**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF DELAWARE**

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| **SAUNDRA M. FLOYD; CANDYSS C. WHITE; STEVEN R. FLOYD, JR.; CHYVANTE E. FLOYD; RACHEL ANN POWELL as Personal Representative of the Estate of LIEUTENANT STEVEN R. FLOYD, SR.; CORRECTIONAL OFFICER WINSLOW H. SMITH; CORRECTIONAL OFFICER JOSHUA WILKINSON; CORPORAL JUSTIN TUXWARD; CORPORAL MATTHEW MCCALL; and CORPORAL OWEN HAMMOND,** | : | |
| **Plaintiffs,** | : | **C.A.No. 17-_____** |
| **v.** | : | **Jury Trial Demanded** |
| **JACK MARKELL, individually; RUTH ANN MINNER, individually; STANLEY W. TAYLOR, JR., individually; THE HONORABLE CARL C. DANBURG, individually; ROBERT COUPE, individually; ANN VISALLI, individually; BRIAN MAXWELL, individually; PERRY PHELPS, in his official capacity; MICHAEL S. JACKSON, in his official capacity; and DEPARTMENT OF CORRECTION, STATE OF DELAWARE,** | : | |
| **Defendants.** | : | |

**COMPLAINT**

1. This is a civil action for compensatory and punitive damages brought by the Estate and survivors of a deceased Correctional Officer as well as five fellow Correctional Officers who survived torture, death threats and beatings in the inmate uprising (the "Uprising") in the Delaware prison system on February 1 and 2, 2017, which was proximately caused by the actions and policies of the individual defendants, in violation of the plaintiffs' rights to substantive due

process under the Fourteenth Amendment of the U.S. Constitution.

## I. JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), 28 U.S.C. §§ 2201 and 2202, and the Fourteenth Amendment to the U.S. Constitution. The cause of action arises under 42 U.S.C. § 1983. The claim arose in this judicial district.

## II. THE PARTIES

### A. Plaintiffs

3. Plaintiff Saundra M. Floyd is the widow of Lieutenant Steven R. Floyd, Sr. They are both citizens of the United States and residents of Kent County, Delaware.

4. Lieutenant Steven R. Floyd, Sr. was born in Lewes, Delaware in 1969. He was raised in Millsboro and attended Sussex Central High School. After graduation, he entered the U.S. Army, rose to the rank of Sergeant First Class, served as an Armor Tank Crewman in the Tank Corps and was a veteran of Operation Desert Storm where he served with distinction in the operation of his tank in battle.

5. A 16 year employee, he joined the defendant Department of Correction, State of Delaware ("DOC") in May 2000, and was always a fair and firm Correctional Officer. He spent his entire career at the Delaware Correctional Center ("DCC"), later renamed Vaughn Correctional Center (for clarity normally referred to as "DCC"), where he eventually was promoted to Sergeant. In 2016 he received the Warden's Award for his outstanding performance working with staff members and the public. Following the tragic events at the center of this case, he was posthumously awarded the Medal of Valor and promoted to Lieutenant.

6. Lt. Floyd was involved in the community providing donations for back to school and

sports programs, organizing community unity events, and many programs that supported the homeless and veterans. He also supported diabetes, breast cancer and other life threatening disease awareness through education and fund-raising.

7. He married Saundra M. Floyd in 1988. They have three children, Candyss C. White, Steven R. Floyd, Jr., and Chyvante E. Floyd, and two grandsons.

8. Plaintiff Candyss C. White, the oldest daughter of Lt. Floyd, is a citizen of the United States who presently resides with her serviceman husband on an American Military Base in Germany. She is 31 years old, married and has one child. She is employed as a finance specialist and has a degree in finance.

9. Lt. Floyd always stood *in loco parentis* to her and was the only father she ever knew. Prior to her marriage, her surname was Floyd. Throughout her childhood she was raised by and lived with Lt. Floyd and he provided her with both financial and emotional support. Her relationship with her father was extremely close and no different than his relationship with his two other children. He continued to provide her with emotional and financial support throughout his life. This included providing advice and support related to her career and family decisions. Her child was Lt. Floyd's first grandchild.

10. Plaintiff Steven R. Floyd, Jr., Lt. Floyd's namesake and middle child, is a citizen of the United States and resides in Virginia. He is 29 years old and has one child. He is employed as a counselor and has a degree in education.

11. Lt. Floyd provided emotional and financial support to his son while he was growing up. Steven was extremely close with his father, and even after he no longer lived with his father and was no longer financially dependent upon him, his father continued to provide him advice and support related to his career and family decisions.

12. Plaintiff Chyvante E. Floyd, the youngest daughter of Lt. Floyd, is a citizen of the United States and resides in Delaware. She is 20 years old and is presently enrolled as a student at Delaware State University majoring in sociology.

13. Throughout her childhood she lived with Lt. Floyd and he provided her with both financial and emotional support while she was growing up. As a university student, Lt. Floyd continued to provide emotional and financial support to her. As with her sister Candyss and brother Steven, she had an extremely close relationship with her father.

14. Plaintiffs Saundra M. Floyd, Candyss C. White, Steven R. Floyd, Jr., and Chyvante E. Floyd all bring this § 1983 wrongful death action.

15. Plaintiff Rachel Ann Powell is the executrix of the Estate of Lieutenant Steven R. Floyd, Sr., appointed under his Last Will and Testament dated November 16, 1990, and brings this §1983 survival action on behalf of the Estate for the injuries suffered by Lt. Floyd prior to his death. She is the mother of plaintiff Saundra M. Floyd.

16. Plaintiff Correctional Officer Winslow H. Smith is a citizen of the United States and resides in Delaware with his wife and three children. He was born in Wilmington in 1981. He grew up in Smyrna and went to Polytech High School in Woodside. He later attended Mansfield University. After college Officer Smith worked with children as a lifeguard at the Dover YMCA before being hired by the DOC in 2001 as a Correctional Officer at DCC. In May 2004, he voluntarily left the DOC and worked various jobs. He returned to the DOC and DCC in 2008.

17. Plaintiff Correctional Officer Joshua Wilkinson is a citizen of the United States and resides in Delaware. He was born in 1986. He attended McKean high school and presently is taking college classes. He worked in security and later as an ambulance driver before being hired by the DOC in the fall of 2016 and began working full time at DCC in January 2017 after

completing the Academy.

18. Plaintiff Corporal Justin Tuxward is a citizen of the United States, a resident of Delaware, married with two children. He was born in 1982 in Hartly and grew up on his family's farm. A graduate of Caesar Rodney High School, he worked as a small engine mechanic, but then followed in the footsteps of other family members and became a Correctional Officer about eight years ago and eventually a Stationary Fireman 1 at DCC.

19. Plaintiff Corporal Matthew McCall is a citizen of the United States, a resident of Delaware, and is married with one daughter. He was born in Milford, Delaware in 1985. He grew up in Felton, attended local public schools and went to Polytech High School in Woodside. Initially thinking he would pursue a career in law enforcement, Officer McCall held a variety of jobs after high school before obtaining a license to become a boiler mechanic and eventually joining the Academy. He became a Correctional Officer where he spent over ten years with the DOC at DCC as a mechanic where he and his fellow mechanics were responsible for operating 14 steam boilers and seven hot water heaters.

20. Plaintiff Corporal Owen Hammond is a citizen of the United States and a resident of Delaware. Born in Newark and raised in Delaware he graduated from Dover High School in 2012, where he met his wife who he later married. Inspired by his stepfather, he joined Dover Fire Department and the Delaware National Guard and later graduated from the Academy in 2015 and became a Correctional Officer and Stationary Fireman at DCC.

**B. Defendants**

21. Defendant Jack Markell ("Markell") formerly was the duly elected Governor of the State of Delaware who assumed office in January, 2009 and relinquished that office in January, 2017 to current Governor John Carney. The Governor is vested with the supreme Executive

powers of the State and the duty to faithfully execute all its laws. Defendant Markell is sued only in his individual capacity.

22. Defendant Ruth Ann Minner ("Minner") formerly was the duly elected Governor of the State of Delaware who assumed office in January, 2001 and relinquished that office in January, 2009 to defendant Markell. Defendant Minner is sued only in her individual capacity.

23. Defendant Stanley W. Taylor formerly was the Commissioner of the DOC. He served in that capacity from approximately 1995 until his retirement in 2007. The Commissioner of the DOC is a cabinet level position which serves at the pleasure of the Governor. The Commissioner is responsible for the administration and operation of the DOC, including maintaining prison facilities to allow for their effective and efficient operation, providing for the allocation of security personnel within prison facilities, making and entering into contracts and agreements and preparing and implementing the orders and policies of the Governor to the extent they involve the DOC. Defendant Taylor is sued only in his individual capacity.

