IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

VIRGINIA CASH,	**CASE NO. 2013-RCHM-001**
PETITIONER	
VS.	
KELLIE McINTYRE, in her official capacity As Solicitor-General of State Court of Richmond County, Georgia	
FIRST RESPONDENT	
RICHARD ROUNDTREE, in his official Capacity as Sheriff of Richmond County, Georgia,	
SECOND RESPONDENT	
SENTINEL OFFENDER SERVICES, LLC,	
THIRD RESPONDENT	

KELVIN ASHLEY,	**CASE NO. 2013-RCHM-002**
PETITIONER	
VS.	
KELLIE McINTYRE, in her official capacity As Solicitor-General of State Court of Richmond County, Georgia	
FIRST RESPONDENT	
RICHARD ROUNDTREE, in his official Capacity as Sheriff of Richmond County, Georgia,	
SECOND RESPONDENT	
SENTINEL OFFENDER SERVICES, LLC,	
THIRD RESPONDENT	

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

CLIFFORD HAYES,] **PETITIONER**] **VS.**]] **KELLIE McINTYRE, in her official capacity**] **As Solicitor-General of State Court of**] **Richmond County, Georgia**] **FIRST RESPONDENT**]] **RICHARD ROUNDTREE, in his official**] **Capacity as Sheriff of Richmond County,**] **Georgia,**] **SECOND RESPONDENT**]] **SENTINEL OFFENDER SERVICES, LLC,**] **THIRD RESPONDENT**]	**CASE NO. 2013-RCHM-003**

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

AMANDA STEPHENS,] **PETITIONER**] **VS.**]] **KELLIE McINTYRE, in her official capacity**] **As Solicitor-General of State Court of**] **Richmond County, Georgia**] **FIRST RESPONDENT**]] **RICHARD ROUNDTREE, in his official**] **Capacity as Sheriff of Richmond County,**] **Georgia,**] **SECOND RESPONDENT**]] **SENTINEL OFFENDER SERVICES, LLC,**] **THIRD RESPONDENT**]	**CASE NO. 2013-RCHM-004**

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

THOMAS JOHN BARRETT, **PETITIONER**	**CASE NO. 2013-RCHM-006**
VS.	
KELLIE McINTYRE, in her official capacity As Solicitor-General of State Court of Richmond County, Georgia **FIRST RESPONDENT**	
RICHARD ROUNDTREE, in his official Capacity as Sheriff of Richmond County, Georgia, **SECOND RESPONDENT**	
SENTINEL OFFENDER SERVICES, LLC, **THIRD RESPONDENT**	

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

WILLIAM STEPHEN CARTER, **PLAINTIFF**	**CASE NO. 2013-RCCV-122**
VS.	
SENTINEL OFFENDER SERVICES, LLC, **FIRST DEFENDANT**	
MARTIN M. MURRAY, **SECOND DEFENDANT**	
AND	
CHERYL BRYANT, **THIRD DEFENDANT**	

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

KATHLEEN MYRTLE HUCKS,	**CASE NO. 2012-RCCV-587**
PLAINTIFF	
VS.	
SENTINEL OFFENDER SERVICES, LLC,	
FIRST DEFENDANT	
BARBARA G. JOHNSON,	
SECOND DEFENDANT	
AND	
GINA A. CHILDS,	
THIRD DEFENDANT	

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

NATHAN RYAN MANTOOTH,	**CASE NO. 2013-RCCV-155**
and all other individuals do situated,	
PLAINTIFF	
VS.	
SENTINEL OFFENDER SERVICES, LLC,	
FIRST DEFENDANT	
AND	
KAYLA WHITE,	
SECOND DEFENDANT	

ORDER

The Court has considered the entire records in the above-styled matters and companion cases filed in the Superior Court of Columbia County, together with the briefs and arguments of counsel, and now enters this Order for the purpose of resolving the pending motions for judgment on the pleadings (filed by the defendants) and for partial summary judgment and class

action certification (filed by the plaintiffs)[1]. In addressing the pending motions, the Court makes the following findings of fact and conclusions of law thereon.

