

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

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

Plaintiffs,

v.

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

Defendants.

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

AMENDED COMPLAINT (Class Action)

Jury Trial Demanded

I. PRELIMINARY STATEMENT

1.

should be

2.

Court

turned these foundational principles upside down. Pursuant to a

Contract

entered with a

operation of probation, and in so doing illegally and unconstitutionally undermines confidence

jurisdiction.

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

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

26. The City selects the judge of the Municipal Court and sets the j

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

~~28~~ Defendant Gomany also operates a private law pr Goma5E-9(aGoma5e)3(tn Tfy)2ye1163o1

before the Municipal Court.

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

33. The Contract is exclusive: it states PPS will ordered by the [Municipal] Court and designates 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 services and programs for the misdemeanor offenders placed on probation by the *Id.*

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

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

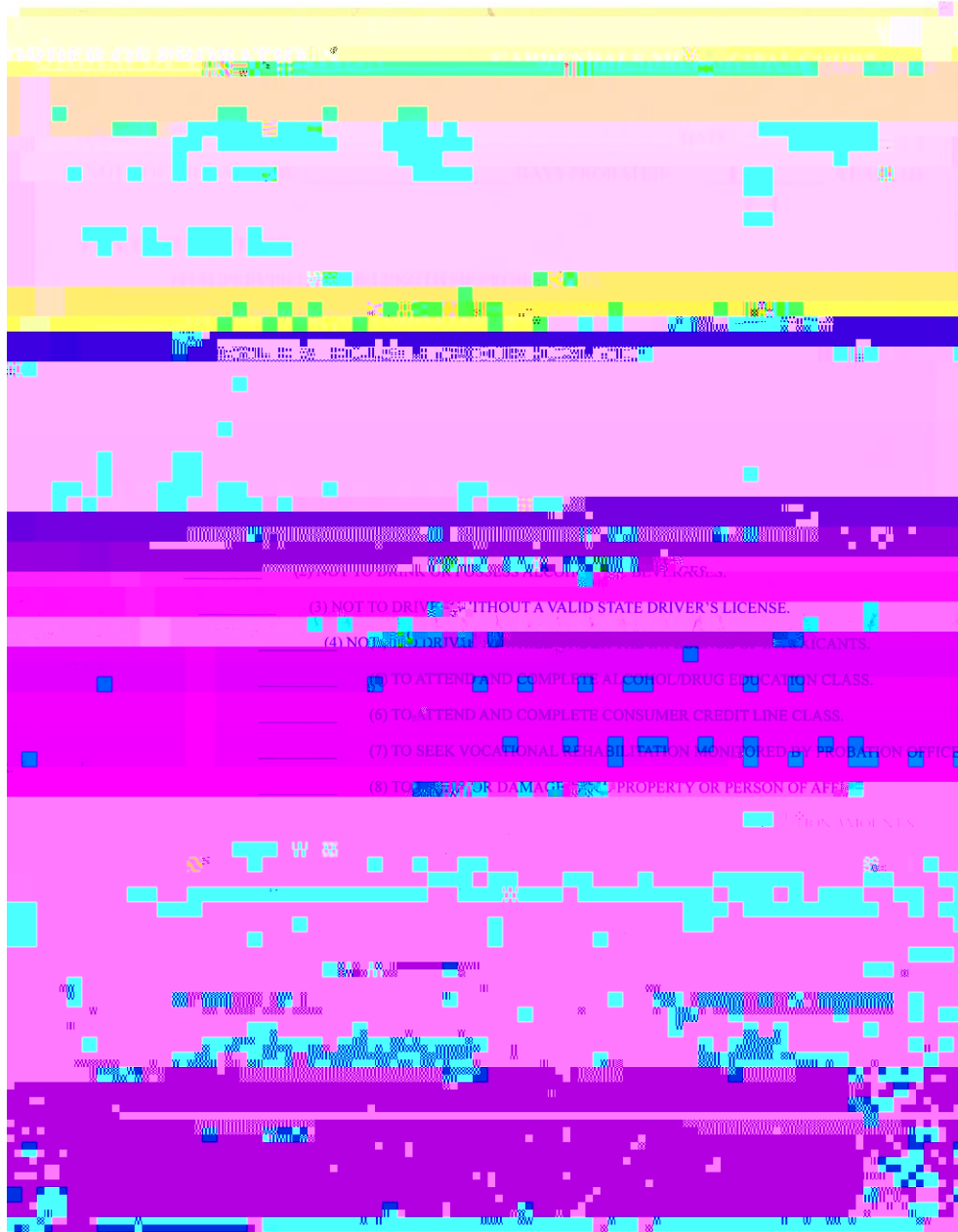
36. On November 1, 2017, Defendant Gomany entered an Order Modifying Terms of hereto as Exhibit B. Pursuant to this Order, all persons were ordered to stop reporting to PPS; cease making payments to PPS of any fees, fines, and court costs to PPS, as