24. Defendant the Honorable Carl C. Danberg formerly was the Commissioner of the DOC. He succeeded defendant Taylor and served in that capacity from approximately 2007 until 2013. Prior to his promotion to Commissioner, he served as Deputy Principal Assistant under defendant Taylor, among other roles. He is sued only in his individual capacity.

25. Defendant Robert Coupe formerly was the Commissioner of the DOC. He succeeded defendant Danberg and served in that capacity from approximately 2013 until January 2017. He is sued only in his individual capacity.

26. Defendant Ann Visalli formerly was the Director of the Office of Management and Budget of the State of Delaware ("OMB") from January 2009 until approximately April 2016. The Director of the OMB is a cabinet level position which serves at the pleasure of the Governor.

The Director is responsible for preparing and implementing the Governor's policy agenda and orders, managing the state's financial, human and capital resources, and any and all other duties, powers and functions assigned by the Governor. Defendant Visalli is sued only in her individual capacity.

27. Defendant Brian Maxwell formerly was the acting Director of the OMB from April 2016 until January 2017. For the three years prior to his becoming Acting Director, he served as the Deputy Director under defendant Visalli. He is sued only in his individual capacity.

28. Defendant Perry Phelps is the current Commissioner of the DOC. He succeeded defendant Coupe. He is sued in his official capacity only and is joined in this action for purposes of certain injunctive relief and collecting attorneys' fees and costs.

29. Defendant Michael S. Jackson is the current Director of the OMB. He succeeded defendant Maxwell. He is sued in his official capacity only and is joined in this action for the purposes of certain injunctive relief and collecting attorneys' fees and costs.

30. Defendant DOC is an agency of the State of Delaware, which is only joined in this action for purposes of certain injunctive relief and collecting attorneys' fees and costs.

## III. FACTS GIVING RISE TO THE ACTION

### A. Correctional Officers in DOC Prisons

31. Since 2002, the Correctional Officers Association of Delaware ("COAD") has been the exclusive bargaining representative for all correctional officers up to and including Sergeants and also for other positions which require basic correctional officer training plus a primary skill.

32. Each correctional officer plaintiff was a member of this bargaining unit at the time of the February 1-2, 2017 inmate Uprising.

33. Correctional officers have one of the most dangerous jobs in the State of Delaware.

34. They are tasked with the responsibility of keeping the public safe from extremely violent inmates, those who society has deemed too dangerous to be free.

### 1. The Contractual Obligation to Provide "Sufficient Staffing" for a "Safe and Secure" Work Environment

35. In recognition of these dangers, the State has voluntarily and contractually bound itself to provide a safe, secure and healthy work environment for all correctional officers working in its prison system and in all DOC facilities.

36. Since 2002, the State has done this by weighing the costs and benefits and voluntarily entering into Union contracts with COAD.

37. The current COAD Union contract with the State began on July 1, 2015 and runs until June 30, 2018.

38. It was signed by defendant Coupe as the then Commissioner of the DOC and defendant Visalli as the then Director of the OMB.

39. Among other things, its written terms specifically require that the State "provide *sufficient staffing* to ensure a *safe and secure work environment* appropriate for penal institutions at all work locations any time prisoners are supervised." (emphasis added).

40. Other provisions state that "the State agrees to provide a safe and healthy work environment for all employees."

41. Other provisions obligate the State to provide training to all of its employees, to enable them to function safely and securely in the prisons.

42. On information and belief, all prior Union contracts dating back to the formation of COAD in 2002, and previous contracts with COAD's predecessor, contained similar provisions requiring the State to provide a safe, secure and healthy work environment with sufficient

staffing and training for all correctional officers working in its prison system and all DOC facilities.

**2. The Daily Responsibilities of a Correctional Officer in the DOC**

43. Running a prison is like running a city - a city in which most of the residents are criminals. Like a city, a prison is alive with activity. In a prison that offers inmates opportunities for personal reform, inmates are moving about going to jobs, to classes, to counseling, to religious services, to meals, to medical services, to the library, to see their lawyers, to be taken to court, and to exercise.

44. Throughout the day, correctional officers must guide, regulate and control participation in these activities. In the process, dozens of decisions must be made rapidly. Officers are dealing with many people who have a history of sudden outbursts of temper, low levels of understanding of personal relations, little respect for authority, and often, mental illnesses about which officers are not allowed information. The average inmate has not functioned well in a normal environment, so they have been placed where they can be controlled. Officers need to be alert and aware of changes in an inmate's mood that may signal a reaction to or withdrawal from medications. They have to do so without knowing what medicine any inmate is taking. They must assess which prisoners are building up to an outburst of violence or becoming uncooperative or shutting down from an acute stage of a mental illness. They have to guess at the possibility that one may have taken smuggled in illegal drugs and guess what will happen when the drugs wear off. They have to worry about the safety of teachers, counselors, lawyers, investigators, medical personnel, and ministers who may interact with the prisoners during the day. They have to calculate whether they can handle inmate on inmate violence or intimidation on a regular basis. They need to be alert to inmates who fake illnesses and to try to

respond properly to the ones who are truly sick.

45. Prisoners are unpredictable as a rule, and officers must follow strict orders about avoiding situations where their normal reaction would make them vulnerable to attack.

46. Classification of inmates has not historically been based on the type of crime committed, so murderers with life sentences may be mixed with non-violent offenders. This increases the need for correctional officers to be able to manage touchy situations. Criminals who have testified against each other may be thrown into the mix.

47. Dealing with this combination of personalities and problems is not easy work. The officers do not carry guns. Their authority comes from what the uniform stands for and how they use their head.

### 3. How Delaware Prisons Were Before Governor Minner

48. There are certain fundamental tenets or pillars of prison operation which the DOC used to follow and abide by.

49. DOC prisons used to be highly secure places.

50. DOC prisons used to be well staffed, with sufficient numbers of correctional officers, and other employees, to allow for their safe and secure operation.

51. DOC prisons used to be staffed by correctional officers who were given sufficient equipment to allow them to safely and securely perform their duties.

52. DOC prisons used to be staffed by correctional officers who received sufficient training to allow them to safely and securely perform their duties.

53. DOC prisons used to be places where the safety and security of correctional officers, staff, other employees and inmates were paramount.

54. DOC prisons used to be places where any temporary shortage of staff jeopardizing

the safe and secure operation of the prisons was compensated for and protected against by an increase in other non-staff dependent security measures.

55. DOC prisons used to be places where inmates were closely supervised.

56. DOC prisons used to be places where inmates' freedom of movement was restricted.

57. DOC prisons used to be well managed by qualified supervisory officials.

58. Although prisons can be dangerous places, they are considered to be "manageably dangerous."

59. Issues may arise in a "manageably dangerous" prison, but if the system is functioning properly, those issues are addressed and resolved.

60. Small problems do not morph into large problems unless one of the essential pillars outlined above breaks down or is not functioning.

61. Only then does a prison go from being a "manageably dangerous" place to being an "unmanageably dangerous" place.

### B. Governor Minner's Administration Begins in 2001

62. Beginning during the Minner Administration, defendants Minner, Taylor and Danberg's (the "Minner defendants") actions made the DOC prisons in general, and the then named maximum security DCC in particular, unmanageably dangerous places.

63. The essential pillars of any properly functioning prison system, as DOC once was, began to break down.

#### 1. Severe Understaffing Was Hidden From the Public and the Legislature

64. For example, despite operational needs and obligations under the COAD Union contract, the Minner defendants made a policy decision not to fill vacant correctional officer positions within the DOC.

65. This policy caused severe understaffing in the DOC prisons, including DCC.

66. In the fall of 2001, the Human Resources Director of the DOC testified that the DOC had "literally hundreds of vacancies" in essential security positions in the prisons.

67. Around this same time, in an effort to hide the extent of the severe understaffing in DOC facilities, defendant Minner ordered the removal of any vacant job positions at DOC.

68. Defendants Taylor and Danburg implemented and participated in implementing defendant Minner's order.

69. These cuts did not eliminate DOC's need for correctional officers to fill these positions, but only hid the true extent of the understaffing from the general public and from the Delaware General Assembly.

70. As a result, the staffing numbers - including the allocated staffing levels - did not even come close to showing how severely understaffed DOC prisons were.

71. By eliminating these positions, the Minner defendants created the appearance that DOC was only short a certain number of officers, while in reality the DOC was greatly and severely understaffed by an even larger number of officers.

