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PRIVILEGED AND CONFIDENTIAL

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[redacted]

[redacted]

Re: *Armstrong v. Newsom*: Plaintiffs' November 2023 Review of CDCR's Accountability System at the Six Prisons
Our File No. 0581-03

Dear [redacted]:

We write regarding our review of Defendants' system for holding staff accountable for misconduct. The enclosed report is based on our review of investigation and discipline files produced from CSP-Los Angeles County ("LAC"), California Institution for Women ("CIW"), R.J. Donovan Correctional Facility ("RJD"), California Substance Abuse Treatment Facility ("SATF"), CSP-Corcoran ("COR"), and Kern Valley State Prison ("KVSP") (collectively "Six Prisons").[1] As detailed below and in the accompanying Table A[2] (which is a separate Excel file), Plaintiffs found that Defendants continue to fail to comply with the *Armstrong* Court Orders, as affirmed in relevant part by the Ninth

[1] For RJD and SATF, the production included documents for cases closed between March 2-May 31, 2023. For KVSP and COR, the production included documents for cases closed between April 1-July 1, 2023. For LAC and CIW, the production included documents for cases closed between January 30-May 1, 2023.

[2] This report contains links to external documents and internal sections within the report. External links are underlined; internal links are not underlined.

Circuit, and with the RJD and Five Prisons Remedial Plans. *See* Dkts. 3059, 3060, 3217, 3218, 3393; *Armstrong v. Newsom*, 58 F.4th 1283, 1288 (9th Cir. 2023).

Plaintiffs identified multiple failures in Defendants' accountability process. Most of these failures occurred in cases processed under Defendants' new investigation and discipline system, which Defendants implemented to attempt to comply with the Remedial Plans and Court orders.

I. Repeat Offenders with No or Inadequate Accountability

Plaintiffs have now identified a number of cases involving repeated complaints (and, in some cases, repeated sustained findings) of staff misconduct involving the same officers for the same types of behavior where the Hiring Authorities fail to impose appropriate discipline. These examples, two of which we highlight below, represent colossal failures of Defendants' accountability system. The first set of cases—**LAC –** [redacted], **LAC –** [redacted], and **LAC –** [redacted]—all involve Officer [redacted]. Plaintiffs first wrote about Officer [redacted] and a retaliatory search that she conducted with another officer in the May 2023 Report. *See* May 2023 Report at 27-31. New documents produced since then show that the Hiring Authority did nothing to hold her accountable for the egregious search. Other cases involving Officer [redacted] include clear video evidence of her engaging in significant and repeated abuses of her authority to harm incarcerated people. In the face of this evidence, she has received little more than a slap on the wrist from the Hiring Authority. Despite finding her "discourteous" twice within a two-month period, the Hiring Authority did not impose progressive discipline.

The second set of cases—**RJD –** [redacted] (discussed in this report) and RJD-[redacted], RJD-[redacted], RJD-[redacted], and RJD-[redacted] (all discussed in the May 2023 Report)—all involve Officer [redacted]. This officer has repeatedly been shown on camera denying class members the ability to walk the shortest path around the track to access programs, despite policy permitting this as a reasonable accommodation. In all four cases, the Hiring Authority took no action to address these ADA violations. In the case included in this report, RJD-[redacted], Officer [redacted] prevented a class member from taking the shortest path, threatened to place him in restraints, and then issued the class member an RVR, even after the class member showed him a granted 1824 permitting him to take the shortest path. The Hiring Authority failed to recognize the ADA violation and hold Officer [redacted] accountable, despite his well-documented history of failing to accommodate class members. Plaintiffs continue to receive

complaints about this officer and his failures to accommodate people with mobility disabilities.

II. Hiring Authorities Continue to Fail to Impose Appropriate Discipline

Hiring Authorities are failing in other respects as well. In particular, Hiring Authorities frequently fail to sustain allegations of misconduct even where video evidence shows officers violating use-of-force and other policies and fail to impose appropriate discipline when they find misconduct has occurred. These problem extend beyond one prison and one warden. In addition to the repeat-offender cases discussed above, the Hiring Authorities at the Six Prisons failed to impose appropriate discipline in the following cases:

- **CIW –** [redacted] – No sustained allegations against an officer shown on video slamming a class member, who is handcuffed behind her back, to the ground when the officer had multiple options available that could have avoided this excessive and dangerous use of force.

- **KVSP –** [redacted] – No sustained allegations against a Sergeant and a Lieutenant shown on video using unnecessary immediate force against an elderly class member who was in waist-chains in his wheelchair and who was peacefully refusing to accept a housing assignment.

- **COR –** [redacted] – No sustained allegations against an officer shown on video gratuitously punching a mentally-ill class member in the abdomen while trying to restrain the class member on a hospital bed.

- **COR –** [redacted]**; COR –** [redacted] – No sustained allegations against officers and health care staff in the Correctional Treatment Center ("CTC") who are shown on video (1) repeatedly refusing to assist a class member to sit up in his bed so he could transfer to his wheelchair to attend outside medical appointments, (2) referring to the class member as "a whiny little bitch" and "a crybaby," and (3) when the class member was unable to get out of his bed, falsely documenting that he refused the appointments.

- **RJD –** [redacted] – No sustained allegations against an officer who is shown on video (1) refusing to obtain wheelchair-accessible transportation

for a DPO class member for an outside medical appointment, (2) falsely asserting that the class member refused to sign an appointment refusal form when the officer never asked the class member to do so, and (3) then issuing the class member a false RVR for delaying a peace officer on which the officer lied that the class member refused to sign the form.

- **LAC –** [redacted] – Failing to even consider whether a Lieutenant—who admitted to signing a form certifying that she completed a review of a class member's placement in Administrative Segregation ("ASU") even though she had not performed the review—had violated the Disciplinary Matrix category for falsifying material facts in reports or official records (E10), which carries a baseline punishment of termination, and instead imposing only corrective action for failure to observe and perform within training or policy (D26).

- **KVSP –** [redacted] – Failing to sustain an allegation that an officer—who challenged a class member lying in a bed in the CTC to fight—had intimidated or threatened the class member (D15), which carries a baseline Level 5 penalty, and instead imposing only corrective action for discourtesy (D1).

In Defendants' existing accountability system, Hiring Authorities are responsible for reviewing investigation reports and supporting evidence to reach the ultimate conclusion regarding whether staff misconduct has occurred. The cases discussed in this report and in prior reports make clear that Hiring Authorities are failing at this essential responsibility. This conclusion is bolstered by the fact that the Hiring Authorities currently have a backlog of hundreds of completed AIU investigations sitting on their desks, awaiting resolution. Their inability to adequately perform this time-consuming function in a timely manner is unsurprising given their substantial other duties running the prisons. It is unrealistic to expect Wardens to have the capacity to review all of the relevant evidence, including video footage, in these cases. The situation is made worse by the fact that Defendants have no required process to review whether Hiring Authorities are adequately performing their accountability responsibilities and to take action if they are not.

III. Investigators Continue to Conduct Incomplete and Biased Investigations

Though the buck stops with the Hiring Authorities, the poor quality and bias evident in staff misconduct investigations contribute substantially to the failures of Defendants' accountability system. Because Hiring Authorities do not have time to adequately review investigations and impose discipline, it appears that they frequently rely on what is written in the investigation reports, without conducting their own analysis. As discussed in more detail below, investigators often mischaracterize evidence, provide incomplete descriptions of evidence, and entirely omit references to crucial and relevant evidence. In addition, some investigators offer conclusions that staff misconduct did not occur, in violation of their duty to "refrain from conjecture and opinion." *See* Cal. Penal Code § 6065(c). Even in cases where investigators do not improperly opine, the titles of the reports, such as a "quick close report" and "Investigative Report with No Evidence of Misconduct," signal to the Hiring Authority that investigators believe no staff misconduct occurred.

The failures by investigators discussed below include the following:

- **KVSP –** [redacted] – Though the class member clearly explained that the alleged use of force—an officer unnecessarily shoving his wheelchair, causing his feet to get caught underneath and injuring his ankles—occurred as he was leaving the mental health building, the investigator obtained footage showing him arriving at and inside, but not leaving, the building. When the video covering the wrong time period did not show the alleged incident, the investigator concluded that no misconduct occurred.

- **KVSP –** [redacted] – Though two incarcerated people provided consistent reports that a Sergeant had forged one of their signatures on a compatibility chrono following a fight, the investigator failed to take steps to determine if the signature had been forged, such as comparing the signature to verified signatures for the incarcerated people and the Sergeant.

- **SATF –** [redacted] – The investigator concluded that video evidence did not support the allegation—that the control officer had denied the class member access to an incontinence shower, requiring him to sit for hours in a soiled diaper—because it did not show the class member asking for a shower. But the class member had specifically alleged that he had someone

in the building request a shower for him, not that he personally requested the shower.

- **KVSP –** [redacted] (discussed above regarding Hiring Authority issues) – Even though video showed that the use of force against a class member in a wheelchair was unnecessary, the investigator's biased report did not even include a description of the video and instead included only the investigator's conclusion that the force complied with policy.

- **COR –** [redacted] (discussed above regarding Hiring Authority issues) – The investigator failed to note in the investigation report that the officer made false statements in his incident report and AIU interview that he punched the class member in the abdomen to stop the class member from trying to head butt staff, as video showed that any attempted head butt occurred after the officer punched him.

- Multiple additional cases where investigators failed to retain and review relevant video footage critical to determining whether misconduct occurred. *See* **I.B.2**.

IV. The CST Continues to Fail to Appropriately Route Allegations of Staff Misconduct

Beyond the challenges of improving disciplinary decision making, Defendants continue to fail to identify staff misconduct complaints. As shown in **II**, the Centralized Screening Team ("CST") is routinely failing to identify when staff misconduct has been alleged. Twenty percent of the grievances reviewed by Plaintiffs, including many grievances raising serious allegations of misconduct, were inappropriately deemed "routine" grievances instead of staff complaints. *See* **APPENDIX A**. Moreover, even when a grievance is identified as containing a staff misconduct allegation, the CST is failing to correctly apply the Allegation Decision Index ("ADI"). As a result, many serious allegations of misconduct are being routed to Locally Designated Investigators ("LDI") rather than to the Allegation Investigation Unit ("AIU") within the Office of Internal Affairs ("OIA"). These two related failures by the CST represent serious non-compliance with the Remedial Plans.

V. Defendants Must Immediately Take the Following Steps to Come Into Compliance with the Remedial Plans and Court Orders

In order for Defendants to operate a meaningful accountability system and to comply with the Court's orders and the Remedial Plans, Defendants must take the following steps:

1. Defendants must implement safeguards to ensure that investigators complete thorough and unbiased investigations. Benchmarks should be created for what constitutes a complete and unbiased investigation. Prior to even starting an investigation, investigators should be required to first describe all sources of evidence needed to evaluate the allegation and then all such evidence should appear in the report. Defendants should also require that investigators explain why they could not obtain any such evidence .

2. Investigative supervisors must perform meaningful and critical reviews of all investigation reports and evidence to determine whether the investigation was complete and unbiased and whether the report accurately describes the evidence. This review should also ensure that investigators refrain from offering inappropriate conclusions about whether staff misconduct has occurred.

3. Defendants must stop the practice of using any report formats—such as quick close reports or "Investigative Report with No Evidence of Misconduct"—that convey that the investigators have concluded no misconduct occurred.

4. Defendants must provide Hiring Authorities with help or else should move the responsibility for administering the accountability system to others within CDCR (e.g., headquarters). Hiring Authorities do not have the time or ability to review the evidence in all cases to make meaningful decisions about whether staff misconduct occurred or to impose appropriate discipline.

5. Defendants must mandate that Hiring Authorities resolve cases within a certain time period after the close of an investigation. This requirement is

necessary even if Defendants eliminate the current backlog of cases. The swift and consistent resolution of complaints and imposition of discipline, if warranted, is necessary in any accountability system.

6. Defendants must develop a system for reviewing Hiring Authority decision making and holding Hiring Authorities accountable if they are doing a poor job deciding whether misconduct occurred or imposing discipline (i.e., by misapplying the Disciplinary Matrix).

7. Defendants must address the repeated failures of its accountability system to identify use-of-force violations. In these cases, investigators are routinely failing to identify and report on evidence accurately, Institutional Executive Review Committees ("IERCs") are failing to identify policy violations, and Hiring Authorities are failing to confirm and punish misconduct. CDCR should take immediate action to retain and utilize experts in use-of-force case reviews.

These and other steps discussed at the October 18 and 23, 2023 meetings are needed to bring Defendants into compliance with the Remedial Plans and Court orders. It is imperative that CDCR re-commit to ending all staff misconduct, including misconduct directed at people with disabilities. Plaintiffs look forward to continuing our discussions with Defendants and the Court Expert on remedies to address ongoing problems identified in this report.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ [redacted]

By: [redacted]

[redacted]

cc: [redacted]

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I. DEFENDANTS CONDUCTED BIASED AND INCOMPLETE INVESTIGATIONS AND IMPOSED INAPPROPRIATE AND INCONSISTENT DISCIPLINE

The Remedial Plans and Court's orders require that Defendants' investigators conduct "comprehensive and unbiased investigations and ensure all relevant evidence is gathered and reviewed" and that Hiring Authorities impose appropriate and consistent discipline. RJD Remedial Plan, § II.B; Five Prisons Remedial Plan, § II.B; *see also* Dkt. 3060, ¶ 5.c; Dkt. 3218, ¶ 5.c.

To evaluate Defendants' compliance, Plaintiffs reviewed all of the cases produced by Defendants. Plaintiffs then selected a subset of those cases for closer review, including: 11 cases from LAC, 9 cases from CIW, 15 cases from SATF; 13 cases from COR; 9 cases from KVSP; and 10 cases from RJD.[3] The complete findings from Plaintiffs' review are contained in Table A. Note that the findings for each prison appear in separate tabs of the Excel file.

Below, Plaintiffs describe a number of cases that illustrate serious, ongoing problems regarding Defendants' accountability system. Though Plaintiffs have categorized each case by whether it primarily reflects problems with investigations or with Hiring Authority decision-making, many cases evidence both types of problems.

A. Hiring Authorities Remain a Significant Barrier to Accountability

1. Hiring Authorities Failed to Hold Staff Accountable When the Preponderance of Evidence Established Misconduct Occurred

(a) Cases Involving Officer [redacted] (LAC)

Over the course of several months, Officer [redacted] at LAC engaged in multiple, serious instances of intentional misconduct toward class members. First, in December 2021, Officer [redacted] abandoned her post in the control booth to conduct an improper and

[3] Plaintiffs selected the cases using a variety of criteria, including, but not limited to, whether: CDCR referred the case to the OIA for investigation or direct adverse action; the AIU investigated the case; the AIMS conducted an inquiry; the case involved an allegation related to use of force or disability; the Hiring Authority sustained an allegation; and the case included video evidence. These criteria are intended to identify cases with the most serious and credible allegations of misconduct, which we then review to determine whether Defendants are holding staff accountable when the evidence shows misconduct occurred. While Defendants have mischaracterized this approach as "cherry-picking" in the past, there can be no reasonable dispute that it is necessary to focus on cases with serious and credible allegations of misconduct to evaluate whether the accountability system is working.

discourteous search of a class member's cell. Second, in February 2022, when a different class member threatened to light a fire in his cell after becoming angry that Officer [redacted] had not released him for his medications, she told the class member to "blaze it up" and still refused to release him. The class member ultimately did set a fire in his cell. Third, as discussed at length in Plaintiffs' May 2023 report, in June 2022, Officer [redacted] and Officer [redacted] conducted a retaliatory cell search against a class member who had previously insulted Officer [redacted].

Despite clear video evidence of each of Officer [redacted]'s acts of misconduct, the Hiring Authority failed to impose adequate discipline. In the first case, the Hiring Authority sustained an allegation of discourtesy, but failed to sustain additional misconduct regarding search violations and dishonesty. In the second case, the Hiring Authority again found Officer [redacted] discourteous but failed to impose progressive discipline even though discourtesy was the exact same violation sustained in the first case only two months earlier. And in the third case, the Hiring Authority did not sustain any allegations against Officer [redacted], even though she bragged on video about her retaliatory intent and then lied to investigators.

Individually and collectively, these cases show that Defendants' accountability system is not working. Officer [redacted] has repeatedly abused her power to intentionally harm class members and then lied about her actions when investigated. CDCR should have fired her for her repeated misconduct and dishonesty. Yet, as far as Plaintiffs are aware, she remains employed by CDCR, able to continue violating class members' rights.

(i) LAC – [redacted] – *Incident: December 7, 2021; 402/403: November 21, 2022;* OIA, Sustained (partial) – Level 3

In this case, [redacted] alleged in a 602 that on December 7, 2021, Officer [redacted] conducted a retaliatory cell search that damaged his property. *See* 602 at 77.[4] The BWC evidence confirms that Officer [redacted] conducted an improper, harassing cell search and violated other CDCR policies. Moreover, Officer [redacted] claimed during her OIA interview that she was searching for contraband, but the contemporaneous BWC evidence shows that Officer [redacted] repeatedly said she was searching Mr. [redacted]'s cell because he was not listening to her orders. The Hiring Authority failed to discipline Officer [redacted] for the improper cell search and for her dishonesty during the OIA interview.

Officer [redacted]'s BWC footage shows her at her assigned post in the control booth in Building [redacted], which houses class members with serious mental illness. Officer [redacted]

[4] Throughout this report, all citations to page numbers of documents refer to the page of the PDF, not to any internal pagination in the document.

orders everyone in the housing unit to get down due to a medical issue in another building. *See* BWC at 18:37 (linked above). She then yells "go to your cell" to an unspecified person. *See* BWC at 18:37:45 (linked above). Two minutes later, she asks an officer on the floor, Officer [redacted], "Do you wanna come up here real quick?" *See* BWC at 18:39:09 (linked above). Officer [redacted] says she is about to "go hit this dude's cell." *See* BWC at 18:39:40 (linked above). She then states the cell is 125 (Mr. [redacted]'s cell) and that she is conducting the search because "he is not trying to go in." Officer [redacted] tells Officer [redacted] that she "told him [Mr. [redacted]] to go in" to his cell.

In violation of policy, Officer [redacted] then leaves the control booth without obtaining approval from a supervisor and walks down to the floor. She tells Mr. [redacted], "you act like you don't fucking hear me" and that he was the "only one who wasn't going in." BWC at 18:43:20 (linked above). Mr. [redacted] replies that he still had duties to perform as a porter. Officer [redacted] says, "From now on, no phone calls for you," and "I have a program that needs to be fucking ran." Officer [redacted] then escorts Mr. [redacted] toward his cell and enters the cell to search it. Officer [redacted] concludes her search, exits the cell, and then prepares to write a cell search receipt. BWC at 18:57:52 (linked above).

Officer [redacted]'s statements on the video footage demonstrate that she inspected Mr. [redacted]'s cell because she was frustrated with Mr. [redacted] for not returning to his cell. That is not a proper basis for a search. Officers can conduct "infrequent" and "unannounced" cell and body searches or can conduct targeted searches if they have reasonable suspicion that a person is committing a crime or holding contraband. *See* 15 C.C.R. §§ 3287(a)(2), (b); DOM §§ 52050.16, 52050.16.2, 52050.16.3. But they may not engage in a targeted search as a punitive measure nor to harass the incarcerated person, as was clearly done here. *See* 15 C.C.R. § 3287(a)(2) (stating that cell searches "will not be used as a punitive measure nor to harass an inmate").

During an October 2022 interview with the OIA investigator, Officer [redacted] tried to explain that the search complied with policy, stating that she searched Mr. [redacted]'s cell because she had seen Mr. [redacted] "passing and receiving items from other inmates" throughout that day. *See* OIA Report at 5. Officer [redacted] claimed that she left her post to search Mr. [redacted] based on that supposed earlier behavior and Mr. [redacted]'s refusal to comply with her orders. *Id.* But this explanation is not credible. Throughout the video interactions described above, Officer [redacted] never mentions that she suspected he possessed contraband or that she witnessed him pass or receive contraband. Instead, the video consists of repeated statements regarding her admitted annoyance with his failure to comply with her orders. Also, the fact that she left her control booth post without supervisor approval to conduct the search further suggests an improper, harassing, and punitive intent. If the purpose of the search was to address contraband, she could have asked one of the floor officers to conduct it.

The Hiring Authority failed to impose adequate discipline. The Hiring Authority sustained allegations that Officer [redacted] (1) left her post without supervisory approval; (2) was discourteous; and (3) failed to wear her protective vest, and issued a Level 3 penalty (5% salary reduction for 12 pay periods), which was the baseline penalty for the controlling category (i.e., the misconduct carrying the highest baseline penalty). *See* 402/403 at 1-4. The Hiring Authority did not, however, sustain an allegation that the search was retaliatory or improper, even though the video establishes so by a preponderance of the evidence. In addition, the Hiring Authority did not even consider an allegation that Officer [redacted] lied to the OIA investigator. Such a charge was warranted, as (1) there is no evidence to support Officer [redacted]'s self-serving statement that she had seen Mr. [redacted] passing items to other incarcerated people; and (2) her repeated contemporaneous statements on video contradict her assertion that she searched the cell because she thought he was passing contraband. Incredibly, the Hiring Authority found as a mitigating factor that Officer [redacted] had been "forthright and truthful during the investigation." *See* 402/403 at 4.

The OIA investigation into the propriety of the search did the Hiring Authority no favors. Most egregiously, the investigation report omitted all of Officer [redacted]'s repeated statements that the reason she searched the cell was because Mr. [redacted] had not complied with her order to return to the cell. Those statements were essential to the investigation, as they directly contradicted Officer [redacted]'s months-later justification for the search. The investigator's interview of Officer [redacted] was also deficient. The investigator did not question Officer [redacted] about her on-camera statements, which contradict the purported basis for the search she provided during her interview. Nor did the investigator ask Officer [redacted] whether there was any evidence corroborating her claim that she suspected Mr. [redacted] had been passing items to other incarcerated people or why, if she saw Mr. [redacted] passing items throughout the day, she waited until later to conduct the search.

(ii) LAC – [redacted] – *Incident: February 1, 2022; 402/403: January 20, 2023;* OIA-DAA, Sustained (partial) – Level 4

On February 1, 2022, Officer [redacted] rejected [redacted] request to be released from his cell to receive his diabetic medication and, after he became upset and threatened to set a fire, encouraged him to "blaze it up." Mr. [redacted] then started a fire, endangering himself and others. The Hiring Authority sustained an allegation that Officer [redacted] was discourteous and imposed a Level 4 penalty (a 10% salary reduction for 8 pay periods). The penalty in this case was inadequate because the Hiring Authority failed to impose progressive discipline based on the prior adverse action against Officer [redacted] for the same misconduct—discourtesy—two months earlier.

Officer [redacted]'s BWC footage shows either staff or incarcerated people yelling to Officer [redacted] about Mr. [redacted] needing his diabetes medication.[5] *See* BWC at 4:41:45; 989 at 1. Officer [redacted] responds, "He didn't come out" and "leave it alone." Officer [redacted] opens the window of the control booth to talk to an officer on the floor. *See* BWC at 4:43:30 (linked above). Officer [redacted] says to the officer, "Bro, shut up, fuck. I open the door, he stands there…he'll get it when I'm done with chow, shit." Mr. [redacted] asks if Officer [redacted] is denying him medical treatment and she responds "I didn't say that, you'll get there." Mr. [redacted] then yells that he is going to start a fire and Officer [redacted] responds, "Blaze it up! The fuck!" Officer [redacted] then closes the window and walks away. *See* BWC at 4:44:15 (linked above). A few minutes later, officers on the floor respond to cell 131 and talk with Mr. [redacted], who says that Officer [redacted] opened the door for only three seconds for his diabetic shot. Shortly after that, Officer [redacted] reports a cell fire in cell 131 over the radio and officers respond to Mr. [redacted]'s cell. *See* BWC at 4:51:00 (linked above). Officer [redacted] then calls a different officer to complain about Mr. [redacted] and Officer [redacted].[6] A supervisor reported the incident and LAC requested OIA authorization for direct adverse action, which the OIA provided. *See* 989 at 1, 4.[7]

The Hiring Authority sustained charges that Officer [redacted] was discourteous to incarcerated people and other staff. *See* 402 at 1. However, the Hiring Authority did not sustain a charge that Officer [redacted] endangered incarcerated people and staff and "failed to appropriately take action when given the threat of arson, when she stated 'Blaze it up, the fuck,' or words to that effect and closed the window to the control booth." *See* 402 at 1. The video evidence shows that Officer [redacted] did exactly what the allegation stated, with little apparent regard for the safety of staff or incarcerated people. The Hiring Authority should have sustained that allegation.

For the charges that were sustained, the Hiring Authority imposed a Level 4 penalty of 10% salary reduction for 8 pay periods. *See* 402/403 at 3. Were this the only sustained adverse action against Officer [redacted], that penalty may have been adequate, as it was one level above the baseline penalty for the category that carried the highest

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[5] A supervisor's memorandum states that at 4:38, Officer [redacted] opens Mr. [redacted]'s cell (Cell 131) without announcement, and that [redacted] "is observed coming to the threshold in shorts and a t-shirt and retreating from the door at which time the cell door is closed." *See* Memo at 5. Plaintiffs did not see this in the provided BWC.

[6] Defendants did not produce video from all officers involved, including from Officer [redacted]. It is unclear whether LAC pulled video from all officers.

[7] The record suggests that the OIA simply authorized adverse action, even though the case notification indicates the OIA accepted it for a subject-only interview. *See* Case Notification at 1. No OIA report or OIA interview of Officer [redacted] appears in the case file.

baseline penalty (D14, 23456, Disruptive, offensive, or vulgar conduct which discredits the department).[8] But this was not the only adverse action against Officer [redacted]. As discussed above in case LAC – [redacted], just two months earlier, the Hiring Authority had imposed adverse action against Officer [redacted] for the exact same type of misconduct—discourtesy. Yet the Hiring Authority failed to recognize that this case warranted progressive discipline. On the 402/403, the Hiring Authority did not identify the prior misconduct as an aggravating factor. *See* 402/403 at 4; Disciplinary Matrix, 15 C.C.R. § 3392.5(c)(11)(L) (providing that it is an aggravating factor if "[t]he employee has committed repeated acts of misconduct resulting in prior sustained adverse action"). Similarly, in the Notice of Adverse Action for Officer [redacted], the Hiring Authority wrongly states that Officer [redacted] had "no prior disciplinary misconduct with CDCR." *See* NOAA at 13.

CDCR claims that it operates a progressive discipline system, in which Hiring Authorities must take into account "whether or not progressive discipline has been taken in the past" when determining what penalty to impose. *See* DOM § 33030.20. These cases involving Officer [redacted], where she was found to have engaged in the exact same type of misconduct only two months apart but the Hiring Authority did not impose progressive discipline, serve as strong evidence that CDCR's system is not working.

(iii) LAC – [redacted][9] – *Incident: June 16, 2022; 402/403: December 2, 2022;* AIU, Not Sustained (Officer [redacted], Officer [redacted]), Sustained (Officer [redacted]) – Level 3

In this case, class member [redacted] accused Officer [redacted] and Officer [redacted] of conducting a retaliatory cell search and accused Officer [redacted] of excessive force. Plaintiffs' May 2023 Report documented the extensive on-camera evidence that Officer [redacted] and Officer [redacted] conducted a retaliatory cell search because Mr. [redacted] had insulted Officer [redacted] the day before. *See* May 2023 Report at 27-31 (discussing case LAC-[redacted]). CDCR inexplicably split that allegation into multiple separate cases and assigned different investigators to look at separate but related claims involving the same set of underlying facts. CDCR has, in this quarterly production, now produced the additional investigation that includes even more evidence (footage not provided with the investigation produced last quarter) which further supports that the search was retaliatory. Notwithstanding this evidence, the

[8] Given how egregious Officer [redacted]'s conduct was, as well as the quantity and quality of the aggravating versus mitigating factors, the Hiring Authority could have imposed a higher penalty.

[9] Unlike the other LAC cases discussed in this report, which Defendants produced on June 27, 2023, Defendants produced this case as part of their September 28, 2023 production.

Hiring Authority failed to appropriately hold the officers accountable. The Hiring Authority did not even consider any allegations against Officer [redacted] for her role in the search. The Hiring Authority failed to consider dishonesty charges against both officers for lying during their AIU interviews. And though the Hiring Authority did find that Officer [redacted] threatened and conducted a retaliatory search, he then imposed inadequate discipline.

As described in detail in the May 2023 Report, footage from June 16, 2022 shows that Officers [redacted] and [redacted] repeatedly stated on video that they were searching Mr. [redacted]'s cell because he had called Officer [redacted] a "house n-----" the prior day. *See* May 2023 Report at 27-29. Additional evidence produced during the more recent production includes footage from June 15, 2022, the day before the search, that further confirms the search was retaliatory. For example, after being insulted by Mr. [redacted], Officer [redacted] announced the following over the PA system in the housing unit:

> [redacted], I'll tell you this. **Soon as you leave your cell tomorrow, I'm in your cell, taking everything that doesn't have your name on it**. You better stay in your cell all day, sir.… Everything that don't got your name on it, I'm taking. That TV, CD player, that watch, that hat. I'm going to be in there and you're going to be mad. Then you're going to have some reason to be mad.... You have a good night, [redacted].

See BWC at 20:43:30 (emphasis added). Mr. [redacted] can also be heard on the video calling Officer [redacted] a "house n-----." BWC at 20:44:28, Later, Officer [redacted] talks to Officer [redacted], who was working as a floor officer in the building, about how Mr. [redacted] had used a racial slur toward him and his plan to search Mr. [redacted]'s cell. *See* BWC at 20:54:30; AIU Report at 14. The AIU investigation documents other statements by Officer [redacted] on June 15 provoking Mr. [redacted] and promising retaliation. *See* AIU Report at 4.

Confronted with the overwhelming evidence that Officers [redacted] and [redacted] conspired to conduct a retaliatory search of Mr. [redacted]'s cell, the Hiring Authority made a series of inexplicable decisions regarding discipline.

First, though the Hiring Authority sustained allegations that Officer [redacted] threatened and then conducted a retaliatory search against Mr. [redacted], *see* 402/403 at 9, the Hiring Authority did not even consider any allegations against Officer [redacted] related to the search. Instead, the Hiring Authority only considered whether Officer [redacted] used excessive force against Mr. [redacted] in an incident that occurred after the retaliatory search. *See* 402/403 at 5. Given that Officers [redacted] and [redacted] were equal participants in the search and that Officer [redacted] repeatedly admitted on camera that the search was retaliatory, *see* May 2023 Report at 27-29, the Hiring Authority's failure to hold Officer [redacted] accountable is inexcusable. This failure is especially troubling because, as discussed above, at the time the Hiring Authority resolved this case, the

Hiring Authority had already found that Officer [redacted] had engaged in misconduct in **LAC –** [redacted]

Second, the Hiring Authority should have considered (and likely sustained) dishonesty charges, which carry a baseline penalty of termination (E6, 78**9**), against Officer [redacted] and Officer [redacted]. With respect to Officer [redacted], in her interview with the AIU investigator, she denied that the search was retaliatory. Instead, she asserted—just as she did in **LAC –** [redacted]—that she was searching the cell "due to [Mr. [redacted]'s] elevated bizarre behavior and from observations of [redacted] passing items around to other cells." *See* AIU Report at 12. There is, however, no evidence to support this claim and substantial evidence that contradicts it. Most importantly, the BWC footage includes many repeated statements that the officers searched Mr. [redacted]'s cell for retaliatory reasons and no statements regarding searching because of his supposed suspicious behavior. In addition, Officer [redacted] conceded that she did not document her suspicion or inform a supervisor. *See* AIU Report at 13. Furthermore, though Officer [redacted] claimed that she and Officer [redacted] discussed their suspicion the night before the search, none of the video evidence supports that claim and, in his own interview, Officer [redacted] did not mention discussing the issue with Officer [redacted]. *See* AIU Report at 15 (stating he had suspicions, but not indicating that he spoke with Officer [redacted] about them).[10]

Officer [redacted] was also dishonest during his interview. He claimed that he was not threatening Mr. [redacted] on June 15 when he said he was going to search Mr. [redacted]'s cell and take his property, but was instead just "talking out of his ass." *See* AIU Report at 15. But, of course, Officer [redacted] was not "talking out of his ass," as the next day he and Officer [redacted] did exactly as he had threatened and searched Mr. [redacted]'s cell and took his property, including his television[11]. Like Officer [redacted], he claimed that he conducted the search because of Mr. [redacted]'s bizarre behavior and suspicion that he might have possessed drugs or contraband. *See* AIU Report at 16. But just as with Officer [redacted], he did not document those suspicions and his BWC footage contains no evidence to support this purported justification for the search and ample evidence that the search was retaliatory.[12] The video from June 15,

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[10] Officer [redacted] also likely lied to the investigator about why she searched a different cell, Cell 144, for such a short period. Officer [redacted] claimed that "she realized she was by herself and cell searches are conducted with a partner for safety reasons." *See* AIU Report at 12. As far as Plaintiffs are aware, there is no such requirement in the DOM. And, in LAC-[redacted] (discussed above), Officer [redacted] searched Mr. [redacted]'s cell by herself, further undermining the purported excuse in this case.

