTED]. It is documented on a CDCR 7219 that LPT [REDACTED] conducted the medical evaluation on [REDACTED] on the date of the incident in question. I presented LPT [REDACTED] with a copy of the CDCR 7219 dated August 27, 2019 which had her signature on the bottom under the section reading: *Report Completed By*. LPT [REDACTED] acknowledged she completed the CDCR 7219. It should be noted LPT [REDACTED] reviewed the CDCR 7219, to include [REDACTED] name and made several unsolicited statements. According to LPT [REDACTED] she had already been interviewed

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Inquiry into allegations of staff misconduct against Officer [REDACTED]

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by a Supervising Registered Nurse in regards to allegations made by [REDACTED]. According to LPT [REDACTED] she was asked if she heard staff call [REDACTED] derogatory names. LPT [REDACTED] stated she was focused on documenting any injuries on [REDACTED] and she did not hear staff call [REDACTED] any names. I asked LPT [REDACTED] if she documented all injuries she observed. LPT [REDACTED] stated, "Yes." I informed LPT [REDACTED] that [REDACTED] claimed he had multiple injuries which were not documented. LPT [REDACTED] stated the injury documented on the CDCR 7219 is the only injury she observed on [REDACTED].

On Wednesday, July 1, 2020, I conducted an interview with Lt. [REDACTED] in regards to [REDACTED] allegations. I explained the circumstances surrounding the incident involving [REDACTED] to Lt. [REDACTED]. Lt. [REDACTED] recalled the incident in question. During the interview, I asked Lt. [REDACTED] if he observed staff utilize force on [REDACTED] while inside the Facility D Gym on the date of the incident. Lt. [REDACTED] stated staff did not utilize any force on [REDACTED] while he was inside the Facility D. Gym. I asked Lt. [REDACTED] if [REDACTED] reported allegations of excessive or unnecessary force. Lt. [REDACTED] stated, "No, he did not."

CONCLUSION

Based on the information obtained during this inquiry, to include documents reviewed and inmate witness interviews, it is evident Inmate [REDACTED] allegations to the PLO are over embellished. Based on the information obtained during this inquiry and the lack of corroborating evidence, it appears [REDACTED] allegations of excessive force have no merit and are being driven by him not wanting to be held accountable for his actions, specifically, committing the act of Resisting Staff. Information obtained from inmate witnesses provided by the PLO contained multiple inconsistencies. Although not proven, the evidence collected alludes that their testimonies may have been coerced by [REDACTED] accounts of what allegedly occurred. The inmate witnesses provided by the PLO disclose just enough information to suggest staff misconduct may have occurred. However, their accounts of what they allegedly witnessed contradict each other's testimonies. A review of all documents relative to the incident in question indicate staff's actions prior, during, and following the use of force were in compliance with the current department use of force policy, procedures, and training. The relationship between the need for force and the amount of force used was commensurate with what the use of force policy deems as appropriate and reasonable. The incident was reviewed at the appropriate levels, to include a thorough review by the IERC which concluded there was no misconduct identified.

Based on totality of the circumstances, the preponderance of evidence and the information reviewed during this inquiry I find that the allegations and incident described herein lacks cause for further investigation.

Exhibit 121

From: [LRinfo](#)
To: [Jack Gleiberman](#)
Subject: RE: Request for MOU Item [IWOV-DMS.FID3579]
Date: Friday, July 3, 2020 3:53:31 PM

Mr. Gleiberman,

The Tentative Agreement for Bargaining Unit 6 dated 2020-2022 will remain on the CalHR website until the final agreement is created, reviewed, and approved for posting. This particular agreement included a significant number of provisions where the parties agreed to "rollover" the previous contract language. For these provisions, the section numbers are provided, and agreed to, without the specific language.

The Memorandum of Understanding (MOU) for 2019-2020 has recently been added to the CalHR website replacing the previous Tentative Agreement.

Respectfully,

CalHR Labor Relations Division

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From: Jack Gleiberman <JGleiberman@rbgg.com>
Sent: Wednesday, June 24, 2020 4:46 PM
To: LRinfo <LR.info@calhr.ca.gov>
Subject: RE: Request for MOU Item [IWOV-DMS.FID3579]

Thank you very much. I look forward to your response.

Jack

From: LRinfo <LR.info@calhr.ca.gov>
Sent: Wednesday, June 24, 2020 4:27 PM
To: Jack Gleiberman <JGleiberman@rbgg.com>
Subject: RE: Request for MOU Item [IWOV-DMS.FID3579]

Mr. Gleiberman,

We have received your email and will provide a response shortly.

Respectfully,

CalHR Labor Relations Division

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From: Jack Gleiberman <JGleiberman@rbgg.com>
Sent: Tuesday, June 23, 2020 2:59 PM
To: LRinfo <LR.info@calhr.ca.gov>
Subject: Request for MOU Item [IWOV-DMS.FID3579]

Hello,

I am writing to request the Bargaining Unit 6 Tentative Agreement (TA) for 2020-2022. While I see that you recently posted the TA on CalHR's website (<https://www.calhr.ca.gov/labor-relations/Documents/ta-20200703-20220702-bu06.pdf>), it appears that a number of sections have been omitted from the agreement. I write to request the full agreement. Please let me know if you need anything further to fulfill this request.

Best,

Jack Rhein Gleiberman
Paralegal

ROSEN BIEN GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 433-6830 (telephone)
(415) 433-7104 (fax)
jgleiberman@rbgg.com

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IRS CIRCULAR 230 NOTICE: As required by United States Treasury Regulations, you should be aware that this communication is not intended by the sender to be used, and it cannot be used, for the purpose of avoiding penalties under United States federal tax laws.

Exhibit 122



Agreement Between
The State of California and
CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION
(CCPOA)

covering

BARGAINING UNIT 6
CORRECTIONS

Effective

July 3, 2019 through July 2, 2020

- F. The employee shall have the right to submit a rebuttal to any LOI/WID, or any such comment referred to in subsection E. above. This rebuttal shall be attached to and shall accompany the LOI/WID.
- G. Disputes concerning this section are adjudicated under the mini-arb section. However, a violation of section D. above is arbitrable under sections 6.11 and 6.12 and 6.11 C. in particular. The Arbitrator cannot in making their decision evaluate, review, or in any other manner involve the contents of the disputed document.

9.06 Adverse Action and Citizen Complaint Documents

- A. Upon the Bargaining Unit 6 member's written request, all official Notices of Adverse Action, all documentation leading to or supporting or proposing such action, and all SPB decisions rendered in such cases will be purged from the employee's official personnel file(s) after three (3) years from the effective date of the adverse action, unless there is a litigation hold on the file.
- B. Upon the employee's written request, all citizen's complaints, reports and findings related to Penal Code Section 832.5 shall be purged from the Department's files after a period of five (5) years.

9.07 Out-of-Classification Assignments

- A. Notwithstanding Government Code Sections 905.2, 19818.8, an employee may be required to perform work other than that described in the specification for their classification for up to one hundred eighty (180) consecutive calendar days during a fiscal year.

- B. Out-of-Class When Required

If a department head or designee requires an employee, in writing, to work in a higher classification for more than fifteen (15) calendar days, the employee shall receive a pay differential of five percent (5%) over their normal daily rate of the class to which they are appointed for that period in excess of fifteen (15) calendar days. If a department head or designee requires, in writing, an employee to work in a higher classification for thirty (30) consecutive calendar days or more, the employee shall receive a pay differential of five percent (5%) over their normal daily rate of the class to which they are appointed from the first day of the assignment. If the assignment to a higher classification is not terminated before it exceeds one hundred twenty (120) consecutive calendar days, the employee shall be entitled to receive the difference between their salary and the salary of the higher class at the same step the employee would receive if the employee were to be promoted to that class, for that period in excess of one hundred twenty (120) consecutive calendar days. The five percent (5%) differential shall not be considered as part of the base pay in computing the promotional step in the higher class.

- C. Should any employee file suit against CCPOA seeking to declare this provision illegal, the State shall indemnify for any costs incurred in defending itself.
- D. The State shall not rotate employees in and out of out-of-class assignments for the purpose of avoiding payment of an out-of-class differential.
- E. It is not the State's intent to select employees for out-of-class assignments based on favoritism.
- F. It is not the intent of either party to circumvent any certified hiring or promotional list, or the Merit System in general. Furthermore, the Appointing Authority shall choose employees for out-of-class appointments from the current hiring list for the particular job classification for which the employee is to be hired on an acting basis. If there is no appropriate current hiring list or the list has been exhausted at the local facility or office complex, the State shall assign the out-of-class duty only to those employees who are qualified to take the examination for entry into that classification. Permanent employees who vacate positions to accept out-of-class assignments shall have a mandatory right of return to their former position and assignment, when possible, upon the conclusion of the out-of-class work.
- G. The parties agree to reopen this section upon issuance of a new out-of-class policy.

9.08 Classification Proposals

The State agrees to notify CCPOA thirty (30) days in advance of classification proposals the State presents to SPB that impact employees in Unit 6. CCPOA agrees to notify the relevant department thirty (30) days in advance of classification proposals that CCPOA presents to SPB.

9.09 Personnel Investigations

- A. An employee who is under investigation for an action or incident which is likely to result in formal adverse action shall be normally notified, at least twenty-four (24) hours prior to the investigative interview, simultaneously, in writing, of both the subject matter and their right to representation prior to any interrogation, fact-finding, investigatory interview, or shooting review board, or similarly-purposed discussion which has the potential of obtaining information which, if found to be true, could or is likely to result in formal adverse action. The employee will be given a reasonable opportunity to secure the representative of their choice.
- B. If an employee is called to an investigatory interview and the employee reasonably believes the subject matter of the investigation is such that the employee could possibly receive discipline, the employee, at their request, shall be given a reasonable opportunity to secure a representative of their choice. In the event of an incident (shooting or use of force) that requires an immediate investigation by the Deadly Force Investigation Team (DFIT) or Office of Internal

Affairs (OIA), the affected Hiring Authority will notify the appropriate local CCPOA representative as soon as possible of the incident and the activation of DFIT/OIA.

- C. The employee will be provided with a copy of all documents and/or other investigatory material in accordance with the Public Safety Officers Procedural Bill of Rights (POBR) and any current or subsequent court decisions which impact or alter Government Code Section 3300, et seq.
- D. Whenever a ward/inmate/parolee/patient files or submits a grievance, a 602 ("Inmate Appeal"), any written complaint, or verbal complaint which is later reduced to writing by either the inmate or the State, which, if found true, could result in adverse action against the employee or contain a threat against the employee, the Department agrees to immediately notice the employee of said filing. The State agrees to provide the affected employee a copy of said document if the employee so requests. This is not intended to preclude the informal level response procedure in the current CDCR Operations Manual. Upon the employee's request, a copy of the outcome of the ward/inmate/parolee/patient's complaint shall be provided, if the complaint has progressed beyond the informal stage. The Employer and CCPOA agree that all video tapes, audio recordings or any other kind of memorialization of an inmate/ward/parolee/patient statement or complaint shall be treated as a writing within the meaning of this subsection. The video tapes and/or audio recordings or "writings" shall be turned over, regardless of whether the complaint/statement is deemed "inmate/ward/parolee/patient initiated" or not.
- E. However, whenever the Department is conducting an investigation which necessitates surveillance, obtaining a search warrant, undercover operations, or a "sting," the employer need not inform the employee of the written complaint until the investigation is completed.
- F. The State agrees that any Unit 6 member under investigation shall be granted an opportunity to view the cell extraction videotape with their representative prior to the related investigatory interview.

Management can have a representative present at the viewing to ensure the integrity of the tape, but the management's representative shall not be so close as to intrude in a private communication.

- G. The Departments acknowledge their obligation to complete all Unit 6 personnel investigations within twelve (12) months under the terms and exceptions of Government Code Sections 3304 and 3309.5 inclusive. This subsection 9.09 G. is not arbitrable. The employee may, however, at any time utilize whatever remedies may be available under POBR.
- H. Employees ordered to attend an investigatory interview by DAI/DJJ shall be informed in one (1) written document of: (1) the subject matter (scope) of the investigation, (2) whether the employee is deemed a witness or a subject of the investigation, (3) whether the investigation is for purposes of administrative

discipline or is considered a criminal investigation, and (4) their right to representation. If the employee is designated a witness, the notice shall allow a reasonable amount of time for the employee to obtain a representative. In criminal investigations, the representative will be an attorney or a member of the legal staff of CCPOA working under the direction and supervision of an attorney and the notice will allow a reasonable amount of time for the representative to travel to the location of the interview. If the employee is designated a subject of the investigation, the employee will be given at least twenty-four (24) hours advance notice of the investigatory interview.

- I. If DAI/DJJ decides to immunize a witness in an administrative or criminal investigation, the immunization shall be accomplished by reading into the audio recording, the administrative or criminal witness admonishment form provided in Appendix #7. The employee shall be given a copy of the signed form at the conclusion of the interview.
- J. An employee or the employee's representative will be permitted to audio record the interview. At the conclusion of the interview, if the employee was designated a witness in the notice of the interview, the audio recording made by the employee or employee's representative shall be sealed by the employee or the employee's representative in an envelope or evidence bag to be provided by the employee or the employee's representative and retained by the investigator. The bag shall not be opened or magnetically compromised by any agent of DAI/DJJ. The sealed employee's audio recording shall be made available to the employee in advance of any subsequent interview of the employee regarding the same or related subjects, and will be provided to the employee on request after the investigation has been concluded.

Employees designated as the subject of an investigation in the notice of the interview will be permitted to retain the audio recording at the conclusion of the interview.

- K. Upon the start of a DAI Enhanced Inspection, the supervisor/manager shall notify the CCPOA Chapter President and/or designee. Copies of the Enhanced Inspection Operational Procedure will be kept at the Enhanced Inspection location for staff review.
- L. Upon mutual agreement, which will not be unreasonably denied, CCPOA shall have the right to bring observers for training purposes to investigatory interviews, Skelly hearings and SPB hearings.
- M. Witnesses involved in an investigation may, after a reasonable passage of time to allow for the investigation to progress and conclude, contact the Local ERO and inquire whether the investigation has been completed. Once the status of the investigation has been validated, the ERO will inform the witness whether the investigation has been completed.

Department shall reimburse the employee for all reasonable attorneys' fees and costs incurred in defense of the criminal matter.

9.16 Video Recordings

- A. The State and CCPOA agree that reviewing/viewing of live or recorded video will not be used for routine supervision of staff. Audio/video surveillance will not be used to monitor staff arrivals/departures from the job site. However, if during the legitimate review of audio/video, staff misconduct is identified, the audio/ video recording can be used as part of the corrective action and/or disciplinary process.

If CCPOA is concerned that inappropriate reviewing/viewing is occurring, CCPOA may raise the specifics of this concern to the Warden. If dissatisfied with the local response, CCPOA may submit its specific concerns in writing to the Associate Director for their determination if inappropriate reviewing/viewing has occurred.

B. Routine Matters

For routine matters, that do not involve an allegation of misconduct or an investigation by the Office of Internal Affairs, the State agrees that Unit 6 employees may be granted an opportunity to review CDCR video recording(s) of an incident they were involved in only AFTER writing and submitting their report. After reviewing such CDCR video recording(s), the Unit 6 employees will be given the opportunity to write a supplemental report prior to the end of their shift.

C. Misconduct, Administrative, Criminal & DFIT Investigations

1. Unit 6 employees will be allowed to review the video, unless, at any point, a CDCR video relates to an incident involving allegations of misconduct (defined as situations where the Hiring Authority has determined and initiated the CDCR Form 989 process), or administrative action is contemplated, in which case Unit 6 employees shall only be granted an opportunity to review CDCR video recording(s) at the sole discretion of the Warden, Chief Deputy Warden or above.

If the Unit 6 employee is denied the opportunity to review any video indicated in 1. above, no further questions/clarifications may be requested of the Unit 6 employee by the Hiring Authority.

2. Unit 6 employees will be allowed to review the video, unless, at any point, a CDCR video relates to an incident where criminal or Deadly Force Investigation is contemplated. Unit 6 employees shall only be granted an opportunity to review CDCR video recording(s) at the sole discretion of the Office of Internal Affairs/investigating or prosecuting agency.

If the Unit 6 employee is denied the opportunity to review any video indicated in 2. above, no further questions/clarifications may be requested of the Unit 6 employee by the Hiring Authority.

D. Management Representative

Management may have a representative present during the viewing of the video(s) to ensure the integrity of the recording(s).

- E. The review of a video recording will not delay the completion of a supplemental report as required by Departmental policy.
- F. The viewing of a video recording shall not apply to a recording that memorializes or documents a complaint made by staff, an inmate or the general public.
- G. AVSS recordings of actual incidents shall not be used for training purposes. AVSS recordings of training exercise(s) (e.g. alarm response simulations, emergency medical response drills, etc.) are authorized for training purposes.
- H. This section is not arbitrable. CCPOA may file grievances regarding violations directly to the Office of Labor Relations and elevate to the appropriate Division Director for final resolution. In extreme situations requiring immediate resolution, CCPOA may elevate its concern directly to the appropriate division's Deputy Director who will respond within seventy-two (72) hours. This expedited process does not prevent CCPOA from pursuing the same issue through the normal grievance process as described in Article 6.
- I. If CCPOA is concerned that access to viewing videos is being unreasonably denied, they may request a meeting with the Undersecretary, Operations.
- J. The State recognizes that use of force incidents can be stressful and fluid. There is no intent on the part of the State in adding this section to take action against a Unit 6 member for reasonable discrepancies between report writing and videos.
- K. If the California legislature approves legislation covering this subject matter which provides greater rights to BU6 members, such rights shall supplement the rights afforded under this section.
- L. With respect to Public Records Act (PRA) requests for video (with or without audio):
 - 1. Institutions shall notify BU6 employees in writing prior to the release and disclosure of any video (with or without audio) pursuant to a PRA request which reasonably or easily identifies the BU6 employee; and
 - 2. Institutions shall maintain this written notification with the underlying PRA request.

- M. When local institutional upgrades are made or equipment is replaced, the LRA shall invite the local Chapter President of CCPOA or designee to all design and implementation meetings (not including pre-planning discussions) related to the local AVSS system.
- N. The parties agree that communication to the local Chapter President regarding the AVSS site walks, design meetings, and implementation meetings will be accomplished through the local LRA.

ARTICLE X LEAVES

10.01 Vacation Leave

- A. Employees shall not be entitled to vacation leave credit for the first six (6) months of service. On the first day of the monthly pay period following completion of six (6) qualifying months, employees covered by this section shall receive a one-time vacation credit of forty-eight (48) hours. Thereafter, except as provided below, for each additional qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period as follows:

7 months to 3 years	8 hours per month
37 months to 10 years	11 hours per month
121 months to 15 years	13 hours per month
181 months to 20 years	14 hours per month
241 months and over	15 hours per month

Notwithstanding the above, and in recognition that the July 2019 accrual of one (1) hour less of vacation than identified in the schedule above did not occur in the prior MOU, the parties agree that it will occur instead no later than the August 2019 pay period. For each CCPOA Member in Unit 6, no later than the August 2019 pay period, the employer shall credit the union's Release Time Bank in Article 10 with one (1) hour.

Notwithstanding the above, during the July 2020 pay period, CCPOA Members shall accrue one (1) hour less of vacation than identified in the schedule above.

For each CCPOA Member in Unit 6 during the July 2020 pay period, the employer shall credit the union's Release Time Bank in Article 10 with one (1) hour.

- B. Breaks in employment of eleven (11) work days or more, including unpaid leaves of absence, shall not be counted towards vacation leave accrual purposes set forth under paragraph A. above.

parties, as soon as practicable, will jointly support a proposal to SPB to effectuate this change.

- K. Any BU6 member who serves as a CPOST commissioner or alternate commissioner shall be released from their normal post to attend the CPOST commission meetings/business on official business (OB) time without loss of compensation.

8.04 Research Projects

By requesting through the Warden/Superintendent/Associate Director, and with the approval of the Department Director, an employee may use State facilities for the purpose of conducting research when the employee is pursuing continuing education credits, is involved in a research project, or is involved in other department-approved training. The employee shall provide a project outline indicating the purpose and scope of the project. The employee may request information as to whether or not the Department is conducting research on a specific subject matter. The use of State facilities shall not result in increased costs to the State nor shall the rights of clients, patients, inmates, wards, or students be compromised.

8.05 7k Training Program

All employees shall be provided with a minimum of sixty (60) hours of annual training. This training shall be either individual or group formalized, structured courses of instruction to acquire skills and knowledge for an employee's current or future job performance. The training shall be as required to contain measurable learning objectives that can be evaluated in a classroom setting or in structured on-the-job training.

The sixty (60) hours of training is divided between forty-eight (48) hours of OffPost Training Sessions (OPTS) and twelve (12) hours of On-the-Job Training (OJT). Where appropriate, training will not result in additional hours of work during the work period. Normally, OPTS training will be provided during second watch work hours. Employees working other shifts shall be provided a minimum of a seven (7) day notice of the shift assignment change to attend required training, in accordance with Section 11.01, Shift and/or Assignment Changes.

The CCPOA Chapter President or designee will have input in the planning of the OPTS training hours with their local management.

DJJ shall provide CCPOA Headquarters with a copy of On-the-Job Training (OJT) materials (which are subject to change) annually on a fiscal basis prior to implementation of yearly training. Time for the completion of the OJT assigned modules will be incorporated into the monthly casework schedule. DJJ will inform CCPOA of changes to the training modules.

STATE COUNTER PROPOSAL

Date: June 11, 2020

Time: 9:45 pm

TA d
6.11.20
11:00
[Signature]

1100
6.11.20
TA
[Signature]
[Signature]

SIDE LETTER XX COVID-19 PANDEMIC RECESSION -

The COVID-19 Pandemic Recession requires an 8.99% savings in BU6 employee compensation in order to balance the state budget. The parties have negotiated the following various savings measures which, when combined, comprise the required 8.99%.

I. Personal Leave Program 2020

Effective with the July 2020 pay period through the June 2022 pay period, employees will be subject to the Personal Leave Program 2020 (PLP 2020) for one (1) day or eight (8) hours per month in the manner outlined below. PLP 2020 shall have no cash value and may not be cashed out, except as permitted in the very limited circumstance described in subsection E below.

- A. Each full-time employee shall continue to work their assigned work schedule and shall have a reduction in pay equal to 4.62% except:
 - 7K Ranges = 4.5%
 - Fire Captain (9001), Range L and M (192 Hour Schedule) = 3.85%
 - Fire Captain (9001), Range N and P (216 Hour Schedule) = 3.42%
- B. Each full-time employee shall be credited with twelve (12) hours of PLP 2020 on the first day of each pay period for the duration of the PLP 2020 program. These twelve (12) hours of PLP 2020 credit are for the eight (8) hours for a single day of payroll deduction in subsection A above and four (4) hours for the other achieved savings (e.g., suspensions of shift differential, reductions in holiday compensation/time, and reductions in uniform allowance).
- C. Salary rates and salary ranges shall remain unchanged.
- D. Employees will be given discretion to use PLP 2020 subject to operational considerations.
 - 1. PLP 2020 time must be used before any other leave with the exception of sick leave in accordance with Appendix Item #11.
 - 2. Employees may elect to use PLP 2020 in lieu of approved sick leave.

II. Contract Reopener Language – Elimination of Pay Decreases and Suspensions

A. Due to the significant economic impacts of the COVID-19 Recession, in accordance with Section 3517.6 of the Government Code, notwithstanding any other provision of law, the following economic provisions of the existing memorandum of understanding (MOU), which require the expenditure of funds for increased salaries, wages and other compensation that were to become effective at any point during the 2020-21 fiscal year, are hereby suspended or eliminated consistent with this Side Letter XX effective July 1, 2020, as ratified by the union and approved by the Legislature:

- The July 1, 2020 3% GSI identified in Article 15.01 Salaries – Adjustment to Salary Ranges is suspended and deferred;
- With the exception of July 4th, Thanksgiving, Christmas and New Year's Day, the holiday pay and credits identified in Section 10.10 – Holidays are suspended for the remaining seven (7) holidays for the term of the MOU (Note: One personal holiday continues to be earned in accordance with 10.10C);
- The night and weekend shift differentials identified in Article 15.08 – Night Shift Differential/Weekend Differential are suspended;
- The \$1000 uniform allowances identified in Article 14.04 – Uniform/Uniform Accessories replacement Allowance are reduced to \$750.00;
- One (1) of the Personal Development Days identified in Article 8.07 – Personal Development Days (PDDs) is eliminated for calendar years 2021 and 2022 (Note: Employees already accrued both PDDs for 2020 in January 2020.); and
- Thirty-two (32) hours of the off-post training identified in Article 8.05 – Training Program are converted to, for example, non-classroom, On-the-Job or on-line training consistent with CDCR's Modified Training Program.

B. The remainder of the MOU, including economic terms of the agreement not specifically related to the various pay items listed in paragraph A, such as the amount necessary for the payment of compensation and employee benefits that were in effect prior to the 2020-21 fiscal year, shall continue in full effect, subject to the reductions agreed to in this Side Letter XX. Notwithstanding any other provisions of law, this MOU represents the only entitlement to payment of compensation and employee benefits.

C. The determination of sufficient funding relative to this Side Letter XX shall be at the sole discretion of the Director of the Department of Finance if either of the following circumstances occur:

Handwritten notes in pink ink:
6.12.20
12:37 PM
6.11.20
11:00

Handwritten initials in green and blue ink: SP

Exhibit 123

RECORDS RETENTION SCHEDULE

Submit three copies to: Department of General Services, California Records and Information Management, 707 Third St. 2nd Fl., W. Sacramento, CA 95605.

A CalRIM Consultant may be reached by phone at (916) 375-4404, by fax at (916) 375-4408 or by email at CalRIM@dgs.ca.gov

(1) DEPARTMENT, BOARD OR COMMISSION Corrections and Rehabilitation, Administration & Offender Services, Div. of Administrative Services,	(2) AGENCY BILLING CODE 16884	(3) PAGE 1 OF 14 PAGES
(4) DIVISION/ BRANCH/ SECTION Human Resources, Personnel Services	(5) ADDRESS 1515 S Street, Room 556 -N, Sacramento, CA 95811	

CHECK THE APPROPRIATE BOX

- (6) ☐ New schedule of records that have never been scheduled. [Complete boxes (9) – (12)]
- (7) ☒ Revising a previous schedule. [Complete boxes (13) – (16)] (A new approval number will be assigned.)
- (8) ☐ Amending some pages of a previous schedule. [Complete boxes (13) – (16)] (The original approval number will remain in effect.)


NEW SCHEDULE INFORMATION (If applicable)	(9) SCHEDULE NUMBER 16884	(10) SCHEDULE DATE	(11) NUMBER OF PAGES	(12) CUBIC FEET (Total Schedule) 1,128 cf
PREVIOUS SCHEDULE INFORMATION (If applicable)	(13) SCHEDULE NUMBER 16884T	(14) APPROVAL NUMBER 05-086 No dup	(15) APPROVAL DATE (S) 6/2/05	(16) PAGE NUMBER(S) REVISED All

(17) MISSION/FUNCTIONAL STATEMENT:


Our mission is to provide premier delivery of customer service by providing a one-stop Information Center for personnel-related issues or questions. Improvements to the hiring and appointment processes along with improved informational services for employees are underway.

PART I - AGENCY STATEMENTS

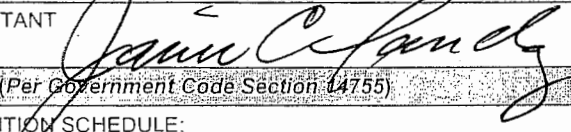
As the program manager (or person authorized to sign for the program manager) directly responsible for the records listed on this records retention schedule, I certify that all records listed are necessary and that each retention period is correct. For revisions, all items on the previous schedule are included or accounted for on the recapitulation. Vital records identified by this schedule are protected. If protection is not currently provided but plans are underway, the details of such plans are shown in Column 45, Remarks.

(18) SIGNATURE - MANAGER RESPONSIBLE FOR THE RECORDS  ROBERT DOWNS	(19) TITLE Chief, Office of Personnel Services	(20) PHONE NUMBER (916) 445-5777	(21) DATE SIGNED 6-27-11
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In accordance with Government Code 14755, approval of this Records Retention Schedule by the Department of General Services is hereby requested. Retention periods shown have been established in accordance with the criteria set forth by Section 1667 of the State Administrative Manual.

(22) SIGNATURE - RECORDS MGMT. ANALYST  Shannon Arrieta	(23) CLASSIFICATION AGPA	(24) NAME (Printed or Typed) Shannon Arrieta	(25) PHONE NUMBER (916) 255-6116	(26) DATE SIGNED 7-1-11
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PART II - DEPARTMENT OF GENERAL SERVICES APPROVAL (Per Government Code Section 14755)

(27) SIGNATURE - CalRIM CONSULTANT  Janice C. Fandy	(28) APPROVAL NUMBER 11-188	(29) DATE SIGNED 12/15/2011	(30) EXPIRATION DATE 12/15/2016
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PART III - ARCHIVAL SELECTION (Per Government Code Section 14755)

THE ATTACHED RECORDS RETENTION SCHEDULE:

- (31) ☒ Contains no material subject to further review by the California State Archives.
- (32) ☐ Contains material subject to archival review. Items stamped "NOTIFY ARCHIVES" may not be destroyed without clearance by the California State Archives. (Per Section 1671 of the State Administrative Manual.)

(33) SIGNATURE - CHIEF OF ARCHIVES OR DESIGNATED REPRESENTATIVE
 Jessica A. Hamed, Archivist

(34) DATE SIGNED
12/20/2011



11-188

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

OFFICE OF PERSONNEL SERVICES

CDC – Department of Corrections
 DGS – Department of General Services
 DOM – Department Operations Manual
 IDP – Individual Development Plan
 MOU – Memorandum of Understanding
 OPF – Official Personnel File
 PERS – Public Employees Retirement System
 SCO – State Controller's Office
 SPB – State Personnel Board
 SRC – State Records Center

*Send to employing department upon transfer.

Mandated by:

California Government Code Sections:
 California Civil Code Sections: 3082-3225
 California Code of Civil Procedures: 337.15
 California Labor Code Section 1720-1781
 State Administrative Manual

Retention:

Columns 41 through 47 are clarified in Column 48, Remarks.

Media (Column 41): P=Paper; M=Magnetic or electronic; X= Mixed (cassettes, videos, etc.).

Vital Records (Column 42)

Critical to reconstruct or perform Department's basic functions after a disaster.

Disclosure Restrictions:

(Column 47)

X: Exempt from public review per the Public Records Act, Government Code Section 6254.

I: Subject individual (person who is subject of records) may have the right to review per the Information Practices Act, Civil Code Section 1798.24, unless the record or portion of record is exempt under Section 1798.40.

Destruction:

Records may be destroyed after a DGS audit or the designated retention period, whichever comes first.

Non-confidential: Recycle

Confidential or exempt (Column 47): Shred.

Historical (Column 39): Do not destroy. Contact the departmental Records Management Coordinator regarding review by Office of State Archives.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

1	299		<u>PROGRAM MANAGEMENT RECORDS</u> Employee's Record of Attendance: CDC 998A	P		2		2	4	I	Retain four years from end of pay period involved (two years in the office and two years at SRC).
2			Absence and Additional Time Worked Reports STD. 634	P		2		2	4		Retain four years from end of pay period involved (two years in the office and two years at SRC).
3			Appointment for Temporary Employment Form 215	P		3			3		Retain three fiscal years.
4	170		Attendance Reports and Forms STD. 672 Time & Attendance Report CD. 48 Student Asst. Attendance Report	P		2		2	4	I	Retain for two years from end of pay period involved. Then retain two more years or until audited, whichever occurs first.
5			Authorization for Extra Hours	P		2		2	4	I	Retain with CDC 998A four years from end of pay period involved (two years in the office and two years at SRC).
6			Blanket Position Record YA 5.904	P		5			5		Retain five years.
7			Board of Control Claim	P		A+1		2	A+3	I	Retain as active until the claim is resolved or closed, then retain three years (one year in the office and two years at SRC).
8			Catastrophic Timebank Request CDC 868	P		2		1	3	I	Retain for three years (two years in office and one year at SRC).
9			Catastrophic Leave Time Approved – Instructions for Recipient CDC 868A	P		2		1	3	I	Retain for three years (two years in office and one year at SRC).
10			Catastrophic Time Denied – Instructions for Requestor CDC 868B	P		2		1	3	I	Retain for three years (two years in office and one year at SRC).
11			Catastrophic Timebank Donation	P		2		1	3	I	Retain for three years (two years in office and one year at SRC).
12			Catastrophic Donor Personnel Office Procedures CDC 869A	P		2		1	3	I	Retain for three years (two years in office and one year at SRC).

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA (47)	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
13			CETA Weekly Report PSD08202	P		3			3	I	Retain three fiscal years.
14			Change in Established Position STD. 607	P		2		2	4	I	Retain for four years (two years in office from end of pay period involved and then two more years or until audited, whichever occurs first.
15			Change in Payroll Header STD 407	P		3		1	4		Retain four years (three years in office and one year in SRC).
16			Child Abuse Reporting YA 5.131	P		A			A	I	Retain until superseded.
17			Deep Class Alternate Range Substantiation SPB Form 300-903	P		3			3	I	Retain three years or until audited by State Personnel Board, whichever comes first.
18			Established Positions STD 608/608A	P		A+2			A+2	I	Retain as active until the fiscal year end that the position is abolished or reclassified, then retain in office for two years from end of fiscal year.
19			Judgment of Levy/Garnishment	P		A+4			A+4	I	Retain as active until closed, then retain four years in office.
20			Letter of Collection. - Accounts Receivable	P		C+1		3	C+4	I	Retain as current until collected or discharged. Then retain four years (one year in the office, three years at SRC) or until audited, whichever occurs first.
21			Monthly Attendance Report STD 681	P		3		1	4	I	Retain four years (three fiscal years onsite then transfer to SRC). Destroy after audit or four years, whichever comes first.
22			Non Industrial Disability (NDI) Approvals and Correspondence	P		3		2	5	I	Retain in NDI file for five years (three years in the office, two years at SRC) from date of notice.
23			Payroll Adjustment Notice STD 674	P		2		2	4	I	Retain with Warrant Register. See Item #25. Retain two years. Then retain two more years or until audited, whichever comes first.
24			Payroll Adjustment Request STD 683	P		2		2	4	I	Retain four years (two years in the office, two years at SRC) from end of pay period involved.
25	136		Payroll Transaction or Warrant Registers	P		2		2	4	I	After 1/03 available on line through SCO. No longer required to maintain hard copy.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
26			Proof of Lost/Destroyed Warrant	P		3		1	4	I	Retain four years, three fiscal years onsite, then transfer to SRC. Destroy after audit or four years, whichever comes first.
27			Report of Absences Without Pay	P		2		2	4	I	Retain two years from end of pay period involved. Then retain two more years or until audited, whichever occurs first.
28			Report of Exceptions CD 66	P		2		2	4	I	Retain with STD 672. Retain two years from end of pay period involved. Then retain two more years or until audited, whichever occurs first.
29			Report of Extra Hours to be Paid STD 673	P		2		2	4	I	Retain two years from end of pay period involved. Then retain two more years or until audited, whichever occurs first.
30	164		Request for Personnel Action CDC 647	P		2		2	4	I	Retain for four years (two years in the office, two years at SRC).
31	9		Seniority Listings (Layoff)	P		3		7	10	I	Retain for ten years (three years in the office, seven years at SRC).
32			Shift Differential CD 46	P		2		2	4	I	Retain for two years from end of pay period involved. Then retain two more years or until audited, whichever occurs first.
33	1		Subpoenas	P		3			3	I	Retain for three years in office. Comply with DOM 14010.6 and Peace Officer personal information disclosure.
34	33		Transmittal of Controller's Warrant CD 155	P		A+2		2	A+4	I	Retain as active until the garnishment is satisfied, then retain for four years (two years in the office, two years at SRC) (filed with garnishment file – refer to Item #19).
35	34		Worker's Compensation SCIF 3067 SCIF 3290 SCIF 3068 SCIF 3301	P		A+2			A+2	I	Retain in Worker's Compensation File as active until settlement of claim or closing of case, then retain for two years. Do Not file in employee's OPF.
36			Workers Compensation correspondence including but not limited to Medical Evaluation Reports.	P		5			5	I	Retain five years from date of injury provided there is no workers compensation claim or legal action pending. In which case destroy two years after claim or legal action is completed.
37	282		OFFICIAL PERSONNEL FOLDER, ACTIVE All documents to be kept in OPF are listed under that item with the individual retention of each document if different from OPF.	P		A			A	I	Retain as active until the employee separates, then retain according to type of separation.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA (47)	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
38			Accident Report (Motor Vehicle):	P		A+2			A+2	I	Retain in OPF as active until settlement of claim or closure of case, then retain for two years.
39			Acknowledgement, Child Abuse and Neglect Reporting Act	P		A			A	I	Retain as active until the employee separates, then retain according to type of separation.
40			Adverse Actions: Employee	P		3			3	I	Retain in OPF for three years from effective date of action – or as stipulated or specified in MOU. Employee Dismissal: Retain until age 70.
41			Application for Employment/Examination STD 678								
			Employee Hired	P		*C			C	I	Retain in OPF until superseded.
			Employee Not Hired	P		2			2	I	Retain for two years after interview process.
42			Authorization for Payment of Premiums for Government Life Insurance by Payroll Deduction STD 410	P		*C+4			C+4	I	Retain in OPF until superseded or cancelled. Then retain for four years.
43			Authorization for Contribution and/or Rate Adjustment: PERS-Acc	P		*A			*A	I	Retain in OPF as active until separation, then retain according to type of *separation.
44			Authorization to Use Privately Owned Vehicle on State Business STD 261	P		C+1			C+1	I	Retain in OPF as current until superseded or cancelled. Then retain for one year.
45			Bilingual Certification STD 897	P		C			C	I	Retain in OPF as current until superseded.
46			Biography (Employment History)	P		*C			C	I	Retain in OPF as current until superseded.
47			Certification of Correction – Member Contribution and Collection Due: PERS 823	P		*A			*A	I	Retain in OPF as active until separation, then retain according to the type of separation.
48			Certification of Merit, Special In-Grade Salary Adjustment STD 609/STD 609A								
			- Approved	P		*1			1	I	Retain in OPF for one year from the date of approval.
			- Denied	P		*3			3	I	Retain in OPF for three salary adjustment years from date of denial.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
49			Certification of Receipt of Memorandum re: Federal Firearms Prohibitions	P		*A			A		Retain in OPF as active until employee separates, then retain according to type of separation.
50			College Transcript	P		*C			C	I	Retain in OPF as current until superseded.
51			Computing Technology Use Agreement CDC 1857			*A			A		Retain as active until employee separates, then retain according to the type of separation.
52			Dental Enrollment Forms STD 691 STD 692	P		*C+4			C+4	I	Retain in OPF as current until superseded, then retain for four years.
53			Dental Plan Direct Payment While on Non-payment Status STD 696	P		*C+4			C+4	I	Retain in OPF as current until superseded, then retain for four years.
54			Designation of Person Authorized to Receive Warrants STD 243	P		*C			C	I	Retain in OPF as current until superseded.
55			Direct Deposit Enrollment Authorization STD 699	P		*C+1			C+1	I	Retain in OPF as current until superseded or cancelled, then retain for one year.
56			Drive Record Information DL 414	P		*C			C	I	Retain in OPF as current until superseded.
57			Election of the First Tier Retirement Plan: PERS-MEM-42C	P		*C			C	I	Retain in OPF as current until superseded.
58			Election of Second Tier Retirement Plan PERS-MEM-28	P		*C			C	I	Retain in OPF as current until superseded.
59			Emergency Form (indicating whom to notify in case of an emergency) CDC 894	P		C			C	I	Retain in OPF as current until superseded.
60			Employee Action Request (EAR) STD 686	P		C			C	I	Retain as current or one year, whichever is longer.
61			Employee Blood Pathogen Exposure Incident Report	P		1		29	30	I	Retain 30 years (1 year in the office and 29 years at SRC).
62			Employee Designation of Physician – In Case of On-the-Job Injuries CDC 912	P		*C			C	I	Retain in OPF as current until superseded or cancelled.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA (47)	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
63			Employee Flextime Report YA 5.210	P		3		1	4		Retain four years (three fiscal years onsite, then transfer to SRC). Destroy after audit or four years, whichever comes first.
64			Employee Leave Record CDC 1115 STD 642 CDC 1116 STD 642A CDC 1117 STD 644 (CLAS Printout) (PALS Printout)	P		A			A	I	Retain in OPF according to the type of separation.
65			Employee Record STD 611	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to the type of *separation.
66			Employee Statement Form Use of Criminal Justice Information and Department of Motor Vehicle Record Information	P		*A			*A		Retain as active in OPF until the employee separates, then retain according to type of separation.
67			Employee Transfer Data: STD 612 CDC 1261 (Same form, just CDC version)	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
68			Employment Confirmation FTB 4968-M	P		*C			*C	I	Retain in OPF as current until superseded.
69			Employment Eligibility Verification I-9	P		*A+1			*A+1	I	Retain in OPF as active until the employee separates, then retain for one year. Original retained in office where initial appointment was made, for three years or until INS audit, whichever comes first.
70			Fingerprint Card BID 7	P		A*			A*	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
71			Flexelect Enrollment Authorization STD 701	P		*C+4			C+4	I	Retain in OPF as current until superseded, then retain four years.
72			Health Benefit Enrollment Authorization HBD 12	P		*C+4			C+4	I	Retain in OPF as current until superseded, then retain four years.
73			Health Benefit Enrollment Authorization for Direct Payments While Off Pay Status HBD 21	P		*C+\$			C+\$	I	Retain in OPF as current until superseded, then retain four years.
74			Health Benefit Plan Health Statement Enrollment HBD 38	P		*C+4			C+4	I	Retain in OPF as current until superseded, then retain four years.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
75			Health Questionnaire STD 610/610 HQ	P		*A			A*	I	Retain in OPF (in a sealed envelope) as active until the employee separates, then retain according to type of *separation. EXCEPTION: Toxic exposure records are maintained 30 additional years (SRC).
76			Hourly Employee Leave Record Card YA 5.215	P		A			A	I	?
77			Individual Development Plan STD 637	P		*C			C	I	Retain in OPF as current until superseded or in accordance with MOU.
78			IPA Statement of Penalties	P		*A			A*	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
79			IPA Voluntary Consent to Release Personal Information CDC 1021	P		*A			A*	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
80			Letter(s) of Commendation	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
81			Letter(s) of Instruction	P		*3Y			*3Y	I	Retain in OPF as stipulated or in accordance with MOU.
82			Life Insurance Enrollment Authorization STD 698	P		*C			*C	I	Retain in OPF as current until superseded.
83			Long Term Disability Enrollment Authorization GR 11513-5	P		*C			*C	I	Retain in OPF as current until superseded.
84			Merit Awards	P		3			3	I	Retain in office three years.
85			Military Information STD 912	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
86			Notice of Change and/or Certification of Contribution Rate PERS 155	P		*A			*A	I	Retain in OPF as active until employee separates, then retain according to type of *separation.
87			Notice of Personnel Action (NOPA)	P		*A			*A	I	Retain in OPF according to type of separation.
88			Notice of Security Clearance IU-32	P		*A			A*	I	Retain in OPF as active until employee separates, then retain according to type of *separation.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA (47)	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
89			Oath of Allegiance STD 688/689	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
90			Out of Class Memo(s)	P		*A			*A	I	Retain in OPF according to the type of separation.
91			Parole Agent Academy Certificates	P		*A			*A		Retain in OPF according to the type of separation.
92			Payroll Deduction for Purchase of U.S. Savings Bonds STD 242	P		*C+4			*C+4	I	Retain in OPF as current until superseded or cancelled, then retain four years.
93			PERS Beneficiary Designation PERS 241	P		*C			*C	I	Retain as current until superseded or cancelled.
94			Personal/Confidential Information Disclosure/ Access Log CDC 819	P		*A			*A	I	Retain taped to the cover of OPF as active until employee separates, then retain according to type of *separation.
95			Personnel Action Request (PAR) STD 680 STD 680A								
			- Separation Document	P		*A			*A	I	Retain in OPF according to type of *separation.
			- Status Document (TAD)	P		C			C	I	Retain as current until the status changes and a new turnaround is received.
96			Personnel Identification Card Information CDC 894-A	P		A			A		Retain in OPF until superseded.
97			Photograph	P		*A			*A	I	Retain taped to inside cover of OPF as active until the employee separates, then retain according to type of *separation.
98			Physical Fitness Incentive Pay Annual Physician Certification CDC 3026	P		4			4		Retain in OPF for four years.
99			Physical Fitness Incentive Pay Testing Participant Score Sheet	P		A			A	I	Retain until superseded.
100			Physical Fitness Incentive Pay Testing Medical History Questionnaire	P		A			A	I	Retain until superseded.
101			Reasonable Suspicion Report YA 5.170	P		3			3	I	Retain three years, unless shorter retention is required by MOU.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
102			Range Change Form: CDC 835 - Approved - Denied	P		** *1 *3			** *1 *3	I	Retain in OPF one year from the date of approval. Retain in OPF three years from the date of denial.
103			Rank and File (BU 6) Signature Sheet CDC 1889			A			A	I	Retain in OPF as active until the employee separates, then retain according to the type of separation.
104			Red Circle Rate Letter	P		*A			*A	I	Retain in OPF according to the type of separation.
105			Request for Disposition STD 238	P		A*			A*	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
106			Report of Employment/Separation YA 5.306	P		3			3	I	Retain in office three years.
107			Report of Performance for Probationary Employee STD 636	P		*C			*C	I	Retain in OPF as current until first STD 637, Individual Development Plan, has been completed.
108			Report of Separation CDC 648	P		*A			*A	I	Retain in OPF according to the type of separation.
109			Salary Warrant Cancellation (with cover memo STD 100) YA 5.401	P		3			3	I	Retain in office three years.
110			Salary Warrant Clearance	P		3			3	I	Retain in office three years.
111			Separation/Disposition of PERS Contribution STD 687	P		*A			*A	I	Retain in OPF (separated files only) as active until employee separates, then retain according to type of *separation.
112			State Service Reconciliation and Verification	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
113			Substance Abuse Notification	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
114			Time and Attendance Report STD 672	P		2		2	4	I	Retain two fiscal years onsite, then transfer to SRC. Destroy after audit or four years, whichever comes first.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)
115			Training and Development Assignment Documents	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
116			Tuberculosis Screening Certificate YA 8.277	P		1		29	30	I	Retain for 30 years (1 year in the office and 29 years at the SRC).
117			Vacation Carryover Letter	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
118			Verification of State Service (SPB Rule 381)	P		*A			*A	I	Retain in OPF as active until the employee separates, then retain according to type of *separation.
119			Vision Plan Enrollment Authorization STD 700	P		*4			*4	I	Retain in OPF for four years.
120			Adverse Termination			*varies			*varies		Six years or until age 70*, whichever comes last.
121			Deceased (while an active CDCR employee)			*varies			*varies		*Six years from date of death or until youngest dependent reaches age 23*, whichever comes last.
122			Disability Retirement			*varies			*varies		Six years or until age 70*, whichever comes last.
123			Layoff			5			5		Retain five years in the office.
124			Rejection on Probation			5			5		Retain five years in the office.
125			Resignation With Fault (AWOL)			*varies			*varies		Six years or until age 70*, whichever comes last.
126			Resignation Without Fault			5			5		Retain five years in the office.
127			Service Retirement			5			5		Retain five years in the office.

ITEM #	CUBIC FEET *	CA. STATE ARCHIVES USE ONLY	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items)	MEDIA	VITAL	RETENTION				PRA (Exempt) & IPA	REMARKS
						OFFICE	DEPT.	SRC	TOTAL		
(37)	(38)	(39)	(40)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)

			ADMINISTRATIVE MANAGEMENT RECORDS (COPIES)								
128			Activity Reports: Monthly	P		2			2		Retain in office for two years.
129			Budgets	P		2			2		Retain in office for two years.
130			Contracts	P		A+2			A+2		Retain as active until contract end, then retain two years in office.
131			Correspondence: (A-Z)	P		2			2		Retain in office for two years.
132			Correspondence: Author Chron Files	P		2			2		Retain in office for two years.
133			Correspondence: Controlled	P		3			3		Retain in office for three years.
134			Electronic Information A. E-mail that are categorized as official records are subject to department records retention schedule and must be retained for the same period of time as the records series that most closely matches the subject matter contained within the new e-message. If there is no entry that resembles or matches the subject matter of the E-message, the "record" should be added to the schedule as a separate series (separate item number). B. Transitory E-mail consists of electronic messages that are created primarily for the communication of informal information as opposed to the perpetuation or formalization of knowledge.	M M		* 90 days			* 90 days		*E-mail records that are classified as official records are subject to department records retention schedule and must be retained for the same period of time as the records series that most closely matches the subject matter contained within the new E-mail message. Destroy transitory E-communications when they have served their purpose.
135			Attendance	P		2			2	I	Retain in office for two years.
136			Interview Documents	P		2			2	I	Retain in office for two years.
137			Supervisor's File	P		A+1			A+1	I	Retain as active in accordance with MOUs until the employee transfers or terminates employment from the office, then retain one year in the office.

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ITEM # (37)	CUBIC FEET * (38)	CA. STATE ARCHIVES USE ONLY (39)	TITLE AND DESCRIPTION OF RECORDS (Double spaces between items) (40)	MEDIA (41)	VITAL (42)	RETENTION				PRA- (Exempt) & IPA (47)	REMARKS (48)
						OFFICE (43)	DEPT. (44)	SRC (45)	TOTAL (46)		
138			Training File	P		A+1		2	A+3	I	Retain copies as active until the employee transfers, terminates, resigns, or retires. If the employee transfers, forward the training record to the employee's new training office. If the employee terminates, resigns, or retires, retain three years (one year in the office and two years in the State Records Center).
139			Equipment/Supply Orders	P		2			2		Retain in office for two years.
140			Legislative Bills	P		A+2			A+2	X	Retain as active until finalized, then retain two years in the office.
141			Policies and Procedures	P		C			C		Retain as current until superseded.
142			Records Management								
			STD Form 71, Records Transfer List	P		C			C		Retain as current until all records have been either destroyed, retired permanently, transferred to the State Archives, or when no longer needed, whichever is later.
			STD Form 73, Records Retention Schedule	P		C			C		Retain as current until revised. NOTE: Although revision is required every five years from date approved by CalRIM, records retention schedules that are not revised remain in effect but are considered non-current.

Differences in Prior Records Retention Schedule vs. Newly Proposed

11-188

Line Item	Add/Delete/Change	Description
2	A	Absence and Additional Time Worked Reports Std. 634
3	A	Appointment for Temporary Employment Form 215
6	A	Blanket Position Record YA 5.904
8	A	Catastrophic Timebank Request CDC 868
9	A	Catastrophic Leave Time Appr'd/Instructions for Recipient CDC 868A
10	A	Catastrophic Time Denied – Inst. For Requestor CDC 868B
11	A	Catastrophic Timebank Donation
12	A	Catastrophic Donor Personnel Office Procedures CDC 869A
13	A	CETA Weekly Report PSD08202
15	A	Change in Payroll Header STD 407
16	A	Child Abuse Reporting YA 5.133
17	A	Deep Class Alternate Range Substantiation SPB Form 300-903
21	A	Monthly Attendance Report STD 681
26	A	Proof of Lost/Destroyed Warrant
36	C	<p>At request of Ray Harvey/Worker's Compensation team, due to receiving requests for file details from files that are older than 5 years old....Change retention remarks/schedule -</p> <p>From: "Retain five years from date of injury provided there is no workers compensation claim or legal action pending. In which case destroy two years after claim or legal action is completed.</p> <p>To: Retain in Worker's Compensation File as active until settlement of claim or closing of case, then retain for six years or until age 70*, whichever comes last. Do Not file in employee's OPF.</p>
61	A	Employee Blood Pathogen Exposure Incident Report
63	A	Employee Flextime Report
76	A	Hourly Employee Leave Record Card YA 5.215
84	A	Merit Awards
98	A	Physical Fitness Incentive Pay Testing Participant Score Sheet
99	A	Physical Fitness Incentive Pay Testing Medical History Questionnaire
107	A	Reasonable Suspicion Report YA 5.170
109	A	Salary Warrant Cancellation (w/cover memo STD 100) YA 5.401
110	A	Salary Warrant Clearance
114	A	Time and Attendance Report STD 672
116	A	Tuberculosis Screening Certificate YA 8.277
134	C	Electronic information retention/details have changed from prior sch.

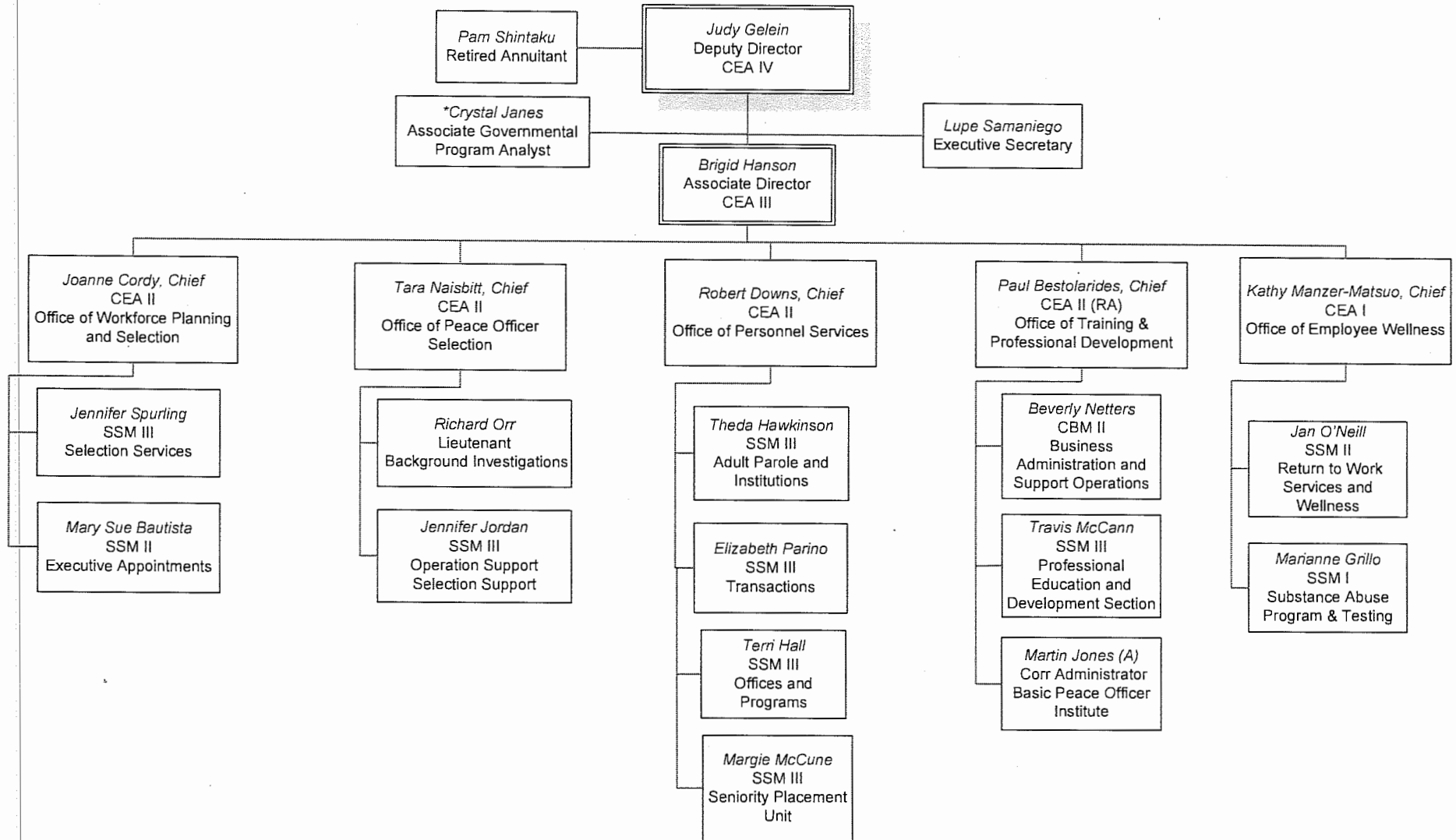
*All additions, (A), above were recommended by Myra Muhammad while still working for OPS.

**All items, including the change, (C), have been vetted out through Jennifer Nolan's team/Emily Gorrindo and all were found to be appropriate for inclusion in the retention schedule with retention "Remarks" approved as listed on attached.

***No additional items were noted for inclusion at this time.

6/28/2011

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
HUMAN RESOURCES
January 2011



Approved by: _____ Date: _____

*Proposed Confidential Position

Revised November 17, 2010

Exhibit 124



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August 26, 2020

VIA ELECTRONIC MAIL ONLY

<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
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Tamiya Davis
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Joanna Hood
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Re: *Armstrong v. Newsom*: Demand for Investigation into Unprofessional
Online Conduct by CDCR Employees
Our File No. 0581-03

Dear Joanna and Tamiya:

We write to raise concerns about unprofessional online conduct exhibited by CDCR employees on Instagram and other social media platforms in the wake of an August 16, 2020 incident that occurred on Facility B at Richard J. Donovan Correctional Facility (“RJD”).

On August 16, 2020, a disturbance occurred on the Facility B yard resulting in the hospitalization of six officers and two incarcerated people. See <https://www.cdcr.ca.gov/news/2020/08/16/inmate-attack-on-correctional-officers-at-richard-j-donovan-correctional-facility-under-investigation/>, last accessed August 19, 2020. In its press release, CDCR represented that the incident was being investigated by local Investigative Services Unit (“ISU”) staff. *Id.* On its Twitter feed, the Office of the Inspector General reported that it, “immediately responded to the scene at 5:30pm to monitor the investigation into the incident.” See <https://twitter.com/CaliforniaOIG/status/1295200119491502080>.

As a preliminary matter, Plaintiffs are concerned that the cycle of violence we have thoroughly documented in our Motions appears to continue unabated at RJD, even in the midst of a statewide modified program due to a global pandemic. Even more concerning is the fact that RJD chose to investigate this incident using local investigators

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
 August 26, 2020
 Page 2

assigned to RJD's ISU. In the course of the ongoing litigation over staff abuse at RJD, Plaintiffs have demonstrated that local investigations into incidents at RJD are plagued by incompetence and bias. *See, e.g.*, Schwartz Decl., Dkt. No. 2948-4, ¶¶ 40-48. In the interest of ensuring that this serious incident is efficiently and thoroughly investigated, Plaintiffs hope that CDCR utilize trained investigators, unaffiliated with RJD.

Plaintiffs are also concerned about the safety of the incarcerated people, especially those with disabilities, and the staff involved in the August 16, 2020 incident. Plaintiffs have uncovered comments about the incident posted to social media networks by officers who appear to be assigned to RJD. These comments, which are posted on the Instagram page, "The Late Relief," are unprofessional at best; at worst, they are calls to incite violence and harm to the incarcerated people and staff involved and are serious violations of various government code statutes. *See* <https://www.instagram.com/thelaterelief/>, last accessed August 19, 2020. Plaintiffs previously reported on the Late Relief in our Statewide Motion, where we raised concerns that the account openly mocks and threatens incarcerated people with disabilities from the perspective of CDCR custody staff. *See* Grunfeld Statewide Decl., Dkt. No. 2948-1, ¶ 42 & Exhibit W.

In multiple instances, staff assigned to RJD direct-messaged The Late Relief about the incident, and, specifically, about Mr. [REDACTED] one of the incarcerated people involved in the incident. The Late Relief then posted those private messages publicly in the comments section of its posts about the incident. One comment reads: "Bro that fucken [sic] scrap ass shot caller mendez needs to die bro for what he did yesterday. We are a solid ass yard staff never instigate shit or start shit bro...[W]e all stuck together and fought back with everything man..." *See Exhibit A*, at 3. This comment, seemingly from an RJD custody officer who was directly involved in the disturbance, calls for the death of Mr. [REDACTED]. Another comment indicates that staff are reading confidential documents from Mr. [REDACTED] custody file, including prior rules violation reports from his file, and are publically commenting about those confidential matters. *Id.* at 9.

One of the images in the series of posts is a screenshot of a Facebook post of Mr. Mendez's mugshot and CDCR Inmate Locator demographic data. *Id.* at 1-2. Plaintiffs' counsel tracked the source of that Facebook post to two accounts on Facebook: Robert Genn (a correctional sergeant at an unknown institution) and Jeffrey Harris, Sr. (who is a correctional officer at one of the two prisons in Susanville, California). *See Exhibit B*; *see* <https://www.facebook.com/photo/?fbid=4002928273066996&set=ecnf.100000495883324>, last accessed August 19, 2020; <https://www.facebook.com/photo?fbid=161068448882210&set=ecnf.100049371662952>, last accessed August 19, 2020.

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
 August 26, 2020
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Other direct-messages posted by The Late Relief call into question the abilities and integrity of the RJD administration. Comments from staff at RJD allege that the incident commander during the disturbance, Captain Carillo, is engaged in a pattern of questionable and unprofessional behavior, having been found by ISU to have done “shady shit” for [REDACTED] and to have been overfamiliar with incarcerated people. *Id.*, at 4-11. One commenter urged that Captain “Carillo needs to be removed and looked at very closely for ties to EME [Mexican Mafia] outside of the system as well.” *Id.* at 5. Other commenters remarked that Warden “Pollard is a big time racist. Always looking out for his own,” and that “OIA needs to start with the racist warden on down at RJD?” *Id.* at 10-11.

Plaintiffs’ counsel does not assert, based on our knowledge of the incident at this time, that it involves an allegation of staff misconduct impacting an *Armstrong* or *Coleman* class member. We are nevertheless extremely concerned about the comments of RJD and other CDCR staff in this case because, as outlined here, those comments evidence inappropriate and unprofessional conduct by staff members, an issue which is at the heart of Plaintiffs’ Motions regarding staff misconduct. The staff member comments are inflammatory, jeopardize the safety and security of the prison, and place the incarcerated people and staff members involved in the incident, especially Mr. [REDACTED] and Captain Carillo, at great risk. These comments constitute multiple violations of Government Code statutes found in the CDCR Disciplinary Matrix, for which CDCR employees might be subject to adverse personnel action, including: Gov. Code § 19572 (m), Discourteous Treatment of Public/Other Employees; Gov. Code § 19572 (r), Gov. Code § 19990, Improper Access to Confidential Material; and Gov. Code § 19572 (t), Other Failure of Good Behavior. *See* DOM § 33030.19.

Beyond this incident, the toxic and incendiary political commentary found on the Facebook pages of Robert Genn and Jeffrey Harris, Sr., as well as The Late Relief, may constitute “insults to anyone pertaining to race, color, national origin, ancestry, sex (i.e., gender), religion, marital status, age, disability, medical condition, pregnancy, sexual orientation, veteran status, or **political affiliation**,” (emphasis added) which carries a base Level 4 penalty on the Disciplinary Matrix. *See* DOM § 33030.19.

These social media accounts point to a persistent and unprofessional culture of hatred towards and bias against incarcerated people among staff at RJD and across CDCR more broadly. We have documented this bias against incarcerated people with disabilities and have asked the Court to issue an Order that includes “development and implement[ion] of Human Rights, de-escalation, and cultural training for all custody, mental health staff, and medical staff at RJD to include discussion of reporting

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
August 26, 2020
Page 4

requirements, whistleblowing, non-retaliation, and treatment of incarcerated people as patients.” See Dkt. No. 3024-6 at 19.

Despite CDCR’s assertions in court filings, RJD remains a deeply troubled place with inadequate oversight and management. *See* Schwartz Decl., Dkt. No. 2948-4, ¶¶ 28-34. Regardless of whether they are true, the allegations involving Captain Carillo make clear that he has lost the confidence of his subordinates, some of whom appear to believe that he is a member of the Mexican Mafia. One staff member commenter went so far as to say: “Screw Carillo I won’t acknowledge his rank...” **Exhibit A**, at 6. Similarly, the allegation that Warden Pollard exhibits race-based favoritism suggests that the systemic problems at RJD that Plaintiffs have painstakingly documented have not been remedied by CDCR’s interventions. The very recent and public resignation of an Associate Warden at RJD due to problems with the administration of that prison make clear that serious problems persist. *See* <https://timesofsandiego.com/crime/2020/08/25/donovan-state-prison-warden-resigns-after-sending-blistering-email/>.

In light of the foregoing, Plaintiffs request that Defendants take immediate steps to investigate the security threat and embarrassment to the Department created by certain employees, including an attempt to identify, investigate and discipline the officer(s) behind The Late Relief, as well as investigate the conduct of Mr. Genn and Mr. Harris. Plaintiffs also request that Defendants review the comments posted to The Late Relief’s page regarding RJD management, including Warden Pollard and Captain Carillo, and determine whether further investigation of these allegations is necessary. Please provide an update on the status of their investigations within 14 days.

Last, we reiterate our general concern that an incident as serious as the one on August 16, 2020, at RJD occurred during a fully locked-down program in the midst of a global pandemic. This is further evidence that RJD remains a very troubled prison, despite any steps taken by CDCR to rectify longstanding problems there. If any *Armstrong* or *Coleman* class members were involved in the incident and have alleged staff misconduct in relation to the incident, we demand that Defendants produce to us all inquiry and/or investigative documentation pertaining to this incident, as well as any written or oral complaints made by incarcerated people about this incident.

///

///

///

PRIVILEGED AND CONFIDENTIAL

Tamiya Davis
August 26, 2020
Page 5

We look forward to your prompt response within 14 days.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold
Of Counsel

PMG:jrg
Enclosures

cc: Ed Swanson	Damon McClain	<i>OLA Armstrong</i>
Alexander Powell	Trace Maiorino	Sean Lodholz
Jeremy Duggan	Nicholas Meyer	Alicia Bower
Anthony Tartaglio	Roy Wesley	Co-counsel
Patricia Ferguson		

EXHIBIT A

12:55

Search

THELATERELIEF

Posts

Follow

4 days ago



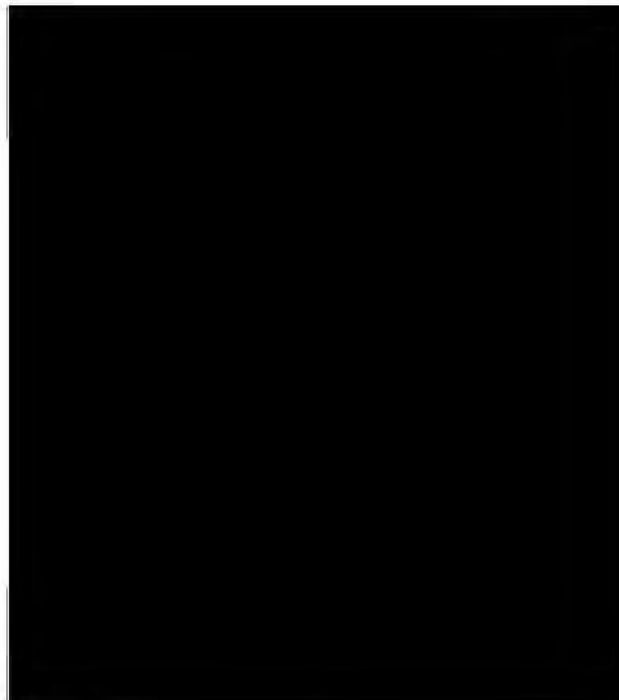
thelaterelief



facebook



At approximately 1600 hours eMe member Yoda from Westminster had words with staff at RJD Facility B. Yoda's security squad attacked staff. Two Officers were seriously stabbed and three seriously beat down. Two Code 3 Ambulances transported staff to outside hospitals. At this point I'm being advised that it appears all staff are going to pull through.



1,094 likes

thelaterelief To our partners who were assaulted at RJD a few hours ago: we are all wishing you speedy

12:55
◀ Search

THELATERELIEF
Posts

Follow

4 days ago



thelaterelief

...

1/6

6 correctional officers hurt after attack by inmates at Donovan prison, officials say

FOX 5 Digital Team

3 hours ago



100%



1,094 likes

thelaterelief To our partners who were assaulted at RJD a few hours ago: we are all wishing you speedy



Comments



1d 5 likes Reply



thelaterelief FROM THE DMs: Well let's see if our "union" speaks out on this..cause now is the time



1d 5 likes Reply



thelaterelief FROM THE DMs: Bro that fucken scrap ass shot caller [REDACTED] needs to die bro for what he did yesterday. We are a solid ass yard staff never instigate shit or start shit bro. The way this motherfucker was talking is the dam captains fault. He was saying fuck you you piece of shits, you dont run shit i run shit!!! I have the power you fuckers aint no body!! Just kept going on bro we kept saying lets go!!! Take it in we dont wanna hear that shit!!! This motherfucker rush me and then his scrap ass homies rushed us all!! It was bad brotha, prayers for all of us especially milan 🙏 he got it the worst But we all stuck together and fought back with everything man and thank god our back up got their quick!!



1d 45 likes Reply



edd_zilla1 @thelaterelief 🙏 to all the COPS AT RJD!!! That's so shady of a Cpt.



1d 4 likes Reply



5:01



Comments



about it, they're not worth your money

1d 5 likes Reply



thelaterelief FROM THE DMs: To add onto the Carrillo stuff, i found out he authorized a BBQ on August 25th for ASU inmates. We've had countless gassings in there since he became captain on B yard and he's given out TVs to inmates in there and countless other stuff. Enough is enough



1d 17 likes Reply



aprilgusc Can't wait to read the replies. Carrillo sounds shady as f*#k!! Be safe out there!



1d 3 likes Reply



whiskey_mike_actual 😨



1d Reply



thelaterelief FROM THE DMs: This breaks my heart to here my brothers are not comin home the same way they left. Prayers for you all and your families 🙏



1d 26 likes Reply

View 1 previous reply



5:05



Comments



22h 4 likes Reply



thelaterelief FROM THE DMs: Heard new captain coming in starting Monday



1d 3 likes Reply



thelaterelief FROM THE DMs: Capt. (sorry excuse for one) Carrillo was at HDSP for a short time before he got a hook up full-time job at RJD. No idea how to do his job but what he did do well was in fact cater to inmates and had a backbone of a jellyfish. It was a blessing he left us up here but obviously his inabilities as a so called Supervisor has gotten his staff hurt. My thoughts go out to the injured officers and I hope there are administrators held accountable for their hire's inability to do their job.



1d 2 likes Reply



thelaterelief FROM THE DMs: Carrillo needs to be removed and looked at very closely for ties to EME outside of the system as well. This dude is no good.



1d 5 likes Reply



thelaterelief FROM THE DMs: It's true. An new officer did a pat down on that eme member who through the first during the incident. The eme member went to the captain and complained





Comments



Warden would be posting themselves at the gym together with another lame AW from Centinela...just hides behind the higher ups thats it...

1d 6 likes Reply



official_mikeyboy Officers need to add to their reports due to "CPT policy I did not do an unclothed body search or clothed search per captain orders and submit their report. Screw Carillo I won't acknowledge his rank , union and staff need to step up and pull that trigger



1d 8 likes Reply



la_palag @official_mikeyboy I know of at least 1 report that was submitted and "erased".... some others were dropped to 128's



22h 3 likes Reply



official_mikeyboy @la_palag wow 🤔🤔 this all sounds shady as heck now ...



22h 4 likes Reply



thelaterelief FROM THE DMs: Heard new captain coming in starting Monday



1d 3 likes Reply



thelaterelief FROM THE DMs: Capt.



5:06



Comments



besos4bella He won't get fired, he will probably get promoted....



1d 12 likes Reply



thelaterelief @besos4bella we will have to wait and see.



1d 1 like Reply



chromese5 @besos4bella fast track to HQ



21h 3 likes Reply



thelaterelief FROM THE DMs: Word on the tier is Captain Carillo has directed yard staff "don't pat down my inmates" (speaking in regards to the southerners and how there is an "agreement" that staff won't be allowed to do their job for their "good" behavior in return) just goes to show what 8 years in the department and already a captain looks like.



1d 10 likes Reply



itsmontyfool OIA needs to start with the racist warden on down at RJD? That place is a free for all?



1d 9 likes Reply



christiejoy59 @itsmontyfool yes it





Comments



thelaterelief FROM THE DMs: Carrillo needs to be removed and looked at very closely for ties to EME outside of the system as well. This dude is no good.



Id 5 Likes Reply



thelaterelief FROM THE DMs: It's true. An new officer did a pat down on that eme member who through the first during the incident. The eme member went to the captain and complained about being disrespected. So the captain chewed out the new officer out. They don't let us do our job at rjd. It's crazy



Id 5 Likes Reply



thelaterelief FROM THE DMs: This hits home because I could see this going down at CRC. Sgt. Black and LT. Popplewell cater to the Inmates. Open door policy any thing we take the give back. Serious write ups dropped to counseling.



Inmates have zero respect for staff because they know the Sgt. And Lt. Are on their side. Inmates make threats all day of hurting staff because they know nothing will come about it. It's a matter of time before CRC bravo side has a similar incident.

The Sgt. Even had he cousin on the facility as an inmate. Was calling him in on first watch to hang out. When people started reported it they did chin him but





Comments



they're such good inmates even though we had just had a stabbing on the yard a week prior
There's no question Carrillo and Mendez were over familiar

2d 7 likes Reply



thelaterelief FROM THE DMs: I was reading the 115's Mendez has on file and he stated on one of them that he can't be touched because of the captain. It's fucking ridiculous. That dude needs to be terminated.



2d 3 likes Reply



thelaterelief FROM THE DMs: ISU caught him doing shady shit for Mendez and they haven't done shit about it because
The (A) warden is his roommate and buddy buddy



2d 3 likes Reply



thelaterelief FROM THE DMs: I was the Yard cop when he ordered us to conduct movement during 1630 standing count for Chick-fil-A food sale pick up. I blasted it on the radio we were moving around 45 plus inmates times 3 units.



2d 5 likes Reply



thelaterelief FROM THE DMs: I seen him





Comments



thelaterelief FROM THE DMs: THIS IS TRUE!! Fuck Carillo!! He got my SGT in trouble for the stupid ass food sale. THAT HE ALLOWED! She was not able to promote because of his ass!



1d 7 likes Reply



thelaterelief FROM THE DMs: Who ever is running this page, good job!!! I work @CAL and he did the same shot over here, him and that undercover blood of an warden. Always having a open door policy with inmates. Not only did he try to burn staff at cal but would also workout with pollard and post it on social media. FTPs



1d 12 likes Reply



thelaterelief FROM THE DMs: He tried to burn staff on a staff assault on c yard. Blaming them for everything that went down. I'll give him that he's book smart but a pendejo when it comes to common sense. He never did real time on the line. Always doing acting at the next level. And pollard is a big time racist. Always looking out for his own. How do u as a CDW at cal push the issue on beards and then when ur son comes in from the academy he's wearing one with no care in the world.



1d 9 likes Reply



5:06



Comments



itsmontyfool OIA needs to start with the racist warden on down at RJD? That place is a free for all?



1d 9 likes Reply



christiejoy59 @itsmontyfool yes it is!!



10h Reply



sgtdaddy1 Wtf?



1d 3 likes Reply



chiquita_guerita1 This is all just tip of the iceberg.... 🤔



1d 4 likes Reply



mikefone F.T.P.!!!



1d 4 likes Reply



jenrennnn Unfortunately he'll most likely be promoted .. you all know how CDC works ...



23h 3 likes Reply



sigmas09 @jenrennnn sad but true



13h Reply

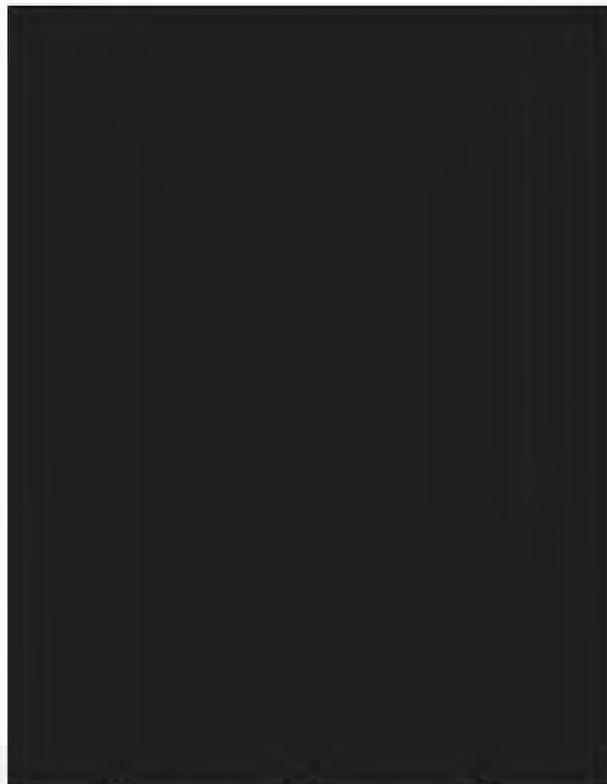


EXHIBIT B

facebook



At approximately 1600 hours eMe member Yoda from Westminster had words with staff at RJD Facility B. Yoda's security squad attacked staff. Two Officers were seriously stabbed and three seriously beat down. Two Code 3 Ambulances transported staff to outside hospitals. At this point I'm being advised that it appears all staff are going to pull through.

**Robert Genn**

4d · 🌐



But Gavin wants almost 20k inmates on our streets.



7

3 Comments 11 Shares



Like



Comment



Share

**Bianca Kristyne**

Crazy isn't it!!! My heart breaks for our brothers and sisters!



1

Like · Reply · 4d

**Stacie Hiebert**

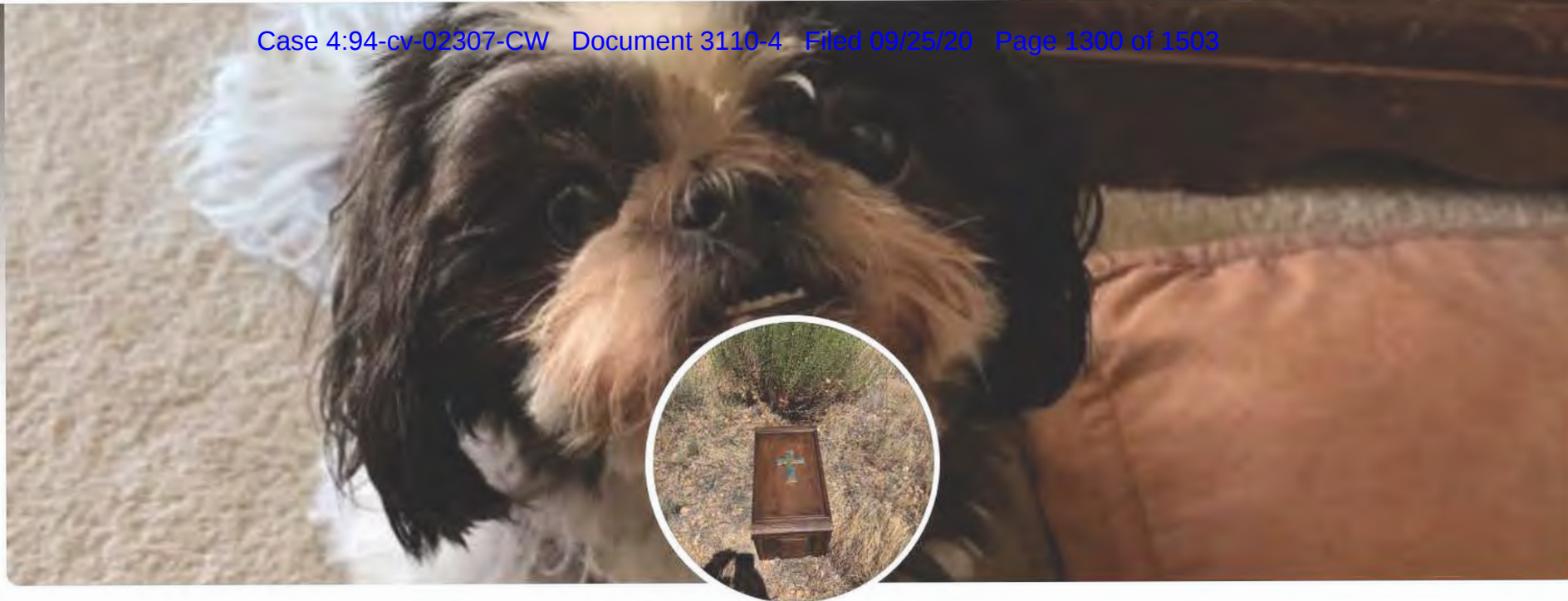
That's because he has a large wall around his house and armed security!! The rest of us have to fend for ourselves and dont try to protect yourselves because then you become the criminal. Fk Calif,

Like · Reply · 3d

**Stacie Hiebert**

Write a comment...





Robert Genn

[Timeline](#)

[About](#)

[Friends](#)

[Photos](#)

[Videos](#)

[More](#) ▼

[Add Friend](#)



Do you know Robert?

To see what he shares with friends, send him a friend request.

[Add Friend](#)

Intro

Works at California Waste Services

Photos

[See All](#)



Robert Genn

1d ·



I hear a lot of tough talk, but only one lady out there killing pedophiles

As approximately 1600 hours, a member of the Westminister had words with staff at RJD Facility B. Yoda's security squad attacked staff. Two Officers were seriously stabbed and three seriously beat down. Two Code 3 Ambulances transported staff to outside hospitals. At this point I'm being advised that it appears all staff are going to pull through.



Jeffrey Harris Sr.
4d · 🌐



1

2 Comments

👍 Like

➦ Share



Rick Belka
its to bad you can't play buy the inmates rules...

Like · 3d



1



Jeffrey Harris Sr.

[Timeline](#)

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[Friends 292](#)

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[More ▾](#)

[Add Friend](#)



Do you know Jeffrey?

To see what he shares with friends, send him a friend request.

[Add Friend](#)

Intro



Works at California Department of Corrections and Rehabilitation



Went to La Sierra High



Jeffrey Harris Sr.

23h · 🌐



I wonder how many

Exhibit 125

Search



THELATERELIEF
Posts

Follow



thelaterelief



Judge orders officers at Otay Mesa prison to wear body cameras

City News Service

Sep 9, 2020 / 06:57 AM PDT

Local

Posted: / Updated: Sep 9, 2020 / 06:57 AM PDT



Donovan State Correctional Facility



716 likes

thelaterelief The last time California complied with a federal judge's mandate, we had a statewide outbreak of COVID19. Maybe the body cameras will

◀ Search



Comments



thelatererelief The last time California complied with a federal judge's mandate, we had a statewide outbreak of COVID19. Maybe the body cameras will capture more fights than some of these inmate-recorded videos. In any case, here are some samples of inmates recording inmates beating up on other inmates, and mobility impaired inmates having a lot more range of motion than you think. 🙄

#dopephonesthanks #ugh #moredredtape #beauracracy #barrier #axonbodycam #bodycamera #sandiego #california #epicfail #mobilityimpaired #tellmewhyyoutgotlockedup

Edited · 2w



count_time1 One of the best fights I've seen in prison was a wheelchair bound inmate get up and beat the fuck out of another inmate that was walking by 🚶



2w 📌 Pinned 23 likes Reply

— View 4 previous replies



count_time1
@therealmccoymakeup 🙄



2w 1 like Reply



jdouglasusn @count_time1 SATF?



2w 1 like Reply



◀ Search



Comments



count_time1 One of the best fights I've seen in prison was a wheelchair bound inmate get up and beat the fuck out of another inmate that was walking by 🚶



2w



Pinned

23 likes

Reply

— View 1 previous reply



count_time1 @thelaterelief Imfao hopefully he made sure he had his vest on 🤡😂😂😂😂



2w

3 likes

Reply



thelaterelief @count_time1 he's wearing it. Check out slides 7 and 8.



2w

1 like

Reply



therealmccoymakeup

@count_time1 😭😭😭😭😭😭💀💀
💀 I choked on my ice coffee reading this



2w

1 like

Reply



count_time1

@therealmccoymakeup 😬



2w

1 like

Reply



jdouglasusn @count_time1 SATF?



◀ Search



Comments



caligirlkcmoore @count_time1 😂
@kuhtreenuh25 read this comment
tho 🤡 🤡 🤡 🤡 🤡



2w 2 likes Reply



_1033_go Public has access to the
footage, correct?



2w 1 like Reply



yep_it_is_i @_1033_go they
shouldn't



2w Reply



thelaterelief FROM THE DMs: That "I'm
disabled" shit is inmates be pulling is a
lie I know several that are in wheel chairs
or walking canes that pretend to be
disabled but will knock out burpees and
squats and box jobs on their bunks when
they're in their cells. Always stay frosty.



2w 10 likes Reply



lazysenon There doing this because
they believe inmates are being abused
😂 this will backfire and instead it will
show how disrespectful ugly and violent
inmates are. Most of the people calling
for these cameras don't understand
these are violent criminals and are in for
a rude awakening on how inmates



◀ Search



Comments



brwnzackmorris The cameras will convict more inmates with attempted murder and gbi. The videos will come in handy



2w 11 likes Reply



2wheelsd @brwnzackmorris and then the inmates will appeal the body cams and file a lawsuit saying it's an invasion of privacy lol



2w 4 likes Reply



herndezb37 @2wheelsd 😂😂😂
😂 so true ^^^



2w 1 like Reply



just_jump_sp Man, imagine the huge amount of digital storage needed for this. So much money too. I know working patrol we generate a huge amount of data with our contacts. We are a small agency and I generate 200-250 videos a month. I can't imagine a prison! Soooo much more contact and video. This should be interesting.



2w 6 likes Reply



yep_it_is_i My state is planning to do a test run with body cameras on top of all the HD4k cameras they have at all institutions: im not 100% all for it



◀ Search



Comments



yep_it_is_i My state is planning to do a test run with body cameras on top of all the HD4k cameras they have at all institutions; im not 100% all for it



2w 1 like Reply



centurion_gear Welcome to the club



2w 3 likes Reply



thelaterelief @centurion_gear some inmate's genitals are going to wind up on camera and then they'll sue the state. Then boots on the ground will have another barrier as they try to do their jobs. Maybe boots won't be able to do security checks in the shower or respond to alarms in that area. Who knows. 🙄



2w 4 likes Reply



big_b_67 But wheretf is ccpoa suing the recievership for incompetent doctors being manipulated.



2w 5 likes Reply



amflores07 @lbettis3306



2w Reply



lbettis3306 @amflores07 crazy



◀ Search



Comments



themurg1 🤔 don't think the public is ready to see how really the inmates are when no one is looking!



2w 6 likes Reply



2wheelsd @themurg1 I don't think the wives are ready to see their husbands with their transgender girlfriends.



2w 5 likes Reply



themurg1 @2wheelsd right 100



2w 1 like Reply



ashleighrose3 I have a wheelchair bound inmate who is able to board up 🤔 needs a catheter but rips it out to throw piss at us .. then goes 8 hours without a replacement. Yeah. He really needs that wheelchair full time. The IEX's, the verbal abuse, gassings, the self harm 🎥 this should be very interesting...



2w 5 likes Reply



thelaterelief @brwnzackmorris it's going to be another level of scrutiny for Monday morning quarterbacks.



2w 1 like Reply



◀ Search



Comments



brwnzackmorris @thelaterelief
guaranteed to happen



2w Reply



ornery_cus Waste of oxygen



2w Reply



devildoggunsmith This proves nothing on officers physical abusing inmates. It is all inmate on inmate!



2w 1 like Reply



celiavazquez1387 🤔🤔🤔🤔🤔🤔



2w Reply



hickwire Show that wheel chair video to the judge and the attorneys



2w 1 like Reply



fins.up.dude Nope, I'll never forget an inmate at RJD on A yard that was wheelchair bound.. but when he went on the yard he would stand up and use the arms of the wheelchair and do handstand push-ups..



2w 2 likes Reply



2wheelsd @fins.up.dude I'll never



◀ Search



Comments



fins.up.dude Nope, I'll never forget an inmate at RJD on A yard that was wheelchair bound.. but when he went on the yard he would stand up and use the arms of the wheelchair and do handstand push-ups..



2w 2 likes Reply



2wheelsd @fins.up.dude I'll never forget that one inmate that "all of sudden" got up from his wheelchair and threw a shank behind HU5 because an officer was about to pat him down.



2w 1 like Reply



caligirlkcmoore @kuhtreenuh25 i can't 😂 the caption. Range of motion 😂 you guys crack me up 😂



2w 1 like Reply



ebduenes @garygomez44 @knight5217 @jenayala1969



2w 2 likes Reply



knight5217 @ebduenes glad we're out



2w Reply



◀ Search



Comments



2w 2 likes Reply



knight5217 @ebduenes glad we're out



2w Reply



ebduenes #cdcr



2w Reply



jenayala1969 But inmates are such fine upstanding citizens 😏



2w 1 like Reply



cobeco1364 This will backfire on the inmates and will make the money hungry lawyers and the judge look like total fools when they realize they got taken by the ADA manipulators.



2w 1 like Reply



lisabates123 🙌🙌🙌🙌🙌🙌🙌



1w Reply



acealx Why do they insist on protecting these degenerates? They're probably quick to fire/arrest an officer who kills an inmate in defense too



1w 1 like Reply



Exhibit 126

CALIFORNIA

California prison guard union places bull's-eye on Black lawmaker's photo in political ad



A screenshot from the Facebook page of California prison guard union President Glen Stailey shows part of an online political advertisement announcing the union's intent to "target" Assemblyman Reggie Jones-Sawyer in the November election. (Office of Assemblyman Reggie Jones-Sawyer)

By ANITA CHABRIA | STAFF WRITER

SEP. 17, 2020 | 4:25 PM UPDATED 7:36 PM



SACRAMENTO — The union representing California prison guards posted pictures and video online of a new political ad announcing its intent to "target" South Los Angeles Assemblyman Reggie Jones-Sawyer, obscuring the Black lawmaker's face with a bull's-eye — and drawing criticism that the image amounted to a threat.

The ad and a screenshot posted Wednesday by California Correctional Peace Officers Assn. President Glen Stailey were later removed, but pictures and copies of the video continue to circulate online.

The incident highlights mounting acrimony in Los Angeles and across the country between law enforcement and those who seek police reforms, and it comes days after two Los Angeles County sheriff's deputies were [ambushed by a gunman](#), leading Sheriff Alex Villanueva to warn that [“words have consequences.”](#)

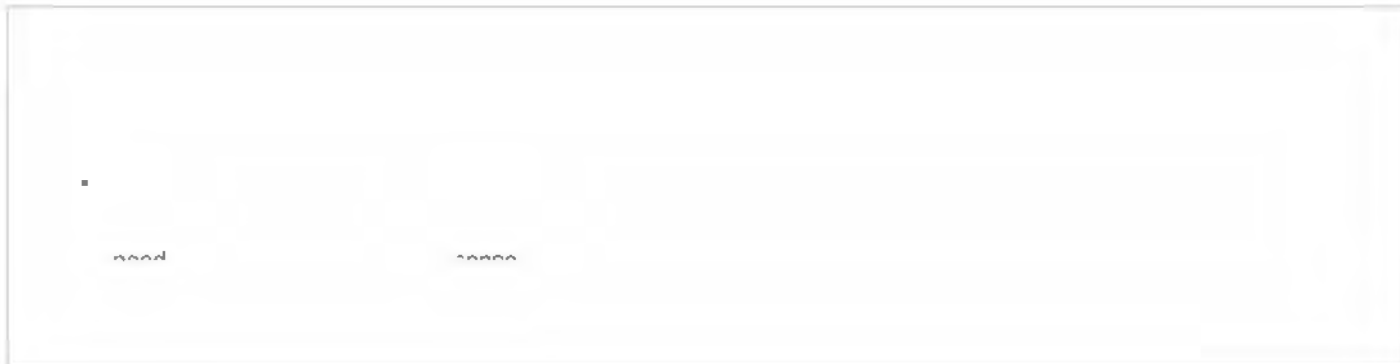
Jones-Sawyer, chairman of the state Assembly's Public Safety Committee, said Thursday he is concerned that regardless of the organization's intent, the online image could lead to real-world violence.

“God forbid someone took that putting a target on me literally and were not stable and showed up at my home,” he said. “In this environment ... you don't put a target on a person of color.”

Jones-Sawyer — who condemned [Saturday night's shooting](#) of the two deputies, calling it a “cowardly act” — has long been a champion of criminal justice reform. He also recently voted in a favor of a new contract for CCPOA members that cuts their pay because of the state's economic crisis while providing additional paid time off each month.

The assemblyman is in a tight reelection race in the 59th District against fellow Democrat Efren Martinez, a public policy commissioner.

The CCPOA has long been a strong lobbying presence at the state Capitol and in campaigns and has given [hundreds of thousands of dollars to dozens of legislators](#) in recent years through independent expenditure committees. It has contributed \$143,000 so far to Martinez's campaign through those channels, according to state records.



Martinez said he does not condone “hateful tactics” and alleged his campaign had been the target of negative actions as well, including an incident in which he said a window was broken at his office.

The union did not respond to a request for comment but sent a statement through a public relations agency.

“It would require a great stretch of the imagination to believe that we meant anything other than our clear intent, which was to demonstrate that we are mounting political campaigns against certain legislators,” read the statement, which was attributed to Stailey. “However, to put this controversy to rest, we are removing the video from our official channels and editing it. We will not be deterred from our commitment to protect the interests of correctional officers by actively participating in political campaigns.”

CALIFORNIA

Supervisors join calls for Sheriff Villanueva to step down



Sep. 17, 2020

**Los Angeles Times**LOG IN 

In the nearly 2½-minute ad, a narrator says that it is the “first day of a new direction for our association” and that it will “further our commitment to the legislators who aren’t afraid to stand with law enforcement.”

The political advertisement includes images of a woman being held against a wall by a man with a knife, a person standing on top of a car while smashing its windows with a baseball bat, and a burning home — while interspersing narrative about rising violence for law enforcement and communities.

“We are going to demand that the increased violence and assaults on police officers are addressed,” the narrator says.

The video continues with Stailey pointing to the bull’s-eye on the photo of Jones-Sawyer while the narrator says, “and the perpetrators are held accountable to the highest degree.”

Assembly Speaker Anthony Rendon (D-Lakewood), said Thursday that he believed the ad “definitely crossed a line.”

“A target over a person’s face is something we all recognize,” he said.

Rendon said the union represents state workers with issues before the Legislature that lawmakers will continue to take seriously. But he said the ad makes him question the association’s leadership.

“I’m skeptical of them and skeptical of their intentions and whether or not they’re very good people,” he said.

Jones-Sawyer said at first he questioned whether the video was real, but when he determined it was, he called Capitol security services for more protection for his family.

Jones-Sawyer is married and has a college-age son at home, he said. He also sent a letter to state Atty. Gen. Xavier Becerra asking whether the video crossed legal lines and amounted to a threat against a public official.

A representative for Becerra's office said Thursday that he was "aware of the request" but declined to say whether an investigation would take place.

Ed Obayashi, an attorney and Plumas County sheriff's deputy who advises agencies on legal matters, said that political speech was one of the "highest forms of protected free speech" and that he did not believe the ad crossed legal lines.

Obayashi said that although he found the bull's-eye image "highly problematic," he believed that it probably resonated with the group's membership. He said recent attacks on officers have left many in law enforcement angry and frustrated by police reform measures in California that many rank-and-file officers view as anti-police.

"The organization would not have put this ad out if that was not the sentiment of the general membership," Obayashi said. "It has come to that point and beyond."

Times staff writer Taryn Luna contributed to this report.

CALIFORNIA



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Anita Chabria covers California state politics and policy for the Los Angeles Times and is based in Sacramento. Before joining The Times, she worked for the Sacramento Bee as a member of its statewide investigative team, and previously covered criminal justice and City Hall.



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‘Tsunami’ of hotel closures is coming, experts warn

Exhibit 127

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0027966-DM	8/31/98	Between August 31, 1998, and September 20, 2015, a lieutenant allegedly falsified documents to have an inmate sentenced to life in prison and stole personal property from inmates. Between October 26, 2012, and October 24, 2013, the lieutenant allegedly misused state equipment when he accessed confidential information without a valid reason. On August 20, 2016, the lieutenant allegedly provided a sergeant confidential interview questions prior to the sergeant's promotional interview and between August 29, 2016, and August 31, 2016, allegedly chaired the sergeant's interview panel. On August 20, 2016, the sergeant allegedly received confidential interview questions and between August 29, 2016, and August 31, 2016, allegedly fraudulently obtained a promotion after receiving the confidential interview questions.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
16-0001781-DM	7/5/16	On July 5, 2016, three officers used physical force to subdue a hand-cuffed resistive inmate. The third officer and a fourth officer placed leg restraints on the inmate. A sergeant, and a fifth and sixth officer also responded to the scene. The sixth officer allegedly inappropriately placed a spit mask on the inmate. The first officer allegedly inappropriately used a third set of restraints to secure the inmate's handcuffs to the leg restraints behind the inmate's back. The first three officers, a seventh officer, and an eighth officer allegedly failed to protect the inmate when the inmate was restrained, face-down, with a spit mask on his face and unable to breath. The sergeant allegedly failed to assess the appropriateness of the situation and failed to take appropriate action to control the incident. Except for the first and sixth officer, all of the officers and a ninth and tenth officer, and the first sergeant and two other sergeants allegedly observed, but failed to report they observed the inappropriate restraint. The department transported the inmate to an outside hospital, where a physician pronounced the inmate dead. A medical examiner determined the manner of death was homicide and the cause of death was cardiac arrest due to methamphetamine toxicity with contributing factors of being involved in an altercation and restrained in a prone position.	Poor	Satisfactory	Satisfactory	Poor	Poor	Satisfactory	Satisfactory

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
16-0002084-DM	8/31/16	On August 31, 2016, two officers allegedly falsely reported they told a sergeant they used force on an inmate. The sergeant allegedly falsely reported the officers did not report their use of force and failed to take appropriate action after the incident. A second sergeant allegedly failed to properly assess the use of force incident and take appropriate action during the use of force incident, and a lieutenant allegedly failed to initiate a report after the incident. On February 14, 2018, the second sergeant allegedly lied during an Office of Internal Affairs interview.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor
17-0022782-DM	9/24/16	On September 24, 2016, an officer allegedly possessed a folding knife inside an institution and brandished it at an inmate. On June 29, 2017, the officer allegedly lied during his Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
17-0021726-DM	12/2/16	On December 2, 2016, three officers allegedly failed to contact emergency medical services upon encountering an inmate having a diabetic emergency, and a sergeant allegedly failed to ensure that officers contacted emergency medical services. On May 31, 2017, the first officer allegedly lied during an Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory
18-0026342-DM	1/1/17	Between January 1, 2017, and April 21, 2018, two officers allegedly provided confidential information to inmates and allowed other officers to use their computer passwords. A third officer allegedly failed to report the misconduct, used the other officers' passwords, and used a computer when another officer was logged on. On November 14, 2018, the first officer allegedly lied during his Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
17-0022721-DM	2/11/17	On February 11, 2017, an officer allegedly disclosed an inmate's confidential information and conspired to have two inmates attack the inmate. A second officer allegedly opened the first inmate's cell door to allow the attack to occur and failed to report the attack. On September 7, 2017, the second officer allegedly lied during an Office of Internal Affairs interview.	Satisfactory	Poor	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
17-0024340-DM	2/28/17	On February 28, 2017, an officer was allegedly dishonest when he failed to report he observed a sergeant use force and on August 24, 2017, allegedly lied when he documented a lieutenant did not interview him regarding the sergeant's use of force. Between April 6, 2017, and April 12, 2017, a lieutenant allegedly failed to interview sergeants and officers and review their reports when investigating an inmate's complaint and lied in a document regarding the interviews. Between April 6, 2017, and June 16, 2017, the lieutenant was allegedly dishonest when he documented that the first officer witnessed a use of force and on April 12, 2017, allegedly created false interview notices and advisements of rights for two sergeants and two officers, and submitted a final report of investigation that contained false statements and documents. On January 10, 2018, and March 28, 2018, the lieutenant allegedly lied during an Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Superior	Poor	Poor	Poor
17-0022609-DM	3/26/17	On March 26, 2017, while being escorted in waist restraints, an inmate began acting erratically and resistive. Sergeants and officers used physical force to restrain the inmate as he kicked and spat. An officer applied a spit mask, and another officer applied ankle restraints. A lieutenant, sergeant, and two officers placed the inmate face-down on a gurney and transported the inmate to the mental health treatment area, where he became unresponsive. Officers and nurses preformed life-saving measures, and an ambulance transported the inmate to an outside hospital, where a physician pronounced the inmate dead on July 21, 2017. The Office of Internal Affairs also opened a criminal investigation, which the OIG accepted for monitoring.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
17-0023498-DM	4/16/17	On April 16, 2017, four officers allegedly struck and kicked two inmates. On April 18, 2017, the first and second officers allegedly struck and kicked the first inmate and forced him to apologize to the third officer. On April 19, 2017, a fifth officer allegedly slammed a third inmate to the floor and kicked him, and a sergeant was allegedly discourteous to the inmate and failed to take appropriate action when he became informed of the officers' use of force against the inmate. On April 21, 2017, the first officer allegedly attempted to strangle the first inmate and the fourth officer allegedly slapped the first inmate, a sixth officer and second sergeant allegedly failed to report the use of force. All of the officers and sergeants allegedly participated in an effort to hide the officers' and sergeant's alleged misconduct.	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
18-0027153-CM	6/19/17	On June 19, 2017, three officers allegedly conspired to have an inmate batter another inmate who had been rude to one of the officers. The Office of Internal Affairs conducted an investigation, which failed to establish sufficient evidence for a probable cause referral to the district attorney. The OIG concurred with the probable cause determination. The Office of Internal Affairs did not open an administrative investigation due to lack of evidence.	Satisfactory	Superior	Satisfactory	Satisfactory			
18-0026417-DM	6/28/17	On June 28, 2017, and between October 30, 2017, and December 1, 2017, an officer allegedly slammed an inmate's head into a wall on multiple occasions.	Satisfactory	Poor	Satisfactory	Satisfactory	Poor	Satisfactory	
18-0025637-DM	8/3/17	On August 3, 2017, a sergeant allegedly placed an inmate in an unapproved cell, and two officers allegedly failed to conduct proper inmate counts on two occasions. On August 4, 2017, a third officer allegedly failed to conduct a proper inmate count.	Poor	Poor	Poor	Satisfactory	Poor	Satisfactory	Poor
17-0024221-DM	8/28/17	On August 28, 2017, an officer allegedly forced a handcuffed inmate into a fence and to the ground, while a second officer allegedly pushed the inmate's head downward. Both officers allegedly submitted false reports. Three other officers allegedly failed to report the use of force they witnessed. A sixth officer, who worked in a tower, allegedly listened to an unauthorized radio, failed to monitor the escort of an inmate, failed to report the force used by the second officer, and failed to properly wear required equipment, including a firearm.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
17-0024501-DM	9/14/17	On September 14, 2017, a lieutenant allegedly improperly ordered an emergency cell entry, and then the lieutenant, a sergeant and the three officers allegedly conducted the cell entry and wrote false reports regarding the incident. The sergeant and the officers allegedly attempted to prevent reporting of the misconduct, the sergeant allegedly left the inmate unsupervised while in restraints inside his cell, and one of the officers allegedly used unreasonable force during the cell entry. On September 15, 2017, the lieutenant allegedly lied to a second sergeant about the incident and on March 6, 2018, allegedly lied during an Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor
18-0024983-DM	10/1/17	On November 7, 2017, an officer allegedly failed to take timely action and stop an inmate fight and on December 5, 2017, was dishonest in his report. Between November 1, 2017, and May 1, 2018, the officer allegedly sent and received personal emails on a state computer. Between April 4, 2018, and April 9, 2018, the officer allegedly discussed the ongoing investigation with two sergeants and four officers after he was admonished not to discuss the case. On April 17, 2018, the officer allegedly threatened to retaliate against an inmate for speaking with the Office of Internal Affairs. On April 9, 2018, and May 23, 2018, the officer allegedly lied during his Office of Internal Affairs interviews.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
18-0026633-CM	12/17/17	Between December 17, 2017, and May 21, 2018, an officer allegedly improperly accessed confidential inmate information, disclosed the information to inmates, and conspired with inmates to facilitate assaults on other inmates. Between January 30, 2018, and February 1, 2018, the officer allegedly conspired with inmates to facilitate an assault on an inmate. The Office of Internal Affairs conducted an investigation, which failed to establish sufficient evidence for a probable cause referral to the district attorney. The OIG concurred with the probable cause determination. The Office of Internal Affairs did not open an administrative investigation due to lack of evidence.	Satisfactory	Satisfactory	Satisfactory	Poor			

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0026037-DM	12/17/17	On December 17, 2017, an officer allegedly intentionally pushed his body into an inmate, striking the inmate's head and neck area, used profanity towards an inmate, threatened to sexually assault the inmate, and failed to document his use of force. A sergeant allegedly failed to report the inmate's allegations that the officer used unreasonable force and threatened to sexually assault him. A second officer allegedly failed to report the first officer's discourteous comments toward the inmate and he and a dentist allegedly failed to report the inmate's allegations the first officer threatened to sexually assault him.	Poor	Poor	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
18-0025697-DM	12/20/17	On December 20, 2017, an officer allegedly confined an inmate to a cell without authorization, cursed and yelled at the inmate in the presence of other inmates, and conducted punitive and retaliatory searches of the inmate's cell. On February 1, 2018, the officer allegedly lied to a lieutenant.	Poor	Poor	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
18-0025565-DM	1/1/18	On January 1, 2018, an officer allegedly punched an inmate in the face, failed to report his use of force, and then lied to a lieutenant about the incident. On April 20, 2018, the officer allegedly tried to influence the reporting by an officer who witnessed the incident. On May 7, 2018, the officer allegedly lied during an Office of Internal Affairs interview.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor
18-0025816-DM	1/19/18	On January 19, 2018, a counselor allegedly forged inmate signatures on inmate appeal forms, falsely representing the inmates withdrew their appeals. On February 9, 2018, the counselor allegedly lied to a supervisor when he denied forging the signatures and falsifying the forms.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
18-0026567-DM	1/31/18	On January 31, 2018, two officers allegedly failed to activate their personal alarm devices and immediately contact medical staff when they discovered an unresponsive inmate in a cell and a third officer allegedly failed to properly conduct inmate checks.	Satisfactory	Superior	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
18-0027725-DM	2/6/18	On February 6, 2018, an officer allegedly pepper sprayed an inmate when there was no imminent threat and lied about the incident in a report.	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
18-0025888-DM	2/20/18	On February 20, 2018, an officer allegedly pushed an inmate, failed to accurately report the incident, and conspired with a second officer to not report the use of force. The second officer allegedly failed to accurately report the incident.	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	

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OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0026215-DM	2/22/18	On February 22, 2018, an officer allegedly used unnecessary physical force on an inmate and failed to report his use of force. Three other officers also allegedly failed to report the use of force.	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
18-0026086-DM	3/8/18	On March 8, 2018, an officer allegedly falsely accused an inmate of purposely running a cart over his foot and on March 9, 2018, allegedly lied in a report. On June 20, 2018, the officer allegedly lied during an Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
18-0027149-DM	3/27/18	On March 27, 2018, a lieutenant allegedly inappropriately grabbed an inmate by the hair and struck the inmate in the mouth. An officer allegedly failed to assist the lieutenant when being assaulted by the inmate. Later that day, a second lieutenant placed his foot on the inmate's neck and a sergeant allegedly struck the inmate on the thigh with a baton. Four other officers and a psychiatric technician allegedly failed to document the force utilized on the inmate. On April 30, 2018, one of those four other officers allegedly forced the inmate to the floor and placed his knee on the inmate's neck, and the sergeant, a psychiatric technician, and the four officers allegedly failed to document the force.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0028661-DM	4/11/18	On April 11, 2018, two officers allegedly twisted the arms of an inmate and pushed him up against a wall during an escort. A third officer allegedly threw a boiling liquid on the inmate, causing serious burns.	Satisfactory	Poor	Satisfactory	Superior	Satisfactory	Superior	
18-0026405-DM	4/29/18	On April 29, 2018, an officer allegedly counted an escaped inmate as present, and on April 30, 2018, a second and third officer allegedly counted the escaped inmate as present and two sergeants allegedly failed to ensure count procedures were followed. On April 30, 2018, a fourth officer allegedly served notice of a disciplinary hearing on the escaped inmate without checking the inmate's bed which contained only clothing arranged to conceal the inmate's escape. On August 2, 2018, the first officer allegedly lied during his Office of Internal Affairs interview.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
18-0026787-DM	5/1/18	On May 1, 2018, an officer allegedly unnecessarily struck an inmate with a baton and submitted a false report. A second officer observed the force, but allegedly did not report the force observed and submitted a false report.	Poor	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	
18-0027767-DM	5/27/18	On May 27, 2018, an officer allegedly forced an inmate to the ground and failed to report the force he used.	Satisfactory	Poor	Satisfactory	Poor	Satisfactory	Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0027497-DM	6/3/18	On June 3, 2018, an officer allegedly unnecessarily punched an inmate in the head. On June 25, 2018, the officer allegedly punched a second inmate in the mouth and made a disparaging comment to the second inmate.	Satisfactory	Poor	Poor	Satisfactory	Satisfactory	Satisfactory	
18-0027836-DM	7/5/18	On July 5, 2018, a lieutenant allegedly lied in a rules violation report when he documented interviewing two officers he did not interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
18-0027680-DM	7/8/18	On July 8, 2018, two officers allegedly failed to notify a supervisor that an inmate reported safety concerns.	Poor	Satisfactory	Poor		Poor	Poor	Poor
18-0027652-DM	8/23/18	On August 23, 2018, an officer allegedly unnecessarily struck an inmate several times with a baton and he and a second officer allegedly lied when they reported that the inmate acted aggressively toward the officer.	Poor	Satisfactory	Poor	Satisfactory	Poor	Poor	Poor
18-0027326-CM	9/2/18	On September 2, 2018, and September 4, 2018, two officers allegedly conspired with inmates to attack another inmate by providing confidential information about the inmate. The Office of Internal Affairs conducted an investigation, which failed to establish sufficient evidence for a probable cause referral to the district attorney. The OIG concurred with the probable cause determination. The Office of Internal Affairs also opened an administrative investigation, which the OIG accepted for monitoring.	Satisfactory	Satisfactory	Satisfactory	Satisfactory			
18-0028129-DM	9/27/18	On September 27, 2018, an officer allegedly punched a restrained, non-resistive inmate multiple times and failed to report his actions. A second officer allegedly observed the first officer punching the inmate but failed to include his observations in his report.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0028459-DM	10/9/18	On October 9, 2018, an officer allegedly directed a racially-disparaging comment to an inmate, unnecessarily deployed pepper spray on the inmate's face, failed to report he used force on the inmate, and submitted a false report regarding the incident.	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0028270-DM	10/20/18	On October 20, 2018, an officer allegedly opened the back door of a dormitory to allow inmates to enter the dormitory and assault another inmate.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	
19-0028276-DM	11/8/18	On November 8, 2018, an officer allegedly made a disparaging comment toward an inmate and forced the inmate face down into the ground. The officer allegedly viewed the visual recording of the incident without authorization prior to preparing his report.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0026286-DM	2/23/17	On February 23, 2017, an officer allegedly struck an inmate with a baton when there was no imminent threat, and a second officer allegedly failed to document witnessing the first officer use a baton and hold the inmate down. Between January 4, 2018, and August 30, 2018, a third officer allegedly provided a second inmate's confidential information to two other inmates and failed to report that the two other inmates told him they assaulted the second inmate, and failed to report that the inmates discussed their Office of Internal Affairs interviews with the officer. On September 14, 2018, the third officer allegedly lied during his Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
17-0024735-DM	9/16/17	On September 16, 2017, a lieutenant and a sergeant allegedly authorized eight officers to immediately enter an exercise yard to subdue an inmate without justification and without ensuring the officers wore safety helmets, and the officers allegedly entered the exercise yard without wearing safety helmets. Five of the officers allegedly dragged the inmate on the ground, and the lieutenant, sergeant, and all eight officers allegedly participated in a code of silence by preparing dishonest reports about the force used during the incident. A psychiatric technician allegedly failed to report witnessing the use of force. Between September 16, 2017, and October 5, 2017, the sergeant was allegedly dishonest when he approved false reports, and falsified and forged one of the officer's reports. On June 20, 2018, the sergeant allegedly lied during his interview with the Office of Internal Affairs.	Poor	Poor	Satisfactory	Poor	Poor	Poor	Poor
18-0027909-DM	9/23/17	On September 23, 2017, a lieutenant allegedly told an inmate he would dismiss the inmate's rules violation report if the inmate attacked a second inmate. On January 7, 2018, the first inmate attacked the second inmate and two nurses allegedly failed to sound their alarms during the attack.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0025402-DM	11/17/17	On November 17, 2017, an officer allegedly struck an inmate with a baton and a second officer allegedly deployed pepper spray when the inmate did not pose an imminent threat, and both officers allegedly wrote false reports about the incident. A third officer allegedly used physical force against the inmate but failed to report it. A sergeant allegedly failed to timely submit a report regarding the incident, and a second sergeant allegedly failed to obtain reports from officers involved in the incident. Between November 17, 2017, and November 20, 2017, a lieutenant allegedly failed to review the video recording of the incident, identify the video as evidence, and identify discrepancies between the video recording and the incident reports.	Satisfactory	Poor	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
18-0025314-DM	12/29/17	On December 29, 2017, an officer allegedly blocked the path of an inmate, shoved the inmate into a wall, failed to report his use of force, and lied to his supervisor when he denied using force. A counselor and a second officer allegedly failed to report witnessing the first officer's use of force, and a nurse allegedly destroyed a medical report to conceal the first officer's use of force. A sergeant allegedly threatened the inmate to prevent the inmate from reporting the use of force. On April 27, 2018, the first officer allegedly lied during an interview with the Office of Internal Affairs.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
18-0026413-DM	1/29/18	On January 29, 2018, a lieutenant allegedly failed to video record an inmate's injuries and have the inmate medically evaluated after the inmate complained he could not breathe because of injured ribs after officers physically restrained him.	Satisfactory	Poor	Satisfactory		Poor	Satisfactory	Poor
18-0025864-CM	3/8/18	On March 8, 2018, a lieutenant and a sergeant allegedly conspired to have an inmate omit information from a letter being used as evidence in a criminal case regarding an agreement between the warden and the inmate. The Office of Internal Affairs completed an investigation and found sufficient evidence for a probable cause referral to the district attorney. The OIG concurred with the probable cause determination. The district attorney declined to file charges.	Satisfactory	Satisfactory	Poor	Satisfactory			

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0026777-DM	5/6/18	On May 6, 2018, a sergeant allegedly approved a cell move for an inmate without having adequately researched whether the inmate was compatible with his new cellmate, improperly approved the move, and was dishonest when he reported that he conducted an appropriate review. A lieutenant allegedly failed to review and approve the cell move prior to the inmate's placement in the cell. Two officers allegedly failed to activate their alarms after discovering one of the inmates was unresponsive, and failed to carry necessary equipment including personal alarms and radios. The first officer allegedly failed to remain at the front of the cell after discovering a medical emergency and the second officer allegedly failed to run to summon care once the emergency was discovered. On September 26, 2018, the sergeant allegedly lied during his Office of Internal Affairs interview when he stated that he had conducted an appropriate review.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory
18-0027445-DM	7/6/18	On July 6, 2018, an officer allegedly placed his knees on an inmate's back, applied tight restraints, lifted the inmate's restrained arms above his head, and slammed the inmate into a holding cell, causing injuries to the inmate's back, wrists, arms, and eye. The officer also allegedly failed to accurately report his use of force and falsely reported the inmate had a preexisting eye injury.	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	
19-0028346-DM	7/28/18	On July 28, 2018, two officers allegedly failed to stop two inmates from fighting and one of the officers allegedly encouraged an inmate to continue fighting.	Satisfactory	Poor	Poor	Satisfactory	Satisfactory	Satisfactory	
18-0027327-DM	9/2/18	On September 2, 2018, an officer allegedly accessed an inmate's confidential information without reason and provided the information to other inmates. On September 4, 2018, a second officer allegedly accessed the same inmate's confidential information without reason and on September 5, 2018, provided the information to other inmates.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	
19-0029051-DM	9/14/18	On September 14, 2018, an officer allegedly failed to submit an incident report prior to being relieved from duty, failed to report he observed an officer use force, and provided false information regarding the date he submitted his report	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
18-0027894-DM	9/19/18	On September 19, 2018, an officer allegedly inappropriately struck an inmate once in the head and three times in the back with a baton, and a second officer allegedly inappropriately deployed pepper spray and struck the inmate with a baton. Both officers allegedly reported there was only one baton strike to the inmate.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0027994-DM	9/19/18	On September 19, 2018, an officer allegedly struck an inmate in the face and failed to report it, and a lieutenant, sergeant, and second officer allegedly witnessed the use of force and failed to report it. On June 27, 2019, the lieutenant allegedly lied during an Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
19-0029359-DM	9/28/18	On September 28, 2018, an officer allegedly hit an inmate on the back of the head and pushed the inmate's head against a concrete floor.	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029253-DM	10/5/18	On October 5, 2018, an officer allegedly lied during a preliminary hearing involving criminal charges against an inmate for possession of an inmate-manufactured syringe.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0028406-DM	10/9/18	On October 9, 2018, a sergeant and an officer allegedly used pepper spray without justification on an inmate who had barricaded himself inside his cell, and the officer allegedly failed to report the sergeant's use of pepper spray. The sergeant, the officer, and two other officers allegedly failed to search the inmate and the inmate's cell after seeing the inmate had a weapon.	Poor	Poor	Satisfactory	Satisfactory	Poor	Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
19-0028821-DM	10/18/18	On October 18, 2018 a sergeant and two officers allegedly failed to report forcing a resistive inmate to the ground during an escort, and three other officers allegedly failed to submit reports before the end of their shifts.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
18-0028182-DM	10/31/18	On October 31, 2018, two officers allegedly provided confidential information to inmates, and one of the officers allegedly failed to report prior knowledge of an inmate assault.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	
19-0028917-DM	11/1/18	On November 1, 2018, two officers and a counselor allegedly kicked and punched an inmate in the head several times without justification.	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029056-DM	11/27/18	On November 27, 2018, an officer allegedly deployed pepper spray on an inmate without justification. The officer and a second officer allegedly wrote false reports indicating the inmate posed a threat when the inmate did not.	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0028273-DM	11/29/18	On November 29, 2018, an officer allegedly touched an inmate's buttocks while the inmate slept.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029049-DM	12/4/18	On December 4, 2018, an officer allegedly provided confidential information about one inmate to another inmate.	Satisfactory	Poor	Poor	Satisfactory	Satisfactory	Satisfactory	
19-0029047-DM	12/24/18	On December 24, 2018, an officer allegedly pulled the right hand of an inmate, resulting in a broken bone in the inmate's hand.	Poor	Poor	Poor	Satisfactory	Poor	Poor	
19-0029119-DM	1/9/19	On January 9, 2019, two officers allegedly failed to report they pushed an inmate against a wall and then to the floor, and a third officer allegedly witnessed the use of force but failed to report it.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	
19-0029427-DM	1/18/19	On January 18, 2019, an officer allegedly refused to allow an inmate out of a cell and lied to a sergeant when he asserted that the inmate threatened officers. On February 28, 2019, the officer allegedly lied to a second sergeant by denying that he claimed the inmate threatened officers.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029113-DM	1/19/19	On January 19, 2019, a sergeant and five officers allegedly failed to report they witnessed other officers hit an inmate in the head and strike the inmate with a baton as they extracted the inmate from a holding cell.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029831-DM	2/4/19	On February 4, 2019, two officers allegedly used unreasonable force on an inmate and one of the officers also failed to obtain medical care for the inmate and did not report the force used. A sergeant allegedly witnessed the unreasonable force used and failed to intervene.	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory		

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
19-0029423-DM	2/23/19	On February 23, 2019, an officer allegedly failed to assess a use-of-force situation after he struck an inmate with his baton, prior to using physical force by grabbing and pushing the inmate to the ground.	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	Poor	
19-0029949-DM	3/20/19	On March 20, 2019, a sergeant allegedly intimidated an inmate to withdraw a complaint the inmate filed claiming his property was not returned after his release from the administrative segregation unit and forged the inmate's signature on the form to withdraw the complaint.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029945-DM	4/11/19	On April 11, 2019, two officers allegedly hit and kicked an inmate multiple times without cause.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029825-DM	4/11/19	On April 11, 2019, two officers allegedly ignored an inmate after the inmate threatened to commit suicide, and one of the officers allegedly used profanity toward and taunted the inmate into committing suicide.	Satisfactory	Superior	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029944-DM	4/30/19	On April 30, 2019, three officers allegedly hit, kicked, and stomped an inmate, and three other officers allegedly failed to report observing the uses of force.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0030099-CM	5/28/19	On May 28, 2019, an officer allegedly grabbed an inmate's buttocks during an escort. The Office of Internal Affairs conducted an investigation and found sufficient evidence for a probable cause referral to the district attorney. The OIG concurred with the probable cause determination. The Office of Internal Affairs also returned the matter to the hiring authority to address the administrative allegation after an interview of the officer. The OIG accepted the case for monitoring.	Satisfactory	Satisfactory	Satisfactory	Satisfactory		Satisfactory	
19-0030269-CM	7/15/19	On July 15, 2019, an inmate on a gurney in the triage and treatment area punched an officer and fell to the floor, while resisting officers. Officers used physical force to restrain the inmate, who became unresponsive. Eight nurses and six officers performed life-saving measures until paramedics pronounced the inmate dead. Although the Office of Internal Affairs did not identify criminal conduct, it referred the matter to the district attorney's office for review pursuant to policy. The Office of Internal Affairs also opened an administrative investigation, which the OIG accepted for monitoring.	Satisfactory	Poor	Satisfactory	Satisfactory		Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0027650-DM	1/1/17	Between January 1, 2017, and August 28, 2018, an officer allegedly made numerous sexually suggestive statements to inmates. On August 22, 2018, the officer allegedly told an inmate to place a cucumber under the pillow of a second inmate of another race as a sexual innuendo and which could have caused racial tension. On August 23, 2018, the officer allegedly made a sexual comment to the second inmate.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
17-0022865-DM	3/31/17	On March 31, 2017, four officers allegedly unnecessarily took an inmate to the ground, causing the inmate multiple broken ribs. The officers also allegedly utilized a blunt cylindrical-shaped object to inflict injuries to the inmate's back and right side and submitted false reports regarding the incident.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0030171-DM	4/9/17	On April 9, 2017, a lieutenant allegedly misused a state computer to send a confidential inmate complaint to a nurse. Between January 1, 2018, and May 1, 2019, the lieutenant allegedly video recorded multiple incidents of sexual activity with the nurse without the nurse's knowledge or consent and tried to dissuade her from reporting the misconduct. Between January 1, 2019, and May 1, 2019, a psychiatric technician allegedly called the nurse a liar and told her she was crazy. On October 11, 2019, the lieutenant allegedly lied during an Office of Internal Affairs interview.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
18-0027653-DM	9/8/17	On September 8, 2017, a counselor allegedly admitted to using unnecessary force on an inmate, failed to report his unnecessary force, insinuated that he lied in a report, and used the state email system to send non-work related emails to a case records technician. On September 28, 2017, the counselor allegedly admitted to misusing his authority and bragged that he lied in a homicide report. Between September 8, 2017, and February 15, 2018, the case records technician allegedly used the state email system to send hundreds of non-work related emails to the counselor and failed to report the counselor's admission that he used unnecessary force on an inmate.	Poor	Poor	Satisfactory	Satisfactory	Poor	Poor	Poor

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0026039-CM	9/14/17	On September 14, 2017, an officer allegedly provided confidential information to an inmate and conspired with the inmate to assault a second inmate. On January 8, 2018, the officer allegedly provided confidential information to a third inmate regarding a fourth inmate and, on May 15, 2018, allegedly conspired with a fifth inmate to assault a sixth inmate. Between January 8, 2018, and January 9, 2018, a second officer allegedly provided confidential information to the first inmate. The Office of Internal Affairs conducted an investigation and found sufficient evidence for a probable cause referral to the district attorney concerning the allegations against the second officer, but not the first officer. The OIG concurred. The Office of Internal Affairs also opened an administrative investigation for both officers, which the OIG accepted for monitoring.	Satisfactory	Satisfactory	Satisfactory	Satisfactory		Satisfactory	
18-0026087-DM	2/28/18	On February 28, 2018, an officer allegedly pulled an inmate off a gurney onto the floor. That first officer and a second officer allegedly dragged the inmate on the floor and failed to report the use of force. A sergeant, the second, third and fourth officers allegedly failed to report witnessing the inmate being dragged. A lieutenant allegedly did not order all staff involved to document the use of force after the sergeant and the first officer reported to him that the inmate was dragged on the floor. On March 14, 2018, a second lieutenant allegedly interviewed the third officer without advising the officer of his due process rights. On April 19, 2018, the sergeant allegedly lied in his report. Between February 28, 2018, and October 25, 2018, the first officer allegedly was in possession of a confidential medical document pertaining to an inmate without authorization.	Poor	Satisfactory	Satisfactory	Poor	Poor	Satisfactory	Poor
18-0026623-DM	3/19/18	On March 19, 2018, an officer and a second officer allegedly placed an inmate into a holding cell as punishment, left the inmate unattended, and failed to obtain prior supervisory approval, inspect the cell, or complete a holding cell log. On March 20, 2018, the first officer and a third officer allegedly placed the inmate into a holding cell as punishment, left the inmate unattended, and failed to obtain prior supervisory approval, inspect the cell, or complete a holding cell log, and a sergeant allegedly failed to follow procedures for placing the inmate into the holding cell.	Poor	Poor	Satisfactory	Poor	Poor	Satisfactory	Satisfactory

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
18-0026277-DM	4/9/18	On April, 9, 2018, a sergeant allegedly entered an inmate's cell without securing the inmate in handcuffs, failed to activate an alarm, grabbed the inmate by the throat, failed to report his use of force, failed to have the inmate medically examined, and attempted to dissuade an officer from reporting the incident. On April 9, 2018, an officer allegedly failed to activate an alarm, failed to report the use of force by the sergeant, and failed to have an inmate examined for medical purposes.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
18-0026622-DM	5/11/18	On May 11, 2018, an officer allegedly kicked an inmate twice in the head, lied in a report, and failed to document his use of force in the report. On January 17, 2019, the officer allegedly lied during an Office of Internal Affairs interview. On December 14, 2018, a recreational therapist allegedly lied during an Office of Internal Affairs interview.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor
18-0027766-DM	8/15/18	On August 15, 2018, a lieutenant allegedly failed to report witnessing a use of force and failed to document an incident which he should have reported. A sergeant, three officers, and a counselor allegedly failed to report witnessing a use of force, and one of the officers allegedly lied in her report regarding the incident. Two additional sergeants allegedly failed to report and timely report witnessing a use of force.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
18-0027907-DM	9/14/18	On September 14, 2018, two officers allegedly allowed inmates to enter a dormitory and assault another inmate and a third officer failed to timely report the misconduct. During the assault, the second officer allegedly did not respond because he was on a non-work-related telephone call with his girlfriend and, during 2018 and 2019, would routinely make non-work-related calls to his girlfriend. On September 22, 2019, the second officer allegedly referred to inmates as "inmate rats," and on February 11, 2019, allegedly disobeyed an order from the special agent to not discuss the investigation.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor
18-0027908-DM	9/21/18	On September 21, 2018, an officer allegedly failed to properly restrain an inmate at an outside hospital, brought a firearm into the inmate's hospital room without a second officer present, and possessed a personal mobile phone. A second officer allegedly abandoned his post and lied to a sergeant, and the two officers and another sergeant allegedly used an unreasonable amount of physical force to hold the inmate on the floor after the inmate ran out of the hospital room.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
19-0030022-DM	10/15/18	On October 15, 2018, an officer allegedly turned a water source off before an inmate concluded a shower and directed profanity toward the inmate. On April 1, 2019, the officer allegedly did not allow an inmate sufficient time to leave a cell upon being released for dinner, failed to ensure the inmate received a meal, and lied to a lieutenant.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Satisfactory
18-0028128-DM	10/21/18	On October 21, 2018, an officer allegedly jerked a restrained inmate's arm while escorting the inmate, failed to report all of the force he used, lied in a report about the reasons for using force, and did not comply with directives as outlined in a letter of instruction.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
20-0033420-DM	10/27/18	On October 27, 2018, an officer allegedly failed to submit a rules violation report after a use-of-force incident involving two inmates.	Satisfactory	Satisfactory	Satisfactory		Satisfactory	Satisfactory	
19-0028736-DM	12/10/18	On December 10, 2018, an officer allegedly failed to notice that an inmate had hung himself with a noose when he counted the inmate and failed to timely summon assistance and enter the cell after discovering that the inmate was unresponsive.	Satisfactory	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory
19-0028990-DM	12/13/18	On December 13, 2018, a sergeant and four officers, allegedly slammed an inmate to the floor and failed to report it, and the sergeant failed to have two inmates medically evaluated. One of the officers was also allegedly distracted from her duties while she watched television in the inmate reception area.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0029111-DM	1/30/19	On January 30, 2019, an officer allegedly failed to ensure an inmate removed items that prevented opening a cell door, falsely documented conducting a security check of the inmate, and delayed activating his alarm after finding the inmate hanging from a noose. On July 26, 2019, the officer allegedly lied during an Office of Internal Affairs interview.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
19-0029630-DM	2/14/19	On February 14, 2019, three officers allegedly punched, kicked, stomped, and dragged an inmate by his feet out of a dining hall and failed to document their actions, and a sergeant allegedly failed to document that he ordered and witnessed the use of force.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0031053-DM	2/27/19	On February 27, 2019, an officer allegedly discriminated against a disabled inmate by writing a work supervisor's report indicating that the inmate was unable to perform his job duties due to mobility impairments and, on March 10, 2019, allegedly deleted the original report and replaced it with a falsified report after the inmate filed a complaint against the officer.	Satisfactory	Poor	Satisfactory	Satisfactory	Satisfactory	Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
19-0029704-DM	3/8/19	On March 8, 2019, an officer allegedly punched an inmate twice and failed to accurately report his use of force.	Poor	Satisfactory	Poor	Satisfactory	Poor	Poor	
19-0029948-DM	4/20/19	On April 20, 2019, an officer allegedly failed to conduct a welfare and security check before leaving work and a second officer allegedly failed to ensure he saw living, breathing flesh when conducting an inmate welfare and security check.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0030104-DM	4/28/19	On April 28, 2019, a lieutenant allegedly ordered an officer to write a false rules violation report and the officer did so. On May 3, 2019, the lieutenant allegedly threatened the officer.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0030103-DM	4/30/19	On April 30, 2019, an officer allegedly made instigating and discourteous statements to an inmate, did not follow an order from a lieutenant to stop making further statements, did not attempt to deescalate the situation, did not draft a complete report that included all of the statements the officer made to the inmate, and lied to the lieutenant about the statements.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Poor

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
19-0030182-DM	5/6/19	On May 6, 2019, an officer and a physician allegedly failed to report the use of force they observed. On May 21, 2019, the officer allegedly submitted a false report.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	Poor
19-0031327-DM	5/24/19	On May 24, 2019, three officers removed an inmate from a holding cell and allegedly unnecessarily wrestled the inmate to the ground, applied handcuffs, and carried him by his hands and feet, and one of the officers allegedly kicked him in the head. The three officers also allegedly failed to report their use of force, and a sergeant allegedly witnessed the use of force and failed to report it.	Satisfactory	Poor	Satisfactory	Satisfactory	Poor	Satisfactory	
19-0031397-DM	5/28/19	On May 28, 2019, an officer allegedly grabbed an inmate's buttocks and failed to report it.	Poor	Satisfactory	Poor	Satisfactory	Poor	Poor	Poor
19-0030253-DM	5/30/19	On May 30, 2019, a lieutenant allegedly failed to wear required safety equipment before entering an individual exercise yard for an emergency extraction of an inmate, an officer allegedly did not properly conduct a search of the inmate before removing him from his cell, a second officer allegedly did not properly search an individual exercise yard before placing the inmate inside, failed to maintain constant video observation of the inmate, and documented a time the inmate left the individual exercise yard knowing the inmate was still in the yard, and a third officer allegedly failed to wear his radio while on duty and failed to maintain direct observation of the inmate after he found the inmate hanging from a noose.	Poor	Satisfactory	Poor	Satisfactory	Poor	Poor	Poor
19-0030671-DM	6/9/19	On June 9, 2019, an officer allegedly failed to document his own use of force and lied to a sergeant regarding the incident.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0030973-DM	6/11/19	On June 11, 2019, three officers allegedly searched an inmate's cell in retaliation for the inmate filing a complaint. On August 7, 2019, a lieutenant allegedly lied to a captain during an inquiry and failed to obey an order not to discuss the inquiry with anyone other than his representative.	Poor	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	Satisfactory
19-0031231-DM	6/14/19	On June 14, 2019, five officers allegedly did not report an attempted suicide by an inmate, and one of the officers allegedly failed to report that he aggressively pulled on pants tied around the inmates neck and made threatening comments to the inmate.	Satisfactory	Poor	Poor	Satisfactory	Satisfactory	Poor	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
19-0031144-DM	6/27/19	On June 27, 2019, two officers allegedly hit a restrained inmate in the face and body multiple times, failed to document their use of force in a report, and failed to document the other officers' unreasonable use of force. A sergeant allegedly did not report the incident to his supervisor and failed to issue a rules violation report against an inmate for assaulting a nurse.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	
19-0030971-CM	7/5/19	On July 5, 2019, a lieutenant allegedly grabbed a handcuffed inmate by the back of the neck, pushed his face into a wall, and kned him in the back without justification. The Office of Internal Affairs conducted an investigation and found sufficient evidence for a probable cause referral to the district attorney. The OIG concurred with the probable cause determination. The district attorney filed a misdemeanor charge for assault under color of authority. The Office of Internal Affairs also opened an administrative investigation, which the OIG accepted for monitoring.	Satisfactory	Satisfactory	Satisfactory	Satisfactory		Satisfactory	
19-0030872-DM	7/11/19	On July 11, 2019, two sergeants allegedly threw an inmate into a cell, two officers used unnecessary physical force on an inmate during a search, and one of the officers repeatedly punched the inmate in the face.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Satisfactory	
19-0030270-DM	7/15/19	On July 15, 2019, after an inmate on a gurney in the triage and treatment area punched an officer and fell to the floor while resisting officers, officers used physical force to restrain the inmate, who became unresponsive. Eight nurses and six officers performed life-saving measures until paramedics pronounced the inmate dead. The Office of Internal Affairs also opened a criminal investigation, which the OIG accepted for monitoring.	Poor	Poor	Satisfactory	Poor	Poor	Satisfactory	
19-0030970-DM	7/24/19	On July 24, 2019, an officer allegedly put his hand over an inmate's mouth and around his throat, used profanity, threatened the inmate with physical force, and did not report the force he used. A second officer allegedly witnessed the incident but did not report it.	Satisfactory	Satisfactory	Poor	Satisfactory	Poor	Satisfactory	
19-0031229-DM	8/27/19	On August 27, 2019, a sergeant allegedly performed a punitive search of an inmate's cell, left it in disarray, and failed to provide a cell search receipt.	Satisfactory	Superior	Poor	Satisfactory	Satisfactory	Satisfactory	

2019-2020 OIG Monitored Cases Involving Custody Staff Misconduct Against Incarcerated People

OIG Case No.	Date	Summary	Overall Case Rating	Indicator 1	Indicator 2	Indicator 3	Indicator 4	Indicator 5	Indicator 6
19-0031455-CM	8/30/19	On August 30, 2019, a captain allegedly grabbed an officer from behind and simulated a sexual act. The Office of Internal Affairs conducted an investigation and found sufficient evidence for a probable cause referral to the district attorney. The OIG concurred with the probable cause determination. The Office of Internal Affairs did not open an administrative investigation because the captain resigned.	Satisfactory	Satisfactory	Satisfactory	Satisfactory		Satisfactory	
19-0032088-DM	9/24/19	On September 24, 2019, an officer allegedly was in an overfamiliar relationship with an inmate and shared with him information concerning a second inmate's commitment offenses, which resulted in an assault on the second inmate.	Satisfactory	Satisfactory	Satisfactory		Poor	Satisfactory	Satisfactory
19-0032190-DM	11/1/19	On November 1, 2019, an officer allegedly punched an inmate twice in the face while the inmate was on the ground and failed to document the alleged punches in his report regarding the incident.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Poor	Poor	
19-0029635-DM	11/30/19	On November 30, 2018, an officer allegedly conducted a retaliatory search of inmate cells in a housing unit because an inmate claimed the officer's partner touched the inmate's buttocks.	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory	

Exhibit 128

Case Summaries

The OIG’s case summaries are a description of the California Department of Corrections and Rehabilitation’s (department) employee discipline cases the OIG monitored and closed.

Filtered Cases: 1

Filter(s) Applied:

Case Number: ["19-0031468-DM"]
Sentinel Only: false

Incident Date

June 13, 2019

Allegations

Use of Force

Case Type

Administrative Investigation

Indicator Ratings*

Indicators 1-6



Poor

*Ratings subject to change

OIG Case Number

19-0031468-DM

Incident Summary

On June 13, 2019, an officer allegedly punched an inmate in the face multiple times with his fist and slammed the inmate to the ground. The first officer and three other officers allegedly failed to report the use of force by the first officer.

Disposition

The hiring authority found insufficient evidence to sustain the allegations. The OIG concurred.

Case Rating

The department’s handling of the case was **poor** because the hiring authority delayed referring the matter to the Office of Internal Affairs, the Office of Internal Affairs should have added dishonesty allegations, and the special agent did not adequately consult with the department attorney and the OIG, did not make accurate entries in the case management system, and delayed providing requested documents and completing the investigation.

Indicator 1: How well did the department discover and refer allegations of employee misconduct?

The hiring authority’s performance in discovering and referring allegations of employee misconduct to the Office of Internal Affairs was **poor** because the hiring authority did not refer the matter to the Office of Internal Affairs until 67 days after discovering the alleged misconduct and 22 days after policy requires.

Indicator 2: How well did the Office of Internal Affairs process and analyze allegations from the hiring authorities?

The Office of Internal Affairs’ performance in analyzing allegations from the hiring authority was **poor** because the Office of Internal Affairs should have included dishonesty allegations because the officers did not accurately document the force used on the inmate.

Indicator 3: How well did the department investigate allegations of employee misconduct?

The Office of Internal Affairs’ performance in investigating allegations of employee misconduct was **poor** because the special agent did not adequately consult with the department attorney and OIG, did not make accurate and sufficient entries in the case management system, delayed providing requested documents, and delayed commencing and completing the investigation.

Indicator 4: How well did the department determine its findings for alleged misconduct and process the case?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 5: How well did the department attorney provide legal advice during the Office of Internal Affairs Central Intake Panel meeting and the Investigative process?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 6: How well did the department provide legal representation during litigation?

This performance indicator is not applicable.

Exhibit 129

Case Summaries

The OIG’s case summaries are a description of the California Department of Corrections and Rehabilitation’s (department) employee discipline cases the OIG monitored and closed.

Filtered Cases: 1

Filter(s) Applied:

Case Number: ["18-0026277-DM"]
Sentinel Only: false

Incident Date

April 9, 2018

Allegations

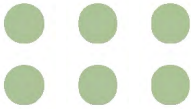
Dishonesty
Use of Force
Failure to Report
Neglect of Duty

Case Type

Administrative
Investigation

Indicator Ratings*

Indicators 1-6



Satisfactory

*Ratings subject to change

OIG Case Number

18-0026277-DM

Incident Summary

On April, 9, 2018, a sergeant allegedly entered an inmate’s cell without securing the inmate in handcuffs, failed to activate an alarm, grabbed the inmate by the throat, failed to report his use of force, failed to have the inmate medically examined, and attempted to dissuade an officer from reporting the incident. On April 9, 2018, an officer allegedly failed to activate an alarm, failed to report the use of force by the sergeant, and failed to have an inmate examined for medical purposes.

Disposition

The hiring authority sustained all the allegations against the sergeant, except for two poorly worded allegations, and dismissed the sergeant. The OIG concurred. The sergeant filed an appeal with the State Personnel Board. After a hearing, the State Personnel Board upheld the dismissal. The hiring authority sustained the allegations against the officer, except a poorly worded allegation and the allegation that the officer did not report the sergeant’s use of force. The hiring authority imposed a 5 percent salary reduction for three months. The OIG concurred. The officer filed an appeal with the State Personnel Board. Prior to the State Personnel Board proceedings, the department entered into a settlement agreement, which changed the wording of the disciplinary action, but not the penalty. The OIG concurred.

Case Rating

The department’s performance was **satisfactory**.

Indicator 1: How well did the department discover and refer allegations of employee misconduct?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 2: How well did the Office of Internal Affairs process and analyze allegations from the hiring authorities?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 3: How well did the department investigate allegations of employee misconduct?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 4: How well did the department determine its findings for alleged misconduct and process the case?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 5: How well did the department attorney provide legal advice during the Office of Internal Affairs Central Intake Panel meeting and the Investigative process?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 6: How well did the department provide legal representation during litigation?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Exhibit 130

Case Summaries

The OIG’s case summaries are a description of the California Department of Corrections and Rehabilitation’s (department) employee discipline cases the OIG monitored and closed.

Filtered Cases: 1

Filter(s) Applied:

Case Number: ["19-0028406-DM"]
Sentinel Only: false

Incident Date

October 9, 2018

Allegations

Use of Force
Failure to Report
Neglect of Duty

Case Type

Administrative
Investigation

Indicator Ratings

Indicators 1-6



Poor

OIG Case Number

19-0028406-DM

Incident Summary

On October 9, 2018, a sergeant and an officer allegedly used pepper spray without justification on an inmate who had barricaded himself inside his cell, and the officer allegedly failed to report the sergeant’s use of pepper spray. The sergeant, the officer, and two other officers allegedly failed to search the inmate and the inmate’s cell after seeing the inmate had a weapon.

Disposition

The hiring authority sustained an allegation against the third officer for not searching the inmate and provided counseling. The hiring authority found insufficient evidence to sustain any of the remaining allegations. The OIG concurred except for the decision to not sustain the allegations the sergeant and first officer used pepper spray without justification but did not seek a higher level of review.

Case Rating

The department’s handling of the case was **poor** because the hiring authority did not timely refer the matter to the Office of Internal Affairs and in the OIG’s opinion, did not make the appropriate findings or disciplinary determinations.

Indicator 1: How well did the department discover and refer allegations of employee misconduct?

The hiring authority’s performance in discovering and referring allegations of employee misconduct to the Office of Internal Affairs was **poor** because the hiring authority did not refer the matter to the Office of Internal Affairs until 67 days after discovery and 22 days after policy requires.

Indicator 2: How well did the Office of Internal Affairs process and analyze allegations from the hiring authorities?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 3: How well did the department investigate allegations of employee misconduct?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 4: How well did the department determine its findings for alleged misconduct and process the case?

The hiring authority’s performance in determining its findings for alleged misconduct was **poor** because the hiring authority should have sustained allegations against the sergeant and first officer and should have issued a salary reduction instead of corrective action against one of the other two officers.

Indicator 5: How well did the department attorney provide legal advice during the Office of Internal Affairs Central Intake Panel meeting and the Investigative process?

The OIG found no major deficiencies, resulting in a **satisfactory** assessment.

Indicator 6: How well did the department provide legal representation during litigation?

This performance indicator is not applicable.

Exhibit 131



Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

June 2019

Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation

*Semi-Annual Report
July–December 2018
Appendices*

Assessment Questions

- Did the hiring authority timely consult with the OIG and the department attorney (if applicable) regarding disciplinary determinations prior to making a final decision?**
The Office of Internal Affairs completed its investigation and referred the matter to the hiring authority on August 6, 2018. However, the hiring authority did not consult with the OIG and department attorney regarding the disciplinary determinations until August 28, 2018, 22 days thereafter.
- In the OIG's opinion, was (were) the disciplinary action(s) served on the subject(s) legally sufficient and in compliance with the departmental policy?**
The disciplinary action did not advise the officer of the right to respond to an uninvolved manager.
- In the OIG's opinion, did the department conduct the disciplinary phase with due diligence?**
The delay is addressed in a prior question.

Incident Date	OIG Case Number	Allegations	Findings	Initial Penalty	Final Penalty
2017-11-07	18-0027077-IR	1. Use of Force 2. Medical	1. Not Sustained 2. Not Sustained	No Penalty Imposed	No Penalty Imposed

Case Type:

Administrative Investigation

Incident Summary

On November 7, 2017, an officer allegedly kicked and punched an inmate, and two nurses allegedly failed to accurately document the inmate's injuries.

Investigative Phase Assessment

The department did not comply with policies governing the investigative phase because the hiring authority for the nurses did not conduct the investigative findings conference in a timely manner.

Procedural Rating

Insufficient

Substantive Rating

Sufficient

Assessment Questions

- Did the hiring authority timely consult with the OIG and department attorney (if applicable), regarding the sufficiency of the evidence, investigation, and the findings?**
The Office of Internal Affairs completed its investigation and referred the matter to the hiring authority for the nurses on October 24, 2018. However, the hiring authority for the nurses did not consult with the OIG and department attorney regarding the sufficiency of the investigation and the investigative findings until November 30, 2018, 37 days thereafter.
- In the OIG's opinion, did the department conduct the investigative phase with due diligence?**
The delay is addressed in a prior question.

Case Disposition

The hiring authorities found insufficient evidence to sustain the allegations. The OIG concurred.

Incident Date	OIG Case Number	Allegations	Findings	Initial Penalty	Final Penalty
2017-11-18	18-0024998-IR	1. Neglect of Duty 2. Misuse of State Equipment or Property 3. Dishonesty	1. Sustained 2. Sustained 3. Not Sustained	Salary Reduction	Salary Reduction
Case Type: Administrative Investigation					
Incident Summary On November 18, 2017, an officer allegedly left his assigned post to go to a restaurant off grounds, lied to a sergeant about having permission to go to the restaurant, and left his assigned radio in the vehicle while in the restaurant.					
Investigative Phase Assessment In the OIG's opinion, the Office of Internal Affairs did not make an appropriate initial determination and the hiring authority did not make an appropriate finding.					
Procedural Rating Sufficient			Substantive Rating Insufficient		
Assessment Questions <ul style="list-style-type: none">In the OIG's opinion, did the Office of Internal Affairs make an appropriate initial determination regarding the hiring authority's request during the Central Intake process? <i>In the OIG's opinion, the Office of Internal Affairs inappropriately removed a sergeant as a subject of the investigation despite evidence the sergeant failed to follow a lawful order and inappropriately removed an allegation the officer was insubordinate despite evidence the officer also failed to follow a lawful order.</i>In the OIG's opinion, did the hiring authority correctly determine the findings for each allegation? <i>In the OIG's opinion, the hiring authority should have sustained a dishonesty allegation.</i>					
Case Disposition The hiring authority sustained the allegations, except for dishonesty, and imposed a 5 percent salary reduction for 36 months. The OIG concurred except for the decision to not sustain dishonesty. The OIG did not seek a higher level of review due to an evidentiary dispute. The officer filed an appeal with the State Personnel Board, which he later withdrew.					
Disciplinary Assessment Overall, the department sufficiently complied with policies governing the disciplinary phase.					
Procedural Rating Sufficient			Substantive Rating Sufficient		

Exhibit 132



Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

November 2018

Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation

*Semi-Annual Report
January–June 2018
Appendices*

Incident Date	OIG Case Number	Allegations	Findings	Initial Penalty	Final Penalty
2017-03-31	17-0023834-IR	1. Threat/Intimidation 2. Use of Force 3. Neglect of Duty	1. Not Sustained 2. Not Sustained 3. Not Sustained	Letter of Instruction	Letter of Instruction
Case Type: Administrative Investigation					
Incident Summary On March 31, 2017, an officer allegedly punched a handcuffed inmate, and the officer and two other officers allegedly failed to report the use of force. On July 21, 2017, the first officer allegedly planted a weapon in a second inmate’s cell. On April 3, 2017, a social worker allegedly failed to confiscate a broken handcuff key from the first inmate.					
Investigative Phase Assessment The department did not comply with policies governing the investigative phase because the hiring authority delayed referring the matter to the Office of Internal Affairs.					
Procedural Rating Insufficient			Substantive Rating Sufficient		
Assessment Questions <ul style="list-style-type: none">◦ Did the hiring authority refer the matter to the Office of Internal Affairs within 45 calendar days of the date of discovery? <i>The department learned of the alleged misconduct on April 3, 2017, but the hiring authority did not refer the matter to the Office of Internal Affairs until May 22, 2017, 49 days after the date of discovery.</i>◦ In the OIG's opinion, did the department conduct the investigative phase with due diligence? <i>The delay is addressed in a prior question.</i>					
Case Disposition The hiring authority found insufficient evidence to sustain the allegations against the officers. The hiring authority for the social worker found insufficient evidence to sustain the allegation but issued a letter of instruction. The OIG concurred with the hiring authorities' determinations.					

Exhibit 133

California Department of Corrections and Rehabilitation
 Division of Correctional Policy Research and Internal Oversight
 Office of Research
 September 2, 2020

Weekly Report of Population
 As of Midnight September 2, 2020

Total CDCR Population						
Population	Felon/ Other	Change Since Last Week	Change Since Last Year	Design Capacity	Percent Occupied	Staffed Capacity
A. Total In-Custody/CRPP Supervision	101,075	-516	-23,991			
I. In-State	101,075	-516	-23,991			
(Men, Subtotal)	97,352	-471	-22,103			
(Women, Subtotal)	3,723	-45	-1,888			
1. Institution/Camps	97,115	-400	-20,522	89,663	108.3	126,848
Institutions	95,146	-345	-19,618	85,083	111.8	122,614
Camps(CCC, CIW, and SCC)	1,969	-55	-904	4,580	43.0	4,234
2. In-State Contract Beds	3,084	-105	-2,934			
Public Community Correctional Facilities	728	-111	-919			
Community Prisoner Mother Program	9	-3	-12			
California City Correctional Facility	2,235	+23	-88			
Female Community ReEntry Facility, McFarland	112	-14	-165			
3. Department of State Hospitals	227	-1	-34			
4. CRPP Supervision	649	-10	-501			
Alternative Custody Program	17	-3	-141			
Custody to Community Treatment Reentry Program	245	+9	-106			
Male Community Reentry Program	347	-12	-268			
Medical Parole	29	-3	+3			
Medically Vulnerable Release	11	-1				
B. Parole	55,697	+37	+4,169			
Community Supervision	54,090	+38	+4,409			
Interstate Cooperative Case	1,607	-1	-240			
C. Non-CDCR Jurisdiction	1,260	+2	+169			
Other State/Federal Institutions	302	-1	-18			
Out of State Parole	745	0	+13			
Out of State Parolee at Large	18	0	+5			
DJJ-W&IC 1731.5(c) Institutions	17	0	-9			
County Jail	178	+3				
D. Other Populations	7,687	+99	+1,444			
Temporary Release to Court and Hospital	1,729	+14	+130			
Escaped	201	+1	+3			
Parolee at Large	5,757	+84	+1,311			
Total CDCR Population	165,719	-378	-18,209			

This report contains the latest available reliable population figures from SOMS. They have been carefully audited, but are preliminary, and therefore subject to revision.

California Department of Corrections and Rehabilitation
 Division of Correctional Policy Research and Internal Oversight
 Office of Research
 September 2, 2020

Weekly Report of Population
 As of Midnight September 2, 2020

Weekly Institution Population Detail

Institutions	Felon/ Other	Design Capacity	Percent Occupied	Staffed Capacity
Male Institutions				
Avenal State Prison (ASP)	3,726	2,920	127.6	4,719
Calipatria State Prison (CAL)	2,894	2,308	125.4	3,451
California Correctional Center (CCC)	2,877	3,883	74.1	4,752
California Correctional Institution (CCI)	3,308	2,783	118.9	4,175
Centinela State Prison (CEN)	3,131	2,308	135.7	3,446
California Health Care Facility - Stockton (CHCF)	2,516	2,951	85.3	3,211
California Institution for Men (CIM)	2,441	2,976	82.0	4,450
California Men's Colony (CMC)	3,309	3,838	86.2	4,687
California Medical Facility (CMF)	2,147	2,361	90.9	2,981
California State Prison, Corcoran (COR)	3,315	3,116	106.4	4,476
California Rehabilitation Center (CRC)	2,577	2,491	103.5	3,262
Correctional Training Facility (CTF)	4,435	3,312	133.9	4,997
Chuckawalla Valley State Prison (CVSP)	2,049	1,738	117.9	2,578
Deuel Vocational Institution (DVI)	1,516	1,681	90.2	2,413
Folsom State Prison (FOL)	2,397	2,066	116.0	3,282
High Desert State Prison (HDSP)	3,339	2,324	143.7	3,461
Ironwood State Prison (ISP)	2,937	2,200	133.5	3,300
Kern Valley State Prison (KVSP)	3,516	2,448	143.6	3,622
California State Prison, Los Angeles County (LAC)	3,013	2,300	131.0	3,424
Mule Creek State Prison (MCSP)	3,819	3,284	116.3	4,207
North Kern State Prison (NKSP)	1,626	2,694	60.4	4,011
Pelican Bay State Prison (PBSP)	2,378	2,380	99.9	3,361
Pleasant Valley State Prison (PVSP)	2,871	2,308	124.4	3,535
RJ Donovan Correctional Facility (RJD)	3,618	2,992	120.9	4,038
California State Prison, Sacramento (SAC)	2,246	1,828	122.9	2,545
California Substance Abuse Treatment Facility (SATF)	4,528	3,424	132.2	5,157
Sierra Conservation Center (SCC)	3,259	3,836	85.0	4,570
California State Prison, Solano (SOL)	3,427	2,610	131.3	4,010
San Quentin State Prison (SQ)	3,056	3,082	99.2	4,422
Salinas Valley State Prison (SVSP)	2,748	2,452	112.1	3,509
Valley State Prison (VSP)	2,811	1,980	142.0	2,954
Wasco State Prison (WSP)	1,941	2,984	65.0	4,447
Male Total	93,771	85,858	109.2	121,453
Female Institutions				
Central California Women's Facility (CCWF)	2,030	2,004	101.3	2,988
California Institution for Women (CIW)	1,208	1,398	86.4	1,877
Folsom State Prison (FOL)	106	403	26.3	530
Female Total	3,344	3,805	87.9	5,395
Institution Total	97,115	89,663	108.3	126,848

California Department of Corrections and Rehabilitation
Division of Correctional Policy Research and Internal Oversight
Office of Research
September 2, 2020

Weekly Report of Population
As of Midnight September 2, 2020

Notes

- Felon/Other counts are felons, county contract boarders, federal boarders, state boarders, safekeepers, county diagnostic cases, Department of Mental Health boarders, and Division of Juvenile Justice boarders.
- Interstate Cooperative Cases are parolees from other states being supervised in California.
- Non-CDCR Jurisdiction are California cases being confined in or paroled to other states or jurisdictions.
- Welfare and Institution Code (W&IC) 1731.5(c) covers persons under the age of 21 who were committed to CDCR, had their sentence amended, and were incarcerated at the Division of Juvenile Justice for housing and program participation.
- Other Population includes inmates temporarily out-to-court, inmates in hospitals, escapees, and parolees at large.

Exhibit 134

Selected Institution(s):

ASP, CAC, CAL, CCC, CCI, CCWF, CCWF-RC, CEN, CHCF, CIM, CIM-RC, CIW, CMC, CMF, COR, CPMP, CRC, CTF, CVSP, DVI, DVI-RC, FCRF, FOL, HDSP, ISP, KVSP, LAC, MCSP, NKSP, NKSP-RC, PBSP, PRCCF, PUCCF, PVSP, RJD, SAC, SACCO, SATF, SCC, SHS, SOL, SO, SO-RC, SVSP, VSP, WSP, WSP-RC
DPP

Inmate Type:

Disability Inmate Counts

Run By: ladjrs

Date Run: 09/01/2020 07:49 AM

Institution	Inmate Count
ASP	112
CAC	39
CAL	48
CCC	29
CCI	113
CCWF	225
CCWF-RC	1
CEN	56
CHCF	1,211
CIM	495
CIM-RC	1
CIW	135
CMC	333
CMF	822
COR	224
CPMP	1
CRC	70
CTF	437
CVSP	123
DVI	64
DVI-RC	26
FCRF	2
FOL	89
HDSP	194
ISP	71
KVSP	214
LAC	413
MCSP	882
NKSP	32
NKSP-RC	25
PBSP	64
PUCCF	8
PVSP	53
RJD	951
SAC	129
SACCO	51

SATF	771
SCC	88
SHS	26
SOL	489
SQ	323
SQ-RC	5
SVSP	345
VSP	631
WSP	34
WSP-RC	36
	10,491

Exhibit 135

SUMMARY OF MENTAL HEALTH POPULATION BY INSTITUTION AND LEVEL OF CARE (H1)

CONFIDENTIAL

Data Refreshed:		8/25/20 6:08 AM		Mental Health Summary by Level of Care																						
Institution	Correctional Clinical Case Management System (CCCCMS)				Enhanced Outpatient Program (EOP)						Mental Health Crisis Bed (MHCb)				Intermediate Care Facility (ICF)				Acute Psychiatric Program (APP)				Total Mental Health Population			
	Operational Capacity	Population	% Occupied	Vacant Beds	EOP Operational Capacities			Population	% Occupied	Vacant Beds	Design Capacity	Population	% Occupied	Vacant Beds	Design Capacity	Population	% Occupied	Vacant Beds	Design Capacity	Population	% Occupied	Vacant Beds				
					General Population (GP)	Administrative Segregation Unit (ASU)	Psychiatric Services Unit (PSU)																			
ASP	1,100	852	77 %	<div><div></div></div> 248				8		<div><div></div></div> -8		3		<div><div></div></div> -3										863		
CAL		18		<div><div></div></div> -18				1		<div><div></div></div> -1		4		<div><div></div></div> -4										23		
CCC																										
CCI	1,850	1,155	62 %	<div><div></div></div> 695				13		<div><div></div></div> -13														1,168		
CEN		32		<div><div></div></div> -32								1		<div><div></div></div> -1										33		
CHCF	550	614	112 %	<div><div></div></div> -64	375	50		554	130 %	<div><div></div></div> -129	98	5	5 %	<div><div></div></div> 93	356	359	101 %	<div><div></div></div> -3	158	65	41 %	<div><div></div></div> 93		1,597		
CIM	1,050	738	70 %	<div><div></div></div> 312				34		<div><div></div></div> -34	34	8	24 %	<div><div></div></div> 26		17		<div><div></div></div> -17		4		<div><div></div></div> -4		801		
CMC	750	632	84 %	<div><div></div></div> 118	552	100		547	84 %	<div><div></div></div> 105	50	26	52 %	<div><div></div></div> 24		22		<div><div></div></div> -22		8		<div><div></div></div> -8		1,235		
CMF	600	427	71 %	<div><div></div></div> 173	391	58		496	110 %	<div><div></div></div> -47	50	13	26 %	<div><div></div></div> 37	257	228	89 %	<div><div></div></div> 29	207	139	67 %	<div><div></div></div> 68		1,303		
COR	1,000	1,003	100 %	<div><div></div></div> -3	366	100		268	58 %	<div><div></div></div> 198	24	6	25 %	<div><div></div></div> 18		11		<div><div></div></div> -11		13		<div><div></div></div> -13		1,301		
CRC	1,150	854	74 %	<div><div></div></div> 296				2		<div><div></div></div> -2													856			
CTF	1,500	1,094	73 %	<div><div></div></div> 406				8		<div><div></div></div> -8		1		<div><div></div></div> -1										1,103		
CVSP		4		<div><div></div></div> -4																			4			
DVI	500	292	58 %	<div><div></div></div> 208				1		<div><div></div></div> -1														293		
FOL	500	429	86 %	<div><div></div></div> 71				6		<div><div></div></div> -6		1		<div><div></div></div> -1										436		
HDSP	1,050	1,007	96 %	<div><div></div></div> 43				19		<div><div></div></div> -19	10	1	10 %	<div><div></div></div> 9										1,027		
ISP	0	32		<div><div></div></div> -32								2		<div><div></div></div> -2										34		
KVSP	900	1,001	111 %	<div><div></div></div> -101	96			126	131 %	<div><div></div></div> -30	12	1	8 %	<div><div></div></div> 11		10		<div><div></div></div> -10		2		<div><div></div></div> -2		1,140		
LAC	1,000	757	76 %	<div><div></div></div> 243	600	100		524	75 %	<div><div></div></div> 176	12	4	33 %	<div><div></div></div> 8		34		<div><div></div></div> -34		8		<div><div></div></div> -8		1,327		
MCSP	1,350	1,440	107 %	<div><div></div></div> -90	774	50		632	77 %	<div><div></div></div> 192	8	6	75 %	<div><div></div></div> 2		8		<div><div></div></div> -8		2		<div><div></div></div> -2		2,088		
NKSP	1,000	326	33 %	<div><div></div></div> 674				15		<div><div></div></div> -15	10	3	30 %	<div><div></div></div> 7		4		<div><div></div></div> -4						348		
PBSP	300	255	85 %	<div><div></div></div> 45				5		<div><div></div></div> -5	10			<div><div></div></div> 10										260		
PVSP	700	476	68 %	<div><div></div></div> 224				8		<div><div></div></div> -8	6			<div><div></div></div> 6										484		
RJD	1,500	1,295	86 %	<div><div></div></div> 205	894	63		801	84 %	<div><div></div></div> 156	14	4	29 %	<div><div></div></div> 10		11		<div><div></div></div> -11		7		<div><div></div></div> -7		2,118		
SAC	500	455	91 %	<div><div></div></div> 45	642	64	172	721	82 %	<div><div></div></div> 157	44	13	30 %	<div><div></div></div> 31		33		<div><div></div></div> -33		23		<div><div></div></div> -23		1,245		
SATF	2,000	1,685	84 %	<div><div></div></div> 315	660			457	69 %	<div><div></div></div> 203	20	3	15 %	<div><div></div></div> 17		19		<div><div></div></div> -19		2		<div><div></div></div> -2		2,166		
SCC	400	475	119 %	<div><div></div></div> -75				1		<div><div></div></div> -1		1		<div><div></div></div> -1										477		
SOL	1,000	593	59 %	<div><div></div></div> 407				3		<div><div></div></div> -3	9	1	11 %	<div><div></div></div> 8						1		<div><div></div></div> -1		598		
SQ	1,250	797	64 %	<div><div></div></div> 453	200			232	116 %	<div><div></div></div> -32	0	6		<div><div></div></div> -6	31	26	84 %	<div><div></div></div> 5	9	8	89 %	<div><div></div></div> 1		1,069		
SVSP	850	806	95 %	<div><div></div></div> 44	396			359	91 %	<div><div></div></div> 37	10	5	50 %	<div><div></div></div> 5	246	182	74 %	<div><div></div></div> 64		2		<div><div></div></div> -2		1,354		
VSP	1,350	989	73 %	<div><div></div></div> 361	372			277	74 %	<div><div></div></div> 95		3		<div><div></div></div> -3		1		<div><div></div></div> -1						1,270		
WSP	1,300	569	44 %	<div><div></div></div> 731				26		<div><div></div></div> -26	6	3	50 %	<div><div></div></div> 3		5		<div><div></div></div> -5		1		<div><div></div></div> -1		604		
DSH-ASH		1		<div><div></div></div> -1				3		<div><div></div></div> -3		1		<div><div></div></div> -1	256	177	69 %	<div><div></div></div> 79		2		<div><div></div></div> -2		184		
DSH-CSH															50	39	78 %	<div><div></div></div> 11						39		
Male Subtotal	27,000	21,103	78%	5,897	6,318	585	172	6,147	87%	928	427	125	29%	302	1,196	1,186	99%	10	374	287	77%	87	28,848			
CCWF	1,350	973	72 %	<div><div></div></div> 377	120	10		90	69 %	<div><div></div></div> 40	12	7	58 %	<div><div></div></div> 5		3		<div><div></div></div> -3						1,073		
CIW	750	554	74 %	<div><div></div></div> 196	75	10	10	53	56 %	<div><div></div></div> 42	29			<div><div></div></div> 29	45	29	64 %	<div><div></div></div> 16		2		<div><div></div></div> -2		638		
FWF	150	74	49 %	<div><div></div></div> 76																			74			
DSH-PSH		1		<div><div></div></div> -1				2		<div><div></div></div> -2					30	8	27 %	<div><div></div></div> 22						11		
Female Subtotal	2,250	1,602	71%	648	195	20	10	145	64%	80	41	7	17%	34	75	40	53%	35	0	2		-2	1,796			
Grand Total	29,250	22,705	78%	6,545	6,513	605	182	6,292	86%	1,008	468	132	28%	336	1,271	1,226	96%	45	374	289	77%	85	30,644			

NOTES:

1. This report provides operational capacities, population, and vacant beds detail by mental health level of care and institution. Level of care is based on Current Mental Health level of care code in SOMS. For each level of care, a summary of patients by SOMS housing program and institution is provided. Data Source is HCODS, as of the "Data Refreshed" time stamp.

2. Definitions:

- Operational Capacity = indicates the number of beds available in the program based on factors such as treatment space and staffing, as determined by CCHCS headquarters.
- Design Capacity = indicates the total number of beds available in the program Determined by Facility Planning, Construction, & Management.
- Population = total census per SOMS as of the "Data Refreshed" time stamp shown on the report.
- % Occupied = ([Population] / [Operational Capacity]) x 100.
- Vacant Beds = the number of beds available after subtracting the Population from the Operational Capacity.
- The "PIP" column in the "Psychiatry Inpatient Program (PIP) Housing" refers to programs that have the ability to provide multiple levels of care.

3. PIP capacities:

- SQ PIP is for male condemned patients only, and has a total capacity of 30 beds reflected under ICF capacity. It is noted that these are flex beds that can accommodate ICF, APP, and MCHB level of care.
- CIW PIP has a total capacity of 45 beds reflected under ICF capacity. It is noted that these are flex beds that can accommodate ICF and APP level of care.
- DSH-PSH has a total capacity of 30 beds reflected under ICF capacity. It is noted that these are flex beds that can accommodate ICF and APP level of care.

4. Housing Groups:

*GP Housing Group census includes patients in the following housing programs: Camp Program Beds, Debrief Processing Unit, Family Visiting, Fire House, General Population, Institution Hearing Program, Minimum Security Facility, Non-Designated Program Facility, Protective Housing Unit, Restricted Custody General Population, Sensitive Needs Yard, SNY Fire House, SNY, MSF, Transitional Housing Unit, Unknown, Varied Use and Work Crew.

SUMMARY OF MENTAL HEALTH POPULATION BY INSTITUTION AND LEVEL OF CARE

Data Refreshed: 8/25/20 6:08 AM		Correctional Clinical Case Management System (CCCMS) Level of Care Population by Housing Program																
Institution	RC Reception Center	GP* General Population	EOP Enhanced Outpatient Program	MHCB Mental Health Crisis Bed	Psychiatric Inpatient Program (PIP) Housing			Specialized Medical Beds Housing			Segregated Housing							Total CCCMS Population
					Acute	Intermediate	PIP	CTC/SNF Correctional Treatment Center/Skilled Nursing Facility	Hospice	OHU Outpatient Housing Unit	ASU Administrative Segregation Unit	Condemned	LTRH Long Term Restricted Housing Unit	NDS Non-Disciplinary Segregation	PSU Psychiatric Services Unit	SHU Security Housing Unit	STRH Short Term Restricted Housing Unit	
ASP		844								8								852
CAL		14									4							18
CCC																		
CCI		1,104									51							1,155
CEN		24									8							32
CHCF		195	14	3				150		245	7							614
CIM	26	656		1						13	42							738
CMC		612	1					3			16							632
CMF		389	2					13	2	14	7							427
COR		770	3					12		6			105				107	1,003
CRC		851								3								854
CTF		1,073								6	15							1,094
CVSP		3									1							4
DVI	68	193								11	20							292
FOL		416									13							429
HDSP		957						5									45	1,007
ISP		32																32
KVSP		911	1					4									85	1,001
LAC		621	25					1			4						106	757
MCSP		1,403	14								23							1,440
NKSP	150	159						2			15							326
PBSP		209						1									45	255
PVSP		468															8	476
RJD		1,224	14					5			52							1,295
SAC		326	28					1			8		32		6		54	455
SATF		1,632	1					6									46	1,685
SCC		457									18							475
SOL		567						2			24							593
SQ	89	551						4			22	131						797
SVSP		717	7			1		6			11						64	806
VSP		962								10	17							989
WSP	406	140						3			20							569
DSH-ASH		1																1
DSH-CSH																		
Male Subtotal	739	18,481	110	4	0	1	0	218	2	316	398	131	137	0	6	0	560	21,103
CCWF	60	830						18			51	14						973
CIW		524						3		7	11					9		554
FWF		74																74
DSH-PSH		1																1
Female Subtotal	60	1,429	0	0	0	0	0	21	0	7	62	14	0	0	0	9	0	1,602
Grand Total	799	19,910	110	4	0	1	0	239	2	323	460	145	137	0	6	9	560	22,705

SUMMARY OF MENTAL HEALTH POPULATION BY INSTITUTION AND LEVEL OF CARE

Data Refreshed: 8/25/20 6:08 AM		Enhanced Outpatient Program (EOP) Level of Care Population by Housing Program																
Institution	RC Reception Center	GP* General Population	EOP Enhanced Outpatient Program	MHCB Mental Health Crisis Bed	Psychiatric Inpatient Program (PIP) Housing			Specialized Medical Beds Housing			Segregated Housing							Total EOP Population
					Acute	Intermediate	PIP	CTC/SNF Correctional Treatment Center/Skilled Nursing Facility	Hospice	OHU Outpatient Housing Unit	ASU Administrative Segregation Unit	Condemned	LTRH Long Term Restricted Housing Unit	NDS Non-Disciplinary Segregation	PSU Psychiatric Services Unit	SHU Security Housing Unit	STRH Short Term Restricted Housing Unit	
ASP		6								2								8
CAL		1																1
CCC																		
CCI		12									1							13
CEN																		
CHCF			367	9	2	29		42		86	19							554
CIM	6	24									4							34
CMC		6	484	2				2			53							547
CMF			415	4	8	12		11	2	6	38							496
COR		4	189					16		3	56							268
CRC		2																2
CTF		8																8
CVSP																		
DVI	1																	1
FOL		5									1							6
HDSP		8															11	19
ISP																		
KVSP		11	90					1									24	126
LAC		5	450					1			68							524
MCSP		12	565					1			54							632
NKSP	12										3							15
PBSP		3															2	5
PVSP		7															1	8
RJD		4	747					6			44							801
SAC		5	524								54		17		121			721
SATF		17	412	1				8									19	457
SCC											1							1
SOL											3							3
SQ	13	40	104					1			13	61						232
SVSP		30	288			6		1									34	359
VSP		15	258							1	3							277
WSP	21										5							26
DSH-ASH			1			2												3
DSH-CSH																		
Male Subtotal	53	225	4,894	16	10	49	0	90	2	98	420	61	17	0	121	0	91	6,147
CCWF	3	32	48								7							90
CIW			51												2			53
FWF																		
DSH-PSH		2																2
Female Subtotal	3	34	99	0	0	0	0	0	0	0	7	0	0	0	2	0	0	145
Grand Total	56	259	4,993	16	10	49	0	90	2	98	427	61	17	0	123	0	91	6,292

SUMMARY OF MENTAL HEALTH POPULATION BY INSTITUTION AND LEVEL OF CARE

Data Refreshed: 8/25/20 6:08 AM		Mental Health Crisis Bed (MHCB) Level of Care Population by Housing Program																
Institution	RC Reception Center	GP* General Population	EOP Enhanced Outpatient Program	MHCB Mental Health Crisis Bed	Psychiatric Inpatient Program (PIP) Housing			Specialized Medical Beds Housing			Segregated Housing							Total MHCB Population
					Acute	Intermediate	PIP	CTC/SNF Correctional Treatment Center/Skilled Nursing Facility	Hospice	OHU Outpatient Housing Unit	ASU Administrative Segregation Unit	Condemned	LTRH Long Term Restricted Housing Unit	NDS Non-Disciplinary Segregation	PSU Psychiatric Services Unit	SHU Security Housing Unit	STRH Short Term Restricted Housing Unit	
ASP										3								3
CAL										4								4
CCC																		
CCI																		
CEN								1										1
CHCF				5														5
CIM				8														8
CMC		2		24														26
CMF				13														13
COR				5				1										6
CRC																		
CTF		1																1
CVSP																		
DVI																		
FOL											1							1
HDSP				1														1
ISP										2								2
KVSP				1														1
LAC				3							1							4
MCSP				6														6
NKSP				3														3
PBSP																		
PVSP																		
RJD			2	1							1							4
SAC				13														13
SATF				3														3
SCC											1							1
SOL				1														1
SQ					2		4											6
SVSP		1		4														5
VSP		3																3
WSP				3														3
DSH-ASH				1														1
DSH-CSH																		
Male Subtotal	0	7	2	95	2	0	4	2	0	9	4	0	0	0	0	0	0	125
CCWF		1		3							3							7
CIW																		
FWF																		
DSH-PSH																		
Female Subtotal	0	1	0	3	0	0	0	0	0	0	3	0	0	0	0	0	0	7
Grand Total	0	8	2	98	2	0	4	2	0	9	7	0	0	0	0	0	0	132

SUMMARY OF MENTAL HEALTH POPULATION BY INSTITUTION AND LEVEL OF CARE

Data Refreshed: 8/25/20 6:08 AM		Intermediate Care Facility (ICF) Level of Care Population by Housing Program																
Institution	RC Reception Center	GP* General Population	EOP Enhanced Outpatient Program	MHCB Mental Health Crisis Bed	Psychiatric Inpatient Program (PIP) Housing			Specialized Medical Beds Housing			Segregated Housing							Total ICF Population
					Acute	Intermediate	PIP	CTC/SNF Correctional Treatment Center/Skilled Nursing Facility	Hospice	OHU Outpatient Housing Unit	ASU Administrative Segregation Unit	Condemned	LTRH Long Term Restricted Housing Unit	NDS Non-Disciplinary Segregation	PSU Psychiatric Services Unit	SHU Security Housing Unit	STRH Short Term Restricted Housing Unit	
ASP																		
CAL																		
CCC																		
CCI																		
CEN																		
CHCF				1	44	312		2										359
CIM				17														17
CMC		3	6	10							3							22
CMF			1	7	23	195		1			1							228
COR			7	1							3							11
CRC																		
CTF																		
CVSP																		
DVI																		
FOL																		
HDSP																		
ISP																		
KVSP			7	1													2	10
LAC			19	1							14							34
MCSP			6								2							8
NKSP	2			2														4
PBSP																		
PVSP																		
RJD			4	6							1							11
SAC			16	4							4				9			33
SATF		2	11	5													1	19
SCC																		
SOL																		
SQ					5		21											26
SVSP			1			181												182
VSP			1															1
WSP	3										2							5
DSH-ASH		1	37	27	69	41		1		1								177
DSH-CSH		1	13	6	15	4												39
Male Subtotal	5	7	129	88	156	733	21	4	0	1	30	0	0	0	9	0	3	1,186
CCWF				1							2							3
CIW							29											29
FWF																		
DSH-PSH		4	1				3											8
Female Subtotal	0	4	1	1	0	0	32	0	0	0	2	0	0	0	0	0	0	40
Grand Total	5	11	130	89	156	733	53	4	0	1	32	0	0	0	9	0	3	1,226

SUMMARY OF MENTAL HEALTH POPULATION BY INSTITUTION AND LEVEL OF CARE

Data Refreshed: 8/25/20 6:08 AM		Acute Psychiatric Program (APP) Level of Care Population by Housing Program																
Institution	RC Reception Center	GP* General Population	EOP Enhanced Outpatient Program	MHCB Mental Health Crisis Bed	Psychiatric Inpatient Program (PIP) Housing			Specialized Medical Beds Housing			Segregated Housing							Total APP Population
					Acute	Intermediate	PIP	CTC/SNF Correctional Treatment Center/Skilled Nursing Facility	Hospice	OHU Outpatient Housing Unit	ASU Administrative Segregation Unit	Condemned	LTRH Long Term Restricted Housing Unit	NDS Non-Disciplinary Segregation	PSU Psychiatric Services Unit	SHU Security Housing Unit	STRH Short Term Restricted Housing Unit	
ASP																		
CAL																		
CCC																		
CCI																		
CEN																		
CHCF				2	62	1												65
CIM				4														4
CMC				8														8
CMF				4	132	2		1										139
COR				13														13
CRC																		
CTF																		
CVSP																		
DVI																		
FOL																		
HDSP																		
ISP																		
KVSP				2														2
LAC				8														8
MCSP			1	1														2
NKSP																		
PBSP																		
PVSP																		
RJD				7														7
SAC				22				1										23
SATF				2														2
SCC																		
SOL				1														1
SQ					2	1	5											8
SVSP				1		1												2
VSP																		
WSP				1														1
DSH-ASH					2													2
DSH-CSH																		
Male Subtotal	0	0	1	76	198	5	5	2	0	0	0	0	0	0	0	0	0	287
CCWF																		
CIW				1			1											2
FWF																		
DSH-PSH																		
Female Subtotal	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	2
Grand Total	0	0	1	77	198	5	6	2	0	0	0	0	0	0	0	0	0	289

Exhibit 136

Selected Institution(s): ASP, CAC, CAL, CCC, CCI, CCWF, CCWF-RC, CEN, CHCF, CIM, CIM-RC, CIW, CMC, CMF, COR, CPMP, CRC, CTF, CVSP, DVI, DVI-RC, FCRF, FOL, HDSP, ISP, KVSP, LAC, MCSP, NKSP, NKSP-RC, PBSP, PRCCF, PUCCF, PVSP, RJD, SAC, SACCO, SATF, SCC, SHS, SOL, SQ, SQ-RC, SVSP, VSP, WSP, WSP-RC

Inmate Type: DDP

Disability Inmate Counts

Run By: ladjrs

Date Run: 09/01/2020 08:30 AM

Institution	Inmate Count
ASP	2
CCWF	23
CHCF	203
CIM	85
CIM-RC	1
CIW	10
CMC	101
CMF	186
COR	17
CTF	2
DVI	2
DVI-RC	3
ISP	1
KVSP	7
LAC	47
MCSP	111
NKSP	2
NKSP-RC	2
PVSP	1
RJD	101
SAC	29
SACCO	8
SATF	249

Disability Inmate Counts

Run By: ladjrs

Date Run: 09/01/2020 08:30 AM

Institution	Inmate Count
SCC	1
SHS	19
SOL	1
SQ	4
SVSP	78
VSP	28
WSP	1
WSP-RC	3
	1,328

Exhibit 137



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September 24, 2020

VIA ELECTRONIC MAIL ONLY

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<p>PRIVILEGED AND CONFIDENTIAL</p> <hr/> <p>SUBJECT TO PROTECTIVE ORDERS</p>
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Re: *Coleman v. Newsom*: Plaintiffs' Concerns about the Issuance of False and Retaliatory Rule Violation Reports Against Class Members
Our File No. 0489-03

Dear OLA Coleman Team:

We write regarding CDCR's pattern of issuing false and retaliatory rule violation reports ("RVRs") against *Coleman* class members (as well as class members in *Armstrong* and other cases).

As you are likely aware, the Office of the Inspector General ("OIG") has documented and condemned this practice twice in recent reports. In addition, documents produced by Defendants in discovery related to Plaintiffs' pending staff misconduct motions in *Armstrong* corroborate the OIG's findings.

A third source of evidence of this practice is the declarations from *Armstrong* and *Coleman* class members Plaintiffs have shared with Defendants as part of the pending *Armstrong* staff misconduct motions. In those declarations, we have provided dozens of examples that show it is a routine practice for CDCR employees to assault, abuse, and retaliate against *Coleman* and *Armstrong* class members and then issue false and retaliatory RVRs to those they victimize. This practice serves the dual purpose of discrediting victims and discouraging future reporting of similar misconduct. These false RVRs are sometimes followed up by false referrals to local district attorneys for criminal prosecution. Those referrals can result in additional criminal charges and extended prison sentences, on top of the punishments meted out in the RVR process.

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CDCR OLA Legal Team

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In these cases, RVR write-ups are followed by one-sided disciplinary hearings where class member testimony is routinely discounted, even when it is supported by documentary evidence and/or multiple witnesses. This bias against evidence from incarcerated individuals appears to exist at all levels in the CDCR and even seems to be shared by some sections of OLA itself. *See* OIG Sentinel Report No. 20-01, January 10, 2020 (attached hereto as **Exhibit A**) (“The OIG is concerned that the department attorneys’ actions suggest an apparent bias and hostility against inmate testimony and evidence provided by inmates, and set a dangerous precedent in which widespread officer misconduct, which in some cases cannot be proven by any means other than evidence or testimony provided by inmates, will go undiscovered and unpunished. The OIG believes that evidence concerning staff misconduct provided by an inmate and subsequent testimony proffered in a legal proceeding should not be disregarded, based simply on the fact that it came from an inmate.”).

Not surprisingly, these RVR hearings almost always result in “guilty” findings that seriously harm class members in myriad ways, including resulting in raised custody levels, punitive SHU terms in units likely to cause mental health decompensation, significantly reduced chances for parole for life prisoners, and additional time served due to loss of good time credits for incarcerated individuals serving fixed terms. The punishments can be very severe. For example, *Coleman* class member Mr. [REDACTED] lost 360 days of credit and is reportedly serving a four-year SHU term for battery with a deadly weapon after he allegedly threw his walker at officers during a cell extraction allegedly done for mental health reasons. *See Exhibit B*, attached hereto. These false guilty findings occur even when the evidence available tends to undermine staff’s version of events and corroborate the version told by incarcerated people. Hearing officers are frequently incompetent and biased against class members. Parallel staff misconduct investigations demonstrate the same bias against class member testimony and evidence. In most cases, it is clear, as Inspector General Roy Wesley said in testimony to the State Senate regarding the staff complaint process, that “the process appears entirely driven by the purpose to exonerate staff.” *See* March 4, 2019 State Assembly Budget Subcommittee at 1:53:53.

This pattern and practice violates the Constitution and basic due process requirements, as well as the *Coleman* Program Guide and associated Court-approved *Coleman* RVR policies. The time has come for Defendants to take swift action to put an end to this practice. We request that Defendants develop a plan to address the problems outlined in and illustrated by the examples this letter.

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1. On Multiple Occasions, the OIG Has Found that CDCR Officers Issue False RVRs to Victims of Staff Misconduct

Attached hereto as **Exhibit C** is OIG Sentinel Case Number 20-04, issued on August 19, 2020. The case is titled, “The Department Made an Egregious Error in Judgment and Relied on Poor Legal Advice When It Did Not Sustain Dishonesty Allegations and Dismiss Two Officers in a Use-of-Force Case.”

This disturbing Sentinel Case recounts a November 21, 2018 incident in which two officers at California State Prison – Sacramento (“SAC”) used unreasonable force on a *Coleman* class member, [REDACTED] ([REDACTED] who was subsequently found guilty of battery on a peace officer. Ex. C, at 1-2. Video surveillance footage of the incident, produced to Plaintiffs’ counsel in *Armstrong*, clearly shows staff escort Mr. [REDACTED] through an obstructed gate, signal non-verbally to one another, and then throw Mr. [REDACTED] to the ground, punching and hitting him for approximately one minute while he lay on the ground with his hands cuffed behind his back and showing no signs of resistance in any way. There does not appear to be any justification for the initial use of force against Mr. [REDACTED] nor the multiple punches and kicks he suffered while compliant and restrained on the ground.

In response to this video, the Warden of SAC requested an Office of Internal Affairs (“OIA”) investigation into the incident, given the evident discrepancy between officers’ reports and the video surveillance footage. *Id.* at 2. After an investigation was conducted by OIA, the Warden elected to sustain the allegations that both officers had used unreasonable force. *Id.* at 3. The OIG reports that attorneys for CDCR opposed the Warden’s disciplinary conclusions, escalating the case through the executive review process multiple times, which is “exceedingly rare” in the view of the OIG. *Id.* at 4. During the executive review process, the OIG found that three CDCR attorneys made arguments that were not supported by the facts of the case or the law. *Id.*

Ultimately, the undersecretary of CDCR elected to sustain the allegations regarding the unreasonable use of force, but did not sustain the dishonesty allegations even when the OIG found that there was a preponderance of evidence supporting the allegation that the officers had been “dishonest in their reports and interview.” *Id.* at 5. Despite finding that the officers had used unreasonable force against the *Coleman* class member, the class member was “left with an unjust guilty finding resulting from the first officer falsely accusing him of battery during this use-of-force incident.” *Id.* at 5. Both officers continue to work as peace officers for the CDCR. *Id.*

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CDCR OLA Legal Team

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We demand that the RVR against Mr. [REDACTED] be reviewed and rescinded immediately, and that all attendant effects of the RVR, including, for example, any credit forfeiture or increase in security points, be promptly reversed.

Attached hereto as **Exhibit D** is an excerpt from the June 2020 Complaint Intake and Field Inquiries Report issued by the OIG on June 2, 2020. The report chronicles a June 2018 incident in which an incarcerated individual was issued an RVR that was later contradicted by video surveillance evidence. Ex. D, at 53-55. While the person's RVR was ultimately reduced to a counselling chrono, CDCR executive staff declined the OIG's recommendation to refer the dishonest staff member to OIA because the executive staff "did not believe the officer was 'blatantly dishonest,'" when reporting facts that proved to be inaccurate based on the video surveillance evidence. *Id.* at 55.

Even though the RVR was rescinded after it was proved false, the incarcerated person was still issued a counselling chrono that remains in their file to this day. This is a blatant due process violation, and one that inflicts substantial harm on incarcerated people. As the OIG notes, "because a counseling chrono documents an inmate's actions the department considers misconduct, it can still reflect poorly on the inmate's suitability for parole during future parole hearings." *Id.* In our experience, such counseling chronos are often given great weight by the BPH and can be the sole grounds for a denial of parole to a lifer.

We ask that the counseling chrono against this individual be dismissed.

Unfortunately, these horrendously unjust outcomes seem to be commonplace within CDCR, although how common is not measurable, given that many such incidents are not caught on camera and therefore are not subject even to the ineffective and biased CDCR investigations and disciplinary processes that resulted in these cases.

2. Documents Produced by Defendants in the Staff Misconduct Proceedings Tell the Same Story: Custody Staff Abuse *Coleman* Class Members, and then Issue False RVRs

Documents produced by Defendants in *Armstrong* and *Coleman* provide further evidence that class members are commonly issued false and retaliatory RVRs *even after* officers involved in the incident underlying the RVR are found to have been intentionally dishonest in their reporting of the incident.

In one such case, *Coleman* class member [REDACTED] [REDACTED] [REDACTED] reported being kicked in the head twice by an officer at RJD. A psychologist who observed the incident submitted an incident report stating that, at the time the officer kicked the

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incarcerated person in the head twice with “extreme force,” the incarcerated person was not resisting and compliant on the floor. *See Exhibit E*, attached hereto. The incarcerated person complained about the excessive use of force and, in turn, was charged and found guilty of an RVR for assaulting an officer during the incident.

The hearing officer adopted the assaulting officer’s version of events—that the officer slipped on discharged pepper spray, causing him to accidentally strike the incarcerated person with his foot—notwithstanding the psychologist’s report to the contrary and the fact that other correctional officer witnesses did not corroborate the assaulting officer’s story. *See* Letter from P. Godbold to N. Weber, October 4, 2019, **Exhibit F**, attached hereto. Although the officer was ultimately terminated for his unnecessary use of force and dishonesty, Mr. [REDACTED] RVR was not rescinded. *See* Letter from U. Stuter to P. Godbold, December 26, 2019 and CDCR 402 dated May 2, 2019, **Exhibit G** and **Exhibit H**, attached hereto.

We demand that the RVR given to Mr. [REDACTED] be reviewed and rescinded immediately, and that all attendant effects of the RVR, including for example, any credit forfeiture or increase in security points, be promptly reversed.

In another case, *Coleman* class member [REDACTED] ([REDACTED]) reported that he was thrown out of his walker by RJD staff without justification. In their incident reports, three staff members claimed that Mr. [REDACTED] threw himself out of his walker and attempted to assault staff. *See Exhibit I*, attached hereto. Mr. [REDACTED] was charged with and found guilty of a serious RVR for obstructing staff. *See Exhibit J*, attached hereto. Video surveillance evidence clearly contradicted the version of events offered by reporting staff and corroborated Mr. [REDACTED] allegation that he was thrown from his walker by staff without justification. (We have a copy of the video and can make it available upon request.) All three staff members involved in the incident were terminated for dishonesty and failure to report the use of force, among other allegations. *See Exhibit K*, attached hereto. Despite this, Defendants have produced no documentation that the RVR issued to Mr. [REDACTED] was rescinded after it was found that all three of the officers’ reports and statements about the incident had been intentionally dishonest.

Please provide documentation that Mr. [REDACTED] RVR has been rescinded, or else please make sure that it is rescinded now. Please also ensure that all attendant effects of the RVR are reversed, including any resulting credit forfeiture or increase in security points. Note that Mr. [REDACTED] is now out of prison, but we would still like the RVRs removed from his file, as it will affect his custody score if he is ever returned to prison, and it could have other potential adverse consequences.

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3. Plaintiffs' Counsel Has Already Provided Defendants with Overwhelming Evidence of these Practices

In Plaintiffs' Motions to Stop Defendants from Assaulting, Abusing and Retaliating against People with Disabilities, filed on February 28, 2020 and June 3, 2020, Plaintiffs' counsel in *Armstrong* has created a substantial record of false and retaliatory RVRs issued to *Coleman* and *Armstrong* class members, usually in the wake of an unnecessary or excessive use of force by staff.

All such class member declarations have been shared with Defendants in *Coleman* as well as *Armstrong*. In total, Plaintiffs' counsel has brought evidence that 76 *Coleman* and *Armstrong* class members have suffered false and retaliatory RVRs at the hands of Defendants' staff; attached as **Appendix A** is a table listing those class members, the institution at which the violations allegedly took place, the violations with which they were charged, and the date of the alleged violations. In what follows, Plaintiffs' counsel outlines a few additional particularly egregious instances where staff issued RVRs to class member declarants at RJD, LAC, and COR in order to discredit their allegations of serious staff misconduct, retaliate against them as victims of misconduct, and punish class members for their mental illness.

RJD

Recently, the *Armstrong* Court issued a Preliminary Injunction ordering the transfer of two *Coleman* class members from RJD due to retaliation. *See* Dkt. 3026. In its Order Granting in Part Plaintiffs' Motion for Preliminary Injunction, the *Armstrong* Court found that *Armstrong* and *Coleman* class member [REDACTED] ([REDACTED]) was assaulted by staff at RJD on June 17, 2020 in retaliation for his participation as a declarant in the RJD Motion. Mr. [REDACTED] was also issued two false RVRs in connection with the incident, one for battery on a peace officer, and another for possession of alcohol.

Even though the Court found Mr. [REDACTED] version of what happened on June 17, 2020 more credible than CDCR's, Defendants found Mr. [REDACTED] guilty of the false RVR in a rushed and unfair proceeding. *See Armstrong* ECF No. 3025, at 14, 16 ("The Court finds the description of the June 17 incident in the declarations of Inmates 2, 1, and 3 to be credible," and "Defendants' description of the June 17 incident lacks credibility.").

Mr. [REDACTED] was denied the opportunity to present the Court's findings at his RVR hearing, was not allowed to question the reporting employees, and was not allowed to bring any witnesses on his behalf. *See Armstrong* ECF No. 3052-1, Ex. A. As a result,

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Mr. [REDACTED] was subjected to a 120 days of credit loss and 10 days of confinement to his quarters after the senior hearing officer elected to mitigate the suspension of privileges in light of Mr. [REDACTED] mental health factors. Mr. [REDACTED] was also deprived of access to a paid job for a year as a result of the guilty finding. Most importantly, this RVR would have substantially reduced the likelihood of Mr. [REDACTED] being found suitable for parole at his scheduled hearing in January 2021. Only after filing multiple briefs about this issue in *Armstrong* did CDCR drop both of Mr. [REDACTED] RVRs.

Very recently, *Coleman* class member [REDACTED] [REDACTED] ([REDACTED]) was excessively pepper-sprayed without any justification by staff at RJD on August 21, 2020, who then issued a false and retaliatory RVR. See Supplemental Declaration of [REDACTED] [REDACTED] (“Suppl. [REDACTED] Decl.”), shared with Defendants on September 1, 2020, ¶¶ 6-19. Although Mr. [REDACTED] has not yet received his final RVR paperwork, his medical records indicate that he has been charged with battery on a peace officer. See **Exhibit L**, attached hereto (RVR MH Assessment Note, August 30, 2020). The records further indicate that officers claim that Mr. [REDACTED] “punched the cell-front window causing it to break and send glass fragments onto the officer’s face.” *Id.* Immediately following the incident, Mr. [REDACTED] was examined by multiple medical professionals. Suppl. [REDACTED] Decl. ¶¶ 17-18. In these evaluations, medical staff did not document any injuries to either of his hands consistent with his having punched a glass window. See, e.g., **Exhibit M**, attached hereto (August 21, 2020 clinical note [“no signs of physical wounds, no swelling, no bleeding, no obvious bruises...”]). Mr. [REDACTED] RVR has not yet been heard.

LAC

Staff at LAC frequently assault class members in the throes of mental health decompensation and crisis, and then issue false RVRs to the victims of their misconduct. Custody staff also routinely ignore class members’ requests for assistance during medical and mental health emergencies, demean them after suicide attempts, and issue them punitive RVRs for behavior strongly influenced by severe mental illness.

On March 21, 2020, *Coleman* class member [REDACTED] [REDACTED] ([REDACTED]) was subjected to an unnecessary emergency cell extraction while he was experiencing mental health crisis. See Declaration of [REDACTED] [REDACTED] shared with Defendants on May 22, 2020, ¶¶ 14-21. After Mr. [REDACTED] requested to speak with a clinician about his ongoing suicidal ideation, officers falsely claimed that he was unresponsive, rushed into his cell, and assaulted him so badly that he was hospitalized. *Id.* ¶¶ 17-19. Mr. [REDACTED] was issued and found guilty of a false RVR for battery on a peace officer in connection with the extraction. *Id.* ¶¶ 25-27. During the RVR hearing, he was denied the opportunity to

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present witnesses or question the reporting employees. *Id.* As a result, he suffered a loss of privileges and a loss of 120 days of credit. *Id.*

In another shocking case, *Coleman* class member [REDACTED] [REDACTED] ([REDACTED]) was assaulted by staff at LAC on April 15, 2020 while in handcuffs after he protested being housed with an incarcerated person who had tested positive for COVID-19. *See* Declaration of [REDACTED] [REDACTED] (“[REDACTED] Decl.”), shared with Defendants on August 28, 2020, ¶¶ 8-20. Mr. [REDACTED] was also charged with an RVR for battery on a peace officer after officers claimed that Mr. [REDACTED] grabbed, punched, and resisted them. *Id.*, ¶ 29. When Mr. [REDACTED] RVR was heard on May 13, 2020, Mr. [REDACTED] pointed out that the officers’ version of events lacked credibility; for example, he was accused of punching officers even though his hands were cuffed behind his back for the entirety of the incident. *Id.* ¶¶ 30-35. In response, the Hearing Officer stated that the serious deficiencies identified in the official report were “simple errors officers tend to make in the heat of battle.” *Id.* ¶ 35. The hearing officer found him guilty of the RVR and issued him a 121-day loss of credit, 60-day loss of canteen, phone privileges, yard, and dayroom, and a 21-month SHU-term (which was later rescinded due to mental health considerations). *Id.* We ask that Mr. [REDACTED] RVR be reviewed and reversed, and that all attendant effects be reversed.

COR

At COR, the issuance of patently false RVRs to severely mentally ill class members is an everyday occurrence. Class members are subjected to lengthy losses of privileges and placements in dangerous segregated housing that render them much more likely to suffer serious mental health decompensation. These false RVRs are also often referred to and prosecuted by the District Attorney, resulting in substantial collateral harm to *Coleman* class members.

On May 30, 2020, *Coleman* class member [REDACTED] [REDACTED] was assaulted by staff and issued a false RVR in response to his expressing suicidality to staff. *See* Declaration of [REDACTED] [REDACTED] shared with Defendants on September 4, 2020, ¶¶ 11-20. After custody staff encouraged him to kill himself, Mr. [REDACTED] was thrown to the ground and beaten into unconsciousness. *Id.* ¶¶ 13-15. Mr. [REDACTED] was then charged with and found guilty of a false RVR for delaying staff. *Id.* ¶ 25. He was denied the opportunity to call any witnesses during the hearing. *Id.* ¶ 26. A 90-day credit loss was imposed as a result of the false RVR. *Id.* ¶ 25. We ask that Mr. [REDACTED] RVR be thrown out, and that all attendant effects be reversed, not only because the RVR was false, but also because it was issued in connection with an effort to seek help with feelings of suicidality.

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Coleman class member [REDACTED] [REDACTED] ([REDACTED]) was assaulted by staff on December 16, 2019 after staff made racist remarks toward Mr. [REDACTED] and refused to let him out of his cell to shower. *See* Declaration of [REDACTED] [REDACTED] shared with Defendants on September 1, 2020, ¶¶ 6-18. Mr. [REDACTED] suffered a concussion, a fracture in his hand, a dislocated and nerve-damaged thumb, and an unspecified jaw injury. *Id.* ¶¶ 24-30. Mr. [REDACTED] received an RVR for battery on a peace officer in connection with this incident. *Id.* ¶ 31. In an incredible story that parallels that of Mr. [REDACTED] discussed above, officers claimed that Mr. [REDACTED] injuries were caused by him *accidentally slipping on pepper-spray*. *Id.* At his classification committee meeting, staff told Mr. [REDACTED] that he was guilty of the RVR before it had been heard and disposed of. *Id.* ¶ 32. Mr. [REDACTED] false RVR was referred to the District Attorney for possible criminal prosecution, and it is still pending as of the date of his declaration. *Id.* ¶ 32. He is also facing an eight-month SHU-term. *Id.* We ask that this false RVR and all attendant effects be reversed immediately.

Coleman class member [REDACTED] [REDACTED] ([REDACTED]) received two RVRs after he was assaulted by staff at COR in June 2019 and May 2020. *See* Declaration of [REDACTED] [REDACTED] shared with Defendants on August 28, 2020, ¶ 17. The first RVR – which Mr. [REDACTED] incurred after being beaten by staff in June 2019 in retaliation for reporting misconduct to the CDCR Ombudsman – was criminally prosecuted by the District Attorney. *Id.* COR referred the second RVR to the District Attorney, and it is still pending as of the date of his declaration. *Id.* We ask that the false RVRs and all attendant effects be reversed immediately.

On May 10, 2019, *Coleman* and *Armstrong* class member [REDACTED] [REDACTED] ([REDACTED]) was thrown to the ground and beaten after he protested that he could not attend yard because his assistive device was broken at the time. *See Exhibit N*, attached hereto (medical notes documenting his injuries, and the fact that his walker is broken). Mr. [REDACTED] reports that officers suggested that they could tape the walker or that Mr. [REDACTED] could sit on the ground outside. When Mr. [REDACTED] refused, the officers assaulted him and issued him a false RVR for “Assault on a Peace Officer by means not likely to cause GBI.” He was found guilty and sentenced to a 12-month SHU term, despite the fact that the clinician doing his RVR mental health assessment determined that he posed “some risk of decompensation” in a SHU setting. *See* Mr. [REDACTED] RVR MHA Note, *Exhibit O*, attached hereto. We ask that this false RVR and all of the attendant effects be reversed.

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4. This Pattern and Practice Harms Class Members

The harm that results from the issuance of false and retaliatory RVRs against class members is substantial and multifaceted.

First, the points added to class members' classification scores as a result of false RVRs puts class members at risk and jeopardizes institutional safety and security. Because class members who receive false RVRs are housed in more restrictive facilities than necessary, they are more likely to be subjected to unnecessary victimization and modifications of program that affect their mental health symptoms. This practice runs counter to the stated goals of the CDCR classification system, to: "provide[] a standard evaluation for placement of inmates *at the least restrictive institution*, commensurate with their custodial requirements." DOM § 62010.5 (emphasis added).

The issuance of false RVRs also undermines CDCR's efforts to promote rehabilitative programming. Class members with serious RVRs incurred in the past twelve months are unable to participate in many desirable and beneficial programs and activities offered by CDCR. And for the many class members issued lengthy sentences in segregated housing after being found guilty of a falsified RVR, access to programming is virtually non-existent.

These harms are compounded by the fact that *Coleman* class members sentenced to a segregated housing term or a loss of privileges after being found guilty of an RVR are at an acute risk of mental health decompensation due to the restrictive housing setting. Segregation can also cause class members to act out and get in further trouble, and it is also characterized by significantly higher suicide rates for class members than elsewhere. *See Coleman v. Brown*, 28 F. Supp. 3d 1068, 1095 (E.D. Cal. 2014) ("placement of seriously mentally ill inmates in California's segregated housing units can and does cause serious psychological harm, including decompensation, exacerbation of mental illness, inducement of psychosis, and increased risk of suicide"); *see also* Special Master Expert Fourth Re-Audit and Update of Suicide Prevention Practices in CDCR, Sept. 23, 2020, ECF No. 6879-1, at 46 (noting one-third of all suicides occurred in segregation units in past four years).

Class members punished for false RVRs are also denied the right to earn credits and deprived of already-earned credits that might expedite their release. For example, the recent Positive Programming Credits launched by Secretary Diaz on July 9, 2020 provides 12 weeks of credit to all persons incarcerated in CDCR except for those found guilty of a serious RVR between March 1, 2020 and June 5, 2020. Mr. [REDACTED] for example, was denied these credits due to the false and retaliatory RVR issued to him.

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Similarly, the Milestone Credits earned by EOP class members who participate in mental health programming are often forfeited after class members are found guilty of a false RVR. *See* Cal. Code Regs. tit. 15 § 3323.

Most importantly, the presence of a false RVR in an individual's custody file substantially reduces the likelihood that the Board of Parole Hearings ("BPH") will find that individual is suitable for parole. Regardless of whether an incarcerated person is found guilty of a RVR or given a counseling chrono, any disciplinary record has a significant negative impact on the outcome of the BPH hearing. Recent disciplinary write-ups of either type are so harmful to a prisoner's chances for release that it is common for attorneys representing prisoners who have been found guilty of an RVR or received a counseling chrono in the year before the hearing to move to postpone the BPH hearing for at least another year. In all of the hearings observed or hearing transcripts reviewed over the past ten years, Plaintiffs' counsel cannot recall a single case where a prisoner received a counseling chrono or an RVR within the year preceding the hearing and was granted parole.

5. These Practices Violate the Constitution, the Program Guide, and the *Coleman* Court's Orders

Defendants' actions and inactions have directly impeded class members' basic Fourteenth Amendment due process rights, including, for example, their abilities to have fair RVR hearings. *See, e.g., Wolff v. McDonnell*, 418 U.S. 539, 563-67 (1974) (requiring adequate notice of and opportunity to present a meaningful defense in disciplinary proceedings); *Armstrong v. Davis*, 275 F.3d 849, 865 (9th Cir. 2001); *Ashker v. Newsom*, No. 09-CV-05796-CW (RMI), 2019 WL 330461, *13 (N.D. Cal. Jan. 25, 2019) (knowing reliance on fabricated evidence in RVR hearing violates due process). As we have also shown, *Coleman* class members are routinely denied access to witnesses or other exculpatory evidence during RVR hearings. Staff frequently decide that class members are guilty of the alleged conduct before the matter has been heard and in spite of compelling evidence that the reporting employees' version of events is not credible.

The pattern and practices documented in this letter also violate the Program Guide and the RVR policies developed by Defendants in response to findings by the Special Master and orders issued by the *Coleman* Court.

In his 27th Round Monitoring Report, the Special Master found multiple deficiencies with CDCR's implementation of its disciplinary policies, ranging from a lack of adequate training to poor adherence to the alternate documentation policy. Special Master's 27th Round Monitoring Report, ECF No. 5779 at 106-15 (Feb. 13, 2018) ["27th

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Round Report”]. **Of 19,983 RVRs the Special Master team reviewed, CDCR only documented one in an alternate manner. *Id.* at 111-13.** The Special Master found additional monitoring was necessary to “work with CDCR to address the deficiencies.” *Id.* at 115. The Special Master’s 2018 Inpatient Monitoring Report raised similar concerns, finding that “mental health assessments did not reflect consideration of mental health factors where patients were found guilty,” “notable credit forfeitures were imposed,” and many RVR mental health assessments were not “timely completed and returned by mental health.” Special Master’s Report on Inpatient Programs, ECF No. 5894 at 67-70 (Aug. 30, 2018).

CDCR’s implementation of its disciplinary policies remain deficient. The misconduct discussed in the class member declarations violates the safeguards ordered by the *Coleman* court that are intended to protect the rights of mentally ill patients in the RVR process, as implemented in § 3317.2 of Title 15 of the California Code of Regulations. The fact that class members are routinely issued RVRs as a result of cell extractions and in retaliation for expressing or acting upon suicidal ideation violates the *Coleman* Court’s May 4, 2015 Order regarding CDCR’s Implementation of Policies and Procedures on RVRs. *See* ECF No. 5305. Despite evidence that many of the incidents discussed in the class member declarations were strongly influenced by severe mental illness, there is no evidence that Defendants have chosen to review and document the incidents in any of the declarations through the alternate process outlined in § 3317.1 rather than the standard RVR process.

6. Conclusion

The evidence outlined above demonstrates a pattern of CDCR employees issuing RVRs to *Coleman* class members in order to discredit allegations of staff misconduct, retaliate against those who report misconduct, and punish class members for their mental illness. Class members are substantially harmed by the frequent issuance of false and retaliatory RVRs, which violates the Constitution, the Program Guide, and the Orders of the *Coleman* Court.

Defendants must take steps to rectify the harm suffered by *Coleman* class members. Please immediately review the allegations contained in the class member declarations listed in **Appendix A**, review the associated RVRs of which these class members were found guilty, and, in light of the evidence offered in the declarations and any other relevant information, immediately rescind the RVRs and expunge them from the class members’ custody files. Please also reverse all attendant effects of these RVRs.

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Defendants also must take immediate steps to address this pattern and practice to minimize its effects on the entire *Coleman* class.

We look forward to your responses to these important concerns.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Thomas Nolan

Thomas Nolan

By: Of Counsel

TN:JRG

Enclosures

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Name of Coleman and/or Armstrong Class Member	CDCR Number	Facility at which Violation Allegedly Occurred	Alleged Violation	Date of Violation
[REDACTED]	[REDACTED]	RJD	Assault on Staff	November 8, 2017
		RJD	1) Participation in a Riot 2) Delay of an Officer in performance of duties	1) On or around October 30, 2018 2) May 9, 2020
[REDACTED]	[REDACTED]	RJD	Delaying a Peace Officer	September 1, 2019
		RJD	Battery on a Peace Officer	May 7, 2018
		RJD	Participation in a Riot	May 21, 2016
		RJD	Battery on Peace Officer	October 2, 2018
		RJD	Disrespect	July 27, 2019
		RJD	Fighting	August 5, 2019
		RJD	Refusal to Accept Assigned Housing; Behavior that Could Lead to Violence	June 7, 2018
[REDACTED]	[REDACTED]	RJD	Delaying a Peace Officer	May 30, 2019
		RJD	Resisting a Peace Officer	On or around November 18, 2018
[REDACTED]	[REDACTED]	RJD	Battery on a Peace Officer	July 1, 2019
		RJD	Obstructing a Peace Officer	September 6, 2019
		RJD	Battery on a Peace Officer	April 23, 2019
		RJD	Resisting a Peace Officer	December 21, 2019
		RJD	Battery on a Peace Officer	July 14, 2019
		RJD	Assault on Staff	On or around August 21, 2018
		LAC	Resisting Staff	August 26, 2019
		LAC	Assault on Staff causing GBI	September 8, 2019

[REDACTED]	[REDACTED]	LAC	Assault on Staff	On or around November 1, 2019
[REDACTED]	[REDACTED]	LAC	Behavior that Could Lead to Violence	March 6, 2020
[REDACTED]	[REDACTED]	LAC	Disobeying an Order	December 9, 2018
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	On or around September 22, 2017
[REDACTED]	[REDACTED]	LAC	1) Refusing to House 2) Behavior that Could Lead to Violence 3) Battery on a Peace Officer	1) November 30, 2018 2) August 1, 2019 3) November 8, 2019
[REDACTED]	[REDACTED]	LAC	Resisting Staff	June 13, 2019
[REDACTED]	[REDACTED]	LAC	Resisting Staff	July 25, 2018
[REDACTED]	[REDACTED]	LAC	1) Battery on a Peace Officer 2) Battery on a Peace Officer	1) November 20, 2019 2) July 7, 2020
[REDACTED]	[REDACTED]	LAC	Resisting Staff	June 29, 2018
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	December 20, 2019
[REDACTED]	[REDACTED]	LAC	Resisting Staff	November 9, 2019
[REDACTED]	[REDACTED]	LAC	Behavior that Could Lead to Violence	January 13, 2020r
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	June 27, 2019
[REDACTED]	[REDACTED]	RJD	Battery on a Peace Officer	March 31, 2020
[REDACTED]	[REDACTED]	RJD	Refusing to House; Threatening Staff	April 23, 2020
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	December 15, 2019
[REDACTED]	[REDACTED]	LAC	Assault on a Peace Officer	April 12, 2019
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	August 23, 2018
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	April 11, 2020
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	April 14, 2020

[REDACTED]	[REDACTED]	SATF	Assault on a Peace Officer not likely to cause GBI; Possession of Dangerous Contraband	April 4, 2020
[REDACTED]	[REDACTED]	COR	Possession of a Weapon; Assault on a Peace Officer not likely to cause GBI	September 3, 2019
[REDACTED]	[REDACTED]	LAC	1) Battery on a Peace Officer 2) Battery on a Peace Officer	1) March 21, 2020 2) April 2, 2020
[REDACTED]	[REDACTED]	CCI	Assault on a Peace Officer by Means not Likely to Cause GBI	December 23, 2019
[REDACTED]	[REDACTED]	CCI	Resisting Staff	February 18, 2020
[REDACTED]	[REDACTED]	COR	Battery on a Peace Officer	April 7, 2020
[REDACTED]	[REDACTED]	RJD	Assault on a Peace Officer Likely to Produce GBI	April 18, 2020
[REDACTED]	[REDACTED]	KVSP	Battery on a Peace Officer	August 27, 2019
[REDACTED]	[REDACTED]	KVSP	1) Fighting 2) Battery on a Peace Officer	1) August 27, 2019 2) September 16, 2019
[REDACTED]	[REDACTED]	LAC	Resisting Staff	December 1, 2018
[REDACTED]	[REDACTED]	LAC	1) Battery on a Peace Officer 2) Battery on a Peace Officer	1) June 20, 2018 2) August 7, 2019
[REDACTED]	[REDACTED]	LAC	1) Battery on a Peace Officer 2) Resisting a Peace Officer	1) June 13, 2017 2) July 1, 2017
[REDACTED]	[REDACTED]	RJD	1) Battery on a Peace Officer	1) June 17, 2020
[REDACTED]	[REDACTED]	KVSP	1) Fighting 2) Threatening Staff	1) August 27, 2019 2) September 16, 2019
[REDACTED]	[REDACTED]	RJD	1) Destroying Property	April or May 2020
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	October 1, 2019
[REDACTED]	[REDACTED]	CMF	Battery on a Peace Officer	November 27, 2019
[REDACTED]	[REDACTED]	COR	Assault on a Peace Officer by Means Not Likely to Cause GBI	September 24, 2019

[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	February 16, 2019
[REDACTED]	[REDACTED]	LAC	Battery on a Peace Officer	April 15, 2020
[REDACTED]	[REDACTED]	COR	1) Battery on a Peace Officer 2) Battery on a Peace Officer	1) June 17, 2019 2) May 25, 2020
[REDACTED]	[REDACTED]	COR	Resisting a Peace Officer	April 5, 2019
[REDACTED]	[REDACTED]	COR	Delaying a Peace Officer	May 1, 2019
[REDACTED]	[REDACTED]	COR	Battery on a Peace Officer	May 4, 2020
[REDACTED]	[REDACTED]	COR	Assault on a Peace Officer by Means Not Likely to Cause GBI	December 16, 2019
[REDACTED]	[REDACTED]	KVSP, LAC, SAC	1) Assault on a Peace Officer by Means Not Likely to Cause GBI 2) Battery on a Peace Officer 3) Resisting a Peace Officer	1) April 2, 2019 2) July 24, 2019 2) March 9, 2020
[REDACTED]	[REDACTED]	LAC	Assault on a Peace Officer by Means Not Likely to Cause GBI	July 14, 2019
[REDACTED]	[REDACTED]	LAC	Threatening a Peace Officer	April 27, 2020
[REDACTED]	[REDACTED]	KVSP	1) Indecent Exposure 2) Mutual Combat	1) July 22, 2019 2) August 27, 2019
[REDACTED]	[REDACTED]	KVSP	Battery on a Peace Officer	June 6, 2019
[REDACTED]	[REDACTED]	COR	Delaying a Peace Officer	May 30, 2020
[REDACTED]	[REDACTED]	LAC	Resisting Staff	July 4, 2019
[REDACTED]	[REDACTED]	KVSP	Assault and Battery with a Deadly Weapon	March 27, 2020
[REDACTED]	[REDACTED]	COR	Fighting	October 2, 2019
[REDACTED]	[REDACTED]	KVSP	Battery on a Peace Officer	February 27, 2020
[REDACTED]	[REDACTED]	MCSP	Delaying a Peace Officer	August 27, 2020
[REDACTED]	[REDACTED]	KVSP	Behavior Which Could Lead to Violence	June 6, 2020

Exhibit 138



Roy W. Wesley, Inspector General

Bryan B. Beyer, Chief Deputy Inspector General

OIG | OFFICE *of the* INSPECTOR GENERAL

Independent Prison Oversight

July 2020

Monitoring the Use-of-Force Review Process of the California Department of Corrections and Rehabilitation

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Regional Offices

Sacramento

Bakersfield

Rancho Cucamonga

July 13, 2020

The Governor of California
 President pro Tempore of the Senate
 Speaker of the Assembly
 State Capitol
 Sacramento, California

Dear Governor and Legislative Leaders:

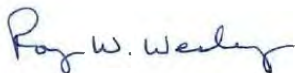
Enclosed is the Office of the Inspector General's report titled *Monitoring the Use-of-Force Review Process of the California Department of Corrections and Rehabilitation*. This is the Office of the Inspector General's third annual report, as mandated by California Penal Code sections 6126(j) and 6133(b)(1), which addresses the California Department of Corrections and Rehabilitation's (the department) use-of-force incidents that occurred between January 1, 2019, and December 31, 2019.

Beginning with this reporting period, we have implemented a new monitoring methodology to assess the department's compliance with its use-of-force policies and procedures prior to, during, and following each incident that we monitored. For this reporting period, the OIG monitored 2,296 of the department's 9,692 use-of-force incidents which occurred in 2019 and concluded that the department's performance was overall *satisfactory*. We assessed the department's performance as *superior* in 24 incidents, *satisfactory* in 2,063 incidents, and *poor* in 209 incidents.

Based on concerns we identified in our monitoring, we provided four recommendations to the department:

(1) implement a policy which clearly requires decontamination of all indoor areas following the use of chemical agents; (2) implement an unambiguous policy to clearly state the required elements for each use-of-force report; (3) track individual supervisors and impose progressive discipline on those supervisors who do not fulfill their duty to thoroughly review each use-of-force incident; and (4) implement a policy with a specified time frame to ensure the higher-level committee within the Division of Juvenile Justice reviews the more significant incidents without undue delay.

Sincerely,



Roy W. Wesley
 Inspector General

Gavin Newsom, Governor

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The Inspector General shall monitor the department's process for reviewing uses of force and shall issue reports annually.

— *State of California*
(*Penal Code section 6126 (j)*)

Use-of-Force Policy: Definitions of Common Terms	
Reasonable force	The force that an objective, trained, and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.
Unnecessary force	The use of force when none is required or appropriate.
Excessive force	More force than is objectively reasonable to accomplish a lawful purpose.
Immediate use of force	The force used to respond without delay to a situation or circumstance that constitutes an imminent threat to institution/ facility security or the safety of persons.
Imminent threat	Any situation or circumstance that jeopardizes the safety of persons or compromises the security of the institution, requiring immediate action to stop the threat. Some examples include, but are not limited to, an attempt to escape, ongoing physical harm, or active physical resistance.
Controlled use of force	The force used in an institutional or facility setting when an inmate's presence or conduct poses a threat to safety or security, and the inmate is located in an area that can be controlled or isolated. These situations do not normally involve the imminent threat to loss of life or imminent threat to institutional security.
Serious bodily injury	A serious impairment of physical condition, including, but not limited to the following: (1) loss of consciousness; (2) concussion; (3) bone fracture; (4) protracted loss or impairment of function of any bodily member or organ; (5) a wound requiring extensive suturing; and (6) serious disfigurement.
Great bodily injury	Any bodily injury that creates a substantial risk of death.

Source: Article 2, Use of Force, 51020.4 "Definitions," *California Department of Corrections and Rehabilitation, Adult Institutions, Programs, and Parole Operations Manual*. On the web at <https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2020/03/2020-DOM-02.27.20.pdf?label=View%20the%20CDCR%202020%20Department%20Operations%20Manual&from=https://www.cdcr.ca.gov/regulations/cdcr-regulations/dom-toc/> (accessed 6-30-20). The publication is commonly referred to as the DOM.

Other Terms Used in This Report	
Hiring authority	The secretary of the department, the general counsel, an undersecretary, or any chief deputy secretary, executive officer, chief information officer, assistant secretary, director, deputy director, associate deputy director, associate director, warden, superintendent, health care manager, regional health care administrator, or regional parole administrator.
Custody staff	Sworn peace officers at all levels within an institution or facility.
Noncustody staff	All nonsworn employees, including administrative, medical, and educational staff within an institution or facility.
Contract facilities	Facilities outside the 35 adult prisons under the Division of Adult Institutions that house state inmates for the purpose of reducing overcrowding.

Source: The department's DOM.



California Department of Corrections and Rehabilitation Institutions and Parole Regions



Map provided courtesy of the California Department of Corrections and Rehabilitation.

Summary

This is the Office of the Inspector General's third annual report, as mandated by California Penal Code sections 6126 (j) and 6133 (b) (1), which addresses the California Department of Corrections and Rehabilitation's (the department) use-of-force incidents that occurred between January 1, 2019, and December 31, 2019.

Beginning with this reporting period, we have implemented a new monitoring methodology to assess the department's compliance with its use-of-force policies and procedures prior to, during, and following each incident that we monitored. Our new methodology consists of 11 units of measure which we call *performance indicators* (indicators). We apply the indicators to assess the following: (1) staff actions prior to the use of force, including whether officers contributed to the need for force and used de-escalation techniques; (2) whether staff used reasonable force and complied with training requirements for methods of deployment; (3) how well staff complied with decontamination requirements after using chemical agents; (4) how well staff followed requirements to medically evaluate each inmate involved in a use-of-force incident; (5) how well staff complied with requirements to supervise an inmate in restraints or a spit hood following a use-of-force incident; (6) how well staff who used force documented their actions in the required report following an incident; (7) how well staff who did not use force documented their actions and observations in the required report following an incident; (8) how well staff conducted video-recorded interviews of inmates alleging unnecessary or excessive force; (9) how well staff conducted inquiries following an incident in which an inmate sustained serious or great bodily injury that may have been caused by staff's use of force; (10) how well the institutions reviewed and evaluated each incident; and (11) how well the department's executive level committee reviewed required incidents.

For this reporting period, we monitored 2,296 of the department's 9,692 use-of-force incidents and concluded that the department's performance was overall *satisfactory*. We assessed the department's performance as *superior* in 24 incidents, *satisfactory* in 2,063 incidents, and *poor* in 209 incidents. In the 24 incidents in which we assessed the department's performance as *superior*, the staff performed exceptionally well in multiple areas, such as, attempting to de-escalate the situation prior to using force, decontaminating involved inmates and the exposed area following the use of chemical agents, and describing in the required reports the force used and observed. In the 209 incidents in which we assessed the department's overall performance as *poor*, we identified multiple failures within a single incident, such as not following decontamination protocols after using chemical agents, medical staff not evaluating inmates as soon as practical following an incident, and the levels of review failing to identify and address policy violations. The incidents in which we assessed the performance as *poor* also included

incidents in which we identified a single violation that was particularly egregious, such as officers using unnecessary force or staff failing to recognize and address an inmate's allegation of unreasonable force.

The department performed satisfactorily prior to the use of force, but we identified some instances in which officers had the opportunity, but did not attempt to de-escalate a potentially dangerous situation prior to using force. Also, similar to our prior reports, we identified several incidents in which an officer's actions unnecessarily contributed to the need to use force. During this period, we identified that staff's actions (or failure to act) contributed to the need to use force in approximately 3 percent of the incidents we monitored, representing an increase from the approximately one percent of the incidents in our prior report.

We found that, overall, the department performed satisfactorily during the actual use of force, but, similar to our prior reports, we identified some instances in which officers failed to describe an imminent threat to justify the force used, leading us to conclude that the force was unnecessary. The number of instances rose from approximately 1.5 percent of the incidents in our prior report, to approximately 2.2 percent of the incidents in this reporting period.

We assessed the department's performance in several areas following the use of force, including staff's compliance with the requirements to decontaminate inmates and affected areas after using chemical agents. We found that staff performed well in decontaminating involved inmates, but noted several instances in which staff did not adequately decontaminate a housing unit or offer decontamination to uninvolved inmates in the area. We also found that institutions inconsistently interpreted the requirement to decontaminate a housing unit, with some believing that the requirement does not extend to other indoor areas, such as classrooms and gymnasiums. Consequently, we provide a recommendation to the department to implement a policy which clearly requires decontamination of all indoor areas.

The department performed satisfactorily overall when writing reports following an incident and describing, among other things, the inmate's actions which led to the force and the force used and observed. We found that institutions inconsistently interpreted the report writing requirements when considering which elements are required in a report. Accordingly, we recommend that the department implement an unambiguous policy to clearly state the required elements for each use-of-force report.

One area of concern we identified is the quality of the reviews conducted by supervisors and managers at the institutions. The review process for each incident involves a minimum of five levels of review, during which each reviewer is required to review and evaluate staffs' actions and identify policy deviations. We found that supervisors and managers often failed to identify and address policy violations, creating an

inefficient process and leading us to question whether the supervisors and managers require additional training or whether they merely neglect their duty to make a good faith effort to review each incident thoroughly. Consequently, we provide a recommendation to the department to track the individual reviewers and impose progressive discipline on those who do not fulfill their duty.

Finally, the department's policy requires that incidents within certain categories, such as an officer's use of force causing serious bodily injury to the inmate, be reviewed at a higher level after the institution's review. We found that the department's Division of Adult Institutions reviewed only 75 percent of the incidents that we believed met these criteria. In addition, the department reviewed only 62 percent of the incidents within the required 60-day time frame. The department's Division of Juvenile Justice reviewed all of the incidents that met these criteria, but unlike the Division of Adult Institutions, there is no requirement for its higher-level committee to review the incidents within a certain time frame. Therefore, we recommend that the department implement a policy requiring this review be completed within a specified time frame to ensure the higher-level committee reviews these more significant incidents without undue delay.

Use-of-Force Statistics, 2019

The OIG monitored 2,296 of the 9,692 use-of-force incidents that occurred (24 percent).

The OIG attended 973 of the 1,861 review committee meetings (53 percent).

Approximately 92 percent of the use-of-force incidents we monitored (2,125 of 2,296) occurred at the adult institutions and contract facilities housing adult inmates, with the remainder involving juvenile facilities (136), parole regions (19), and the Office of Correctional Safety (16).

Approximately 35 percent of the incidents we reviewed occurred at one of only five state prisons: Salinas Valley State Prison (215); California State Prison, Sacramento (206); Kern Valley State Prison (190); High Desert State Prison (104); and California State Prison, Corcoran (89).

The 2,296 incidents we monitored involved 7,717 applications¹ of force. Chemical agents² accounted for 3,511 of total applications (45 percent), while physical strength and holds accounted for 2,713 (35 percent). The remaining 19 percent of force applications consisted of options such as less-lethal projectiles, baton strikes, tasers, and firearms.³

1. The number of times a staff member used a force option in an incident; e.g., two baton strikes in one incident counts as two applications.

2. Chemical agents are described in detail in the force options section, beginning on page 6.

3. Percentages may not sum to 100 due to rounding.

Introduction

Background

Nearly 25 years ago, in the class-action lawsuit *Madrid v. Gomez*, the federal court found, among other things, that officials with the California Department of Corrections⁴ (the department) “permitted and condoned a pattern of using excessive force, all in conscious disregard of the serious harm that these practices inflict” in violation of the Eighth Amendment of the United States Constitution.⁵

As a result of those findings, in 2007, the Office of the Inspector General (OIG) began monitoring the department’s use-of-force review process. In 2011, after the department made significant improvements to reform its use-of-force review and employee disciplinary processes, the federal court dismissed the case. The OIG, however, has continued monitoring these processes. This report includes use-of-force incidents that occurred in 2019, and presents our analysis of how well the department followed its own policies and training.

Use-of-Force Options

Inmate behavior can be unpredictable, and at times, departmental staff must use force to gain inmates’ compliance to ensure the safety of other inmates or staff. According to departmental policy, when determining the best course of action to resolve a particular situation, staff must evaluate the totality of the circumstances, including an inmate’s demeanor, mental health status and medical concerns (if known), and the inmate’s ability to understand and comply with orders. Policy further states that staff should attempt to verbally persuade, whenever possible, to mitigate the need for force. When force becomes necessary, staff must consider specific qualities of each force option when choosing among options to use, including the range of effectiveness of the force option, the level of potential injury, the threat level presented, the distance between staff and the inmate, the number of staff and inmates involved, and the inmate’s ability to understand.⁶ Departmental policy includes a number of force options, which are described in further detail on the following pages.

4. In 2005, the California Department of Corrections was renamed the California Department of Corrections and Rehabilitation.

5. *Madrid et al. v. Gomez (Cate) et al.*, 889 F. Supp. 1146 (N.D. Cal. 1995), January 10, 1995.

6. California Department of Corrections and Rehabilitation, Department Operations Manual (hereafter referred to as DOM), Section 51020.

Chemical Agents

The department has three approved types of chemical agents: chloroacetophenone (CN), orthochlorobenzalmalononitrile (CS), and oleoresin capsicum (OC or pepper spray). Each type has specific training requirements, and each type causes different physiological reactions. Of the three types, pepper spray is the most common type of chemical agent used by officers during use-of-force incidents, while CS is only authorized in limited circumstances. The chemical agents provide officers the ability to use force while maintaining distance from the threat, such as a group of fighting inmates.

Figure 1.
Delivery Methods
for Deploying Chemical Agents

Aerosol

Chemical agent aerosols operate similarly to a can of spray paint. A pressurized gas disperses the chemical agent in a liquid stream or mist. This is the most common method of pepper spray deployment by officers.



Pyrotechnics

Chemical agents in a solid state are always dispersed using a pyrotechnic device and are generally for use only in large outdoor areas due to potential fires.



Blasts

CS and OC may be dispersed by a blast grenade that spreads the chemical agent over an area.



Source: The California Department of Corrections and Rehabilitation. See Table 1, next page, for additional source information.

In Table 1 below, we identify the more common types of chemical agents used by departmental staff, with training requirements regarding distance, target areas, and area usage. Deploying chemical agents at a shorter distance than the recommended minimum creates the potential for injury to inmates' eyes, and also increases the likelihood of the chemical agent splashing back and exposing staff. Recommended target areas ensure maximum effectiveness.

Table 1. Chemical Agents

Type	Minimum Distance Requirements	Deployment / Target Areas	Indoor / Outdoor	Common Uses
MK9 pepper spray stream	6 feet	Facial area: specifically the eyes, forehead and brow	Both	Inmate fights, attacks on staff
MK9 pepper spray vapor	No distance	Disperse in the area of the inmate	Indoor	Cell extractions
MK46 pepper spray	12 feet	Facial area	Both	Larger scale incidents, such as riots
Blast grenades	No distance	Deployed underhand (similar to bowling)	Both	Inmate fights or riots

Source: Chemical Agents: Instructor Guide—Version 2.0, Basic Correctional Officer Academy, Office of Training and Professional Development (Sacramento: California Department of Corrections and Rehabilitation, June 2014).

Hand-Held Baton

Shown below, a hand-held expandable baton is a tool normally issued as a use-of-force option to officers assigned to positions with direct inmate contact. The hand-held baton is an impact weapon designed to strike or jab an inmate in close proximity while the baton is in an opened or closed position.



Source: Expandable Baton: Instructor Guide—Version 1.1, Basic Correctional Officer Academy, Office of Training and Professional Development (Sacramento: California Department of Corrections and Rehabilitation, October 2013).

Departmental training includes eight different types of strikes and four jab techniques. The training also includes specific target areas with varying levels of potential trauma. The color-coded trauma chart (illustration, right) shows the different target areas, with blows to the green area resulting in the minimal level of trauma, those to the yellow area resulting in a moderate to serious level of trauma, and those to the red area resulting in the highest level of trauma. The red areas are not authorized for blows unless the criteria for deadly force is met.



Source: The California Department of Corrections and Rehabilitation.

Physical Strength and Holds

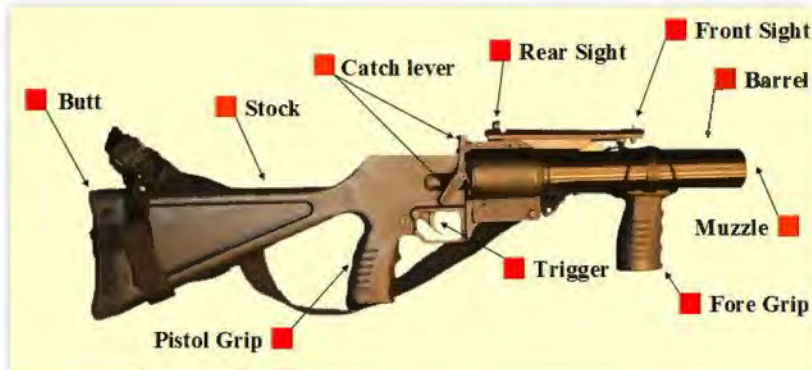
The department defines the use of physical strength and holds (or physical force) as “any deliberate physical contact, using any part of the body to overcome conscious resistance. A choke hold or any other physical restraint which prevents the person from swallowing or breathing shall not be used unless the use of deadly force would be authorized.”⁷ Physical strength and holds encompass a wide variety of techniques trained by the department, including:

- Control holds, which officers may use to maintain control of a resistive inmate during an escort;
- Takedown techniques, which may be used to force an inmate to the ground; and
- Punches and kicks, which officers may use in self-defense when attacked by an inmate.

7. DOM. Section 51020.5

Less-Lethal Weapons

Departmental policy defines less-lethal weapons as “any weapon that is not likely to cause death. Shown below, a 37mm or 40mm launcher, and any other weapon used to fire less-lethal projectiles, is a less lethal weapon.” The launcher has the appearance of a firearm, but is designed to fire “less-lethal projectiles.” These weapons are not designed to be deadly, but departmental training notes that “it must be understood that they can cause serious injury or even death.”⁸



Source: The California Department of Corrections and Rehabilitation.

The training guidelines for the launcher identify “zones,” or target areas. The only authorized target area during less-lethal situations is Zone 1. Zones 2 and 3 are not authorized unless deadly force is authorized.⁹

- Zone 1, which includes the legs and buttocks;
- Zone 2, consisting of skeletal and medium muscle groups, including shoulders and arms, and
- Zone 3, which consists of the head and neck, chest, solar plexus, groin, spine, and lower back.

The less-lethal launcher may be fired from the ground, but it is more typically used by officers assigned to an elevated post, such as a housing unit control booth or an observation tower on an exercise yard.

Figure 2 on the next page depicts three authorized impact munition projectiles designated for use in a less-lethal launcher.

8. Impact Munitions training manual, prepared by the department’s Office of Training and Professional Development, Basic Correctional Officer Academy, which cites: “Zone 2 is not an approved target zone in less-lethal situations because it was found that while targeting Zone 2, the dynamics of the situation resulted in frequent Zone 3 strikes.” (Sacramento: California Department of Corrections and Rehabilitation, April 2013.)

9. Ibid.

Figure 2.

Impact Munition Projectiles Designated for Use in a Less-Lethal Launcher

Stinger Rounds

Stinger rounds have multiple rounds of either .32 or .60 caliber rubber balls, which are authorized as a direct impact munition, i.e., fired directly at the inmate, with an effective range of 10 to 40 feet.



Baton Rounds

Baton rounds have multiple payloads of three projectiles made from foam, rubber, or wood. Foam baton rounds are designed as a direct impact round, while rubber and wood rounds are indirect rounds, i.e., fired in front of the inmate, designed to skip off the ground prior to impacting the target inmate.



Sponge Rounds

Sponge rounds are single rounds designed as direct impact munitions with an authorized range of 10 to 105 feet.



Source: The California Department of Corrections and Rehabilitation.

Table 2. Authorized Munition Projectiles for Less-Lethal Force

Round Type	Direct / Indirect	Minimum / Maximum Distance	Authorized Target
Stinger round	Direct	10–40 feet	Zone 1
Baton round (foam)	Direct	10–40 feet	Zone 1
Baton round (wood/rubber)	Indirect	Maximum 60 feet	3 feet in front of target from an elevated post
Sponge round	Direct	10–105 feet	Zone 1

Source: The California Department of Corrections and Rehabilitation.

Lethal Weapons

A firearm is a lethal weapon because it is used to fire lethal projectiles. A lethal weapon is any weapon whose use is likely to result in death.¹⁰ When presented with a situation in which deadly force is authorized, an officer may aim and fire a lethal weapon directly at the inmate, or the officer may fire a *warning shot*, which is a lethal round fired in a safe area of the institution, such as the side of a building or an unoccupied area on an exercise yard.

10. DOM, Section 51020.5.

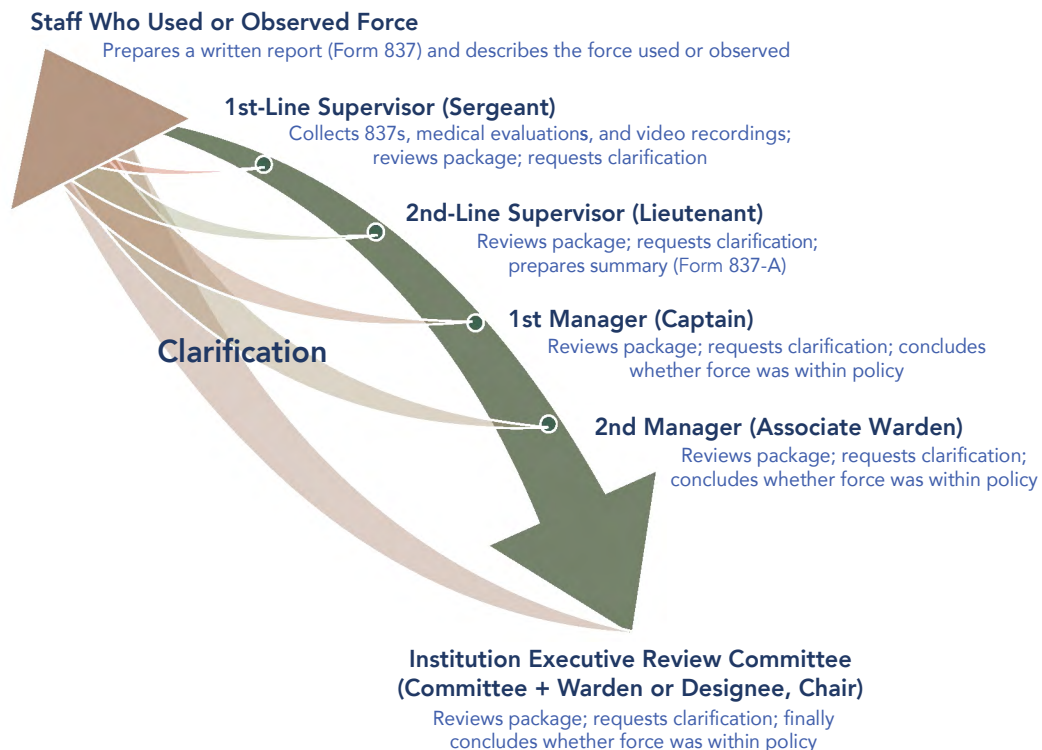
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Reporting and Review Requirements

The department is divided into different divisions, including the Division of Adult Institutions, the Division of Juvenile Justice, and the Division of Adult Parole Operations. A separate director oversees each division.

The department's use-of-force policy requires staff to complete a thorough, multistep process to review and evaluate all uses of force. The review process involves a minimum of five levels of supervisory and managerial review and, on those occasions when staff use deadly force or cause serious injuries, another review at the department's executive level. This review process may involve more than a dozen individuals for every incident. The department generally requires that the review process be concluded within 30 days of the incident, given the critical nature of these issues and the severity of the potential negative outcomes.

Figure 3: Flowchart Depicting the Division of Adult Institutions' Use-of-Force Review Process



Source: The Office of the Inspector General's analysis of the California Department of Corrections and Rehabilitation's review process.

The review process for the Division of Adult Institutions¹¹ begins after any use of force: departmental policy requires that staff who use or observe force submit a written report prior to being relieved from duty at the end of the working shift. In general, reports should include a description of the inmate's (or inmates') actions and the staff member's (or members') perception of the threat that led to the use of force, a description of the specific force used or observed, and a description of the inmate's level of resistance. The policy also requires that medical personnel evaluate and assess the extent of any injuries sustained during the event and thoroughly document their medical evaluation.

The incident response supervisor (typically a first-line supervisor, such as a sergeant) is responsible for collecting all the reports from staff who may have used or observed force. During this first level of review, the supervisor determines whether the reports contain the necessary information, then forwards the reports, including any medical assessments, to the next level of review.

At the second level of review, the incident commander (typically a second-level supervisor, such as a lieutenant) must review all the reports for quality, accuracy, and content. The incident commander may ask staff to submit additional information if he or she determines the initial staff reports were unclear or incomplete in their descriptions. The incident commander is also responsible for providing an overall summary of the incident based on all reports submitted by staff and then analyzing actions taken during the use of force to determine whether such actions complied with policy and training. The incident commander then submits the incident package to the next reviewer.

At the third and fourth levels of review, managers who are at the captain and associate warden levels, respectively, review the incident package for content and sufficiency, and may request that staff clarify their individual reports. Each of these reviewers, in turn, independently determines compliance with both policy and training and submits the reports to the next level of review.

The fifth level of review occurs at the institution's executive review committee meeting, which is chaired by the warden or chief deputy warden. Typically, institutions hold these meetings once per week. Other institutional managers, in addition to a health care representative and, under certain circumstances, a mental health practitioner, also attend these meetings. The institution's executive review committee reviews every reported use-of-force incident to determine whether each application of force was reasonable under the circumstances and whether staff complied with departmental policies and training. This committee

11. The review process is similar for the Division of Juvenile Justice and the Division of Adult Parole Operations.

also reviews every allegation of excessive or unnecessary force, which may arise either directly in connection with use-of-force incidents or via inmates reporting through a separate process.

During these meetings, if the institution's executive review committee determines that staff reports remain unclear, *even after the four previous levels of review*, its members may request additional clarification from respective staff or conduct an internal fact-finding inquiry and re-review the incident at a subsequent meeting. Ultimately, the institution executive review committee chair (the warden or chief deputy warden) determines whether the force used and the staff's actions were within policy.

If the chair determines that staff actions were out of policy, he or she may order corrective action, which could include training, a letter of instruction, or counseling. For more serious policy violations (or repeated violations), the chair may refer the matter to the department's Office of Internal Affairs for an investigation or approval to address the allegations without an investigation.

Levels of Review: Adult Institutions

Institution Executive Review Committee: This is an institution's review committee, which is the primary committee level of review for use-of-force incidents occurring within the Division of Adult Institutions. For each adult institution, an institution's executive review committee reviews every use of force, except those involving deadly force. This committee is chaired by the warden (or his or her designee, such as a chief deputy warden). The committee also includes an institution's associate wardens, captains, and health care representatives. Committees at each institution meet regularly, depending on the volume of use-of-force incidents, to discuss the merits of the force used, and to determine whether staff followed policies and procedures when using force. Departmental policy generally requires the committees to review each incident within 30 days of occurrence.

Department Executive Review Committee: The department groups adult prisons into different collectives of institutions, called *missions*, with a separate associate director assigned to oversee each mission. The principal missions in the Division of Adult Institutions are *Female Offender Programs and Services/Special Housing*, *General Population*, *Reception Centers*, and *High Security*.

Each mission has a committee of staff selected by, and that includes, the associate director of the respective mission in which the force occurred. This committee reviews incidents in which serious bodily injury could have been caused by the use of force and incidents involving a warning shot from a lethal weapon. In addition, this committee may

review any incidents referred by a warden or otherwise requested by the associate director of the mission. To reduce the duplication of work, this committee will not review incidents for which the Office of Internal Affairs has completed an investigation.¹² The department's policy allows this committee up to 60 days to complete its review.¹³

Levels of Review: Juvenile Facilities

Force Review Committee: For each of the juvenile facilities,¹⁴ a force review committee reviews every use of force. The review committee is a multidisciplinary team at each facility tasked with evaluating use-of-force incidents to identify effective and ineffective intervention techniques, with the goal of reducing the use of force. The committee is chaired by the superintendent (or his or her designee, such as an assistant superintendent or chief of security), and includes program administrators, treatment team supervisors, a training officer, and health care representatives. As with the adult committees, the juvenile committees meet regularly to ensure each incident is reviewed within 30 days of occurrence, as required by policy.

Division Force Review Committee: The Division Force Review Committee is a headquarters-based multidisciplinary team of representatives whom the director of the Division of Juvenile Justice designates to ensure employees act in accordance with the crisis prevention and management policy. This committee reviews a minimum of 10 percent of all use-of-force incidents that the Force Review Committee at each facility evaluates to provide another level of review and assess compliance with the department's policies, procedures, and training.

Levels of Review: Adult Parole Operations

Field Executive Review Committee: There are two parole regions, a northern region and a southern region. For the two parole regions, a field executive review committee reviews every use of force and is chaired by the regional parole administrator (or his or her designee, such as a chief deputy). Normally, the committee consists of the chair, one other manager, a supervising training coordinator, and a use-of-force coordinator. The department's policy generally requires the committees to review each incident within 30 days of occurrence.

12. Memorandum, "Revised Department Executive Review Committee Expectations" from the department's director, Kathleen Allison, September 20, 2017.

13. DOM, Section 51020.19.6.

14. The Division of Juvenile Justice has different use-of-force policies, procedures, and training from those of the Division of Adult Institutions.

Deadly Force (Statewide)

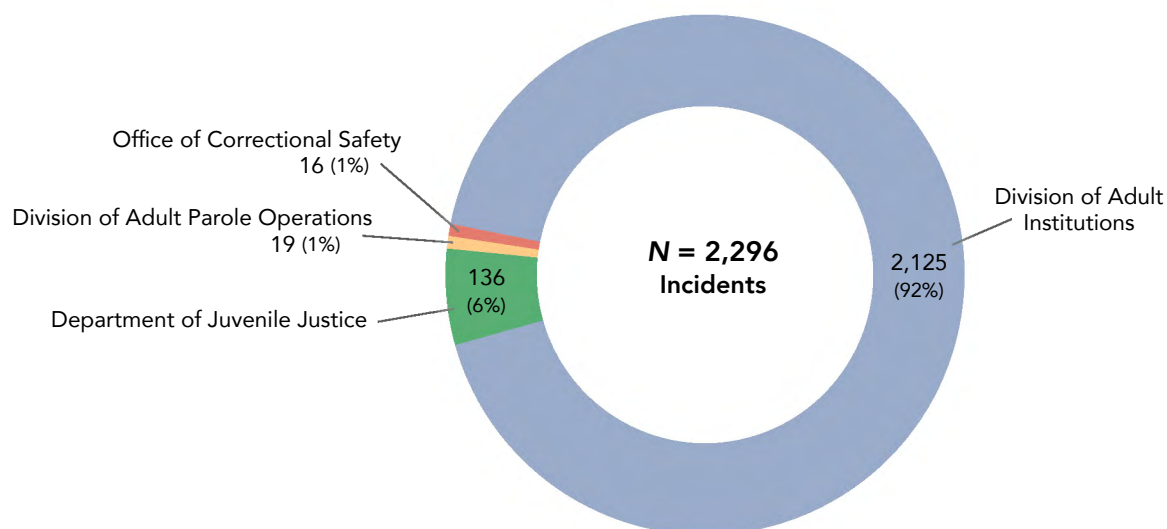
Deadly Force Review Board: The Office of Internal Affairs conducts criminal¹⁵ and administrative investigations into every use of deadly force (except for certain types of warning shots inside of an institution) and every death or great bodily injury that could have been caused by a staff use of force, regardless of whether the incident occurred in an institutional or community setting. The department's Deadly Force Review Board subsequently reviews these incidents. The board consists of at least four members, three of whom are law enforcement experts outside of the department and one of whom is a high-ranking official from the department. As part of its disciplinary monitoring function, the OIG monitors the Office of Internal Affairs' deadly force investigations, as defined above, and subsequently participates in the board's review in a nonvoting capacity. The OIG reports on its monitoring of these incidents in a separate report, the OIG's Discipline Monitoring Report, issued semiannually.

Number of Use-of-Force Incidents and Type of Force Applied

We reviewed 2,296 of the 9,692 use-of-force incidents that occurred within the department between January 1, 2019, and December 31, 2019. The majority of the incidents occurred at adult institutions (2,125), with a smaller share occurring in juvenile facilities (136) and within the communities where offenders were on parole (19) (Figure 4 on the next page). We also reviewed a few incidents of force applied by the department's Office of Correctional Safety (16), which acts as a liaison with other law enforcement entities and apprehends fugitives in the community.

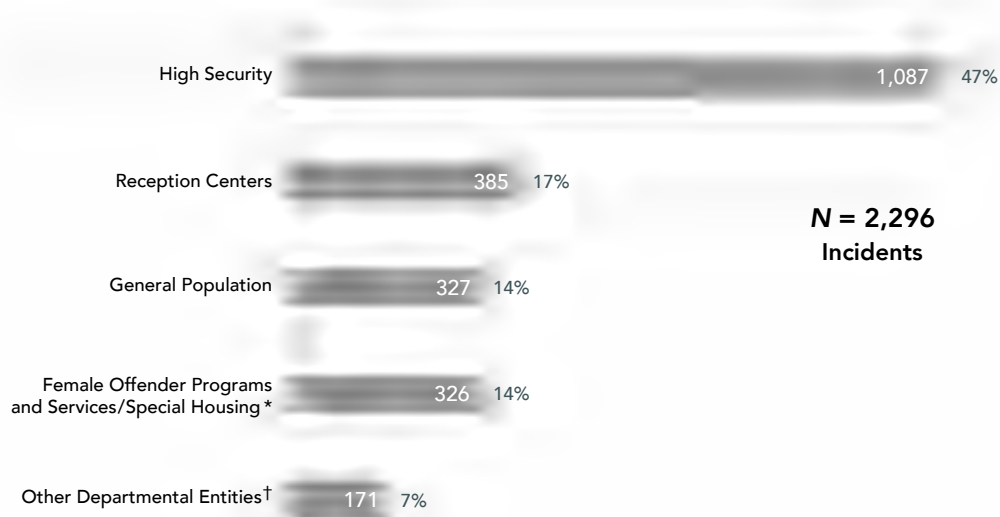
15. In some instances of deadly force, an outside law enforcement agency may conduct a criminal investigation. In those cases, the Office of Internal Affairs will not conduct a criminal investigation.

Figure 4. Distribution of the 2,296 Use-of-Force Incidents the OIG Monitored by Division and Other Entities



Source: The Office of the Inspector General Tracking and Reporting System.

Among the 2,125 incidents we monitored that occurred within the Division of Adult Institutions, the vast majority of incidents took place at the institutions within the categories *High Security mission* (1,087), followed by *Reception Centers and Fire Camps* (385), *General Population* (327), and *Female Offender Programs and Special Services* (326). The category *Other Departmental Entities* (171) includes the Division of Juvenile Justice, Division of Adult Parole Operations, and the Office of Correctional Safety (Figure 5).

Figure 5. Use-of-Force Incidents the OIG Monitored by Mission and Other Entities

* The mission encompassing the category of female offender programs and services/special housing facilities includes contract facilities that are located both in and outside California.

† Other Departmental Entities includes the Division of Adult Parole Operations, the Division of Juvenile Justice, and the Office of Correctional Safety.

Note: Percentages may not sum to 100 percent due to rounding.

Source: The Office of the Inspector General Tracking and Reporting System.

Table 3. Number of Incidents the OIG Monitored by Departmental Entity

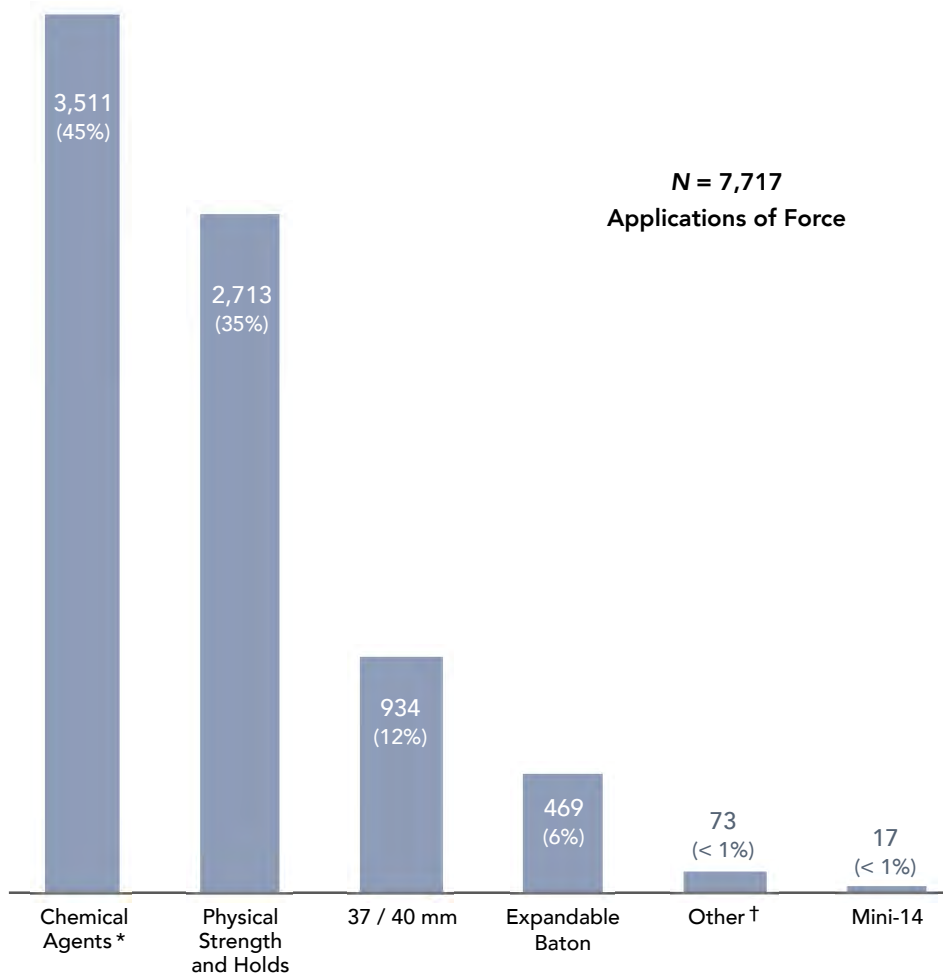
Departmental Entity	Number of:			
	Use-of-Force Incidents	Applications of Force	Staff Who Applied Force*	Inmates, Youth, or Parolees to Whom Force Was Applied*
Adult Institutions	2,092	7,056	5,078	3,914
Contract Beds Unit: In State	22	77	41	34
Contract Beds Unit: Out of State	11	58	23	42
Juvenile Facilities	136	435	298	385
Parole Regions	19	44	40	19
Office of Correctional Safety	16	47	29	16
Totals	2,296	7,717	5,509	4,410

* The OIG counted the name of each staff member and inmate every time they were involved with a use-of-force incident. Therefore, we counted several staff members and inmates more than once.

Source: The Office of the Inspector General Tracking and Reporting System.

As part of the 2,296 use-of-force incidents that we monitored, staff members used 7,717 applications of force. The most common force option staff members used was chemical agents (3,511), which accounted for 45 percent of the total applications of force, followed by physical strengths and holds (2,713), at 35 percent. Staff members used other force options less frequently, such as less-lethal projectiles (934), batons (469), other forms of force, such as a shield, nonconventional force, tasers (73), and the Mini-14 rifle (17) (Figure 6).

Figure 6. Distribution of the Applications of Force in 2,296 Use-of-Force Incidents



* Chemical agents include oleoresin capicum (OC), CN gas, and CS gas.

† Other includes the use of a shield, nonconventional uses of force, and a taser.

Note: Percentages may not sum to 100 percent due to rounding.

Source: The Office of the Inspector General Tracking and Reporting System.

Scope and Methodology

Scope

In this report, the OIG presents its evaluation of the use-of-force incidents that occurred between January 1, 2019, and December 31, 2019. To evaluate the effectiveness of the department's process of handling use-of-force incidents and its compliance with policies and procedures, our staff reviewed various rules and regulations relevant to the department's use-of-force practices. We also reviewed the department's use-of-force policy and related training modules and other applicable operational policies. To further understand the department's procedures, we also observed use-of-force training at some institutions.

The OIG reviewed and analyzed 2,296 of the 9,692 use-of-force incidents that occurred within the department between January 1, 2019, and December 31, 2019. To reach this number, we randomly selected 1,079 incidents and used our discretion to select another 1,217 incidents. We selected incidents based on the nature of the incident (e.g., serious bodily injury to an inmate caused by force, a riot, a reported force incident involving an allegation of unnecessary or excessive force), and the workload of our inspectors. Inmates alleged unnecessary or excessive force in 235 of the 2,296 incidents that we monitored. Our review of the allegations in these incidents focused solely on the video-recorded interview requirements following the allegation, rather than the adequacy of the department's inquiry into the allegations.

Our inspectors visited every adult prison and juvenile facility,¹⁶ as well as the northern and southern parole regions, and attended 933 of the 1,801 institutions' review committee meetings (52 percent) to monitor incidents that occurred in 2019.¹⁷ Although OIG inspectors served as nonvoting attendees at these committee meetings, they provided real-time feedback and, when necessary, recommendations on compliance-related matters to committee chairs.

To determine whether the department executive review committees (for adult institutions) and the department force review committees (for juvenile facilities) properly assessed force incidents, inspectors attended 40 of the 60 meetings (67 percent), during which the committees reviewed incidents that occurred in 2019. As noted in the footnote above, some of these meetings occurred in early 2020.

16. The department currently operates 35 adult institutions and three juvenile facilities. A committee in the department's headquarters office reviews use-of-force incidents from all contract facilities.

17. Since departmental policy requires that the review committees review each incident within 30 days from the date of the incident, some of the meetings we attended occurred in 2020. For instance, if one of the incidents we monitored occurred in December 2019, we may have attended the meeting in January 2020.

Methodology

The OIG monitors the department's adherence to its policies and procedures and training concerning use of force and the department's subsequent review process. Commencing with this reporting period, we present our assessment of the department's use-of-force incidents and its subsequent review process using data and information garnered from a new monitoring methodology and tool. The tool divides the department's processes into 11 units of measurement that we refer to as performance indicators, as described below:

- **Indicator 1** addresses how well staff followed policies and procedures prior to the use of force, including whether staff contributed to the need to use force and used proper de-escalation techniques.
- **Indicator 2** addresses how well staff followed policies and procedures during the use of force, including whether force was reasonable and whether staff followed training requirements on methods of deploying force options.
- **Indicator 3** addresses how well staff complied with decontamination policies following the use of force, including whether the affected inmate and area were properly decontaminated.
- **Indicator 4** addresses how well medical staff evaluated inmates following the use of force, including the timeliness of the medical evaluation and the adequacy of the documentation.
- **Indicator 5** addresses how well staff followed policies and procedures when supervising inmates following uses of force, including inmates who required constant or direct supervision while in restraints or in a spit hood.
- **Indicator 6** addresses how well staff who used force documented their actions following the use of force, including circumstances leading up to the force, articulation of the perceived threat, and the force used.
- **Indicator 7** addresses how well staff who did not use force documented their actions following the use of force, including circumstances leading up to the force, articulation of their involvement, and any force observed.

