

1 Timothy J. Eckstein, 018321  
2 Joshua D. Bendor, 031908  
3 OSBORN MALEDON, P.A.  
4 2929 N. Central Ave., Suite 2100  
5 Phoenix, Arizona 85012-2793  
6 (602) 640-9000  
7 teckstein@omlaw.com  
8 jbendor@omlaw.com

9 A. Dami Animashaun  
10 Katherine Chamblee-Ryan  
11 Olevia Boykin  
12 CIVIL RIGHTS CORPS  
13 910 17<sup>th</sup> Street NW, Second Floor  
14 Washington, D.C. 20006  
15 (202) 656-5189  
16 dami@civilrightscorps.org  
17 katie@civilrightscorps.org  
18 olevia@civilrightscorps.org

19 Attorneys for Plaintiffs

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22 IN THE UNITED STATES DISTRICT COURT  
23 FOR THE DISTRICT OF ARIZONA

24 DeShawn Briggs, Mark Pascale,  
25 McKenna Stephens, and Lucia Soria, on  
26 behalf of themselves and all others  
27 similarly situated; Taja Collier,

28 Plaintiffs,

v.

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

Defendants.

No. CV-18-2684-PHX-EJM

**SECOND 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 program<sup>1</sup> that penalizes the poor because of their poverty.

<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup>

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

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

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

18 <sup>3</sup> 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 <sup>4</sup> 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 <sup>5</sup> 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”<sup>6</sup> 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 <sup>6</sup> “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 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 **Lucia Soria** is a 38-year-old Latina woman. She is a resident of  
10 Maricopa County, Arizona. Ms. Soria is currently being supervised on Defendants'  
11 marijuana diversion program solely because she is unable to pay program fees. Ms.  
12 Soria represents herself and a class of similarly-situated people subject to Defendants'  
13 unlawful policies, practices, and customs.

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

1            **Defendants**

2            46. Defendant **Bill Montgomery** is the elected County Attorney for  
3 Maricopa County, Arizona. Defendant Montgomery is the chief official responsible for  
4 the enforcement and prosecution of felonies within Maricopa County. Defendant  
5 Montgomery is also responsible for operating and administering the deferred  
6 prosecution programs in Maricopa County. Defendant Montgomery is the final  
7 policymaker for Maricopa County on matters relating to diversion programs, including  
8 the marijuana diversion program at issue in this lawsuit. He is sued in his official  
9 capacity.

10           47. Defendant **Maricopa County, Arizona**<sup>7</sup> is a political subdivision formed  
11 and designated as such pursuant to Title 11 of the Arizona Revised Statutes. Defendant  
12 Maricopa County can sue and be sued in its own name. Maricopa County is liable for  
13 the practices and policies of Defendants Montgomery and TASC. The County has and  
14 continues to acquiesce in the administration of the TASC drug diversion program,  
15 including the marijuana diversion program at issue in this lawsuit.

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

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27 <sup>7</sup> 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 **JURISDICTION**

2 49. This action arises under 42 U.S.C. § 1983 and the Constitution of the  
3 United States. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and  
4 1343.

5 50. Venue is proper under 28 U.S.C. § 1391(b). All Defendants’ official  
6 places of business are located within this District. The events giving rise to the claims  
7 occurred in this District.

8 **STATEMENT OF FACTS**

9 **I. Defendants’ Unlawful Policies**

10 **Marijuana Possession Prosecutions in Maricopa County**

11 51. In Arizona, possession of any amount of marijuana—even trace  
12 amounts—can be prosecuted as a felony.<sup>8</sup>

13 52. Felony prosecution has severe consequences.

14 53. According to the National Inventory of the Collateral Consequences of  
15 Conviction—an American Bar Association database—people convicted of felony  
16 offenses in Arizona are subject to over 350 “collateral consequences” as a direct result  
17 of a felony criminal conviction.<sup>9</sup>

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<sup>8</sup> See Ariz. Rev. Stat. Ann. § 13-3405(B)(1) (providing that possession of “an  
23 amount of marijuana not possessed for sale having a weight of less than two pounds is  
24 guilty of a class 6 felony”). Arizona is the only state in the nation where any amount  
25 of marijuana, no matter how small, can draw a felony charge. See Jacob Sullum,  
26 *Explaining His Cannabis Conversion, John Boehner Cites a Marijuana Myth*, Reason  
27 (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  
under Arizona law. See Ariz. Rev. Stat. Ann. § 13-3415(A).

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

1           54. For example, a person convicted of a felony in Arizona cannot vote, serve  
2 on a jury, obtain a commercial driver’s license, possess a gun, or join the U.S. armed  
3 forces.<sup>10</sup>

4           55. A felony conviction may also bar a person from receiving professional  
5 licenses and affect a person’s child custody rights, parental status, and housing.<sup>11</sup>

6           56. A person with a felony drug conviction in Arizona may lose public  
7 benefits, such as food stamps and social security benefits.<sup>12</sup>

8           57. Defendant County Attorney Bill Montgomery has aggressively opposed  
9 legalization measures as well as efforts to reduce simple possession of marijuana to a  
10 misdemeanor.

11           58. In 2016, Defendant Montgomery successfully advocated against the  
12 passage of Proposition 205, a ballot initiative that would have made recreational  
13 marijuana use legal in Arizona.

14           59. Defendant Montgomery made numerous public statements and  
15 participated in public debates attacking the initiative and advocating for its failure.

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

19           61. Defendant Montgomery has also worked to narrow Arizona’s medical  
20 marijuana laws.

21           62. For example, when Defendant Montgomery learned that doctors were  
22 able to stop a five-year-old’s seizures by using a marijuana extract, he threatened the  
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26 <sup>10</sup> See Consequences of a Felony, Maricopa County, AZ,  
<https://www.maricopa.gov/930/Consequences-for-a-Felony> (last visited Oct. 11,  
27 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

1 child's parents with felony prosecution, arguing that extracts were not covered by the  
2 state's medical marijuana allowance.<sup>13</sup>

3 63. Drug possession charges represent an overwhelming proportion of the  
4 charges filed by MCAO.

5 64. Possession of marijuana is the MCAO's most commonly prosecuted  
6 offense; it amounts to approximately 15 percent of total prosecutions.<sup>14</sup>

7 65. And more broadly, more than 45 percent of MCAO's prosecutions are for  
8 drug possession.<sup>15</sup>

9 66. Between 2006 and 2016, MCAO made nearly \$15 million from diverting  
10 threatened prosecutions to TASC.<sup>16</sup>

11 **The Possession of Marijuana Diversion Program**

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

15 68. To operate, administer, and supervise participants in the program, MCAO  
16 has contracted with TASC, a private, non-profit company.

17 69. TASC also partners with MCAO to administer a diversion program for  
18 possession of narcotics.

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

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

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

<sup>16</sup> Cassidy, *supra* note 4.

1           70. More than 15,000 people participated in MCAO and TASC's marijuana  
2 diversion program between 2011 and 2017.<sup>17</sup>

3           71. Over that same time period, the marijuana diversion program accounted  
4 for approximately three quarters of TASC's total intakes for drug diversion.<sup>18</sup>

5           72. People arrested for simple possession of marijuana or marijuana  
6 paraphernalia can enter the diversion program either before or after criminal charges  
7 are filed.

8           73. People who enter into the marijuana diversion program post-filing have  
9 charges filed against them prior to enrolling in the program.

10           74. The charges are suspended while the person completes the program.

11           75. If the person successfully completes the program, MCAO dismisses the  
12 case.

13           76. If the person fails to complete the program, MCAO reinstates  
14 prosecution.

15           77. People can also enter the program before any criminal charges are filed  
16 in court.

17           78. People who enter the marijuana diversion program pre-filing are sent a  
18 letter from MCAO.

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

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24 <sup>17</sup> 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 <sup>18</sup> 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           80. The letter warns, “If convicted of a class 6 felony, you could receive a  
2 maximum sentence of 2 years in prison and a maximum fine of \$150,000 plus 80%  
3 surcharge.”

4           81. The letter also warns that a class 1 misdemeanor conviction could result  
5 in “a maximum sentence of six months in jail and a maximum fine of \$2,500.00 plus  
6 80% surcharge.”

7           82. The threats in this letter are false.

8           83. The pre-filing diversion program generally only includes people with no  
9 prior convictions.

10          84. Under Arizona law, jail or prison time is prohibited for a first or second  
11 offense of simple possession of marijuana.

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

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

16          87. The letter’s representation that its recipients could be fined \$150,000 plus  
17 an 80% surcharge are false as well.<sup>19</sup>

18          88. After delivering these false threats, the letter explains the basic  
19 requirements of the marijuana diversion program and provides a deadline and contact  
20 information to sign up for the program.

21          89. If a person in the pre-filing category completes the diversion program,  
22 MCAO will not file charges against her.

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26 <sup>19</sup> A person convicted of possession of marijuana can be fined \$750 or three times  
27 the value of the marijuana involved. *See* Ariz. Rev. Stat. § 13-3405(D). \$150,000 is  
28 the maximum fine allowable for any felony. *See* Ariz. Rev. Stat. § 13-801(a). No  
person accused of a crime involving \$50,000 worth of marijuana would be eligible for  
TASC.

1 90. Failing the program results in criminal prosecution.<sup>20</sup>

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

6 92. A TASC employee tells participants exactly what to write in the statement  
7 of facts.

8 93. The following information must be written into the statement:

- 9 a. Date and location of the offense;
- 10 b. The full name of the substance possessed;
- 11 c. That the participant possessed a usable amount of the substance; and
- 12 d. The facts of the offense, which must read, “the [name of the drug] was  
13 found in [where the drug was found] in my possession.”

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

18 **The Cost of Avoiding Prosecution**

19 95. Once enrolled in the marijuana diversion program, the requirements for  
20 the pre- and post-filing participants are the same.

21 96. For both groups of participants, avoiding prosecution costs money.

22 97. To complete the program, all participants must:

- 23 a. Pay program fees—\$950 or \$1000—in full;
- 24 b. Pay for and pass routine drug and alcohol tests for 90 days; and

25 \_\_\_\_\_

26 <sup>20</sup> 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 c. Complete a three-hour drug education seminar.
- 2 98. The mandatory \$950 or \$1000 program fee includes the following:
  - 3 a. \$150 admission fee;
  - 4 b. \$650 “drug fund” fee;
  - 5 c. \$150 TASC fee; and
  - 6 d. \$50 booking fee, which applies only to participants who were arrested  
7 and booked.
- 8 99. All of these fees must be paid in person by debit card or with a money  
9 order.
- 10 100. Participants are not allowed to pay by any other means, including with  
11 credit or cash.
- 12 101. Defendants require that participants pay the \$150 admission fee at the  
13 program orientation.
- 14 102. If a participant is unable to pay the \$150 admission fee at orientation  
15 because she cannot afford it, Defendants allow her to pay \$75 at orientation and the  
16 other \$75 during the program.
- 17 103. If a participant cannot afford to pay \$75 at orientation, she may be told to  
18 return with the money the same day or be failed from the program and face felony  
19 prosecution.
- 20 104. In addition to the \$950 or \$1000 in fees, participants must pay to take  
21 drug and alcohol tests at TASC.
- 22 105. Each drug and alcohol test costs \$15 or \$17, depending on the method of  
23 payment.
- 24 106. Participants must call TASC or consult a phone application every day,  
25 seven days a week to determine whether they are required to report to a TASC location  
26 that day so that TASC can collect and test their urine.

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1           107. If a participant does not call daily, she may miss a scheduled test and be  
2 sanctioned, which could ultimately result in termination from the diversion program,  
3 followed by felony prosecution.

4           108. Participants are required to drug test at least once—and often multiple  
5 times—each week.

6           109. At the TASC location, TASC employees watch participants through glass  
7 panels while they submit urine for drug and alcohol testing.

8           110. In at least one TASC location, the bathroom where participants submit  
9 urine for testing includes multiple mirrors so that a TASC employee can watch the  
10 participant urinate from multiple angles.

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

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

15           113. In addition to the three program requirements, Defendants impose a  
16 number of additional terms on participants.

17           114. These terms are set forth in a document called the “Client Contract.”<sup>21</sup>

18           115. The Client Contract states that diversion participants must make  
19 minimum monthly payments towards those fees at a rate set by Defendant TASC.

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

21           117. Defendant TASC does not inquire into a participant’s ability to pay before  
22 setting the minimum monthly fee.

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

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

1 119. The Client Contract also prohibits, among other things:

- 2 a. Alcohol use, including over-the-counter medications that include  
3 alcohol, like NyQuil;<sup>22</sup>  
4 b. Leaving the state for any amount of time without “special permission  
5 from TASC”;<sup>23</sup>  
6 c. Leaving Maricopa County for more than one day without informing a  
7 TASC case manager;<sup>24</sup>  
8 d. Taking any prescription medication without reporting it to a TASC  
9 case manager and bringing the prescription to TASC for  
10 verification.<sup>25</sup>

11 120. The Client Contract also states that “[u]nless disability status applies,  
12 [participants] must be employed while participating in the program.”<sup>26</sup>

13 121. “[V]iolation of any” of these provisions “can result in program  
14 termination.”<sup>27</sup>

15 **Defendants Require Participants to Remain on Diversion**  
16 **Until All Fees Are Paid**

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

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

24  
25 <sup>22</sup> *Id.* ¶ 5.

26 <sup>23</sup> *Id.* ¶ 10.

27 <sup>24</sup> *Id.*

28 <sup>25</sup> *Id.* ¶ 3.

<sup>26</sup> *Id.* ¶ 17.

<sup>27</sup> *Id.* (unnumbered paragraph).

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

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

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

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

10           128. People who are forced to stay on diversion solely because they cannot  
11 afford to pay program fees remain subject felony prosecution until they complete the  
12 program.

13           129. In addition, these “pay only”<sup>28</sup> participants are subject to same  
14 requirements as they were during the first 90 days on diversion.

15           130. Thus, “pay only” participants are barred from drinking alcohol, taking  
16 certain medications (like NyQuil), and leaving the State without Defendant TASC’s  
17 approval.<sup>29</sup>

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

20           132. These participants must also complete all of the requirements attendant  
21 to the drug and alcohol tests.

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

25  
26  
27 \_\_\_\_\_  
28 <sup>28</sup> See *supra* note 6 (explaining the term “pay-only”).

<sup>29</sup> See Client Contract ¶¶ 3, 5, 10.

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

3 135. As a result, these participants may ultimately have to pay hundreds of  
4 dollars more than people wealthy enough to pay the \$950 or \$1000 program fee within  
5 90 days—in addition to remaining subject to felony criminal prosecution for months  
6 longer.

7 **Defendants Terminate Participants from the Diversion Program**  
8 **for Failure to Pay Minimum Monthly Program Fees**

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

12 137. The Client Contract, to which all participants are subject, states that the  
13 minimum monthly rate is \$160 or \$170.

14 138. Defendants’ policy does not include any exception for participants who  
15 did not make their monthly payment solely because they could not afford it.

16 139. Defendants do not inquire into a participant’s ability to pay before setting  
17 the minimum monthly fee.

18 140. The Client Contract states: “Failure to make payments [toward the  
19 program fees] each month as agreed will result in [the] case being returned for  
20 prosecution.”<sup>30</sup>

21 141. Another paragraph of the Client Contract states that “failure to test as  
22 scheduled, continued positive/diluted/altered tests, missed seminar/counseling, and/or  
23 *failure to make payments as agreed may result in unsuccessful termination from the*  
24 *program.*”<sup>31</sup>

25 142. Defendants have discretion as to when to enforce this policy; they may  
26 terminate a participant on the first missed payment or the tenth.

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27 <sup>30</sup> *Id.* ¶ 12.

28 <sup>31</sup> *Id.* ¶ 17 (emphasis added).

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

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

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

8           145. As a matter of policy, practice, and custom, Defendants do not allow  
9 diversion participants to take the program’s mandatory drug and alcohol tests unless  
10 they can pay for them at the time of the test.

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

14           147. People who cannot afford to take drug and alcohol tests may also fail the  
15 program altogether.

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

18           149. The Client Contract states that “failure to test as scheduled . . . may result  
19 in unsuccessful termination from the program.”<sup>32</sup>

20           150. A person who accrues too many of these violations will be failed by  
21 TASC and referred to the MCAO for prosecution.

22           151. When this happens, a person faces felony prosecution solely because of  
23 her inability to pay.

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

26  
27 \_\_\_\_\_  
28 <sup>32</sup> Client Contract ¶ 16.

1           153. Nor does anyone at MCAO assess ability to pay before prosecuting  
2 people who have failed diversion solely because of their inability to pay for drug and  
3 alcohol tests.

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

5           154. As a matter of policy, practice, and custom, Defendants do not reduce or  
6 waive the \$950 or \$1000 program fee for any person, regardless of financial  
7 circumstances.

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

11           156. At the outset, Defendants do not assess participants’ ability to pay before  
12 charging them in full for tests.

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

16           158. One TASC employee interviewed by investigators for undersigned  
17 counsel stated that reduced drug and alcohol testing fees are reserved for people who  
18 can demonstrate that they have basically zero income.

19           159. Another TASC employee explained that fee reductions are “very  
20 difficult” to get and that “it rarely happens.”

21           160. As one TASC employee explained, drug and alcohol testing is “strictly  
22 fee for service.”

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

26  
27  
28

1           162. According to Defendants’ written policy, even in the rare cases that fee  
2 reductions are granted, full fees can be reinstated as a punishment for a dirty or diluted  
3 urine test.

4           163. Defendants’ Client Contract warns, “If [a participant’s] fees are reduced  
5 and [the participant] submit[s] a positive/diluted/altered urine test, full fees may be  
6 reinstated ... from that point forward until completion of the program.”<sup>33</sup>

7           **The “User-Funded” Model**

8           164. Defendants MCAO and TASC advertise the diversion program as “user-  
9 funded.”

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

12           166. A brochure published by MCAO describing its felony pretrial diversion  
13 programs notes that “defendants ... bear the costs of the program.”<sup>34</sup>

14           167. Defendant TASC’s website explains that the diversion program “is fully  
15 funded by the clients we serve.”<sup>35</sup>

16           168. Defendant TASC is responsible for collecting fees from the people  
17 enrolled in the diversion program.

18           169. Defendant TASC keeps a portion of the money it collects.

19           170. The \$650 “drug fund fee” that Defendant TASC collects from each  
20 participant is deposited to MCAO.

21           171. MCAO does not publicly disclose how it spends the money it receives  
22 from the program.

