



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

TAMARA G. NELSON and TIMOTHEA  
RICHARDSON, individually and on behalf of  
all other persons similarly situated,

Plaintiffs,

v.

BELINDA C. CONSTANT, et al.,

Defendants.

Case No. 17-cv-14581-JVM

Division 1: Magistrate van Meerveld

(Class Action)

**SETTLEMENT AGREEMENT**

The parties agree to the following, and the parties jointly agree to enter into this Settlement Agreement which, in the event any party engages in any act or omission that is in breach of this Settlement Agreement, the class representative may move the Court to enter an order enforcing the terms and conditions of this Settlement Agreement.

**DEFINITIONS**

**Community Service:**

“Community service” shall not be limited to service performed for subdivisions of the municipal or state governments. The days of the week or hours during which service can be performed shall not be limited by the City Prosecutor. The City of Gretna’s Clerk of Court’s office shall maintain a list of approved nonprofit organizations where service may be completed; in the alternative, service may be performed at I.R.C. § 501(c)(3) organizations if such organizations agree to the placement and will appropriately verify the hours of work performed. Such groups should provide non-denominational services; i.e., if performing service with a faith-based organization or church, the service must provide a benefit open to all members of the public, regardless of

faith. For example, serving in a church-run soup kitchen that is open to the public, as opposed to serving as a deacon or playing in a church band at a religious service. The clerk of court shall solicit from the community suggestions for service projects. Community Service shall be credited at the rate of \$10 per hour or the federal minimum wage, whichever is higher.

### **Indigent**

An applicant shall be considered “indigent” if the deferred prosecution fee would pose a substantial financial hardship.

### **Substantial Financial Hardship**

A substantial financial hardship will be presumed, but not conclusively proven, whenever an applicant receives public assistance, including S.N.A.P. (“food stamps”), Temporary Assistance for Needy Families, Medicaid, Supplemental Security Income, Social Security Disability Insurance, resides in subsidized housing, or when an applicant’s income is less than 200% of the federal poverty guideline, all of which must be shown by appropriate documentation provided by the applicant.

## **PRELIMINARY MATTERS**

1. This Settlement Agreement represents the entire agreement between the parties.
2. “Plaintiffs” are the settlement class as defined in paragraph 9 below.
3. “Defendants” are the City of Gretna, the Mayor of Gretna, the Magistrates of the Gretna Mayor’s Court, the City Prosecutor.
4. “Intervenors” are the Clerk of Court of the Gretna Mayor’s Court and the Gretna Chief of Police who intervene in this settlement agreement.

5. Each party to this Settlement Agreement was assisted by counsel, understands the meaning and consequences of the Settlement Agreement, and executes the Settlement Agreement of his, her, its, or their own free will.
6. The Eastern District of Louisiana shall retain jurisdiction to enforce this Settlement Agreement for three years from the date of its approval by the Court.
7. Each party to this Settlement Agreement has cooperated in the preparation and drafting of this Settlement Agreement. Accordingly, the Settlement Agreement shall not be construed more strictly against any party than it is against any other party.
8. The claims compromised, settled, and resolved by this Settlement Agreement include all claims that were raised in the Original or Amended Complaints filed in this action pertaining to Defendants' operation of a "Deferred Prosecution Program" articulated as "Count Two" in Plaintiffs' Amended Complaint (ECF No. 41). This Agreement does not compromise, settle or resolve, and shall in no way impair, the other claims in this litigation, i.e., "Count One" of Plaintiffs' Amended Complaint, or any claims that may arise after the end of this Settlement Agreement.

#### **STIPULATION OF SETTLEMENT CLASS**

9. This agreement is conditioned upon the certification of a settlement class by the United States District Court for the Eastern District of Louisiana. The parties agree to a settlement class comprised of:

All persons denied participation in, terminated from, or threatened with termination from the City of Gretna's Deferred Prosecution Program.

Subclass A: all persons with unpaid Deferred Prosecution Program fees on a case filed in the Gretna Mayor's Court on or before December 31, 2017.

Subclass B: all persons terminated from the Deferred Prosecution Program from June 1, 2015, to present, who forfeited payments to the program, were later convicted, paid fines and fees upon conviction, but received no credit for the funds forfeited to the Deferred Prosecution Program.

Subclass C: all persons terminated from the Deferred Prosecution Program on or after January 1, 2018, for failure to pay and are either (i) awaiting trial or (ii) have failed to make their final payment as scheduled or have been attached for failure to appear.

### **PLAINTIFFS' COMMITMENTS**

10. Plaintiffs agree to dismiss Count Two of Plaintiffs' First Amended Complaint (ECF No. 41 at ¶¶ 93–96) with prejudice, subject to the Court's retaining jurisdiction to enforce the terms of this Agreement for a period of 3 years.

### **DEFENDANTS' COMMITMENTS**

11. Defendants, and to the extent applicable, Intervenors, agree to the following:
- a. Defendants shall develop a written admissions policy for the Gretna City Prosecutor's Deferred Prosecution Program.
    - i. Defendants shall confer with Plaintiffs in the development of this admissions policy, providing a draft of the proposed policy and an opportunity to comment prior to its implementation.
  - b. No applicant to the Deferred Prosecution Program shall be denied acceptance into or terminated from the Deferred Prosecution Program because of their inability to pay the program fees as opposed to their refusal to pay. The Defendants reserve the right, in the future, to abandon and/or cease the operation of the Deferred Prosecution Program.

- c. The policy shall not limit participation in the program to those who can afford to make monetary payments, as opposed to those who refuse to pay.
- d. Defendants shall waive all fees for Deferred Prosecution Program participants deemed indigent or may impose certain conditions in lieu of fees, such as community service, job training, substance abuse treatment, education, etc.
- e. The policy shall establish a procedure for determining whether an applicant is indigent such that certain conditions would be imposed in lieu of any Deferred Prosecution Program fees, i.e., community service, job training, substance abuse treatment, education, etc., or in certain limited circumstances both fees and alternative nonfinancial conditions would be waived, such as when a person is mentally or physically incapable of fulfilling other conditions.
  - i. Mental or physical incapacity to fulfill a nonfinancial condition of participation shall not be cause for denial of participation or termination from the program. Defendants shall exercise reasonable discretion to determine when such incapacities are present in applicants or participants. An applicant or participant with a mental or physical incapacity to complete nonfinancial conditions of participation will have all conditions waived—apart from the standard 6-month period of probation—and charges dismissed.
- f. Where compliance with a nonfinancial condition may cause a participant in the Deferred Prosecution Program to incur charges or fees—e.g., substance abuse counseling, job training, etc.—the participant’s noncompliance with a condition due to inability to pay such fees will not be considered cause for termination from the program. Only a willful nonpayment of such a fee may be considered cause for

termination. Where a participant has been noncompliant with a charge or fee of a nonfinancial condition, i.e., fee for substance abuse, etc., Defendants may substitute other nonfinancial conditions for continued participation in the program.

- g. Alternative conditions should have a rational relation to the alleged offense; e.g., substance-abuse counseling should not be required of a person charged with only simple theft.
- h. Participants will be allowed an amount of time to complete nonfinancial conditions of participation that is no less than the amount of time given to paying participants to pay the full amount of their fees.
  - i. Defendants will not impose longer “probation” periods upon indigent applicants in lieu of participation fees.
- i. Defendants may limit eligibility for the deferred prosecution program to a maximum of two offenses per calendar year. This exclusion will be applied equally to those can afford the application fee and those who cannot.
- j. To implement the admissions policy, Defendants shall develop a Deferred Prosecution Program application form that shall be completed by all applicants, who claim inability to pay, under oath and under penalty of perjury, which shall attest that the applicant cannot afford the payment of the deferred prosecution fee within a year’s time. The form will solicit information on the details of applicant’s financial situation sufficient to help the City Prosecutor make reliable determinations regarding the ability to pay, including in installment payments, over time, which may include: (i) the applicant’s and his or her spouse’s income from employment, such as IRS W-2 forms for the prior two years, real property, interest and dividends, gifts, alimony,

child support, retirement, disability, unemployment payments, public assistance, and other sources (ii) applicant and his/her spouse's employment history for the prior 2 years and gross monthly pay, such as IRS W-2 Forms, (iii) applicant and his/her spouse's present cash available in any financial institutions where cash is held, (iv) assets owned, e.g., real estate and motor vehicles; (v) money owed to applicant and his/her spouse, (vi) dependents of applicant and his-her spouse and their ages; (vii) estimation of itemized monthly expenses; (viii) taxes and legal costs; (ix) expected major changes in income or expenses; and (x) any additional information which the applicant wishes to provide to help explain the inability to pay. The application form will notify applicants that the financial information collected on the form will be used only to determine ability to pay.