- **Indicator 8** addresses how well staff followed policies and procedures when conducting video-recorded interviews of inmates alleging unnecessary or excessive force.
- **Indicator 9** addresses how well staff followed policies and procedures when conducting inquiries into serious or great bodily injury that could have been caused by staff's use of force, including timeliness of the notification to the OIG and video-recording requirements.
- **Indicator 10** addresses how well the institution reviewed and evaluated the use of force, including the adequacy of each level of review and the decision of the institution's executive review committee.
- **Indicator 11** addresses how well the department reviewed and evaluated the use of force, including the timeliness and adequacy of review by the department's executive review committee.

Concerning each indicator, we developed a series of compliance- or performance-related questions. Our inspectors who monitored the use-of-force incidents collected data to answer the questions. Based on the collective answers, we rated each of the 11 indicators for each incident as *superior*, *satisfactory*, or *poor*.¹⁸ Then, using the same rating descriptors, our inspectors determined an overall rating for each incident they monitored.

The rating for each indicator, and subsequently the rating for the entire incident, is based on the department's compliance with its own policies, procedures, and training concerning the use of force, combined with our opinion regarding the quality of the department's handling of an incident, from the circumstances leading up to the incident, through the various levels of review until a decision by the review committee. We understand that policy or training violations do not necessarily render the department's performance *poor*. However, we may assign a *poor* rating when major or multiple deviations from the process occur, because such deviations could lead to an increased risk of harm to and tension among staff and inmates. On the other hand, we may assign a *superior* rating when, in our opinion, the department performed exceptionally well in multiple or critical areas.

To arrive at meaningful data to monitor during this reporting period and to track over time, we assigned a numerical point value to each of the individual indicator ratings and to the overall rating for each incident.

18. Certain indicators are not applicable for all incidents. For instance, if chemical agents were not one of the force options used, Indicator 3, which assesses decontamination, would not apply. Similarly, if none of the involved inmates alleges unnecessary or excessive force, Indicator 8 would not apply.

The point system is as follows:

Superior	4 points
Satisfactory	3 points
Poor	2 points

We then added the collective value of the assigned points and divided the result by the total number of points possible to arrive at a weighted average score. To illustrate how this scoring method works, consider a hypothetical example consisting of 10 incidents. The maximum point value—the denominator—would be 40 points (10 incidents multiplied by 4 points). If the department scored one superior result, seven satisfactory results, and two poor results, its raw score—the numerator—would be 29 points. To arrive at the weighted average score, we would then divide 29 by 40, yielding a score of 72.5 percent. The formula for the hypothetical situation is given in the equation below.

Equation. Scoring Methodology

$$\frac{[(1 \text{ superior} \times 4 \text{ points}) + (7 \text{ satisfactory} \times 3 \text{ points}) + (2 \text{ poor} \times 2 \text{ points})]}{(10 \text{ incidents} \times 4 \text{ points})}$$

Finally, we assigned a rating of *superior* to weighted averages that fell between 100 percent and 80 percent, *satisfactory* to weighted averages that fell between 79 percent and 70 percent, and *poor* to weighted averages that fell between 69 percent and 50 percent. Thus, using the example above, the summary-level rating would be *satisfactory* because the weighted average score of 72.5 percent was between 79 percent and 70 percent. As we assign a minimum of two points to each rating, the minimum weighted average percentage value is 50 percent.

Results & Percentages		
Superior	Satisfactory	Poor
100%–80%	79%–70%	69%–50%

Monitoring Results

Overall, Even Though the Department Performed Satisfactorily in Its Handling of Its Use-of-Force Incidents, Staff Continue to Comply With the Department's Use-of-Force Policy at a Low Rate

The OIG reviewed and analyzed 2,296 staff-reported use-of-force incidents that occurred between January 1, 2019, and December 31, 2019. These incidents predominantly took place in a prison setting, but some occurred in the juvenile facilities or in the community setting.

Overall, the department determined that its staff completely followed policy in only 1,156 out of the 2,296 incidents that we monitored during this period (50 percent), as depicted in Figure 7 on the following page. In the OIG's opinion, staff committed some type of policy violation in 673 of the incidents in which the department concluded its staff were compliant.

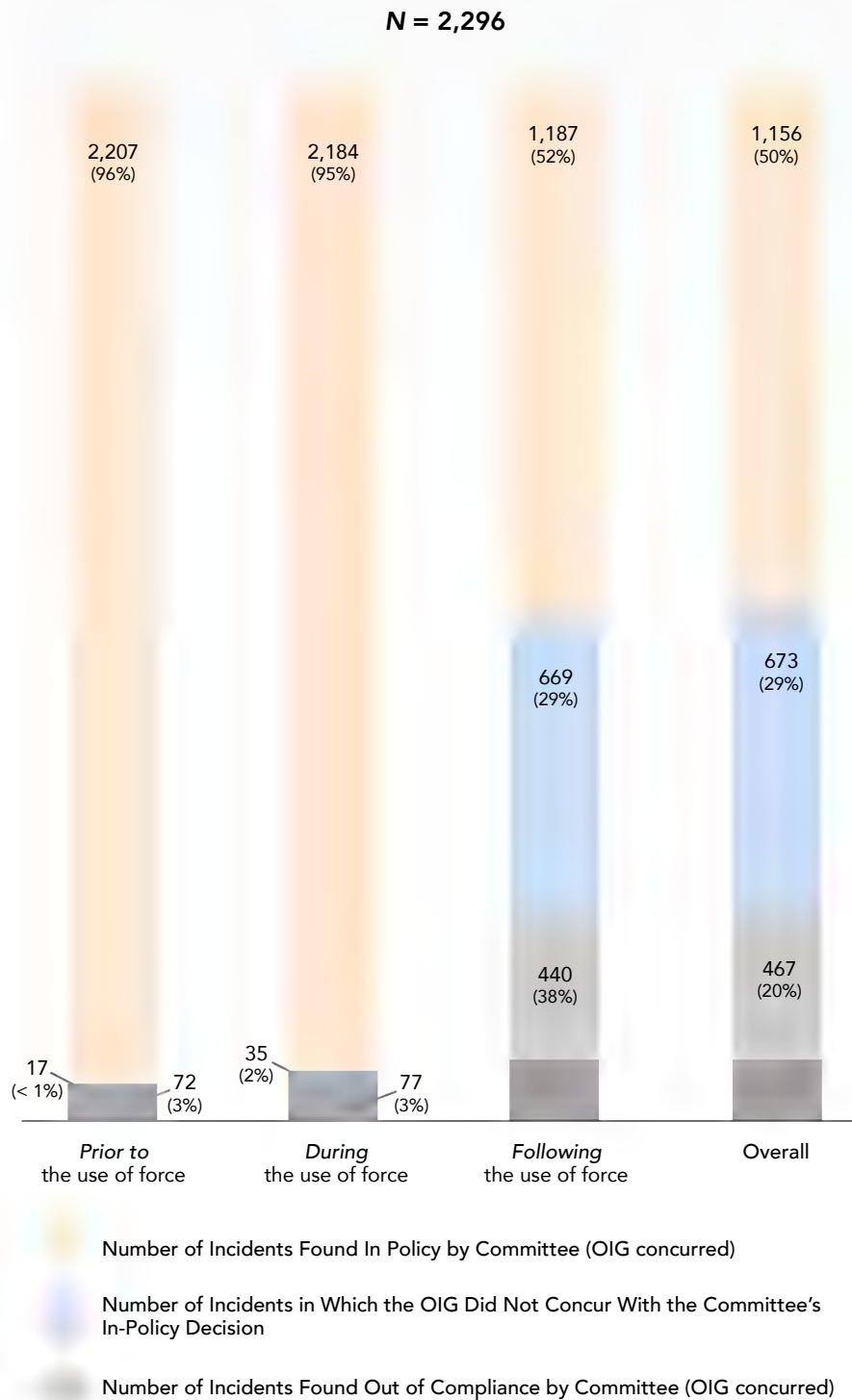
When evaluating force in relation to departmental policy, we evaluate the department's three primary categories: (1) *prior to*, referring to the events leading up to the force; (2) *during*, referring to the actual force; and (3) *following*, referring to the events immediately following the incident through the review process. These categories help provide some measure of context to overall compliance rates.

The department concluded that staff followed policy requirements *prior to* the use of force in 2,207 incidents (96 percent). We mostly agreed with the department's review committees' decisions, but we determined that 17 of the 2,207 incidents had at least one policy violation relevant to this category for which the department took no action.

Regarding the policy requirements *during* the use of force, the department determined that staff followed policy in 2,184 of the incidents, a 95 percent compliance rate. Again, the OIG agreed with most of these determinations, but we also determined that 35 of those 2,184 incidents reflected at least one policy violation relevant to this category that the department did not address.

Finally, the department determined that staff complied with policy requirements *following* the use of force in 1,187 of the 2,296 incidents (52 percent). We concluded that 669 of the 1,187 incidents reflected at least one policy violation relevant to this category that the department failed to address.

Figure 7. Total Number of Incidents Found In and Out of Compliance With the Department's Use-of-Force Policy



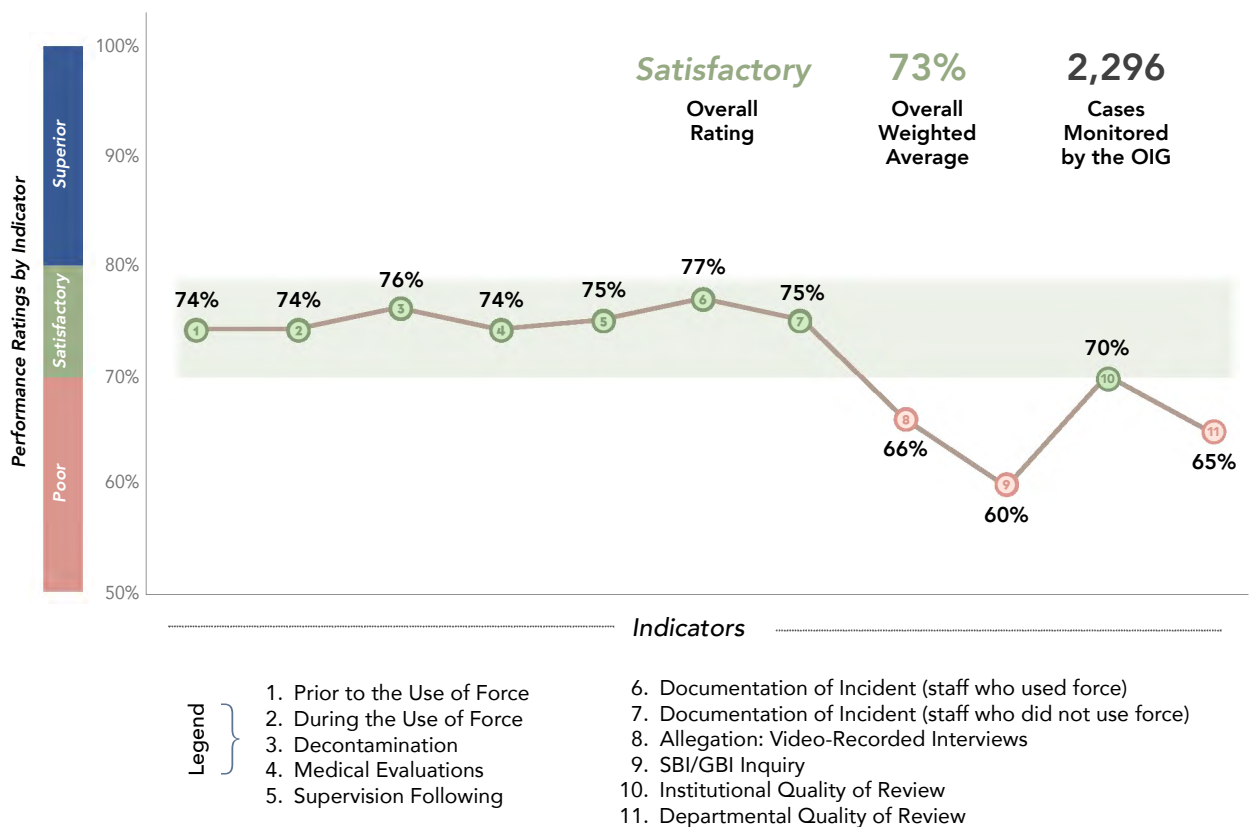
Note: Percentages may not sum to 100 percent due to rounding.

Source: The Office of the Inspector General Tracking and Reporting System.

The Department's Overall Performance in Handling Its Use-of-Force Incidents Was Satisfactory

The OIG determined that the department's overall performance in handling use-of-force incidents was *satisfactory*. We rated the department's overall performance as *superior* in 24 incidents, *satisfactory* in 2,063 incidents, and *poor* in 209 incidents. While we rated the vast majority of the incidents *satisfactory* overall, and we rated eight of the 11 individual indicators *satisfactory*, we found room for improvement in the areas of conducting video-recorded interviews following an allegation of excessive or unnecessary force (Indicator 8), conducting inquiries into serious bodily injury that may have been caused by force (Indicator 9), and the reviews conducted at the department's executive level (Indicator 11).

Figure 8. The OIG's Overall Rating of the Department's Handling of Its Use-of-Force Incidents



Source: The Office of the Inspector General Tracking and Reporting System.

The OIG’s overall assessment of how well the department performed *prior to, during, and following* an incident is based on a cumulative assessment of 11 indicators.¹⁹ Our rating for each of the indicators was based on the answers to specific compliance- or performance-related questions. To answer the questions, we used the requirements outlined in the Department Operations Manual and other established procedures,²⁰ such as the department’s training manuals regarding the different force options.

In assessing the department’s performance *prior to* the use-of-force, we used information from answers to Indicator 1. In Indicator 1, we assess whether staff’s actions may have contributed to the need to use force. There are numerous actions that may contribute to the need to use force that fall outside of the use-of-force requirements, such as failing to properly secure a cell door or failing to properly handcuff an inmate. Because of the seriousness of the issue—staff actions that may have caused the incident—this is the only indicator in which we include our assessment of the department’s actions not directly related to the use-of-force policy.

In assessing the department’s compliance during the use-of-force, we used information from answers to Indicator 2.

We used answers to questions in the remaining indicators (Indicators 3 through 11) to assess the department’s compliance *following* the incident. Indicator 3 applied only if officers used chemical agents. Indicator 8 applied only when an inmate alleged excessive or unnecessary force, while Indicator 9 applied only if an inmate sustained serious or great bodily injury as a result of the force. Finally, Indicator 11 applied only if the incident met specific criteria requiring review by the department’s executive review committee.

We present two incidents to which we assigned an overall rating of *superior*, concluding that staff performed exceptionally well:

- In one incident, officers observed two inmates fighting in the dayroom of a housing unit during the morning medication distribution. One officer deployed two less-lethal direct impact rounds, and another officer deployed one chemical-agent grenade to stop the fight. While the incident itself is a common occurrence, in our opinion, the department performed exceptionally well in four of the eight applicable indicators. Officers and supervisors who provided decontamination thoroughly documented the efforts to decontaminate the inmates and the affected areas. Medical staff evaluated the involved inmates within three

19. Not all 11 indicators are applicable to every incident.

20. DOM, Article 2, Use of Force, Section 51020.1 et seq.

minutes and completed clear and thorough reports concerning the evaluation. Finally, the officers who used and observed force provided detailed, well-written reports to describe the threat and the force used and observed.

- In another incident, an officer discovered an inmate lying on his bunk with a sheet covering his head. The officer clearly described his unsuccessful attempts to establish dialogue with the inmate. The officer called his supervisor and requested a medical response. The responding sergeant also described his efforts to communicate with the inmate prior to ordering an emergency entry to the cell. When the officers entered the cell, the inmate jumped up and attempted to hit the officers with a radio, requiring the use of a shield and physical force to stop the inmate's attack. All involved officers wrote exceptional reports, clearly describing the inmate's actions, the force used and observed, and the effectiveness of the force.

In contrast, we assigned an overall rating of *poor* to the following two incidents:

- In one incident, we rated the department's overall performance *poor* because, in our opinion, officers failed to maintain correctional awareness—a failure that led to a serious assault on staff, and ultimately to a use-of-force incident. In this incident, an inmate in an “out-of-bounds” area on an exercise yard attacked a psychologist as she was reporting to her assigned post. The inmate grabbed the staff member from behind and turned her body toward him as she screamed for help. The inmate continued his attack by groping her breasts and buttocks while she attempted to fend off his attack by striking him in the face with her keys. The inmate overpowered her and forced her to the ground, landing on top of her. A nearby inmate heard the psychologist's screams, ran to her aid, and tackled the other inmate. Officers then responded and used pepper spray after the aggressor presented a threat to the officers. The OIG identified that the officer assigned to provide coverage of the area failed to be cognizant of the inmate's movement after he left the medication line and failed to exercise proper safety precautions. The warden disagreed with our position and declined to take any action against the officer. The warden also disagreed with our recommendation regarding re-evaluating the posting of officers in the area during medication distribution to ensure the safety of staff. Instead, the warden provided the victim of the sexual battery “safety awareness training.”
- In another incident, we rated the department's overall performance *poor* because in our opinion, a youth correctional counselor used unnecessary force on a ward, and we disagreed with the review committee's conclusion that the counselor's

actions were reasonable. In this incident, a ward punched a youth correctional counselor in the back of the head. The counselor gave the ward verbal orders to get on the ground and warned the ward that he would deploy pepper spray. The ward turned away, immediately placed himself in a prone position with his hands behind his back, and apologized to the counselor. The counselor placed handcuffs on the ward. A second counselor arrived and reported that he ordered the ward to cross his legs and stop moving, but the ward refused. The second counselor used physical force by applying a *figure four leg lock*, which is a technique used to control a ward's legs while the ward is on his or her stomach by placing one ankle across the back of the opposite knee, bending the opposite leg at the knee, and forcefully pushing the ward's foot toward his or her buttocks. This technique is only authorized when a ward demonstrates behavior that threatens the safety of the ward or others. We asserted, based on a video-recording of the incident and the officers' reports, that the force was unnecessary because no imminent threat existed to justify it. The facility's force review committee disagreed with us, stating that the application of force would prevent the ward from further assaulting staff. We elevated the matter to departmental executives, who initially upheld the facility review committee's conclusions. Upon the OIG insisting on multiple occasions, the department's executive-level review committee ultimately changed its position and agreed with us that the counselor's force was unnecessary and ordered corrective action. While the department eventually arrived at the same conclusion that we did, we rated this incident *poor* because of the counselor's unnecessary force and the failure by the supervisors and managers at the institution to identify and address the policy violation.

Indicator 1. The Department's Compliance With Policies and Procedures Before the Use of Force Was *Satisfactory*

This indicator measures how well staff followed policies and procedures prior to the use of force; this assessment includes examining whether staff unnecessarily contributed to the need to use force and whether they used de-escalation techniques when appropriate. For planned, controlled uses of force, this indicator also examines how well staff coordinated with medical and mental health care staff prior to the actual force used. In this indicator, however, we do not assess the quality of the documentation subsequently generated.

Among incidents we monitored that occurred between January 1, 2019, and December 31, 2019, we found the department's compliance with its policies and procedures prior to the use of force *satisfactory*. The OIG assessed the department's performance as *superior* in nine incidents, *satisfactory* in 2,192 incidents, and *poor* in 95 incidents.

The number of incidents in which officers may have contributed to the need for using force increased from our prior reporting periods.

The actions of officers in 74 of the 2,296 incidents (3 percent) unnecessarily contributed to the need to use force. Due to the seriousness of the conduct, we rated Indicator 1 *poor* in the 74 incidents in which staff contributed to the need for force. Even though these officers may not have intended to use force at the time of their initial actions, their actions (or failures to act) nevertheless contributed to the outcome, putting themselves, other staff, or inmates in danger. While this percentage remains low, it represents an increase from our prior two reporting periods in which we identified staff contribution in only one percent of the incidents we monitored. We reiterate that the department should examine these events so that it can train staff to better recognize situations prior to incidents and prevent potentially dangerous situations that result.

The review committees identified 62 of the 74 instances and took actions ranging from training to disciplinary action. The OIG identified an additional 12 incidents in which we believed the staff may have contributed to the need to use force, but the review committees disagreed with our position and declined to take any action.

Indicator Rating **Satisfactory**

Superior

9 incidents
Less than
1 percent

Satisfactory

2,192 incidents
96 percent

Poor

95 incidents
4 percent

The following incidents illustrate the seriousness of staff's contribution to the need to use force:

- An officer opened a cell door to speak with an unrestrained inmate, in violation of the institution's local procedure for maximum custody housing, which requires officers to handcuff an inmate prior to opening the cell door. When the door opened, the inmate rushed toward the door and attacked an officer. The officer wrapped his arms around the inmate's torso and forced him to the ground, where the inmate thrashed his body around to avoid the officer's attempts to place him in handcuffs. A responding officer assisted the first officer and punched the inmate one time in the face. The inmate and the first officer sustained minor injuries during the incident. The warden determined that the officer violated the institution's procedure when he opened the cell door without first restraining the inmate; the warden ordered formal counseling for the officer. While we agreed with the outcome, the seriousness of the conduct resulted in a *poor* rating.
- In another incident, officers allowed three unrestrained inmates out of their assigned cells without prior authorization, in violation of the institution's program status procedures that were in place due to ongoing violence among different security-threat groups. The three inmates attacked another inmate with inmate-manufactured weapons, and an officer used pepper spray to stop the attack. The institution transported the injured inmate to an outside hospital for treatment of multiple stab wounds. The warden determined that the officers' negligence in releasing the unrestrained inmates from their cells violated the institution's procedures, endangering staff and inmates, and imposed formal discipline on the three officers. Again, despite the warden's determination, the gravity of the officers' negligence resulted in a *poor* rating.

Some officers did not articulate attempts to de-escalate a potentially dangerous situation prior to using force.

Departmental policy states: "It is the expectation that staff evaluate the totality of circumstances involved in any given situation, to include consideration of an inmate's demeanor, bizarre behavior, mental health status if known, medical concerns, as well as ability to understand and/or comply with orders, in an effort to determine the best course of action and tactics to resolve the situation. Whenever possible, verbal persuasion should be attempted in an effort to mitigate the need for force."²¹

21. DOM. Section 51020.5.

When an imminent threat is not present, effective communication skills are an essential tool for minimizing conflict.

Source: The California Department of Corrections and Rehabilitation,
Office of Training and Professional Development,
T4T – Multiple Interactive Learning Objectives,
approved June 2017.

Of the 2,296 incidents we monitored, we identified 444 in which the involved officers had the opportunity to de-escalate the situation prior to using force. In 23 of those 444 (5 percent), officers did not adequately articulate their attempts.²² We acknowledge that there are likely many instances in which officers successfully de-escalated a situation without needing to use force. However, since our monitoring only focuses on incidents that resulted in the use of force, those successful instances are not reflected here.

Officers complied with policy and training and articulated de-escalation techniques in 421 of the 444 instances in which officers were initially presented with a potential threat and had the opportunity to de-escalate the situation prior to using force (95 percent). Of those 421, we identified nine incidents in which the involved officers performed exceptionally well in their efforts to resolve the situation, resulting in a *superior* rating for Indicator 1 for those incidents, as illustrated in the following example:

- Officers described their interaction with an inmate in a housing unit who was a participant in the department’s mental health delivery system. One of the officers reported that the inmate was not speaking clearly and was not able to put together complete sentences. The officer further articulated that the inmate “appeared agitated as he was tensing his fists, arms, and upper body areas.” The officer clearly described his attempts to de-escalate the situation, without using force, by asking the inmate about his concerns and trying to persuade the inmate to enter a holding cell. The officer also contacted the inmate’s mental health care provider and informed the inmate that the provider would speak with him as long as he entered the holding cell. Ultimately, the officers needed to use physical force to restrain the inmate, but we recognize the officers’ efforts to resolve the situation for approximately seven minutes prior to the need to use force.

22. In the remaining 1,852 incidents we monitored, there was no opportunity to de-escalate the situation prior to using force due to the imminent threat presented to the officer. In these cases, such as an inmate fight or inmate attack on staff, immediate force is appropriate.

Despite the high compliance rate, there is room for improvement. The following are examples from the 23 incidents in which officers were initially presented with a potential threat, and officers did not adequately attempt to resolve the situation:

- An officer confiscated a letter from an inmate and ordered her to move to the line to receive her medication. The inmate refused and demanded that the officer return her letter. The officer again ordered the inmate to proceed to the line for her medication. The inmate refused and sat down. The officer reported that he gave the inmate a direct order to stand up, turn around, and “cuff up,” but the inmate did not comply. The officer then attempted to place the inmate in handcuffs, and after she resisted his efforts, the officer used physical force to apply handcuffs. In this incident, each level of review identified that the officer should have handled the situation differently and should have attempted to de-escalate the situation. The institution’s executive review committee ordered formal counseling for the officer, concluding that the inmate “was agitated and noncompliant, however she did not pose a threat to staff or inmates. Due to an imminent threat not being present you had time to contact your supervisor and request assistance in de-escalating the situation.” We agreed with the committee’s findings.
- In another incident, an officer reported that he placed an inmate, who was a participant in the mental health delivery system, in his assigned cell. As the officer walked away, the inmate began to hit his cell door with his fists, breaking the glass. The officer returned to the cell, opened the door and ordered the inmate to turn around so the officer could place the inmate in handcuffs. The inmate took a fighting stance with his fists up, and the officer pepper sprayed the inmate. The OIG opined that the officer had the opportunity to de-escalate the situation and possibly avoid using force. The warden agreed with our opinion and ordered training for the officer.

The review committees took appropriate action in 13 of the 23 instances, ordering interventions that ranged from training to formal counseling. We identified an additional 10 instances in which we believed the staff had the opportunity to de-escalate the situation, but the review committees disagreed with our position and declined to take any action.

In 2017, the department deployed training to all custodial and noncustodial staff to improve their communication skills and learn when to apply de-escalation techniques. This training is included in the department’s required annual use-of-force training. We encourage the department’s continued use of this training to further its goal of accomplishing custodial functions with minimal reliance on the use of force.

During controlled use-of-force incidents, the department performed well in the planning and coordination with medical and mental health care staff.

The department defines the controlled use of force as “the force used in an institutional or facility setting when an inmate’s presence or conduct poses a threat to safety or security, and the inmate is located in an area that can be controlled or isolated. These situations do not normally involve the imminent threat to loss of life or imminent threat to institution security.” These situations involve advanced planning and organization by custodial, medical, and mental health care staff. A controlled use of force requires both the authorization and the presence of a first- or second-level manager (or administrator of the day during nonbusiness hours) and a video recording of the incident.

A common example of when an institution might authorize a controlled use of force occurs when an inmate refuses to exit his or her cell after being told he or she is transferring to another institution. Policy allows officers to use controlled force to remove the inmate from a cell to facilitate a transfer. Officers may use controlled force when staff must administer medications, provide medical treatment, or complete mandated testing. Compared with immediate uses of force, controlled uses of force occur infrequently (98 percent versus 2 percent, respectively, in the incidents we reviewed this period).

During this reporting period, we monitored 35 controlled use-of-force incidents. We commend the department for complying, in all incidents, with the following policy requirements: an appropriate “cool-down” period for the inmate; intervention by a mental health clinician during the cool-down period; a collaborative effort by custody, medical, and mental health care staff in developing a tactical plan; and a review of the inmate’s health record by a registered nurse.

Nevertheless, we identified at least one deviation from policy requirements in 27 of the 35 incidents. The most common deviations related to the video-recording requirements, as follows:

- The video recording did not display the accurate date and time (21 incidents);
- Staff members failed to introduce themselves on camera (11 incidents);
- Staff did not follow general video-recording requirements (13 incidents); and
- Staff did not wear appropriate safety equipment (six incidents).

Indicator Rating
Satisfactory

Superior

No incidents

Zero percent

Satisfactory

2,228 incidents

97 percent

Poor

68 incidents

3 percent

Indicator 2. The Department's Compliance With Policies and Procedures During the Application of Force Was *Satisfactory*

This indicator measures how well staff followed policies and procedures *during* the use of force; among other considerations, this indicator examines whether staff used reasonable force and whether they complied with specific, objective training requirements for target zones and distance. In controlled use-of-force incidents, we also assessed the department's compliance with strict policy requirements regarding the type and duration of the force.

Among incidents we monitored during this review period, we found the department's compliance with its policies and procedures during the use of force *satisfactory*. We assessed the department's performance as *satisfactory* in 2,228 incidents and *poor* in 68 incidents. We did not assign a *superior* rating to any incidents for this indicator, since we determined whether the force was reasonable and whether the officers complied with the objective requirements.

In some instances, officers did not articulate an imminent threat to justify the force used.

The department allows officers to use immediate force when an imminent threat jeopardizes the safety of persons or compromises the security of the institution. In 51 of the 2,296 incidents (2.2 percent), officers did not adequately articulate an imminent threat, leading us to question whether the force was necessary. While this is a low percentage in relative terms, it represents an increase compared with our last report, in which we determined that officers did not justify the force in 1.5 percent of the incidents.

The department self-identified unnecessary force in 31 of the 51 incidents and took action to address the violations in forms ranging from training to formal discipline. The OIG identified an additional 26 instances in which we believed an imminent threat did not exist to justify the force. In six of the 26 incidents, the review committee agreed with our opinion and concluded the force was out of policy. In the remaining 20 incidents, the committee disagreed with our opinion and found no violation of policy related to the force used. We acknowledge the difficulty of making split-second decisions during potentially dangerous situations; it is much easier to second-guess officers' actions after the fact. Nevertheless, we reiterate that any instance of unnecessary force has the potential to increase tension between staff and inmates, create a culture of mistrust, and expose the department to legal liability. Due to the seriousness of the violation, in all 51 of these incidents, we rated Indicator 2 *poor*.

- In one incident, an inmate locked in a holding cell spat at an officer, striking the officer in the neck and back of the head. The officer turned to the inmate and ordered him to stop spitting.

The officer reported that the inmate pulled down his pants, made a vulgar comment to the officer, and spat in the officer's direction, but did not make contact. The officer then unholstered his pepper spray, and "from approximately 6 feet away, [he] deployed one 2 second burst, aiming at his facial area and making direct contact to his upper torso and face." The inmate then complied with the officer's orders and stopped spitting. The warden determined that the officer's force was unnecessary or excessive based on the lack of an imminent threat to justify using pepper spray on the inmate who was locked in a holding cell. Further, following the initial instance in which the inmate spat on the officer, the officer had the ability to move away from the holding cell, removing himself from the threat of being spat on again. The warden imposed formal discipline on the officer. Although we agreed with the warden's decision to impose discipline, we found the officer's unnecessary or excessive force justified the *poor* rating.

- In another instance, a youth correctional counselor reported that while he was escorting a ward to his room following a fight, the ward attempted to pull away from the counselor's control and run toward other wards in the area. The counselor stated that he "needed to secure him to keep him from attacking a youth." The counselor reported that he then wrapped his arm around the ward's neck and used necessary force to pull him to the ground. While the counselor articulated an imminent threat to justify the use of immediate force, the superintendent determined that the counselor's actions (wrapping his arm around the ward's neck to pull him to the ground) were excessive, and he ordered counseling. As we found in the incident above, while we agreed with the outcome of the incident, we determined the officer's actions during the incident resulted in a *poor* rating for Indicator 2.

In a few incidents, officers used more force than was reasonable to gain control of an inmate.

While officers are authorized to use force to accomplish custodial functions, the force must not be excessive. We identified six incidents in which we believe the officers used more force than was reasonable to accomplish the stated purpose. Any instance of excessive force brings discredit to the officer and the department and exposes both to possible legal consequences.

The hiring authorities determined the officers' actions were excessive in only two of the incidents, declining to take any action in the other four. Due to the seriousness of the conduct, we rated all six of these incidents *poor*.

- In one incident, officers escorted an inmate to an office for an interview with a sergeant. During the interview, the inmate punched an officer in the face, causing other officers to physically force the inmate to the ground. The inmate resisted the officers' efforts to place him in handcuffs by swinging his arms, kicking his legs, and biting one of the officers on his hand. Officers were able to place the inmate in leg restraints²³ and apply one handcuff, but the inmate continued to resist by attempting to stand. A lieutenant ordered one of the eight officers present to stand on the inmate's back to keep the inmate on the ground. The officer reported that she "placed both of my feet on [the inmate's] lower back area and placed my arm onto the office refrigerator in an effort to maintain my balance." This caused the inmate to stop resisting and allowed officers to place the second handcuff on the inmate's wrist. During the institution's review committee meeting, we asserted that the officer's action of standing on the inmate's back appeared excessive due to the potential for causing serious injury. The hiring authority disagreed with our position, concluding that the officer's actions were reasonable and did not violate policy. We elevated the matter to the departmental executive review level, and the committee ultimately affirmed our position and imposed corrective action on the lieutenant.
- In another incident, a doctor ordered an inmate to remain in the institution's medical center for observation. The inmate, who was lying on a gurney and handcuffed behind his back, wearing leg restraints attached to the gurney, became upset and kicked both of his feet toward a sergeant, but did not make contact. The sergeant reported, "to subdue [the inmate's] attack and overcome his continued resistance, I lowered the side rail of the gurney, placed both of my hands on [the inmate's] shoulders and forcefully pulled him off the gurney and to the floor of the exam room. [Inmate] being handcuffed behind his back was unable to break his fall and landed on his face." The inmate sustained minor injuries to his chin. The OIG asserted that the sergeant's actions were excessive under the circumstances. The hiring authority disagreed and found no violation of policy.

23. Leg restraints are similar to handcuffs, but they are designed to be placed around the ankles rather than the wrists.

In nearly all instances, staff complied with zone and distance requirements specified in departmental training.

As described in the “Force Options” section of this report, there are specific zones, or “target areas,” on an inmate’s body and distances from which an officer is permitted to deploy force. For instance, the training curriculum states that officers may deploy a less-lethal direct impact round from a minimum of 10 feet up to a maximum of 105 feet. The only authorized target area with the less-lethal round is below the inmate’s waist. Depending on the projector, there are different minimum and maximum distances for the different chemical agents used by officers, and the target area is generally limited to the intended target’s facial area. There is no minimum distance requirement for an expandable baton since it is designed to be used in close proximity to an inmate, but the department provides a “Trauma Chart” with green, yellow, and red target areas, each with an increasing level of potential trauma (see page 8). Officers are not authorized to target the red areas unless the situation meets the criteria for deadly force. The red areas include the head, neck, spine, solar plexus, and kidneys.

In the 1,496 incidents we monitored in which a force option was used for which the department’s training guidelines specify a minimum and maximum distance, officers complied with the training requirements in 1,476 (99 percent) of the incidents. In 17 incidents, officers deployed pepper spray at less than the minimum distance. In one incident, an officer deployed pepper spray at a distance greater than the maximum effective range, and in two incidents, an officer deployed a less-lethal direct impact round beyond the maximum effective range. We considered these deviations to be minor, and while they warranted training to the involved officers, none rose to the level that would merit a *poor* rating for Indicator 2.

In the 1,606 incidents we monitored in which the force options required a target area, officers targeted the authorized zones in 1,592 (99 percent). Most of the deviations were minor in nature and did not result in a *poor* rating. For example, the department’s training guidelines state that pepper spray “must come into direct contact with the face of the target to be effective.” If officers targeted an inmate’s torso, the force was not in compliance with training, but, more importantly, the force was not used in the most effective manner to stop the imminent threat.

During controlled use-of-force incidents, staff achieved a high rate of compliance with the requirements for deploying pepper spray.

As noted above, departmental policy provides specific requirements regarding the deployment of chemical agents during a controlled use of force, including the following:

- The type of pepper spray projector that may be used;
- The number of seconds that an officer can apply pepper spray;
- The minimum length of time that an officer must wait between applications of pepper spray; and
- The maximum number of pepper spray applications that staff may use on an inmate during an incident.

Of the 35 controlled use-of-force incidents that we monitored, officers used pepper spray in 23 incidents (66 percent). In all 23 of those incidents, staff used an authorized pepper spray projector. In two of the 23 incidents, officers deployed pepper spray for longer than the authorized duration. In both instances, the officer deployed pepper spray for 5 seconds, 2 seconds longer than the duration allowed for that particular type of pepper spray. The review committees at both of the institutions provided training to the respective officers regarding duration requirements. In all 23 incidents, officers waited the appropriate time before deploying pepper spray a second time. Finally, in four of the 23 incidents, staff used more than the maximum number of applications allowed during the incident. Policy allows for two to four total applications of pepper spray during a single incident, depending on the type of projector used.²⁴ In the four incidents, officers used one or two more applications than allowed. In all instances, the respective review committees determined the staff were out of policy, and they provided training.

24. DOM, Section 51020.15.1.

Indicator 3. The Department's Compliance With Decontamination Policies and Procedures Following the Use of Chemical Agents Was *Satisfactory*

Indicator 3 assesses how well staff complied with decontamination policies following the use of force, including whether staff properly offered the affected inmates the opportunity and means to decontaminate themselves, removed any spit masks during inmates' decontamination, and ensured that inmates were not left in a facedown position after being exposed to chemical agents such as pepper spray. This indicator also measures whether staff offered decontamination to nearby inmates and examines how thoroughly staff decontaminated the physical area affected by chemical agents.

Among incidents we monitored during this review period, we found the department's compliance with its decontamination policies *following* the use of chemical agents *satisfactory*. Officers used chemical agents in 1,324 of the 2,296 incidents that we monitored (58 percent). The OIG assessed the department's performance as *superior* in 88 incidents, *satisfactory* in 1,181 incidents, and *poor* in 56 incidents. Based solely on our review of staff reports, we determined that if staff meet the policy requirements or commit only minor deviations, typically the rating will be *satisfactory*. If, in our opinion, staff do an exceptional job of describing in detail the decontamination efforts of the affected inmates and the affected area, we will assign a *superior* rating. Conversely, when the reports lack information regarding the decontamination efforts, making it impossible to determine whether the requirements have been met, we will assign a *poor* rating. Below is a summary of our analysis of the different questions we ask related to decontamination following the use of chemical agents, followed by examples of *superior* and *poor* ratings for Indicator 3.

In the 93 incidents in which we negatively assessed the department in at least one area of the required decontamination, the department failed to take action to correct the deficiency in 51 of the incidents (55 percent).

Staff achieved a high compliance rate with requirements to afford inmates proper decontamination and provide fresh clothing following exposure.

Policy requires that any inmate exposed to a chemical agent be afforded an opportunity to decontaminate as soon as is practical.²⁵ Decontamination to relieve the effects of chemical agents may be accomplished by exposing the inmate to fresh moving air or flushing the affected body area with cool water. Policy further states that inmates exposed to chemical agents shall be allowed to change their clothes as

Indicator Rating
Satisfactory

Superior

88 incidents

7 percent

Satisfactory

1,181 incidents

89 percent

Poor

56 incidents

5 percent

25. DOM, Section 51020.15.4.

soon as practical.²⁶ Lack of proper decontamination may unnecessarily prolong the physiological effects of the chemical agents. Of the 1,324 incidents we monitored in which officers used chemical agents, staff properly decontaminated and provided fresh clothing to the exposed inmates in approximately 97 percent of the incidents. We identified 16 instances in which officers did not document proper decontamination to the inmate and 26 instances in which officers did not document offering clean clothing.

Officers complied with policy requirements regarding the removal of a spit mask during decontamination in almost all incidents.



Source: Image courtesy of Correctional Peace Officers Standards and Training.

Officers may apply a spit mask to an inmate based on specific policy requirements (photo, left).

If officers use a spit mask on an inmate exposed to chemical agents, policy requires that the spit mask be removed during decontamination with water to ensure the inmate is afforded an opportunity to thoroughly rinse the affected area. When decontamination is complete, a new spit mask must be used to prevent re-exposure to the chemical agents. In the 14 incidents we monitored in which a spit mask was used following exposure, officers properly removed the mask in all but one incident.

Most officers performed well in ensuring inmates were not placed face-down longer than necessary following exposure to chemical agents, but we identified a few instances in which inmates were left in a dangerous position longer than necessary.

Policy states, “Once an inmate is exposed to chemical agents . . . staff shall not place them on their stomachs, or in a position that allows the inmate to end up on their stomach, for any period longer than necessary to secure (e.g. handcuff) and/or gain control of the inmate. A prone position makes it difficult for any exposed individual to breathe and may be a contributing factor in positional asphyxia. Positional asphyxia occurs when an individual’s body position interferes with respiration, resulting in death.”²⁷ We primarily relied on photographs and incident videos to identify violations. We identified five incidents for which photographs or video revealed inmates on their stomachs longer than necessary following exposure to chemical agents. While the number is small, each such incident constitutes a significant failure due to the risk of death.

26. Ibid.

27. DOM, Section 51020.16.

In several instances, officers did not describe decontaminating the affected area, any uninvolved inmates in the area, or the location of the incident.

In addition to the requirements to decontaminate inmates directly exposed to chemical agents, policy requires additional steps to ensure that inmates in an adjacent cell or in the general area where chemical agents are used are questioned by custody staff to determine if decontamination is warranted. Policy requires that decontamination of the affected cell and housing unit be accomplished by ventilating the area to remove airborne agents and that visible residue be cleaned by wiping with a damp cloth or mop. Decontamination of the general area is not required for incidents that occur outdoors.

Officers did not properly decontaminate the area or the housing unit in 63 of the 591 applicable incidents (11 percent). The policy requirements specify the decontamination of “the housing unit” but do not address other indoor spaces used by inmates and staff, such as classrooms or medical clinics. Some of the review committees interpret the requirement to include other indoor spaces and expect officers to document efforts to decontaminate those areas as they would a housing unit. Others interpret the policy literally and do not extend the requirement to other indoor areas. Obviously, chemical agent residue that is not properly cleaned may cause the physiological effects to linger unnecessarily. The OIG recommends the department amend its current policy to include a requirement to decontaminate other indoor areas, such as medical clinics and classrooms, following the use of chemical agents.

In many instances, there are no uninvolved inmates in the surrounding area who would require questioning about possible exposure. However, in incidents involving chemical agents in which other inmates are known to be present, such as those occurring on a dayroom floor or in a dining hall, officers are expected to question surrounding inmates regarding possible exposure. Of the 551 incidents in which officers deployed chemical agents with uninvolved inmates in the surrounding area, officers did not question the inmates in 52 incidents (9 percent). The following is an example illustrating staff’s poor performance in this area:

- Two inmates fought in the dayroom of a housing unit as inmates returned to the unit from their morning meal. Responding officers applied pepper spray six times, including one instantaneous blast grenade, to stop the fight. Officers documented removing the involved inmates and providing water to relieve the effects of the pepper spray. However, none of the reports, neither officers’ nor supervisors’ documented questioning inmates in the surrounding area regarding possible exposure. In addition, none of the staff described in their reports any efforts to clean the affected area or ventilate the housing unit.

On the other hand, we identified 88 instances in which staff did an exceptional job describing the efforts to decontaminate affected inmates and areas, earning a *superior* rating for these incidents in this indicator.

- In one example of a *superior* rating, officers deployed multiple applications of pepper spray to stop two inmates fighting on an exercise yard. The sergeant who responded to the incident articulated that he offered all uninvolved inmates in the general vicinity of the fight the opportunity to decontaminate, but the inmates refused. The officers assigned to escort and decontaminate the inmates clearly described the process, including one officer who reported, “I asked [inmate] if he needed to use water to assist in clearing the agents off of him, he stated ‘yes.’ I provided water from a hose in front of D-Facility Library in the grass area by holding hose in a manner that allowed him to place the top of his head, face, neck and upper body area into the stream of water provided. By alternating in facing into the wind and using the stream of water to assist in the removal process for approximately 5 minutes, he stated ‘I feel better. I don’t think I need to use the water anymore.’”
- In another example of a *superior* rating, officers used pepper spray to stop two inmates fighting inside their cell. The sergeant who responded to the incident reported that he questioned inmates in the cells near the incident to determine whether they needed to decontaminate. The officers who provided decontamination to the involved inmates clearly recorded the manner and duration of the decontamination process. One of the officers described that he cleaned the affected cell “with soap and water and the contaminated linens were exchanged for clean linens.” The control booth officer in the building described activating the building’s ventilation system to clear the area of pepper spray.

Indicator 4. The Department's Compliance With Policies and Procedures in Medically Evaluating Inmates Who Were Involved in a Use-of-Force Incident Was *Satisfactory*

Indicator 4 measures how well licensed nursing staff evaluated inmates following the use of force; this includes assessing how promptly nurses conduct medical evaluations after the use of force and how thoroughly nurses document those medical evaluations.

Among the incidents we monitored during this review period, we found the department's compliance with policies and procedures in medically evaluating inmates who were involved in a use-of-force incident was *satisfactory*. The OIG assessed the department's performance as *superior* in 84 incidents, *satisfactory* in 2,021 incidents, and *poor* in 191 incidents.

Indicator Rating
Satisfactory

Superior
84 incidents
4 percent

Satisfactory
2,021 incidents
88 percent

Poor
191 incidents
8 percent

The licensed nursing staff who conduct medical assessments of inmates involved in use-of-force incidents must document any injuries, the injuries' locations, and their sources, if known.²⁸ They also document the incident time and date, the reason for the evaluation, any inmate comments, any decontamination, and the disposition of the examination, using the Medical Report of Injury or Unusual Occurrence form (CDCR Form 7219, Figure 9, right).

Staff's failure to identify and assess inmate injuries in a timely manner can delay necessary medical care. In our assignment of ratings for this indicator, we took into consideration the reasonableness of delays. When force is used, departmental policy requires that "a medical evaluation shall be provided as soon as practical."²⁹ Nursing staff is required to complete the medical report form and submit it to the response supervisor prior to leaving the institution.

Figure 9. Medical Report of Injury or Unusual Occurrence (CDCR Form 7219)

STATE OF CALIFORNIA
MEDICAL REPORT OF INJURY
OR UNUSUAL OCCURRENCE
CDCR 7219 (Rev. 4/13)

DEPARTMENT OF CORRECTIONS AND REHABILITATION
Page 1 of 2

NAME OF INSTITUTION LOCATION OF EVALUATION DATE

REASON FOR REPORT ☐ ALLEGATION ☐ ON THE JOB INJURY ☐ USE OF FORCE ☐ INJURY ☐ OTM RETURNS
☐ UNUSUAL OCCURRENCE ☐ PRE AD/SEG ADMISSION ☐ R&R ☐ OTHER

NAME LAST FIRST CDDC NUMBER PERNR / INST. ID # VISITOR ID # (GOMS)

PLACE OF OCCURRENCE DATE OF OCCURRENCE TIME OF OCCURRENCE TIME SEEN RN NOTIFIED TIME PHYSICIAN NOTIFIED TIME

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE

INJURIES FOUND? YES / NO

Abrasion/Scrub	1
Active Bleeding	2
Broken Bone	3
Bruise/Discolored Area	4
Burn	5
Dislocation	6
Dried Blood	7
Fresh Tattoo	8
Cut/Laceration/Slash	9
Swollen Area	10
Pain	11
Protrusion	12
Puncture	13
Rounded Area	14
Skin Flap	15
Pre-Existing	16
Other	17
	18

Chemical Agent Exposure? YES / NO

Chem. Agent Exposure Area EX

Decontaminated w/ Time? YES / NO / REFUSED

Decontaminated w/ Air? YES / NO / REFUSED

Self-decontamination Instructions given? YES / NO

Staff issued Exposure packet? YES / NO

Q 15 min. check times

Initial	1 st Check
2 nd Check	Final

TIME DISPOSITION

REPORT COMPLETED BY/TITLE (PRINT AND SIGN) PERNR / INST. ID # RDC# ASSIGNMENT AREA

Right Left Front Back

Source: The California Department of Corrections and Rehabilitation.

28. DOM, Section 51020.17.6.

29. DOM, Section 51020.9.

The form must include the following:

- The inmate's own words;
- Observations of the area where force was applied;
- Comments or information gathered from custody staff regarding the type and amount of force used;
- Description of injuries sustained and the medical treatment rendered;
- Any refusal by the inmate of medical evaluation and/or treatment;
- Any alternative assistive devices provided;
- Any medical recommendation or accommodation;
- In-cell decontamination instructions; and
- Times of 15-minute checks, if applicable.³⁰

Some staff performed exceptionally well ensuring that inmates received a timely medical evaluation following a use-of-force incident.

Staff complied with policy and training and ensured inmates received a timely medical evaluation in 2,186 of the 2,296 incidents (95 percent). The following examples in which staff performed exceptionally well in their efforts to conduct timely medical evaluations on inmates resulted in a superior rating in Indicator 4 in these incidents.

- In one incident, officers observed two inmates on the ground punching each other in the face and torso. Officers were unsuccessful when ordering the inmates to stop and get down, so the officers deployed pepper spray. Officers saw that one inmate was actively bleeding from his face. Officers escorted the inmate to the medical center, where staff conducted a medical evaluation of the inmate within two minutes of the incident. He was transported via ambulance to an outside hospital for a higher level of care. The inmate sustained serious bodily injury in the form of a broken nose.
- In a second incident, officers observed three inmates punching a fourth inmate in the face and torso. An officer activated an alarm. The aggressors continued striking the victim, who was in a seated position with his arms covering his face. Officers moved closer to the inmates and observed a large amount of blood around the victim as he appeared to be slumped over with his arms to his sides. Officers used their pepper spray to stop

30. DOM, Section 51020.17.6.

the attack, and the inmates got down on the ground into prone positions. Medical staff arrived and transported the injured inmate to the triage and treatment area for evaluation before transporting him to an outside hospital for a higher level of care. Staff identified a ballpoint pen and one of the victim's teeth in the pool of blood where the victim was located. The victim sustained multiple puncture wounds and lacerations to his head and face along with a lost tooth. The response of medical staff was exceptional as the inmate was thoroughly evaluated within four minutes following the incident.

Some staff did not ensure inmates received a timely medical evaluation following a use-of-force incident.

Of the 2,296 incidents we monitored, staff failed to ensure inmates received timely medical evaluations following a use of force in 110 incidents (5 percent). We acknowledge that there are many circumstances that can reasonably delay a medical evaluation, such as large-scale riots, multiple inmates with serious injuries, and staff safety considerations; however, circumstances such as administering medication (pill-line), medical staff assigned to other areas, crime scene preservation, among other common occurrences, are not acceptable reasons for delay. Furthermore, deliberate failure on the part of custody staff to alert medical staff of possible injuries resulting from a use of force is serious misconduct. This misconduct can inhibit the department's ability to conduct thorough investigations and can promote a culture of distrust, intimidation, and fear among staff and inmates. A few examples that illustrate staff's poor performance in this area, resulting in a *poor* rating for Indicator 4, are as follows:

- Officers had ordered an inmate to return to his assigned housing. The inmate became agitated and advanced toward the officers aggressively. Officers deployed chemical agents without effect. The inmate began to punch the officers in the face and grabbed one officer, placing the officer in a choke hold and rendering him unconscious. Responding staff arrived and used physical force and hand-held batons in an attempt to stop the inmate. Officers struck the inmate 16 times with their batons, one officer struck the inmate in the head, and another used nonconventional force by striking the inmate in the head with his pepper spray canister. The inmate released the officer, and surrounding staff tackled the inmate to the ground. Responding staff escorted the inmate to a holding cell and notified the incident commander and response supervisor that the inmate was struck in the head with a baton. Officers failed to alert medical staff until an hour after the incident, at which time it was determined that he sustained serious bodily injury and was transported to an outside hospital for a higher level of care. The inmate sustained

a cut on the top of his head that required five staples and one on his forehead requiring eight sutures. Staff who conducted the various levels of review at the institution failed to identify the inmate was not afforded a medical evaluation as soon as was practical. The OIG raised the issue of the one-hour delay during the institution's review committee meeting, but the hiring authority declined to take any action.

- In another incident, officers observed an inmate attempting to conceal suspected drugs while the inmate used the bathroom. Without warning, the inmate battered the officers while attempting to flush the suspected drugs down the inmate toilet. Staff used physical force by punching the inmate in the face and body multiple times to stop the attack. Officers forced the inmate to the ground, striking his head on a holding cell door. Officers forced the inmate to the ground a second time, this time striking his head on the concrete. The sergeant arrived on scene and observed that the inmate was unclothed and actively bleeding from his face and head area, with what appeared to be “non-life-threatening injuries.” The same sergeant instructed the inmate to stay calm and told him that he would be medically evaluated after investigative staff arrived and processed the crime scene. Staff did not medically assess the inmate until approximately 40 minutes after the incident, at which time they noted serious bodily injury in the form of a broken nose. The inmate was treated at the institution and then sent to an outside hospital for further treatment. Staff who conducted the various levels of review at the institution did not identify this delay. The OIG raised the issue at the institution's review committee. The hiring authority provided training to the sergeant to address the delayed medical assessment. Although the OIG agreed with the decision to provide training, the egregiousness of the delay warranted a *poor* rating for this indicator.
- In another incident, an agitated inmate started yelling obscenities at officers. The officers ordered the inmate to turn around to be placed in restraints. The inmate continued to yell at the officers, and one officer placed the inmate on the wall and attempted to grab his arm to place him in restraints. The inmate continued to resist by pulling his arm away, but the officer was able to secure both the inmate's hands in restraints. The inmate was escorted to a holding cell, where he fell to the ground and kicked an officer. Once inside the holding cell, the inmate began to bang his head multiple times against the back and sides of the holding cell, refusing officers' orders to stop. The inmate eventually complied with orders and was retained in the holding cell awaiting a medical evaluation. The incident commander and sergeant noted in their reports that medical staff was called on several occasions to conduct a medical evaluation of the inmate, but did not arrive until more than three hours after the incident.

The inmate sustained a laceration and swollen area on the left side of his head. Staff conducting the various levels of review at the institution failed to identify this delay. The OIG raised the issue at the institution's review committee meeting, but the hiring authority declined to take any action.

Following medical evaluations, some staff failed to satisfactorily document inmates' injuries.

Of the 2,261 incidents³¹ in which we evaluated documentation of injuries, we identified 65 incidents in which staff failed to satisfactorily document the inmate's injuries (3 percent). Following medical evaluations, staff generally release inmates back to their assigned housing or to a more restrictive program, depending on the circumstances surrounding the use-of-force incidents. Inmates' injuries are time-sensitive and best captured immediately following the incident. Injuries that go unidentified are rendered, effectively, as if they did not happen, eliminating possible evidence to corroborate statements. The following example illustrates staff's poor performance while documenting inmates' injuries, resulting in a *poor* rating for Indicator 4 in this incident.

- Officers were placing an inmate in restraints when his unrestrained cellmate began to strike him multiple time on the head with a cup. The aggressor continued to strike the victim on the head, knocking him to the ground. The aggressor began to straddle the victim and continued to strike him. Fearing the victim would suffer brain trauma or serious injury, staff deployed pepper spray in the face of the aggressor. The aggressor moved away from the victim and got down on the ground. The incident commander wrote in his original report, "The state cup is made of hardened plastic, it will not bend." This statement, plus the statements regarding fear of brain injury and the inmate's inability to protect himself, added to the reported numerous strikes to the inmate's head, would have caused injuries that could have been documented. The victim's form showed no injuries. In fact, the victim's form was almost identical to the aggressor's, also showing no injuries. The same psychiatric technician evaluated both the victim and the aggressor and completed the forms (see Figures 10a and 10b, next page). Staff completing the various levels of review at the institution failed to identify this deficiency. The OIG raised the issue at the institution's review committee meeting, but the hiring authority declined to take any action.

31. This number is less than the 2,296 total incidents we monitored because the parole division's policy requirements differ from requirements at adult institutions and juvenile facilities, so incidents involving parolees are not applicable for this question.

Figure 10. Medical Evaluation Forms for Victim and Aggressor

Figure 10a. Victim

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE:
"No comment"

Victim

INJURIES FOUND	YES (NO)
Abuse/Scorch	1
Active Bleeding	2
Broken Bone	3
Broken/Dislocated Arm	4
Burn	5
Chin Injury	6
Dead Blood	7
Fracture	8
Cut/Laceration/Slash	9
Swollen Arm	10
Pain	11
Prisoners	12
Puncture	13
Reddened Arm	14
Skin Flap	15
Pit Earring	16
Other	17

Chemical Agent Exposure? ☒ YES ☐ NO

Chin Agent Exposure Area: ☒ YES ☐ NO / REFUSED

Documented w/ Witness? ☒ YES ☐ NO / REFUSED

Documented w/ Airt? ☒ YES ☐ NO / REFUSED

Self-documentation Instructions given? ☒ YES ☐ NO

Staff issued Equipment packet? ☒ YES ☐ NO

Q 15 min. check times

Initial	1st Check	2nd Check
NA	NA	NA
NA	NA	NA

Figure 10b. Aggressor

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE:
"No comment"

Aggressor

INJURIES FOUND	YES (NO)
Abuse/Scorch	1
Active Bleeding	2
Broken Bone	3
Broken/Dislocated Arm	4
Burn	5
Chin Injury	6
Dead Blood	7
Fracture	8
Cut/Laceration/Slash	9
Swollen Arm	10
Pain	11
Prisoners	12
Puncture	13
Reddened Arm	14
Skin Flap	15
Pit Earring	16
Other	17

Chemical Agent Exposure? ☒ YES ☐ NO

Chin Agent Exposure Area: ☒ YES ☐ NO / REFUSED

Documented w/ Witness? ☒ YES ☐ NO / REFUSED

Documented w/ Airt? ☒ YES ☐ NO / REFUSED

Self-documentation Instructions given? ☒ YES ☐ NO

Staff issued Equipment packet? ☒ YES ☐ NO

Q 15 min. check times

Initial	1st Check	2nd Check
NA	NA	NA
NA	NA	NA

Some staff performed exceptionally well in their efforts to satisfactorily document all inmate injuries in corroboration of timely medical assessments. Staff complied with policy and training and satisfactorily documented the inmates' injuries in 2,196 of the 2,261 incidents (92 percent). The following is an example of staff's performance contributing to a *superior* rating for Indicator 4.

- Officers observed three inmates striking a third inmate on the head and torso with their fists. An alarm was announced via the institutional radio, and the yard was ordered down via the public address system. The attacking inmates ignored the orders and continued to strike the victim. A control booth officer, using a 40mm direct impact launcher, aimed at and struck one of the aggressors in the right buttock; the projectile ricocheted and struck the same inmate's right calf. The aggressors stopped their attack and assumed prone positions on the ground. The victim and the recipient of force each had visible injuries. The medical staff thoroughly documented the inmates' injuries on the medical forms (Figures 11a and 11b, next page).

Despite the high compliance rates, there is definite room for improvement. Among the 2,261 incidents applicable for this indicator, we identified 615 in which staff failed to complete all required fields on the medical evaluation form, excluding the inmate's injuries (27 percent). Training on completing this form has been ongoing, but so far has been less than effective.

Indicator Rating
Satisfactory**Superior**

No incidents

Zero percent

Satisfactory

2,266 incidents

99 percent

Poor

30 incidents

1 percent

Indicator 5. The Department's Compliance With Policies and Procedures When Supervising Inmates Following a Use of Force Was Satisfactory

Indicator 5 assesses how well staff followed policies and procedures when supervising inmates following uses of force; among other considerations, this indicator measures whether staff maintained constant supervision of inmates who were in restraints or wearing a spit hood after a use of force.

Among incidents we monitored during this review period, we found the department's compliance with its policies and procedures when supervising inmates following a use of force *satisfactory*. The OIG assessed the department's performance as *satisfactory* in 2,266 incidents and *poor* in 30 incidents. We did not assign any incidents a *superior* rating in this indicator.

Departmental policy states, "If a spit hood/mask is applied to an inmate, it is imperative that constant supervision of the inmate be maintained for signs of respiratory distress. If any respiratory distress is observed, the spit hood/mask shall be removed until the signs of respiratory distress have dissipated."³² The policy further requires that "restrained inmates shall never be left unsupervised."³³

In some instances, staff failed to maintain constant supervision of inmates after applying a spit hood or mask.

Staff applied a spit hood or mask in 109 incidents we monitored. In seven of the 109 incidents, staff failed to maintain constant supervision of inmates after applying spit hoods or masks (6 percent). The following example illustrates staff's poor performance in this area, resulting in a *poor* rating for Indicator 5 in this incident:

- Officers responded to an inmate's cell to assist medical staff in taking his daily vitals. The inmate went to the back of the cell and crossed his arms, refusing to cooperate. Officers ordered the inmate to submit to restraints without effect, and he fell to the ground in a fetal position. Officers placed the inmate in restraints, at which time he began to make hacking noises as if he were going to spit. An officer placed a spit hood on the inmate and left the room, leaving the inmate unsupervised. The OIG found that the officer's report did not mention removing the hood. The warden agreed to request clarification from the officer to determine whether the inmate was left without supervision; however, after further follow-up, no action was taken.

32. DOM, Section 51020.16.

33. DOM, Section 51020.6.

Some staff failed to maintain supervision of inmates placed or retained in restraints.

When inmates are restrained but unsupervised, they may use the restraints to cause injuries to themselves, other inmates, or staff, or they may create security concerns. Of the 2,296 incidents we monitored, we identified 2,132 incidents in which staff applied restraints to an inmate. In 19 of these incidents, staff failed to maintain constant supervision of inmates after placing them in restraints. Although these instances accounted for less than one percent of the incidents we monitored, each had the potential for serious consequences. The following examples are incidents for which we assigned a *poor* rating for Indicator 5:

- During an escort, officers ordered a resisting inmate to get down after he pulled away from their grasp. The inmate complied and got down on the ground. Responding officers assisted the inmate to his feet and began escorting the inmate to his cell, when he again became disruptive by thrashing his body left and right. As the inmate neared the holding cell, he used his leg to push off the holding cell door into the officers. The officers used physical force to push him to the ground, and an assisting officer placed the inmate in leg restraints. The sergeant ordered that the inmate remain in restraints due to his refusal to go back to his cell, and he assigned an officer to maintain supervision of the inmate. The captain approved the inmate to remain in the holding cell for more than 25 hours, and the observing officers failed to note on the holding cell log that they maintained constant supervision. Institutional staff at all levels who reviewed the incident failed to identify the lack of supervision. The hiring authority declined to take any action. The OIG did not concur.
- In another incident, inmates were left unsupervised while in restraints. Officers had placed a group of inmates in waist chains following their battery on another inmate and escorted them to a transportation van outside the facility. As officers escorted the last inmate to the van, the inmate began to resist and pulled away from officers, who then used physical force to regain control of the inmate. The officers continued the escort and as they approached the van, they observed glass on the floor and a large hole in the sliding glass door window. Staff who completed the various levels of review at the institution failed to recognize that the inmates were left unsupervised while in restraints. The OIG identified this deviation during the institution's review committee meeting and influenced the hiring authority to take appropriate action. The hiring authority provided training to the sergeant for failing to ensure staff maintained constant supervision of inmates left in restraints. The OIG concurred.

Indicator Rating
Satisfactory

Superior

294 incidents

13 percent

Satisfactory

1,892 incidents

82 percent

Poor

110 incidents

5 percent

Indicator 6. The Department's Compliance With Policies and Procedures Specific to Users-of-Force Reporting Requirements Was Satisfactory

Indicator 6 measures how well staff who used force documented their actions following the use of force; this includes assessing how well staff documented the circumstances leading up to the use of force, how well staff described the perceived threat that justified the use of force, how thoroughly staff documented their actions and observations, whether staff documented approved criteria for applying a spit hood, and whether staff completed their documentation promptly and independently, without collaborating with other staff.

Among incidents we monitored during this review period, we found the department's compliance with its policies and procedures specific to users-of-force reporting requirements *satisfactory*. The OIG assessed the department's performance as *superior* in 294 incidents, *satisfactory* in 1,892, and *poor* in 110 incidents. For this indicator, we examined how well staff who *used force* documented their observations and actions following a use of force, including the articulation of precipitating events, inmates' actions, and the force *used* throughout the incident. We addressed staff *who did not use force* in Indicator 7.

Departmental policy states, "Any employee **who uses force** or observes a staff use of force shall report it to a supervisor as soon as practical and follow up with appropriate documentation prior to being relieved from duty. The CDCR 837 Crime/Incident Report form (Figure 12, next page) is used for reporting uses of force. Written reports regarding both immediate and controlled use of force shall be documented on a CDCR 837 [*emphasis added*]."³⁴ The policy further requires staff to identify any witnesses, describe the circumstances precipitating the force, consideration of mental health issues, and the nature and extent of the force used.

We assessed how each user of force documented on the incident report form the precipitating events, imminent threat, inmates' actions, forced used, response following the force, and the use of spit masks or hoods, and we assessed the timeliness of reports and other details surrounding use-of-force reporting.

Some staff who used force did not articulate the imminent threat justifying the use of immediate force.

The department defines immediate use of force as "the force used to respond without delay to a situation or circumstance that constitutes an imminent threat to institution/facility security or the safety of persons."³⁵

34. DOM, Section 51020.17.

35. DOM, Section 51020.4.

Figure 12. CDCR 837 Crime/Incident Report Form

Double Click Here to Print Preview

STATE OF CALIFORNIA CRIME / INCIDENT REPORT PART C - STAFF REPORT CDCR 837-C (Rev. 10/15)				DEPARTMENT OF CORRECTIONS AND REHABILITATION			
				PAGE <u>1</u> Of <u> </u>		INCIDENT LOG NUMBER	
NAME: LAST		FIRST		MI	DATE OF INCIDENT		TIME OF INCIDENT
POST #	POSITION	YEARS OF SERVICE YRS. MO.	DATE OF REPORT		LOCATION OF INCIDENT		
RDO'S	DUTY HOURS	DESCRIPTION OF CRIME / INCIDENT				CCR SECTION / RULE <input type="checkbox"/> N/A	
YOUR ROLE		WITNESSES (PREFACE S-STAFF, V-VISITOR, O-OTHER)		INMATES (PREFACE S-SUSPECT, V-VICTIM, W-WITNESS)			
<input type="checkbox"/> Primary							
<input type="checkbox"/> Responder							
<input type="checkbox"/> Witness							
<input type="checkbox"/> Camera							
<input type="checkbox"/> Victim							
<input type="checkbox"/> Other:							
<input type="checkbox"/> N/A							
FORCE USED BY YOU – TYPE OF WEAPON / SHOTS FIRED / NON-CONVENTIONAL FORCE							
<input type="checkbox"/> Physical:	Lethal Weapons:	Warning:	Effect:	Less Lethal Weapons:	# Effect:	Chemical Agent:	Projector:
<input type="checkbox"/> Hand-Held Baton	<input type="checkbox"/> Mini 14			<input type="checkbox"/> 37 mm		<input type="checkbox"/> OC	
<input type="checkbox"/> X-10 BRD w/o OC	<input type="checkbox"/> .38 Cal			<input type="checkbox"/> 40 mm		<input type="checkbox"/> CN	
	<input type="checkbox"/> .40 Cal			<input type="checkbox"/> L8		<input type="checkbox"/> CS	
<input type="checkbox"/> X-10 BRD w/ OC	<input type="checkbox"/> 9 mm			<input type="checkbox"/> 40 mm Multi			
	<input type="checkbox"/> Shotgun			<input type="checkbox"/> HFWRS			
<input type="checkbox"/> Non-Conventional or Force Not Listed Above:							
FORCE OBSERVED BY YOU	<input type="checkbox"/> N/A <input type="checkbox"/> Physical <input type="checkbox"/> Hand-Held Baton <input type="checkbox"/> Chemical Agent <input type="checkbox"/> X-10 <input type="checkbox"/> Less Lethal <input type="checkbox"/> Lethal <input type="checkbox"/> Non-Conventional						
EVIDENCE COLLECTED BY YOU	EVIDENCE DESCRIPTION		EVIDENCE DISPOSITION			BIO HAZARD	PPE
<input type="checkbox"/> YES						<input type="checkbox"/> YES	<input checked="" type="checkbox"/> YES
<input type="checkbox"/> NO	<input type="checkbox"/> N/A		<input type="checkbox"/> N/A			<input type="checkbox"/> NO	<input type="checkbox"/> NO
REPORTING STAFF INJURED	DESCRIPTION OF INJURY		LOCATION TREATED (HOSPITAL/CLINIC)		FLUID EXPOSURE		SCIF 3301/3067 COMPLETED
<input type="checkbox"/> YES					<input type="checkbox"/> BODILY <input type="checkbox"/> N/A		<input type="checkbox"/> YES
<input type="checkbox"/> NO	<input type="checkbox"/> N/A		<input type="checkbox"/> N/A		<input type="checkbox"/> UNKOWN		<input type="checkbox"/> NO
					<input type="checkbox"/> Other:		
NARRATIVE:							
<input type="checkbox"/> CHECK IF NARRATIVE IS CONTINUED ON CDCR 837-C1.							
SIGNATURE OF REPORTING STAFF			TITLE		BADGE # / ID #		DATE
NAME AND TITLE OF REVIEWER (PRINT/SIGNATURE)			DATE RECEIVED	CLARIFICATION NEEDED <input type="checkbox"/> YES <input type="checkbox"/> NO	APPROVED <input type="checkbox"/> YES <input type="checkbox"/> NO		DATE
DISTRIBUTION: Original: Incident Package Copy: Reporting Employee Copy: Reviewing Supervisor							

Source: The California Department of Corrections and Rehabilitation.

An imminent threat is “any situation or circumstance that jeopardizes the safety of persons or compromises the security of the institution, requiring immediate action to stop the threat.”³⁶ Some examples include escape attempts, ongoing physical harm to one’s self or others, or active physical resistance.

Of the 2,265 incidents³⁷ we monitored in which staff used immediate force, we identified 55 incidents in which staff failed to *articulate* an imminent threat necessitating the need for immediate force (2 percent) in their reports. In this indicator, we assessed the quality of the *written articulation* of the imminent threat on the incident report form following the use of immediate force. In the following examples, the reports following immediate uses of force lacked the required articulation of imminent threat, resulting in a *poor* rating for Indicator 6 in these incidents.

- In one incident, even though a potential threat did exist, staff nevertheless failed to satisfactorily articulate the immediacy of the threat to justify immediate force. The officer had opened a holding cell door to release an inmate. The inmate refused to exit the cell, so the officer closed the door. The inmate stated, “Well fine, I’m just going to kill myself in this cell.” The officer, fearing the inmate could carry out the threat, ordered the inmate to turn around and place her hands through the cuff port to place the inmate in restraints. The inmate initially complied by placing her hands outside of the port. The officer grabbed her right hand as the inmate attempted to pull her hands away from the officer and back into the holding cell. Again, fearing the inmate would carry out the threat, the officer maintained her grip on the inmate’s wrist, turning it clockwise, causing minimal pain in an effort to make the inmate comply with orders. The inmate continued to attempt to pull her hands inside while the officer was attempting to pull her hands outside the cuff port. The officer failed to articulate an imminent threat that would require the need for immediate force. There was a potential threat of the inmate threatening to kill herself; however, there was no articulation as to how the inmate would be successful. Furthermore, the inmate was contained in the holding cell; when the inmate pulled her hands back through the port, the officer should have let go, stepped away, and closed the cuff port. The OIG acknowledged the presence of a potential threat, but raised the issue of staff failing to articulate an imminent threat during the institution’s review committee. The hiring authority disagreed and declined to take any action.

36. Ibid.

37. Controlled uses of force are not included in this assessment.

- In another incident, an officer assigned to observe an inmate on contraband surveillance watch called for assistance because the inmate needed to urinate. Two officers removed the inmate from the cell and removed his waist restraints. One officer removed himself from the escort to contact the sergeant while the other officer placed the inmate inside the cell. The inmate suddenly stopped urinating, removed his jumpsuit, and turned toward the officer. The officer used physical force to push the inmate back toward the toilet and ordered him to get down. The second officer returned from calling the sergeant, heard orders to get down, and assisted the officer in forcing the inmate to a seated position on the toilet. The inmate attempted to remove an item from his anal cavity, resulting in both officers using physical force to push him off the toilet. The force did not have the desired effect as the inmate stood up and the officers backed out of the cell and secured the door. The first level review identified that the initial force was appropriate as the inmate turned towards staff; however, once the inmate sat on the toilet the threat was no longer present. The hiring authority provided corrective action to the officers to address this deficiency.

Staff complied with policy and training when articulating the imminent threat in 2,210 of the 2,265 incidents (97 percent). Of those 2,210, the OIG identified a few examples of which staff performed exceptionally well in their efforts to articulate the imminent threat, resulting in a *superior* rating for Indicator 6.

- In one incident, an officer observed one inmate punching a second inmate in the face. The officer gave orders for both inmates to stop fighting and to get down with negative results. The aggressor continued to strike the victim until the victim eventually fell down, and the aggressor was able to straddle the other inmate's back. The victim was unable to protect himself and, fearing serious bodily injury could occur if the officer did not intervene, the officer fired three rounds from her less-lethal launcher to stop the inmate's attack. The officer thoroughly articulated the aggressor's actions and the victim's inability to defend himself, and provided a detailed description as to why she had to act without delay and the continued threat that required additional force.
- In another incident, an officer was escorting an inmate in restraints to the shower, when the inmate became agitated, accusing the officer of spitting in his food. Without warning or provocation, the inmate turned facing the officer and kicked him in the left shin with his right foot, resulting in the officer using physical force to force the inmate to the ground. The officer detailed the inmate's actions, including the speed and the direction in which the inmate turned towards him and why he responded without delay to the inmate's attack.

Following use-of-force incidents, some staff who used force failed to satisfactorily document their actions or observations.

If possible, staff must identify important information in the content of the reports, including descriptions of the following:

- Inmates' actions;
- Any force used or observed;
- Projector type and distance if chemical agents were used;
- The level of resistance by the inmate or inmates;
- The threat perceived;
- Any identified inmate disabilities; and
- Observations of decontamination.

Among the 2,296 incidents the OIG monitored this period, we identified 55 incidents in which users of force failed to satisfactorily document their observations or actions (2 percent). The following is an example of an incident we assigned a *poor* rating due to staff's failure to satisfactorily describe their own actions or observations:

- Officers who used force did not clearly describe the inmate's actions or the force the officers used throughout the incident. Staff observed two inmates walk toward officers, whisper something unintelligible, and begin punching each other in the head and upper torso. Officers activated their personal alarms and ordered the inmates to get down. In an attempt to stop the inmates from striking each other, the first officer struck one inmate in the right leg with a baton. The inmates continued to punch each other, resulting in the officer striking the inmate in the left upper leg. The use of force was effective as the inmates got down on the ground. Without warning, the inmates got back up and continued punching each other in the face, and a second officer exited his office and gave orders to stop and get down. The second officer struck the other inmate with his baton in the right shoulder. Both inmates got on the ground and officers placed them in restraints. The first officer failed to describe the inmate's actions between the two baton strikes or the specific area (front or back) of the upper leg, and we found multiple spelling, grammar, and word choice errors (Exhibit 1a, next page). The second officer failed to describe the inmate actions that caused an "immanent [*sic*] threat" that resulted in the need to use force. Furthermore, the officer failed to describe where the baton struck the inmate. The report was lacking detail and contained grammatical errors (Exhibit 1b, next page). A captain who reviewed the incident identified most of the issues referenced

above and requested and received approximately 20 clarifications among the two officers to ensure the reports contained the required elements. The hiring authority provided report-writing training to both officers to address the deficiencies.

Exhibit 1a

then gave multiple orders for the Inmates involved in the incident to stop and get down on the ground. My orders were ignored as they continued fighting. My Partner Officer [redacted] came out of the officer's office and gave multiple orders for the Inmates Involved in the incident to stop and get down on the ground. His orders were ignored as they continued fighting. I then transitioned to my state issued expandable baton and attempted strike Inmate [redacted] with a forward strike in my intended area of his right thigh, striking him in the right knee, which yield negative results. I then assed and gave orders to get down, which he ignored. I then Struck Inmate [redacted] with a reverse strike on my attended target his upper left leg. Inmate [redacted] got down. Both Inmates got down in prone position. I then provided security coverage for Officer [redacted] well he placed Inmate [redacted] in hand cuffs and conducted a

Exhibit 1b

heard Officer [redacted] yell "get down". I saw inmates [redacted] and [redacted] (later identified by state issued identification cards) in the front of the officer's podium fighting striking each other about the head and upper torso areas. Officer [redacted] activated his state issue alarm and call for a code 1 assistant

I ran to Officer [redacted] position and yield for both inmates to get down, which yield a negative result. Utilizing my state issued baton in an attempt stop immanent threat. I use a forward strike aiming for inmate [redacted] right shoulders which cause him to get down. Officer [redacted] provided coverage as I cuff and conducted a clothed body search of inmate [redacted] which yield a negative result. I provided Officer [redacted] coverage as he cuffed and conducted a clothed body search of inmate [redacted] with negative results. Officers [redacted] and [redacted] escorted both inmates from the building. This concludes my involvement of this incident

On a positive note, we found that staff complied with policy and training when describing their involvement throughout the incident and description of force used in 2,241 of the 2,296 incidents (97 percent). Of those 2,241, the OIG identified a few examples in which staff performed exceptionally well in their efforts to articulate the force they used, contributing to a *superior* rating for the respective indicators in these incidents.

- In one incident, officers observed two inmates punching a third inmate in the head and upper torso. The observation officer used the public address system to order all of the inmates on the yard to get on the ground—and all inmates complied, with the exception of the involved inmates. While the two inmates continued to strike the third inmate, responding staff arrived and strategically lined up at a safe but effective distance from the fight. Staff from the line gave orders for the inmates to stop and get down, which were unsuccessful. Three officers used chemical agent grenades to stop the attack. All three officers did an exceptional job describing the aggressors' actions as well as the victim's during the attack. Furthermore, the officers provided a detailed description of their force, including the method of deployment, distance, location, and effect. The reports were well written, clear, and concise (Exhibits 2a and 2b, next page).

Exhibit 2a

caution towards the incident in the middle of the yard. As I was responding, I observed chemical agents being deployed and a cloud of white smoke near the combatants. Due to my distance and my focus on the combatants, I did not observe which staff members deployed their chemical agents. Upon my arrival to the skirmish line, I observed the chemical agents had negative results as Inmates [REDACTED] and [REDACTED] were striking Inmate [REDACTED] to the facial and upper torso area with their fists. [REDACTED] was lying on the ground attempting to shield himself utilizing both of his arms from his assailants. Believing serious bodily injury would occur, I utilized my state issue Oleoresin Capsicum (O.C) Instantaneous Blast Grenade, with an underhand toss towards the combatants from a safe distance of approximately 20 feet away. The grenade landed and detonated approximately 3 feet away from the combatants with positive results as all three inmates separated and assumed prone positions on the ground. When it was safe to do so, Correctional

Exhibit 2b

[REDACTED] who were striking inmate [REDACTED] in his face and upper back with their fists, as [REDACTED] laid down on his stomach covering his head with his arms. Correctional Officers [REDACTED] and I responded to the incident forming a skirmish line at a safe but effective distance in the middle of the Recreational yard west of the incident facing east. From the skirmish line, staff and I gave numerous orders to the combatants to get down with negative results. Fearing serious bodily injury may occur; I utilized my Chloroacetophenone (C.N.) Han Ball Grenade, with an underhand toss from approximately 20 feet away. The grenade landed and detonated approximately 3 feet from the combatants with negative results as the combatants continued their assault on [REDACTED]. Officer [REDACTED] utilized his CN Han Ball grenade, landing and detonating near the combatants with negative results as the combatants continued their assault on [REDACTED]. Responding staff joined the skirmish line, as we continued to give verbal orders to get down with negative results. Correctional Officer [REDACTED] utilized his Oleoresin Capsicum (OC) Instantaneous Blast grenade landing and detonating it next to the combatants with positive results as the combatants separated from each other assumed prone positions. I provided coverage of the yard as responding staff

- In another incident, officers observed two inmates punching a third inmate in the torso and face. Staff observed the victim lying on the track, motionless, not defending himself, with his arms out to his side. Officers ordered all the inmates to stop fighting and get down on the ground, but the orders were ineffective. An officer, fearing great bodily injury for the victim due to a large amount of blood on the victim's face and the victim's inability to defend himself, struck the aggressors with his baton to stop the attack. The officer documented exceptionally well the aggressors' attack and the victim's inability to protect himself. The officer's report also included with great detail the re-assessment between each baton strike, the inmates' actions, the force used, and the inmates' reaction to each application of force (Exhibits 3a and 3b, next page).

Exhibit 3a

in front of inmates and two inmates later identified by their state identification cards as punching a third inmate in the upper torso and facial area that was laying down on the ground with negative results, both inmates and continued striking inmate with a fist in the upper torso/facial area. I drew my state issued monadnock expandable baton (M.E.B) with an intent to the position and once again or all inmate to stop fighting and get down with negative results, both inmates and continued striking inmate who was still lying motionless in his back not defending himself. Due to the ent th rious bodily injury if both inmates continued striking inmate in his upper torso/facial area with a fist, I delivered a power forward strike aiming for inmate left shoulder striking m tended target with the po safety tip portion of my M.E.B with negative results. s continued striking inmate with a fist while inmate laid motionless on the track. I recovered to an open to the sky carry position and reassess I again ordered both inmates to stop fighting and get down with negative results both inmates continued striking inmate in the torso facial area. Due to the continued imminent threat of serious bodily injury if both inmates continued striking inmate with a fist in the upper torso/facial area, I delivered a second power forward

Exhibit 3b

strike aiming at inmate right upper arm area striking y intended target with the power safety tip portion of my M.E.B with negative results. Both inmates continued to punch inmate who was still lying on his back not defending himself. I recovered to an open to the sky carry position and reassess once n ordered all inmate to stop fighting and prone out with negative results. Both inmates continued Punching inmate who was now bleeding profusely from his facial area. Due to the continued threat of serious bodily injury if both inmates continued to punch inmate in his upper torso and facial area. I delivered a third power forward strike aiming for inmate right thigh area, st intended target with the power safety tip portion of my M.E.B with negative results. Both inmates inued to punch inmate who was not defending himself. I recovered to an open to the sky carry position and reassess I once again ordered a inmate to stop fighting and prone out with negative results. Both inmates continued punching inmate who was still bleeding profusely from his facial area. I delivered a fourth power forward strike aiming for inmate right area striking my intended target with the power safety tip portion of my M.E.B with positive results. I recovered pen to the sky carry on and reassessed. Both inmates assumed a prone position. I immediately advised central control via institutional radio that was requesting the medical emergency response vehicle. in front of Due to my focus on the incident, I was unable to observe any other use of force being used by

Some staff who used force did not articulate approved criteria when applying a spit hood or mask.

We identified 67 incidents in which staff who used force applied a spit hood or mask. In 11 of those (16 percent), staff who used force failed to articulate policy-specified criteria to justify the use of the spit hood or mask. The inappropriate use of a spit hood or mask can suggest punitive motives on the part of staff as well as put inmates at risk of respiratory distress. Despite the risks, the OIG acknowledges that, when used appropriately, these hoods and masks are effective tools to provide needed protection to staff when the criteria are met.

Departmental policy directs staff on acceptable criteria when considering the use of a spit hood, stating, in part, that a spit hood or mask shall not be placed on an inmate for whom any of the following applies:

- Is in a state of altered consciousness;
- Displays visible signs of seizure; or
- Is vomiting or exhibiting signs of beginning to vomit.³⁸

38. DOM, Section 51020.16.

Departmental policy allows staff to apply a spit hood or mask if there is verbal or physical intent by the inmate to contaminate others with spit or other bodily fluids from the nose or mouth; if the inmate is not able to control expelling fluid from the nose or mouth; or if the inmate is on authorized security precautions.³⁹ The following is an example that demonstrates staff's unauthorized use of a spit hood or mask, contributing to a *poor* rating for this indicator in this incident:

- Officers questioned an inmate who was refusing to go into his assigned cell. The inmate was adamant about having a cell to himself and threatened to hurt another cellmate if he were placed in the same cell. Officers gave the inmate an order to submit to restraints, which was ineffective, and the inmate walked into the sally port with clenched fists. Officers attempted to give the inmate additional orders to come out of the sally port and submit to restraints; these orders were also ineffective. A control booth officer heard the inmate arguing with the officer and ordered the inmate to “prone out” on the floor. The inmate partially complied, getting down on the ground, but stayed on his elbows. Officers grabbed the inmate’s arm to place him in restraints, and the inmate attempted to pull away, resulting in additional physical force to place the inmate’s arms in restraints and maintain control until responding staff arrived. The sergeant arrived and ordered the inmate to be placed in leg restraints. The inmate refused, stating, “You aint [sic] putting those restraints on me bitch.” The inmate continued to resist and required multiple staff to use force to secure him in restraints. The sergeant ordered a spit hood be placed on the inmate as a “precautionary measure” due to the inmate’s failure to comply with orders and continued resistance. The use of the spit hood did not meet the criteria for placement. All internal levels of review failed to identify the inappropriate use of the spit hood. The OIG raised the issue during the institution’s review committee, and the hiring authority agreed to provide training to address the deficiency.

In nearly all incidents, staff who used force submitted reports within required time frames.

Timely submission of reports is not only required by policy, but is critical to ensure appropriate review of every use-of-force incident.⁴⁰ Of the 2,296 incidents we monitored, the OIG identified 28 incidents in which staff who used force failed to submit their report prior to being relieved from duty (one percent).

39. Ibid.

40. DOM, Section 51020.17.1.

Following a use-of-force incident, some staff who used force failed to complete their reports independently and free of any collaboration, copying the wording of other staff.

Of the 2,296 incidents we monitored, we identified 12 instances in which staff who used force cloned one another's reports (one percent). Despite the low percentage, even one such incident is too many. It is imperative that officers write their reports from a standpoint of their own individual recollection, not that of others. We acknowledge that similar actions or events will occur when completing reports of the same incident. However, although these can be similar in nature, they would never be almost identical to those of their counterparts. The following is an example demonstrating staff's poor performance and intent to collaborate, resulting in a *poor* rating for Indicator 6 in this incident:

- An officer heard a commotion and observed two inmates punching each other in the face and torso. The officer gave orders for the inmates to stop fighting and get down, requiring two officers to use pepper spray to quell the incident. The officers' reports were very similar and contained exactly the same words in exactly the same order (Exhibits 4a and 4b, below).

Exhibit 4a

NARRATIVE: On [REDACTED], at approximately [REDACTED], while conducting my duties as [REDACTED], I responded to an alarm on [REDACTED]; more specifically while passing out [REDACTED], I was on the [REDACTED] and heard commotion coming from the [REDACTED]. I rushed up to the stairs and observed inmate [REDACTED] and inmate [REDACTED], who were both later positively identified by their state issued CDCR identification cards, striking each other in the facial area and upper torso area. I ordered both inmates, several times, to "Get down!" to which they did not comply with my orders. The imminent threat I perceived prior to utilizing force was that if I did not intervene, inmate [REDACTED] and inmate [REDACTED] were going to continue to batter each other and it would ultimately result in serious bodily injury (SBI). In order to stop the imminent threat of SBI I un-holstered my state issued MK-9 OC pepper spray and deployed a one(1), two(2) second burst, from approximately 8 feet, aiming towards both inmates' facial area. The pepper spray had the desired affect as it struck both inmates in the facial area and both inmates got down into the prone position. I handcuffed inmate [REDACTED] and performed a clothed body search with negative results for contraband. I relinquished custody of inmate [REDACTED] to an unknown code one responder to be escorted out of the unit and decontaminated with copious amounts of cool running water. This concludes my involvement in this matter.

Exhibit 4b

NARRATIVE: On [REDACTED], at approximately [REDACTED], while passing out [REDACTED], I was on the [REDACTED] and heard commotion coming from the [REDACTED]. I rushed down the stairs and observed inmate [REDACTED] and inmate [REDACTED], who were both later positively identified by their state issued CDCR identification cards, striking each other in the facial area and upper torso area. I ordered both inmates, several times, to "Get down!" to which they did not comply with my orders. The imminent threat I perceived prior to utilizing force was that if I did not intervene, inmate [REDACTED] and inmate [REDACTED] were going to continue to batter each other and it would ultimately result in serious bodily injury (SBI). In order to stop the imminent threat of SBI, I un-holstered my state issued MK-9 OC pepper spray and deployed a one (1), two (2) second burst, from approximately 7 feet, aiming towards both inmates' facial area. The pepper spray had the desired affect as it struck both inmates in the facial area and both inmates got down into the prone position. I activated my Personal Alarm Device, and transmitted a radio call via institutional radio, " [REDACTED], this is [REDACTED], I have a one on one fight on the [REDACTED], I'm requesting code one response." When code one response entered the unit, both inmates were handcuffed and escorted out of the unit to be decontaminated with copious amounts of cool running water. I could not positively identify the two escorting officers who escorted both inmates out of the unit. The tier was decontaminated with water, cleaning supplies, and fresh air. This concludes my report

Indicator Rating
Satisfactory

Superior

129 incidents

6 percent

Satisfactory

2,007 incidents

87 percent

Poor

160 incidents

7 percent

Indicator 7. The Department's Compliance With Policies and Procedures Specific to Nonusers-of-Force Reporting Requirements Was Satisfactory

Indicator 7 measures how well *staff who did not use force* documented their observations and actions following a use of force; this includes, among other considerations, assessing staff's description of precipitating events, of inmates' actions, of the use of spit hoods, and of the force *observed* throughout the incident, as well as evaluating the independence and promptness of the documentation. This indicator also assesses how well medical staff met controlled use-of-force reporting requirements.

Among incidents we monitored during this review period, we found the department's compliance with its policies and procedures specific to nonusers of force reporting requirements was *satisfactory*. The OIG assessed the department's performance as *superior* in 129 incidents, *satisfactory* in 2,007, and *poor* in 160 incidents.

In addition to the reporting requirements previously outlined in Indicator 6, departmental policy provides specific reporting requirements for controlled uses of force, including a description of any involvement of licensed mental health practitioners prior to or during the use of force incident, whether de-escalation strategies were attempted, and the outcomes of any strategies.⁴¹

Following use-of-force incidents, some staff who observed force failed to satisfactorily document their actions or observations.

As detailed in Indicator 6, staff must identify important information in the content of the reports. Among the 2,129 incidents the OIG monitored this period, we identified 97 in which observers of force failed to satisfactorily document their observations or actions (5 percent); 167 incidents were excluded from this total because there were no observers of force in those incidents. In the following example, staff who observed force failed to satisfactorily articulate their observations on the incident report form, resulting in a *poor* rating for Indicator 7 in this incident.

- An officer who observed force failed to articulate how an inmate was forced to the ground. Officers had ordered a group of inmates to line up against the fence and to submit to a clothed body search. All but one of the inmates complied and placed their hands on the fence, but the other inmate refused to open his hands and kept his fists clenched. An officer attempted to place the inmate in restraints when he observed a blue object in the inmate's hand. The inmate aggressively pulled his hands away from the officer and spun to his right. The officer

41. DOM, Section 51020.17.

maintained control of the restraints, which were attached to the inmate's left wrist, and pulled them behind his back. The officer placed his right hand in the middle of the inmate's back and used his right foot to sweep the inmate's legs to the left while pushing the inmate, forcing the inmate to the ground. The inmate swallowed what was in his hand and continued to resist while on the ground until responding staff arrived and secured his right hand in restraints. The officer who observed this incident failed to satisfactorily report how the inmate was forced to the ground, writing only that "the officer attempted to guide the inmate to the ground." The OIG noted the officer's lack of detail during the institution's review committee meeting and recommended obtaining clarification on how the officer "attempted to guide the inmate to the ground." The hiring authority disagreed and declined to take any action.

Staff complied with policy and training in 2,032 of the 2,129 incidents (95 percent) when articulating their involvement throughout the incident and describing the force observed. We identified a few examples in which staff performed exceptionally well in articulating the force they observed, contributing to a *superior* rating for Indicator 7 in these incidents.

- In one incident, observers of force did an exceptional job of reporting their observations of force and detailing the victim's and aggressors' actions throughout the incident. Officers observed two inmates punching a third on the head and face. The victim was bent forward at the waist while holding up his hands to shield his face from the continued punches. An officer responded and deployed chemical agents to stop the attack.
- In another incident, nonusers and observers of force wrote detailed reports about the force observed, the inmate's actions, and investigative staff's response following the force. Officers observed two inmates striking a third in the upper torso area and face using inmate-manufactured weapons. An officer described in detail that the attackers used weapons in their right hands, gripping them with their thumbs upward and the sharpened part down, and that the inmates used an overhand stabbing motion to strike the victim. An officer fired one less-lethal round at the fighting inmates, stopping the attack. Investigative staff arrived, secured the crime scene, and recovered multiple pieces of evidence, including two inmate-manufactured weapons. The inmate sustained multiple life-threatening stab wounds to his chest and back and was subsequently airlifted to an outside hospital for a higher level of care.

Following a use-of-force incident, some staff who did not use force failed to complete their reports independently and free of any collaboration, instead copying the wording of other staff.

Of the 2,233 applicable incidents we monitored, we identified 22 instances in which nonusers of force plagiarized the reports of others (one percent). As previously noted in Indicator 6, even one such incident is unacceptable. The following is an example illustrating staff's plagiarism, resulting in a *poor* rating for Indicator 7 in this incident:

- Officers observed an inmate cutting his wrist with a razor blade. An officer activated the alarm, and responding officers ordered the inmate to stop and drop the razor. The inmate refused and continued cutting his wrist, resulting in one of the officers using pepper spray to prevent the inmate from causing serious or great bodily injury to himself. The force was effective as the inmate stopped his actions and dropped the razor. The reports completed by both the officer who used the pepper spray and the officer who observed the force were nearly identical in many areas (Exhibits 5a and 5b, next page). The word *negative* was misspelled as *neagative* in both reports. All levels of review failed to identify the collaboration. The OIG raised the issue during the institution's review committee meeting, and the hiring authority provided a counseling memorandum to both officers to address the collaboration.

Exhibit 5a

NARRATIVE: On [REDACTED] at approximately [REDACTED], while performing my duties as [REDACTED] security patrol officer 1, Officer [REDACTED] and I observed a couple inmates coming off the patio area informing us there was an inmate acting bizzare. We immediatley responed to the patio. I observed inmate [REDACTED] actively cutting himself on the left wrist Officer [REDACTED] gave Inmate [REDACTED] a loud verbal command to stop cutting and prone out, [REDACTED] refused and said " NO". Officer [REDACTED] advised Central Control via institutional radio that we have a code 1 cuttter in [REDACTED] as Officer [REDACTED] activated Personal Alarm Device (PAD) . [REDACTED] continued to actively cut his upper left inside arm. Officer [REDACTED] gave [REDACTED] another loud verbal command to stop cutting himself, [REDACTED] refused, this is when officer [REDACTED] pulled [REDACTED] state issued O.C pepper spray from [REDACTED] holster and gave [REDACTED] a third loud verbal command to put the razor down and prone out, with negative results from inmate [REDACTED] . In order to stop the imminent threat of [REDACTED] actively cutting himself, to gain compliance with a lawful order, and effect custody, officer [REDACTED] sprayed a 1-2 second burst of OC to the facial region of [REDACTED], approximately 6 feet away hitting intended target. Inmate [REDACTED] dropped the razor blade and proned out. Officer [REDACTED] placed [REDACTED] in handcuffs while OFFICER [REDACTED] and I provided coverage. Officer [REDACTED] Performed a search of inmate [REDACTED] for weapons and contraband with neagative results. Officer [REDACTED] instructed [REDACTED] to roll

Exhibit 5b

NARRATIVE: On [REDACTED], at approximately [REDACTED], while performing my duties as [REDACTED] Officer [REDACTED] and I observed a couple inmates coming off the patio area informing us there was an inmate acting bizzare. We immediatley responed to the patio. I observed inmate [REDACTED] actively cutting himself on the left wrist I immediatley gave Inmate [REDACTED] a loud verbal command to stop cutting and prone out [REDACTED] refused and said, " NO". I advised Central Control that I had a code 1 cuttter in [REDACTED] as Officer [REDACTED] activated Personal Alarm Device (PAD) . [REDACTED] continued to actively cut on his upper left arm. I gave [REDACTED] another loud verbal command to stop cutting himself, [REDACTED] refused. At this point I pulled my state issued MK9 Oleresin Capsicum (OC) pepper spray from my holster and gave [REDACTED] a third loud verbal command to put the razor down and prone out, with negative results from inmate [REDACTED] . In order to stop the imminet threat of [REDACTED] actively cutting himself, to gain compliance with a lawful order and effect custody I dispersed (1); 2-3 second burst of OC from approximately 6-7 feet away to [REDACTED] facial area hitting my intended target. Inmate [REDACTED] dropped the razor blade and proned out. I placed [REDACTED] in handcuffs while OFFICER [REDACTED] and OFFICER [REDACTED] provided coverage. I Preformed a search of inmate [REDACTED] for weapons and contraband with neagative results. I instructed [REDACTED] to roll over on his right side and instructed him to bring his knees up to his chest. I placed

In most incidents, staff who did not use force submitted reports within required time frames.

Of the 2,167 applicable incidents we monitored, we identified 69 incidents in which officers who observed force failed to submit their reports prior to leaving the institution after their shift (3 percent).

Some staff did not articulate approved criteria when applying a spit hood or mask.

We identified 41 incidents in which nonusers of force applied a spit hood or mask to an inmate. In four of those 41 incidents (10 percent), staff failed to describe the required criteria, leading us to question whether the placement of the spit hood was justified.

In some instances, medical staff failed to satisfactorily document their involvement during controlled uses of force.

Our assessment of medical staff's *actions* during a controlled use of force were discussed earlier in Indicator 2. We identified 35 incidents in which medical staff had the opportunity to document their involvement during a controlled use of force. Of the 35 incidents, we identified 11 in which staff failed to satisfactorily document required elements (31 percent). For the purpose of this indicator, we assessed the quality of medical staff's written articulation of their involvement during controlled uses of force, specific to three requirements:

- Health care staff who provided intervention failed to articulate the required elements (four incidents);
- Licensed nursing staff failed to articulate on the incident report their review of the inmate's health record regarding increased risk for adverse outcomes (eight incidents);
- A licensed mental health care practitioner failed to articulate on the incident report if the inmate had the ability to understand orders, had difficulty complying with orders based on mental health issues or was at an increased risk of a mental health crisis (six incidents).

Indicator 8. The Performance of Staff When Conducting Video-Recorded Interviews Following Allegations of Unnecessary or Excessive Force Was *Poor*

Indicator 8 measures how well staff followed policies and procedures when conducting video-recorded interviews of inmates alleging unnecessary or excessive force; these requirements include interviewing the inmate on camera within 48 hours of the use of force, capturing the inmate's injuries on camera, and stopping the interview to get medical attention and documentation for the inmate if the inmate identifies new injuries during the interview.

Among incidents we monitored during this review period, we found the performance of staff when conducting video-recorded interviews following allegations of unnecessary or excessive force was *poor*. Of the 235 incidents applicable to this indicator, the OIG rated 148 *satisfactory*, and 87 *poor*; we assigned no *superior* ratings.

Departmental policy requires staff to video-record an interview with an inmate who alleges unnecessary or excessive force; policy also identifies specific requirements of those conducting the recording.⁴² Staff must interview the inmate as soon as possible, but no later than 48 hours⁴³ from the discovery of the allegation. The policy further requires staff to record any visible or alleged injuries and mandates that the interviews be conducted by supervisors, such as sergeants or lieutenants, who did not themselves use or observe the force during the incident. Finally, staff must not inhibit or discourage the inmate from providing relevant information. The interview worksheet (CDCR Form 3013-2, Inmate Interview for Allegation Worksheet, Figure 13, next page) used by the interviewer includes additional requirements, including conducting the interview in a location free of outside influence, noise, and distractions.

The policy requirements ensure that allegations of staff misconduct are promptly addressed, thoroughly documented, and handled in an unbiased manner. For instance, the requirement to video-record the inmate within 48 hours ensures that potential visual evidence of the inmate's alleged injuries is captured. Promptly and properly documenting evidence may support an inmate's claim of unnecessary or excessive force, but a lack of visible injuries may *refute* an inmate's allegation against staff. For example, an inmate's allegation that officers repeatedly punched him in the face loses credibility if there are no visible injuries. If staff do not video-record the inmate within the required time frames and complete proper documentation, the department is more vulnerable to allegations

Indicator Rating
Poor

Superior

No incidents
Zero percent

Satisfactory

148 incidents
63 percent

Poor

87 incidents
37 percent

42. DOM, Section 51020.17.3.

43. The Division of Juvenile Justice requires a video-recorded interview and photographs of the ward within 24 hours of the discovery of the allegation.

of a cover-up. Requirements that uninvolved supervisors conduct the interview in a confidential setting lessen the potential for bias and promote an opportunity for the inmate to openly speak about the allegation.

Figure 13. Inmate Interview for Allegation Worksheet (CDCR Form 3013-2)

STATE OF CALIFORNIA
INMATE INTERVIEW FOR ALLEGATION WORKSHEET
CDCR 3013-2 (Rev. 10/15)

DEPARTMENT OF CORRECTIONS AND REHABILITATION
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Inmate Interview for Allegation Worksheet

Per DOM 51020.17.3, a Custody Supervisor shall conduct a video recorded interview with the inmate when either of the following conditions exists:

- 1) The inmate has sustained Great Bodily Injury or Serious Bodily Injury that could have been caused by a staff use of force.
- 2) The inmate has made an allegation of unnecessary or excessive use of force.

The interview shall be conducted no later than 48 hours from discovery of the injury or allegation.

INTERVIEW FORMAT FOR ALLEGATION OF UNNECESSARY OR EXCESSIVE FORCE:

The interview and video recording shall be conducted by a Custody Supervisor who did not use or observe the force used and was not involved in the incident. If the incident is a DA referral, you should provide/remind the inmate of a Miranda Admonishment prior to the interview. The location of the interview shall be conducted in a location free of outside influence, noise and distractions. The Custody Supervisor shall not interfere with the inmate's ability to be interviewed. It is the responsibility of the Custody Supervisor to prepare and submit a report (CDCR 3014) to the Manager. This report shall address all reports reviewed and information gathered in relationship to the interview subject. Further, it is the responsibility of the Custody Supervisor to summarize the interview statements and the results of the fact-finding. The CDCR 3014 shall include a conclusion and make a recommendation to the Manager as to further actions to be taken.

Prior to commencing the interview, the Custody Supervisor shall ensure that a CDCR 7219 has been completed. During the interview, the Custody Supervisor shall ensure all injury(s) are captured on the video recording. The view should be close enough to accurately account for the injuries noted on the CDCR 7219. If there are injuries in view that are not noted on the CDCR 7219, cease the video recording and have the inmate evaluated by medical again and obtain an updated CDCR 7219. Restart the videotaped interview with the new CDCR 7219 and review all the injuries.

At the onset of the recording, the Custody Supervisor will:

<i>(Complete the items below)</i>	
1. Introduce themselves and the camera operator. Interviewer:	Camera Operator:
2. Give the date and time the interview commenced: Date:	Time:
3. Indicate to the inmate the reason for the video recorded interview: Reason:	
4. Ask inmate to give their full name and CDCR number: Name:	CDCR#:

The following questions will then be asked:

<i>(Complete the items below)</i>
1. On this date: at approximately hours: You were involved in an incident which occurred at the following location:
2. This incident has been assigned CDCR Incident Log number:
3. According to the documentation provided on the CDCR 7219, you sustained an injury that lead to this interview. Please describe the injury: :
4. Do you have any other injuries?
5. In your own words, explain what happened and how you received your injuries. You need to be as <i>specific</i> as possible:
6. Can you identify staff witnesses?
7. Can you identify inmate witnesses?
8. Have you filed an appeal on this issue? (Ask only if time has passed to allow the inmate to do so):

Custody Supervisor's Name (Printed Name and Signature)	Title	Date

Source: The California Department of Corrections and Rehabilitation.

Table 4 below lists specific policy requirements for the Division of Adult Institutions; next to each policy requirement is the percentage of incidents we found in which staff did not follow that policy requirement. Of the 228 required video-recorded interviews, we found at least one instance of noncompliance in 85 incidents (37 percent).

Table 4. Inmate Allegation Video-Recorded Interview Compliance Rates

Division of Adult Institutions	Compliance rate
Staff conducted the video-recorded interview within time requirements	79%
Interview conducted by staff uninvolved in the incident	92%
Reasonable attempt to capture visible and alleged injuries on video	83%
Interviewer stopped the video for a new medical evaluation if new injuries identified	35%
Interviewer did not inhibit the inmate from providing relevant information	99%
Interview conducted free of distractions	94%
Interview conducted in a confidential setting	93%

Source: The Office of the Inspector General Tracking and Reporting System.

The department achieved high compliance rates in the areas that may lead to potential bias if policies are not followed, including uninvolved supervisors conducting the interviews (92 percent); not inhibiting the inmate from providing relevant information (99 percent); conducting the interview free of distractions (94 percent); and conducting the interview in a confidential setting (93 percent). However, considering the requirements to ensure prompt and adequate documentation of the allegation and injuries, improvement is needed. Staff complied with the video-recorded interview time requirements in only 79 percent of the incidents and captured all visible and alleged injuries on video in only 83 percent of the incidents. Finally, staff stopped the video for a new medical evaluation following the identification of new injuries in only 35 percent of the applicable incidents.

Not all incidents in which we identified a deviation resulted in a *poor* rating. However, in incidents involving multiple violations or egregious violations of the video-recorded interview policy, we assigned a *poor* rating, as illustrated in the following examples:

- In one incident, officers reported that an inmate threw a cup of urine and feces at the officers. An officer reported pepper-spraying the inmate when the inmate attempted to retrieve additional matter from the toilet. The inmate got on the ground, but resisted three officers' efforts to place him in handcuffs, resulting in the officers using physical force to control the inmate and place him in handcuffs. On the day of the incident, the medical evaluation form included the inmate's statement, "They assaulted me." Despite the inmate's clear allegation of excessive force, staff failed to video-record an interview until 11 days after the incident. During the interview, the inmate alleged that an officer stood on his leg restraints and jumped on them. He further alleged that another officer repeatedly punched him in the head. While there was other evidence in this incident to refute the inmate's allegation of excessive force, had the video-recorded interview been the only source, it would have been too late to have been useful.
- In another example, an inmate attacked an officer by punching him in the face and choking him unconscious. Other officers reported using pepper spray, physical force, and batons to stop the inmate's attack. The inmate alleged that an officer pepper-sprayed him for no reason and that he sustained injuries from other officers who struck him in the head and chest with batons. The inmate further alleged that officers began to hit him prior to placing him in a holding cell. The inmate claimed to have a "busted mouth," an alleged injury that staff made no attempt to capture on camera. In addition, staff interviewed the inmate in a hallway in the presence of unknown staff. Finally, just as the camera turned off, the video captured the inmate asking, "Can I just . . .," which led the OIG to question whether the inmate had additional relevant information to provide that the department failed to address.

Indicator 9. The Department's Compliance With Policies and Procedures When Staff Conducted Inquiries Into Serious or Great Bodily Injury That Could Have Been Caused by Staff's Use of Force Was *Poor*

Indicator 9 measures how well staff followed policies and procedures when conducting inquiries into serious or great bodily injury *that could have been caused by staff's use of force*; this includes assessing how promptly staff notifies the OIG and evaluating how well staff follow video-recording requirements, such as interviewing the inmate on video within 24 hours of the incident and making a reasonable attempt to capture injuries on the video recording.

Among incidents we monitored during this review period, we found the department's compliance with its policies and procedures when staff conducted inquiries into serious or great bodily injury that could have been caused by staff's use of force was *poor*. Of the 59 incidents applicable to this indicator, the OIG rated 24 *satisfactory* and 35 *poor*. We assigned no *superior* ratings.

After an incident in which an inmate sustains serious or great bodily injury that may have been caused by staff's use of force, departmental policy requires that the department notify the OIG as soon as possible, but no later than one hour from the time the serious or great bodily injury is discovered.⁴⁴ Second, policy requires that a supervisor who did not use or observe force during the incident conduct a video-recorded interview with the inmate no later than 48 hours from the discovery of the injury. The specific policy requirements for the video-recorded interview are the same as those required for an interview following an allegation of unnecessary or excessive force that we discussed in Indicator 8, including video-recording any visible or alleged injuries and not inhibiting the inmate from providing relevant information. In addition, the policy requires that "a video-recorded interview of an inmate shall be conducted in accordance with the Inmate Interview for GBI [Great Bodily Injury] and SBI [Serious Bodily Injury] Worksheet."⁴⁵ This worksheet (CDCR Form 3013-1, Figure 14, page 74) is a guide for supervisors assigned to conduct interviews and includes specific references to additional procedures, including ensuring that the medical staff have evaluated the inmate prior to the interview and conducting the interview in a location free of outside influence, noise, and distractions. The interview worksheet also includes the requirement that a custody supervisor prepare and submit a report (Report of Findings, Inmate Interview, CDCR Form 3014, Figure 15, page 75), which must address "all reports reviewed and information gathered in relationship to the interview subject. Further, it is the responsibility of the Custody Supervisor to summarize the interview statements and the results of the fact-finding. The CDCR 3014 shall include a conclusion and make a recommendation to the Manager as to further actions to be taken."

Indicator Rating **Poor**

Superior

No incidents

Zero percent

Satisfactory

24 incidents

41 percent

Poor

35 incidents

59 percent

44. DOM, Section 51020.18.2.

45. DOM, Section 51020.17.3.

Figure 14. Inmate Interview (CDCR Form 3013)

STATE OF CALIFORNIA
INMATE INTERVIEW FOR GBI AND SBI WORKSHEET
CDCR 3013-1 (Rev. 10/15)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

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Inmate Interview for GBI and SBI Worksheet

Per DOM 51020.17.3, a Custody Supervisor shall conduct a video recorded interview with the inmate when either of the following conditions exists:

- 1) The inmate has sustained Great Bodily Injury or Serious Bodily Injury that could have been caused by a staff use of force.
- 2) The inmate has made an allegation of unnecessary or excessive use of force.

The interview shall be conducted no later than 48 hours from discovery of the injury or allegation.

INTERVIEW FORMAT FOR GBI AND SBI:

The interview and video recording shall be conducted by a Custody Supervisor who did not use or observe the force used and was not involved in the incident. If the incident is a DA referral, you should provide/remind the inmate of a Miranda Admonishment prior to the interview. The location of the interview shall be conducted in a location free of outside influence, noise and distractions. The Custody Supervisor shall not interfere with the inmate's ability to be interviewed. It is the responsibility of the Custody Supervisor to prepare and submit a report (CDCR 3014) to the Manager. This report shall address all reports reviewed and information gathered in relationship to the interview subject. Further, it is the responsibility of the Custody Supervisor to summarize the interview statements and the results of the fact-finding. The CDCR 3014 shall include a conclusion and make a recommendation to the Manager as to further actions to be taken.

Prior to commencing the interview, the Custody Supervisor shall ensure that a CDCR 7219 has been completed. During the interview, the Custody Supervisor shall ensure all injury(s) are captured on the video recording. The view should be close enough to accurately account for the injuries noted on the CDCR 7219. If there are injuries in view that are not noted on the CDCR 7219, cease the video recording and have the inmate evaluated by medical again and obtain an updated CDCR 7219. Restart the videotaped interview with the new CDCR 7219 and review all the injuries.

At the onset of the recording, the Custody Supervisor will:

<i>(Complete the items below)</i>	
1. Introduce themselves and the camera operator. Interviewer: ____ Camera Operator: ____	
2. Give the date and time the interview commenced: Date: ____ Time: ____	
3. Indicate to the inmate the reason for the video recorded interview: Reason: _____	
4. Ask inmate to give their full name and CDCR number: Name: ____ CDCR#: ____	

The following questions will then be asked:

<i>(Complete the items below)</i>
1. On this date: You were involved in an incident which occurred at the following location:
2. This incident has been assigned CDCR Incident Log number:
3. According to the documentation provided on the CDCR 7219, you sustained an injury that lead to this interview. Please describe the injury:
4. In your own words, explain what happened and how you received your injuries. You need to be as <i>specific</i> as possible:
5. Can you identify staff witnesses?
6. Can you identify inmate witnesses?

Custody Supervisor's Name (Printed Name and Signature)	Title	Date

Source: The California Department of Corrections and Rehabilitation.

Figure 15. Report of Findings – Inmate Interview (CDCR Form 3014)

STATE OF CALIFORNIA
REPORT OF FINDINGS – INMATE INTERVIEW
 CDCR 3014 (Rev. 10/15)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

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Report of Findings – Inmate Interview

INCIDENT SITE/LOCATION		INCIDENT / APPEAL / FF LOG #	
DESCRIPTION OF THE INCIDENT			INCIDENT DATE
NAME AND TITLE OF INTERVIEWER		NAME AND TITLE OF CAMERA OPERATOR	
INMATE NAME AND CDCR#	DATE OF INTERVIEW	NAME AND TITLE OF TRANSLATOR (IF UTILIZED).	

The Report of Findings shall be conducted by custodial supervisors (sergeants or lieutenants) who did not use, or observe the force used, in the incident.

INMATE INTERVIEW		Yes	No	N/A
1. Did the inmate refuse to participate in the interview? If so, please provide the name and title of staff who asked the inmate to participate. Name: _____ Title: _____		<input type="checkbox"/>	<input type="checkbox"/>	
2. What is the reason for the interview? <input type="checkbox"/> Serious Bodily Injury <input type="checkbox"/> Great Bodily Injury <input type="checkbox"/> Allegation				
a. If there was an allegation, describe the allegation: Description: _____				
3. Summarize the statements made by the inmate during the interview: Summary: _____				

INMATE WITNESSES INTERVIEWED		Yes	No	N/A
1. Did the inmate being interviewed request inmate witnesses. If yes, fill in the information below: Inmate Name: _____ CDCR#: _____ Housing: _____ Date Interviewed: _____ Inmate Name: _____ CDCR#: _____ Housing: _____ Date Interviewed: _____ Inmate Name: _____ CDCR#: _____ Housing: _____ Date Interviewed: _____ Inmate Name: _____ CDCR#: _____ Housing: _____ Date Interviewed: _____		<input type="checkbox"/>	<input type="checkbox"/>	
2. Did any inmates refuse to participate in the interview? If so, please provide the name and title of staff who asked the inmate to participate: Staff Name: _____ Title: _____ Inmate Refused: _____ Staff Name: _____ Title: _____ Inmate Refused: _____ Staff Name: _____ Title: _____ Inmate Refused: _____ Staff Name: _____ Title: _____ Inmate Refused: _____		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Summarize the statements made by the witnesses during the interview: Summary: _____				

Source: The California Department of Corrections and Rehabilitation.

Table 5 below displays the specific policy requirements with the percentage of incidents in each category in which we determined staff followed policy and procedures.

Table 5. Serious Bodily Injury Video-Recorded Interview Compliance Rates

OIG Notification Requirement	If serious or great bodily injury occurred, did the institution timely notify the OIG?	55%
Video-Recording Requirements	Did staff conduct a video recorded interview within 48 hours?	72%
	Did staff ensure a 7219 was completed prior to the interview?	94%
	Did the interviewed or camera operator introduce themselves?	96%
	Did an uninvolved supervisor conduct the interview?	90%
	Did the interviewer make a reasonable attempt to capture injuries?	62%
	Did staff stop the video and have a new 7219 completed?	21%
	Did staff openly conduct the interview, not to inhibit the inmate?	96%
	If inmate refused, was the refusal captured on video?	100%
	Did staff conduct the video in a confidential setting?	96%
	Did staff conduct the video free of distractions and outside noise?	92%
Inquiry Requirements	Was the inquiry assigned to an uninvolved supervisor or manager?	92%
	Were all pertinent staff and inmate interviews attempted?	90%
	Did staff conduct a thorough inquiry into the cause of the SBI?	83%
	Did staff adequately review all documents and recordings?	94%
	Did staff adequately determine the outcome, including referral to OIA?	77%

Notes: **7219** refers to the department's Medical Report of Injury or Unusual Occurrence form (No. 7219; see page 45, this report). **SBI** refers to serious bodily injury. **OIA** refers to the Office of Internal Affairs.

Source: The Office of the Inspector General Tracking and Reporting System.

As was the case in Indicator 8, the department's deficiencies were primarily in the areas intended to ensure prompt and adequate documentation of the inmate's injuries. Staff met the time requirements for the video-recorded interview in only 72 percent of the incidents and captured the inmate's injuries on video in only 62 percent of the incidents. Finally, staff stopped the video to obtain a new medical evaluation following the identification of additional injuries in only 21 percent of the applicable incidents.

Not all incidents in which we identified a deviation resulted in a *poor* rating. However, in incidents involving multiple violations, or egregious ones, we assigned a *poor* rating, as illustrated in the following examples:

- In one incident, an inmate refused a sergeant's orders to sit on the ground during an emergency on a yard, as required by procedures. The sergeant attempted to place the inmate in handcuffs, but the inmate pulled away from the sergeant's control; the sergeant wrapped his arms around the inmate's torso and forced the inmate to the ground. The sergeant landed on top of the inmate and the inmate's face hit the ground. The sergeant and an officer used physical force while on the ground to overcome the inmate's resistance and apply handcuffs. The inmate sustained a broken tooth and a laceration to his lip that required seven sutures. Staff did not video-record all of the inmate's alleged injuries during the interview and did not stop the video to have the inmate medically evaluated after the inmate alleged additional injuries. In addition, the inmate identified an officer as a witness, but the sergeant conducting the inquiry did not interview the witness or explain why he did not attempt to interview the witness.
- In another incident, an inmate head-butted an officer during an escort, resulting in three officers and a sergeant using physical force to place the inmate on the ground and apply handcuffs. The inmate sustained a broken eye socket and a laceration on his face as a result of the force. Staff did not attempt to video-record an interview with the inmate until 11 days after discovering the serious bodily injury. The inmate refused to participate in the interview, but the sergeant conducting the interview failed to make a reasonable attempt to video-record the inmate's injuries.

Indicator Rating
Satisfactory

Superior

No incidents

Zero percent

Satisfactory

1,872 incidents

81 percent

Poor

424 incidents

18 percent

Indicator 10. The Department's Compliance With Policies and Procedures at the Institutional Levels of Review Was *Satisfactory*

Indicator 10 measures how well the institution reviewed and evaluated the use of force; this assessment includes evaluating the adequacy of each level of review as well as the decision of the institution's executive review committee.

Among incidents we monitored during this review period, we found the department's compliance with its policies and procedures at the institutional levels of review was *satisfactory*. The OIG found the department's performance *satisfactory* in 1,872 incidents (81 percent) and *poor* in 424 incidents (18 percent). We assigned no *superior* ratings.

Departmental policy states, "Each incident or allegation shall be evaluated at both supervisory and management levels to determine if the force used was reasonable under policy, procedure, and training. For reported incidents, a good faith effort must be made at all levels of review in order to reach a judgment whether the force used was in compliance with policy, procedure and training and follow-up action if necessary."⁴⁶ At the culmination of the five levels of review, the executive review committee makes a final determination on each incident.

This multiple-level process of scrutiny is designed to ensure that deviations from policy regarding serious incidents such as uses of force do not go unaddressed. Failures to identify use-of-force policy deviations allow staff who do not follow policy to avoid accountability. Furthermore, deviations that are not uncovered until the committee level represent failures at lower levels of review.

The reviewing supervisors and managers often did not identify deviations from use-of-force policy, procedures, or training.

We assessed how well the institutions' reviewers at all levels identified and addressed deviations from policy. We found that at each level, reviewers failed to address policy violations that the OIG identified.

In Table 6 on the next page, we identify the number of deficiencies that reviewers at each level did not identify. Of the 2,296 incidents we monitored, we found 799 incidents (35 percent) in which one or more reviewer did not identify a deficiency. In most cases, if the first-level reviewer did not identify the deficiency, reviewers in the subsequent levels of review also missed the issue, resulting in a total of 3,113 instances in which a reviewer did not identify a deficiency. For example, if the first-level reviewer did not identify that staff failed to ensure decontamination of a housing unit following the use of chemical

46. DOM, Section 51020.19.

agents, and the subsequent reviews also did not address the deviation, that represents five instances in which the reviewers missed the opportunity to address the issue.⁴⁷

Table 6. Policy Violations Not Identified at a Level of Review

Level of Review	DAI	DJJ	DAPO/OCS	Total
Incident Commander	698	68	6	772
First-Level Manager's Review	631	64	6	701
Second-Level Manager's Review	590	56	5	651
Use-of-Force Coordinator's Review	472	N/A	N/A	472
Institutional Executive Committee Review	463	48	6	517
Total Policy Violations	2,854	236	23	3,113
Total Use-of-Force Incidents Assessed by the OIG	2,125	136	35	2,296

Note: **DAI** stands for the Division of Adult Institutions; **DJJ**, the Division of Juvenile Justice, and **DAPO/OCS**, the Division of Adult Parole Operations/Office of Correctional Safety.

Source: The Office of the Inspector General Tracking and Reporting System.

The following examples illustrate the failures at various levels of institutional review to address use-of-force policy violations:

- In one incident, an officer reported that while escorting an inmate to the institution's medical center for a mental health evaluation, the inmate attempted to pull away from his control, causing the officer to use physical force to place the inmate face-down on the ground. The inmate sustained a minor injury to her arm, but during the medical evaluation following the incident, the inmate reported to a nurse, "I did not resist nobody. [Officer] dropped me." We believed the inmate's statement constituted an allegation of unnecessary force, which should have triggered the video-recorded interview requirements. None of the reviewers at any institutional level of review identified the allegation. In fact, the

47. For the Division of Adult Institutions, the five levels would include a lieutenant, a captain, an associate warden, a use-of-force coordinator, and the review committee.

critique at each level of review includes a standard question about allegations of unnecessary or excessive force, and each reviewer indicated the question was “not applicable,” and each reviewer concluded that staffs’ actions prior to, during, and following the incident were in compliance with policy. During the institution’s review committee meeting, we asserted that the inmate’s statement was an allegation of unnecessary force. The committee disagreed with our opinion and declined to take any action.

- In another example, following a group therapy session, a therapist left the classroom to inform officers that the session had ended. During this time, the inmates were left unsupervised and restrained to their chairs. One inmate freed himself from his restraints, picked up a chair and threw it at another inmate, followed by punching the inmate in the face several times. An officer responded and used pepper spray to stop the inmate’s attack. Following the incident, there were numerous discrepancies in the reports from the officers and the recreational therapist regarding the supervision of the inmates and discrepancies regarding the staff present who may have observed the force. None of the levels of review identified the lack of supervision that contributed to the need to use force and none addressed the lack of clarity—and possible dishonesty—in the reports. During the institution’s review committee, we recommended that the committee refer the matter to the Office of Internal Affairs for investigation. The hiring authority disagreed with our opinion and took no action to address any of the violations or discrepancies.

Indicator 11. The Department's Compliance With Its Policies and Procedures Regarding Department-Level Executive Review of Use-of-Force Incidents Was *Poor*

Indicator 11 measures how well the department reviewed and evaluated the use of force; this assessment includes evaluating the timeliness and adequacy of review by the department's executive review committee. Among incidents we monitored during this review period, we found the department's compliance with its policies and procedures regarding department-level executive review of use-of-force incidents to be *poor*. Of the 113 incidents applicable to this indicator,⁴⁸ the OIG assessed the department's performance as *satisfactory* in 47 incidents and *poor* in 66 incidents; we assigned no *superior* ratings.

The department executive review committees are required to review significant incidents, such as those involving warning shots, serious bodily injury, great bodily injury, or death that could have been caused by staff members' use of force.⁴⁹ In addition to this requirement, the department executive review committees may review other use-of-force incidents referred to them from the institutions' or facilities' review committees or requested by the department. Policy requires that at the departmental level, a review occur within 60 days after the institution's review committee completes its review,⁵⁰ unless the incident took place at a facility within the Division of Juvenile Justice, in which case there is no policy-mandated time frame. Of the 95 incidents we monitored that the department executive committees reviewed, they identified use-of-force deviations not previously found by the institutions' reviews in 65 incidents (68 percent).

The Department Executive Review Committee failed to review all incidents as required by policy, and those it did review were often untimely.

Specific to the Division of Adult Institutions, the Department Executive Review Committee reviewed only 55 of the 73 incidents that we determined met the criteria for review (75 percent). To clarify the significance of this poor performance, this means that a quarter of the OIG-monitored use-of-force incidents requiring the highest level of review were not addressed at the departmental executive level.

The Department Executive Review Committee also failed to review the incidents within the required 60-days after the institutions finalized their reviews in 34 of the 55 incidents (62 percent). Failure to promptly review

Indicator Rating
Poor

Superior

No incidents
Zero percent

Satisfactory

47 incidents
42 percent

Poor

66 incidents
58 percent

48. The 113 incidents applicable to this indicator includes 73 incidents within the Division of Adult Institutions that we determined met the criteria for review and 40 incidents within the Division of Juvenile Justice.

49. DOM, Section 51020.19.6.

50. Ibid.

incidents may leave significant policy violations unchecked and delay in imposing necessary corrective action.

The Division Force Review Committee reviewed all of the required incidents from juvenile justice institutions, but the lack of a time frame in its policy resulted in unreasonable delays.

Of the 40 incidents we monitored that met the criteria for review by the Division Force Review Committee, the committee reviewed 100 percent of the incidents. The criteria for the Department of Juvenile Justice requires the Division Force Review Committee to review a minimum of 10 percent of serious use-of-force incidents meeting specified criteria, including, self-injurious behaviors, serious injuries sustained by a ward or staff, incidents involving only one ward, use of pepper spray on a ward with a mental health designation, and incidents in which a ward alleges unreasonable force.⁵¹ During this reporting period, the Department of Juvenile Justice clearly identified certain incidents of significance that required review by departmental executives; even so, there is no requirement for the higher-level committees to review these incidents within a certain time frame. The Division Force Review Committee reviewed the incidents an average of 141 days after the facility's review, with some occurring up to 266 days after. As noted above, failure to promptly review incidents delays the department's ability to correct any inappropriate actions.

51. Division of Juvenile Justice, Crisis Prevention and Management.

Recommendations

For the January to December 2019 reporting period, we offer four recommendations to the department.

Nº 1. The department should revise its current policies pertaining to decontamination of the housing unit to include all indoor areas.

The current policy is unsatisfactory because it only requires staff to decontaminate an affected cell and housing unit after the use of chemical agents. In our opinion, the spirit of the policy requires decontaminating any indoor area where chemical agents were deployed. We identified many instances in which chemical agents were used indoors but the areas were not decontaminated due to the unsatisfactory policy language. We recommend revising the current policy to include *all indoor areas*, including dining halls, classrooms, and chapels.

Nº 2. The department should revise its current policies pertaining to involved staff's reporting requirements to ensure the same elements are required for all force options.

The department's use-of-force policy lacks consistency when requiring staff to articulate specific details of their actions or observations, depending upon the type of force used or observed. For incidents involving some force options, staff must identify important details, including descriptions of the specific force used or observed, whether or not chemical agents were involved, the type of projector, and the distance from targets, among other requirements. However, policy only requires staff to identify the distance if the force was in the form of a projector, eliminating this requirement for all nonprojector force options.

Nº 3. The department should develop a method to ensure that reviewers at all levels adequately review and identify deviations from use-of-force policy, procedure, and training.

In many instances, reviewers at all levels, from the incident commander to the institution's review committee, failed to identify use-of-force policy deviations. Furthermore, reviewers concurred with the reviewers at the prior level all the way through the multi-level review process, leaving the deviations to be identified by the use-of-force coordinator, a noncustody staff member, or the institution's review committee. These missed deviations led the OIG to question whether the reviewers require more training on their responsibilities in this area, or whether the department fails to hold accountable reviewers who neglect their responsibilities.

This process delays review and closure of incidents and bottlenecks the process at one level, often the use-of-force coordinator or the last institutional level of review, the committee. We recommend that the department track and monitor those levels of review and impose progressive discipline upon those reviewers who frequently fail to complete satisfactory reviews.

Nº 4. The Department of Juvenile Justice should adopt a policy to ensure eligible incidents are reviewed by the executive review committee within 60 days following the facility's review.

In almost all of the incidents reviewed by the Division Force Review Committee, the OIG identified a missed opportunity for the executive and final level of review to timely identify use-of-force deviations. The Division Force Review Committee conducted its reviews an average of 141 days after the facility's review. Only one incident was reviewed within 60 days, the standard required by the Division of Adult Institutions, and many were reviewed more than 200 days after closure by the facility. The OIG urges the Department of Juvenile Justice to adopt a policy and practice similar to that of the Division of Adult Institutions to ensure eligible incidents are reviewed at an executive level within 60 days after the facility's review.

Monitoring the Use-of-Force Review Process of the California Department of Corrections and Rehabilitation

OFFICE *of the* INSPECTOR GENERAL

Roy W. Wesley
Inspector General

Bryan B. Beyer
Chief Deputy Inspector General

STATE *of* CALIFORNIA
July 2020

OIG

Exhibit 139



The Department Refused to Take Disciplinary Action Against an Officer Despite Evidence That Suggested He Punched His Girlfriend and Slammed a Truck Door on Her Hand, Which Cut Off Part of Her Thumb

The Office of the Inspector General (OIG) is responsible for, among other things, monitoring the California Department of Corrections and Rehabilitation's (the department) internal investigations and employee disciplinary process. Pursuant to California Penal Code section 6133, the OIG reports semiannually on its monitoring of these cases. However, in some cases, where there are compelling reasons, the OIG may issue a separate public report; we call these *Sentinel Cases*. The OIG may issue a Sentinel Case when it has determined that the department's handling of a case was unusually poor and involved serious errors, even after the department had a chance to repair the damage. This Sentinel Case, No. 20-03, involves departmental executives, despite a preponderance of the evidence, refusing to take disciplinary action against an officer who punched his girlfriend and then slammed a truck door on her hand, completely severing a portion of her thumb at the first joint.

On December 15, 2018, the officer and his girlfriend engaged in a verbal altercation at her apartment complex. The following narrative is based on statements the girlfriend made after the incident occurred: The girlfriend was outside, talking on the phone with her mother, when the officer exited her apartment. The girlfriend ended the call with her mother and followed the officer, who was walking toward his truck, and the couple began screaming at each other. According to the girlfriend, the officer punched her in the face, causing her lip to bleed. She approached the officer as he entered his truck, pleading with him to "talk things out." The girlfriend reported she had her hand on the truck door when the officer forcefully slammed the door on her hand.

The girlfriend stated she passed out briefly and regained consciousness to find that her thumb, bloodied and maimed, was now missing the entire tip, down to the first joint. According to the girlfriend, the officer was fleeing the scene in his truck, driving at a high rate of speed through the parking lot, leaving her screaming, battered, and bleeding. As the officer waited for the automatic gate to open so that he could drive out of the parking lot of the apartment complex, the girlfriend yelled, "My thumb is gone!"



The girlfriend on the night of the altercation: the injury to her lower lip.

A neighbor heard the disturbance, emerged from his apartment, and found the girlfriend walking to the apartment building from the parking lot with a big cut on her lip and bleeding from her mouth. The girlfriend stated that the officer

had punched her in the face and slammed a truck door on her hand. While the girlfriend called 9-1-1, the neighbor searched for the missing portion of her thumb.

Fire department personnel arrived first and medically treated the girlfriend. The police also responded to the apartment complex. They found the girlfriend with her clothes covered in blood. Her lower lip was cut and actively bleeding. Her left thumb was in a bandage. The police took photographs of the girlfriend's injuries.

The police searched for and found the severed portion of the girlfriend's thumb in the apartment complex's parking lot. Emergency personnel transported the girlfriend to the hospital, but medical staff there could not reattach the severed portion of the girlfriend's thumb as it had been cut off at the joint. She did, however, receive approximately half a dozen stitches for her split lip.

The officer returned home that night and took photographs of his own hands. Meanwhile, the police tried to contact the officer, but he did not answer the phone.

The next day, on December 16, 2018, the police arrested the officer at the prison where he was, and continues to be, employed. The police inspected the officer's truck and found trace amounts of blood in the door jamb of the front driver's-side door. The officer reported that on the previous night, he saw his girlfriend as he opened the front driver's-side door of the truck, grabbed the inside door handle and slammed the door shut, and she fell to the ground. The officer admitted that he continued to drive away even after his girlfriend fell.

The district attorney filed felony charges of domestic violence and mayhem against the officer. The court held a preliminary hearing, at which the girlfriend testified. After evaluating the evidence, including the girlfriend's testimony, a superior court judge found that the district attorney met the burden of proof and held the officer to answer on the charges. The judge concluded that the evidence in this case would lead a reasonable person to believe in, and conscientiously entertain a strong suspicion of, the defendant's guilt (*People v. San Nicolas* (2005) 34 Cal.4th 614, 654).



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Prison Oversight

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Meanwhile, the department initiated an internal investigation into the girlfriend's allegations against the officer. Among other investigative activities it conducted, the Office of Internal Affairs interviewed the girlfriend and the officer. On May 23, 2019, the officer lied to the Office of Internal Affairs when he denied that he punched his girlfriend and slammed a truck door on her hand.

After the investigation had concluded, the officer's hiring authority, a warden, reviewed all the case materials, including the report, the photographs the police took, and the interview recordings, and evaluated the evidence. On August 6, 2019, the warden sustained allegations that the officer battered his girlfriend and that the officer lied to the police and to the Office of Internal Affairs. The warden did not sustain the mayhem allegation. The warden decided to dismiss the officer from his employment with the department. The department attorney, who also evaluated the evidence, supported the warden's decisions to sustain the battery and dishonesty allegations against the officer and to dismiss him.

On September 10, 2019, a predeprivation hearing, called a *Skelly* hearing, was held. The *Skelly* officer heard a presentation by the officer's attorney and, based on the presentation, concluded there were inconsistencies in the girlfriend's statements and that the officer "presented himself humbly, very confident in his demeanor, and body language was agreeing [*sic*] with the statements of his legal representation." The *Skelly* officer recommended the warden withdraw the disciplinary action.



The girlfriend's bandaged thumb.

By the time of the *Skelly* hearing, a new warden had replaced the original warden as the hiring authority.

The new warden, without consulting the OIG, adopted

the *Skelly* officer's recommendation and withdrew the disciplinary action against the officer. The prison's employee relations officer subsequently notified the OIG. Upon learning of the decision, the OIG immediately contacted the new warden, who affirmed his decision to withdraw the disciplinary action. The OIG attorney asked the new warden for his thoughts on how the officer's girlfriend sustained the egregious injuries. The new warden responded, "I don't know. I was not there." The new warden then blamed the girlfriend and speculated that she could

have tripped and fallen. The department attorney, who had supported the previous warden's decision to sustain the allegations and dismiss the officer, then opined that she no longer believed the department could prove its case.

The OIG disagreed and elevated the decision multiple times to three different departmental executives: an associate director, a deputy director, and a director. (*To elevate a decision* means to appeal that decision to a higher level of authority.) Departmental executives

concluded the department could not prove it was more likely than not that the officer battered his girlfriend, and then lied about it to outside law enforcement and to the Office of Internal Affairs. Departmental executives noted there were no third-party witnesses to the incident, it was a



The girlfriend after receiving stitches for her split lip.

"he said/she said" situation, there were inconsistencies in the girlfriend's statements, and, after criminal charges were filed, the girlfriend had sent an email message to the officer stating she could no longer recall exactly how she sustained the injuries that night; this emailed message caused the district attorney to ultimately dismiss the criminal charges.

The OIG disagrees with the department's decision to take no disciplinary action in this case. On the date the event took place, the girlfriend consistently reported to a neighbor, to 9-1-1, and to the police that the officer punched her and slammed the door on her hand. She had injuries that supported her version of the events. She suffered a split lip, for which she received multiple stitches. She lost part of her thumb. Photographs documented the injuries. A neighbor who was willing to testify told outside law enforcement and the Office of Internal Affairs that he heard the officer and the girlfriend arguing, heard the "screeching of tires" as the officer sped out of the parking lot, and observed the horrendous injuries the girlfriend suffered.

The above facts are those a superior court judge relied upon to hold the officer to stand trial on felony charges of domestic violence and mayhem. The above facts are those a warden reviewed to sustain allegations the officer battered his girlfriend, and lied about it to the police and to the Office of Internal Affairs. The above facts are those a warden used to support his decision to dismiss the officer. And the above facts are those a department attorney should present to the State Personnel Board in pursuing disciplinary action against the officer. Instead, the department is taking no disciplinary action at all.

THE WARDEN WHO ORIGINALLY REVIEWED THIS CASE and made findings was correct in determining there was a preponderance of evidence needed to prove the allegations in a hearing, and it was more likely than not that the officer had engaged in misconduct. This same warden correctly recognized the importance of protecting the integrity of the department and the absolute requirement that its peace officers be held to the highest standards of ethical behavior. Unfortunately, the department is not always willing to strenuously support these critical standards and values. This is one of those cases. The OIG disagrees. OIG



STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

GAVIN NEWSOM, GOVERNOR

OFFICE OF THE SECRETARY
 P.O. Box 942883
Sacramento, CA 94283-0001


May 27, 2020

 Mr. Roy Wesley
Office of the Inspector General
10111 Old Placerville Road, Suite 110
Sacramento, CA 95827

Dear Mr. Wesley:

The California Department of Corrections and Rehabilitation (the Department) submits this letter in response to Sentinel Case Report 20-03. Thank you for the opportunity to review and comment on the draft report.

The Department has reviewed the draft Sentinel Report prepared by the Office of the Inspector General (Report number 20-03). The Department does not believe that the Sentinel Report fully and accurately captures the facts underlying the proposed discipline of the Department's Correctional Officer.

 1, 5, 6, 7,
8, 9, 10

Demonstrably absent from the report are the facts that support the Hiring Authorities' decisions to not sustain the allegations against the Officer. While the report correctly characterizes the issue as a "he said, she said," it leaves out the credibility of the parties and why one of the parties was credible and one was not; this credibility determination was the basis for the Department's decision. The draft report also does not reflect that throughout the Executive Review process the Hiring Authorities reviewed all the evidence available to each of them, weighed it, and found that the complaining witness was not credible.¹ Ultimately, the OIG's criticism of the Department's executives results simply from the OIG choosing to believe one of the complaining witness's multiple versions of events; this does not demonstrate any failure by the Department's executives.

1

The Department does not dispute that the complaining witness, [REDACTED] was injured. She sustained a cut to her lower right lip. Further, the tip of her thumb was severed in the driver-side door of the Officer's truck when she tried to open/keep open the door to the truck as the Officer was trying to close the door so that he could leave. Exactly how [REDACTED] sustained her injuries is at issue in this case.

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¹ Additional evidence was made available throughout the Executive Review process. For example, the body-cam footage was obtained prior to the Executive Review before the Deputy Director, and the Preliminary Hearing transcript and email discussed below were obtained prior to the Executive Review before the Director.



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Both parties were drinking alcohol that evening at an event. The Officer had approximately 3 vodka and red bulls over a 5-6 hour period. [REDACTED] had approximately 5-6 double vodkas over the same period. When they returned to her home, the Officer retired to her bedroom, while she went outside and called her mother. After a period of time, the Officer decided that he was finished with their relationship, packed up his few belongings, and departed the apartment.

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The Officer's version of the events that transpired thereafter was consistent each time he told it and was consistent with the physical evidence. According to the Officer, he left [REDACTED] apartment with his bags. He got into his truck when he saw [REDACTED] running towards him when she was just a few feet from the truck. He was attempting to close his driver's side door while [REDACTED] was attempting to keep the door open and prevent him from leaving. He pulled the door shut. He explained that when he pulled the door shut he felt some resistance, which he believed was [REDACTED] pulling the door again. The resistance turned out to likely be her thumb being stuck in the door. She then fell to the step board of his truck or the pavement. When the Officer was later informed that [REDACTED] had an injury to her lip, he believed that when she fell at the side of his truck was when she struck her face. He left the scene. He explained that he did not speed out of the parking space, but after waiting for the parking lot gate to open, may have sped out of the gate. Pictures of his hands showed no injuries. The Officer maintains [REDACTED] must have injured her lip after her thumb was severed striking her mouth on the step board of the truck or the ground. He steadfastly denied striking her in the face.

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[REDACTED] however, has offered several different versions of events. Her versions are not consistent with one another and do not match the physical evidence, and, under oath, denied the events as detailed by the responding police officers (stating that she did not make statements attributed to her). Furthermore, she admitted her memory of the alleged punch is blurry and that she does not recall if it was his fist that injured her face.

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A few days after the event, [REDACTED] wrote an email to the Officer wherein she stated she did not recall what happened from the time she approached the truck until she saw him again at the gate. She specifically stated "I'm not sure it was your hand that hit me." She went on to state that she assumed that he was part of her injuries based just on "the way you speed [sic] away." She further informed the Officer that she didn't "support the charge" against him, and would contact the District Attorney, who would likely drop the charges because of her lack of certainty.

7

In addition to the email, [REDACTED] has offered three versions of what happened:

Version 1. [REDACTED] told the responding police officer that as she was walking across the parking lot when the Officer turned and punched her in the face. She then followed him to the



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truck and fought with him over closing the driver's side door. When the door closed it sliced her thumb and she fell to the ground.

Version 2. At the preliminary hearing, [REDACTED] testified under oath that the Officer left with one bag, came back to get his second bag and she followed him down. She further testified that both the punch and the struggle over the door occurred at the truck, but happened at the passenger side door not the driver door. She further testified at the preliminary hearing that she lost consciousness and did not have any idea how her thumb was injured. In fact, she testified unequivocally that she did not tell the responding officer that she was holding the driver's door open, and that her thumb got slammed in the door when the Officer closed it.²

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Version 3. During her OIA interview, [REDACTED] testified that the Officer left her home with two bags, and that she carried one of the bags down, following him. During her interview, she could not recall which side of the vehicle she was on, but believed it was the passenger side because she was on the ground near the tree (which would have been on the passenger side) when she "came to." And when she came to she was missing her thumb and was covered in blood.

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It should also be noted that the neighbor did not witness any of the interaction between [REDACTED] and the Officer, and, instead, just heard the Officer's vehicle speed away and heard [REDACTED] yelling "[REDACTED] come back" to the Officer.³

11

Furthermore, the OIG's inclusion of the Court's decision at the preliminary hearing is misleading. A preliminary hearing does not include all evidence. In addition, the Court utilized a standard of "reasonable cause to believe" that the offenses occurred, and the Court failed to articulate why it believed this standard had been met. (Even with the Court's determination, the District Attorney subsequently declined to proceed with the case.) The Department must prove that the misconduct occurred by a preponderance of evidence.

11

[REDACTED] injuries were certainly serious, and the images of the injuries to her thumb are gruesome. However, those facts alone are insufficient to demonstrate by a preponderance of the evidence (not a mere "suggestion") that the Officer struck her in the face or intentionally

11

² At the preliminary hearing the responding officer testified that [REDACTED] told him that she was holding the driver's side door open and when the Officer pulled the door shut, her thumb was slammed in the door. He further testified that she did not ever inform him that she had lost consciousness.

³ [REDACTED] claims that she was yelling that the Officer had injured her thumb; the neighbor did not testify that he heard any statements beyond "[REDACTED] come back."



Mr. Roy Wesley, Office of the Inspector General
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caused the injury to her thumb. The Department had to make a credibility determination. Finding that [REDACTED] was not credible left the Department without a preponderance of evidence to sustain the allegation against the Officer.

12

The Department holds its peace officers to the highest standards of ethical behavior, and takes these matters seriously. If you have further questions, please contact me at (916) 323-6001.

Sincerely,

RALPH M. DIAZ
Secretary



OIG No. 20-03

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SENTINEL CASE

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JUNE 15, 2020

COMMENTS

OFFICE OF THE INSPECTOR GENERAL'S COMMENTS ON THE RESPONSE FROM THE DEPARTMENT OF CORRECTIONS AND REHABILITATION

To provide clarity and perspective, we are commenting on the California Department of Corrections and Rehabilitation's (hereinafter referred to as the department) response to our Sentinel Case No. 20-03. The numbers below correspond with the numbers we have placed in the margin of the department's response. The department contends the Sentinel Case does not fully capture the facts underlying the discipline of the officer in this case. We submit the facts contained in the Sentinel Case are comprehensive and have been verified for accuracy.

1. The department contends that the OIG did not address credibility in this case; this assertion is incorrect. Credibility can be determined by a multitude of factors: corroboration, body language, demeanor, and so forth. We weighed not only the credibility of the girlfriend and the officer, but also found corroboration in the physical injuries suffered by the girlfriend and the statement of the girlfriend's neighbor, and determined that the girlfriend's initial statements to law enforcement and to her neighbor on the night of the incident are the most reliable. The department tends to give undue credence to its officers (see [OIG Sentinel Case No. 20-01](#), in which the department disregarded credible inmate testimony and chose to believe the self-serving statements of its officers; and [OIG Sentinel Case No. 20-02](#), in which the department dismissed statements from its own department attorneys and employee relations officer and, again, chose to believe the self-serving statements of its officer).

The officer in this case had every reason to be untruthful. Not only was the officer's job potentially at risk, but he also was subject to criminal prosecution. The injuries the victim suffered are not consistent with the officer's version of events. The officer also fled the scene. His behavior of fleeing the scene is circumstantial evidence of his consciousness of guilt. In addition, on the evening of the incident, when the police attempted to call the officer and speak with him regarding the incident, he did not answer the call.

The department completely ignores the fact that the original warden on the case not only believed the girlfriend and sustained the allegation that the officer battered his girlfriend, but also added two additional allegations against the officer. The original warden added a dishonesty allegation against the officer for lying to outside law enforcement and for lying to the Office of Internal Affairs.

2. The department has no problem minimizing the victim's injuries, referring to the laceration on her lip, which required multiple stitches, as just a "cut" and describing the permanent disfigurement of her thumb as just the "tip" of her



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thumb being severed, when, in actuality, her thumb was severed to the first joint. The department is blaming the girlfriend, who is the victim, in this case.

3. The department contends that the officer drank three alcoholic beverages, and the girlfriend allegedly consumed double that amount. The department does not make any reference as to the source of this information. However, after again reviewing the evidence in the case, it appears that the department obtained this information from the officer's interview with the Office of Internal Affairs. The department chooses to believe the officer's self-serving statements regarding how much alcohol he and the girlfriend consumed despite the fact that, on the night of the event in question, he and the girlfriend attended a business event for her employer in which she was responsible for the event and had hosting responsibilities. Both parties admitted to consuming alcohol. However, the actual amount of alcohol imbibed by the officer or the girlfriend was never independently confirmed.
4. The department asserts that the officer was consistent with his version of the events regarding the incident in question. However, just because someone is consistent with his or her story does not make the story true. The department has conflated repetition with validity. It is also worth noting that the officer did not wait for the police to arrive on the night in question, and he did not answer the phone when the police attempted to speak with him that same night. The officer had plenty of time to formulate his version of events by the time he was briefly interviewed by the police on the following day. The officer also had more than five months to think about what he was going to say during his interview with the Office of Internal Affairs.
5. The department inaccurately recounts the officer's version of events. The department asserts that the officer was attempting to close the door when he was approached by his girlfriend who kept the door open in order to prevent him from leaving. However, the officer actually stated that he had already entered his vehicle and shut the door when his girlfriend approached and opened his driver's side door. The officer alleged the vehicle was actually running. If this is true, the officer could have driven away at any point. The officer stated he refused to speak with his girlfriend and admitted in his Office of Internal Affairs' interview that, after she opened the door and asked to speak with him, he "slammed" the door shut.¹ The officer claimed he felt a "nudge" when he first began to close the car door.² The Office of Internal Affairs' special agent asked for clarification in regard to what the officer meant by "nudge." The officer explained he felt some light resistance when he attempted to pull the door shut, as if she "had a handle" on the door, and he "ripped" it out of her hand.³ The special agent specifically asked him if he felt the resistance when the door tried to close against the frame of the car and the

1. Office of Internal Affairs' interview of officer, time stamp, 16:36.
2. Office of Internal Affairs' interview of officer, time stamp, 16:41.
3. Office of Internal Affairs' interview of officer, time stamp, 18:19.



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officer stated, “No,” that it was in the beginning.⁴ During the interview, the officer claimed he opened the door again because he saw his girlfriend sitting on the ground next to his vehicle.⁵ He claimed he asked her if she was okay and that she got up and ran away, back into her apartment.⁶

The officer maintained he did not observe any injuries or see any blood. However, when the police arrived on scene, the girlfriend was covered in blood, her lip was actively bleeding, and her thumb was severed.⁷

6. At one point in the interview, the officer speculated as to how the girlfriend sustained the injury to her lip.⁸ His *guess* was that she fell forward when he ripped the car door out of her hand, and she hit her lip on the side of his truck. He repeatedly indicated that he didn’t know, that it was an assumption, and that it was his “guess.” When the Office of Internal Affairs’ special agent questioned the officer regarding the girlfriend’s severed thumb, the officer had no idea. He could not even begin to formulate a response.⁹ This is not reasonable or credible. The girlfriend’s severed portion of her thumb was found in the parking lot. The officer admitted to “slamming” his truck door shut, yet he vehemently denied any knowledge regarding the manner in which his girlfriend’s thumb was severed.

The department determined that the officer’s pure speculation was credible, instead of statements made by the girlfriend on the night in question: that she was punched in the face and that the officer slammed his truck door on her thumb. The girlfriend did not have time to think about what she was going to say to her neighbor or the police that night. The girlfriend was at her most vulnerable moment when she told her neighbor that she was struck in the face by her boyfriend, the officer. At the time she made this statement, she was actively bleeding from her mouth, and what was left of her thumb was bleeding as well. It is reasonable to assume she was in a considerable amount of pain. The OIG contends that on the night in question she was telling the truth.

7. The department points out the fact that the girlfriend made inconsistent statements. The department is correct—the girlfriend did make inconsistent statements and subsequently contacted the district attorney, informing that entity she did not “support the charge” against the officer. What the department fails to acknowledge is that the girlfriend was a *victim of domestic violence*. Unfortunately, the sad reality is that domestic violence victims have a propensity to recant. Recanting refers to the act of trying to take back or withdraw a prior statement. “False statements in domestic violence cases are a significant problem and considered an epidemic with an estimated 50 to

4. Office of Internal Affairs’ interview of officer, time stamp, 18:00–32.

5. Office of Internal Affairs’ interview of officer, time stamp, 18:38.

6. Office of Internal Affairs’ interview of officer, time stamp, 20:02–04.

7. Police Department Crime/Incident Report, officer’s report narrative, p. 3 of 5.

8. Office of Internal Affairs’ interview of officer, time stamp, 35:44–36:08.

9. Office of Internal Affairs’ interview of officer, time stamp, 37:33–50.



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90 percent of domestic violence victims recanting.”¹⁰ That the girlfriend recanted her statements should not negate what she initially told the police on the evening of the incident, which included that she desired prosecution. The girlfriend’s statements to the police on the night in question and her express desire for prosecution should be the statements given the most weight.

8. The department points out the girlfriend admitted her memory of the alleged punch was “blurry” and that she later stated she lost consciousness. It is puzzling the department never thought to put the two together—specifically, the possibility that the girlfriend’s memory was “blurry” because she, in fact, lost consciousness on the night in question. The department never even considered that perhaps on the night in question, when the girlfriend was speaking to the police, she may not have even realized she had lost consciousness. It is plausible that, upon further reflection, after the shock of the night’s events had worn off, she may have realized that she did, in fact, lose consciousness. Furthermore, it is reasonable to infer that the girlfriend did not anticipate getting punched in the face. Therefore, it is valid for her, literally, to have not seen the officer’s fist coming toward her face.
9. The girlfriend’s interview with the Office of Internal Affairs occurred on May 15, 2019. This interview occurred five months after the incident in question. It is natural for some of the irrelevant details, such as how many bags the officer carried out or whether she carried a bag down to his car, to have been forgotten. This does not mean that her entire version of events should be dismissed. It is a natural and inevitable occurrence for memories to fade over time.
10. The department asserts that the neighbor did not witness any interaction between the girlfriend and the officer. However, the neighbor did hear the girlfriend and the officer fighting from his bedroom window. He recognized the girlfriend’s voice during the argument, and he could tell from the tone of their voices that the two were arguing. The neighbor heard the arguing stop, and then he heard the loud screeching of tires. The neighbor also heard the girlfriend crying and found the girlfriend walking back toward her apartment. The neighbor requested that the girlfriend stay with him in the parking lot while he searched for her thumb in case the officer returned and attempted to hurt her again. The neighbor’s independent observations corroborate the girlfriend’s statements. In addition, the girlfriend explained to the neighbor the events that had transpired between herself and the officer. She told the neighbor that the officer punched her in the mouth and slammed his car door on her hand, causing her thumb to be severed.¹¹ This is consistent with the statements she made to the police later in the evening.

10. Njeri Mathis Rutledge, “Turning a Blind Eye: Perjury in Domestic Violence Cases,” *New Mexico Law Review* 39, no. 1 (Winter 2009): 149–94.

11. Office of Internal Affairs’ investigation report, summary of interview of neighbor, pp. 9–10.



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11. The department notes that, subsequent to the preliminary hearing, where the officer was held to answer on all charges, the district attorney declined to proceed with the case. The OIG will not speculate as to the reasons why the district attorney did not continue with the prosecution of the officer. However, it is important to distinguish among the different legal standards of proof. In a criminal case, the prosecution has the burden of proving its case *beyond a reasonable doubt*. Reasonable doubt is the highest standard of proof in the American legal system.

What is reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt; because every thing relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge (*Commonwealth v. Webster*, 59 Mass. 295, 320 (1850)).

In contrast, the department has the burden of proving its case by a mere *preponderance of the evidence*, which is one of the lowest burdens of proof in the American legal system. “The California Supreme Court has stated that the standard of proof to be used in state employment cases is a preponderance of the evidence” (*Skelly v. State Personnel Board*, *supra*, 15 Cal.3d at p. 204, fn. 19, 124 Cal.Rptr. 14, 539 P.2d 774). Practically speaking, the department is required to prove that it is more likely than not that the officer punched his girlfriend and severed her thumb. The girlfriend’s statements to the police and to her neighbor, the neighbor’s independent observations, and the physical evidence of the girlfriend’s injuries are sufficient to prove the department’s case. In the OIG’s opinion, the department had sufficient evidence to sustain the allegations and dismiss the officer.

12. The department’s credibility determination ignores the dynamics of domestic violence, revictimizes the girlfriend who suffered through a traumatic event and is permanently disfigured, and allows the officer to remain discipline free and maintain his position of authority as an officer with the department.

Exhibit 140

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