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

JOHNNY REYNOLDS, et al.,	)	
	)	
Plaintiffs,	)	
	)	<b>CIVIL ACTION NO.:</b>
	)	2:85-CV-665-MHT
v.	)	
	)	
ALABAMA DEPARTMENT OF	)	
TRANSPORTATIO N, et al.,	)	
	)	
Defendants.	)	

## JOINT PROPOSAL FOR RESOLUTION OF PLAINTIFFS' INDIVIDUAL CONTEMPT CLAIMS

The Court has directed counsel for Defendants and Plaintiffs to submit a plan for the resolution of Plaintiffs' remaining individual contempt claims ("ICCs"). (ECF No. 9152). In particular, the Court directed that a plan be devised to winnow the number of ICCs to those that potentially have merit and to dismiss those that no longer have merit. After consultation with Special Master González and in compliance with the Court's instructions, the parties present the following plan of action:

<u>First</u>. The decision of which ICCs to pursue and which to voluntarily dismiss remains with the Plaintiffs and their counsel. Defendants reserve all defenses and the right to file dispositive motions with respect to any claims not otherwise voluntarily dismissed.

<u>Second.</u> Those ICCs that have been previously dismissed by court order or voluntarily dismissed by the claimant are no longer pending and the fact that one or more of the previously dismissed claimants may have responded to the court's questionnaire does not revive the claim. Claimants whose claims have been dismissed by court order but who submitted a questionnaire are: Jerry Pogue (ECF No. 8981) and Leroy Williams (ECF No. 8536). Counsel for plaintiffs has previously withdrawn from representation of Mr. Pogue and Mr. Williams.

Third. Approximately 140 claimants have filed petitions for bankruptcy or have had a bankruptcy pending since March 5, 2003. Defendants' counsel is in the process of reviewing the bankruptcy petitions of these claimants and **by February 15, 2016,** will provide Plaintiffs' counsel with a list of those claimants whom they believe did not disclose their ICC to the bankruptcy court together with supporting documentation. Plaintiffs' counsel will then evaluate

the information and **by March 16, 2016,** inform Defendants' counsel of those claimants to whom a notice of potential dismissal will be sent. For any remaining claimants who filed for bankruptcy or have a bankruptcy pending but to whom judicial estoppel does not apply or whose bankruptcy records defendants could not locate, Plaintiffs' counsel will make an initial assessment of whether their claims are meritorious (*see* Seventh item below).

Fourth. On or before March 11, 2016, plaintiffs' counsel will identify by name those claimants who were sent court questionnaires but who failed to respond within the time provided (by March 6, 2015). Those claimants will be sent a notice of potential dismissal. Plaintiffs reserve their rights to argue against dismissal of specific claims based on failure to receive the notice and for other extenuating circumstances. The parties have agreed to discuss certain individuals and the effect of their individual circumstances.

<u>Fifth</u>. Plaintiffs' counsel will attempt to identify those ICCs who retired on or before the Fairness Hearing on May 29, 2001 and those individuals will be notified of the Court's ruling on available relief through a notice of potential dismissal. For claimants who retired after May 29, 2001, Plaintiffs' counsel will conduct an initial assessment to evaluate their claims, taking special consideration of the effect of retirement (*See* Seventh item below).

<u>Sixth.</u> The Plaintiffs whose individual contempt claims are at issue in this litigation were identified in prior submissions by the parties. *See* ECF Nos. 6492, 7040. There are twelve (12) individuals who completed questionnaires but are not listed in ECF Nos. 6492 and 7040. Those persons include Lena M. Burroughs, Elaine M. Corley, Eugene L. Elmore, James P. Hollis, Alvin Peoples, Sheila Peoples-Black, Stanley W. Perry, James Potts, Kelvin L. Roberts, Vivian Smith, Thelma R. Webster, and Lillian Williams. Plaintiffs' counsel does not contend that responding to the court's questionnaire creates a claim. Additionally, Sammy Lee Gaines and Geraldine Little were not listed in ECF No. 7040 and those claims remain under discussion.<sup>1</sup>

<u>Seventh.</u> Concurrent with the execution and completion of items one through six, plaintiffs' counsel will review the remaining ICCs and assess which of the claimants, if any, should receive a notice of potential dismissal. This review shall be completed **on or before August 10, 2016.** The notices of potential dismissal due under this paragraph will be sent out **on or before October 10, 2016.** 

<u>Eighth</u>. The special master will work with counsel to draft the notices of potential dismissal that will be sent from the Court to the claimants. The parties will have the notices of potential dismissal due under Items 3, 4, and 5 ready for mailing **by July 20, 2016**. The notices of potential dismissal due for all paragraphs will be sent by registered mail and the expense will be deducted from the contempt fines held in the court's treasury.

Ninth. Following the completion of items one through eight, but no later than **August 26**, **2016**, the special master will convene a meeting with counsel and establish a plan for the review and resolution of any remaining ICCs. The projected date for the completion of Plaintiffs' ICCs

<sup>&</sup>lt;sup>1</sup> Plaintiffs' counsel contends that the Plaintiff ICCs identified in ECF Nos. 7383 and 7556 (Plaintiffs' Motion to Amend ICCs) should be included in this litigation. Defendants objected (ECF No. 7445), and the issue was not resolved. (ECF Nos. 7487, 7562).

is August 25, 2017. The parties will update the projected completion date of August 25, 2017, after the planning meeting with the special master.

## Respectfully submitted,

s/ Russell W. Adams

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been filed with the Clerk of Court using the CM/ECF system which will electronically notify that the following counsel of record:

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on this the 10th day of February, 2016.

s/ Russell W. Adams
OF COUNSEL