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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT MARSILI,

No. C-10-1164 EMC

Plaintiff,

v.

**ORDER GRANTING DEFENDANT'S
ADMINISTRATIVE MOTION TO
REASSIGN CASE TO SAN JOSE
DIVISION**

UNITED STATES OF AMERICA,

Defendant.

(Docket No. 4)

Currently pending before the Court is Defendant the United States's motion to reassign the above-referenced case from the San Francisco to the San Jose Division. Having considered the parties' briefs and accompanying submissions, the Court hereby **GRANTS** the motion for reassignment.

Civil Local Rule 3-2(c) governs the assignment of cases within the Northern District of California. It provides that "[a] civil action arises in the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated." Civ. L.R. 3-2(c). This language is similar to that used in the federal statute governing venue. *See* 28 U.S.C. § 1391. Because the language used in Rule 3-2(c) is similar to that used in the federal venue statute, the Court looks to case law interpreting the latter for guidance.

With respect to § 1391's "transactional venue" provision, the Wright and Miller treatise notes as follows: "In tort cases, when determining whether a substantial part of the events or

1 omissions giving rise to the plaintiff’s claim occurred or did not occur in the district for venue
2 purposes, the factors that courts focus on include the place where the allegedly tortious actions
3 occurred and the place where the harms were felt.” Wright, Miller, *et al.*, 14D Fed. Prac. & Proc.
4 Juris. § 3806.1 (3d ed.). Most courts have agreed. *See, e.g., Trico Bancshares & Subsidiaries v.*
5 *Rothgerber Johnson & Lyons LLP*, No. 2:09-CV-01700 GEB JFM, 2009 U.S. Dist. LEXIS 96095, at
6 *6 (E.D. Cal. Oct. 15, 2009); *Estate of Abtan v. Blackwater Lodge & Training Ctr.*, 611 F. Supp. 2d
7 1, 8 (D.D.C. 2009).

8 In the instant case, the allegedly tortious actions clearly took place in Santa Clara County.
9 Mr. Marsili has alleged that a surgery was improperly performed by government employees at the
10 Palo Alto VA Medical Facility, which is located in Santa Clara County. *See* Compl. ¶ 7.
11 Furthermore, contrary to what Mr. Marsili argues, the harms were also sustained in Santa Clara
12 County. That is, Mr. Marsili sustained harm in Santa Clara County when the “botched” surgery took
13 place there. The fact that his injuries only manifested themselves while he was convalescing in his
14 home in San Mateo County does not mean that the harm did not take place until then. This is not a
15 situation comparable to *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1076 (9th Cir. 2001)
16 (concluding that one of the harms suffered by the plaintiffs was akin to the tort of invasion of
17 privacy and was felt in Nevada where they resided).

18 Accordingly, the Court grants the United States’s motion to reassign the case to the San Jose
19 Division.

20 This order disposes of Docket No. 4.

21
22 IT IS SO ORDERED.

23
24 Dated: May 21, 2010

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26 _____
27 EDWARD M. CHEN
28 United States Magistrate Judge