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18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF ARIZONA

20 DeShawn Briggs, Mark Pascale, and
21 McKenna Stephens on behalf of
22 themselves and all others similarly
23 situated; Taja Collier,

24 Plaintiffs,

25 v.

26 William Montgomery, in his official
27 capacity as County Attorney of
28 Maricopa County; Maricopa County;
Treatment Assessment Screening
Center, Inc.,

Defendants.

No. CV-18-2684-PHX-JAS

**FIRST AMENDED CLASS ACTION
COMPLAINT AND JURY TRIAL
DEMAND**

OVERVIEW

1. The Maricopa County Attorney’s Office (MCAO) and the Treatment Assessment Screening Center (TASC) jointly operate a possession of marijuana diversion program¹ that penalizes the poor because of their poverty.

¹ This diversion program is referred to in the Complaint as “the possession of marijuana diversion program,” “the marijuana diversion program,” and “the program.”



1 2. In a “diversion” program, participants undergo a period of supervision
2 and must meet certain requirements to avoid criminal prosecution and conviction.

3 3. The programs are generally “a functional equivalent of a sentence to
4 pretrial probation . . . and [are] staffed with paraprofessionals overseeing individuals in
5 what [is] in effect a probationary-type of supervision and control.”²

6 4. In principle, the programs are “intended to relieve overburdened courts
7 and crowded jails, and to spare low-risk offenders from the devastating consequences
8 of a criminal record.”³

9 5. But in Maricopa County, they serve another purpose: to make money for
10 those who operate the program, including the MCAO.⁴

11 6. Between 2006 and 2016, MCAO collected nearly \$15 million in revenue
12 by diverting threatened prosecutions to TASC.⁵

13 7. The length of time a person spends in the diversion program and whether
14 the person ultimately completes the program and avoids felony criminal prosecution
15 depends on whether she can pay the program’s required fees.

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17 ² S. Rep. No. 93–1021, at 36–37 (1974) (describing the operation of two pretrial
diversion programs).

18 ³ Shaila Dewan & Andrew W. Lehren, *No Money, No Mercy: After a Crime, the*
19 *Price of a Second Chance*, N.Y. Times (Dec. 12, 2016),
20 [https://www.nytimes.com/2016/12/12/us/crime-criminal-justice-reform-
diversion.html](https://www.nytimes.com/2016/12/12/us/crime-criminal-justice-reform-diversion.html).

21 ⁴ See Megan Cassidy, *If Prop. 205 Passes, Maricopa County Attorney’s Office*
22 *Funds From Marijuana Diversion Program Would Dry Up*, Ariz. Republic (Oct. 26,
2016), [https://www.azcentral.com/story/news/local/phoenix/2016/10/26/prop-205-
marijuana-diversion-tasc-dry-up-county-attorney-bill-montgomery-
23 millions/92795924](https://www.azcentral.com/story/news/local/phoenix/2016/10/26/prop-205-marijuana-diversion-tasc-dry-up-county-attorney-bill-montgomery-millions/92795924); Ray Stern, *If Prop 205 Passes, the Maricopa County Attorney’s*
24 *Budget is Likely to Take a Hit*, Phoenix New Times (Oct. 31, 2016),
25 [https://www.phoenixnewtimes.com/news/if-prop-205-passes-the-maricopa-county-
attorneys-budget-is-likely-to-take-a-hit-8782184](https://www.phoenixnewtimes.com/news/if-prop-205-passes-the-maricopa-county-attorneys-budget-is-likely-to-take-a-hit-8782184); Ray Stern, *Potential Marijuana*
26 *Legalization in Arizona Threatens TASC Drug Treatment Firm’s Funding*, Phoenix
27 New Times (Jan. 26, 2016), [https://www.phoenixnewtimes.com/news/potential-
marijuana-legalization-in-arizona-threatens-tasc-drug-treatment-firms-funding-
7999610](https://www.phoenixnewtimes.com/news/potential-marijuana-legalization-in-arizona-threatens-tasc-drug-treatment-firms-funding-7999610).

28 ⁵ See Cassidy, *supra* note 4.

1 8. In order to complete the program and avoid felony criminal prosecution,
2 participants in the marijuana diversion program must pay a fee of \$950 or \$1000.

3 9. Participants must also pay \$15 or \$17 for each drug and alcohol test; they
4 may be required to take as many as three or four tests each week.

5 10. The program is two-tiered: people who meet program requirements—
6 completing a three-hour drug education seminar and routine drug and alcohol testing—
7 and are wealthy enough to pay the \$950 or \$1000 program fee complete the program in
8 90 days and are no longer subject to felony criminal prosecution.

9 11. But participants who cannot pay the program fees are forced to stay in the
10 program for at least six months and until they can pay off the money owed to MCAO
11 and TASC, even if they have satisfied every program requirement other than payment.

12 12. During the “pay-only”⁶ period, participants remain subject to felony
13 criminal prosecution during the additional time they are forced to remain in the
14 diversion program.

15 13. These participants also remain subject to all of the diversion program’s
16 requirements.

17 14. These requirements include reporting to a TASC location, as often as four
18 times per week, so that the participant’s urine can be collected and tested.

19 15. Participants who remain on diversion solely because of their inability to
20 pay program fees must also continue to pay \$15 or \$17 each time they are required to
21 submit to a drug and alcohol test.

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25 ⁶ “Pay-only” refers to a period of criminal supervision during which the person is
26 supervised only because she has not paid all of her debt. This “extremely muscular
27 form of debt collection,” which “masquerades as supervision,” is becoming
28 increasingly common. Human Rights Watch, *Profiting from Probation: America’s
‘Offender Funded’ Probation Industry* (Feb. 5, 2014),
[https://www.hrw.org/report/2014/02/05/profitting-probation/americas-offender-
funded-probation-industry](https://www.hrw.org/report/2014/02/05/profitting-probation/americas-offender-funded-probation-industry).

1 16. The perverse result is that poor people are ultimately charged more
2 money—potentially hundreds of dollars more—than similarly situated participants who
3 can afford to pay to finish the program in 90 days.

4 17. Participants who cannot afford to pay for diversion may also be
5 terminated from the program altogether and referred for felony prosecution.

6 18. This can happen in at least two ways.

7 19. First, Defendants require diversion participants to make a minimum
8 monthly payment towards the \$950 or \$1000 program fees at a rate set by Defendant
9 TASC.

10 20. A participant who fails to pay the minimum monthly payment set by
11 Defendant TASC can be terminated from the program and prosecuted.

12 21. Defendants do not inquire into a participant's ability to pay before setting
13 the minimum monthly fee.

14 22. Defendants' policy does not include any exception for participants who
15 do not pay the minimum monthly amount solely because they cannot afford it.

16 23. Second, participants are not allowed to take the drug and alcohol tests the
17 program requires if they cannot afford to pay for them.

18 24. For example, if a participant cannot pay the \$15 or \$17 fee for a drug and
19 alcohol test, she is not allowed to take the test at all.

20 25. Therefore, if a participant reports for a drug and alcohol test without the
21 required fee, she will be turned away, and she will receive a violation for missing the
22 test.

23 26. In other words, an unpaid drug and alcohol test is a failed test.

24 27. If a participant misses too many drug and alcohol tests—even if she
25 missed them solely because she could not afford to pay for them—she will be failed out
26 of the diversion program and prosecuted for felony possession of marijuana.

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1 28. Defendants enforce these policies even when they know that diversion
2 participants are poor or even homeless, and even when they know that participants are
3 sacrificing basic necessities to pay fees.

4 29. And indeed, Defendants have a financial incentive to enforce the policies
5 this way—and to use the specter of termination and felony prosecution to coerce as
6 much money from participants as they can.

7 30. Diversion participants who alert TASC employees that they cannot afford
8 the required fees are told that they will be failed from the program if they do not pay
9 and to do whatever it takes to get the money.

10 31. For example, Plaintiff Marc Pascale is a 60-year-old man with
11 degenerative disc disease, which has left him physically unable to work.

12 32. TASC refused to waive his program and drug and alcohol testing fees
13 even after he repeatedly told them that he could not afford to pay the fees.

14 33. Mr. Pascale's case manager repeatedly told him to borrow money to pay
15 the fees or else he would fail the program, lose the money he had already paid in
16 program and drug and alcohol testing fees, and be prosecuted for felony criminal
17 possession of marijuana.

18 34. Plaintiff Taja Collier emailed her case manager at TASC to tell her that
19 she was homeless and could not afford to pay for drug and alcohol testing.

20 35. Ms. Collier's case manager responded that if she did not test, she would
21 be issued a notice of violation and her case would be sent back to court, where she
22 would be prosecuted for felony criminal possession of marijuana.

23 36. As a result, Ms. Collier sold her blood plasma to pay for drug and alcohol
24 tests.

25 37. Plaintiffs bring this civil rights action pursuant to 42 U.S.C. § 1983 to
26 redress violations of Named Plaintiffs', class members', and Plaintiff Collier's rights
27 under the Fourth and Fourteenth Amendments of the United States Constitution.
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1 38. Named Plaintiffs DeShawn Briggs and Mark Pascale, as well as the class
2 members whose interests they represent, seek monetary damages against Defendants
3 for violation of these rights.

4 39. Named Plaintiff McKenna Stephens, as well as the class members whose
5 interests she represents, seeks injunctive relief against the Defendants to enjoin
6 Defendants from continuing their unlawful and unconstitutional policies, practices, and
7 customs.

8 40. Plaintiff Taja Collier seeks monetary damages and injunctive relief on her
9 own behalf.

10 **PARTIES**

11 **Plaintiffs**

12 41. Plaintiff **DeShawn Briggs** is a 28-year-old African American man. He is
13 a resident of Maricopa County, Arizona. Mr. Briggs spent six months in Defendants’
14 marijuana diversion program solely because he was unable to pay the program fees
15 within 90 days. He represents himself and a class of similarly situated people subject to
16 Defendants’ unlawful policies, practices, and customs.

17 42. Plaintiff **Marc Pascale** is a 60-year-old white man. He is a resident of
18 Maricopa County, Arizona. Mr. Pascale spent more than seven months in Defendants’
19 marijuana diversion program solely because he was unable to pay the program fees in
20 90 days. He represents himself and a class of similarly situated people subject to
21 Defendants’ unlawful policies, practices, and customs.

22 43. Plaintiff **McKenna Stephens** is a 24-year-old white woman. She is a
23 resident of Maricopa County, Arizona. Ms. Stephens is currently a participant in
24 Defendants’ marijuana diversion program. Ms. Stephens has complied with all of the
25 program requirements to date and will complete all non-monetary program
26 requirements during the first 90 days of the program. However, she is unable to pay the
27 program fees in full during the first 90 days of the program. Therefore, as a result of
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1 Defendants' policies and practices, Ms. Stephens will be forced to stay in the program
2 for at least six months and until she can pay all of the required fees. As long as Ms.
3 Stephens is required to remain in the program, she will remain subject to felony criminal
4 prosecution and be forced to submit to routine, suspicionless drug and alcohol tests.
5 Ms. Stephens also cannot afford the minimum monthly payments Defendants require,
6 and Defendants may terminate her from the program as a result. She represents herself
7 and a class of similarly situated people subject to Defendants' unlawful policies,
8 practices, and customs.

9 44. Plaintiff **Taja Collier** is a 21-year-old African American woman. She is
10 a resident of Maricopa County, Arizona. Ms. Collier first enrolled in Defendants'
11 marijuana diversion program in July 2017. Ms. Collier was willing to meet all diversion
12 requirements, but she could not afford to pay for drug and alcohol testing, particularly
13 during a month when she was homeless and sleeping in parks. After Ms. Collier could
14 not afford to pay for several drug and alcohol tests, she was terminated from the
15 diversion program and prosecuted for felony possession of marijuana. After prosecution
16 was initiated, Ms. Collier was again diverted into Defendants' diversion program. Ms.
17 Collier cannot afford the minimum monthly payments Defendants require, and
18 Defendants may terminate her from the program as a result. Ms. Collier also cannot
19 afford to pay for the required drug and alcohol tests, and she may be terminated for that
20 reason as well. Ms. Collier brings this suit on her own behalf.

21 **Defendants**

22 45. Defendant **Bill Montgomery** is the elected County Attorney for
23 Maricopa County, Arizona. Defendant Montgomery is the chief official responsible for
24 the enforcement and prosecution of felonies within Maricopa County. Defendant
25 Montgomery is also responsible for operating and administering the deferred
26 prosecution programs in Maricopa County. Defendant Montgomery is the final
27 policymaker for Maricopa County on matters relating to diversion programs, including
28

1 the marijuana diversion program at issue in this lawsuit. He is sued in his official
2 capacity.

3 46. Defendant **Maricopa County, Arizona**⁷ is a political subdivision formed
4 and designated as such pursuant to Title 11 of the Arizona Revised Statutes. Defendant
5 Maricopa County can sue and be sued in its own name. Maricopa County is liable for
6 the practices and policies of Defendants Montgomery and TASC. The County has and
7 continues to acquiesce in the administration of the TASC drug diversion program,
8 including the marijuana diversion program at issue in this lawsuit.

9 47. Defendant **Treatment Assessment Screening Center** is a private, non-
10 profit, 501(c)(3) corporation headquartered in Phoenix, Arizona. Defendant TASC has
11 contracted and continues to contract with MCAO to operate, administer, and supervise
12 the marijuana diversion program at issue in this lawsuit. Defendant TASC supervises
13 all people whose prosecutions for simple possession of marijuana have been diverted.
14 Defendant TASC acts under the color of law in its administration and supervision of
15 the County's marijuana diversion program.

16 JURISDICTION

17 48. This action arises under 42 U.S.C. § 1983 and the Constitution of the
18 United States. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
19 1343.

20 49. Venue is proper under 28 U.S.C. § 1391(b). All Defendants' official
21 places of business are located within this District. The events giving rise to the claims
22 occurred in this District.

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27 ⁷ Defendant Montgomery, in his official capacity, acts on behalf of and is the final
28 policymaker for Maricopa County with respect to the conduct described in this
lawsuit. If this is correct, naming Maricopa County as a defendant is redundant.

1 **STATEMENT OF FACTS**

2 **I. Defendants’ Unlawful Policies**

3 **Marijuana Possession Prosecutions in Maricopa County**

4 50. In Arizona, possession of any amount of marijuana—even trace
5 amounts—can be prosecuted as a felony.⁸

6 51. Felony prosecution has severe consequences.

7 52. According to the National Inventory of the Collateral Consequences of
8 Conviction—an American Bar Association database—people convicted of felony
9 offenses in Arizona are subject to over 350 “collateral consequences” as a direct result
10 of a felony criminal conviction.⁹

11 53. For example, a person convicted of a felony in Arizona cannot vote, serve
12 on a jury, obtain a commercial driver’s license, possess a gun, or join the U.S. armed
13 forces.¹⁰

14 54. A felony conviction may also bar a person from receiving professional
15 licenses and affect a person’s child custody rights, parental status, and housing.¹¹

16 55. A person with a felony drug conviction in Arizona may lose public
17 benefits, such as food stamps and social security benefits.¹²

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19 ⁸ See Ariz. Rev. Stat. Ann. § 13-3405(B)(1) (providing that possession of “an
20 amount of marijuana not possessed for sale having a weight of less than two pounds is
21 guilty of a class 6 felony”). Arizona is the only state in the nation where any amount
22 of marijuana, no matter how small, can draw a felony charge. See Jacob Sullum,
23 *Explaining His Cannabis Conversion, John Boehner Cites a Marijuana Myth*, Reason
(Apr. 12, 2018), [http://reason.com/blog/2018/04/12/explaining-his-cannabis-
conversion-john/print](http://reason.com/blog/2018/04/12/explaining-his-cannabis-conversion-john/print). Possession of marijuana paraphernalia is also a class 6 felony
24 under Arizona law. See Ariz. Rev. Stat. Ann. § 13-3415(A).

25 ⁹ See National Inventory of the Collateral Consequences of Conviction,
<https://niccc.csgjusticecenter.org/search/?jurisdiction=8> (last visited Oct. 12, 2018).

26 ¹⁰ See Consequences of a Felony, Maricopa County, AZ,
<https://www.maricopa.gov/930/Consequences-for-a-Felony> (last visited Oct. 11,
27 2018).

28 ¹¹ *Id.*

¹² *Id.*

1 56. Defendant County Attorney Bill Montgomery has aggressively opposed
2 legalization measures as well as efforts to reduce simple possession of marijuana to a
3 misdemeanor.

4 57. In 2016, Defendant Montgomery successfully advocated against the
5 passage of Proposition 205, a ballot initiative that would have made recreational
6 marijuana use legal in Arizona.

7 58. Defendant Montgomery made numerous public statements and
8 participated in public debates attacking the initiative and advocating for its failure.

9 59. During a public debate on marijuana legalization, Defendant
10 Montgomery told a Vietnam veteran, who admitted to using medical marijuana for back
11 pain and occasional recreation use, “I have no respect for you. ... [Y]ou’re an enemy.”

12 60. Defendant Montgomery has also worked to narrow Arizona’s medical
13 marijuana laws.

14 61. For example, when Defendant Montgomery learned that doctors were
15 able to stop a five-year-old’s seizures by using a marijuana extract, he threatened the
16 child’s parents with felony prosecution, arguing that extracts were not covered by the
17 state’s medical marijuana allowance.¹³

18 62. Drug possession charges represent an overwhelming proportion of the
19 charges filed by MCAO.

20 63. Possession of marijuana is the MCAO’s most commonly prosecuted
21 offense; it amounts to approximately 15 percent of total prosecutions.¹⁴

24 ¹³ Evan Wyloge, *Court Rules Medical Marijuana Patients Can Use Extracts*, Ariz.
25 Capitol Times (Mar. 22, 2014), [https://azcapitoltimes.com/news/2014/03/22/az-
26 medical-marijuana-patients-can-use-cannabis-extract-court-rules-bill-montgomery](https://azcapitoltimes.com/news/2014/03/22/az-medical-marijuana-patients-can-use-cannabis-extract-court-rules-bill-montgomery).

27 ¹⁴ See Maricopa County Attorney’s Office, 2016 Annual Report, at 43,
28 *available at* [https://www.maricopacountyattorney.org/ArchiveCenter/View-
File/Item/88](https://www.maricopacountyattorney.org/ArchiveCenter/View-File/Item/88). The year 2016 is the most recent for which MCAO has published
this charging data.

1 64. And more broadly, more than 45 percent of MCAO's prosecutions are for
2 drug possession.¹⁵

3 65. Between 2006 and 2016, MCAO made nearly \$15 million from diverting
4 threatened prosecutions to TASC.¹⁶

5 **The Possession of Marijuana Diversion Program**

6 66. For most people who are arrested in Maricopa County for simple
7 possession of marijuana or marijuana paraphernalia, the only way to avoid a felony
8 criminal prosecution is to complete the diversion program offered by MCAO.

9 67. To operate, administer, and supervise participants in the program, MCAO
10 has contracted with TASC, a private, non-profit company.

11 68. TASC also partners with MCAO to administer a diversion program for
12 possession of narcotics.

13 69. More than 15,000 people participated in MCAO and TASC's marijuana
14 diversion program between 2011 and 2017.¹⁷

15 70. Over that same time period, the marijuana diversion program accounted
16 for approximately three quarters of TASC's total intakes for drug diversion.¹⁸

17 71. People arrested for simple possession of marijuana or marijuana
18 paraphernalia can enter the diversion program either before or after criminal charges
19 are filed.

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22 ¹⁵ *Id.* (calculated by adding the percentage of the total offenses charged represented
by each type of drug charge listed).

23 ¹⁶ Cassidy, *supra* note 4.

24 ¹⁷ *See id.* (providing the number of participants who enrolled in the program
25 between 2011 and 2015); Letter from Bill Montgomery, County Attorney, Maricopa
26 County, to Elizabeth Ortiz, Executive Director, Arizona Prosecuting Attorneys'
Advisory Council (Aug. 8, 2017) (providing the number of participants who enrolled
in the program from July 1, 2016 through June 30, 2017).

27 ¹⁸ *See Cassidy, supra* note 4; Letter from Bill Montgomery, County Attorney,
28 Maricopa County, to Elizabeth Ortiz, Executive Director, Arizona Prosecuting
Attorneys' Advisory Council (Aug. 8, 2017).

1 72. People who enter into the marijuana diversion program post-filing have
2 charges filed against them prior to enrolling in the program.

3 73. The charges are suspended while the person completes the program.

4 74. If the person successfully completes the program, MCAO dismisses the
5 case.

6 75. If the person fails to complete the program, MCAO reinstates
7 prosecution.

8 76. People can also enter the program before any criminal charges are filed
9 in court.

10 77. People who enter the marijuana diversion program pre-filing are sent a
11 letter from MCAO.

12 78. The letter informs the person that she is facing class 6 felony charges and
13 offers two options: criminal prosecution or the TASC marijuana diversion program.

