

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Mortensen v. Foster

Mortensen · No. 2:22-cv-01773-TLN-CKD · Decided March 14, 2023

SUMMARY

The court orders pro se plaintiff Steven Lee Mortensen to provide his current address within 14 days under Local Rule 183(b), after mail and service attempts were returned or unsuccessful. The court declines to withdraw or vacate pending findings and recommendations until plaintiff provides a valid service address and warns that failure to respond will result in submission of those findings and recommendations to the assigned district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn K. Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 14, 2023
DOCKET	2:22-cv-01773-TLN-CKD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's civil rights action was removed from state court. After the court issued findings and recommendations recommending dismissal without prejudice for failure to report an address change, plaintiff filed a change of address and objections. Mail to plaintiff was later returned, and an attempted service at the new address failed. The court ordered plaintiff to provide a current address.
PRECEDENTIAL VALUE	unpublished

TOPICS

service of process civil procedure prisoners rights pleadings

PRACTICE AREAS

civil procedure civil rights prisoner litigation

QUESTIONS PRESENTED

1. Whether the court should require a pro se plaintiff whose mail and service of process had failed to provide a current address before proceeding with the pending findings and recommendations.

HOLDINGS

1. The court ordered plaintiff to provide his current address within 14 days in compliance with Local Rule 183(b).
2. If plaintiff failed to respond within the prescribed period, the pending findings and recommendations would be submitted to the assigned district judge.

KEY QUOTATIONS

“Within 14 days from the date of this order, plaintiff shall provide his current address in compliance with Local Rule 183(b).” (at 2)

FACTUAL BACKGROUND

Steven Lee Mortensen, a former county inmate proceeding pro se, brought a civil rights action against Tarah Foster. After the action was removed to federal court, plaintiff changed his address, but mail sent to him was subsequently returned. An attempted service of process at plaintiff's new address also failed.

PROCEDURAL HISTORY

The action was removed from state court on October 6, 2022. On February 22, 2023, the court issued findings and recommendations recommending dismissal without prejudice because plaintiff had failed to inform the court of an address change. Plaintiff filed a change of address the following day and later objected to the re-served findings and recommendations, but mail was again returned and service at the new address failed. The court ordered plaintiff to provide a current address within 14 days and declined to withdraw or vacate the pending findings and recommendations until plaintiff could be properly served.

DISPOSITION

other

CASES CITED

- *Houston v. Lack*, 487 U.S. 266 (1988)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 STEVEN LEE MORTENSEN, No. 2:22-cv-01773-TLN-CKD P 12 Plaintiff,
13 v. ORDER 14 TARAH FOSTER, 15 Defendant. 16 17 Plaintiff is a former county inmate
proceeding pro se in this civil rights action that was 18 removed from state court on October 6,
2022. ECF No. 1.

The undersigned issued Findings and 19 Recommendations on February 22, 2023 to dismiss this action without prejudice based on 20 plaintiff's failure to inform the court of any address change. ECF No. 10. The next day plaintiff 21 filed his change of address with the court. ECF No. 11.

The Findings and Recommendations 22 were then re-served on plaintiff's new address of record. Plaintiff filed objections to the Findings 23 and Recommendations on March 6, 2023.¹ However, mail sent to plaintiff was subsequently 24 returned to the court.² Defendant Foster has also filed a response to plaintiff's objections 25 ¹ As plaintiff is no longer in custody, the court no longer applies the prison mailbox rule to plaintiff's pleadings to determine the constructive filing date.

Houston v. Lack, 487 U.S. 266 26 (1988). ²⁷ ² The Clerk's Office does not keep the envelopes containing the postmark date or the reason why ²⁸ the mail was returned. ¹ | indicating that an attempt at service of process at plaintiffs new address has also failed. ECF No. 2 | 13.

Therefore, the court will order plaintiff to provide his current address within 14 days from the ³ || date of this order. ⁴ Accordingly, IT IS HEREBY ORDERED that: ⁵ ¹. Within 14 days from the date of this order, plaintiff shall provide his current address in ⁶ compliance with Local Rule 183(b). ⁷ ².

The undersigned will not withdraw or vacate the pending Findings and ⁸ Recommendations until plaintiff has notified the court of a current address where he ⁹ can be properly served. ¹⁰ ³. Plaintiffs failure to respond to this order within the time provided will result in the ¹¹ submission of the pending Findings and Recommendations to the district judge ¹² assigned to this action.

¹³ | Dated: March 14, 2023 / ae ☐☐ / a Ly a ⁴ CAROLYN K DELANEY ¹⁵ UNITED STATES MAGISTRATE JUDGE ¹⁶ ¹⁷ ¹⁸ ¹⁹ ²⁰ ²¹ ¹²/mort1773.osc.mail ²² ²³ ²⁴ ²⁵ ²⁶ ²⁷ ²⁸