72. In doing so, the Minner defendants sought to distort the actual numbers so they did not appear as bad for public and legislative consumption.

73. Yet the Minner defendants never addressed the DOC's vital actual need that these positions had to be fully staffed and filled.

74. Then after the elimination of these positions, the understaffing problem only worsened as time went by since correctional officers continued to leave the DOC faster than replacements could be hired and trained for the acknowledged positions.

75. For example, in 2003, 179 officers left the DOC while only 152 were hired to replace

them.

76. Similarly, in the first several months of 2004, 79 officers also left while only 37 were hired.

77. Numerous staffing and security problems were caused by these cuts and the exodus of correctional officers, including, but not limited to the following:

- DOC instituted a policy of "freezing" or forced involuntary overtime whereby correctional officers were forced to stay on at the end of their shifts, and to work another shift, because there was no other officer to replace them.
- In May 2004, the DOC was over an entire shift short which resulted in a mass amount of involuntary overtime or freezing of officers.
- several buildings at DCC were closed because of the lack of staff.

78. Any correctional officer who refused to be "frozen" and work the forced, involuntary, mandatory overtime, was charged with abandonment of post or other disciplinary measures which resulted either in suspension or termination of employment.

79. On August 5, 2004, the DOC even filed a lawsuit in the Delaware Court of Chancery against COAD and its union officials, seeking to force the union members to volunteer to work voluntary overtime.

80. The lawsuit was ultimately unsuccessful.

**a. Security and Understaffing are Linked**

81. Security and understaffing go hand-in-hand.

82. The more understaffed a facility is, the higher the risk of harm to the correctional officers, the inmates and, ultimately, the public.

83. Correctional officers burn out faster and take more sick leave due to forced overtime caused by severe understaffing.

84. This then increases the need for additional overtime and the cycle repeats itself.

85. Chronic fatigue due to overwork also leads to mistakes in judgment.

86. The work load on officers increases as the prison population grows or as the number of correctional officers decreases.

87. More stress plus more work equals mistakes.

88. Mistakes in prisons can be deadly.

**b. Because of Understaffing Defendants Adopted Numerous Dangerous Policies**

89. In this era, due to the severe levels of understaffing, the DOC and the Minner defendants enacted policies, practices or customs, which compromised the security of its institutions, including the maximum security DCC.

90. For example, the DOC had a policy of not searching inmates, including violent ones, who were being transported to court for hearings.

91. As the then president of COAD publicly stated at the time, this is because we "just don't have the staff."

92. Defendant Taylor also admitted in 2004 that inmates regularly hide weapons on their bodies and that the DOC is unable to stop them.

93. Other dangerous and harmful policies, practices or customs enacted by the Minner defendants in this time period included: not searching prisoners resident within the prisons for contraband, such as weapons, and propping open locked security doors with pieces of wood, so that they no longer functioned as security doors.

**2. Essential Officer Training Also Was Eliminated**

94. The Minner defendants also enacted certain policies, practices or customs which eliminated necessary training of correctional officers.

95. For example, no training was ever given to correctional officers by DOC on how to transport inmates to or from prison.

96. This lack of training in various areas led to numerous high profile major security breakdowns, including:

- December 2003 - a convicted felon escaped from DOC custody while en route to court, triggering a massive three week manhunt.
- April 2004 - a defendant during a rape trial slit his own neck in open court with a razor blade during the trial.
- April 2004 - a prisoner at DCC was attacked and severely injured by another inmate with a razor.
- April 2004 - a convicted felon swallowed a handcuff key while on his way to a court hearing.
- May 2004 - that same felon again swallowed another handcuff key, this time while on his way to the hospital.
- There were numerous additional incidents which were never publicly revealed.

97. Other officer training also was eliminated.

**3. A Spring 2004 Outside Expert Report Then Condemned Defendants**

98. In the spring of 2004 an outside DOC security expert and consultant publicly released a report harshly criticizing the DOC and squarely placing responsibility upon the Minner defendants and the DOC administration for numerous security lapses. The expert concluded that "somebody is going to be seriously injured or killed" unless things change.

99. This same DOC outside expert harshly criticized the Minner defendants and the DOC administration for their lackadaisical approach to prison safety.

100. This DOC outside expert also recommended that all inmates being transported needed to be: (1) identified by photo identification; (2) strip searched; (3) body searched; (4)

placed in full restraints; (5) dressed in court clothing and shower shoes; and (6) not be allowed to carry any personal property except court papers.

**4. Widespread Media Attention Also Unsuccessfully Demanded Changes**

101. In the spring and summer of 2004 there also was a flood of newspaper articles and media attention about the many dire safety issues plaguing the DOC, including severe understaffing, major security lapses caused by the understaffing, the lack of training, and other problems.

102. Because of this media attention, through internal reports and by other means, the Minner defendants had actual knowledge of all of the many dangerous understaffing and safety issues plaguing the DOC.

**5. COAD Also Sounded The Alarm And Warned of Rape and Murder**

103. One cause of this flood of media and public attention was COAD's repeated blowing of the whistle and grave warnings to the media, the public and to the Minner defendants, raising concerns about these critical problems and its many calls for needed reform.

104. COAD regularly sounded the alarm but it was ignored by the Minner defendants and the DOC.

105. The problems in the DOC prisons reached such crisis proportions that COAD took out numerous billboards throughout the state to call attention to the severe understaffing problems, including:

Delaware
The First State
Unable to Staff Its Own Prisons

Delaware Corrections
Doing More With Less
More Inmates Less Staff

Delaware Corrections
Where Minimum Staffing...
Would be an Increase

Welcome to Sussex County
For Your Safety Obey the Law
We Cannot Staff Our Prisons

Delaware
It's Good to be the First
To Build Prisons Without Staff

106. Among other warnings, in October 2003, COAD publicly warned that "the severe levels of understaffing would inevitably lead to murder, injury or even rape" in the DOC.

107. In June 2004, COAD publicly revealed that the levels of severe understaffing in DOC prisons had reached "crisis proportions."

108. In this same time frame, COAD also publicly warned that "It's getting dangerous. It's coming to a head."

**6. Defendants' Misleading Responses**

109. The regular response of the Minner defendants to security incidents in 2004 was that "inmates do stupid things."

110. Defendant Taylor assured the public and stated in this same time frame that "our secure facilities are pretty secure."

111. The Minner defendants repeatedly reassured the public and the legislature that conditions in the DOC prisons were safe and secure for all involved.

**7. The Rape And Attempted Murder of an Employee Counselor At DCC Exposed the Falsehoods of the Minner Defendants**

112. On July 12, 2004, as presciently and repeatedly warned by COAD, the outside DOC expert and others, the severe levels of understaffing, forced overtime and the lack of proper

training caused a horrific and violent incident in the maximum security facility at DCC.

113. An inmate serving 660 years for rape, who was armed with an 8 inch shank and other forbidden contraband equipment, attacked, immobilized and took a female civilian counselor hostage for 6 ½ hours. During this time he repeatedly raped her, all before he was eventually shot and killed by a correctional officer on the Correctional Emergency Response Team ("CERT") crawling through the ceiling as the inmate fought to murder this innocent women with his shank.

114. The root cause of this incident was understaffing in the DCC which caused numerous security breakdowns that day.

115. These breakdowns included: security doors being left open instead of being locked and secured; security doors being propped open with pieces of wood instead of being locked and secured; a single untrained correctional officer being required to monitor electronic displays for an entire section of the building, a job intended for three correctional officers, not one; insufficient numbers of "rovers" being assigned to the building; lack of searches for weapons and other contraband; and other breakdowns.

116. The Minner defendants repeatedly and publicly lied and denied that the severe levels of dangerous understaffing had played any role whatsoever in the security breakdowns leading to the abduction, rape and attempted murder of this innocent woman.

117. Defendant Minner's official public response to this unprecedented security breakdown was "[i]n prisons, you almost expect this to happen."

### 8. The Highly Critical 2005 Executive Task Force Report Followed And Called For the Elimination of Severe Understaffing, and Identified the Misuse of Overtime and Inadequate Training

118. Because of the unprecedented security breakdown leading to the abduction, rape and

attempted murder of the prison counselor at DCC, an Executive Task Force was created by defendant Minner.

119. Its charge was to investigate the root causes of the problems at DCC and issue a Report allowing those problems to be identified and fixed in order to prevent such a horrific violent incident from ever occurring again.

120. The Executive Task Force was headed by two distinguished Delaware jurists: former Chancellor Grover C. Brown; and former Resident Superior Court Judge Vincent Bifferato Sr.

