AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Michigan

FILED - LN
October 21, 2024 4:17 PM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: pjw / SCANNED BY: 10/21

JEFFREY RYAN FENTON

Plaintiff(s)

v.

VIRGINIA LEE STORY et al.,

Defendant(s)

Civil Action No. 1:23-cv-1097

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* James Michael Hivner
8019 Sara Jane Lane
Bartlett, TN 38133

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jeffrey Fenton
17195 Silver Parkway #150
Fenton, MI 48430

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: AUG 1 9 2024 ~~5/23/2024~~

Paula J. Wood
Signature of Clerk or Deputy Clerk

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Civil Action No. 1:23-cv-1097

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* JAMES MICHAEL HIVNER

was received by me on *(date)* August 21, 2024 .

☒ Other *(specify)*:

Service of defendant JAMES MICHAEL HIVNER was initiated pursuant to F.R.Civ.P. 4(e)(1) and Mich. Ct. R. 2.105(A) by delivering to him the lawsuit service package as itemized in ECF 69 and 69-1 of this lawsuit, via certified U.S. mail with tracking number 70203160000230014834, return receipt requested, with delivery restricted to the addressee. This package was successfully delivered to defendant Hivner's residence on August 27, 2024, at 1:43 PM. See the attached receipt copies from the USPS.

Despite executing service with *restricted delivery* exactly as outlined in Mich. Ct. R. 2.105(A), somehow *every* individual bar defendant in this lawsuit managed to defeat, or persuade their mail carrier(s) to help defeat, the successful *confirmation of service* as intended in this rule, by either interfering with return of the *"return receipt requested"*, returning it blank and unsigned devoid of any delivery information, or returning it signed by someone other than the named defendant to whom the lawsuit service was clearly addressed, despite delivery being restricted to that specific individual.

In this instance, the return receipt was never mailed back from Tennessee.

Brian Joseph Gallagher of Lennon Miller PLC made an appearance in this matter on behalf of defendant Hivner on September 17. Since the definitive date and time of service was defeated by some failure to mail back the return receipt, defendant Hivner is *deemed served* as of the date of *first appearance* in this matter, that being on September 17, 2024, though he likely received service weeks earlier.

"(3) An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." Rule 2.105(K)(3) - Process; Manner of Service, Mich. Ct. R. 2.105(K)(3).

In the spirit of Mich. Ct. R. 2.105(K)(3) above, the objective here was to err on the side of caution while completing service since clearly the defendant must have been informed about this action prior to the *date of first appearance* of his counsel evidenced in the record.

I declare under penalty of perjury that this information is true.

Date: 10/19/2024

Marsha Ann Fenton

Server's signature

Marsha Ann Fenton

Printed name and title

17195 Silver Pkwy, #150, Fenton, MI 48430-3426

Server's address

DEFENDANT: JAMES MICHAEL HIVNER

LAWSUIT DELIVERED: 8/27/2024 (DEEMED SERVED: 9/17/2024)

UNITED STATES POSTAL SERVICE.

FENTON
210 S LEROY ST
FENTON, MI 48430-9998
(800)275-8777

08/24/2024 02:06 PM

Product	Qty	Unit Price	Price
Priority Mail®	1		$16.95
Memphis, TN 38133			
Weight: 3 lb 10.80 oz			
Expected Delivery Date			
Tue 08/27/2024			
Insurance			$0.00
Up to $100.00 included			
Restricted Del			$12.75
Recipient name			
JAMES M HIVNER			
Tracking #:			
70203160000230014834			
Return Receipt			$4.10
Tracking #:			
9590 9402 8627 3244 0683 81			
Total			$33.80

Grand Total: $200.20

Credit Card Remit $200.20
Card Name: VISA
Account #: XXXXXXXXXXXX8359
Approval #: 314260
Transaction #: 188
AID: A0000000031010 Chip
AL: VISA CREDIT
PIN: Not Required

UFN: 253200-0431
Receipt #: 840-54930020-3-6269723-1
Clerk: 05

7020 3160 0002 3001 4834

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at *www.usps.com®*.

Memphis, TN 38133

OFFICIAL USE

Certified Mail Fee $4.10
Extra Services & Fees (*check box, add fee as appropriate*)
- [x] Return Receipt (hardcopy) $0.00
- [ ] Return Receipt (electronic) $12.75
- [x] Certified Mail Restricted Delivery $0.00
- [ ] Adult Signature Required $0.00
- [ ] Adult Signature Restricted Delivery $

Postage $16.95
Total Postage and Fees $33.80

0431
05
FENTON, MI 48430
Postmark Here
08/24/2024

JAMES MICHAEL HIVNER
8019 SARA JANE LN
BARTLETT, TN 38133-2814

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

This USPS Return Receipt Mysteriously Disappeared It was Never Returned After The Successful Delivery

RICO SERVICE: SHIPPED via USPS on 8/24/2024 at 2:06PM

Case 1:23-cv-01097-PLM-RSK (FENTON v. STORY et al.)

Help

Product Tracking & Reporting

UNITED STATES POSTAL SERVICE

Home Search Reports Manual Entry Rates/ Commitments PTR / EDW Customer Information October 18, 2024

USPS Tracking Intranet

Delivery Signature and Address

Tracking Number: 7020 3160 0002 3001 4834

This item was delivered on 08/27/2024 at 13:43:00

< Return to Tracking Number View

Signature	Mailer Mailer
Address	**8019 SARA JANE LN, BARTLETT, TN 38133** Covid

Enter up to 35 items separated by commas.

Select Search Type: Quick Search Submit

Product Tracking & Reporting, All Rights Reserved
Version: 24.4.3-de6c5246

This page is the U.S. Postal Service's internal delivery confirmation with "signature image" from the mail carrier's electronic keypad, signed by the recipient at the time of delivery.

This page was provided by Postmaster Danielle Weisenstein, from the Linden Post Office in Genessee County Michigan, who researched this parcel and provided this confirmation.

ALERT: TROPICAL STORM FRANCINE, FLOODING, AND SEVERE WEATHER IN THE SOUTHERN U.S. M...

USPS Tracking®

FAQs >

COMPLETED

Remove ×

Tracking Number:

70203160000230014834

Copy Add to Informed Delivery (https://informeddelivery.usps.com/)

Latest Update

Your item was delivered to an individual at the address at 1:43 pm on August 27, 2024 in MEMPHIS, TN 38133.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered
Delivered, Left with Individual
MEMPHIS, TN 38133
August 27, 2024, 1:43 pm

Out for Delivery
MEMPHIS, TN 38133
August 27, 2024, 6:25 am

Arrived at Post Office
MEMPHIS, TN 38134
August 27, 2024, 6:14 am

Arrived at USPS Regional Destination Facility
MEMPHIS TN DISTRIBUTION CENTER
August 26, 2024, 2:33 pm

In Transit to Next Facility
August 25, 2024

Arrived at USPS Regional Facility
PONTIAC MI DISTRIBUTION CENTER
August 24, 2024, 6:16 pm

Departed USPS Facility

Feedback

FLINT, MI 48502
August 24, 2024, 5:16 pm

Departed USPS Facility
FENTON, MI 48430
August 24, 2024, 3:20 pm

Departed Post Office
FENTON, MI 48430
August 24, 2024, 3:14 pm

USPS in possession of item
FENTON, MI 48430
August 24, 2024, 2:01 pm

Hide Tracking History

What Do USPS Tracking Statuses Mean? **(https://faq.usps.com/s/article/Where-is-my-package)**

Text & Email Updates

USPS Tracking Plus®

Product Information

Feedback

Postal Product:	Features:	See tracking for related item:
Priority Mail®	Certified Mail Restricted Delivery Up to $100 insurance included. Restrictions Apply ⓘ	**9590940286273244068381 (/go/TrackConfirmAction?tLabels=9590940286273244068381)**

See Less

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

USPS Tracking®

FAQs >

**This is the tracking for the Return Receipt.
This shows that the Return Receipt was purchased, but it was never mailed back from Tennessee.**

Remove ×

Tracking Number:

9590940286273244068381

Copy Add to Informed Delivery (https://informeddelivery.usps.com/)

Latest Update

The U.S. Postal Service has received electronic notification on August 24, 2024 at 2:01 pm that you have associated a return receipt to your item.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Feedback

Pre-Shipment
Return Receipt Associated
August 24, 2024, 2:01 pm

What Do USPS Tracking Statuses Mean? (https://faq.usps.com/s/article/Where-is-my-package)

Text & Email Updates

USPS Tracking Plus®

Product Information

Postal Product:	Features:	See tracking for related item: 70203160000230014834 (/go/TrackConfirmAction?tLabels=70203160000230014834)
USPS Ground Advantage™	Return Receipt USPS Tracking®	