

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

LOUIS HENDERSON, et al.,

Plaintiffs,

v.

**KIM THOMAS, Commissioner,
Alabama Department of Corrections, et
al.,**

Defendants.

Civil Case No. 2:11cv224-MHT

(wo)

**ORDER PRELIMINARILY APPROVING
PARTIES' PROPOSED SETTLEMENT AGREEMENT**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Parties jointly move the Court to grant preliminary approval to the proposed Settlement Agreement (attached as Exhibit A-1 and A-2 to this Order); to approve the form of Notice to class members of the proposed Settlement Agreement (attached as Exhibit B to this Order); and to approve the form for Objection/Comment on proposed Settlement Agreement (attached as Exhibit C to this Order). Based on the entire record before the Court, the Court finds:

The proposed Settlement Agreement is the result of extensive arms-length negotiations between the Parties, after a five-week trial on the merits and the Court's entry of its Opinion and Judgment. After reviewing the terms of the

proposed Settlement Agreement in light of the record and of controlling legal authority, the Court finds the proposed Settlement is sufficiently reasonable, adequate, fair, and consistent with relevant federal law to warrant preliminary approval and provision of notice to interested parties of a fairness hearing.

The Court also finds that the form of Notice attached hereto as Exhibit B, together with a copy of the proposed Settlement Agreement (Exhibits A-1 and A-2), constitutes due and sufficient notice of the proposed Settlement Agreement to all persons entitled to receive notice required by due process and Rule 23 of the Federal Rules of Civil Procedure. The Court further finds that the method of delivery of notice proposed by the Parties, namely, by hand-delivery by Defendants to each current member of the Plaintiff Class, at least thirty days before the deadline for filing objections as provided by Rule 23(e)(2), F.R. Civ. P., to be the most effective and practicable manner of notice under the circumstances. The Court also finds the form for Objection/Comment attached as Exhibit C is adequate.

IT IS THEREFORE ORDERED THAT the joint motion for preliminary approval (doc. no. 284) is granted as follows:

1. The proposed Settlement Agreement attached hereto as Exhibits A-1 and A-2 is PRELIMINARILY APPROVED. Final approval of the Settlement Agreement and entry of the Proposed Order attached thereto incorporating its

terms is subject to a hearing and to review by the Court of any objections submitted by interested parties to the terms of the Settlement Agreement.

2. On or before August 2, 2013, Defendants will notify Plaintiffs of the total number of class members currently in ADOC custody. On or before August 6, Plaintiffs will provide Defendants' counsel with copies of Exhibits A-1, A-2, B, and C for every class member in ADOC custody according to the information provided by ADOC. On or before August 9, 2013, Defendants will provide by hand delivery a copy of Exhibits A-1, A-2, B, and C to every current class member in its custody as of that date.

3. Defendants shall make arrangements to provide all class members the opportunity to meet with class counsel during the week of August 19-23, 2013.

4. Any interested party may object to the proposed Settlement Agreement by filing an objection by September 6, 2013. To be considered by the Court, any written objections to final approval of the proposed Settlement Agreement must state that the objector is a prisoner with HIV currently in the custody of the Alabama Department of Corrections, and must state the basis for the objection. The objection must be filed in writing, along with any other papers the objector wishes the Court to consider, by mailing them by September 6, 2013 to the Clerk of the United States District Court, attn.: *Henderson v. Thomas* Settlement, P.O. Box 711, Montgomery, AL 36101-0711.

5. The Court will hold fairness hearings at Tutwiler Prison for Women, Wetumpka, Alabama, at 10:00 AM on September 24, 2013 and at Limestone Correctional Facility, Harvest, Alabama, at 11:00 AM on September 26, 2013, at which time the Court will hear oral argument and testimony relating to whether the settlement is fair, reasonable and adequate. In the discretion of the Court, interested persons may appear personally and be heard at the fairness hearings. Should an objector choose to be represented by counsel at the fairness hearings, he or she may do so at his or her own expense. In order to be heard at the fairness hearings, any attorney representing an objector must file a Notice of Appearance with the Court and serve counsel for all parties at least ten calendar days before the fairness hearing. The Court will not permit anyone who fails to timely file and serve a written objection to raise such objection at the fairness hearings, except for good cause shown. Anyone who fails to object in the manner prescribed herein shall be deemed to have waived any such objection.

6. If objections are filed, the Parties' counsel may engage in discovery concerning the objections prior to the fairness hearing.

7. The Parties' counsel shall serve on each other and file with the Court, at least three calendar days prior to the fairness hearing, any further documents in support of the proposed Stipulated Order, including responses to any papers filed by interested parties.

IT IS SO ORDERED, this 6th day of August, 2013.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE