

2005 WL 2087840

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United States District Court,
S.D. New York.

Abdul SHARIFF, James West, Divine Allah, and
Jose Torres, Plaintiffs,

v.

Glenn S. GOORD, Commissioner, New York State
Department of Correction Services; Lester Wright,
M.D., M.O.H., Associate Commissioner/Chief
Medical Officer, Department of Correctional
Services; Stephen Bernardi, Deputy
Commissioner, Policy and Compliance Review,
Department of Correctional Services; Donna
Masterson, Americans with Disabilities Act
Coordinator, Department of Corrections; William
E. Phillips, Superintendent, Green Haven
Correctional Facility; Carol Koenigsmann, M.D.,
Medical Director, Green Haven Correctional
Facility; William Mazzuca, Superintendent,
Fishkill Correctional Facility; J. Peter Gregoire,
M.D., Medical Director, Five Points Correctional
Facility; David Dobies, M.D., Former Medical
Director, Five Points Correctional Facility; Samuel
Stornelli, M.D., Physician, Five Points
Correctional Facility; Nancy O'Conner, RN, Nurse
Administrator, Five Points Correctional Facility;
David Goodwin, RN, Assistant Nurse
Administrator, Five Points Correctional Facility;
Robert Macomber, Physician Assistant at Five
Points Correctional Facility, Defendants.

No. 03 Civ. 7664(DAB). | Aug. 26, 2005.

Opinion

MEMORANDUM & ORDER

BATTS, J.

*1 Plaintiffs Abdul Shariff (“Shariff”), James West (“West”), Divine Allah (“Allah”), and Jose Torres (“Torres”) (collectively “Plaintiffs”), proceeding *pro se*, bring this action seeking both equitable relief and monetary damages under 42 U.S.C. § 1983 against various Defendants sued in their individual and official capacities who are currently or were previously employed by the New York Department of Corrections.¹ Plaintiffs allege in the Amended Complaint that Defendants failed to provide them with adequate medical care, thereby violating their rights under the Fifth, Eighth, and

Fourteenth Amendments of the United State Constitution, and that Defendants discriminated against them by failing to construct wheelchair-amenable cells and failing to provide recreational activities, in violation of the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act of 1973 (“Rehabilitation Act”). Currently before the Court are two motions. Plaintiffs Shariff, West, and Allah move for a preliminary injunction to enjoin Defendants from violating their civil rights and requiring Defendants (1) to provide Plaintiffs with one disposable catheter per use, (2) to provide a sterilization method consistent with the catheter manufacturer’s instructions, and (3) to provide access to urologists for adequate bladder care and treatment. (Pls’ Preliminary Injunction Memorandum of Law at 2.) Defendants move pursuant to Federal Rules of Civil Procedure 12(b)(3) and (6) to dismiss the action for improper venue, and for failure to state a claim upon which relief may be granted, or, in the alternative, Defendants move to transfer venue pursuant to 28 U.S.C. § 1404(a) or § 1406(a). For the reasons stated below, Defendants’ motion to dismiss based on improper venue is denied; and Defendants’ motion to transfer is granted, therefore, the Court does not reach the merits of Plaintiff’s Preliminary Injunction Motion or Defendants’ 12(b)(6) motion.

I. BACKGROUND

Except where indicated, the facts below are drawn from the Amended Complaint and are presumed true for the purposes of this decision. Plaintiffs are all wheelchair-bound prisoners currently incarcerated in correctional facilities run by the New York State Department of Correctional Services (“DOCS”). (Amended Complaint ¶¶ 12-13 (hereinafter “Am. Compl.”).) “All, or some, has a loss of volition control of his bowel and bladder and lacks sensation tolerance for pressure on his skin, and is prone to skin breakdowns ([bed sores]), urinary [tract] infections (UTI) and other serious medical complications.” (*Id.* ¶ 33.)

