

**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.

**CIVIL ACTION NO.
2:17-CV-1791-UJB-AKK**

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the following parties (“the Parties”): Plaintiff Catherine Regina Harper (“Plaintiff”) and Defendants the City of Gardendale and Kenneth Gomany, in his official capacity as Judge of the Gardendale Municipal Court (collectively, “Defendants”).

Recitals

Whereas on October 23, 2017, Plaintiff filed the above-captioned action in the U.S. District Court for the Northern District of Alabama against Defendants challenging the legality of the contract (the “Contract”) entered into between the

City of Gardendale and Judge Kenneth Gomany of the Gardendale Municipal Court and Professional Probation Services, Inc. (“PPS”);¹ and

Whereas Defendants aver that they acted legally and lawfully at all times relevant to Plaintiffs’ claims in this lawsuit; and

Whereas, it is the desire of the Parties to resolve the above-captioned litigation; and

Whereas, Plaintiff agrees to dismiss this litigation against Defendants, according to the terms and conditions set forth in this Agreement;

The Parties enter into the following Agreement:

Agreement

In consideration of the mutual execution of this Agreement and the releases and promises made in the Agreement by the Parties, the Parties agree as follows:

1. **Standing Order re PPS reporting:** The Gardendale Municipal Court has entered a Standing Order, attached as **Exhibit A**, directing all persons previously assigned to probation through PPS to stop reporting to PPS, to cease making payments of outstanding fines, costs, and fees to PPS, and to begin reporting directly to the Court as of November 1, 2017. The Gardendale Municipal Court agrees to keep this Standing Order posted and in effect for 180 days from the date of this agreement.
2. **Cancellation of PPS Contract:** The Contract between the Gardendale Municipal Court and PPS was cancelled effective November 14, 2017.
3. The Gardendale Municipal Court has directed PPS to post a notice in its office stating that anyone assigned to PPS through the Gardendale Municipal Court should go to the Gardendale Municipal Court to receive instructions on how to pay off their existing fines and costs.
4. **Recall of Warrants Related to PPS Review Hearings:** The Gardendale Municipal Court has rescinded all warrants related to review hearings for

¹ PPS is not a party to this Settlement Agreement.

those previously on PPS probation issued since November 1, 2015 and will continue to review to determine if any such warrants exist from prior to this time and will rescind those also. The City will not consider these warrants as valid failure to appear warrants for any purpose, including for purposes of determining whether an individual is eligible for unsecured bail. The Gardendale Municipal Court has also mailed notice to any last known address contained in the Municipal Court's records to each such person instructing them to appear no later than March 2, 2018 in substantially the same form as the notice in paragraph 5. The Gardendale Municipal Court will take no actions to compel attendance by executing warrants for or arresting such persons until after June 30, 2018.

5. **Notice of Cancellation of PPS Contract:** The Gardendale Municipal Court has posted a notice, attached as **Exhibit B** to this Agreement, inside and outside of its Courtroom, in a conspicuous location, stating that persons previously assigned to PPS should stop reporting to PPS as of November 1, 2017, and should instead report to the Municipal Court Clerk to receive instructions on how to pay off their existing fines and costs before January 1, 2018. The notice further instructs that persons previously assigned to PPS who have not paid off their fines and costs by January 1, 2018, may request a payment plan by appearing in any regular court session before March 30, 2018, or requesting a court date from the clerk at which to request a payment plan. The Gardendale Municipal Court agrees to keep this notice posted for 180 days from the date of this agreement.
6. Those individuals who were previously on PPS probation and active will be or have been mailed a copy of either the order reference in Paragraph 1 or the notice referenced in Paragraph 5, to any last known address contained in the Municipal Court's records and/or records provided by PPS. By April 30, 2018, Defendants will provide Plaintiffs' Counsel with a list of individuals who have not yet returned to Court, and the addresses where Defendants have mailed these individuals the order/notice, at the address specified in Paragraph 24.
7. **Future contracts for probation-related services:** Within 1 year of the execution of this Agreement, Defendants agree not to enter into a new contract (or any other agreement) with any entity or division offering

probation-related or money-collection-related services related to its Municipal Court that charges individuals subject to the probation or money-collection practices a fee for those services.

