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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

DEREK WHEAT, et al.,  
Plaintiff,  
vs.  
STATE OF CALIFORNIA, et al.,  
Defendants.

Case No: C 11-2026 SBA  
**ORDER TRANSFERRING VENUE**

Plaintiffs Derek Wheat (“Wheat”), a California parolee, and others, bring the instant putative class action, pursuant to 42 U.S.C. § 1983, on behalf of themselves and current and future parolees and probationers alleging that California’s parole and probation revocation system violates their constitutional rights. The Court previously directed the parties to show cause why the instant action should not be transferred to the Central District of California where a virtually identical class action brought by the same Plaintiffs’ attorney was previously litigated. Having read and considered the papers submitted in response to the order to show cause, and being fully informed, the Court hereby TRANSFERS the instant action to the Central District of California. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 **I. BACKGROUND**

2 **A. PRIOR LITIGATION**

3 The present action is the latest in a series of legal challenges involving California's  
4 parole revocation system. Prior to this case, two other actions, including another class  
5 action filed by Plaintiffs' counsel, Los Angeles-based attorney Eric C. Jacobson  
6 ("Jacobson"), were litigated in the Eastern District of California and later in the Central  
7 District of California. These actions are summarized below.

8 **1. Valdivia v. Wilson**

9 On May 2, 1994, six individuals and the Prisoners' Rights Union filed a section  
10 1983 class action suit in the Eastern District of California against the State of California  
11 and various state officials. See Valdivia v. Wilson, No. Civ. S-94-0671 LKK (E.D. Cal.  
12 filed May 2, 1994); Defs.' Request for Judicial Notice in Supp. of Mot. to Dismiss ("RJN")  
13 Ex. A, Dkt 23-1; Ex. M, Dkt. 23-7. The plaintiffs alleged that they were denied legal  
14 counsel at their parole revocation hearings in violation of the Fourteenth Amendment. Id.  
15 Ex. A at 2-3. On December 1, 1994, the Honorable Lawrence K. Karlton certified a class  
16 consisting of: (1) California parolees at large; (2) California parolees in custody, as alleged  
17 parole violators; and (3) California parolees who are in custody, having been found in  
18 violation of parole and who have been sentenced to custody. Id. at 3.

19 On March 9, 2004, Judge Karlton entered a Stipulated Order for Permanent  
20 Injunctive Relief. Id. Ex. C, Dkt. 23-1. The injunction requires the State of California and  
21 responsible officials to implement policies and procedures with respect to the parole  
22 revocation process, including: (1) the appointment of counsel; (2) setting a probable cause  
23 hearing within a specified amount of time; (3) a plan to provide hearing space for  
24 revocation hearings; (4) standards, guidelines and training for effective assistance of state-  
25 appointed counsel; (5) access to evidence and the ability to subpoena and present witnesses  
26 and evidence to the same extent as the State; and (6) limitations on the use of hearsay  
27 evidence. Id. Judge Karlton approved the settlement and final injunction on March 17,  
28 2004, and continues to maintain jurisdiction over the settlement. Id. Ex. D, Dkt. 23-2.

1                   **1.     Jacobson v. Schwarzenegger and Johnson v. Schwarzenegger**

2                   On May 21, 2004, Attorney Jacobson—the same attorney who filed the instant  
3 action—filed a pro se action in the Central District of California. See Jacobson v.  
4 Schwarzenegger, No. CV-04-3629 JFW (E.D. Cal. filed May 21, 2004). The 97-page  
5 complaint alleged essentially two sets of claims. First, Jacobson, acting pro se, sought to  
6 represent a class of 125,000 California parolees whose rights alleged were violated by  
7 California’s parole revocation system, notwithstanding the relief afforded in the Valdivia  
8 action. See id. Ex. F ¶ 13, Dkt. 23-3. Though not a parolee, Jacobson alleged that he could  
9 assert claims on behalf of the class under the doctrine of third party standing. Id. ¶ 12.  
10 Second, Jacobson sought to assert claims arising from his removal by the California Board  
11 of Prison Terms (“BPT”) from the list of attorneys eligible to receive appointments to  
12 represent parolees at parole revocation hearings. Id. ¶¶ 10, 13. The named defendants  
13 included then Governor Arnold Schwarzenegger, along with fourteen other State officials.

14                   Defendants filed a motion to dismiss and motion to strike, which the district court  
15 granted. See Jacobson v. Schwarzenegger, 357 F. Supp. 2d 1198 (C.D. Cal. 2004).  
16 Relying largely on the Ninth Circuit’s decision in McHenry v. Renne, 84 F.3d 1172 (9th  
17 Cir. 1996), Magistrate Judge James W. McMahon found that the complaint failed to  
18 comport with the requirement under Federal Rule of Civil Procedure 8(a) that a pleading be  
19 “short and plain.” Id. at 1205. The court noted that “[t]he complaint contains page after  
20 page of descriptive and often hyberbolic narrative, quotations from articles, descriptions of  
21 interviews and legal argument, and a lengthy digression on the California governor’s  
22 purported relationship with the prison guard’s union.” Id. In addition, the court ruled that  
23 Jacobson lacked standing to represent the claims of parolees covered by the Valdivia  
24 settlement with respect to the “speculative claims of future parolees.” Id. at 1121.

25                   On January 21, 2005, Jacobson filed a 200-page First Amended Complaint which  
26 added Eric Johnson (“Johnson”), a California parolee, as a representative plaintiff. Id. Ex.  
27 G at 2-3, Dkt. 23-5. The amended complaint alleged that Johnson purported to represent a  
28 class consisting of “all felons currently serving determinate sentences and all felons who

1 have completed determinate sentences and been released to parole terms but have not yet  
2 been discharged from parole.” Id. (citing First Am. Compl. ¶¶ 128-138). On February 15,  
3 2005, Magistrate Judge McMahon sua sponte dismissed the First Amended Complaint with  
4 leave to amend, again for failure to comply with Rule 8(a). See Jacobson v.  
5 Schwarzenegger, 226 F.R.D. 395, 397 (C.D. Cal. 2005). Plaintiffs thereafter filed a Second  
6 Amended Complaint on March 11, 2005, and a Third Amended Complaint on August 31,  
7 2005. RJN Ex. G at 2-3, Dkt. 23-5.

8 As with the previous iterations of the pleadings, the 107-page Third Amended  
9 Complaint asserted two sets of claims. Claims One through Eleven were directed at  
10 perceived constitutional deficiencies in California’s parole revocation system. RJN Ex. F  
11 ¶ 13. These claims were brought by both plaintiffs on behalf of the class of “all felons who  
12 have completed determinate sentences and been released to parole terms but have not yet  
13 been discharged from parole.” Id. ¶ 151(a).<sup>1</sup> The remaining claims, Claims Twelve  
14 through Eighteen, were brought by Jacobson to challenge his removal from the BPT list of  
15 attorneys eligible to represent parolees at parole revocation hearings. Id. ¶¶ 173-186.  
16 Jacobson alleged that he was “purged” from the attorney appointment list due to his  
17 representation of parolees , as well as his advocacy for reforming the parole revocation  
18 system. RJN Ex. G at 5.

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21 <sup>1</sup> The complaint alleged that “[t]he size of the class is conservatively estimated to be  
22 approximately 160,000 persons.” Id. ¶ 152. The class claims were styled, as follows:  
23 (1) violation of the Fourteenth Amendment right to be free from unreasonable searches and  
24 seizures (Claim One); (2) violation of a Fourteenth Amendment due process right to  
25 rehabilitative services (Claim Two); (3) violation of the Due Process and Equal Protection  
26 Clauses based on identical treatment of differently situated persons (Claim Three); (4)  
27 violation of a Fifth, Sixth, and Fourteenth Amendment right to affected for presentation of  
28 counsel that parole revocation hearings (Claim Four); (5) violation of a Sixth and  
Fourteenth Amendment right to parole revocation hearings of sufficient duration, open to  
the public, and before qualified an impartial hearing officer (Claims Five, Six, and Eight);  
(6) violation of a Sixth and Fourteenth Amendment right to a jury trial (Claim Seven); (7)  
violation of the Fourteenth Amendment right to a disposition made pursuant to a  
meaningful collaborative process (Claim 9); (8) violation of the Eighth and Thirteenth  
Amendment rights to be free of inhumane treatment and enslavement (Claim Ten); and  
(9) state tort claims (Claims Eleven). Id. ¶¶ 162-172.

1 On January 16, 2007, Magistrate Judge Jennifer T. Lum issued a 65-page Report and  
2 Recommendation in which she recommended dismissing Claims Two, Three, Six, Seven  
3 and Ten, with prejudice. Id. Ex. G, Dkt. 23-5. In addition, she recommended dismissing  
4 Jacobson as a plaintiff from Claims One through Eleven for lack of standing, and severing  
5 Johnson’s remaining claims (i.e., Claims One, Four, Five, Eight, Nine and Eleven) from  
6 Jacobson’s individual claims. Id. On August 1, 2007, District Judge John F. Walter  
7 adopted the Report and Recommendation. Id. Ex. H, Dkt. 23-6. Judge Walter  
8 subsequently issued an Order Severing Claims and directed the Clerk to assign a new case  
9 number to the claims being asserted by Johnson. Id. Ex. I. The severed case was styled as  
10 Johnson v. Schwarzenegger, No. CV-07-6176 JFW.<sup>2</sup>

11 On September 28, 2007, Judge Walter ruled in the Johnson matter that Johnson  
12 could not proceed on his claims on a class basis on the ground that his attorney, Jacobson,  
13 inexcusably failed to file a motion for class certification within the time prescribed by the  
14 Central District Local Rules. RJN Ex. J, Dkt. 23-6.

15 On February 14, 2008, Judge Walter granted the defendants’ motion for judgment on  
16 the pleadings as to remaining Claims One, Four, Five, Eight and Nine, which he dismissed  
17 with prejudice for lack of standing based on the fact that Johnson was not a parolee. Id. Ex.  
18 K at 3, Dkt. 23-6. Judge Walter declined to exercise supplemental jurisdiction over Claim  
19 Eleven, which alleged various state law causes of action. Id. at 4.

20 On March 15, 2008, Jacobson appealed the dismissal of Johnson’s claims to the  
21 Ninth Circuit. Id. Ex. L. On April 18, 2012, the Ninth Circuit affirmed the Central  
22 District’s decision. See Johnson v. Schwarzenegger, 476 Fed.Appx. 349, 2012 WL  
23 1332026 (9th Cir. Apr. 18, 2012); Defs.’ Request for Judicial Notice in Supp. of Opening  
24 Brief Re Transfer to Central District (“Second RJN”), Ex. A, Dkt. 50.

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<sup>2</sup> For simplicity, further references to the Johnson action relate to the class claims  
alleged by Johnson on behalf of a class of California parolees.

1           **B.       THE PRESENT CASE**

2           On April 26, 2011, during the pendency of the Johnson appeal, Attorney Jacobson  
3 filed the instant representative action on behalf of 160,000 California parolees and future  
4 parolees (or future probationers) who are due to be released on parole or probation. Compl.  
5 ¶ 4, Dkt. 1. The Complaint named Derek Wheat as the only representative Plaintiff. Id. ¶  
6 5. After Defendants filed a motion to dismiss, the parties stipulated to the filing of a First  
7 Amended Complaint (“FAC”). Dkt. 14, 20.

8           On July 26, 2011, Jacobson filed a 79-page FAC on behalf of Wheat, as well as  
9 newly-joined Plaintiffs, Antonio Martinez (“Martinez”) and Shandon Davis (“Davis”).  
10 Dkt. 21. Wheat and Martinez are alleged to be under active parole supervision by the  
11 California Department of Corrections (“CDCR”) in this District. FAC ¶¶ 7, 11. Davis  
12 allegedly is serving a fifteen-year determinate sentence and is not alleged to be on parole.  
13 Id. ¶ 94-95. Plaintiffs purport to represent a class of “all felons who are serving  
14 determinate sentences and will be released to parole (and/or probation) terms and all  
15 current parolees who have not yet been discharged from parole.” Id. ¶ 222. They bring this  
16 action to challenge various “due process deficiencies” within California’s parole revocation  
17 system. Id. ¶ 3. They generally accuse “juridically linked” Defendants, i.e., officials at the  
18 Governor’s Office, the CDCR and the BPH, of operating a “parole revocation mill” to  
19 sustain California’s “burgeoning prison-industrial complex.” Id. ¶¶ 69, 73, 75.<sup>3</sup>

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21           <sup>3</sup> The Defendants identified in the case caption in the FAC are: (1) Edmund G.  
22 Brown, Jr., Governor of California, in his official and individual capacity; (2) James  
23 Humes, Office of the Governor, Executive Secretary for Administration, Legal Affairs and  
24 Policy, in his official and individual capacity; (3) Matthew L. Cate, Secretary of the CDCR,  
25 in his official and individual capacity; (4) Jeanne Woodford, Senior Fellow for Corrections  
26 Policy, UC Berkeley & Special Advisor to the Governor, in her official and individual  
27 capacity; (5) Terri L. McDonald, CDCR, Chief Deputy Secretary for the Adult Operations  
28 Division, in her official and individual capacity; (6) Scott M. Kernan, CDCR,  
Undersecretary for the Adult Operations Division, in his official and individual capacity;  
(7) Wendy S. Still, CDCR & Special Advisor to the Governor, in her official and individual  
capacity; (8) Roberto J. Ambroselli, CDCR, Senior Advisor for the Division of Adult  
Parole Operations, in his official and individual capacity; (9) Margarita E. Perez, CDCR,  
Deputy Director for the Adult Operations Division, in her official and individual capacity;  
(10) Marvin E. Speed, CDCR, Parole Administrator I, in his official and individual  
capacity; (11) Arnold P. Fitt, CDCR, Parole Agent III, Unit Supervisor Berkeley Parole

1           The FAC alleges ten federal constitutional claims and one supplemental state law  
2 claim. Claims One through Ten of the FAC assert violations of the Fourth, Fifth, Sixth,  
3 Eighth, Thirteenth, and Fourteenth Amendments of the United States Constitution, as  
4 follows: (1) unreasonable search and seizure of parolees, and the unlawful deprivation of  
5 privacy and liberty (Claim One); (2) violation of due process based on the frequent re-  
6 incarceration of parolees in punitive jail and prison environments, and the deprivation of  
7 effective rehabilitation services (Claim Two); (3) violation of equal protection based on  
8 identical treatment of differently-situated persons (Claim Three); (4) deprivation of the  
9 right to effective assistance of counsel (Claim Four); (5) violation of due process based on  
10 improper hearings of inadequate duration (Claim Five); (6) denial of the right to a public  
11 trial (Claim Six); (7) denial of right to jury trial (Claim Seven); (8) violation of due process  
12 based on improper hearings before non-neutral, non-detached and unqualified hearing  
13 officers (Claim Eight); (9) violation of due process based on biased, unfair and unjust  
14 dispositions (Claim Nine); and (10) unlawful infliction of cruel and unusual punishment,  
15 and enslavement or subjection to the badges and incidents thereof (Claim Ten). Id. ¶¶ 245-  
16 254. Claim Eleven is an amalgam of various supplemental state claims which are alleged  
17 in an entirely conclusory manner. Id. ¶¶ 255-56.

18           Plaintiffs seek a litany of remedies, including, without limitation, a court order:  
19 directing CDCR to end their warrantless searches and seizures of parolees; id. ¶ 257(A);  
20 directing the CDCR and BPH to provide rehabilitative services to parolees; id.; increasing

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21 Office, in his individual and official capacity; (12) Robert G. Doyle, Chairperson of the  
22 California Board of Parole Hearings (“BPH”), in his official and individual capacity; (13)  
23 Martin N. Hoshino, Executive Officer of the BPH, in his official and individual capacity;  
24 (14) Rhonda W. Skipper-Dotta, BPH, Chief Commissioner, in her official and individual  
25 capacity; (15) Kenneth E. Cater, BPH, Chief Deputy Commissioner, in his official and  
26 individual capacity; (16) George E. Lehman, BPH, Associate Chief Deputy Commissioner,  
27 in his official or individual capacity; (17) Patricia A. Cassady, BPH, Associate Chief  
28 Deputy Commissioner, in her official or individual capacity; (18) Richard D. Jallins, BPH,  
Associate Chief Deputy Commissioner, in his official and individual capacity; (19) William  
B. Crisologo, BPH, Associate Chief Deputy Commissioner, in his official and individual  
capacity; (20) Alan Silver, BPH, Deputy Commissioner, in his official and individual  
capacity; (21) Edward McNair, BPH, Deputy Commissioner, in his official and individual  
capacity; and (22) unknown current officials Nos. 1-10 of the State of California, CDCR or  
BPH, in their official or individual capacities.

1 the time allotted for parole revocation hearings; *id.*; “*disestablishing* California’s  
2 unconstitutional aberrant non-rehabilitative system of parole administration and  
3 revocation,” transferring the powers of the Secretary of the CDCR over parole  
4 administration and revocation procedures to a court appointed receiver, *id.* ¶¶ 257(C); and  
5 directing the immediate implementation of Assembly Bill 109 (“AB 109”).

6 In response to the FAC, Defendants filed a second motion to dismiss, which  
7 presented both procedural and substantive grounds for dismissal. Dkt. 31. Among  
8 Defendants’ procedural contentions was that the action should be dismissed under the first-  
9 to-file rule based on prior lawsuits—principally the *Johnson* action—which involved  
10 essentially the same claims as are alleged in this action. *Id.* at 3-4. Given that *Johnson* had  
11 been terminated, the Court declined to find that *dismissal* of the action was appropriate.  
12 Because Defendants only sought dismissal and not a transfer, the Court ordered the parties  
13 to show cause why the instant action should or should not be transferred to the Central  
14 District of California. *Id.* at 12 n.5.<sup>4</sup>

15 In their response to the show cause order, Defendants contend that the action should  
16 be transferred to Central District under the doctrine of federal comity, or alternatively,  
17 pursuant to 28 U.S.C. § 1404(a). Plaintiffs oppose transferring venue to the Central  
18 District. However, to the extent the Court is inclined to change venue, Plaintiffs request  
19 that the action be transferred to the Eastern District of California. The matter has been fully  
20 briefed and is ripe for adjudication.<sup>5</sup>

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23 <sup>4</sup> The Court Order of March 30, 2012, also addressed the sufficiency of the claims  
24 alleged in the FAC and granted the motion to dismiss. Dkt. 48. The Court granted  
25 Plaintiffs leave to amend only as to Claims One, Four, Five, Eight, Nine and Eleven. Dkt.  
26 48 at 28. Nonetheless, Plaintiffs’ Second Amended Complaint, filed June 4, 2012, Dkt. 55,  
27 exceeds the permissible scope of leave to amend by joining three additional Plaintiffs and  
28 joining and substituting various Defendants. These unauthorized modifications are  
improper. See *Earll v. eBay Inc.*, No. C 10-00262 EJD, 2012 WL 3255605, at \*2 (N.D.  
Cal. Aug. 8, 2012) (dismissing newly-alleged claim in an amended complaint that exceeded  
the scope of the leave to amend previously granted by the court).

<sup>5</sup> Because the Court finds that transfer is warranted for reasons of comity, the Court  
does not reach the parties’ arguments regarding transfer under 28 U.S.C. § 1404(a).



1 **II. DISCUSSION**

2 **A. OVERVIEW**

3 The “first-to-file rule,” also referred to as the federal comity doctrine, “permits a  
4 district court to decline jurisdiction over an action when a complaint involving the same  
5 parties and issues has already been filed in another district.” Pacesetter Sys., Inc. v.  
6 Medtronic, Inc., 678 F.2d 93, 94-95 (9th Cir. 1982). “This circuit has defined the rule of  
7 comity as merely of recognizing exclusive jurisdiction in the court first acquiring  
8 jurisdiction of any action.” Rath Packing Co. v. Becker, 530 F.2d 1295, 1306 (9th Cir.  
9 1975)) (internal quotations and citation omitted). “The first-to-file rule was developed to  
10 ‘serve the purpose of promoting efficiency well and should not be disregarded lightly.’”  
11 Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d 622, 625 (9th Cir. 1991) (quoting in part  
12 Church of Scientology v. United States Dep’t of the Army, 611 F.2d 738, 750 (9th Cir.  
13 1979)).

14 In exercising its discretion to dismiss, transfer or stay an action under the first-to-file  
15 rule, a court should consider: (1) the chronology of the two actions; (2) the similarity of the  
16 parties; and (3) the similarity of the issues. Z-Line Designs, Inc. v. Bell’O Int’l LLC, 218  
17 F.R.D. 663, 665 (N.D. Cal. 2003) (Whyte, J.). The issues and parties in the first and second  
18 action need not be identical; it is sufficient that they are “substantially similar” in order for  
19 the rule to apply. Inherent v. Martindale-Hubbell, 420 F. Supp.2d 1093, 1097 (N.D. Cal.  
20 2006); accord Jeske v. Cal. Dept. of Corrections and Rehabilitation, No. 1:11-CV-01838  
21 JLT, 2012 WL 1130639, at \*6 (E.D. Cal. Mar. 30, 2012) (“the rule is satisfied if some of  
22 the parties in one matter are also in the other matter, regardless of whether there are  
23 additional unmatched parties in one or both matters.”).

24 **B. ANALYSIS**

25 The Court finds that the record supports transferring the instant action to the Central  
26 District under the doctrine of federal comity. With regard to the first consideration, there is  
27 no dispute between the parties that the Johnson action is the first-filed action, as it was  
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1 commenced in the Central District in 2004 while the instant action was filed in 2011. Thus,  
2 the first factor pertinent to the Court’s analysis weighs in favor of transfer.

3         The second factor—similarity between the parties—also militates in favor of  
4 transfer. Where class actions are involved, it is the class, as opposed to the identity of the  
5 class representative, which is germane. Jeske, 2012 WL 1130639, at \*6. In the Johnson  
6 action, the class was identified as “all felons who have completed determinate sentences  
7 and been released to parole terms but have not yet been discharged from parole.” RJN, Ex.  
8 F ¶ 151(a), Dkt. 23-4. The class identified in this action is similarly identified as “all felons  
9 who are serving determinate sentences and will be released to parole (and/or probation)  
10 terms and all current parolees who have not yet been discharged from parole.” FAC ¶ 222.  
11 Except for the inclusion of future parolees in this action, the class definitions are  
12 substantially similar. Moreover, the interests of the classes are fundamentally the same,  
13 i.e., avoidance of harm resulting from California parole revocation system.<sup>6</sup> As for  
14 defendants, both actions name the current Governor of the State of California as well as  
15 various State officials who are alleged to be responsible for or connected to the State’s  
16 parole revocation system. Accordingly, the Court finds that there is sufficient similarity  
17 between the parties in both actions to meet the second requirement for application of the  
18 federal comity doctrine.

19         Finally, the record supports the conclusion that the legal issues involved in this and  
20 the prior action are substantially the same. A number of the allegations contained in  
21 pleadings in Johnson are repeated verbatim in the FAC filed herein. At their core, both  
22 actions challenge the constitutionality of various aspects of California’s parole revocation  
23 system. Notably, each of Plaintiff’s surviving claims—i.e., deprivation of privacy and  
24 liberty (Claim One), deprivation of the right to effective assistance of counsel (Claim Four);  
25 violation of due process based on improper hearings of inadequate duration (Claim Five),  
26 violation of due process based on improper hearings before non-neutral, non-detached and

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28 <sup>6</sup> The earlier versions of the pleadings in Johnson identified the class as consisting of  
both future and current parolees. See RJN Ex. G at 3.

1 unqualified hearing officers (Claim Eight), violation of due process based on biased, unfair  
2 and unjust dispositions (Claim Nine), unlawful infliction of cruel and unusual punishment,  
3 and enslavement or subjection to the badges and incidents thereof (Claim Ten), and  
4 supplemental state claims (Claim Eleven)—were alleged in the Johnson action. Compare  
5 FAC ¶¶ 245-254 with RJN Ex. F ¶¶ 162-172.<sup>7</sup> In addition, the relief sought in the two  
6 actions is largely identical; namely, a complete overhaul of California’s parole revocation  
7 system. See RJN Ex G. at 100-104; FAC ¶¶ 257-58.

8         Notably, Plaintiffs make no attempt to address, let alone dispute, any of the three  
9 considerations relevant to a proposed transfer under the doctrine of federal comity. To the  
10 contrary, Plaintiffs readily acknowledge that the Johnson action “involves all or a material  
11 part of the same matter and all or substantially all of the same parties” as this action. Pls.’  
12 Opp’n at 1. Instead, Plaintiffs contend that no purpose will be served by transferring this  
13 case to the Central District because Johnson is no longer an active case and the Ninth  
14 Circuit has since issued a summary order affirming the dismissal. The Court finds  
15 Plaintiffs’ argument unpersuasive.

16         The judges of the Central District have already invested significant time and  
17 resources in reviewing and considering the numerous pleadings filed by Jacobson in pursuit  
18 of claims ostensibly on behalf of California parolees. In Johnson, the action was litigated  
19 through at least three separate, lengthy complaints containing hundreds of pages and  
20 paragraphs of allegations, over the course of almost four years. Significantly, the parties in  
21 Johnson engaged in extensive motion practice, which resulted in a number of substantive  
22 rulings addressing the sufficiency of the pleadings and the various claims alleged therein.  
23 Given the Central District’s familiarity with the parties and issues presented in both this and  
24 the Jacobson action, the policies underlying the doctrine of federal comity persuade the  
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26         <sup>7</sup> The only substantive difference between the two actions is that in Claim One of the  
27 FAC filed in the instant action, Plaintiffs allege a due process violation based on AB 109  
28 and recently enacted parole regulations. FAC ¶ 245. As noted, the claims need not be  
identical to sustain a finding that the legal issues in the two actions are substantially similar.  
See Inherent, 420 F. Supp.2d at 1097.

1 Court that the present action should be transferred to the Central District. See Church of  
2 Scientology, 611 F.2d at 750 (“The doctrine [of judicial comity] is designed to avoid  
3 placing an unnecessary burden on the federal judiciary, and to avoid the embarrassment of  
4 conflicting judgments.”); c.f. Wireless Consumers Alliance, Inc. v. T-Mobile USA, Inc.,  
5 No. C 03-3711 MHP, 2003 WL 22387598, at \*4 (N.D. Cal. Oct. 14, 2003) (finding that  
6 transfer to the Central District was proper, *even if the prior action is no longer pending*,  
7 “[to] avoid the risk of conflicting rulings” and “save judicial resources”).<sup>8</sup>

8 Finally, Plaintiffs make a new argument in their reply that this Court has already  
9 ruled the doctrine of federal comity is inapplicable to this action. Pls.’ Reply at 1. “The  
10 district court need not consider arguments raised for the first time in a reply brief.” Zamani  
11 v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007). Nonetheless, the Court finds no merit to this  
12 contention. In its prior ruling on Defendants’ motion to dismiss the FAC, the Court found  
13 that the doctrine of federal comity did not warrant the *dismissal* of the action. Dkt. 48 at  
14 11-12. Since Defendants did not request a *transfer*, the Court declined to consider a  
15 transfer sua sponte, and instead, issued an order to show cause. Moreover, the Court’s prior  
16 ruling was based on the showing made at that time by the parties. Unlike their motion to  
17 dismiss, which devoted less than a page to the comity argument, Defendants’ present  
18 response to the Court’s order to show provides a much more thorough and thoughtful  
19 discussion of the issues, and includes specific cites to the record, as well as citations to  
20 relevant legal authority, to support their positions.<sup>9</sup> Based on the more comprehensive  
21 briefing provided by Defendants, the Court is now persuaded that the doctrine of federal  
22 comity warrants the transfer of this action to the Central District.

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25 <sup>8</sup> Though Johnson may now be closed, the Local Rules of the Central District permit  
26 the assignment of this action to the judge who previously presided over the action. See  
C.D. Cal. L.R. 83-1.3.1.

27 <sup>9</sup> The brevity of Defendant’s earlier argument is undoubtedly attributable to the strict  
28 page limits applicable to motions filed in this Court, coupled with the numerous other bases  
for dismissal presented in their motion.

1 **III. CONCLUSION**

2 The Court, in its discretion, finds that a transfer of this action to the Central District  
3 is warranted under the federal comity doctrine. Accordingly,


4 IT IS HEREBY ORDERED THAT:

5 1. The instant action is TRANSFERRED forthwith to the Central District of  
6 California.

7 2. The Clerk shall close the file and terminate all pending matters.

8 IT IS SO ORDERED.

9 Dated: February 5, 2013

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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