121. Following an exhaustive investigation, among other findings, the Executive Task Force Report:

- found that "the battle was lost" leading up to the July 12, 2004 incident because of severe staffing shortages and complacency.
- identified that the DOC's overtime expenditures jumped from $2 million in the recent past to $8 million in 2004.
- found that "excessive reliance upon overtime ... leads to numerous security breakdowns, as tired staff fall victim to complacency."
- urged that the DOC decrease reliance on overtime.
- found that the DOC policies and procedures, including standard operating procedures and post orders, are useless, and too outdated or too vague to be useful.
- found that the inmate at the center of the rape and attempted murder had managed to conceal an 8 inch shank, which had not been detected because shakedowns and searches were not being performed.
- identified that there was inadequate training and supervision, creating "great confusion" among the staff.

122. The Executive Task Force Report also concluded:

- the DOC's policies of "freezing" or "forced overtime" for correctional officers

present a "serious security risk" yet "[s]till the practice is routine." It creates a "dangerous environment" where "it is clear that tired, less alert personnel, manning a high security prison population during times of inmate movement, can be a recipe for disaster on any day." It urged that these problems must be eliminated.

- the severe levels of understaffing regularly put individual correctional officers into positions where they were being given duties it was impossible for them to perform alone.

- the training and policies of the DOC are abysmal. "In many cases, no uniform training/policy exists for specific critical functions." Such uniform training and policies are vital and must be corrected.

- "DCC also suffers from a negative culture" which raises the "larger question .. of leadership." It urged that the DCC "sorely need[s]" "[l]eadership that functions to create an environment that offers clear directions, limits lapses in judgment and develops a feeling of esprit de corps based on clarity of mission rather than anxiety."

123. Other conclusions of the Executive Task Force Report, specific to DCC, included:

- correctional officers are "the first line of security" within DCC and that line has "become dangerously thin."

- "The State must reduce the excessive amount of overtime that is currently being drawn upon to compensate for the shortage of security personnel available to staff needed security positions throughout DOC, and particularly at DCC."

- as of December 2004, DCC operated at a vacancy rate of 24%, meaning that of the authorized strength, 24% of the positions are vacant.

- "at present hiring and retention is not keeping pace with departures" and "[m]ore correctional personnel are leaving DOC than are being hired and retained."

- due to the conditions at DCC, the attrition rate within correctional officer positions is twice as high at DCC as it is in the entirety of all DOC correctional officer positions as a whole, 21% in the DOC as a whole compared to 40% at DCC. This contributes to the severity of the security problems at DCC.

- "After having worked eight hours through the night it is not possible for a correctional officer to be as alert as he/she should be ... This is not a good thing for a prison."

**9. Defendants Ignored the Repeated Understaffing, Overtime and Inadequate Training**

**Findings of the Report**

124. The Minner defendants had actual knowledge of, but ignored all of these key conclusions and recommendations of defendant Minner's own Executive Task Force and its two distinguished judicial officer investigators.

125. As a result, the situation in the DOC prisons in general, and DCC in particular, deteriorated even more.

126. For example, by November 2005, the DOC started every day approximately 400 correctional officers down.

127. By November 2005, defendants repeatedly refused to fill vacant positions that had been fully funded by the Delaware General Assembly.

128. Instead, defendants returned millions of dollars in unspent funds to the State's General Fund each year.

**C. Governor Markell's Administration Then Made It Even Worse Starting in 2009**.

129. Throughout the Markell Administration, defendants Markell, Danberg, Coupe, Visalli and Maxwell's (the "Markell defendants") actions continued to make and by themselves independently made the DOC prisons in general, and DCC in particular, unmanageably dangerous places.

130. The essential pillars of any properly functioning prison system, as DOC once was, continued to break down.

**1. Markell Continued The Severe Understaffing and Excessive Overtime Problem**

131. Severe understaffing and thus use of overtime continued and got worse.

132. Most of these vacant correctional officer positions were at DCC.

133. During Markell's administration, the overtime budget went from $13-14 million a

year to $23 million a year.

134. This was a result of a newly enacted policy decision by defendant Markell to rely upon even more overtime rather than to fill the critical shortfall of correctional officers.

135. This use of even more overtime directly contradicted the 2005 Executive Report by Chancellor Brown and Judge Bifferato, among others.

136. Defendants Danburg, Coupe, Visalli and Maxwell implemented and participated in implementing defendant Markell's policy.

137. Defendant Markell ordered that all the key findings of severe understaffing in the 2005 Executive Task Force Report were to be ignored in order to deceive the public and the legislature into thinking that the conditions in the DOC prisons in general, and DCC in particular, were safe and secure for all involved.

138. Defendants Danburg, Coupe, Visalli and Maxwell implemented and participated in implementing this order.

139. In 2009, overtime hours worked in the DOC were approximately 500,000. By 2015, that figure had risen to almost 800,000 overtime hours worked.

140. That is the equivalent of needing an additional 470 employees.

141. As of early 2017, almost 40% of the staffing at DCC was filled by correctional officers working overtime.

**a. Severe Problems Were Caused by These Policies**

142. While he was Commissioner, defendant Coupe admitted that working for an extended period of time without full staffing elevates security risks and decreases security.

143. He also admitted that there is an inverse correlation between staffing levels and risk in prisons.

144. He also admitted that the DOC operates at a substantial staff vacancy rate.

145. He also admitted that prison design, functioning equipment, and standard operating procedures are of limited help without a full complement of staff.

146. He also admitted that the DOC's maintenance of its prisons, including DCC, does not meet the industry standards set by the U.S. Department of Justice's National Institute of Corrections.

147. He also admitted that thinly deployed staff cannot respond quickly to security incidents and timely response to incidents is often the difference between a minor incident turning into a major incident.

**b. Violent Incidents Continued**

148. As defendant Coupe admitted would occur, violent incidents caused by lack of staff also continued.

149. For example, in 2010, an inmate carrying a homemade contraband knife stabbed one correctional officer and repeatedly punched another in the face. The incident was made worse by the fact that the correctional officers' radios did not work so their repeated calls for backup were not received by other correctional officers.

150. Other violent incidents occurred as well.

151. For example, in 2016, there was a significant rise in major incidents of violence at DCC.

152. These major incidents of violence continued, unabated, because there was not enough security staff to deal with, prevent and control them.

153. In the fall of 2016 alone, there were at least 25 assaults on prison employees.

**2. Markell Also Enacted a New Policy of Refusing To Fill Vacant Positions**

154. The Markell defendants also enacted an official new policy of not filling vacant DOC positions.

155. As part of this policy, defendant Markell ordered that at least 90 vacant DOC positions must go unfilled at all times.

156. Most of these vacant correctional officer positions were at the maximum security institution at DCC.

157. Defendant Markell ordered that his vacant positions policy must be obeyed, even when critical staffing and safety requirements necessitated that these positions be filled.

158. Defendant Markell ordered that his vacant positions policy must be obeyed, even when doing so guaranteed that correctional officers staffing the prisons would be severely injured, or killed, because there were not sufficient numbers of employees to safely staff the prisons.

159. Defendant Markell justified this as a money saving measure.

160. Defendants Visalli and Maxwell worked to implement and participated in implementing this policy.

161. For example, the President of COAD repeatedly met with defendant Visalli, defendant Maxwell and others and warned them that this policy was going to result in the death of correctional officers, specifically including those at DCC.

162. In response, these defendants repeatedly voiced an 'I don't care' attitude and said that they were willing to take these risks with the lives of correctional officers at DCC because the Markell defendants placed more importance on the short term public relations value of being able to say they saved money, than on saving the lives of correctional officers working with the State's most dangerous and violent inmates.

163. Defendants Danburg and Coupe also implemented and participated in implementing Markell's orders.

164. In response, the leadership of COAD repeatedly brought to the Markell defendants' attention the key understaffing, overtime and other findings of the 2005 Executive Task Force Report and pleaded with them that they follow the urgent recommendations it contained.

165. Despite COAD's pleadings, Defendant Markell ordered that all the key understaffing, overtime and other findings of the 2005 Executive Task Force Report were to be ignored in order to deceive the public and the legislature into thinking that the conditions in the DOC prisons were safe and secure for all involved.

166. Defendants Danburg, Coupe, Visalli and Maxwell implemented and participated in implementing this order.

**3. Essential Security Features Also Were Eliminated at DCC**

167. Because of the severe staff shortage caused by the Markell defendants' policies, the DOC halted the necessary and vital practice of specialized security teams performing random security sweeps searching for weapons and contraband at DCC.

168. The warden at DCC has repeatedly admitted that the security team sweeps were eliminated due to low staffing.

169. The warden at DCC's hands were tied by the orders from his superiors, including defendants Markell, Danburg and Coupe.

170. In late 2016 and early 2017, there were numerous reports up the chain of command from correctional officers and maintenance staff at DCC that fixtures and other pieces of equipment at DCC had been tampered with and numerous pieces of metal removed from them.

171. Doing this is a well known means in prison to make contraband homemade knives,

shivs and other dangerous weapons.

172. However, because of the severe levels of understaffing, no searches or shakedowns were conducted to look for these contraband weapons which were known to exist.

173. Because of the lack of staff, it also was no longer possible to identify inmates who posed security threats to the staff and to others and then to move them to higher-security housing units.

174. Instead, they were not identified and instead were left in lower security housing units at DCC.

175. As a direct result, as noted above, in 2016 forward, there was a significant rise in major incidents of violence at DCC. These major incidents of violence continued, unabated, because there was not enough security staff to deal with, prevent and control them.

176. There were numerous instances of "Code Threes," or major disturbances, at DCC in 2016 and into 2017.

177. Also in 2016, defendants enacted a new policy and released approximately 100 of the most dangerous violent offenders back into the general prison population at DCC, a majority of whom were placed in Building C.

178. But, due to the unsafe levels of understaffing, defendants did not correspondingly increase the security staff to monitor these new transfers into Building C.

179. For the same reasons, nor did defendants resume the necessary random security sweeps to search for, detect and remove contraband weapons from Building C which now housed a much larger number of the most dangerous violent offenders in the prison.

180. In late 2016 into early 2017, the prisoners in Building C at DCC then conducted numerous dry runs in which they caused mass disturbances in order to gage and test the security

response to their actions.

181. This is a well known tactic in prisons by prisoners to test the security response and to find weak points and vulnerabilities in the system.

182. These also are well known red flags occurring of looming problems known to correctional officers, as the essential pillars of a properly functioning prison system broke down.

183. Numerous correctional officers on staff at DCC then filed reports about all of these red flag incidents, and requested: additional staffing to deal with them, security sweeps to detect contraband and weapons, that other security measures be taken, and that the most violent or dangerous ringleaders be separated and transferred to other buildings in order to nip the problem in the bud.

184. However, due to lack of staff, defendant Markell's policies, as implemented by the Markell defendants, and the other actions set forth above, no remedial action was taken, no searches for contraband were conducted, the ringleaders were left in Building C and no additional security staffing was brought in to deal with the rapidly deteriorating life threatening situation in Building C.

**4. COAD'S Final Warnings**

185. Sensing the imminent danger and grave threats to its members lives, COAD sounded the alarm.

186. COAD sounded the alarm directly to each of the Markell defendants, as well as to the general public.

187. The Markell defendants were aware of these grave warnings but ignored them.

188. Additionally, in the summer 2016, the president of COAD publicly warned that the situation in the DOC in general and DCC in particular was critical and that "sometime between

January and July [of 2017], the wheels are going to come off."

189. The Markell defendants were aware of this grave warning but ignored it.

190. In late December 2016, the president of COAD again warned that "assaults are dramatically increasing. We have been virtually ignored for the past eight years. This cannot continue. Someone is bound to be seriously injured - or even worse."

191. The Markell defendants were aware of this grave warning but ignored it.

### D. The February Prison Uprising And Riot

#### 1. The Dangerous Conditions in Building C

192. Because of the severe levels of understaffing, forced overtime, lack of proper training, and the plethora of problems flowing therefrom, since at least 2004, the most dangerous place to work within DOC was at DCC.

193. For the reasons set forth above, beginning in 2016 and forward, the most dangerous place to work within DCC was Building C.

194. Indeed, in an age when surveillance cameras are everywhere in the general public, there were no surveillance cameras whatsoever anywhere in Building C to monitor inmate activity, to detect an inmate uprising or riot, to protect correctional officers who were tasked to work within the building, or to aid a rescue team trying to free hostages.

195. Building C was historically a medium to high security level unit for transitioning prisoners to higher or lower security levels.

196. However, dangers there were dramatically increased by the permanent addition of the earlier mentioned numerous dangerous violent offenders in the fall of 2016, without correspondingly increasing the security staff or other security measures and also by the elimination of searches for weapons and other contraband.

197. It was widely discussed among the employees, staff and management at DCC that Building C was unmanageably dangerous and had become a powder keg that was about to explode.

198. It was widely discussed that it was not a matter of "if" there would be an explosion, but it was a matter of "when" the explosion would occur.

199. It was called "dangerous Building C" among the staff and employees.

200. Management at DCC, including the Warden and Deputy Warden, were aware of this imminent danger and relayed this information to defendant Coupe who, on information and belief, relayed it to defendant Markell.

201. But due to the Markell defendants' policies, these serious problems and risks continued to be ignored.

**2. The Attack and Uprising Begins**

202. On February 1, 2017, for the morning shift, then Sgt. Floyd, Officer Smith and Officer Wilkinson were assigned to and working in different parts and tiers of Building C.

203. Officers Hammond, McCall and Tuxward were working on the boilers in the basement of Building C.

204. At approximately 10:20 a.m., inmates simultaneously attacked Sgt. Floyd, Officer Smith and Officer Wilkinson.

**a. Officer Smith**

205. Officer Smith was brutally and physically attacked by a large group of inmates.

206. There were, at a minimum, five attackers.

207. These inmates were wearing contraband masks.

208. These inmates were armed with several types of contraband weapons.

209. Although Officer Smith stayed conscious as he was beaten by these inmates using their weapons, fists and feet, he was knocked to his knees and eventually to the ground.

210. He was struck on the back of his head by a blunt contraband weapon.

211. Officer Smith bravely fought back, grabbing the legs of one of the inmates attacking him but was eventually overwhelmed by their sheer numbers and brutality.

212. As he was fighting back and trying to fend off his attackers, Officer Smith saw both Sgt. Floyd and Officer Wilkinson covered in blood and also being attacked by inmates.

213. As he was fighting back, one of his attackers grabbed one end of Officer Smith's handcuffs and cuffed his right arm.

214. As this occurred, Officer Smith saw other inmates assaulting a female civilian counselor, Patricia May, in her office, grabbing her by her hair, shoving her against the wall with one's hands approaching her throat.

215. Officer Smith valiantly struggled to get to his feet to go to her aid and fought his way into the office, but he was again knocked to the ground by his attackers, dragged out of the office and viciously beaten.

216. As this occurred, his attackers were able to handcuff his other hand, so both of his hands were now handcuffed in front of his body.

217. In addition to other contraband weapons, Officer Smith saw at least one contraband homemade knife, also known as a shank or shiv, as he was being attacked.

218. As he was being attacked, several of the inmate attackers proceeded to rotate back and forth between Officer Smith, Sgt. Floyd and Officer Wilkinson, taking turns brutally attacking all three of them.

219. Officer Smith was brutally, violently and repeatedly tortured and beaten by the

inmate attackers.

220. He was beaten over every part of his body by them.

221. The inmate attackers then attempted to throw Officer Smith into a cell on B tier, but then instead ultimately threw him into a small maintenance closet.

222. By this time, Officer Wilkinson was already in the closet with both of his hands cuffed behind his back.

223. The inmates removed Officer Smith's keys and equipment.

224. The inmates then locked the door.

**b. Officer Wilkinson**

225. Simultaneously, Officer Wilkinson was rushed and then brutally and physically attacked by a large group of inmates.

226. There were a total of approximately 10-15 inmate attackers.

227. These inmates were wearing contraband masks.

228. These inmates were armed with several types of contraband weapons.

229. Although he bravely fought to stay on his feet, he was eventually tackled and brought to the ground by the inmates.

230. Officer Wilkinson was struck on the side of his face by a blunt contraband weapon.

231. Officer Wilkinson was brutally, violently and repeatedly tortured and beaten by the inmate attackers.

232. He was beaten over every part of his body by them.

233. He was eventually overwhelmed by their brutal attacks and was handcuffed by his attackers, with his arms behind his back.

234. Although he could not see Sgt. Floyd or Officer Smith as he was being attacked, he

heard Sgt. Floyd yell "Code One," which indicates an attack on an officer.

235. Since he knew Sgt. Floyd was not in his line of sight, Officer Wilkinson realized that at least one other of his fellow correctional officers was being attacked.

