

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

3 JOSEPH J. FLOWERS,) No. C 08-04179 CW (PR)
 4)
 Plaintiff,) ORDER DENYING PLAINTIFF'S MOTIONS TO
 5) FILE FOURTH AMENDED COMPLAINT AND
 v.) COMPEL PRODUCTION OF DOCUMENTS;
 6) DISMISSING EXCESSIVE FORCE AND
 ALAMEDA COUNTY SHERIFF'S) UNREASONABLE SEARCH CLAIMS; GRANTING
 7) DEPARTMENT, et al.,) DEFENDANTS' MOTION FOR SUMMARY
) JUDGMENT
 Defendants.)
 8) (Docket nos. 67, 84, 85)

9
 10 INTRODUCTION

11 Plaintiff, a state prisoner currently incarcerated at Salinas
 12 Valley State Prison (SVSP), filed this civil rights action pursuant
 13 to 42 U.S.C. § 1983, concerning events that took place when he was
 14 in the custody of the Alameda County Sheriff's Department in 2007
 15 and 2008.

16 The operative pleading is Plaintiff's third amended complaint
 17 (3AC), which was filed on July 2, 2010. On May 13, 2011, the
 18 Alameda County Defendants filed a motion for summary judgment.
 19 Thereafter, Plaintiff filed an opposition to the motion, together
 20 with a motion to file a fourth amended complaint (4AC) and a motion
 21 to compel discovery (MTC). Defendants have filed a reply to
 22 Plaintiff's opposition and have opposed Plaintiff's motions.

23 BACKGROUND

24 On March 21, 2007, Plaintiff was taken into the custody of the
 25 Alameda County Sheriff's Department and booked into the Santa Rita
 26 County Jail (SRCJ). Through August 3, 2007, he was incarcerated at
 27 either SRCJ or the Glenn Dyer Detention Facility (GDDF). On that
 28 date, he was transferred from the custody of the Alameda County
 Sheriff's Office to the California Department of Corrections and

1 Rehabilitation (CDCR).

2 Following his release from CDCR, Plaintiff was arrested again.
3 He was booked by the Hayward Police Department on May 13, 2008, and
4 transported to SRCJ on May 14, 2008.

5 Plaintiff alleges that during these two periods of
6 incarceration at SRCJ and GDDF, Defendants violated his
7 constitutional rights. By Order filed November 24, 2010, the Court
8 reviewed the allegations in the 3AC and ordered that pleading
9 served on Defendants. Specifically, the Court directed Defendants
10 to respond to the following cognizable claims for relief:

11 (1) unlawful placement in administrative segregation; (2) mail
12 tampering; (3) deliberate indifference to safety and denial of
13 access to the courts; (4) deliberate indifference to serious
14 medical needs; and (5) food tampering. Plaintiff's excessive force
15 and unreasonable search claims were dismissed because Plaintiff had
16 not named or linked any Defendants to his allegations; the claims
17 were dismissed with leave for Plaintiff to move to amend should he
18 learn the identities of the responsible individuals.

19 DISCUSSION

20 I. Voluntary Dismissal of Claims

21 In opposition to the motion for summary judgment, Plaintiff
22 states he is dismissing voluntarily his claims of unlawful
23 placement in administrative segregation and food tampering. Docket
24 no. 86 at 3. Accordingly, these claims are DISMISSED with
25 prejudice.

26 II. Motion for Leave to File Fourth Amended Complaint

27 "[A] party may amend its pleading only with the opposing
28 party's written consent or the court's leave." See Fed. R. Civ. P.
15(a)(2). The district court may exercise its discretion to deny a

1 motion for leave to amend where the amendment of the complaint
2 would cause the opposing party undue prejudice, is sought in bad
3 faith, constitutes an exercise in futility, or creates undue delay.
4 See Janicki Logging Co. v. Mateer, 42 F.3d 561, 566 (9th Cir.
5 1994). "[A] district court has broad discretion to grant or deny
6 leave to amend, particularly where the court has already given a
7 plaintiff one or more opportunities to amend his complaint to
8 allege federal claims." Mir v. Fosburg, 646 F.2d 342, 347 (9th
9 Cir. 1996).

10 A. Mail Tampering, Safety and Court Access

11 The allegations in the 3AC and 4AC with respect to Plaintiff's
12 claims of mail tampering, deliberate indifference to his safety and
13 denial of access to the courts are substantially the same.
14 Plaintiff has not shown why amendment of these claims should be
15 granted. Accordingly, leave to amend these claims is DENIED.

16 B. Deliberate Indifference to Serious Medical Needs

17 In Plaintiff's original complaint, first amended complaint,
18 second amended complaint and the operative 3AC, his claim of
19 deliberate indifference to his serious medical needs is based on
20 allegations of inadequate access to medical care in 2008 for an
21 injury that occurred in 2007, and the failure to comply with
22 medical orders, resulting in him re-injuring himself on August 13,
23 2008 while climbing stairs.

24 Plaintiff's proposed amendment to this claim seeks to add a
25 new allegation of injury from climbing stairs that occurred on
26 September 9, 2008. Plaintiff, however, does not explain why he did
27 not allege facts about the September 8, 2008 incident in any of his
28 prior pleadings.

The Court finds that amendment to add these new allegations to

1 Plaintiff's medical claim at this late stage in the proceedings
2 would cause undue prejudice to Defendants and create undue delay of
3 the resolution of this case. Accordingly, leave to amend this
4 claim is DENIED.

5 C. Excessive Force and Illegal Search

6 The Court previously found that Plaintiff stated cognizable
7 claims (1) for excessive force, based on his allegations that, on
8 May 14, 2008, he was beaten without cause by unidentified sheriff's
9 deputies, and (2) an unreasonable search, based on his allegations
10 that, on July 28, 2008, he was strip-searched repeatedly without
11 cause by an unidentified sheriff's deputy. As noted above,
12 however, because Plaintiff had not identified any of the deputies
13 responsible for the above alleged violations, the Court dismissed
14 both claims with leave to move to amend to name the responsible
15 individuals should he discover their identities. Docket no. 38 at
16 12:8-14, 14:4-16.

17 Plaintiff now seeks to amend the 3AC to add Deputies R. Bixby
18 and M. Menard as Defendants responsible for the use of excessive
19 force and Deputy R. Bartholomew as the Defendant responsible for
20 the unreasonable search. Defendants do not oppose these
21 amendments. In view of the new information Plaintiff has provided
22 with respect to these claims, however, the Court finds that
23 granting leave to amend the 3AC to add the new Defendants would be
24 futile because the claims are subject to dismissal as improperly
25 joined.

26 A plaintiff may properly join as many claims as he has against
27 an opposing party. Fed. R. Civ. P. 18(a). While multiple claims
28 against a single party may be alleged in a single complaint,
unrelated claims against different defendants must be alleged in

1 separate complaints. See George v. Smith, 507 F.3d 605, 607 (7th
2 Cir. 2007). Further, parties may be joined as defendants only if
3 "any right to relief is asserted against them jointly, severally,
4 or in the alternative, with respect to or arising out of the same
5 transaction, occurrence, or series of transactions and
6 occurrences," Fed. R. Civ. P. 20(a)(2)(A), and, "any question of
7 law or fact common to all defendants will arise in the action,"
8 Fed. R. Civ. P. 20(a)(2)(B).

9 Here, Plaintiff's excessive force and illegal search claims
10 involve Defendants who are identified for the first time in the 4AC
11 and are not linked to any of Plaintiff's other claims.
12 Additionally, the claims concern discrete instances of alleged
13 misconduct that do not arise out of the same transactions or
14 occurrences as the claims at issue in the 3AC. Consequently, the
15 Court concludes that the excessive force and illegal search claims
16 are not properly joined in the 3AC. Therefore, leave to amend
17 these claims is DENIED, and the claims are DISMISSED without
18 prejudice to Plaintiff's pursuing them in new and separate
19 complaints.

20 III. Discovery

21 Together with his opposition to the motion for summary
22 judgment Plaintiff has filed a "Motion for Additional Discovery"
23 and, in his supplemental opposition to the motion for summary
24 judgment, he claims he requires additional relevant documentation
25 from Defendants to support his opposition. Docket nos. 84 & 94.
26 As Defendants have done, the Court construes the discovery-related
27 requests as a motion to compel discovery and a request for
28 additional discovery under Federal Rule of Civil Procedure 56(d).

//

1 A. Motion to Compel

2 Plaintiff seeks to compel discovery of the following documents
3 previously requested from Defendants: (1) his booking photos from
4 May 13 and 14, 2008, from both SRCJ and the Hayward Police
5 Department; (2) photos related to discovery documents numbers
6 ACS0000706 and ACS0000703, which pertain to injuries suffered by
7 Plaintiff at SRCJ on August 12 and September 9, 2008; (3) the
8 legible or typed names of medical staff at Prison Health Services
9 who produced medical progress reports on June 17 and 19, 2008; and
10 (4) the name of an Asian deputy sheriff working when Plaintiff was
11 booked at the Hayward Police Department.

12 Defendants oppose Plaintiff's motion on the ground they have
13 complied with the Federal Rules of Civil Procedure by producing
14 those documents responsive to Plaintiff's requests that are in
15 their "possession, custody or control," see Fed. R. Civ. P.
16 34(a)(1), and also by fulfilling their obligation to conduct a
17 reasonable inquiry into the location of the documents requested.
18 See Fed. R. Civ. P. 26(g). In support of their opposition,
19 Defendants submit the declaration of their counsel of record,
20 Associate County Counsel Manuel Martinez, and attached exhibits
21 comprised of Defendants' responses to Plaintiff's discovery
22 requests. The responses have been verified by Martinez, Deputy
23 County Counsel Audrey Beaman and Kelly Martinez, the Civil
24 Litigation Manager for the Alameda County Sheriff's Department, all
25 of whom have sworn, under penalty of perjury, that they have
26 searched for, and provided Plaintiff with, all documents, photos
27 and other information in their possession, custody or control that
28 might be responsive to his requests. See Martinez Decl. & Exs.
1-7.

1 By contrast, Plaintiff's contention that, despite the
2 representations noted above, Defendants have not searched
3 diligently enough to find the discovery he seeks, are speculative
4 and unsupported by the record. Accordingly, Plaintiff's motion to
5 compel is DENIED.

6 B. Additional Discovery

7 Rule 56(d) of the Federal Rules of Civil Procedure allows a
8 party to avoid summary judgment when such party has not had
9 sufficient opportunity to discover affirmative evidence necessary
10 to oppose the motion. See Garrett v. San Francisco, 818 F. 2d
11 1515, 1518 (9th Cir. 1987).¹ In particular, Rule 56(d) provides
12 that a court may deny a summary judgment motion and permit the
13 opposing party to conduct discovery where it appears that the
14 opposing party, in the absence of such discovery, is unable to
15 present facts essential to opposing the motion.

16 Here, Plaintiff has had adequate opportunity to conduct
17 discovery to seek facts to oppose the claims at issue in the motion
18 for summary judgment, and he acknowledges in his opposition to the
19 motion for summary judgment that he has received more than 1,500
20 discovery responses from Defendants. Accordingly, the request for
21 additional discovery under Rule 56(d) is DENIED.

22 IV. Motion for Summary Judgment

23 A. Legal Standard

24 Summary judgment is only proper where the pleadings, discovery
25 and affidavits show there is "no genuine issue as to any material
26 fact and that the moving party is entitled to judgment as a matter

27 ¹ Garrett cites Rule 56(f), the subsection in which this
28 provision formerly was set forth; as of December 1, 2010, the
applicable provision is Rule 56(d). See Fed. R. Civ. P. 56.

1 of law." Fed. R. Civ. P. 56(c). Material facts are those that may
2 affect the outcome of the case. Anderson v. Liberty Lobby, Inc.,
3 477 U.S. 242, 248 (1986). A dispute as to a material fact is
4 genuine if the evidence is such that a reasonable jury could return
5 a verdict for the nonmoving party. Id.

6 The court will grant summary judgment "against a party who
7 fails to make a showing sufficient to establish the existence of an
8 element essential to that party's case, and on which that party
9 will bear the burden of proof at trial." Celotex Corp. v. Catrett,
10 477 U.S. 317, 322-23 (1986); see also Anderson, 477 U.S. at 248
11 (holding fact to be material if it might affect outcome of suit
12 under governing law). The moving party bears the initial burden of
13 identifying those portions of the record that demonstrate the
14 absence of a genuine issue of material fact. The burden then
15 shifts to the nonmoving party to "go beyond the pleadings, and by
16 his own affidavits, or by the 'depositions, answers to
17 interrogatories, or admissions on file,' designate 'specific facts
18 showing that there is a genuine issue for trial.'" Celotex, 477
19 U.S. at 324 (citing Fed. R. Civ. P. 56(e)).

20 In considering a motion for summary judgment, the court must
21 view the evidence in the light most favorable to the nonmoving
22 party; if, as to any given fact, evidence produced by the moving
23 party conflicts with evidence produced by the nonmoving party, the
24 court must assume the truth of the evidence set forth by the
25 nonmoving party with respect to that fact. See Leslie v. Grupo
26 ICA, 198 F.3d 1152, 1158 (9th Cir. 1999). The court's function on
27 a summary judgment motion is not to make credibility determinations
28 or weigh conflicting evidence with respect to a disputed material
fact. See T.W. Elec. Serv. v. Pacific Elec. Contractors Ass'n, 809

1 F.2d 626, 630 (9th Cir. 1987).

2 B. Mail Tampering

3 Plaintiff alleges a single incident of purported mail
4 tampering that occurred on August 2, 2007, the day he was
5 transferred from GDDF to SRCJ. Specifically, Plaintiff alleges
6 that prior to the transfer he handed to mailroom personnel two
7 legal mail packages, each of which contained documents concerning
8 his "writ." 3AC at 2. The packages were addressed to the Alameda
9 County Superior Court and the District Attorney's Office. Id.

10 The following day, Plaintiff was transferred to state prison.
11 Martinez Decl. ¶ 23. When, after sixty days, he had not heard back
12 from the Superior Court, he sent a notice regarding lost mail to
13 GDDF. On or about October 22, 2007, Plaintiff received the
14 documents in question, which had been forwarded from GDDF as "Lost
15 Mail." 3AC at 2. He noticed that the documents were misplaced and
16 not in their original envelopes. Id. He claims that as a result
17 of the mishandling of his mail the "[j]udges rulings were effected"
18 in his case. Id. He brings this claim against Sheriff Ahern, who
19 he claims is responsible for implementing the mail policy and
20 procedures that resulted in the mishandling of his mail.

21 Prisoners enjoy a First Amendment right to send and receive
22 mail. Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995).
23 Nonetheless, prison officials may institute procedures for
24 inspecting legal mail, which includes mail sent between attorneys
25 and prisoners, see Wolff v. McDonnell, 418 U.S. 539, 576-77 (1974),
26 and mail sent from prisoners to the courts, see Royse v. Superior
27 Court, 779 F.2d 573, 574-75 (9th Cir. 1986). While the deliberate
28 delay of legal mail which adversely affects legal proceedings
presents a cognizable claim for denial of access to the courts, see

1 Jackson v. Proconier, 789 F.2d 307, 311 (5th Cir. 1986), isolated
2 incidents of mail interference without any evidence of improper
3 motive or resulting interference with the right to counsel or
4 access to the courts do not give rise to a constitutional
5 violation. See Smith v. Maschner, 899 F.2d 940, 944 (10th Cir.
6 1990); Morgan v. Montanye, 516 F.2d 1367, 1370-71 (2d Cir. 1975);
7 Bach v. Illinois, 504 F.2d 1100, 1102 (7th Cir. 1974).

8 Here, on the undisputed evidence presented by the parties, a
9 First Amendment violation is not shown. This was an isolated
10 incident of mail mishandling; there is no evidence that the
11 mishandling was based on the content of the mail or was purposeful.
12 Moreover, Plaintiff's conclusory assertion that the ruling in his
13 Superior Court case was affected by the mishandling is unsupported
14 and is not probative evidence that the mishandling had a negative
15 impact on any legal proceeding. Additionally, Plaintiff's
16 supervisory liability claim fails because his assertion is that the
17 mail was not handled in accordance with Sheriff Ahern's written
18 policy and procedures, and he has offered no evidence that shows
19 there was a mailroom practice of subverting the policy.

20 Accordingly, summary judgment is GRANTED to Sheriff Ahern on
21 this claim.

22 C. Deliberate Indifference to Safety/Denial of Court Access

23 Plaintiff alleges that upon arriving at SRCJ after his
24 transfer from GDDF on August 2, 2007, he was placed in a cell with
25 two inmates who were dressed in yellow clothing. Plaintiff, who
26 was in full hand and leg restraints, was wearing red clothing.
27 According to Plaintiff, red clothing indicates an inmate's
28 segregation status, while yellow clothing indicates an inmate is
housed on the mainline. Inmates wearing different colored clothing

1 are not to be placed in cells together. 3AC at 3(a).

2 Plaintiff alleges the two inmates took his legal materials,
3 which were hard copies of his criminal appeal and several of his
4 musical compositions, ripped them up and flushed them down the
5 toilet and "physically abused" Plaintiff, who was unable to protect
6 himself. Id. Plaintiff further alleges that "[p]resent at the
7 seen [sic] was Deputy Fis[c]her, a female officer; who ignored
8 plaintiff during the attacks; and refused to assist plaintiff while
9 housed in the intack [sic] unit of receiving the 'afternoon time',
10 Aug. 2, 2007." He brings this claim against Fischer and Sheriff
11 Ahern. 3AC at 3(a)-(b).

12 In support of the motion for summary judgment, Fischer
13 affirmatively denies, under penalty of perjury, that she either
14 witnessed or was aware of Plaintiff being physically attacked or of
15 anyone destroying or taking his property on August 2, 2007. Decl.
16 Shavies ¶¶ 5-6.² She further denies that she stood idly by while
17 the alleged attack occurred. Id. ¶ 7. Additionally, Defendants
18 have submitted evidence that the Sheriff's Department possesses no
19 "grievance, information, record or document" that supports
20 Plaintiff's allegations, nor is there any report documenting
21 physical injury to Plaintiff on that date. Decl. Martinez ¶¶ 26-
22 27.

23 In his declaration in support of his opposition to the motion
24 for summary judgment, Plaintiff states that "Plaintiff recalls
25 Deputy Fischer there and ignored Plaintiff during the morning/noon
26 shift the incidents of Aug 2, 2007. She walked pass the

27 ² Deputy Fischer's last name is now Shavies. For convenience
28 and consistency, she will be referred to as Deputy Fischer herein.

1 location/cell several times without assisting Plaintiff, as
2 Plaintiff called." Pl.'s Decl. ¶ 17.

3 Under the Eighth Amendment, prison officials must take
4 reasonable measures to guarantee the safety of prisoners. Farmer
5 v. Brennan, 511 U.S. 825, 832 (1994). In particular, prison
6 officials have a duty to protect prisoners from violence at the
7 hands of other prisoners. Id. at 833; Hearns v. Terhune, 413 F.3d
8 1036, 1040 (9th Cir. 2005). The failure of prison officials to
9 protect inmates from attacks by other inmates violates the Eighth
10 Amendment only when two requirements are met: (1) the deprivation
11 alleged is, objectively, sufficiently serious; and (2) the prison
12 official is, subjectively, deliberately indifferent to inmate
13 safety. Farmer, 511 U.S. at 834; Hearns, 413 F.3d at 1040-41.

14 Here, Plaintiff has failed to present evidence that creates a
15 genuine issue of material fact with respect to whether Fischer
16 acted with deliberate indifference to his safety. Specifically,
17 Fischer affirmatively denies that she was aware of the alleged
18 incident or failed to come to Plaintiff's aid, and also has shown
19 that the Sheriff's Department possesses no record of the incident.
20 In response, Plaintiff has not presented evidence that refutes
21 Fischer's. Rather, he states only that he was "jumped" by the
22 inmates, without providing any further detail about the assault or
23 resulting injury, Opp'n at 27-28, and that Fischer walked by the
24 cell several times during the morning/noon shift without responding
25 when "plaintiff called." He does not provide any further detail
26 about what he said when he called or how many times he did so.
27 Pl.'s Decl. ¶ 17. At most, Plaintiff's assertions show that
28 Fischer might have heard Plaintiff calling to her when she walked

1 by his cell, but did not respond. Such assertions, however, do not
2 raise a reasonable inference that Fischer knew Plaintiff was being
3 beaten and intentionally failed to act to protect him. Further,
4 Plaintiff has presented no evidence to refute to refute Fischer and
5 Sheriff Ahern's evidence that no record of the incident exists.

6 Additionally, Plaintiff has not shown that, as a result of
7 either Fischer's or Sheriff Ahern's actions, he was denied access
8 to the courts. Prisoners have a constitutional right of access to
9 the courts. Lewis v. Casey, 518 U.S. 343, 350 (1996). To
10 establish a claim for a violation of this right, the prisoner must
11 prove that he suffered "actual injury" because he was denied such
12 access. Id. at 350-55. To prove an actual injury, he must show
13 that the actions of prison officials hindered his efforts to pursue
14 a non-frivolous claim concerning his conviction or conditions of
15 confinement. See id. at 354-55. Here, Plaintiff has presented no
16 evidence to support his assertion that either Fischer or Sheriff
17 Ahern's conduct was the cause of the destruction of his legal
18 documents or that he suffered an actual injury to court access as a
19 result of the destruction.

20 Accordingly, summary judgment is GRANTED to Fischer and
21 Sheriff Ahern on Plaintiff's deliberate indifference to safety and
22 denial of court access claims.

23 D. Deliberate Indifference to Serious Medical Needs

24 Plaintiff alleges that when he was incarcerated at SRCJ,
25 Deputies Jones, Smith, DeLeon, Nelson, Delima, Kull and Valverde
26 were deliberately indifferent to his serious medical needs between
27 May 13, 2008 and August 24, 2008. Plaintiff further alleges that
28 Sheriff Ahern was responsible for policies that permitted

1 indifference to his medical needs through September 2008.

2 Plaintiff was arrested and booked by the Hayward Police
3 Department on May 13, 2008 and transported to SRCJ the next day.
4 Plaintiff maintains that, from his arrival at SRCJ on May 14, 2008
5 through August 24, 2008, Defendants acted to prevent him from
6 seeking medical treatment for injuries he suffered from the alleged
7 beating by other inmates at SRCJ on August 2, 2007 (discussed
8 above), and from an old gunshot wound to his neck. He also claims
9 that the lack of adequate attention to those needs resulted in his
10 re-injuring himself on August 13, 2008, when he was moved through
11 the jail while in restraints.

12 Deliberate indifference to a prisoner's serious medical needs
13 violates the Eighth Amendment's proscription against cruel and
14 unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 104
15 (1976). A determination of "deliberate indifference" involves an
16 examination of two elements: the seriousness of the prisoner's
17 medical need and the nature of the defendant's response to that
18 need. McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992),
19 overruled on other grounds, WMX Technologies, Inc. v. Miller, 104
20 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A prison official is
21 deliberately indifferent if he knows a prisoner faces a substantial
22 risk of serious harm and disregards that risk by failing to take
23 reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837
24 (1994). Consequently, in order for deliberate indifference to be
25 established, there must exist both a purposeful act or failure to
26 act on the part of the defendant and harm resulting therefrom. See
27 McGuckin, 974 F.2d at 1060.

28 The Court finds Plaintiff has not presented evidence that

1 raises a triable issue of fact as to whether Defendants acted with
2 deliberate indifference to his serious medical needs. As an
3 initial matter, it is undisputed that Defendants are not medical
4 providers. Rather, they are sheriff's deputies who Plaintiff
5 claims knew of his injuries and prevented him from receiving
6 necessary medical care. Plaintiff, however, has not presented
7 evidence that supports his assertion. In particular, the
8 undisputed facts show the following: (1) Plaintiff was medically
9 assessed when he arrived at SRCJ on May 14, 2008, and the only
10 injuries noted were a wrist abrasion three to four days old and an
11 old gunshot wound to the neck, which he states he suffered in 1987;
12 (2) deputy sheriffs escorted him to sick call on May 20, 27 and 30,
13 2008, July 10, 2008, and September 9 and 15, 2008; (3) he had two
14 sets of x-rays taken while at SRCJ -- an x-ray of his right wrist,
15 on May 28, 2008, and of his right wrist and lumbar spine, on
16 September 10, 2008, both of which showed no acute findings; (4) he
17 refused an annual health assessment on May 29, 2008 and
18 acknowledged that he would assume all responsibility for his
19 welfare; (5) he refused to cooperate during physical therapy
20 appointments on June 17, 2008, June 19, 2008 and July 3, 2008;
21 (6) medical staff provided him with pain medication from May 27,
22 2008 to June 3, 2008, and from July 30, 2008 to August 13, 2008.
23 See Decl. Gilbert & Exs. 1-6; Decl. Gober & Ex. 1; Decl. Molloy.

24 Further, Plaintiff claims Defendants did not comply with a
25 medical order for special housing and bunk assignments.
26 Defendants, however, have presented undisputed evidence that
27 Plaintiff never informed the housing unit deputies of that order
28 and, pursuant to Alameda County Jail regulations, it is the

1 prisoner's responsibility to inform the housing unit deputy of an
2 order to be placed on the lower tier and lower bunk. Decl. P.M.
3 Jones ¶ 6-7. Without knowledge of Plaintiff's medical needs,
4 Defendants could not have been deliberately indifferent to them.