23  
24  
25 <sup>33</sup> See MCAO/TASC Adult Deferred Prosecution Program Possession of  
Marijuana, Client Contract ¶ 13.

26 <sup>34</sup> Maricopa County Attorney’s Office, Felony Pretrial Intervention Program  
27 (2018).

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

1           172. In addition to collecting fees, the Contract between Defendants MCAO  
2 and TASC makes Defendant TASC responsible for most of the day-to-day operations  
3 of the possession of marijuana diversion program.

4           173. This includes administering drug and alcohol tests, tracking participants’  
5 attendance and participation, and determining whether a participant has completed the  
6 program requirements.

7           174. MCAO’s duties under the Contract are to assess the appropriateness of  
8 referrals to the program and to send qualified participants to Defendant TASC.

9           175. The Contract does not require the MCAO to pay Defendant TASC any  
10 money.

11           176. Instead, the Contract provides that the program’s participants alone will  
12 pay Defendant TASC, and “no public monies will be expended pursuant to [the  
13 Contract].”<sup>36</sup>

14           177. The Contract does provide that, “[a]t his option, the County Attorney may  
15 utilize monies accumulated in the Drug Diversion Fund to satisfy the costs associated  
16 with this agreement if the participant is indigent and unable to pay the costs associated  
17 with the ... diversion program.”<sup>37</sup>

18           178. But there is no requirement that MCAO make such payments.<sup>38</sup>

19           179. Between 2006 and 2016, MCAO made nearly \$15 million in fees from  
20 participants in the marijuana diversion program.<sup>39</sup>

21           180. Defendant TASC has also benefited financially from operating the  
22 marijuana diversion program.

23  
24  
25 <sup>36</sup> MCAO & TASC, Behavior Specific Adult Diversion Program Contract, at 1  
(Mar. 22, 2016, effective through Sept. 30, 2018).

26 <sup>37</sup> *Id.*

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

28 <sup>39</sup> Cassidy, *supra* note 4.

1 181. Defendant TASC's net assets were approximately \$18 million in 2016.<sup>40</sup>

2 182. In 2014, TASC paid its CEO \$281,165 and its former CEO \$963,358.<sup>41</sup>

3 183. In 2015, TASC paid its CEO \$321,347.<sup>42</sup>

4 184. In 2016, TASC paid its CEO \$308,720.<sup>43</sup>

5 **II. Plaintiffs**

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

7 185. Class representatives **DeShawn Briggs** and **Mark Pascale** were both  
8 required to remain in the pretrial diversion program for more than double the time  
9 required of similarly situated (but wealthier) participants solely because they were  
10 unable to pay program fees.

11 186. Plaintiff **DeShawn Briggs** is a 28-year-old African American man.

12 187. In December 2015, Mr. Briggs was arrested for simple possession of  
13 marijuana.

14 188. At the time of his arrest, Mr. Briggs worked part-time at Walmart, where  
15 he made \$10 per hour.

16 189. Mr. Briggs had no prior criminal record.

17 190. He was not addicted to marijuana.

18 191. On or around January 13, 2016, Mr. Briggs received a letter from MCAO.

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

23 193. The claims in the letter Mr. Briggs received were false.

24  
25  
26 <sup>40</sup> See IRS Form 990, filed by TASC for 2016, at 1.

27 <sup>41</sup> See IRS Form 990, filed by TASC for 2014, at 7.

28 <sup>42</sup> See IRS Form 990, filed by TASC for 2015, at 7.

<sup>43</sup> See IRS Form 990, filed by TASC for 2016, at 7.

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

3           195. Mr. Briggs also did not face a \$150,000 fine.

4           196. Mr. Briggs did not know that he could not receive jail time for conviction  
5 of marijuana possession since it was his first offense.

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

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

10           199. Mr. Briggs followed the instructions given in the letter and contacted  
11 TASC to enroll in the program.

12           200. A TASC employee told Mr. Briggs to appear for orientation and bring a  
13 \$150 intake fee.

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

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

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

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

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

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

28

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

3           208. The statement of facts stated that Mr. Briggs possessed a usable quantity  
4 of marijuana.

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

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

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

11           212. During that time period, Mr. Briggs was required to report for drug and  
12 alcohol testing up to three times each week.

13           213. Mr. Briggs was forced to pay each time he reported for a drug and alcohol  
14 test, even though he was struggling to pay for basic necessities.

15           214. Mr. Briggs also completed the required three-hour drug education  
16 seminar during his first 90 days on the program.

17           215. However, in that first 90 days, Mr. Briggs could not afford to pay the  
18 \$1000 fee.

19           216. Mr. Briggs’s monthly pay at Walmart was less than \$1000.

20           217. Mr. Briggs also has disabilities caused by spinal meningitis that limit his  
21 ability to work.

22           218. During the first 90 days of the program, Mr. Briggs was only able to pay  
23 \$421 toward the \$1000 balance.

24           219. Mr. Briggs made those payments in small installments.

25           220. He paid one \$75 installment toward his \$150 orientation fee on February  
26 29, 2016.

27           221. He paid the second installment on April 14, 2016.

28

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

2           223. On May 5, 2016, Mr. Briggs paid \$170 toward his balance.

3           224. On May 11, 2016, he paid another \$16.

4           225. During that same time period, Mr. Briggs paid approximately \$195 for  
5 drug and alcohol tests.

6           226. Despite meeting all other program requirements, Mr. Briggs was not  
7 considered for program completion at the 90-day mark because he had not paid the  
8 \$1000 fee in full.

9           227. Instead, Mr. Briggs was required to remain on diversion, and remained  
10 subject to felony criminal prosecution.

11           228. Mr. Briggs was also required to continue reporting to drug and alcohol  
12 testing one to three times each week.

13           229. After the first 90 days on the program, Mr. Briggs reported for and passed  
14 15 additional drug and alcohol tests.

15           230. The final drug and alcohol test that Mr. Briggs submitted to and paid for  
16 was on August 23, 2016.

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

19           232. Mr. Briggs also continued to make payments against his balance.

20           233. On June 16, 2016, Mr. Briggs paid \$170.

21           234. On July 14, 2016, he paid \$70.

22           235. On August 18, 2016, he paid \$50.

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

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

27

28

1           238. Mr. Briggs returned to the TASC offices the following day and received  
2 a certification of completion from TASC.

3           239. Plaintiff **Mark Pascale** is a 60-year-old man.

4           240. Mr. Pascale lives in Maricopa County, Arizona with his 15-year-old son,  
5 for whom he is the sole provider.

6           241. Mr. Pascale is disabled; he suffers from degenerative disc disease in his  
7 neck and back.

8           242. To manage his symptoms, Mr. Pascale takes an anti-epileptic drug, an  
9 anti-convulsant drug, and morphine every day.

10          243. Because of his illness, Mr. Pascale has been physically unable to work  
11 since 2008.

12          244. That year, Mr. Pascale filed for bankruptcy.

13          245. Mr. Pascale's only stable source of income comes from federal disability  
14 benefits.

15          246. Mr. Pascale also receives nutritional assistance benefits and, in the past,  
16 has received assistance from government programs to pay his utility bills.

17          247. In May 2017, a police officer found a small amount of marijuana in  
18 Mr. Pascale's car.

19          248. Mr. Pascale was not arrested, but he received a criminal summons in the  
20 mail in October 2017, stating that he was being charged with possession or use of  
21 marijuana, a class 6 felony.

22          249. At his first court appearance, Mr. Pascale agreed to enroll in the  
23 marijuana diversion program.

24          250. Mr. Pascale was not addicted to marijuana.

25          251. Mr. Pascale attended an orientation for the program on November 21,  
26 2017.

1           252. Mr. Pascale could not afford to pay the \$150 application fee that TASC  
2 requires at orientation.

3           253. A TASC employee agreed to allow Mr. Pascale to pay \$75 up front  
4 instead of \$150 to attend the orientation.

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

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

10           256. When Mr. Pascale reported for his first mandatory drug and alcohol test,  
11 he told his case worker at TASC that he could not afford to pay the \$950 in program  
12 fees.<sup>44</sup>

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

15           258. Mr. Pascale's case worker told him that there was no way to waive or  
16 reduce the program fees.

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

19           260. The case worker gave Mr. Pascale a financial information form to  
20 complete.

21           261. On the form, Mr. Pascale marked that he was disabled and worked zero  
22 hours per week.

23           262. He listed his income as \$920 per month, explaining that he received  
24 disability benefits.

25  
26  
27 \_\_\_\_\_  
28 <sup>44</sup> Because Mr. Pascale was not arrested, he did not have to pay the \$50 booking  
fee.

1           263. The case worker told Mr. Pascale that he did not qualify for reduced drug  
2 and alcohol testing fees because he owned a computer and was paying for internet  
3 service, which are “luxuries.”

4           264. Mr. Pascale therefore had to pay the full \$15 for each required drug and  
5 alcohol test.

6           265. These payments, made out of his disability income, made it difficult for  
7 Mr. Pascale to pay for basic necessities for himself and his son, including food, shelter,  
8 medication, and clothing.

9           266. Mr. Pascale was tested at least once per week, but as often as three times  
10 per week.

11           267. At least once each month, Mr. Pascale would be asked to submit to  
12 additional drug and alcohol testing because he had tested positive for opiates due to the  
13 prescription medications he takes.

14           268. Mr. Pascale had provided his case worker with information and  
15 documentation about the prescription medications that he takes (including morphine),  
16 but even so, she ordered the extra testing.

17           269. Mr. Pascale had to pay for these additional tests as well.

18           270. Mr. Pascale frequently emphasized to his case worker that he did not have  
19 the money to pay for drug and alcohol tests.

20           271. The case worker told Mr. Pascale that he had to pay in order to be tested  
21 and suggested he borrow money.

22           272. Mr. Pascale often skipped paying bills to keep up with the fees.

23           273. After 90 days had passed, Mr. Pascale had met all non-monetary program  
24 requirements and had never failed a drug and alcohol test.

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

26           275. As a result, Mr. Pascale was required to remain on diversion until all of  
27 the fees were paid.

28

1           276. During this time, he was still required to submit to and pay for drug and  
2 alcohol testing up to three times each week.

3           277. Mr. Pascale made his final payment—and submitted to and passed his  
4 final drug and alcohol test—on June 29, 2018, more than seven months after he had  
5 entered the program.

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

9           **Damages and Injunctive Relief Class Representative Lucia Soria**

10          279. Plaintiff **Lucia Soria** is a 38-year-old Latina woman.

11          280. Ms. Soria is a single mother. She has a son and daughter, both of whom  
12 are teenagers. She lives with her parents, her children, and members of her extended  
13 family.

14          281. Ms. Soria is unemployed and without income because her ability to work  
15 is severely limited by her medical conditions, which include diabetes and neuropathy.  
16 In November 2018, Ms. Soria’s doctor advised her to stop working because of her  
17 medical conditions.

18          282. Ms. Soria left her employment as an assistant manager at Dollar Tree  
19 shortly after receiving this advice from her doctor.

20          283. In December 2018, Ms. Soria was driving friends home when she was  
21 pulled over. The officer alleged he found marijuana in the car, but Ms. Soria was not  
22 arrested or cited.

23          284. On or around March 25, 2019, Ms. Soria received a letter from Defendant  
24 MCAO about the marijuana diversion program.

25          285. The letter gave her a choice: she could agree to participate in the TASC  
26 diversion program or she would face felony prosecution.

1           286. The letter threatened Ms. Soria that, if convicted, she could be sentenced  
2 to two years of imprisonment and a fine of up to \$150,000, plus an 83% surcharge.

3           287. These threats were false.

4           288. Because Ms. Soria had never been convicted of possessing marijuana, she  
5 could not receive jail or prison time if convicted of simple possession of marijuana  
6 under Arizona law.

7           289. Nor was Ms. Soria eligible for a \$150,000 fine.

8           290. But Ms. Soria believed the threats Defendant MCAO made in the letter.

9           291. Ms. Soria decided to enroll in the diversion program because she did not  
10 want to be fined \$150,000 or spend two years in prison.

11           292. Ms. Soria attended orientation for the marijuana diversion program after  
12 receiving the letter in March 2019.

13           293. Ms. Soria was told that the program would cost approximately \$950.

14           294. At orientation, Ms. Soria told the TASC employee who facilitated the  
15 orientation class that she had no income and could not afford the fees. The TASC  
16 employee responded by saying “it’s not up to me,” and told Ms. Soria that she had to  
17 pay the fees or she could not participate in TASC.

18           295. The TASC employee also told Ms. Soria that in order to complete the  
19 program in 90 days, she would have to submit to and pass random drug and alcohol  
20 tests, attend a three-hour drug and alcohol seminar, and pay the \$950 program fee within  
21 that time period. Further, the TASC employee told Ms. Soria that if she were unable to  
22 meet any of the three requirements—including full payment of program fees—she  
23 would remain under TASC supervision in the diversion program.

24           296. Ms. Soria had to sign the “Client Contract” during orientation, which,  
25 among other things, stated that she would be terminated from the program if she did  
26 not make minimum monthly payments required by Defendant TASC.

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1           297. The Client Contract Ms. Soria signed set the minimum monthly payment  
2 at \$160 or \$170.

3           298. The TASC employee also told Ms. Soria that, in addition to the program  
4 fee, she would have to pay \$15 each time she submitted to a drug and alcohol test.

5           299. Ms. Soria was not offered a fee waiver or fee reduction at orientation or  
6 any other time during her tenure under TASC supervision.

7           300. Ms. Soria has submitted to one to three drug and alcohol tests every week  
8 since she started the marijuana diversion program.

9           301. When Ms. Soria first started on the marijuana diversion program, the  
10 closest location where she could test was approximately a 45-minute drive each way  
11 from her home if there was no traffic.

12           302. During her time on the program, a TASC location has opened closer to  
13 her house, but it is still a 30-minute drive each way from her home.

14           303. Ms. Soria often has to rely on her daughter to drive her to and from TASC  
15 when she has to test.

16           304. Ms. Soria borrows money from her parents or her daughter when she has  
17 to submit to drug and alcohol tests, because she fears that if she cannot pay for the test,  
18 she will not be allowed to test and will be terminated from the program.

19           305. Ms. Soria cannot borrow money from her family members to pay off the  
20 rest of the program fees because they cannot afford to give her the money.

21           306. Ms. Soria's family has helped her pay off portions of the program fees in  
22 the past with money received from tax refunds but they currently cannot afford to give  
23 her money to pay off any more of the program fees.

24           307. On July 15, 2019, Ms. Soria asked her case worker, Viviana Garcia, when  
25 her 90 days would be over and she would be off the program.

26           308. Ms. Garcia replied: "Your anticipated completion date is on 7/29/19 as  
27 long as you have a zero balance . . . ."  
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1           309. Ms. Soria asked, “what could I do if I can’t pay the 440.00 [I] still owe  
2 by the 29th” and informed Ms. Garcia that she “still do[esn’t] have a job.”

3           310. Ms. Garcia replied: “If you are unable to pay of[f] your fees in full by  
4 7/29/19 you will continue to comply with the program.”

5           311. Ms. Soria did not violate any program rules or policies between July 15,  
6 2019 and July 29, 2019, the date she would have completed the program if she could  
7 have afforded to pay the program fees.

8           312. Ms. Soria could not afford to pay the program fees in full by July 29,  
9 2019—and still cannot afford to pay the program fees in full—and thus remains on the  
10 program solely because she could not and cannot afford to pay the program fees.

11           313. Ms. Soria also cannot afford to pay Defendant TASC’s standard monthly  
12 minimum payment of \$160 or \$170 per month, which was set forth in the Client  
13 Contract to which she is subject.

14           314. Pursuant to Defendants’ written policy, if Ms. Soria cannot afford to  
15 make the minimum monthly payment she will be terminated from the diversion  
16 program.

17           315. Pursuant to Defendants’ policies, practices, and customs, if Ms. Soria is  
18 terminated from the diversion program, she will be prosecuted for felony possession of  
19 marijuana.

20           316. At orientation, Ms. Soria was told to sign a statement of facts confessing  
21 to possession of marijuana as a condition of entering the program.

22           317. Ms. Soria believed that signing the statement in order to enter the  
23 diversion program was the only way that she could avoid prosecution and potential for  
24 a two-year prison sentence and a \$150,000 fine.

25           318. Arizona law allows this confession to be used against Ms. Soria in court.

26           319. Accordingly, Ms. Soria believes that if she is prosecuted, she will be  
27 convicted of felony marijuana possession because she signed the confession.

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1                    **Injunctive Relief Class Representative McKenna Stephens**

2                    320. Plaintiff **McKenna Stephens** is a 24-year-old white woman.

3                    321. Ms. Stephens works as a part-time server at a restaurant.

4                    322. On October 29, 2016, Ms. Stephens was sitting with a friend in a car when  
5 they were approached by two police officers.

6                    323. The officers searched the car and found a small amount of marijuana and  
7 marijuana paraphernalia in the vehicle.

8                    324. Ms. Stephens was arrested for possession of marijuana.

9                    325. She was booked into a local jail and released.

10                   326. The arresting officer told Ms. Stephens that she would receive a letter in  
11 the mail regarding next steps.

12                   327. Ms. Stephens had no prior criminal convictions.

13                   328. She was not addicted to marijuana.

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

17                   330. The letter gave her a choice: she could agree to participate in the TASC  
18 diversion program or she would face felony prosecution.

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

22                   332. These threats were false.

23                   333. Because this was Ms. Stephens’s first marijuana arrest, under Arizona  
24 law, she could not receive jail or prison time if convicted of simple possession of  
25 marijuana.

26                   334. Nor was Ms. Stephens eligible for a \$150,000 fine.

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1           335. But Ms. Stephens believed the threats Defendant MCAO made in the  
2 letter.

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

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

8           338. Ms. Stephens attended orientation for the marijuana diversion program  
9 on September 18, 2018.

10           339. That same day, Ms. Stephens paid \$150 to TASC.

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

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

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

22           343. Ms. Stephens informed the TASC employee that she had a medical  
23 marijuana card and was legally able to use marijuana.

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

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1           345. During her first week in the marijuana diversion program, Defendants  
2 required Ms. Stephens to submit to four drug and alcohol tests.

3           346. Defendants required Ms. Stephens to pay \$15 for each of the four drug  
4 and alcohol tests.

5           347. Ms. Stephens intends to fulfill all of the non-monetary requirements of  
6 the diversion program within the first 90 days.

7           348. However, Ms. Stephens cannot afford to pay the \$1000 program fee  
8 within 90 days.

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

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

13           351. In order to complete diversion within 90 days, Ms. Stephens would have  
14 to pay well over \$300 each month.

15           352. Ms. Stephens could not pay this amount without defaulting on bill  
16 payments and sacrificing basic necessities.

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

21           354. Without sacrificing basic necessities or defaulting on bills, Ms. Stephens  
22 also cannot afford to pay Defendant TASC's standard monthly minimum payment of  
23 \$160 or \$170 per month, which was set forth in the Client Contract to which she is  
24 subject.

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1           355. If Ms. Stephens cannot afford to make the minimum monthly payment,  
2 pursuant to Defendants’ written policy, she will be terminated from the diversion  
3 program.<sup>45</sup>

4           356. Pursuant to Defendants’ policies, practices, and customs, if Ms. Stephens  
5 is terminated from the diversion program, she will be prosecuted for felony possession  
6 of marijuana.

7           357. At orientation, Ms. Stephens was told to sign a statement of facts  
8 confessing to possession of marijuana as a condition of entering the program.

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

12           359. Arizona law allows this confession to be used against Ms. Stephens in  
13 court.

14           360. Accordingly, Ms. Stephens believes that if she is prosecuted, she will be  
15 convicted of felony marijuana possession because she signed the confession.

16           **Individual Plaintiff Taja Collier**

17           361. Plaintiff **Taja Collier** is a 21-year-old African American woman.

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

20           363. The officer searched the car’s occupants and found a small cylinder in  
21 Ms. Collier’s purse that contained trace amounts of marijuana.

22           364. The amount of marijuana in the container was so small that the police  
23 officer did not weigh it.

24           365. Ms. Collier was placed under arrest for possession of marijuana.

25           366. Ms. Collier had no prior criminal record.

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

1           367. Ms. Collier was not addicted to marijuana.

2           368. In early Spring 2017, Ms. Collier received a letter from MCAO.

3           369. The letter gave her two choices: she could face felony charges for  
4 marijuana possession, or she could agree to participate in the TASC diversion program.

5           370. The letter warned Ms. Collier that if convicted, she could be sentenced to  
6 two years in jail and a fine of up to \$150,000, plus an 80% surcharge.

7           371. These threats were false.

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

10          373. Nor was Ms. Collier eligible for a \$150,000 fine.

11          374. But Ms. Collier believed the threats in the letter.

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

14          376. At the time of her arrest, Mr. Collier was a sophomore at Central Arizona  
15 College, where she studied social work.

16          377. Central Arizona College is located in Casa Grande, Arizona, which is  
17 almost an hour away from Phoenix.

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

21          379. Ms. Collier did not have a car or money to make such a long trip so  
22 frequently.

23          380. She had to stop attending school and move to Phoenix in order to  
24 participate in the diversion program.

25          381. Ms. Collier was told that she would need to pay \$150 at the orientation in  
26 order to start the program.

27          382. She planned to start the program on June 22, 2017.

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

3           384. Ms. Collier had recently started a job working part-time at a Target.

4           385. Ms. Collier made around minimum wage and worked approximately 16  
5 hours per week.

6           386. However, she had not yet received her first paycheck.

7           387. Ms. Collier called TASC's main office to tell them that she could not  
8 afford to pay the \$150 fee.

9           388. No one called her back.

10          389. At 6:51 a.m. on the morning her orientation was set to begin, Ms. Collier  
11 sent an email to the general email address for the possession of marijuana diversion  
12 program.

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

18          391. Later the same day, Ms. Collier reached a TASC employee by phone and  
19 rescheduled her orientation for July 6, 2017.

20          392. Several days later, however, on June 25, 2017, Ms. Collier learned that  
21 she would not be paid until after July 9, 2017.

22          393. Ms. Collier wrote again to the email address for the possession of  
23 marijuana diversion program and informed TASC that she needed to reschedule the  
24 orientation for after she got paid.

25          394. A TASC employee rescheduled Ms. Collier's orientation for July 13,  
26 2017.

1           395. The employee did not tell her that she could start the program even if she  
2 did not pay.

3           396. The employee also did not tell her that she could apply for a fee waiver  
4 or a fee reduction.

5           397. On July 13, 2017, Ms. Collier paid \$150 to TASC and attended the  
6 mandatory orientation.

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

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

12           400. Ms. Collier again emailed the address for the possession of marijuana  
13 diversion program.

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

18           402. No one responded to the email.

19           403. Nor did anyone call Ms. Collier to follow up.

20           404. Ultimately, Ms. Collier could not take the test because she could not  
21 afford to pay for it.

22           405. To pay for her drug tests going forward, Ms. Collier began to sell her own  
23 blood plasma whenever she was called to test.

24           406. Whenever Ms. Collier would learn that she had a drug test, she would  
25 schedule a blood plasma sale so that she could pay for the test.

26           407. Ms. Collier made \$20 to \$35 each time she sold her blood plasma.  
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1           408. However, according to the blood plasma center's rules, a person is only  
2 allowed to sell blood plasma twice each week.

3           409. Therefore, weeks when Ms. Collier was called to drug test more than  
4 twice were especially difficult for her to manage.

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

7           411. But she continued to sell her blood plasma because it was the only way  
8 she could pay for the drug tests.

9           412. Ms. Collier told her case manager at TASC that she sold her blood plasma  
10 to pay for drug tests.

11           413. The case manager never told her that she could take the tests without  
12 paying for them at the time of the test.

13           414. The case manager also never told her that she could apply for a reduced  
14 fee.

15           415. At times, even after selling her blood plasma, Ms. Collier could not afford  
16 to take drug and alcohol tests at TASC.

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

19           417. Instead, Ms. Collier would try to contact her case manager to tell her that  
20 she could not afford to pay to test.

21           418. Frequently, Ms. Collier's case manager would not answer her phone or  
22 respond to emails, and Ms. Collier would try to reach her by calling TASC's corporate  
23 office.

24           419. In September 2017, Ms. Collier became homeless.

25           420. She remained homeless for approximately one month.

26           421. While she was homeless, Ms. Collier slept in public parks.

27           422. On September 20, 2017, Ms. Collier emailed her case manager.  
28

1           423. She explained, “I have been homeless for the passed [sic] week so money  
2 has been really tight. ... It has been really tough.”

3           424. Ms. Collier also told her case manager in the email that she planned to  
4 start Job Corps and that she would be able to pay for drug and alcohol tests once she  
5 started.

6           425. Ms. Collier’s case manager responded five days later.

7           426. In her email, the case manager replied:

8                   “Sorry to hear that you are going through this. I am hoping  
9 things get better for you. I also noticed that since you are  
10 on your FINAL NOTICE, any missed test past this point  
11 will result in program termination. So I am happy to hear  
12 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.”

13           427. Again, the case manager did not suggest that Ms. Collier could take the  
14 tests without paying for them.

15           428. Nor did she invite her to apply for a reduced fee.

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

19           430. On October 10, 2017, TASC reported to MCAO that Ms. Collier had  
20 failed the diversion program.

21           431. In its reasons for failing Ms. Collier, TASC listed that Ms. Collier had not  
22 submitted to mandatory drug and alcohol tests.

23           432. As described above, Ms. Collier did not take these tests solely because  
24 she could not afford to pay for them.

25           433. TASC also stated that Ms. Collier was being failed because she had not  
26 paid the required TASC fee and had not paid the required drug fund assessment fee.<sup>46</sup>

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27 <sup>46</sup> In addition, TASC stated that Ms. Collier had not attended the program’s  
28 mandatory seminar. However, participants are required to take this seminar before they

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

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

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

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

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

9           439. 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           440. To re-enter the program, Ms. Collier was again required to pay the \$150  
13 admissions fee.

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

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

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

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

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

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

23 \_\_\_\_\_  
24 can successfully complete the program; they are not required to take it at a specific  
25 time. Ms. Collier would not have been failed from the diversion program solely because  
26 she had not yet completed the seminar. The only other reason TASC provided for failing  
27 Ms. Collier was that she did not respond to a non-compliance letter she received on  
28 August 7, 2017. But Ms. Collier was in contact with her case manager after receiving  
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           447. Ms. Collier is also still required to submit to drug and alcohol testing—at  
2 \$15 or \$17 per test—one to three times each week.

3           448. TASC still will not allow Ms. Collier to complete drug and alcohol tests  
4 unless she pays for them.

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

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

8           451. Ms. Collier wrote:

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

17           452. Ms. Collier’s case worker replied, “You have to pay for the program in  
18 order to complete the program. I understand that this is cost effective [sic] but in order  
19 for you to have you [sic] felony dismissed with prejudice you will have to complete all  
20 program requirement [sic] which includes paying all fees associated with the  
21 program.”<sup>47</sup>

22           453. On September 4, 2018, Ms. Collier was scheduled to submit to a drug and  
23 alcohol test at TASC.

24           454. Ms. Collier did not have any money to pay for the drug test.

25           455. Nevertheless, at approximately 6 p.m., Ms. Collier reported to the TASC  
26 office in Phoenix to submit to a test.

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27 <sup>47</sup> 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           462. During the 2017 fiscal year (July 1, 2016 through July 30, 2017), there  
2 were 2687 admittances to the possession of marijuana diversion program.

3           463. The marijuana diversion program has maintained similar numbers of  
4 admittances in its last several years of operation.

5           464. Therefore, there were likely at least 2500 admittances in the 2018 fiscal  
6 year.

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

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

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

14           467. The Class members' claims raise common issues of fact and law.

15           468. With respect to the Damages Class, those common questions include, but  
16 are not limited to:

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

469. 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

1 solely due to inability to pay violates the Fourth Amendment to the  
2 U.S. Constitution;

3 f. Whether Defendants have a policy, practice, and custom of requiring  
4 diversion participants to make a minimum monthly payment and  
5 terminating those who fail to do so, without inquiring into those  
6 participants' ability to pay; and

7 g. Whether Defendants' policy of terminating participants who cannot  
8 afford to make a minimum monthly payment violates the Due Process  
9 and Equal Protection Clauses of the Fourteenth Amendment to the  
10 U.S. Constitution.

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

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

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

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

19 472. Named Plaintiffs are capable of fairly and adequately protecting the  
20 interests of the Class because Named Plaintiffs do not have any interests antagonistic  
21 to the Class.

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

25 474. Plaintiffs' counsel are experienced in civil rights litigation and have  
26 successfully litigated a number of civil rights class action cases.

1 475. Many of those cases, like this one, involve unconstitutional penalties  
2 based solely on wealth status.

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

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

6 477. For Named Plaintiffs McKenna Stephens and Lucia Soria, as well as for  
7 the members of the Class, this case turns on what the Defendants' policies and practices  
8 are and on whether those policies are lawful.

9 478. The common questions of law and fact listed above are dispositive  
10 questions in the case for every member of the Class.

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

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

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

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

20 482. The common questions of law and fact listed above are dispositive  
21 questions in the case of every member of the Class.

22 483. Moreover, the question of liability can therefore be determined on a class-  
23 wide basis.

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

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28





1           498. Plaintiffs Stephens and Soria also cannot afford to pay the minimum  
2 monthly fees set by Defendant TASC.

3           499. Plaintiffs Stephens and Soria seek to enjoin Defendants from terminating  
4 them, and all others similarly situated, from the diversion program solely because they  
5 cannot afford to pay minimum monthly fees.

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

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

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

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

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

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

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

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

28

1           506. 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           507. 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           508. 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           509. 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           510. 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           511. 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, Mark Pascale,*  
22           *and Lucia Soria on behalf of themselves and all others similarly situated against all*  
23           *Defendants for damages.*

24           512. 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           513. 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           514. 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           515. 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 Plaintiffs McKenna Stephens and Lucia*  
14           *Soria on behalf of themselves and all others similarly situated against all Defendants*  
15           *for injunctive relief; and by Plaintiff Taja Collier on her own behalf against*  
                  *Defendant TASC for injunctive relief.*

16           516. 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           517. 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           518. 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           519. Plaintiffs Stephens and Soria are currently participants in Defendants'  
27 diversion program and cannot afford to pay the fees required to complete the program  
28 in 90 days.



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 26th day of August, 2019.

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/ A. Dami Animashaun  
12 A. Dami Animashaun  
13 Katherine Chamblee-Ryan  
14 Olevia Boykin  
910 17<sup>th</sup> Street NW, Second Floor  
Washington, D.C. 20006

15 Attorneys for Plaintiffs  
16  
17  
18  
19  
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21  
22  
23  
24  
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26  
27  
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