

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 JUAN M. PEGUERO-ALBUERME,

4
5 Plaintiff,

6 v.

7 MIGUEL PEREIRA-CASTILLO,

8
9 Defendant.

Civil No. 08-1397 (JAF)

10 **OPINION AND ORDER**

11 Plaintiff Juan M. Peguero-Albuerme brings this action against
12 Defendant Miguel Pereira-Castillo, the Puerto Rico Administrator of
13 Corrections ("Administrator"), under 42 U.S.C. § 1983, alleging that
14 Defendant has subjected Plaintiff to harsh prison conditions. Docket
15 Nos. 2, 6. Plaintiff seeks monetary damages. Id. Defendant moves for
16 dismissal pursuant to Federal Rules of Civil Procedure 12(b)(1) and
17 12(b)(6). Docket No. 10. The motion is unopposed.

18 **I.**

19 **Factual and Procedural Synopsis**

20 We draw the following facts from Plaintiff's complaint. Docket
21 Nos. 2, 6. In considering a motion to dismiss, we assume that the
22 factual averments in the complaint are true and "draw all plausible
23 inferences in the plaintiff's favor." Berner v. Delahanty, 129 F.3d
24 20, 23 (1st Cir. 1997).

25 Plaintiff is an inmate at Guayama in the penal custody of the
26 Commonwealth of Puerto Rico. Plaintiff has suffered physical and

1 psychological injury from (1) illumination from lighting fixtures,
2 (2) uncomfortable seating at table and within his cell, (3) low
3 temperatures within his cell, (4) inability to exercise without
4 complying with a dress code imposed by a prison official,
5 (5) unhygienic prison meals, (6) dangerous vapors from floor wax used
6 in the corridors, (7) inadequate fire suppression systems and
7 evacuation procedures, (8) distracting lighting in the prison
8 library, (9) fumes released by drying paint in a common space in the
9 prison ward, (10) exposure to nude fellow prisoners in the common
10 shower, (11) risk of falling from an upper bunk bed, and (12) risk of
11 contagion from inadequately washed prison uniforms. Plaintiff states
12 without elaboration that he has exhausted his administrative
13 remedies.

14 Plaintiff filed this case in federal court on April 2, 2008,
15 seeking monetary compensation. Docket No. 2. On July 24, 2008,
16 Defendant moved to dismiss under Federal Rules of Civil Procedure
17 12(b)(1) and 12(b)(6), Docket No. 10; Plaintiff has not opposed.

18 II.

19 Standard under Rule 12(b)(6)

20 A defendant may move to dismiss an action against him, based
21 solely on the complaint, for the plaintiff's "failure to state a
22 claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).
23 In assessing this motion, "[w]e begin by accepting all well-pleaded
24 facts as true, and we draw all reasonable inferences in favor of the

1 [plaintiff]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962,
2 971 (1st Cir. 1993). We then determine whether the complaint states
3 a legally cognizable demand for relief.

4 The complaint must demonstrate "a plausible entitlement to
5 relief" by alleging facts that directly or inferentially support each
6 material element of some legal claim. Gagliardi v. Sullivan, 513 F.3d
7 301, 305 (1st Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550
8 U.S. 544, 559 (2007)). "[S]pecific facts are not necessary; the
9 statements need only 'give the defendants fair notice of [the claim]
10 and the grounds upon which it rests.'" Thomas v. Rhode Island, 542
11 F.3d 944, 948 (1st Cir. 2008) (quoting Erickson v. Pardus, 551 U.S.
12 89 (2007)).

13 **III.**

14 **Analysis**

15 Defendant moves for dismissal for Plaintiff's failure to
16 attribute alleged defects at Guayama to Defendant. Docket No. 10. We
17 agree that supervisory liability does not attach to Defendant.

18 To establish supervisory liability under § 1983, a plaintiff
19 must demonstrate the supervisor's fault for his own acts or
20 omissions. Whitfield v. Melendez-Rivera, 431 F.3d 1, 14 (1st Cir.
21 2005). Accordingly, a plaintiff must establish either (1) the
22 supervisor's direct participation in a constitutional violation, or
23 (2) conduct by the supervisor that is tantamount to tacit
24 authorization of illegal conduct. Id. Under the latter approach, a

1 plaintiff must show that (a) the conduct of the supervisor's
2 subordinate caused a constitutional violation, and (b) the
3 supervisor's acts or omissions were affirmatively linked to the
4 subordinate's conduct such that it constituted supervisory
5 encouragement, acquiescence, or gross negligence amounting to
6 deliberate indifference. Id. The Administrator may suffer supervisory
7 liability for his neglect of duties enumerated in Puerto Rico
8 statutes. See Cristóbal-Miranda v. Giménez-Muñoz, 770 F.2d 255, 260-
9 61 (1st Cir. 1985) (citing Administrator's powers under 4 L.P.R.A.
10 § 1112(f) (1978)).

11 There is nothing in the complaint which suggests that Defendant
12 is personally involved in the day-to-day operations of the prison at
13 Guayama. See Docket No. 2. Thus, Plaintiff has failed to state a case
14 for direct participation. See Whitfield, 431 F.3d at 14.

15 At the same time, Puerto Rico law does not command Defendant to
16 exercise direct supervision over any of the alleged deficiencies at
17 Guayama. See 4 L.P.R.A. §§ 1112-13 (2005). Furthermore, Plaintiff has
18 not attributed specific acts or omissions to any subordinate of
19 Defendant at Guayama for the bulk of his complaints. See id. The only
20 exception is the unnamed official responsible for the dress code for
21 physical exercise. See id. Plaintiff does not allege, however, that
22 Defendant is personally responsible for, or turned a blind eye
23 toward, the dress code. See id.

24 Having failed to allege Defendant's dereliction of statutory
25 duty with respect to conditions at Guayama, actors responsible for

1 the alleged violations, or Defendant's involvement with the dress
2 code for physical exercise, Plaintiff cannot establish Defendant's
3 tacit authorization. See Whitfield, 431 F.3d at 14.

4 As we dismiss for Plaintiff's failure to state a claim for
5 supervisory liability, we need not address Defendant's arguments for
6 failure to exhaust administrative remedies, sovereign immunity,
7 qualified immunity, and lack of standing. See Docket No. 10.

8 **IV.**

9 **Conclusion**

10 Accordingly, we hereby **GRANT** Defendant's motion to dismiss,
11 Docket No. 10. We **DISMISS** Plaintiff's complaint, Docket No. 2, **WITH**
12 **PREJUDICE**, pursuant to Federal Rule of Procedure 12(b)(6).

13 **IT IS SO ORDERED.**

14 San Juan, Puerto Rico, this 23rd day of March, 2009.

15 s/José Antonio Fusté
16 JOSE ANTONIO FUSTE
17 Chief U.S. District Judge