8. After the first year of the execution of this Agreement, the City of Gardendale agrees that if it elects to enter into a new contract (or any other agreement) with any entity offering probation-related or money-collection-related services for cases in its Municipal Court within four (4) years of the execution of this Agreement, the City of Gardendale will provide notice (the "Contract Notice") to Plaintiffs' Counsel. The Contract Notice shall be mailed to Plaintiffs' Counsel by first-class mail at the address provided in Paragraph 24 (or by any other method that will arrive to the specified address in Paragraph 24 within two business days), and via email . The Contract Notice shall be mailed to Plaintiffs' Counsel no later than sixty days prior to the City of Gardendale's City Council taking final action to approve said contract. The Contract Notice shall clearly state that the Notice is in relation to "*Harper, et al. v. PPS, et al.*, No. 17-CV-1791 (N.D. Ala.)." The Contract Notice shall include a copy of the contract (or any other agreement) that the City of Gardendale is considering. The Contract Notice shall be provided to Plaintiffs' Counsel at the address specified in Paragraph 24.
9. The Parties agree that the City of Gardendale, within four (4) years of the execution of this Agreement, may not enter into a new contract for probation-related or money-collection-related services related to its Municipal Court for at least 60 days after the notice required in the previous paragraph is provided. The Parties contemplate that if any Party can establish that the specified notice was not provided, the remedy should be specific performance enjoining the new contract for probation-related or money-collection-related services for a 60-day period.
10. **Warrant Amnesty Week:**
 - a. The Gardendale Municipal Court will designate one week during which individuals with outstanding arrest warrants for failure to comply with a subpoena, summons, or order to appear in the Municipal Court may appear at the Municipal Court to receive a new hearing date, and the formal notice thereof, and clear any

warrants related to failure to appear, rather than being arrested. The Amnesty Week shall occur between July 1, 2018 and January 1, 2019.

- b. The Warrant Amnesty Week will be publicized through a press release provided to local media outlets at least seven (7), but not more than twenty-one (21), days before the scheduled amnesty days. The press release will be posted on the Municipal Court Clerk's window and front door of the courthouse, and on the Municipal Court's website during the same timeframe. The press release mentioned herein will contain the following sentences: "No person who appears at the Municipal Court for the Amnesty Week will be jailed for non-payment or for a warrant for failing to appear. The Court will provide you with a new court date and an opportunity to pay your fine and court costs. If you are not sure if you have a current warrant for failure to appear, you can call the clerk's office at (205) 631-7155."
 - c. Counsel for Plaintiffs will be notified at least one week before the start of the Warrant Amnesty Week, and a copy of the press release will be sent to counsel for Plaintiffs at least one week before the Warrant Amnesty Week.
 - d. The Parties agree that if any Party can establish that a Party did not comply with this provision, the remedy should be specific performance.
11. **Probation Credit:** For those persons who were on PPS probation as of October 23, 2017, the City and Municipal Court, by March 31, 2018, will remit outstanding fines and costs still owed in their open cases in an amount of 50 % of any fees paid directly to and retained by PPS. The remitted amounts will be applied as a credit on the balance due. The name of each individual who will have money remitted and the amount of that remittance is attached as **Exhibit C**.
12. **Court Procedures:** The Gardendale Municipal Court has entered the attached Standing Order Adopting Policies and Procedures ("Procedures"), attached as **Exhibit D** to this Agreement. The Parties

agree that Defendants and their officers, employees, and agents will be instructed to comply with these Procedures.

13. **Notice of Changes to Court Procedures:** Defendants have no current expectation that said **Exhibit D** will be materially altered by the Municipal Court Judge (who serves by appointment of the City for a renewable term provided by statute). Nonetheless, changes in the law or experience (among other reasons) could cause parts of the Procedures to change. To the extent that the Procedures are altered, rescinded, or replaced in any material respect within two (2) years of the execution of this Agreement, the Gardendale Municipal Court will provide notice (the “Procedures Notice”) to Plaintiffs’ Counsel. The Procedures Notice shall be mailed to Plaintiffs’ Counsel by first-class mail or by any other method that will arrive to the specified address within two business days, and via e-mail. The Procedures Notice shall be mailed to Plaintiffs’ Counsel no later than 30 days prior to the Gardendale Municipal Court Judge taking action to alter, rescind, or replace the Procedures. The Procedures Notice shall clearly state that the Notice is in relation to “*Harper, et al. v. PPS, et al.*, No. 17-CV-1791 (N.D. Ala.).” The Procedures Notice shall include a copy of the revised procedure (or any other Order altering, rescinding, or replacing the Procedures) that the Gardendale Municipal Court is considering. The Procedures Notice shall be provided to Plaintiffs’ Counsel at the address specified in Paragraph 24.
14. **Dismissal:** The Parties shall file with the Court within five (5) days of the execution of this Agreement a Joint Motion to Dismiss Pursuant to Federal Rules of Civil Procedure Rule 41 (a)(1)(A)(ii), as agreed upon by the Parties and attached hereto as **Exhibit E**.
15. **Mutual Releases**
 - a. **By Plaintiff:** Except for any violations that arise from a breach of this Agreement, Plaintiff, on her behalf and on behalf of her successors, heirs, and assigns, hereby releases, remises, and forever discharges Judge Kenneth Gomany, in his official capacity as Judge of the Gardendale Municipal Court, and his successors, heirs, and assigns, and the City of Gardendale, and its subsidiaries,

divisions, affiliates, and agents, including all city officials and municipal officers, from all claims, suits, actions, charges, demands, judgments, costs, and executions present and future, known or unknown, both legal and equitable in any manner arising out of the above-captioned litigation.

- b. **By Defendants:** Except for amounts owed by Plaintiff for fines, court costs, or restitution (subject to any credit available under Paragraph 11 of this Agreement), and/or any violations that arise from a breach of this Agreement, Judge Kenneth Gomany, in his official capacity as Judge of the Gardendale Municipal Court, and on behalf his successors, heirs, and assigns, and the City of Gardendale, on its behalf and on behalf its subsidiaries, divisions, affiliates, and agents, release, remise, and forever discharge Plaintiff from all claims, suits, actions, charges, demands, judgments, costs, and executions present and future, known or unknown, both legal and equitable in any manner arising out of the Lawsuit.

- 16. **Fees:** Each Party shall be responsible for each party's own attorneys' fees and expenses in connection with the above-captioned litigation. The Parties waive any claim for costs or fees, including, but not necessarily limited to, attorneys' fees, arising from this case, and no enforcement action or future related action shall be used to reinstate any claim for costs or fees arising from this case.
- 17. The Parties, including their counsel, hereby waive any claim for costs or fees, including, but not necessarily limited to, attorneys' fees, arising from any effort to enforce any provision of this Agreement.
- 18. **Binding Effect of Agreement:** This Agreement is enforceable by, and binding upon, any one or more of the Parties and their respective successor and assigns, and no other individual or entity.
- 19. **Duration of the Agreement:** This Agreement shall remain in effect for five (5) years from the final date of execution.
- 20. **Modifications to the Agreement:** This Agreement, including the attachments hereto, is the entire, final, and complete agreement of the

Parties relating to the subject of this Agreement, and supersedes and replaces all prior or existing written and oral agreements between the Parties or their representatives relating thereto. No amendment or modification of this Agreement shall be effective unless through a written agreement signed by all Parties hereto.

21. **Severability**: If any provision of this Agreement is held to be invalid or unenforceable, all remaining provisions will continue in full force and effect.
22. **Counterparts of the Agreement**: This Agreement may be executed in multiple counterparts, all of which shall be deemed originals, and with the same effect as if all Parties had signed the same document. All of such counterparts shall be construed together with and shall constitute one Agreement, but in making proof, it shall only be necessary to produce one such counterpart (with multiple copies of the signature pages to show signatures, as needed). A facsimile transmission or photocopy shall be as valid and enforceable as an original.
23. **Remaining Defendants Not a Party to this Agreement**: Notwithstanding anything else stated in this Agreement, Plaintiffs may continue to pursue their claims against any other Defendant and this Agreement is not a settlement or release of any other Defendant not a party to this Agreement.
24. **Notices**: Except as otherwise stated in this Agreement, any communications or notices to be provided to legal counsel for the Parties pursuant to this Agreement will be sent in writing via email and by mail, via commercial overnight delivery service, to the attention of the persons identified below (or as the signatories may subsequently direct in writing):

Plaintiffs' Counsel:

MAILING ADDRESS

EJP Deputy Legal Director
ATTN: Harper, *et al.* v. PPS, *et al.*
Southern Poverty Law Center

400 Washington Avenue
Montgomery, AL 36104

EMAIL ADDRESS

EJPSettlement@splcenter.org

Defendants' Counsel:

MAILING ADDRESS

Will Hill Tankersley
Balch & Bingham LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203

EMAIL ADDRESS

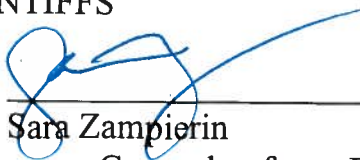
WHT@balch.com

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.]

The Parties and their counsel, by their signatures below, have executed this Agreement and agree to be bound by it.

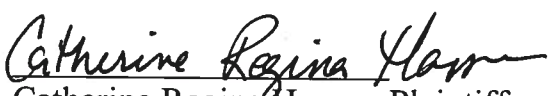
PLAINTIFFS

DATED: 2/28/18, 2018



Sara Zampierin
Counsel for Plaintiff Catherine
Regina Harper

DATED: 02/27, 2018



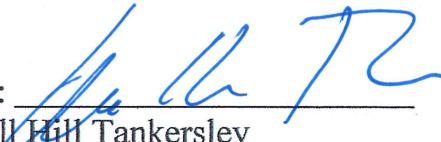
Catherine Regina Harper, Plaintiff

THE CITY OF GARDENDALE, ALABAMA

DATED: 3-5-18, 2018

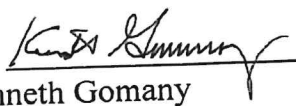
By: 
Stan Hogeland
Mayor, City of Gardendale

DATED: 3-6-2018, 2018

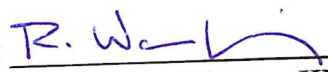
By: 
Will Hill Tankersley
Counsel for The City of Gardendale

KENNETH GOMANY, GARDENDALE MUNICIPAL COURT JUDGE

DATED: 3/5, 2018

By: 
Kenneth Gomany
Gardendale Municipal Court Judge

DATED: March 5, 2018

By: 
Richard Warren Kinney, III
Counsel for Kenneth Gomany