Three of the Plaintiffs presently are incarcerated at Five Points Correctional Facility (“Five Points”), which is located in Seneca County, in the Western District of New York. According to Defendants, Plaintiff Torres was transferred to Orleans Correctional Facility in Orleans County, also in the Western District of New York, on or about April 22, 2004. (Defs.’ Mem. of Law at 3.) Plaintiffs allege that they all have been injured by using inaccessible toilets, showers, sinks, or beds at the Five Points facility. (Am.Compl.¶ 62.) The Plaintiffs also claim that throughout their confinement at Five Points, Defendants Goord, Wright, Gregoire, O’Conner, and Goodwin “have failed and refused to provide medical care

Shariff v. Goord, Not Reported in F.Supp.2d (2005)

consistent with good and accepted medical treatment to the Plaintiffs.” (*Id.* ¶ 79.)

*2 All four Plaintiffs seek monetary and injunctive relief for claims arising from their incarceration at Five Points. Plaintiff Shariff also brings claims arising out of his incarceration at Green Haven Correctional Facility and Plaintiff Allah brings claims arising out of his incarceration at Fishkill Correctional Facility (*id.* ¶¶ 60-61), both of which are located in the Southern District of New York. Out of the fifteen Defendants, Defendants Phillips and Koenigsmann work at Green Haven; Defendant Mazzuca works at Fishkill; Defendants Goord, Wright, Bernardi and Masterson are DOCS administrative officials employed in Albany; and Defendants Dobies, Stornelli, Gregoire, O’Connor, Goodwin, Macomber, Walker, and Poole were or are employed at Five Points. (Am. Compl. ¶¶ 15-27; Defs.’ Mem. Law at 4.)

At the time the Amended Complaint was filed, all four Plaintiffs were confined in Five Points, in the Western District of New York. All of them have filed grievances and exhausted all administrative remedies available to them. (Am.Com pl.¶¶ 65-67, 116.)

A. Plaintiff Shariff

1. Green Haven

Plaintiff Shariff, who currently is imprisoned at Five Points, previously was imprisoned at Green Haven, where he was placed in “Administrative Segregation” and housed in a room in the Inpatient Care Unit (“ICU”), which is a “pre-fab” building that is “unsafe and a hazard to non-ambulatory prisoners.” (*Id.* ¶ 46 .) While there, he dislocated his shoulder while attempting “to transfer from the toilet.” (*Id.* ¶ 47.) He also was treated differently than able-bodied prisoners by being placed in solitary confinement. (*Id.* ¶ 48.)

The ventilation and heating system in the pre-fab building was deficient, which caused extreme fluctuations in hot and cold temperatures, and which put the Plaintiff’s health at risk and caused him to become ill. (*Id.* ¶ 49.) Plaintiff Shariff suffered from nose bleeds and colds because of the ventilation system. (*Id.*) In addition to the flawed heating system, the ventilation system’s in-take ducts outside the building were located near the exhaust pipe of a mobile truck, which caused exhaust to fill the isolation rooms and caused Shariff to become nauseous, light-headed, and dizzy. (*Id.* ¶¶ 50-51.)

Plaintiff Shariff claims that Defendants Goord, Phillips, Wright, and Koenigsmann were made aware “by way of letter or grievance” of the inaccessibility of the toilets, showers and sinks within the isolation rooms, as well as the faulty heating system. (*Id.* ¶ 55.)

2. Five Points

Plaintiff Shariff was transferred on May 23, 2003 from Green Haven to Five Points, where he was placed in the facility’s infirmary. (Am.Compl.¶ 80.) The nursing staff at Five Points informed him the day after he arrived that the facility did not carry size 12 catheters, and provided him with size 14 catheters instead, which caused him to bleed. (*Id.* ¶ 81.) Shariff informed the nurse that the catheters were too large, and the nurse contacted Defendant Dr. Gregoire, who ordered that Shariff continue to use the catheters until he could be examined. (*Id.* ¶ 82.) Plaintiff was examined by Gregoire five days after his arrival at Five Points, and Gregoire “acknowledged the problem of improper catheters and ordered ... that Plaintiff continue using the size-14 catheters until the size-12 [catheters were] delivered.” (*Id.* ¶ 83.) Plaintiff allegedly asked for a supply of catheters to be able to use a new one each time, but this request was denied. (*Id.*) As a result of using the oversized catheters and as a result of using them multiple times, Plaintiff contracted a urinary tract infection and experienced “excruciating bladder spasm pain.” (*Id.* ¶ 84.) As a result of the infection and the pain, Plaintiff was examined by Gregoire, who decided not to conduct a urine culture test and also did not allow Plaintiff to be examined by a urologist. (*Id.* ¶ 84.) He prescribed medication for the spasms and Tylenol for Plaintiff’s pain. (*Id.* ¶ 84.) After Plaintiff Shariff complained about the number of catheters he was provided, the quantity was increased from four per week to fifteen for fourteen days, which is equivalent to five uses per catheter. (*Id.* ¶ 85.)

*3 Plaintiff Shariff complained about having to use the “single-use” catheters multiple times, and about his inability to properly sterilize the catheters in conformity with the manufacturer’s instructions. (*Id.* ¶ 86.) Shariff voiced these complaints to Gregoire, who told him that soap and water were sufficient for sterilization. (*Id.* ¶ 86.)

Plaintiff Shariff also states that he defecated on himself because of the inaccessibility of the toilets in the Program Building at Five Points. (*Id.* ¶ 71.) Shariff also was injured on or about July 6, 2003 while showering at Five Points, because of the “metal slab seat” upon which he was forced to sit. (*Id.* ¶ 72.)

Soon after Plaintiff Shariff arrived at Five Points, his specialized wheelchair cushion seat broke. (*Id.* ¶ 87.) Shariff requested that he be provided with another specialized cushion, which Gregoire refused. (*Id.* ¶ 87.) Instead, Shariff was provided with a standard wheelchair cushion provided to all Five Points inmates, regardless of their disability. (*Id.* ¶ 87.) As a result of the non-specialized cushion, Shariff experienced several pressure sores. (*Id.* ¶ 88.) Dr. Gregoire examined the

Shariff v. Goord, Not Reported in F.Supp.2d (2005)

sores, but did not treat them. (*Id.* ¶ 88.) Thereafter, Shariff “submitted a sick call slip” and was treated by non-Defendant nurse Ritchie-Carter and physician assistant Macomber, who dressed his wound. (*Id.* ¶ 89.) Macomber also provided Shariff with a prescription for antibiotics. (*Id.* ¶ 89.) Shariff continued to experience pressure sores, but was informed by Gregoire that he would not be provided with another cushion. (*Id.* ¶ 90.) Plaintiff Shariff also alleges that at Green Haven he was prescribed a wheelchair back support to minimize his back pain, which he asked Goodwin, O’Conner and Gregoire at Five Points to reassemble on his wheelchair, but they informed him that it “could not be found.” (*Id.* ¶ 92.) Without the back support, Shariff suffers from “excruciating pain.” (*Id.* ¶ 92.) Plaintiff Shariff wrote letters to Goord, Wright, Poole, Gregoire, O’Conner and Goodwin about his various problems. (*Id.* ¶ 93.)

Plaintiff Shariff submitted an affidavit in support of his Motion for a Preliminary Injunction, in which he reiterates many of the facts stated in the Amended Complaint. (*See* Shariff Affidavit in Support of Motion for Preliminary Injunction at 1-3 (hereinafter “Shariff Aff.”).) In the affidavit, he adds that he filed a grievance about the multiple use of single-use catheters, and filed several grievances and complaints to Dr. Wright, Commissioner Goord, Superintendent Poole, Deputy of Administration Brown, and Dr. Gregoire about the lack of hot water in his cell. (Shariff Aff. at 2-3.) He states that the urinary tract infections he has experienced since his arrival at Five Points are the worst he has ever had since becoming paralyzed. (*Id.* at 3.)

Also attached to Plaintiffs’ memorandum of law in support of the Preliminary Injunction are several letters written on behalf of Plaintiff Shariff by various lawyers. They include a June 16, 2003 letter from James I. Meyerson to Superintendent [Poole] regarding lack of medical supplies, wrong-sized catheters, and problematic conditions for wheelchair-bound individuals. (Pls.’ Mem. Law in Support of Preliminary Injunction, Exhbt C.) Poole responded to the letter from Meyerson on July 8, 2003, and assured him that Shariff’s medical supplies had been ordered and received, that Shariff was receiving proper medical care, that the facility health services director and the acting nurse administrator had met with Shariff and inspected his cell, and that Five Points had been inspected and verified to be in compliance with the ADA requirements. (*Id.*) Poole also informed Meyerson that, “The inmate was also advised of the new statewide policy on self-catheterizations and supplies for same.” (*Id.*)

*4 Attorney John Beck wrote to Defendant Dr. Peter Gregoire on July 2, 2003 on Shariff’s behalf, regarding the significant health risk of re-using single-use catheters, and explaining the proper disinfecting procedures according to federal infectious disease control, which

includes rinsing the inside of the catheter with a syringe and boiling the catheter for 15 minutes. (*Id.* at Exhbt D.) Another attorney, Alexander Reinert, also wrote a letter to Dr. Gregoire (date unknown) regarding the dangers of reusing the catheters and informing Gregoire that his own conversations with the manufacturer did not confirm that “single use” referred to use by only one patient. (*Id.* at Exhbt E.) Another attorney, Betsy Ginsberg, wrote a letter to Defendant Lester Wright on December 1, 2003 about the dangers of reusing single-use catheters, and Shariff’s right to a new wheelchair cushion. (*Id.* at Exhbt F.)

Plaintiff’s attachments also include a memorandum from Defendant Goodwin in regard to Grievance # 8025-03, which states, “It has been confirmed with the manufacturer that the phrase ‘for single use only’, is intended that the catheter would only be used by one patient. They agreed with proper washing reuse is appropriate. This is the ‘community standard’ nationwide.” (Pls.’ Mem. Law in Support of Preliminary Injunction, Exhbt B.)

B. Plaintiff Allah

1. Fishkill

On or about February 25, 2003, Plaintiff Allah was transferred from Green Haven³ to Fishkill’s SHU because of the broken heating system.⁴ (*Id.* ¶ 60.) He requested the use of a wheelchair-accessible toilet in his cell. (*Id.*) The nurse who was present used the shower-chair to create a makeshift toilet-chair, however, Allah injured his head and back using the makeshift chair. (*Id.*) He states that Defendants Goord and Mazzuca were aware of the design of the cell and its inaccessibility for disabled prisoners. (*Id.* ¶ 61.)

2. Five Points

Plaintiff Allah arrived at Five Points on June 12, 2003. (Am.Compl.¶ 103.) Upon his arrival, Allah requested to see a physician, but instead was escorted to a housing unit and told to submit a “sick call slip.” (*Id.* ¶ 103.) Plaintiff Allah submitted several slips to see a physician, but was not examined for a month, when, on July 11, 2003, he was examined by physician assistant Macomber. (*Id.* ¶ 103.) Allah complained about his catheters, leg bags, fleets enemas, and urinary tract infections. (*Id.* ¶ 105.) He was provided with prescriptions for the catheters and fleets enemas, but did not receive them for weeks. (*Id.* ¶ 105.) Furthermore, Allah only was given four catheters per week; after he complained to Gregoire, he was given fourteen catheters for fourteen days, and was forced to reuse each one multiple times. (*Id.* ¶ 106.) Allah’s request to see a urologist was denied. (*Id.* ¶ 108.) Plaintiff Allah also asked Defendant Gregoire if he could be moved to a

Shariff v. Goord, Not Reported in F.Supp.2d (2005)

cell with a wheelchair-accessible shower, toilet and bed, however, Allah was moved to another wheelchair-inaccessible cell. (*Id.* ¶ 109.) His request to have his wheelchair repaired also was denied. (*Id.*)

C. Plaintiff Torres

*5 Plaintiff Torres arrived at Five Points on February 28, 2003 from Downstate Correctional Facility's infirmary. (*Id.* ¶ 110.) The Downstate infirmary supplied Torres with six catheters, which it considered a day's use of catheters. (*Id.* ¶ 111.) The Downstate facility also had prescribed Torres pain medication. (*Id.* ¶ 112.) Plaintiff Torres was placed in the Five Points infirmary upon his arrival, but was not examined by a physician. (*Id.* ¶ 112.) He submitted several sick call slips before he was seen by Defendant Macomber, who informed Torres that his pain medication would be discontinued, due to the facility's "no narcotic policy." (*Id.* ¶¶ 112-13.) Plaintiff Torres asked to be re-evaluated by a doctor, but this request was denied. (*Id.* ¶ 113.)

Plaintiff Torres was provided with seven single-use catheters per week. (*Id.* ¶ 114.) He experienced several painful urinary tract infections, for which he requested an examination by a urologist, and these requests were denied. (¶ 115.) Plaintiff Torres also suffered an injury to his arm because he fell in the shower under similar circumstances as Shariff. (*Id.* ¶ 73.) He states that Defendants Goord, Bernardi, Masterson and Poole "knew or should have known of the problems alluded to herein." (*Id.* at ¶ 75.)

D. Plaintiff West

On or about February 18, 2002, Plaintiff West was transferred from Upstate Correctional Facility to Five Points, by court order, because of Upstate's inability to provide him with proper medical care and attention. (Am.Compl.¶ 94.) Upon his arrival at Five Points, he was interviewed and examined by Defendant Dobies, who provided him with the wrong-sized catheters. (*Id.* ¶¶ 96-97.) Plaintiff West complained to Dobies about the size of the catheters, and also about the fact that they are labeled "For Single Use Only," and that he lacked the proper sterilization methods to clean them. (*Id.* ¶¶ 97-98.) Dobies told West to continue to use the improper catheters until proper ones were delivered. (*Id.* ¶ 97.) As a result of using the improper catheters multiple times, Plaintiff West experienced massive bleeding and contracted a urinary tract infection. (*Id.* ¶¶ 97-99.) Plaintiff West requested an examination by a urologist because of his urinary tract infection, but this request was denied. (*Id.* ¶ 100.) West alleges that Defendants Poole, Wright, Dobies, Walker, Stornelli, O'Conner, and Goodwin disregarded the court order to provide him with

proper and adequate medical supplies and care. (*Id.* ¶¶ 101-02.)

Plaintiff West also submitted an affidavit in support of his motion for a preliminary injunction. (West Affidavit in Support of Motion for Preliminary Injunction.) In his affidavit, West adds that Defendant Gregoire tried to "intimidate me, harass me, verbally abuse me, because I would not [consent] to re-using 'single-use catheters.'" (*Id.* ¶ 9.)

II. DISCUSSION

*6 As a preliminary matter, the Court notes that where plaintiffs proceed *pro se*, a court must liberally construe the complaint and " 'interpret [it] to raise the strongest arguments that [it] suggests,'" *Soto v. Walker*, 44 F.3d 169, 173 (2d Cir.1995) (quoting *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir.1994)), thus holding the *pro se* pleading " 'to less stringent standards than formal pleadings drafted by lawyers.'" *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980) (per curiam) (quoting *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (per curiam)); *see also Hernandez v. Coughlin*, 18 F.3d 133, 136 (2d Cir.1994).

Defendants argue that Plaintiffs' action should be dismissed for improper venue pursuant to Fed. R. Civ. Pro. 12(b)(3) and 28 U.S.C. § 1406(a), or, in the alternative, transferred to the Western District of New York pursuant to 28 U.S.C. § 1404(a) or § 1406(a). In their Memorandum in Opposition to the Motion to Dismiss, Plaintiffs argue that the Southern District is not an improper venue for the case. (Pls.' Opp. Mem. Law at 5.)

Rule 12(b)(3) of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 1404(a), 1406(a) permit the Court to dismiss a claim where venue is improper. The requirement of proper venue "serves the purpose of protecting a defendant from the inconvenience of having to defend an action in a trial that is either remote from the defendant's residence or from the place where the acts underlying the controversy occurred." *Leon C. Baker, P.C. v. Bennett*, 942 F.Supp. 171, 175 (S.D.N.Y.1996) (internal quotations and citations omitted). When venue is challenged, Plaintiff "bears the burden of demonstrating that 'a substantial part of the events or omissions giving rise to the claim occurred' in this district." *G.F.C. Fashions v. Goody's Family Clothing*, No. 97 Civ. 0730, 1998 U.S. Dist. LEXIS 1989, *5, 1998 WL 78292 (S.D.N.Y. Feb. 24, 1998) (quoting *D'Anton Jos, S.L. v. Doll Factory, Inc.*, 937 F.Supp. 320, 321 (S.D.N.Y.1996)). When considering such a motion, the Court must accept the facts alleged in the complaint as true, and draw all reasonable inferences in the plaintiff's favor. *See Rey-Willis v. Citibank, N.A.*, No. 23 Civ.2006, 2003 U.S. Dist. LEXIS

Shariff v. Goord, Not Reported in F.Supp.2d (2005)

12760, at *10, 2003 WL 21714947 (S.D.N.Y. July 23, 2003); *Imagineering, Inc. v. Lukingbeal*, No. 94 Civ. 2589, 1996 U.S. Dist. LEXIS 3939, *5, 1996 WL 148431 (S.D.N.Y. Apr. 2, 1996) (internal quotations and citations omitted).

Where jurisdiction is based on a federal question, venue is appropriate in “a judicial district where any defendant resides, if all defendants reside in the same state.” 28 U.S.C. § 1391(b)(1). For the purposes of venue in an action under 42 U.S.C. § 1983, defendants who are sued in their official capacity “reside” where they perform their official duties. *See Amaker v. Haponik*, 198 F.R.D. 386, 391 (S.D.N.Y.2000) (citing *Iman Saifullah Akbar v. Cuomo*, No. 94 Civ. 7757, 1995 U.S. Dist. LEXIS 13007, at *2, 1995 WL 539638 (S.D.N.Y. Sept. 8, 1995)).

*7 Because three of the Defendants “reside” in the Southern District of New York, the Southern District is not an improper venue for the claims seeking monetary damages, and the Court denies Defendants’ motion to dismiss on this basis.

Under 28 U.S.C. § 1404(a), “for the convenience of the parties, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” “[M]otions for transfer lie within the broad discretion of the district court and are determined upon notions of convenience and fairness on a case-by-case basis.” *In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 117 (2d Cir.1992). “The burden of demonstrating the desirability of transfer lies with the moving party, and in considering the motion for transfer, a court should not disturb a plaintiff’s choice of forum unless the defendants make a clear and convincing showing that the balance of convenience favors defendants’ choice.” *Orb Factory, Ltd. v. Design Science Toys, Ltd.*, 6 F.Supp.2d 203, 208 (S.D.N.Y.1998) (internal quotations and citations omitted); *In re Nematron Corp. Secs. Litig.*, 30 F.Supp.2d 397, 400 (S.D.N.Y.1998) (same).

The inquiry on a motion to transfer is two-fold: the first step is for the court to determine whether the case could have been brought originally in the proposed transferee district. *See, e.g., Foot Locker Retail, Inc. v. SBH, Inc.*, No. 03 Civ. 5050, 2005 U.S. Dist. LEXIS 599, at *24 (S.D.N.Y. Jan. 18, 2005). If the answer to this question is “yes”, then the court must determine whether, considering the convenience of the parties and witnesses and the interest of justice, a transfer is appropriate. *See id.* In making this second determination, a district court generally considers the following factors: (1) convenience of witnesses; (2) convenience of the parties; (3) location of relevant documents and the relative ease of access to sources of proof; (4) the locus of the operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties;

(7) the comparative familiarity of each district with the governing law; (8) the weight accorded to plaintiff’s choice of forum; and (9) judicial economy and the interests of justice. *See Johnson & Johnson Vision Care, Inc. v. CIBA Vision Corp.*, No. 04 Civ. 7369, 2004 U.S. Dist. LEXIS 20548, at *2, 2004 WL 2314424 (S.D.N.Y. Oct. 13, 2004) (quoting *Herbert Ltd. P’ship v. Electronic Arts Inc.*, 325 F.Supp.2d 282, 285-86 (S.D.N.Y.2004)). “The convenience of the parties and witnesses is considered ‘the essential criteria under the venue statute.’” *Baker v. Coughlin*, No. 93 Civ. 1084, 1993 U.S. Dist. LEXIS 12445, at *12, 1993 WL 356852 (quoting *First City Federal Savings Bank v. Register*, 677 F.Supp. 236, 237 (S.D.N.Y.1988)).

Because there is no question that Plaintiffs could have brought the action in the Western District, where most of the Defendants reside, the Court will proceed to examine the most relevant convenience/fairness factors. All the Plaintiffs currently reside in the Western District of New York, and the eight Five Points Defendants reside in the Western District. Five Points clearly is the center of gravity for this lawsuit, as it is the common facility among all four Plaintiffs, and most of the facts alleged, involving a majority of the Defendants, occurred there. Furthermore, Plaintiffs seek injunctive relief at Five Points. Venue in the Western District would be far more convenient for any witnesses, parties, and evidence in any hearing that might be held on the preliminary injunction, and any subsequent trial. Furthermore, the Western District is the locus of the operative facts, and there is no question that the Western District is equally familiar with governing law as the Southern District. Although the Southern District is their choice of forum, which is a strong factor to consider, Plaintiffs cannot demonstrate that a substantial part of events giving rise to their cause of action occurred in the Southern District of New York. Only two of the Plaintiffs, Shariff and Allah, have claims properly venued in the Southern District, against only three Southern District Defendants, for which the relief sought is limited to damages. *See Prins v. Coughlin*, 76 F.3d 504, 506 (2d Cir.1996) (holding that it is well settled in this Circuit “that a transfer from a prison facility moots an action for injunctive relief against the transferring facility.”) (citations omitted). Thus, the claims of Plaintiff Shariff and Allah seeking injunctive relief for actions allegedly occurring in the Southern District of New York are dismissed as moot. In the interests of justice and judicial economy, as well as relying on notions of fairness and convenience to all the parties, the Court finds a transfer to the Western District to be appropriate. Accordingly, weighing all the factors, especially convenience to the parties and the fact that injunctive relief is requested at Five Points, the motion to transfer the case to the Western District of New York is GRANTED, and Plaintiffs Shariff’s and Allah’s claims seeking injunctive relief in the Southern District of New York are dismissed as moot.

Defendants' motion to transfer venue to the Western District of New York is GRANTED. The Clerk of the Court is directed to transfer the entire remaining action to the Western District of New York.

III. CONCLUSION

*8 For the reasons stated above, Defendants' motion to dismiss the case in its entirety for improper venue is DENIED. Defendants' motion to dismiss claims of Plaintiffs Shariff and Allah seeking injunctive relief in the Southern District of New York is GRANTED.

SO ORDERED.

Footnotes

- 1 Defendants point out in their memorandum of law in support of their Motion to Dismiss the Complaint that the caption of the Amended Complaint includes thirteen individuals, but the body of the Amended Complaint identifies two additional Defendants, Superintendent Thomas Poole and Dr. Leslie Walker, who were never served with summonses, and therefore are not proper parties to this action. (Defendants' Memorandum of Law at 1, n. 1.) In addition, the Court's records indicate that Defendant David Dobies, M.D. was never properly served with a summons, therefore, he, too is not a proper party. However, the Amended Complaint clearly identifies these three Defendants, and the Office of the Attorney General has been authorized to accept service on their behalf. Accordingly, the Court has jurisdiction over all fifteen Defendants for the purposes of this Order.
- 2 No further information about this "statewide policy" was provided to the Court.
- 3 The Amended Complaint appears to argue in paragraphs 46 through 55 that both Shariff and Allah suffered from the same conditions at Green Haven, but Plaintiffs' memorandum of law in opposition to Defendants' Motion to Dismiss states in reference to Allah, "This Plaintiff make[s] no claim against Green Haven concerning ADA accessibility within the [] Amended Complaint." (Pls' Opp. Mem. at 6 .) Accordingly, there is no claim by Allah against Green Haven to consider.
- 4 The Amended Complaint states that both Shariff and Allah were transferred to Fishkill, but Shariff does not appear to allege that he suffered any injuries during his stay, accordingly, only Allah's claims are considered.