

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

WILLIAM L. EVINS,	)	No. C 08-2537 CW (PR)
	)	ORDER OF SERVICE
Plaintiff,	)	
	)	
v.	)	
	)	
BEN CURRY, et al.,	)	
	)	
Defendants.	)	

---

Plaintiff William L. Evins, a state prisoner currently incarcerated at the Correctional Training Facility (CTF), has filed the present pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that prison officials at CTF were deliberately indifferent to his medical needs. His motion for leave to proceed in forma pauperis has been granted.

Venue is proper in this district because the acts complained of occurred at CTF, which is located in Monterey County. 28 U.S.C. §§ 84(a), 1391(b).

BACKGROUND

According to the allegations in the complaint, since 2003, Plaintiff has had "two different types of dental diseases that have been diagnosed by the CTF Dental Department." (Compl. at 3.) He claims that he did not receive proper treatment for his dental problems, which has resulted in "constant pain since 2003 and the degeneration of all of Plaintiff's teeth." (Id.) He also claims that these dental diseases have affected his heart. (Id.)

Plaintiff alleges that the failure to provide him with dental care when he was suffering and in pain since 2003 amounted to deliberate indifference to his serious medical needs. He names the following as Defendants: CTF Dentist P. Babienco; CTF Chief Dental

1 Officer K. B. Sather; CTF Chief Medical Officer Joseph Chudy; and  
2 CTF Warden Ben Curry. He seeks injunctive relief and monetary  
3 damages.

4 DISCUSSION

5 I. Standard of Review

6 A federal court must conduct a preliminary screening in any  
7 case in which a prisoner seeks redress from a governmental entity  
8 or officer or employee of a governmental entity. See 28 U.S.C.  
9 § 1915A(a). In its review, the court must identify cognizable  
10 claims and dismiss any claims that are frivolous, malicious, fail  
11 to state a claim upon which relief may be granted or seek monetary  
12 relief from a defendant who is immune from such relief. See id.  
13 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally  
14 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,  
15 699 (9th Cir. 1988).

16 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
17 allege two essential elements: (1) that a right secured by the  
18 Constitution or laws of the United States was violated, and  
19 (2) that the alleged violation was committed by a person acting  
20 under the color of state law. See West v. Atkins, 487 U.S. 42, 48  
21 (1988).

22 II. Legal Claim

23 Deliberate indifference to the serious medical needs of  
24 convicted prisoners violates the Eighth Amendment's proscription  
25 against cruel and unusual punishment. Estelle v. Gamble, 429 U.S.  
26 97, 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.  
27 1992), overruled on other grounds by WMX Technologies, Inc. v.  
28 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). Serious

1 medical needs can include a prisoner's need for dental care. See  
2 Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir. 1989) (dental  
3 care important medical need of inmates).

4 A determination of "deliberate indifference" involves an  
5 examination of two elements: the seriousness of the prisoner's  
6 medical need and the nature of the defendant's response to that  
7 need. McGuckin, 974 F.2d at 1059. A serious medical need exists  
8 if the failure to treat a prisoner's condition could result in  
9 further significant injury or the "unnecessary and wanton  
10 infliction of pain." Id. (citing Estelle, 429 U.S. at 104). The  
11 existence of an injury that a reasonable doctor or patient would  
12 find important and worthy of comment or treatment; the presence of  
13 a medical condition that significantly affects an individual's  
14 daily activities; or the existence of chronic and substantial pain  
15 are examples of indications that a prisoner has a serious need for  
16 medical treatment. Id. at 1059-60 (citing Wood v. Housewright, 900  
17 F.2d 1332, 1337-41 (9th Cir. 1990)).

18 A prison employee is deliberately indifferent if he knows that  
19 a prisoner faces a substantial risk of serious harm and disregards  
20 that risk by failing to take reasonable steps to abate it. Farmer  
21 v. Brennan, 511 U.S. 825, 837 (1994).

22 Liberally construed, Plaintiff's allegations present a  
23 cognizable claim for relief against Defendants Babienco, Sather and  
24 Chudy. However, Plaintiff has not alleged an adequate basis for  
25 liability against Defendant Curry. A supervisor may be liable  
26 under § 1983 upon a showing of (1) personal involvement in the  
27 constitutional deprivation or (2) a sufficient causal connection  
28 between the supervisor's wrongful conduct and the constitutional

1 violation. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th  
2 Cir. 1991) (en banc) (citation omitted). Here, Plaintiff has  
3 alleged neither. Rather, it appears that he is seeking to impose  
4 liability under the doctrine of respondeat superior, that is,  
5 because Defendant Curry, as the warden of CTF, is responsible for  
6 the actions or omissions of his employees. However, respondeat  
7 superior liability is not a basis for recovery in a § 1983 action.  
8 Accordingly, Plaintiff's claim against Defendant Curry is dismissed  
9 with leave to amend. Plaintiff may file an amendment to the  
10 complaint that alleges supervisory liability under the standards  
11 explained above.

12 CONCLUSION

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

14 1. Plaintiff has stated a cognizable Eighth Amendment claim  
15 against Defendants Babienco, Sather and Chudy for deliberate  
16 indifference to his medical needs.

17 2. Plaintiff's supervisory liability claim against Defendant  
18 Curry is DISMISSED WITH LEAVE TO AMEND as indicated above. Within  
19 thirty (30) days of the date of this Order Plaintiff may file an  
20 amended supervisory liability claim against Defendants Curry as set  
21 forth above in Section II of this Order. (Plaintiff shall resubmit  
22 only that claim and not the entire complaint.) The failure to do  
23 so will result in the dismissal without prejudice of the  
24 supervisory liability claim against Defendant Curry.

25 3. The Clerk of the Court shall mail a Notice of Lawsuit and  
26 Request for Waiver of Service of Summons, two copies of the Waiver  
27 of Service of Summons, a copy of the complaint and all attachments  
28

1 thereto (docket no. 1) and a copy of this Order to CTF Dentist P.  
2 Babienco; CTF Chief Dental Officer K. B. Sather; and CTF Chief  
3 Medical Officer Joseph Chudy. The Clerk of the Court shall also  
4 mail a copy of the complaint and a copy of this Order to the State  
5 Attorney General's Office in San Francisco. Additionally, the  
6 Clerk shall mail a copy of this Order to Plaintiff.

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

28 5. Defendants shall answer the complaint in accordance with

1 the Federal Rules of Civil Procedure. The following briefing  
2 schedule shall govern dispositive motions in this action:

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

12 b. Plaintiff's opposition to the dispositive motion  
13 shall be filed with the Court and served on Defendants no later  
14 than sixty (60) days after the date on which Defendants' motion is  
15 filed. The Ninth Circuit has held that the following notice should  
16 be given to pro se plaintiffs facing a summary judgment motion:

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

20 Rule 56 tells you what you must do in order to  
21 oppose a motion for summary judgment. Generally, summary  
22 judgment must be granted when there is no genuine issue  
23 of material fact -- that is, if there is no real dispute  
24 about any fact that would affect the result of your case,  
the party who asked for summary judgment is entitled to  
judgment as a matter of law, which will end your case.  
25 When a party you are suing makes a motion for summary  
judgment that is properly supported by declarations (or  
26 other sworn testimony), you cannot simply rely on what  
your complaint says. Instead, you must set out specific  
27 facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided  
28 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

1 you do not submit your own evidence in opposition,  
2 summary judgment, if appropriate, may be entered against  
3 you. If summary judgment is granted [in favor of the  
defendants], your case will be dismissed and there will  
be no trial.

4 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en  
5 banc).

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

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

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

24 6. Discovery may be taken in this action in accordance with  
25 the Federal Rules of Civil Procedure. Leave of the Court pursuant  
26 to Rule 30(a)(2) is hereby granted to Defendants to depose  
27 Plaintiff and any other necessary witnesses confined in prison.  
28

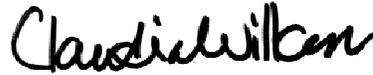
1           7. All communications by Plaintiff with the Court must be  
2 served on Defendants, or Defendants' counsel once counsel has been  
3 designated, by mailing a true copy of the document to Defendants or  
4 Defendants' counsel.

5           8. It is Plaintiff's responsibility to prosecute this case.  
6 Plaintiff must keep the Court informed of any change of address and  
7 must comply with the Court's orders in a timely fashion.

8           9. Extensions of time are not favored, though reasonable  
9 extensions will be granted. Any motion for an extension of time  
10 must be filed no later than fifteen (15) days prior to the deadline  
11 sought to be extended.

12           IT IS SO ORDERED.

13 DATED: 12/4/08



---

CLAUDIA WILKEN  
United States District Judge

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

4 WILLIAM L. EVINS,  
5 Plaintiff,

Case Number: CV08-02537 CW

**CERTIFICATE OF SERVICE**

6 v.

7 BEN CURRY et al,  
8 Defendant.

---

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

11 That on December 4, 2008, 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 William L. Evins  
16 D14797  
17 P.O. Box 689  
18 Soledad, CA 93960

Dated: December 4, 2008

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

United States District Court  
For the Northern District of California