

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

GINA KAY RAY, KRISTY FUGATT,
TIMOTHY FUGATT and DEUNATE T. JEWS,
Individually and on behalf of a class of
similarly situated persons,

Plaintiffs;

v.

JUDICIAL CORRECTION SERVICES, INC.,
a corporation;

Defendants.

Civil Action No.: 2:12-cv-02819-RDP

**FIFTH AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL REQUESTED

INTRODUCTION

Pursuant to this Court’s Order and Opinion of June 15, 2018, (Docs.687, 688), Plaintiffs file this Fifth Amended Complaint. Plaintiffs Gina Ray Kay, Kristy Fugatt, Timothy Fugatt, and Deunate T. Jews bring this civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendant Judicial Corrections Services (“JCS”), a for-profit probation company acting under color of law, violated Plaintiffs’ constitutional and statutory rights and the rights of persons similarly situated.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter because it concerns a controversy arising under the Constitution of the United States. 28 U.S.C. § 1331. This is a civil rights action brought under 42 U.S.C. §§ 1983 and 1988.

2. This Court also has jurisdiction of this action by virtue of 28 U.S.C. §§ 1343(a)(3) and 1343(a)(4), authorizing jurisdiction of claims brought under 42 U.S.C. § 1983 to

enforce civil rights guaranteed by the United States Constitution.

3. This action also seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2022.

4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391 (b) and (c).

PARTIES TO THE COMPLAINT

5. Plaintiff Gina Kay Ray is an individual resident of Bonaire, Alabama.

6. Plaintiff Kristy Fugatt is an individual resident of Sylacauga, Alabama.

7. Plaintiff Timothy Fugatt is an individual resident of Sylacauga, Alabama.

8. Plaintiff Deunate T. Jews is an individual resident of Childersburg, Alabama.

9. Defendant Judicial Correction Services, Inc. (hereinafter "JCS") is a Delaware corporation, registered as a foreign corporation and doing business in the State of Alabama and in this District which markets itself as "not a social service agency," but a "for profit" company which offers services to governmental entities "free of charge" to the cities as "an offender paid system." At all times, JCS has operated under the color of state law.

FACTUAL ALLEGATIONS

10. JCS operated a for profit enterprise that marketed its services to various municipal and county governments and contracted with over 100 cities and towns throughout Alabama to collect unpaid fines and court costs from people brought before municipal courts in traffic and other misdemeanor cases. JCS' marketing approach to these cities emphasized that its fees would be paid by the "offender" before the municipal court and that its efforts would improve collection of court fines and costs at no cost to the city.

11. JCS routinely used a form contract to establish its relationship with its customer

cities and similarly trained its employees using a training manual replete with forms for courts to use during proceedings, and for courts and JCS to use to contact the “offenders” from whom they are collecting. As a result, the JCS approach was highly systemized and uniform across municipalities.

12. Under the system established and implemented by JCS, its employees were not required to have criminal justice or legal training, have any social work education, or meet any minimum law enforcement standards, as is required of state probation officers. Instead, JCS required only that its employees be at least 21 years old, have no felony convictions, have at least two years of college, and complete 40 hours of training by JCS on its processes. On satisfying those requirements, JCS employees were then labeled “Probation Officers,”¹ permitted to carry a JCS issued badge in some municipalities, and collect fees, court fines and costs.

13. Under this system and by agreement with municipalities such as Childersburg, many administrative and judicial functions of the municipal court were unlawfully delegated to JCS, clothing it with the color of state law for the collection of court fines, costs and private fees.

14. The agreement drafted by JCS and agreed to by the mayor of Childersburg is substantially the same contract form used throughout Alabama and stated that the municipal “*court agrees that each court order shall provide* for the following:

a probation fee of \$35.00 per month flat fee

One time probationer set up fee of \$10.00. . . . “(emphasis added).

¹ In contrast, even a judicial volunteer is required to meet greater and more specific qualifications, careful screening, specific training and continual oversight established by the Administrative Office of Courts (‘AOC’). See Ala. Rule of Judicial Administration Rule 42.

JCS's contracts with other cities sometimes set the monthly fee at \$45.

15. Childersburg, through its mayor and council, approved the agreement with JCS and approved the employment of Larry Ward as judge of its municipal court. Ward, a bond salesman at Morgan Keegan, also served as municipal judge for Harpersville, Bridgeport, Dora, Hollywood, Lincoln, Ohatchee and Springville which were cities also under contract with JCS. The Childersburg Municipal Court meets once a month for a few hours on the second Thursday of the month.

16. The JCS system provided "Order of Probation" forms to the municipal court with the printed requirement on each form that the "offender" pay JCS \$35 per month plus \$10 for a file set up charge. See Exhibit A. The monthly fee of \$35 was later increased to \$45 per month for each "offender" at Childersburg. In Childersburg and Harpersville, Municipal Court Judge Larry Ward pre-signed blank probation orders printed by JCS.

17. At municipal courts operating under the JCS contract, a person unable to fully pay fines and costs when levied would be placed on probation using the JCS orders and forms, even when the underlying offense is not punishable by a jail sentence or when no suspended sentence is imposed. This was routinely done with no investigation into the indigency of the individual or the reasons for their inability to pay the fine and costs. The order forms supplied by JCS then required the individual to make payment to JCS of the fines, costs and additional monthly fees as required under its contract with the city.

18. The JCS system and its "Probation Tracker" software is highly systemized and focuses on collections of fines, costs, and its fees—not traditional probation services. That system was used in every municipal court in which JCS operated in Alabama. For example, "offenders" were allowed to mail in payments if they lived 30 miles from the

JCS office. See Exhibit B. In fact, the daily tasks of the JCS employees were heavily directed to collecting, counting and depositing the money collected. See Exhibit C.

19. The training manual used by JCS instructed its employees on the use of its computer systems in tracking the payments made by the “offenders” and provided court forms to order probation and payment to JCS. The payments to JCS were ordered under these forms even when there was no adjudication of whether the individual was responsible for committing an underlying offense or adjudication was withheld. See Exhibit D.

20. The JCS training system was used in every municipal court in which JCS operated in Alabama and also provided sample letters for use after probation was ordered, threatening the “offender” that “a warrant will be issued for your arrest” and that their “court date cannot and will not be reset.” See Exhibits E and F. Similar JCS forms instructed the “offender” that they could avoid the court date if they pay an amount determined by JCS. See Exhibit G.

21. The JCS training manual instructed its employees on the issuance of warrants of arrest and provided forms for that purpose. See Exhibit H. After the arrest warrant was issued, JCS also provided forms for warrant dismissal if JCS determines that the “offender” was in compliance. See Exhibit I. Once a person was arrested, JCS monitored those “offenders” placed in jail. See Exhibit J.

22. The city council and its mayor controlled the policymaking for Childersburg, hired the municipal court judge, contracted for JCS to provide “probation services” at the municipal court starting in 2005, and continued to use JCS until they voted to terminate the contract on May 19, 2015. See Exhibit N. The decision to use JCS was an administrative decision of the cities such as Childersburg, by and through its mayor,

and not a decision of the municipal court judge or the Chief Justice, or any other employee of the Administrative Office of Courts ('AOC'). The cities did not issue a request for proposal ('RFP') prior to signing the contract, and the cities did not competitively bid this exclusive contract.

23. Alabama municipalities like Childersburg, through their contracts with JCS and operations, clothed JCS with the appearance of state authority and many allowed JCS employees to carry badges. The JCS employees attended each municipal court session and were referred to as "probation officers" in the operation of the municipal court and city clerk's office, though none have such authority under Alabama statutes. Under this system, "offenders" were not permitted to pay fines at the city clerk's office, but were instead required to make all payments, including those for fines, restitution, probation fees and court costs, to JCS at the JCS office.

24. This public ruse was maintained by Alabama municipalities like Childersburg and JCS in order to impose and collect fines and costs from citizens such as the Plaintiffs, and was accomplished by allowing JCS to control the money, determine how much each municipal court "offender" must pay each month, how much would be credited for each payment to the collection "services" of JCS each month and how much of it would rebate to the municipalities toward the fines adjudged.

25. This system, as a matter of routine, violated the rights of persons such as the Plaintiffs and the classes they seek to represent by imposing fines, costs, and fees on indigent persons with no hearing or consideration of their indigency.

26. Despite the lack of authority to do so, JCS, at its discretion, used threats of revoking probation, increased fines and costs and jail time for purposes of collection. Under this system, should an individual fail to pay to the satisfaction of JCS, JCS would

determine that the individual's "probation" should be revoked. Under the system operated jointly by Alabama municipal courts and JCS, JCS's determination to incarcerate an individual was routinely accepted by city and court personnel without conducting delinquency or probation hearings and without making any findings, much less any ability-to-pay determination or appointment of counsel before taking such punitive action. In fact, JCS' Contract with many cities/cities' court explicitly agreed that JCS, a financially interested party, will provide testimony stating: "the [probation] 'officer' will testify as to the circumstances of the case."²

27. The collective actions of JCS and the Alabama municipalities like Childersburg with which it contracted were inextricably interwoven with each other under an agreement and understanding and routinely resulted in court costs, fines, and fees which exceeded the statutory maximum of \$500 for municipal courts, and in some cases also imposed additional "jail fees" for the costs of any incarceration. Similarly, the periods of "probation" imposed for purposes of collecting fines and fees for JCS routinely exceeded the two-year statutory maximum, all of which resulted in JCS and the municipalities taking joint action to detain and otherwise incarcerate individuals

² The following contracts include this provision: Albertville p. 1 section G, Arab p. 4 section G, Bay Minette p. 8 Exhibit A ¶6, Brookwood p. 29 section G, Calera p. 33 Exhibit A ¶6, Childersburg p. 37 Exhibit A ¶6, Citronelle p. 41 Exhibit A ¶6, Clanton p. 46 Exhibit A ¶6, Dauphin Island p. 54 Exhibit A ¶6, Dora p. 58 Exhibit A ¶6, East Brewton p. 63 Exhibit A ¶6, Fairhope p. 67 Exhibit A ¶6, Falkville p. 70 Section G, Fort Payne p. 74 Exhibit A ¶6, Haleyville p. 87 Exhibit A ¶6, Hartselle p. 91 Exhibit A ¶6, Hollywood p. 95 Exhibit A ¶6, Homewood p. 99 Section G, Hueytown p. 104 Section G, Jackson p. 108 Exhibit A ¶6, Jacksonville pp. 112, 316 Exhibit A ¶6, Jemison p. 116 Exhibit A ¶6, Kinston p. 125 Exhibit A ¶6, Lake View p. 127 Exhibit A ¶6, Leeds pp. 131, 143 Exhibit A ¶6, Town of Level Plains p. 147 Exhibit A ¶6, Loxley p. 153 Section G, Millbrook p. 157 Exhibit A ¶6, Montevallo p. 161 Exhibit A ¶6, Montgomery p. 165 Exhibit A ¶6, Mount Vernon p. 170 Exhibit A ¶6, Northport p. 177 Exhibit A ¶6, Orange Beach p. 180 Section G, Owens Crossroads p. 183 Section G, Ozark p. 187 Section G, Pleasant Grove p. 192 Exhibit A ¶6, Priceville p. 196 Exhibit A ¶6 (signed by Mayor and City Judge), Rainbow City p. 200 Section G, Rainsville p. 204 Exhibit A ¶6, Robertsdale p. 211 Section G, Saraland p. 215 Exhibit A ¶6, Scottsboro p. 219 Exhibit A ¶6, Somerville p. 226 Section G, Southside p. 229 Section G, Sylacauga p. 235 Exhibit A ¶6 (signed by Mayor and City Judge), Talladega p. 243 Section G, Tallasse p. 247 Exhibit A ¶6, Troy p. 259 Section G, Warrior p. 269 Exhibit A ¶6, Ashford p. 273 Exhibit A ¶6, Attalla p. 276 Section G, Blountsville p. 279 Section G, Bridgeport p. 283 Exhibit A ¶6, Brighton p. 287 Exhibit A ¶6, Dauphin Island pp. 300, 303 Exhibit A ¶6, Notasulga pp. 320, 325 Exhibit A ¶6.

without any jurisdiction to do so.

28. Although probation was routinely imposed on individuals who were not convicted of any underlying offense—or who were charged with an offense for which no jail sentence could lawfully be imposed, individuals were arrested and incarcerated if the fine, together with the fees added by JCS, were not paid as dictated by JCS.

29. Despite directing the municipal courts such as Childersburg that incarceration of an individual “offender” is needed when payment is not made, JCS undertakes no determination of the reasons for nonpayment, and does not consider such things as the Plaintiffs’ disability, unemployment, or assets, in regard to the nonpayment of the fines.

30. JCS denies any responsibility and took no action under its operations with Alabama municipalities to determine ability to pay, and provides no instruction in its employee manual for the consideration of indigency. The municipal court judge employed by Childersburg, however, contended that under its contract it is JCS that should determine if an “offender” is unable to pay due to indigency and if so, to abate any fees in the probation order.

31. Under this system jointly implemented by JCS and municipalities such as Childersburg, after simple fines were converted to “probation” for payment, jail often resulted for any “offender” who did not meet the payment scheduled set by JCS. Based on JCS’s allegation of a “probation violation,” warrants were issued for “failure to obey court order” or failure to pay, and individuals whose original penalty had only been a fine—or even who were not found guilty of any offense and were only assessed court costs—ended up being imprisoned.

THE NAMED PLAINTIFFS’ EXPERIENCES

A. Gina Kay Ray

32. Gina Kay Ray is an individual resident of Bonaire, Alabama, who was brought before the Childersburg Municipal Court on August 12, 2010 on charges of “no insurance” and “driving while license suspended.” She was fined \$398 and \$498 for these charges and received a suspended jail sentence, but was not sentenced to serve any jail time. Ms. Ray was not financially able to pay the fines when levied and was ordered to be on probation with JCS. Ms. Ray did not voluntarily agree to be put on JCS probation, but signed the JCS papers because the judge ordered her to do so. Pursuant to the JCS form probation order, Ms. Ray was required to pay JCS an additional \$45 per month and a \$10 charge to set up her file. Her monthly payment on these amounts was set by JCS at \$145 per month.

33. On July 14, 2011, Ms. Ray was brought before the Childersburg Municipal Court on charges of “expired tag” and “driving while license suspended.” For these charges she was fined \$168 and \$498 respectively, and received a suspended jail sentence. Since she could not pay these fines either, she was again ordered to “probation” with JCS and ordered to pay JCS \$45 per month and \$10 file set fee. Ms. Ray did not voluntarily agree to be put on JCS probation, but signed the JCS papers because the judge ordered her to do so. Her monthly payment on these amounts was also set by JCS at \$145 per month. Though the “probation” period for her 2010 and 2011 cases overlap in time, JCS treated these as “consecutive cases” so that the period would then extend well beyond 24 months and result in monthly fees to JCS for both cases.

34. Ms. Ray was and has been indigent and was not able to pay for her insurance, tag or license, much less the JCS fees, but, in accordance with the policy and practice of Childersburg which was established in its contract with JCS, neither the Childersburg Municipal Court nor JCS ever made any inquiry into her inability to pay at the time of

levying the fine or thereafter.

35. Due to her inability to pay as directed by JCS, Ms. Ray was arrested and jailed at the request of JCS for "failure to obey a court order." Ms. Ray was placed in the Talladega County jail for a period of four days in 2010 and then an additional 21 days in 2011, and further time in April and May of 2012.

36. Due to her inability to pay and her indigency, she remained in jail throughout these periods of time. On or about April 26, 2012, a friend of Ms. Ray was able to acquire \$300.00 which was the amount determined and demanded by JCS to secure her release from jail.

37. At the point of Ms. Ray's release on or about April 26, 2012, an employee of JCS completed a pre-printed, pre-signed probation order stating, "Val Jews reporting w/300 before Def can be released," The probation order listed a \$317 fine and an offense of "Reinstate w/warrant fee." After the \$300 was paid, Ms. Ray was directed to appear in "Judicial Corrections Municipal Court."

38. On June 14, 2012, Ms. Ray was again brought before the Municipal Court in Childersburg on charges of "attempt to evade," "expired tag" and "driving while revoked." She was fined \$248, \$248, and \$598 on these charges and again received a suspended jail sentence but was not sentenced to serve any jail time. She could not pay these fines and once again placed on "probation" with JCS and ordered to pay JCS \$45 per month for 24 months and \$10 file setup fee.

39. While Ms. Ray has made some small payments, she at all times has been indigent and unable to pay the full amounts and the additional probation fees charged by JCS and Childersburg. At the time this lawsuit was filed, remaining balances were still demanded by JCS and Childersburg.

40. Ms. Ray was also subjected to JCS probation in the Town of Harpersville. JCS demanded payments and compliance with its demands without any probation orders. Despite the fact that no probation orders were issued by the municipal court, JCS demanded money from Ms. Ray. When she was unable to pay the amounts JCS demanded, JCS changed her status in ProbationTracker to “warrant;” and she was arrested and jailed for eight days.

41. Throughout this period of time, JCS provided no services to Ms. Ray and acted merely as a collection agency charging additional fees and, despite knowledge that Ms. Ray was unable to pay these fines and indigent, JCS has sought to collect and has taken actions to incarcerate Ms. Ray without any due process and kept on probation beyond the statutory maximum of two (2) years.

42. On each of her adjudications and incarcerations, Ms. Ray was denied the benefit of legal counsel, without any formal probation revocation hearing, or any hearing on the issue of her indigency. Despite no legal counsel, Ms. Ray was incarcerated and, on some occasions, later released based upon the determination of JCS. These actions were taken with the approval, agreement and participation of the Childersburg city court pursuant to their policy, contract and conspiracy with JCS.

B. Kristy And Timothy Fugatt

43. The Fugatts have twin children and had a third child who was born with serious medical conditions which required constant medical care in Birmingham for two years until his death in June 2011. As a result, both parents had extended stays at the hospital with their child and made numerous trips to and from Birmingham to their home in Sylacauga.

44. On one trip on November 13, 2010, Kristy Fugatt was stopped and ticketed by

the Childersburg Police Department for having an expired license tag and an expired driver's license.

45. Timothy Fugatt was stopped and ticketed on or about December 3, 2010 by Childersburg Police for having an expired license tag on the same vehicle. Both of the Fugatts were set for court on January 13, 2011 at the Childersburg Municipal Court.

46. The Childersburg court records reflect that the Fugatts' cases were *not proessed* upon payment of the court costs of \$198.00 for the expired driver's license and \$148.00 each for the expired tag charges. They were not sentenced to a suspended jail sentence or required to serve any jail time.

47. Due to these financial burdens, the Fugatts were unable to immediately pay the court costs and were ordered to "probation" under JCS. The Fugatts did not voluntarily agree to be put on JCS probation, but signed the JCS papers because the judge ordered them to do so. Under the mandated terms of the probation, they were each charged a \$10 set up fee and an additional \$45.00 per month for JCS's probation "service."

48. The Fugatts paid as best they could, but when they were unable to make payments as were ordered by JCS employees, they were required to drive to Childersburg and explain why they could not pay. JCS set the dates upon which the Fugatts were to report to the JCS office and were told that they would be jailed if they did not come. Many times the Fugatts were not able to make phone contact due to limited phone access of JCS. Nevertheless, they were repeatedly threatened with jail for any nonappearance at the JCS office.

49. The Fugatts told JCS employees about their inability to pay as demanded and even provided medical records. Instead of assistance from JCS, the Fugatts were

called liars and continually threatened with arrest and incarceration for nonpayment.

50. Although the City of Childersburg's accounting records show that Mr. Fugatt had paid his court costs in full as of May 18, 2011, JCS claimed that he still owed money, kept him on probation, and continued to demand payment. JCS then sought an arrest warrant for Mr. and Mrs. Fugatt based on their alleged failure to pay.

51. When the Fugatts did not appear in court on August 11, 2011- the date set by JCS for its 'petition for revocation' - each of the Fugatts was assessed \$317.00 for "Failure to Obey Court Order" on September 26, 2011, and a warrant of arrest was issued.

52. Despite their inability to pay the initial court costs, the amounts JCS claimed the Fugatts owed kept increasing, with added as "fines," "restitution," "other" and "probation fees."

53. On Sunday afternoon, February 26, 2012, a Childersburg officer came to their home in Sylacauga, threatened them with a taser and arrested them, taking them from their young children to the jail at Childersburg and instructing them that DHR would be called for care of their kids. This was avoided only by relatives arriving in time to take care of the young children.

54. Only after relatives collectively brought \$900.00 to the Childersburg jail were the Fugatts released from jail. (Exhibit K)

55. On February 26, 2012, the date of their arrest, each of the Fugatts was charged an additional \$317 for "Failure to Appear," though there was no judge present that Sunday and no judicial order was signed. These additional charges totaled \$1,268, plus the \$90 monthly JCS fee, all resulting from the expired tag and expired driver's license.

56. In July 2012, JCS charged Mr. Fugatt an additional \$234 in “restitution.” Although no restitution was ordered by the municipal court or assessed for his nol prossed ticket, and although the City of Childersburg’s records showed that he had paid off the court costs he owed over a year earlier, neither the City nor its municipal court challenged these added charges.

57. After their arrests, JCS continued to demand payments from Mr. and Mrs. Fugatt in excess of the balance recorded by the City. In addition, although Mrs. Fugatt was never charged with speeding, she was ordered to JCS probation for someone else’s speeding ticket using a pre-printed JCS probation order that Judge Ward pre-signed. Although the person who had actually gotten the speeding ticket was also put on JCS probation for the offense, JCS sought to collect the balance owed for that ticket from Mrs. Fugatt.

58. On October 11, 2012, the Fugatts were again required to appear at Childersburg Municipal Court by JCS employees. While there, a JCS employee working in its JCS division told the Fugatts that they now owed over \$1,000 in court costs, fines and probation fees with Mrs. Fugatt owing \$557 and Mr. Fugatt owing \$517.

59. On December 13, 2012, Mr. Fugatt was once again ordered to JCS probation for a “Proof of Insurance” violation. The probation order was not signed by the judge and did not include any jail sentence. JCS set up this term of probation to run consecutive to Mr. Fugatt’s previous probation for the initial expired tag (which he had paid in full eighteen (18) months earlier on May 18, 2011), demanding that he pay another \$10 setup fee and \$135 per month, including a monthly JCS fee of \$35.

60. While Mr. Fugatt maintained some employment, the hours he was able to work were quite limited by these serious medical issues and family responsibilities. As a

result, the Fugatts were very poor.

61. Though the Fugatts had repeatedly informed JCS of their situation, no relief was granted. The Fugatts were not afforded due process of law, in that they were continually punished with increased amounts due and owing, threats of incarceration for not paying, and ultimately incarceration.

62. In addition, the Fugatts, like all the Plaintiffs, were treated differently than persons able to pay the court costs when first imposed, merely because of their economic status.

63. Throughout this period of time, JCS has provided no services to the Fugatts and has acted merely as a collection agency charging additional fees, and despite knowledge that the Fugatts were unable to pay and indigent, JCS has sought to collect and take actions to incarcerate the Fugatts without any due process and kept them on probation after their city court costs had been paid in full and beyond the statutory maximum of two (2) years.

64. The Fugatts were jailed without the benefit of legal counsel, without any notice of charges, without formal probation revocation hearing, and without any hearing on the issue of their indigency, but simply incarcerated and, later released based upon the determination of JCS. These actions were taken with the approval and participation of Childersburg personnel and pursuant to its policy and contract with JCS.

Deunate T. Jews

65. Deunate T. Jews is a resident of Childersburg, Alabama, and brought before the Childersburg Municipal Court in 2008 on the charge of harassment. Mr. Jews was never tried, and the alleged victim placing this charge went to prison. As a result, the charges against Mr. Jews were dismissed but, on October 22, 2009, he was

nonetheless charged court costs of \$166. Since he could not pay this amount, he was ordered to probation with JCS for 24 months for payment with the additional requirement that he also pay JCS \$45 per month and a \$10 file set up fee. Mr. Jews did not voluntarily agree to be put on JCS probation, but signed the JCS papers because the judge ordered him to do so. Mr. Jews was not sentenced to serve any jail time.

66. When Mr. Jews did not pay the amounts demanded by JCS, an arrest warrant was issued at the request of JCS for “failure to obey a court order.” Because this warrant to arrest Mr. Jews was issued, an additional \$317 was added to his bill with JCS listed as “restitution” on the JCS and court records, even though no restitution was involved.

67. On September 11, 2009, Mr. Jews was arrested and placed in the Talladega jail forty-one (41) days for “failure to appear.”

68. Based on these unlawful charges, Mr. Jews was incarcerated at the request of JCS. At his release, he was ordered to appear in “Judicial Corrections” Municipal Court.

69. When Mr. Jews was unable to pay the ever growing JCS fees, JCS sought another warrant for his arrest. Mr. Jews was arrested on August 18, 2010, by Childersburg police officer Mark Holmes for the charge of “FTOCO” and a \$935 cash bond was demanded for his release. Mr. Jews was again taken to the Talladega County Jail where he stayed until September 9, 2010.

70. JCS charged Mr. Jews “restitution,” “probation fees,” and “court money” fees, which, because of his indigency, he was unable to pay. On January 13, 2011, Childersburg police officer Luke Benefield arrested Mr. Jews on the FTOCO charge. Although the arrest warrant lists a \$1,035 cash only bond, Childersburg released Mr.

Jews when family members paid \$500 the next day. Upon his release, Mr. Jews was notified that he had to appear in the Childersburg court on March 10, 2010.

71. When Mr. Jews was again unable to pay the continuing, escalating JCS fees, JCS issued another warrant for his arrest and Mr. Jews was arrested and jailed on February 21, 2012. Childersburg police booked Mr. Jews and he was transported to the Talladega County Jail. Childersburg demanded a \$1,000 cash bond for his release.

72. On March 8, 2012, Mr. Jews was released from the Talladega County Jail when he appeared in court and a family member paid JCS \$200.

73. On May 25, 2012, Mr. Jews paid JCS \$25; JCS applied \$15 to “restitution” though there was none, and \$10 to “Probation Fee.” JCS gave Mr. Jews a receipt acknowledging his payment in which it listed: Fees in arrears = \$295.00; Pay off not including Probation fees: \$343.00; Monthly Probation Fees: \$45; Court Money Due from other Probations: Fines: \$1,807. This JCS receipt stated a probation start date of March 9, 2012, which was the date Mr. Jews was released from his most recent incarceration, and a probation end date of March 9, 2014 which is nearly six years after the charges against him were dismissed. See Exhibit L.

74. Though the “probation” originally ordered on October 22, 2009 was for 24 months, it continued—with charges accruing each month—until this lawsuit was filed and lawyers for the City of Childersburg wrote, and the City magistrate to sign and sent, a letter to JCS requesting that JCS terminate hundreds of probations that exceeded the statutory two year maximum.

75. While Mr. Jews has made payments throughout the period of time, he was indigent and unable to pay the full amount of the probation fees and other charges imposed by JCS. JCS closed out Mr. Jews on December 17, 2014 with an entry of

“Pre-Payment/Bond in the amount of \$166.”

76. Throughout this period of time, JCS has provided no services to Mr. Jews and has acted merely as a collection agency charging additional fees, and despite knowledge that Mr. Jews was unable to pay these fines and indigent, JCS has sought to collect and take actions to incarcerate Mr. Jews without any due process.

77. Each time Mr. Jews was incarcerated, it was without the benefit of legal counsel, without notice of charges, and without any formal probation revocation hearing or any hearing on the issue of his indigency. On some occasions, he was later released based upon the determination of JCS. These actions were taken with the approval and participation of Childersburg pursuant to its policy and contract with JCS.

**FACTUAL ALLEGATIONS REGARDING
CONSPIRACY BETWEEN JCS
AND THE CITY OF CHILDERSBURG**

78. JCS entered into an agreement and/or reached an understanding with the Childersburg Municipal Court to deny the Plaintiffs’ and class members’ constitutional rights protected by 42 U.S.C. § 1983.

79. The parties’ relationship was established by a contract between JCS and the City and its court. Following the date of this contract in 2005, there was concerted consistent action between JCS and the municipal court showing evidence of their agreement and understanding, to deny the Plaintiffs’ and class members’ constitutional rights.

80. The relationship between these parties was established by the City’s former mayor signing a contract with JCS which was recommended by the municipal judge for the City of Childersburg. JCS was hired for the collection of city court fines and costs.

81. This agreement provided that the municipal judge, Larry Ward, would include in

his orders sending people to JCS that those people would be required to pay JCS a set-up fee and monthly fee.

82. This agreement also stated that JCS would provide testimony “as to the circumstances of the case” as a ‘probation officer.’

83. The same municipal judge, Larry Ward, also worked for other Alabama municipal courts where JCS had been hired for the same services including Harpersville, Dora, Ohatchee, Lincoln, Bridgeport, Hollywood and Springville.

84. In furtherance of the understanding and agreement between JCS and the Childersburg Municipal Court, Judge Ward consistently placed persons appearing before him on “probation” with JCS for the collection of fines and court costs when they could not immediately pay these fines and court costs to the municipal court when they were assessed. This referral to JCS “probation” occurred regardless of the existence of a suspended jail sentence and required those individuals to pay additional JCS fees. The “order” for probation was presigned by Ward in blank for use by the JCS employees as part of the practice and conspiratorial understanding between these parties.

