

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

MEDICAL DEVELOPMENT  
INTERNATIONAL, a Delaware  
corporation,

NO. CIV. 2:07-2199 WBS EFB

Plaintiff,

MEMORANDUM AND ORDER RE:  
MOTION TO TRANSFER VENUE

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, ROBERT SILLEN,  
individually and as Receiver,  
and J. CLARK KELSO, as  
Receiver,

Defendants.

\_\_\_\_\_ /

-----oo0oo-----

Plaintiff Medical Development International ("MDI")  
brought this action against defendants California Department of  
Corrections and Rehabilitation ("CDCR"), Robert Sillen  
("Sillen"), individually and as Reciever, and J. Clark Kelso  
("the Receiver"), as Receiver. Presently before the court is the  
Receiver's motion to transfer this action to the Northern  
District of California pursuant to 28 U.S.C. § 1404(a).

1 I. Factual and Procedural Background

2 On October 3, 2005, the Honorable Thelton Eugene  
3 Henderson of the Northern District of California issued an  
4 opinion in Plata v. Schwarzenegger, No. 01-1351, 2005 WL 2932253  
5 (N.D. Cal. Oct. 3, 2005),<sup>1</sup> a class action challenging the  
6 constitutional adequacy of medical care provided to CDCR inmates  
7 with serious medical needs. Id. at \*1. In his opinion, Judge  
8 Henderson determined that the California prison medical care  
9 system was "broken beyond repair." Id.

10 In response to these systemic defects, Judge Henderson  
11 established a Receivership to manage the health care systems at  
12 the CDCR's various institutions to bring the medial care up to  
13 constitutional standards. Id. Judge Henderson subsequently  
14 appointed defendant Sillen as the Receiver on February 14, 2006  
15 (effective April 17, 2006) and charged him with the "duty to  
16 control, oversee, supervise, and direct all administrative,  
17 personnel, financial, accounting, contractual, legal, and other  
18 operational functions of the medical delivery component of the  
19 CDCR." Plata v. Schwarzenegger, No. 01-1351, slip op. at 2 (N.D.  
20 Cal. Feb. 14, 2006) ("Order Appointing Receiver") (hereinafter  
21 "OAR").

22 In a subsequent order on March 30, 2006, Judge  
23 Henderson directed the CDCR, then under the control of Sillen, to

---

24  
25 <sup>1</sup> The Receiver filed a Request for Judicial Notice in  
26 which he asks the court to take notice of court documents  
27 relating to both this action and the Plata case. (Docket No.  
28 62.) The court will grant the Receiver's request, as the  
documents are all public documents whose accuracy cannot be  
questioned. Fed. R. Evid. 201; see U.S. ex rel. Robinson  
Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248  
(9th Cir. 1992).

1 begin developing new processes for medical contract management.  
2 Plata v. Schwarzenegger, No. 01-1351, slip op. at 5-7 (N.D. Cal.  
3 Mar. 30, 2006). The March 30, 2006 Order required the CDCR to  
4 pay "all current outstanding, valid, and CDCR approved medical  
5 invoices (even in the absence of a separate written approved  
6 contract) within 60 days of the date of this order." Id. at 5.  
7 The Order further provided that during a 180-day planning period,  
8 "to ensure continuity of medical care, and to mitigate the loss  
9 of life or limb and preserve the limited pool of competent  
10 providers, CDCR shall not be required to competitively bid  
11 medical services contracts nor file bid exemption applications .  
12 . . ." Id.

13           At about this same period, the CDCR entered into  
14 negotiations with plaintiff--an administrator of prison health  
15 care systems--to provide specialty medical services for inmates  
16 at two California correctional facilities as part of a pilot  
17 program. (Compl. ¶¶ 8, 20-21.) In early September 2006, CDCR  
18 officials permitted plaintiff to begin performing services at the  
19 two institutions notwithstanding the absence of a final executed  
20 contract. (Id. ¶¶ 25-27.)

21           Shortly after plaintiff began providing its services,  
22 the CDCR staff--noting that plaintiff was not licensed to  
23 practice medicine in California--questioned whether plaintiff was  
24 functioning in violation of California's prohibition on the  
25 corporate practice of medicine. (Id. ¶¶ 33-34.) In January  
26 2007, amid the ongoing concerns regarding the legality of  
27 plaintiff's services, Sillen called for a halt to the CDCR's  
28 processing of plaintiff's final contract and ordered the CDCR to

1 stop further payments on plaintiff's invoices. (Id. ¶¶ 36-37.)  
2 Plaintiff nonetheless continued providing services without  
3 compensation. (Id. ¶ 42.) During a February 16, 2007 meeting,  
4 Sillen renewed his concerns to plaintiff regarding the legality  
5 of its services and indicated that plaintiff could be paid only  
6 if it was determined that it could lawfully provide services in  
7 California. (Id. ¶ 44.) Plaintiff again continued to provide  
8 services to the two institutions, purportedly in reliance on "Mr.  
9 Sillen's representations regarding future payment." (Id. ¶ 45.)

10 On March 7, 2007, plaintiff provided Sillen with a  
11 legal memorandum--drafted by its counsel--that concluded its  
12 services were being lawfully provided. (Id. ¶ 46.) Sillen  
13 "refused to accept the opinion," ultimately demanding that  
14 plaintiff obtain an official opinion from the Medical Board of  
15 California. (Id. ¶¶ 47-48.) When plaintiff failed to promptly  
16 comply with his demand, Sillen effectively ended their  
17 relationship when he allegedly "physically expelled Plaintiff['s]  
18 personnel" from the two CDCR pilot program institutions on April  
19 7, 2007. (Id. ¶¶ 50-51.)

20 On September 17, 2007, plaintiff filed a complaint in  
21 Sacramento Superior Court against Sillen (in both his official  
22 and individual capacities) and the CDCR. In its Complaint,  
23 plaintiff alleges fifteen state law causes of action arising from  
24 its purported reliance on certain misrepresentations that Sillen  
25 and the CDCR made throughout the preliminary contract  
26 negotiations. On October 16, 2007, Sillen removed the action to  
27 this court pursuant to 28 U.S.C. § 1442(a)(1).

28 On January 23, 2008, Judge Henderson dismissed Sillen

1 as Receiver, simultaneously appointing Kelso as the new Receiver.  
2 On February 14, 2008, this court dismissed the action on the  
3 ground that plaintiff was required to obtain Judge Henderson's  
4 permission to bring an action against the Receiver. (Docket No.  
5 50.) Plaintiff then filed an ex parte application with Judge  
6 Henderson in the Northern District requesting leave to file suit  
7 against the Receiver, which was denied on the grounds that leave  
8 would be futile because the Receiver was immune from suit.  
9 Plaintiff appealed both rulings.

10 The Ninth Circuit reversed in part, finding that  
11 permission from the appointing court was unnecessary to sue the  
12 Receiver under the statutory exception in 28 U.S.C. § 959(a) and  
13 that the Receiver was not immune from suit. Med. Dev. Int'l v.  
14 Cal. Dept. of Corr. & Rehab., 585 F.3d 1211, 1216, 1219 (9th Cir.  
15 2009). The Ninth Circuit then remanded the action to this court,  
16 noting "that nothing in [its] opinion prevents the Eastern  
17 District from coordinating with or, if appropriate, transferring  
18 the action to the Northern District." Id. at 1222. The Receiver  
19 subsequently filed a motion to transfer the action to the  
20 Northern District. (Docket No. 60.) CDCR filed a statement of  
21 its non-opposition to the motion to transfer. (Docket No. 66.)

## 22 II. Discussion

23 "For the convenience of parties and witnesses, in the  
24 interest of justice, a district court may transfer any civil  
25 action to any other district or division where it might have been  
26  
27  
28

1 brought." 28 U.S.C. § 1404(a).<sup>2</sup> Under § 1404(a), a district  
2 court "has discretion to adjudicate motions for transfer  
3 according to an individualized, case-by-case consideration of  
4 convenience and fairness." Jones v. GNC Franchising, Inc., 211  
5 F.3d 495, 498 (9th Cir. 2000) (quoting Stewart Org. v. Ricoh  
6 Corp., 487 U.S. 22, 29 (1988)) (internal quotation marks  
7 omitted). To undertake this analysis of "convenience" and the  
8 "interests of injustice," a district court may weigh "multiple  
9 factors," including the plaintiff's choice of forum, the contacts  
10 relating to the plaintiff's cause of action in the chosen forum,  
11 the convenience of witnesses and parties, and the ease of access  
12 to sources of proof.<sup>3</sup> Id. at 498-99; see DeFazio v. Hollister  
13 Employee Share Ownership Trust, 406 F. Supp. 2d 1085, 1088-89  
14 (E.D. Cal. 2005) (Karlton, J.); Williams v. Bowman, 157 F. Supp.  
15 2d 1103, 1106 (N.D. Cal. 2001).

16 "No single factor is dispositive and a district court  
17

---

18 <sup>2</sup> The parties do not dispute that this case could have  
19 been brought in the Northern District of California, as  
20 defendants appear to be subject to personal jurisdiction in that  
21 district and venue would be proper there. See Robinson v. Mich.  
22 Consol. Gas Co., 918 F.2d 579, 586 (6th Cir. 1990) (finding  
23 actions against a receiver may be brought in the appointing court  
24 even without any independent grounds for asserting jurisdiction);  
25 Diners Club, Inc. v. Bumb, 421 F.2d 396, 398-401 (9th Cir. 1970);  
26 see also Straus Family Creamery v. Lyons, 219 F. Supp. 2d 1046,  
27 1048 (N.D. Cal. 2002) (noting venue in a suit against a state  
28 agency is appropriate in any city in which the Attorney General  
has an office).

<sup>3</sup> Other factors considered by courts include the  
availability of compulsory process to compel attendance of  
unwilling non-party witnesses, the location where relevant  
agreements were negotiated and executed, the state that is most  
familiar with the governing law, the differences in the costs of  
litigation in the two forums, the presence of a forum selection  
clause, and the relevant public policy of the forum state. GNC  
Franchising, 211 F.3d at 498-99.

1 has broad discretion to adjudicate motions for transfer on a  
2 case-by-case basis." Ctr. for Biological Diversity v.  
3 Kempthorne, No. 08-1339, 2008 WL 4543043, at \*2 (N.D. Cal. Oct.  
4 10, 2008) (citing Stewart Org., 487 U.S. at 29; Sparling v.  
5 Hoffman Constr. Co., 964 F.2d 635, 639 (9th Cir. 1988)).  
6 Ultimately, the party moving for a transfer of venue under §  
7 1404(a) "bears the burden to show that another forum is more  
8 convenient and serves the interest of justice." F.T.C. v. Watson  
9 Pharm., Inc., 611 F. Supp. 2d 1081, 1086 (C.D. Cal. 2009) (citing  
10 GNC Franchising, 211 F.3d at 499).

11           The Receiver's primary argument in support of its  
12 motion to transfer venue avails the "interests of justice" aspect  
13 of the § 1404(a) analysis. Specifically, the Receiver argues  
14 that transfer of this action to the Northern District will  
15 promote efficiency and save judicial resources in light of the  
16 interrelatedness between the Plata case and this action.  
17 (Receiver's Mem. I/S/O Mot. Transfer 10:27-11:27.)

18           "An important consideration in determining whether the  
19 interests of justice dictate a transfer of venue is the pendency  
20 of a related case in the transferee forum." Am. Canine Found. v.  
21 Sun, No. 06-654, 2006 WL 2092614, at \*3 (E.D. Cal. July 27, 2006)  
22 (Karlton, J.) (citing A.J. Indus., Inc. v. U.S. Dist. Court for  
23 the Cent. Dist. of Cal., 503 F.2d 384, 389 (9th Cir. 1974)); see  
24 Williams v. Bowman, 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001)  
25 (listing "feasibility of consolidation of other claims" as a  
26 factor relevant to the "interests of justice"). Indeed, the  
27 Supreme Court and the Ninth Circuit have long recognized that  
28 "[t]o permit a situation in which two cases involving precisely

1 the same issues are simultaneously pending in different District  
2 Courts leads to the wastefulness of time, energy and money that §  
3 1404(a) was designed to prevent." Cont'l Grain Co. v. The  
4 FBL585, 364 U.S. 19, 26 (1960); see A.J. Indus., Inc., 503 F.2d  
5 at 389 ("[T]he pendency of an action in another district is  
6 important because of the positive effects it might have in  
7 possible consolidation of discovery and convenience to witnesses  
8 and parties."); Amazon.com v. Cendent Corp., 404 F. Supp. 2d  
9 1256, 1260 (W.D. Wash. 2005) ("Litigation of related claims in  
10 the same tribunal is strongly favored because it facilitates  
11 efficient, economical and expeditious pre-trial proceedings and  
12 discovery and avoids duplicitous litigation and inconsistent  
13 results." (quotations and citations omitted)).

