

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

<b>ROBERT EARL COUNCIL, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No.</b>
	)	<b>2:23-cv-00712-CLM-JTA</b>
	)	
<b>KAY IVEY, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANT PROGRESSIVE FINISHES INC.’S**  
**MOTION TO DISMISS THE COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Progressive Finishes, Inc. (“Progressive Finishes”) respectfully moves for dismissal of all claims made against Progressive Finishes in Plaintiffs’ Complaint. As explained in the contemporaneously filed Defendant Progressive Finishes, Inc.’s Brief in Support of Motion to Dismiss, this Motion should be granted for the following reasons:

1. Count I of the Plaintiffs’ Complaint should be dismissed because:
  - A. 18 U.S.C. §1589, which is the only statute cited by Plaintiffs under Count I of the Complaint, does not provide for a private cause of action;
  - B. To the extent that Plaintiffs’ claim in Count I is based on 18 U.S.C.A. § 1595, Plaintiffs fail to allege that Progressive Finishes participated

in a venture, which venture Progressive Finishes knew or should have known has engaged in an act in violation of 18 U.S.C.A. § 1589;

C. Plaintiffs' claims under Count I should be dismissed as to Plaintiffs Moore, Walker, Cole, Pritchett, English, and Cartwright, USSW, and RWDSU because Plaintiffs fail to allege that Progressive Finishes had any actual or constructive knowledge that any venture violated 18 U.S.C.A. § 1589 as to those Plaintiffs; and

D. 18 U.S.C.A. § 1589 and 18 U.S.C.A. § 1595 are unconstitutional as applied in the present case.

2. Count II of the Plaintiffs' Complaint should be dismissed because:

A. Plaintiffs fail to allege that Progressive Finishes committed an underlying predicate racketeering offense, let alone a pattern of such underlying predicate racketeering offenses; and

B. Plaintiffs, who never worked at Progressive Finishes and are unrelated to Progressive Finishes, have failed to allege proximate cause.

3. Count III of Plaintiffs' Complaint should be dismissed because Article I, Section 32, of the Constitution of the State of Alabama, does not provide for a private cause of action.

4. Count XI of Plaintiffs' Complaint should be dismissed because:

A. Plaintiffs have failed to properly allege the underlying conspiracy under 42 U.S.C. §1985 due to the intracorporate conspiracy doctrine;

B. Plaintiffs have failed to allege that Progressive Finishes had any power to prevent any alleged 42 U.S.C. §1985 conspiracy;

C. Plaintiffs have failed to properly allege that Progressive Finishes actually knew about any alleged wrongful conduct by the alleged co-conspirators; and

D. Plaintiffs' claims are barred by the statute of limitations.

5. Count XII of Plaintiffs' Complaint should be dismissed because Plaintiffs expressly allege the existence of contracts to hire the inmates pursuant to the work-release program, which extinguishes the unjust enrichment claim, and because Plaintiffs fail to properly allege that Progressive Finishes obtained any benefit from Plaintiffs unjustly.

6. All claims should be dismissed as to Plaintiffs USSW, SEIU, RWDU, MSD, and the Woods Foundation, who lack standing to bring suit against Progressive Finishes in the present case.

**WHEREFORE, PREMISES CONSIDERED,** Progressive Finishes respectfully moves the Court to:

A. Dismiss Plaintiffs' claims against Progressive Finishes under counts I, II, III, XI, and XII of Plaintiffs' Complaint; and

B. Grant Progressive Finishes any other relief that the Court deems just and appropriate.

Respectfully Submitted,

/s/ Josh C. Harrison

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of March, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will automatically send notification of such filing to the following:

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I further certify that, on March 29, 2024, I caused the foregoing to be served via U.S. mail to the *pro se* parties listed below, at the addresses listed below:

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