

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LIONEL GUSTAFSON, <u>et al.</u>,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL ACTION NO. 05-0352-CG-L
)	
ADRIAN JOHNS, <u>et al.</u>,)	
)	
Defendants.)	

ORDER

This matter is before the court on the original defendants' motions to take judicial notice (Docs. 81, 82) and motion for judgment on the pleadings with memorandum in support (Docs. 83 and 84). Plaintiffs have filed their response to these motions. Intervenor defendants have not had an opportunity to state their position(s) in regard to the motion. Accordingly, the court sets the following briefing schedule:

Responses by intervenor defendants and any supplemental response by plaintiffs shall be filed no later than **October 18, 2005**. Any **reply** by the original defendants must be filed no later than **October 28, 2005**.

Without limiting the discussion of issues raised by the motions, the court requests that, in addressing the preclusive effect of the Montiel v. Davis litigation raised by the motion for judgment on the pleadings (Doc. 84), the parties discuss the following:

1. The doctrine of virtual representation, and the relevance, if any, of the public law aspect of this case;
2. The extent to which the Montiel v. Davis litigation was, in substance, a class action, and the

relevance thereof. See Doe v. Bush, 261 F.3d 1037 (11th Cir. 2001), and cases cited therein;

3. The identity of interests between the present parties and the parties in Montiel;
4. Factors relevant to whether there is a close relationship between the parties in the present case and the parties in Montiel, including, inter alia: any parties in common, any attorneys in common, any supporters in common (financial or otherwise); publicity attending the Montiel litigation, or other evidence of awareness thereof or acquiescence therein by present parties;
5. The adequacy of legal representation of plaintiffs in Montiel; and
6. Any evidence of tactical maneuvering or efforts to avoid the preclusive effect of Montiel, and the relevance thereof.

The page limitations of Local Rule 7.1 are applicable to the responses and replies. Because plaintiffs have already filed a response and defendants have replied, any supplemental response filed by plaintiffs or replies filed by the original defendants shall be no longer than **15 pages**.

DONE and ORDERED this 30th day of September, 2005.

/s/ Callie V. S. Granade
CHIEF UNITED STATES DISTRICT JUDGE