

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CATHERINE REGINA HARPER, on behalf
of herself and those similarly situated, and
JENNIFER ESSIG,

Plaintiffs,

v.

PROFESSIONAL PROBATION
SERVICES, INC.,
THE CITY OF GARDENDALE,
ALABAMA, a municipal corporation, and
KENNETH GOMANY, in his official
capacity as Judge of the Gardendale
Municipal Court,

Defendants.

Case No. **2:17-CV-1791-UJB-AKK**

AMENDED COMPLAINT (Class Action)

Jury Trial Demanded

I. PRELIMINARY STATEMENT

1. America’s judicial system is premised on the assumption that justice should be achieved through objectivity and fairness. But to do so, “justice must satisfy the *appearance* of justice,”¹ for, if the decision-maker appears biased, the integrity of the entire system is undercut. This is why “[t]he Due Process Clause entitles a person to an impartial and disinterested tribunal.”² Neutrality “preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.”³

¹ *Offutt v. United States*, 348 U.S. 11, 14 (1954) (emphasis added).

² *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

³ *Id.* (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 172 (1951))

2. Professional Probation Services, Inc. (“PPS”) and the Gardendale Municipal Court (“the Municipal Court”) turned these foundational principles upside down. Pursuant to a Contract for Probation Supervision and Rehabilitation Services (“Contract”) entered with a former Municipal Court judge 20 years ago, PPS used the Municipal Court as a cudgel to extract financial profit from those too poor to pay their fines and court costs. The Municipal Court enabled this exploitation by requiring any person who could not pay in full to be supervised on probation with PPS. PPS exercised exclusive control over its supervisees, and PPS had a direct financial interest in every decision it made in its supervisees’ cases.

3. Pursuant to the Contract, PPS set all the terms of probation, without input from, and often in contradiction to, what had been ordered by the Municipal Court. PPS ordered supervisees to pay PPS a monthly fee—typically \$40—which was the sole source of PPS’s revenue. To maximize its revenue, PPS controlled the length of time supervisees were on probation, sometimes ordering a longer period than was authorized by the Municipal Court; extending the term of probation when persons fell behind on payments; and collecting its fee first when partial payments were made—all conduct which resulted in more money to PPS. In some instances, PPS unilaterally increased a probationer’s fine to extend the term of probation and increase PPS’s ability to earn a profit.

4. Although the Contract under which PPS ran this probation scheme prohibited PPS from charging any fees to those who are indigent, PPS systematically ignored individuals’ requests to reduce payments or perform community service in lieu of payment and failed to facilitate asking the Municipal Court for such relief. And when individuals could not afford to pay, PPS set more frequent “review” hearings in Municipal Court, where PPS informed the

(Frankfurter, J., concurring)).

Municipal Court that the person had not paid or missed check-in appointments. Often, these statements were either lies about the underlying conduct or failed to provide critical context, including that the person had told PPS about their inability to pay, had called ahead of the alleged missed appointment to reschedule, or was unable to attend due to circumstances beyond her control.

5. These one-sided in-court statements by PPS typically resulted in an order of detention for a number of days, during which the detained person would not receive credit toward their outstanding fines, costs, or fees. Instead, after their release, the person would continue their supervision with PPS, still facing the ongoing obligation to pay PPS's monthly fees along with the associated threats for non-compliance.

6. By prioritizing PPS's ability to collect additional revenue over individuals' successful completion of probation, Defendants increased PPS's revenue to the detriment of Plaintiffs Catherine Regina Harper and Jennifer Essig (hereinafter collectively "Plaintiffs") and others similarly situated, who were under PPS supervision and subjected to this unlawful contractual scheme and PPS's practices arising therefrom.

7. Plaintiffs, both of whom are indigent, could not fully pay the fines and court costs that the Gardendale Municipal Court had assessed against them on their sentencing dates, and were therefore assigned to PPS probation solely for the purpose of forcing them to pay fines and costs owed to the Municipal Court.

8. When Plaintiffs fell behind on payments, PPS required them to report weekly to the PPS office for "appointments," where they were only required to pay.

9. PPS applied all money Plaintiffs paid first to PPS's \$40 monthly supervision fee. PPS also refused to offer Plaintiffs viable alternatives to payment, such as fee waivers or

community service, even as Plaintiffs repeatedly expressed difficulties or the inability to pay.

10. In addition, PPS used the Municipal Court and the threat of jail sanctions for contempt or probation violation to intimidate Plaintiffs into compliance and paying more than they could afford. Plaintiffs Harper and Essig were jailed based on PPS's false or inadequate representations to the Municipal Court that they were "noncompliant" with probation terms.

11. After this lawsuit was filed, Defendant Judge Gomany ordered all persons previously sentenced to a term of probation supervised by PPS to cease reporting to PPS. Instead, these persons were instructed to pay all outstanding court debt by January 1, 2018, or appear in the Municipal Court to request a payment plan. As a result of the court order, PPS sent the City and Municipal Court staff notice of its intent to terminate the Contract.

12. Ms. Harper initially requested preliminary injunctive relief because she feared she would be jailed at her next review hearing on December 1, 2017. Because Defendants have not assured Plaintiffs they will not re-enter another contract for private probation services and resume the practices that led to this lawsuit, Ms. Harper reasonably fears that the City of Gardendale or Judge Gomany will re-enter a contract for private probation services with PPS and thus that she will be jailed again at future hearings based on PPS's history of making misrepresentations to the court and her continuing inability to make monthly payments.

13. Accordingly, Plaintiffs file this Amended Complaint against PPS, the City of Gardendale, and Municipal Court Judge Kenneth Gomany in his official capacity, to challenge these policies and practices of privatized probation arising from the Contract. Plaintiff Harper raises three claims on behalf of herself other persons similarly situated: *first*, the Contract and Defendants' enforcement thereof violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution by creating a process that injects PPS's financial interest into its

operation of probation, and in so doing illegally and unconstitutionally undermines confidence that probation can be conducted by PPS in a disinterested fashion; *second*, the Contract that authorizes this scheme is unconstitutional under the Alabama Constitution, because it grants an exclusive franchise to PPS but was not publicly bid; and *third*, the Contract is illegal and void under Alabama law, because it mandates PPS to collect a monthly fee of \$40 from persons assigned to PPS probation in violation of Alabama law and public policy that prevents the collection of a fee for municipal court probation. Plaintiffs also raise a *fourth* claim, that PPS's use of probation to maximize generation of profit constitutes an abuse of process under Alabama law.

14. Plaintiff Harper, on behalf of herself and a class of similarly situated individuals, seeks to enjoin and declare unconstitutional and unlawful Defendants' enforcement of the Contract and the manner in which PPS generates revenue from this Contract, which is the source of PPS's conflict of interest. Plaintiff Harper, on behalf of herself and a class of similarly situated individuals, also seeks actual and punitive damages from Defendant PPS for injuries suffered due to PPS's unconstitutional conflict of interest. Finally, Plaintiffs Harper and Essig seek actual and punitive damages for PPS's abuse of process under state law.

II. JURISDICTION AND VENUE

15. The Court has federal question jurisdiction over this civil rights action pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction over the state law causes of action asserted in this Complaint under 28 U.S.C. § 1367, because the state law claims are related to, and form part of the same case or controversy as, the federal claims over which this Court has original jurisdiction.

16. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of

the events and omissions giving rise to Plaintiffs' claims occurred in this District.

III. PARTIES

A. Plaintiffs

17. Plaintiff Catherine Regina Harper (“Gina” or “Harper”) is a resident of Birmingham, Alabama.

18. Plaintiff Jennifer Essig is a resident of Center Point, Alabama.

B. Defendants

19. Defendant Professional Probation Services, Inc. (“PPS”) is a foreign corporation incorporated in Georgia. Defendant PPS has been doing business in Jefferson County, Alabama, during all times relevant to this action, pursuant to the Contract, executed by a former Municipal Court judge, and approved by the Mayor of Gardendale, to provide “probation” services for the City and to collect probation fees for PPS as well as fines, restitution, and court costs for the Municipal Court.

20. Defendant Municipal Court Judge Kenneth Gomany (the “Judge” or “Gomany”) is a judge for the Gardendale Municipal Court (the “Municipal Court”) and serves in this capacity for the Municipal Court within Jefferson County, Alabama. He is sued in his official capacity.

21. Defendant City of Gardendale (the “City” or “Gardendale”) is a municipal corporation located within Jefferson County, Alabama.

IV. STATEMENT OF FACTS

A. The City of Gardendale, Alabama, and its Municipal Court

22. Defendant Gardendale is located in Jefferson County, Alabama, north of Birmingham, Alabama. It has a population of approximately 14,000 residents.

23. The Municipal Court is authorized to hear cases involving city ordinance

violations, including traffic tickets and misdemeanors, which occur within the city's police jurisdiction.

24. The Municipal Court holds court the first and third Friday of each month, with a morning session and an afternoon session.

25. The Municipal Court handles thousands of cases per year. In 2016 alone, the Municipal Court presided over 3,454 filed cases.⁴

26. The City selects the judge of the Municipal Court and sets the judge's salary.

27. The Municipal Court is staffed by one part-time judge, Defendant Municipal Judge Gomany.

28. Defendant Gomany also operates a private law practice representing clients in criminal and personal injury matters.

29. Defendant Gomany was appointed and confirmed by the Gardendale City Council in December 2016 to his current judgeship.⁵ He previously served as Municipal Court judge from approximately 2005 to 2008.

B. Failure to Publicly Bid PPS's Exclusive Contract

30. Defendant PPS is a for-profit private corporation founded in 1992 and operating in various states around the country. It generates corporate income by charging fees to those it supervises on probation through contracts it executes with local governments.

31. PPS began operating in Gardendale in 1998 after it contracted with the Municipal Court judge and the City to serve as the City's sole probation provider for defendants appearing

⁴ See Ala. Admin. Office of Courts, *Fiscal Year 2016 Annual Report and Statistics* 163 (2016), available at <http://www.alacourt.gov/Annual%20Reports/2016AOCAnnualReport.pdf>.

⁵ See Gardendale City Council Meeting Minutes (Dec. 19, 2016), available at <http://cityofgardendale.com/site/wp-content/uploads/2013/06/Minutes-20161219.pdf>.

before the Municipal Court.

32. In or around July 1998, then-Municipal Court Judge Norman Winston and PPS entered into the Contract for Probation Supervision and Rehabilitation Services (“Contract”), approved by the then-Mayor of Gardendale, Kenneth A. Clemons. Contract for Probation Supervision and Rehabilitation Servs. and Addendum (“Contract”) (1998), attached hereto as Exhibit A. The Contract automatically renews each year unless one party gives notice 30 days before its expiration. *Id.* at 3.

33. The Contract is exclusive: it states PPS will provide “such probation services as ordered by the [Municipal] Court” and designates PPS the “sole private entity to coordinate, provide and direct probation programs and services to offenders sentenced by and under the jurisdiction of the [Municipal] Court.” Ex. A at 1. Furthermore, the Contract states PPS is to provide “the services and programs for the misdemeanor offenders placed on probation by the Court.” *Id.*

34. Defendant Gardendale did not put out a request for bids or otherwise advertise and solicit bids for probation services before the Contract went into effect in 1998.

35. The Contract was renewed each year since the original execution. Yet the City failed each year to put out a request for bids or otherwise advertise or solicit bids for probation services.

36. On November 1, 2017, Defendant Gomany entered an Order Modifying Terms of Probation Under Supervision of Professional Probation Services (“Modification Order”), Inc. (“PPS”), a true and correct copy of which is attached hereto as Exhibit B. Pursuant to this Order, all persons “previously sentenced to a term of probation supervised by PPS” were ordered to stop reporting to PPS; cease making payments to PPS of any fees, fines, and court costs to PPS, as

previously ordered by the Court; and pay all outstanding court debt January 1, 2018, or appear in the Municipal Court to request a payment plan. Ex. B at 1–2. Nothing in the Order prohibits the City or Municipal Court from re-engaging with PPS in a future contract for private probation services under terms identical or substantially similar to those of the original Contract. Nor does the Modification Order explain how the Municipal Court will process the cases of individuals who cannot afford a payment plan. Finally, the Modification Order does not clarify whether individuals who owe outstanding PPS supervision fees will be required to pay those fees.

37. On November 14, 2017, Defendant PPS sent to Municipal Court and City officials its notice of intent to terminate the contract “[a]s a result of the Court order, as well as [the Municipal Court Clerk’s] request to transition the caseload and data to the Court.”

38. Plaintiffs have not received any assurance from Defendants that the City or Municipal Court will not re-enter another contract for private probation services.

C. PPS’s Collection of Monthly Probation “Service” Fees from Persons on PPS Probation

39. PPS’s primary purpose in providing probation services for individuals is to collect its own fees and the fines and costs owed to the Municipal Court.

40. PPS charges monthly fees to those on probation.

41. Under the Contract, “[f]ees for [PPS’s] basic services . . . are payable not by the City, but by sentenced offenders.” Ex. A at 3. The Contract highlights that the private probation is a “cost-free program, the support of which rests completely on the private agency, and the offender—not the taxpayer.” *Id.* at 11.

42. The Contract authorizes PPS to bill individuals assigned to probation for program services. Ex. A at 2.

43. The Contract required the City to pay PPS 30% of all pre-existing fines that were

delinquent at that the time of the Contract's original execution and that PPS subsequently collected. Ex. A at 3.

44. The Contract authorizes PPS to charge individuals a monthly fee (listed in the contract as \$30 per month) for basic supervision, which should include 1 to 5 office visits per month depending on a "risk result," community service coordination, referral to appropriate agencies to address probation supervisees' needs, and possible home or work visits by the PPS officer—depending on the level of supervision needed and the officer's discretion. Ex. A at 8. PPS is also authorized to charge additional fees for additional services, such as anger management, substance abuse, and personal growth classes. *Id.* at 8–13.

45. The Contract prohibits PPS from "profit[ing] or attempt[ing] to profit from any fines, restitution, or court cost collected from the offenders," though this prohibition is contradicted by other parts of the Contract that (1) permit PPS to earn 30% of all fines that were delinquent prior to 1998 and were collected by PPS, and (2) permit PPS to charge a monthly "service" fee for its collection of fines, restitution, and court costs from individuals. Ex. A at 3.

46. When money is paid by offenders, the Contract is silent on how that money will be divided between probation service fees owed to PPS and fines and costs owed to the Municipal Court.

47. The Contract also requires PPS to supervise, at no cost, any individuals whom the Municipal Court deems indigent. Ex. A at 8. As detailed below, however, the Municipal Court did not assess indigency while the Contract was in effect, and PPS generally did not assist in seeking an indigency determination, even where it was clear an individual was having difficulty paying.

D. Probation and Probation Conditions

i. *Initial Assignment to PPS*

48. Until November 1, 2017, Defendant Gomany assigned defendants to PPS probation in a standard manner. When an individual appeared on a traffic ticket or misdemeanor offense and was sentenced or otherwise ordered to pay a fine or court costs, Judge Gomany asked whether the person could pay the entire amount due on the date of sentencing.

49. When individuals expressed that they could not pay, Judge Gomany stated they must pay some amount, or they would be jailed. Defendant Gomany often directed defendants to call their friends and family or visit an ATM to get money.

50. If a person could not pay the entirety of their fines and costs, Judge Gomany assigned them to be supervised by PPS and entered an “Order of Probation” (hereinafter “Probation Order”) for that person. Indeed, Defendant Gomany usually informed defendants that paying in full would save them from going on probation.

51. If a defendant could pay in full, they were not referred to probation with PPS.

52. Defendant Gomany did not explain to defendants that PPS is a private, for-profit company.

53. The Probation Order does not identify the probation provider or supervisor.

54. The Probation Order also does not identify the monthly service fees or total payment due to PPS.

55. Instead, the Probation Order generally mandates that probation is supervised until the individual pays her “fines, costs, and/or restitution.” The Probation Order also sets the length of the term of probation, the suspended sentence, and any other conditions of probation specific to the individual.

56. A standard example of a Probation Order appears below:

pay their monetary sentence or probation fees to PPS.

ii. *Meeting with PPS and Execution of the PPS-Created Sentence of Probation Form and Enrollment Form After the Sentencing Hearing*

60. Individuals assigned to PPS probation then met with PPS in a separate room of the Municipal Court courthouse.

61. During the meeting, PPS completed a PPS-created “Sentence of Probation” form (hereinafter “PPS Sentence of Probation Form”), which a Municipal Court magistrate or magistrate supervisor had previously signed on behalf of Judge Gomany.

62. The PPS Sentence of Probation Form requires PPS to fill in the number of months of probation. PPS typically assigned individuals to 24 months of probation, even though the Municipal Court’s Probation Order regularly specified a shorter period of 12 months.

63. The PPS Sentence of Probation Form also requires PPS to specify the amount the probationer must pay PPS each month, including a monthly probation service fee of \$40.00 to PPS (corrected by hand from a printed version of \$45.00 and more than the amount of \$30.00 specified in the Contract, *see* Ex. A at 8), and an amount that goes towards the fines and court costs owed to the Municipal Court, which PPS typically set at least an additional \$40. By contrast, the Probation Order does not specify an amount to pay.

64. The PPS Sentence of Probation Form specifies other conditions, such as reporting to the probation supervisor as directed. By contrast, the Probation Order does not specify these conditions.

65. The PPS Sentence of Probation Form also lists sixteen other possible conditions of probation that PPS may select from. Generally, PPS specified in the Form that persons such as Plaintiffs must abstain from the use of alcohol or drugs and submit to random testing and not drive without a valid driver’s license. By contrast, the Probation Order does not specify these

conditions.

66. Once PPS completed the Sentence of Probation Form, the probationer and PPS signed it. Defendant Gomany, however, did not further review or approve the Form.

67. A standard PPS Sentence of Probation Form follows:

**IN THE MUNICIPAL COURT OF THE CITY OF GARDENDALE
STATE OF ALABAMA**

CITY OF GARDENDALE
VS.

DP
#40

OFFENSE	CITATION #	FINE	COURT COST	TOTAL
CT 30 CRIMINAL	MC17-0354	50	232	282

SENTENCE OF PROBATION

WHEREAS, the above disposition has been made against the above named defendant, the defendant is hereby sentenced to confinement for a period of 30 days and ordered to pay a total fine in the amount of \$ 282 dollars,

HOWEVER, it is further ordered by the Court that the defendant is hereby ordered to serve 12 months on probation subject to the following conditions:

- 1.) Pay a monthly probation service fee of \$45.00 to Professional Probation Services, Inc.;
- 2.) Pay all fines which include surcharges within 12 months; at a rate of \$ 80 per month;
- 3.) Not violate the laws of any governmental unit;
- 4.) Report to the probation supervisor as directed;
- 5.) Work faithfully at suitable employment insofar as may be possible;
- 6.) Not change his/her present place of abode, or leave the State without notifying the probation supervisor;
- 7.) Support his/her legal dependents to the best of his/her ability;
- 8.) Avoid injurious and vicious habits-especially alcoholic intoxication, and dangerous drugs unless prescribed lawfully;
- 9.) Avoid persons and places of harmful or disreputable character;
- 10.) Not to drive without a valid State driver's license;
- 11.) Abstain from the use of alcohol and drugs, and submit to random alcohol/drug testing;
- 12.) Complete an alcohol and drug use evaluation and follow all directives for treatment or counseling;
- 13.) Complete a DUI school program conducted by an agency licensed by the State of Alabama;
- 14.) Complete _____ hours of community service as directed by the probation officer;
- 15.) Probation to be unsupervised upon payment of the fine and cost;
- 16.) Pay restitution in the amount of \$ _____ to _____ for Citation # _____;
- 17.) Serve _____ days in the Gardendale City Jail; to report on _____ and released on _____;
- 18.) Not to bother, harass, or contact affiant _____;
- 19.) To stay off the property of Seachtus _____;
- 20.) Review 8-18-17 p.m. _____;

UPON THE VIOLATION of any of these conditions, probation may be revoked and the sentence of confinement executed. The defendant is subject to arrest upon the violation of any conditions of probation. **IT IS SO ORDERED**, this 21 Day of July, 2017.

Kenneth Hama
Judge, Gardendale Municipal Court

This is to certify that a true and correct copy of this sentence has been delivered in person to the Defendant who has been duly instructed regarding the conditions of probation.
This 21 day of July, 2017.

[Signature] Probation Officer [Signature] Defendant

White - Clerk of Court Yellow - Probation Pink - Defendant

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68. After completing the PPS Sentence of Probation Form, PPS provided the

individual with a carbon copy, along with a PPS Enrollment Form, which identifies the probationer's probation officer; the date of her first appointment with PPS; PPS's office hours; and the amount of the probationer's first payment.

69. The PPS Enrollment Form also sets forth the following probation conditions, including:

- a. the probationer must report to the probationer officer as directed;
- b. missed appointments can and will result in the issuance of a warrant for the probationer's arrest; and
- c. the probationer will be scheduled to report once a month unless he is non-compliant with any of the conditions of probation, including payments, in which case the probationer must report weekly with or without payment.

70. The PPS Enrollment Form warns individuals, "DO NOT RETURN TO THE COURT OFFICE!!! Your probation appointment is at the [PPS office] location listed above."

71. A typical PPS Enrollment Form follows:

PROFESSIONAL PROBATION SERVICES, INC.
1126 MAIN STREET
P.O. Box 1114
GARDENDALE, AL 35071
(205) 608-0994

You have been given a **JAIL SENTENCE**. Provided that you comply with the conditions of probation, that sentence will remain suspended. If you cannot or choose not to comply with the conditions of probation, then the probation may be revoked, and you may spend time in jail.

YOUR PROBATION OFFICER IS: Rachel McCombs

YOUR FIRST APPOINTMENT IS: 7-28-17

You may report during office hours: **9:00am to 12:00pm or 1:00pm to 4:30pm.**
OFFICE CLOSED DAILY FROM 12:00 UNTIL 1:00 FOR LUNCH

YOUR TOTAL MONTHLY PAYMENTS ARE \$ 80
MONTHLY PAYMENT DUE AT FIRST VISIT!!!

** \$40.00
Due at
1st Appt*

*****YOUR PAYMENTS CAN BE IN CASH (exact change), MONEY ORDER or DEBIT/CREDIT CARDS*****

READ THESE INSTRUCTIONS CAREFULLY!

1. You must report to your probation officer as directed. Missed appointments can and will result in the issuance of a warrant for your arrest
2. You will be scheduled to report once a month unless you are non-compliant with any of the conditions of your probation (including payments). In this event you will be required to report weekly with or without payment.
3. Mailing payments does not excuse you from reporting to your probation officer as directed. You may only mail payments if approved by probation officer.
4. You may reschedule your appointment on or before the day of your appointment unless it is your first appointment or the Deadline Date (the day all money is due)
5. The conditions of your sentence are **not** negotiable, and will be strictly enforced.

Directions to the office:

* From I-65 North, take Exit 271 (Fieldstown Road) and go Right, Turn left onto Grubbs Ave at 3rd Traffic Light, You will go straight into The Garden shopping center parking lot, The office is on the left, between Taylor Bug's and The Studio

*From Hwy31 North or South take Main Street (runs parallel with Hwy31), Do not go to City Hall, our office is located in The Garden Shopping Center (Across the street from Bradberry Auto Glass & Trim) Turn into the shopping center parking lot and drive straight back, our office is between Taylor Bug's and The Studio.

!!!DO NOT RETURN TO THE COURT OFFICE!!!

YOUR PROBATION APPOINTMENT IS AT THE LOCATION LISTED ABOVE

72. The PPS Enrollment Form warns individuals that non-compliance with these and

other conditions of their sentence can result in probation revocation and jail time.

73. The PPS Enrollment Form also states that individuals can reschedule their appointments on or before the day of their appointment, except for the first appointment or the “Deadline Date” (the date all money is due).

74. In practice, however, if a person could not appear on the appointment date scheduled by PPS, PPS recorded the missed appointment as non-compliance for failing to appear, even if the person called PPS ahead of time to reschedule the appointment.

75. At no point during the initial meeting between PPS and the probationer did PPS ever evaluate the probationer’s ability to pay or inform them of the availability of fee waivers or alternatives to payment, such as community service.

76. Individuals were also handed a “Know Your Rights” form from PPS that states that indigent persons cannot have probation “revoked for failure to pay, alone,” and that those “truly unable to pay . . . due to indigency” may be eligible to have their fines converted to community service work. A copy of the Know Your Rights form follows:

KNOW YOUR RIGHTS...

If you are indigent, meaning you do not **have the ability** to pay your fines (which is different than not wanting to pay your fines), your probation cannot be revoked for failure to pay, alone.

Your probation **can be revoked for failing to report** as directed and for other violations, so it is important to report even if you don't have the money to pay.

If you are **truly unable to pay** the monies ordered by the Court due to indigency, you may be eligible to have your fines converted to community service work.

The key to success on probation is to report and comply with all conditions- and to **communicate with your officer** about your situation!

If you are unemployed, your PPS officer can assist you in your job search and even help you develop a resume - just ask.



77. The Know Your Rights form says nothing about waiving the monthly service fee owed to PPS, and PPS did not otherwise alert individuals to this possibility.

78. When persons told PPS at this initial meeting that they would be unable to pay or have trouble doing so, PPS did not provide any information about, or assistance to the person in obtaining, an indigency determination by the Municipal Court. Rather, PPS retained complete discretion to decide whether to grant or seek any financial relief for those who could not pay.

79. At this initial meeting, PPS did not provide individuals with any information about or assistance with obtaining community service in lieu of payments, but told individuals that they could discuss it at later appointments. However, because Defendant Gomany stated at review hearings that he is unable to assign people to community service, PPS retained complete

discretion to decide whether to allow persons on probation to perform community service in lieu of paying their fees and fines.

80. Neither PPS nor any court personnel disclosed that PPS is a private for-profit company.

E. PPS's Broad Discretion in Probation Conditions and Findings of "Noncompliance"

i. Requirements to Report to, and Pay, PPS

81. During the period of time that Defendant Gomany assigned defendants to probation under PPS, PPS operated an office a few blocks from the Municipal Court, where individuals met with PPS "probation officers" on dates set by PPS.

82. PPS's operated the office from 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m. on most weekdays. It was closed the first and third Fridays of every month when its officers attended court hearings in the Municipal Court, and open approximately one Saturday per month for limited hours.

83. This schedule was set despite PPS's own representations in the Contract that "PPSI recognizes that traditional office hours may cause the offender to miss time from work and subsequently discourage prompt payment of monies and participation in rehabilitation programs," and that "our office locations are open Saturdays and evenings, and at 7:30 am on weekdays." Ex. A at 10.

84. Individuals assigned to PPS were required to report to the PPS office at least once every 30 days. Those who could not pay the full monthly amount were required to report once per week.

85. The primary purpose of a probationer's in-person appointments was for PPS to collect its "supervision" fees; any additional money an individual could pay above the \$40 PPS

fee was applied to Municipal Court costs and fines.

86. To illustrate, when individuals assigned to PPS arrived for their appointments at PPS's office in Gardendale, they were required to first record on a sign-in sheet how much they could pay that day.

87. The "meetings" took place through a payment window. Generally, the only questions PPS asked concerned how much the person was going to pay that day and the next reporting date. The probationer was not required to report any other information to PPS.

88. A photograph of the payment window and sign-in sheet follows:



89. Neither during nor between these check-in appointments did PPS provide any actual rehabilitation services in exchange for the fees paid by individuals under PPS supervision. Rather, PPS only collected and documented the payments the probationer made and informed them of the date and amount of their next payment.

90. When individuals assigned to PPS probation called the office to move a check-in date due to transportation issues, work schedules, or other conflicts—which the PPS enrollment form states is acceptable—PPS employees told probationers that they could reschedule

appointments. However, in practice PPS recorded the person as having “missed” the appointment on the original date, in violation of the terms of their probation.

91. A sign that hung in the PPS office indicated that a person would receive “24 hours in jail” for a first “violation,” “48 hours in jail” for a second violation, and probation revoked for a third violation.

92. When individuals informed PPS they could not pay the required amount because they were unemployed or did not make enough money, PPS did not bring this to the Court’s attention or help individuals waive the payments, including the monthly probation fee that generates profit for PPS.

93. When individuals informed PPS they could not pay the required amount because they were unemployed or did not make enough money, PPS did not help them convert their fees and court costs to community service.

94. PPS decided whether to allow individuals to complete community service in lieu of payment, while Defendant Gomany stated he was unable to order community service. Those who asked for community service were generally told by PPS and then Defendant Gomany, upon PPS’s instruction, that they did not qualify.

95. PPS occasionally distributed documents to people on probation to collect information about the individual’s financial circumstances, but had sole discretion over providing this information to the Municipal Court.

96. PPS did not regularly offer community service to individuals as an alternative to payments.

ii. *Apportionment of Money Collected Between PPS and the Municipal Court*

97. PPS retained the first \$40 of each individual’s monthly payment to satisfy its

monthly probation fees and paid the remainder, if any, to the Municipal Court.

98. If the payment was less than \$40 or the balance of fees owed to PPS, PPS applied that payment only to its fees and none of it to an individual's court-ordered fees and fines.

99. PPS maintained records of appointments and payments within its own system. This information was not independently reviewed or audited by the Municipal Court.

iii. *PPS Relies on Collected Monthly Probation Service Fees to Generate Revenue and Coerces Payments and Prolongs Probation Terms to Generate Profit*

100. PPS generates significant income from its supervision practices.

101. PPS is a for-profit entity and exclusively relies on these monthly service fees to turn a profit. It would not be able to function in its current business model, pursuant to the terms of its probation service contracts with municipalities, without collecting fees from the individuals it supervises.

102. While supervising defendants in Gardendale, Defendant PPS engaged in several practices that allowed it to maximize its profit by extending the period of time individuals were required to report to, and in turn, pay PPS.

103. PPS increased the amount of time that individuals were on probation, often setting it at the statutory maximum of two years in the PPS Sentence of Probation Form, even when Defendant Gomany set probation for one year. This practice increased the period of time in which PPS charged its monthly probation service fee.

104. PPS also increased the amount of fines from what was ordered at sentencing. For example, Plaintiff Essig was told at sentencing and on her PPS Sentence of Probation Form that she owed a total of \$282:

**IN THE MUNICIPAL COURT OF THE CITY OF GARDENDALE
STATE OF ALABAMA**

CITY OF GARDENDALE
vs.

DP
#40

Jennifer Helen Essig

OFFENSE	CITATION #	FINE	COURT COST	TOTAL
<i>CT 30</i>	<i>MC17-0354</i>	<i>50</i>	<i>232</i>	<i>282</i>
<i>Criminal</i>				

SENTENCE OF PROBATION

WHEREAS, the above disposition has been made against the above named defendant, the defendant is hereby sentenced to confinement for a period of 30 days and ordered to pay a total fine in the amount of \$ 282 dollars,

HOWEVER, it is further ordered by the Court that the defendant is hereby ordered to serve 12 months on probation subject to the following conditions:

- 1.) Pay a monthly probation service fee of \$45.00 to Professional Probation Services, Inc.;
- 2.) Pay all fines which include surcharges within 12 months; at a rate of \$ 80 per month;
- 3.) Not violate the laws of any governmental unit;
- 4.) Report to the probation supervisor as directed;
- 5.) Work faithfully at suitable employment insofar as may be possible;

However, as the below PPS receipt shows, at her first appointment PPS told her she must pay a total of \$382.00 to the Municipal Court:

Court.
8-18-17 @ 1:30

PROFESSIONAL PROBATION SERVICES (205)608-0994
 1126 MAIN ST / PO BOX 1114
 GARDENDALE, AL 35071

RECH:999901053409 07/27/2017 01:26P
 M

NAME: ESSIG, JENNIFER ILEEN
 OFFICER: MCCOMBS, R.
 COURT 99 - GARDENDALE MUNICIPAL COURT
 PPSI#:99991014552

TENDERED: CASH FOR: \$40.00
 REFERENCE: RM

\$382
August

ID NUMBER: MC17-0354

TYPE	DUE	APPLIED	BALANCE
FEE	\$0.00	\$0.00	\$0.00
FINE	\$382.00	\$40.00	\$342.00

\$382

BALANCES ARE SUBJECT TO VERIFICATION

NXT APPT: *8-1-17*

105. These practices benefitted PPS because requiring additional time on probation or additional fine payments that resulted in an individual taking more time to pay, increased the number of monthly service fees paid to PPS.

106. When PPS employees appeared in the Municipal Court for probation review hearings, those probation officers routinely acted in a non-neutral manner, thereby increasing the likelihood of the Municipal Court entering a contempt sanction against, or revoking probation for, individuals under its supervision. PPS employees presented unsworn and inadequate—or sometimes false—statements alleging that defendants, like Plaintiffs Harper and Essig, missed PPS check-in appointments, or that they did not pay PPS. By failing to provide the Municipal

Court with any context for these alleged violations, such as the person's inability to pay or that the person rescheduled the "missed" check-in appointment, PPS effectively ensured that the individual would be jailed or assessed additional fines for contempt by the Municipal Court, thereby prolonging their term on probation.

107. At these review hearings, PPS employees represented that individuals were "noncompliant," knowing this representation would result in contempt jail sentences or put probationers in fear that they would be sent to jail in the future.

108. The prosecutor did not participate in these review hearings.

109. Defendant PPS did not file formal contempt citations or revocation paperwork before reporting individuals' alleged non-compliance with payment obligations or other PPS probation conditions to the Municipal Court.

110. Defendant PPS did not provide any information about the alleged violations to individuals (who were without counsel) before a review hearing, minimizing the ability of the probationer to refute the unanticipated allegations.

111. Defendant PPS did not usually present specific testimony about the alleged violations, making it even more difficult for individuals on probation to refute the allegations about their violations. Rather, PPS generally testified that individuals had missed appointments or were "behind" on their payment obligations.

112. Defendant PPS also did not testify or present to Defendant Gomany any evidence about the individuals' inability (or ability) to pay, even if the individual had discussed these issues with PPS at their appointments.

113. PPS did not request that Defendant Gomany order fee waivers or community service instead of payment when individuals requested payment alternatives based on their

indigency.

114. During review hearings in Municipal Court, PPS regularly set the next review date for probationers. For others who did not have review hearings scheduled, PPS set court dates during probation appointments if it wanted to bring the individual to court. The Municipal Court did not provide any additional notice to the individual of the time, location, or nature of the hearing.

115. Defendant PPS's representations about individuals' compliance with PPS's probation conditions had severe consequences, such as jail time, for individuals on probation. Plaintiff Harper, for example, spent five days in jail for allegedly missing check-in appointments, without being informed of the specific appointments she allegedly missed or being given advance notice about PPS's intent to make in-court statements about these appointments or the opportunity to contest them. Plaintiff Essig spent 24 hours in jail, allegedly for missing check-ins, even though Ms. Essig had reported for her appointments and possessed documentation proving her attendance.

116. PPS did not recommend that individuals receive any credit towards their court debt balance for time served in jail due to probation revocation or contempt rulings, and the court did not give probationers any credit. Thus, these jail stays merely reinforced the power PPS wielded over the probationer, without allowing the individual any relief from the total amount owed.

117. Because of Defendant PPS's actions and representations at review hearings, individuals remained on probation with PPS after being released from jail, with the constant threat of jail at future review hearings unless they satisfied PPS with payments.

118. Through its actions, policies, and practices, PPS acted with reckless and callous indifference to the constitutional rights of individuals on probation.

119. Even after multiple lawsuits were filed against PPS and similar companies operating private probation schemes in Alabama, alleging similar violations of rights, PPS continued to operate in Gardendale. In November 2015, the private probation provider with the most contracts in Alabama—Judicial Corrections Services, Inc. (“JCS”)—ceased operations in Alabama after many cities canceled their contracts over these lawsuits and expressed concerns about JCS’s treatment of persons on probation. PPS did not cease its operations in Gardendale; instead, PPS acquired JCS as a subsidiary on January 1, 2017.

F. Named Plaintiffs

i. *Gina Harper*

120. Plaintiff Gina Harper has lived in Birmingham, Alabama, since March 2017. She previously lived in Gardendale from October 2016 to March 2017.

121. Ms. Harper regularly drives to and through Gardendale, Alabama, and makes purchases in Gardendale on which she pays sales taxes.

