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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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PAMELA DENISE PRINGLE,

No. 2:17-cv-02206-TLN-AC

12

Plaintiff,

13

v.

**ORDER TRANSFERRING THIS MATTER
TO THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF IDAHO**

14

AMANDA GENTRY, et al.,

15

Defendant.

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This matter is before the Court on Magistrate Judge Allison Claire's Order to Show Cause as to why this case should not be transferred sua sponte to the United States District Court for the District of Idaho. (ECF No. 41.) Both parties responded to the Order to Show Cause. (ECF Nos. 42 & 43.) The Court has carefully reviewed the briefing by the parties and the entire record in this matter. For the reasons stated below, the Court hereby TRANSFERS this matter to the United States District Court for the District of Idaho.

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I. FACTUAL BACKGROUND

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Plaintiff Pamela Denise Pringle ("Plaintiff") brings this case under 42 U.S.C. § 1983. (ECF No. 1 at 1.) Plaintiff was incarcerated at various Idaho Department of Corrections ("IDOC") facilities between August 12, 2012 and December 14, 2012. (ECF No. 1 at 4.) She was again incarcerated between May 25, 2016 and November 1, 2016. (ECF No. 1 at 4.) Upon her arrival to an IDOC facility she noted "numerous civil rights violations, as well as instances of

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1 financial fraud, falsification of records, staff misconduct with inmates, and negligence.” (ECF
2 No. 1 at 4.) She claims that when she sought to file grievances regarding these violations, prison
3 staff harassed her and retaliated against her, including: transferring her to administrative
4 segregation; losing her personal property; transferring her to other facilities; verbal and
5 psychological abuse; intimidation and threats; loss of prison employment; and denial of access to
6 courts. (ECF No. 1 at 5.) Plaintiff claims that Defendants also denied her the opportunity to go
7 to a minimum-security facility. (ECF No. 1 at 6.)

8 On November 3, 2016, after she served her term of imprisonment in IDOC, “two private
9 security officers hired by Yolo County arrived and transported Plaintiff back to California on the
10 Yolo County detainer.” (ECF No. 1 at 13.) Plaintiff alleges she was not provided food or water
11 for the 13-hour trip, and that the transporting officers told her that IDOC was the entity
12 responsible for supplying food and water so they had not made provisions. (ECF No. 1 at 13.)

13 Plaintiff claims that on or about January 26, 2017, an IDOC employee contacted Plaintiff
14 in California and directed her to apply for an interstate compact (a mechanism that allows for
15 transferring adult offenders on supervision from one state to another) to transfer her supervision
16 to California because Plaintiff had been released from Yolo County Jail. (ECF No. 1 at 13.)
17 Plaintiff responded in writing that she declined to apply for Interstate transfer, asserting she was
18 still under the jurisdiction of the Yolo County detainer and under Interstate Compact rules she
19 was not eligible to apply for Interstate Compact. (ECF No. 1 at 13.)

20 On February 6, 2017, Plaintiff was ordered to report to Sylvia Diaz of the Yolo County
21 Probation Department for her Idaho parole check-in by an IDOC employee. (ECF No. 1 at 14.)
22 Plaintiff claims this decision came from Defendants Mesick, Jones, and Kubinski. (ECF No. 1 at
23 14.) Plaintiff took issue with Defendants’ demand that she apply for an interstate compact. (ECF
24 No. 1 at 14.) Despite an interstate compact being forwarded to Yolo County Probation, Plaintiff
25 claims she never initiated nor signed an application. (ECF No. 1 at 14.)

26 According to Plaintiff, Defendant Judy Mesick forwarded Plaintiff an email on February
27 14, 2017, which stated that if Plaintiff did not consent to the transfer of her parole from Idaho to
28 California Plaintiff would receive a parole violation and be re-incarcerated. (ECF No. 1 at 15.)

1 On March 8, 2017, Plaintiff “reluctantly and belatedly” signed the “fraudulent Interstate Compact
2 Application.” Plaintiff alleges that on March 2, 2017, Defendant Cindy McDonald had a
3 telephone conversation with Yolo County District Attorney Larry Eichele, who had contacted Ms.
4 McDonald in preparation for his “Opposition to Plaintiff’s Motion to Dismiss.” (ECF No. 1 at
5 16.) Plaintiff alleges that Defendant McDonald “was advised to make [] misrepresentation[s] of
6 material fact” to Eichele by Defendant Mark Alan Kubinski. (ECF No. 1 at 16.)

7 **II. PROCEDURAL BACKGROUND**

8 Plaintiff initially proceeded in this action pro se, and the case was accordingly referred to
9 the magistrate judge by Local Rule 302(c)(21). Plaintiff is a California resident who, on October
10 23, 2017, brought a complaint containing four causes of action against Defendants Amanda
11 Gentry, Cindy McDonald, Shannon Cluney, Noel Barlow-Hust, Sandy Jones, Judy Mesick, and
12 Mark Alan Kubinski (collectively “Defendants”), all of whom are employees of the Idaho
13 Department or Board of Correction or the Idaho Attorney General’s Office. (ECF No. 1 at 2.)
14 Plaintiff’s complaint alleged claims for: (1) “Failure to Follow the Established Law of the
15 [Interstate Agreement on Detainers (“IAD”)];” (2) “Unconstitutional and Unlawful Transport
16 Order, Interstate Compact Acts and Parole Conditions;” (3) “Violations of Rules of Professional
17 Responsibility;” (4) “First Amendment Retaliation and Eighth Amendment Calculated
18 Harassment.” (ECF No. 1 at 17–26.) Defendants filed a motion to dismiss for lack of
19 jurisdiction and venue on February 8, 2018. (ECF No. 12.) Following a hearing, the magistrate
20 judge issued findings and recommendations concluding the Eastern District of California lacked
21 personal jurisdiction with respect to Plaintiff’s first, third, and fourth causes of action. (ECF No.
22 27 at 1–10.) The magistrate judge recommended dismissal of the second cause of action after sua
23 sponte undertaking an analysis of the claim under the doctrine of forum non conveniens. (ECF
24 No. 27 at 10–13.)

25 On May 5, 2018, this Court issued an Order adopting the findings and recommendations
26 with respect to the recommendation that Plaintiff’s first, third, and fourth causes of action be
27 dismissed for lack of personal jurisdiction. (ECF No. 31.) However, upon finding that the
28 Plaintiff did not have an adequate opportunity to brief the issue of forum non conveniens prior to

1 dismissal of her second claim, this Court referred the issue back to the magistrate judge for
2 further proceedings. (ECF No. 31 at 2.) The same day, the magistrate judge issued a minute
3 order requiring the parties to submit supplemental briefing on the issue of dismissal of Plaintiff's
4 second cause of action on grounds of forum non conveniens. (ECF No. 32.) Plaintiff and
5 Defendants submitted a response to the magistrate judge's request, and replies to one another's
6 responses. (ECF Nos. 33, 34, 35 & 36.)

7 Upon careful review of the parties' briefing and exhibits, the magistrate judge determined
8 that transfer, rather than dismissal, was potentially the proper course of action for this case and
9 issued an Order to Show Cause directing the parties to instruct the Court as to why Plaintiff's
10 case, consisting of one remaining cause of action, should not be transferred to the District of
11 Idaho pursuant to 28 U.S.C. § 1404. (ECF No. 41.) Plaintiff subsequently obtained counsel.
12 (ECF No. 44.) Therefore, this matter was referred back to this Court to conduct all further
13 proceedings pursuant to Local Rule 302(c)(21). (ECF No. 45.) Therefore, the question currently
14 before the Court is whether, in full view of the supplemental briefing provided by the parties
15 (ECF Nos. 33, 34, 35, 36, 42 & 43), this case should be transferred to the U. S. District Court for
16 the District of Idaho.

17 **III. STANDARD OF LAW**

18 “For the convenience of parties and witnesses, in the interest of justice, a district court
19 may transfer any civil action to any other district or division where it might have been brought or
20 to any district or division to which all parties have consented.” 28 U.S.C. § 1404(a). The purpose
21 of § 1404(a) “is to prevent the waste ‘of time, energy and money’ and ‘to protect litigants,
22 witnesses, and the public against unnecessary inconvenience and expense[.]’” *Van Dusen v.*
23 *Barrack*, 376 U.S. 612, 616 (1964) (quoting *Continental Grain Co. v. Barge FBL*, 585, 364 U.S.
24 19, 26, 27 (1960)). In considering a transfer pursuant to § 1404(a), the district court undertakes
25 an “individualized, case-by-case consideration of convenience and fairness.” *Jones v. GNC*
26 *Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (internal citation omitted).

27 In a § 1404(a) analysis, the Court first determines whether the case could have been
28 brought in the transferee forum and then considers the convenience of the parties and witnesses

1 and the interest of justice. 28 U.S.C. § 1404(a). Courts looks to several factors to determine
2 where the interests of justice and convenience lie, including “(1) plaintiff’s choice of forum, (2)
3 convenience of the parties, (3) convenience of the witnesses, (4) ease of access to the evidence,
4 (5) familiarity of each forum with the applicable law, (6) feasibility of consolidation of other
5 claims, (7) any local interest in the controversy, and (8) the relative court congestion and time of
6 trial in each forum.” *Barnes & Noble, Inc. v. LSI Corp.*, 823 F. Supp. 2d 980, 993 (N.D. Cal.
7 2011) (citing *Vu v. Ortho-McNeil Pharm., Inc.*, 602 F. Supp. 2d 1151, 1156 (N.D. Cal. 2009)).
8 “No single factor is dispositive, and a district court has broad discretion to adjudicate motions for
9 transfer on a case-by-case basis.” *Ctr. for Biological Diversity Kempthorn*, No. 08-1339, 2008
10 WL 4543043, at *2 (N.D. Cal. Oct. 10, 2008) (citing *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S.
11 22, 29 (1988); *Sparling v. Hoffman Constr. Co., Inc.*, 864 F.2d 635, 639 (9th Cir. 1988)).

12 The Court may transfer a case sua sponte if the parties have had an opportunity to present
13 their views on the issue. *Pavao v. Unifund CCR Partners*, 934 F. Supp. 2d 1238, 1242 (S.D. Cal.
14 2013) (citing *Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986)); *Mix v. Neeb*, No. 2:14-CV-
15 01594-KJM-AC, 2014 WL 6469130, at *2 (E.D. Cal. Nov. 17, 2014); 15 B. Wright & Miller,
16 Fed. Prac. & Proc. § 3844 (4th ed. 2018) (“The language of the statute is broad enough that a
17 district court can order transfer on its own initiative.”).

18 IV. ANALYSIS

19 In addition to a discussion of the merits of transferring this matter, Plaintiff argues in her
20 responsive briefing to the order to show cause that the magistrate judge must be disqualified.
21 (ECF No. 42 at 7.) The Court notes Plaintiff presents no evidence that the magistrate judge acted
22 improperly in this matter in either conducting *ex parte* communications with Defense Counsel or
23 using improper means to act within her discretion to manage the Court’s own docket. While
24 Plaintiff may not like or agree with the decisions made in this case, the magistrate judge acted
25 within her powers to determine sua sponte if this matter should be dismissed or transferred for the
26 convenience of the parties. Accordingly, the Court finds no reason for the magistrate judge to
27 recuse herself or be disqualified.

28 Turning to the merits at issue, the Court finds the Order to Show Cause (ECF No. 41)

1 afforded the parties sufficient opportunity to be heard prior to the Court deciding whether to sua
2 sponte transfer this matter. Accordingly, the Court will first determine whether this matter could
3 have originally been brought in the District of Idaho and then whether the interests of justice are
4 best served by transferring this matter.

5 A. Original Jurisdiction in the District of Idaho

6 In determining whether transfer is appropriate, the Court must first determine if the action
7 could have been brought in the District of Idaho. 28 U.S.C. § 1404(a). As this matter involves 42
8 U.S.C. § 1983 claims, the District of Idaho would have subject matter jurisdiction over the case.
9 Furthermore, the parties acknowledge Defendants reside in the District of Idaho, and thus, are
10 likely considered citizens for jurisdictional purposes. There is no debate as to standing or
11 ripeness. Accordingly, the matter could have been brought in the District of Idaho.

12 B. Interests of Justice

13 i. *Plaintiff's Choice of Forum Disfavors Transfer*

14 In general, great weight is afforded to the plaintiff's choice of forum. *Lou v. Belzberg*,
15 834 F.2d 730,739 (9th Cir. 1987). However, "if the operative facts have not occurred within the
16 forum and the forum has no interest in the parties or subject matter, plaintiff's choice is entitled to
17 only minimal consideration." *Id.* (citing *Pacific Car & Foundry Co. v. Pence*, 403 F.2d 949, 954
18 (9th Cir. 1968)).

19 Here, the majority of the facts as to the second claim occurred outside of this district
20 including the transfer of Plaintiff out of Idaho and any actions Defendants are alleged to have
21 taken. (See ECF No. 1 at 20–22.) However, Plaintiff's allegations suggest the actions were
22 targeted at this district because the special condition requires her to reside outside of Idaho and
23 Plaintiff signed the allegedly fraudulent Interstate Compact Application in Yolo County.
24 Additionally, Plaintiff currently resides in the district. Thus, Plaintiff's choice of the Eastern
25 District of California is afforded deference and weighs against transfer.

26 ii. *Convenience of the Parties Favors Transfer*

27 Plaintiff wishes to maintain this case in the Eastern District of California and has
28 demonstrated it would be more convenient for her to do so because she lives in California.

1 However, Plaintiff's showing of convenience is outweighed by Defendants' demonstration of
2 substantial inconvenience. While Plaintiff is a resident of California, each of the four remaining
3 defendants in this case is a resident of Idaho and is an employee of the State of Idaho. (*See*
4 Affidavit of Sandy Jones, ECF No. 34-1; Affidavit of Mark Alan Kubinski, ECF No. 34-2;
5 Affidavit of Cindy McDonald, ECF No. 34-3; Affidavit of Judy Mesick, ECF No. 34-4.)
6 Maintaining this case in California, would be largely inconvenient to each of the Defendants as
7 they are all residents of Idaho. (ECF No. 1 ¶¶ 3-9; Affidavits of Jones, Kubinski, McDonald and
8 Mesick.) The materiality and importance of each of these witnesses is crucial to this case as the
9 complaint alleges individual acts that each of these Defendants made. (ECF No. 1 ¶¶ 106-121.)
10 Therefore, it would be anticipated that each of Defendants would have to be brought to California
11 to testify if this matter were to continue in California.

12 Defendants have shown through their declarations that it would be difficult and
13 inconvenient for Defendants to travel to California in light of their personal local considerations,
14 in addition to the obvious inconveniences of having to be away from their Idaho residence and
15 employment. For example, Defendant Mesick is the primary caregiver for her elderly mother and
16 husband. Mesick's husband, who is not in good health, does not leave home without Mesick to
17 accompany him. (Affidavit of Mesick at ¶ 9.) Defendant McDonald has not been outside of the
18 state of Idaho for 17 years. She does not prefer to travel on airplanes and suffers from motion
19 sickness when traveling. (Affidavit of McDonald at ¶ 7.) Defendant Jones has minor children at
20 home. (Affidavit of Jones at ¶ 8.) Further, Defendant Kubinski also has a minor child which he
21 shares custody of and having to travel to California has the potential to interfere with his custody
22 arrangements. (Affidavit of Kubinski at ¶ 6.)

23 On the other hand, traveling to Idaho would be inconvenient for Plaintiff for some of the
24 same reasons litigating in California is inconvenient for Defendants: she may have to travel and
25 be away from her residence, or work with the Court to determine an alternate means of
26 participating in the litigation. These inconveniences are real. However, Plaintiff's assertions that
27 a transfer to Idaho would be especially inconvenient to her do not withstand scrutiny, especially
28 now that Plaintiff has retained counsel. Plaintiff alleges Idaho is an inconvenient venue — and in

1 fact an impossible venue — because she is “currently unable to travel to Idaho” due to limitations
2 imposed on her by conditions of parole. (ECF No. 35 at 4.) First, Plaintiff admits in her
3 Affidavit that California parolees can travel with a “travel pass.” (ECF No. 35-1 at 3.) Though
4 she states she has been “repeatedly informed” that she could not receive a travel pass to Idaho
5 during the pendency of her parole, it is unclear who this information is coming from and whether
6 the issue has been discussed in the context of potential litigation.

7 Second, any travel restrictions placed on Plaintiff as a condition of her parole do not
8 prevent her from litigating in Idaho. Plaintiff’s Counsel is now fully capable of representing
9 Plaintiff’s interest in Idaho in her stead. Furthermore, courts conduct most litigation on the
10 papers such that Plaintiff or her counsel may never need to travel to Idaho to litigate this matter.

11 On balance, the Court finds that the inconveniences Plaintiff would face by litigating in
12 Idaho are outweighed by the inconveniences that the multiple remaining Defendants would face
13 by litigating in the Eastern District of California. The relative convenience of the parties favors
14 transferring venue to the District of Idaho.

15 *iii. Convenience of Witnesses is Neutral as to Transfer*

16 Defendants anticipate the number of defense witnesses are more numerous due to the fact
17 there are more Defendants as compared to Plaintiff and because Plaintiff’s allegations extend to
18 actions associated with other members of the IDOC. Coordinating the witness schedule, and
19 transporting and housing these witnesses in California would be costly and would create
20 administrative inconvenience as compared to hearing this matter in Idaho. It would be
21 impractical to bring all these persons to California as witnesses for a trial that can be more
22 efficiently and justifiably held in Idaho.

23 However, Plaintiff asserts that she is a witness and located in the Eastern District of
24 California. Plaintiff further argues the majority of non-party witnesses reside in California as she
25 intends to call at trial the Yolo County Probation Department, the Yolo County Sheriff’s
26 Department, and the California division of the Interstate Compact Commission located in
27 Sacramento. (ECF No. 42 at 12.)

28 The Court has no way of anticipating from the parties’ arguments where more witnesses

1 would be located such that one district would be more convenient over the other. Based on
2 Plaintiff's submission at least some witnesses not including herself reside in California.
3 However, Defendants as well as any other witnesses from the IDOC reside in Idaho. Thus, this
4 factor is neutral.

5 *iv. Ease of Access to Evidence Favors Transfer*

6 Defendants contend the evidence they would produce related to this matter is all located in
7 Idaho as a part of the IDOC's records. (Affidavits of Jones at ¶ 5; Affidavit of Kubinski at ¶ 5;
8 Affidavit of McDonald at ¶ 5; and Affidavit of Mesick at ¶¶ 4–6.) In contrast, Plaintiff contends
9 the majority of the evidence supporting the second cause of action is in Woodland or Sacramento,
10 California. However, Plaintiff offers no support for this contention as compared to the affidavits
11 of the Defendants. Viewing the complaint, the actions giving rise to the second cause of action
12 culminated in the Plaintiff's transfer to California. (ECF No. 1 ¶ 111.) However, the allegations
13 in the second cause of action detail the Defendant's actions in implementing the allegedly
14 unlawful transfer and parole condition that Plaintiff may not travel to Idaho. (See ECF No. 1 ¶¶
15 107–121.) Thus, the Court cannot say Plaintiff is correct that the majority of evidence for the
16 second cause of action is in California. While there is some evidence in Plaintiff's California
17 parole file including the allegedly fraudulent Interstate Compact Application, evidence of
18 Defendant's actions with regards to the Transport Order and parole conditions set prior to
19 transport would in all likelihood be in Idaho in the possession of the IDOC. Accordingly, the
20 Court finds there is better ease of access to evidence in Idaho.

21 *v. Familiarity with Applicable Law Weighs Neutrally on Transfer*

22 This matter arises under federal law, specifically 42 U.S.C. § 1983 for violations of the
23 United States Constitution. (ECF No. 1 at 20.) Accordingly, the familiarity with the applicable
24 law is neutral because both “fora are federal courts.” *Eli Lilly & Co. v. Genentech, Inc.*, No. 13-
25 CV-0919 YGR, 2013 WL 4396718, at *5 n.3 (N.D. Cal. Aug. 13, 2013).

26 *vi. Feasibility of Consolidation of Other Claims Favors Transfer*

27 Plaintiff does not discuss the feasibility of consolidation with other claims in her response
28 to the Order to Show Cause. (See generally ECF No. 42.) However, the Court dismissed the

1 first, third, and fourth causes of action for lack of personal jurisdiction. In its analysis as to the
2 first cause of action, the Court explained “[a]ll of defendant’s actions were taken in Idaho,
3 pursuant to defendant’s responsibilities as Idaho officials, and related to plaintiff’s status as an
4 Idaho inmate.” (ECF No. 27 at 8.) Similarly, the Court explained the third and fourth causes of
5 action did not demonstrate actions directed at California by the Idaho Defendants. The Idaho
6 District Court would have personal jurisdiction over the first, third, and fourth causes of actions
7 as the actions arose in Idaho. Accordingly, it is entirely feasible that the claims may be amended
8 and consolidated to allow Plaintiff to continue not only on her second cause of action, but her
9 first, third, and fourth causes of action as well. Thus, this factor weighs in favor of transfer.

10 *vii. Local Interest in the Controversy Favors Transfer*

11 The relief that Plaintiff requests are money damages and possible injunctive relief to
12 enjoin Defendants from “continuing their constitutional violations against Plaintiff.” (ECF No. 1
13 at 26–27). The remedies Plaintiff seeks therefore exclusively would come from Defendants in
14 Idaho and would be a request to enjoin Defendants’ actions in Idaho. Idaho has a greater interest
15 in ensuring any actions with direct impact on Idaho citizens and agencies is litigated fairly.
16 Accordingly, local interest in Idaho and the exclusivity of all remedies to Idaho favors transfer.

17 *viii. Relative Congestions of California and Idaho Federal Courts*
18 *Favors Transfer*

19 Plaintiff argues neither party has presented evidence about the relative time to trial in the
20 respective forums, but acknowledges that previous statistics demonstrates the Eastern District of
21 California is more congested than the District of Idaho. (ECF No. 42 at 14.) The statistics
22 provided by Defendants demonstrates the Eastern District of California has an average of 1,246
23 pending cases per judge as of December 31, 2017. (ECF No. 36-1 at 5.) In contrast, the District
24 of Idaho has an average of 533 pending cases per judge. (ECF No. 36-1 at 6.) These statistics
25 demonstrate a higher likelihood that Plaintiff’s case would proceed more expeditiously in Idaho.
26 For reference, the Court is currently setting trial dates in September 2019 for cases in which
27 discovery is complete and all dispositive motions having been ruled on. Given the early nature of
28 this case, a trial date at that time would be unlikely. Accordingly, the relative congestion of the

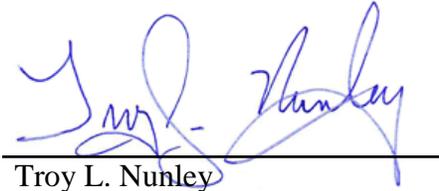
1 Eastern District of California favors transferring this matter to the District of Idaho.

2 **V. CONCLUSION**

3 Weighing the factors as discussed above, the Court finds transfer of this matter to the
4 District of Idaho would better serve the interest of justice and prevent the waste of time and
5 money for most of the people involved in this lawsuit or necessary as witnesses. Accordingly,
6 this matter is hereby TRANSFERRED to the United States District Court for the District of Idaho
7 for all further proceedings. The Court notes for the District of Idaho that the issue of whether to
8 dismiss Plaintiff's second cause of action is still pending.

9 IT IS SO ORDERED.

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11 Dated: August 2, 2018

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Troy L. Nunley
United States District Judge