

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

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.

COMPLAINT (Class Action)

Jury Trial Demanded

I. PRELIMINARY STATEMENT

1. America’s judicial system is premised on the assumption that justice 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) (Frankfurter, J., concurring)).

2. Professional Probation Services, Inc. (“PPS”) and the Gardendale Municipal Court (“the Municipal Court”) have turned these foundational principles upside down. Pursuant to an ongoing Contract entered with a former Municipal Court judge 20 years ago, PPS is using the Municipal Court as a cudgel to extract financial profit from those too poor to pay their fines and court costs. The Municipal Court enables this exploitation by requiring any who cannot pay in full to be supervised on probation with PPS. PPS exercises exclusive control over its supervisees, and PPS has a direct financial interest in every decision it makes in its supervisees’ cases.

3. Pursuant to the Contract, PPS sets all the terms of probation, without input from, and often in contradiction to, what has been ordered by the Municipal Court. PPS orders the supervisee to pay PPS a monthly fee—typically \$40—which is the sole source of PPS’s revenue. To maximize its revenue, PPS controls the length of time supervisees are on probation, sometimes ordering a longer period than was authorized by the Municipal Court; extends that time when persons fall behind on payments; and always collects its fee first when partial payments are made—all conduct which results in more money to PPS. In some instances, PPS has even unilaterally increased the fine amount the person allegedly owes, again extending its ability to earn a profit.

4. Although the Contract under which PPS runs this probation scheme prohibits PPS from charging any fees to those who are indigent, PPS systematically ignores individuals’ requests to reduce payments or perform community service in lieu of payment, and fails to facilitate asking the Municipal Court for such relief. And when people stop paying altogether, PPS can set more frequent “review” hearings for the person to appear in Municipal Court, where PPS informs the Municipal Court that the person has not paid or has missed check-in

appointments. Often, these statements are either lies about the underlying conduct or fail to provide critical context, including that the person has professed to PPS an inability to pay or that the person called ahead of the alleged missed appointment to reschedule or was unable to attend due to circumstances beyond her control.

5. The result of these one-sided in-court statements by PPS is typically an order of detention for a number of days, during which the detained person receives no credit toward her outstanding fines, costs, or fees. Instead, the person is jailed for non-payment and then released to continue her supervision with PPS, still facing the ongoing obligation to pay its monthly fees and associated threats for non-compliance.

6. By prioritizing PPS's ability to collect additional revenue, these actions by PPS are to the financial benefit of PPS and to the detriment of Plaintiff Catherine Regina Harper and Jennifer Essig (hereinafter collectively "Plaintiffs"), who are under PPS supervision and are being forcefully 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 are only required to pay.

9. PPS has applied all money Plaintiffs have paid first to PPS's \$40 monthly supervision fee. PPS has also refused to offer Plaintiffs viable alternatives to payment, such as fee waivers or community service, even as Plaintiffs have continually expressed difficulties or an

inability to pay.

10. In addition, PPS has used the Municipal Court and jail sanctions for contempt or probation violation to threaten Plaintiffs into compliance and to pay more than they can afford. Plaintiffs Harper and Essig have been jailed based on PPS's false or inadequate representations to the Municipal Court that they were "noncompliant" with probation terms. Ms. Harper fears she will be jailed again at her next review hearing on December 1, 2017, based on PPS's misrepresentations and her inability to make her upcoming monthly payments to PPS.

11. Accordingly, Plaintiffs bring this civil rights action 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 four claims: *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.

12. Finally, in the Fourth Claim for Relief, Plaintiffs Harper and Essig claim that PPS's use of probation to maximize generation of profit constitutes an abuse of process under state law.

13. 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. Plaintiffs Harper and Essig also seek actual and punitive damages for PPS's abuse of process under state law.

II. JURISDICTION AND VENUE

14. 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.

15. 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

16. Plaintiff Catherine Regina Harper ("Gina" or "Harper") is a resident of Birmingham, Alabama.

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

B. Defendants

18. 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 a contract executed with 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.

19. 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.

20. 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

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

22. 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.

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

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

25. The City selects the judge of the Municipal Court and sets the judge’s salary.

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

27. Defendant Gomany also operates a private law practice representing clients in

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

criminal and personal injury matters.

28. 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

29. 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.

30. 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 before the Municipal Court.

31. 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.

32. 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

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

provide “the services and programs for the misdemeanor offenders placed on probation by the Court.” *Id.*

33. 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.

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

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

35. 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.

36. PPS charges monthly fees to those on probation.

37. 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.

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

39. The Contract, when executed, required the City to pay PPS 30% of all pre-existing fines that were delinquent at that time and that PPS subsequently collected. Ex. A at 3.

40. According to the Contract, PPS charges 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 authorized under the Contract to charge additional fees for additional services such as anger management, substance abuse, and personal growth classes. *Id.* at 8–13.

41. 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.

42. 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.

43. The Contract also requires PPS to supervise, at no cost, any individuals whom the Municipal Court deems indigent. Ex. A at 8.

44. As detailed below, however, the Municipal Court does not assess indigency, and PPS generally does not assist in seeking an indigency determination, even where it is clear an individual is having difficulty paying.

D. Probation and Probation Conditions

i. Initial Assignment to PPS

45. The practice of the Municipal Court’s referral of court defendants to PPS probation is standard. When an individual appears on a traffic ticket or misdemeanor offense and is sentenced or otherwise ordered to pay a fine and/or court costs, Judge Gomany’s practice is to ask whether the person can pay the entire amount due on the date of sentencing.

46. Even when individuals express they cannot pay, Judge Gomany tells them they

must pay some amount or they will be jailed and must call their friends and family or visit an ATM to get money.

47. If a person cannot pay the entirety of what they have been assessed, Judge Gomany assigns them to be supervised by PPS, because they cannot pay their fines and court costs in full, and enters an “Order of Probation” (hereinafter “Probation Order”) for that person. Indeed, Defendant Gomany usually informs defendants that paying in full will save them from going on probation.

48. If a defendant can pay in full, the individual pays the Municipal Court and is not referred to probation with PPS.

49. Defendant Gomany does not explain that PPS is a private, for-profit company.

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

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

52. 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, as well as any other conditions of probation specific to the individual.

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

<u>ORDER OF PROBATION</u>		<u>GARDENDALE MUNICIPAL COURT</u>
NAME: <u>Jennifer Essig</u>		DATE: <u>7/24/17</u>
LENGTH OF PROBATION: <u>30</u>	DAYS PROBATED	<u>10</u> YEARS (s)
TYPE OF SUPERVISION:		
☐ (1) SUPERVISED FOR LENGTH OF PROBATION.		
☐ (2) SUPERVISED FOR COMPLETION OF COURT REFERRAL PROGRAMS.		
☒ (3) SUPERVISED UNTIL FINE, COURT COST AND/OR RESTITUTION PAID.		
☐ (4) UNSUPERVISED.		
☐ (5) OTHER: _____		
SPECIAL CONDITIONS: DEFENDANT IS SO ORDERED.....		
☐ (1) TO PAY FINE, COURT COST, RESTITUTION, FEES TO PROBATION OFFICER.		
☐ (2) NOT TO DRINK OR POSSESS ALCOHOLIC BEVERAGES.		
☐ (3) NOT TO DRIVE WITHOUT A VALID STATE DRIVER'S LICENSE.		
☐ (4) NOT TO DRIVE WHILE UNDER THE INFLUENCE OF INTOXICANTS.		
☐ (5) TO ATTEND AND COMPLETE ALCOHOL/DRUG EDUCATION CLASS.		
☐ (6) TO ATTEND AND COMPLETE CONSUMER CREDIT LINE CLASS.		
☐ (7) TO SEEK VOCATIONAL REHABILITATION MONITORED BY PROBATION OFFICER.		
☐ (8) TO PAY FOR DAMAGES TO PROPERTY OR PERSON OF AFFIANT: _____		
RESTITUTION AMOUNT \$ _____		
☐ (9) NOT TO BOTHER, HARASS, OR CONTACT AFFIANT		
☒ (10) TO STAY OFF PROPERTY OF: <u>PeachTree Crossings, Landerdale, AL</u>		
☐ (11) NOT TO OWN OR POSSESS ANY FIREARM OR OTHER WEAPON.		
☐ (12) OTHER: _____		
ATTORNEY: _____		☒ WAIVES ATTORNEY
DATE	<u>Jennifer Essig</u> DEFENDANT'S SIGNATURE	DATE <u>7/24/17</u> JUDGE
WHITE: COURT		YELLOW COPY: DEFENDANT

54. Once Defendant Gomany signs the Probation Order, he has the individual execute it and provides her a carbon copy.

55. Defendant Gomany makes no effort to evaluate an individual's income or expenses or to determine the amount the individual can afford to pay each month.

56. Nor does the Judge explain to individuals the terms of the probation or offer them alternatives to payment, such as community service if they indicate they cannot 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*

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

58. During the meeting, PPS completes a PPS-created “Sentence of Probation” form (hereinafter “PPS Sentence of Probation Form”).

59. A Municipal Court magistrate or magistrate supervisor has already signed the PPS Sentence of Probation Form on behalf of Judge Gomany before PPS completes the Form during this meeting between PPS and the individual.

60. The PPS Sentence of Probation Form requires PPS to fill in the number of months of probation, which is typically 24 months—even though the Municipal Court’s Probation Order regularly specifies a shorter period of 12 months.

61. 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 that goes towards the fines and court costs owed to the Municipal Court, which is at least an additional \$40. By contrast, the Probation Order does not specify an amount to pay.

62. 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.

63. The PPS form also lists sixteen other possible conditions of probation that PPS may select on the Form. Generally, PPS specifies 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.

64. Once PPS completes the Sentence of Probation Form, the probationer and PPS sign it. Defendant Gomany, however, does not further review or approve the Form.

65. 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
CT30	MC17-0354	50	232	282
CRIMINAL				

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 \$48.00 to Professional Probation Services, Inc.;
- 2.) Pay all fines which include surcharges within 12 months; at a rate of \$ 20 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 _____;
- 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, 20 17.

Kenneth Hemm
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, 20 17

Probation Officer

Defendant

White - Clerk of Court Yellow - Probation Pink - Defendant

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66. After completing the PPS Sentence of Probation Form, PPS provides 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.

67. The 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.

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

69. 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 Hwy 31 North or South take Main Street (runs parallel with Hwy 31), 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

70. The Enrollment Form warns individuals that non-compliance with these and other

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

71. The 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). In practice, however, if a person does not appear on the appointment date scheduled by PPS, PPS records this as an example of non-compliance for failing to appear. This is true even if the person calls PPS ahead of time to reschedule the appointment.

72. At no point during this separate meeting between PPS and the probationer does 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.

73. Individuals are 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.



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

75. When persons state that they are unable or will have trouble paying at this initial meeting, PPS does not provide any information about, or assistance to the person in obtaining, an indigency determination by the Municipal Court. Rather, PPS retains complete discretion to decide whether to grant or seek any financial relief for those who cannot pay.

76. At this initial meeting, PPS also does not provide individuals with any information about or assistance with obtaining community service in lieu of payments, but tells individuals that they can discuss it at later appointments. Defendant Gomany has stated at review hearings that he is unable to assign people to community service. Thus, to the extent community service is

available at all, PPS retains complete discretion to decide whether to allow persons on probation to perform community service in lieu of paying their fees and fines.

77. Neither PPS nor any court personnel generally disclose throughout the probation assignment process 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

78. PPS operates an office a few blocks from the Municipal Court, where individuals must meet with PPS "probation officers" on dates set by PPS.

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

80. This schedule is 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.

81. Individuals assigned to PPS must report to the PPS office at least once every 30 days. Those who cannot pay the full monthly amount must report once per week.

82. The primary purpose of a probationer's in-person appointments is for PPS to collect its "supervision" fees; any additional money an individual can pay above the \$40 PPS fee is applied to Municipal Court costs and fines.

83. To illustrate, when individuals assigned to PPS arrive for their appointments at PPS's office in Gardendale, they must first record on a sign-in sheet how much they will pay that

day.