85. In ordering people to JCS “probation” for collection of fines and court costs, Judge Ward consistently failed to consider the persons’ poverty, even when they complained to the court they could not immediately pay the fines, costs and fees when they were imposed. Instead of consideration of their poverty, and in furtherance of the conspiratorial understanding and agreement with JCS, Judge Ward placed the named Plaintiffs and class members on probation without inquiry into their ability to pay.

86. The actions of Judge Ward in furtherance of the conspiratorial understanding and agreement with JCS, were done with full understanding and acknowledgment that

JCS had financial interests in extending the paid supervision of individuals placed with it for “probation.” Those financial interests, in fact, were harmed if an individual sent to JCS was formally declared to be indigent as JCS agreed to not charge indigent people probation fees.

87. This conspiratorial agreement and understanding between JCS and the municipal court of Childersburg is further shown by the consistent failure of Judge Ward to make any indigency determinations and by JCS’ policy position that it has no responsibility to address the poverty of the person sent to it even when it possessed specific information about the person showing their disabilities, unemployment, and the lack of income.

88. This conspiratorial agreement and understanding between JCS and the municipal court of Childersburg is further shown by the consistent failure of Judge Ward to appoint counsel to those he ordered to JCS ‘probation’ and JCS’ pre-printed probation order, which Judge Ward pre-signed, including the following language above the offender’s signature line. “I have counsel or have waived my right to counsel for all proceedings to this date and have received a copy of this ORDER.”

89. In furtherance of this understanding between JCS and the City of Childersburg Municipal Court, the court there routinely issued arrest warrants for failure to appear, failure to pay or failure to obey court order after JCS requested this in its petition to revoke probation. The warrants issued by the city court, in fact, showed these charges as convictions and were based upon JCS’ institution of the petition for revocation though no hearing had occurred on those charges. The agreement and understanding between JCS and the city municipal court in Childersburg was further implemented by JCS providing to the court its petition for revocation as the tool to acquire the warrant

from the City court in order to facilitate the arrest of person who had not paid.

90. In furtherance of this conspiratorial agreement and understanding, after JCS petitioned for revocation beginning the process to acquire a warrant, neither JCS nor the municipal court took steps to provide counsel for the persons pursued or to inform them of this right and any notice about these proceedings was allowed to be given by JCS - not the city court.

91. The petitions for revocation sought by JCS under its agreement and understanding with Childersburg Municipal Court were all predicated on failure of the individual to pay the fines and fees demanded. Those petitions were discharged when such payment was forthcoming and with "probation" itself promptly terminated when the fees, fines and costs were fully paid. These petitions used under this conspiratorial agreement and understanding in turn were accepted by the city court as the basis for arrest warrants on charges such as failure to obey, failure to appear, failure to pay and failure to obey court order.

92. In furtherance of the conspiratorial agreement and understanding between JCS and the city court of Childersburg, JCS was allowed to determine the monthly payments required and to allocate of any such payment between JCS or the City without any audit by the City as to the correctness or its accounting before the City court complied with the request of JCS for warrants.

93. This conspiratorial agreement and understanding between JCS and the municipal court of Childersburg is further shown by the hundreds of people who were kept on JCS probation beyond the statutory maximum of two (2) years during which time JCS continued to demand monthly fees.

94. These concerted efforts between the city court and JCS, including the city judge

and the other employees of the court, show an agreement and understanding that warrants would be issued if money was not paid by the person sent to JCS for collection, all while ignoring the requirement of consideration of poverty as required under constitutional law, *Bearden v. Georgia*, and Alabama law.

CLASS ACTION ALLEGATIONS

95. The named Plaintiffs seek to represent two main classes and two subclasses:

Fees class: All individuals who, as of August 28, 2010 or thereafter, were assigned by Alabama municipal courts to JCS for the collection of fines, fees and costs, and who paid fees to JCS.

Childersburg Fees Subclass: All individuals in the Fees Class who were assigned to JCS probation by the Childersburg Municipal Court.

AND

Arrest and Jail Class: All individuals who, as of August 28, 2010 or thereafter, were assigned by Alabama municipal courts to JCS probation and who were arrested and/or incarcerated without an ability-to-pay determination after failing to pay fees, fines, or court costs to JCS.

Childersburg Arrest and Jail Subclass: All individuals in the Arrest and Jail class who were assigned to JCS probation by the Childersburg Municipal Court.

96. The members of the Classes and Subclasses are so numerous that joinder of all members is impracticable.

97. As of this time, the exact number in the Classes is unknown but would be more than one thousand.

98. Plaintiffs' treatment by the Defendants is typical of the members of the Classes and subclasses and is ongoing.

99. Plaintiffs will fairly and adequately protect the interests of the Classes and have

retained counsel who are competent and experienced in class litigation. Plaintiffs have no interests that are adverse or antagonistic to the Classes.

100. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by many class members may be small, the expense and burden of individual litigation makes it virtually impossible for the class members individually to seek redress for the wrongful conduct alleged.

101. Common questions of law and fact exist as to all members of the Classes, and predominate over any questions affecting solely members of the Classes. Among the questions of law and fact common to the Classes are:

- a. Whether policy and practice of automatically placing on probation all municipal offenders who cannot immediately pay fines and costs but who are not, or could not be, sentenced to jail is legal;
- b. Whether the policy and practice of converting unpaid fines and costs to days of incarceration, without any determination concerning an individual's ability, to pay is legal;
- c. Whether the policy and practice of requiring every order of the municipal court to require probation fees for JCS is legal;
- d. Whether the policy and practice of arresting and incarcerating individuals for failure to pay fines and costs with no finding of willfulness is legal.
- e. Whether the policy and practice of failing to appoint counsel for indigent defendants when a jail sentence is involved is legal;

- f. Whether the policy and practice of failing to make any inquiry into indigency before imposing additional fines and costs is legal;
- g. Whether the policy and practice of failing to give adequate notice of the charge and nature of a probation revocation hearing, failing to provide a probation revocation hearing, failing to make written findings concerning the reasons for revoking probation and the evidence relied upon, failing to hold a hearing to determine indigency before revoking probation and otherwise imposing incarceration, failing to make written findings concerning an individual's willful nonpayment of fines and costs before imposing incarceration for nonpayment are legal;
- h. Whether JCS can raise its monthly probation fee charge to \$45 without proper municipal action;
- i. Whether the policy and practice of charging incarcerated municipal defendants a daily fee for each day the person is incarcerated is legal;
- j. Whether the policy and practice of imposing fines and court costs that exceed that statutory maximum for municipal is legal;
- k. Whether the policy and practice of extending "probation" for municipal offenses beyond 24 months is legal;
- l. Whether the policy and practice which fails to give any credit for time spent incarcerated is legal;

102. JCS and Alabama municipalities including Childersburg have acted on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or

corresponding declaratory relief with respect to the Classes as a whole.

103. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action. The data concerning the class members and the transaction details and amounts on each charge is largely computerized by the municipalities and by JCS.

104. The names and addresses of the class members are a matter of public record and are also kept by JCS and notice can be provided to the class members via First Class U.S. Mail or other appropriate means as may be directed by the Court.

**COUNT ONE
DENIAL OF DUE PROCESS BY JCS,
BOTH THROUGH ITS OWN INDEPENDENT ACTS
AND IN CONSPIRACY WITH CHILDERSBURG MUNICIPAL COURT**

Plaintiffs incorporate by reference the previous paragraphs and make them a part hereof.

105. Plaintiffs aver that JCS, acting under color of state law in violation of 42 U.S.C. § 1983, denied them, and all class members, their right to due process.

106. At the Childersburg municipal court these constitutional violations were the result of a conspiracy between JCS and the Childersburg municipal court as shown by an agreement, understanding and practice implemented by those parties there in the collection of court fines and costs.

107. JCS operated a for profit enterprise that marketed its services to various municipal and county governments and contracted with over 100 cities and towns throughout Alabama including Childersburg to collect unpaid fines and court costs from people brought before municipal courts in traffic and other misdemeanor cases. JCS'

marketing approach to these cities emphasized that its fees would be paid by the “offender” before the municipal court and that its efforts would improve collection of court fines and costs at no cost to the city.

108. JCS routinely used a form contract to establish its relationship with its customer cities and similarly trained its employees using a training manual replete with forms for courts to use during proceedings, and for courts and JCS to use to contact the “offenders” from whom they were collecting. As a result, the JCS approach is highly systemized and uniform across municipalities in Alabama.

109. Under the system established by JCS, its employees were not required to have criminal justice or legal training, have any social work education, or meet any minimum law enforcement standards, as is required of state probation officers. Instead, JCS required only that its employees be at least 21 years old, have no felony convictions, have at least two years of college, and complete 40 hours of training by JCS on its processes. Upon satisfying those requirements, JCS employees were then labeled “Probation Officers,” permitted to carry a JCS issued badge in some municipalities, and to collect fees, court fines, and costs.

110. Under this system and by agreement with cities, such as Childersburg municipal court with which JCS conspired, many administrative and judicial functions of the municipal court were unlawfully delegated to JCS, clothing it with the color of state law for the collection of court fines, costs and private fees.

111. The agreement drafted by JCS and agreed to by mayor of Childersburg stated that the municipal “*court agrees that each court order shall provide* for the following:

a probation fee of \$35.00 per month flat fee

One time probationer set up fee of \$10.00. . . . “(emphasis added).

JCS used similar contracts with other cities and sometimes set the monthly fee at \$45.

112. JCS is, by virtue of its contracts with municipalities such as Childersburg, clothed with the appearance of a state actor and its actions were interwoven with those of the municipalities. Under JCS's contracts and its operations, JCS employees were represented to the Plaintiffs and class members to be "probation officers" acting "on behalf of" the municipalities. Exhibit M.

113. In accord with the contract language, JCS provided "Order of Probation" forms to municipal courts like Childersburg with the printed requirement on each form that the "offender" pay JCS \$35 per month plus \$10 for a file setup charge. See Exhibit A. The monthly fee of \$35 after the agreement was increased to \$45 per month for each "offender" at Childersburg. The orders supplied by JCS required the individuals sent to JCS to pay JCS the in addition to the fines, costs, and additional monthly fees as required under its contract.

114. Under the JCS contract, policy, and procedures and agreement, municipal courts such as Childersburg's required "probation" for any person who was unable to immediately pay in full the fine and/or costs when levied by the municipal court. Since collection was the goal, JCS probation was imposed even in cases where the debtor did not receive any jail sentence, was never convicted of a jailable offense, or where probationers were assessed court costs but were not convicted of anything at all.

115. That "probation" requirement, under agreement between JCS and the cities, was required to be part of every printed order at the municipal courts such as Childersburg which also required payment of monthly fees to JCS. In fact, JCS' Contract with many cities/cities' court including Childersburg explicitly agreed that JCS, even though a financially interested party, will provide testimony stating: "the [probation] 'officer' will

testify as to the circumstances of the case.”³

116. As a result of JCS, policy and practice, people who failed to pay fines, fees and costs were subject to arrest, detention, and incarceration. At Childersburg municipal court, JCS conspired with that court under an agreement, understanding and practice to use this “probation,” threats of additional court action, petitions for revocation, arrests and jail as tools to extort collection without inquiry into the person’s ability to pay.

117. Incarceration of individuals who could not pay their fines, costs, and added fees, such as the Plaintiffs and class members, was accomplished by JCS seeking warrants against them for charges of failure to pay or “failure to obey court order,” though there is no such state statute or city ordinance which defines this as a criminal act.

118. Though a determination of willful refusal to obey a court order as required by Ala. Code § 15-18-62 can lawfully lead to incarceration, no such determinations were made under the JCS system and methods. Under the JCS conspiracy with the Childersburg municipal court, neither determinations of willfulness nor inquiry into the ability to pay as required by *Bearden v Georgia* were done.

119. JCS expressly denies that it had any responsibility to inquire or determine why

³ The following contracts include this provision: Albertville p. 1 section G, Arab p. 4 section G, Bay Minette p. 8 Exhibit A ¶6, Brookwood p. 29 section G, Calera p. 33 Exhibit A ¶6, Childersburg p. 37 Exhibit A ¶6, Citronelle p. 41 Exhibit A ¶6, Clanton p. 46 Exhibit A ¶6, Dauphin Island p. 54 Exhibit A ¶6, Dora p. 58 Exhibit A ¶6, East Brewton p. 63 Exhibit A ¶6, Fairhope p. 67 Exhibit A ¶6, Falkville p. 70 Section G, Fort Payne p. 74 Exhibit A ¶6, Haleyville p. 87 Exhibit A ¶6, Hartselle p. 91 Exhibit A ¶6, Hollywood p. 95 Exhibit A ¶6, Homewood p. 99 Section G, Hueytown p. 104 Section G, Jackson p. 108 Exhibit A ¶6, Jacksonville pp. 112, 316 Exhibit A ¶6, Jemison p. 116 Exhibit A ¶6, Kinston p. 125 Exhibit A ¶6, Lake View p. 127 Exhibit A ¶6, Leeds pp. 131, 143 Exhibit A ¶6, Town of Level Plains p. 147 Exhibit A ¶6, Loxely p. 153 Section G, Millbrook p. 157 Exhibit A ¶6, Montevallo p. 161 Exhibit A ¶6, Montgomery p. 165 Exhibit A ¶6, Mount Vernon p. 170 Exhibit A ¶6, Northport p. 177 Exhibit A ¶6, Orange Beach p. 180 Section G, Owens Crossroads p. 183 Section G, Ozark p. 187 Section G, Pleasant Grove p. 192 Exhibit A ¶6, Priceville p. 196 Exhibit A ¶6 (signed by Mayor and City Judge), Rainbow City p. 200 Section G, Rainsville p. 204 Exhibit A ¶6, Robertsdale p. 211 Section G, Saraland p. 215 Exhibit A ¶6, Scottsboro p. 219 Exhibit A ¶6, Somerville p. 226 Section G, Southside p. 229 Section G, Sylacauga p. 235 Exhibit A ¶6 (signed by Mayor and City Judge), Talladega p. 243 Section G, Tallasse p. 247 Exhibit A ¶6, Troy p. 259 Section G, Warrior p. 269 Exhibit A ¶6, Ashford p. 273 Exhibit A ¶6, Attalla p. 276 Section G, Blountsville p. 279 Section G, Bridgeport p. 283 Exhibit A ¶6, Brighton p. 287 Exhibit A ¶6, Dauphin Island pp. 300, 303 Exhibit A ¶6, Notasulga pp. 320, 325 Exhibit A ¶6.

people did not make their payments or whether they were able pay to. Therefore, when an “offender” was unable to pay the fine and additional fees required by JCS, JCS and the municipal courts in cities such as Childersburg cooperated to issue arrest warrants initiated by JCS.