122. She cleans homes in the Birmingham area to earn money. She lives with and supports her 15-year-old son, who is autistic.

123. Many years ago, Ms. Harper suffered from addiction to drugs and alcohol, and received various tickets and criminal charges related to this addiction. Her license was revoked during that time.

124. She has been sober for 10 years. Because of her limited income, she has not been able to pay the fees required to reinstate her driver’s license.

125. Ms. Harper received a ticket from the City of Gardendale, Alabama, for driving on a revoked license on February 25, 2017, while living in Gardendale.

126. On May 5, 2017, Ms. Harper pled guilty to the ticket in Municipal Court. Judge Gomany sentenced her to a \$500 fine, \$215 in court costs, and 48 hours of jail to serve immediately and assigned her to probation under PPS.

127. Judge Gomany then asked if Ms. Harper could pay the fine that day. When she said that she could not pay it in full, he told her that she had to pay something that day but could go on probation to pay the rest. He filled out and handed her a Probation Order and informed her that she would be on probation.

128. Before putting her on probation, Judge Gomany never asked Ms. Harper about her income or expenses.

129. Judge Gomany also did not tell Ms. Harper the conditions of her probation, any fees she would have to pay for probation, or that a private company like PPS would be supervising her while on probation. He also did not offer her any alternatives to payment, such as community service or payment plans.

130. The Probation Order was largely blank. It said only that she had 90 days of jail probated for 1 year. No additional conditions of probation were defined.

131. A PPS employee, Courtney Waters, escorted her into a small room outside of the courtroom.

132. Courtney had in front of her a form. Courtney told Ms. Harper that she must pay PPS \$80 per month, \$40 of which would go to PPS.

133. Ms. Harper started crying because she knew that she would not be able to keep up with the payments and she felt what PPS was doing with the money was wrong and illegal. Ms. Harper was already struggling financially at the time, and she did not have an additional \$80 each month.

134. Ms. Harper had been on private probation with another company, Judicial Corrections Services, Inc. (“JCS”), previously when she could not afford to pay what she owed to other courts. She had heard about court cases challenging JCS’s practices as illegal and knew JCS no longer operated in any municipal courts.

135. Ms. Harper asked how PPS was legal and how it was different than JCS. Courtney told Ms. Harper that what JCS was doing was illegal, and that what PPS does is different. Ms. Harper continued to ask her to explain how it was different. Courtney went to get Municipal Court Magistrate Sherry Baggett, who told Ms. Harper to calm down and that it was “just probation.” Ms. Harper continued to cry and ask questions. A police officer came in and told Ms. Harper that she would go to jail if she did not “calm down.”

136. When Ms. Harper asked about community service, Courtney said that she had to discuss it with Rachel McCombs, Harper’s assigned PPS officer, at her next appointment, which was set for a week later, on May 12, 2017.

137. Ms. Harper repeated she could not afford the monthly payments and simply wanted to know about alternative options like community service.

138. Courtney gave Ms. Harper a PPS Sentence of Probation Form and other paperwork, and told Ms. Harper that she would only have to report to PPS monthly if she kept her payments current.

139. Someone crossed out the writing on Ms. Harper’s PPS Sentence of Probation Form that originally stated she would serve only 12 months on probation, as the judge had specified on her Probation Order, and changed it to 24 months. Nobody discussed with Ms. Harper this change or how long she would be on probation.

140. Ms. Harper refused to sign the PPS Sentence of Probation Form because no one could explain to her why PPS was legal or answer her questions, and she did not want to sign something she did not understand. Nevertheless, Courtney told her that she had to report to probation.

141. Courtney gave Ms. Harper a PPS Enrollment Form that identified her PPS probation officer; the date of her first appointment at PPS's offices; PPS's office hours; and the amount of her first payment. It stated that missed appointments would result in a warrant, but that she could call to reschedule appointments on or before the date she was required to report. The PPS Enrollment Form also stated she would be required to report weekly if her payments were not current.

142. In addition, Courtney gave her an informational sheet from PPS entitled, "KNOW YOUR RIGHTS..." that said she might be eligible to have her fines converted to community service.

143. Ms. Harper paid \$30 that day. She believes it all went towards PPS's own fee, because her fine balance did not go down, according to receipts she later received from PPS.

144. Ms. Harper was then escorted by a police officer to the Gardendale City Jail to serve the 48-hour sentence for the ticket. When she was released from jail, she was given a review hearing date in the Municipal Court set for approximately two months later.

145. Ms. Harper was unable to report to her first check-in appointment with PPS because she was working, and also was unable to make her first payment because she did not have the money. When she called PPS to inform PPS she would not make the appointment, PPS told her to report the following week.

146. When Ms. Harper reported the following week, she could not pay anything so she asked for community service. At this appointment, PPS employee Rachel McCombs gave her a form to complete about her income and expenses, and told her to bring it back at a future appointment.

147. Ms. Harper reported to PPS again on May 22, 2017, unable to pay. She returned the financial questionnaire to Courtney and asked again for community service. Courtney told Ms. Harper that community service would have to be discussed with Judge Gomany. Courtney told Ms. Harper to report again on June 1, 2017.

148. Ms. Harper did not ask about community service again at her next few appointments, because she understood that it would be discussed at her next court date.

149. Ms. Harper reported to PPS again on June 1, 2017, but did not have anything to pay.

150. In early June, Ms. Harper's son injured his neck in a swimming accident, and Ms. Harper took several days off of work to take care of him and bring him to the hospital and doctor's appointments. She informed PPS by phone of these obligations preventing her from reporting and preventing her from working regularly.

151. Ms. Harper reported again on June 13, 2017, though she was unable to make a payment.

152. On June 16, 2017, Ms. Harper appeared in the Municipal Court for a review hearing. PPS employee Rachel told Judge Gomany that Ms. Harper had not paid her fines. Ms. Harper explained that she is a single parent of a son with special needs.

153. Rachel did not raise the issue of community service, but Ms. Harper asked the Judge herself. Judge Gomany suggested that she get a second job. When Ms. Harper tried to

explain that she would not be able to get a second job because of her caretaking responsibilities for her son and because of her current work schedule, Judge Gomany suggested that she could find a house to clean. She was told to report for another review hearing on August 4, 2017.

154. At no point during this hearing did PPS represent to Defendant Gomany Ms. Harper's financial circumstances, despite the financial information Ms. Harper had provided through PPS's form.

155. Ms. Harper reported to PPS soon after the hearing and paid \$20, which went entirely to PPS fees. PPS employee Rachel gave her a form to complete by her next appointment to show that she had applied to 20 jobs.

156. In early July, Ms. Harper's son suffered another injury, breaking his hand. Ms. Harper missed work to care for him and take him to the hospital and his doctor's appointments. She informed PPS of this obligation.

157. She reported on July 14, 2017, making another \$20 payment that went entirely to PPS fees.

158. She informed PPS that she had applied to several jobs and was offered a second job at Dollar General.

159. Ms. Harper reported for two more appointments, though she was unable to make payments due to the work she had missed earlier in the month.

160. On August 4, 2017, she went to the Municipal Court for another review hearing before Judge Gomany. PPS employee Rachel reported that Ms. Harper had applied for and been accepted at a second job. Ms. Harper explained to Defendant Gomany that she could not take the job because of her responsibility to take care of her son. To save money, she had instead taken on a roommate to help with rent.

161. PPS again did not ask the Municipal Court for community service, but Ms. Harper raised it on her own. Judge Gomany said that the Municipal Court does not offer community service because of liability concerns. When Ms. Harper pointed out that PPS had mentioned the possibility of community service, Judge Gomany inquired if PPS offered community service. Rachel indicated that PPS sometimes allows individuals to complete community service, and said she could talk to Ms. Harper at her next appointment.

162. Rachel then told Ms. Harper to report to PPS the next week and set Ms. Harper's next court review date for September 15, 2017.

163. Ms. Harper was unable to report in mid-August because she was dealing with a friend's personal crisis and hospitalization. Ms. Harper called to let PPS know that she was unable to make it and Rachel rescheduled her appointment.

164. Ms. Harper reported again on August 25, 2017. Rachel asked Ms. Harper if she was making a payment. Ms. Harper did not have a payment, and asked if she could discuss community service. Despite the conversation at Ms. Harper's last court date that the Municipal Court could not order community service, Rachel indicated that the Municipal Court would need to order community service. Rachel wrote \$250 on Ms. Harper's receipt, which was what she owed for the months she had been on probation.

165. Ms. Harper counted the number of people on the sign-in sheet at the PPS office that day. It appeared that 15 people had reported just within the last hour before she came in at 4:15 p.m.

166. Ms. Harper reported again on August 31, 2017. PPS employee Courtney asked if she was paying anything. Ms. Harper said she was unable to pay anything. Courtney handed Ms. Harper a receipt indicating that she owed \$330 at her next appointment on September 8, 2017.

167. Ms. Harper reported again on September 8, 2017. She did not have money to pay and again asked for community service. Courtney stated that she would need to talk to Rachel, who was at the Municipal Court, and Ms. Harper decided to wait. While talking to Courtney, Ms. Harper became upset and frustrated because PPS would not allow her to do community service and make any progress on her cases, and she began to cry. Ms. Harper told Courtney that she thought PPS was changing their story about community service each time she asked about it. She eventually regained her composure and apologized. Courtney then told her she would not be able to talk to Rachel because “we close at 4:30 and she has a lot of crap to do.”

168. Ms. Harper appeared in the Municipal Court for her most recent review hearing on September 15, 2017. PPS reported that Ms. Harper had continued to miss appointments and was non-compliant. Ms. Harper asked the dates and number of appointments PPS was alleging she had missed but did not receive an answer. Judge Gomany told Ms. Harper to stop talking. PPS employee Rachel also reported that Ms. Harper worked only part-time, and had turned down a second job—misrepresenting her current work situation and failing to report Ms. Harper’s inability to work additional hours because of her son. Ms. Harper tried to explain, but Judge Gomany again told her to stop talking.

169. Ms. Harper was then ordered to jail for five days.

170. Before this review hearing, PPS never told her it was going to report to the Judge that she had any missed appointments, or which appointments it would represent to the Municipal Court that she had missed.

171. Ms. Harper also heard Judge Gomany and one of the magistrates discussing a recording. The Municipal Court took a recess before deciding her case, and she believes that during that time PPS played a recording of her conversation with Courtney during her last

appointment. Nobody played Ms. Harper the recording or allowed her to explain what had happened.

172. Court records show Judge Gomany's notes from PPS's testimony that Ms. Harper had "cont. to miss appointments" and was "non-compliant."

173. Ms. Harper was released from jail on September 20. She did not receive any notice of when her next appointment was set. PPS employee Rachel called Ms. Harper on Monday, September 25 to tell her she missed an appointment the previous Friday. Ms. Harper explained that she did not have a notice of an appointment. Rachel set an appointment for the following Friday, September 29.

174. On September 29, 2017, Ms. Harper reported to the office and asked again about community service. Rachel informed her that community service can only be completed on weekdays, similar to the hours of a full-time job. She said that Ms. Harper's full-time job would not allow her to complete community service.

175. Ms. Harper also asked PPS for a copy of any records PPS kept on her file. Rachel told her that all of the records would be with the Municipal Court, including records of missed appointments.

176. No list of missed appointments from PPS appears in the file Ms. Harper obtained from the Municipal Court. Her file also does not include any evidence from past hearings or submitted for her future review hearing regarding missed appointments.

177. Courtney informed Ms. Harper that their system showed seven missed appointments since the beginning of May. Ms. Harper believes this included appointments that she had called to reschedule and could not attend because of work or family obligations.

178. Ms. Harper appeared at PPS for her next appointments on October 5, October 13, and October 24, 2017. Ms. Harper made a \$20 payment on October 13, all of which PPS applied to its service fees. Her most recent receipt from PPS indicates that she owes PPS \$150 in supervision fees and the Municipal Court \$715 in fines.

179. Ms. Harper has struggled to make ends meet since she was assigned to PPS in May 2017 and will continue to do so, given her limited income and the costs of caring for her son's medical needs. Ms. Harper and her son also struggle to survive off her income and her son's Social Security disability check.

180. For these same reasons, Ms. Harper struggled to pay PPS each month and to report to PPS each week. Ms. Harper would have to scrape up \$5 to \$10 to pay others for a ride to the PPS office, which is at least a 40-minute drive roundtrip from her home. And because she was required to report weekly, she often missed work to get to the PPS office by the time the office closed at 4:30 p.m. Though PPS was occasionally open one Saturday per month for a half day, the weekend hours were not frequent enough for Ms. Harper's weekly appointments.

181. In total, Ms. Harper reported to PPS approximately sixteen times, and to the Municipal Court three additional times, after she was put on probation. It consumed a significant amount of her time and money to do so.

182. Ms. Harper tried to talk to PPS about her difficulty reporting weekly and paying \$80 per month, because she does not live or work in Gardendale and often could not find reliable transportation. But PPS repeatedly told her that she had to report each week because she was behind on her payments and had to pay.

183. PPS never offered her any services or alternatives to payment based on her limited income, despite her numerous requests.

184. Ms. Harper saw Judge Gomany ask PPS in multiple cases if PPS will take someone back on probation after PPS testified that the probationer was noncompliant. PPS always indicated that it wanted the person to continue to report, presumably so PPS could continue to collect fees.

185. Each time Ms. Harper reported to the PPS office, she had to sign into a sign-in sheet and write how much she was paying. At each appointment, PPS only asked her about her payment and when she could report the following week.

186. Ms. Harper was given a receipt after each PPS visit, which indicated how much she paid and how the funds were applied to the PPS fee and her court fines. When she could not pay, the receipt indicated “non-payment” and the total amount she was required to pay at the next visit, which increased each month and totaled hundreds of dollars when Defendant Gomany removed her from PPS.

187. Ms. Harper was only able to pay PPS \$90 total—all of which PPS applied to its monthly fees, not her Municipal Court fines and costs. As of her last receipt from PPS, she still owed the full \$715 to the court and an additional \$150 in PPS fees.

188. Ms. Harper was scheduled to report back to the Municipal Court for a review hearing on her PPS probation on December 1, 2017, but Defendant Gomany removed her from PPS supervision on November 1, 2017, pursuant to the Modification Order. *See* Ex. B. Defendant Gomany separately canceled her upcoming review hearing.

189. Because the Modification Order did not indicate Defendants’ intent *not* to re-enter a contract for private probation services or how the Municipal Court will administer payment plans or process the cases of those who cannot afford a payment plan, Ms. Harper expects Defendants Gardendale and Gomany may resume a contract for private probation services with

Defendant PPS. Thus, she fears she will once again be placed under PPS supervision; required to report weekly to PPS; subjected to PPS's threats, inaccurate representations, and profit-motivated scheme; and again face jail or threats of jail because she is too poor to pay PPS the monthly fees or her fines and costs, and because she struggles to make it to PPS's weekly "appointments."

190. Moreover, since entering the Modification Order, Judge Gomany still does not appear to offer defendants community service in lieu of their fines and costs.

ii. *Jennifer Essig*

191. Plaintiff Jennifer Essig does not have a permanent residence and has been living in a motel in Center Point, Alabama, with her fiancé for several months.

192. Ms. Essig appeared in the Gardendale Municipal Court on July 21, 2017, and pled guilty to trespassing. Judge Gomany sentenced her to a \$50 fine and \$232 in court costs.

193. Judge Gomany then asked Ms. Essig if she could pay the fines and costs in full. She said she could pay \$40 that day but could not pay the entire amount, because she was on a fixed income. Judge Gomany then informed Ms. Essig that she would have to pay the rest through probation.

194. Judge Gomany did not inquire as to Ms. Essig's assets, income, or ability to pay the costs and fine assessed against her prior to placing her on probation.

195. Ms. Essig had been in a serious car accident in May 2017, which required her to wear a back brace and resulted in an inability to walk without difficulty. Because of her condition, she is unable to work and pays her bills using her disability payments. Ms. Essig's medical condition was visible to Judge Gomany during her court appearance.

196. Judge Gomany handed Ms. Essig a Probation Order and told her to sign it. Judge Gomany did not inform Ms. Essig that the Probation Order would require a \$40 monthly payment to PPS.

197. Although Ms. Essig told Judge Gomany she was on a fixed income, he did not ask her what monthly payments she could afford.

198. Judge Gomany did not tell Ms. Essig the conditions of her probation, any fees she would have to pay for probation, or that a private company, like PPS, would be supervising her while on probation. He also did not offer her any alternatives to payment, such as community service.

199. Ms. Essig did not have an attorney to represent her at this hearing, and Judge Gomany did not ask if she wanted an attorney to be appointed for her.

200. Ms. Essig was escorted out of the courtroom and into another room by Courtney Waters, an employee of PPS. Courtney brought a PPS Sentence of Probation Form with her and filled it out in front of Ms. Essig, noting that Ms. Essig would pay PPS \$40 per month for a “probation service fee,” and that she would repay all of her fines and costs at a rate of \$80 per month over the next 12 months. Courtney also checked off other probation conditions on this form.

201. Courtney did not ask about Ms. Essig’s ability to pay the \$80 per month fee, nor did she inform Ms. Essig about the availability of fee waivers, community service, or other alternatives to payment.

202. Courtney had Ms. Essig sign the form, which had already been signed by Rachel McCombs, another PPS employee, and the Municipal Court magistrate supervisor, Sherry Baggett, on behalf of Judge Gomany.

203. Ms. Essig did not return to the courtroom to review the terms of her probation with Judge Gomany, the clerks, or any employee of the Municipal Court.

204. Courtney also presented Ms. Essig with another document on PPS letterhead that stated, “MONTHLY PAYMENT DUE AT FIRST VISIT!!!,” along with the name of her PPS probation officer; the date of her first appointment at PPS’s offices; PPS’s office hours; and the amount of her first payment. This PPS Enrollment Form states that individuals can reschedule their appointments on or before the day of their appointment, aside from the first appointment or the “Deadline Date” (the date all money is due).

205. Courtney also gave Ms. Essig an informational sheet from PPS titled, “KNOW YOUR RIGHTS...”

206. Ms. Essig gave Courtney her \$40 payment and received a hand-written receipt. She was not told that this payment would be applied solely to PPS’s monthly supervision fee and not to her court costs and fine.

207. Ms. Essig reported to PPS on July 27, 2017, and paid \$40, bringing her total for the first month to \$80.

208. At her PPS appointment, Ms. Essig received a receipt indicating the total amount of her fines and costs, as well as PPS’s supervision fee; the amount she had paid towards each of these line items; and her outstanding balance. The receipt showed that PPS had added an additional \$100 to Ms. Essig’s court fines without an explanation.

209. Ms. Essig’s PPS receipt from July 27 indicated she had an appointment on August 1, even though Ms. Essig had been on probation for only one week and already had paid one month’s worth of payments to PPS. Ms. Essig does not recall whether she reported to this appointment or not.

210. Ms. Essig reported to PPS again on August 11, 2017, and paid \$20. PPS told her to report every week.

211. Ms. Essig reported to PPS again on August 17, 2017, as scheduled, and paid \$28.

212. Ms. Essig appeared for a review hearing in the Municipal Court on August 18, 2017. Prior to the hearing, neither PPS nor Judge Gomany provided her with any notice that PPS would present evidence to the Court about her probation and that she could face jail time based on that evidence. Specifically, neither PPS nor the judge told Ms. Essig before her hearing that she had allegedly missed probation appointments. She was not offered an attorney.

213. At the hearing, PPS employee Rachel McCombs told Judge Gomany that Ms. Essig had missed three PPS appointments, but she did not provide any more information or evidence to the Judge or to Ms. Essig. Ms. Essig offered to get her PPS receipts from the car showing she had reported to PPS three times since her initial court date less than a month prior, but Judge Gomany silenced Ms. Essig and sentenced her to 24 hours of jail without an explanation as to the basis of the term of incarceration.

214. Rachel told Judge Gomany she wanted Ms. Essig to report back to court for another review hearing on October 6, 2017.

215. Ms. Essig was given a piece of paper from the clerk stating that she was serving 24 hours in jail and that her next court appointment was October 6, 2017.

216. Ms. Essig was escorted to the jail and released the following day, August 19, 2017.

217. Ms. Essig reported to PPS on August 24, 2017, and paid \$20, bringing her total payments to PPS for August to \$68.

218. The PPS receipt from Ms. Essig's August 24th visit shows that she did not receive any credit towards her court costs and fine for her 24 hours spent in jail.

219. Ms. Essig reported to PPS on September 8, September 14, September 22, September 29, and October 3, 2017, and made a payment at each appointment. She paid off her balance at her October 3 appointment.

220. At each of her PPS appointments, PPS asked only how much money she would be paying and when she would report the next week. At no point did PPS offer Ms. Essig any services beyond payment collection.

221. Ms. Essig was scared of being sent back to jail at her next review hearing, so she used half of her monthly disability payment to pay off PPS. She struggled to pay for necessities of life that month, including groceries and gas, because of her payments to PPS.

222. When in the PPS office on one visit, Ms. Essig heard PPS employee Rachel McCombs tell another individual that she would be put in jail for a week if she did not make her payments to PPS.

223. Because Ms. Essig lives 45 minutes from the PPS office in Gardendale and has limited access to a car, it was very difficult and expensive for her to report to PPS each week. Though Ms. Essig told PPS about her difficulty reporting weekly, PPS told Ms. Essig she had to report each week because she couldn't pay \$80 up front. PPS also did not offer Ms. Essig alternatives to payment, such as community service. Nor did PPS offer to waive Ms. Essig's fees, despite knowing that her only income was from her disability payments.

224. While reporting, Ms. Essig often saw a line of other people waiting to report and pay.

225. In total, Ms. Essig paid PPS \$160 in supervision fees for a probation period that lasted just under two and a half months, from July 21, 2017, to October 3, 2017.

226. Ms. Essig paid \$382 in fines and costs to the court, which is \$100 more than she was sentenced to pay by Judge Gomany.

V. CLASS ALLEGATIONS

227. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), Plaintiff Harper seeks to certify a class related to Claims One, Two, and Three of the Complaint, for which she seeks declaratory and injunctive relief. This proposed Class is defined as: All individuals who are now or who will in the future be supervised by PPS for cases in the Gardendale Municipal Court and are required to pay monthly probation fees to PPS. This Class is referred to as the Equitable Relief Class.

228. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), Plaintiff Harper seeks to certify a Class related to Claim One only, for which she seeks actual and punitive damages. This proposed Class is defined as: All individuals who were supervised by PPS for cases in the Gardendale Municipal Court on or after December 28, 2015. This Class is referred to as the Damages Class.

229. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(b)(a) as to the proposed Equitable Relief and Damages Classes; the requirements of Rule 23(b)(2) as to the proposed Equitable Relief Class; and the requirements of Rule 23(b)(3) as to the proposed Damages Class.

A. Rule 23(a) Requirements for the Equitable and Damages Classes

i. *Numerosity*

230. The precise size of the Classes is unknown but substantial. For example, PPS reported after starting its operation in Gardendale in 1998 that it had supervised 232 people on probation in its first six months, and on one given day in 2017, Plaintiff Harper observed that 15 people reported for probation in just one hour based on her review of one recent sign-in sheet at the PPS office. Therefore, Plaintiffs estimate that hundreds of individuals who were assigned to

PPS probation over the last two years would be members of both Classes.

231. Furthermore, the Equitable Relief Class is forward-looking, with the potential for new members to join the Class on an ongoing basis. Moreover, the Class is comprised of low-income individuals who were or will be placed on probation with PPS because they could not or cannot afford to pay the full fines and costs they owed or will owe at sentencing.

232. Thus, joinder of every class member would be impracticable as to both Classes.

ii. *Commonality*

233. Plaintiff Harper raises claims based on questions of law and fact that are common to, and typical of, the members of the putative Classes.

234. Questions of fact common to the Proposed Classes include:

a. Whether PPS made supervision-related decisions concerning Plaintiff's and the proposed Classes members' probation conditions, including deciding and prolonging the length of probation and the date and number of times individuals must report and pay;

b. How PPS profited from its supervision of PPS supervisees;

c. The amount of fees PPS collected from its supervisees;

d. Whether PPS applied all monies paid by supervisees first to the PPS fee and second to court-imposed fines and costs;

e. Whether PPS charged individuals monthly service fees;

f. PPS's role in review hearings and deciding whether individuals are noncompliant and should be punished for contempt;

g. PPS's role in setting appointment dates and review hearings;

h. Whether the Contract grants an exclusive franchise for provision of probation services;

- i. Whether Defendant City of Gardendale competitively bid the Contract; and
- j. Whether the Contract allows the charging of a probation fee.

235. Questions of law common to the proposed Class include:

a. Whether PPS's supervision of individuals in whose cases it has a direct financial interest violates its duty of neutrality under the Fourteenth Amendment Due Process Clause;

b. Whether the Contract's creation of this financial conflict of interest for PPS voids the Contract and renders PPS unable to serve as probation officer;

c. Whether the Contract between PPS and the Municipal Court Judge is void and unenforceable because it grants an exclusive franchise that was not competitively publicly bid, in violation of Ala. Const. Art. I, § 22 and Ala. Code § 41-16-50 (1975);

d. Whether the Contract between PPS and the Municipal Court Judge violates public policy, because it requires the charging of a probation fee in municipal court, which is not authorized by state law;

e. Whether actual and punitive damages are appropriate against PPS; and

f. Whether injunctive and declaratory relief is appropriate and if so, what the terms of such relief should be.

236. These common legal and factual questions arise from one central scheme: PPS's enormously profitable contractual relationship with the Municipal Court Judge that governed the City's probation supervision practices. Defendants operated this scheme in materially the same manner every day, to every person assigned to PPS. The material components of the scheme did not vary among members of the proposed Classes, and the resolution of these legal and factual issues will determine whether all of the members of the proposed Classes are entitled to the relief

that they seek.

iii. *Typicality*

237. Plaintiff Harper's claims are typical of those asserted on behalf of the proposed Classes. Because Plaintiff and the proposed Classes challenge the same unconstitutional, unlawful Contract and PPS's unconstitutional practices thereunder, it is anticipated that Defendants will assert similar defenses against Plaintiff and members of the proposed Classes.

238. Plaintiff Harper suffered injuries from Defendants' violations of federal and state law. Moreover, Plaintiff Harper is vulnerable to further injury due to the reasonable likelihood that Defendants may resume their practices under the Contract based on the Modification Order's failure to terminate the Contract with PPS; prohibit the City or Municipal Court from re-engaging with PPS in the future for private probation services under terms identical or substantially similar to those of the Contract; prohibit the Municipal Court from engaging PPS to facilitate the payment plan individuals must request if they cannot fully pay by January 1, 2018; and explain how the Municipal Court will handle defendants who cannot pay anything towards a payment plan. The answer to whether Defendants' scheme is unlawful, as the foregoing alleges, will determine the success of Plaintiff Harper's claims and every other member of the proposed Equitable Relief and Damages Classes. If the named Plaintiff succeeds in her claims that Defendants' policies and practices violate their federal and state rights, that ruling will likewise benefit every other member of the proposed Classes.

iv. *Adequacy*

239. Plaintiff Harper will fairly and adequately protect the interests of the proposed Class. Plaintiff has no interests separate from, or in conflict with, those of the proposed Classes she seeks to represent as a whole, and she seeks equitable relief and damages on behalf of all

members of the proposed Classes.

B. Rule 23(g): Class Counsel

240. Plaintiff Harper is represented by attorneys from the Southern Poverty Law Center, who have experience in class-action litigation involving civil rights law, as well as experience litigating policies and practices of municipal courts that are unconstitutional. Counsel have the resources, expertise, and experience to prosecute this action.

C. Rule 23(b)(2): Equitable Relief Class

241. Each Defendant has acted on grounds generally applicable to the proposed Equitable Relief Class, making declaratory and injunctive relief with respect to the proposed Class as a whole appropriate and necessary. Specifically, through the policies, practices, and procedures that make up the probation and debt-collection scheme at issue, Defendants have acted pursuant to the Contract as well as the PPS-crafted and executed Sentence of Probation Form in a manner that is generally applicable to the proposed Class.

242. A declaration that PPS's supervision of Plaintiff Harper and proposed Class members, while maintaining a personal financial conflict of interest, violates the Fourteenth Amendment Due Process Clause, as well as an injunction that enjoins Defendants from reentering into a similar contractual scheme going forward would benefit every member of the proposed Equitable Relief Class. The same rings true for a declaration that the Contract is void and its enforcement should be enjoined, because it violates the Due Process Clause of the Fourteenth Amendment and Alabama law.

D. Rule 23(b)(3): Damages Class

243. Because the question of liability can be determined on a class-wide basis and

common issues of law and fact overwhelmingly predominate in this case, certification of Plaintiff Harper's proposed Damages Class under Fed. R. Civ. P. 23(b)(3) is appropriate. The common questions of fact regarding the Contract and Defendant PPS's operation of the private probation scheme pursuant to that Contract, and the common questions of law regarding the constitutionality of the Contract and the operation of that scheme thereunder, are dispositive of the issue of whether every member of the proposed Damages Class is entitled to damages. The viability of Plaintiff Harper's and Damages Class members' claims will depend on a determination as to PPS's conduct and the legality thereof.

244. A class action is also the superior means of fairly and efficiently adjudicating the claims of the hundreds of members of the proposed Damages Class against Defendant PPS, as compared to hundreds of individual lawsuits.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution Based on PPS's Financial Conflict of Interest in Probation Cases

Plaintiff Harper, on her own behalf and on behalf of the proposed Equitable Relief Class, against Defendants PPS, Gardendale Municipal Court Judge Kenneth Gomany in his official capacity, and the City of Gardendale, Alabama

Plaintiff Harper, on her own behalf and on behalf of the proposed Damages Class, against Defendant PPS

245. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

246. Pursuant to the Contract under which Defendants operated the private probation scheme at issue, PPS performed traditional governmental functions of probation supervision for the City and the Municipal Court.

247. The Due Process Clause of the Fourteenth Amendment requires probation providers such as PPS to serve as neutral information gatherers and neutrally assist the Municipal Court in fairly discharging sentences and prohibits probation providers from having a personal financial interest in the probation cases they supervise.

248. Defendants' policies and practices in executing the Contract, however, created a direct financial stake for PPS—a for-profit corporation—in every decision PPS made concerning the supervision, enforcement, and revocation of Plaintiff Harper's Municipal Court probation.

249. Due to this financial interest, PPS was not incentivized to operate as a neutral public court officer or to instruct individuals to seek waivers of any fees, assist individuals in reporting their indigency to the Judge, or evaluate the indigency of individuals itself. Rather, PPS was incentivized to maximize corporate profit in deciding probation conditions for Plaintiff Harper and members of the proposed Equitable Relief and Damages Classes; how to enforce the conditions; what information to provide Plaintiff and members of the proposed Classes about their rights and obligations while on probation; which statements to submit to Judge Gomany about the probation compliance of the members of the proposed Classes; and what sanctions to recommend to Defendant Gomany for alleged probation violations.

250. Through its actions, policies, and practices, PPS acted with reckless and callous indifference to the constitutional rights of Plaintiff Harper and other individuals on probation.

251. Thus, Defendants' policy and practice of administering private probation for Plaintiff Harper and members of the proposed Classes through PPS—pursuant to the Contract and PPS-created Sentence of Probation Form—violated longstanding due process restrictions against such self-interested financial arrangements under the Fourteenth Amendment.

252. These policies and practices injected, and will continue to inject upon Defendants'

resumption of this scheme, PPS's financial interest into the probation supervision and enforcement process in Gardendale and PPS's probation-related decisions in violation of the Due Process Clause, unless Defendants are enjoined from engaging in such practices in the future.

253. Accordingly, to redress the harm that has resulted and that will result in the future due to Defendants' unconstitutional probation scheme, Plaintiff Harper and members of the proposed Equitable Relief Class are entitled to a declaration that the probation scheme creates an unconstitutional conflict of interest, as well as a preliminary and permanent injunction enjoining this conflict of interest.

254. Plaintiff Harper and members of the proposed Damages Class are entitled to actual and punitive damages against Defendant PPS in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

Violation of Section 22 of the Alabama Constitution's Requirement to Competitively Publicly Bid Exclusive Franchises

Plaintiff Harper, on her own behalf and on behalf of the proposed Equitable Relief Class, against Defendants PPS, Gardendale Municipal Court Judge Kenneth Gomany in his official, non-judicial capacity, and the City of Gardendale, Alabama

255. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

256. A municipal contract must be publicly bid if the contract grants an "exclusive franchise" in violation of Section 22 of Article I of the Alabama Constitution.

257. The Contract entered into by PPS and a former Municipal Court judge, and approved by the former Mayor of Gardendale, grants an exclusive franchise for the provision of probation services to PPS. In the Contract, the City designates PPS the "sole" provider of probation services to offenders sentenced by Municipal Court.

258. The Contract was not competitively publicly bid, as required by Ala. Const. Art. I,

§ 22, and Ala. Code § 41-16-50.

259. Because the Contract was not, and has never been, competitively publicly bid, it is void and unenforceable.

260. Thus, Plaintiff Harper and putative Equitable Relief Class members are entitled to a declaration against Defendants that the contract is void and unenforceable under the Alabama Constitution, as well as a preliminary and permanent injunction against Defendants enjoining enforcement of the Contract and all future, substantively similar contracts.

THIRD CLAIM FOR RELIEF

Violation of Alabama Public Policy to Charge Probation Fees in Direct Contradiction of Alabama Precedent that Prohibits Such Fees in Municipal Court

Plaintiff Harper, on her own behalf and on behalf of the proposed Equitable Relief Class, against Defendants PPS, Gardendale Municipal Court Judge Kenneth Gomany in his official, non-judicial capacity, and the City of Gardendale, Alabama

261. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

262. The Contract violates public policy because it requires the charging of a probation fee in direct contradiction of Alabama law's prohibition against fees in municipal court.

263. Municipal courts may only impose monetary penalties of fines and court costs expressly provided by law. Ala. Code §§ 11-45-9(a); 12-19-153(a). Alabama law does not authorize such a municipal probation fee to be charged.

264. Because the Contract violates public policy, it is void and unenforceable.

265. Plaintiff Harper and putative Equitable Relief Class members are entitled to a declaration against Defendants that the contract is void and unenforceable, as well as a preliminary and permanent injunction against Defendants enjoining enforcement of the Contract

and all future, substantively similar contracts.

FOURTH CLAIM FOR RELIEF

Abuse of Process

Plaintiffs Harper and Essig, individually, against Defendant PPS

266. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth here.

267. PPS abused the process of probation in the Municipal Court by misusing the Probation Order and Sentence of Probation Form granting them authority to supervise probation to extort money from Plaintiffs Harper and Essig for PPS's own profit.

268. PPS intentionally misused these orders by threatening Plaintiffs Harper and Essig with jail sentences, failing to give them full information about their due process and other rights, and failing to provide a process for evaluating or presenting indigency to the Municipal Court when Plaintiffs Harper and Essig were unable to pay.

269. Plaintiffs Harper and Essig are entitled to an award of damages against PPS in an amount to be determined at trial, including punitive damages.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request this Court grant them the following relief:

- a. the exercise of jurisdiction over this action;
- b. certification of Plaintiff Harper's proposed Equitable Relief Class under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure in connection with the First, Second, and Third Claims for Relief;
- c. certification of Plaintiff Harper's proposed Damages Class under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure in connection with the First Claim for Relief;

d. an award of declaratory and injunctive relief against Defendants on behalf of Plaintiff Harper and the members of the certified Equitable Relief Class in connection with the First, Second, and Third Claims for Relief;

e. an award of damages, including punitive damages, to Plaintiff Harper and members of the proposed Damages Class and against Defendant PPS under the First Claim for Relief;

f. an award of damages, including punitive damages, to Plaintiffs and against Defendant PPS under the Fourth Claim for Relief;

g. an award of prevailing party costs, including attorney fees; and

h. such other relief as the Court deems just and appropriate.

TRIAL BY JURY IS DEMANDED ON FIRST AND FOURTH CLAIM FOR RELIEF.

DATED this December 28, 2017.

Respectfully submitted,

/s/ Sara Zampierin

Sara Zampierin

On Behalf of Plaintiffs' Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing was filed through the Court's CM/ECF filing system, and by virtue of this filing notice will be sent electronically to all counsel of record, including:

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DATED this December 28, 2017.

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