14 79. The letter warns, “If convicted of a class 6 felony, you could receive a
15 maximum sentence of 2 years in prison and a maximum fine of \$150,000 plus 80%
16 surcharge.”

17 80. The letter also warns that a class 1 misdemeanor conviction could result
18 in “a maximum sentence of six months in jail and a maximum fine of \$2,500.00 plus
19 80% surcharge.”

20 81. The threats in this letter are false.

21 82. The pre-filing diversion program generally only includes people with no
22 prior convictions.

23 83. Under Arizona law, jail or prison time is prohibited for a first or second
24 offense of simple possession of marijuana.

25 84. Instead, for people in this category, the law requires drug treatment and a
26 maximum penalty of probation. *See* Ariz. Rev. Stat. § 13-901.01(A), (D), (H)(1).

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1 85. Accordingly, the people who receive the pre-filing letter threatening jail
2 time are ineligible to be jailed as a matter of state law.

3 86. The letter’s representation that its recipients could be fined \$150,000 plus
4 an 80% surcharge are false as well.¹⁹

5 87. After delivering these false threats, the letter explains the basic
6 requirements of the marijuana diversion program and provides a deadline and contact
7 information to sign up for the program.

8 88. If a person in the pre-filing category completes the diversion program,
9 MCAO will not file charges against her.

10 89. Failing the program results in criminal prosecution.²⁰

11 90. Participants who do not complete the diversion program and whose cases
12 are prosecuted have little hope of avoiding felony criminal prosecution and conviction
13 because people who enroll in the marijuana diversion program—whether pre- or post-
14 filing—are first required to sign a statement of facts admitting their guilt.

15 91. A TASC employee tells participants exactly what to write in the statement
16 of facts.

17 92. The following information must be written into the statement:

- 18 a. Date and location of the offense;
- 19 b. The full name of the substance possessed;
- 20 c. That the participant possessed a usable amount of the substance; and
- 21

22 ¹⁹ A person convicted of possession of marijuana can be fined \$750 or three times
23 the value of the marijuana involved. *See* Ariz. Rev. Stat. § 13-3405(D). \$150,000 is
24 the maximum fine allowable for any felony. *See* Ariz. Rev. Stat. § 13-801(a). No
25 person accused of a crime involving \$150,000 worth of marijuana would be eligible
for TASC.

26 ²⁰ When a person in the pre-filing group fails diversion, the prosecutor will file
27 charges in the case. When a person in the post-filing group fails diversion, the
28 prosecutor will move to reinstate the prosecution. As a matter of policy, practice, and
custom, for both pre- and post-filing participants, TASC sends the participant a final
warning letter before the participant is failed from the program.

1 d. The facts of the offense, which must read, “the [name of the drug] was
2 found in [where the drug was found] in my possession.”

3 93. This signed statement of facts can be used against a person if she fails to
4 complete the marijuana diversion program and is criminally prosecuted. *See State v.*
5 *Gill*, 391 P.3d 1193, 1197 (Ariz. 2017) (holding that a written admission contained in
6 a statement of facts obtained by a TASC representative was admissible at trial).

7 **The Cost of Avoiding Prosecution**

8 94. Once enrolled in the marijuana diversion program, the requirements for
9 the pre- and post-filing participants are the same.

10 95. For both groups of participants, avoiding prosecution costs money.

11 96. To complete the program, all participants must:

12 a. Pay program fees—\$950 or \$1000—in full;

13 b. Pay for and pass routine drug and alcohol tests for 90 days; and

14 c. Complete a three-hour drug education seminar.

15 97. The mandatory \$950 or \$1000 program fee includes the following:

16 a. \$150 admission fee;

17 b. \$650 “drug fund” fee;

18 c. \$150 TASC fee; and

19 d. \$50 booking fee, which applies only to participants who were arrested
20 and booked.

21 98. All of these fees must be paid in person by debit card or with a money
22 order.

23 99. Participants are not allowed to pay by any other means, including with
24 credit or cash.

25 100. Defendants require that participants pay the \$150 admission fee at the
26 program orientation.

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1 101. If a participant is unable to pay the \$150 admission fee at orientation
2 because she cannot afford it, Defendants allow her to pay \$75 at orientation and the
3 other \$75 during the program.

4 102. If a participant cannot afford to pay \$75 at orientation, she may be told to
5 return with the money the same day or be failed from the program and face felony
6 prosecution.

7 103. In addition to the \$950 or \$1000 in fees, participants must pay to take
8 drug and alcohol tests at TASC.

9 104. Each drug and alcohol test costs \$15 or \$17, depending on the method of
10 payment.

11 105. Participants must call TASC or consult a phone application every day,
12 seven days a week to determine whether they are required to report to a TASC location
13 that day so that TASC can collect and test their urine.

14 106. If a participant does not call daily, she may miss a scheduled test and be
15 sanctioned, which could ultimately result in termination from the diversion program,
16 followed by felony prosecution.

17 107. Participants are required to drug test at least once—and often multiple
18 times—each week.

19 108. At the TASC location, TASC employees watch participants through glass
20 panels while they submit urine for drug and alcohol testing.

21 109. In at least one TASC location, the bathroom where participants submit
22 urine for testing includes multiple mirrors so that a TASC employee can watch the
23 participant urinate from multiple angles.

24 110. Records obtained as part of the preliminary investigation for this lawsuit
25 revealed that participants may be required to test as many as nine times per month.

26 111. Thus, on top of the \$1000 in program fees, diversion participants pay at
27 least \$60—but up to \$153—each month for drug and alcohol tests.

28

1 112. In addition to the three program requirements, Defendants impose a
2 number of additional terms on participants.

3 113. These terms are set forth in a document called the “Client Contract.”²¹

4 114. The Client Contract states that diversion participants must make
5 minimum monthly payments towards those fees at a rate set by Defendant TASC.

6 115. The rate set forth in the Client Contract is \$160 or \$170 per month.

7 116. Defendant TASC does not inquire into a participant’s ability to pay before
8 setting the minimum monthly fee.

9 117. If a participant does not make the minimum monthly payment set by
10 Defendant TASC, she can be terminated from the program and then prosecuted.

11 118. The Client Contract also prohibits, among other things:

- 12 a. Alcohol use, including over-the-counter medications that include
13 alcohol, like NyQuil;²²
- 14 b. Leaving the state for any amount of time without “special permission
15 from TASC”;²³
- 16 c. Leaving Maricopa County for more than one day without informing a
17 TASC case manager;²⁴
- 18 d. Taking any prescription medication without reporting it to a TASC
19 case manager and bringing the prescription to TASC for
20 verification.²⁵

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24 ²¹ See MCAO/TASC Adult Deferred Prosecution Program Possession of
25 Marijuana, Client Contract (hereinafter “Client Contract”). In this Complaint,
26 Plaintiffs cite the version of the Client Contract distributed to participants on Tuesday,
27 October 9, 2018.

28 ²² *Id.* ¶ 5.

²³ *Id.* ¶ 10.

²⁴ *Id.*

²⁵ *Id.* ¶ 3.

1 119. The Client Contract also states that “[u]nless disability status applies,
2 [participants] must be employed while participating in the program.”²⁶

3 120. “[V]iolation of any” of these provisions “can result in program
4 termination.”²⁷

5 **Defendants Require Participants to Remain on Diversion**
6 **Until All Fees Are Paid**

7 121. Participants who complete the three program requirements—including
8 full payment of fees—within 90 days complete the diversion program at that point, and
9 they are not subject to felony criminal prosecution thereafter.

10 122. However, as a matter of policy, practice, and custom, people who cannot
11 afford to pay the program fees in full within 90 days are not released from the
12 program—even if they have completed the other program requirements, including
13 passing all drug and alcohol tests.

14 123. Instead, participants who cannot afford to pay these fees must remain
15 subject to the requirements of the diversion program for a minimum of six months.

16 124. If these participants are not able to pay the program fees by the end of six
17 months, they must remain in the program until they do.

18 125. Defendants do not assess a person’s ability to pay before refusing to
19 consider her for program completion after 90 days, even when the participant has
20 completed every program requirement other than payment.

21 126. Nor do Defendants assess a person’s ability to pay before they require her
22 to remain on diversion beyond six months and until all fees are paid.

23 127. People who are forced to stay on diversion solely because they cannot
24 afford to pay program fees remain subject felony prosecution until they complete the
25 program.

26 ²⁶ *Id.* ¶ 17.

27 ²⁷ *Id.* (unnumbered paragraph).

1 128. In addition, these “pay only”²⁸ participants are subject to same
2 requirements as they were during the first 90 days on diversion.

3 129. Thus, “pay only” participants are barred from drinking alcohol, taking
4 certain medications (like NyQuil), and leaving the State without Defendant TASC’s
5 approval.²⁹

6 130. “Pay only” participants must continue to submit to one or more drug and
7 alcohol tests weekly—under the threat of felony criminal prosecution.

8 131. These participants must also complete all of the requirements attendant
9 to the drug and alcohol tests.

10 132. For example, participants must continue to call TASC every day, seven
11 days a week, to determine whether they are required to report to a TASC location during
12 a certain time period that day so that TASC can collect and test their urine.

13 133. People who remain on diversion because they cannot afford to pay
14 program fees are also still forced to pay \$15 or \$17 for each drug and alcohol test.

15 134. As a result, these participants may ultimately have to pay hundreds of
16 dollars more than people wealthy enough to pay the \$950 or \$1000 program fee within
17 90 days—in addition to remaining subject to felony criminal prosecution for months
18 longer.

19 **Defendants Terminate Participants from the Diversion Program**
20 **for Failure to Pay Minimum Monthly Program Fees**

21 135. Pursuant to Defendants’ written policy, failure to pay program fees at the
22 monthly rate set by Defendant TASC will result in termination from the program and
23 prosecution for felony possession of marijuana.

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27 ²⁸ See *supra* note 6 (explaining the term “pay-only”).

28 ²⁹ See Client Contract ¶¶ 3, 5, 10.

1 136. The Client Contract, to which all participants are subject, states that the
2 minimum monthly rate is \$160 or \$170.

3 137. Defendants' policy does not include any exception for participants who
4 did not make their monthly payment solely because they could not afford it.

5 138. Defendants do not inquire into a participant's ability to pay before setting
6 the minimum monthly fee.

7 139. The Client Contract states: "Failure to make payments [toward the
8 program fees] each month as agreed will result in [the] case being returned for
9 prosecution."³⁰

10 140. Another paragraph of the Client Contract states that "failure to test as
11 scheduled, continued positive/diluted/altered tests, missed seminar/counseling, and/or
12 *failure to make payments as agreed may result in unsuccessful termination from the*
13 *program.*"³¹

14 141. Defendants have discretion as to when to enforce this policy; they may
15 terminate a participant on the first missed payment or the tenth.

16 142. But in every case, Defendants have a financial incentive to use the threat
17 of termination to coerce as much money from participants as they can.

18 143. Thus, a diversion participant who at any point is unable to make the
19 monthly payment set by Defendant TASC can be terminated from the program and
20 prosecuted for felony possession of marijuana.

21 **Defendants Do Not Allow Participants to Take Drug and Alcohol Tests**
22 **Unless They Pay for Them**

23 144. As a matter of policy, practice, and custom, Defendants do not allow
24 diversion participants to take the program's mandatory drug and alcohol tests unless
25 they can pay for them at the time of the test.

27 ³⁰ *Id.* ¶ 12.

28 ³¹ *Id.* ¶ 17 (emphasis added).

1 145. As a result, poor people are forced to extend their time on the program
2 for failing to take mandatory drug and alcohol tests—solely because they could not
3 afford to pay for them.

4 146. People who cannot afford to take drug and alcohol tests may also fail the
5 program altogether.

6 147. Missed drug and alcohol tests are counted as “violations”—even when a
7 person only missed the test because she could not afford to pay for it.

8 148. The Client Contract states that “failure to test as scheduled . . . may result
9 in unsuccessful termination from the program.”³²

10 149. A person who accrues too many of these violations will be failed by
11 TASC and referred to the MCAO for prosecution.

12 150. When this happens, a person faces felony prosecution solely because of
13 her inability to pay.

14 151. No one at TASC assesses a person’s ability to pay before referring her for
15 prosecution because she did not pay for drug and alcohol tests.

16 152. Nor does anyone at MCAO assess ability to pay before prosecuting
17 people who have failed diversion solely because of their inability to pay for drug and
18 alcohol tests.

19 **Defendants’ Refusal to Waive Fees for the Poor**

20 153. As a matter of policy, practice, and custom, Defendants do not reduce or
21 waive the \$950 or \$1000 program fee for any person, regardless of financial
22 circumstances.

23 154. Defendants contend that they allow for reductions of drug and alcohol
24 testing fees to \$7 instead of \$15 per test for participants who cannot afford them—but
25 these reductions are almost never granted in practice.

26
27 _____
28 ³² Client Contract ¶ 16.

1 155. At the outset, Defendants do not assess participants' ability to pay before
2 charging them in full for tests.

3 156. But even when Defendants are aware that a participant is indigent and
4 unable to pay without sacrificing basic necessities, Defendants require the participant
5 to pay the full \$15 or \$17 to test.

6 157. One TASC employee interviewed by investigators for undersigned
7 counsel stated that reduced drug and alcohol testing fees are reserved for people who
8 can demonstrate that they have basically zero income.

9 158. Another TASC employee explained that fee reductions are "very
10 difficult" to get and that "it rarely happens."

11 159. As one TASC employee explained, drug and alcohol testing is "strictly
12 fee for service."

13 160. When participants tell TASC case managers that they are struggling to
14 pay, the case managers recommend they borrow money from friends or family because
15 they will be failed from the program and prosecuted if they do not pay.

16 161. According to Defendants' written policy, even in the rare cases that fee
17 reductions are granted, full fees can be reinstated as a punishment for a dirty or diluted
18 urine test.

19 162. Defendants' Client Contract warns, "If [a participant's] fees are reduced
20 and [the participant] submit[s] a positive/diluted/altered urine test, full fees may be
21 reinstated ... from that point forward until completion of the program."³³

22 **The "User-Funded" Model**

23 163. Defendants MCAO and TASC advertise the diversion program as "user-
24 funded."

27 ³³ See MCAO/TASC Adult Deferred Prosecution Program Possession of
28 Marijuana, Client Contract ¶ 13.

1 164. According to MCAO, “user-funded” means that “the [person entering the
2 program] typically bears the costs of the initial assessment and the assigned treatment.”

3 165. A brochure published by MCAO describing its felony pretrial diversion
4 programs notes that “defendants ... bear the costs of the program.”³⁴

5 166. Defendant TASC’s website explains that the diversion program “is fully
6 funded by the clients we serve.”³⁵

7 167. Defendant TASC is responsible for collecting fees from the people
8 enrolled in the diversion program.

9 168. Defendant TASC keeps a portion of the money it collects.

10 169. The \$650 “drug fund fee” that Defendant TASC collects from each
11 participant is deposited to MCAO.

12 170. MCAO does not publicly disclose how it spends the money it receives
13 from the program.

14 171. In addition to collecting fees, the Contract between Defendants MCAO
15 and TASC makes Defendant TASC responsible for most of the day-to-day operations
16 of the possession of marijuana diversion program.

17 172. This includes administering drug and alcohol tests, tracking participants’
18 attendance and participation, and determining whether a participant has completed the
19 program requirements.

20 173. MCAO’s duties under the Contract are to assess the appropriateness of
21 referrals to the program and to send qualified participants to Defendant TASC.

22 174. The Contract does not require the MCAO to pay Defendant TASC any
23 money.

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26 ³⁴ Maricopa County Attorney’s Office, *Felony Pretrial Intervention Program*
27 (2018).

28 ³⁵ Diversion, TASC, <http://www.tasc-solutions.org/tasc-services/diversion> (last
visited Aug. 22, 2018).

1 175. Instead, the Contract provides that the program’s participants alone will
2 pay Defendant TASC, and “no public monies will be expended pursuant to [the
3 Contract].”³⁶

4 176. The Contract does provide that, “[a]t his option, the County Attorney may
5 utilize monies accumulated in the Drug Diversion Fund to satisfy the costs associated
6 with this agreement if the participant is indigent and unable to pay the costs associated
7 with the ... diversion program.”³⁷

8 177. But there is no requirement that MCAO make such payments.³⁸

9 178. Between 2006 and 2016, MCAO made nearly \$15 million in fees from
10 participants in the marijuana diversion program.³⁹

11 179. Defendant TASC has also benefited financially from operating the
12 marijuana diversion program.

13 180. Defendant TASC’s net assets were approximately \$18 million in 2016.⁴⁰

14 181. In 2014, TASC paid its CEO \$281,165 and its former CEO \$963,358.⁴¹

15 182. In 2015, TASC paid its CEO \$321,347.⁴²

16 183. In 2016, TASC paid its CEO \$308,720.⁴³

17 **II. Plaintiffs**

18 **Damages Class Representatives DeShawn Briggs and Mark Pascale**

19 184. Class representatives **DeShawn Briggs** and **Mark Pascale** were both
20 required to remain in the pretrial diversion program for more than double the time
21

22 ³⁶ MCAO & TASC, Behavior Specific Adult Diversion Program Contract, at 1
23 (Mar. 22, 2016, effective through Sept. 30, 2018).

24 ³⁷ *Id.*

25 ³⁸ The Contract states, “[U]nder no circumstances is the County liable for any fees
or costs related to [the] Contract.” *Id.*

26 ³⁹ Cassidy, *supra* note 4.

27 ⁴⁰ See IRS Form 990, filed by TASC for 2016, at 1.

28 ⁴¹ See IRS Form 990, filed by TASC for 2014, at 7.

⁴² See IRS Form 990, filed by TASC for 2015, at 7.

⁴³ See IRS Form 990, filed by TASC for 2016, at 7.

1 required of similarly situated (but wealthier) participants solely because they were
2 unable to pay program fees.

3 185. Plaintiff **DeShawn Briggs** is a 28-year-old African American man.

4 186. In December 2015, Mr. Briggs was arrested for simple possession of
5 marijuana.

6 187. At the time of his arrest, Mr. Briggs worked part-time at Walmart, where
7 he made \$10 per hour.

8 188. Mr. Briggs had no prior criminal record.

9 189. He was not addicted to marijuana.

10 190. On or around January 13, 2016, Mr. Briggs received a letter from MCAO.

11 191. The letter stated that he had two options with respect to his marijuana
12 arrest: he could face prosecution and conviction with a punishment of two years in jail
13 and a fine of up to \$150,000 plus an 80% surcharge—or he could participate in the
14 TASC pretrial diversion program.

15 192. The claims in the letter Mr. Briggs received were false.

16 193. Because this was Mr. Briggs' first offense, under Arizona law, he could
17 not receive jail or prison time if convicted of simple possession of marijuana.

18 194. Mr. Briggs also did not face a \$150,000 fine.

19 195. Mr. Briggs did not know that he could not receive jail time for conviction
20 of marijuana possession since it was his first offense.

21 196. He also did not know that he could not be fined \$150,000.

22 197. Mr. Briggs chose to participate in the pretrial diversion program because
23 he did not want to go to jail and thought the diversion program was the only way to
24 avoid two years of incarceration and a six-figure fine.

25 198. Mr. Briggs followed the instructions given in the letter and contacted
26 TASC to enroll in the program.

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1 200. A TASC employee told Mr. Briggs to appear for orientation and bring a
2 \$150 intake fee.

3 201. At the orientation, a TASC employee informed Mr. Briggs of the program
4 requirements and fees.

5 202. The TASC employee told Mr. Briggs that he would have to submit to and
6 pass random drug and alcohol tests for 90 days, complete a three-hour drug education
7 class, and pay his program fees of \$1000 in full within that 90-day period.

8 203. The TASC employee told Mr. Briggs that the program would either last
9 for 90 days or six months.

10 204. The employee told him that if he tested clean, attended the class, and paid
11 his program fees in full, then he would complete the program in 90 days.

12 205. If he did not complete any of the three requirements in the first 90 days,
13 including payment of fees in full, he would have to stay in the program for an additional
14 three months or be prosecuted for a felony.

15 206. The TASC employee did not ask Mr. Briggs whether he would be able to
16 pay the program and drug and alcohol testing fees.

17 207. Mr. Briggs was told to sign a “statement of facts” as a condition of entry
18 into the program.

19 208. The statement of facts stated that Mr. Briggs possessed a usable quantity
20 of marijuana.

21 209. Mr. Briggs did not consult with an attorney before signing the statement
22 because he could not afford one.

23 210. Because of this, Mr. Briggs believed that if he failed to meet the
24 program’s requirements—including paying the necessary fees—he would go to jail.

25 211. Mr. Briggs passed all of his drug tests during the first 90 days of the
26 program.

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1 211. During that time period, Mr. Briggs was required to report for drug and
2 alcohol testing up to three times each week.

3 212. Mr. Briggs was forced to pay each time he reported for a drug and alcohol
4 test, even though he was struggling to pay for basic necessities.

5 213. Mr. Briggs also completed the required three-hour drug education
6 seminar during his first 90 days on the program.

7 214. However, in that first 90 days, Mr. Briggs could not afford to pay the
8 \$1000 fee.

9 215. Mr. Briggs's monthly pay at Walmart was less than \$1000.

10 216. Mr. Briggs also has disabilities caused by spinal meningitis that limit his
11 ability to work.

12 217. During the first 90 days of the program, Mr. Briggs was only able to pay
13 \$421 toward the \$1000 balance.

14 218. Mr. Briggs made those payments in small installments.

15 219. He paid one \$75 installment toward his \$150 orientation fee on February
16 29, 2016.

17 220. He paid the second installment on April 14, 2016.

18 221. On that same date, Mr. Briggs paid another \$95 toward his balance.

19 222. On May 5, 2016, Mr. Briggs paid \$170 toward his balance.

20 223. On May 11, 2016, he paid another \$16.

21 224. During that same time period, Mr. Briggs paid approximately \$195 for
22 drug and alcohol tests.

23 225. Despite meeting all other program requirements, Mr. Briggs was not
24 considered for program completion at the 90-day mark because he had not paid the
25 \$1000 fee in full.

26 226. Instead, Mr. Briggs was required to remain on diversion, and remained
27 subject to felony criminal prosecution.

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1 227. Mr. Briggs was also required to continue reporting to drug and alcohol
2 testing one to three times each week.

3 228. After the first 90 days on the program, Mr. Briggs reported for and passed
4 15 additional drug and alcohol tests.

5 229. The final drug and alcohol test that Mr. Briggs submitted to and paid for
6 was on August 23, 2016.

7 230. In total, the 15 drug and alcohol tests that Mr. Briggs had to take during
8 the pay-only period cost Mr. Briggs approximately \$225.

9 231. Mr. Briggs also continued to make payments against his balance.

10 232. On June 16, 2016, Mr. Briggs paid \$170.

11 233. On July 14, 2016, he paid \$70.

12 234. On August 18, 2016, he paid \$50.

13 235. Finally, on August 25, 2016, Mr. Briggs paid a final installment of \$275.

14 236. When Mr. Briggs made this final payment, a TASC employee told
15 Mr. Briggs that had successfully completed the program and that he should return to
16 the TASC office the next day to receive his certificate of completion.

17 237. Mr. Briggs returned to the TASC offices the following day and received
18 a certification of completion from TASC.

19 238. Plaintiff **Mark Pascale** is a 60-year-old man.

20 239. Mr. Pascale lives in Maricopa County, Arizona with his 15-year-old son,
21 for whom he is the sole provider.

22 240. Mr. Pascale is disabled; he suffers from degenerative disc disease in his
23 neck and back.

24 241. To manage his symptoms, Mr. Pascale takes an anti-epileptic drug, an
25 anti-convulsant drug, and morphine every day.

26 242. Because of his illness, Mr. Pascale has been physically unable to work
27 since 2008.

28

1 243. That year, Mr. Pascale filed for bankruptcy.

2 244. Mr. Pascale's only stable source of income comes from federal disability
3 benefits.

4 245. Mr. Pascale also receives nutritional assistance benefits and, in the past,
5 has received assistance from government programs to pay his utility bills.

6 246. In May 2017, a police officer found a small amount of marijuana in
7 Mr. Pascale's car.

8 247. Mr. Pascale was not arrested, but he received a criminal summons in the
9 mail in October 2017, stating that he was being charged with possession or use of
10 marijuana, a class 6 felony.

11 248. At his first court appearance, Mr. Pascale agreed to enroll in the
12 marijuana diversion program.

13 249. Mr. Pascale was not addicted to marijuana.

14 250. Mr. Pascale attended an orientation for the program on November 21,
15 2017.

16 251. Mr. Pascale could not afford to pay the \$150 application fee that TASC
17 requires at orientation.

18 252. A TASC employee agreed to allow Mr. Pascale to pay \$75 up front
19 instead of \$150 to attend the orientation.

20 253. The remaining \$75 was added to Mr. Pascale's bill, and he was required
21 to pay it before he could complete the diversion program.

22 254. During the orientation, a TASC employee told Mr. Pascale that he could
23 complete the program in 90 days if he did not fail any drug and alcohol tests and paid
24 all required fees in full.

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1 255. When Mr. Pascale reported for his first mandatory drug and alcohol test,
2 he told his case worker at TASC that he could not afford to pay the \$950 in program
3 fees.⁴⁴

4 256. He also told her that he could not afford to pay \$15 or \$17 for drug and
5 alcohol testing weekly or multiple times each week.

6 257. Mr. Pascale's case worker told him that there was no way to waive or
7 reduce the program fees.

8 258. However, she explained, his drug and alcohol testing fees could
9 potentially be reduced to \$7 per test instead of \$15 per test.

10 259. The case worker gave Mr. Pascale a financial information form to
11 complete.

12 260. On the form, Mr. Pascale marked that he was disabled and worked zero
13 hours per week.

14 261. He listed his income as \$920 per month, explaining that he received
15 disability benefits.

16 262. The case worker told Mr. Pascale that he did not qualify for reduced drug
17 and alcohol testing fees because he owned a computer and was paying for internet
18 service, which are "luxuries."

19 263. Mr. Pascale therefore had to pay the full \$15 for each required drug and
20 alcohol test.

21 264. These payments, made out of his disability income, made it difficult for
22 Mr. Pascale to pay for basic necessities for himself and his son, including food, shelter,
23 medication, and clothing.

24 265. Mr. Pascale was tested at least once per week, but as often as three times
25 per week.

27 ⁴⁴ Because Mr. Pascale was not arrested, he did not have to pay the \$50 booking
28 fee.

1 266. At least once each month, Mr. Pascale would be asked to submit to
2 additional drug and alcohol testing because he had tested positive for opiates due to the
3 prescription medications he takes.

4 267. Mr. Pascale had provided his case worker with information and
5 documentation about the prescription medications that he takes (including morphine),
6 but even so, she ordered the extra testing.

7 268. Mr. Pascale had to pay for these additional tests as well.

8 269. Mr. Pascale frequently emphasized to his case worker that he did not have
9 the money to pay for drug and alcohol tests.

10 270. The case worker told Mr. Pascale that he had to pay in order to be tested
11 and suggested he borrow money.

12 271. Mr. Pascale often skipped paying bills to keep up with the fees.

13 272. After 90 days had passed, Mr. Pascale had met all non-monetary program
14 requirements and had never failed a drug and alcohol test.

15 273. He had not, however, finished paying the \$950 he owed in program fees.

16 274. As a result, Mr. Pascale was required to remain on diversion until all of
17 the fees were paid.

18 275. During this time, he was still required to submit to and pay for drug and
19 alcohol testing up to three times each week.

20 276. Mr. Pascale made his final payment—and submitted to and passed his
21 final drug and alcohol test—on June 29, 2018, more than seven months after he had
22 entered the program.

23 277. When Mr. Pascale told his case worker that he had paid his program fees
24 in full, she told him that he had successfully completed the program and issued a
25 certificate of completion dated July 5, 2018.

26 **Injunctive Relief Class Representative McKenna Stephens**

27 278. Plaintiff **McKenna Stephens** is a 24-year-old white woman.

28

1 279. Ms. Stephens works as a part-time server at a restaurant.

2 280. On October 29, 2016, Ms. Stephens was sitting with a friend in a car when
3 they were approached by two police officers.

4 281. The officers searched the car and found a small amount of marijuana and
5 marijuana paraphernalia in the vehicle.

6 282. Ms. Stephens was arrested for possession of marijuana.

7 283. She was booked into a local jail and released.

8 284. The arresting officer told Ms. Stephens that she would receive a letter in
9 the mail regarding next steps.

10 285. Ms. Stephens had no prior criminal convictions.

11 286. She was not addicted to marijuana.

12 287. On August 3, 2018—nearly two years after she was arrested for
13 marijuana possession—Ms. Stephens received a letter from Defendant MCAO about
14 the marijuana arrest.

15 288. The letter gave her a choice: she could agree to participate in the TASC
16 diversion program or she would face felony prosecution.

17 289. The letter threatened Ms. Stephens that, if convicted, she could be
18 sentenced to two years of imprisonment and a fine of up to \$150,000, plus an 80%
19 surcharge.

20 290. These threats were false.

21 291. Because this was Ms. Stephens's first marijuana arrest, under Arizona
22 law, she could not receive jail or prison time if convicted of simple possession of
23 marijuana.

24 292. Nor was Ms. Stephens eligible for a \$150,000 fine.

25 293. But Ms. Stephens believed the threats Defendant MCAO made in the
26 letter.

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1 294. She decided to enroll in the diversion program because she did not want
2 to be fined \$150,000 or spend two years in prison.

3 295. Prior to orientation for the diversion program, a TASC employee told Ms.
4 Stephens that she would have to pay \$150 in order to attend orientation and begin the
5 program.

6 296. Ms. Stephens attended orientation for the marijuana diversion program
7 on September 18, 2018.

8 297. That same day, Ms. Stephens paid \$150 to TASC.

9 298. During the orientation, a TASC employee told Ms. Stephens that in order
10 to complete the program in 90 days, she would have to submit to and pass random drug
11 and alcohol tests, attend a three-hour drug and alcohol seminar, and pay the \$1000
12 program fee within that time period.

13 299. The TASC employee told Ms. Stephens that if she were unable to meet
14 any of the three requirements—including full payment of program fees—within 90
15 days, she would have to stay in the diversion program for at least six months and until
16 the program fees were paid.

17 300. The TASC employee also told Ms. Stephens that, in addition to the \$1000
18 program fee, she would have to pay \$15 each time she submitted to a drug and alcohol
19 test.

20 301. Ms. Stephens informed the TASC employee that she had a medical
21 marijuana card and was legally able to use marijuana.

22 302. The TASC employee told her that she could use marijuana while on the
23 marijuana diversion program, but that Ms. Stephens would still have to submit to and
24 pay for random drug and alcohol tests.

25 303. During her first week in the marijuana diversion program, Defendants
26 required Ms. Stephens to submit to four drug and alcohol tests.

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1 304. Defendants required Ms. Stephens to pay \$15 for each of the four drug
2 and alcohol tests.

3 305. Ms. Stephens intends to fulfill all of the non-monetary requirements of
4 the diversion program within the first 90 days.

5 306. However, Ms. Stephens cannot afford to pay the \$1000 program fee
6 within 90 days.

7 307. Ms. Stephens's sole income is the \$600 or \$700 she makes each month
8 as a part-time server.

9 308. Ms. Stephens's allocates almost 100% of her income towards paying her
10 bills and expenses, which includes her car payment, insurance, gas, and phone service.

11 309. In order to complete diversion within 90 days, Ms. Stephens would have
12 to pay well over \$300 each month.

13 310. Ms. Stephens could not pay this amount without defaulting on bill
14 payments and sacrificing basic necessities.

15 311. Because Ms. Stephens cannot pay the \$1000 program fees within 90 days,
16 pursuant to Defendants' policy, practice, and custom, she will be required to remain on
17 diversion (and subject to the diversion program's requirements) for at least six months
18 and until she is able to pay the \$1000 program fee.

19 312. Without sacrificing basic necessities or defaulting on bills, Ms. Stephens
20 also cannot afford to pay Defendant TASC's standard monthly minimum payment of
21 \$160 or \$170 per month, which was set forth in the Client Contract to which she is
22 subject.

23 313. If Ms. Stephens cannot afford to make the minimum monthly payment,
24 pursuant to Defendants' written policy, she will be terminated from the diversion
25 program.⁴⁵

27 ⁴⁵ *Id.* ¶ 12 (“Failure to make payments [toward the program fees] each month as
28 agreed will result in [the] case being returned for prosecution.”).

1 314. Pursuant to Defendants' policies, practices, and customs, if Ms. Stephens
2 is terminated from the diversion program, she will be prosecuted for felony possession
3 of marijuana.

4 315. At orientation, Ms. Stephens was told to sign a statement of facts
5 confessing to possession of marijuana as a condition of entering the program.

6 316. Ms. Stephens believed that signing the statement in order to enter the
7 diversion program was the only way that she could avoid prosecution and potential
8 confinement for two years and a \$150,000 fine.

9 317. Arizona law allows this confession to be used against Ms. Stephens in
10 court.

11 318. Accordingly, Ms. Stephens believes that if she is prosecuted, she will be
12 convicted of felony marijuana possession because she signed the confession.

13 **Individual Plaintiff Taja Collier**

14 319. Plaintiff **Taja Collier** is a 21-year-old African American woman.

15 320. On October 7, 2016, Ms. Collier was riding in a car with friends when the
16 car was pulled over by a police officer for making an improper turn.

17 321. The officer searched the car's occupants and found a small cylinder in
18 Ms. Collier's purse that contained trace amounts of marijuana.

19 322. The amount of marijuana in the container was so small that the police
20 officer did not weigh it.

21 323. Ms. Collier was placed under arrest for possession of marijuana.

22 324. Ms. Collier had no prior criminal record.

23 325. Ms. Collier was not addicted to marijuana.

24 326. In early Spring 2017, Ms. Collier received a letter from MCAO.

25 327. The letter gave her two choices: she could face felony charges for
26 marijuana possession, or she could agree to participate in the TASC diversion program.
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1 328. The letter warned Ms. Collier that if convicted, she could be sentenced to
2 two years in jail and a fine of up to \$150,000, plus an 80% surcharge.

3 329. These threats were false.

4 330. Because this was Ms. Collier's first offense, under Arizona law, she could
5 not receive jail or prison time if convicted of simple possession of marijuana.

6 331. Nor was Ms. Collier eligible for a \$150,000 fine.

7 332. But Ms. Collier believed the threats in the letter.

8 333. She decided to enroll in the TASC diversion program because she did not
9 want to be fined \$150,000 or spend two years in prison.

10 334. At the time of her arrest, Mr. Collier was a sophomore at Central Arizona
11 College, where she studied social work.

12 335. Central Arizona College is located in Casa Grande, Arizona, which is
13 almost an hour away from Phoenix.

14 336. When Ms. Collier learned that the TASC diversion program required
15 drug and alcohol testing in Phoenix multiple times each week, she decided she could
16 not go back to college while she was on the TASC program.

17 337. Ms. Collier did not have a car or money to make such a long trip so
18 frequently.

19 338. She had to stop attending school and move to Phoenix in order to
20 participate in the diversion program.

21 339. Ms. Collier was told that she would need to pay \$150 at the orientation in
22 order to start the program.

23 340. She planned to start the program on June 22, 2017.

24 341. That week, however, Ms. Collier realized she would not be able to come
25 up with the \$150 required to start the program.

26 342. Ms. Collier had recently started a job working part-time at a Target.
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1 343. Ms. Collier made around minimum wage and worked approximately 16
2 hours per week.

3 344. However, she had not yet received her first paycheck.

4 345. Ms. Collier called TASC's main office to tell them that she could not
5 afford to pay the \$150 fee.

6 346. No one called her back.

7 347. At 6:51 a.m. on the morning her orientation was set to begin, Ms. Collier
8 sent an email to the general email address for the possession of marijuana diversion
9 program.

10 348. The email read, "Hi, my name is Taja Collier. I called the office to
11 reschedule my appointment 2 days ago and have not received a call back. I left a
12 message for the corporate office and nod [sic] I'm sending this email. I had an
13 appointment today at 8:45 and I do not have 150 because I get my first check next week.
14 I do not want my file sent back to the court system."

15 349. Later the same day, Ms. Collier reached a TASC employee by phone and
16 rescheduled her orientation for July 6, 2017.

17 350. Several days later, however, on June 25, 2017, Ms. Collier learned that
18 she would not be paid until after July 9, 2017.

19 351. Ms. Collier wrote again to the email address for the possession of
20 marijuana diversion program and informed TASC that she needed to reschedule the
21 orientation for after she got paid.

22 352. A TASC employee rescheduled Ms. Collier's orientation for July 13,
23 2017.

24 353. The employee did not tell her that she could start the program even if she
25 did not pay.

26 354. The employee also did not tell her that she could apply for a fee waiver
27 or a fee reduction.

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1 355. On July 13, 2017, Ms. Collier paid \$150 to TASC and attended the
2 mandatory orientation.

3 356. Shortly after her orientation, Ms. Collier was informed by the case
4 manager that had been assigned to her that she had to submit to a drug and alcohol test
5 and that she had to pay for the test in order to take it.

6 357. Ms. Collier was willing to take the mandatory test, but she could not
7 afford the \$15 or \$17 fee to pay for it.

8 358. Ms. Collier again emailed the address for the possession of marijuana
9 diversion program.

10 359. In her email, Ms. Collier pleaded: “I won't be able to come up with the
11 fee money until next Friday. I keep calling [my case manager] to figure out what my
12 next steps should be. Is there anyway [sic] I can change case managers or get some
13 assistance?”

14 360. No one responded to the email.

15 361. Nor did anyone call Ms. Collier to follow up.

16 362. Ultimately, Ms. Collier could not take the test because she could not
17 afford to pay for it.

18 363. To pay for her drug tests going forward, Ms. Collier began to sell her own
19 blood plasma whenever she was called to test.

20 364. Whenever Ms. Collier would learn that she had a drug test, she would
21 schedule a blood plasma sale so that she could pay for the test.

22 365. Ms. Collier made \$20 to \$35 each time she sold her blood plasma.

23 366. However, according to the blood plasma center's rules, a person is only
24 allowed to sell blood plasma twice each week.

25 367. Therefore, weeks when Ms. Collier was called to drug test more than
26 twice were especially difficult for her to manage.

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1 368. After she sold her blood plasma, Ms. Collier often felt fatigued and dizzy,
2 like she couldn't breathe or might black out.

3 369. But she continued to sell her blood plasma because it was the only way
4 she could pay for the drug tests.

5 370. Ms. Collier told her case manager at TASC that she sold her blood plasma
6 to pay for drug tests.

7 371. The case manager never told her that she could take the tests without
8 paying for them at the time of the test.

9 372. The case manager also never told her that she could apply for a reduced
10 fee.

11 373. At times, even after selling her blood plasma, Ms. Collier could not afford
12 to take drug and alcohol tests at TASC.

13 374. When this happened, Ms. Collier could not take required drug and alcohol
14 tests because she was not allowed to test if she could not pay for it.

15 375. Instead, Ms. Collier would try to contact her case manager to tell her that
16 she could not afford to pay to test.

17 376. Frequently, Ms. Collier's case manager would not answer her phone or
18 respond to emails, and Ms. Collier would try to reach her by calling TASC's corporate
19 office.

20 377. In September 2017, Ms. Collier became homeless.

21 378. She remained homeless for approximately one month.

22 379. While she was homeless, Ms. Collier slept in public parks.

23 380. On September 20, 2017, Ms. Collier emailed her case manager.

24 381. She explained, "I have been homeless for the passed [sic] week so money
25 has been really tight. ... It has been really tough."
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1 382. Ms. Collier also told her case manager in the email that she planned to
2 start Job Corps and that she would be able to pay for drug and alcohol tests once she
3 started.

4 383. Ms. Collier's case manager responded five days later.

5 384. In her email, the case manager replied:

6 "Sorry to hear that you are going through this. I am hoping
7 things get better for you. I also noticed that since you are
8 on your FINAL NOTICE, any missed test past this point
9 will result in program termination. So I am happy to hear
10 that you are going to do whatever is possible to test next
time you are required to test. Good Luck and hope
everything works out for you."

11 385. Again, the case manager did not suggest that Ms. Collier could take the
12 tests without paying for them.

13 386. Nor did she invite her to apply for a reduced fee.

14 387. Shortly after this exchange, Ms. Collier was issued another violation
15 because she did not take drug and alcohol tests solely because she could not afford to
16 pay for them.

17 388. On October 10, 2017, TASC reported to MCAO that Ms. Collier had
18 failed the diversion program.

19 389. In its reasons for failing Ms. Collier, TASC listed that Ms. Collier had not
20 submitted to mandatory drug and alcohol tests.

21 390. As described above, Ms. Collier did not take these tests solely because
22 she could not afford to pay for them.

23 391. TASC also stated that Ms. Collier was being failed because she had not
24 paid the required TASC fee and had not paid the required drug fund assessment fee.⁴⁶

25 ⁴⁶ In addition, TASC stated that Ms. Collier had not attended the program's
26 mandatory seminar. However, participants are required to take this seminar before they
27 can successfully complete the program; they are not required to take it at a specific
28 time. Ms. Collier would not have been failed from the diversion program solely because
she had not yet completed the seminar. The only other reason TASC provided for failing

1 392. On December 8, 2017, MCAO filed felony charges against Ms. Collier
2 for possession of marijuana.

3 393. Ms. Collier's preliminary hearing was on January 22, 2018.

4 394. On that same date, Ms. Collier agreed to re-enroll in the TASC possession
5 of marijuana diversion program.

6 395. Ms. Collier's prosecution was suspended for two years to allow her to
7 complete TASC.

8 396. Ms. Collier knew that she would struggle to pay for diversion.

9 397. But she decided to re-enroll because—based on the false threats in the
10 letter that she received from MCAO—she believed that she would go to jail if she did
11 not complete diversion.

12 398. To re-enter the program, Ms. Collier was again required to pay the \$150
13 admissions fee.

14 399. Ms. Collier paid \$148 toward that amount on March 13, 2018.

15 400. Ms. Collier paid the remaining \$2 on May 24, 2018.

16 401. Since that time, Ms. Collier has made payments of between \$8 and \$20.

17 402. Ms. Collier still must pay \$667 to TASC before she can complete the
18 program.

19 403. Ms. Collier cannot afford this sum without sacrificing basic necessities
20 like food and housing.

21 404. Nor can she afford to pay it at the rate required by Defendant TASC in
22 the Client Contract.

23 405. Ms. Collier is also still required to submit to drug and alcohol testing—at
24 \$15 or \$17 per test—one to three times each week.

25 _____
26 Ms. Collier was that she did not respond to a non-compliance letter she received on
27 August 7, 2017. But Ms. Collier was in contact with her case manager after receiving
28 this letter and explained that she could not afford to pay for drug and alcohol tests. In
addition, TASC does not have a policy, practice, or custom of failing diversion
participants who do not respond to a letter.

1 406. TASC still will not allow Ms. Collier to complete drug and alcohol tests
2 unless she pays for them.

3 407. Ms. Collier therefore continues to sell her blood plasma whenever she
4 knows she is going to be drug tested so that she can pay for the tests.

5 408. On August 17, 2018, Ms. Collier sent an e-mail to her case manager.

6 409. Ms. Collier wrote:

7 “Tasc has really been putting a big strain on my pockets. ...
8 I am very concerned that I will end up homeless again
9 trying to sacrifice rent for tasc as this is putting Me [sic] in
10 a bad space. I have been donating plasma whenever I have
11 to test to get the money I need to pay for it, but I am afraid
12 it is affecting my health. I am willing to test whenever I'm
13 required but I cannot afford the fees. Is there anyway [sic]
14 that I can test without having to pay for it?”

13 410. Ms. Collier’s case worker replied, “You have to pay for the program in
14 order to complete the program. I understand that this is cost effective [sic] but in order
15 for you to have you [sic] felony dismissed with prejudice you will have to complete all
16 program requirement [sic] which includes paying all fees associated with the
17 program.”⁴⁷

18 411. On September 4, 2018, Ms. Collier was scheduled to submit to a drug and
19 alcohol test at TASC.

20 412. Ms. Collier did not have any money to pay for the drug test.

21 413. Nevertheless, at approximately 6 p.m., Ms. Collier reported to the TASC
22 office in Phoenix to submit to a test.

23 414. When she arrived, Ms. Collier told a male TASC staff member that she
24 was willing to take the drug and alcohol test, but that she could not pay the fee that day.

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27 ⁴⁷ In her response, the case worker also suggested that Ms. Collier could apply for
28 insurance to alleviate the costs of one of the mandatory treatment classes. This would
do nothing to relieve the costs of program fees or the fees for drug and alcohol tests.

1 415. The TASC staff member told Ms. Collier that if she did not have the
2 money, she could not take the drug and alcohol test.

3 **CLASS ACTION ALLEGATIONS**

4 416. The named Plaintiffs bring this case as a class action pursuant to Rules
5 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure.

6 417. The Classes are defined as follows:

- 7 a. Damages Class: All people who, since August 23, 2016, and until the trial
8 of this case, (1) were enrolled in the marijuana diversion program
9 operated by Defendants TASC and MCAO; (2) satisfied all program
10 requirements in the first 90 days of the program other than payment of
11 program fees; and (3) were not considered for successful completion after
12 90 days solely because they were unable to pay the required fees. Named
13 Plaintiffs Deshawn Briggs and Mark Pascale seek certification of this
14 class.
- 15 b. Injunctive Class: All people who (1) have not yet been formally charged
16 with possession of marijuana; (2) received a pre-filing letter offering
17 participation in the MCAO and TASC marijuana diversion program; and
18 3) are unable to pay the required program fees within 90 days and/or at
19 the rate required by Defendant TASC. Named Plaintiff McKenna
20 Stephens seeks certification of this class.

21 418. The class members are readily ascertainable: the names and relevant
22 records of the class members are in Defendants' possession.

23 **Numerosity: Fed. R. Civ. P. 23(a)(1)**

24 419. On information and belief, both Classes include at least several hundred
25 members.

26 420. During the 2017 fiscal year (July 1, 2016 through July 30, 2017), there
27 were 2687 admittances to the possession of marijuana diversion program.

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1 421. The marijuana diversion program has maintained similar numbers of
2 admittances in its last several years of operation.

3 422. Therefore, there were likely at least 2500 admittances in the 2018 fiscal
4 year.

5 423. Thus, if even a small percentage of the people admitted to TASC since
6 August 23, 2016 meet the requirements for the Classes, the Classes would number in
7 the hundreds.

8 424. Moreover, on information and belief, a large majority of those arrested
9 and prosecuted for marijuana possession in Maricopa County are deemed indigent for
10 the purposes of appointment of counsel.

11 **Commonality: Fed. R. Civ. P. 23(a)(2)**

12 425. The Class members' claims raise common issues of fact and law.

13 426. With respect to the Damages Class, those common questions include, but
14 are not limited to:

- 15 a. Whether Defendants have a policy, practice, and custom of refusing
16 to consider diversion participants for program completion after 90
17 days and beyond solely because they cannot afford to pay the required
18 fees, without inquiring into those participants' ability to pay;
- 19 b. Whether Defendants have a policy, practice, and custom of requiring
20 diversion participants who have not paid the required fees to remain
21 on diversion supervision until they have done so, without inquiring
22 into those participants' ability to pay;
- 23 c. Whether Defendants' diversion extension policies (in subparagraphs
24 (a) and (b)) violate the Due Process and Equal Protection Clauses of
25 the Fourteenth Amendment to the U.S. Constitution;
- 26 d. Whether Defendants have a policy, practice, and custom of requiring
27 diversion participants who remain on diversion solely due to inability
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to pay to continue to submit to and pay for random drug and alcohol tests; and

- e. Whether Defendants’ policy of continuing this mandatory drug and alcohol testing for participants who remain on the diversion program solely due to inability to pay violates the Fourth Amendment to the U.S. Constitution.

427. With respect to the Injunctive Class, those common questions include, but are not limited to:

- a. Whether Defendants have a policy, practice, and custom of refusing to consider diversion participants for program completion after 90 days and beyond solely because they cannot afford to pay the required fees, without inquiring into those participants’ ability to pay;
- b. Whether Defendants have a policy, practice, and custom of requiring diversion participants who have not paid the required fees to remain on diversion supervision until they have done so, without inquiring into those participants’ ability to pay;
- c. Whether Defendants’ diversion extension policies (in subparagraphs (a) and (b)) violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution;
- d. Whether Defendants have a policy, practice, and custom of requiring diversion participants who remain on diversion solely due to inability to pay to continue to submit to and pay for random drug and alcohol tests;
- e. Whether Defendants’ policy of continuing this mandatory drug and alcohol testing for participants who remain on the diversion program solely due to inability to pay violates the Fourth Amendment to the U.S. Constitution;

- 1 f. Whether Defendants have a policy, practice, and custom of requiring
2 diversion participants to make a minimum monthly payment and
3 terminating those who fail to do so, without inquiring into those
4 participants' ability to pay; and
- 5 g. Whether Defendants' policy of terminating participants who cannot
6 afford to make a minimum monthly payment policy violates the Due
7 Process and Equal Protection Clauses of the Fourteenth Amendment
8 to the U.S. Constitution.

9 **Typicality: Fed. R. Civ. P. 23(a)(3)**

10 428. The Named Plaintiffs' claims are typical of the claims of the members of
11 the Class, and they have the same interests in this case as all other members of the Class
12 that they represent.

13 429. The determination whether the Defendants' scheme of policies, practices,
14 and customs is unlawful in the ways alleged will determine the claims of the named
15 Plaintiffs and every other class member.

16 **Adequacy: Fed. R. Civ. P. 23(a)(4)**

17 430. Named Plaintiffs are capable of fairly and adequately protecting the
18 interests of the Class because Named Plaintiffs do not have any interests antagonistic
19 to the Class.

20 431. There are no known conflicts of interest among class members, all of
21 whom have a similar interest in vindicating the constitutional rights to which they are
22 entitled.

23 432. Plaintiffs' counsel are experienced in civil rights litigation and have
24 successfully litigated a number of civil rights class action cases.

25 433. Many of those cases, like this one, involve unconstitutional penalties
26 based solely on wealth status.

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1 **Predomination, Injunctive Class: Fed. R. Civ. P. 23(b)(2)**

2 434. Class treatment under Rule 23(b)(2) is appropriate because the common
3 questions of law and fact predominate in this case.

4 435. For Named Plaintiff McKenna Stephens, as well as for the members of
5 the Class, this case turns on what the Defendants' policies and practices are and on
6 whether those policies are lawful.

7 436. The common questions of law and fact listed above are dispositive
8 questions in the case for every member of the Class.

9 437. Because the putative Class challenges the Defendants' scheme as
10 unconstitutional through injunctive relief that would apply to every member of the
11 Class, Rule 23(b) (2) certification is proper.

12 **Predomination, Damages Class: Fed. R. Civ. P. 23(b)(3)**

13 438. Class treatment under Rule 23(b)(3) is appropriate because the common
14 questions of law and fact overwhelmingly predominate in this case.

15 439. For every Named Plaintiff, as well as for the members of the Class, this
16 case turns on what the Defendants' policies and practices are and on whether those
17 policies are lawful.

18 440. The common questions of law and fact listed above are dispositive
19 questions in the case of every member of the Class.

20 441. Moreover, the question of liability can therefore be determined on a class-
21 wide basis.

22 442. To the extent that individual damages will vary, they will vary depending
23 in large part on the amount of time that a person was subjected to the unlawful scheme
24 and the amount of money coerced from them.

25 443. Determining damages for individual class members can thus typically be
26 handled in a ministerial fashion based on easily verifiable records in the Defendants'
27 possession.

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444. If need be, individual hearings on class members’ specific damages based on special circumstances and particular hardships caused by Defendants’ scheme can be held after class-wide liability is determined.

CLAIMS FOR RELIEF

Count One: Wealth-Based Discrimination in Violation of the Fourteenth Amendment

Brought under 42 U.S.C. § 1983 by Named Plaintiffs DeShawn Briggs and Mark Pascale on behalf of themselves and all others similarly situated against all Defendants for damages.

445. Defendants, acting in concert under color of state law, enacted, enforced, and continue to enforce a policy, practice, and custom of subjecting diversion participants to longer terms of diversion supervision while under threat of felony prosecution, which include in-person reporting, drug and alcohol testing requirements, and increased payments, solely because of their inability to pay fees associated with the program.

446. This policy, practice, and custom of penalizing individuals based solely on wealth status violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution.

447. As a direct and proximate cause of Defendants’ unlawful policy, practice, and custom, Plaintiffs have suffered violations of their constitutional rights and thus are entitled to compensatory damages for their injuries.

448. Defendant TASC’s actions were willful, deliberate, and malicious, and involved reckless or callous indifference to Plaintiffs’ constitutional rights. Accordingly, Plaintiffs are entitled to recover punitive damages—in addition to compensatory damages—against Defendant TASC.

1 **Count Two: Wealth-Based Discrimination in Violation of the**
2 **Fourteenth Amendment**

3 *Brought under 42 U.S.C. § 1983 by Named Plaintiff McKenna Stephens on behalf of*
4 *herself and all others similarly situated against all Defendants for injunctive relief;*
5 *and by Plaintiff Taja Collier on her own behalf against Defendant TASC for*
6 *injunctive relief.*

7 449. Defendants, acting in concert under color of state law, enacted, enforced,
8 and continue to enforce a policy, practice, and custom of subjecting participants to
9 longer terms of diversion and/or terminating them from the diversion program based on
10 wealth status.

11 450. Defendants subject diversion participants to longer terms of diversion
12 supervision while under threat of felony prosecution, which include in-person
13 reporting, drug and alcohol testing requirements, and increased payments, solely
14 because of their inability to pay fees associated with the program.

15 451. Pursuant to a written policy, Defendants terminate participants who
16 cannot afford to make specific minimum monthly payments toward diversion program
17 fees and subsequently prosecute them for felony possession of marijuana.

18 452. These policies, practices, and customs violates the Due Process and Equal
19 Protection Clauses of the Fourteenth Amendment to the U.S. Constitution.

20 453. As a direct and proximate cause of Defendants' unlawful policies,
21 practices, and customs, Plaintiffs will continue to suffer violations of their
22 constitutional rights unless Defendants are enjoined.

23 454. Plaintiff Stephens is a participant in Defendants' diversion program and
24 cannot afford to pay the fees required to complete the program in 90 days.

25 455. Plaintiff Stephens seeks to enjoin Defendants from requiring her, and all
26 others similarly situated, to remain on diversion for more than 90 days solely because
27 they cannot afford to pay the fees necessary to complete the diversion program.

1 456. Plaintiff Stephens also cannot afford to pay the minimum monthly fees
2 set by Defendant TASC.

3 457. Plaintiff Stephens seeks to enjoin Defendants from terminating her from
4 the diversion program solely because she cannot afford to pay minimum monthly fees.

5 458. Plaintiff Collier is a participant in Defendants' diversion program and
6 cannot afford to pay the fees required to complete the program.

7 459. Ms. Collier seeks to enjoin Defendant TASC from forcing her to remain
8 on diversion solely because she cannot afford to pay the fees necessary to complete the
9 diversion program.

10 460. Plaintiff Collier also cannot afford to pay the minimum monthly fees set
11 by Defendant TASC.

12 461. Plaintiff Collier seeks to enjoin Defendant TASC from terminating her
13 from the diversion program solely because she cannot afford to pay monthly minimum
14 fees.

15 **Count Three: Wealth-Based Discrimination in Violation of the**
16 **Fourteenth Amendment**

17 *Brought under 42 U.S.C. § 1983 by Plaintiff Taja Collier on her own behalf against*
18 *all Defendants for damages and against Defendant TASC for injunctive relief.*

19 462. Defendants, acting in concert under color of state law, enacted, enforced,
20 and continue to enforce a policy, practice, and custom of not allowing participants in
21 Defendants' diversion program to complete drug and alcohol tests unless those
22 participants can pay for them at the time of the test.

23 463. Defendants, acting in concert under color of state law, also enacted,
24 enforced, and continue to enforce a policy, practice, and custom of failing participants
25 from the program because those participants were not permitted to take drug and
26 alcohol tests solely because they were unable to afford them.

1 464. These policies, practices, and customs penalized Plaintiff Collier based
2 solely on her wealth status in violation of the Due Process and Equal Protection Clauses
3 of the Fourteenth Amendment to the U.S. Constitution.

4 465. As a direct and proximate cause of Defendants' unlawful policies,
5 practices, and customs, Plaintiff Collier suffered violations of her constitutional rights
6 and thus is entitled to compensatory damages for her injuries.

7 466. Defendant TASC's actions were willful, deliberate, and malicious, and
8 involved reckless or callous indifference to Plaintiff Collier's constitutional rights.
9 Accordingly, she is entitled to recover punitive damages—in addition to compensatory
10 damages—against Defendant TASC.

11 467. Plaintiff Collier is still a participant in Defendants' diversion program and
12 cannot afford to pay the program's fees or the fees required to take drug and alcohol
13 tests.

14 468. Plaintiff Collier therefore seeks to enjoin Defendant TASC from refusing
15 to allow her to take drug and alcohol tests solely because she is unable to pay for them.

16 469. Plaintiff Collier also seeks to enjoin Defendant TASC from terminating
17 her from the diversion program because she did not take drug and alcohol tests solely
18 because she could not afford them.

19 **Count Four: Unreasonable Searches and Seizures in Violation of the Fourth and**
20 **Fourteenth Amendments**

21 *Brought under 42 U.S.C. § 1983 by Named Plaintiffs DeShawn Briggs and Mark*
22 *Pascale on behalf of themselves and all others similarly situated against all*
23 *Defendants for damages.*

24 470. Defendants, acting in concert under color of state law, enacted, enforced,
25 and continue to enforce a policy, practice, and custom of requiring urinalysis to test for
26 drug and alcohol consumption for individuals who remain on the marijuana diversion
27 program solely because they were unable to pay the required fees.

1 471. This policy, practice, and custom violates the right to be free from
2 unreasonable searches and seizures under the Fourth Amendment to the U.S.
3 Constitution.

4 472. As a direct and proximate cause of Defendants’ unlawful policy, practice,
5 and custom, Plaintiffs have suffered violations of their bodily liberty and integrity and
6 are entitled to compensatory damages for their injuries.

7 473. Defendant TASC’s actions were knowing, willful, deliberate, and
8 malicious, and involved reckless or callous indifference to Plaintiffs’ constitutional
9 rights. Accordingly, Plaintiffs are entitled to recover punitive damages—in addition to
10 compensatory damages—against Defendant TASC.

11 **Count Five: Unreasonable Searches and Seizures in Violation of the Fourth and**
12 **Fourteenth Amendments**

13 *Brought under 42 U.S.C. § 1983 by Named McKenna Stephens on behalf of herself*
14 *and all others similarly situated against all Defendants for injunctive relief; and by*
15 *Plaintiff Taja Collier on her own behalf against Defendant TASC for injunctive relief.*

16 474. Defendants, acting in concert under color of state law, enacted, enforced,
17 and continue to enforce a policy, practice, and custom of requiring urinalysis to test for
18 drug and alcohol consumption for individuals who remain on the marijuana diversion
19 program solely because they were unable to pay the required fees.

20 475. This policy, practice, and custom violates the right to be free from
21 unreasonable searches and seizures under the Fourth Amendment to the U.S.
22 Constitution.

23 476. As a direct and proximate cause of Defendants’ unlawful policy, practice,
24 and custom, Plaintiffs will suffer violations of their bodily liberty and integrity unless
25 Defendants are enjoined.

26 477. Plaintiff Stephens is currently a participant in Defendants’ diversion
27 program and cannot afford to pay the fees required to complete the program in 90 days.
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1 478. Plaintiff Stephens seeks to enjoin Defendants from requiring her, and all
2 others similarly situated, to submit to drug and alcohol testing after 90 days in the
3 program if the sole reason she remains on the program is that she cannot afford to pay
4 the fees necessary to complete it.

5 479. Plaintiff Collier is still a participant in Defendants' diversion program and
6 cannot afford to pay the fees required to complete the diversion program.

7 480. Plaintiff Collier therefore requests that this Court enjoin Defendant TASC
8 from requiring her to take drug and alcohol tests solely because she cannot afford to
9 pay the fees necessary to complete the diversion program.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, the Plaintiffs demand a jury trial for all issues so appropriate
12 and request this Court to issue the following relief:

13 A. That this action be certified as a class action pursuant to Rule 23 of the
14 Federal Rules of Civil Procedure, declaring Named Plaintiffs DeShawn Briggs, Mark
15 Pascale, and McKenna Stephens as representatives of their respective Classes and
16 Named Plaintiffs' counsel as counsel for the Classes;

17 B. A judgment compensating the Plaintiffs and the Classes of similarly
18 situated individuals for the damages that they suffered as a result of the Defendants'
19 unconstitutional and unlawful conduct in an amount to be determined at trial;

20 C. A judgment granting the punitive damages authorized by statute based
21 on Defendant TASC's willful and egregious violations of the law;

22 D. A judgment enjoining Defendants from further unconstitutional and
23 unlawful conduct against Named Plaintiff McKenna Stephens and the class she
24 represents;

25 E. A judgment enjoining Defendant TASC from further unconstitutional
26 conduct against Plaintiff Taja Collier;

1 F. An order and judgment granting reasonable attorneys' fees and costs
2 pursuant to 42 U.S.C. § 1988 and 18 U.S.C. § 1964; and

3 G. Such other and further relief as the Court deems just and proper.

4 DATED this 12th day of October, 2018.

5 Respectfully submitted,

6 OSBORN MALEDON, P.A.

7 Timothy J. Eckstein
8 Joshua D. Bendor
9 2929 N. Central Ave., Suite 2100
Phoenix, Arizona 85012-2793

10 CIVIL RIGHTS CORPS

11 /s/ Katherine Chamblee-Ryan
12 A. Dami Animashaun*
13 Katherine Chamblee-Ryan
14 910 17th Street NW, Second Floor
Washington, D.C. 20006

15 Attorneys for Plaintiffs

16
17
18 *Admitted to practice solely in New York. Not admitted in the District of
19 Columbia; practice limited pursuant to D.C. App. R. 49(c), with supervision by
Alec Karakatsanis, a member of the D.C. Bar.

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Certificate of Service

I hereby certify that on the 12th day of October, 2018, I caused a copy of the foregoing document to be served on all parties by the Electronic Case Filing System for the United State District Court for the District of Arizona.

s/ Katherine Chamblee-Ryan
Katherine Chamblee-Ryan



A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW