

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

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

MELVIN DUKES,

Plaintiff,

No. CIV S-09-2208 DAD P

vs.

J. SELBIL, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983¹. Plaintiff has not submitted an application to proceed in forma pauperis.

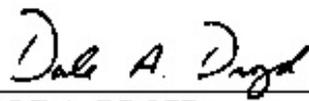
The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in “(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving 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.” 28 U.S.C. § 1391(b).

¹ Plaintiff has used the form for a petition for a writ of habeas corpus in his initial pleading filed with the court. However, he does not challenge his underlying conviction therein and the court has construed the filing as a civil rights complaint.

1 In this case, none of the defendants reside in this district. The claim arose in
2 Monterey County, which is located in the Northern District of California. Therefore, plaintiff's
3 claim should have been filed in the United States District Court for the Northern District of
4 California. In the interest of justice, a federal court may transfer a complaint filed in the wrong
5 district to the correct district. See 28 U.S.C. § 1406(a); Starnes v. McGuire, 512 F.2d 918, 932
6 (D.C. Cir. 1974).

7 Accordingly, IT IS HEREBY ORDERED that this matter is transferred to the
8 United States District Court for the Northern District of California.

9 DATED: September 4, 2009.

10
11 
12 _____
13 DALE A. DROZD
14 UNITED STATES MAGISTRATE JUDGE

13 DAD:md/4
14 duke2208.21