Procedural History and Findings of Fact

During the 2000 Georgia General Assembly session, Senate Bill 474 was passed. The bill effectively transferred supervision of 25,000 then existing misdemeanants, and all future misdemeanants, from supervision by the State Department of Corrections to the various counties. The above-styled actions serve as illustrations of the legacy of that legislation. The plaintiffs herein have all been sentenced in the State Court of Richmond County which administers the vast majority of misdemeanor cases arising from criminal violation of state statutes, including traffic offenses, DUI offenses, and misdemeanor theft cases. The plaintiffs contend that the legacy originated with an unconstitutional statute and was further tainted by the unauthorized supervision of potential class members through the unlawful tolling of misdemeanor sentences during which Sentinel unlawfully collected excessive supervision fees and employed other procedures to obtain money from probationers. Sentinel contends that the statute is constitutional and that it has performed valuable services to the court. It further contends that its authority to supervise misdemeanor probationers is based not only in the statutory framework controlling misdemeanor probation in Georgia, but also in the terms of each sentencing order entered by the Richmond County State Court.

The litigation is somewhat expansive. In addition to the eight above-styled cases in Richmond County Superior Court, there are at least five companion cases in the Columbia County Superior Court. In Columbia County the Superior Court administers misdemeanor cases in the same manner as the State Court does in Richmond County.[2] In addition, the Magistrate Court of Columbia County, which had also utilized the services of Sentinel, has stayed all revocation proceedings pending the outcome of these actions. In the Richmond County matters, some of the actions also included actions for habeas corpus relief for plaintiffs who were in

[1] The Court notes that only the matter of Mantooth v. Sentinel Offender Services, LLC (Case No. 2013-RCCV-155) is filed as a class action, but that the plaintiffs in the companion cases could be considered members of the class of plaintiffs described in the Mantooth v. Sentinel complaint.
[2] There is no State Court in Columbia County.

custody. This Court is contemporaneously entering an order in the Columbia County cases and does not endeavor here to develop further the separate history of those cases except as they coincide with the issues presented herein.

The issues presented by this litigation are unique (and challenging) in a variety of ways. Besides seeking habeas corpus relief, the complaints seek to recover damages for money had and received by Sentinel. The analysis of the relationship through which the money was received by Sentinel leads not only to an examination of the relationship between each plaintiff and Sentinel, but also the relationship between Sentinel and the State Court of Richmond County.[3] The parties have exhaustively argued the effect of court orders that purported to toll the sentences of offenders who had violated the terms of their sentences, where the statutory authority expressly prohibits tolling of sentences supervised by private probation entities. Additionally, many of the cases concern the constitutional implications of the practice of Sentinel to obtain probation revocation warrants but to take no further action to secure arrest of the non-compliant probationer and to systematically defer such arrest until the probationer was subsequently apprehended on other matters – usually traffic violations occurring years after the issuance of the probation violation warrants.

The most challenging and unique facet of these cases, in both Richmond and Columbia Counties, is the necessity to balance the interests of the plaintiffs (and those similarly situated) in avoiding allegedly unconstitutional restrictions on their liberty with the administration of constitutional duties conferred on the sheriffs of the respective counties, as well as the judges of the State Courts and Magistrate Courts, who could be potentially impacted by the validity and constitutionality of the probation revocation warrants. It is in respect to those constitutional entities, and the potential impact on the administration of their duties, that this Court has rejected the suggestion that the matter of class action certification should be first decided and subject to appellate review before this Court addresses the substantive issues raised by the defendants' Motion for Judgment on the Pleadings and the plaintiffs' Motion for Partial Summary Judgment. This Court finds it repugnant to the concepts of due process and sound jurisprudence that it should choose between delay in the resolution of potentially illegal or unconstitutional

[3] Although there is an additional issue in the Columbia County cases, arising from a question about the very existence of a valid contract pursuant to OCGA §42-8-100(g), the validity and proper execution of the contract between Sentinel and the Richmond County State Court is not in issue here.

incarceration of any citizen, and interference with the orderly administration of constitutional duties by a court, its duly elected judges, or by duly elected sheriffs. And it is with appreciation to counsel for all parties that they have reserved objection to the extension (and informal expansion) of restraining orders against arrests of a certain classification of misdemeanor probationers to facilitate sufficient discovery to allow this Court to address all three motions now before it.

