

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 92-cv-870-EWN-OES

JESSE (JESUS) MONTEZ, *et al.*,

Plaintiffs, as representatives of themselves and all others similarly situated in this class action,

v.

BILL OWENS, *et al.*,

Defendants.

**PLAINTIFF CLASS NOTICE TO THE HON. JOHN L. KANE OF DEFENDANTS'
NON-COMPLIANCE OF REMEDIAL PLAN**

The Plaintiff Class, through counsel of record, David H. Miller and Paula D. Greisen of the Law Firm of KING & GREISEN, LLP, submits the following Plaintiff Class Notice of Non-Compliance By Defendants. In support of this Notice the Plaintiff Class states as follows:

1. On August 27, 2003, the Hon. Edward W. Nottingham approved the Remedial Plan in the above case. Doc. 528.
2. Pursuant to ¶ XXXI of the Remedial Plan “the DOC [the Colorado Department of Corrections] shall have no more than two years within which to come into substantial compliance with the terms of this Remedial Plan, hereafter the “Compliance Period.” . . . If the parties disagree as to whether substantial compliance has been achieved, the dispute shall be submitted to Judge Kane for a final determination. *Id.*
3. The two year period will expire on or about August 26, 2005. During the interim period Plaintiffs’ counsel has visited several of the facilities, met with many of the plaintiff class members, discussed the compliance issue with the joint experts in the case, and had numerous

discussions with Defendants representatives and counsel concerning compliance and conditions at the affected facilities.

4. Defendants have not, however, made a showing of compliance. The parties have agreed to meet and review records of activities undertaken by Defendants over the course of the last two years in their efforts to reach a consensus on the compliance issue. The parties discussed having that first compliance meeting set for August 9, 2005, but because of a confusion of the schedule, Plaintiffs' counsel is still trying to find a mutually convenient date and time to review the records.

5. At that meeting Defendants have stated that they will offer information concerning substantial compliance with the Remedial Plan. That information, however, has not been previously offered and no final compliance inspections of the affected facilities and review of the policies and procedures have been made; with exception that joint expert Peter Orleans has inspected physical plant and facility modifications that were agreed on between the parties under the Remedial Plan concerning Americans With Disabilities Act construction compliance, and has stated to undersigned counsel that he expects the DOC to be able to come into substantial compliance with that part of the Remedial Plan ("Plan") at or around the two year anniversary of the Plan. Counsel, however, is still awaiting Mr. Orleans' confirmation of compliance.

6. To date, Defendants have been made no showing of compliance. Plaintiffs' counsel has communicated with the joint experts; has had discussions with members of the Plaintiff Class; and has made (partial) inspection of the facilities. From such information it appears to undersigned Plaintiffs' Class counsel that Defendants have not come into substantial compliance with the Remedial Plan. Accordingly, the Plaintiff Class hereby gives notice of non-compliance under ¶ XXXI of the Plan.

7. Undersigned counsel for the Plaintiff Class believe that the review process they have started with the Defendants--including the upcoming meeting(s) within the next 30 days--will lead to an agreed-upon approach towards addressing the compliance issue. However, at this time, lacking the necessary information to affirm substantial compliance, the Plaintiff Class gives this notice of non-compliance, and requests that the matter be reviewed by the Hon. Judge L. Kane for final determination under a schedule agreed to by the parties, and after they have had the necessary time to review the issue with the Defendants. To the extent the Court finds non-compliance, Plaintiffs seek an Order of Court directing the Defendants to come into compliance forthwith, and for such other sanctions and/or relief, including contempt, that may be available at law and equity.

RESPECTFULLY SUBMITTED this 16th day of August, 2005.

~s/ David H. Miller
David H. Miller
Paula D. Greisen
King & Greisen LLP
1670 York Street
Denver, CO 80206
Phone: (303) 298-9878
Fax: (303) 298-9879
E-mail: miller@kinggreisen.com
greisen@kinggreisen.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 16th day of August 2005, I electronically filed the foregoing **PLAINTIFF CLASS NOTICE TO THE HON. JOHN L. KANE OF DEFENDANTS' NON-COMPLIANCE OF REMEDIAL PLAN** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses. via U.S. Mail, addressed to:

Beth McCann, Esq.
James X. Quinn, Esq.
Assistant Attorney General
Civil Litigation and Employment Law Section
1525 Sherman St., 5th Floor
Denver, CO 80203
james.quinn@state.co.us

~s/David H. Miller _____