[11] Officer [redacted] admitted in his AIU interview that he knew that the "television was important to [redacted]." *See* AIU Report at 15-16.

[12] Officer [redacted] also was dishonest about other issues. As highlighted by the investigator, Officer [redacted] claimed during his interview that he searched cells 142 (Mr. [redacted]'s

2023, where Officer [redacted] tells Mr. [redacted] that he's going to search his cell and take his property in order to make Mr. [redacted] "mad," is particularly damning. The Hiring Authority also found, by a preponderance of the evidence, that the search was retaliatory. Such a finding compelled the Hiring Authority to also find that Officer [redacted] was dishonest when Officer [redacted] swore to the investigator that the search was not retaliatory.

Lastly, the punishment for Officer [redacted] was also inappropriate because the Hiring Authority misapplied the Disciplinary Matrix. As discussed above, the Hiring Authority sustained allegations that Officer [redacted] threatened and then conducted a retaliatory search. The Hiring Authority initially issued a Level 3 penalty (5% salary reduction for 6 pay periods), *see* 402/403 at 9-11, which the Hiring Authority later agreed to reduce to a 5% reduction for only 3 pay periods, at the very low end of Level 3, *see* [redacted] Stipulation-NOAA at 1.[13] The Hiring Authority only identified two Matrix categories implicated by Officer [redacted]'s misconduct: discourtesy (D1, **1**23456) and failure to observe and perform (D26, **1**2345). *See* 402/403 at 11. The Hiring Authority did impose a punishment above the baseline for those categories, likely because the Hiring Authority identified seven aggravating factors and one mitigating factor.[14] The Hiring Authority failed, however, to identify a host of other relevant Matrix categories that carried more serious penalties: Intimidation, threat, or assault without the intent to inflict serious injury toward an inmate (D15, 34**5**678); Disruptive, offensive, or vulgar conduct which discredits the department (D14, 2**3**456); Failure to observe and perform within professional standards (D25, **3**456789); Intentional failure to report misconduct by another employee (B1, 2**3**45); and Unauthorized use of department position (D8, 1**2**3). Had the Hiring Authority identified these other relevant Matrix categories, the punishment likely would have been higher than the Hiring Authority imposed. The Hiring Authority would have started at a Level 5 penalty (the highest of the relevant categories) and then should have increased the penalty from there based on the aggravating factors.

Officers like Officer [redacted] and Officer [redacted], who intentionally abuse their power to punish disfavored incarcerated people, should not work in CDCR prisons, let alone

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cell), 143, and 144 because of suspicions related to contraband. But Officer [redacted] only searched cell 143 for 10 seconds. Officer [redacted] claimed "he did not remain in cell 143 because it had a lot of stuff and he did not feel like diving into it." *See* AIU Report at 16. But if he truly believed there was potentially contraband in that cell, his explanation makes no sense.

[13] That the Hiring Authority, in a case with such clear and intentional misconduct, agreed to reduce the discipline by settlement is problematic in its own right.

[14] The Hiring Authority also erred in identifying the single mitigating factor—"[t]he employee accepts responsibility." Nothing in the file suggests that Officer [redacted], who denied that the search was retaliatory, actually accepted responsibility for his misconduct.

work around people with disabilities. And yet, in this case, despite clear video evidence of very serious retaliation, Officer [redacted] received little more than a slap on the wrist and Officer [redacted] was not punished at all.

(b) RJD – [redacted] – Local, Not Sustained

This case represents yet another instance in which Officer [redacted] at RJD failed to provide reasonable accommodations to people with disabilities on Facility A. Yet, as in prior reports where Plaintiffs have identified the same behavior by this officer, CDCR did nothing to hold him accountable.

[redacted], is a class member with a mobility disability who also works as an ADA Worker. In June 2022, Mr. [redacted] submitted an 1824 specifically complaining that Officers [redacted] and [redacted] prohibited him and other class members with mobility disabilities from taking the short route from their housing units to the dining hall. The RAP granted the 1824, stating "Inmate [redacted], staff will allow you to take the shortest distance to the chow hall to accommodate your mobility disability." *See* June 9, 2022, RAP Response at 3.

On June 28, 2022, after Mr. [redacted] received the RAP response, he attempted to take the shorter route to the dining hall while pushing [redacted], who was in a wheelchair. *See* BWC. As shown on video, Officer [redacted] refuses to allow Mr. [redacted] and Mr. [redacted] to pass. Mr. [redacted] shows Officer [redacted] the RAP response. Officer [redacted] becomes agitated, saying he is going to provide them notice in writing that "future violations will result in progressive discipline." When Mr. [redacted] tries to reference the statewide CDCR policy allowing individuals with mobility disabilities to take the shortest path of travel (*see* Revised Durable Medical Equipment policy (May 12, 2020) at 3), Officer [redacted] explicitly contradicts both the policy and the RAP response: "When yard is open and you're on a ducat, sir, you feel free to take the shortest route. During chow, movement is controlled." Officer [redacted] then gets more threatening, stating "You know what, this is the last time I'm gonna have a sentence cut off so what I'm gonna do right now is give you a lawful order to turn around and go back with the flow of traffic. Are you gonna comply or am I gonna have to place you both in restraints?" *See* BWC (linked above). Mr. [redacted] and Mr. [redacted] turn around and walk away from Officer [redacted]. Officer [redacted] issued a counseling-only RVR to Mr. [redacted] related to this incident. *See* Inquiry Report at 2.

The LDI investigating Mr. [redacted]'s 602 stopped the inquiry based on a reasonable belief that misconduct likely to result in adverse action had occurred and submitted a Request for Further Administrative Review to the OIA. The OIA, however, rejected the case, concluding that no misconduct had occurred. The Hiring Authority accepted this decision and closed the case with no further action. *See* Closures at 2-3.

The lack of accountability in this case is, for multiple reasons, deeply concerning.

First, the misconduct is captured on video, yet resulted in no accountability.

Second, Mr. [redacted] had done everything possible to ensure he received the accommodation he needed, including by obtaining confirmation of his rights in a RAP response, yet nothing was done to address Officer [redacted]'s failure to follow policy. The conduct of the officer in this case represents not just a failure to accommodate Mr. [redacted] and Mr. [redacted], but also a failure to comply with attempts by a superior (the Associate Warden who granted the 1824 and instructed that Mr. [redacted] could take the shortest path) to ensure accommodations for class members on Facility A.

Third, Plaintiffs' have repeatedly reported on Officer [redacted]'s and another officer's (Officer [redacted]) failures to accommodate people with mobility disabilities—including cases where BWC footage similarly confirms the failure to accommodate and the violation was also not sustained. *See* Sept. 2022 RJD Monitoring Report at 10-12; *see also* Plaintiffs' May 2023 Report at 21-23. In this case, as in prior cases, the class member also received inappropriate and discriminatory discipline (in this case a counseling-only RVR) that should be voided and expunged from his file immediately. And in all of the cases, the Hiring Authority failed to hold the officers accountable for their failures to follow ADA policies.

This case should have been simple. And yet the failed history of attempts by class members, Plaintiffs' counsel, and ADA staff at the prison to bring officers on Facility A into compliance regarding "short walk" accommodations suggests that CDCR has made little progress towards identifying and addressing even the most basic of ADA violations. Despite the new investigation system, multiple complaints about the same officers engaging in the same misconduct, and multiple examples of video evidence confirming the violation, CDCR still has not taken any steps to hold staff accountable or to ensure that class members receive the accommodations to which they are entitled under the ADA.

(c) CIW – [redacted] – AIU, Not Sustained

In this case, video shows that, without adequate justification, Officer [redacted] slammed [redacted] to the ground while she was handcuffed behind her back. Notwithstanding clear video evidence that the force used by Officer [redacted] was excessive and unnecessary, the Hiring Authority did not find any misconduct. Moreover, the investigation report was biased and incomplete, as the investigator improperly concluded that the use of force complied with policy without even interviewing Officer [redacted].

On April 26, 2022, Ms. [redacted] got into an altercation inside of her housing unit with another incarcerated person. Ms. [redacted] was escorted outside of the unit and placed

in handcuffs. As shown on the video, Sergeant [redacted] orders Officer [redacted] to escort Ms. [redacted] to the CTC to complete a 7219. *See* BWC at 17:27:45. Officer [redacted] uses his left hand to guide Ms. [redacted] by her right elbow. As they begin walking, Sergeant [redacted] orders [redacted], who was sitting on the ground as instructed by officers, to get up so officers can search him. As she is walking away, Ms. [redacted] speaks up to defend Mr. [redacted] by explaining that he was not involved in the incident. Ms. [redacted] stops walking to speak up for Mr. [redacted]. Officer [redacted] then tugs on Ms. [redacted]'s right arm and says, "Let's go." *See* BWC at 17:27:56 (linked above). He tugs on her arm again. *See* BWC at 17:28:00 (linked above). About two seconds later, Officer [redacted] again says, "Let's go," and yanks on Ms. [redacted]'s arm forcefully, dragging her to her right. *See* BWC at 17:28:02 (linked above). This yank spins Ms. [redacted] around, causing Officer [redacted] to lose some control over Ms. [redacted]. Even though Officer [redacted] briefly loses his grip on her arm, Ms. [redacted] does not appear to pose any imminent threat as she is in handcuffs, there are multiple officers nearby, and Ms. [redacted] is simply trying to make her point to the nearby officers. She is not otherwise moving toward or threatening anyone.

Officer [redacted] then grabs Ms. [redacted] by her left arm and slams her forcefully to the ground. *See* BWC at 17:28:05. Ms. [redacted] is unable to brace her fall because she is handcuffed behind her back. She hits the concrete pavement on her left shoulder very hard. Multiple officers pile on top of her. Officer [redacted] and another officer then escort her to the CTC.

Officer [redacted] caused substantial injuries to Ms. [redacted]. On October 14, 2022, an MRI documented a "rotator cuff tear." *See* MRI dated October 14, 2022. Ms. [redacted] reported in her 602 and her use-of-force interview that the rotator cuff tear was due to Officer [redacted]'s use of force.

The force used by Officer [redacted] was both unnecessary and excessive. Officer [redacted] did have a lawful purpose—escorting Ms. [redacted] to the CTC. But at the moment Ms. [redacted] stopped the escort to turn around and advocate for Mr. [redacted], Officer [redacted] had a host of non-force options for obtaining compliance and continuing the escort, including, most notably, (1) de-escalating the situation by attempting to calm her down and gain compliance, (2) threatening an RVR if she did not comply with orders to continue, and/or (3) requesting that another officer assist with the escort. Instead, as so often happens in CDCR, he immediately resorted to force by yanking Ms. [redacted]'s arm, which set the entire incident in motion. Had Officer [redacted] engaged in the non-force options available to him, as required by policy, it is likely that no force would have been necessary.

The amount of force used in this case —slamming to the ground a person handcuffed behind her back—also far exceeded the objectively reasonable amount of force needed to regain control over Ms. [redacted] during the escort. Ms. [redacted] had already

complied when initially being restrained. Her reaction to being yanked by Officer [redacted] did not provide him with license to slam her to the ground.

Notwithstanding the video evidence showing that the force was unnecessary and excessive, the Hiring Authority did not sustain any allegations of misconduct. Moreover, the IERC in the Incident Commander Review (a Lieutenant.), First Level Manager's Review (a Captain), and Second Level Manager's Review (an Associate Warden) wrongly and repeatedly concluded that the use of force complied with policy. This case therefore represents yet another instance where staff at all levels within Division of Adult Institutions have failed to recognize a clear use-of-force violation.

In addition, the investigation report for the case was substantially biased in favor of justifying the force. Most troublingly, the report mischaracterizes the video in the following ways, which all tend to exonerate Officer [redacted]:

- The investigator states that at 17:27:54, Ms. [redacted] "raised her right arm up," suggesting that she was resisting the escort. *See* AIU Report at 4. The video shows, however, that Officer [redacted] pulled on her arm, causing it to lift up.

- The investigator states that at 17:28:03, "[redacted] pulled her right arm away from [redacted] and broke [redacted]' grip on [redacted]'s arm." *See* AIU Report at 4. The investigator fails to mention that Ms. [redacted] only pulls away from Officer [redacted] after he forcefully yanked on her arm. It is significant in determining whether there is an immediate threat that her action is a reaction to the force used against her, and not an overt act.

- The investigator mischaracterizes the encounter by stating that at 17:28:05, "[redacted] repositioned himself on [redacted]'s left side, placed both hands on [redacted]'s left arm, bent down on his left knee and pulled [redacted] down to the ground. As [redacted] landed on her left side, [redacted] used his right hand to roll [redacted] onto her stomach. [redacted] gently placed his right hand on [redacted]'s left wrist and gently placed his left hand on [redacted]'s right shoulder." *See* AIU Report at 4-5. This description—which used the word "gently" twice and describes Officer [redacted] as "pull[ing]" Ms. [redacted] to the ground—is not an accurate description of the force used by Officer [redacted]. Someone reading the report without viewing the video would not understand that Officer [redacted] used his entire body weight to forcefully slam Ms. [redacted] to the concrete while she was already handcuffed behind her back.

The investigation report is incomplete as well. The investigator did nothing to gather evidence about Ms. [redacted]'s injuries, which is relevant to the reasonableness of the force used. The investigator also did not interview Officer [redacted] to inquire about his intent throughout the incident.

Lastly, the investigator offers an improper conclusion in the report that Officer [redacted] did not violate the use-of-force policy. The investigator wrote that "[b]ased on evidence reviewed from BWC ... misconduct did not occur." *See* AIU Report at 5. Not only is this conclusion wrong (as discussed above), but it violates Penal Code § 6065(c), which provides that "[a]ll [investigation] reports prepared by an [OIA] investigator shall provide the appointing authority with a complete recitation of the facts and shall refrain from conjecture or opinion." Defendants have repeatedly asserted that Section 6065(c) prohibits investigators from offering opinions regarding whether misconduct has occurred. But in this case, the investigator offered exactly such an opinion. As Plaintiffs have seen time and time again, investigators often violate Section 6065(c), nearly always doing so to exonerate officers and rarely doing so to opine that staff violated policy.