Before addressing the writ of habeas corpus in those cases where the probationers were incarcerated at the time of the filing of their actions, this Court consulted with counsel in each case and, after reviewing the records of the sentencing of each defendant, accepted the stipulations of counsel that none of the sentences met the constitutional standards under Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). The records having lacked the colloquy necessary to establish a waiver of the accused's constitutional rights, the sentence thereon is a nullity:

> The entry of a guilty plea involves the waiver of three federal constitutional rights: the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers [cit.]. . . ." [Cit.] In a habeas corpus proceeding, the State has the burden to show that the defendant's guilty plea was voluntarily, knowingly, and intelligently made. [Cit.] Waiver cannot be presumed from a record that is silent. [Cit.] When the record reflects a failure to inform the defendant of each of his three Boykin rights prior to his entering a guilty plea, a judgment denying habeas relief must be reversed. [Cits.]

Sanders v. Holder, 285 Ga. 760, 761 (684 SE2d 239) (2009). See also, Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969), Hamm v. State, 123 Ga. App. 10, 179 S.E.2d 272 (1970), Wilson v. Kemp, 288 Ga. 779, 727 S.E.2d 90 (2011).

It was also stipulated by counsel that Sentinel has not ever been a physical custodian of any of the parties in this action. Nonetheless, Sentinel contends that after the plaintiffs herein, who were in custody upon institution of their actions, were released under the foregoing stipulation, this Court effectively lost jurisdiction over the remaining issues because such additional issues cannot be joined in a petition seeking habeas corpus relief.

The following additional facts are undisputed, illustrative of the predominant issues in these companion cases, and material to resolution of the issues presented:

1) Misdemeanor sentences entered during the period covered by this litigation have commonly required payment of probation supervision fees to Sentinel during the period of probation – typically between $34.00 and $44.00 per month for each month of supervision.

2) Counsel for Sentinel has stipulated to the Court that Sentinel would not be entitled to collect supervision fees from a probationer after all fines, restitution, and costs are paid in a case, except where a condition of probation requires further supervision, such as performance of community service, completion of mandatory courses, or specific monitoring of the probationer.

3) In contrast to the companion cases sentenced in the Columbia County Superior Court, many of the defendants in the State Court of Richmond County were ordered to submit to electronic monitoring and to pay the costs associated with such service rendered by Sentinel. There is no evidence that electronic monitoring of misdemeanor probationers has been employed in Columbia County.

4) Counsel has agreed that as a general rule, when a probationer is alleged to have violated the terms of his probation and an affidavit is submitted to a State Court judge for issuance of a warrant or a "show cause order," such warrants and orders are routinely entered into the Georgia Crime Information Center data base but no purposeful search is made for the probationer. Counsel acknowledged that the usual effect of that practice is that thousands of probationers currently have outstanding misdemeanor probation warrants and any subsequent encounter with law enforcement, even years after the original term of their sentence has expired, will result in their arrest and incarceration until they can be brought before a judge in a regular session of court.[4]

5) Amanda Stephens was sentenced on June 20, 2005 to a term of 12 months for the offense of Simple Battery. She was also required to submit to random drug screens; pay a $500.00 fine; and to pay a probation supervision fee of $44.00 per month. On January 8, 2013, she was arrested for violation of her probation. She was ordered to submit to electronic monitoring as a condition of her release, and to comply with electronic monitoring for a period of one year.

