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

RANDALL THOMPSON,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
et al.,

Defendants.

No. C 16-3415 CW

ORDER RECONSIDERING  
DENIAL OF MOTION TO  
TRANSFER AND  
TRANSFERING CASE

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On March 15, 2017, this Court denied a motion to transfer this case to the United States District Court for the Eastern District of California. On September 15, 2017, the Court dismissed all claims against three of the Defendants in this case. In the September 26, 2017 joint case management statement, Defendants asserted that as a result of the dismissal, all of the alleged events giving rise to Plaintiff's claims occurred at Deuel Vocational Institute (DVI), which is located in the Eastern District of California. In a September 29, 2017 order, the Court directed the parties to meet and confer and be prepared to address at the case management conference whether the Court should reconsider its order denying Defendants' transfer motion. Following argument at the October 3, 2017 case management conference, the Court hereby reconsiders the denial of the motion to transfer and transfers this case to the Eastern District of California.

1 LEGAL STANDARD

2 "For the convenience of parties and witnesses, in the  
3 interest of justice, a district court may transfer any civil  
4 action to any other district or division where it might have been  
5 brought or to any district or division to which all parties have  
6 consented." 28 U.S.C. § 1404(a). "Under § 1404(a), the district  
7 court has discretion to adjudicate motions for transfer according  
8 to an individualized, case-by-case consideration of convenience  
9 and fairness. A motion to transfer venue under § 1404(a) requires  
10 the court to weigh multiple factors in its determination whether  
11 transfer is appropriate in a particular case." Jones v. GNC  
12 Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000). "To support  
13 a motion for transfer, the moving party must establish: (1) that  
14 venue is proper in the transferor district; (2) that the  
15 transferee district is one where the action might have been  
16 brought; and (3) that the transfer will serve the convenience of  
17 the parties and witnesses and will promote the interest of  
18 justice." Reflex Packaging, Inc. v. Audio Video Color Corp.,  
19 No. 13-cv-03307-SI, 2013 WL 5568345, at \*2 (N.D. Cal. Oct. 9,  
20 2013) (citations omitted).

21 The Ninth Circuit considers the following factors to  
22 determine whether to transfer venue: "(1) plaintiff's choice of  
23 forum, (2) convenience of the parties, (3) convenience of the  
24 witnesses, (4) ease of access to the evidence, (5) familiarity of  
25 each forum with the applicable law, (6) feasibility of  
26 consolidation with other claims, (7) any local interest in the  
27 controversy, and (8) the relative court congestion and time of  
28 trial in each forum." Id. (citing Jones, 211 F.3d at 498-99.)

1 "The burden is on the defendant to show that, of the relevant  
2 factors, the balance of convenience weighs in favor of transfer to  
3 another district." TransPerfect Global, Inc. v. Motionpoint  
4 Corp., No. 10-cv-02590, 2010 WL 3619565, at \*2 (N.D. Cal. Sept.  
5 13, 2010) (citing Commodity Futures Trading Comm'n v. Savage,  
6 611 F.2d 270, 279 (9th Cir. 1979)).

7 DISCUSSION

8 As the parties agreed and the Court found previously, this  
9 action could have been brought in the Eastern District of  
10 California because a substantial part of the events giving rise to  
11 the claim occurred in that District. "Once venue is determined to  
12 be proper in both districts, the Court evaluates which venue is  
13 more convenient to the parties and the witnesses." Reflex  
14 Packaging, 2103 WL 5568345, at \*3.

15 At the time this Court denied the individual Defendants'  
16 motion to transfer, there were seven Defendants in this action.  
17 Defendants Theodore Abreu, Harry Newman, Thomas Bzoskie, and  
18 Jerome Price are employed at DVI, working and residing in the  
19 Eastern District of California. Defendants Margaret Hanna and  
20 Ronald Davis are employed at San Quentin State Prison, working and  
21 residing in the Northern District of California. Defendant  
22 California Department of Corrections and Rehabilitation (CDCR)  
23 operates both institutions. Plaintiff resides in the Eastern  
24 District of California.

25 In denying the motion to transfer, the Court found that the  
26 convenience of the parties weighed in favor of transfer to the  
27 Eastern District, but only slightly due to the close proximity of  
28 the two districts. The Court also found that Plaintiff's choice

1 of forum in the Northern District was entitled to deference  
2 because at least some of the operative facts occurred in this  
3 District and he was housed at San Quentin for twice as long as he  
4 was housed at DVI. With regard to the remaining factors, the  
5 Court found that the access to evidence weighed slightly in favor  
6 of transfer; relative court congestion weighed against transfer;  
7 and the convenience of the parties, forum's familiarity with  
8 applicable law, feasibility of consolidation, and local interest  
9 in the controversy were neutral.

10 The dismissal of all claims against the two individual  
11 Defendants who work and reside in the Northern District materially  
12 changes this analysis. The claims against the remaining  
13 individual Defendants are based on allegations of facts that  
14 occurred solely at DVI.

15 Plaintiff has a claim under Title II of the Americans with  
16 Disabilities Act (ADA), 42 U.S.C. § 12132, against CDCR, which  
17 operates both San Quentin and DVI. In this claim, Plaintiff  
18 alleges that he "had a right to be protected from injury and the  
19 risk of injury due to his disability." Second Amended Complaint  
20 (2AC) ¶ 57. He also alleges that CDCR violated the ADA by  
21 "refusing to follow the limitations and restrictions listed on the  
22 Medical Classification Chrono and Comprehensive Accommodation  
23 Chrono, denying plaintiff a wheelchair and other requested medical  
24 devices, providing inadequate medical care, and failing to  
25 accommodate his disability by, among other things, requiring him  
26 to perform physical duties he was unable to perform due to his  
27 disability." Id. ¶ 56. In denying CDCR's motion to dismiss this  
28 claim, the Court relied primarily on CDCR's alleged failure to

1 provide Plaintiff with an agreed-upon accommodation that he should  
2 not be required to climb stairs at DVI. Also, the Court has  
3 dismissed all claims based on the individual Defendants' alleged  
4 failure to provide adequate medical care at San Quentin. Although  
5 no part of Plaintiff's ADA claim against CDCR has been dismissed,  
6 that claim is largely, although not wholly, based on events that  
7 occurred at DVI.

8 That few, if any, of the operative events in this case took  
9 place in the Northern District, and Plaintiff resides in the  
10 Eastern District, means that Plaintiff's choice of forum in this  
11 District is now entitled to limited weight. See Pac. Car &  
12 Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir. 1968) ("If the  
13 operative facts have not occurred within the forum of original  
14 selection and that forum has no particular interest in the parties  
15 or the subject matter, the plaintiff's choice is entitled only to  
16 minimal consideration."). Counsel for Plaintiff as well as for  
17 Defendants are located in the Eastern District. The convenience  
18 of the parties weighs decisively in favor of transfer following  
19 the dismissal of all claims against the individual Defendants  
20 employed at San Quentin. Likewise, the Eastern District of  
21 California now has an increased local interest in the controversy  
22 relative to the Northern District, and this factor also now weighs  
23 somewhat in favor of transfer. The Court's analysis of the  
24 remaining factors (convenience of the parties, access to evidence,  
25 forum's familiarity with applicable law, feasibility of  
26 consolidation, and relative court congestion) has not changed.

27 Previously, the Court found that two factors weighed slightly  
28 in favor of transfer, while Plaintiff's choice of forum and

1 relative court congestion weigh against transfer. Now, however,  
2 the convenience of the parties, the Eastern District of  
3 California's local interest in the controversy, and the access to  
4 evidence all weigh in favor of transfer, while Plaintiff's choice  
5 of forum is entitled only to minimal weight. The relative court  
6 congestion in the Eastern District of California weighs against  
7 transfer, but this is not sufficient to overcome the other factors  
8 given the lack of significant underlying facts based in the  
9 Northern District. Accordingly, the Court finds that transfer  
10 will serve the convenience of the parties and witnesses and will  
11 promote the interest of justice.

12 CONCLUSION

13 The Court RECONSIDERS the denial of the individual  
14 Defendants' motion to transfer venue. The Clerk shall transfer  
15 this case to the United States District Court for the Eastern  
16 District of California and close the file in this Court.

17 IT IS SO ORDERED.

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19 Dated: October 12, 2017



20 CLAUDIA WILKEN  
21 United States District Judge  
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