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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 RODERICK WILLIAM LEAR,

11 Plaintiff,

12 v.

13 D. AVILA, et al.,

14 Defendants.  
15

**CASE No. 1:17-cv-00071-MJS (PC)**

**ORDER (1) SEVERING CLAIMS AND (2)  
TRANSFERRING SEVERED PORTION  
TO THE EASTERN DISTRICT OF  
CALIFORNIA, SACRAMENTO DIVISION**

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17 **I. Procedural History**

18 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil  
19 rights action brought pursuant to 42 U.S.C. § 1983.

20 On January 17, 2017, Plaintiff filed his complaint in this action. The majority of the  
21 complaint concerns acts that occurred at High Desert State Prison ("HDSP"), where  
22 Plaintiff presently is housed. He names the following defendants: D. Avila, Laura  
23 Christensen, A. Manasrah, and J. Lewis.

24 Plaintiff's claims against D. Avila and Laura Christensen arose at High Desert  
25 State Prison. Briefly stated, Plaintiff alleges that he fell multiple times while at HDSP due  
26 to non-ADA compliant facilities, and that Defendants Avila and Christensen did not  
27 properly respond to his complaints. Plaintiff's allegations against J. Lewis relate to  
28 appeals of the conditions at HDSP.

1 Plaintiff's only allegation against Defendant Manasrah is as follows: While at  
2 Corcoran State Prison, Plaintiff fell down bus steps several times. Defendant Manasrah  
3 intentionally refused to "address" these falls. As a result, Plaintiff's back condition  
4 worsened and Plaintiff experienced unnecessary pain.

5 Plaintiff seeks monetary relief, transfer out of HDSP, and a declaration that his  
6 rights were violated at HDSP.

## 7 **II. Severance**

8 Federal Rule of Civil Procedure 21 ("Rule 21") provides that, in cases of  
9 "misjoinder," the Court may sua sponte "sever any claim against a party." Rule 21,  
10 however, does not provide a standard to determine if a party is misjoined, so the Court  
11 looks to Rule 20 for guidance. Rule 20 provides for the appropriate joinder of parties "if a  
12 plaintiff's 'right to relief is asserted against [the defendants] . . . with respect to or arising  
13 out of the same transaction, occurrence, or series of transactions or occurrences,' and  
14 also if there is a 'question of law or fact common to' the defendants." Rush v. Sport  
15 Chalet, Inc., 779 F.3d 973, 974 (9th Cir. 2015) (citing Fed. R. Civ. P. 20(a)(2)) (alteration  
16 and omission in original). The mere fact that multiple claims against different defendants  
17 "arise under the same general law does not necessarily establish a common question of  
18 law or fact." Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997).

19 Here, Plaintiff's claims against Defendants Avila, Christensen, and Lewis arose  
20 out of the conditions at HDSP and the defendants' response thereto. His claims against  
21 Manasrah arose at Corcoran State Prison, involve different factual questions, and  
22 potentially involve different legal questions.<sup>1</sup> Severance clearly is appropriate to separate  
23 these two sets of claims. See, e.g., Sheffield v. Rios, 2012 WL 928717, at \*5 (E.D. Cal.  
24 Mar. 19, 2012) (finding claims of failure to provide adequate medical care at different  
25 federal prisons at the hands of different defendants were improperly joined); see also

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27 <sup>1</sup> Because of the conclusory nature of Plaintiff's allegations against Manasrah, the Court is unable to  
28 discern whether Plaintiff expected Manasrah to provide medical care, to remedy the conditions that  
caused Plaintiff to fall, to otherwise protect Plaintiff from injury, or something else altogether. Thus, the  
Court is unable to identify with clarity the legal issues involved in Plaintiff's claim.

1 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (“[u]nrelated claims against different  
2 defendants belong in different suits”).

3 Pursuant to Rule 21, the severed claims become a new and separate action. See,  
4 e.g., Lee v. Cook County, 635 F.3d 969, 971 (7th Cir. 2011) (“When a federal civil action  
5 is severed, it is not dismissed. Instead, the clerk of court creates multiple docket  
6 numbers for the action already on file, and the severed claims proceed as if suits had  
7 been filed separately.”); Gaffney v. Riverboat, 451 F.3d 424, 442 (7th Cir. 2006)  
8 (“[s]everance under Rule 21 creates two separate actions or suits where previously there  
9 was but one”) (alteration in original, internal quotation marks omitted); United States v.  
10 O’Neil, 709 F.2d 361, 368 (5th Cir. 1983) (“[w]here a single claim is severed out of a suit,  
11 it proceeds as a discrete, independent action”).

### 12 **III. Transfer of Severed Portion to Sacramento Division**

13 “A civil action may be brought in (1) a judicial district in which any defendant  
14 resides, if all defendants are residents of the State in which the district is located, (2) a  
15 judicial district in which a substantial part of the events or omissions giving rise to the  
16 claim occurred, or a substantial part of property that is the subject of the action is  
17 situated, or (3) if there is no district in which an action may otherwise be brought as  
18 provided in this section, any judicial district in which any defendant is subject to the  
19 court's personal jurisdiction with respect to such action.” 28 U.S.C. § 1391(b).

20 Here, the severed portion of this case arose at HDSP, in Lassen County, which is  
21 in the Sacramento Division of the United States District Court for the Eastern District of  
22 California. 28 U.S.C. § 84(b). It is in that division where the corresponding defendants  
23 are likely to be found, along with relevant documents, witnesses and other evidence  
24 bearing on the claims against them. Accordingly, the Court will order the severed portion  
25 of this action transferred to the Sacramento Division of the Eastern District.

26 The Court will retain those claims relating to Defendant Manasrah, and will screen  
27 Plaintiff’s complaint as it pertains to those claims in a separate order.

### 28 **IV. Conclusion and Order**

1 For the foregoing reasons, the Court HEREBY ORDERS that (1) Claims against  
2 Defendants Avila, Christensen, and Lewis are SEVERED from this action; and (2) the  
3 Clerk shall transfer that portion of the case to the Sacramento Division of the District  
4 Court for the Eastern District of California. The Court retains the claims against  
5 Defendant Manasrah and will issue a separate screening order in due course.

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7 IT IS SO ORDERED.

8 Dated: February 15, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE