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.

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[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.

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