236. The inmates then stripped him of his equipment and keys and locked him in a maintenance closet.

237. A few minutes later, Officer Smith was similarly thrown into the same closet, handcuffed, by the inmates.

**c. Sgt. Floyd**

238. Simultaneously, a large group of inmates on Tier B staged a fight.

239. Sgt. Floyd immediately called in the fight over the radio.

240. He then approached and attempted to break up the fight.

241. As he did, he was immediately attacked by the inmates, who had staged the fight to lay a trap for him.

242. Sgt. Floyd then was brutally attacked and beaten by the inmates.

243. There were a large number of inmate attackers.

244. Some were wearing contraband masks.

245. They were armed with several types of contraband weapons.

246. Despite the overwhelming number of attackers, Sgt. Floyd fought back bravely and was able to send out a "Code One" over his radio, indicating an attack on officers.

247. Sgt. Floyd was brutally, violently and repeatedly tortured and beaten by the inmate attackers.

248. He was beaten over every part of his body by them.

249. Sgt. Floyd then was thrown into, locked and imprisoned in a closet near the one

where Officers Smith and Wilkinson were imprisoned.

### 3. Officers Hammond, McCall and Tuxward Walk Into the Middle of the Uprising

#### a. Working in the Basement

250. Earlier that morning, Officers Hammond, McCall and Tuxward had entered Building C to work on the boilers.

251. The boilers are located in the basement, which is accessed through a locked door and then down a staircase.

252. Officers Hammond, McCall and Tuxward entered through the locked door, locked it behind them, went down the staircase and began to work on the boilers.

253. Their job that day was to apply a dangerous new caustic chemical to the basement boilers to try to raise the pH in the steam lines and deal with acid that was eating away at the piping.

254. First they performed chemical tests and then applied the chemical to the boilers.

255. Officer Tuxward was handling the chemical and wore a respirator as he applied it.

256. Officers Hammond and McCall stood behind him at a safe distance as the chemical was applied.

257. As they were doing so, they heard a great deal of commotion, thuds and shuffling on the unit above them.

258. After the chemical application was finished, they walked back up the stairs, unlocked the door and exited the staircase and entered into the interior of Building C.

#### b. They Stumble Into the Uprising

259. As they did so, an inmate who looked scared to death was standing by the door.

260. The inmate told them to go back down the stairs.

261. The inmate said to them, “he is going crazy,” “he is out of his mind,” “it is crazy out there,” “they have taken the building,” among other things.

262. Officers Hammond, McCall and Tuxward did not know what the inmate was talking about and believed he was messing with them, which is not unusual in the prison.

263. Officer McCall noticed a locker padlock sitting on the floor and knowing that it could be used as a weapon by an inmate, picked it up and put it in his pocket.

264. He asked the inmate if the padlock was his and the inmate denied this.

265. Meanwhile Officer Tuxward was still wearing his respirator and carrying the dangerous caustic chemical in a 5 gallon container.

266. Officers Hammond, McCall and Tuxward continued walking forward and turned the corner onto the unit.

267. They immediately knew that something was wrong.

268. There was a broken mop wringer, other items and a large 3 foot by 4 foot smear of blood across the floor.

269. They assumed there had been a fight between two inmates and that correctional officers had tried to contain the fight.

**c. They Try to Rescue Sgt. Floyd**

270. Officers Hammond, McCall and Tuxward suddenly heard a voice close by, calling out, coming from the closet.

271. Initially they believed that it was an inmate in the closet as sometimes fighting inmates were temporarily secured there.

272. But then they heard the voice asking “help me,” “get me out of here,” “they have my keys” and “they have taken over the building.”

273. They went over to the closet and peered inside through the 2x3 metal mesh window at the top and saw blood and lacerations on someone on the ground, then saw a blue uniform and Sergeant stripes and realized it was Sgt. Floyd.

274. Officers Hammond, McCall and Tuxward tried to free Sgt. Floyd but they were unable to open the door because it was locked and they did not have the key.

**d. The Inmates Threaten to Kill Them**

275. Immediately as they did so, a masked inmate carrying a large contraband weapon, a shiv, came around the corner and confronted them.

276. The masked inmate held the large blade up to Officer Tuxward's face and threatened to kill Officers Tuxward, Hammond and McCall if they tried to force open the locked closet door and rescue Sgt. Floyd.

277. As the inmate did this, the Officers noticed that all of the prisoners on A tier were out of their cells and the tier door was wide open. They could not see the other tiers from their vantage point but, given the circumstances and the absence of any other correctional officers, feared that all of the prisoners on the other two tiers also were out of their cells and were similarly armed and dangerous.

278. At this moment, Officers Hammond, McCall and Tuxward all feared for their lives and thought they were going to be killed.

279. Thinking quickly, Officer Tuxward, who was still wearing the respirator, held up in front of him the 5 gallon container with the dangerous chemical inside, motioned as if he was going to pour it out and said to the masked, armed inmate, "if you breathe this, you will f-cking die."

280. The masked, armed inmate immediately jumped back several feet.

**e. They Retreat to the Basement Where They Are Imprisoned Against Their Will**

281. Fearing for their lives, Officer Tuxward motioned to Officers Hammond and McCall and all three quickly retreated back to the basement door, unlocked it, entered and locked it again behind them.

282. They realized that the inmate who had originally been standing by the door when they had entered from the basement had been trying to warn them and protect them from danger.

**4. The Inmates Set a Trap for the First Responders**

283. The inmates also set a trap to capture the first responder Quick Response Team ("QRT") officers.

284. The inmates started numerous fires, which activated the sprinkler systems, soaking the area.

285. They then laid in wait for the QRT officers to arrive, hiding in a place farther down from the closets where Sgt. Floyd, Officer Smith and Officer Wilkinson were imprisoned.

286. Four QRT officers responded to the alert and alarms and ran into Building C.

**a. Sgt. Floyd Warns and Saves the Lives of the QRT Responders**

287. The QRT officers rushed in past the Sergeant and Counselor's offices and saw blood all over the floor and were approaching the closet where, unbeknownst to them, Sgt. Floyd was imprisoned.

288. Sgt. Floyd heard the QRT officers entering the building and approaching his closet.

289. Having smelled the fire and experienced the alarms and sprinklers being activated, Sgt. Floyd realized that the inmates were setting a trap in order to capture the QRT and any other responding correctional officers.

290. Sgt. Floyd was widely known to be very protective of and to care deeply for his

brother and sister correctional officers and all of those under his command.

291. Without regard for his own safety or his life, Sgt. Floyd courageously yelled out to warn the entering QRT, "It's a trap! It's a trap! Go back! Get out of the building! Cut off the water!"

292. Sgt. Floyd knew that this would further enrage his inmate attackers but refused to risk the lives of any of his brother and sister correctional officers who were trying to come to his and his co-workers' aid.

293. Officers Smith and Wilkinson heard Sgt. Floyd yell and warn the QRT officers.

294. The QRT officers also heard Sgt. Floyd's warnings and instructions and reluctantly complied, quickly exiting Building C and locking the door to contain the uprising and prevent it from spreading to other buildings at DCC.

295. Sgt. Floyd saved the lives of the QRT officers. At least one of these QRT officers admitted to Sgt. Floyd's spouse that Sgt. Floyd had saved their lives by his selfless act of bravery.

296. The inmates were enraged that Sgt. Floyd had foiled their plans to capture more correctional officers who they could torture and use as bargaining chips.

### 5. Plaintiffs' Imprisonment

#### a. Sgt. Floyd is Tortured for His Selfless Act of Bravery

297. Angry over his life-saving warnings to the QRT officers, the inmates brutally tortured Sgt. Floyd for a long period of time.

298. From their separate closet, Officers Smith and Wilkinson heard the sounds of the inmates brutally and sadistically torturing Sgt. Floyd.

299. But due to being handcuffed and imprisoned, they were powerless to do anything to help him.

### b. Officers Smith and Wilkinson Are Beaten and Tortured

300. The closet in which Officers Smith and Wilkinson were imprisoned was fairly small, but just big enough for both of them to sit on the floor.

301. The inmates threatened to kill them if they looked at the inmates' faces.

302. The inmates tortured Officers Smith and Wilkinson while they were imprisoned in the closet.

303. One of the inmates also unlocked the door and threw a burning blanket onto Officer Wilkinson.

304. Officer Wilkinson was unable to remove the burning blanket because his hands were cuffed behind his back.

305. However because his hands were cuffed in front of him, Officer Smith was able to eventually douse the blanket with the water accumulating on the floor from the sprinklers.

306. Both Officers Smith and Wilkinson were badly injured and bleeding as they sat in the dark in the closet.

307. Officer Wilkinson's face was fully covered in blood and he was bleeding profusely.

308. Both Officers Smith and Wilkinson thought they were going to die.

309. They feared for their lives and that they would be further tortured and then murdered by the inmates.

310. They wanted to get out of their small prison but were unable to do so.

311. While they were inside the closet, both of them heard the inmates moving footlockers and believed that the inmates were barricading the door to the Building.

312. The inmates eventually took Officer Smith and made him memorize five names. They told him that he was being released with the task of delivering these five names to the

authorities outside.

313. Officer Smith asked that the inmates release Officer Wilkinson in his place, but the inmates refused.

314. The inmates made Officer Smith cover his head and place his back against the closet door.

315. They then unlocked the closet, moved him out of it, and then locked the door again after them.

316. They told Officer Smith that they would kill him if he turned around or looked at them.

317. The inmates then released him into the yard where he was rescued.

318. This release occurred sometime around 2:25 p.m.

319. After Officer Smith was released, Officer Wilkinson lost consciousness numerous times due to his injuries and blood loss.

320. Several hours after Officer Smith's release, the inmates took Officer Wilkinson out of the closet and visibly presented him to the hostage negotiators through a window.

321. Sometime thereafter, one of the inmates stated to Officer Wilkinson, that his being beaten, tortured and held hostage was nothing personal, but that things were going to change as far as how they were being treated by the DOC.

322. By this point Officer Wilkinson was very concerned for Sgt. Floyd and asked if he could speak to Sgt. Floyd.

323. The inmate responded that Sgt. Floyd would not be meeting with him.

324. From this, Officer Wilkinson inferred that Sgt. Floyd was not going to make it out alive.

325. Later, while still handcuffed in the closet, one of the inmates entered the closet with a radio and a homemade contraband knife and held the large blade up to Officer Wilkinson's throat and threatened to kill him.

326. The inmate doing so ordered Officer Wilkinson to tell the hostage negotiators on the radio that the inmate was threatening to kill him.

327. Officer Wilkinson complied.

328. Officer Wilkinson believed he was going to die and be killed at that time.

329. Eventually, sometime thereafter, the inmates removed Wilkinson from the closet, covered his head with a pillowcase and had him walk into the yard where he was rescued.

330. This release occurred sometime around 8:00 p.m.

**c. Officers Hammond, McCall and Tuxward Are Imprisoned and Threatened**

331. After retreating to the basement, Officers Hammond, McCall and Tuxward, immediately designated Officer Hammond to call in the recent events.

332. Officer Hammond quickly called in a "Code One," indicating an attack on staff and a "Code Three," indicating a major disturbance, on their radios.

333. After first calling in the Codes on the maintenance channel and receiving no reply, Officer Hammond called them in on the general channel.

334. He also called in that Sgt. Floyd was badly injured, imprisoned by the inmates in the closet and that the inmates had taken over the unit.

335. At this early point, within the first hour of the uprising, the rescue effort was fully informed that Sgt. Floyd's life was in jeopardy and he needed to be rescued before he was killed.

336. Officers Hammond, McCall and Tuxward did not want to be in the basement but were trapped and imprisoned there by the masked, armed inmates. They had no way out.

337. They knew that the only thing standing between them and severe physical injury and death was the single lock at the door at the top of the stairs.

338. They knew that the inmates already had access to keys since they had been able to lock Sgt. Floyd in the closet.

339. Officer McCall then stood lookout at the top of the stairs, and relayed whatever information he was able to see or hear, to Officer Hammond, who would relay it to Officer Tuxward, who would relay it to the prison authorities by either telephone or radio.

340. From his lookout position, Officer McCall saw an inmate wearing a mask and armed with a large contraband blade approach the door.

341. He also saw both masked and unmasked inmates carrying a radio, contraband knives and a large set of keys.

342. They believed the inmates were trying to find the right set of keys to open the door to the basement in order to attack them.

343. The inmates eventually blocked the view from the basement door so they were no longer able to see and report on what was going on in the unit.

344. Eventually Officers Hammond, McCall and Tuxward began to smell smoke, heard the fire alarms and sprinkler system go off.

345. Water from the sprinklers flowed down the walls and into the basement and covering the floor.

346. They heard a great deal of movement above them, with items being moved, dropped and broken.

347. When the sprinklers went off, the phones shut down, leaving their radios as their only communication and lifeline to the outside.

348. They desperately wanted to get out of the basement but were trapped and unable to do so.

349. They were imprisoned in the basement and unable to leave without risking death or serious physical injury by the inmates.

350. Officers Hammond, McCall and Tuxward feared for their lives the entire time they were in the basement.

351. They feared that the masked and armed inmates above would finally find the right key to the basement door or break it down and come, attack and murder them.

352. While they were in the basement, Officers Hammond, McCall and Tuxward heard the inmates threaten to kill all of the correctional officer hostages.

353. The door to the boiler room in the basement could not be locked.

354. So expecting to be rushed by the armed inmates at any minute, Officers Hammond, McCall and Tuxward eventually barricaded the boiler room door with, among other things, a picnic table and a concrete barrier and armed themselves with pipes, fire extinguishers and other items to defend themselves.

355. At numerous times during their basement imprisonment, Officers Hammond, McCall and Tuxward turned off the gas, heat, hot water and water supply to the Building, as well as reset the phones, and then turned the water back on again, all as instructed by prison authorities who they assisted.

356. Officers Hammond, McCall and Tuxward were able to hear the inmates speak to the outside negotiators on the radio and heard their demands, including their demand to speak to Governor Carney, which was refused.

357. After approximately 12-13 hours of being imprisoned in the basement by the

masked, armed inmates, expecting an attack at any moment, the prison authorities found a way to rescue them.

358. They were instructed to slowly, carefully and quietly access the attic, climb a cupola-like structure, make their way to the roof and to very quietly and cautiously walk along the roof above the rioting prisoners.

359. From the roof, Officers Hammond, McCall and Tuxward were eventually rescued.

**d. Sgt. Floyd is Murdered**

360. Sometime thereafter, and after Officer Hammond had called in the desperate condition of Sgt. Floyd, it is believed the inmates moved and then murdered Sgt. Floyd.

361. Plaintiffs are as of yet unable to determine when Sgt. Floyd's death occurred due to the Governor's refusal to release the autopsy results privately to his family.

362. On information and belief, the DCC CERT was ready and prepared to retake the building and rescue Sgt. Floyd and all the other hostages within an hour, by 11:30 a.m. at the latest.

363. CERT's readiness and ability to retake the building is consistent with historical practice. It is reported that on September 2, 1971, Building C rioted and three correctional officers were taken hostage. But they were rescued without serious harm after only three hours when the building was recaptured.

364. On information and belief, CERT's intended rescue actions were in compliance with the DCC written standard operating procedures governing a building seizure and hostage taking.

365. On information and belief, the Warden at DCC had given the go ahead to retake the building and rescue Sgt. Floyd and all the other hostages before their lives were further

endangered.

366. On information and belief, the Governor instead intervened, overruled the Warden and halted the rescue attempt, for presently unknown reasons.

367. The Governor's actions were a violation of all DCC emergency preparedness training, policies and procedures governing the rescue of hostages, which placed the rescue attempt in the hands of the Warden who was trained for quick thinking in such an emergency.

368. On information and belief, the DCC Warden then was enraged that the Governor had intervened and put the lives of Sgt. Floyd and the other hostages at greater risk.

369. On information and belief, the Governor instead decided that a rescue would be attempted the next day.

### 6. The Police Storm the Prison and End the Uprising

370. At approximately 5:06 a.m. the next morning, on February 2, 2017, the Governor's belated rescue effort began.

371. SWAT teams from the Delaware State Police and the Maryland State Police stormed Building C and ended the uprising.

372. SWAT was able to rescue the female civilian counselor, Patricia May, whom Officer Smith had valiantly fought to protect the day before.

373. However, Sgt. Floyd's body was found and he was pronounced dead soon thereafter, the victim of a homicide.

## E. EVIDENCE OF CAUSATION

374. But for the defendants' actions as set forth above, there would have been sufficient security staff in Building C, such that the inmates never would have attempted to seize the building of February 1, 2017.

375. But for the defendants' actions as set forth above, there would have been other sufficient security measures in Building C, such that the inmates never would have attempted to seize the building.

376. But for the defendants' actions as set forth above, there would have been sufficient security in the immediate vicinity and areas surrounding Building C, such that the inmates never would have attempted to seize the building.

377. But for the defendants' actions as set forth above, when the numerous additional dangerous and violent inmates were added to Building C, additional security staff and/or other security measures would have been proportionally increased.

378. But for the defendants' actions as set forth above, secure security cameras would have existed throughout Building C, and when monitored from the outside at the start of the uprising would have resulted in quick aid and reinforcements from the QRT Officers and other correctional officers in the vicinity to put down and quell the uprising.