84. The “meetings” take place through a payment window. Generally, the only questions PPS asks involve how much the person can pay that day, and inquiries regarding the next reporting date. The probationer is not required to report any other information to PPS.

85. A photograph representing the payment window and sign-in sheet follows:



86. Neither during nor between these check-in appointments does PPS provide any actual rehabilitation services in exchange for the fees paid by individuals under PPS supervision. Rather, PPS only collects and documents the payments the probationer makes and informs them of the date and amount of their next payment.

87. When Plaintiffs and others call to explain that they need to move their check-in date due to transportation issues, work schedules, or other conflicts—which the PPS enrollment form states is acceptable—they are told that they can come in another date. However, PPS still records the person as having “missed” the appointment on the original date, in violation of the terms of their probation.

88. A sign in the PPS office indicates that a person will receive “24 hours in jail” for a

first “violation,” “48 hours in jail” for a second violation, and probation revoked for a third violation.

89. When individuals inform PPS they cannot pay the required amount because they are unemployed or because they do not make enough money, PPS does not help them bring this to the Court’s attention or to get the payments waived, including the monthly probation fee that generates profit for PPS.

90. When individuals inform PPS they cannot pay the required amount because they are unemployed or because they do not make enough money, PPS does not help them convert their fees and court costs to community service.

91. PPS decides whether to allow individuals to complete community service in lieu of payment, while Defendant Gomany states he is unable to order community service. Those who ask for community service are generally told by PPS and then Defendant Gomany, upon PPS’s instruction, that they do not qualify.

92. PPS sometimes distributes financial information documents to those on probation, but appears to have sole discretion over whether the Municipal Court receives this information or whether PPS will do anything further with it. PPS does not regularly offer community service to individuals as an alternative to payments.

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

93. PPS retains any money paid to first satisfy its own outstanding monthly probation fees of \$40 per month, and it pays the remainder, if any, to the Municipal Court.

94. If the payment is less than \$40 or less than the balance of fees PPS is owed, PPS applies that amount collected to its fees and applies none of the payment to the court-ordered fees and fines.

95. PPS maintains records of appointments and payments within its own system. This information is 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 Generate Profit*

96. PPS generates significant income from its supervision practices.

97. PPS is a for-profit entity and relies exclusively on these monthly service fees to turn a profit. It would not be able to function in its current business model without collecting fees from the individuals it supervises.

98. Defendant PPS engages in several practices that allow it to maximize its profit by extending the period of time individuals must report and in turn, pay PPS.

99. PPS increases the amount of time that individuals are 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 increases the period of time in which PPS can potentially charge its monthly probation service fee.

100. PPS also increases 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
CT 30	MC17-0354	50	232	282
Criminal				

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, 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

\$800

BALANCES ARE SUBJECT TO VERIFICATION

NXT APPT: *8-1-17*

101. This benefits PPS because either requiring additional time on probation, or additional fine payments that result in an individual taking more time to pay, results in additional monthly service fees for PPS.

102. When appearing in the Municipal Court, PPS routinely acts in a non-neutral manner, thereby increasing the likelihood of the Municipal entering a contempt sanction against, or revoking probation for, individuals under its supervision. PPS does this in several ways, including by presenting unsworn and inadequate—or sometimes false—statements at review hearings before the Municipal Court that individuals like Plaintiffs Harper and Essig have missed PPS check-in appointments, or that they have not paid 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 and appeared at the rescheduled time, PPS effectively ensures that the individual will be jailed or assessed additional fines for contempt by the Municipal Court, thereby prolonging their term on probation.

103. PPS testifies that individuals are "noncompliant," knowing and with the intent that this will result in contempt jail sentences that will make them fearful of going to jail in the future until they have paid what they owe.

104. The prosecutor does not participate in these review hearings.

105. Defendant PPS does not file formal contempt citations or revocation paperwork before reporting individuals' alleged non-compliance with payment obligations or other PPS probation conditions.

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

107. Defendant PPS does 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 testifies that individuals have missed appointments or are "behind" on their payment obligations.

108. Defendant PPS also does not testify or present to Defendant Gomany any evidence about the individuals' inability (or ability) to pay or any issues that have prevented them from making progress on the fines and costs they owe to the Municipal Court, even if the individual had discussed these issues at their appointments.

109. PPS does not request that Defendant Gomany order fee waivers or community

service instead of payment, when individuals request payment alternatives based on their indigency.

110. During review hearings, PPS regularly sets the next review date that a probationer must return to court and again face PPS's testimony about their compliance or noncompliance.

111. Defendant PPS's representations about individuals' compliance with PPS's probation conditions have 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.

112. PPS does not recommend that individuals receive any credit towards what they owe when they serve time in jail, and they do not receive any credit. Thus, these jail stays merely reinforce the power PPS has over the probationer, without allowing the individual any relief from the total amount owed.

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

F. Named Plaintiffs

i. *Gina Harper*

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

115. She works as a painter at a sign company in Midfield, Alabama. She lives with and supports her 15-year-old son, who is autistic.

116. 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.

117. 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.

118. 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.

119. 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.

120. 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.

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

122. Judge Gomany also did not tell her 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.

123. 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.

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

125. 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.

126. 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.

127. Ms. Harper had been on private probation with another company, Judicial Corrections Services (“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.

128. 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.”

129. 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.

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

131. 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.

132. 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 said, and changed it to 24 months. Nobody discussed with Ms. Harper this change or how long she would be on probation.

133. Ms. Harper refused to sign the 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.

134. 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 Enrollment Form also stated she would be required to report weekly if her payments were not current.

135. 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.

136. 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 her later receipts from PPS.

137. 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 set for approximately two months later.

138. 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.

139. 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.

140. 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.

141. 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.

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

143. 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.

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

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

146. 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.

147. 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.

148. 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.

149. 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.

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

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

152. 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.

153. 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.

154. 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.

155. 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.

156. 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.

157. 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.

158. 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.

159. 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.

160. 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."

161. Ms. Harper appeared 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.

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

163. 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.

164. 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.

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

166. 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.

167. 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.

168. 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.

169. No list of missed appointments from PPS appears in the file she 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.

170. 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.

171. Ms. Harper appeared at PPS for at her next appointments on October 5, 2017, and October 13, 2017. Ms. Harper made a \$20 payment on October 13, all of which PPS applied to its service fees. Her most recent receipt indicates that she owes \$410 at her next appointment.

172. 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. Her hours have been inconsistent at the sign company she works for because she has had to take more time off than normal to take her son to appointments. Ms. Harper and her son also struggle to survive off her income and her son's Social Security disability check.

173. For these same reasons, Ms. Harper has struggled to pay PPS each month and to report to PPS each week. To report to PPS, she often has 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 has to report weekly, she often has to miss work to get to the PPS office by the time the office closes at 4:30 p.m. PPS is sometimes open one Saturday per month for a half day, but not frequently enough for Ms. Harper's weekly appointments.

174. In total, Ms. Harper has reported to PPS approximately fourteen times, and to the Municipal Court three additional times, in the four months since she was put on probation. It has consumed a significant amount of her time and money to do so.

175. Ms. Harper has tried to talk to PPS about how she struggles to report weekly and to pay because she does not live or work in Gardendale and often cannot find reliable transportation. But PPS continues to tell her that she has to report each week because she is behind on her payments.

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

177. Each time Ms. Harper has reported to the PPS office, she has to sign into a sign-in sheet and write how much she is paying. At each appointment, PPS only asks her about its money for its monthly fees and her fines and costs, and about when she can report the following week.

178. Ms. Harper is given a receipt after each PPS visit, which indicates how much she paid and how the funds were applied to the PPS fee and her court fines. When she cannot pay, the receipt indicates “non-payment” and the total amount she must pay at the next visit, which continues to rise each month and now totals hundreds of dollars.

179. To date, Ms. Harper has only been able to pay PPS \$90—all of which PPS has applied to its monthly fees and none of which has gone to pay off any of her fines and costs. She still owes close to \$900 in court debt and PPS’s mounting monthly probation service fees.

180. Ms. Harper is scheduled to report back to the Municipal Court for a review hearing on her PPS probation on December 1, 2017, and she is afraid of going back to jail due to PPS’s assessment of whether or not she has been “compliant.”

181. Ms. Harper has seen Judge Gomany ask PPS in multiple cases if PPS will take someone back on probation after they have testified that they are noncompliant. PPS has always indicated that they want the person to continue to report, presumably so they can collect fees.

182. Ms. Harper worries that PPS, without any advance notice to her, will report to Judge Gomany at the hearing that she has missed appointments, without explaining which days she has missed to allow her to contest these assertions or explain her efforts to reschedule. She also worries that PPS will inform Judge Gomany that she is noncompliant because she has neither paid nor satisfied her fines and costs.

183. Judge Gomany does not appear to offer any community service from the Municipal Court; Ms. Harper believes she can only access community service if PPS approves it.

184. Ms. Harper worries that she will be under PPS supervision, required to report weekly and be jailed repeatedly at her court dates, for years because she is too poor to pay PPS the monthly fees or her fines and costs, and because she struggles to report weekly.

ii. *Jennifer Essig*

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

186. 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.

187. 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.

188. 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.

189. 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 condition was visible to Judge Gomany during her court appearance.

190. Judge Gomany handed Ms. Essig a Probation Order form 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.

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

192. 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.

193. 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.

194. Ms. Essig was escorted out of the courtroom and into another room by Courtney Waters, an employee of PPS. Courtney brought a 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.

195. 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.

196. 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.

197. 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.

198. 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 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).

199. Courtney also gave Ms. Essig an informational sheet from PPS titled, "KNOW YOUR RIGHTS..."

200. Ms. Essig gave Courtney her \$40 payment and received a hand-written receipt, but 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.

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

202. 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.

203. 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 to PPS. Ms. Essig does not recall whether she reported to this appointment or not.

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

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

206. 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.

207. 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, 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.

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

209. 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.

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

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

212. 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.

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

214. 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.

215. 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.

216. 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.

217. 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.

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

219. 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.

220. 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

221. 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.

222. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of Rule 23(b)(a) and (b)(2).

223. **Rule 23(a)(1), Numerosity:** The precise size of the class is unknown but is 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. The Class is forward-looking, with new members joining it on an ongoing basis. Moreover, it 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. Thus, joinder of every class member would be impracticable

224. **Rule 23(a)(2), Commonality:** Plaintiff Harper raise claims based on questions of law and fact that are common to, and typical of, the putative Class members.

225. Questions of fact common to the Proposed Class include:

a. Whether PPS makes supervision-related decisions concerning Plaintiff Harper's and the proposed Class 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 makes money from its supervision of PPS supervisees;

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

d. Whether PPS charges individuals monthly service fees even when it knows them to be indigent;

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

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

g. Whether the Contract was competitively bid; and

h. Whether the Contract allows the charging of a probation fee.

226. 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; and

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

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

228. **Rule 23(a)(3), Typicality:** The claims of Plaintiff Harper are typical of those asserted on behalf of the proposed Class. Because Plaintiff and the proposed Class challenge the same unconstitutional, unlawful Contract, it is anticipated that Defendants will assert similar defenses against Plaintiff Harper and proposed class members.

229. Plaintiff Harper suffers injuries from Defendants' violations of federal and state law. The answer to whether Defendants' scheme is unlawful will determine the success of the claims of named Plaintiff Harper and every other proposed Class member, and if named Plaintiff

Harper succeeds in the claim that Defendants' policies and practices violate their federal and state rights, that ruling will likewise benefit every other member of the proposed Class.

230. **Rule 23(a)(4), Adequacy:** Plaintiff 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 Class she seeks to represent as a whole, and she seeks equitable relief on behalf of the entire proposed Class that she seeks to represent.

231. **Rule 23(g), Class Counsel:** 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 has the resources, expertise, and experience to prosecute this action.

232. **Rule 23(b)(2):** Each Defendant has acted on grounds generally applicable to the proposed 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.

233. 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 PPS's collection of fees in cases in which PPS is supervising probation, would benefit every member of the proposed 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.

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 Class, against
Defendants PPS, Gardendale Municipal Court Judge Kenneth Gomany in his official capacity,
and the City of Gardendale, Alabama*

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

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

236. 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.

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

238. Due to this financial interest, PPS is 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 is incentivized to maximize corporate profit from the decisions it makes in deciding Plaintiff Harper's and proposed Class members' probation conditions, how to enforce them, what

information it provides Plaintiff Harper and the proposed Class about their rights and obligations under probation, the statements it submits to Judge Gomany about Plaintiff Harper's and Class members' compliance with probation, and the sanctions it recommends to Municipal Court Judge for alleged probation violations.

239. Thus, Defendants' policies and practices to administer private probation for Plaintiff Harper and members of the proposed Class through PPS—pursuant to the Contract and PPS-created Sentence of Probation Form—violate longstanding due process restrictions against such self-interested financial arrangements under the Fourteenth Amendment.

240. These policies and practices have injected, and will continue to inject, PPS's financial interest into the probation supervision and enforcement process in Gardendale and PPS's probation-related decisions in Plaintiff Harper's and proposed class members' cases in violation of the Due Process Clause, unless they are stopped.

241. Accordingly, to redress the harm resulting from Defendants' unconstitutional probation scheme, Plaintiff Harper and members of the proposed Class are entitled to an injunction enjoining this conflict of interest.

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 Class, against
Defendants PPS, Gardendale Municipal Court Judge Kenneth Gomany in his official, non-
judicial capacity, and the City of Gardendale, Alabama*

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

243. 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.

244. 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.

245. The Contract was not competitively publicly bid, as required by Ala. Const. Art. I, § 22, and Ala. Code § 41-16-50.

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

247. Thus, Plaintiff Harper and putative Class members are entitled to a declaration against Defendants that the contract is void and unenforceable under the Alabama Constitution.

248. Plaintiff Harper and putative Class members are also entitled to a preliminary and permanent injunction against Defendants enjoining enforcement of the Contract.

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 putative Class, against
Defendants PPS, Gardendale Municipal Court Judge Kenneth Gomany in his official, non-
judicial capacity, and the City of Gardendale, Alabama*

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

250. 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.

251. 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.

252. Because the contract violates public policy, it is void and unenforceable.

253. Plaintiff Harper and putative Class members are entitled to a declaration against Defendants that the contract is void and unenforceable.

254. Plaintiff Harper and putative Class members are also entitled to preliminary and permanent injunction against Defendants enjoining enforcement of the Contract.

FOURTH CLAIM FOR RELIEF

Abuse of Process

Plaintiffs Harper and Essig, individually, against PPS

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

256. 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.

257. 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.

258. 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 Class under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure in connection with the First, Second, and Third Claims for Relief;

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

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

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

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

TRIAL BY JURY IS DEMANDED ON FOURTH CLAIM FOR RELIEF.

DATED this October 23, 2017.

Respectfully submitted,

/s/ Sara Zampierin

Sara Zampierin

On Behalf of Plaintiffs' Counsel

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Attorneys for Plaintiffs

**application for admission pending*

CERTIFICATE OF SERVICE

I hereby certify that arrangements have been made to deliver a true and correct copy of the foregoing by hand delivery to the following parties, at the below addresses:

Professional Probation Services, Inc.
c/o C T Corporation System, Registered Agent
2 North Jackson St., Ste. 605
Montgomery, Alabama 36104

City of Gardendale, Alabama
c/o City Clerk Melissa Honeycutt
925 Main Street
Gardendale, Alabama 35071

Kenneth Gomany, *in his official capacity as Judge of the Gardendale Municipal Court*
Gardendale Municipal Courthouse
1309 Decatur Highway
Gardendale, Alabama 35071

I further certify that true and correct courtesy copies of the foregoing will be sent via electronic mail to the following:

Hon. Kenneth Gomany
Gardendale Municipal Court Judge
kengomany@bellsouth.net

J. Ken Thompson
Gardendale City Attorney
kent@jkenthompsonlaw.com

Thomas S. York
Corporate Counsel to Private Probation Services, Inc.
tyork@ppsinfo.net

Formal proof of service will be filed with the Court when completed.

DATED this October 23, 2017.

/s/ Sara Zampierin
Sara Zampierin