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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
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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 and discipline timelines
23

24 As the Court is aware, AIU investigations must be completed in 120 or 180 days,
25 depending on whether they are assigned to custody supervisors (sergeants and lieutenants) or to
26 special agents. As the Court Expert has previously reported, CDCR has been unable to meet
27 these deadlines in all instances. The trend continues to improve, however. For cases received
28 from November 2022 through February 2023, roughly 68% closed on time; for cases received
from March to June 2023, the average was around 72%. Perhaps relatedly, the average time

1 investigators spend per case has dropped slightly during the same general period (from almost 30
 2 hours per case between May and June to 27 hours per case in September and October 2023).
 3 That still means, however, that AIU was late closing over a quarter of the cases it received
 4 during the most recently four months for which data is available. The Court Expert shares
 5 Plaintiffs’ concerns that the delay in case closures indicates insufficient staffing at AIU.

6 The Court Expert has also previously reported on the data showing delay between the
 7 investigators’ closing of cases and the imposition of discipline. Here, too, CDCR has shown
 8 improvement. As of April 2023, wardens had not acted on 80% of closed cases; as of June 2023
 9 that figure had dropped to 55%; and the most recent data (as of October 31, 2023), shows that
 10 43% of cases are still pending imposition of discipline. As noted in the Court Expert’s last report,
 11 however, due to limitations on data collection that figure may include cases in which the warden
 12 has acted but discipline is not yet final. The parties will continue to discuss this issue.

13 **Centralized Screening Team**

14 There is a caveat to the modest improvements in AIU investigation timelines. The
 15 number of complaints filed by incarcerated individuals has continued to rise, with a dramatic
 16 increase in the last few months. At the same time, far fewer cases have been sent to AIU for
 17 investigation. September 2023 saw both the highest total number of cases filed (5,813) and the
 18 lowest total number of cases sent to the AIU (214) to date. In October 2023, the number of
 19 complaints increased yet further (to 6,104) while the number sent to AIU continued to drop (to
 20 195). The following table illustrates the trend:

	Average number of complaints filed per month	Average number routed to AIU per month	Average percentage routed to AIU per month
September 2022 through May 2023	3,586	345	9.6%
June through October 2023	5,326	311	6.1%

1 The increase in complaints received by CST and the decrease in complaints routed to
2 AIU may be related, at least to some extent, to the phased implementation of the investigations
3 and disciplines system. CST initially received only complaints made via Forms 602-1
4 (Grievances); complaints submitted on Forms 602-HC (Health Care Grievances) were sent to
5 CST starting in June 2023, and since September CST has been receiving complaints on Forms
6 1824 (Reasonable Accommodation Requests) as well.¹

7 However, plaintiffs have reviewed random samplings of CST screening decisions and
8 believe CST has improperly categorized as “routine” many complaints that in fact allege staff
9 misconduct. They have raised concerns that the number of cases routed to AIU may be
10 decreasing because CST is improperly reviewing the merits of complaints before making a
11 screening decision. As the Court is aware, the Remedial Plans dictate that CST’s purpose is
12 solely to screen and categorize allegations. It does not conduct investigations or inquiries, and it
13 does not evaluate the merits of any complaint. However, as the Court Expert has reported, in
14 order to reduce the caseload for AIU investigators, CDCR previously implemented a “causal
15 nexus” test pursuant to which CST conducted a limited review of the merits of complaints filed
16 in institutions other than the *Armstrong* six. Plaintiffs and the Court Expert were concerned that
17 having two separate processes in operation simultaneously—one at the *Armstrong* six where
18 CST could screen only based on the face of the complaint, and one at all other prisons that
19 allowed evaluation of the merits—would cause undue confusion.

20 CDCR has since discontinued the causal nexus screen at non-*Armstrong* six prisons.
21 However, the concern regarding case volume that informed that screening approach persists.
22 CDCR has accordingly implemented new screening processes at CST which apply to all
23 complaints (without differentiating between *Armstrong* prisons and other institutions). First, AIU
24 worked with mental health staff and identified 10 individuals who are responsible for a large
25 number of the complaints received by CST; grievances filed by those individuals are addressed

26 _____
27 ¹ The final phase of implementation, in which CST receives complaints made by third parties
28 (such as citizen complaints and advocacy letters) began this month. No data from December is
yet available.

1 by clinicians at the institutions in the first instance, who identify and submit any allegations that
2 merit AIU investigation. Second, AIU has implemented processes for batching complaints from
3 repeat filers in order to expedite review. While Plaintiffs and the Court Expert are still learning
4 the details of these processes, the Court Expert agrees in principle that further review of such
5 complaints to ensure they merit AIU investigation appears to be a good way to reduce AIU
6 workloads without compromising the integrity of the screening process.

7 CST is also attempting to screen out complaints that are patently meritless. To do so,
8 screeners are asked to determine if a complaint is “factually impossible” or “factually
9 implausible.” Any such complaint is designated as routine and sent back to the institution for
10 inquiry. Again, the parties have yet to discuss how these screens are being implemented. The
11 Court Expert agrees that factually impossible claims do not merit AIU investigation, if such
12 claims can be reliably identified. However, whether it is appropriate to screen out “factually
13 implausible” allegations is a more difficult question: just because an allegation appears highly
14 unlikely does not mean it will not prove true. The parties will continue to discuss this issue.

15 **Review of closed cases**

16 As the Court Expert previously reported, the parties have developed a process for
17 reviewing closed investigations. Pursuant to the Remedial Plans, CDCR continues to produce
18 documents related to closed investigations on a quarterly basis, which Plaintiffs review to assess
19 whether the investigations appear comprehensive and unbiased. The parties then meet to discuss
20 specific investigations and disciplinary decisions in a confidential setting to identify whether
21 changes need to be made to the investigations and discipline system. The parties have held two
22 such meetings to date and have scheduled a further meeting for the first quarter of 2024.

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24 Dated: December 28, 2023

Respectfully submitted,

25 /s/
26 _____
Edward W. Swanson
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