

**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 GRANTING
PRELIMINARY APPROVAL
OF SIXTH AND FINAL
CONSENT DECREE**

THIS MATTER having come before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of an Amended Final Consent Decree [Docket Item 202], and the parties' having entered into the Sixth and Final Consent Decree [Docket Item 210-1] thereby resolving all claims as to all parties, and the Court having considered the papers and for good cause shown pursuant to Rule 23(e), Fed. R. Civ. P.;

IT IS, ON THIS 21st day of February, 2017, ORDERED:

1. Plaintiffs' Motion is GRANTED and the Sixth and Final Consent Decree, attached hereto, is hereby preliminarily approved.
2. This Court previously certified this case as a Class Action, pursuant to Rule 23 (b)(2).

3. The Class is defined as 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. A “Class Member” is a person who is within this class definition.

4. The Court preliminarily approves the Sixth and Final Consent Decree of this Action on the terms set forth in the Consent Decree as being fair, reasonable, and adequate, and narrowly tailored to address the claims asserted in the Amended Complaint, subject to further consideration at a fairness hearing to be held before this Court on Tuesday, May 23, 2017 at 10:00 A.M., in the United States District Court, District of New Jersey, Mitchell H. Cohen U.S. Courthouse, One John F. Gerry Plaza, Fourth and Cooper Streets, Camden, New Jersey, (the “Settlement Fairness Hearing”).

5. Any person wishing to object to the terms of the proposed settlement shall file a written, signed Objection with the Clerk of Court not later than thirty (30) days before the date scheduled for the Settlement Fairness Hearing, that is, not later than April 24, 2017, and the Class Member shall also mail such Objection at that time to Class Counsel Lisa J. Rodriguez, Esq. and to First Assistant County Counsel Howard L. Goldberg, at their addresses listed in the attached Notice of Class Action Settlement. Only Class Members who have timely filed an Objection will be permitted to speak at the final Settlement Fairness Hearing.

6. At the Settlement Fairness Hearing, the Court will determine whether the proposed settlement of this action on the terms and conditions provided for in the Amended Final Consent Decree are fair, reasonable and adequate and should be approved by the Court, and whether Class Counsel's fees and expenses, as well as class representatives incentive award, should be granted.

7. The Court approves the form, substance, and requirements of the Notice, and finds that the procedures established for publication of such Notice substantially in the manner and form attached hereto constitute the best notice practicable under the circumstances and are in full compliance with the notice requirements of due process and Federal Rule of Civil Procedure 23.

8. Defendants shall cause to be posted a copy of a Notice of Class Action Settlement, in the form attached hereto, in each housing unit within the Camden County Correctional Facility, as well as the law library, and also in a public area of the New Jersey Superior Court, Camden County, and upon the Camden County website. The website shall also provide links to relevant documents including this Order, the approved Notice, the Sixth and Final Consent Decree, and the Second and Third Consent Decrees which are incorporated with the Sixth and Final Consent Decree. The Notice shall be posted within twenty (20) days from the date of this Order and shall remain posted for a period of at least thirty (30) days. The

parties shall, at or before the Settlement Fairness Hearing, file with the Court proof of distribution of notice.

9. The parties' brief in support of final approval of the Settlement, as well as Plaintiffs' Motion for Attorneys' Fees and Award of Class Representative Incentive Awards shall be filed no later than May 15, 2017.


JEROME B. SIMANDLE
Chief U.S. District Judge

**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 Manger 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.

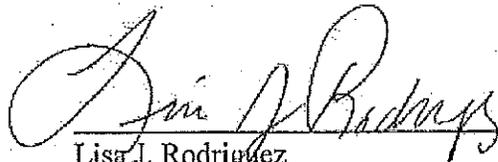
67. The parties agree that it is appropriate for the Court to maintain jurisdiction over this matter for a period of two years from the entry of any Order finally approving this settlement.

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).

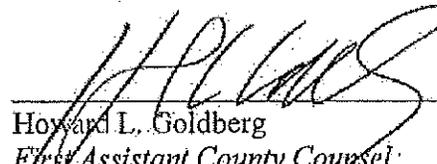
IN WITNESS WHEREOF, the Parties hereto, through their respective attorneys and intending to be legally bound, have executed this Agreement.

Dated: 1/30/17



Lisa J. Rodriguez
Class Counsel for the Plaintiffs

Dated: _____



Howard L. Goldberg
*First Assistant County Counsel
Counsel for Defendants*