6) On January 24, 2006, plaintiff Virginia Cash was sentenced to three consecutive, twelve-month sentences for misdemeanors (Driving on a Suspended License; No Proof of Insurance; and Possession of Marijuana) in State Court. She was also ordered to pay fines and surcharges. The sentence provided for suspension of some of the fines upon her compliance with certain conditions within an allotted time. On March 17, 2009, Cash was sentenced to an additional twelve-month term on an unrelated charge of Driving on a Suspended License. She was ordered to pay monthly probation supervision fees in the amount of $34.00. The sentence was to run consecutively to the sentence imposed in 2006. On October 18, 2012, the State Court revoked 5 months of the probated sentence

[4] In an amicus brief filed on behalf of the State Court Judges of Richmond County, the judges also acknowledged this practice by Sentinel.

imposed in 2006 and further ordered that, before she could be released from jail she would have to pay a start-up fee to begin electronic monitoring. When this action was filed on January 2, 2013, Cash was incarcerated. Sentinel's report to the State Court at the time of her arrest reflected that she had over two years, six months remaining on her combined sentences.

7) Kelvin Ashley was sentenced in State Court of Richmond County on August 20, 2012 for the offenses of Family Simple Battery and Cruelty to Children in the Third Degree. As part of his sentence, he was ordered to submit to electronic monitoring and to pay fines and probation supervision fees. He failed to pay the costs associated with electronic monitoring and was ordered to submit to electronic monitoring at a probation revocation proceeding in September, 2012. In November, 2012, he was again brought before the court on a probation revocation proceeding and ordered to enroll in an in-patient alcohol treatment program. He alleges in his complaint that he works minimum wage jobs and his income prohibits compliance with the electronic monitoring condition of his probation. He was incarcerated at the time this action was filed on January 15, 2013.

8) Nathan Ryan Mantooth was sentenced on January 23, 2013 to a twelve month term for improper lane change. He was ordered to pay a fine of $420.00; attend a driver improvement course; and pay a monthly probation supervision fee of $35.00. He paid his fine in full at the time of sentencing and completed his driver improvement course one week later. He attempted to deliver his certificate of completion on two occasions to Sentinel but was informed his case had not yet been entered into their computer. On February 26, 2013, a Sentinel employee submitted an affidavit to the State Court seeking revocation of his probation for failure to pay court-ordered supervision fees. He was stopped on March 18, 2013 for failure to wear a set belt and was taken into custody by Columbia County Sheriff Deputies for transport to the Richmond County jail. He seeks class action certification on his complaint based on the effort of Sentinel to collect probation supervision fees after payment in full of his fine and surcharges.

9) The testimony of Mark Contestabile, Chief Business Development Officer of Sentinel establishes clearly that Sentinel maintains sufficient records from which it can be determined the source and amount of all types of revenue/income to the corporation. There is no evidence that any such records have been destroyed or are not accessible.

Conclusions of Law

The plaintiffs herein seek injunctive relief and damages. The claim for injunctive relief alleges that Sentinel has exceeded the authority of the Court's sentences or the statutory provisions that govern private probation services, or both, by imposing obligations on probationers that effectively extend the terms of their probated sentences, thereby resulting in the imposition of additional, unauthorized probation supervision fees.

The plaintiffs allege that OCGA §42-8-100(g)(1) is unconstitutional (within the contemplation of Article I, Section I, Paragraphs I, II and XXIII of the Constitution of the State of Georgia) on its face and as applied because privatization of probation services systemically denies due process of law and equal protection to probationers, and systematically provides for imprisonment for debt.

The plaintiffs also seek damages in the form of recovery of probation supervision fees paid to Sentinel under an equitable theory of money had and received. They contend that, Sentinel has charged probation supervision fees that are not authorized by law. They also contend that, in implementing the law that transferred misdemeanor probation supervision to private probation services, the legislature disallowed the tolling of any such sentences and therefore any probation supervision fees paid after the expiration of the original term of any sentence should be recovered.

The defendants contend that in order to recover damages under a theory of money had and received, there must be an ostensible contract between the parties or some express, statutory right of recovery. They further contend that Sentinel is not a proper party to a challenge to the constitutionality of the private probation statute.

