

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEDIR ESSA ESMAEL,
Plaintiff,
v.
SANTA CLARA COUNTY,
Defendant.

) No. C 09-3943 MMC (PR)

) **ORDER DIRECTING**
) **PLAINTIFF TO INFORM**
) **THE COURT WHETHER HE**
) **INTENDS TO PROCEED**
) **WITH THE INSTANT**
) **ACTION**

On August 26, 2009, plaintiff, a California prisoner then incarcerated at the Elmwood Men’s Facility in Milpitas (“Elmwood”), California, and proceeding pro se, filed the above-titled civil rights action pursuant to 42 U.S.C. § 1983. Together with his complaint plaintiff filed a completed prisoner’s in forma pauperis (“IFP”) application indicating that he had no funds in his prisoner trust account to pay the \$350.00 filing fee.

Thereafter, plaintiff wrote the court that he no longer was incarcerated at Elmwood and was residing in San Jose. The Court inferred from plaintiff’s letter that he no longer was imprisoned. Consequently, the Court directed plaintiff to either pay the requisite filing fee in this matter in full, or submit a court-approved non-prisoner’s IFP application showing he is unable to pay the fee. (Docket No. 4.) In response, plaintiff wrote the Court explaining that he had not been released from jail and was residing at the San Jose Main Jail. (Docket No. 8.)

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff next wrote the Court and asked that his case be “transferred” to the “Downtown Superior – Civil Division, 191 North First Street, San Jose, CA 95113,” which plaintiff also described as the “Santa Clara County Civil Division.” (Docket No. 10.) Plaintiff’s stated reason for such request was his desire to have the case transferred to the county in which he was residing. The San Jose address provided by plaintiff in the letter is the address of the Superior Court of Santa Clara County.


Most recently, plaintiff wrote the Court that he now is incarcerated at the Eloy Detention Center, in Eloy, Arizona. (Docket No. 11.)

As noted, plaintiff has asked the Court to transfer his case to the Superior Court of Santa Clara County. Such request will be denied. If plaintiff wishes to prosecute his claims in state, rather than federal, court, he must voluntarily dismiss the instant action and file a complaint in Superior Court. Accordingly, within **twenty** days of the date this order is filed, plaintiff shall inform the Court whether he intends to proceed with the instant action in this court. If plaintiff fails to comply with this order, the action will be dismissed without prejudice.

The Court will defer ruling on plaintiff’s request to proceed IFP until plaintiff informs the Court of his intentions as directed above.

IT IS SO ORDERED.

DATED: October 19, 2010


MAXINE M. CHESNEY
United States District Judge