IN THE SUPERIOR COURT OF COLUMBIA COUNTY
STATE OF GEORGIA

PAMELA LYNN TENNILLE, PLAINTIFF VS. SENTINEL OFFENDER SERVICES, LLC, FIRST DEFENDANT AND CHRISTINA KAPRAL, SECOND DEFENDANT	]]]]]]]]]]	CASE NO. 2012-CV-0861

IN THE SUPERIOR COURT OF COLUMBIA COUNTY
STATE OF GEORGIA

WILLIE JAMES GILYARD, PLAINTIFF VS. SENTINEL OFFENDER SERVICES, LLC, FIRST DEFENDANT GINA A. CHILDS, SECOND DEFENDANT AND BARBARA G. JOHNSON, THIRD DEFENDANT]	]]]]]]]]]]]]	CASE NO. 2012-CV-0850

IN THE SUPERIOR COURT OF COLUMBIA COUNTY
STATE OF GEORGIA

BRANDON TYLER OSBORN, PLAINTIFF VS. SENTINEL OFFENDER SERVICES, LLC, FIRST DEFENDANT AND BARBARA G. JOHNSON,[1] SECOND DEFENDANT	]]]]]]]]]]	CASE NO. 2012-CV-0867

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[1] On July 11, 2013, this defendant filed a Chapter 7 Petition in the United States Bankruptcy Court, staying all actions to collect debts, disputed or undisputed, pursuant to 11 U.S.C. §362(a). The Court notes that this order shall have only that effect that is consistent with the prevailing law concerning the automatic stay, as it relates to her.

IN THE SUPERIOR COURT OF COLUMBIA COUNTY
STATE OF GEORGIA

LAWRENCE RUBEN MARTIN,	]	**CASE NO. 2012-CV-0888**
PLAINTIFF	]	
VS.	]	
	]	
SENTINEL OFFENDER SERVICES, LLC,	]	
FIRST DEFENDANT	]	
AND	]	
	]	
CHRISTINA KAPRAL,	]	
SECOND DEFENDANT	]	

IN THE SUPERIOR COURT OF COLUMBIA COUNTY
STATE OF GEORGIA

JACOB MARTIN GLOVER,	]	**CASE NO. 2012-CV-0811**
and all other individuals so situated,	]	
PLAINTIFF	]	
VS.	]	
	]	
SENTINEL OFFENDER SERVICES, LLC,	]	
DEFENDANT	]	

ORDER

The Court has considered the entire records in the above-styled matters and companion cases filed in the Superior Court of Richmond 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)[2]. In addressing the pending motions, the Court makes the following findings of fact and conclusions of law thereon.

[2] The Court notes that only the matter of Glover v. Sentinel Offender Services, LLC (Case No. 2012-CV-811) 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 Glover v. Sentinel complaint.

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 contend that the legacy originated with an unconstitutional statute and was further tainted by the failure of Sentinel Offender Services, LLC (hereinafter sometimes referred to as "Sentinel") and its predecessor entity, Detention Management Services (hereinafter sometimes referred to as "DMS"[3]), to secure approval of their contract to provide contract probation services in accordance with OCGA §42-8-100(g)(1)[4] and the controlling constitutional authority. Sentinel contends that the statute is constitutional and that, notwithstanding the absence of a contract between it and the Chief Superior Court Judge, or approval by the Columbia County Commission, it has performed valuable services to the court and its authority is found in its assumption of the contract rights of the terms of each sentencing order entered by the Columbia

[3] Counsel for Sentinel has stipulated that Sentinel acquired the assets of DMS after June 7. 2000.

[4] The statute provides:

"(g)(1) The chief judge of any court within the county, ***with the approval of the governing authority of that county***, is authorized to enter into written contracts with corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in that court and placed on probation in the county. In no case shall a private probation corporation or enterprise be charged with the responsibility for supervising a felony sentence. ***The final contract negotiated by the chief judge with the private probation entity shall be attached to the approval by the governing authority of the county to privatize probation services as an exhibit thereto.*** The termination of a contract for probation services as provided for in this subsection entered into on or after July 1, 2001, shall be initiated by the chief judge of the court which entered into the contract, and subject to approval by the governing authority of the county which entered into the contract and in accordance with the agreed upon, written provisions of such contract. The termination of a contract for probation services as provided for in this subsection in existence on July 1, 2001, and which contains no provisions relating to termination of such contract shall be initiated by the chief judge of the court which entered into the contract, and subject to approval by the governing authority of the county which entered into the contract and in accordance with the agreed upon, written provisions of such contract.

" (2) ***The chief judge of any court within the county, with the approval of the governing authority of that county, is authorized to establish a county probation system*** to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in that court and placed on probation in the county." (Emphasis added for ease of use/relevance.)

County Superior Court which sentences anticipated and directed it to supervise any probated misdemeanor sentence.

The litigation is somewhat expansive. In addition to the five above-styled cases in Columbia County Superior Court, there are at least eight companion cases in the Richmond County Superior Court that pertain to probation supervision services rendered by Sentinel pursuant to misdemeanor sentences in the State Court of Richmond County.[5] 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 custody. This Court is contemporaneously entering an order in the Richmond 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. 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 relationships between Sentinel and this Court, and between Sentinel and the Columbia County government for whom Sentinel performed an "Executive Branch" function throughout the term of its now-disputed contract.[6] The parties have also 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

[5] There is no State Court in Columbia County.
[6] In December, 2012, after the filing of some of these actions, Sentinel unilaterally terminated its services to the Superior Courts of Richmond and Columbia Counties and Magistrate Court of Columbia County.

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 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.

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

1) Throughout the period of time concerning all of the above-styled cases, from the year 2000 through December 31, 2012, the only misdemeanor probation services provided to the Superior Court of Columbia County were by Sentinel and its predecessor entity, DMS.

2) There has never been an approval of a contract for probation services between Sentinel and the Columbia County governing authority, within the contemplation and provisions of OCGA §42-8-100(g)(1).

3) There was a contract, executed on June 7, 2000, between the former Chief Judge of the Augusta Judicial Circuit (Columbia, Richmond and Burke Counties) and DMS, which outlined the probation services that DMS would provide for misdemeanants in Columbia County, and providing that the contract would automatically renew in the absence of written notice of termination by either party.

4) Prior to 2012, no misdemeanor sentence imposed in Columbia County designated Sentinel or any other entity, by name, as the supervising probation service. In fact, the forms utilized by the Court made reference to the "State Probation Office," an undisputed

scrivener's error that went unnoticed by the Court as well as any interested party or agency.

5) During the period from 2000 through 2012, there have been at least 14 Superior Court Judges (six have retired during the relevant period) who have presided in thousands of misdemeanor matters in Columbia County and who have employed the sentence forms that outlined the terms and provisions of every misdemeanor sentence. Before these companion actions were instituted, none of the judges questioned the existence of a valid contract between the Court and Sentinel.

6) Misdemeanor sentences have ordered the payment of probation supervision fees ranging from $30.00 per month to $39.00 per month, for each month of supervision.

7) 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.

8) Willie James Gilyard (the plaintiff in Case No. 2012-CV-850) was sentenced On October 16, 2001 on one felony and two misdemeanor offenses. He was also ordered to pay a monthly probation supervision fee of $23.00. After serving 5 years probation on the felony offense, his probation supervision was assumed by Sentinel on October 16, 2006 for the two consecutive, 12-month sentences imposed on the misdemeanor violations. No order was sought to toll the probated sentence. Almost 38 months later, on December 4, 2009, Sentinel submitted an affidavit for an arrest warrant alleging Gilyard had violated technical terms of his probated sentence – "failure to pay fine and fee and failure to submit to random screens." Again, on September 26, 2012, eleven years after the 7-year original sentence was imposed and over six years after Sentinel assumed supervision of a 24-month sentence, Sentinel sought another probation violation arrest warrant, again alleging failure "to pay fine/fee and failing to submit to random drug screens due to not reporting." On October 25, 2012, a Superior Court Judge ordered Gilyard's "release and termination of the case."

9) Brandon Tyler Osborn (the plaintiff in Case No. 2012-CV-867) was sentenced to a 12-month term of probation on June 1, 2011 in the Superior Court of Columbia County. His probation supervision (including collection of a fine and fees) was assumed by Sentinel on that date. No order was sought to toll the period of probation. Almost 16 months later Sentinel sought revocation of his probation for failure to appear at its offices in November 2011, and failure to pay fines and fees.

10) Jacob Martin Glover (who seeks class action certification in Case No. 2012-CV-811, filed on November 20, 2012) was sentenced by the Superior Court of Columbia County on February 22, 2012 to serve a 12-month probated sentence, and to pay a fine and probation supervision fees. He does not contend that an effort has been made to arrest

him. Instead, he alleges that Sentinel has no authority to collect probation supervision fees because it has failed to comply with the statutory requirements to serve as a private probation service as contemplated by OCGA §42-8-100. Specifically, he alleges that there has never been a contract with the Chief Superior Court Judge, nor has there been approval by the county's governing authority. The class he seeks to represent is that of all persons who have paid probation supervision fees to Sentinel in Columbia County, Georgia, but excluding those who have been incarcerated as a result of probation violation warrants procured by Sentinel employees.

11) 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.

12) There is no evidence that the Superior Court of Columbia County has ordered the use of electronic monitoring for any misdemeanor probationers.

Conclusions of Law

The plaintiffs herein seek injunctive relief and damages. The claim for injunctive relief alleges that Sentinel has never secured a contract to provide probation services in Columbia County that comports with the requirements of OCGA §42-8-100(g)(1); and further 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, because there was no valid contract between the Superior Court (and Magistrate Court) of Columbia County and Sentinel, Sentinel lacked statutory authority to collect any probation fees at any time. 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 may be an ostensible, contractual relationship between the Superior Court and Sentinel, originating with the DMS contract of 2000, 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. **The issues herein, including the issue of injunctive relief, are not rendered moot by the resignation from future service to Columbia County by Sentinel.**

A case is moot when its resolution would amount to the determination of an abstract question not arising upon existing facts or rights." American Professional Risk Services, Inc. et. al. v. Gotham Insurance Company, (Georgia Court of Appeals, Case No. A13A1033, decided August 30, 2013). The issues presented herein, including the issues upon which injunctive relief are sought, are also presented in the companion, Richmond County cases, where Sentinel continues to provide probation supervision services to the Richmond County State Court.

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 Columbia County. The practice offends fundamental tenets 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 period of 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[7]" to assess and collect 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

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

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. **There was mutual mistake on the part of Sentinel and the Superior Court and Magistrate Court of Columbia County regarding the omission to secure approval of a contract by the governing authority, as demonstrated by the fact that all services specified in the DMS contract of 2000 have been continuously provided by Sentinel and there had been no information or knowledge that the services were in violation of the statutory scheme.**

The plaintiffs seek recovery of all money paid for probation supervision fees under a theory of "money had and received." "Although legal in form, being an action in implied assumpsit, [an action for money had and received] is founded on the equitable principle that no one ought to unjustly enrich himself at the expense of another, and it is a substitute for a suit in equity." J. C. Penney Co. v. West, 140 Ga. App. 110, 111-112, 230 SE2d 66 (1976). Turning to

the principles of equity, the Court concludes that the plaintiffs are not entitled to recover probation supervision fees paid during the original terms of their probated sentences.

> "It will be remembered that the essential element of a mistake was defined to be a mental condition or conception or conviction of the understanding. This mental condition may be either a passive state or an active conviction. When merely passive, it may consist of an unconsciousness, an ignorance, or a forgetfulness; when active, it must be a belief. In the first of these two conditions, the unconsciousness, ignorance, or forgetfulness may be either of a fact which is present and now existing, or of a fact which is past and has existed; they must always concern a fact material to the transaction. In the second condition, the belief may be either that a certain matter or thing exists at the present time, which really does not exist; or that certain matter or thing existed at some time which did not really exist. All possible forms of mistake of fact are embraced within this description; and all particular errors which fall under any of these conditions are mistakes of fact which furnish an occasion for equitable relief.

Callan Court Co. v. C & S National Bank, 184 Ga. 87, 190 S.E. 831 (1937).

Pursuant to OCGA §23-2-20, and based on the undisputed facts herein. the Court concludes that equity does not support disgorgement of probation supervision fees collected during a 12-year period when 14 judges mistakenly deferred to Sentinel to carry out the lawful orders of the Court. However, 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 also 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.

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 meets the statutory requirements of superiority, predominance, typicality, and numerosity; however, the plaintiff in the Columbia County case is not a representative of that class.**

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. However, the Court concludes, based on the undisputed facts, that the plaintiff, Jacob Martin Glover, is not a representative party to the class of persons who paid fees beyond the term of his original sentence and may lack any claim on that basis. Accordingly, the Court will defer to the Richmond County companion case for identification of a 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. The Court defers ruling on whether Jacob Martin Glover is a proper representative of the class, and whether proceedings on behalf of the class should proved in Columbia County Superior Court or Richmond County Superior Court.

It is further ORDERED that the plaintiff, Jacob Martin Glover's motion to be appointed class representative of that class of persons who have paid probation supervision fees beyond the term of their original sentences is DENIED at this time to defer to a plaintiff whose claim is certain as a matter in fact and law.

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 Columbia 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 Columbia 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