

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL J. VOLPICELLI,
Appellant,

vs.

DAVID CARPENTER; JAMES G. COX;
MICHAEL DITTENBERG; TIMOTHY
GARRETT; ROBERT LEGRAND; D. E.
REED; AND THE STATE OF
NEVADA,
Respondents.

Supreme Court No. 66096
District Court No. PI 13-0870
Due Date: August 26, 2014

FILED

AUG 22 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

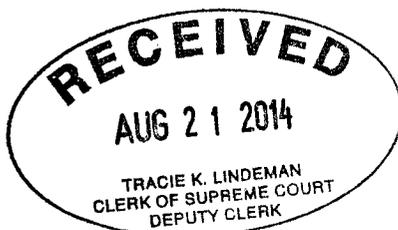
CIVIL PROPER PERSON APPEAL STATEMENT

Ferrill Joseph Volpicelli
Inmate ID: 79565
LCC
1200 Prison Road
Lovelock NV 89419-5110

Charles W. Lehman/Attorney
General
100 N. Carson St.
Carson City, NV 89701

David L. Carpenter
James G. Cox
Michael Dittenberg
Timothy Garrett
Robert Legrand
D. E. Reed
The State of Nevada
Respondents

Appellant in Proper Person



Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
JUNE 13, 2014	ORDER

Notice of Appeal. Give the date you filed your notice of appeal in the district court: JULY 11, 2014 (MAILBOX RULE FOR PRO SE (IN CUSTODY) LITIGANT)

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
MA		

Issues on Appeal. Does your appeal concern any of the following issues? Check all that apply:

- divorce
- relocation
- paternity
- adoption
- other—briefly explain: ERRONEOUS DISMISSAL OF DEFENDANTS
ERRONEOUS DENIAL OF MOTION FOR ENTRY OF DEFAULT.
- child custody/visitation
- termination of parental rights
- marital settlement agreement
- prenuptial agreement
- child support
- attorney fees
- division of property
- spousal support

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

ON MAY 21, 2013, APPELLANT FILED A 42 USC § 1983
CIVIL RIGHTS ACTION ALLEGING THE CONTRAVENTION OF
CONSTITUTIONAL RIGHTS SECURED BY THE FIFTH AND FOURTEENTH
AMENDMENTS OF THE U.S. CONSTITUTION, AS WELL AS ART. (S)
VI OF THE NEVADA STATE CONSTITUTION, RELEVANT TO
A DISCIPLINARY MATTER WHILE IN CUSTODY AT THE N.D.C.C.,
THE INSTANT INTERJUDICIAL APPEAL IS POSED FOR REVIEW

* PROPER PERSON LITIGANT'S PLEADING TO BE LIBERALLY CONSTRUED—
ERICKSON V PARDUS 127 S.Ct 2197 (2007) (CITING ESTELLE V GIBBLE).

SPECIFIC TO THE DISTRICT COURT'S JUNE 13, 2014 ORDER
SUMMARILY DISMISSING DEFENDANTS D.E. REED AND
MICHAEL DITTENBERG, AS WELL AS THE DENIAL OF
PLAINTIFFS' REQUEST FOR ENTRY OF DEFAULT AGAINST
DEFENDANT REED.

IN SUPPORT OF APPELLANTS' CONTENTIONS THAT THE
DISTRICT COURT MAY HAVE ERRED WITH ITS RULINGS,
APPELLANT ADVERTS AND INCORPORATES, AS SET FORTH
HEREIN WITH ATTACHMENTS 1, 2 & 3, THE POINTS
AND AUTHORITIES PROFFERED WITHIN SAID ATTACHMENTS.

→ SWIFT JUDICIAL COURT CASE SUMMARY (SEE ATTACHMENT 1 p.1-3)

ISSUE (1) DISTRICT COURT ERROR

WHETHER THE DISTRICT COURT ERRED IN NOT
ORDERING THE N.D.C.C TO PROVIDE PLAINTIFF
WITH THE LAST KNOWN ADDRESS(ES) UNDER SER,
FOR UNSERVED DEFENDANTS DITTENBERG &/OR
DITTENBERG, AS WELL AS REED, UNDER COURT SER,
FOR THE PROCESS OF SERVICE BY AN AUTHORIZED
PROCESSOR, AND THAT THE DISTRICT COURT FURTHER
DIRECT SAID PROCESS OF SERVICE BE FILED IN CAMERA?

→ (SEE ATTACHMENT 2, P.4)

ISSUE (2) DISTRICT COURT ERROR

WHETHER THE DISTRICT COURT ERRED IN NOT
SUFFICIENTLY EXTENDING THE PERIOD OF PROCESS FOR
UNSERVED DEFENDANTS BEYOND THE DISTRICT COURT'S
RULING ON PLAINTIFFS' REQUESTS ADDRESSED IN
THE MOTION TO EXTEND SERVICE; DESPITE THE DILIGENCE
AND EXTRAORDINARY CUSTODIAL CIRCUMSTANCES?

→

(SEE ATTACHMENT 2, p-4)

ISSUE (3) DISTRICT COURT ERROR

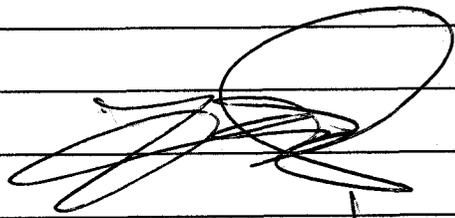
WHETHER THE DISTRICT COURT ERRED IN NOT GRANTING PLAINTIFFS' MOTION FOR AN ORDER DIRECTING THE ENTRY OF DEFAULT AGAINST DEBORAH REED IN VIEW OF PROOF OF SERVICE TO THE ATTORNEY GENERAL'S OFFICE, AS WELL AS THE ACCOMPANYING POINTS AND AUTHORITIES PROFFERED IN SAID MOTION?
(SEE ATTACHMENT 3, p-3&4).

REQUESTED RELIEF:

THAT THIS HONORABLE COURT REVERSE THE ERRORS WITHIN THE JUNE 13, 2014 DISTRICT COURT ORDER SPECIFIC TO PREMATURELY DISMISSING DEFENDANT(S) DITTENBERG / DITTENBER AND REED, AS WELL AS DENYING ENTRY OF DEFAULT AGAINST REED, THAT THIS ACTION BE REMANDED TO THE DISTRICT COURT UNDER § 1983 WITH ANY RELIEF THAT COURT SEES FIT.

DATED THIS 20th

DAY OF AUGUST, 2014



FERRUCIO J. VOLPICECCI

APPELLANT IN PRO PER

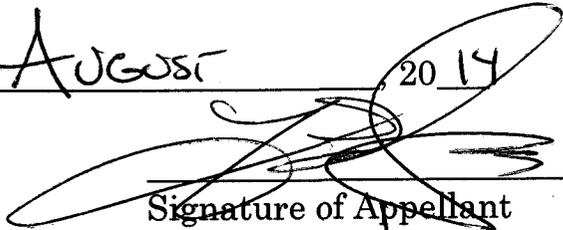
CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed appeal statement upon all parties to the appeal as follows:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served by mail):

NEVADA ATTORNEY GENERAL
100 N. CARSON ST
CARSON CITY, NV 89701

DATED this 20th day of AUGUST 2014



Signature of Appellant

FERRILL VOLPICELLI
Print Name of Appellant

79565 LCC
Address

1200 PRISON Rd
City/State/Zip

LOVELOCK, NV 89409
Telephone

FILED

2014 JUN 13 PM 1:58

LACEY DONALDSON
DISTRICT COURT CLERK

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

-000-

FERRILL J. VOLPICELLI,

Plaintiff,

vs.

ORDER

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

Defendants.

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

SIXTH JUDICIAL
DISTRICT COURT
HIPPOBOLT COUNTY • LAHER COUNTY • PERSHING COUNTY
MICHAEL R. MONTERO
DISTRICT JUDGE • DEPARTMENT II

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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

Case #: PI-13-0870

Judge: MONTERO, MICHAEL R

Date Filed: 05/17/13 Department: 02

Case Type: CVR VIO CIVIL RIGHTS VIOLATION

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

Defendant (s)
CARPENTER, DAVID

Attorney (s)
ATTORNEY GENERAL

Defendant (s)
COX, JAMES G.

Attorney (s)
ATTORNEY GENERAL

Defendant (s)
DITTENBERG, MICHAEL

Attorney (s)
ATTORNEY GENERAL

Defendant (s)
GARRETT, TIMOTHY

Attorney (s)
ATTORNEY GENERAL

Defendant (s)
LEGRAND, ROBERT

Attorney (s)
ATTORNEY GENERAL

Defendant (s)
REED, D.E.

Attorney (s)
ATTORNEY GENERAL

Defendant (s)
THE STATE OF NEVADA

Attorney (s)
ATTORNEY GENERAL

Plaintiff (s)
VOLPICELLI, FERRILL J.

Attorney (s)
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

CASE No. PI 13-0870
DEPT No. 2

FILED

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LACEY DONALDSON
DISTRICT COURT CLERK

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

FERRIL J. VOLPICELLI,
PLAINTIFF,
VS.
DAVID CARPENTER, ET AL.,
DEFENDANTS.

PLAINTIFF'S MOTION TO EXTEND
PROCESS OF SERVICE ON ANY
UNSERVED DEFENDANT(S).

COMES NOW, PLAINTIFF, FERRIL J. VOLPICELLI (HEREINAFTER
"PLAINTIFF"), APPEARING IN PERSON, AND FILES THIS MOTION TO
EXTEND PROCESS OF SERVICE ON ANY UNSERVED DEFENDANTS,
IN THE ABOVE-ENTITLED ACTION.

THIS MOTION IS FILED PURSUANT TO NRCR 4 (FRCP 4(M)), NRCR 7,
DCR 13, AND THE FOLLOWING LEGAL MEMORANDUM OF POINTS AND AUTHOR-
ITIES.

I. BACKGROUND DISCUSSION.

PLAINTIFF HAS FILED A 42 U.S.C. § 1983 CIVIL RIGHTS COMPLAINT,
ALLEGING THE DEPRIVATION OF HIS FEDERAL AND STATE CONSTITU-

¹ NRCR 1. SCOPE OF RULES NRCR AND ITS FEDERAL COUNTERPART, FRCP.

TIONAL RIGHTS, PURSUANT TO THE U.S.C.A. V AND XIV AMENDS.;
N.Y. ST. CONST. ART. VI §§ IV, VI; AND NRS 209.246.² BETWEEN
THE DATES OF JUNE 4, 2013 AND JUNE 5, 2013, DEFENDANTS
WERE SERVED WITH BOTH THE SUMMONS AND COMPLAINT, WITH
THE EXCEPTION OF THE FOLLOWING DEFENDANTS:

1. MICHAEL LITRENBELG, COLLECTIONAL OFFICER AT
THE LOVELOCK COLLECTIONAL CENTER ("LCC"). SERVICE WAS
ATTEMPTED ON JUNE 4, 2013 AT THE DEFENDANT'S PLACE OF
EMPLOYMENT, NEVADA DEPARTMENT OF COLLECTIONS ("NDOC").
SERVICE WAS REFUSED BY AN AUTHORIZED AGENT, STATING
"THAT THERE IS NO SUCH EMPLOYEE WITH NDOC." PLEASE SEE
EXHIBIT 01.

2. J. E. REED, DEPUTY DIRECTOR, NDOC, PROXY OF
SERVICE INDICATES THAT SERVICE WAS INITIALLY REFUSED
BY AN AUTHORIZED AGENT OF THE NDOC STATING THAT "PARTY
(DEFENDANT) IN [SIC] NO LONGER EMPLOYED ~~THE~~ WITH THE
NDOC." HOWEVER, THE SUMMONS AND COMPLAINT APPEARS TO
HAVE BEEN SERVED WITH AN AGENT OF THE ATTORNEY
GENERAL'S OFFICE, SEE EXHIBIT 02, WHICH WAS ACCEPTED
PROCESS OF SERVICE.

THE INSTANT PLEASING FOLLOWS.

II. LEGAL MEMORANDUM / POINTS AND AUTHORITIES.

ANSWERING DEFENDANTS FILED THEIR ANSWER TO
COMPLAINT ON JULY 12, 2013. AS TO PARAGRAPHS NOS. 4 AND 7,
DEFENDANTS STATE "THIS NAMED DEFENDANT (LITRENBELG)

2. STARE LAW CLAIMS UNDER SUPPLEMENTAL JURISDICTION;
28 U.S.C. § 1367.

(Reed) is not currently a party to this litigation, therefore no response is forth coming on behalf of this named Defendant. Under this Postulation, Plaintiff has a purported understanding that service may not have been accepted as to Defendant Reed, by the Attorney General's office. See Answer on file herein, p. 2, 1-2; 9-10.

On this basis, and as to the confusion, Plaintiff out of an abundance of caution seeks to extend the process of service as to Defendants Wittensberg and Reed.

FRCP 4(m) provides that:

"If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court may upon motion, or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant, or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for failure, the court shall extend the time for service for an appropriate period."

ACCEPTANCE OF SERVICE.

After accepting service on behalf of the State of Nevada, the Attorney General's office can accept service on behalf of any persons who were not yet served, and could file a notice of replesser litigation as to the unserved named Defendants. To date, this does not appear to have been the case. Each named Defendant has been discussed in the Answer, as well as each Defendant being employed by the State of Nevada ex rel. NDC. The Attorney General's

OFFICE IS AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF ANY OF THE NAMED DEFENDANTS, WAIVING SERVICE OF PROCESS. SEE, Fritz Hansen A/S v. EIGHTH JUDICIAL DISTRICT COURT, 116 Neb. 650, 6 P.3d 982 (2000) (SPECIAL APPEARANCES).

MRS 41.0338; 41.0339.

MRS 41.0338 AND 41.0339 PROVIDES THAT THE ATTORNEY GENERAL'S OFFICE MAY PROVIDE LEGAL REPRESENTATION TO DEFENDANTS UNDER THE CIRCUMSTANCES OF THIS § 19B3 ACTION. IT IS UNCLEAR FROM THE RECORD, AS TO WHETHER DEFENDANT REED HAS MADE A REQUEST FOR REPRESENTATION TO THE ATTORNEY GENERAL'S OFFICE. THE OFFICE APPEARS TO HAVE RECEIVED THE SUMMONS AND COMPLAINT BY AN AUTHORIZED AGENT OF THE ATTORNEY GENERAL'S OFFICE.

INTEREST OF JUDICIAL ECONOMY.

DEFENDANT "DITREIBERG" IS AN EMPLOYEE OF THE NDOC AT THE LCC, AND AT ALL TIMES RELEVANT TO THIS ACTION, WAS THE DISCIPLINARY CHARGING OFFICER. SEE EXHIBIT C. THUS, IT IS UNCLEAR AT THE TIME OF SERVICE, THAT THE NDOC STATES THAT THIS DEFENDANT IS NOT EMPLOYED BY THE NDOC.

IN THE INTEREST OF JUSTICE, AND THE AVOIDANCE OF WASTING JUDICIAL RESOURCES; OR UNNECESSARY DISCOVERY MOTIONS. PLAINTIFF SEEKS AN ORDER DIRECTING THE NDOC TO PROVIDE PLAINTIFF WITH LAST KNOWN ADDRESS, UNDER SEEN, FOR DEFENDANTS DITREIBERG AND REED, FOR THE PROCESS OF SERVICE BY AN AUTHORIZED PROCESSER, OR APPROPRIATE SHERIFF'S OFFICE; AND THAT THIS COURT FURTHER DIRECT THAT PROCESS OF SERVICE BE FILED IN CAMERA. SUCH REQUEST IS

MADE AS TO ANY SECURITY CONCERNS, IN WHICH THE NDOC
MAY AFFECT, DUE TO PLAINTIFF'S INCARCERATION STATUS.

PLAINTIFF HAS EXERCISED DUE DILIGENCE, DEMON-
STRATED GOOD CAUSE TO EXTEND THE PROCESS OF SERVICE, AND
MADE A COLORFUL SHOWING OF THE UNSERVED DEFENDANTS'
EMPLOYMENT WITH THE NDOC. ADDITIONALLY, THE ATTORNEY
GENERAL'S OFFICE MAY ACCEPT SERVICE ON BEHALF OF THE
UNSERVED DEFENDANTS. NRS 41.0336.

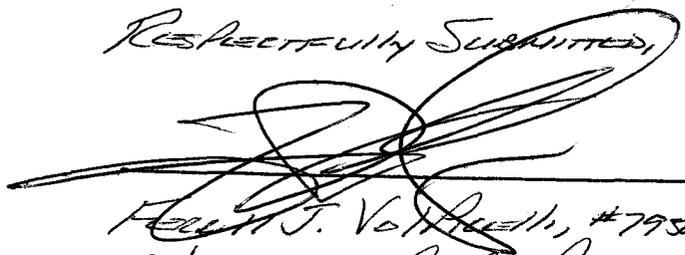
III. CONCLUSION.

BASED UPON THE FOREGOING LEGAL MEMORANDUM,
PLAINTIFF RESPECTFULLY REQUESTS THAT THIS HONORABLE
COURT ISSUE AN ORDER GRANTING AN EXTENDED PERIOD OF
PROCESS OF SERVICE ON UNSERVED DEFENDANTS "LEES" AND
"BITTENBERG," AND FOR THE RELIEF REQUESTED IN THE INTEREST
OF JUSTICE AND JUDICIAL ECONOMY.

WHEREFORE, PLAINTIFF PRAYS THAT THIS COURT GRANT
THE RELIEF REQUESTED HERETO. THANK YOU.

DATED THIS 9th DAY OF August, 2013.

RESPECTFULLY SUBMITTED,



FELTON J. VON AELLEN, #79815
PLAINTIFF, IN PROPER PERSON
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NEVADA 89419

ASSISTED BY: ON REQUEST OF
PLAINTIFF: SEE EXHIBIT 4 ATTACHED
HERETO, AUTHORIZATION FOR LEGAL
ASSISTANCE BY INMATES, AR 722.04,
AND Ltr OF C. CASH, 088, 9/20/12

ATTACHMENT 3

ATTACHMENT 3

FERRILL VOLPICELLI #79565
LCC - 1200 PRISON RD
LOVELOCK, NV 89419

Copy

CASE No. PI-13-0870
Sheet No. 2

FILED

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LACEY DONALDSON
DISTRICT COURT CLERK

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

FERRILL J. VOLPICELLI,
PLAINTIFF,

VS.

DAVID CARPENTER; JAMES
G. COX; MICHAEL LITTEMBERG;
TIMOTHY GARRETT; ROBERT
LEBRAND; LEBORAH REED;
AND THE STATE OF NEVADA, EX
RE NV NEVADA DEPARTMENT OF
COLLECTIONS,
DEFENDANTS.

PLAINTIFF'S MOTION FOR AN
ORDER DIRECTING THE ENTRY
OF DEFAULT AGAINST DEFEN-
DANT LEBORAH REED

COMES NOW, PLAINTIFF, FERRILL J. VOLPICELLI (HEREINAFTER
"PLAINTIFF"), APPEARING IN PROPER PERSON, AND FILES THIS MOTION FOR
AN ORDER DIRECTING THE ENTRY OF DEFAULT AGAINST DEFENDANT
LEBORAH REED, IN THE ABOVE-ENTITLED ACTION.

THIS MOTION IS FILED PURSUANT TO RULE 7(b), SS(b)(2), AND THE
FOLLOWING LEGAL MEMORANDUM OF POINTS AND AUTHORITIES.

I. BACKGROUND DISCUSSION.

ON MAY 21, 2013, PLAINTIFF FILED A 42 U.S.C. § 1983 CIVIL

RIGHTS COMPLAINT ALLEGING THE DEPRIVATION OF HIS CONSTITUTIONAL RIGHTS SECURED BY THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION; AND THE NEVADA STATE CONSTITUTION ART. IV & VII, SUPPLEMENTAL JURISDICTION (STATE CLAIMS), PURSUANT TO 28 U.S.C. § 1367.

PLAINTIFF ALLEGES THAT THE DEFENDANTS VIOLATED HIS DUE PROCESS RIGHTS IN A PRISON DISCIPLINARY PROCEEDING UNDER THE STATUTORY FEDERAL AND STATE GUARANTEES, AS ENUNCIATED IN WOLFF V. MCDONALD, 418 U.S. 539, 556-59, 94 S.Ct. 2963 (1974). PLAINTIFF SEEKS INJUNCTIVE RELIEF, AND GENERAL AND PUNITIVE DAMAGES.

AS TO THE INSTANT MOTION, DEFENDANT LEBLANC REED ("REED") APPEARS TO HAVE BEEN SERVED VIA THE ATTORNEY GENERAL'S OFFICE BY A PERSON AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF THE STATE OF NEVADA, AND ITS EMPLOYEES. PROOF OF SERVICE APPEARS TO HAVE BEEN COMPLETED ON JUNE 5, 2013, AND ON FILE WITH THE CLERK OF THE COURT.

TO DATE, NO ANSWER OR OTHER RESPONSIVE PLEADING, NOR HAS THERE BEEN ANY APPEARANCE MADE BY DEFENDANT REED. THE INSTANT PLEADING FOLLOWS.

II. LEGAL MEMORANDUM / PRELIMS AND AUTHORITIES.

ON OCTOBER 15, 2013, PLAINTIFF SUBMITTED A "DEFAULT" AND AN "REQUEST TO CLERK FOR ENTRY OF DEFAULT AGAINST NAMED DEFENDANT (REED)". SUBSEQUENT THERETO, PLAINTIFF RECEIVED A LETTER FROM LEAHY CLERK LAURE BEQUETTE, THAT WAS DATED JULY 28, 2010, MORE THAN THREE YEARS AGO. PLAINTIFF WAS INFORMED THAT THE DEFAULT COULD NOT BE ENTERED AS THE DEFENDANT HAD NOT BEEN SERVED. THE CLERK WENT ON TO STATE: "IF YOU HAVE ANY PROOF OF ACTUAL SERVICE TO LEBLANC REED, PLEASE SUBMIT TO THE COURT FOR CONSIDERATION."

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A. PROOF OF SERVICE.

THE COURT ISSUED THE SUMMONS FOR DEFENDANT REED ON MAY 21, 2013. THEREAFTER, THE CARSON CITY COUNTY SHERIFF'S OFFICE EFFECTED SERVICE ON REED ON JUNE 5, 2013, AT THE DEFENDANT'S PLACE OF EMPLOYMENT, NEVADA DEPARTMENT OF COLLECTIONS ("NDOC"). SERVICE WAS INITIALLY REFUSED BY THE NDOC'S AUTHORIZED AGENT, NANCY SANDERS. THE SHERIFF'S OFFICE THEN PROCEEDED TO SERVICE OF THE SUMMONS AND COMPLAINT AT THE ATTORNEY GENERAL'S OFFICE, BY SERVING AN AUTHORIZED AGENT, JESSICA JONES, WHO ACCEPTED SERVICE.

PURSUANT TO NRS 41.0341, REED HAD 45 DAYS IN WHICH TO FILE AN ANSWER, OR OTHER RESPONSIVE PLEADINGS, OR TO MAKE AN APPEARANCE. DEFENDANT HAVING FAILED TO RESPOND, PLAINTIFF PROPERLY SUBMITTED DEFAULT DOCUMENTS TO THE CLERK, PURSUANT TO NRCAPS(a), FOR THE ENTRY OF DEFAULT. DOCUMENTS ARE ON FILE WITH THE CLERK OF THE COURT.

B. DEFAULT IS FOUNDED.

ENTRY OF DEFAULT IS APPROPRIATELY ENTERED AGAINST A DEFENDANT WHO FAILS TO PLEAD OR DEFEND AS REQUIRED BY THE RULES. NRCAPS(a). GENERALLY, ENTRY OF DEFAULT IS A MINISTERIAL FUNCTION CARRIED OUT BY THE CLERK OF THE COURT UPON REQUEST OF THE PARTY SEEKING AFFIRMATIVE RELIEF, AND A DETERMINATION BY THE CLERK THAT THE ENTRY IS FOUNDED. OPACO LUMBER & REALTY CO. v. PHIPPS, 75 Nev. 312, 314, 346 P.2d 95, 96 (1959).

BECAUSE THE COURT, NOT THE CLERK, HAS THE AUTHORITY TO PASS UPON THE VALIDITY OF ANY SUBMITTED INSTRUMENT, AND UPON THE

1. REPRESENTS THE STATE OF NEVADA, AND ITS EMPLOYEES. REED WAS EMPLOYED AT THE TIME OF PLAINTIFF'S 1983 CLAIMS BY THE STATE OF NEVADA, ET AL NDOC. NRS 41.0338, 41.0339.

RIGHT OF A PERSON TO FILE SUCH AN INSTRUMENT, THE COURT RETAINS THE AUTHORITY TO DIRECT ENTRY OF DEFAULT IN THIS CASE. BOWMAN V. EIGHTH JUDICIAL DISTRICT COURT, 102 Nev. 474, 479, 728 P.2d 433, 435 (1986).

C. ACCEPTANCE OF SERVICE.

THE ATTORNEY GENERAL'S OFFICE REPRESENTS MANAGEMENT PERSONNEL WITH THE RANK OF SERGEANT AND ABOVE TWO YEARS BEYOND THEIR SERVICE AS AN EMPLOYEE OF THE STATE OF NEVADA. THE TWO YEAR TIMING IS BASED UPON THE STATUTE OF LIMITATIONS OF NRS 11.190, AS TO ANY ACTIONS ALLEGED DURING THE COURSE OF THEIR EMPLOYMENT. DEFENDANT REED AT ALL RELEVANT TIMES WAS EMPLOYED BY THE STATE OF NEVADA BY REE NICE, AS A RANKING DEPUTY DIRECTOR. SEE ALSO, NICE'S ADMINISTRATIVE REGULATION ("AR") 342, "EMPLOYEE REPRESENTATION" BY THE ATTORNEY GENERAL'S OFFICE, EXHIBIT 01.

SECONDLY, THE ATTORNEY GENERAL'S OFFICE EMPLOYS AN AUTHORIZED AGENT TO ACCEPT SERVICE ON BEHALF OF THE STATE OF NEVADA, AND ITS EMPLOYEES. THIS AUTHORIZED AGENT APPEARS ON THE ACCEPTANCE OF SERVICE ON BEHALF OF DEFENDANT REED, ON THE PROCESS OF SERVICE'S "PROOF OF SERVICE" ON FILE WITH THE CLERK'S OFFICE, AND ATTACHED HERETO AS EXHIBIT 02.

LASTLY, AS TO THE ACCEPTANCE OF SERVICE, AND GENERAL AND SPECIAL APPEARANCES, FRITZ HANSEN A/S V. EIGHTH JUDICIAL DISTRICT COURT, 116 Nev. 650, 6 P.3d 982 (2000). RESPECTFULLY, PLAINTIFF PRESENTS THE OPINION OF THE SISTER COURT, SEVENTH JUDICIAL DISTRICT COURT, WHITE PINE COUNTY, OF THE HONORABLE JAIL. PATEZ, CLINTON V. STATE OF NEVADA, ET AL., CASE NO. CF-1104018, July 18, 2012. EXHIBIT 03 (APPEARANCE AND ENTRY OF DEFAULT BY THE COURT), I.E., P.22, FN. 58, IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER FOR THE ENTRY OF DEFAULT. EXHIBIT 03.

III. NRCPS 7(b)(1). MOTION PRACTICE.

PURSUANT TO NRCPS 7(b)(1), AND PLAINTIFF'S REQUEST UNDER NRCPS(b)(2), AN APPLICATION TO THE COURT FOR AN ORDER SHALL BE BY NOTICE WHICH, UNLESS MADE DURING A HEARING OR TRIAL, SHALL BE MADE IN WRITING, SHALL STATE WITH PARTICULARITY THE GROUNDS THEREFOR, AND SHALL SET FORTH THE RELIEF OR ORDER SOUGHT. THIS REQUIREMENT HAS BEEN FILLED CARRING PLAINTIFF'S WRITTEN REQUEST FOR AN ORDER AND SUPPORTING LEGAL MEMORANDUM, ON THE BASIS OF THE RELIEF SOUGHT.

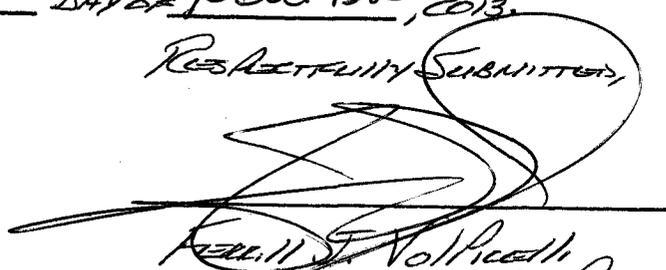
IV. CONCLUSION.

BASED UPON THE FOREGOING LEGAL MEMORANDUM, PLAINTIFF RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT ISSUES AN ORDER DIRECTING THE ENTRY OF DEFAULT, PURSUANT TO NRCPS(b)(2), AGAINST DEFENDANT DEBORAH REED.

WHEREFORE, PLAINTIFF PRAYS THAT THIS COURT GRANT THE RELIEF REQUESTED HEREIN. THANK YOU.

DATED THIS 8TH DAY OF NOVEMBER, 2013.

RESPECTFULLY SUBMITTED,



KELLY H. VOLPICELLI
PLAINTIFF, IN PROPER PERSON

NDOC # 79565
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NEVADA 89419

ASSISTED BY, ON REQUEST OF
PLAINTIFF: SEE ATTORNEY IMMEDIATE
RECOGNITION FOR LEGAL ASSISTANCE
BY INMATES AND GLE OF E. LUSH, JR.
RSD, 9/27/12 ATTORNEY CONF. 04.

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