

1 sergeant's actions violated a right secured by the Constitution or
2 other federal law. Subsequently, the case was reassigned to the
3 undersigned.

4 Plaintiff has filed an amended complaint in which he names the
5 following Defendants: (1) Defendant W. Bennett, a Correctional
6 Sergeant for the California Department of Corrections and
7 Rehabilitation (CDCR) Transportation Unit, who works or resides in
8 Sacramento; (2) Defendant L. Gonzalez, a Correctional Officer for
9 the CDCR Transportation Unit, who works or resides in Sacramento;
10 (3) Defendant Fragoso, a Correctional Sergeant at CSP-SAC;
11 (4) Defendant Pomilla, a Correctional Officer at CSP-SAC;
12 (5) Defendant K. Gonzalez, a Correctional Officer at SVSP.

13 Plaintiff makes the following allegations against the above
14 Defendants. On March 17, 2010, Plaintiff was placed on a bus to
15 transport him from SVSP to CSP-SAC for a court appearance. L.
16 Gonzalez, a transportation officer accompanying Plaintiff and other
17 prisoners on the bus, assaulted Plaintiff when the bus stopped
18 briefly at SQSP. Bennett, another transportation officer on the
19 bus, failed to intervene to stop the assault. When Plaintiff told
20 Bennett he wished to file a complaint about the matter, Bennett
21 advised him not to do so. For the duration of the ride to CSP-SAC,
22 L. Gonzalez and Bennett made threatening statements to Plaintiff.
23 When Plaintiff arrived at CSP-SAC, Bennett and CSP-SAC Correctional
24 Officer Pomilla had him sign a form acknowledging his right to file
25 a complaint against a peace officer, but Bennett told Plaintiff
26 that if he did file a complaint he'd regret it.

27 On March 19, 2010, at CSP-SAC, Pomilla told Plaintiff his
28 court appearance had been cancelled and he was being returned to

1 SVSP. Pomilla told Plaintiff that he hoped Plaintiff would get his
2 personal items, i.e., his court attire, sent back to him at SVSP.
3 Plaintiff then told Pomilla's supervisor, Fragoso, that Plaintiff
4 would be filing an excessive force claim against L. Gonzalez and a
5 claim for retaliatory deprivation of property against Bennett and
6 Pomilla. Fragoso did not intervene to ensure Pomilla returned
7 Plaintiff's property to him.

8 When Plaintiff returned to SVSP, Correctional Officer K.
9 Gonzalez seized Plaintiff's legal property, mail and books, and
10 then interviewed Plaintiff about his complaint of excessive force.
11 K. Gonzalez subsequently refused to return Plaintiff's property to
12 him, in retaliation for Plaintiff's complaints about the other
13 Defendants.

14 Venue may be raised by the court sua sponte where the
15 defendant has not filed a responsive pleading and the time for
16 doing so has not run. See Costlow v. Weeks, 790 F.2d 1486, 1488
17 (9th Cir. 1986). When jurisdiction is not founded solely on
18 diversity, venue is proper in (1) the district in which any
19 defendant resides, if all of the defendants reside in the same
20 state; (2) the district in which a substantial part of the events
21 or omissions giving rise to the claim occurred, or a substantial
22 part of the property that is the subject of the action is situated;
23 or (3) a judicial district in which any defendant may be found, if
24 there is no district in which the action may otherwise be brought.
25 See 28 U.S.C. § 1391(b).

26 In the present action, Plaintiff names five Defendants, four
27 of whom - L. Gonzalez, W. Bennett, Fragoso and Pomilla - reside in
28 Sacramento County, which is located in the Eastern District of

1 California. See 28 U.S.C. § 84(b). One Defendant, K. Gonzalez,
2 resides at SVSP in Monterey County, in the Northern District. Id.
3 § 84(a). The vast majority of the events giving rise to the claims
4 in the complaint concern the actions of the four Eastern District
5 Defendants who, in one capacity or another, interacted with
6 Plaintiff during the course of his transport from SVSP to CSP-SAC.
7 Some of the events giving rise to the claims against those four
8 Defendants occurred at CSP-SAC, in the Eastern District, and some
9 of the events occurred on the bus at SQSP, which is in the Northern
10 District.

11 Based on the above, under § 1391(b), venue is proper in either
12 the Eastern or the Northern District. Where, however, an
13 alternative forum with greater relation to the defendants or the
14 action exists than the forum in which the action was filed, the
15 action may be transferred to such alternative forum "[f]or the
16 convenience of parties and witnesses, in the interest of justice."
17 See 28 U.S.C. § 1404(a).

18 Here, the Court concludes the Eastern District would be a more
19 convenient forum, for the following reasons: Plaintiff is
20 incarcerated at CSP-COR in the Eastern District; the four
21 Defendants allegedly responsible for the majority of the events
22 from which Plaintiff's claims arise reside in the Eastern District;
23 a substantial part of the events giving rise to Plaintiff's claims
24 occurred in the Eastern District; Plaintiff's claim against K.
25 Gonzalez, the sole Defendant who resides in the Northern District,
26 stems from Plaintiff's allegations against the other Defendants.

27 Accordingly, IT IS ORDERED in the interest of justice and for
28 the convenience of both the parties and the witnesses, and pursuant

1 to 28 U.S.C. § 1404(a), that this action be TRANSFERRED to the
2 United States District Court for the Eastern District of
3 California.

4 The Clerk of the Court shall transfer this matter forthwith.

5 IT IS SO ORDERED.

6 DATED: 12/7/2011

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8 CLAUDIA WILKEN
9 United States District Judge

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