5 Additionally, Plaintiff has not presented evidence that Deputy
6 Jones acted with deliberate indifference when he moved Plaintiff in
7 restraints on August 12, 2008, which, Plaintiff alleges, caused him
8 to fall and re-injure himself. Even if Plaintiff fell because he
9 was restrained and not, as Jones wrote in the incident report,
10 because his foot slipped out of his sandal, there is no evidence
11 that Jones knew of a substantial risk of harm to Plaintiff and
12 failed to act to prevent such harm. Rather, it is undisputed that
13 Plaintiff was housed in administrative segregation and all such
14 inmates must be moved in restraints; Plaintiff does not allege that
15 a medical order required that he be excepted from this procedure or
16 that Jones failed to honor such an order. Nor does he allege any
17 other facts which support the proposition that Jones acted with
18 deliberate indifference.

19 Finally, Plaintiff has not shown supervisory liability for
20 deliberate indifference to his medical needs by Sheriff Ahern.
21 Respondeat superior liability does not exist under 42 U.S.C.
22 § 1983. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). "A
23 supervisor is only liable for constitutional violations of his
24 subordinates if the supervisor participated in or directed the
25 violations, or knew of the violations and failed to act to prevent
26 them." Id. Here, Plaintiff has not shown that any deputy sheriff
27 acted with deliberate indifference to his serious medical needs or
28 that any Sheriff's Department policy resulted in the violation of

1 his constitutional rights.

2 Based on the above, summary judgment is GRANTED in favor of
3 Defendants on this claim.

4 E. Qualified Immunity

5 Defendants argue that they are entitled to qualified immunity.
6 The defense of qualified immunity protects "government officials
7 . . . from liability for civil damages insofar as their conduct
8 does not violate clearly established statutory or constitutional
9 rights of which a reasonable person would have known." Harlow v.
10 Fitzgerald, 457 U.S. 800, 818 (1982). The threshold question in
11 qualified immunity analysis is: "Taken in the light most favorable
12 to the party asserting the injury, do the facts alleged show the
13 officer's conduct violated a constitutional right?" Saucier v.
14 Katz, 533 U.S. 194, 201 (2001). The relevant, dispositive inquiry
15 in determining whether a right is clearly established is whether it
16 would be clear to a reasonable defendant that his conduct was
17 unlawful in the situation he confronted. Id. at 202.

18 On the facts presented herein, viewed in the light most
19 favorable to Plaintiff, Defendants prevail as a matter of law on
20 their qualified immunity defense because the record establishes no
21 constitutional violation. Even if a constitutional violation did
22 occur, however, Defendants could have reasonably believed their
23 conduct was lawful. Specifically, with respect to Plaintiff's mail
24 tampering claim, it would not have been clear to Sheriff Ahern that
25 his policy for the inspection of legal mail violated the First
26 Amendment because of a single incident of Plaintiff's mail being
27 mishandled. Additionally, it would not have been clear to Deputy
28 Fischer or Sheriff Ahern that Plaintiff's right to be protected

1 from attack by other inmates was violated based on Plaintiff's bare
2 statement that he called out to Fischer when she passed by his cell
3 but she did not respond. Further, it would not have been clear to
4 Fischer or Sheriff Ahern that Fischer violated Plaintiff's
5 constitutional right of access to the courts by failing to prevent
6 other inmates from flushing his legal materials down the toilet.
7 Finally, it would not have been clear to those Defendants who are
8 alleged to have prevented Plaintiff from receiving adequate medical
9 care that they were acting with deliberate indifference to his
10 serious medical needs. They escorted him to see medical staff on
11 numerous occasions, were unaware of a medical order to provide him
12 with certain housing and bunk assignments, and escorted him in
13 restraints when there was no medical order requiring a different
14 procedure.

15 Accordingly, Defendants are entitled to qualified immunity
16 with respect to all of Plaintiff's claims, and their motion for
17 summary judgment is GRANTED for this reason as well.

18 CONCLUSION

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

- 20 1. Plaintiff's motion for leave to file a fourth amended
21 complaint is DENIED.
- 22 2. Plaintiff's motion to compel discovery is DENIED.
- 23 3. The administrative segregation and food tampering claims
24 are DISMISSED with prejudice.
- 25 4. The excessive force and illegal search claims are
26 DISMISSED without prejudice.
- 27 5. Defendants' motion for summary judgment is GRANTED.
- 28 The Clerk of the Court shall enter judgment and close the

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file. All parties shall bear their own costs.

This Order terminates Docket nos. 67, 84 and 85.

IT IS SO ORDERED.

Dated: 3/27/2012



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE