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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 CONFESSOR MONTALVO,

12 Plaintiff,

13 vs.

14 CDCR PERSONNEL,

15 Defendants.
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1:16-cv-01078-GSA-PC

**ORDER SEVERING CLAIMS FOR LACK
OF VENUE AND TRANSFERRING
SEVERED CLAIMS TO PROPER COURTS
FOR ADJUDICATION**

**ORDER FOR CLERK'S OFFICE TO SEND
COPIES TO PROPER COURTS**

19 **I. BACKGROUND**

20 Confessor Montalvo ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
21 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On July 26, 2016, Plaintiff
22 filed the Complaint commencing this action, which is now before the court for screening.
23 (ECF No. 1.)

24 On August 15, 2016, Plaintiff consented to Magistrate Judge jurisdiction in this action
25 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 6.)
26 Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of
27 California, the undersigned shall conduct any and all proceedings in the case until such time as
28 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 **II. SCREENING REQUIREMENT**

2 The court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
4 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
5 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
6 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
7 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
8 paid, the court shall dismiss the case at any time if the court determines that the action or
9 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

10 A complaint is required to contain “a short and plain statement of the claim showing
11 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
12 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
14 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are
15 taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart
16 Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
17 To state a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to
18 ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S.
19 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as
20 true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting
21 this plausibility standard. Id.

22 **III. VENUE**

23 The venue for some of Plaintiff’s claims is not proper in this court, and those claims
24 shall be severed from the Complaint and transferred to the proper courts.

25 The federal venue statute requires that a civil action be brought in “(1) a judicial district
26 in which any defendant resides, if all defendants are residents of the State in which the district
27 is located; (2) a judicial district in which a substantial part of the events or omissions giving
28 rise to the claim occurred, or a substantial part of property that is the subject of the action is

1 situated; or (3) if there is no district in which an action may otherwise be brought as provided in
2 this section, any judicial district in which any defendant is subject to the court's personal
3 jurisdiction with respect to such action." 28 U.S.C. § 1391. In the interest of justice, a federal
4 court may transfer a complaint filed in the wrong district to the correct district. See 28 U.S.C. §
5 1406(a); also see Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986) (court may raise
6 defective venue *sua sponte*); see also Davis v. Mason County, 927 F.2d 1473, 1479 (9th Cir.
7 1991) (courts have broad discretion regarding severance).

8 In addition, pursuant to Rule 120(f) of the Local Rules of the Eastern District of
9 California, a civil action which has not been commenced in the proper court may, on the court's
10 own motion, be transferred to another venue within the district. L.R. 120(f).

11 **Discussion**

12 Plaintiff is presently incarcerated at Kern Valley State Prison in Delano, California.
13 The events at issue in the Complaint allegedly occurred at three state prisons, (1) High Desert
14 State Prison (HDSP)¹ in Susanville, California, (2) Pelican Bay State Prison (PBSP)² in
15 Crescent City, California, and (3) Corcoran State Prison (CSP)³ in Corcoran, California, when
16 Plaintiff was incarcerated at those institutions in the custody of the California Department of
17 Corrections and Rehabilitation.

18 Venue is not proper in this court for Plaintiff's claims arising out of events at PBSP and
19 HDSP, and those claims may not be pursued in this action. PBSP is in Crescent City, Del
20 Norte County, California, which is located in the United States District Court for the Northern
21 District of California. HDSP is in Susanville, Lassen County, California, which is located in
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23 ¹ For claims arising at HDSP, it appears that Plaintiff names the following defendants: Sergeant
24 G. Harrison, Sergeant. B. Wheeler, Correctional Officer W. Jones, IGI B. Fleming, S&E M. Marin, IGI C/O N.
Smith, Special Agent J.A. Harrison, and Special Agent P.P. Sprahue.

25 ² For claims arising at PBSP, it appears that Plaintiff names the following defendants: Deputy
26 Director G. Giurbino, Director S. Hubbard, CCII J. Ryan, Z. Razavi (Ph.D.), Special Agent M. Ruff, Chief D.
Rothchild, and CSR B. Lee.

27 ³ For claims arising at CSP, it appears that Plaintiff names the following defendants: Captain R.
28 Chavez, CCI T. Galaviz, Lieutenant S. Pina, CCII C. Villarrial, Chief Deputy Warden J. D. Smith, Sergeant N.
Holland, Social Worker D. Prince, Captain R. Broomfield, and CCII T. Campbell.

1 the Sacramento Division of the United States District Court for the Eastern District of
2 California.

3 Therefore, the court shall sever Plaintiff's claims arising at PBSP and HDSP from the
4 Complaint and transfer those claims to the proper courts. Venue for Plaintiff's claims arising
5 out of events at CSP is proper in this court, and those claims shall proceed in this action.

6 **IV. CONCLUSION AND ORDER**

7 The court finds that venue is not proper in this court for Plaintiff's claims arising at
8 PBSP and HDSP, and those claims may not be pursued in this action. Therefore, the court shall
9 sever those claims from the Complaint and transfer them to the proper courts for adjudication.

10 Based on the foregoing, it is **HEREBY ORDERED** that:

- 11 1. Plaintiff's claims arising at High Desert State Prison in Susanville, California,
12 are severed from this action for lack of venue and transferred to the Sacramento
13 Division of the United States District Court for the Eastern District of
14 California;
- 15 2. The Clerk's Office shall forward to the Sacramento Division of United States
16 District Court for the Eastern District of California:
 - 17 (1) a copy of this order, and
 - 18 (2) a copy of the Complaint filed in this action on January 17, 2017 (ECF
19 No. 1);
- 20 3. Plaintiff's claims arising at Pelican Bay State Prison in Crescent City,
21 California, are severed from this action for lack of venue and transferred to the
22 United States District Court for the Northern District of California;
- 23 4. The Clerk's Office shall forward to the United States District Court for the
24 Northern District of California:
 - 25 (1) a copy of this order, and
 - 26 (2) a copy of the Complaint filed in this action on January 17, 2017 (ECF
27 No. 1);

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- 5. This case shall proceed with Plaintiff's claims arising at Corcoran State Prison;
and
- 6. By separate order, the Court will grant Plaintiff leave to file an amended
complaint in this case as to the Corcoran State Prison claims only.

IT IS SO ORDERED.

Dated: March 24, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE