

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 EASTERN DISTRICT OF CALIFORNIA

WILLIAM ROUSER,  
Plaintiff,  
v.  
JOSEPH R. WHEELER, et al.,  
Defendants.

No. 2:22-CV-0032-TLN-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Defendants’ motion to dismiss and/or transfer. See ECF No. 27. Defendants argue the action should be transferred to the United States District Court for the Central District of California pursuant to a consent decree issued in Rouser v. White, C. Dist. Cal. case no. 2:11-cv-09123. Defendants also argue that Defendant Wheeler should be dismissed with prejudice as an immune defendant. Defendants have filed a request for judicial notice in support of their motion. See ECF No. 28. Plaintiff has not filed an opposition. Instead, Plaintiff filed a document entitled “Request for Investigation and Sanctions on Defendant Carillo for Destroying the Candles Donated by Plaintiff’s Fiancé for Services.” See ECF No. 31. Defendants have filed a motion for additional time respond to Plaintiff’s request. See ECF No. 32.

///

1 For the reasons discussed below, the Court finds that the matter should be  
2 transferred to the United States District Court for the Central District of California as an action to  
3 enforce the consent decree in Rouser v. White.

#### 4 5 **I. PLAINTIFF'S ALLEGATIONS**

6 This action proceeds on Plaintiff's first amended complaint. See ECF No. 13.  
7 Plaintiff is a prisoner at Mule Creek State Prison, where the alleged violations occurred. See id.  
8 at 1. Plaintiff names the following as defendants: (1) Gavin Newsom, Governor of California; (2)  
9 Joseph R. Wheeler, Deputy Attorney General; (3) Kathleen Allison, Secretary of the California  
10 Department of Corrections and Rehabilitation (CDCR); (4) Patrick Covello, Warden; (5) M.  
11 Safonov, Protestant Chaplain; (6) Mohammed, Muslim Chaplain; (7) Jane or John Doe, Rabbi;  
12 (8) John or Jane Do, Native; (9) Carrillo, Catholic Chaplain; (10) Felton, Sargent; and (11) J.  
13 Eshelman, Community Resource Manager. Id. Defendant Newsom has been dismissed. See  
14 ECF No. 26.

15 Plaintiff again claims violations of RLUIPA and the First Amendment. See id. at  
16 5, 8. Plaintiff alleges the Defendants are not following the terms of the consent decree entered in a  
17 previous case. See id. at 5.

18 Plaintiff claims that the Religious Review Committee, composed of Defendants  
19 Safonov, Muhammad, Carrillo, the Rabbi, the Native American Chaplain, Felton, and Eshelman,  
20 acted with malice, fraud, and oppression by denying Plaintiff items essential to practice Wicca.  
21 See id. The Committee denied Plaintiff an altar, candles, incense, wood, and a fire pit— even  
22 though Catholics and Jews were provided with those items. See id. The Committee told Plaintiff  
23 that they were acting according to a memo from Warden Covello and Secretary Allison. See id.  
24 Plaintiff alleges that Deputy Attorney General Wheeler told the Committee that they did not have  
25 to follow RLUIPA or the court-ordered settlement agreement. See id. at 5-6.

26 ///

27 ///

28 ///

1 Plaintiff claims that denial of a Wiccan chaplain violates Plaintiff's First  
2 Amendment rights of religious establishment. See id. at 8. Defendants Covello, Allison,  
3 Safonov, Mohammed, the Rabbi, the Native American Chaplain, and Carrillo discriminated  
4 against Plaintiff by denying him a Wiccan chaplain. See id. Plaintiff was denied the ability to  
5 practice his religion, as he was not provided a spiritual advisor as other religions were provided.  
6 See id. at 8. Plaintiff claims this is a violation of the judge's order in Rouser v. White. See id.  
7 Plaintiff seeks damages and injunctive relief.

## 8

## 9 II. PLAINTIFF'S PREVIOUS LITIGATION

10 On May 7, 1993, Plaintiff filed a lawsuit in the Eastern District alleging that  
11 former CDCR directors and wardens at various prisons violated his religious rights under the First  
12 Amendment and RLUIPA. See Rouser v. White, E. Dist. Cal. case no. 2:93-cv-0767-LKK-GGH-  
13 P. In that case, the court granted Plaintiff's motion for injunctive relief to facilitate access to  
14 religious items and group worship. See 630 F. Supp. 2d 1165 (E.D. Cal. 2009). Plaintiff later  
15 obtained a second order granting injunctive relief arising from conditions at California State  
16 Prison – Los Angeles County. See 630 F. Supp. 2d 1055 (E.D. Cal. 2010).

17 On September 23, 2011, the parties in Rouser v. White entered into a consent  
18 decree, which the court approved. See ECF No. 28, Exhibit A (Defendants' request for judicial  
19 notice). The Court accepts Defendants' general description of the consent decree as follows:

20 . . . The decree outlined the scope of injunctive relief to which  
21 entitled Plaintiff was entitled, including his access to Wiccan services,  
22 religious items, and holidays. (Pl.'s Complaint, ECF No. 13 at 10-23.) The  
23 decree, by its terms, would apply regardless of what CDCR institution  
24 Plaintiff was housed in. (*Id.* at ¶ 43.) However, compliance may be  
temporarily suspended in various circumstances. (*Id.* at ¶ 37.) The parties  
agreed to dismiss several defendants, several other litigations, and transfer  
venue to the Central District of California because Plaintiff was still  
housed at LAC. (*Id.* at ¶¶ 1-2, 52.)

25 ECF No. 27-1, pgs. 2-3.

26 On October 18, 2021, the court transferred Rouser v. White to the United States District Court for  
27 the Central District of California and directed that compliance with the consent decree would  
28 begin in that court. See ECF No. 28, Exhibit B. The matter was assigned case number 2:11-cv-

1 09123 in the Central District.

2 In 2013, the Central District granted Defendants’ motion to vacate the consent  
3 decree entered in Rouser v. White. See 2013 WL 12377689, at \*1 (C.D. Cal. 2013). In 2016, the  
4 Ninth Circuit Court of Appeals granted Plaintiff’s appeal, vacated the Central District’s order, and  
5 reinstated the consent decree. See Rouser v. White, 825 F.3d 1076 (9th Cir. 2016). The appellate  
6 court remanded the matter back to the Central District. See id. Rouser v. White remains an open  
7 case in the Central District subject to the original consent decree. The consent decree provides  
8 that jurisdiction and venue over enforcement of Plaintiff’s religious accommodations lies in the  
9 Central District regardless of Plaintiff’s assigned prison. See ECF No. 28, Exhibit A.

### 11 III. DISCUSSION

12 Pursuant to Federal Rule of Civil Procedure 12(b)(3), a defendant may move to  
13 challenge venue. If venue is improper, the matter must either be dismissed without prejudice or  
14 transferred pursuant to 28 U.S.C. § 1406(a) to the proper venue. See Nissan Motor Co. v. Nissan  
15 Computer Corp., 89 F. Supp. 2d 1145, 1161 (C.D. Cal. 2000).

16 Here, Defendants argue that venue is improper in the Eastern District and that the  
17 matter should be transferred to the Central District pursuant to the consent decree in Rouser v.  
18 White. See ECF No. 27-1, pgs. 8-9. According to Defendants:

19 A district court retains continuing jurisdiction to enforce its  
20 judgments, including those obtained by consent decree. *Hook v. State of*  
21 *Arizona, Dep’t of Corrections*, 972 F.2d 1012, 1014 (9th Cir. 1992). A  
22 consent decree contains elements of both court judgment and contract,  
23 embodying the parties’ agreements and their expectation that it is  
24 enforceable by a court. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367,  
25 378 (1992). The parties to a consent decree expect and achieve a  
26 continuing basis of jurisdiction to enforce the terms of the resolution of  
27 their case in the court entering the order. *Smyth ex rel. Smyth v. Rivero*,  
28 282 F.3d 268, 280 (4th Cir. 2002), *overruled on other grounds by Stinnie*  
*v. Holcomb*, 77 F.4th 200 (4th Cir. 2023). Thus, a court may “refuse  
entirely to entertain the action if relief in a more appropriate forum – the  
rendering court – were available.” *Treadaway v. Academy of Motion*  
*Picture Arts*, 783 F.2d 1418, 1421 (9th Cir. 1986). This is especially true  
where the relief sought in the litigation cannot be separated from the relief  
provided by the consent decree. (*Parkison v. Butte Cnty. Sheriff’s Dep’t*,  
2013 WL 1007042, at \*14 (E.D. Cal. Mar. 13, 2013), *report and*  
*recommendation adopted*, 2013 WL 1345080 (E.D. Cal. Mar. 28, 2013);  
*Goulart v. United Airlines, Inc.*, 1994 WL 544476, at \*3 (N.D. Cal. Sept.

1 28, 1994) (citing *Yonkers Racing Corp. v. City of Yonkers*, 858 F.2d 855,  
2 865 (2d Cir. 1988).))

3 Here, Plaintiff's request for relief cannot be separated from the  
4 relief provided by the consent decree. Plaintiff alleges that MCSP staff  
5 conspired to prohibit his access to religious items and interfere with the  
6 practice of his religion, and Plaintiff seeks injunctive relief to correct these  
7 violations. This is the same relief that was already at issue in *Rouser v.*  
8 *White*, 2022 WL 343250, and is currently pending in the Ninth Circuit.  
9 Plaintiff's collateral litigation, even if not already being adjudicated,  
10 would still require the interpretation and enforcement of the consent  
11 decree. Jurisdiction of the consent decree has been reserved by the Central  
12 District regardless of which prison Plaintiff is incarcerated in. An order  
13 from the Eastern District granting or denying the relief requested would  
14 potentially lead to conflicting court orders and confusion among the  
15 parties as to which order they should follow. Wiccan sigils, the only  
16 exception given in the consent decree, are also not at issue here.  
17 Accordingly, principles of comity and the orderly administration of justice  
18 dictate that this court either dismiss this litigation, or, in the alternative,  
19 transfer this case back to the Central District.

20 ECF No. 27-1, pgs. 8-9.

21 Defendants' argument is well-taken. The Court agrees that the current action is an  
22 enforcement action subject to the consent decree entered in *Rouser v. White*, which is pending in  
23 the Central District. In the interest of justice, the Court will transfer the matter to the Central  
24 District. See 28 U.S.C. § 1406(a).

#### 25 IV. CONCLUSION

26 Accordingly, IT IS HEREBY ORDERED as follows:

- 27 1. Defendants' request for judicial notice, ECF No. 28, is GRANTED.
- 28 2. Defendants' unopposed motion to dismiss and/or transfer, ECF No. 27, is  
GRANTED to the extent the Court finds that this matter should be transferred.
3. The Court expresses no opinion as to whether Defendant Wheeler should be  
dismissed as an immune defendant, and the Court expresses no opinion regarding Plaintiff's filing  
entitled "Request for Investigation and Sanctions on Defendant Carillo for Destroying the Candles  
Donated by Plaintiff's Fiancé for Services," ECF No. 31, or Defendants motion for additional  
time to respond thereto, ECF No. 32, such matters to be more properly addressed by the transferee  
court.

///

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

4. This matter is TRANSFERRED to the United States District Court for the Central District of California consistent with the terms of the consent decree entered in Rouser v. White, 2:11-cv-09123.

Dated: July 22, 2024



---

DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE