

No. 19-2366

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**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

In re: Peter Baker

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On Petition for a Writ of Mandamus  
To the United States District Court  
for the Southern District of Maryland  
No. 18-cv-3309  
Hon. Peter J. Messitte

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**FTC’s Opposition to Emergency Stay Motion**

Petitioner Peter Baker asks the court for an emergency stay of proceedings in the district court, including a trial scheduled to begin January 20, 2020, pending his pro-se petition for mandamus. For the reasons that follow, the motion should be denied.

**Background**

Baker’s mandamus petition arises from an FTC enforcement action to halt a real-estate development scam known as Sanctuary Belize. Baker and other defendants are charged with bilking consumers of more than \$100 million on false promises that empty lots in remote southern Belize were low-risk investments in a soon-to-be-completed luxury resort development.<sup>1</sup> In

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<sup>1</sup> A second pro-se petition for mandamus has been filed by another defendant in the case, *In re Andris Pukke*, No. 19-2353.

fact, the investment was risky, the promised luxury amenities never materialized, and the development was little more than a mirage.

The district court entered an ex-parte temporary restraining order and asset freeze in November 2018. D.Ct. Docket No. 615 at 2. The court then entered an interim preliminary injunction while the parties prepared for an evidentiary hearing held in March 2019. *See id.* After the hearing and post-hearing briefing, the Court entered a preliminary injunction which included a discovery schedule and set trial to begin on January 20, 2020.<sup>2</sup> *Id.* at 10-25, 38-39.

The Court allowed Baker (and the other defendants) to withdraw \$3,000 per month from frozen funds for living expenses. *See* D.Ct. Docket No. 649. Baker, who lives in California, sought to unfreeze an additional \$50,000 to cover the expenses of attending the trial. He asked in the alternative to either transfer the case for trial in California or stay the proceedings pending his appeal of the preliminary injunction. D.Ct. Docket No. 655 at 4. The court granted the motion in part, unfreezing \$30,000 “to cover travel, incidentals, and at least some consultations with counsel.” D.Ct. Docket No. 649 at 1. The court also allowed Baker to appear for a Jan. 14, 2020 pretrial confer-

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<sup>2</sup> Three individual defendants, including Baker, have filed pro-se appeals from the preliminary injunction, *FTC v. Baker* (No. 19-2306), *FTC v. Pukke* (No. 19-2204), and *FTC v. Chadwick* (No. 19-2387).

ence by video, and the Commission provided him and other defendants with video facilities in California. *See id.*; D.Ct. Docket No. 768.

Not satisfied with those accommodations, Baker filed another motion seeking to transfer the case to the Central District of California. *See* D.Ct. Docket No. 670. The court denied the motion, citing the reasons stated in its oral denial of a motion to transfer earlier in the case. D.Ct. Docket No. 675 (citing March 1, 2019 transcript). There, the court considered the FTC’s choice of forum as the plaintiff, the forum’s convenience to the parties and the witnesses, and the interests of justice, concluding that the interest of justice favored hearing the case in Maryland. March 1, 2019 Tr. at 36-37.

Baker now petitions the Court for a writ of mandamus directing the district court to transfer the proceedings below to the Central District of California and also to stay those proceedings pending its decision on the petition. Baker Pet. 2. On January 9, 2020, Baker filed an emergency motion to stay the district court proceedings pending the resolution of his mandamus petition and the Court directed the Commission to respond.<sup>3</sup>

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<sup>3</sup> Baker states that his motion is made not only on his own behalf, but also “on behalf of the entities that he represents.” Stay Mot. 2. Because Baker is not an attorney, he may represent only himself.

## Argument

Baker advances one claim: that he will be denied due process if the trial is held in Maryland rather than California. Stay Mot. 2. He asserts that none of the defendants or their witnesses are from Maryland and argues that because of the asset freeze, he “does not have the resources to put on a proper defense across the country,” and that proceeding in Maryland will cause “extreme prejudice toward the defendants.” *Id.*

That argument does not address—much less meet—the extraordinary showing that Baker must make to obtain a stay pending the Court’s resolution of his mandamus petition. To obtain a stay, Baker must show “(1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay.” *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970).

Baker’s motion presents a cursory argument on the merits of his mandamus petition but it does not argue that he is likely to *prevail* on the merits, as the first factor requires him to show, and it does not address the other three factors at all. Standing alone, Baker’s failure to address the requirements for the relief he seeks is reason enough to deny his stay motion.

Indeed, Baker’s burden on the first factor—success on the merits—is particularly high. Mandamus is a drastic remedy to be used only in extraordinary circumstances. *In re Beard*, 811 F.2d 818, 826 (4th Cir. 1987) (citing *Kerr v. United States Dist. Court*, 426 U.S. 394, 402 (1976)). It is available only when there are no other means by which the relief sought could be granted, *id.*, and may not be used as a substitute for appeal. *In re Catawba Indian Tribe*, 973 F.2d 1133, 1135 (4th Cir. 1992). The party seeking mandamus relief carries the heavy burden of showing both that (1) there is no other adequate means to attain the relief requested and (2) the entitlement to such relief is clear and undisputable. *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980). “In short, only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy.” *United States v. Moussaoui*, 333 F.3d 509, 516 (4th Cir. 2003) (cleaned up).

Further, this Court established long ago that mandamus is almost never appropriate to override a district court’s decision on a motion to transfer. *See In re Ralston Purina Co.*, 726 F.2d 1002, 1005 (4th Cir. 1984). The transfer decision is “committed to the discretion of the district court,” and it therefore “cannot be said that a litigant’s right to a particular result is clear and undisputable,” as is required for mandamus. *Id.* at 1004-1005 (cleaned up).

In addition, because the ruling on a transfer motion can be challenged on appeal from a final judgment, “it is difficult to say that [the petitioner] has no other adequate means to attain the relief it desires.” *Ralston Purina*, 726 F.2d at 1005 (cleaned up). Accordingly, to qualify as “exceptional circumstances” that would justify mandamus to review a transfer decision, the district court’s decision must go beyond “a mere abuse of discretion” and instead “amount to a ‘judicial usurpation of power.’” *Id.* at 1006 (quoting *Allied Chemical*, 449 U.S. at 35). As a result, mandamus is not appropriate even if the district court’s venue decision “does not withstand analysis.” *Id.*

Baker’s motion does not approach the high bar set by *Ralston Purina*. Although he asserts that the District of Maryland is “the wrong Jurisdiction,” that it is “3000 miles away from his home,” and that he cannot “put on a proper defense” there, he fails to mention the substantial accommodations made by the district court to facilitate his meaningful participation in the trial, allowing him to use \$30,000 of frozen funds to attend the trial and arranging for his remote participation in the pretrial conference. D.Ct. Docket Nos. 649, 768.

Nor does he address the district court’s reasons for denying his motion to transfer. “District courts within this circuit consider four factors when deciding whether to transfer venue: (1) the weight accorded to plaintiff’s choice of

venue; (2) witness convenience and access; (3) convenience of the parties; and (4) the interest of justice.” *Trs. of the Plumbers & Pipefitters Nat. Pension Fund v. Plumbing Servs., Inc.*, 791 F.3d 436, 444 (4th Cir. 2015). The district court considered those factors, noting that the FTC’s choice of forum was entitled to some weight, and while Maryland was a less convenient forum for the defendants and some witnesses, it was convenient for the FTC and no less convenient for witnesses who are in neither D.C. nor California. March 1, 2019 Tr. at 36-37. The court stated that the “key component” in its denial of the motion to transfer was the interest of justice, based on the overlap between the Sanctuary Belize case and a related FTC case with which it is consolidated, the court’s familiarity with the earlier case, and the interests of judicial economy that would be served by avoiding duplicative trials. *Id.* at 37. Neither Baker’s emergency motion nor his petition for mandamus shows that the district court’s consideration of those factors was an abuse of discretion, much less that it was a “judicial usurpation of power.”

Baker’s failure to show that he is likely to prevail in his petition for a writ of mandamus directing the district court to transfer the underlying matter to California is in itself fatal to his stay motion. And he has not even addressed the other factors required to grant a stay while the Court considers his petition. *See Long*, 432 F.2d at 979. The stay should therefore be denied.

January 15, 2020

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that on January 15, 2020, I filed the foregoing using the Court's appellate CM-ECF system, and served appellant by U.S. mail at the following address:

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January 15, 2020

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