

NO-66096

Case No. PC 13-0870
Dept. No. 2

FILED

2014 JUL 14 AM 11:37

LACEY DONALDSON
DISTRICT COURT CLERK

IN THE Sixth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Pershing **FILED**

* * * * *

Ferruccio Volpicelli,)
Plaintiff,)
-vs-)
Delio Carrera, et al)
Defendant.)

JUL 17 2014
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff, Ferruccio Volpicelli,
in pro se, hereby appeals to the Nevada Supreme Court the ORDER
DISMISSING DITTENBERG & D.E. REED; AND DENYING DEFAULT ENTRY AT PERSH.
as filed/entered on the 13 day of JUNE, 2014,
(complete if applicable) and the _____

_____, as filed/entered on the _____ day of _____,
_____, 20____, in the above-entitled Court.

Dated this 16 day of JULY, 2014.

[Signature]
Ferruccio Volpicelli # 72205
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

RECEIVED
JUL 16 2014
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

LCC LL FORM 26.062

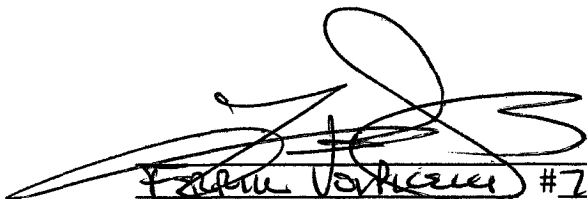
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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 11 day of JULY, 2014, by placing same in the U.S. Mail via prison law library staff:

NEVILLE ATTORNEY GENERAL
105 N. CARSON ST.
CARSON CITY, NV 89201

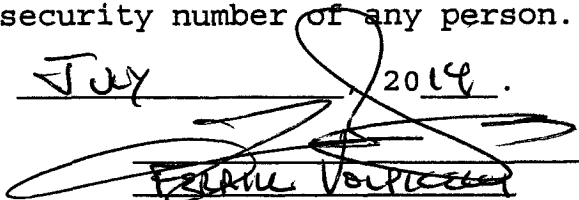

Felicia Volpicelli #725165
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. PS 13-0872 does not contain the social security number of any person.

Dated this 11 day of JULY, 2014.


Felicia Volpicelli

Plaintiff In Pro Se

FILED

2014 JUL 15 AM 9:39

LACEY DONALDSON
DISTRICT COURT CLERK



1 Case No. PI 13-0870
2 Dept No. 2

3
4 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5
6 IN AND FOR THE COUNTY OF PERSHING

7	FERRILL J. VOLPICELLI,)	
	Appellant,)	
8	Vs.)	CASE APPEAL STATEMENT
)	
9	DAVID CARPENTER, et al.)	
10	Respondents)	
		/	

- 11 1. Name of appellant filing this case appeal statement:
12 Ferrill J. Volpicelli
- 13 2. Identify the judge issuing the decision, judgment or order appealed
14 from:
15 Honorable Michael R. Montero
- 16 3. Identify all parties to the proceedings in the district court (the use of
17 et al. to denote parties is prohibited):
18 Ferrill J. Volpicelli, David Carpenter, James G. Cox, Michael Dittenberg,
19 Timothy Garrett, Robert Legrand, D.E. Reed, The State of Nevada, Chaz
20 W. Lehman, Deputy Attorney General.
- 21 4. Identify all parties involved in this appeal (the use of et al. to denote
22 parties is prohibited):
23 Ferrill J. Volpicelli, David Carpenter, James G. Cox, Michael Dittenberg,
24 Timothy Garrett, Robert Legrand, D.E. Reed, The State of Nevada, Chaz
25 W. Lehman, Deputy Attorney General.
- 26 5. Set forth the name, law firm, address and telephone number of all
Counsel on appeal and identify the party or parties whom they represent:

Ferrill J. Volpicelli – Inmate No. 79565
1200 Prison Rd./LCC
Lovelock, NV 89419
Pro Per for Petitioner

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Office of the Attorney General
ATTN: Chaz W. Lehman
100 N. Carson St.
Carson City, NV 89710
Attorney for Respondents

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Pro Per

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Pro per

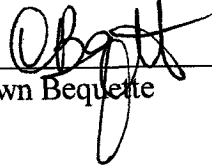
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Order to Proceed in Forma Pauperis GRANTED 5/21/13

9. Indicate the date the proceedings commenced in the district court (e.g. date of complaint, indictment, information or petition was filed):

Civil Rights Complaint 42 USC 1983 Jury Trial Demand
FILED on 5/21/13

Dated this 15th day of July, 2014

Deputy Court Clerk 
Dawn Bequette

Case #: PI-13-0870

Judge: MONTERO, MICHAEL R

Date Filed: 05/17/13 Department: 02

Case Type: CVRVIO CIVIL RIGHTS VIOLATION

Title/Caption: Ferrill J. Volpicelli
-vs-
David Carpenter, et al.

Defendant (s) Attorney(s)
CARPENTER, DAVID ATTORNEY GENERAL

Defendant (s) Attorney(s)
COX, JAMES G. ATTORNEY GENERAL

Defendant (s) Attorney(s)
DITTENBERG, MICHAEL ATTORNEY GENERAL

Defendant (s) Attorney(s)
GARRETT, TIMOTHY ATTORNEY GENERAL

Defendant (s) Attorney(s)
LEGRAND, ROBERT ATTORNEY GENERAL

Defendant (s) Attorney(s)
REED, D.E. ATTORNEY GENERAL

Defendant (s) Attorney(s)
THE STATE OF NEVADA ATTORNEY GENERAL

Plaintiff(s) Attorney(s)
VOLPICELLI, FERRILL J. PRO PER

Disp/Judgment: MTDS Date: 12/06/13

Filings:

Date	Pty	Filing	Fees
5/17/13	P	APPLICATION TO PROCEED IN FORMA PAUPERIS	FILED
5/17/13	P	CERTIFICATE OF INMATE'S INSTITUTIONAL ACCOUNT	FILED
5/21/13	C	ORDER TO PROCEED IN FORMA PAUPERIS	FILED
5/21/13	P	CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. §1983	
	P	JURY TRIAL DEMAND	FILED
5/21/13	P	MOTION FOR APPOINTMENT OF COUNSEL	FILED
5/21/13	P	SUMMONS 7/REED-LEGRAND-GARRETT-DOTTENBERG-COX-SON-	
	P	CARPENTER	ISSUED
7/15/13	D	ANSWER TO COMPLAINT	FILED
8/13/13	P	SUMMONS 5/STATE-LEGRAND-GARRETT-COX-CARPENTER	FILED
8/13/13	P	PLAINTIFF'S MOTION TO EXTEND PROCESS OF SERVICE ON	
	P	ANY UNSERVED DEFENDANTS	FILED
8/15/13	P	PLAINTIFF'S INITIAL 16.1 DOCUMENTS DISCLOSURE	FILED
8/22/13	D	LIMITED NON-OPPOSITION TO MOTION FOR EXTENSION OF	
	D	TIME TO SERVE DEFENDANTS DE REED AND MICHAEL	
	D	DITTENBERG	FILED
8/28/13	D	JOINT CASE CONFERENCE REPORT	FILED

10/14/13	P	SUMMONS 1/REED	FILED
10/14/13	P	REQUEST TO CLERK FOR ENTRY OF DEFAULT AS AGAINST P NAMED DEFENDANT	FILED
11/01/13	P	REQUEST FOR SUBMISSION OF MOTION	FILED
11/13/13	P	PLAINTIFF'S MOTION FOR AN ORDER DIRECTING THE ENTRY P OF DEFAULT AGAINST DEFENDANT DEBORAH REED	FILED
11/27/13	D	NOTICE OF APPEARANCE	FILED
11/27/13	D	OPPOSITION TO MOTION FOR DEFAULT JUDGMENT	FILED
12/06/13	D	MOTION TO DISMISS	FILED
12/12/13	P	PLAINTIFF'S OPPOSITION TO DEFENDANTS (D.E. REED AND P MICHAEL DITTENBER) MOTION TO DISMISS COMPLAINT	FILED
12/18/13	D	REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS	FILED
12/18/13	D	REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO D DISMISS	FILED
1/24/14	D	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	FILED
2/06/14	P	MOTION FOR ENLARGEMENT OF TIME (FIRST REQUEST)	FILED
2/21/14	P	PLAINTIFF'S OPPOSITION/RESPONSE TO DEFENDANTS' P (CARPENTER, GARRETT, LEGRAND) MOTION FOR SUMMARY P JUDGMENT PURSUANT TO FRCP56(B)	FILED
2/21/14	D	NON-OPPOSITION TO PLAINTIFF'S MOTION FOR ENLARGEMENT D OF TIME	FILED
3/03/14	D	MOTION TO STRIKE PLAINTIFF'S OPPOSITION TO DEFENDANTS' D MOTION FOR SUMMARY JUDGMENT	FILED
3/03/14	D	MOTION REQUESTING COURT TO ORDER PLAINTIFF TO D PROPERLY SERVE HIS OPPOSITION TO DEFENDANTS' D MOTION FOR SUMMARY JUDGMENT WITH ATTACHED EXHIBITS D AND MOTION TO STAY BRIEFING	FILED
3/05/14	D	ERRATA TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S D OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY D JUDGMENT	FILED
3/05/14	D	ERRATA TO DEFENDANTS' MOTION REQUESTING COURT TO D ORDER PLAINTIFF TO PROPERLY SERVE HIS OPPOSITION D TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH D ATTACHED EXHIBITS AND MOTION TO STAY BRIEFING	FILED
3/07/14	P	RESPONSE TO MOTION TO STRIKE PLAINTIFF'S OPPOSITION D TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	FILED
3/07/14	D	RESPONSE TO MOTION REQUESTING COURT TO ORDER PLAINTIFF D TO PROPERLY SERVE HIS OPPOSITION TO DEFENDANTS' D MOTION FOR SUMMARY JUDGMENT WITH ATTACHED EXHIBITS D {AND} MOTION TO STRIKE BRIEFING	FILED
3/18/14	D	REPLY IN SUPPORT OF MOTION REQUESTING COURT TO ORDER D PLAINTIFF TO PROPERLY SERVE HIS OPPOSITION TO D DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH D ATTACHED EXHIBITS (AND) MOTION TO STAY BRIEFING	FILED
3/24/14	P	RESPONSE TO DEFENDANTS' REPLY IN SUPPORT OF MOTION P REQUESTING COURT TO ORDER.....	FILED
3/24/14	P	REQUEST FOR SUBMISSION OF MOTION	FILED
4/09/14	D	MOTION TO STRIKE PLAINTIFF'S RESPONSE TO DEFENDANTS' D REPLY IN SUPPORT OF THEIR MOTION FOR COURT ORDER D AND MOTION TO STAY	FILED
4/09/14	D	REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO D STRIKE	FILED
4/15/14	P	MOTION FOR PRODUCTION OF PLAINTIFF'S OPPOSITION TO P DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AT NO P EXPENSE	FILED
4/18/14	P	MOTION FOR STAY OF BRIEFING	FILED
4/28/14	D	MOTION TO STRIKE PLAINTIFF'S MOTION TO STAY BRIEFING	FILED

4/28/14	D	OPPOSITION TO MOTION FOR PRODUCTION OF PLAINTIFF'S	
	D	OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY	
	D	JUDGMENT AT NO EXPENSE	FILED
5/01/14	P	JUDICIAL NOTICE	FILED
5/14/14	D	OPPOSITION TO PLAINTIFF'S MOTION FOR JOINDER OF A	
	D	PROPER PARTY AND EXPAND THE SCOPE OF ORDERS	FILED
5/20/14	P	MOTION TO STRIKE OPPOSITION TO PLAINTIFFS' MOTION FOR	
	P	JOINDER OF A PROPER PARTY	FILED
5/30/14	D	DEFENDANTS' NOTICE OF WITHDRAWAL OF OPPOSITION TO	
	D	PLAINTIFF'S MOTION FOR JOINDER OF A PROPER PARTY	
	D	AND EXPAND THE SCOPE OF ORDERS	FILED
6/13/14	C	ORDER	FILED
6/13/14	C	ORDER	FILED
6/13/14	C	ORDER	FILED
6/13/14	C	NOTICE OF ENTRY OF ORDER	FILED
6/13/14	C	NOTICE OF ENTRY OF ORDER	FILED
6/13/14	C	NOTICE OF ENTRY OF ORDER	FILED
6/17/14	P	MOTION FOR SECOND STAY OF BRIEFING	FILED
6/23/14	D	OPPOSITION TO PLAINTIFF'S MOTION FOR SECOND STAY OF	
	D	BRIEFING	FILED
6/27/14	P	REPLY TO OPPOSITION TO PLAINTIFF'S MOTION FOR SECOND	
	P	STAY OF BRIEFING	FILED
6/27/14	P	REQUEST FOR SUBMISSION OF MOTION	FILED
7/01/14	P	MOTION FOR ORDER TO REDUCE DUPLICATION FEES AND TO DEBIT	
	P	PLAINTIFF'S ACCOUNT	FILED
8/01/14	P	MOTION FOR ENLARGEMENT OF TIME (FIRST REQUEST)	FILED
7/14/14	D	NOTICE TO THE COURT	FILED
7/14/14	P	NOTICE OF APPEAL	FILED
7/15/14	C	CASE APPEAL STATEMENT	FILED

1 CASE NO. PI 13-0870
2 DEPT. NO. II

FILED

2014 JUN 13 PM 1:58

LACEY DONALDSON
DISTRICT COURT CLERK

5 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF PERSHING

-000-

7 FERRILL J. VOLPICELLI,
8

Plaintiff,

9 vs.

ORDER

10 DAVID CARPENTER; JAMES G. COX;
11 MICHAEL DITTENBERG; TIMOTHY
12 GARRETT; ROBERT LEGRAND; D.E.
13 REED; and the STATE OF NEVADA,

Defendants.

14 Before this Court are the following pleadings: (1) *Plaintiff's Motion to Extend Process of*
15 *Service on Any Unserved Defendant(s)* filed on August 13, 2013 and Defendants' *Limited Non-*
16 *Opposition to Motion for Extension of Time to Serve Defendants DE Reed and Michael*
17 *Dittenberg* filed on August 22, 2013; (2) *Plaintiff's Motion for an Order Directing the Entry of*
18 *Default Against Defendant Deborah Reed* filed on November 13, 2013, and Defendants'
19 *Opposition to Motion for Default Judgment* filed on November 27, 2013; (3) Defendants' *Motion*
20 *to Dismiss* filed on December 6, 2013, *Plaintiff's Opposition to Defendants (DE Reed and*
21 *Michael Dittenber) Motion to Dismiss Complaint* [sic] filed on December 12, 2013, and
22 Defendants' *Reply in Support of Defendants' Motion to Dismiss* filed on December 18, 2013.
23 The briefing outlined above will be discussed in one order as the underlying issue is the same
24



1 throughout the pleadings. The issue is whether named Defendants D.E. Reed and Michael
2 Dittenberg have been properly served.


3 The Court's analysis begins with the deadline to effectuate service. Plaintiff requested, in
4 August 2013, additional time to serve Michael Dittenberg and D.E. Reed. The State agreed to a
5 60 day extension. The Court finds that a 60 day service extension was reasonable and appropriate
6 under the circumstances presented; hence, Plaintiff had until December 2, 2013 to effectuate
7 service.

8 Plaintiff has failed to establish for the Court that Michael Dittenberg was properly served.
9 Accordingly, Defendants' *Motion to Dismiss* is GRANTED as to Michael Dittenberg.

10 Plaintiff submitted "Proof of Service" for D.E. Reed indicating that an employee at the
11 Attorney General's Office accepted service on behalf of Reed as an "authorized individual."
12 Defendants claim that such service was not proper because the Attorney General's Office is not
13 authorized to receive service of process on behalf of current or former State employees.
14 Plaintiff's position that the Attorney General serves as the authorized agent for State employees
15 is not persuasive, nor supported by the law. Accordingly, the Court finds that D.E. Reed was not
16 properly served. As a result, *Plaintiff's Motion for an Order Directing the Entry of Default*
17 *Against Defendant Deborah Reed* is DENIED because entry of default is not proper in this case.
18 Lastly, Defendants' *Motion to Dismiss* is also GRANTED as to D.E. Reed.

19 IT IS SO ORDERED.

20 DATED: June 10, 2014.

21 
22 HONORABLE MICHAEL R. MONTERO
23 DISTRICT JUDGE
24


CERTIFICATE OF SERVICE

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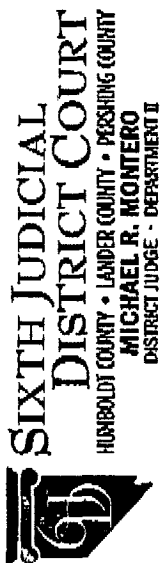
I hereby certify that I am an employee of the Pershing County District Court Clerk's Office and am not a party to, nor interested in, this action; and that on June 13, 2014, I caused to be served a true and correct copy of the enclosed **ORDER** upon the following parties:

Ferrill J. Volpicelli, #79565
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419
Via US Mail

Chaz W. Lehman
Deputy Attorney General
100 N. Carson St.
Carson City, NV 89710
Via US Mail



Deputy Clerk



FILED

2014 JUN 13 PM 2: 14

1 FILE NO. PI 13-0870
2 DEPT. NO. 2
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LACEY DONALDSON
DISTRICT COURT CLERK



5 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF
6 NEVADA, IN AND FOR THE COUNTY OF PERSHING

7 Ferrill J. Volpicelli,
8 Plaintiff,
9 vs.

NOTICE OF ENTRY
OF ORDER

10 David Carpenter; James G. Cox;
11 Michael Dittenberg; Timothy
12 Garrett; Robert LeGrand; D.E.
13 Reed; and the State of Nevada,
14 Defendants.

15 PLEASE TAKE NOTICE that on June 13, 2014, the Court
16 entered an order in this matter, a true and correct copy of which is
17 attached to this notice.

18 You may appeal to the Supreme Court from the Order of this Court.
19 If you wish to appeal, you must file a Notice of Appeal with the Clerk of this
20 Court within 33 days after the date this notice is mailed to you. This notice
21 was mailed on June 13, 2014.

22 DATED: June 13, 2014.

23 Lacey Donaldson

24 Clerk of Court

25 By 

26 Deputy

1 CASE NO. PI 13-0870
2 DEPT. NO. II

FILED

2014 JUN 13 PM 1:58

LACEY DONALDSON
DISTRICT COURT CLERK

5 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF PERSHING

-000-

7
8 FERRILL J. VOLPICELLI,

Plaintiff,

9 vs.

ORDER

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11 MICHAEL DITTENBERG; TIMOTHY
12 GARRETT; ROBERT LEGRAND; D.E.
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Defendants.

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18 Default Against Defendant Deborah Reed filed on November 13, 2013, and Defendants'
19 Opposition to Motion for Default Judgment filed on November 27, 2013; (3) Defendants' Motion
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1 throughout the pleadings. The issue is whether named Defendants D.E. Reed and Michael
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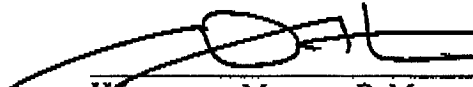
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8 Plaintiff has failed to establish for the Court that Michael Dittenberg was properly served.
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17 *Against Defendant Deborah Reed* is DENIED because entry of default is not proper in this case.
18 Lastly, Defendants' *Motion to Dismiss* is also GRANTED as to D.E. Reed.

19 IT IS SO ORDERED.

20 DATED: June 10, 2014.


21 
22 HONORABLE MICHAEL R. MONTERO
23 DISTRICT JUDGE
24

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Pershing County District Court Clerk's Office and am not a party to, nor interested in, this action; and that on June 13, 2014, I caused to be served a true and correct copy of the enclosed **ORDER** upon the following parties:

Ferrill J. Volpicelli, #79565
Lovelock Correctional Center
1200 Prison Rd
Lovelock, NV 89419
Via US Mail

Chaz W. Lehman
Deputy Attorney General
100 N. Carson St.
Carson City, NV 89710
Via US Mail



Deputy Clerk



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