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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CORRI DITTIMUS BEY, *et al.*

Plaintiffs,

v.

CAMDEN COUNTY
CORRECTIONAL FACILITY, *et. al.*

Defendants.

CIVIL ACTION

NO. 05-cv-0063 (JBS-JS)

**NOTICE OF MOTION FOR FINAL APPROVAL
OF AMENDED FINAL CONSENT DECREE**

PLEASE TAKE NOTICE that on May 23, 2017 at 10:00 a.m., Plaintiffs shall move before the Honorable Jerome B. Simandle, United States District Court for the District of New Jersey, Mitchell H. Cohen U.S. Courthouse, 1 John F.

Gerry Plaza, Fourth and Cooper Streets, Camden, New Jersey, for an Order Granting Final Approval of the Amended Final Consent Decree

In support of this motion, Plaintiffs will reply upon the accompanying Memorandum of Law.

A proposed form of Order is attached.

s/ Lisa J. Rodriguez

Lisa J. Rodriguez

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Dated: May 15, 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CORRI DITTIMUS BEY, MELVIN
CLARK, MARK ELLIOTT and
DONALD RUDD on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

CAMDEN COUNTY
CORRECTIONAL FACILITY,
CAMDEN COUNTY DEPARTMENT
OF CORRECTIONS, CAMDEN
COUNTY, WARDEN ERIC TAYLOR,
DEPUTY WARDEN FRANK
LOBERTO, and JOSEPH RIPA.

Defendants.

CIVIL ACTION

NO. 05-cv-0063 (JBS-JS)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF AMENDED FINAL CONSENT DECREE**

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I. PRELIMINARY STATEMENT

Plaintiffs, on behalf of the certified class of current and future inmates of the Camden County Correctional Facility (“CCCCF” or “Jail”), submit this memorandum of law in support of their unopposed motion for final approval of the Sixth and Final Amended Consent Decree (hereinafter “Final Consent Decree” or “Final Settlement”) (Exhibit A).¹

This Court should grant final approval of this Class Action Settlement which comes after twelve (12) years of litigation, extensive settlement negotiations among the parties and experts in the field, and the implementation of significant changes to the Camden County criminal justice system, including the creation of the Camden County Pretrial Services Program.

The road to this motion for final approval has not been a smooth one. The parties, in crafting the terms of the six consent decrees in this litigation, recognized the practical and legal limitations that prevent the use of what otherwise may seem

¹ The first Consent Decree, entitled “Interim Consent Decree,” was approved by the Court by Order dated January 22, 2008. Dkt. No. 90. The Second Consent Decree was approved by the Court by Order dated August 20, 2009. Dkt. No. 110. The Amended Third Consent Decree was approved by the Court by Order dated March 4, 2011. Dkt. No. 121. The Fourth Consent Decree, intended as the Final Consent Decree, was preliminarily approved by Order dated December 26, 2013. The parties withdrew that consent decree in advance of the fairness hearing. A Fifth Consent Decree was intended to supplant the Fourth Decree but that too was withdrawn prior to Court approval. The Sixth and Final Consent Decree was preliminarily approved on February 21, 2017.

like obvious solutions to the overcrowded Jail conditions: for instance, the Warden cannot refuse admission to individuals because the Jail population reaches unconstitutional levels (N.J.S.A. § 30:8-1); the County cannot be ordered to simply build a new jail to accommodate the population (18 U.S.C. § 3632(a)(1)(C) (“Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons...”); and, the Court cannot place a cap on the prison population, which would result in the premature release of inmates, until other remedies have been exhausted (18 U.S.C. 3632(a)(3)).

These are very real and significant hurdles to effectively remedying the overpopulation. The parties, however, in conjunction with non-party criminal justice stakeholders have worked diligently and closely with each other and with experts to devise a plan that is an efficient, effective and long-term solution to the overpopulation at the Jail. The parties also worked to put measures into place to assure the sanitary preparation and service of meals, and undertook significant measures to successfully redress heightened CO² levels that affected the air quality within the Jail.

The settlement process was comprised of a series of Consent Decrees. The Second Consent Decree approved by the Court on August 20, 2009, set forth the terms of the settlement that included the implementation of various programs and

efforts to reduce the population, as well as suggested remediation of environmental issues. The Amended Third Consent Decree, approved by the Court on March 4, 2011, detailed the Defendant's compliance with the terms of the Second Consent Decree, and the impact it had on the Jail's population. At the time the Third Consent Decree was entered, there remained only two open issues. The first issue related to the hiring of a full time Jail Population Manager, and the second issue related to reduced air flow and ventilation in certain cell units causing heightened CO² levels. Since entry of the Third Consent Decree, Defendants have permanently filled the position of Jail Population Manager, and have remediated the environmental concerns. The Defendants' compliance with these terms is set forth in the Amended Final Consent Decree.

Accordingly, through this motion, Plaintiffs seek final approval of the Amended Final Consent Decree.

II. BACKGROUND

On January 6, 2005, nine *pro se* complainants incarcerated at CCCF filed a class action complaint ("Complaint") under 42 U.S.C. § 1983 alleging violations of the Sixth, Eighth, and Fourteenth Amendments of the Constitution by various municipal defendants. *See generally* Dkt. No. 1. The Complaint alleged, *inter alia*, that inmates were forced to live in overcrowded conditions at CCCF, which included up to four individuals living in a cell designed for a single inmate. *See id.*

On November 4, 2005, the Court granted Plaintiff Corri Dittimus-Bey's Motion for the appointment of counsel under 28 U.S.C. § 1915(e). *See* Dkt. No. 35. In this same Order, the Court appointed Lisa Rodriguez of Trujillo Rodriguez and Richards, LLC to represent Plaintiffs. *See id.*

On March 31, 2006, Plaintiffs, through their newly appointed counsel, filed an Amended Class Action Complaint ("Amended Complaint") against CCCF, Camden County Department of Corrections, Camden County, Warden Eric Taylor, Deputy Warden Frank Loberto, and Joseph Ripa ("Defendants"). *See* Dkt. No. 60. In their Amended Complaint, Plaintiffs alleged that the policies and practices of Defendants created unconstitutional conditions that both pretrial detainees and convicted prisoners were forced to endure while incarcerated at CCCF. *See generally id.* at ¶¶ 13-35. These included, *inter alia*, overcrowded cells, inadequate sleeping arrangements, insufficient medical and dental care, unsanitary meal service, understaffed maintenance personnel, and inadequate laundry service and cleaning supplies. *Id.* Plaintiffs sought declaratory and injunctive relief. *Id.*

Following extensive discovery and research, Plaintiffs moved for class certification under Federal Rule of Civil Procedure 23(b)(2). By Order dated July 31, 2007, this Court certified a class pursuant to Rule 23(b)(2), consisting of:

All individuals incarcerated at the Camden County Correctional Facility, either as pretrial detainees or as convicted prisoners, from the inception of this lawsuit on January 6, 2005 until its termination.

See Dkt. No. 80. Certification under Rule 23(b)(2), rather than Rule 23(b)(3), was appropriate because the remedies Plaintiffs sought were injunctive and declaratory in nature. Specifically, the Plaintiffs sought to remedy the unconstitutional conditions of confinement they allege exist in CCCF. Following class certification, Plaintiffs no longer sought, through this action, monetary damages for injuries -- personal, emotional or otherwise -- that may have stemmed from any alleged unconstitutional condition within the CCCF.

The certified Class was informed of the litigation and the fact that monetary damages were not being sought by court-approved Class Notice, which was posted in each jail cellblock for a thirty-day period, commencing November 22, 2007. *See* Dkt. No. 86.

Plaintiffs engaged highly-qualified and experienced conditions of confinement and overcrowding expert, Steve Martin. *See* Dkt. No. 108 (Second Consent Decree, Ex. A). Prior to rendering his opinion, Mr. Martin reviewed hundreds of documents and conducted an in-depth, three-day site inspection of the Jail. Based upon his review of these materials and his site inspection, Mr. Martin concluded that the population was at such excessive levels that nothing short of plant expansion or complex population control strategies would reduce the population.

The CCCF is dangerously overcrowded creating pervasive risks of harm to both inmate population and

facility staff. The sheer number of inmates housed in seriously substandard and spatially dense in-cell conditions throughout the facility has overwhelmed the infra-structure and its necessary support service systems. The ability of management to deliver basic necessities has been seriously compromised as has the ability of staff to maintain minimal levels of safety and security for the inmate population. Absent a combination of both physical plant expansion and population control strategies, the harmful conditions set out herein will continue unabated with ever present risks of more serious disruptions at the facility than heretofore seen.

See Id. (Second Consent Decree, Ex. A (June 29, 2007 Martin Report, CONCLUSION, pp. 15-16)). Mr. Martin further explained that the problems associated with overcrowding are a:

. . . manifestation of larger and more systemic problems related to the county criminal justice system. While there certainly may be short term strategies that provide some reduction of the overcrowding, such as temporary or fast-track housing in combination with maximizing/expanding existing diversion and release mechanisms, the magnitude of such systemic problems that face county officials will require a total systems approach from professional criminal justice planners for long term resolution.

See id.

Mr. Martin thereafter rendered a supplemental report, dated September 28, 2007, in which he was asked to make specific recommendations for measures that should be taken to address problems alleged in the complaint. See Dkt. No. 108 (Second Consent Decree, Ex. B). In response, Mr. Martin specifically

recommended the retention of two criminal justice planning firms to address this system-wide problem of overcrowding. One of the firms Mr. Martin recommended was Pulitzer Bogard & Associates.

By Interim Consent Decree dated January 22, 2008, the Court authorized the retention of Pulitzer Bogard for the purpose of conducting a staffing and population analysis. Dkt. No. 90. Those reports were finalized in April of 2008. *See* Dkt. No. 108 (Second Consent Decree, Ex. C and D).

Thereafter, by Order dated November 3, 2008, the Court granted the parties' request to retain the Pulitzer Bogard firm for the purpose of developing improvements and/or changes within the criminal justice system aimed at reducing the jail population. *See* Dkt. No. 98. Plaintiffs soon thereafter retained Pulitzer Bogard and work immediately commenced. The extent and nature of the background work Pulitzer undertook is set forth in its report. *See* Dkt. No. 108 (Second Consent Decree, Ex. F).

On or about April 21, 2009, Pulitzer Bogard issued its report entitled "Camden County NJ Jail Population Analysis" to the parties. The Bogard Report set forth twenty-two (22) specific recommendations aimed at reducing the Jail's population. *See* Dkt. No. 108 (Second Consent Decree, Ex. F).

In order to proceed with the implementation of the recommendations set forth in the Bogard Report, the parties entered into a Second Consent Decree, dated

July 20, 2009 and approved by the Court on August 20, 2009. The Second Consent Decree provided for the implementation of six recommendations that were designed to result in the most significant reduction in jail population, the hiring of Luminosity, Inc. for the purpose of implementing those recommendations, and the voluntary creation of the Jail Population Reduction Sub-committee.

The Defendants' compliance with the terms of the Second Decree, as well as their voluntary implementation of other measures aimed at the reduction of the jail population, was set forth in the parties' Amended Third Consent Decree. *See* Dkt. No. 121 (Amended Third Consent Decree).

The Amended Third Consent Decree detailed the significant measures that the Defendants had put into place to monitor the Jail population and, as a result of the Defendants' compliance with the terms of the Second and Third Consent Decrees, the Jail population has been reduced and the overall processing of the criminal justice system significantly revamped and improved. Rather than reiterating the significant steps taken by the Defendants in compliance with the terms of the Second Consent Decree, reference is made to the Amended Third Consent Decree which was approved by the Court by Order dated March 4, 2011. The Third Consent Decree recited at length the successful implementation of the Bogard Report recommendations, as well as the voluntary steps undertaken by

Defendants as well as voluntary participants within the criminal justice community.

The gravamen of Plaintiffs' complaint was Jail overcrowding and so, importantly, the settlement of this litigation has resulted in not only a reduced population but systemic changes aimed at managing the Jail's population so that unconstitutional population levels are not reached in the future.

The rated capacity of the Jail is 1267. When this litigation commenced in 2005, the annual average daily population was 1848 inmates. *See* Dkt. No 121 (Third Consent Decree, Ex. A (Camden County Average Monthly Jail Population)). In October of 2005, the Jail reached a previously unseen high of 1,989 inmates. The majority of cell units were shared by at least three, if not four, inmates. For cells that were triple-bunked, an inmate was forced to sleep on the floor. For cells that were quadruple-bunked, two inmates were forced to sleep on the floor, one of which slept with his head inches from the toilet.

Following entry of the Second Consent Decree, in May of 2010, the Jail's average monthly population reached an all-time low of 1232 inmates, below the Jail's rated capacity. As a result of the lower population, bed overages were 48 on June 2, 2010, meaning that only 48 cells housed three inmates. All other cells housed either one or two inmates. No cell housed four inmates.

On September 21, 2012, the daily population was 1414. Although above the Jail's rated capacity, it was being managed by the former Jail Population Manager, as well as the classification unit and the parties did not view the population increase as an impediment to final settlement of this matter. By Order dated December 26, 2012, the Court granted preliminary approval of the settlement. Dkt. No. 137. A Fairness Hearing was scheduled for February 27, 2013. Dkt. No. 137.

Between the time Counsel filed their Motion for Preliminary Approval and the deadline for briefing in support of Final Approval of this class action settlement, the Jail's population increased dramatically, by nearly 160 inmates. In particular, on September 21, 2012, when the motion for preliminary approval was filed, the Jail population was 1414. At the time the adjournment of final approval was requested in February 2013, the population had reached 1583. Due to this sudden increase, by letter dated February 4, 2013, Class Counsel sought an adjournment of the Final Approval deadline. Dkt. No. 141.

A thorough investigation followed and the parties jointly determined that, although the systems put into place by Luminosity were effective (as detailed in the Second and Third Consent Decrees), they were not being managed by an appropriate Jail Manager. The position of the Jail Population Manager was at the time being filled by Jail personnel. It was determined that the position must be

filled by someone outside the Jail to be effective. *See* Amended Final Consent Decree ¶ 24.

The County then undertook an exhaustive search for a qualified applicant and experienced great difficulty in finding one. The position requires a unique combination of skill and personality. After reviewing over 100 applications, the County narrowed the field to a handful and eventually hired Brian Jacobs. Mr. Jacobs' one year contract began November 2013.

During his one-year tenure, Mr. Jacobs worked closely with Counsel and all criminal justice stakeholders to isolate areas of improvement and focus on areas that would result in both immediate and long term solutions to over-crowding. He reported monthly to the County. As a result of his efforts, the Jail's population began to trend downwards, thereby reinforcing the parties' view that the system was working effectively, but that the Jail Manager position was instrumental in ensuring the proper working of these newly implemented processes.

During Mr. Jacob's tenure, the population decreased from 1519 (November 12, 2013) to 1456 (November 12, 2014), with a decrease in bed overages by nearly 10% from the year prior. Importantly, too, the population was trending downward despite the increase in the number of arrests and commitments. *See* Amended Final Consent Decree, ¶ 27.

As of September 2014, the number of arrests was on target to exceed the number of arrests made in 2009 when the population fluctuated between 1700 and 1800. Without the new processes in place, as managed by the Jail Population Manager, the population would likely have been at or near the excessive levels seen in 2008 and 2009. *See* Amended Final Consent Decree, ¶ 27.

On December 18, 2014, the population was 1376. *See* Amended Final Consent Decree, ¶ 27.

Mr. Jacobs' contract was not renewed at the end of his contract year. It was initially represented that the position of the Jail Population Manager would be filled by Dr. Marie VanNostrand of Luminosity. Based on those representations and with the jail population trending down, counsel for plaintiffs believed it was time to finally resolve this matter and entered into what was referred to as the Fifth and Final Consent Decree. Plaintiffs also filed a motion for preliminary approval. Dkt. No. 169. Subsequent to the filing of that motion for preliminary approval, plaintiffs' counsel learned that, despite the representations made, the position of Jail Population Manager was not being filled by Dr. VanNostrand or anyone else.

The County indicated that it was initiating a process to hire a new Jail Manager but had not done so. Because a core component of the parties' settlement relies on an independent Jail Manager to monitor the daily jail population numbers, and history had shown that without such a person in place the population numbers

increased, it was determined that it was not appropriate to proceed with the motion for preliminary approval. That motion was then withdrawn. Dkt. No. 170.

A new full-time Jail Manager, Sharon Bean, was hired in April 2015. The jail population is again being actively managed and the downward trend has continued. As of May 10, 2017, the jail population was 996, well below the rated capacity of 1,267. It is against this background that the plaintiffs seek final approval of the Amended Final Consent Decree.

III. DEFENDANTS HAVE COMPLIED WITH THE REMAINING TERMS OF THE AMENDED THIRD CONSENT DECREE

As previously mentioned, at the time the Third Consent Decree was approved by the Court, the only two remaining issues related to the Jail's HVAC system and the hiring of a full time Jail Population Manager. The Defendants are now in compliance with those terms and, accordingly, entry of the Final Decree is appropriate.

A. JAIL POPULATION MANAGER

The Jail Population Manager is responsible for monitoring, coordinating and ensuring the most efficient processing of Jail inmates. She collects, compiles and conducts quantitative data analysis to identify trends and potential systematic causes of processing delays as well as opportunities to expedite release and transfers. In addition to these duties, the jail population manager facilitates and provides services to the Jail Population Reduction Subcommittee ("JPRC"). The

position serves as a liaison to the courts, prosecutor, defense bar, community corrections programs, JPRC and other criminal justice stakeholders on behalf of the County and Jail as it relates to population management.

Sharon Bean was hired for the position in April 2015 and continues in the Jail Population Manager position today. Ms. Bean is well-credentialed with specific (successful) experience managing the population of juveniles in custody. She graduated with a B.A. in Criminal Justice and Masters of Public Administration. Prior to becoming the Camden County Jail Population Manager, Ms. Bean worked with the New Jersey Juvenile Justice Commission (JJC) for thirteen years. Since 2004, Ms. Bean has worked with the JJC to implement the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). JDAI is a national initiative designed to safely reduce the number of youth unnecessarily or inappropriately incarcerated in secure detention. Ms. Bean was the Team Leader for JDAI in NJ and a national trainer for JDAI. In her role as Team Leader, Ms. Bean worked with system stakeholders to implement over 500 policies and practices at both the state and local level to improve access to detention alternatives, reduce case processing delays contributing to length of stay in detention, reduce racial and ethnic disparities, and develop strategies to improve court appearance rates and successful outcomes on Probation. Ms. Bean also assisted in the development, implementation, and monitoring of NJ's Juvenile Risk

Screening Tool and the Juvenile Probation Sanctions, Incentives, and Interventions System. She worked directly with Camden County to implement juvenile justice reform and saw the average daily population in detention decreased 48.7% with over one-thousand fewer youth having been admitted to secure detention.

B. DEFENDANTS HAVE REMEDIED THE INCREASED CO² LEVELS

In 2007, Plaintiffs retained the services of Urban Engineers (“Urban”), an environmental expert, for the purpose of conducting an on-site inspection of the Jail to inspect mold and mildew, water quality, air pollution and rodent infestation. Urban Engineers issued a report dated September 28, 2007. Although Urban Engineers’ initial inspection did not reveal any environmental hazards that would rise to the level of constitutional violations, it did note areas that warranted improvement. Urban Engineers also concluded that many of the areas noted for improvement may resolve themselves simply by virtue of a population reduction. Urban also found elevated CO² levels.

In August 2010, prior to entering into this Third Consent Decree, Plaintiffs again retained the services of Urban for the purpose of conducting a supplemental site inspection to determine if, in fact, some of the noted areas of concern had improved simply by virtue of the population reduction, as was expected. In its November 10, 2010 follow-up Report, Urban again found elevated CO² levels and opined that the levels had not improved since 2007, but instead had worsened and

noted that the cause may be from HVAC balancing issues. High CO² readings indicate that the building has significant airflow issues, and a balancing report is the first step in addressing these issues.

The County retained Fischer Balancing Company to perform a balancing test. Fischer issued a report dated September 27, 2011, which was reviewed and analyzed by Urban. As a result of collaborative meetings between Fischer, Urban and the Camden County Improvement Authority, the County retained CM3 Building Solutions to perform systematic maintenance and repairs to the facilities.

On April 3, 2012, Urban conducted a follow-up air survey and reported an average CO² level of 1788 ppm. This was a noticeable improvement from Urban's September 2010 survey, which had a maximum CO² reading of 2,700 ppm.

Urban conducted another follow-up air survey on June 5, 2012, and determined that the average CO² concentration within the individual cells had depressed 149 ppm from its previous inspection. Urban concluded that although levels above 1000 ppm (which are still present in individual cells) indicate general airflow issues, the levels noted during the April and June 2012 surveys (1788 ppm and 1639 ppm respectively) were well below the suggested maximum daily exposure levels of 5000-10000 ppm. Urban further recommended that until a permanent Building Management System is installed, the Jail could continue its focus of maintaining and increasing airflow to the individual cell registers. The

County continues these efforts and requires that Jail maintenance staff conduct periodic CO² surveys of the individual cells and monitor concentration trends.

C. THE 2016 SURVEY

Given the passage of time the parties agreed that it was appropriate to have another follow-up survey done. The County agreed to again retain Urban Engineers to conduct the follow-up environmental examination and air survey. On January 12 and 13, 2016, Urban Engineers, with the assistance of Batta Environmental Associates, Inc., conducted a site visit to identify potential sources of poor air quality at the Jail. The site visit consisted of visual inspection, ambient air monitoring (temperature, relative humidity, carbon monoxide and CO²) airborne mold sampling, and an assessment of the building and HVAC system.

Urban issued its report on February 17, 2016. The report noted that, while CO² levels continued to be higher than the ASHRAE² recommendations in some locations, they were in fact below OSHA's Time-Weighted average permissible exposure limit. The highest levels were detected in an inside recreation area, which the report noted could be expected when a large group of people concentrated without outside air to dilute and remove the CO² continuously generated by the occupants.

² American Society of Heating Refrigeration and Air Conditioning Engineers

The report found no indoor air quality issues relating to carbon monoxide and no elevated airborne mold levels within the facility were detected.

It is also worthy of mention that the County made a number of other major capital improvements in the past several years, including the modernization and upgrade of the elevator system; significant upgrades and repairs to the HVAC system; lighting upgrades; upgrades and improvements to some of the shower enclosures; and the modernization and renovations to a portion of the exterior windows.

IV. THE SIGNIFICANT EFFORTS OF THE COUNTY TO REDUCE THE JAIL POPULATION

Although detailed in the parties' Second and Third Consent Decrees, it is worthy of reiteration some of the significant improvements this settlement has brought to the processing of inmates through the Camden County criminal justice system thereby effectively and efficiently managing the Jail population.

A. THE CREATION OF A PRETRIAL SERVICES AGENCY

Perhaps most significant, as detailed in the parties Second and Third Consent Decrees, was the creation of a very robust pretrial services program, known the "Camden County Pretrial Services Agency." The mission of Camden County Pretrial Services Agency ("Pretrial Services") is to safely and effectively reduce pretrial detention by identifying inmates appropriate for conditional release pending disposition and, when ordered by the Court, provide effective supervision

and services intended to assure appearance in court and safety of the community. *See* Dkt. No. 121 Third Consent Decree, Ex. B (Camden County Pretrial Services Pamphlet).

A defendant must be eligible for pretrial services. The target population for a pretrial investigation consists of defendants who have been admitted to the Jail with a bail set in an amount not greater than \$35,000 and is within the jurisdiction of the Camden County Superior Court. Defendants charged with the following offenses are not targeted for an investigation: murder, arson, kidnapping, sexual assault, weapon charges involving firearms, or any charge that meets the criteria for bail restrictions. Defendants serving a sentence or who have a detainer are also not targeted.

Pretrial Services began operations on August 16, 2010 and has been fully operational since the first week of September 2010, at which time the program officially began providing pretrial investigations to the Court for appropriate candidates and pretrial supervision when ordered by the Court.

The program is staffed by employees of Camden County. Camden County is the first county within New Jersey to create a pretrial services program. The creation of this program has garnered a tremendous amount of attention from other counties experiencing similar jail overcrowding problems and it is anticipated that Camden County's pretrial agency will serve as a model for years to come.

From January 1, 2016 through November 2016, the program screened 2,033 inmates, conducted 515 investigations, recommended 460 inmates for release to pretrial services, and received 296 placements on supervision.

Referrals to the program are accepted from the prosecutor's office, the public defender's office and private defense bar, or the Superior Court. Release decisions to the program are made by all of the Camden County criminal judges.

B. OTHER MEASURES AIMED AT REDUCING JAIL POPULATION

In addition to the creation of the pretrial services program, the Defendants have also undertaken a variety of other measures that successfully contributed towards the reduction of the Jail's population. These measures include, but are not limited to:

- (1) Accurate recording of inmate credit for time spent in custody;
- (2) Creation of four additional attorney/inmate visitation rooms;
- (3) Reduction in the amount of time between sentencing inmates to the home electronic device (HED) program and the actual release onto the HED program. The Defendants also agreed to proactively screen inmates for the HED program and make a recommendation to the Court when an eligible inmate is identified. As a result of this new policy, the jail increased its HED capacity from 75 electronic monitoring devices to 125 electronic monitoring devices by receiving fifty (50) additional devices with GPS technology;

(4) Creation and voluntary continuation of the Jail Population Reduction Sub-Committee, a voluntary committee comprised of (but not limited to) representatives from the Jail, the Camden Vicinage of the Superior Court, the Prosecutor's Office and the Public Defender's Office, whose participation has been vital to the success of reducing the jail crowding. The newly hired Jail Population Manager is a member of this committee; and

(5) Improved CCIS data, which was viewed as essential to effectively implementing any jail population reductions strategy. The lack of accurate data served as a barrier to the identification of opportunities to reduce the jail population and the inability to easily access information about the jail inmates. The ability to run queries based on custody status, length of stay, location/program, and bail amount enables justice system stakeholders the ability to target inmates for jail alternatives and/or faster case processing. Luminosity developed a web-based CCIS interface. This CCIS interface allows authorized justice system stakeholders to view and analyze the jail population on a daily basis. The system, named the Jail Population Analysis Wizard (JPAW) is an ASP.NET application accessible via Firefox web browser. JPAW was fully implemented on May 5, 2010. Access is available to the Prosecutor's Office, Sheriff's Department, Jail, Public Defender's Office, and County staff. There is even a laptop located on the 6th floor of the Hall of Justice with access to JPAW. In order to effectively utilize the upgraded

computer system, the County created and staffed the position of Data Quality Analyst. This position is essential to the continued use and function of the JPAW system which, as set forth above, is critical to analyzing and maintaining the Jail population. Although not required by The Bogard Report, or earlier Consent Decrees, this position was deemed essential to the continued success of the jail population reduction efforts.

V. THE COURT SHOULD APPROVE THE SETTLEMENT

A. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

The Court may approve a class action settlement only if it is “fair reasonable and adequate.” *Fed. R. Civ. P.* 23(e)(2). The Third Circuit has adopted a nine-factor test to make this determination. The test was first stated in *Girsh v. Jepsen*, 521 F. 2d 153, 157 (3d Cir. 1975). The elements of this test have become known as the “Girsh factors.” In deciding whether to approve a settlement, the Court must consider:

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

In re Schering-Plough Corp. ENHANCE ERISA Litig., No. 08-cv-1435, 2012 WL 1964451 at *2 (D.N.J. May 31, 2012) (*citing Girsh*, 521 F.2d at 157). *See also In re AT&T Corp. Sec. Litig.*, 455 F. 3d 160, 164-65 (3d Cir. 2006).

As this Court has held, applying *Girsh* is not a mechanical exercise:

These factors are a guide and the absence of one or more does not automatically render the settlement unfair Rather, the court must look at all the circumstances of the case and determine whether the settlement is within the range of reasonableness under *Girsh* In sum, the Court's assessment of whether the settlement is fair, adequate and reasonable is guided by the *Girsh* factors, but the Court is in no way limited to considering only those enumerated factors and is free to consider other relevant circumstances and facts involved in [the] Settlement.

Plymouth Cnty. Contributory Ret. Sys. v. Hassan, No. 08-cv-1022, 2012 WL 664827, at *2 (D.N.J. Feb 28, 2012) (emphasis added) (Cavanaugh); *Schering-Plough ERISA*, 2012 WL 1964451 at *2 (same). The Third Circuit has directed district courts to apply an “initial presumption of fairness” to settlements if they find:

- (1) the settlement negotiations occurred at arm's length;
- (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and
- (4) only a small fraction of the Class objected.

In re Warfarin Sodium Antitrust Litig., 391 F. 3d 516, 535 (3d Cir. 2004), *quoting In re Cendant Corp Litig.*, 264 F 3d 201, 232 n.18 (3d Cir 2001) (Cendant I);

Henderson v. Volvo Cars of N. Am. LLC., No 09-cv-4146, 2013 WL 1192479 at *7 (D. N.J. Mar 22, 2013) (same).

Here, the Court should find the proposed settlement presumptively fair. It is undisputed that the settlement was negotiated over many years, at arm's-length. And while the negotiations were not necessarily adversarial, they were done cooperatively with principals and experts in the field with the common goal of finding ways to reduce and control the jail population.

There has been sufficient discovery comprised of years of data and the input from stakeholders and experts in the field concerning issues of prison overcrowding. Class Counsel is experienced in complex litigation and has been involved in over a hundred class action cases. And while the Notice posted in the Court House and Jail has prompted interest in the litigation, there have been no objections to this Settlement.

This Settlement also satisfies the *Girsh* factors.

1. Complexity, Expense and Likely Duration of the Litigation

The first *Girsh* factor is whether the settlement avoids a lengthy, complex, and expensive continuation of the litigation. “This factor is concerned with assessing the probable costs, in both time and money, of continued litigation.” *Schering-Plough ERISA*, 2012 WL 1964451, at *4 (*quoting Cendant I*, 264 F.3d at 234). Here, through a series of consent orders, the issue of systematic

overcrowding has been effectively addressed. As set forth at length *supra*, the jail population figures are well below the rate capacity and there is a proven system in place to ensure that the population numbers are monitored and actively managed.

Settlement at this juncture results in a substantial present benefit without the risks and delays of trial and post-trial proceedings. The complexity, expense, and likely duration of continued litigation absent the Settlement all weigh heavily in favor of approval.

2. Reaction of the Class

Notice of the *Fed. R. Civ. P.* 23(b)(2) Class Settlement was posted in the Camden County Correctional Facility, in the New Jersey Superior Court, Camden County, and on the Camden County website. (*See* Declaration of Howard Goldberg, submitted separately). And while the issues facing the inmate population at theJ continue to generate inquiries from class members and complaints about jail conditions, there have not been any objections to the Settlement. Accordingly, the reaction of the Class weighs in favor of approval.

3. Stage of the Proceedings and Amount of Discovery

The third *Girsh* factor requires the Court to “consider the degree of case development that Class Counsel have accomplished prior to Settlement, including the type and amount of discovery already undertaken.” *Merck ERISA*, 2010 WL 547613 at *7 (quoting *GM Truck*, 55 F.3d at 813). “In short, under this factor, the

Court considers whether the amount of discovery completed in the case has permitted ‘counsel [to have] an adequate appreciation of the merits of the case before negotiating.’” *Merck ERISA*, 2010 WL 547613, at *7 (alteration in original) (quoting *In re Prudential Ins. Co. Am. Sales*, 148 F.3d 283, 319 (1998)).

Plaintiffs and their counsel “have an adequate appreciation of the facts in this matter, and this factor weighs in favor of approval.” *Schering-Plough ERISA*, 2012 WL 1964451, at *4; *see also Colon v. Passaic City*, No. 08-cv-4439, 2012 WL 1457764, at *4 (D.N.J. Apr. 24 2012) (Cavanaugh, J.) (“considering the amount of effort expended by Class Counsel in this matter, as well Class Counsel’s extensive experience litigating class actions ... the Court is convinced that Plaintiffs have a sufficient understanding of the merits of this case”). As set forth at length in the preceding sections, the Plaintiffs have a detailed understanding of the merits of this case to support the decision to seek final approval of the Sixth and Final Consent Decree. Class Counsel has been actively involved in this litigation for 12 years. There can be no doubt that they have an appreciation of the facts in this case. The wealth of discovery conducted here more than satisfies the reasonably low threshold necessary to grant approval of the Settlement.

Accordingly, the third *Girsh* factor also supports approval of the proposed Settlement.

4. Significant Obstacles and Risks to Recovery

Factors four and five address the risks of establishing liability and damages. This factor is not particularly relevant in the analysis of this settlement. Early on in the litigation, the Defendants recognized that overcrowding was a real issue at the jail and worked cooperatively with Plaintiffs and experts in the field to reduce the population at the jail and to create a system to effectively manage the jail population. The litigation did not seek damages, but injunctive and declaratory relief. The objectives of the litigation have been achieved and continued litigation is not justified.

5. Ability of Plaintiffs to Maintain Class Certification

This action was one seeking injunctive relief. Consequently, the issue of maintaining class certification is not particularly problematic and was not an issue that impacted the decision to settle.

6. Ability of Defendant to Withstand a Greater Judgment

In addressing the seventh *Girsh* factor, the Court must consider whether Defendants could withstand a judgment much greater than the amount of the settlement. Here, the Plaintiffs were not seeking money damages, but rather injunctive relief. This is not a consideration in the decision to settle this litigation. The relief sought was achieved.

7. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation

The final two *Girsh* factors “evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case.” *Schering-Plough/Merck Merger*, 2010 WL 1257722, at *12 (quoting *Warfarin*, 391 F.3d at 538). A Court asked to approve a settlement “should determine a range of reasonable settlements in light of the best possible recovery (the eighth *Girsh* factor), and a range in light of all the attendant risks of litigation (the ninth factor).” *Schering-Plough/Merck Merger*, 2010 WL 1257722, at 12. Additionally, in conducting its evaluation, the Court should keep in mind “that settlement represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution....” *Johnson & Johnson*, 900 F. Supp. 2d 467, 484-85 (D. N.J. 2012) (internal quotations and citations omitted). It has been recognized that “[t]he best possible recovery, while arguably more than the settlement, is tempered by the risks of further litigation.” *United Nat’l Ret. Fun v. Watts*, No. 04-cv-3603, 2005 WL 2877899, at *4 (D.N.J. Oct. 28, 2003) (Cavanaugh, J.).

The Final Consent Decree should be approved because it reflects a reasonable assessment of the strengths and weaknesses of the claims and the risks of establishing liability at trial. Most importantly, however, the final settlement has

allowed the parties to seek involvement and voluntary participation of non-parties to this litigation. This participation was crucial to the successful implementation of the solutions suggested by Plaintiffs' experts. Without the settlement in this case, the tremendous and long-term results simply could not have been achieved.

VI. CONCLUSION

The Final Consent Decree is fair, reasonable and in the best interests of the class members and future inmates of the Jail. It was the result of formal negotiations between the parties, with the involvement, support and recommendation of experts such as Luminosity, Inc. and Urban Engineers. Importantly, this Final Consent Decree is consistent with the Prison Litigation Reform Act's requirement that any injunctive relief "be narrowly drawn, extend no further than necessary to correct the harm the court find requires the preliminary relief, and be the least intrusive means necessary to correct the harm." 18 U.S.C. § 3632(a)(2). For the foregoing reasons, the Plaintiffs' Motion for Final Approval should be granted.

s/ Lisa J. Rodriguez
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Dated: May 15, 2017

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CORRI DITTIMUS BEY, MELVIN
CLARK, MARK ELLIOTT and DONALD
RUDD on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

CAMDEN COUNTY CORRECTIONAL
FACILITY, CAMDEN COUNTY
DEPARTMENT OF CORRECTIONS,
CAMDEN COUNTY, WARDEN ERIC
TAYLOR, DEPUTY WARDEN FRANK
LOBERTO, and JOSEPH RIPA.

Defendants.

CIVIL ACTION NO. 05-cv-0063

Hon. Jerome B. Simandle, U.S.D.J.

**THE SIXTH AND
FINAL CONSENT DECREE**

I. INTRODUCTION

1. This Final Consent Decree (“Final Consent Decree”) is entered into as of the 14th day of December, 2016, by Plaintiffs Corri Dittimus Bey, Melvin Clark, Mark Elliott and Donald Rudd, as representatives of the certified Class, and Defendants Camden County Correctional Facility, Camden County Department of Corrections, Warden Eric Taylor, Deputy Warden Frank Loberto and Joseph Ripa (collectively “Defendants”), by and through their respective undersigned counsel.

2. This Final Consent Decree is intended to supplement the Amended Third Consent Decree entered into between the parties on March 2, 2011, and approved by the Court on March 4, 2011 (Dkt. No. 121), the Second Consent Decree, entered between the parties on July 30, 2009 and approved by the Court on August 20, 2009 (Dkt. No. 110), as well as an

Interim Consent Decree entered between the parties on December 21, 2007 and approved by the Court on January 22, 2008. Dkt. No. 90. The Second and Third Consent Decrees are incorporated into this Final Consent Decree.

3. The parties entered into a Fourth Consent Decree in 2012. That decree was intended to be the final consent decree and was preliminarily approved by the Court by Order dated December 26, 2012. Dkt. No. 137. Under the terms of that Order, the Settlement Fairness Hearing was scheduled for February 27, 2013 with briefing in support due February 15, 2013. Dkt. No. 137, ¶ 8. Due to a significant increase in the Jail's population, the parties withdrew their application for Final Approval. Dkt. No. 141. *See* Section III.A., *infra*, for a more detailed discussion.

4. Subsequently, the parties entered into a Fifth Consent Decree. This Fifth Consent Decree was also intended to be a Final Consent Decree. Plaintiffs' counsel filed this Consent Decree with the Court on December 23, 2014, Dkt. No. 169-5, along with a renewed motion for preliminary approval of that Decree. Dkt No. 169. Subsequent to the filing, however, Plaintiffs' counsel learned that the County had not replaced the Jail Population Manager as Plaintiffs' Counsel believed, and the position remained unfilled. *See* Section III.A., *infra*, for a more detailed discussion. The Jail Population Manager position has proven to be an important component of controlling the jail population and is vital to the success of the settlement. Consequently, Plaintiffs withdrew their preliminary approval motion. The Fifth Consent Decree was never approved by the Court.

5. This Sixth Consent Decree is presented as the Final Consent Decree and is intended to supplant the parties' Fourth and Fifth Consent Decrees in all respects.

6. This Sixth and Final Consent Decree is intended to fully, finally, and forever resolve, discharge and settle any and all claims against the Defendants.

7. This Sixth and Final Consent Decree is narrowly drawn to meet the applicable constitutional and statutory standards and the following terms and conditions are to serve as the basis for the injunctive relief encompassed herein, as well as the injunctive relief encompassed in the prior Consent Decrees.

8. It is expressly agreed and understood that this Sixth and Final Consent Decree does not constitute an admission by any party and may not be admitted into evidence in any action involving any party except an action to enforce the terms hereof.

9. This Sixth and Final Consent Decree shall be governed by the laws of the State of New Jersey.

II. DEFINITIONS

10. “Certified Class” is defined pursuant to Court Order dated July 31, 2007, and includes: all individuals incarcerated at Camden County Correctional Facility, as either pretrial detainees or as convicted prisoners, from the inception of this lawsuit on January 6, 2005, until its termination.

11. “County Corrections Information System” or “CCIS” serves as the statewide automated information system for the entry, retrieval and exchange of data related to the management of county jail populations. See N.J.S.A. 2B:6-6.

12. “Defendants” refers to Camden County Correctional Facility, Camden County Department of Corrections, Camden County, Warden Eric Taylor, Deputy Warden Frank Loberto and Joseph Ripa, and/or their successors.

13. “Effective Date” means the date this Final Consent Decree is entered by the Court.

14. “Implement” and any form of the word means to give practical effect and ensure actual fulfillment by concrete measures, including but not limited to staffing, appropriate training of relevant staff and funding.

15. “Include” or “including” means “include, but not be limited to” or “including, but not limited to.”

16. “Jail” means the Camden County Correctional Facility located in Camden, New Jersey.

17. “Named Plaintiffs” include plaintiffs Corri Dittimus Bey, Melvin Clark, Mark Elliott and Donald Rudd.

18. “Plaintiffs” include the Named Plaintiffs as well as members of the certified class.

19. Class Counsel is Lisa J. Rodriguez, of Schnader Harrison Segal & Lewis, LLP.

III. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background

20. The procedural and factual backgrounds set forth in the parties’ Second Consent Decree, Paragraphs 18 through 33, and the parties’ Amended Third Consent Decree, Paragraphs 16 through 31, are incorporated herein and supplemented as follows. *See* Second Consent Decree, Dkt. 108; Amended Third Consent Decree, Dkt. No. 121.

21. On October 12, 2012, Plaintiffs’ filed their unopposed Motion for Preliminary Approval of the Fourth and then Final Consent Decree. Dkt. No. 134. The Fourth and Final Consent Decree detailed Defendants continued compliance with the terms of the Second and Third Consent Decrees, and detailed Defendants’ compliance with two issues that remained outstanding following approval of the Amended Third Consent Decree. Those two

issues were: (1) the adequacy of the Jail's HVAC system and COS levels; and (2) the hiring of a full-time Jail Population Manager. *See* Dkt 134 (Fourth and Final Consent Decree). *See* Sections IV.A. and V, *infra*, for more detailed discussion on the Jail Population Manager and environmental report.

22. By Order dated December 26, 2012, the Court granted preliminary approval of the settlement and authorized the posting of Class Notice in the Jail. Dkt. 137. Final Approval briefing was due February 15, 2013 and a Fairness Hearing was scheduled for February 27, 2013. Dkt No. 137.

23. Between the time Counsel filed their Motion for Preliminary Approval and the deadline for briefing in support of Final Approval of this class action settlement, the Jail's population increased dramatically, by nearly 160 inmates. In particular, on September 21, 2012 when the motion for preliminary approval was filed, the Jail population was 1414. At the time the adjournment of final approval was requested in February of 2013, the population had reached 1583. Due to this sudden increase, by letter dated February 4, 2013, Class Counsel sought an adjournment of the Final Approval deadline. Dkt. 141.

24. A thorough investigation ensued and the parties jointly determined that, although the systems put into place by Luminosity were effective (as detailed in the Second and Third Consent Decrees), they were not being managed by an appropriate Jail Manager. It was agreed by the parties that the position of the Jail Population Manager, at that time filled by Jail personnel, needed to be filled by someone outside the Jail.

25. The County then undertook an exhaustive search for a qualified applicant and experienced great difficulty in finding a qualified candidate. The position requires a unique combination of skill as well as personality. After reviewing over 100 applications, the County

narrowed the field down to a handful and eventually hired Brian Jacobs. Mr. Jacobs' one year contract began November 2013.

26. During his one-year tenure, Mr. Jacobs worked closely with Counsel and all criminal justice stakeholders to isolate areas of improvement and focus on areas that would result in both immediate and long term solutions to the over-crowding. He reported monthly to the County. As a result of his efforts, the jail population began to trend in a downward direction, thereby reinforcing the parties' view that the system was working effectively, but that the Jail Manager position was instrumental in ensuring the proper working of these newly implemented processes.

27. During Mr. Jacobs' tenure as Jail Manager, the population decreased from 1519 (November 12, 2013) to 1456 (November 12, 2014), with a decrease in bed overages by nearly 10% from the prior year. Importantly, too, the population was trending downward despite an increase in the number of arrests and commitments. On December 18, 2014, the population was 1,376.

28. As of September 2014, the number of arrests was on target to exceed the number of arrests made in 2009 when the population fluctuated between 1700 and 1800. Without the new processes in place as managed by the Jail Population Manager, the population would likely be at or near the excessive levels seen in 2008 and 2009.

29. In or around September of 2014, with a strong system in place and a Jail population trending downward, the parties determined that since the Jail population was no longer at potentially unconstitutional levels and all other aspects of the Consent Decrees had been complied with, it was time to enter into a Final Consent Decree.

30. In November 2014, the County announced it would not renew Mr. Jacobs' contract.

31. The County initially represented that the position of Jail Population Manager would be filled by Dr. Marie VanNostrand, and based on that representation, the parties entered into a Fifth Consent Decree and sought preliminary approval of the class action settlement.

32. It was later learned that Dr. VanNostrand would not be filling the role of Jail Population Manager. Because that position is pivotal to the success of the settlement, Plaintiffs' counsel withdrew their motion seeking preliminary approval of the settlement until that position was filled with a suitable candidate.

33. The position of Jail Population Manager is now being filled by Sharon Bean. She has been in that position since April 2015. Under her direction, the jail population numbers have continued to trend downward.

B. Factual Background -- Jail Population

34. The Jail's rated capacity is 1267. When this litigation commenced in 2005, the annual average daily population was 1848 inmates. As a result, the majority of cell units were shared by at least three, if not four, inmates. For cells that were triple-bunked, an inmate was forced to sleep on the floor. For cells that were quadruple-bunked, two inmates were forced to sleep on the floor, one of whom slept with his head inches from the toilet.

35. In May of 2010, following entry of the Second Consent Decree, the Jail's average monthly population reached an all-time low of 1232 inmates, below the Jail's rated capacity. As a result of the lower population, bed overages also reached an all-time low of 48 on June 2, 2010, meaning that only 48 cells housed three inmates. All other cells housed either one or two inmates. No cell housed four inmates.

36. After 2010, the Jail population slowly increased and reached a crisis point in early 2013 when the population reached 1600. It was at this point that the parties withdrew their application for final approval of the Fourth Consent Decree.

37. As a result of the effort of the Jail Population Manager, the population is now at or below the rated capacity of 1,267. As of December 9, 2016 the jail population was at 1,160

38. The daily population is now being closely monitored and managed by the Defendants and the parties believe it is now appropriate to finally resolve this litigation.

IV. DEFENDANTS ARE IN COMPLIANCE WITH THE TERMS OF THE SECOND AND THIRD CONSENT DECREES

39. Each term of the Second Consent Decree that was completed in its entirety was addressed in the Third Consent Decree, Section IV (A). *See* Dkt. No. 121. These terms included the implementation of a new policy to track inmate booking in a way that reflected the date and time an inmate was actually taken into custody; the creation of additional attorney visitation rooms thereby providing defense counsel with better access to their incarcerated clients; an increase in the number of inmates released on home electronic devices; the improvement of CCIS data; and the creation of a pretrial services program. These items are fully implemented and the Defendants are in continued compliance with these terms.

40. Each term of the Second Consent Decree that was complied with but still being tracked was addressed in Section IV (B) of the Third Consent Decree. *Id.* These terms included the hiring of Luminosity, Inc. to assist and facilitate the implementation of the Bogard Report recommendations; and the hiring of a Jail Population Manager. Defendants are in compliance with these terms.

Jail Population Manager

41. The Jail Population Manager is responsible for monitoring, coordinating and ensuring the most efficient processing of Jail inmates. She collects, compiles and conducts quantitative data analysis to identify trends and potential systematic causes of processing delays as well as opportunities to expedite release and transfers. In addition to these duties, the Jail Population Manager facilitates and provides services to the Jail Population Reduction Subcommittee (“JPRC”). The position serves as a liaison to the courts, prosecutor, defense bar, community corrections programs, JPRC and other criminal justice stakeholders on behalf of the County and jail as it relates to population management.

42. When the position was created, Luminosity served as Interim Jail Population Manager until a full time interim Jail Population Manager was hired and fully trained in June of 2011. That individual remained in the position of interim Jail Population Manager until June 1, 2012, when then Defendants hired Lt. Karen Taylor as the permanent full-time Jail Population Manager, in accordance with Paragraphs 63 through 66 of the parties’ Second Consent Decree.

43. In 2013, when it was determined by the parties that the position was best filled by a person outside of the Jail, Brian Jacobs was hired on a contractual basis and served as Jail Population Manager from November 2013 through November 2014.

44. Sharon Bean was retained as Jail Population Manager in April 2015. She continues in that position today.

V. DEFENDANTS HAVE REMEDIED THE ENVIRONMENTAL HAZARDS.

45. In 2007, Plaintiffs’ retained the services of Urban Engineers, an environmental expert, for the purpose of conducting an on-site inspection of the Jail to inspect mold and mildew, water quality, air pollution and rodent infestation. Urban Engineers issued a

report dated September 28, 2007. Although Urban Engineers' initial inspection did not reveal any environmental hazards that would rise to the level of constitutional violations, it did note areas of improvement. Urban Engineers also concluded that many of the areas noted for improvement may resolve themselves simply by virtue of a population reduction.

46. For instance, Urban Engineers recommended that an HVAC balancing inspection and report be prepared by the Defendants so that Urban can fully ascertain if the equipment is performing as originally installed.

47. Urban also found elevated CO₂ levels.

48. In August 2010, prior to entering into this Third Consent Decree, Plaintiffs again retained the services of Urban Engineers for the purpose of conducting a supplemental site inspection to determine if, in fact, some of the noted areas of concern had improved simply by virtue of the population reduction, as was expected.

49. On September 29, 2010, Urban conducted its follow-up inspection and issued a written report dated November 10, 2010.

50. Urban Engineers again found elevated CO₂ levels and opined that the levels had not improved since 2007, but instead had worsened and noted that the cause may be from HVAC balancing issues. High CO₂ readings indicate that the building has significant airflow issues, and a balancing report is the first step in addressing these issues.

51. Urban recommended that a balancing report be prepared, as it was necessary for establishing a baseline and for proper operation and maintenance of the HVAC system.

52. Urban also observed some malfunctioning HVAC equipment at the Jail and suggested that a balancing report will inventory the HVAC equipment and provide a thorough review of their functionality.

53. Accordingly, in 2011, Defendants retained Fischer Balancing Company to perform a balancing test. Fischer issued a report dated September 27, 2011, which was reviewed and analyzed by Urban. As a result of collaborative meetings between Fischer, Urban and the Camden County Improvement Authority, the County retained CM3 Building Solutions to perform systematic maintenance and repairs to the facilities.

54. On April 3, 2012, Urban conducted a follow-up air survey and reported an average CO₂ level of 1788 ppm. This was a noticeable improvement from Urban's September 2010 survey, which had a maximum CO₂ reading of 2,700 ppm. During this survey, Urban noted that the airflow in cell registers was negligible and reported this to the County. The County responded that although the long term approach was to install a new Building Management System, it would in the short term manually adjust dampers on a priority basis with an objective of increasing air flow and circulation in corridors, central areas and individual cells. The County also agreed to replace air filters on a more regular basis.

55. Urban conducted another follow-up air survey on June 5, 2012, and determined that the average CO₂ concentration within the individual cells had depressed 149 ppm from its previous inspection. Urban concluded that although levels above 1000 ppm (which are still present in individual cells) indicate general airflow issues, the levels noted during the April and June 2012 surveys (1788 ppm and 1639 ppm respectively) were well below the suggested maximum daily exposure levels of 5000-10000 ppm. (Urban's Report dated June 26, 2012).

56. Urban further recommended that until a permanent Building Management System is installed, the Jail could continue its focus of maintaining and increasing airflow to the individual cell registers. *Id.*

57. After the motion to preliminarily approve the Fifth Consent Decree was withdrawn the parties agreed that it was appropriate to have an additional environmental examination conducted, given the passage of time since the previous environmental examination and air survey were performed.

58. On January 12 and 13, 2016, Urban Engineers, with the assistance of Batta Environmental Associates, Inc., conducted an on-site visit of the jail in order to evaluate the air quality.

59. Urban issued its report on February 17, 2016. The report noted that, while CO₂ levels continued to be higher than the ACGIH¹ recommendations in some locations, they were in fact below OSHA's Time-Weighted average permissible exposure limit. The highest levels were detected in an inside recreation area, which the report noted could be expected when a large group of people concentrated without outside air to dilute and remove the CO₂ continuously generated by the occupants.

60. The report found no indoor air quality issues relating to carbon monoxide and no elevated airborne mold levels within the facility were detected.

¹ Association Advancing Occupational and Environmental Health

61. It is also worthy of mention that the County made a number of other major capital improvements in the past several years, including the modernization and upgrade of the elevator system; significant upgrades and repairs to the HVAC system; lighting upgrades; upgrades and improvements to some of the shower enclosures; and the modernization and renovations to a portion of the exterior windows.

VI. AGREEMENT OF THE PARTIES

62. The parties acknowledge that the injunctive relief implemented in the Second and Third Consent Decrees have been instrumental in substantially reducing the inmate population at the CCCF.

63. The parties to this Consent Decree acknowledge that it is appropriate to extend the injunctive relief implemented in the Second and Third Consent Decrees and incorporated herein to insure the progress that has been made in reducing the inmate population at the CCCF continues .

64. Defendants agree to be bound by the terms of the Second and Third Consent Decrees consistent with the provisions of 18 U.S.C. § 3626(b)(1) and to continue to monitor the progress that has been made in reducing the population at CCCF.

65. Class Counsel agrees to continue to receive and monitor the daily Camden County Corrections Population Snapshot.

66. The parties believe that the prospective relief contained herein is narrowly drawn and the least intrusive means to correct the issues of overcrowding at the CCCF.

67. The parties agree that it is appropriate for the Court to maintain jurisdiction over this matter for a period of two years from the entry of any Order finally approving this settlement.

VII. ATTORNEYS FEES AND CLASS REPRESENTATIVE INCENTIVE AWARDS

68. Defendants agree that they will not oppose Plaintiffs' anticipated Motion for Approval of an Award of Attorneys' Fees (not to exceed \$150,000) and Class Representative Incentive Awards (not to exceed a total of \$5,000).

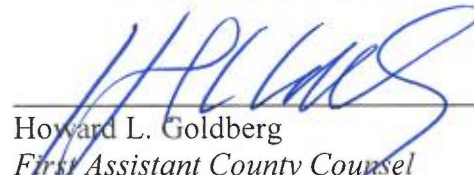
IN WITNESS WHEREOF, the Parties hereto, through their respective attorneys and intending to be legally bound, have executed this Agreement.

Dated: 1/30/17



Lisa J. Rodriguez
Class Counsel for the Plaintiffs

Dated: _____



Howard L. Goldberg
First Assistant County Counsel
Counsel for Defendants

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CORRI DITTIMUS BEY, *et al.*

Plaintiffs,

v.

CAMDEN COUNTY
CORRECTIONAL FACILITY, *et. al.*

Defendants.

CIVIL ACTION

NO. 05-cv-0063 (JBS-JS)

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Plaintiffs' Notice of Motion for Final Approval of the Amended Final Consent Decree; supporting Memorandum of Law with Exhibits; Proposed Order and this Certificate of Service to be served upon defense counsel by electronic filing.

s/ Lisa J. Rodriguez
Lisa J. Rodriguez

Dated: May 15, 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CORRI DITTIMUS BEY, *et al.*

Plaintiffs,

v.

CAMDEN COUNTY
CORRECTIONAL FACILITY, *et. al.*

Defendants.

CIVIL ACTION

NO. 05-cv-0063 (JBS-JS)

ORDER APPROVING AMENDED FINAL CONSENT DECREE

THIS MATTER having come before the Court on Plaintiffs' Motion for Final Approval of the Amended Final Consent Decree, and the Defendants having consented to Plaintiffs' Motion, and the parties having entered into a Final Consent Decree, and the Court having considered the moving papers, and for good cause shown:

IT IS ON THIS _____ day of May, 2017,

ORDERED that Plaintiffs' Motion is GRANTED; and that the Amended Final Consent Decree entered into between the parties is hereby APPROVED.

Jerome B. Simandle, U.S.D.J.