

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-N-870 (OES) (Consolidated for all purposes with Civil Action No. 96-N-343)

JESSE MONTEZ, et al.

Plaintiffs,

-vs.-

BILL OWENS, et al.

Defendants.

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Claim Number X-339

Category: Untimely Filed Claim

Claimant: Barbara Gutierrez-Gonzales, #92076

Address of Claimant: LVCF, 1401 W. 17<sup>th</sup> Street, Pueblo, CO 81003

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**ORDER OF DISMISSAL OF SPECIAL MASTER**

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THIS MATTER comes before the Special Master on the damage claim form of Claimant. Claimant has alleged that she is mobility impaired. Claimant also stated that she has been in DOC custody on four occasions, with the latest incarceration in 2007 extending to the present time.

Claimant filed a supplemental form and alleged in that form in paragraph 5, in part, as follows:

Since original slip and fall that caused my disability April 6, 08, I have fallen a total of 3 times more...

Claimant did not provide any additional information with her supplemental form, and this notation indicated that Claimant might not have had a disability until 2008. A further order was issued on February 11, 2009 directing Claimant to provide additional information. Claimant has not responded to that order.

This case was commenced in 1992 under the Americans with Disabilities Act and Rehabilitation Act. The general allegations were that DOC had many inmates who were disabled and who were being discriminated against because of those disabilities. On August 27, 2003, Judge Nottingham approved the Remedial Plan. That document is the written settlement agreement between counsel for the class and Defendants. Judge Nottingham held a fairness hearing and then

approved the settlement. Article XXXII of the Remedial Plan provides for a claim process for individuals who were in DOC custody on or before August 27, 2003 and were the victims of discrimination prohibited by the ADA and Rehabilitation Act on or before that date.

Claimant has not alleged that she was disabled on or before August 27, 2003. As a result, there is no jurisdiction over the damage claim. Claimant is not precluded from pursuing a separate lawsuit for what occurred in 2008.

IT IS HEREBY ORDERED that the damage claim of Barbara Gutierrez-Gonzales is dismissed for lack of jurisdiction; and

IT IS FURTHER ORDERED that Claimant and Defendants are advised that they may file an objection to this Order pursuant to Federal Rule of Civil Procedure 53(g)(2), but said objection must be filed with the Clerk of the United States District Court, 901 19<sup>th</sup> Street, Denver, CO 80294 **on or before May 26, 2009.**

SIGNED this 13<sup>th</sup> day of March, 2009.

BY THE COURT:

*/s/ Richard M. Borchers*

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Richard M. Borchers  
Special Master