

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

JOSEPH N. MAIOLA  
Plaintiff,

v.

GREATER BALTIMORE MEDICAL  
CENTER,  
Defendant.

Case No. 19-cv-05946-LB

**ORDER SCREENING COMPLAINT  
UNDER 28 U.S.C. § 1915**

Re: ECF Nos. 1, 6, 9

**INTRODUCTION**

Plaintiff Joseph Maiola, who lives in Yuma, Arizona and is representing himself, sued the Greater Baltimore Medical Center, which is located in Maryland, claiming that in 1978, there was a “premeditated switch of a newborn baby at GBMC with another newborn,” causing him (the baby’s father) and his family severe emotional distress.<sup>1</sup> He wants a blood draw to check DNA (presumably from the child and through the U.S. Marshal) because saliva DNA is inadequate and a “gag order.”<sup>2</sup> The court granted Mr. Maiola’s application to proceed *in forma pauperis*,

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<sup>1</sup> Compl. – ECF No. 1 at 7. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents. GBMC is the acronym that Mr. Maiola uses for the Center. *Id.* at 6.

<sup>2</sup> *Id.* at 8.

1 reserving the issue of service for this order.<sup>3</sup> Before authorizing the U.S. Marshal to serve the  
 2 complaint, the court must screen it for minimum legal viability. 28 U.S.C. § 1915(e)(2)(B). The  
 3 court can decide the matter without oral argument. N.D. Cal. Civ. L. R. 7-1(b). Because venue  
 4 does not lie in the Northern District of California, and because the court lacks personal jurisdiction  
 5 over the Center, the court orders Mr. Maiola to show cause in writing by November 4, 2019 why  
 6 the court should not transfer his case to the District of Maryland.

### 8 STATEMENT

9 On June 5, 1978, Mr. Maiola's wife gave birth to their third child at the Center, which is in  
 10 Towson, Maryland.<sup>4</sup> Mr. Maiola alleges that the Center is a "Baltimore County facility."<sup>5</sup> Without  
 11 naming those responsible, he alleges that there was a "premeditated switch of a newborn baby at  
 12 GBMC with another newborn" and that the switch was "intentional, criminal, and previously  
 13 planned."<sup>6</sup> He alleges that the other mother and father (now deceased) and other participants "are  
 14 known" and that the motive for the switch was "student loans [and] bankruptcy (no loading up and  
 15 discharge, March 1978).<sup>7</sup> The "ongoing conspiracy involves . . . hiding, silence, and deception" or  
 16 "HSD."<sup>8</sup> The "HSD is thirty-six years of Emotional Distress. HSD is shown by CHSD [meaning,  
 17 "Chronologic HSD"]. GBMC[']s prima facie culpability rises to [the] level of [] gross negligence,  
 18 and criminal collusion is internal and external to GBMC."<sup>9</sup> The conduct "show[s] cruelty by  
 19 unusually punishing over and over, . . . violating a family's constitutional dignity, multiply;  
 20 designated VII."<sup>10</sup> "[National Security Protection Probability requires Supreme Court (via the  
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22 <sup>3</sup> Order – ECF No. 5. Mr. Maiola consented to magistrate-judge jurisdiction. Consent – ECF No. 8.

23 <sup>4</sup> Compl. – ECF No. 1 at 1, 6.

24 <sup>5</sup> *Id.* at 6.

25 <sup>6</sup> *Id.* at 7.

26 <sup>7</sup> *Id.*

27 <sup>8</sup> *Id.* at 5.

28 <sup>9</sup> *Id.* at 7 (emphasis in original); *see id.* at 2 (defining CHSD).

<sup>10</sup> *Id.* at 5.

1 9CCA)] [‘Can maintain action for emotional distress,’ . . . Larsen. 81 P.3d 196.] Cause of Action  
2 [Requires], Jury Possibly.”<sup>11</sup>

3 The full citation to *Larsen* is *Larsen v. Banner Health Sys.*, 81 P. 3d 196 (Wyoming 2003).  
4 *Larsen* was a negligence lawsuit stemming from the separation of a mother and daughter for 43  
5 years based on the hospital’s switching two newborn babies at birth in 1958. *Id.* at 198. After  
6 DNA tests revealed that one baby was not the daughter of her purported father and mother, the girl  
7 searched for her biological parents and found her biological mother. *Id.* They then sued the  
8 hospital in federal court. *Id.*; see *Larsen v. Banner Health Systems*, Case No. 2-cv-01029-WFD,  
9 Compl. – ECF No. 1, at 2 (D. Wyo. June 5, 2002) (the basis for jurisdiction was diversity  
10 jurisdiction). The district court in the District of Wyoming certified to the Wyoming Supreme  
11 Court the issue of whether the mother and daughter could maintain a negligence action where the  
12 only damages were great emotional pain, humiliation, anxiety, grief, and expenses for  
13 psychological counseling. *Larsen*, 81 P.3d at 198–99. The Wyoming Supreme Court answered  
14 that under Wyoming law, the plaintiffs could maintain a negligence action. *Id.* at 207.

15 Mr. Maiola asks for “Marshall Service for Blood DNA” and a “gag order.”<sup>12</sup> In a supplemental  
16 filing, he says that he “want[s] to locate and identify my thirdborn, Joseph N. Maiola.”<sup>13</sup>

### 18 ANALYSIS

19 There apparently is not venue in this district because the defendant resides in Maryland, and  
20 the acts took place there. The court thus orders Mr. Maiola to show cause in writing by November  
21 4, 2019 why his case should not be transferred to the District of Maryland.

22 “A civil action may be brought in — (1) a judicial district in which any defendant resides, if all  
23 defendants are residents of the State in which the district is located; (2) a judicial district in which  
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25 \_\_\_\_\_  
<sup>11</sup> *Id.* at 8 (brackets in original).

26 <sup>12</sup> *Id.*

27 <sup>13</sup> Mot. – ECF No. 9 at 1. Mr. Maiola filed two motions, one about the possibility of any defense of  
28 mootness, and another to preclude other motions by the defendant. Motions – ECF Nos. 6, 9. These are  
procedurally premature, and the court denies them without prejudice.

1 a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part  
2 of property that is the subject of the action is situated; or (3) if there is no district in which an  
3 action may otherwise be brought as provided in this section, any judicial district in which any  
4 defendant is subject to the court’s personal jurisdiction with respect to such action.” 28 U.S.C. §  
5 1391(b).

6 If venue is improper, the court may either dismiss the case without prejudice, or, if it is in the  
7 “interest of justice,” transfer the case “to any district or division in which it could have been  
8 brought.” 28 U.S.C. § 1406(a); *In re Hall, Bayoutree Assocs., Ltd.*, 939 F.2d 802, 804 (9th Cir.  
9 1991). Ordinarily, the interest of justice requires transferring the case to a proper venue rather than  
10 dismissing the case. *See Baeta v. Sonchik*, 273 F.3d 1261, 1264–65 (9th Cir. 2001). An action may  
11 be transferred to another court if: (1) that court is one where the action might have been brought;  
12 (2) the transfer serves the convenience of the parties; and (3) the transfer will promote the interests  
13 of justice. *Kinney v. Gutierrez*, No. 3:16-cv-02278-LB, 2016 WL 4268679, at \*2 (N.D. Cal. Aug.  
14 15, 2016 (citing *E & J Gallo Winery v. F. & P. S.p.A.*, 899 F. Supp. 465, 466 (E.D. Cal. 1994)).

15 Because the Center does not reside here and the alleged switch did not occur here (and instead  
16 occurred in the District of Maryland), venue is not proper in the Northern District and instead lies  
17 in the District of Maryland.

18 A related issue is that the court has no personal jurisdiction over the Center. *See Pebble Beach*  
19 *Co. v. Caddy*, 453 F.3d 1151, 1154-55 (9th Cir. 2005).

20 By November 4, 2019, Mr. Maiola must (1) show cause in writing (in no more than five  
21 pages) why the court should not transfer his case to the District of Maryland, (2) file a statement of  
22 non-opposition; or (3) dismiss the case without prejudice by filing a one-page notice of voluntary  
23 dismissal. If Mr. Maiola does not file anything by November 4, 2019, the court will transfer the  
24 case to the District of Maryland.

25 **IT IS SO ORDERED.**

26 Dated: October 21, 2019



27  
28 LAUREL BEELER  
United States Magistrate Judge