

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. 05cv0063

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

THIRD CONSENT DECREE

I. INTRODUCTION

1. This Third Consent Decree is entered into as of the 14th day of December, 2010, 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 Third Consent Decree is intended to supplement the Second Consent Decree, entered between the parties on July 30, 2009 and approved by the Court on August 20, 2009, as well as an Interim Consent Decree entered between the parties on December 17, 2007 and

approved by the Court on January 22, 2008. This Decree is not intended to fully, finally, or forever resolve, discharge or settle any and all claims against the Defendants.

3. The parties anticipate entering into a Final Consent Decree, subject to Court approval, in the summer or fall of 2011, subject to the completion of all terms set forth herein.

4. This Third 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.

5. It is expressly agreed and understood that this Third 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.

6. This Consent Order shall be governed by the laws of the State of New Jersey.

II. DEFINITIONS

7. "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.

8. "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.

9. "Defendants" refers to Camden County Correctional Facility, Camden County Department of Corrections, Camden County, Warden Eric Taylor, Deputy Warden Frank Loberto and Joseph Ripa.

10. "Effective Date" means the date this Third Consent Decree is entered by the Court.

11. "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.

12. "Include" or "including" means "include, but not be limited to" or "including, but not limited to."

13. "Jail" means the Camden County Correctional Facility located in Camden, New Jersey.

14. "Named Plaintiffs" include plaintiffs Corri Dittimus Bey, Melvin Clark, Mark Elliott and Donald Rudd.

15. "Plaintiffs" include the Named Plaintiffs as well as members of the certified class.

III. FACTS

16. The factual background set forth in the parties' Second Consent Decree, Paragraphs 18 through 33, is hereby incorporated herein and supplemented as follows. *See* Second Consent Decree, PACER Docket Entry No. 108.

17. The Second Consent Decree, dated July 20, 2009, and approved by the Court by Order dated August 20, 2009, *see* PACER Docket Entry, Nos. 108 and 110, contemplated the implementation of six recommendations identified in a report prepared by Pulitzer Bogard, Inc. and Luminosity, Inc. (The Bogard Report).

18. In the Second Consent Decree, the parties agreed that the Defendants would implement Recommendations 2, 6, 16, 20, 21 and 22 of The Bogard Report. To date, the

Defendants have successfully complied with the terms of the Second Consent Decree, the details of which are set forth below, *see infra* Sections IV (A), (B) and (D).

19. In addition to implementing the six specific recommendations of The Bogard Report, the Defendants, through the voluntary efforts of the Jail Population Reduction Subcommittee, have explored, investigated and, in some instances, implemented, additional solutions aimed at the overall efficiency of the criminal justice system which, in turn, impacts the jail population. Those efforts are detailed below in Section IV (C), *infra*:

20. As a direct result of the parties' efforts in this litigation, the jail population has been reduced and the overall processing of the criminal justice system significantly revamped and improved.

21. The rated capacity of the Jail is 1267. When this litigation commenced in 2005, the annual average daily population was 1848 inmates. *See Ex. A (Camden County Average Monthly Jail Population)*. 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 which slept with his head inches from the toilet.

22. 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.

23. As a result of the lower population, bed overages 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.

24. Since May of 2010, the population has slowly increased which is consistent with historical averages. The months of September, October and November are historically the most

active months and see the highest average daily populations, with a decline in the population becoming evident in the month of December, which continues to decline through the months of May and June.

25. The significant decrease in jail population is attributable to the efforts of the parties, Luminosity, Inc., and the Jail Population Reduction Subcommittee and its representatives.

26. Although the current population is higher than the Jail's rated capacity, the parties anticipate that the average monthly population will continue to decrease and, in light of the anticipated decrease in population, do not view the current population as exceeding a range of permissible capacity. On December 14, 2010, the Jail population was 1377. This number excludes the 23 Gloucester County female inmates currently housed at the Jail pursuant to contract.