The multitude of issues presented by the pleadings are more easily managed by an examination of the relationships of the parties. Although there is a relationship between the State Court of Richmond County and Sentinel, there is no contractual relationship between the plaintiffs and Sentinel. Instead, the relationship between the plaintiffs and Sentinel is court-ordered, pursuant to sentences entered in criminal cases over which the plaintiffs had no apparent negotiating authority whatever. With that distinction, the Court now turns to the issues presented by the motions for judgment on the pleadings, partial summary judgment and class certification.

1. This Court is not deprived of jurisdiction to consider the claims of the plaintiffs merely because it was determined that Sentinel was not the custodian of any plaintiff for the purpose of considering the habeas corpus petitions; nor by the determination that the sentences of the plaintiffs were null and void.

Where a court has acquired jurisdiction of a case, it cannot be deprived of jurisdiction by subsequent events in the course of its proceedings, even if those events would have prevented

jurisdiction from attaching in the first place. Resolution Trust Corp. v. Foust, 177 Ariz. 507, 869 P.2d 183 (1993); Uptime Corp. v. Colorado Research Corp., 161 Colo 87, 420 P.2d 232 (1966), Foster v. Nordman, 244 S.C. 485, 137 S.E.2d 485, (1964). See also, Union Chemicals and Materials Corp. v. Cannon, 38 Del Ch. 203, 148 A.2d 348 (1959).

2. **The private probation statutory framework does not, on its face, unconstitutionally condone imprisonment for debt in violation of Article I, Section I, Paragraph XXIII of the Constitution of the State of Georgia.**

All of the plaintiffs in the actions in Columbia and Richmond Counties share the distinction of having been brought before the Superior Court of Columbia County or the State Court of Richmond County, charged with misdemeanor crimes. Pretermitting the issues of the validity of their sentencing processes, it is undisputed by the parties to this litigation that the purpose for placing them under the supervision of Sentinel Offender Services was for supervision of criminal sentences and arrangement for the payment of fines as an alternative to incarceration. In Connally v. State, 265 Ga. 563, 458 S.E.2d 336 (1995), the court observed the distinction between imprisonment for debt, in violation of the Georgia Constitution, and imprisonment for criminal conduct. To that extent, the private probation statute does not differ on its face from state-supervised probation.

3. **The private probation statutory framework does not, on its face, deprive plaintiffs of due process of law or equal protection in violation of Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia.**

Under the same analysis as discussed above, the private probation statute, OCGA §42-8-100(g)(1) does not, on its face, authorize Sentinel Probation Services or any other private probation company to deprive any individual, over whom they have supervision, liberty or property without due process of law. Furthermore, the statutory authority extended to private probation companies is very limited, clear and unambiguous. It is not subject to more than one interpretation. Any alleged injury or taking by Sentinel under the auspices of its role as probation supervisor did not occur with the imprimatur of the statutory framework. In comparison, see Newnan v. Atlanta Laundries, Inc, 174 Ga. 99, 162 S.E. 497 (1932), (discussing the constitutional analysis of legislation generally).

By the foregoing conclusion, this Court does not suggest that the practice of Sentinel, to

secure warrants and orders to show cause and not to pursue timely arrests of probation violators is consistent with the concept of constitutional due process. Without exception, the effect of the practice is long-delayed arrest and incarceration of the probationer. In some cases, the arrests are made in other counties or states and the probationer must await transport to Richmond County. The practice offends basic notions of due process by depriving the probationer the opportunity to defend the alleged violations of probation in a timely manner when evidence may be more readily available, and subjecting the probationer to detention many years after the original sentence has expired. Indeed, it is the very "prospect of detention" that motivated the Supreme Court to expand the concept of due process to ensure representation by counsel in Alabama v. Shelton, 535 U.S. 654, 122 S. Ct. 1764, 152 L. Ed. 2d 888 (2002). The recognition that delay in judicial proceedings inherently offends the constitutional right to due process of law has been recognized for decades in our jurisprudence. See Barker v. Wingo, 407 U.S. 514, 33, L.Ed2d 101, 92 S.Ct. 2182 (1972), U.S. v. Weaver, 384 F.2d 879, 880 (4th Cir. 1967).

This Court would like to conclude that the legislature recognized the constitutional wisdom of limiting the prospect of detention to the original term of the sentence for a misdemeanor offender, and it is such wisdom that underlies the prohibition of tolling for sentences supervised by private probation services.

4. The statutory framework clearly prohibits the tolling of any sentence supervised by a private probation services entity.

The administration of probation sentences by the State of Georgia and, as contracted between courts and private probation services, is controlled by Articles 1 through 8 of Title 42 of the Official Code of Georgia. Pursuant to OCGA §42-8-36 (found in Article 2) a court is authorized to suspend (toll) a sentence of any offender who absconds during the term of his sentence, upon submission of a sufficient affidavit by the probations supervisor. Article 2 also confers on the court the authority to require drug and alcohol screening of probationers (OCGA §42-8-35.7); to undergo mental health screening and counseling (OCGA §42-8-35.6); and to wear a device capable of tracking the location of the probationer by means of electronic surveillance or global positioning satellite systems. And Article 2 authorizes "the department[5]" to assess and collect

[5] Refers to the Department of Corrections. OCGA §42-8-22

fees from the probationer for such monitoring. However, Article 2 also specifically excludes private probation entities from using any of the foregoing supervision services:

> In any county where the chief judge of the superior court, state court, municipal court, probate court, or magistrate court has provided for probation services for such court through agreement with a private corporation, enterprise, or agency or has established a county or municipal probation system for such court pursuant to Code Section 42-8-100, the provisions of this article relating to probation supervision services shall not apply to defendants sentenced in any such court.

OCGA §42-8-30.1

Effective July 1, 2001, there is no statutory authority for a private probation service to extend the original term of a probated sentence. The Court will forbear at this time from an analysis of the underlying purposes for criminal sentences and the distinction between felony offenses and misdemeanor offenses. The Court will further forbear from an analysis of effective misdemeanor sentencing within the statutory framework provided by the legislature, without the authority to toll the running of such sentences. Such analyses would require a virtual treatise on the objectives and purpose of sentencing in American jurisprudence. It is appropriate in this conclusion of law; however, to note that the limitations imposed by the legislature bear a logical and necessary correlation to the public policy behind sentencing in misdemeanor cases.

5. **No Court may extend the term of its sentence in the absence of statutory authority. For greater reason, no court may extend the term of a probated sentence where a statute specifically prohibits such action.**

Sentinel contends that tolling has been ordered by the courts in which it performs the role of probation supervisor, and the order of the Court, not the statutory authority, controls the issue of tolling. That contention is inapposite to the established jurisprudence on the issue. "Statutes providing for the suspension of a sentence or the probation of a defendant must be strictly followed." Cross v. Huff, 308 Ga. 392, 67 S.E.2d 124 (1951), Entrekin v. State, 147 Ga. App. 724; 250 S.E.2d 177 (1978). See also, Tenney v. State, 194 Ga. App. 820, 392 S.E.2d 294 (1990). The Court's authority over a probated sentence, once the defendant enters upon it, is limited by the controlling statutory authority. Where the court has entered into a contract with a private probation service, the statute precludes the tolling of a sentence.

6. The plaintiffs are entitled to recover from Sentinel any probation supervision fees collected after the statutorily authorized period of probation supervision and any money paid to Sentinel for electronic monitoring.

As was noted above, the Court cannot lawfully extend the length of a misdemeanor sentence, supervised by private probation service beyond its original term. OCGA §42-8-30.1. To that extent, equity will not afford a remedy to allow Sentinel to retain that which the law prohibited it from taking (from the probationer) in the first place:

> "Mere ignorance of the law on the part of the party himself, where the facts are all known, and there is no misplaced confidence, and no artifice or deception or fraudulent practice is used by the other party either to induce the mistake of law or to prevent its correction, shall not authorize the intervention of equity.' § 37-209." Callan Court Co. v. C & S National Bank, 184 Ga. 87, 190 S.E. 831 (1937), Robbins v. National Bank of Georgia, 241 Ga. 538, 246 S.E.2d 660 (1978).

Sentinel is not entitled to retain illegally obtained probation supervision fees under a doctrine of quantum meruit. In City of Baldwin v. Woodard & Curran, 293 Ga. 19, 743 S.E.2d 381 (2013) the Supreme Court addressed the application of the doctrine of quantum meruit to claims against a government and determined that the doctrine does not apply where the government has no power to enter into the agreement. Similarly, in the present case, the court had no power to extend Sentinel's supervision of probationers beyond the original term of their sentences. This the doctrine of quantum meruit is unavailable to prevent an order that illegally obtained fees must be disgorged, and may be recovered by the plaintiffs.

Sentinel contends that an action for money had and received must be founded in a contractual relationship. However, the holding in Haugabook v. Crisler, 297 Ga.App. 428, 677 S.E.2d 355 (cert. denied, 2009) is contrary to that contention. To the extent that Sentinel seeks judgment on the pleadings on that issue, and the plaintiffs seek partial summary judgment, the Court concludes that the there is a right on the part of the plaintiffs to recover probation supervision fees paid after expiration of the term of any original sentence. In addition, because the OCGA §42-8-30.1 prohibits private probation services from charging for electronic monitoring in misdemeanor cases, it must disgorge money had and received from probationers in violation of the statutory prohibition.

7. **The Court concludes that a class of persons, who have paid any fees to Sentinel after expiration of the original term of their sentences or who have paid Sentinel for electronic monitoring at any time during their probation, meets the statutory requirements of superiority, predominance, typicality, and numerosity.**

There is no factual dispute that the class of persons is so numerous that joinder of all members who have paid probation supervision fees is impracticable and the Court so concludes. Additionally, the foregoing findings and conclusions of law establish that there is essentially only one question of law and fact in the case and it is common to every person who paid probation supervision fees beyond the term of their original sentences. The amount of each claim can be easily calculated from business records readily accessible to Sentinel. That common fact and legal issue clearly establishes the typicality of the claims and defenses. The Court concludes, based on the undisputed facts, that the plaintiff, Nathan Mantooth, is a representative party to the class of persons who paid fees beyond the term of his original sentence. Accordingly, the Court will certify the class of potential claimants and designate Nathan Mantooth as the class representative.

Order

Based on the foregoing findings of fact and conclusions of law, it is now ORDERED that the Motion for Judgment on the Pleadings of the defendant, Sentinel Probation Services, LLC is DENIED.

It is further ORDERED that the plaintiffs Motion for Partial Summary Judgment based on the challenge to the constitutionality of OCGA §42-8-100 is DENIED.

It is further ORDERED that the plaintiff's Motion for Partial Summary Judgment for money had and received is GRANTED.

It is further ORDERED that the plaintiff's motion for class certification is conditionally GRANTED.

It is further ORDERED that the defendants are permanently enjoined from requiring any probationer to submit to any conditions of probation which conditions are reserved to the Department of Corrections pursuant to Article 2, Title 42 of the Official Code of Georgia

including, but not limited to the use of electronic monitoring of such probationers or the tolling of the term of the original sentences imposed by any court in Richmond County, Georgia.

It is further ORDERED that the defendants are permanently enjoined from taking any action to supervise or enforce the conditions of any probation sentence in Richmond County, Georgia after the date of expiration of the original term of any such sentence.

It is so ORDERED this 16th day of September, 2013.

Daniel J. Craig
Superior Court Judge
Augusta Judicial Circuit

CERTIFICATE OF SERVICE

Prior to filing, a copy of the foregoing Order was delivered to counsel for the parties at the following addresses:

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This 16th day of September, 2013.

Daniel J. Craig
Superior Court Judge
Augusta Judicial Circuit