

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

3 JOSEPH J. FLOWERS,                               ) No. C 08-4179 CW (PR)  
4                               Plaintiff,                               )  
5                               v.                               ) ORDER OF DISMISSAL WITH  
6 ALAMEDA COUNTY SHERIFF GREGORY                               ) LEAVE TO AMEND  
7 AHERN, et al.,                               )  
8                               Defendants.                               )

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9  
10                               INTRODUCTION

11               Plaintiff Joseph Flowers, who is currently incarcerated in  
12 the Marin County Jail, has filed a pro se complaint under 42  
13 U.S.C. § 1983. He has been granted leave to proceed in forma  
14 pauperis.

15               Venue is proper because Plaintiff alleges constitutional  
16 violations against him by jail officials at the Santa Rita County  
17 Jail and the North County Jail, which are both located in the  
18 Northern District of California. See 28 U.S.C. §§ 84(a), 1391(b).

19                               BACKGROUND

20               Plaintiff alleges multiple constitutional violations, which  
21 he experienced while he was incarcerated at Santa Rita County Jail  
22 and North County Jail in 2007. (Compl. at 3-18.) He claims he  
23 was given "spoiled and unhealthy" meals, subjected to "solitary  
24 confinement as a result of his refusal to cease and desist from  
25 practicing law," subjected to mail tampering, "beaten near death,"  
26 subjected to deliberate indifference to his serious medical  
27 needs, "sexually assaulted and discriminated against upon at  
28 least fourteen different occasions," housed in administrative  
segregation for "the duration of [his] incarceration for unfound

1 reasons," and placed in a cell with "mainline inmates," who  
2 "ransacked" the cell and "abused" him. (Id.)

3 Plaintiff names the following as Defendants: Alameda County  
4 Sheriff Gregory Ahern and Alameda County Sheriff's Deputies H.C.  
5 McKenzie, J. DeLeon, R. Kull, A. Valvedia, Smith, Fischer, C.  
6 Delima, and Jones, as well as "others not yet named." (Id. at 1.)  
7 He seeks injunctive relief and monetary damages.

#### 8 DISCUSSION

##### 9 I. Plaintiff's Claims

##### 10 A. Claim for Injunctive Relief

11 The jurisdiction of the federal courts depends on the  
12 existence of a "case or controversy" under Article III of the  
13 Constitution. Pub. Util. Comm'n of State of Cal. v. FERC, 100  
14 F.3d 1451, 1458 (9th Cir. 1996). A claim is considered moot if it  
15 has lost its character as a present, live controversy and if no  
16 effective relief can be granted; where the question sought to be  
17 adjudicated has been mooted by developments subsequent to filing  
18 of the complaint, no justiciable controversy is presented. Flast  
19 v. Cohen, 392 U.S. 83, 95 (1968). Where injunctive relief is  
20 requested, questions of mootness are determined in light of the  
21 present circumstances. See Mitchell v. Dupnik, 75 F.3d 517, 528  
22 (9th Cir. 1996).

23 When an inmate has been transferred to another prison and  
24 there is no reasonable expectation nor demonstrated probability  
25 that he will again be subjected to the prison conditions from  
26 which he seeks injunctive relief, the claim for injunctive relief  
27 should be dismissed as moot. See Dilley v. Gunn, 64 F.3d 1365,  
28 1368-69 (9th Cir. 1995). A claim that the inmate might be re-

1 transferred to the prison where the injury occurred is too  
2 speculative to overcome mootness. Id.

3 Although Plaintiff was previously incarcerated at the Santa  
4 Rita County Jail and the North County Jail, his transfer to Marin  
5 County Jail rendered moot his claim for injunctive relief against  
6 jail officials at the Santa Rita County Jail and the North County  
7 Jail. See id. Accordingly, Plaintiff's action for injunctive  
8 relief is dismissed.

9 B. Claims for Monetary Damages

10 Plaintiff's transfer did not render moot any claims for  
11 monetary damages against jail officials at the Santa Rita County  
12 Jail and the North County Jail. If Plaintiff wishes to bring such  
13 claims, he should amend his complaint to state that he seeks  
14 damages, and to allege specifically how each named defendant  
15 actually and proximately caused the deprivation of a federally  
16 protected right, as directed below. See Leer v. Murphy, 844 F.2d  
17 628, 634 (9th Cir. 1988).