i. *Initial Assignment to PPS*

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

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

50. If a person could not pay the entirety of their fines and costs, Judge Gomany assigned



57. Once Defendant Gomany signed the Probation Order, he directed the defendant execute it and provided a carbon copy.

58. Defendant Gomany made no effort to income or expenses or to determine the amount they could afford to pay each month.

59. Nor did Defendant Gomany explain to individuals the terms of the probation or offer them alternatives to payment, such as community service, if they indicated they could not



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

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

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

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

75.

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

78. When persons tol2(ssn2ah3i)-3(n)-9(g)10()-79(a)4(b1 0 0 1 216.77 283.1359.37[()] TJETBT/F2

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

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

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

i. Requirements to Report to, and Pay, PPS

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

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

83. This schedule was 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

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

91. A sign that hung in the PPS office indicated that a person would

third violation.

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

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

94. PPS decided whether to allow individuals to complete community service in lieu of payment, while Defendant Gomany stated he was unable to order community service. Those who asked

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

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

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

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

100. PPS generates significant income from its supervision practices.

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

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

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

104. PPS also increased the amount of fines from what was ordered at sentencing. For example, Plaintiff Essig was told at



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

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

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

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

142.

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

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

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

156.

Ms.

She informed PPS of this obligation.

157.

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

168. Ms. Harper appeared in the Municipal Court for her most recent review hearing on September 15, 2017. PPS reported that Ms. Harper had continued to miss appointments and was non-compliant. Ms. Harper asked the dates and number of appointments PPS was alleging she had missed but did not receive an answer.

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

172. Court

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

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

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

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

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

184.

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

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

ii. *Jennifer Essig*

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

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

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

194. to pay the costs and fine assessed against her prior to placing her on probation.

195. Ms. Essig had been in a serious car accident in May 2017, which required her to wear a back brace and resulted in an inability to walk without difficulty. Because of her con medical condition was visible to Judge Gomany during her court appearance.

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

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

198.

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

204. Courtney

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

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

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

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

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

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

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

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

218.

219. Ms. Essig reported to PPS on September 8, September 14, September 22,

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

V. CLASS ALLEGATIONS

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

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

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

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

i. *Numerosity*

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

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

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

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

b. conflict of interest for PPS voids the Contract and renders PPS unable to serve as probation officer;

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

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

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

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

236.

enormously profitable contractual relationship with the Municipal Court Judge that governed the d this scheme in materially the same manner every day, to every person assigned to PPS. The material components of the scheme did not vary among members of the proposed Classes, and the resolution of these legal and factual issues will determine whether all of the members of the proposed Classes are entitled to the relief

members of the proposed Classes.

B. Rule 23(g): Class Counsel

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

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

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

242. A declaration that Harper and proposed Class members, while maintaining a personal financial conflict of interest, violates the Fourteenth Amendment Due Process Clause, as well as an injunction that enjoins Defendants from reentering into a similar contractual scheme going forward would benefit every member of the proposed Equitable Relief Class. The same rings true for a declaration that the Contract is void

247. The Due Process Clause of the Fourteenth Amendment requires probation providers such as PPS to serve as neutral information gatherers and neutrally assist

and all future, substantively similar contracts.

FOURTH CLAIM FOR RELIEF

Abuse of Process

Plaintiffs Harper and Essig, individually,

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

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

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

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

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

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

DATED this December 28, 2017.

Respectfully submitted,

/s/ Sara Zampierin

CERTIFICATE OF SERVICE

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filing system, and by virtue of this filing notice will be sent electronically to all counsel of record, including:

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DATED this December 28, 2017.

/s/ Sara Zampierin

Sara Zampierin