

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 10-cv-02242-WYD-KLM

MICHAEL JASON MARTINEZ;
ELIZABETH FRITZ;
THOMAS TRUJILLO;
AMBER HUGENOT;
GARY HARRISON;
ROBERT RUMPF; and
DAMIAN GRADELESS, on behalf of themselves and all others similarly situated,

Plaintiffs, and

CALLIE GONZALES,

Plaintiff-Intervenor,

v.

TERRY MAKETA, in his official capacity as El Paso County Sheriff,

Defendant.

ORDER

THIS MATTER is before the Court on two motions filed March 28, 2011: the parties' Joint Motion to Approve Resolution of Class Action and Plaintiff's Unopposed Motion for Attorneys' Fees. For the reasons set forth below, the Joint Motion to Approve Resolution of Class Action is granted in part and deferred in part. Plaintiff's Unopposed Motion for Attorneys' Fees is deferred.

By way of background, this class action was brought pursuant to 42 U.S.C. § 1983 by Plaintiffs, prisoners at the El Paso County Jail in Colorado Springs, Colorado, who are challenging the Jail's policy restricting prisoners' outgoing correspondence, with

certain exceptions, to 4 x 6 inch postcards supplied by the Jail. Plaintiffs allege that this policy violates their rights under the First and Fourteenth Amendments to the United States Constitution and Article II, sections 10 and 25 of the Colorado Constitution.

I first address the Joint Motion to Approve Resolution of Class Action. The motion notes that on February 1, 2011, the parties filed a Joint Motion to Hold Case in Abeyance Pending Finalization of Settlement. That document outlined the terms of the resolution to which the parties had agreed. Magistrate Judge Mix granted the motion and ordered all deadlines in the case stayed until February 28, 2011. She further ordered the parties to file joint stipulations regarding resolution of this case.

The parties have memorialized their Joint Stipulations Supporting Resolution of Class Action which they contend support this Court's approval of the proposed resolution of this case. These Stipulations are attached to the Joint Motion. (ECF No. 55-2.) The parties stipulated therein, among other things, that the Court should grant the pending motion for class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(2), appoint counsel for the plaintiff class, issue a permanent injunction incorporating the terms of the preliminary injunction that the Court entered on December 21, 2010, require Defendant to pay Plaintiffs' reasonable costs and attorney fees' in the amount of \$60,000 pursuant to Rule 23(h), issue a notice pursuant to Rule 23(e) to class members of the proposed resolution of the case that Defendant shall post within the El Paso County Jail, and set a hearing to determine whether the resolution is fair, adequate and reasonable. The parties request in their Joint Motion that this relief be granted.

The parties agree that posting the notice within the jail in the manner set forth in the Joint Stipulations is a reasonable way to notify all class members who would be bound by the proposed resolution of the case. The parties also agree in the Joint Motion that the proposed resolution provides all the relief requested in the Complaint, is fair to the absent members of the class and is reasonable and adequate.

Having reviewed the motion and being fully advised in the premises, I find that the motion should be granted in part and deferred in part. I grant the motion to the extent it asks that I grant the pending motion for class certification pursuant to Fed. R. Civ. P. 23(a) and (b)(2), appoint counsel for the plaintiff class, issue a notice pursuant to Rule 23(e) to class members of the proposed resolution of the case that Defendant shall post within the El Paso County Jail, and set a hearing to determine whether the resolution is fair, adequate and reasonable. The fairness hearing is set for Wednesday, May 25, 2011, at 3:00 p.m. I defer the request to approve resolution of the class action or the relief sought in connection therewith, including issuance of a permanent injunction and an award of attorneys' fees and costs, as well as Plaintiff's Unopposed Motion for Attorneys' Fees, until the fairness hearing.

In conclusion, it is

ORDERED that the Joint Motion to Approve Resolution of Class Action (ECF No. 55) is **GRANTED IN PART AND DEFERRED IN PART** as set forth in this Order. In accordance therewith, it is

ORDERED that Plaintiffs' Motion to Certify Class and Appoint Class Counsel (ECF No. 2) is **GRANTED**. It is

FURTHER ORDERED that the proposed notice pursuant to Rule 23(e) to class members of the proposed resolution of the case attached to the Joint Motion to is **APPROVED** and is attached hereto. Defendant shall promptly post this notice within the El Paso County Jail as set forth in the Joint Motion. It is

FURTHER ORDERED that a hearing is set for **Wednesday, May 25, 2011, at 3:00 p.m.**, to determine whether the resolution is fair, adequate and reasonable pursuant to Fed. R. Civ. P. 23(e). Finally, it is

ORDERED that Plaintiff's Unopposed Motion for Attorneys' Fees (ECF No. 54) is **DEFERRED** until the hearing.

Dated: March 31, 2011

BY THE COURT:

s/ Wiley Y. Daniel _____
Wiley Y. Daniel
Chief United States District Judge

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Chief Judge Wiley Y. Daniel

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Defendant.

NOTICE TO EL PASO COUNTY JAIL PRISONERS

1. In August 2010, the El Paso County Jail implemented a new policy that, with certain exceptions, restricted prisoners' outgoing mail to postcards supplied by the jail.

2. On September 14, 2010, seven prisoners filed a legal challenge to that policy, arguing that it violated prisoners' First Amendment rights: *Martinez v. Maketa*, Civil Action No. 10-cv-02242-WYD-KLM, United States District Court, District of Colorado. The prisoners also filed a motion to certify the case as a class action.

3. The lawsuit seeks a declaratory judgment and an injunction ordering the jail to stop what the lawsuit called the “postcard-only” policy. The lawsuit does not seek monetary damages on behalf of any prisoners.

4. On December 15, 2010, the jail rescinded the postcard-only policy and went back to the previous policy regarding outgoing correspondence. On December 20, 2011, pursuant to the parties’ agreement, the Court entered a preliminary injunction.

5. On March 31, 2011, the Court certified the case as a class action on behalf of a class defined as “all current and future prisoners in the El Paso County Jail who are subject to or affected by the postcard-only policy.”

6. The Court appointed attorneys working for the American Civil Liberties Union of Colorado and the ACLU National Prison Project to serve as counsel for the class.

7. The parties have now agreed to and proposed a settlement that will resolve all issues in the case. Pursuant to Fed. R. Civ. P. 23(e), this notice of provided to class members to advise them of the terms of the proposed settlement, which are summarized as follows:

- a. The Court will issue a permanent injunction banning the postcard-only policy or any other policy that restricts prisoners’ outgoing mail to postcards;
- b. Counsel for the plaintiffs are entitled to an award of reasonable attorney’s fees and costs to be paid by the Defendant. The parties have agreed that \$60,000 represents a reasonable amount.

8. The Court has set a date of **Wednesday, May 25, 2011**, for a hearing to determine whether the settlement is fair, reasonable, and adequate. Any class member who objects to the proposed settlement may submit an objection. Objections must be sent to and filed with the Clerk of the Court, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, Room A-105, 901 19th Street, Denver, Colorado 80294-3589, and must be postmarked no later than **Friday, April 15, 2011**. The Objection must reference the case name and case number, and contain a statement of the reasons for the objection. Responses to objections shall be filed by **Friday, May 4, 2011**.

Dated: March 31, 2011

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge