

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 (JESUS) MONTEZ, et al.,

Plaintiffs,

-vs.-

BILL OWENS, et al.,

Defendants.

Claim Number: 01-197

Category: I

Claimant: Daniel Martinez, #120983

Address of Claimant: CTCF, P.O. Box 1010, Canon City, CO 81215-1010

ORDER OF SPECIAL MASTER

THIS MATTER comes before the Special Master on the motion of enforcement of existing remedial plan (#3978) and various accompanying documents (#3980). In that motion, Claimant alleges that he is deaf and that the Remedial Plan has not been complied with by officials of the Colorado Department of Corrections (DOC).

The Special Master would note that Claimant filed a damage claim in 2005. That claim was dismissed on January 3, 2006 because Claimant had not been in DOC custody on or before August 27, 2003.

To the extent that Claimant is attempting to seek Court intervention on behalf of the class, Claimant is precluded from doing so by existing case law. The United States Court of Appeals for the Tenth Circuit in *McNeil v. Guthrie*, 945 P.2d 1163 (10th Cir. 1991) held that *pro se* pleadings must be accepted for filing in a class action, but there can be no action on those documents except by class counsel. The court noted that “individual prisoners lack standing to individually litigate matters relating to the class action...”

To the extent that Claimant is seeking individual relief under the Remedial Plan, there is a question under *McNeil* whether jurisdiction exists to allow *pro se* motions for relief. The present case law provides that individual requests must go through class counsel or be pursued in separate litigation. That jurisdictional issue is before Judge Arguello and will be resolved in the near future.

Claimant’s motion and documents will be accepted for filing. Nothing further can be done

until the jurisdictional issue is resolved.

IT IS HEREBY ORDERED that Claimant's pleadings are accepted for filing and will be held in abeyance.

SIGNED this 27th day of May, 2009.

BY THE COURT:

/s/ Richard M. Borchers

Richard M. Borchers
Special Master