(d) KVSP – [redacted] – AIMS, Not Sustained

In this case, a Lieutenant and a Sergeant at KVSP initiated an inappropriate immediate use of force against [redacted], an elderly class member who uses a wheelchair. Mr. [redacted] had just been transferred to KVSP and was refusing to accept what he believed was a Sensitive Needs Yard ("SNY") housing assignment to which he had not consented. The investigation was horrifically incomplete and biased, most notably because it did not contain any description of the BWC footage, which shows the use of force was improper. In addition, the Hiring Authority did not sustain any allegations, even though (1) the video shows that Mr. [redacted] did not pose any imminent threat, (2) policy requires that staff take disciplinary action rather than use force under these circumstances, and (3) supervisors easily could have avoided force by taking him to the ASU.

On April 18, 2022, Mr. [redacted] arrived at KVSP and refused to be housed on what he believed was SNY (Mr. [redacted] was, in fact, being sent to a non-designated EOP unit, not an SNY). Sergeant [redacted] and Lieutenant [redacted] push him onto Facility C, where the EOP unit is located, in his wheelchair. Mr. [redacted] is in waist-chains. The BWC footage that was produced begins on the track on Facility C. Mr. [redacted] informs the supervisors that he is refusing to go to the assigned housing unit. Lieutenant [redacted] then states "I'm going to use force if I have to." *See* BWC at 21:22:39 (linked above). At that same time, Lieutenant [redacted] grabs Mr. [redacted]'s waist-chain and begins pulling backward. Lieutenant [redacted] repeatedly states, "We're going to go to building 7..... You're going to go to Building 7." Mr. [redacted] asks to be taken to ASU instead and again refuses to go to Building 7. Lieutenant [redacted] insists that they are going to force him to go to Building 7. Mr. [redacted] again refuses. *See* BWC at 9:23:18 (linked above).

Mr. [redacted] then asks if they are going to throw him to the ground and "give him a case." He also complains that the supervisors are cutting off his air supply by pulling backward on the waist-chains. Mr. [redacted] begins slowly using his feet to move his wheelchair forward. *See* BWC at 9:23:27 (linked above). Both supervisors then start dragging Mr. [redacted] backward in his wheelchair, against his will, while pulling firmly

backward on the waist-chain. Mr. [redacted] leans forward, complaining that he cannot breathe because of the pressure from the waist-chain. Mr. [redacted] then slowly slides forward out of the front of his chair, all while still being pulled backward by the supervisors. *See* BWC at 9:24:00 (linked above). The supervisors force him to the ground. One of the supervisors sounds an alarm over the radio and additional officers respond. From the ground, Mr. [redacted] states that his back, neck, and legs are injured. After a little over a minute and despite Mr. [redacted]'s requests that the supervisors not move him, they lift him from the ground and place him back in his wheelchair.

The video establishes that the supervisors violated CDCR's use-of-force policy. First, though Mr. [redacted] was not complying with an order to go to his assigned housing, he did not pose any imminent threat justifying an immediate use of force. Mr. [redacted] is an elderly class member in a wheelchair, and he was in waist-chains. He was simply stating that he was not going to accept the housing. Had the supervisors decided that force was necessary to gain compliance with their order, they were required to initiate a controlled use of force.

Second, the supervisors had a number of non-force options available to them that might have (and likely would have) avoided the need for force. They could have taken Mr. [redacted] to the ASU, as he requested, and then sorted out the issue with his housing. They could have threatened to issue him an RVR if he continued to refuse housing, which might have gained Mr. [redacted]'s compliance. In fact, CDCR policy specifies that the proper consequence for an individual refusing housing is an RVR. *See* 15 C.C.R. §§ 3005, 3269.1, 3315. They could have, as required by policy, tried to deescalate the situation by discussing Mr. [redacted]'s concerns more fully, including by clarifying that he was not actually being placed in SNY housing. Instead, the supervisors ratcheted up the tension almost immediately. Within seconds of the start of the dispute, Lieutenant [redacted] threatens to use force. And rather than try to deescalate, both supervisors simply repeat over-and-over again that Mr. [redacted] will accept his housing. Through their actions, the supervisors made force, and therefore the resultant risk of injury, far more likely.

Despite this clear evidence of misconduct, the Hiring Authority did not sustain any allegations against the supervisors.

Though the buck stops with the Hiring Authority and Hiring Authorities have an obligation to independently review the evidence, the failure in this case to find that the supervisors violated policy was likely caused, at least in part, by the biased and incomplete AIMS inquiry report, which wrongly signaled that the use of force complied with policy. Initially, the investigator appears to have submitted a report that did not even discuss the video footage of the incident. The investigator then submitted an amendment to the report "to reflect ... BWC ... documentation in the note section of this inquiry." *See* Inquiry at 1. The amendment, however, ignores that the video shows that the immediate use-of-force was improper. The investigator's note states *"[a] review of BWC ... footage, [sic] showed no evidentiary value.* At no time during my review of the

aforementioned video footage, [sic] did the subjects commit the allegations made by [redacted]. *There were sufficient facts and or [sic] evidence discovered during [sic] to reasonably determine the staff misconduct did not occur.*" *See* Inquiry Report at 2 (emphasis added). Even after the amendment, the investigation report contains no information about what is shown on the video. The report thus not only fails to describe what can be seen on the video footage, but suggests to the Hiring Authority that the video is not even worth reviewing.[15]

Lastly, the improper use of force in this case is particularly troubling as it involved two supervisors. It is essential that supervisors understand and model the obligation to deescalate, as required by policy, rather than quickly resorting to force.

(e) COR – [redacted] – AIU, Not Sustained

In this case, camera footage shows Officer [redacted] punching [redacted] with a closed fist in the abdomen while Officer [redacted] and other officers attempt to restrain Mr. [redacted] in the CTC. Despite clear evidence that the punch was gratuitous, unnecessary, and therefore excessive, the Hiring Authority did not sustain any use-of-force allegation against Officer [redacted]. Moreover, the investigator and the Hiring Authority both failed to recognize that Officer [redacted] was dishonest in his incident reports and AIU interview. Officer [redacted] tried to justify the punch by stating that Mr. [redacted] attempted to head butt him before the punch, when, in fact, any attempted head butt occurred *after* the punch.

On November 16, 2022, Mr. [redacted] reported being suicidal. Officers [redacted] and [redacted] escorted him to the CTC, where staff placed Mr. [redacted] in suicide resistant clothing and placed him on a bed, handcuffed behind his back. As shown on Officer [redacted]'s BWC, at some point Mr. [redacted] attempted to get up from the bed. *See* BWC at 23:39:42. The officers appropriately use physical force to put Mr. [redacted] back on the bed in a sitting position and then use their arms to push him back so that he is lying on the bed. They continue to use their hands to restrain him against the bed. Mr. [redacted] thrashes his legs around a bit. A third officer enters the room and controls Mr. [redacted]'s legs, followed by additional officers, who also help restrain him. Sergeant [redacted] then enters the room, but cannot be seen on camera, and asks Mr. [redacted] "What is the issue?" Mr. [redacted] responds, while gesturing with his head toward Officer [redacted], "This jackass searched my

[15] The investigation was also incomplete and biased in other respects. The investigator did not interview either of the subjects, claiming that he "did not have any clarifying questions and the force utilized was clearly articulated in the" incident reports. *See* Inquiry Report at 2. That statement is contradicted by the video, which shows the officers did not have a legitimate reason to use force. As a result, asking the officers about their justification was critical. Moreover, the investigation was very delayed. The investigator did not interview Mr. [redacted] until more than 11 months after the incident.

cell and ... fucked up a lot of my legal work. That's what started the [unintelligible]." *See* BWC at 23:41:08 (linked above).

Mr. [redacted] begins moving his legs again, causing the officers to increase their force in restraining him. Officer [redacted] then uses his right hand to deliver a very hard closed-fist punch to Mr. [redacted]'s abdomen. *See* BWC at 23:41:45 (linked above). The punch is sufficiently hard that the impact can be heard on Officer [redacted]'s BWC. Mr. [redacted] says, "You're going to sock me? You're going to sock me? You sock me? That's unnecessary use of force." While he is talking, Mr. [redacted] twice moves his head toward Officer [redacted] in what might have been attempts to head butt Officer [redacted]. *See* BWC at 23:41:49, 23:41:55 (linked above). Over the next approximately six minutes, officers continue to try to attempt to gain control over Mr. [redacted], including two efforts to place a spit mask on him.

It is unclear how, but Mr. [redacted] made an allegation of unnecessary use of force on the same day as the incident. The allegation was not referred for an AIU investigation until January 26, 2023.

The investigation and investigation report were biased and incomplete. First, the investigator does not identify in the report that Officer [redacted]'s version of events—that he punched Mr. [redacted] *after* Mr. [redacted] attempted to head butt him—was false. The video shows that the punch occurred *before* any attempted head butt. This discrepancy between the video and Officer [redacted]'s incident report[16] and interview testimony[17] is significant and should have been highlighted in the report because it undermines Officer [redacted]'s reported justification for punching Mr. [redacted]. Instead, the investigator recounts Officer [redacted]'s interview testimony that the attempted head butt occurred before the punch, without providing any Investigator Note to emphasize that the video showed that the

[16] Officer [redacted] wrote: "Inmate [redacted] maintained his resistive behavior by continuing to try to kick his feet up, and thrust his upper body towards me. … At this time Inmate [redacted] *was continuously attempting to strike me with his head* and throw his body weight into me. I gave Inmate [redacted] another direct order to 'STOP RESISTING' which he did not comply. Inmate [redacted] violently thrusted his body weight at me once again; with a closed fist, I used my right hand to strike Inmate [redacted] on the right side of his upper abdomen. My strike did not have its desired affects, and Inmate [redacted] continued his resistive behavior." *See* DE Exhibits at 79 (emphasis added).

[17] Officer [redacted] in his interview reported that: "Fields attempted to kick his feet up and *then attempted to head butt staff.* [redacted] stated at that time with his right hand he struck [redacted] in the abdomen area in hopes to have him stop trying to head butt them." *See* AIU Report at 4 (emphasis added).

attempted head butt occurred after the punch.[18] Moreover, the investigator did not ask Officer [redacted] any questions during the interview about this important discrepancy. *See* COR-[redacted], Subject interview – Officer [redacted].[19]

Second, the investigator failed to include in the report that Officer [redacted] punched Mr. [redacted] approximately thirty seconds after Mr. [redacted] accused Officer [redacted] of destroying Mr. [redacted]'s legal property. This information is crucial to put the punch in context as potential retaliation against Mr. [redacted] for making the allegation to Sergeant [redacted].[20]

Even though the report was biased, misleading, and incomplete, the Hiring Authority should have sustained an allegation of excessive force based on the video. Though Mr. [redacted] was resisting at the time, the punch was gratuitous and unnecessary to the officers' attempts to gain control of Mr. [redacted]. Mr. [redacted] was hand-cuffed behind his back. There were multiple officers in the room. Officers [redacted] and [redacted] appeared to have been able to maintain control over Mr. [redacted]'s upper body using holds. Nothing on the video suggests that the officers were in danger such that a punch was an objectively reasonable use of force. A finding that the strike was excessive was especially warranted given Officer [redacted]'s potential retaliatory intent. And yet, even when the video showed use-of-force violations, the Hiring Authority failed to hold Officer [redacted] accountable.[21]

(f) COR – [redacted]; COR – [redacted] – Local, Not Sustained; Local, Not Sustained

In these two cases, custody and health care staff at COR's CTC would not help an elderly class member transfer from his infirmary bed to his wheelchair so that he could be escorted to health care appointments, and then falsely documented that he had "refused" the appointments. In each case, the BWC footage shows that the class member did not refuse the appointments, but simply asked that the escorting officers help pull him into a

[18] The investigator did include a note in the report that he did not see any attempted head butt on the video. *See* AIU Report at 3. But the investigator does nothing to draw attention to the inconsistency between Officer [redacted]'s report and the video.

[19] Plaintiffs could not link this file. The native file is included as part of Defendants' production, which can be accessed using the link in the heading of this case.

[20] In addition, the investigation file only includes Officer [redacted]'s BWC footage. The file should have included many other officers' BWCs, especially Officer [redacted]'s. The investigation report contains no explanation for why the other BWC footage was not included.

[21] The IERC, including the Associate Warden who conducted the Manager's Review, also failed to identify the policy violation in this case. DE Exhibits at 31.

seated position on his bed so that he could transfer to his wheelchair. In each case, the officers declined this basic request for an accommodation—a literal request for a helping hand that would have only taken seconds of minimal effort to provide—and instead asked nursing staff whether the class member actually required this assistance. In each case, nursing staff told the officers that they should not help the class member. And in each case, the officers and nurses treated the class member's failure to independently transfer into his wheelchair as a "refusal," which has real consequences on access to future health care appointments and puts the class member at risk of being disciplined for refusing ducats. Although the relevant facts were clearly presented in the inquiry reports, the Hiring Authority failed to identify or address these obvious ADA violations.

[redacted], is a 75-year-old full-time wheelchair user with urinary and fecal incontinence, hearing aids, and low vision. Mr. [redacted] cannot walk, as he has diagnosed diabetic neuropathy, chronic lower back pain, and bilateral knee contractures (which make him unable to fully straighten or extend his knees). He has consistently reported to health care staff and physical therapy that he has difficulty sitting up in his bed. *See* Outpatient Progress Note (dated Jan. 18, 2023); Physical Therapy Progress Note (dated Feb. 1, 2023). He was transferred from RJD to COR's CTC on January 26, 2023, after being admitted to an outside hospital for four days for assistance with activities of daily living, as his chronic pain syndrome was causing him "pain in knees, hips, back and shoulders, spending 23hrs/day in bed, unable to move." *See* UM Discharge Planning (dated January 23, 2023); *see also* Admission History and Physical (dated Jan. 26, 2023).

In the first case, COR-[redacted], Officers [redacted] and [redacted] tell Mr. [redacted] that he has a ducat for chest x-rays on the morning of February 2, 2023. The video footage confirms that Mr. [redacted] tells the officers he "definitely" wants his x-rays, but the officers refuse to help him sit up so he can transfer to his wheelchair. *See* [redacted] BWC #1. Officer [redacted] enters the room to pick up Mr. [redacted]'s breakfast tray, but retreats when Mr. [redacted] asks, "Let me just get one hand to get up," and refuses to enter the room again. Officer [redacted] then walks over to the nurse station and asks whether Mr. [redacted] is able to transfer to his wheelchair on his own. Registered Nurse [redacted] responds: "Yes, he can, he acts like he can't but you need to enforce it, be like 'no, you can do this on your own, transfer.'" *See* [redacted] BWC #1. As Officer [redacted] is leaving the nurse station, RN [redacted] states (referring to Mr. [redacted]), "He's just a whiny little bitch."[22] *Id.* Officer [redacted] returns to the doorway to Mr. [redacted]'s room and tells Officer [redacted] that "he can move himself." Beginning at 8:05:32, Mr. [redacted] says, "I need help getting up" and asks

[22] The investigator referred Nurse [redacted]'s inappropriate comment to the CCHCS hiring authority for review as possible staff misconduct. *See* Unrelated Staff Misconduct Memorandum (dated Feb. 22, 2023). **Please ensure that the full investigation file for the inquiry or investigation into Registered Nurse [redacted]'s inappropriate comment toward Mr. [redacted] is produced to Plaintiffs once it is closed.**

for assistance multiple times. Officer [redacted] responds, "We're custody, we don't help medical." *See* [redacted] BWC #1 (linked above); *see also* [redacted] BWC #1 (linked above). The officers tell Mr. [redacted] that the "nurses say you can move," and tell him to get onto his wheelchair, and they will be back later to escort him to his ducat.[23] *Id.*

At 8:07:05, Officer [redacted] walks to the officer's podium and states, "I'm not helping him, that's not my responsibility." A second female nurse responds, "He can do it, he's just a crybaby." *See* [redacted] BWC #1 (linked above). At 8:11:55, Officer [redacted] and Officer [redacted] walk from the officer's podium towards Mr. [redacted]'s room. As they are walking away, Officer [redacted] tells a third officer at the podium: "Hey, if this guy's not in his chair, the nurse says he's a 'refusal' then, so we're going to check one more time." *See* [redacted] BWC #2. Officer [redacted] tells Officer [redacted], "Just look in there, don't talk to him," and as soon as Officer [redacted] reaches the door, Officer [redacted] says, "That's a refusal." *Id.* Officer [redacted]'s BWC footage shows him glance through Mr. [redacted]'s window for approximately one second (at 8:11:26) to say "are you ready," and then immediately turn around and walk back to the podium. *See* [redacted] BWC #2. Officer [redacted] tells the female nurse "refusal," and says, "He's just kicking back, he just wants a pity party." *Id.* Officer [redacted] walks to the nurse station and, at 8:11:42, tells Nurse [redacted] that Mr. [redacted] "is not getting in his chair." *See* [redacted] BWC #2 (linked above). Nurse [redacted] responds, "Then that's a refusal," and implies to Officer [redacted] that she will take care of the refusal paperwork. *Id.*

The local investigator's inquiry report summarizes and quotes from BWC footage confirming Mr. [redacted]'s allegations on the 1824 that officers "refused to give me a hand to pull me up to a sitting position" and that medical and custody staff were "falsifying my medical file" by stating he "refused to go for my chest x-ray." *See* 1824 (Inquiry File at 3). The report contains more than enough evidence to confirm the allegations against both the officers and the nursing staff. *See* Allegation Inquiry Report (Inquiry File at 9-11).

The Hiring Authority, however, failed to identify these blatant ADA violations, and instead "exonerated" the officers, concluding that while the facts "did in fact occur,"

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[23] According to Mr. [redacted]'s medical file, nursing staff at the CTC entered notes and told other health care staff that Mr. [redacted] has sometimes been able to transfer to and from his wheelchair without assistance. *See, e.g.* Nursing Note (dated Jan. 31, 2023). However, it is very common for individuals with disabilities to have their need for accommodations fluctuate based on factors such as temperature, weather, time of day, or the individual's fatigue level. *See* 28 C.F.R. § 108(d)(iv) ("An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."). That Mr. [redacted] may sometimes be able to transfer independently does not excuse refusing to provide him reasonable accommodations when he reports that he is in significant pain and that it is difficult for him to sit up and/or transfer to his wheelchair.

the "inquiry revealed that the actions were justified, lawful, and proper." *See* June 5, 2023 Memorandum (Inquiry File at 21).[24] Moreover, the local inquiry and the Hiring Authority did not refer the nursing staff, who were shown on video refusing to accommodate Mr. [redacted], to the CCHCS Hiring Authority so that they could be held accountable (with the exception of Nurse [redacted] for her inappropriate comment). As such, neither the officers nor the nursing staff were held accountable for denying basic accommodations to Mr. [redacted] and for falsifying his medical records by stating that he "refused" his x-ray appointment.

The production included a second case, COR-[redacted], which also involves an escort officer refusing to help Mr. [redacted] sit up and transfer to his wheelchair for a health care appointment, and asking nursing staff whether he had to help Mr. [redacted], only to have nursing staff tell the officer not to assist Mr. [redacted] and document that he "refused" the appointment. *See* 1824 (Originating Docs at 4).

The BWC footage shows Officer [redacted] asking Mr. [redacted] if he wants to go to the dentist on the morning of February 28, 2023, and Mr. [redacted] saying that he does want to go and is ready. *See* [redacted] BWC #1. When Mr. [redacted] asks for help getting up, Officer [redacted] responds, "The doctor says you can get up on your own," but Mr. [redacted] explains, "that's not true." Officer [redacted] declines to help and instead goes to the nurse station and asks whether Mr. [redacted] needs help transferring. The nurses all start to chuckle, and one female nurse states that Mr. [redacted] "will need assistance to the wheelchair," and Officer [redacted] asks, "OK, so who is going to help him, medical-wise?" The nurses again all laugh, and Officer [redacted] asks, "Or can he get up on his own?" The nursing staff continue laughing, and one says, "No comment." Another female nurse says, "He's a big problem, oh gosh."

Officer [redacted] returns to Mr. [redacted]'s room with two female nurses and tells Mr. [redacted] that the nurses will help him transfer. Mr. [redacted] asks the nurses to pull him up to a seated position, but they tell him to get himself into a seated position independently. *See* [redacted] BWC #2. The nurses and Mr. [redacted] become argumentative with each other, with the nurses repeatedly insisting that they will not use their physical strength to help pull him up into a seated position, and Mr. [redacted] stating he cannot sit up without help. At 10:34:26, one of the nurses tells Mr. [redacted] that she and the other nurse cannot hold Mr. [redacted]'s body weight, but when he asks why the officer cannot simply give him a hand (as he originally asked), the nurse insists that the officers "are not going to touch you." Officer [redacted] leaves the area to call the dentist's office. The dental

[24] To the extent that the Hiring Authority exonerated the officers for their refusal to accommodate Mr. [redacted] due to their reliance on the nursing staff's statements to them, this is not appropriate as the officers are required to provide reasonable accommodations to class members, and should have done so here without first asking the nursing staff whether they had to accommodate Mr. [redacted].

staff tell Officer [redacted] that Mr. [redacted] would not need to transfer from his wheelchair to receive dental care, but at 10:38:48, one of the female nurses tells Officer [redacted], "the thing is, he wants us to pull his whole body up, no!" *See* [redacted] BWC #3. Officer [redacted] responds, "So it's a refusal then, we're going to go with that," and the nurse agrees. *Id.*

As with the first case, the local investigator's inquiry report summarizes and quotes from the BWC footage that confirms Mr. [redacted]'s allegations. *See* Allegation Inquiry Report at 3-5.[25] Yet the Hiring Authority failed to identify the ADA violations and again "exonerated" the officers. *See* June 12, 2023 Closure Memorandum. And once again, the investigator and the Hiring Authority did not refer the misconduct by the nurses to the CCHCS Hiring Authority, ensuring that neither Officer [redacted] nor the nurses involved were held accountable.

(g) RJD – [redacted] – AIU, Not Sustained

In this case, the investigation confirmed that staff denied class member [redacted] access to an ADA accessible vehicle to transport her to a medical appointment, falsely documented that she "refused" to attend the appointment, and then issued her a false RVR for delaying a peace officer. Notwithstanding this evidence, the Hiring Authority failed to sustain the allegations of staff misconduct. Upon reviewing Officer [redacted]'s BWC footage, the investigator confirmed that Ms. [redacted] could not attend her appointment because a wheelchair-accessible vehicle was not provided, stating, "[redacted] requested a wheelchair vehicle with a lift. [redacted] did not refuse the transport." *See* Investigation Report at 3. The investigator also confirmed Officer [redacted] lied on the RVR issued to Ms. [redacted]. Officer [redacted] wrote in the RVR that, "Wilson also refused to sign the necessary CDCR 7225 REFUSAL OF EXAMINATION AND/OR TREATMENT, therefore, causing an overall delay of approximately thirty (30) to forty-five (45) minutes in our scheduled assignment." *See* Investigation Report at 3. The 7225 Form completed by Officer [redacted] also states, "I/P is refusing to attend, states is permanent disability. Refused to sign." *See* Investigation Report at 4. However, the investigator found that "[a]t no time during the footage did I

[25] The investigator even highlights one of the key questions for the Hiring Authority, with an inquiry note stating that "*Upon review of Operational Procedure 1076, Refusal of Medical Treatment (**Exhibit 8**), it should be noted there is nothing specific to what constitutes as a refusal of medical treatment*." *See* Allegation Inquiry Report at 5 (emphasis in original).

observe [redacted] attempt to have [redacted] sign a CDCR 7225 Refusal of Examination and/or Treatment."[26]

The evidence cited in the investigation report confirms, as alleged by Ms. [redacted], that Officer [redacted] lied in reports and issued her a false and discriminatory RVR. Such misconduct presents grounds for termination. *See* Investigation Report at 3; Disciplinary Matrix (E10, 789). Yet staff misconduct was "not sustained" by the Hiring Authority in this case involving the denial of a basic disability accommodation.[27] Most concerning, in response to Plaintiffs' advocacy regarding the RVR, CDCR Office of Legal Affairs also responded that Ms. [redacted]'s conduct "warranted the issuance of an RVR." *See* October 11, 2023 Letter from [redacted] Regarding Discriminatory RVRs Issued to Class Members (RJD) at 5.

2. Hiring Authorities Failed to Impose Appropriate Discipline After Misconduct Was Confirmed

In the cases discussed in this section, Hiring Authorities sustained allegations of misconduct, but imposed inappropriate discipline. Cases discussed in other sections also reflect this serious problem. *See* **LAC – [redacted]**; **LAC – [redacted]**.

(a) LAC – [redacted] – OIA, Sustained (for failure to perform within training) – LOI, Training

In this case, the Hiring Authority failed to impose appropriate discipline on Lieutenant Sears who admitted to falsifying documents extending a class member's stay in administrative segregation. Even though the conduct merits a violation with a base level penalty of 9, the Hiring Authority imposed only corrective action.

On December 28, 2021, Lieutenant [redacted] placed class member [redacted] in administrative segregation after an altercation between Mr. [redacted] and another incarcerated person. Because placing someone in segregation is considered a significant deprivation of their liberty, a captain must conduct an "administrative review" of the person's placement in the ASU within one business day. 15 C.C.R. § 3336; DOM § 54046.5.1. This review must involve an interview with the incarcerated person and a C-File review, examining the circumstances of the ASU

[26] The RVR Hearing Officer found Ms. [redacted] "not guilty" of the RVR, which is consistent with the investigator's finding that Officer [redacted] was not truthful on the RVR.

[27] It should not matter but is nevertheless worth noting that the Hiring Authority who reviewed this case was a Warden from a different prison who presumably inherited this case due to the backlog of cases at RJD.

placement, and, if applicable, medical or mental health staff input. *Id.* The administrative review is documented on a CDCR 114-D.

Mr. [redacted] alleged that no administrative review ever occurred in his case. The evidence gathered by the investigator included a 114-D signed by Lieutenant [redacted], indicating that she, acting as a captain, completed the administrative review. *See* OIA Exhibits at 18-21. In interviews with AIMS and OIA investigators, however, Lieutenant [redacted] admitted that she signed the 114-D, but did not actually conduct the required elements of an administrative review. *See* OIA Report at 6. Lieutenant [redacted] thus made a false statement on the 114-D—that she had conducted the administrative review when she had not.

Given the significance of Lieutenant [redacted] admitting to falsifying documents regarding compliance with a process designed to prevent deprivations of due process, the discipline the Hiring Authority imposed in this case (corrective action) was inappropriate. *See* 402 at 1.[28] The Hiring Authority considered only a charge of D26 (**1**2345), for failure to observe and perform within the scope of training and department policy. The Hiring Authority then mitigated the discipline to corrective action. However, Lieutenant [redacted]'s conduct violated E10 (78**9**), which prohibits "[f]alsification of material facts in reports or official records," and carries a base penalty of 9. Lieutenant [redacted]'s signature represented that an administrative hearing occurred, when, as the Hiring Authority found, it did not. Accordingly, Lieutenant [redacted] falsified a material fact on an official record. The Disciplinary Matrix recognizes that such conduct is very serious. Though it is possible that termination would not have been an appropriate result in this case, imposing only corrective action was clearly inappropriate. The Hiring Authority's failure to consider the more serious Disciplinary Matrix category was improper.

(b) KVSP – [redacted] – AIU, Sustained (for discourtesy) – LOI

In this case, video evidence confirms that, as alleged by [redacted], Officer [redacted] walked into Mr. [redacted]'s cell in the CTC where Mr. [redacted] was lying in his medical bed, threatened him, and challenged him to fight. Despite this clear evidence, the Hiring Authority only sustained a violation of discourtesy and issued Officer [redacted] corrective action (Letter of Instruction). This penalty was not appropriate for Officer [redacted]'s serious misconduct.

As shown on the video, after Officer [redacted] walks into Mr. [redacted]'s CTC cell, the following conversation occurs. *See* BWC at 7:14:23.

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[28] There is no evidence that the administrative review in fact occurred. The CCI listed as the staff assistant on the 114-D denied participating in the administrative review, OIA Report at 3-4, and Mr. [redacted] stated it never occurred. *Id.* at 2.

Mr. [redacted]: I don't understand why you gotta walk all the way in here when the nurse isn't here.

Officer [redacted]: Cause I can.

Mr. [redacted]: What you mean cause you can?

Officer [redacted]: **I don't know what your issue is today man, whatever you need to do, you need to do.** I don't know who the hell you think you're talking to man.

Mr. [redacted]: Who you think you're talking to?

Officer [redacted]: **We can find out real quick man.**

Mr. [redacted] (looking startled): What's up?

Officer [redacted]: **Handle it. You're the one talking shit bro.** All I did was walk in, ask how you're doing.

The bolded statements above represent threats by Officer [redacted] to Mr. [redacted] and challenges for Mr. [redacted] to physically fight Officer [redacted]. Based on this evidence, the Hiring Authority should have, at a minimum, found that Officer [redacted] intimidated and/or threatened Mr. [redacted] without an intent to inflict serious injury (D15, 34**5**678). Instead, the Hiring Authority did not sustain an allegation under D15 that Officer [redacted] "tried to provoke violence" and only sustained an allegation under D1 (**1**23456) that Officer [redacted] was discourteous. *See* 402 at 2.

Further compounding the problem, the Hiring Authority then misapplied the Disciplinary Matrix for the discourtesy finding. The Hiring Authority found no mitigating factors and a host of aggravating factors (that the misconduct was intentional and willful; the employee knew or should have known that their actions were inappropriate; and sworn staff shall be held to a higher standard of conduct, among others). And yet the Hiring Authority went below the base level and issued Officer [redacted] only corrective action (a Letter of Instruction). Officer [redacted]'s discourteous behavior is significantly more serious than other types of discourtesy (e.g., cursing at an incarcerated person). The Hiring Authority's decision to impose only corrective action was not appropriate.[29]

[29] The Hiring Authority also should have considered a dishonesty allegation against Officer [redacted]. According to the AIU investigation report, during his AIU interview, Officer [redacted] stated "he was not provoking [redacted] to violence." *See* AIU Report at 4. Based on the video of the incident, that statement is false and material.

3. Hiring Authorities Continue to Delay in Reviewing Investigations

Despite improvements to the staff complaint process to ensure the swift and timely completion of investigations, within 120 or 180 days, Hiring Authorities are undermining those reforms by delaying in reviewing and taking action on completed investigations. According to data produced by Defendants on October 17, 2023, 43% percent (1,561 of 3,662) of the investigations that the AIU (a) received between August 2022 and September 2023 and (b) has completed are currently waiting for Hiring Authority action. In these cases, Hiring Authority review is the only thing standing in the way of imposing important corrective or adverse action that can reduce future harm to class members, or exonerating officers who have not violated policy.

The problem is particularly acute at LAC (58% of completed investigations pending with Hiring Authority), RJD (54%), SATF (40%), and CIW (38%). Since the last report, Defendants have made some progress at COR and KVSP. Some of the cases pending with the Hiring Authority are very old; more than 120 of the still pending cases were received by the AIU in August-October of 2022.[30]

	RESOLVED BY HA	PENDING	TOTAL	% PENDING
CIW	109	67	175	38%
COR	613	192	804	24%
KVSP	211	63	273	23%
LAC	342	482	824	58%
RJD	389	460	849	54%
SATF	441	297	737	40%

The purpose of negotiating shortened timelines to complete investigations was to ensure that CDCR could swiftly act to hold staff accountable for serious staff misconduct. The parties focused on eliminating delays in investigations because that is where delays were occurring. Now, those delays have simply been transferred to a different part of the process—Hiring Authority decision making. **In Plaintiffs' June 13, 2023 letter, Plaintiffs requested that Defendants impose a deadline for Hiring Authorities to timely act on completed investigations. In Defendants' October 13, 2023 letter, Defendants stated that "they are not currently considering setting a policy**

[30] At the October 18, 2023 meeting, Defendants indicated that the older cases may be showing as pending if they have been appealed to the State Personnel Board. Defendants indicated they were looking into fixing the system so that it can track when the Hiring Authority closes the case at the prison by issuing the 402/403 or Notice of Adverse Action.

requirement for how quickly Hiring Authorities must complete their review of investigation files once received but may consider doing so in the future." The time to make this change is now. This problem must be addressed.

4. Imposition of Post-Hiring Authority Discipline at LAC

In multiple cases in this production, Defendants produced memoranda indicating that CDCR imposed discipline *after* the Hiring Authority determined that no discipline was warranted. For example, in LAC-[redacted], the Hiring Authority did not sustain the charges that Officer [redacted] damaged Mr. [redacted]'s property or failed to provide him a cell search receipt. Yet the file contains a June 15, 2023 memorandum (four months after the 402/403 conference) from the LAC chief deputy warden to DAI stating that LAC uncovered misconduct while reviewing video footage in the case, and that the misconduct "will be addressed and corrective action will be issued." *See* June 15, 2023 Memo at 1. The memorandum does not describe the specific misconduct or the corrective action issued, although the AIU report notes, correctly, that Officer [redacted] called Mr. [redacted] an "asshole" to another incarcerated person. *See* AIU Report at 4. The production includes at least two other cases with memoranda showing that LAC imposed discipline after the Hiring Authority's initial decision and outside of the 402/403 process. *See also* LAC-[redacted]; LAC-[redacted].

Questions:

1. Please describe the basis for the post-402/403 video review process. What policy is it derived from? Who is involved? Does this occur in every case? If not, how are cases selected for review?

2. Does the Hiring Authority receive training or feedback if the review finds misconduct after the Hiring Authority failed to sustain an allegation?

B. Barriers to Accountability as a Result of Investigations

1. Investigators Conducted Incomplete and Biased Investigations that Interfered with Determining If Allegations Were True

Biased and incomplete investigations lie at the heart of the problem in almost all cases reviewed by Plaintiffs, including many of the cases discussed in the Hiring Authority decision-making section above. *See* **LAC –** [redacted]; **KVSP –** [redacted]; **COR –** [redacted]. The cases included in this section illustrate additional examples of the types of investigation failures identified by Plaintiffs.

(a) KVSP – [redacted] – AIU, Not Sustained

In this case, [redacted] alleged that Officer [redacted] used unnecessary force when, without any justification, she forcefully shoved his

wheelchair by the handles, injuring his ankles when they were caught underneath the chair. The investigation and resultant report are incomplete and biased in a variety of ways that make it impossible to determine whether the misconduct occurred.

The biggest problem with the investigation is that the investigator appears to have intentionally not obtained all of the relevant video, but then relied on the absence of video of the incident to conclude it did not occur. Throughout the investigator's interview with Mr. [redacted], Mr. [redacted] is clear that the incident occurred between 10:00 or 10:30 AM and 1:00 or 1:30 PM, when he was leaving the mental health building. *See* KVSP-[redacted], Interview [redacted] at 7:35-12:20.[31] At various points, the investigator asks Mr. [redacted] to narrow that timeframe, but Mr. [redacted] is unable to do so. The investigator, however, mischaracterized Mr. [redacted]'s interview testimony in the investigation report, stating that "[redacted] believed the incident took place between either 1000 to 1020 hours or 1300 to 1320 hours." *See* AIU Report at 1. That is not what Mr. [redacted] said. Then, in what can only be presumed to be an intentional act, the investigator only requested and reviewed video from 10:00-10:20 and from 1:00-1:20.

A review of the brief, 10:00-10:20 video clip, does show some interactions between Officer [redacted] and Mr. [redacted]. At 10:00:00, Mr. [redacted] enters the mental health building while Officer [redacted] is sitting behind a desk. At 10:01:00, he goes into his IDTT meeting. At 10:06:30, he exits the IDTT and goes into a waiting room. Then at 10:07:45, he goes from the waiting room to a 1:1 meeting with a clinician. The video ends at 10:20:00 without showing Mr. [redacted] leaving the 1:1 appointment. *See* BWC. The investigator reviewed this video and concluded that "[a]t no time did [redacted] grabbed [sic] [redacted] [sic] wheelchair and shove him." *See* AIU Report at 2. However, Mr. [redacted] made clear during his interview that the incident occurred when he was leaving the mental health building. The investigator was therefore on notice that the video he requested stopped prior to the reported timing of the incident, and yet still relied on the video to conclude that the incident did not occur.

The investigation was also incomplete. The investigator did nothing to attempt to confirm Mr. [redacted]'s claimed injuries to his ankles, which could have corroborated his allegation. In fact, Mr. [redacted]'s medical file contains such evidence, including a 7362 dated September 15, 2022 in which he requests a 7219; a nursing note from September 19, 2022, which shows that a nurse gave him ibuprofen for his ankles; and a nursing note from September 23, 2022, that states that he had swelling in both ankles caused when "Officer [redacted] became upset with him and pushed/shoved his wheelchair, causing his feet to drag underneath the wheelchair." *See* 7362 dated September 15, 2022; Progress Note dated September 23, 2022.

[31] Plaintiffs could not link this file. The native file is included as part of Defendants' production, which can be accessed using the link in the heading of this case.

Lastly, the investigation report is drafted on a form entitled "Investigative Report with No Evidence of Misconduct." *See* AIU Report at 1. Like the Quick Close Reports, discussed *infra*, the use of this form by CDCR violates Penal Code § 6065(c), which provides that investigators "refrain from conjecture or opinion." Defendants have repeatedly indicated that Section 6065(c) prohibits investigators from opining on whether misconduct occurred. The title of the form itself communicates exactly what CDCR states the statute prohibits its investigators from doing.

(b) KVSP – [redacted] – AIU, Not Sustained

In this case, [redacted] alleged that Sergeant [redacted] forged his former cellmate's [redacted] signature on a compatibility chrono following a fight between the two of them. Mr. [redacted] later assaulted Mr. [redacted] a second time. Though the incident occurred before camera deployment at KVSP, the investigator uncovered significant evidence that someone had, in fact, forged Mr. [redacted]'s signature. Mr. [redacted], in his interview with the investigator, stated that he observed Sergeant [redacted] sign the chrono for Mr. [redacted]. Mr. [redacted] provided corroborating testimony during his interview, stating that the signature on the chrono was not his and that he did not sign any compatibility chrono after fighting with Mr. [redacted]. *See* Investigation Report at 3. Thereafter, however, the investigator failed to adequately follow up on that evidence, which prevented the Hiring Authority from being able to hold staff accountable for what may have been very serious misconduct that later resulted in injury to a class member.

Given Mr. [redacted]'s and Mr. [redacted]'s consistent reports, the investigator should have taken all available investigative steps to determine if the signature was forged and, if yes, by whom. The investigator did interview Sergeant [redacted], who reported that it was actually Sergeant [redacted] who interviewed Mr. [redacted] and Mr. [redacted] after the fight. The investigator also interviewed Sergeant [redacted], who admitted to interviewing Mr. [redacted]. Both Sergeants denied forging the signature. *See* Investigation Report at 3-4.

At that point, even without video evidence, the investigator could and should have taken a number of straightforward additional steps to determine whether the signature was forged and by whom. The investigator could have compared the signature on the chrono to Mr. [redacted]'s verified signature, as well as to Sergeant [redacted] and Sergeant [redacted]'s verified signatures to determine if they had signed the document for Mr. [redacted]. Given the seriousness of the allegation—that staff forged a document endangering incarcerated people who were not safely housed together, which could have resulted in serious harm or even death—the investigator could also have brought in a forensic handwriting expert to conduct those comparisons. If the comparisons suggested that one of the Sergeants signed the document for Mr. [redacted], the investigator could have interrogated the Sergeant about that fact. The investigator also could have re-interviewed Mr. [redacted] and Mr. [redacted] to determine if it was actually Sergeant [redacted]

who interviewed them and forged the signature, rather than Sergeant [redacted]. Instead, the investigator did nothing and simply ended the investigation. By conducting such an incomplete investigation, the investigator deprived the Hiring Authority of the evidence needed to conclusively determine whether misconduct occurred.

(c) SATF – [redacted] – AIU, Not Sustained

In this case, [redacted] alleges he was denied access to an incontinence shower on June 27, 2022, and made to wait for hours in a soiled diaper by Officer [redacted] while others were allowed to use the phones and showers, in retaliation for writing staff misconduct complaints. During his interview, Mr. [redacted] provided additional details, including that he had an ADA Worker inform Officer [redacted] at around 1:00 pm that he needed a shower, that he could see Officer [redacted] in the tower letting other people out to use the phones and showers during that same time, and that the ADA shower was open but he was still made to wait. *See* SATF-[redacted], audio file, Claimant [redacted].[32] Although the investigation uncovered some corroborating evidence, the investigator stopped short.

Officer [redacted]'s BWC footage shows him in the control tower while an incarcerated person can be heard below attempting to get his attention. Officer [redacted] chuckles to himself and appears to be ignoring the person attempting to get his attention, and then walks away. *See* BWC. It is unclear from the video alone whether this is the ADA Worker reportedly sent to notify Officer [redacted] of Mr. [redacted]'s need for a shower. The BWC and AVSS footage confirms, as alleged, that multiple other people were out in the dayroom, and that Mr. [redacted] was not released from his cell during this time. *See* AVSS. Despite evidence corroborating the allegation, the investigator closed the case with a Quick Close Report, on the basis that Officer [redacted]'s BWC footage "captures no interaction with [redacted] from 1300 to 1320 hours," and the AVSS "demonstrates no interaction with [redacted]." *See* AIU Report at 2. But Mr. [redacted] never alleged that he directly interacted with Officer [redacted]. Consistent with his allegation, Mr. [redacted] appears to be stuck in his cell.

The report fails to accurately characterize Mr. [redacted]'s allegations and does not mention that someone can be seen attempting to get Officer [redacted]'s attention at 1 pm. At the very least, the ADA Worker should have been interviewed to see whether Mr. [redacted] asked him to request a shower for him, and whether he was the person in the video trying to get Officer [redacted]' attention. If the ADA Worker corroborated the allegations, Officer [redacted] should have also been interviewed.

[32] Plaintiffs could not link this file. The native file is included as part of Defendants' production, which can be accessed using the link in the heading of this case.

Mr. [redacted] also makes additional allegations against Officer [redacted] during his audio interview that are not mentioned anywhere in the Quick Close Report. He alleges that Officer [redacted] obstructed his access to the complaint process later that day by threatening him with an RVR for being out of bounds if he dropped his complaint in the appeals box. He also alleges that Officer [redacted] was off work for a few days after Mr. [redacted] filed his complaint on June 27, 2022, but that on his first day back, July 1, 2022, Officer [redacted] issued him a retaliatory RVR. Mr. [redacted] claims that he was written up for having his window partially covered, which he reports is common place in the unit and which he does for privacy while changing his diaper. He reports that video will show many people with their windows covered, but that he was singled out for an RVR. Mr. [redacted] also claims that he was written up again by Officer [redacted] the very next day, July 2, 2022. None of these allegations are mentioned anywhere in the Quick Close Report, and it is unclear whether they are being investigated. These allegations are closely related to the allegation that Mr. [redacted] was denied an incontinence shower, and should have all been investigated together. Instead, the allegations were never investigated.

2. Investigators Routinely Fail to Review Relevant Video Footage of Incidents

Defendants' investigators continue to fail to retain and review appropriate video footage.[33] *See* RJD Remedial Plan, § IV; Five Prisons Remedial Plan, § V; *see also* August 2023 Report at 33-34; May 2023 Report at 41-44; Feb. 2023 Report at 45-49.

For example, in LAC-[redacted], the class member alleged that, on the morning of July 20, 2022, Officer [redacted] disregarded the fact that he was suicidal and abandoned the class member's cell while the class member was on suicide watch. The class member reported attempting suicide later that same afternoon. The investigator obtained and reviewed video from the class member's July 20 afternoon suicide attempt. However, the investigator failed to even attempt to obtain any video evidence related to the July 20 *morning* incident, which was crucial to determining whether and why Officer [redacted] abandoned the class member, potentially contributing to his later suicide attempt. The investigator gave no justification for failing to obtain video from the morning incident. Notwithstanding this failure to obtain video of the morning incident, the investigator concluded that video footage could not corroborate the class member's allegation.

[33] Under the Remedial Plans and Defendants' BWC policy, Defendants must retain video footage for all triggering events, including, but not limited to, any allegation of staff misconduct, any PREA allegation, any allegation of misconduct by an incarcerated person, any suspected felonious criminal activity, and any use of force incident. *See, e.g.*, RJD Remedial Plan, § I; Operational Plan No. 28, § VII.B; Five Prisons Remedial Plan, Attachment A ("Operational Plan No. 131"), § VI.B.

In COR – [redacted], the class member filed a 602 reporting that Officer [redacted] and multiple other unnamed officers ignored his requests to be seen by medical because he was having severe chest pains. *See* 602 at 1-2. The investigator only requested footage beginning at 9 am, and the incarcerated person reported that he spoke with Officer [redacted] and the two other officers at "8:30 am or 9:00 in the morning." *See* 602 at 2. Additionally, the investigator reviewed footage from Officer [redacted], but should have investigated the identities of the two unnamed officers referenced in the grievance and requested their BWC. Without this additional BWC footage, the investigation was incomplete.

In **KVSP –** [redacted], discussed above, the investigator failed to obtain footage from the time period the class member alleged an officer used unnecessary force. There are other examples of investigators failing to obtain video footage necessary to resolve staff misconduct allegations. *See also* COR-[redacted], LAC-[redacted], SATF-[redacted], SATF-[redacted], RJD-[redacted], RJD-[redacted].

In other cases, investigators regularly fail to request video within the 90-day retention period, causing the destruction of relevant video footage that is crucial to resolving serious staff misconduct allegations. For example, in COR-[redacted], the class member alleged that staff were disclosing information about the class member that endangered him. Video was critical to resolving this allegation and determining what actually occurred, but the AIU investigator did not begin investigating until three months after the class member filed a timely grievance—and by that time, CDCR had destroyed the video. In other cases, such as SATF-[redacted], investigators fail to request video even when timely assigned to the case. *See also* SATF-[redacted], RJD-[redacted], RJD-[redacted], RJD-[redacted].

3. Inappropriate Use of AIU "Quick-Close" Policy

Plaintiffs continues to identify cases where investigators use the "Video Quick Close Report" to summarily close cases even where further investigation was required. During the October 18, 2023 meeting, Defendants reported that they have done additional training to clarify when it is appropriate to use a "Video Quick Close Report." However, Plaintiffs agree with the OIG that the "Video Quick Close" process is itself improper. *See* Office of the Inspector General's Staff Misconduct 2022 Annual Report ("OIG Annual Report"), at 47-49, August 3, 2022. **Defendants should cease use of the "Video Quick Close" process.** The very nature of the "Video Quick Close Report" form signals to Hiring Authorities "nothing to see here." As identified by the OIG, the result is an improper conclusion, at the investigation stage, "that no staff misconduct occurred; however, only a hiring authority can reach such a conclusion." *See id.* at 49. The following improper use is illustrative:

In SATF – [redacted], [redacted] reported that Officer [redacted] issued Mr. [redacted] a retaliatory RVR after he filed a staff misconduct

complaint against Officer [redacted].[34] Mr. [redacted] reported that on August 15, 2022, a floor officer allowed him to sit outside during medication time when he was dizzy and felt sick. Days later, Officer [redacted] issued him an RVR for being out-of-bounds. The AIU investigator only reviewed AVSS and BWC, and stated on a "Video Quick Close Report," that "based on the review of AVSS and BWC, the allegation made by the claimant did not occur." *See* AIU Report at 3. Given the allegation that the RVR was retaliatory, it was impossible for the investigator to close the case after viewing only video. It was necessary to determine whether it was true that Mr. [redacted] filed a recent staff complaint against Officer [redacted] and, if so, to at the very least interview that officer about the RVR, his intent, and whether he knew about the 602. The investigator instead relied on a statement in the RVR that the officer had "ordered and informed [redacted] numerous time(sic) not to sit on his walker in an Out Of Bounds marked area." *See* RVR at 26. The investigator failed to determine whether, as Mr. [redacted] asserted in this case, the floor officer granted him permission to sit there and why the conduct resulted in an RVR days later. Despite the improper use of the video quick-close report, and an incomplete investigation, an AIU Caption signed off on the investigation report. *See* AIU Report at 4. Furthermore, the Hiring Authority closed the case without a request for further investigation, and did not sustain the allegation.

