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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL OROZCO,  
Plaintiff,  
v.  
SCOTT KERNAN,<sup>1</sup>  
Defendant.

No. 2:16-cv-3028 DB P

ORDER

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 28, 2016, plaintiff filed his original complaint in this court. (ECF No. 1). At the time, Scott Kernan of the California Department of Corrections and Rehabilitation (“CDCR”) was the sole named defendant. (See ECF No. 1 at 1-2). On December 27, 2017, the

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<sup>1</sup> At the time plaintiff filed the original complaint, Scott Kernan was the Secretary of the California Department of Corrections and Rehabilitation. The court takes judicial notice of the fact that effective September 1, 2018, Ralph Diaz became and is currently the Acting Secretary of the CDCR. See California Dept. of Corrections and Rehabilitation, About CDCR Secretary Ralph Diaz, (Dec. 10, 2018, 3:06 PM), [https://www.cdcr.ca.gov/About\\_CDCR/Secretary.html](https://www.cdcr.ca.gov/About_CDCR/Secretary.html). Given, however, that plaintiff’s first amended complaint (“FAC”) no longer names Kernan as a defendant (see ECF No. 9 at 1-4), the court will not direct the Clerk of Court to correct the case caption of the docket to reflect this change in secretaries. Instead, it will order that the docket be corrected to reflect the defendants newly named in the FAC.

1 complaint was screened, and the court provided plaintiff with the opportunity to file an amended  
2 complaint. (ECF No. 5 at 6).

3 On January 31, 2018, plaintiff filed a first amended complaint (“FAC”). (ECF No. 9). In  
4 it, however, plaintiff names completely different defendants, none of whom are located in the  
5 Sacramento Division of the Eastern District.<sup>2</sup> Indeed, in the FAC, plaintiff avers that the  
6 violations occurred at the following institutions: “CTF – Soledad, CA; MCCF – McFarland, CA;  
7 NKSP – Delano, CA, and ASP – Avenal, CA.” (ECF No. 9 at 1). The institution located in  
8 Soledad, California is covered by the Northern District of California. The remaining three  
9 institutions are covered by the Fresno Division of the Eastern District.

10 “A civil action may be brought in a judicial district in which any defendant resides” or “a  
11 judicial district in which a substantial part of the events or omissions given rise to the claim  
12 occurred.” 28 U.S.C. § 1391(b)(1)-(2). When a case lays venue in the wrong division or district,  
13 a district court shall dismiss or transfer the case to the district or division in which it could have  
14 been brought. See 28 U.S.C. § 1406(a).

15 In this case, three of the four institutions at which plaintiff claims violations occurred are  
16 located in Kern County, which is part of the Fresno Division of the United States District Court  
17 for the Eastern District of California. See Local Rule 120(d). Pursuant to Local Rule 120(f), a  
18 civil action which has not been commenced in the proper division of a court may, on the court’s  
19 own motion, be transferred to the proper division of the court. Therefore, this action will be  
20 transferred to the Fresno Division of the court.<sup>3</sup>

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23 <sup>2</sup> In the first amended complaint, plaintiff now names the following individuals as defendants:  
24 Michael Terry and “King” located at CTF – Soledad; John Doe #1 located in Sacramento; John  
25 Doe #2 located at MCCF – McFarland; John Does #3 and #4 located at North Kern State Prison,  
and J. Lopez located at Avenal State Prison. (See ECF No. 9 at 1-4).

26 <sup>3</sup> In so doing, the court does not decide whether the claim(s) plaintiff contends originated at the  
27 fourth location – CTF – Soledad, which is located in Monterey County – should be transferred to  
28 the Northern District of California. See generally 28 U.S.C. § 84(a) (stating Monterey County is  
located in Northern District of California).

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Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of Court shall correct the case caption of the docket as follows:


- a. Defendant Scott Kernan shall be removed, and
- b. Michael Terry; King; John Does 1 through 4, and J. Lopez as identified and listed in the first amended complaint (see ECF No. 9 at 1-4) shall be added as defendants;

2. This action is transferred to the United States District Court for the Eastern District of California sitting in Fresno, and

3. All future filings shall reference the new Fresno case number assigned and shall be filed at:

United States District Court  
Eastern District of California  
2500 Tulare Street  
Fresno, CA 93721

Dated: December 11, 2018



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB:13  
DB/ORDERS/ORDERS.PRISONER.CIVIL RIGHTS/oroz3028.22