27. The Defendants are in compliance with the terms of the Second Consent Decree, which required the implementation of six Recommendations of The Bogard Report, and the hiring of Luminosity, Inc. for the purpose of implementing those recommendations.

28. The Second Consent Decree also contemplated the creation of a Jail Population Reduction Subcommittee, which required the voluntary participation of the Prosecutor's Office, Public Defender's Office, the Courts, and many others within the Camden County criminal justice system. The efforts of the Jail Population Reduction Committee, and its representatives, made it possible for the Defendants to begin to reach the population goals and have improved the overall efficiency of the criminal justice system.

29. Each term of the Second Consent Decree that has been completed in its entirety is addressed in Section IV (A) below.

30. Each term of the Second Consent Decree that has been complied with but is still being tracked is addressed in Section IV (B) below.

31. Section V sets forth additional steps taken by the Defendants that were not required by the terms of the Second Consent Decree but rather were solutions identified by the Jail Population Reduction Subcommittee. Section VI addresses environmental remediation to which the Defendants have agreed.

IV. DEFENDANTS ARE IN COMPLIANCE WITH THE TERMS OF THE SECOND CONSENT DECREE.

A. DEFENDANTS HAVE FULLY COMPLETED BOGARD RECOMMENDATIONS 2, 6, 16 and 21.

1. Time/Day in Custody (Bogard Report, Recommendation No. 2).

32. Defendants agreed to implement a policy whereby jail staffers were trained to override the automatic data entry of the date and time of formal booking to reflect the date and time that the inmate was actually taken into custody by the arresting police department, as reported on the police report.

33. This has resulted in inmates being given credit for the time they actually spend in custody. This procedure often results in a length of stay reduction of one day for each sentenced inmate.

34. Defendants have fully complied with this term. A policy has been implemented whereby the date an inmate is actually taken into custody by the arresting police department is manually entered into the system.

2. Access to Clients (Bogard Report, Recommendation No. 6).

35. Due to limited space at the jail, there were insufficient areas for attorneys (and their staff) to meet with their clients.

36. The inability of defense counsel (and staff) to meet with their clients created additional delays in the process because counsel was unable to timely speak with their clients, which then caused delays in moving the case forward.

37. In accordance with the terms of the Second Consent Decree, Defendants have built four visitation rooms designed for attorney-inmate visitation with an emphasis on access for members of the Public Defender's Office. In particular, there are two rooms on the 3rd floor and two rooms on the 5th floor of the Jail that are now used for attorney-inmate visitation. These rooms are in addition to the three rooms within the Jail itself that are available for attorney-inmate visitation.

38. Additionally, the shift commander has a cell phone available for use, which can be signed out and then returned by the Public Defenders. Having a cell phone available to Public Defenders during inmate visitation allows for a more productive meeting.

3. Electronic Monitoring as Alternative to Incarceration for Sentenced Inmates (Bogard Report, Recommendation No. 16).

39. In the Second Consent Decree, the Defendants agreed to take necessary steps to reduce the 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.

40. In particular, the Jail implemented a policy that has been approved by the Courts. The policy includes jail staffers screening locally sentenced inmates for HED and notifying the Court, the Prosecutor and Defense Attorney when an inmate is deemed eligible.

41. As a result of this new policy, the jail increased its HED capacity from 75 electronic monitoring devices to 125 electronic monitoring devices by recently receiving fifty (50) additional devices with GPS technology.

42. There are currently 70 individuals on HED with space for 55 more individuals.

43. This solution has been fully implemented and is being monitored.

4. Improve CCIS Data Quality (Bogard Report, Recommendation No. 21).

44. The improvement of CCIS data 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.

45. 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.

46. Luminosity developed a web-based CCIS interface.

47. 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 now available to the Prosecutor's Office, Sheriff's Department, Jail, Public Defender's Office, and County staff. All necessary files and information have been provided to the Court IT staff and full implementation is pending by local Court IT. There is one laptop located on the 6th floor of the Hall of Justice with access to JPAW.

48. Defendants have fully complied with this term.

B. DEFENDANTS' CONTINUED EFFORTS TO COMPLY WITH SELECT BOGARD RECOMMENDATIONS

1. Defendants Shall Continue the Employment of Luminosity, Inc.

49. In the Second Consent Decree, the Defendant agreed to retain Luminosity, Inc. through July of 2010, for the purpose of assisting in the implementation of select recommendations contained in The Bogard Report. Luminosity has the specialized expertise, extensive training and a proven reputation that is needed to implement the comprehensive strategies set forth in The Bogard Report to reduce jail crowding while maintaining public safety and the integrity of the judicial process.

50. By Resolution of the Camden County Board of Chosen Freeholders, Luminosity's services have been extended through April 2011, for an additional cost of \$159,872.

51. One or more Luminosity consultants will be onsite approximately one week each month and will continue to provide services including but not limited to:

- a. Serve as the jail population manager until one is hired and trained during the first quarter of 2011 subject to the recommendations of the Jail Population Reduction sub-committee;
- b. Continued facilitation of the CJCC jail population reduction sub-committee meetings; and
- c. Conduct a feasibility study for the transfer of appropriate inmates to an existing rehabilitative services-focused facility.

2. Hiring of a Jail Population Manager

52. The Defendants previously agreed to hire a Jail Population Manager in Paragraphs 63 through 66 of the parties' Second Consent Decree.

53. The Jail Population Manager will be responsible for monitoring the jail population using data and other methods. This person will take steps necessary to work with

system stakeholders to identify and resolve individual and system issues impacting the jail population. This person shall be based in the Jail.

54. Luminosity, Inc. has served, and will continue to serve, as the Jail Population Manager until April, 2011 and will assist in the hiring and training of the Jail Population Manager during the first quarter of 2011, subject to the recommendations of the Jail Population Reduction sub-committee.

C. **VOLUNTARY CONTINUATION OF THE JAIL POPULATION REDUCTION SUB-COMMITTEE.**

55. Pursuant to the Second Consent Decree, the Defendants, through the Camden County Criminal Justice Coordinating Committee (CJCC), voluntarily formed a jail population reduction sub-committee. The Federal Court continues to recognize that the voluntary participation of those that form this committee, including 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.

56. The committee will continue meet at least every other month.

57. The meetings will consist of multi-hour work sessions with the purpose of identifying and prioritizing viable opportunities to reduce unnecessary detention, some of which are contained in The Bogard Report but may also include newly identified opportunities, and work to implement solutions to the identified opportunities. The committee will also monitor the jail population to measure the impact of the implemented solutions and to continue to identify additional opportunities to reduce unnecessary detention.

58. As a result of the direct and open communications of the committee, members of the committee now immediately reach out to one another when a problem or issue arises. The openness of discussions has created a work environment among the various facets of the justice

system that is conducive to quickly and efficiently resolving problems, including those related to overcrowding.

D. CREATION OF THE PRETRIAL SERVICES PROGRAM (BOGARD REPORT, RECOMMENDATION NO. 20).

59. The Defendants have created, staffed, and commenced operations of a very robust pretrial services program, in accordance with paragraphs 53 through 61 of the Second Consent Decree. The program is known as the “Camden County Pretrial Services Agency.”

60. 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 Ex. B (Camden County Pretrial Services Pamphlet).*

61. 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.

62. 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.

63. It is staffed by four investigators and a Coordinator, who are all employees of Camden County. Camden County is the first county within New Jersey to create a pretrial services program and it is anticipated that other counties throughout New Jersey will follow suit. 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.

64. Between September 7, 2010, when it became operational, and November 15th, the program conducted 144 investigations, recommended 35 inmates for release to pretrial services, and received 26 placements on supervision. As of November 15th, the program was supervising 22 defendants. No one released on supervision has failed to appear for court, and only one defendant was arrested for a new charge and his bail has since been revoked.

65. The Pretrial Agency investigators meet with the Superior Court judges, and Judge Brown in particular, on a frequent basis.

66. Referrals to the program are accepted from the prosecutor's office, the public defender's office and private defense bar, or the Superior Court. Presently, release decisions are being made solely by Judge Brown but it is anticipated that, as the program develops and becomes more familiar, all Camden County judges will begin making release decisions to the program.

V. **RECOMMENDATIONS OF THE JAIL POPULATION REDUCTION SUBCOMMITTEE THAT HAVE BEEN COMPLETED OR ARE BEING TRACKED.**

67. In addition to the efforts described above, the Defendants, through the Recommendations of the Jail Population Reduction Committee have identified and implemented (where appropriate) the following additional solutions, not specified in the Second Decree, aimed

at reducing the Jail population. It should be noted that some of the solutions identified below were also included in The Bogard Report but were not implemented as part of The Second Consent Decree. *See* Ex. C (Opportunities to Reduce the Jail Population as of September 8, 2010).

68. The following solutions have been fully investigated and implemented where appropriate, and are now considered closed:

- a. Multiple Special Person Numbers in Promis/Gavel – The sub-committee determined that sometimes one person has multiple special person numbers in Promis/Gavel, therefore their cases are not linked. This can cause delays in processing. The Court and the Prosecutor's Office previously implemented a solution to this issue that is working, but the Public Defender's Office was not aware of the proper person to contact. Now, when the Public Defender's Office becomes aware of multiple SPNs for the same person in Promis/Gavel, they can call the Prosecutor's Office who can resolve the issue. *See* Ex. C, p. 9.
- b. Promis/Gavel Information Not Available to Public Defender Immediately After Arrest – The information needed by the public defender is now contained in the CCIS software and JPAW, and the Public Defender has access to it. The Prosecutor's Office is also pursuing earlier case screening and PROMIS/GAVEL case activation so that the public defender can obtain the information through this source as well. *See* Ex. C, p. 9.

69. It should be noted that the sub-committee explored other issues related to the jail population, are set forth in Exhibit C, pages 9 through 10, but, after investigation, determined not to implement.

70. The following solutions have been fully investigated, implemented where appropriate and are being tracked:

- a. Rehabilitation Services-Focused Facility – The Defendants retained consultants to conduct a study to identify a target population profile for an alternative rehabilitative services-focused facility. The feasibility assessment process has begun and will be completed in November 2010. The deliverable for the project will include a written report detailing objectives of the initiative and a detailed analysis of the feasibility as it relates to (1) appropriate

population from within the jail; and (2) a cost benefit analysis, and (3) impact on the jail population and crowding in the short and long term. *See Ex. C, p. 1.*

- b. Earlier Case Screening – The Prosecutor’s Office is willing to conduct earlier case screening daily at the jail but it will require a Major Incident Report or detailed Probable Cause statement from the police departments. The Prosecutor’s Office has met with the Attorney General’s Office, State Police, and representatives from the other 21 counties to discuss receiving reports faster from the State Police. Another avenue being pursued to accomplish earlier case screening would be to allow the E-CDRs to be sent to the Prosecutor in real time. The Administrative Office of the Courts obtained a grant, which in part will be used to develop an E-CDR Web Service. The AOC is reporting a target completion date of December 2010. Implementation of the E-CDR will allow for the earliest case screening. *See Ex. C, p. 1.*
- c. Coordination of Arrest Sweeps – There is now a system in place for law enforcement to notify jail management when they can expect a significant increase in jail admissions. *See Ex. C, p. 3.*
- d. Inmates Refusing to Attend Court – In order to reduce the frequent occurrences of inmates not being transported to court for scheduled court appearances because they refuse, the current “order to produce” is now being interpreted to mean by force if necessary. When it is unreasonable or unadvisable to complete a physical cell extraction of the inmate, the Jail will contact the trial court judge to request an exception when it appears appropriate. A written policy in this regard is in place. *See Ex. C, p. 4.*
- e. CCIS Custody Codes – CCIS data, which is essential to jail population management, is now accurate. *See Ex. C, p. 4.*
- f. Access to Video Court – A room has been constructed in the admissions area and video conferencing equipment installed in admissions and is being utilized for first appearances. *See Ex. C, pp. 4-5.*
- g. Pending Drug Court Cases – A person has been dedicated to conducting substance abuse evaluations on in-custody cases pending Drug Court. This modification has resolved delays that previously existed in processing cases. *See Ex. C, p. 5.*
- h. Information Required by Jail on Court Slips – Court and Jail staff have worked together to develop and implement a standardized Superior Court Criminal Division court slip, which clearly specifies the “person custody status” and other required information for accurate CCIS updates. This allows

for accurate CCIS data and avoids delays in inmates being processed and/or brought to court. *See Ex. C, p. 5.*

- i. Missing Transports to Court – In order to avoid inmates missing transports to Court, a policy has been implemented whereby the Sheriff's Department will transport an inmate to a remote court upon request with a minimum of 24 hours notice. If transport is needed with less than 24 hours notice, the Court may call the Sheriff's office transport division to determine if they can accommodate the request, e.g. a transport is already being made to that court and the inmate can be added. If the Sheriff's Office cannot transport the inmate, the Court may request the arresting police department to transport the inmate. In instances when the transportation division transports the inmate on the wrong day, they will transport the inmate on the originally designated day even if it is the next business day. *See Ex. C, p. 5.*
- j. Court Slips Required By Jail For Returned Inmates – An existing policy has been reinforced whereby an inmate will not be transported from the court to the jail without a court slip and that the jail will not accept an inmate without a court slip. This ensures the accuracy of CCIS data. *See Ex. C, p. 6.*
- k. Prosecuting Inmates with a Detainer – Information that an inmate has an INS detainer is now available to the Prosecutor's Office via JPAW, thereby allowing the Prosecutor's Office to consider the case for faster processing or resolution. *See Ex. C, p. 6.*
- l. Inmates Ready for Court After List Prepared – Frequently inmates are processed and ready for court after the court list has been completed. There were inconsistent policies relating to whether or not jail staff could work with court staff to add inmates to the list. Adding inmates to the court list allows a release one day sooner, while not adding inmates to the list delays the release by at least one day. Inmates are now being added to the Court list at strategic and agreed upon times. *See Ex. C, p. 6.*
- m. Court Paperwork Sent To Jail Following First Appearance – A policy has been implemented requiring the court to send court paperwork to the jail throughout the day following first appearances. *See Ex. C, pp. 6-7.*
- n. Inmates Sentenced to CSLS with Detainers – Inmates with detainers who are sentenced to CSLS, a community sentence, may not be eligible for CSLS and remain in jail (due to detainer) until their eligibility is determined. This resulted in delays in the transfer on detainer for several days. To avoid this delay, a policy has been implemented whereby inmates sentenced to CSLS with a detainer are now screened by jail staff for eligibility the same day to avoid this delay. *See Ex. C, p. 7.*

- o. Additional Warrants/Charges Identified For Inmates Following First Appearance - Practices have been modified to ensure that records are run for all inmates scheduled to appear in video court for first appearance before the inmate appears. This enables the Court to resolve all outstanding warrants at the first appearance and not delay the release of the inmate. *See Ex. C, p. 7.*
- p. Warrants/Detainers Identified For Inmates Processed For Release - Inmates who have been in custody for periods of time are frequently being processed for release during which time it is determined that there is an outstanding warrant. Often times, the warrant is issued due to a failure to appear while the inmate was in CCCF custody. To resolve this problem, the admissions department now sends a list of inmates with known release dates 1 week prior to their release to the Sheriff's Department, who then runs the records to identify any new outstanding warrants so that they can be resolved prior to the release date. *See Ex. C, p. 7.*

VI. DEFENDANTS AGREE TO REMEDY CERTAIN ENVIRONMENTAL HAZARDS.

71. 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. *See Ex. D.* 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.

72. 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. *See December 7, 2007 Urban Engineer Supplemental Letter Report, Ex. E.*

73. Urban also found elevated CO2 levels, and rodent and insect infestation.

74. 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.

75. On September 29, 2010, Urban conducted its follow-up inspection and issued a written report dated November 10, 2010. *See* Ex. F.

76. Urban Engineers again found elevated CO2 levels, and rodent and insect infestation.

77. With respect to the heightened CO2 levels, Urban opined that the levels had not improved since 2007, but instead had worsened and noted that the cause may be from HVAC balancing issues. *See* Ex. F, p. 1. High CO2 readings indicate that the building has significant airflow issues, and a balancing report is the first step in addressing these issues.

78. Urban recommends that a balancing report be prepared. A balancing report is an important document for establishing a baseline and for proper operation and maintenance of the HVAC system.

79. Moreover, Urban observed some malfunctioning HVAC equipment at the Jail. The balancing report will inventory the HVAC equipment and provide a thorough review of their functionality.

80. The Defendants have agreed to retain a company for the purpose of obtaining a balancing report. The County must first obtain three competitive quotes from contractors for this purpose. As of the date of this Consent Decree, the County received a bid from Fisher Balancing Co. (\$28,000) and Tab Systems (\$24,000) and is awaiting the third quote which is expected in the immediate future. The County will retain one of these three companies to perform the balancing report, which is anticipated to be prepared by March 2011. The Defendants agree to make any necessary repairs to the HVAC system. Following the completion

of the recommended repairs, which Defendants have agreed to complete not later than June of 2011, Urban will conduct another study of the elevated CO2 levels.

81. Urban also identified a continued insect and rodent infestation. *See* Ex. F.

82. In particular, Urban stated that vector issues remain in both the dry storage area and kitchen, and the fruit fly infestation worsened. Although there are currently two extermination contracts in place to control the issue (one through the County and one through Aramark, the food service provider), the services currently being provided are not effective due to the cleanliness of the kitchen staff which is comprised primarily of inmates.

83. In an effort to remedy the rodent and insect problem, the Defendants have agreed to follow the following rodent control program:

- a. Sanitation: Defendants agree to implement policies for the elimination of unwanted or unused equipment and materials from the establishment, proper storage of food waste and refuse, and keeping packaged food off the floor and away from the walls.
- b. Mouse- and rat-proofing: Doors need to be tight-fitting and openings around pipes, wires, etc. need to be effectively sealed.
- c. Trapping: Snap traps and cage traps are effective in eliminating mice when properly used. Defendants agree to use snap traps and cage traps.

84. This program is consistent with an existing policy, Department of Corrections General Order No. 162, a copy of which is attached hereto as Exhibit G. The Defendants have agreed that they will continue to comply with this General Order and will ensure that the kitchen staff is closely monitored to ensure compliance with this General Order.

VII. FUTURE COURT HEARINGS

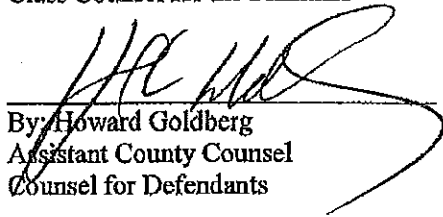
85. This Third Consent Decree is not intended to be a final resolution of this litigation and, accordingly, the parties agree that this matter should be set down for a status conference

with the Court no later than June ___, 2011. At that time, the parties will update the Court on completion of the terms set forth in this Third Consent Decree, as well as the parties' intent to enter into a Final Consent Decree.

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



By: Nicole M. Acchione, Esq.
Class Counsel for the Plaintiffs



By: Howard Goldberg
Assistant County Counsel
Counsel for Defendants