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

GARY F. O’LEARY,
Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al,
Defendants.

) No. C 09-4035 JSW (PR)
)
) **ORDER OF TRANSFER**
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Plaintiff, a California prisoner incarcerated at Salinas Valley State Prison in Soledad, California, has filed this civil rights action under 42 U.S.C. § 1983 against medical staff at Mule Creek State Prison and Pleasant Valley State Prison regarding medical care he received at those facilities. Mule Creek State Prison is located in Ione, California within Amador County, which is within the venue of the United States District Court for the Eastern District of California. Pleasant Valley State Prison is located in Coalinga, California within Fresno County, which is also within the venue of the United States District Court for the Eastern District of California. Plaintiff alleges that the Defendants work and the events occurred in Amador and Fresno Counties, California.

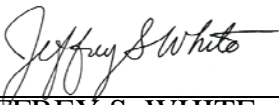
When jurisdiction is not founded solely on diversity, venue is proper in the district in which (1) any defendant resides, if all of the defendants reside in the same state, (2) the district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part 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

1 district in which the action may otherwise be brought. 28 U.S.C. § 1391(b). Where a
2 case is filed in the wrong venue, the district court has the discretion either to dismiss the
3 case or transfer it to the proper federal court “in the interest of justice.” 28 U.S.C. §
4 1406(a). Venue may be raised by the court sua sponte where the defendant has not yet
5 filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790
6 F.2d 1486, 1488 (9th Cir. 1986).

7 Plaintiff brings his claims involving events that occurred and against Defendants
8 who reside within the venue of the Eastern District of California. *See* 28 U.S.C. § 84.
9 Accordingly, IT IS ORDERED in the interest of justice, and pursuant to 28 U.S.C. §
10 1406(a), that this action be TRANSFERRED to the United States District Court for the
11 Eastern District of California. The Clerk of the Court shall transfer this matter forthwith.

12 IT IS SO ORDERED.

13 DATED: September 14, 2009

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16 JEFFREY S. WHITE
17 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GARY F. O'LEARY,
Plaintiff,

Case Number: CV09-04035 JSW

CERTIFICATE OF SERVICE

v.


CA DEPT OF CORRECTIONS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 14, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gary Francis O'Leary
P.O. Box 1050
T33173
Soledad, CA 93960-1050

Dated: September 14, 2009


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk