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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA
18 SACRAMENTO DIVISION
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21 **WILLIAM ROUSER,**

22 Plaintiff,

23 v.

24 **THEO WHITE, et al.,**

25 Defendants.
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27

2:93-cv-0767-LKK-GGH (PC)

**JOINT NOTICE AND MOTION FOR
ORDER APPROVING SETTLEMENT
AND TRANSFERRING VENUE**

Date: October 24, 2011
Time: 10:00 a.m.
Courtroom: 4
Judge: Lawrence K. Karlton
Trial Date: None
Action Filed: May 17, 1993

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**TO THE CLERK OF THE COURT AND THE ATTORNEY OF RECORD FOR;
INTERVENORS SPOTTED EAGLE CIRCLE, T. NGUYEN, RUSS, TERRES,
MELTON, WEYANT, L. NGUYEN, D. LEE, HINKLE, ROBINSON, K. LEE,
DADO, McCARTER**

PLEASE TAKE NOTICE THAT, at the time and place set forth above, plaintiff and defendants will jointly move for an order approving the settlement in this action and transferring venue to the United States District Court for the Central District of California, Western Division, under 28 U.S.C. §1404(a).

The grounds for this motion are that the parties have reached a settlement of this action which provides for orders entering the parties' settlement agreement as a consent decree under 18 U.S.C. § 3626(c)(1) and transferring venue to the United States District Court for the Central District of California, Western Division. The settlement agreement resolves the claims at issue, and the change of venue to the transferee court will serve the convenience of the parties and witnesses, and the interests of justice during the compliance and enforcement of the settlement, as more fully set forth in the parties' memorandum of points and authorities.

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1 This motion is based on the notice and motion, the supporting memorandum of points and
2 authorities and attached declaration, the pleadings, records, and files in this action, and such other
3 matters as may properly come before the Court.

4 Dated: September 23, 2011

Respectfully submitted,

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/s/ JASON C. WRIGHT

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JASON C. WRIGHT
Attorney for Plaintiff Rouser

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KAMALA D. HARRIS
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/s/ JAMES E. FLYNN

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Gomez, Haws, Ortiz, White Yates, and Cash*

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17 FOR THE EASTERN DISTRICT OF CALIFORNIA
18 SACRAMENTO DIVISION
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21 **WILLIAM ROUSER,**

22 Plaintiff,

23 v.

24 **THEO WHITE, et al.,**

25 Defendants.
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2:93-cv-0767-LKK-GGH (PC)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF JOINT
MOTION FOR ORDER APPROVING
SETTLEMENT AND TRANSFERRING
VENUE**

Date: October 24, 2011
Time: 10:00 a.m.
Courtroom: 4
Judge: Lawrence K. Karlton
Trial Date: None
Action Filed: May 17, 1993

1 **INTRODUCTION**

2 The parties have reached a settlement that will operate as a consent decree under 18 U.S.C.
3 § 3626(c)(1), when approved by the Court. Because Plaintiff William Rouser (“Plaintiff”) is now
4 housed at the California State Prison-Los Angeles County, compliance with the agreement will
5 occur at that prison. The parties have conditioned their agreement on a change of venue to the
6 United States District Court for the Central District of California, Western Division, because it
7 will serve the convenience of the parties, witnesses, and the interest of justice during
8 implementation of the agreement, and any future compliance and enforcement proceedings.
9 There is no bar, and all the relevant factors favor the transfer of venue.

10 **ARGUMENT**

11 **I. THE COURT SHOULD APPROVE THE SETTLEMENT BECAUSE IT COMPLIES WITH 18**
12 **U.S.C. § 3626.**

13 The parties have entered into a settlement agreement providing Plaintiff with certain
14 injunctive relief. (Attached hereto as Exhibit A.) This settlement agreement is contingent on this
15 court entering the settlement agreement as a consent decree, enforceable as a judgment for
16 injunctive relief. Further, this Court should enter the settlement agreement as a consent decree
17 because it comports with the requirements of the Prison Litigation Reform Act.

18 Under 18 U.S.C. § 3626(c), a consent decree must comply with subsection (a). Section
19 3626(a) requires a court to determine that the injunctive relief is (1) narrowly drawn; (2) extends
20 no further than necessary to correct the harm the court finds requires preliminary relief; and (3) is
21 the least intrusive means necessary to correct that harm. The relief agreed to between the parties
22 meets these requirements.

23 First, the injunctive relief is “narrowly drawn” if it “[avoids] unnecessary disruption to the
24 state agency’s ‘normal course of proceeding.’” *Clement v. Cal. Dep’t of Corrs.*, 364 F.3d 1148,
25 1153 (9th Cir. 2004) (quoting *Ashker v. Cal. Dep’t of Corrs.*, 350 F.3d 917, 921-22, 924 (9th Cir.
26 2003)). In other words, the injunction is narrowly drawn if it does not prohibit other prison
27 policies or practices that are necessary to maintain security and other legitimate objectives. As
28 shown by Defendants’ own agreement to the relief, the proposed settlement agreement does not

1 disrupt other prison operations. Indeed, the settlement agreement provides Defendants with the
2 ability to ensure prison security while still complying with the settlement agreement. For instance,
3 when there is “a lockdown or inmate-caused safety or security concern,” Plaintiff’s religious
4 holiday (“Sabbat”) may be cancelled without being rescheduled. (Settlement Agreement ¶ 16.)

5 With regard to the second requirement, an injunction does not extend further than necessary
6 when it is limited to remedying the harm shown by the evidence. In other words, an injunction
7 premised on isolated violations must be limited to the named plaintiffs, but systemic violations of
8 constitutional rights will justify system-wide relief. *Armstrong v. Davis*, 275 F.3d 849, 870-71
9 (9th Cir. 2001) (holding system-wide relief was appropriate because the evidence demonstrated
10 systemic violations by the defendants). Because the Settlement Agreement provides relief
11 specific to Plaintiff (Settlement Agreement ¶ 10), it does not “extend further than necessary.”

12 With regard to the third requirement, an injunction employs the “least intrusive means
13 necessary” when its enforcement does not require “the continuous supervision by the federal
14 court over the conduct of [state officers].” *Clement*, 364 F.3d at 1153 (citations omitted). The
15 rule against “continuous supervision” does not prohibit an injunction simply because a plaintiff
16 may avail himself of the court’s enforcement powers; rather, the rule prohibits injunctive relief
17 that automatically requires the court to involve itself in the day-to-day management of the
18 defendant. *Armstrong*, 275 F.3d at 873 (holding the injunction at issue was “the least intrusive
19 means necessary” because the district court “did not attempt to ‘micro manage’ the Board’s
20 activities, but rather to set clear objectives for it to attempt to attain, and, in most circumstances,
21 general methods whereby it would attain them.”). Here, there is no provision in the settlement
22 agreement that automatically requires the Court’s attention; and as a result, it employs the least
23 intrusive means necessary.

24 Because the settlement agreement comports with the requirements of the Prison Litigation
25 Reform Act, this Court should enter the agreement as a consent decree and final judgment.

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1 **I. THE COURT SHOULD TRANSFER VENUE FOR THE CONVENIENCE OF THE PARTIES,**
2 **WITNESSES, AND IN THE INTEREST OF JUSTICE.**

3 The Court should find that the parties' settlement of this long-running action satisfies the
4 requirement of 18 U.S.C. § 3626(c)(1) and should order venue transferred to the Central District,
5 Western Division under 28 U.S.C. § 1404(a).

6 The Court has discretion under 28 U.S.C. § 1404(a) to transfer venue for the convenience of
7 the parties and witnesses, in the interest of justice, to a district court where the action might have
8 been brought. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). "Weighing of
9 the factors in favor or against transfer involves subtle considerations and is best left to the
10 discretion of the district court." *Commodity Futures Trading Comm'n v. Savage*, 611 F.2d 270,
11 279 (9th Cir. 1979).

12 The threshold question for a court considering a transfer under section 1404(a) is whether
13 the action could have been brought in the district to which the moving party seeks to transfer the
14 action. In deciding whether an action could have been brought in the transferee court, the district
15 court is not required to confine its venue consideration to the facts as they existed at the time of
16 the original complaint. *Cordis Corp. v. Siemens-Pacesetter, Inc.*, 682 F.Supp. 1200, 1201-02
17 (S.D. Fla. 1987) (citing *In re Fine Paper Antitrust Litigation*, 685 F.2d 810 (3d. Cir. 1982)). The
18 question is whether, at the present time, the transferee district is one where the action might have
19 been brought as to all defendants before the court. *Id.* At its core, a common-sense approach to
20 applying section 1404(a) requires that the phrase "where it might have been brought" not act as
21 an absolute bar to transfer where the surrounding circumstances favor transfer to best serve the
22 convenience or the interests of justice, even though the plaintiff could not have brought the exact
23 same case, when originally filed, in the transferee court. *Encyclopaedia Britannica, Inc. v.*
24 *Magellan Navigation, Inc.*, 512 F.Supp.2d 1169, 1174 (W.D. Wis. 2007).

25 **A. Transfer to the Central District is Proper Because this Action Could Have**
26 **Been Brought There.**

27 This action is proceeding on the fourth amended complaint, which alleges federal
28 constitutional and statutory claims. (Fourth Am. and Suppl. Compl., Dec. 15, 2009, ECF No.

1 452.) All federal district courts have jurisdiction over federal constitutional, statutory, and civil
2 rights claims. 28 U.S.C. §1331, 1343. Subject matter jurisdiction in the Eastern District was
3 based on 28 U.S.C. §1391(b) because a substantial part of the events giving rise to Plaintiff's
4 claims, and in particular his claims for monetary damages, occurred at prisons located in a county
5 within that court's jurisdiction. ((Fourth Am. and Suppl. Compl., Dec. 15, 2009, ECF No. 452,
6 ¶4.) However, a portion of the events giving rise to Plaintiff's claims for injunctive relief, which
7 were resolved by the parties' consent decree, occurred at the California State Prison-Los Angeles
8 County, located in the Central District, Western Division. (*Id.* ¶¶ 12, 43.) For that reason, this
9 action could also have been brought in the Central District, Western Division, for events in Los
10 Angeles County. There is no dispute that the Central District, Western Division, would have
11 jurisdiction over all Defendants in this action. For these reasons, there is no bar to the transfer of
12 venue.

13 **B. The Convenience of the Parties, Witnesses, and Interest of Justice Favor**
14 **the Transfer.**

15 The convenience of the parties and witnesses, and the interest of justice favor the transfer.
16 In making that determination, the court considers the following factors: 1) the place where the
17 operative facts will occur; 2) the convenience of the parties; 3) the convenience of the witnesses;
18 4) the relative ease of access to sources of proof; 5) the availability of process to compel the
19 attendance of unwilling witnesses; 6) parties' choice of forum; 7) the court's familiarity with the
20 applicable law; and 8) trial efficiency, costs of litigation, and the interest of justice. *Jones*, 211
21 F.3d at 498.

22 **1. Place Where Operative Facts Will Occur**

23 A federal court will only retain jurisdiction of this matter for the purposes of any
24 enforcement action regarding the prospective relief agreed to by the parties. Most importantly,
25 the operative facts concerning compliance with the settlement will occur over the next year at
26 CSP-Los Angeles County, where Plaintiff is confined. In an injunctive relief case like this, where
27 one court is "closer to the action" and better able to monitor compliance with any injunction, this

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1 factor weighs in favor of a transfer. *Law Bulletin Pub., Co. v. LRP Publications, Inc.*, 992
2 F.Supp. 1014, 1021 (N.D. Ill. 1998).

3 **2. Convenience of Parties**

4 Plaintiff is an inmate, and defendant Cash is the Warden at the California State Prison-Los
5 Angeles County. Both parties are located in the county served by the Central District, Western
6 Division, and the prison is in Lancaster, California, which is approximately 75 miles from the
7 court, while the Eastern District is located in Sacramento, California, over 360 miles away. And,
8 the Attorney General and Plaintiff's attorney of record have offices in Los Angeles itself, only a
9 few miles from the Central District, Western Division, courthouse. This factor favors transfer.

10 **3. Convenience of Witnesses, Access to Sources of Proof, and Subpoena**
11 **Power**

12 The convenience of witnesses will be served by the transfer. While the identity and
13 testimony of every witness concerning compliance cannot be anticipated at this time, witnesses
14 would include, at a minimum, Plaintiff and Warden Cash. And, as has occurred in earlier phases
15 of the litigation, witnesses such as the prison's Community Partnership Manager, who oversees
16 inmate religious programs at the prison; the chaplain for the facility where Plaintiff is housed,
17 who is responsible for facilitating the Wiccan religious program; and the volunteer Wiccan
18 spiritual advisor could be expected to be witnesses, as well as correctional officers responsible for
19 releasing inmates for religious services. All those witnesses are located at the California State
20 Prison-Los Angeles County in Lancaster. Witness convenience in accessing the parties' attorneys
21 and the court for hearings, if necessary, as well as access to documents and other sources of proof,
22 and subpoenas for unwilling witnesses, because they would be located within 100 miles of the
23 court, all favor transfer to the Central District, Western Division.

24 **4. The Parties' Choice of Forum**

25 Defendants favor moving the venue to the Central District, Western Division because of
26 convenience to the parties. Plaintiff agrees that venue in the Central District of California is more
27 practical if, as the parties have agreed, the settlement agreement is entered as a consent decree

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1 and the only remaining action by a court would possibly be review Defendants' future conduct
2 that would necessarily occur in Los Angeles County. As a result, this factor favors transfer.

3 **5. The Transferee Court's Familiarity with the Law**

4 The law on enforcement of the settlement agreement is the same, regardless of which
5 district court applies it, so the Central District, Western Division, can be expected to be as
6 familiar with the law as the Eastern District, Sacramento Division. This factor favors transfer.

7 **6. Trial Efficiency, Cost of Litigation, and Interests of Justice**

8 For the reasons discussed above, trial efficiency will be furthered by transfer of venue
9 because of the proximity of the parties and their attorneys to witnesses and evidence, and the
10 Central District court. Moreover, that proximity will also minimize associated costs and burdens
11 to the parties if future evidentiary hearings were necessary.

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CONCLUSION

The Court should grant the parties' motion, approve the settlement agreement as a consent decree under § 3626(c)(1), and transfer venue to the Central District, Western Division, under section 1404(a) because this action could have been brought there, and the convenience of the parties, witnesses, and the interests of justice favor the transfer.

Dated: September 23, 2011

Respectfully submitted,

/s/ Jason C. Wright

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