379. But for the defendants' actions as set forth above, secure security cameras would have existed throughout Building C, and when monitored from the outside during the uprising this would have revealed the life threatening treatment of Sgt. Floyd and others within the building and led to the decision to storm the building before any loss of life occurred.

380. But for the defendants' actions as set forth above, the weapons, masks and other contraband used by the inmates would have previously been detected and seized.

381. But for the defendants' actions as set forth above, the owners of this contraband would have been punished and assigned to a higher level of secure housing.

382. But for the defendants' actions as set forth above, the ringleaders of the numerous dry runs would have been separated and removed to other secure housing units.

383. Defendants' actions were the but for cause of plaintiff's injuries.

**G. DAMAGES**

384. As a direct and proximate result of the actions of the defendants, as detailed herein, plaintiffs have suffered or will suffer damages including, but not limited to, the full panoply of damages available under federal common law rules for damages, as well as those available under state law for a survival action and for a wrongful death action. These include death, physical and emotional pain and suffering, mental anguish, emotional distress, loss of enjoyment of life, humiliation, embarrassment, injury to reputation, disappointment, anger, inconvenience and other non-pecuniary losses and injuries.

385. Physical injuries suffered by plaintiffs include, but are not limited to: death; broken bones, such as chipped vertebrate, a broken nose and a fractured eye socket; puncture wounds; a concussion; as well as other physical injuries.

386. Psychological, emotional or mental injuries include, but are not limited to: fear; terror; post-traumatic stress disorder; acute stress disorder; adjustment disorder; anxiety; flashbacks; trouble sleeping; recurring nightmares; fear of crowds; decreased energy and motivation; as well as other psychological, emotional and mental injuries.

387. Economic damages include, but are not limited to: burial costs and funeral expenses; loss of wages; loss of earnings; loss of benefits; loss of pension benefits; loss of retirement benefits; decreased earning capacity; decreased pension and retirement benefits; and other pecuniary losses.

## IV. ALLEGATIONS REGARDING THE DEFENDANTS' CONDUCT

388. The individual defendant's actions violated clearly established federal constitutional rights of which any official would have known.

389. At all times material hereto the individual defendants participated in, authorized, and sanctioned the federal constitutional deprivations described above.

390. At all times material hereto the individual defendants and their agents were acting under color of law. The federal constitutional deprivations described herein are fairly attributable to the State.

391. The actions of the defendants and their agents or employees were deliberately, intentionally, willfully, purposefully, and knowingly done in violation of federal constitutional rights and because of the exercise of those rights.

392. The defendants either knew or showed a negligent or reckless disregard for the matter of whether their conduct violated federal constitutional rights.

393. Their actions were outrageous and taken with evil motive, in bad faith, out of personal animus and without any reasonable grounds to support them.

394. Their actions were wanton and malicious or taken with reckless indifference to federal constitutional rights.

395. The exercise of rights under the U.S. Constitution made a difference in all actions adverse to the plaintiffs.

396. The exercise of these rights was a motivating, substantial or determinative factor in all actions adverse to plaintiffs.

397. The defendants did not reasonably believe that the actions they took were necessary to accomplish any legitimate governmental purpose.

398. The defendants' actions were motivated by bias, bad faith, and improper motive.

399. The defendants’ actions were arbitrary.

400. The defendants' actions constitute an abuse of governmental power.

401. The defendants' actions do not further any narrowly drawn important, substantial or compelling governmental interest.

402. The defendants' actions are not so reasonable as to further any governmental interest asserted and do not closely fit the goal of serving those governmental interests.

**COUNT I (Fourteenth Amendment - Substantive Due Process - Shocks the Conscience)**

403. Plaintiffs repeat and reallege paragraphs 1-402 set out above.

404. The 2005 Executive Task Force Report, headed by two disinterested judicial officers, was an official government report whose material, essential findings and strong recommendations on understaffing, the use of forced overtime, and the great need for training and policies were ignored by the defendants for approximately eleven years.

405. Defendants were not faced with a situation where they had to make split second decisions, they were not operating in a hyperpressurized environment in which they were being forced to act quickly or with urgency, nor did they have only minutes or hours to act.

406. Instead, defendants had: the opportunity to proceed in a deliberate fashion; the luxury of thinking about the issues; the chance for repeated reflection; and extended opportunities to do better. They were faced with a situation where they had the time to make unhurried and considered judgments about implementation of the Executive Task Force's essential findings and strong recommendations.

407. In failing to do so, defendants consciously disregarded a substantial and a great risk of serious harm, which was obvious, apparent and grave. They were actually aware of these risks of harm because the risks were brought to their attention by COAD, among others means and methods.

408. Defendants' actions demonstrated a protracted failure even to care. They failed to

act upon these great risks of harm due to deliberate indifference, gross negligence and recklessness. Additionally, they acted intentionally and arbitrarily.

409. Defendants' actions shock the conscience.

410. As a direct and proximate result of defendants' actions, plaintiffs have been injured.

411. Plaintiffs' constitutional right to substantive due process has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

**COUNT II (Fourteenth Amendment - Substantive Due Process - State Created Danger)**

412. Plaintiffs repeat and reallege paragraphs 1-411 set out above.

413. Defendants had actual knowledge of the risk of harm to plaintiffs and other correctional officers, both at DOC in general and at DCC in particular, because it was repeatedly brought to their direct attention by COAD and others.

414. Using ordinary common sense and experience, the harm and dangers caused by defendants were foreseeable and direct as plaintiffs were not random members of the public but instead, as correctional officers and members of COAD, they worked at DCC, the very facility that was the focus of the 2005 Executive Task Force Report, and in the DOC prison system.

415. Defendants' affirmative actions set forth above created certain dangers to plaintiffs and rendered plaintiffs more vulnerable to other dangers than if defendants had not acted at all.

416. Defendants created the risks of some harms to plaintiff and increased the risks of other harms to them as well and caused them to be more vulnerable to these harms than if the defendants had not acted at all.

417. Defendants misused their authority to create an opportunity and increase the opportunity for a foreseeable danger from private persons but then failed to protect them.

418. There is a direct causal relationship between defendants' action and the harm

plaintiffs have suffered.

419. Defendants' actions were the but for cause of the dangers faced by plaintiffs.

420. As a direct and proximate result of defendants' actions, plaintiffs have been injured.

421. Plaintiffs' constitutional right to substantive due process has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

**COUNT III (Fourteenth Amendment - Substantive Due Process - Failure to Train and Maintenance of Policies, Practices and Customs)**

422. Plaintiff repeats and realleges paragraphs 1-421 set out above.

423. Defendants created, maintained and executed the policies, practices and customs set forth above.

424. Defendants failed to train plaintiffs, other correctional officers and other security personnel in the DOC in general, and at DCC in particular, how to operate under conditions where: there were long term unsafe levels of understaffing; searches for weapons and other contraband had been eliminated as a general policy; such searches had been eliminated as a specific policy even when such weapons and contraband were actually known to exist within a specific building; major disturbances by inmates were allowed and were not punished; inmates were repeatedly permitted without consequence to conduct dry runs to test and determine security response time to inmate disturbances; and where there were insufficient additional security measures to protect themselves from death, imminent threats of death or other severe physical injuries.

425. As a direct and proximate result of defendants' actions, plaintiffs have been injured.

426. Plaintiffs' constitutional right to substantive due process has been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

**Wherefore**, Plaintiffs pray that the Court:

A. Enter separate judgments against each of the individual capacity defendants.

B. Enter a declaratory judgment declaring the acts of each of the defendants to be a violation of the decedent's constitutional rights, as well as the constitutional rights of every other plaintiff.

C. Enter a judgment against the individual capacity defendants, jointly and severally, for compensatory damages, including but not limited to loss of life, lost wages, back pay, pension and other benefits, for future or front pay, loss of earning capacity, physical and emotional injuries, pain and suffering, emotional distress, humiliation, embarrassment, and injury to reputation.

D. Enter separate judgments against the individual capacity defendants for punitive damages.

E. Issue a reparative injunction directing that each of the individual capacity defendants write letters of apology to each of the plaintiffs, apologizing for their illegal violations of plaintiffs' constitutional rights.

F. Issue a reparative injunction directing that official capacity defendants Commissioner Phelps and Director Jackson, on behalf of the DOC and OMB, respectively, issue a written apology to plaintiffs for violation of their constitutional rights by their predecessors in office.

G. Issue a mandatory injunction that Sgt. Floyd's autopsy report be released privately to his family.

H. Award plaintiffs attorney's fees, costs and pre and post judgment interest for this action.

I. Require such other and further relief as the Court deems just and proper under the circumstances.

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Respectfully Submitted,

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