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

LEONARDO DONTE,	}	No. C 10-0352 JSW (PR)
Plaintiff,	}	ORDER OF TRANSFER
vs.	}	(Docket No. 2)
D. SWINGLE, et al,	}	
Defendants.	}	

Plaintiff, a prisoner of the State of California, currently incarcerated at Salinas Valley State Prison in Soledad, California, has filed this civil rights action under 42 U.S.C. § 1983 complaining about the conditions of his confinement while incarcerated at High Desert State Prison in Susanville, California. Plaintiff has filed an application to proceed *in forma pauperis* (docket no. 2.)

In the complaint, Plaintiff complains about Defendants located within the venue of the United States District Court for the Eastern District of California as well as his conditions of confinement at the prison located in that venue. Plaintiff alleges no basis for jurisdiction within the venue of the United States District Court for the Northern District of 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 district in which the action may otherwise be brought. 28 U.S.C. § 1391(b). Where a


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

6 Plaintiff brings his claims involving Defendants who reside within the venue of
7 the Eastern District of California, in a case where a substantial part of the events or
8 omissions giving rise to the claim also occurred. *See* 28 U.S.C. §1391(b)(2).

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. In light of the transfer, the Court will not resolve
12 Plaintiff’s pending motion (docket no. 2). The Clerk of the Court shall transfer this
13 matter forthwith.

14 IT IS SO ORDERED.

15 DATED: February 3, 2010

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18 JEFFREY S. WHITE
19 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 LEARNADO F. DONTE,
6
7 Plaintiff,

Case Number: CV10-00352 JSW

CERTIFICATE OF SERVICE

8 v.


9 DEPT OF CORRECTIONS et al,
10 Defendant.
_____ /

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
Court, Northern District of California.

13 That on February 3, 2010, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 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.

16
17 Leonardo Donte
18 Salinas Valley State Prison
19 V36182
Soledad, CA 93960

20 Dated: February 3, 2010


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

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