14           While the claims in the Plata case and this action are  
15 not identical, this action is nevertheless closely related to the  
16 case. The Receiver was appointed in the Plata case and Judge  
17 Henderson has overseen the Receivership since he ordered its  
18 creation in February 2006. In this action, plaintiff contends  
19 that it was authorized to begin its pilot program with the CDCR  
20 pursuant to the March 30, 2006 Order in Plata. The March 30,  
21 2006 Order is also a significant source of disagreement between  
22 the parties. (See Compl. ¶¶ 16-26; Receiver's RJN Exs. 3, 4.)  
23 The interpretation of Judge Henderson's March 30, 2006 Order will  
24 likely be dispositive in this action because it will determine  
25 whether plaintiff was a medical provider authorized by the Order  
26 to begin work for the CDCR without an executed contract or  
27 competitive bidding. (See Compl. ¶¶ 23, 25, 30.)

28           Considerations of judicial economy weigh heavily in



1 favor of transfer. "Judicial resources are conserved when an  
2 action is adjudicated by a court that has already committed  
3 judicial resources to the contested issues and is familiar with  
4 the facts of the case." Madani v. Shell Oil Co., No. 07-4296,  
5 2008 WL 268986, at \*2 (N.D. Cal. Jan. 30, 2008). To properly  
6 adjudicate this action, this court would need to become familiar  
7 with the facts giving rise to the March 30, 2006 Order. This  
8 would require an investment of a substantial amount time by the  
9 court and would result in the expense of significant resources by  
10 the parties to fully brief the context giving rise to the March  
11 30, 2006 Order in Plata. Unlike this court, Judge Henderson is  
12 intimately familiar with the details of the Plata case, having  
13 presided over the matter since April 2001. Given his extensive  
14 knowledge of the case and the facts and circumstances giving rise  
15 to his Order, Judge Henderson can more efficiently interpret the  
16 March 30, 2006 Order than this court.

17           Transfer of this matter to the Northern District will  
18 also ensure consistency in the interpretation of the March 30,  
19 2006 Order, preventing uncertainty about the contractual  
20 obligations of the Receiver and CDCR under the Receivership. See  
21 In re Genesisintermedia, Inc. Sec. Litig., No. 01-9024, 2003 WL  
22 25667662, at \*4 (C.D. Cal. June 12, 2003); Argonaut Ins. Co. v.  
23 Mac Arthur Co., No. 12-3878, 2002 WL 145400, at \*4 (N.D. Cal.  
24 Jan. 18, 2002) ("The best way to ensure consistency is to prevent  
25 related issues from being litigated in two separate venues.").

26           Ultimately, the adjudication of this matter in the  
27 Northern District will promote judicial economy, conserve the  
28 parties' resources, and avoid inconsistent judgments--all in the

1 furtherance of the "interests of justice." Accordingly, the  
2 interests of justice weigh heavily in favor of transfer. See,  
3 e.g., Cardoza v. T-Mobile USA Inc., No. 08-5120, 2009 WL 723843,  
4 at \*6 (N.D. Cal. Mar. 18, 2009); Bomanite Corp. v. Newlook Int'l,  
5 Inc., No. 07-1640, 2008 WL 1767037, at \*11 (E.D. Cal. Apr. 16,  
6 2008) (Wanger, J.); Alexander v. Franklin Res., Inc., No.  
7 06-7121, 2007 WL 518859, at \*3 (N.D. Cal. Feb. 14, 2007); Jolly  
8 v. Purdue Pharma L.P., No. 05-1452, 2005 WL 2439197, at \*2 (S.D.  
9 Cal. Sept. 28, 2005).

10 In opposition to the Receiver's motion to transfer  
11 venue, plaintiff argues that the court should give weight to  
12 plaintiff's choice of forum. While a plaintiff's choice of forum  
13 "is typically given considerable weight in the venue analysis. .  
14 . [it] is not significant" in a matter where the plaintiff is not  
15 a resident of the district the case is brought in. Deputy v.  
16 Long-Term Disability Plan of Sponsor Aventis Pharm., No.  
17 C02-2010, 2002 WL 31655328, at \*3 (N.D. Cal. Nov. 21, 2002)  
18 (citing Bryant v. ITT Corp., 48 F. Supp. 2d 829, 832 (N.D. Ill.  
19 1999); Reiffin v. Microsoft Corp., 104 F. Supp. 2d 48, 54, n.12  
20 (D. D.C. 2000)). Plaintiff's choice of forum was not this court  
21 but the Sacramento County Superior Court; it was the defendant  
22 who removed the action to this court. Further, plaintiff is a  
23 Delaware corporation with its principal place of business in  
24 Florida. Accordingly plaintiff's choice of forum should not be  
25 given a substantial amount of weight.<sup>4</sup> (Compl. ¶ 1.)

---

26  
27 <sup>4</sup> Plaintiff also contends that disregarding plaintiff's  
28 choice of forum and transferring this action to the Northern  
District would defeat the purpose of § 959(a) and the Ninth

1           Moreover, while a defendant normally "must make a  
2 strong showing of inconvenience to warrant upsetting the  
3 plaintiff's choice of forum," Decker Coal Co. v. Commonwealth  
4 Edison Co., 805 F.2d 834, 843 (9th Cir. 1986), this premise does  
5 not implicate the court's power to transfer an action where the  
6 interests of justice so require. See generally Madani, No.  
7 07-4296, 2008 WL 268986, at \*2 ("The question of which forum will  
8 better serve the interest of justice is of predominant importance  
9 on the question of transfer, and the factors involving  
10 convenience of parties and witnesses are in fact subordinate."  
11 (quoting Wireless Consumers Alliance v. T-Mobile USA, Inc., No.  
12 03-3711, 2003 WL 22387598, at \*4 (N.D. Cal. Oct.14, 2003)));  
13 accord Amazon.com, 404 F. Supp. 2d at 1261.

14           Furthermore, the Receiver's arguments supporting  
15 transfer arguably promote the mutual "convenience" of the parties  
16 through the efficient use of their time and resources, and  
17 plaintiff provides scant support for the argument that a transfer  
18 from Sacramento to San Francisco would unduly inconvenience the  
19 parties. Rather, plaintiff only asserts that it "anticipates  
20 propounding extensive discovery requests on the CDCR and Receiver  
21 seeking the production of both information and records, including  
22 correspondence and emails" relating to contract negotiations of  
23 CDCR. (Pl.'s Opp'n Mot. Transfer 6:12-14.)

24           While San Francisco is approximately ninety miles from  
25

---

26 Circuit's ruling in this matter. This argument is clearly belied  
27 by the Ninth Circuit's own opinion, which specifically states  
28 that "nothing in this opinion prevents the Eastern District from  
coordinating with or, if appropriate, transferring the action to  
the Northern District." Med. Dev. Int'l, 585 F.3d at 1222.

1 Sacramento, the inconvenience of transferring the action is not  
2 considerable. As previously mentioned, plaintiff is a Delaware  
3 corporation, with its principal place of business in Florida.  
4 Plaintiff provided medical services to prisons located in  
5 Southern California. Plaintiff and defendants' counsel reside in  
6 San Francisco. There is no overwhelming nexus between this  
7 action and the Eastern District, outside of the fact that the  
8 Receiver and CDCR are located in Sacramento. Plaintiff has not  
9 indicated how it would be materially inconvenienced by issuing  
10 discovery requests for electronic and paper documents a mere  
11 ninety miles from Sacramento. Plaintiff has also not identified  
12 any witnesses that would be inconvenienced by discovery and  
13 forced to travel to San Francisco.

14 The Receiver has carried his burden under § 1404(a) and  
15 demonstrated that the interests of justice favor transferring  
16 this action to the Northern District. These considerations weigh  
17 heavily against plaintiff's choice of forum, particularly since  
18 any inconvenience incident to transfer appears to be negligible.  
19 Accordingly, the court will grant defendant's motion to transfer  
20 venue.

21 IT IS THEREFORE ORDERED that the Receiver's motion to  
22 transfer venue to the Northern District of California be, and the  
23 same hereby is, GRANTED. The Clerk shall transmit the file to  
24 the Clerk of the District Court for the Northern District of  
25 California (San Francisco Division) for further proceedings.

26 DATED: January 21, 2010

27 

28 WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE