

1 recognizes that the named plaintiffs represent the class and that defenses must be asserted
2 against them, and not against class members individually, on all class issues. The Court
3 cannot determine at this point, however, whether litigation of individual class member issues
4 will be required after all class issues have been resolved, and therefore will not preclude
5 Defendant from bifurcating their affirmative defenses against the class members.¹ This
6 decision portends no departure from the class litigation procedures of Rule 23.

7 The Court notes that the more than 50 pages of briefing on these issues have largely
8 been an exercise in shadow boxing. The applicability and sufficiency of affirmative defenses
9 will be far more relevant at the summary judgment and trial stages of this case.

10 **IT IS ORDERED:**

- 11 1. Plaintiffs' motion to strike (Dkt. #158) is **denied** as moot.
- 12 2. Defendant's motion to modify the second case management order and for
13 leave to file a second amended answer and affirmative defenses (Dkt. #161)
14 is **granted**.

15 DATED this 2nd day of February, 2010.

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19 David G. Campbell
20 United States District Judge

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27 ¹The Court notes that the two cases cited by Plaintiffs – *Cooper v. Southern Co.*, 390
28 F.3d 695, 713 (11th Cir. 2004) and *In re HealthSouth Corp. Secs. Litigation*, Nos. CV-03-
BE-1500-S, CV-03-BE-1501-S, CV-03-BE-1502-S, 2009 WL 3152226, *9 (N.D. Ala. Sept.
30, 2009) – do not address the pleading of affirmative defenses