- i. Defendants shall confer with Plaintiffs in the development of this application, providing a draft of the proposed application and an opportunity to comment prior to its implementation.
- k. If an applicant presents a valid SNAP qualification certificate, or otherwise presents appropriate, acceptable documentation of substantial financial hardship as defined above, the applicant shall not be required to comply with section 10(j) above.
- l. For those applicants who seek a monthly payment plan yet are not determined indigent such that fees would be waived, the monthly payment shall not exceed the applicant's average gross daily income for an eight-hour work day, as determined by no more than two of the applicant's pay stubs—or equivalent documentation—in the preceding two months. And the payment plan shall extend no longer than twelve months, at which time any remaining balance shall be forgiven.

- i. If a payment plan is created, or certain conditions are imposed in lieu of payment, the plan, or the conditions imposed, will be memorialized in a “Deferred Prosecution Agreement.” That document shall include language informing applicants of this limitation on the amount and duration of monthly payments and /or certain conditions. It shall also inform participants of their right to seek a modification to their monthly payment based upon a substantial change in the circumstances set forth at ¶ 10(j).
- m. Upon entry of this Agreement, Defendants shall waive all unpaid fees to the Deferred Prosecution Program in all accounts for cases filed in the Mayor’s Court on or before December 31, 2017. The class members with such charges will be considered to have successfully completed the Deferred Prosecution Program, and the City Prosecutor will therefore dismiss those charges.
- n. In cases of nonpayment of deferred prosecution fees occurring after entry of this Agreement, Defendants must inquire if a nonpayment was willful before terminating a person from the program; i.e., that the continued imposition or enforcement of any financial obligation imposed causes the applicant a substantial financial hardship as set forth above. An applicant determined to be the subject of a substantial hardship may not be terminated from the program solely because of nonpayment.
- o. Defendants shall identify all participants in the Deferred Prosecution Program who were terminated from the program for failure to pay program fees, during the period from June 1, 2015, to present, who also forfeited any payments to the Deferred Prosecution Program, and were later convicted, and paid fines and fees upon conviction, but received no credit for the funds paid under the program. For those



participants identified, Defendants will refund to them the sums paid to the Deferred Prosecution Program that had been forfeited to the Deferred Prosecution Program and for which no credit was given. If Defendants are unable to locate participants to whom a refund is due, Defendants shall report the unclaimed refund to the Louisiana Department of the Treasury's Unclaimed Property Division during a period not to exceed 12 months from the entry of this Settlement Agreement.

- p. All participants in the Deferred Prosecution Program who were terminated from the program, on or after January 1, 2018, for failure to pay and are:
  - i. awaiting trial; or
  - ii. failed to make their final payment as scheduled or have been attached for failure to appear

shall be given the choice to be placed back into the Deferred Prosecution Program upon appearance at the Mayor's Court within nine months of the U.S. District Court's approval of this agreement. Defendants shall provide general notice of this option for readmission to the program through postings in the Clerk of Court's office and the Mayor's Court. Defendants shall also include notice in all communications from the Mayor's Court. The notice shall include the following language: "If you were terminated from the Deferred Prosecution Program after January 1, 2018, for failure to pay fees, you can choose to rejoin the program. If you receive certain types of public assistance or have low income, you may qualify for certain alternatives to program fees, including community service and, in some instances, waiver of fees." Upon readmission to the Deferred Prosecution Program, defendants shall inquire of those former participants to determine if they qualify for a substantial financial

hardship and a waiver, or partial waiver, of deferred prosecution fees or the imposition of certain conditions in lieu of fees. To the extent any terminated participant has made any payments while participating in the Deferred Prosecution program, or thereafter, they are entitled to a full credit for those payments either after re-enrollment into the Deferred Prosecution program, or towards any future fine or fee if the case is adjudicated, or a refund if the case is dismissed. Defendants shall provide direct notice to those class members who are due a credit or refund under this provision.

- q. The Deferred Prosecution agreement, the City's online payment portal, and any termination notices, default notices, payment receipts, or payment plans produced to program participants by the City Prosecutor, Clerk of Court, or other Defendants shall include the following language: "Are you having trouble making payments to the Deferred Prosecution Program? If you receive certain types of public assistance or have low income, you may qualify for certain alternatives to program fees, including community service and, in some instances, waiver of fees. Contact the Clerk of Court for more information."

12. Defendants shall produce a monthly report to Plaintiffs' counsel on or about the 15<sup>th</sup> of the month, capturing Program data for the preceding month. That report will identify:

- a. the number of applicants to the program;
- b. the number of applicants denied participation and the reason for denial;
- c. the number of individuals accepted into the program;
- d. the number of indigency waivers sought based upon the applications filed;

In the first report produced under this provision, the Defendants will also produce an accounting—to include name, mailing address, and any amounts credited—of the persons identified in provisions 11(o) and 11(p). Defendants need not produce this data in subsequent reports. Upon request of Plaintiffs, Defendants will either produce or make available for inspection and copying (at defendants' election) the underlying documents, including application documents, indigency determinations, and payment agreements in accordance herewith. The Defendants shall not be required to maintain the underlying documents beyond 3 years from the creation of the documentation, or enrollment in to the Deferred Prosecution Program, whichever first occurs. Plaintiffs' counsel shall be permitted to use a portable scanner to copy the underlying documents (only) upon three days' notice and at reasonable times. Defendants shall not be required to create, maintain or produce these reports after the expiration of 3 years from the date of this Agreement. The Defendants shall not be required to provide access to the underlying documents after the expiration of three years from the date of this Agreement, except as may be required by the Louisiana Public Records Law, La. R.S. §§ 44:1 et seq.

13. In the event Plaintiffs determine any Defendant is in breach of any obligation described herein, such Defendant shall have the right to cure any breach or default within ten (10) business days of receiving notice of such a breach or default delivered by certified mail to such Defendant, along with a copy to undersigned by counsel by e-mail or facsimile transmission.
14. In consideration of the commitment contained herein, and the benefits provided or to be provided hereunder, this Settlement Agreement shall fully resolve, extinguish, and finally and forever bar, and the Plaintiffs hereby release, all claims described in ¶¶ 95–98 of the

Complaint (ECF No. 1) and ¶¶ 93–96 of the First Amended Complaint (ECF No. 41). Upon final approval by the court, this Settlement Agreement shall be fully binding on, and fully extinguish and release the claims of, all members of the settlement class.

*/s/ Eric A. Foley*

---

Eric A. Foley, La. Bar No. 34199, TC  
James W. Craig, La. Bar No. 33687  
Elizabeth Cumming, La. Bar No. 31685  
Roderick & Solange MacArthur Justice Center  
4400 S. Carrollton Ave.  
New Orleans, LA 70119  
(504) 620-2259 (p)  
(504) 208-3133 (f)  
eric.foley@macarthurjustice.org  
jim.craig@macarthurjustice.org  
elizabeth.cumming@macarthurjustice.org

*Counsel for Plaintiffs Tamara Nelson and Timothea Richardson*

*/s/ Leonard L. Levenson*

---

LEONARD L. LEVENSON, T.A. (#8675)  
CHRISTIAN W. HELMKE (#29594)  
DONNA R. BARRIOS (#32093)  
424 Gravier Street, First Floor  
New Orleans, LA 70130  
Telephone: (504) 586-0066  
Facsimile: (504) 586-0079  
lenlawyer@aol.com  
cwhelmke@gmail.com  
dbarrios@bellsouth.net

*Counsel for Defendants ARTHUR LAWSON, JR, in his official capacity, and TERRI BROSSETTE, in her official capacity*

*/s/ E. John Litchfield (L.L.L.)*

\_\_\_\_\_  
E. JOHN LITCHFIELD, T.A. (#8622)

MICHAEL J. MARSIGLIA (#30271)

Place St. Charles – Suite 4204

201 St. Charles Avenue

New Orleans, Louisiana 70170

(504) 568-0541 phone

(504) 561-8655 fax

jlitchfield@berriganlaw.net

mmarsiglia@berriganlaw.net

*Counsel for Defendants Belinda C. Constant, Raymond A.  
Osborn, Jr., Olden C. Toups, Jr.,  
Walter J. LeBlanc, and the City of Gretna.*