120. All the named Plaintiffs were indigent both at the time of charges were levied against them in Childersburg and at the times of their incarcerations. Each was unable to pay the fines and/or costs and fees demanded by JCS due to their indigency and each was arrested and incarcerated by Childersburg based on JCS’s recommendation and pursuant to the conspiratorial agreement and understanding between these parties.

121. Under the policy and practice of JCS and the municipalities like Childersburg, unpaid fines and costs were unlawfully converted to undetermined days in jail for which the “offenders” were sometimes charged by the day for their time in jail and were often given no credit for time spent in jail against the fines levied.

122. The JCS system and its “Probation Tracker” software was used in all of the Alabama cities where JCS operated and was highly systemized and focused on collections of fines, costs, and its fees—not traditional probation services. For example, “offenders” were allowed to mail in payments if they lived 30 miles from the JCS office. See Exhibit B. In fact, the daily tasks of the JCS employees were heavily directed to collecting, counting and depositing the money collected. See Exhibit C.

123. The training manual used by JCS instructed its employees on the use of its computer systems in tracking the payments made by the “offenders” and provided court forms to order probation and payment to JCS. The payments to JCS were ordered under these forms even when there was no adjudication of whether the individual was responsible for committing an underlying offense or adjudication is withheld. See

Exhibit D.

124. The JCS training system also provided sample letters for use after probation is ordered, threatening the “offender” that “a warrant will be issued for your arrest” and that their “court date cannot and will not be reset.” See Exhibits E and F. Similar JCS forms instructed the “offender” that they could avoid the court date if they paid an amount determined by JCS. See Exhibit G.

125. The JCS training manual instructed its employees on the issuance of warrants of arrest and provided forms for that purpose. See Exhibit H. After an arrest warrant was issued, JCS also provided forms for warrant dismissal if JCS determined that the “offender” was now in compliance (i.e., had paid). See Exhibit I. Once a person was arrested, JCS monitored those “offenders” placed in jail. See Exhibit J.

126. The agreement and forms drafted by JCS are uniformly used by it.

127. JCS controlled the money collected from debtors, the required payment amounts and schedules, and the location where the money must be paid. Furthermore, it controlled how much of each payment was credited to its own collection “services” each month, and how much of it was forwarded to the towns such as Childersburg toward the underlying fines and/or costs.

128. JCS, at its discretion, used threats of revoking probation, increased fines and costs, and jail time for purposes of collection. Under this system, should an individual fail to pay to the satisfaction of JCS, JCS would determine that the individual’s “probation” should be revoked. Under the system operated jointly by JCS and municipal courts such as Childersburg’s, JCS’ recommendation of incarcerating an individual and/or imposing unreasonable bond requirements was routinely accepted without conducting delinquency or probation hearings and without making any findings,

much less any determination of ability to pay or appointment of counsel before taking such punitive action. At Childersburg municipal court these actions occurred as a result of the conspiratorial agreement and understanding between JCS and the Childersburg municipal court.

129. JCS's practices in Alabama municipal courts and its conspiracy with Childersburg's court routinely resulted in the charging of court costs, fines and fees which exceeded the jurisdictional maximum of \$500 for municipal courts. Similarly, the periods of "probation" imposed for purposes of collecting fines, costs, and fees for JCS routinely exceeded the two-year statutory maximum, all of which results in JCS and the municipal courts including Childersburg's court taking joint action to detain and otherwise incarcerate individuals without any jurisdiction to do so.

130. Under this system and under its conspiracy with Childersburg based on JCS' allegation of a "probation violation," warrants were issued for "failure to obey court order" or failure to pay, and individuals whose original penalty had only been a fine—or even those who were not found guilty of any offense and were only assessed court costs—ended up being imprisoned.

131. Under this system and under its conspiracy with Childersburg in this process of converting fines and/or costs to jail time, JCS and municipal courts like Childersburg did not give adequate notice of the nature of any lawful charge, failed to conduct hearings, failed to make written findings concerning the reasons for revoking probation or the evidence relied upon, and failed to make written findings concerning any willful nonpayment of fines and costs before imposing incarceration for failure to pay fines and costs.

132. Under this system and under its conspiracy with Childersburg, when a simple

fine was transformed into a jail sentence of an undetermined time, JCS and the courts also failed to provide counsel for the “offenders.”

133. Under this system and under its conspiracy with Childersburg after an adjudication under which a fine is levied, additional fees, costs and other charges are added to the “offender’s” bill with JCS for each new arrest, alleged probation violation, or contempt proceeding including, in some cases, those relating to charges years earlier.

134. In some cases, under the practice and policy of JCS, even where there has been a deferred adjudication in anticipation of future dismissal, the accused is nonetheless required to pay JCS fees. See Exhibit D.

135. Even in cases where a charge is dismissed as with the Plaintiff Deunate T. Jews discussed above, costs and fees for JCS can be levied and collection pursued through threats and repeated incarceration.

136. JCS’s policy and practice at city courts like Childersburg of imposing onerous fees on debtors who were unable to promptly pay in full municipal fines or costs, and threatening them with arrest if they failed to make payments and arresting them, deprived Plaintiffs and the class members of their rights under the Due Process Clause.

137. Under this system and under its conspiracy with Childersburg JCS’s policy and practice of seeking the arrest and imprisonment of debtors for failure to pay was done without any determination that the nonpayment was willful and without any other inquiry into indigency or ability to pay. These actions likewise deprived Plaintiffs and the class members of their rights under the Due Process Clause.

138. At Childersburg municipal court, these Due Process violations were the result of a conspiracy shown by an agreement or understanding and practice between JCS and

Childersburg municipal court to impose JCS probation on debtors who were unable to pay municipal fines or costs all at once, and to implement JCS's terms of probation, and execute JCS's requests to arrest and imprison debtors for nonpayment without any determination that the nonpayment was willful or any other inquiry into indigency or ability to pay. As a proximate consequence of these deprivations of due process, Plaintiffs and Class Members suffered injuries, to their liberty and dignity, such as having fines, costs, and fees far in excess of their initial penalties levied against them, facing the constant threat of arrest for nonpayment even when never convicted of a jailable offense or any offense at all, having fines and/or costs converted to jail sentences, being unlawfully arrested and incarcerated for indefinite periods of time, and having their probation extended for longer than the court-imposed 24-month maximum.

COUNT TWO
VIOLATION OF THE SIXTH AMENDMENT BY JCS,
IN CONSPIRACY WITH CHILDERSBURG MUNICIPAL COURT

Plaintiffs incorporate by reference the previous paragraphs and make them a part hereof.

139. The Plaintiffs aver that JCS, acting under color of state law in violation of 42 U.S.C. § 1983, violated their Sixth Amendment rights and the rights of the class members.

140. At the Childersburg municipal court these constitutional violations were the result of a conspiracy between JCS and the Childersburg municipal court as shown by an agreement, understanding and practice implemented by those parties there in the collection of court fines and costs.

141. Under the joint policy and practice of JCS and pursuant to an agreement or

understanding with the Childersburg municipal court, when a simple fine was transformed into a jail sentence, counsel was not provided for the indigent “offenders.”

142. Some named Plaintiffs and many class members were initially ordered to pay only a fine or costs in municipal court, but due to their inability to pay, each was placed on “probation” under JCS pursuant to JCS form orders and its contract with the municipality.

143. JCS denies that it had any responsibility to investigate the indigency of the “offenders” and took no action to determine or consider disabilities, employment status or other reasons justifying nonpayment.

144. Under the JCS system used in Alabama municipalities and the conspiracy with Childersburg, simple fines and/or costs including those without jail sentences were illegally converted to “probation” if the offender could not promptly pay the entire fine and costs.

145. After their fines were converted to probation, debtors were threatened with jail and actually arrested and imprisoned if the fines, fees, and costs were not paid as scheduled by JCS.

146. For Plaintiffs and some class members who were not convicted of any underlying offense, or who were convicted of an offense that is punishable by a fine only, there would have been no risk of jail time but for the JCS collection system illegally requiring “probation” for simple fines and costs.

147. Because debtors on probation were often wholly unable to pay, JCS frequently submitted petitions for revocation of probation charging debtors with “probation violations.” Arrest warrants would then be issued by the municipal court for “failure to obey court order,” failure to appear, or failure to pay, all without any inquiry into debtors’

ability to pay.

148. Under the practice, and conspiratorial agreement at Childersburg municipal court, each of the named Plaintiffs while indigent was unlawfully jailed under this JCS system without any assistance of counsel

149. Plaintiffs and class members did not have the benefit of counsel—and did not knowingly, intelligently, and voluntarily waive counsel—during crucial legal proceedings, including when they were first sentenced to JCS probation (and were first saddled with the risk of being jailed for failure to comply with its terms); when petitions for revocation of probation were submitted; or when they were in fact jailed. Furthermore, no ability-to-pay determinations were made for them as required by *Bearden v. Georgia*, and they were not informed that counsel would be provided for them if they were indigent. These failures to provide counsel violated their Sixth Amendment rights.

150. These Sixth Amendment deprivations at Childersburg were the result of a conspiratorial agreement or understanding between JCS and Childersburg municipal court to deny debtors their right to counsel, as evidenced by the uniformity of the denials there, as well as preprinted JCS forms stating, with respect to each probationer, that the probationer had already waived the right to counsel.

151. As a proximate consequence of this violation of their Sixth Amendment rights, the Plaintiffs and class members suffered injuries, including having fines and/or costs converted to jail sentences, being unlawfully arrested and incarcerated for undetermined periods of time with the loss of their liberty and injury to their dignity, by having fines and costs in excess of statutory limits levied against them and by having other illegal charges for JCS fees, costs and restitution levied all while being indigent.

**COUNT THREE
DENIAL OF EQUAL PROTECTION BY JCS,
BOTH THROUGH ITS OWN INDEPENDENT ACTS
AND IN CONSPIRACY WITH CHILDERSBURG MUNICIPAL COURT**

Plaintiffs incorporate by reference the previous paragraphs and make them a part hereof.

152. JCS and Alabama municipal courts like Childersburg's have acted jointly under color of state law in violation of 42 U.S.C. § 1983 to deny the Plaintiffs' and class members' rights to equal protection secured by the Fourteenth Amendment.

153. At Childersburg these constitutional violations were the result of a conspiracy as shown by an understanding, agreement and practice between the Childersburg municipal court and JCS. This is shown by placing debtors on JCS probation solely because they could not pay municipal fines and/or costs, implementing JCS's terms of probation, and executing JCS's requests to arrest and imprison debtors without an ability-to-pay determination.

154. As referenced above, by agreement, JCS employees attended municipal court sessions, collected city fines and costs, were labeled as "probation officers," some carried badges, and regularly represented themselves as acting "on behalf of" the municipalities like Childersburg. Additionally, the JCS forms were used at the municipal court and fees for JCS were included in every city court order referring debtors to JCS. In the system established by an illegal agreement between JCS and Alabama cities such as Childersburg, the actions of JCS are inextricably intertwined with those of the government.

155. The practice and policy under this agreement requires "probation" for any person who, regardless of jail time, is financially unable to fully pay the fine and costs when

levied by the municipal court. That probation requirement is part of the agreement between JCS and Alabama cities like Childersburg, and required payment of monthly fees to JCS.

156. Persons who were financially able to fully pay the levied fine and costs in Alabama municipal courts were not placed on “probation.” As a result, those persons were not charged any fees for JCS and were not subjected to threats of probation revocation, arrest and incarceration in the collection process.

157. Once on “probation” for purposes of paying fines and costs, this policy and practice implemented by JCS in conspiracy with Childersburg municipal court routinely imposed incarceration and additional costs on individuals who were unable to pay fines and costs, without any determination of willfulness as lawfully required under Alabama statutes. See Ala. Code, Section 15-18-62 and without any determination of ability to pay as is required under *Bearden v. Georgia*.

158. This disparate treatment based upon the wealth of the “offender” before the municipal court is a violation of equal protection and cannot be justified on any legitimate basis.

159. This inequality of treatment is also beyond the authority of the municipal courts which are required by Alabama statute to uniformly process traffic infractions and penalties for misdemeanors in accordance with specified maximum fines. See Ala. Code § 12-14-8. JCS policy is not in accord with the procedures established by the Alabama Administrative Office of Courts because it imposes fees only on “offenders” cannot pay immediately and creates its own rules for penalizing individuals who cannot pay as directed.

160. These additional JCS fees result in disparate treatment of those who can

immediately pay compared to those cannot. Furthermore, those “offenders” within jurisdictions that contract with JCS are processed and fined differently than “offenders” in jurisdictions that do not contract with JCS.

161. Each of the Plaintiffs was required to pay the additional costs and fees under this disparate system and each of the named Plaintiffs was subjected to threats including petitions for probation revocation and each was unlawfully jailed for their inability to pay as demanded under the conspiracy between JCS and the municipal court of Childersburg.

162. JCS's policy and practice by virtue of an understanding and agreement conspiracy with the Childersburg municipal court imposed onerous fees on debtors who were unable to pay municipal fines or costs all at once, threatened them with probation violation and arrested and jailed them if they failed to make payments, while imposing none of these harsh conditions on debtors with sufficient resources to pay their court fines or costs right away deprived Plaintiffs and the class members of their rights under the Equal Protection Clause.

163. JCS's conspiratorial policy and practice with Childersburg of including the arrest and imprisonment of Plaintiffs and the class members for failure to pay without any determination that the nonpayment was willful, any other inquiry into indigency or their ability to pay, likewise deprived Plaintiffs and the class members of their rights under the Equal Protection Clause.

164. As a proximate consequence of this denial of the right to Equal Protection under the Fourteenth Amendment, Plaintiffs and class members suffered injuries to their liberty and dignity, such as having fines, costs, and fees far in excess of their initial penalties levied against them, facing the constant threat of arrest for nonpayment even

when never convicted of a jailable offense or any offense at all, having fines and costs converted to jail sentences, and being unlawfully arrested and incarcerated.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully pray that the Court will assume jurisdiction of this cause and upon the final hearing:

- a. Certify this matter as a proper class action maintainable under Rule 23 of the Federal Rules of Civil Procedure;
- b. Award the Plaintiffs such damages as this Court shall find the Plaintiffs have sustained, together with punitive, or exemplary damages as the law shall permit;
- c. Award to the Plaintiffs and class members damages and relief under 42 U.S.C. § 1983;
- d. Award to the Plaintiffs and Class the cost of this matter, including a reasonable attorneys' fee;
- e. Award to the Plaintiffs and the class members such other, further and more general relief as the Court may deem appropriate under these circumstances, including cost of these proceedings.

JURY DEMAND

Plaintiffs, on behalf of themselves and the classes, request trial by jury on all claims so triable.

RESPECTFULLY SUBMITTED,

s/ G. Daniel Evans

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CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of July, 2018, I electronically filed the foregoing Plaintiffs' Fifth Amended Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Will Hill Tankersley, Esquire
Gregory C. Cook, Esquire
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