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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROY HAROLD KELLY,
Plaintiff,

No. CIV S-06-1743 DFL-CMK-P

vs

ORDER.

CLARKE, et al.,
Defendants.

_____ /

Plaintiff, who is proceeding pro se, has filed a civil rights action, apparently pursuant to 42 U.S.C. § 1983, based on alleged violations of his constitutional rights. Plaintiff has paid the statutory filing fee.


The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in “(1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.” See 28 U.S.C. § 1391(b). In this case, none of the defendants reside in this district. The claim arose in San Jose, California,

1 which is in the Northern District of California. Therefore, plaintiff's claim should have been
2 filed in the United States District Court for the Northern District of California. In the interest of
3 justice, a federal court may transfer a complaint filed in the wrong district to the correct district.
4 See 28 U.S.C. § 1406(a); Starnes v. McGuire, 512 F.2d 918, 932 (D.C. Cir. 1974).

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. This matter is transferred to the United States District Court for the
7 Northern District of California;
- 8 2. The order setting status conference, issued on August 8, 2006, is vacated;
- 9 3. Upon transfer of this case, plaintiff should obtain instruction from the
10 United States District Court for the Northern District of California with respect to issuance of
11 new summonses; and
- 12 4. The Clerk of the Court is directed to close this file.

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14 DATED: August 16, 2006.

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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