Plaintiffs have reported on additional examples where investigators improperly relied on the use of the "Video Quick Close Report." *See* **KVSP –** [redacted]; **SATF –** [redacted]; August 2023 Report at 35-36.

4. AIU Investigations Continue to Be Delayed

Hiring Authorities are not the only cause of investigation delays. *See* **I.B.4**. AIU staff are also failing to complete investigations by the deadlines set in the Remedial Plans: 120 days for investigations conducted by custody supervisors (Sergeants and Lieutenants)[35] and 180 days for investigations conducted by Special Agents. **The chart below shows that, for investigations the AIU received in August 2022 to May 2023,[36]**

[34] Mr. [redacted] also reported that he filed the initial staff complaint due to an RVR that was issued by the officer in retaliation for a lawsuit he filed against the officer.

[35] The data shows that for cases received by the AIU between August 2022 and September 2023, 93% of the AIU investigations were assigned to custody supervisors. This represents a significant increase from the period covering cases received by the AIU between June 2022 to June 2023, during which 88% of the AIU investigations were assigned to custody supervisors. In August and September of 2023, only 9 of 448 (2%) investigations received by the AIU were assigned to Special Agents.

[36] Plaintiffs only present the data for August 2022 to May 2023 because the vast majority of investigations from more recent months (1) are not yet complete and (2) could not

the AIU closed 36% of the investigations late. For the most recent three months of available data, the AIU closed 30% of investigations late.

	MONTH RECEIVED	CLOSED-ON TIME	CLOSED-PAST DUE	OPEN	OPEN-PAST DUE	TOTAL	% LATE	% ON TIME/NOT YET LATE
2022	August	131	121	0	0	252	48%	52%
	September	97	104	1	1	203	52%	48%
	October	143	180	1	0	324	56%	44%
	November	155	75	0	0	230	33%	67%
	December	204	104	0	0	308	34%	66%
2023	January	300	126	0	0	426	30%	70%
	February	277	131	0	1	409	32%	68%
	March	277	129	0	7	413	33%	67%
	April	214	90	1	14	319	33%	67%
	May	313	53	1	46	413	24%	76%
TOTAL		2,111	1,113	4	69	3,297	36%	64%

II. DEFENDANTS ARE FAILING TO PROPERLY IDENTIFY AND ROUTE STAFF MISCONDUCT COMPLAINTS

A. The CST Is Inappropriately Routing Staff Misconduct Complaints as "Routine" Grievances

The CST continues to route as "routine" far too many grievances that contain clear allegations of staff misconduct. The CST should only classify a grievance as "routine" if it does not include an allegation of staff misconduct.[37] A grievance contains a staff misconduct allegation if it alleges an employee engaged in "behavior that results in a violation of law, regulation, policy, or procedure, or actions contrary to an ethical or professional standard." 15 C.C.R. § 3486(c)(22).

Plaintiffs reviewed the random sample of grievances for Q3 2023 from class members at the Six Prisons that the CST determined do not allege misconduct, which

possibly be late because they have not yet run up against the deadlines in the Remedial Plan.

[37] In an October 17, 2023 email, Defendants explained that they have instructed the CST to route as routine "factually impossible" or "factually implausible" complaints, even when the complaint contains allegations of staff misconduct. Plaintiffs are not opposed to this concept in principle. However, Defendants have not yet provided Plaintiffs with sufficient information regarding the timing of this change or the nature of the instructions provided to CST staff. Plaintiffs requested at the October 18, 2023 meeting that Defendants produce all CST training materials.

Defendants produced on October 5, 2023. **In 19 out of 96[38] cases (or 20%), Plaintiffs disagree with the CST's determination that the grievance contains no staff misconduct allegation.**[39] According to data produced by Defendants, the CST determined that 14,076 grievances did not include an allegation of staff misconduct in Q3 2023. If the CST's 20% error rate for this quarter applied across these decisions, that would mean CDCR failed to route more than 2,800 complaints into the staff misconduct investigation process during this three-month period. **This would mean that the CST missed far more staff misconduct complaints than they actually identified in Q3 2023, as the CST routed a combined total of 1,617 complaints to LDIs and the OIA during that time period**.[40]

Once again, in nearly every case where Plaintiffs disagreed with the CST, the staff misconduct allegation was clear and unambiguous. A number of the 602s that the CST routed as routine not only contained allegations of staff misconduct (and therefore should have at least been investigated by an LDI), but also included allegations of staff misconduct on the ADI, and therefore should have been investigated by the AIU. The full list of 602s from the Q3 2023 sample that the CST improperly routed as routine are described in **APPENDIX A**. **Plaintiffs request that Defendants provide their position on whether the CST improperly routed each of the 19 grievances described in APPENDIX A, and if not, the basis for their disagreement with Plaintiffs' position.**

The following examples are illustrative of 602s that the CST erroneously classified as not including an allegation of staff misconduct:

- [redacted] – The person alleges that a Lieutenant denied his request for single cell housing due to his disability-related safety concerns, and forced him to house with a cellmate, even though they each stated they were not compatible with each other. He also alleges that staff are retaliating against him for seeking assistance "against this abuse of authority" by blocking phone calls from his daughter. *See* Other Misconduct (2); Retaliation (1), (4).

[38] Defendants' random sample produced for this quarter was missing three 602s and included one duplicate copy of a 602, which we omit from the count.

[39] Plaintiffs are counting two grievances from the Q3 2023 sample as correctly screened as "routine" by the CST that allege staff misconduct on their face, but where the allegations are factually impossible and/or factually implausible.

[40] While this is a slight decrease in the CST's error rate compared to the last two quarters (27% and 30%, respectively), it is still far too high. Further, multiple factors likely account for the decrease including the influx of 1824s into the system that naturally contain "routine" complaints and likely decrease the rate of error regarding the identification of staff complaints.

- [redacted] – The person alleges that an officer sexually assaulted him in his cell. *See* Staff Sexual Misconduct (2).

- [redacted] – The person alleges that an officer is targeting and harassing him because of his race, including by denying him access to yard and threatening to write a false RVR against him. *See* Discrimination/Harassment (2), (3).

- [redacted] – The person alleges that a Sergeant conducted a biased interview of him regarding an assault by staff in order to protect the officers involved, and tried to file a false report on the incident. *See* Code of Silence (4).

- [redacted] – The person alleges that a Sergeant ordered him to the back of the chow line and then tried to handcuff him in retaliation for filing a 602 against him, and that the Sergeant is disrespectful and threatens incarcerated people. *See* Retaliation (2); Other Misconduct (4).

- [redacted] – The person alleges that the prison's sign language interpreter is often very late for appointments or does not show up at all, causing his appointments to be canceled, and that she retaliates against any Deaf person who goes against her. *See* Retaliation (1), (4).

- [redacted] – The person alleges that staff disregarded his safety concerns by sending him back to the yard where incarcerated people were demanding that he pay his former cellmate's debt, even though the staff knew his life was in danger because he had disclosed the names of the people who were threatening him. *See* Integrity (1); Other Misconduct (2).

Our findings that Defendants are erroneously classifying many complaints as routine is consistent with data produced by Defendants that show a marked increase in the number of complaints that the CST is classifying as routine. As shown in the chart below, in August and September 2023 (the two most recent months for which Defendants have produced data), the CST processed more complaints than in any of the other months. But in those two months, the CST also categorized the highest percentage of complaints as routine and the lowest percentage of complaints as alleging staff misconduct. Perhaps most troublingly, in September 2023, the CST processed the most complaints of any month (5,665) but also classified, by a very large margin, the fewest complaints as alleging staff misconduct of any month (325). (September 2022 had the second fewest staff misconduct complaints, with 435.) September 2023 had only 37% of the number of staff misconduct complaints in June 2023 (868 staff misconduct complaints).

		Initial CST Routing Decision							
T	Month received	HA/LDI	OIA	ROUTINE	TOTAL	% STAFF SM (LDI+OIA)	% LDI	% AIU	% ROUTINE
2022	August	309	284	3,077	3,670	16%	8%	8%	84%
	September	220	215	2,877	3,312	13%	7%	6%	87%
	October	322	299	2,889	3,510	18%	9%	9%	82%
	November	386	255	2,682	3,323	19%	12%	8%	81%
	December	338	354	2,912	3,604	19%	9%	10%	81%
2023	January	429	434	3,141	4,004	22%	11%	11%	78%
	February	323	426	2,452	3,201	23%	10%	13%	77%
	March	327	392	3,034	3,753	19%	9%	10%	81%
	April	311	314	2,942	3,567	18%	9%	9%	82%
	May	438	415	3,142	3,995	21%	11%	10%	79%
	June	370	498	3,805	4,673	19%	8%	11%	81%
	July	327	355	3,846	4,528	15%	7%	8%	85%
	August	313	297	4,890	5,500	11%	6%	5%	89%
	September	159	166	5,340	5,665	6%	3%	3%	94%
TOTAL		4,572	4,704	47,029	56,305	16%	8%	8%	84%

At the October 18, 2023 meeting, Defendants suggested that the increase in routine complaints and the decrease in staff misconduct complaints was possibly the result of additional and ongoing training provided to the CST. Plaintiffs are skeptical that training alone can explain the dramatic changes in the data. Plaintiffs will continue to closely monitor this critical issue, which is essential to ensure that appropriate staff investigate staff misconduct allegations.

Plaintiffs' findings that the CST is erroneously screening staff complaints as "routine" is also consistent with a recent OIG report describing in detail CST screening and routing problems in four cases reviewed in August 2023. *See* OIG CST Monitoring Report. In two of the four cases, the OIG determined that the CST inappropriately screened staff complaints as routine, and in all four cases, the OIG rated CST screening as "poor." *Id.*

Plaintiffs remain seriously concerned about the ability of the CST to identify staff complaints. In order to effectively monitor CST decision making, and to account for the influx of 1824's and complaints from other sources into the staff complaint screening process, **Plaintiffs request that, moving forward, CDCR produce a sample of 150 grievances screened routine by the CST and that at least 100 of those grievances be 602s.**[41]

[41] Plaintiffs also note that the random sample of "routine" grievances for Q3 2023 did not include any 602-HCs, even though we understand that they were phased into the CST

B. The CST Is Improperly Routing Serious Staff Misconduct Complaints Back to Prisons Instead of the OIA

Plaintiffs conducted a non-exhaustive review of cases from this review period filed on 602s by class members at the Six Prisons after May 31, 2022 that the CST routed to the institution for investigation by an LDI. This non-comprehensive review revealed that, even where the CST correctly identifies an allegation of staff misconduct, the CST frequently does not recognize that the staff misconduct allegation is on the ADI, and thus improperly routes it for investigation by an LDI, rather than by the AIU. **Plaintiffs request that Defendants provide their position on whether the CST improperly routed each of the grievances described in this section, and if not, the basis for their disagreement with Plaintiffs' position.**

Plaintiffs are particularly concerned that, in deciding whether a case falls on the ADI, the CST is improperly pre-judging cases on the merits, rather than routing them based on the allegations in the complaint, as required by the Remedial Plans.[42] The CST's routing decision must be based on what is alleged on the face of the complaint. The CST may not pre-judge the merits of the complaint or screen out the complaint based on its belief that the allegations of staff misconduct are untrue.

For example, in COR-[redacted], a class member alleged that two Sergeants were verbally aggressive and hostile to him when he asked them about his gate pass, and threatened to take away 190 days of good behavior time. The class member perceived that he was being discriminated against because of his race "by these two white authority figures," and asked if they were racist. One responded, "I told him to write you up." *See* 602. Although this allegation is on the ADI, *see* Discrimination/Harassment (3), the CST improperly routed the 602 to an LDI. The investigation file for this case includes a summary of the CST's routing decision showing it improperly pre-judged the allegation before an investigation commenced, rather than applying the ADI: "HA LDI **no substantiation for discrimination, just discourteous treatment." Originating Docs at 6.

In another case, COR-[redacted], a class member alleged that officers denied him phone calls and threatened him with cell extraction in retaliation for filing 602s against

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screening system on May 31, 2023. **Please ensure that 602-HCs screened by the CST are also included in the quarterly productions.**

[42] *See* RJD Remedial Plan at 3-4; Five Prisons Remedial Plan at 4 (The CST is required "to evaluate whether complaints received by CDCR include an ***allegation(s)*** of staff misconduct … [and] ***will route all allegations*** in the complaint that are on the ADI … to the OIA for investigation." [emphasis added]); RJD Remedial Plan at 9; Five Prisons Remedial Plan at 9 ("If CST determines that a complaint contains ***allegation(s)*** of staff misconduct … not listed on the ADI, ***those allegations will be referred*** … for an allegation inquiry [by an LDI]." (emphasis added)).

the officers. *See* 602 at 4-5. Although this retaliation allegation is on the ADI, *see* Retaliation (2), the CST improperly routed the 602 to an LDI. The investigation file for this case also includes a summary of the CST's routing decision, which once again shows improper pre-judging of the merits of the complaint: "Claimant alleges on 3/2/23 that Lt. [redacted], Sgt. [redacted], Lt. [redacted], and C/O's harassed and retaliated on the claimant; however, no retaliation in the claim identified." *See* Originating Docs at 3; *see also* COR-20032809 (CST routed allegation to LDI that transferring incarcerated people get their property immediately unless they are Black; summary of CST's routing decision states, "Claimant did not describe personal observations to support a claim of racial discrimination…. Refer to HA/LDI," *see* Originating Docs at 3; 15).

Below, we provide additional examples of cases routed for local inquiries that should have been routed to the AIU for investigation:

- KVSP-[redacted] (*see* 602 at 8-9) – The person alleges that an officer directs other incarcerated people to "incite altercations" during pill call, in order to "facilitate brutality or a fight intentionally to stop, delay, and prevent current investigations" into staff misconduct. These allegations fall under multiple ADI categories, including endangerment, code of silence, and creating an opportunity or motive for incarcerated people to harm others. *See* Other Misconduct (2); Code of Silence (1), (3), (4); Integrity (1).

- CIW-[redacted] (*see* Inquiry Report at 3) – The person alleges that a correctional counselor tried to return her to the general population yard despite her reported safety and enemy concerns, and threatened her with an RVR if she refused the housing move. The allegations of endangerment and creating an opportunity for incarcerated people to harm her are both on the ADI. *See* Other Misconduct (2); Integrity (1).

- RJD-[redacted] (*see* 602 at 8-9) – The person alleges that officers conducted a retaliatory cell search because of a 602 she filed, causing some of her property to be damaged or go missing. She also alleges that one of the officers called her racial slurs during the cell search. The allegations of retaliation and racial insults are on the ADI. *See* Discrimination/Harassment (1); Retaliation (2).

- LAC-[redacted] (*see* 602 at 2-3) – The person alleges that the Control Officer delayed in opening his cell door and then closed the cell door on his body in retaliation for filing a 602 against the officer. The person also alleges that the Control Officer refused to call for medical when he told the officer that another incarcerated person was having a medical emergency, saying that he would not do so unless he saw the person fall onto the ground. These allegations of retaliation and endangerment are both on the ADI. *See* Retaliation (2); Other Misconduct (1).

- SATF-[redacted] (*see* 602 at 1-2) – The person alleges that while she was being interviewed about a staff complaint, the Sergeant misgendered her and then issued her a false and retaliatory RVR. She also alleges that the next day, an officer told her she would not be able to use "that transgender card," referring to prior complaints she had filed against staff for misgendering her. This grievance includes multiple allegations on the ADI, including repeated misuse of pronouns or honorifics, dishonesty and retaliation. *See* Discrimination/Harassment (4); Dishonesty (1); Retaliation (1), (2).

- COR-[redacted] (*see* 602 at 4-5) – The person alleges that an officer searched his cell in retaliation for yelling loudly out of his cell door that he was having chest pains, even though he explained to the officer at the time that he does not always realize how loudly he is speaking because he is deaf in one ear. The allegation of harassment because of a disability is on the ADI. *See* Discrimination/Harassment (2).

III. OFFICERS ARE NOT COMPLYING WITH BWC POLICIES

Plaintiffs' counsel reviewed BWC footage from the productions covered in this report to assess officers' compliance with BWC policies and whether CDCR is holding officers accountable for non-compliance. Our review shows that staff continue to violate BWC policies and that investigators and Hiring Authorities sometimes fail to take appropriate action when BWC videos reflect non-compliance. *See also* August 2023 Report at 37-39; May 2023 Report at 45-48; February 2023 Report at 49-52. Defendants' BWC policies mandate that officers must keep their BWCs activated for the entirety of an officer's shift, except for specified deactivation events. *See, e.g.* Connie Gipson, Clarification to the Body-Worn Camera Deactivation Events or Circumstances (November 7, 2022). Officers must reactivate their cameras as soon as the deactivation event has concluded, and announce their reactivation. *See, e.g.*, BWC Operational Plan No. 28 § VI.B.11 (RJD); Five Prison Remedial Plan Local Operations Procedures § VI.B.11 (LAC).

In multiple cases, footage reveals that officers do not always wear their cameras, as required by policy. For example, in RJD-[redacted], Officer [redacted] is working in the control booth. From the start of the footage, he is clearly not wearing his body worn camera, and instead has it mounted on a fixed location. Midway through the footage at 1:39:56, Officer [redacted] picks up his body worn camera and moves it to a different fixed location, where it stays for the remainder of the footage. *See* BWC. The investigator failed to identify this policy violation. Similarly, in KVSP-[redacted], Sergeant [redacted] removes his body worn camera twice, from 9:17:45 to 9:23:26 and again from 9:26:06 to the end of the footage. Sergeant [redacted] places the camera on

the desk next to him while he works on the computer. *See* BWC. Again, the investigator failed to identify this policy violation.[43]

In several other cases, the officer reactivated his BWC in an improper circumstance. In LAC-[redacted], reviewed above, the footage begins with the officer speaking to other officers in the housing unit office about issues he is facing with incarcerated people during his shift. *See* BWC. Before deactivating his BWC, between 4:39:36- 4:40:25, he starts talking about an incarcerated person by the name [redacted]. He states, "I got another issue...so I have [redacted], he's been in this building before. I don't know if it's signed off by a clinician or not but he's always been in 1 or 2. He went over there to Charlie 5 and then came back into my building. They gave him fucking 241 Jcat [redacted] so they're not meshing right now…. He says they fought and threw down and I'm just like you don't have any marks on you dude so how about you just be real with me and be like hey we're not meshing you know.... No we really do, we just fought and I'm just like I don't care. You know what, put it on the camera, I don't really don't care anymore. This is fucking stupid." Then at 4:40:35, the officer proceeds to deactivate his BWC after another officer tells him she needs to speak with him and walk towards the yard. After approximately 12 minutes, the officer reactivates his BWC, with no mention of the reason why his BWC was deactivated, while he is cell side engaged in a conversation with other officers and an incarcerated person. In SATF-[redacted], the footage begins when Officer [redacted] reactivates his camera while speaking to an unknown incarcerated person about grievances, among other issues. *See* BWC at 11:12:42. The investigator should have presented these improper reactivation, which occurs only a minute before the incident at the center of the investigation, to the Hiring Authority, but did not do so.[44]

Plaintiffs found additional violations, not discussed in this report, in which officers failed to announce deactivations and reactivations. It is worth noting that Defendants' BWC audit system would not identify many (if any) of these instances of BWC noncompliance, as few (if any) of the videos contain deactivations exceeding 1.5 hours.

[43] It is unclear whether then one page AIU video quick-close report is the entire investigation report, but the report does not note the policy violation.

[44] A memorandum dated April 14, 2023 was issued "to clarify corrective action was issued outside the scope of the inquiry." *See* Memo at 1. However, it is unclear whether this refers to the improper reactivation. In the original Memorandum issued by the Hiring Authority, additional findings were that staff "use[d] profanity when speaking to an inmate and other inmates [and] … not wearing mandated mask [sic] as required." *See* Memorandum at 31. The case file is unclear regarding whether the corrective action was related to those violations or to the BWC non-compliance.

IV. CONCLUSION

Pursuant to the parties' agreement, we expect to receive a response to this report from Defendants by December 11, 2023. Plaintiffs will continue to work with Defendants and the Court Expert to attempt to bring Defendants into compliance with the Court's Orders and the Remedial Plans.

APPENDIX A

Prod. No.	Last Name	CDCR No.	Grievance No.	Date Rec'd	Summary of Allegation	Should have been on ADI?	Clarifying Interview Required?
1	[redacted]	[redacted]	[redacted]	9/13/23	Officers are making false reports on her in retaliation for filing 602s, causing her to be wrongly placed in the PIP, and gave her false RVRs. Her 602s have been denied because officers cover up evidence for each other.	Retaliation (2); Code of Silence (1)	
9	[redacted]	[redacted]	[redacted]	8/2/23	Officer refused him access to the law library based on racial animus.	Discrimination / Harassment (3)	
10	[redacted]	[redacted]	[redacted]	7/31/23	Officer refused to provide him cleaning supplies, and falsely accused him of stealing cleaning supplies from staff bathroom.	No	
17	[redacted]	[redacted]	[redacted]	8/21/23	An officer told him he could not shower, even though his neighbor ("a white guy") had just showered.	Maybe	Yes, as it is unclear whether he is alleging the motive is discrimination based on race.

Prod. No.	Last Name	CDCR No.	Grievance No.	Date Rec'd	Summary of Allegation	Should have been on ADI?	Clarifying Interview Required?
20	[redacted]	[redacted]	[redacted]	9/14/23	Committee staff disregarded safety concerns by sending him back to the yard where incarcerated people were demanding he pay his former cellmate's debt, despite knowing his life was in danger as he had disclosed the names of the people who were threatening him to staff.	Integrity (1); Other Misconduct (2)	
23	[redacted]	[redacted]	[redacted]	9/15/23	Two officers routinely bark and yell at him and other incarcerated people in an unprofessional manner.	No	
25	[redacted]	[redacted]	[redacted]	8/31/23	The CDCR sign language interpreter is often very late and sometimes does not show up at all for his appointments, causing them to be canceled. She retaliates against Deaf people who go against her.	Retaliation (1), (4)	

Prod. No.	Last Name	CDCR No.	Grievance No.	Date Rec'd	Summary of Allegation	Should have been on ADI?	Clarifying Interview Required?
26	[redacted]	[redacted]	[redacted]	7/25/23	Lieutenant denied his request for single-cell status due to his disability-related safety concerns, and forced him to house with a cellmate even though they each stated they were not compatible with each other. Staff are also blocking phone calls from his daughter in retaliation for seeking assistance "against this abuse of authority."	Other Misconduct (2); Retaliation (1), (4)	
34	[redacted]	[redacted]	[redacted]	9/18/23	Staff are responsible for his legal paperwork and other property going missing.	No	
35	[redacted]	[redacted]	[redacted]	1/25/23	Sergeant lied on the response to his prior 602 (alleging an incarcerated clerk is stealing indigent envelopes), to cover up officers' role in the scheme. He stopped getting his indigent envelopes in retaliation for the prior 602.	Retaliation (2); Code of Silence (1), (4); Other Misconduct (6)	

Prod. No.	Last Name	CDCR No.	Grievance No.	Date Rec'd	Summary of Allegation	Should have been on ADI?	Clarifying Interview Required?
37	[redacted]	[redacted]	[redacted]	9/6/23	Staff forced incarcerated people to eat dinner with sewage and feces on the floor, and refused to give them cleaning supplies to clean it up. This is the fourth time this has happened.	No	
46	[redacted]	[redacted]	[redacted]	9/22/23	Staff failed to ducat him for a telephonic court hearing, even though the Litigation Coordinator was served with the Order requiring them to do so, causing him to miss the hearing.	No	
60	[redacted]	[redacted]	[redacted]	9/13/23	Officer is targeting him and harassing him because of his race, including by denying him access to yard to exercise and threatening to write a false RVR against him.	Discrimination / Harassment (2), (3)	

Prod. No.	Last Name	CDCR No.	Grievance No.	Date Rec'd	Summary of Allegation	Should have been on ADI?	Clarifying Interview Required?
62	[redacted]	[redacted]	[redacted]	7/6/23	Sergeant conducted a biased interview of him regarding an assault by staff in order to protect the officers involved, and tried to file a false report on the incident.	Code of Silence (4)	
74	[redacted]	[redacted]	[redacted]	5/23/23	Staff improperly refused to deliver books he ordered by mail and returned them to the vendor without notice to him while he was in the ASU for non-disciplinary reasons.	No	
77	[redacted]	[redacted]	[redacted]	8/28/23	Mail room staff stole artwork he sent to a friend, part of a pattern of tampering with his mail, including legal mail.	No	
78	[redacted]	[redacted]	[redacted]	8/29/23	Mail room staff improperly returning indigent envelopes and refusing to send personal mail to his family and legal mail to the courts.	No	

Prod. No.	Last Name	CDCR No.	Grievance No.	Date Rec'd	Summary of Allegation	Should have been on ADI?	Clarifying Interview Required?
85	[redacted]	[redacted]	[redacted]	8/4/23	A Sergeant ordered him to get to the back of the chow line and then tried to handcuff him in retaliation for filing a 602. The Sergeant is disrespectful and threatens incarcerated people.	Retaliation (2); Other Misconduct (4)	
97	[redacted]	[redacted]	[redacted]	9/21/23	An officer sexually assaulted him. The 602 names the officer and describes the circumstances in sufficient detail to investigate.	Staff Sexual Misconduct (2)	

APPENDIX B

KVSP

[redacted]	See discussion in report.

COR

[redacted]	Due to the AIU investigator's delay in beginning the investigation, the investigator could not obtain BWC and fixed camera footage to investigate the allegations. This video footage, particularly BWC footage, was necessary to meaningfully investigate the allegation that staff were making statements that endangered the class member.
[redacted]	A central issue in this case is whether an LVN examined the class member, which medical staff and the class member disputed. Despite the BWC footage failing to show either way whether medical staff examined the class member, the AIU investigator failed to obtain fixed camera footage from the program office that could have confirmed whether the LVN examined the class member.
[redacted]	The investigation report references video footage, including a conversation between a nurse and officers about the class member's disability, that Defendants did not produce to Plaintiffs.

LAC

[redacted]	In this case, the investigator failed to account for BWC footage that potentially contradicted the investigator's conclusions. The issue was whether the subject officer was instructed to intentionally deactivate her BWC during an RVR hearing. The investigator concluded based on one set of BWC footage that the subject officer had her BWC deactivated for almost two hours, and well before the RVR hearing, which precluded any video evidence of a deactivation right before the RVR hearing. However, the investigator failed to account for the *other* BWC footage in the case file, which showed that the subject officer's BWC was not deactivated for that entire two-hour stretch, and which therefore indicated that additional footage immediately preceding the RVR hearing may have existed.
[redacted]	See discussion in report.

[redacted]	See discussion in report.

SATF

[redacted]	CDCR did not produce complete footage of the class member's interaction with three officers. At the beginning of the footage, the class member is already speaking to the officers, which leaves it unclear what the officers already said to the class member or said to the librarian who refused to let the class member use the toilet.
[redacted]	The class member alleged that an officer directed the tower to open the class member's door while she was naked and drying off from a bird bath. Regarding the subject officer, BWC was apparently unavailable, as SATF ISU stated that the "server showed no footage was recorded on that date for that BWC." The investigator did not further inquire into this issue. The investigator also conducted only minimal investigation into whether the subject officer allowed other incarcerated people to cover up their windows, as the investigator reviewed only one hour of AVSS footage from only one angle (and apparently did so only to view the interaction between the class member and subject officer). Further video could have helped the investigator determine whether the subject officer singled out the class member for their window coverings.
[redacted]	As the investigator acknowledged in the report, video footage was unavailable due to CDCR's delays in the investigation: "I did not request AVSS as I did not receive the case till approximately 11 months 2 weeks after the date of the event, and the typical AVSS retention period is 90 days." Video footage could have helped identify potential witnesses to the incident, and thus whether officers instructed other incarcerated people to attack the class member.
[redacted]	The investigator received the referral within 90 days of the incident, but failed to preserve BWC or AVSS of the incident, or to provide any justification for doing so in his report. In fact, the report omits any discussion of video altogether. SATF ultimately sustained the allegation based on the officer's admission that he failed to strap down the class member in a transport van, but reviewing video was necessary to ascertain the degree of the officer's culpability and harm to the class member.

[redacted]	The class member alleged that two officers denied him transport in an ADA van with a lift, contributing to a fall. An officer denied doing so in an interview. Video was thus necessary to resolve the class member's and the officer's differing accounts. Yet the investigator failed to obtain BWC footage of the two officers in question to verify whether the class member requested an ADA van with a lift before departing from the hospital.
[redacted]	In this case, the class member alleged that staff forced him to wait in a soiled diaper after he requested an incontinence shower. The investigator reviewed video from a Sergeant who interacted with the class member after the alleged incident, but failed to review video from the tower officer—who claimed in his interview that he immediately called for assistance once the class member reported an incontinence accident.

RJD

[redacted]	The investigator failed to initiate their investigation until well after the 90-day retention period lapsed, despite being assigned the case within the retention period and obtaining information from the class member regarding a time range for when staff were ignoring man-down calls in the unit.
[redacted]	The class member alleged that for two months, an officer had been tampering with his food tray, and that the same officer conducted an improper cell search on November 14, 2022. The investigator reviewed video from only November 14 related to the food tray allegation (apparently because it was retained due to an incident report), but could not review any video of the cell search because the investigator was not assigned to the case until after the 90-day retention period ran. The class member had promptly filed his grievance well within the 90-day retention period.
[redacted]	A class member alleged officers had encouraged incarcerated people to attack the class member, had permitted incarcerated people to enter the class member's housing unit even though they did not live in that unit, and spoke with incarcerated people who later attacked the class member. The investigator failed to review BWC footage from all officers who responded to the incident. The investigator also failed to review any AVSS footage from inside the housing unit, which would have shown whether officers allowed the incarcerated people to enter the unit or spoke with the attackers. Instead, the investigator reviewed only footage from the

	attack itself, which was insufficient to address the full scope of the class member's allegations.
[redacted]	The class member alleged that they reported safety concerns about their cellmate to a named officer, but the officer ignored the safety concerns, and the class member was housed with the cellmate for another week. The class member promptly filed a grievance within 10 days of the incident. Yet by the time CDCR assigned an investigator, 90 days had elapsed since the incident, and the AIU Lieutenant was unable to request or review any video footage.

CIW

[redacted]	The investigator, without any explanation, failed to request video to investigate this allegation that staff were aware that a group of incarcerated people had surrounded and threatened the class member and her roommate, but did nothing to address the situation.
[redacted]	Because of a nine-month delay in starting the investigation, video evidence was unavailable to investigate this allegation that an officer retaliated against a class member for filing a 602 against the officer.
[redacted]	The investigator, without any explanation, failed to request AVSS video to investigate the allegation that a supervising cook had falsely issued an RVR to the claimant for attempting to obtain a special diet meal and a general population meal.
[redacted]	Though the claimant filed a 602 within a few weeks of the incident, CIW did not process the claim for nearly four months, meaning that video was unavailable to investigate the allegations that an officer had failed to lock the claimant's door, resulting in other incarcerated people stealing claimant's property; that the officer laughed when informed of the theft; and then the officer filed false RVRs against the claimant.
[redacted]	BWC footage was not available to investigate multiple allegations that a Lieutenant was harassing the claimant because the investigator delayed almost nine months in requesting it.