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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL ERIAS STELLY, SR.,	)	No. C 08-01997 CW (PR)
	)	
Plaintiff,	)	ORDER REVIEWING AMENDED COMPLAINT
	)	AND ORDERING SERVICE OF
v.	)	COGNIZABLE CLAIMS
	)	
DR. ELAINE TOOTELL, et al.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Paul Erias Stelly, Sr., a state prisoner, filed this civil rights complaint when he was housed at San Quentin State Prison (SQSP). He alleged that prison officials at SQSP were deliberately indifferent to his medical needs. On November 25, 2008, the Court issued an Order of Dismissal with Leave to Amend. On December 8, 2008, Plaintiff filed his amended complaint, which the Court now reviews to determine whether it states cognizable claims for relief.

DISCUSSION

In its November 25, 2008 Order, the Court indicated that, in his original complaint, Plaintiff alleged that Defendants were deliberately indifferent to his serious medical needs because he was deprived of psychiatric and medical treatment, beginning in February, 2008. The Court dismissed with leave to amend the deliberate indifference claim because: (1) Plaintiff failed to allege specifically how each named defendant actually and proximately caused the deprivation of a federally protected right. (Nov. 25, 2008 Order at 4-5 (citing Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988)).) Plaintiff named SQSP Chief Medical Officer

1 Elaine Tootell; SQSP Head of Psychiatric Department Larry Dizman;  
2 SQSP Head of Mental Health and Chief Psychologist E. Monthei; and  
3 SQSP Acting Health Care Receiver Manager Timothy Rougeux as  
4 Defendants; however, these Defendants were not linked specifically  
5 to the allegations in the body of the complaint. The Court noted  
6 that Plaintiff seemed to be alleging that the named Defendants were  
7 liable as supervisors. However, Plaintiff was warned that a  
8 supervisor generally is only liable for constitutional violations  
9 of his subordinates if the supervisor "participated in or directed  
10 the violations, or knew of the violations and failed to act to  
11 prevent them." (Nov. 25, 2008 Order at 5 (quoting Taylor v. List,  
12 880 F.2d 1040, 1045 (9th Cir. 1989)).) The Court instructed  
13 Plaintiff, in his amended complaint, to allege facts supporting his  
14 claim against each individual Defendant by listing the  
15 constitutional right that Defendant violated. The Court also noted  
16 that Plaintiff had not shown that he had exhausted administrative  
17 remedies on his claims, which must be done prior to filing them in  
18 federal court. The Court granted Plaintiff leave to amend to  
19 provide copies of denials of his appeals at the Director's level of  
20 review which would indicate administrative exhaustion.

21 On December 8, 2008, Plaintiff filed his amended complaint.  
22 Plaintiff contends he filed administrative appeals (grievances) on  
23 the issues in his amended complaint, which have never been  
24 answered. It thus appears he has not exhausted his administrative  
25 remedies as required by 42 U.S.C. § 1997e(a). If the allegations  
26 that his appeals have not been answered are true, however, it may  
27 be that administrative remedies are not "available" within the  
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1 meaning of the statute. Therefore, the Court concludes that, for  
2 the purposes of this preliminary review of Plaintiff's amended  
3 complaint, he has satisfactorily provided evidence showing that he  
4 could be excused from the exhaustion requirement because prison  
5 officials refused to process his appeals. This is an issue better  
6 resolved at a later stage of the case.

7 In his amended complaint, Plaintiff alleges that Defendants  
8 Tootell, Dizman, Monthei and Rougeux "kept [him] from going through  
9 various level[s] of appeal, and thereby exhausting my remedies by  
10 conventional means, after demonstrating an indifference to [his]  
11 serous medical and mental health needs." (Am. Compl. at 4.)  
12 Plaintiff further states:

13 Each defendant failed to assess me, when obvious medical  
14 and mental health disorders were occurring and further  
15 failed to notify or designate mental and medical health  
16 subordinates to render assessments and treatment for  
17 prolonged period of times. In addition, each defendant  
18 may have known, or should have known that exhausting my  
19 remedies would be essential should I follow through with  
20 further legal action. Nevertheless each of these  
21 Defendants were in receipt of my inmate appeal forms  
22 (602's), my inmate request forms for medical care, or  
23 had knowledge of my repeated requests for medical and  
24 mental health care, but failed to act to prevent further  
25 delay in providing me medical and mental health care.

26 (Id.) Plaintiff specifically claims that: (1) Defendant Tootell  
27 failed to respond to his appeal or provide timely medical treatment  
28 for his "Temporal Lobe Epilepsy," or "Hepatitis C;" (2) Defendants  
Monthei and Dizman failed to respond to his appeal or provide  
timely psychiatric treatment for his depression; and (3) Defendant  
Rougeux failed to forward his appeal forms "to their appropriate  
entity" by "willfully postpon[ing] processing of [his] requests for  
an assessment or treatments for Medical and Mental Health Care."

1 (Id.)

2 A supervisor may be liable under section 1983 upon a showing  
3 of (1) personal involvement in the constitutional deprivation or  
4 (2) a sufficient causal connection between the supervisor's  
5 wrongful conduct and the constitutional violation. Redman v.  
6 County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc)  
7 (citation omitted). As mentioned above, a supervisor therefore  
8 generally "is only liable for constitutional violations of his  
9 subordinates if the supervisor participated in or directed the  
10 violations, or knew of the violations and failed to act to prevent  
11 them." Taylor, 880 F.2d at 1045. An administrator may be liable  
12 for deliberate indifference to a serious medical need, for  
13 instance, if he or she fails to respond to a prisoner's request for  
14 help. Jett v. Penner, 439 F.3d 1091, 1098 (9th Cir. 2006).  
15 "'Supervisory liability is imposed against a supervisory official  
16 in his individual capacity for his own culpable action or inaction  
17 in the training, supervision, or control of his subordinates, for  
18 his acquiescence in the constitutional deprivations of which the  
19 complaint is made, or for conduct that showed a reckless or callous  
20 indifference to the rights of others.'" Preschooler II v. Davis,  
21 479 F.3d 1175, 1183 (9th Cir. 2007) (citations omitted). Evidence  
22 of a prisoner's letter to an administrator alerting him to a  
23 constitutional violation is sufficient to generate a genuine issue  
24 of material fact as to whether the administrator was aware of the  
25 violation, even if he denies knowledge and there is no evidence the  
26 letter was received. Jett, 439 F.3d at 1098. Evidence that a  
27 prison supervisor was personally involved in an unconstitutional  
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1 transfer and denied all appeals of the transfer, for example, may  
2 suffice. Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992);  
3 see also Watkins v. City of Oakland, 145 F.3d 1087, 1093 (9th Cir.  
4 1998) (supervisor who signed internal affairs report dismissing  
5 complaint against officer despite evidence of officer's use of  
6 excessive force may be liable for damages).

7 Read liberally, the allegations in Plaintiff's amended  
8 complaint may state a deliberate indifference claim against  
9 Defendants Tootell, Dizman, Monthei and Rougeux who reviewed  
10 Plaintiff's appeals and did not remedy the constitutional  
11 violation. Therefore, this claim may proceed against these  
12 Defendants.

13 CONCLUSION

14 For the foregoing reasons, the Court orders as follows:

15 1. Plaintiff states a cognizable claim for deliberate  
16 indifference to his serious medical needs against Defendants  
17 Tootell, Dizman, Monthei and Rougeux.

18 2. The Clerk of the Court shall mail a Notice of Lawsuit and  
19 Request for Waiver of Service of Summons, two copies of the Waiver  
20 of Service of Summons, a copy of the complaint (docket no. 1), the  
21 amended complaint (docket no. 19) and all attachments thereto along  
22 with a copy of this Order to Chief Medical Officer Elaine Tootell,  
23 Head of Psychiatric Department Larry Dizman, Head of Mental Health  
24 and Chief Psychologist E. Monthei, and Acting Health Care Receiver  
25 Manager Timothy Rougeux at SQSP. The Clerk shall also mail copies  
26 of these documents to the Attorney General of the State of  
27 California. In addition, the Clerk shall serve a copy of this  
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1 Order on Plaintiff.

2 3. Defendants are cautioned that Rule 4 of the Federal Rules  
3 of Civil Procedure requires them to cooperate in saving unnecessary  
4 costs of service of the summons and complaint. Pursuant to Rule 4,  
5 if any Defendant, after being notified of this action and asked by  
6 the Court, on behalf of Plaintiff, to waive service of the summons,  
7 fails to do so, said Defendant will be required to bear the cost of  
8 such service unless good cause be shown for his failure to sign and  
9 return the waiver form. If service is waived, this action will  
10 proceed as if Defendant had been served on the date that the waiver  
11 is filed, except that pursuant to Rule 12(a)(1)(B), Defendants will  
12 not be required to serve and file an answer before sixty (60) days  
13 from the date on which the request for waiver was sent. (This  
14 allows a longer time to respond than would be required if formal  
15 service of summons is necessary.) Defendants are asked to read the  
16 statement set forth at the foot of the waiver form that more  
17 completely describes the duties of the parties with regard to  
18 waiver of service of the summons. If service is waived after the  
19 date provided in the Notice but before Defendants have been  
20 personally served, the Answer shall be due sixty (60) days from the  
21 date on which the request for waiver was sent or twenty (20) days  
22 from the date the waiver form is filed, whichever is later.

23 4. Defendants shall answer the complaint in accordance with  
24 the Federal Rules of Civil Procedure. The following briefing  
25 schedule shall govern dispositive motions in this action:

26 a. No later than ninety (90) days from the date of this  
27 Order, Defendants shall file a motion for summary judgment or other  
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1 dispositive motion. The motion shall be supported by adequate  
2 factual documentation and shall conform in all respects to Federal  
3 Rule of Civil Procedure 56. If Defendants are of the opinion that  
4 this case cannot be resolved by summary judgment, they shall so  
5 inform the Court prior to the date the summary judgment motion is  
6 due. All papers filed with the Court shall be promptly served on  
7 Plaintiff.

8           b. Plaintiff's opposition to the dispositive motion  
9 shall be filed with the Court and served on Defendants no later  
10 than sixty (60) days after the date on which Defendants' motion is  
11 filed. The Ninth Circuit has held that the following notice  
12 regarding summary judgment motions should be given to plaintiffs:

13           The defendants have made a motion for summary  
14 judgment by which they seek to have your case dismissed.  
15 A motion for summary judgment under Rule 56 of the  
Federal Rules of Civil Procedure will, if granted, end  
your case.

16           Rule 56 tells you what you must do in order to  
17 oppose a motion for summary judgment. Generally, summary  
18 judgment must be granted when there is no genuine issue  
19 of material fact--that is, if there is no real dispute  
20 about any fact that would affect the result of your case,  
21 the party who asked for summary judgment is entitled to  
22 judgment as a matter of law, which will end your case.  
23 When a party you are suing makes a motion for summary  
24 judgment that is properly supported by declarations (or  
25 other sworn testimony), you cannot simply rely on what  
26 your complaint says. Instead, you must set out specific  
facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided  
in Rule 56(e), that contradict the facts shown in the  
defendant's declarations and documents and show that  
there is a genuine issue of material fact for trial. If  
you do not submit your own evidence in opposition,  
summary judgment, if appropriate, may be entered against  
you. If summary judgment is granted in favor of  
defendants, your case will be dismissed and there will be  
no trial.

27 Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc).

1 Plaintiff is advised to read Rule 56 of the Federal Rules of  
2 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.  
3 Ct. 2548, 91 L. Ed. 2d 265 (1986) (party opposing summary judgment  
4 must come forward with evidence showing triable issues of material  
5 fact on every essential element of his claim). Plaintiff is  
6 cautioned that because he bears the burden of proving his  
7 allegations in this case, he must be prepared to produce evidence  
8 in support of those allegations when he files his opposition to  
9 Defendants' dispositive motion. Such evidence may include sworn  
10 declarations from himself and other witnesses to the incident, and  
11 copies of documents authenticated by sworn declaration. Plaintiff  
12 will not be able to avoid summary judgment simply by repeating the  
13 allegations of his complaint.

14 c. If Defendants wish to file a reply brief, they shall  
15 do so no later than thirty (30) days after the date Plaintiff's  
16 opposition is filed.

17 d. The motion shall be deemed submitted as of the date  
18 the reply brief is due. No hearing will be held on the motion  
19 unless the Court so orders at a later date.

20 5. Discovery may be taken in accordance with the Federal  
21 Rules of Civil Procedure. Leave of Court pursuant to Rule 30(a)(2)  
22 is hereby granted to Defendants to depose Plaintiff and any other  
23 necessary witnesses confined in prison.

24 6. All communications by Plaintiff with the Court must be  
25 served on Defendants, or their counsel once counsel has been  
26 designated, by mailing a true copy of the document to Defendants or  
27 their counsel.

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1           7. It is Plaintiff's responsibility to prosecute this case.  
2 Plaintiff must keep the Court informed of any change of address and  
3 must comply with the Court's orders in a timely fashion. Failure  
4 to do so may result in the dismissal of this action for failure to  
5 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

6           8. Extensions of time are not favored, though reasonable  
7 extensions will be granted. However, the party making a motion for  
8 an extension of time is not relieved from his or her duty to comply  
9 with the deadlines set by the Court merely by having made a motion  
10 for an extension of time. The party making the motion must still  
11 meet the deadlines set by the Court until an order addressing the  
12 motion for an extension of time is issued. Any motion for an  
13 extension of time must be filed no later than fifteen (15) days  
14 prior to the deadline sought to be extended.

15           IT IS SO ORDERED.

16 DATED: 7/7/09



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CLAUDIA WILKEN  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 PAUL E STELLY SR,

5 Plaintiff,

6 v.

7 ELAINE TOOTELL et al,

8 Defendant.

Case Number: CV08-01997 CW

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on July 7, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Paul Erias Stelly F86444  
16 San Quentin State Prison  
17 San Quentin, CA 94974

Dated: July 7, 2009

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk

United States District Court  
For the Northern District of California