18 C. Claims Against the Oakland Police Department

19 Plaintiff's complaint also alleges claims against officers  
20 from the Oakland Police Department (OPD) stemming from a traffic  
21 stop on March 20, 2007. (Compl. at 17-18.) These claims are  
22 unrelated to Plaintiff's claims against the named defendants from  
23 the Alameda County Sheriff's Department, and Plaintiff has not  
24 properly joined the claims against the OPD officers with his civil  
25 rights action against these named defendants.

26 Accordingly, if Plaintiff wishes to sue the officers from the  
27 OPD, he may bring those claims in a separate lawsuit against these  
28 officers.

II. Exhaustion of Administrative Remedies

The Prison Litigation Reform Act of 1995 (PLRA) amended 42 U.S.C. § 1997e to provide that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a).

Exhaustion is mandatory and no longer left to the discretion of the district court. Woodford v. Ngo, 548 U.S. 81, 84 (2006) (citing Booth v. Churner, 532 U.S. 731, 739 (2001)). "Prisoners must now exhaust all 'available' remedies, not just those that meet federal standards." Id. The PLRA's exhaustion requirement requires "proper exhaustion" of available administrative remedies. Id. at 2387.

An action must be dismissed unless the prisoner exhausted his available administrative remedies before he or she filed suit, even if the prisoner fully exhausts while the suit is pending. McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002); see Vaden v. Summerhill, 449 F.3d 1047, 1051 (9th Cir. 2006) (where administrative remedies are not exhausted before the prisoner sends his complaint to the court it will be dismissed even if exhaustion is completed by the time the complaint is actually filed).

If the court concludes that the prisoner has not exhausted non-judicial remedies, the proper remedy is dismissal without prejudice. Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003). A prisoner's concession to non-exhaustion is a valid ground for dismissal, so long as no exception to exhaustion applies. Id.

1 Accordingly, a claim may be dismissed without prejudice if it is  
2 clear from the record that the prisoner has conceded that he did  
3 not exhaust administrative remedies. See id.

4 Here, the claims raised in Plaintiff's complaint appear not  
5 to have been exhausted through the administrative grievance  
6 procedure. Plaintiff states that he filed "tort claims." (Compl.  
7 at 2.) He also alleges that he was "denied access to a county  
8 grievance;" therefore, the "county appeal process was exhausted."  
9 (Id.) However, Plaintiff fails to specify whether he exhausted  
10 his available administrative remedies before he filed suit. And  
11 he appears to be referring to the county administrative tort  
12 claims procedure. He does not specifically address exhaustion of  
13 the jails' grievance procedure. Because Plaintiff did not attach  
14 any of his grievance forms, the Court is unable to determine if  
15 Plaintiff satisfied the administrative remedies exhaustion  
16 requirement on each of the claims he alleges, prior to filing his  
17 suit. Therefore, it appears from the face of the complaint that  
18 Plaintiff has not exhausted his administrative remedies.

19 Accordingly, the complaint is DISMISSED for this reason, with  
20 leave to amend. In his amended complaint, Plaintiff must show  
21 that he exhausted his administrative remedies with respect to the  
22 claims in his complaint before he filed his suit.

23 III. Defendants

24 A. Named Defendants

25 Plaintiff must allege facts sufficient to show that  
26 Defendants' actions rise to the level of constitutional  
27 violations. As mentioned above, he is attempting to hold  
28 Defendants Ahern, McKenzie, DeLeon, Kull, Valvedia, Smith,

1 Fischer, Delima, and Jones liable for the claims in his complaint;  
2 therefore, he must allege facts showing what each defendant did  
3 that violated his constitutional rights. See Leer, 844 F.2d at  
4 634 (sweeping conclusory allegations will not suffice; the  
5 plaintiff must instead set forth specific facts as to each  
6 individual defendant's actions which violated his or her rights).  
7 If Plaintiff claims that any of the named Defendants are liable as  
8 supervisors, he must allege that these Defendants "participated in  
9 or directed the violations, or knew of the violations and failed  
10 to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th  
11 Cir. 1989). A supervisor may be liable under § 1983 upon a  
12 showing of personal involvement in the constitutional deprivation  
13 or a sufficient causal connection between the supervisor's  
14 wrongful conduct and the constitutional violation. Redman v.  
15 County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc)  
16 (citation omitted). A supervisor therefore generally "is only  
17 liable for constitutional violations of his subordinates if the  
18 supervisor participated in or directed the violations, or knew of  
19 the violations and failed to act to prevent them." Taylor, 880  
20 F.2d at 1045. A supervisor may be liable for implementing "a  
21 policy so deficient that the policy itself is a repudiation of  
22 constitutional rights and is the moving force of the  
23 constitutional violation." Redman, 942 F.2d at 1446; see Jeffers  
24 v. Gomez, 267 F.3d 895, 917 (9th Cir. 2001).

25 Because Plaintiff has not linked any of the named Defendants  
26 to his claims, no claim for damages can proceed unless Plaintiff  
27 amends his complaint to cure this pleading deficiency.  
28

1 B. Unnamed Defendants

2 Plaintiff mentions "others not yet named" whose names he  
3 apparently intends to learn through discovery. Where the identity  
4 of alleged defendants cannot be known prior to the filing of a  
5 complaint, the plaintiff should be given an opportunity through  
6 discovery to identify them. Gillespie v. Civiletti, 629 F.2d 637,  
7 642 (9th Cir. 1980). Failure to afford the plaintiff such an  
8 opportunity is error. See Wakefield v. Thompson, 177 F.3d 1160,  
9 1163 (9th Cir. 1999).

10 Accordingly, Plaintiff's claims against the unnamed  
11 defendants are DISMISSED. Should Plaintiff learn the identities  
12 of the unnamed defendants, he may move for leave to amend to add  
13 them as named defendants. See Brass v. County of Los Angeles, 328  
14 F.3d 1192, 1195-98 (9th Cir. 2003).

15 CONCLUSION

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

- 17 1. Plaintiff's action for injunctive relief is dismissed.
- 18 2. If Plaintiff wishes to bring any claims for monetary  
19 damages, he must amend his complaint: (1) to state that he seeks  
20 such damages; (2) to allege specifically how each named Defendant  
21 actually and proximately caused the deprivation of a federally  
22 protected right; and (3) to allege facts which show that he  
23 exhausted all available administrative remedies with respect to  
24 these claims before he filed this lawsuit. Within thirty (30)  
25 days from the date of this Order, Plaintiff may file an amended  
26 complaint as set forth above. He must use the attached civil  
27 rights form, write the case number for this action -- Case No.  
28 C 08-4179 CW (PR) -- on the form, clearly label the complaint  
"Amended Complaint," and complete all sections of the form.

1 Because an amended complaint completely replaces the original  
2 complaint, Plaintiff must include in it all the claims he wishes  
3 to present. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th  
4 Cir.), cert. denied, 506 U.S. 915 (1992); King v. Atiyeh, 814 F.2d  
5 565, 567 (9th Cir. 1987); London v. Coopers & Lybrand, 644 F.2d  
6 811, 814 (9th Cir. 1981). He may not incorporate material from  
7 the original complaint by reference. Plaintiff's failure to file  
8 an amended complaint will result in the dismissal of this action  
9 without prejudice for failure to exhaust administrative remedies  
10 and for failure to state a claim upon which relief may be granted.

11 3. Plaintiff's claims against the unnamed defendants are  
12 DISMISSED. Should Plaintiff learn the identities of these  
13 defendants, he may move for leave to amend to add them as named  
14 defendants. See Brass, 328 F.3d at 1195-98.

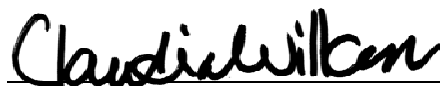
15 4. If Plaintiff wishes to sue the officers from the OPD  
16 stemming from the traffic stop on March 20, 2007, he may bring  
17 those claims in a separate lawsuit against these officers.

18 5. It is Plaintiff's responsibility to prosecute this case.  
19 Plaintiff must keep the Court informed of any change of address  
20 and must comply with the Court's Orders in a timely fashion.  
21 Failure to do so may result in the dismissal of this action for  
22 failure to prosecute pursuant to Federal Rule of Civil Procedure  
23 41(b).

24 6. The Clerk of the Court shall send Plaintiff a blank  
25 civil rights form along with a copy of this Order.

26 IT IS SO ORDERED.

27 DATED: 7/1/09



CLAUDIA WILKEN  
United States District Judge



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

4 JOSEPH J. FLOWERS,

5 Plaintiff,

Case Number: CV08-04179 CW

**CERTIFICATE OF SERVICE**

6 v.

7 ALAMEDA COUNTY SHERIFF 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 July 1, 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  
13 said 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 Joseph J. Flowers w/CR form  
16 Marin County Jail  
17 13 Peter Behr Dr.  
18 San Rafael, CA 94903

19 Dated: July 1, 2009

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