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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 JOHN ARMSTRONG, et al.,

14 Plaintiffs,

15 v.

16 GAVIN NEWSOM, et al.,

17 Defendants.
18

Case No. CV 94-2307 CW

**COURT EXPERT'S QUARTERLY
REPORT ON INVESTIGATIONS AND
DISCIPLINE**

19 Pursuant to the Court's orders for remedial measures at RJD, LAC, COR, SATF, CIW,
20 and KVSP, the Court Expert provides the following report on implementation of CDCR's new
21 investigations and discipline system.

22 **Investigation timelines and caseloads**

23 As the Court is aware, investigations must be completed in 120 or 180 days, depending
24 on whether they are assigned to custody supervisors (sergeants and lieutenants) or special agents.
25 The Court Expert's last two reports expressed concern with CDCR's ability to meet those
26 timelines. Only 39% of cases received by the Allegation Inquiry Unit (AIU) in June 2022 closed
27 on time. While the numbers have gotten better, more improvement is needed. For cases received
28

1 in December 2022, 68% (203 cases) closed on time, and 19% (39 cases) remain open and past
2 due as of the end of April.

3 The backlog in cases pending decision by hiring authorities persists. While investigations
4 must be closed in six months at the outside, the time limit for the notice of proposed discipline is
5 longer—one year for corrections staff and three years for non-peace officers. Gov. Code §§
6 3304(d), 19635. A timely investigation thus does not guarantee speedy discipline. At the time of
7 the last report, wardens had yet to act on 81% of cases where the investigation had closed. Those
8 numbers have not improved. Between June 2022 and April 2023, AIU completed 2,189
9 investigations arising out of the six *Armstrong* prisons, but hiring authorities have yet to act on
10 1,752 (80%) of them.¹ As the Court Expert pointed out in his last report, long delays after
11 completion of investigations undermine the goal of prompt resolution for accuser and accused,
12 and they risk compromising the thoroughness of investigations themselves because wardens, by
13 delaying the discipline decision until close to end of the limitations period, could lose the ability
14 to send matters back for further investigation. The Court Expert will work with the parties over
15 the next quarter to discuss ways to achieve more timely investigations and more prompt
16 discipline decisions and will report back on these efforts in the next quarterly report.

17 **Complaint classification**

18 Between June 2022 and April 2023, incarcerated individuals at the six *Armstrong* prisons
19 filed an average of around 3,500 complaints per month. The role of the Centralized Screening
20 Team (CST) is to group those complaints into three categories: “routine” complaints, which do
21 not allege misconduct; complaints alleging serious forms of staff misconduct against inmates;
22 and complaints alleging less serious misconduct. CST routes routine complaints to the
23 institutions, serious staff misconduct complaints to the AIU, and less serious misconduct to
24 Locally Designated Investigators (LDIs) at the institutions. CST’s role is not to evaluate the
25 merits of complaints but simply to determine whether their allegations, if true, constitute staff
26 misconduct. Since June 2022, CST has on average found that roughly 82% of complaints

27 _____
28 ¹ Of the 437 cases that have been decided, allegations were sustained in 25 cases (5.7%) and not
sustained in 412 (94.3%).

1 (2,900/month) are routine, and it has routed around 9% to the AIU (315 cases) and 9% to LDIs
2 (300 cases). As the Court Expert has noted in prior reports, CDCR’s initial estimate was that
3 AIU would be receiving 505 cases per month from the entire prison system; the fact that an
4 average of around 315 cases are coming from only six institutions indicates that the AIU may be
5 understaffed.

6 Plaintiffs believe CST is failing to properly categorize complaints and that more cases
7 should be going to AIU. Based on a review of complaints categorized as routine, they allege CST
8 failed to identify staff misconduct in 30% of cases. Plaintiffs have also raised concerns that CST
9 staff may be evaluating the merits of complaints before sending them to AIU instead of simply
10 categorizing them.

11 As described in the Court Expert’s September and December 2022 reports, CST conducts
12 a “causal connection” screen of certain complaints from non-*Armstrong* prisons. Where a
13 complaint concerns misconduct related to a protected status or activity (such as discrimination on
14 the basis of race or retaliation for reporting misconduct), CST assesses not just if the complaint
15 claims there was misconduct but also if it sufficiently alleges a connection between that
16 misconduct and the protected status or activity. CDCR implemented this requirement in an effort
17 to alleviate staffing concerns and to reduce the number of cases that do not actually involve
18 serious staff misconduct being sent to the AIU. The Court Expert has not determined whether
19 CST is conducting a similar merits review for cases from the *Armstrong* prisons and agrees that
20 such a review would not be appropriate under the remedial plans as they currently stand.² If
21 Plaintiffs are right that CST is improperly categorizing as routine complaints that in fact allege
22 staff misconduct, that is cause for concern as well. However, if the current process is sending
23 more complaints to AIU than its investigators can reasonably handle, and if cases are being
24 routed to AIU that do not in fact involve staff misconduct, it may be that some form of additional
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27 ² The remedial plans provide that “CST will route all allegations in the complaint that are on the
28 ADI, as well any allegations directly related in time and scope that are not on the ADI, to OIA
for investigation.” Five Prison Remedial Plan (Dkt. 3393) 4.

1 screening is required. The Court Expert will be discussing this issue with the parties during the
2 next quarter and will report back to the Court.

3 **Review of closed investigations**

4 As CDCR has continued to make quarterly productions of information on closed cases,
5 Plaintiffs have continued to send letters to Defendants and the Court Expert in which they raise
6 concerns with individual investigations and disciplinary decisions. Defendants have responded
7 with letters of their own, but they have discussed the specific cases identified by Plaintiffs only
8 on a general level, apparently in part out of a concern that statements acknowledging deficiencies
9 in specific investigations or discipline decisions could be used against them in later proceedings.

10 In order to identify—and remedy—problems with investigations and discipline, the
11 parties must be able to speak candidly. That is not always possible in an adversarial setting,
12 where a party might hesitate to acknowledge problems out of a concern that admissions could be
13 detrimental in litigation. To enable the parties and the Court Expert to communicate more
14 candidly about the specific cases identified in Plaintiffs' letters and to identify what is working
15 well and what is not, the Court Expert and the parties have devised a new process to discuss
16 investigations and discipline. Based on their review of CDCR's quarterly productions, Plaintiffs
17 will continue to outline where they see problems in investigation and/or discipline. In a
18 confidential response, CDCR will explain whether it agrees with Plaintiffs' critiques and explain
19 why if it does not agree. The parties will select cases they believe are worth further discussion,
20 and the parties will meet with the Court Expert to examine a subset of these cases. In quarterly
21 meetings, we will examine the actions of individual investigators and hiring authorities in
22 specific cases. The goal is to determine where improvement or corrective action is necessary,
23 where successes can be shared and built upon, and where changes in training, investigation
24 practices, or policy may be necessary. In order to foster open discussion, the meetings will be
25 confidential and subject to a mediation privilege.

26 The Court Expert hopes that candid and confidential discussion of particular cases will
27 help the parties identify necessary reforms and agree on concrete steps to improve the
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