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United States District Court
Central District of California
Western Division

JAMES HYDRICK, *et al.*,

CV 98-07167 TJH (ASx)

Plaintiffs,

v.

PETER WILSON, *et al.*,

Order
JS-6

Defendants.

The Court has considered Defendants’ motion to dismiss the Second Amended Complaint for lack of subject matter jurisdiction because the case is, now, moot, together with the moving and opposing papers.

This case has a long litigation history. It was filed in 1998 on behalf of a class of sexually violent predators who alleged constitutional violations in connection with their civil confinement at California Department of State Hospitals [“DSH”] Atascadero. Beginning in 1999, Plaintiffs were represented by attorney Joel Krischer at the law firm of Latham and Watkins. On August 14, 2002, Plaintiffs filed a Second Amended Complaint. Plaintiffs, then, served the Second Amended Complaint on only three of the named defendants: then Executive Director of DSH Atascadero Melvin Hunter (also known as Jon DeMorales), DSH Atascadero’s then Senior Psychologist

1 Specialist Craig Nelson, and DSH Atascadero's then Clinical Administrator Grenda
2 Ernst ["Served Defendants"]. In 2003, the Court denied the Served Defendants' motion
3 to dismiss the Second Amended Complaint. From 2003 to 2012, this case was before
4 the Ninth Circuit and the United States Supreme Court on the Served Defendants'
5 motion to dismiss. While the case was on appeal, the class members were transferred
6 from DSH Atascadero to DSH Coalinga. On January 12, 2012, the Ninth Circuit held
7 that the Plaintiffs could proceed with their claims for declaratory and injunctive relief
8 based on events that took place at DSH Atascadero. *Hydrick v. Hunter*, 669 F.3d 937
9 (9th Cir. 2012).

10 On December 17, 2013, upon the retirement of Joel Krischer, the Court approved
11 the Plaintiffs' request for substitution of attorneys from Latham and Watkins to Spertus,
12 Landes, & Umhoffer, LLP. Thereafter, Plaintiffs sought leave to file a Third Amended
13 Complaint, which, in effect, was a new complaint because it would have replaced all
14 but one of the named Plaintiffs, and was based primarily on alleged violations at DSH
15 Coalinga. The Court denied the motion for leave, the subsequent motion for
16 reconsideration, and the subsequent motion to transfer venue based on *forum non*
17 *conveniens*.

18 Now, in light of the holding in *Hydrick v. Hunter*, 669 F.3d 937 (9th Cir. 2012),
19 the Served Defendants move to dismiss the Second Amended Complaint as moot
20 because Plaintiffs' claims were limited to declaratory and injunctive relief for alleged
21 violations at DSH Atascadero, but they are no longer confined there. Then, on April
22 21, 2016, after this motion to dismiss was filed, Plaintiffs served the Second Amended
23 Complaint on the current Director of the California Department of State Hospitals,
24 Pamela Ahlin, and the current Secretary of the California Department of Corrections
25 and Rehabilitations, Scott Kernan.

26 A plaintiff must serve a defendant within 90 days of a complaint being filed.
27 Fed. R. Civ. P. 4(m). At the time the complaint was filed, Rule 4 provided 120 days
28 for effectuating service. However, if service is not effectuated within 90 days, the

1 plaintiff bears the burden to show good cause justifying the delay, otherwise the action
2 must be dismissed. Fed. R. Civ. P. 4(m). The Court may, also, grant an extension to
3 effectuate service, even in the absence of good cause. *See Efaw v. Williams*, 473 F.3d
4 1038, 1040 (9th Cir. 2007). After eighteen years of litigation, and fourteen years after
5 the filing of the Second Amended Complaint, Plaintiffs suddenly decided to effectuate
6 service on two additional defendants. Plaintiffs did not offer any explanation for this
7 delay, which was more than “extraordinary,” nor did Plaintiffs seek leave to extend
8 Rule 4(m)’s time limit. *See e.g. Efaw*, 473 F.3d at 1041. This litigation has proceeded
9 for eighteen years without these newly served individuals or their predecessors, who
10 had never made an appearance or otherwise participated in this case. Despite Plaintiffs’
11 argument, service of process confers this Court with jurisdiction over a party, not the
12 placement of a party’s name on the Court’s docket. *See Fed. R. Civ. P. 4(k)(1)*.

13 Until his retirement, Joel Krischer was the Plaintiffs’ counsel. Krischer was an
14 esteemed civil litigator and partner at Latham and Watkins. As indicated in the June
15 28, 1999, Minute Order, Krischer made strategic decisions on how to frame this case,
16 which included the abandonment of claims against unserved defendants. Otherwise,
17 there is no reasonable explanation as to why Krischer would not have served the
18 additional defendants.

19 Further, it is well-established that a detainee’s transfer to a new facility moots
20 claims for declaratory and injunctive relief based on alleged violations that took place
21 at that prior facility, unless the complaint challenges statewide policies. *See Nelson v.*
22 *Heiss*, 271 F.3d 891, 897 (9th Cir. 2001). Here, Plaintiffs’ case has always been
23 limited to prospective injunctive and declaratory relief for actions and policies at DSH
24 Atascadero; it was never a systemic lawsuit against the entire California DSH system.
25 *See Nelson*, 271 F.3d at 987. Indeed, this case was surgically targeted to address the
26 issues at DSH Atascadero. Since Plaintiffs have been transferred to DSH Coalinga,
27 Plaintiffs’ new counsel has tried to re-frame this case into something it has never been.
28 Now that Plaintiffs have been transferred to DSH Coalinga, the Second Amended

1 Complaint is moot. *See Nelson*, 271 F.3d at 987.

2 Plaintiffs' are not left without a remedy. Their remedy, now, is a new lawsuit
3 in the Eastern District of California for any claims related to Plaintiffs' confinement at
4 DSH Coalinga.

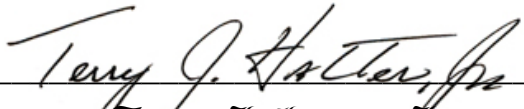
5 Accordingly,

6 **It is Ordered** that the motion to dismiss the Second Amended Complaint be,
7 and hereby is, **Granted**.

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9 Date: May 13, 2016

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Terry J. Haller, Jr.
Senior United States District Judge

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