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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 Stephen Paul McClane,

11 Plaintiff,

12 v.

13 City of Walla Walla et al.,

14 Defendants.

CASE NO. C17-5116 RBL-DWC

ORDER TRANSFERRING CASE

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16 Plaintiff Stephen Paul McClane, proceeding *pro se* and *in forma pauperis*, filed this civil  
17 rights complaint under 42 U.S.C. § 1983. Because Plaintiff is housed at Washington State  
18 Penitentiary (“WSP”) located in Walla Walla, Washington, and his claims arise out of actions  
19 committed at WSP, the Court orders this case be transferred to the Eastern District of  
20 Washington.<sup>1</sup>

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22 <sup>1</sup> Because an order transferring venue pursuant to 28 U.S.C. § 1404(a) does not address the merits of the  
23 case, it is a nondispositive matter that is within the province of a magistrate judge's authority under 28 U.S.C. §  
24 636(b)(1)(A). *See Pavao v. Unifund CCR Partners*, 934 F. Supp. 2d 1238, 1241 (S.D. Cal. 2013); *Corrinet v. Burke*,  
2012 WL 1952658, at \*6 (D.Or. Apr. 30, 2012); *Shenker v. Murasky*, 1996 WL 650974, at \*1 (E.D.N.Y. Nov. 6,  
1996) (“An order issued by a magistrate judge transferring venue under 28 U.S.C. § 1404(a) is non-dispositive.”);  
*Holmes v. TV-3, Inc.*, 141 F.R.D. 697, 697 (W.D. La. 1991) (“Since [a motion to transfer venue] is not one of the

1 **BACKGROUND**

2 Plaintiff, who is currently incarcerated at Washington State Penitentiary (“WSP”) alleges  
3 Defendants violated his constitutional rights when they failed to properly prosecute and  
4 adjudicate a case he filed regarding staff assault at the Clallam Bay Corrections Center  
5 (“CBCC”). Dkt. 6 at 3.

6 Plaintiff alleges Defendant Donaldson, the Walla Walla City Attorney, “failed to bring  
7 charges [against] me.” *Id.* at 4. Plaintiff alleges Defendant Donaldson should have charged him  
8 based on a May, 22, 2015 infraction. *Id.* Plaintiff alleges Defendant Martin, the Walla Walla  
9 County Superior Court Clerk, would not allow Plaintiff to retain a public defender for his staff  
10 assault case at CBCC. *Id.* Plaintiff alleges Defendant Lohrman, a Walla Walla Superior Court  
11 Judge, refused to help Plaintiff determine if he has a disability and seek other relief. *Id.* Plaintiff  
12 requests “due process in my staff assault at [CBCC].” Dkt. 6 at 4. Plaintiff does not seek  
13 monetary damages. *Id.*

14 The Court has not ordered the Clerk’s Office to attempt service of process. Defendant has  
15 not appeared in this action. *See* Dkt. On March 7, 2017, the Court ordered Plaintiff to show cause  
16 why his case should not be transferred to the Eastern District of Washington. Dkt. 7. The Court  
17 warned Plaintiff failure to file a response to the Court’s order would result in Plaintiff’s case  
18 being transferred to the Eastern District. Dkt. 7. Plaintiff did not file a response to the Court’s  
19 Order. *See* Dkt.

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23 motions excepted in 28 U.S.C. § 636(b)(1)(A), nor is it dispositive of any claim on the merits within the meaning of  
24 Rule 72 of the Federal Rules of Civil Procedure, this ruling is issued under the authority thereof, and in accordance  
with the standing order of this Court.”).

1 **DISCUSSION**

2 Venue may be raised by the court *sua sponte* where the defendant has not filed a  
3 responsive pleading and the time for doing so has not run. *See Costlow v. Weeks*, 790 F.2d 1486,  
4 1488 (9th Cir. 1986). When jurisdiction is not founded solely on diversity, venue is proper in (1)  
5 the district in which any defendant resides, if all of the defendants reside in the same state; (2)  
6 the district in which a substantial part of the events or omissions giving rise to the claim  
7 occurred, or a substantial part of the property that is the subject of the action is situated; or (3) a  
8 judicial district in which any defendant may be found, if there is no district in which the action  
9 may otherwise be brought. *See* 28 U.S.C. § 1391(b). When venue is improper, the district court  
10 has the discretion to either dismiss the case or transfer it “in the interest of justice.” *See* 28  
11 U.S.C. § 1406(a).

12 Here, it is clear Defendants all reside in Walla Walla, Washington and Plaintiff’s claims  
13 arise out of actions committed at WSP in Walla Walla, Washington, which is within the venue of  
14 the Eastern District of Washington. *See* 28 U.S.C. §§ 128(a).<sup>2</sup> Accordingly, the Court orders this  
15 case be transferred to the Eastern District of Washington.

16 The Clerks’ Office is directed to electronically transfer this case to the Eastern District of  
17 Washington fifteen days after the date of this Order.

18 Dated this 5<sup>th</sup> day of May, 2017.

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21 David W. Christel  
22 United States Magistrate Judge

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24 <sup>2</sup> The only allegation related to the Western District of Washington is Plaintiff’s request for “due process”  
related to his staff assault case at CBCC. Dkt. 6 at 4. However, it does not appear Plaintiff is challenging any  
conditions of confinement at CBCC, but instead, Plaintiff is challenging Defendants’ failure to provide him with  
assistance in litigating his claims arising out of staff conduct at CBCC. *Id.* at 3-4.