UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN

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September 25, 2024 11:11 AM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: pjw / SCANNED BY

JEFFREY RYAN FENTON,

PLAINTIFF

v.

VIRGINIA LEE STORY ET AL.,

DEFENDANTS

CASE NO. 1:23-cv-01097

NOTICE, DECLARATION, AND MOTION REGARDING THE NAMING AND ADDRESS OF DEFENDANT THOMAS ANDERSON IN THIS LAWSUIT[1]

Plaintiff brings this testimony and motion pursuant to 28 U.S. Code § 1746, Fed. R. Civ. 15[2](a[3])(2[4]), Fed. R. Civ. 15(c[5]).

I, Jeffrey Ryan Fenton, declare under oath as follows:

1. I am the plaintiff in this federal lawsuit (Case No. 1:23-cv-01097).
2. I am a citizen of the United States of America, born in Washington State.
3. I am domiciled in Genesee County, Michigan.
4. My mailing address is 17195 Silver Parkway, #150, Fenton, MI 48430-3426.
5. My phone number is (615) 837-1300. My email address is contact@jefffenton.com.
6. I am filing this document to explain a mistake I made in naming one of the defendants in this lawsuit, as well as his address on record.

[1] Citations to the court record in this lawsuit will be notated without the case name or number, using the starting ECF Number, followed by both the beginning and ending Page ID, which is abbreviated as "PID."

[2] https://www.law.cornell.edu/rules/frcp/rule_15

[3] Amendments Before Trial

[4] Other Amendments

[5] Relation Back of Amendments

Initials: JRF

PRO SE LITIGANT - MERITS RULE OVER TECHNICALITIES

7. I am acting in a *pro se*[6] capacity in this lawsuit by necessity and entitled to a liberal reading and less stringent standards since my filings have been prepared without assistance of counsel. See *Haines v. Kerner,* 404 U.S. 519, 92 S. Ct. 594 (1972).

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8. In compliance with the court's rules, I did not execute service myself, my mother did, who will be filing the PROOF OF SERVICE upon completion. During service by my mother, an incorrect naming/address discovery was made and brought to my attention, which is why I am explaining it here instead of having my mother explain this to the court.

PHONE CALL FROM THOMAS EARL EUGENE ANDERSON

9. On Thursday August 12, 2024, at 6:02 pm, I received a voicemail at (615) 837-1300, which was transcribed by my service provider to read: "Hello, this message is for Mr. Fenton. This is Thomas Anderson. You have the wrong Thomas Anderson in the lawsuit that you're trying to file you could please give me a call at 469-734-0640 so that we can kind of clear this up. Can direct you to the correct Thomas Anderson, but it's definitely not me. Thank you."

10. Upon receipt of his message, I quickly returned his phone call at the number provided, where I learned the following information:

11. There are two different men named "Thomas E. Anderson" in Middle Tennessee, who are both licensed real estate professionals[7]. Both agents have the same first names, middle initials, and last names, while having once worked at the same real estate firm together, where there were multiple mix-ups between the two agents' names.

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[6] ECF 1-35, PID.1960

[7] See attached exhibit 'A'.

Initials: JRF

12. "Thomas Earl Eugene Anderson" (the wrong party who called me), with Tennessee real estate "Affiliate Broker" license #327116 was served by my mother via USPS at his residential address of 947 Russell Street, Nashville, TN 37026.

13. "Thomas E. Anderson[8]" (the correct party) with Tennessee "Real Estate Broker" license #254363 is also a state licensed "Principal Auctioneer", with license #3809, was served by my mother[9] via USPS[10] with tracking number 70203160000230014896 at his work address for ADARO Realty LLC, at 1187 Old Hickory Boulevard, Suite 125, Brentwood, TN 37027-4248, on August 26, 2024, as shown in the attached USPS receipts, which he personally signed for.

14. Mr. Anderson's middle name was not known to be questionable, but his residential address was a known concern, due to the high number of Andersons in the area. I had a very difficult time pinpointing what I thought might be his correct residential address. It was for this reason that I had my mother execute service for Mr. Anderson at both his believed residential address (which was wrong), as well as at his believed work address, according to the Tennessee Department of Commerce and Insurance[11], which fortunately was correct.

15. Another clear distinction between the two men, the man who called me to inform me that he was the *wrong* party, claimed not to have anything to do with *auctions*, while the "Thomas E. Anderson" who caused my damages did so in the capacity of an Auctioneer, while being duly licensed by the state.

16. Furthermore, I could clearly tell by the man's voice, while speaking with him over the phone, that he was not the same person who had caused my damages. Of this I am sure.

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[8] See attached exhibit 'B'.

[9] See attached exhibit 'C-2'.

[10] See attached exhibits 'C-3' through 'C-5'.

[11] https://verify.tn.gov/

Initials: JRC

17. The man I spoke with mentioned that possibly the correct middle name for the Thomas E. Anderson in my lawsuit is "Edward", but this remains unconfirmed at this time.

18. For those reasons, I am seeking to change the naming of the party in my lawsuit, by dropping his middle name, to "THOMAS E. ANDERSON", while dropping his residential address and listing his work address of 1187 Old Hickory Boulevard, Suite 125, Brentwood, TN 37027-4248, unless he chooses to provide me with his residential address or another address at which he prefers to receive service.

19. This materially changes absolutely nothing within the complaint, except how this party is named on pages one and five, along with his address listed on page five of my "AMENDED COMPLAINT FOR TORTIOUS CONDUCT AND INJUNCTIVE RELIEF" (hereinafter "FAC"), filed by the undersigned on August 21, 2024, in ECF 66, PID.4870 & 4874.

20. Any and every mention throughout this lawsuit of "THOMAS ANDERSON" and "T. ANDERSON", regardless of what middle name(s) are used, refers to Tennessee Real Estate Broker/Auctioneer "THOMAS E. ANDERSON", holding Tennessee "Real Estate Broker" license #254363[12], whose broker license currently operates under the Real Estate Firm of ADARO Realty LLC[13], located at 1187 Old Hickory Boulevard, Suite 125, Brentwood, TN 37027-4248.

MOTION TO AMEND FAC TO CORRECT DEFENDANT THOMAS ANDERSON[14]

21. On page-1[15] of my FAC, ECF 66, PID.4870, where the name "THOMAS EARL EUGENE ANDERSON" is listed, please remove the middle name(s) of "EARL EUGENE" and replace them with the middle initial "E.".

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[12] See attached exhibit 'B'.

[13] See attached exhibit 'A'.

[14] ECF 66, PID.4870-5007 | https://rico.jefffenton.com/evidence/1-23-cv-01097_fenton-vs-story-first-amended-complaint.pdf

[15] See attached exhibit 'D'.

Initials:

22. The corrected name on page-1 of my FAC, should read "THOMAS E. ANDERSON".

23. On page-5[16] of my FAC, ECF 66, PID.4874, please strike the sentence which reads: "Thomas Earl Eugene Anderson is believed to be a U.S. citizen residing and domiciled at 947 Russell Street, Nashville, TN 37206-3714."

24. On page-5 of my FAC, ECF 66, PID.4874, please replace the sentence above with the following sentence, "Thomas E. Anderson is believed to be a U.S. citizen residing and domiciled in Middle Tennessee, with a business address of 1187 Old Hickory Blvd, Suite 125, Brentwood, TN 37027-4248."

25. No other changes are needed to correct my FAC in any known regard, in relation to defendant Thomas Anderson.

APPLICABLE COURT RULES

26. Fed. R. Civ. 15[17](a[18])(a[19]) states, "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. *The court should freely give leave when justice so requires.*" (Emphasis added.)

27. Fed. R. Civ. 15(c) states, "the amendment changes the party or the *naming* of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

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[16] See attached exhibit 'E'.

[17] https://www.law.cornell.edu/rules/frcp/rule_15

[18] Amendments Before Trial

[19] Other Amendments

Initials:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, *but for a mistake concerning the proper party's identity*." (Emphasis added.)

28. Fed. R. Civ. 15(c)(1)(B) states, "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to he set out—in the original pleading;" (Which is exactly what took place, the counts in the complaint need not be modified in any way. I simply had the wrong middle name and address for Thomas Anderson.)

29. Thomas E. Anderson was served at the same time as the other defendants in this lawsuit, causing him no prejudice in defending on the merits whatsoever.

30. These mistakes were caught within a matter of days, and this declaration will be both mailed and emailed to Mr. Anderson to provide him with timely notice about the typographical errors in the FAC he received, while confirming that he is in fact the correct party to this lawsuit, encouraging that he proceed as one of the named defendants.

31. I motion for the court to make these simple corrections to my FAC as outlined above, to correct the *naming* and *address* of defendant Thomas E. Anderson, while specifically requesting, due to my *pro se* status and lack of experience, to please let me know if any further action is required on my part to complete these corrections.

32. Later, should the court provide me the opportunity, I will update/correct this information while making other minor edits, improvements, and clarifications to my lawsuit, in my next amended complaint.

33. I have much I must focus on currently: addressing the Court's Notice of Intent to

Initials:

Transfer Action filed in ECF 72, assisting my mother in the documentation of service and communication with the court, and needing to address a multitude of concerns arising out of service due to many defendants actively dodging service and denying confirmation when service has been successfully completed in violation of the USPS rules for certified mail—even when using restricted delivery as instructed in Mich. Ct. R. 2.105.

34. Unless the court tells me otherwise, I will assume that no further action is required on my part to correct the naming and address of defendant Thomas E. Anderson, so that I can focus on these other critical time sensitive matters.

IMPORTANT CASE LAW ABOUT WHY THIS MOTION SHOULD BE APPROVED

35. "*Pro se* pleadings are to be considered without regard to technicality; *pro se* litigants' pleadings are not to be held to the same high standards of perfection as lawyers."[20]

36. "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment" (emphasis added).[21]

37. "Following the simple guide of rule [8(e)] that 'all pleadings shall be so construed as to do substantial justice'.....The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." The court also cited then-FRCP 8(f), now 8(e), which holds that all pleadings must be construed so as to do justice. (emphasis added).[22]

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[20] Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233

[21] Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938)

[22] Conley v. Gibson, 355 U.S. 41 at 48 (1957)

Initials:

CONCLUSION

38. The correct Thomas Anderson has accepted service of this lawsuit. He can disregard the mistaken middle name(s) and address listed on the complaint as honest typographical errors and proceed as one of the named defendants in this lawsuit.

39. This declaration has been executed in good faith, for the purposes stated herein.

DECLARATION

Pursuant to 28 U.S. Code § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 23, 2024

JEFFREY RYAN FENTON, PRO SE

17195 SILVER PARKWAY, #150
FENTON, MI, 48430-3426
CONTACT@JEFFFENTON.COM
(P) 615.837.1300

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2024, I mailed the foregoing papers to the court, as well as to the defendants or their counsel, by first class mail, at the addresses below.

USDC WESTERN DISTRICT OF MICHIGAN
113 FEDERAL BLDG
315 W ALLEGAN ST RM 113
LANSING, MI 48933-1514

VALERIE HENNING MOCK
WILSON ELSER MOSKOWITZ EDELMAN & DICKER
17197 N LAUREL PARK DR STE 201
LIVONIA, MI 48152-7901

BRIAN JOSEPH GALLAGHER
LENNON MILLER PLC
151 S ROSE ST STE 900
KALAMAZOO, MI 49007-4719

SANDRA J. DENSHAM
PLUNKETT COONEY
333 BRIDGE ST NW 5TE 530
GRAND RAPIDS, MI 49504-5365

THOMAS E. ANDERSON
ADARO Realty, LLC
1187 OLD HICKORY BLVD STE 125
BRENTWOOD, TN 37027-4248

ELECTRONIC SERVICE OPTIONS

This document is also available on the Internet, on my list[1] of documents filed by myself in this lawsuit, since the release of my lawsuit service package[2]. It is also available directly via the URL[3].

Executed on August 23, 2024

JEFFREY RYAN FENTON, PRO SE

17195 SILVER PARKWAY, #150
FENTON, MI, 48430-3426
CONTACT@JEFFFENTON.COM
(P) 615.837.1300

[1] https://jefffenton.com/digital-service-package-for-lawsuit/fenton-filings-since-service/

[2] https://jefffenton.com/digital-service-package-for-lawsuit/
ECF 69, PID.5030-5042 | https://rico.jefffenton.com/evidence/1-23-cv-01097_fenton-vs-story-lawsuit-service-pack-details.pdf

[3] https://rico.jefffenton.com/evidence/2024-09-23_thomas-anderson-name-and-address-correction.pdf

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