**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF ALABAMA**
**NORTHERN DIVISION**

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| **LOUIS HENDERSON, et al.,**<br><br>Plaintiffs,<br><br>v.<br><br>**KIM THOMAS, Commissioner, Alabama Department of Corrections, et al.,**<br><br>Defendants. | Civil Case No. 2:11cv224-MHT |

**PLAINTIFFS' RESPONSE TO THE STATE'S SECOND SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND TO THE STATE'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THE STATE'S MOTION TO DISMISS**

In their Second Supplemental Opposition to Class Certification and their Supplemental Memorandum in Support of their Motion to Dismiss, Defendants contend that the release of Named Plaintiff Albert Knox deprives him, and thus the class, of standing. Defendants further assert that Mr. Knox's claims should be denied and he should be dismissed from the case. As to class certification, they contend that Plaintiffs do not meet the numerosity requirement of Fed. R. Civ. P. 23(a). *See* The State's Second Supplemental Opposition to Plaintiffs' Motion for Class Certification (Doc. 82), at 2 (hereinafter "Supp. Opp."); Supplemental Memorandum in Support of the State's Motion to Dismiss (Doc. 83), at 2. These assertions are without merit.

## I. The Release of Albert Knox Does Not Defeat Standing

When Plaintiffs filed the complaint and motion for class certification, Albert Knox was a prisoner housed in the HIV-segregated dormitory at Limestone Correctional Facility. *See* Second Amended Complaint (Doc. 61) ¶ 22. *See also* Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Class Certification (Doc. 3), at 1. He has since been released on parole.

However, because of this case's status as a putative class action, Mr. Knox's standing relates back to when the complaint was filed despite the expiration of his individual interest. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991). In *McLaughlin*, the U.S. Supreme Court held: "That the class was not certified until after the named plaintiffs' claims had become moot does not deprive [the Court] of jurisdiction. We recognized in *Gerstein* that '[s]ome claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires.' … In such cases, the 'relation back' doctrine is properly invoked to preserve the merits of the case for judicial resolution." *Id.* (*quoting U.S. Parole Commission v. Geraghty*, 445 U.S. 388, 399 (1980)) (*citing Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975))). *See also Sosna v. Iowa*, 419 U.S. 393, 402 n. 11 (1975) ("There may be cases in which the controversy involving the named plaintiffs is such that it becomes moot as to them before the district court can reasonably be expected to rule on a certification motion. In such instances, whether the certification can be said to 'relate back' to the filing of the complaint may depend upon the circumstances of the particular case and especially the reality of the claim that otherwise the issue would evade review."). As this Court held, "Whenever class certification relates back, the named plaintiff has standing to pursue the issue of certification regardless of the mootness of his or her individual claims." *Candy H. v. Redemption Ranch, Inc.*, 563 F. Supp. 505, 518 (M.D. Ala. 1983). *See also Payne v. Travenol Laboratories, Inc.*, 565 F.2d 895, 898 (5th Cir. 1978) ("[T]he necessary requirement is for a named plaintiff to have standing at the time the litigation is filed." (*quoting Thurston v. Dekle*, 531 F.2d 1264, 1269-70 (5th Cir. 1976))).

Relation back is particularly appropriate for a prisoner rights case like this one, as these cases are classic examples of fluid classes. *See, e.g.*, *McLaughlin*, 500 U.S. at 52 (applying the

relation back standard to jail inmates); *Geraghty*, 445 U.S. at 399 (applying the relation back standard to a class of federal prisoners); *Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997) (noting that jail inmates present a "classic example of a transitory claim..."). In this case, as Defendants note, Supp. Opp. at 3-4, several Plaintiffs have already been released from custody since the Complaint was filed. Mr. Knox's release from ADOC custody does not deprive him of standing and his claims should not be dismissed.

Defendants further argue that because Plaintiffs did not necessarily experience every manifestation of ADOC's segregation policy, they lack standing to challenge those particular injuries and are thus not adequate class representatives. *See* Supp. Opp., at 7. To the contrary, all Plaintiffs have standing to challenge ADOC's policy of segregating and discriminating against prisoners with HIV because all Plaintiffs are subject to and aggrieved by that unitary policy. For class certification purposes, moreover, there is no requirement that the injuries they suffer as a result of that policy be factually identical to those suffered by all class members. *See Appleyard v. Wallace,* 754 F.2d 955, 958 (11th Cir. 1985). Plaintiffs fully addressed this point in previous briefings. *See* Plaintiffs' Response to Defendant's Motion to Stay or, in the Alternative, Opposition to Plaintiffs' Motion for Class Certification (Doc. 49), at 8-24; Memorandum of Law in Support of Plaintiffs' Motion for Class Certification (Doc. 3), at 3-10.

## II. The Numerosity Requirement is Satisfied

Defendants argue that because the putative class representatives are not numerous, the class fails to meet the numerosity requirement of Rule 23(a). *See* Supp. Opp., at 8. This argument is premised on a fundamental misunderstanding about the nature of class actions. Class actions serve the interests of judicial efficiency by having a small number of representatives stand in for a larger group for which joinder would be impracticable. *See American Pipe &*

*Const. Co. v. Utah*, 414 U.S. 538, 553 (1974) (characterizing "efficiency and economy of litigation" as "a principal purpose of the [class action] procedure"); *Smith v. Swormstedt*, 57 U.S. 288, 303 (1853) ("Where the parties interested in the suit are numerous … it would not be possible, without very great inconvenience, to make all of them parties. … For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body… ."). Requiring that the class representatives themselves be numerous would defeat the purpose of having a class action in the first place.

The proposed class is defined as "all prisoners diagnosed with HIV in the custody of the Alabama Department of Corrections, now and in the future." *See* Plaintiffs' Motion for Class Certification (Doc. 2), at 1. For the reasons set forth in previous briefing, this proposed class meets the numerosity requirement. *See* Memorandum of Law in Support of Plaintiffs' Motion for Class Certification (Doc. 3), at 4-5; Plaintiffs' Response to Defendant's Motion to Stay or, in the Alternative, Opposition to Plaintiffs' Motion for Class Certification (Doc. 49), at 9-12.

**CONCLUSION**

For the foregoing reasons, the Court should grant Plaintiffs' Motion for Class Certification.

RESPECTFULLY SUBMITTED:

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of February, 2012, I filed a true copy of the foregoing Response to the State's Second Supplemental Opposition to Class Certification and their Supplemental Memorandum in Support of their Motion to Dismiss with the Court using the CM/ECF electronic filing system, which will automatically forward a copy to counsel for the Defendants:

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