

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

PETER M. SOUTHWORTH, )  
Petitioner, )  
 )  
vs. )  
 )  
THE EIGHTH JUDICIAL DISTRICT )  
COURT OF THE STATE OF )  
NEVADA IN AND FOR THE )  
COUNTY OF CLARK, AND THE )  
HONORABLE ROB BARE, )  
DISTRICT COURT JUDGE, )  
 )  
Respondents, )  
 )  
AND )  
 )  
LAS VEGAS PAVING )  
CORPORATION, )  
 )  
Real Parties in Interest. )  
\_\_\_\_\_ )

Eighth Judicial District  
Court Case No. A-14-703690-G  
No. 73655 Electronically Filed  
Oct 18 2017 08:45 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**REAL PARTY IN INTEREST'S APPENDIX**

TO: The Supreme Court of the State of Nevada:

COMES NOW, Real Party in Interest, LAS VEGAS PAVING CORPORATION,  
and hereby respectfully submits this Appendix in support of his *Petition for Writ of*  
///

*Mandamus or Prohibition.*

DATED this 17th day of October, 2017.

EMERSON LAW GROUP



PHILLIP R. EMERSON, ESQ.

Nevada Bar No. 5940

1055 Whitney Ranch Drive, Suite 120

Henderson, Nevada 89014

*Attorney for Respondent,*

*Las Vegas Paving Corporation*

<b>No.</b>	<b>Document</b>	<b>Date Filed</b>	<b>Page No.</b>
1	Small Claims Complaint	8/17/15	RA000001 — RA000003
2	Referee's Findings of Fact, Conclusions of Law, and Recommendations	12/2/16	RA000004 — RA000005
3	Formal Objection Notice	12/7/16	RA000006
4	Order: Small Claims Formal Objection Hearing	2/7/17	RA000007
5	Small Claims Judgment	3/22/17	RA000008 — RA000012
6	Notice of Appeal	4/7/17	RA000013 — RA000019
7	Respondent's (Petitioner's) Motion to Dismiss Appeal	4/24/17	RA000020 — RA000025
8	Appellant/Defendant's (Real Party in Interest) Opposition to Plaintiff's (Petitioner's) Motion to Dismiss Appeal	5/19/17	RA000026 — RA000041
9	Respondent's (Petitioner) Reply to Appellant's (Real Party in Interest) Opposition to Respondent's Motion to Dismiss Appeal	5/24/17	RA000042 — RA000057
10	Appellant/Defendant's (Real Party in Interest) Supplement to Opposition to Plaintiff's Motion to Dismiss Appeal	6/1/17	RA000058 — RA000073
11	Errata to Appellant/Defendant's (Real Party in Interest) Supplement to Opposition to Plaintiff's (Petitioner's) Motion to Dismiss Appeal	6/7/17	RA000074 — RA000083
12	Respondent's (Petitioner) Reply to Appellant's (Real Party in Interest) Supplement to Opposition to Respondent's Motion to Dismiss Appeal	6/13/17	RA000084 — RA000099

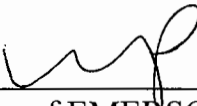
13	Eighth Judicial District Court Minute Order Denying Motion to Dismiss Appeal	6/26/17	RA000100 – RA000101
14	Notice of Entry of Order Denying Motion to Dismiss Appeal	8/11/17	RA000102 – RA000106

**CERTIFICATE OF MAILING AND FACSIMILE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that service of the foregoing, **REAL PARTY IN INTEREST'S ANSWER BRIEF**, was made this 17<sup>th</sup> day of October, 2017, via facsimile, pursuant to EDCR Rule 7.26(a), and by depositing a true and correct copy of the same for first class mailing at Las Vegas, Nevada, addressed as follows:

PETER M. SOUTHWORTH  
406 S Desert Candles Street  
Ridgecrest, California 93555  
(760) 608-3986  
No Facsimile  
peter.m.southworth@gmail.com  
Petitioner, In Proper Person

Honorable Rob Bare  
Eighth Judicial District Court, Department 32  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
(702) 671-4323 Facsimile  
Respondent District Court Judge

  
\_\_\_\_\_  
An Employee of EMERSON LAW GROUP

**EXHIBIT "1"**

RECEIVED

JUL 19 2016

LAS VEGAS PAVING

12<sup>30</sup> pm KL

<b>JUSTICE COURT, LAS VEGAS TOWNSHIP</b> <b>Clark County, Nevada</b>		Case No. <u>15A002996</u> Department No. <u>7</u>	<b>SMALL CLAIMS COMPLAINT</b>
Name and Address of Plaintiff(s): Peter M. Southworth 406 S Desert Candles St Ridgecrest, CA 93555		(Plaintiff's(s) Email Address) <u>peter.m.southworth@gmail.com</u> Plaintiff's(s) Telephone Number <u>(760) 608-3986</u>	
(Plaintiff's(s) Telephone Number) <u>(760) 608-3986</u>			
<b>VERSUS</b>			
Name and Address of Defendant(s): Las Vegas Paving Corporation 4420 S Decatur Blvd Las Vegas, NV 89103			
(Defendant's(s) Telephone Number) <u>(702) 251-5800</u>			


  

STATE OF NEVADA     )  
 COUNTY OF CLARK    )

I, Peter M. Southworth, STATE THAT Defendant(s) owes Plaintiff(s) the sum of \$ 7500.00  
 for damages arising from a traffic incident on 19 AUG 2012 caused by Las Vegas Paving Corporation. The \$7500.00 sum is comprised of the following: a hotel stay, 2 one-way rental cars, gasoline, 2 meals, loss of wages, driving time, the NHP accident report, a Carfax report, the post-repair diminished value of my vehicle, and the value of a rental car during repairs. These costs are directly attributable to the incident referenced above.

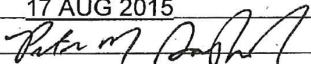
that a letter demanding payment has been sent; that Defendant(s) refuses to pay; and that Defendant(s) either currently resides, works or does business in the Las Vegas Township, County of Clark, State of Nevada.

\* \* \* \* \*

(Signature)  (Dated): 17 AUG 2015

Print Name: Peter M. Southworth Attorney for Pro Se

**You MUST have this affidavit notarized (block on the left) or sign the unsworn declaration per NRS 53.045 (block on the right):**

SUBSCRIBED AND SWORN to before me this _____ day _____, 20____.	<b>OR: UNSWORN DECLARATION: Per NRS 53.045</b> "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct." (Date): <u>17 AUG 2015</u> (Signature): <u></u> (Typed or printed name): <u>Peter M. Southworth</u>
---	--

**The Plaintiff(s) must serve three (3) documents: (Small Claims Complaint, Instructions to Plaintiff or Defendant, and Small Claims Answer), on each Defendant.**

**To the above-named DEFENDANT(S):**  
**A SMALL CLAIMS ACTION HAS BEEN COMMENCED AGAINST YOU!**  
 YOU ARE DIRECTED TO E-FILE (electronically file), with the Las Vegas Justice Court Clerk's Office, AN ANSWER WITHIN TWENTY (20) CALENDAR DAYS from the date of service of the Complaint. Use the attached ANSWER form. You must mail a copy of your Answer to Plaintiff(s) immediately after E-Filing your Answer with the Las Vegas Justice Court. Your failure to Answer (respond to) the Complaint within 20 calendar days may result in the Plaintiff(s) filing a Motion for Default Judgment against you. This means the Referee or Judge may grant a Judgment for the Plaintiff(s) based on the claims/allegations in the Complaint and without considering your possible defense(s) or explanation(s)

LVJCVL Form -15 Revised 6/14:

Pursuant to JCRCP 12(a)(3), the State of Nevada or any political subdivision thereof, and any officer, employee, board or commission member of the State of Nevada or political subdivision, and any state legislator shall file an answer or other responsive pleading within 45 days after their respective dates of service

RA000001

<b>JUSTICE COURT, LAS VEGAS TOWNSHIP</b> <b>Clark County, Nevada</b> <hr/> <small>Name of Plaintiff(s) and Address(es)</small> Peter M. Southworth 406 S Desert Candles St Ridgecrest, CA 93555 <hr/> <small>(Plaintiff's(s) Telephone Number:</small> <hr/> <div style="text-align: center;"><b>VERSUS</b></div> <hr/> <small>Name of Defendant(s) and Address(es)</small> Las Vegas Paving Corporation 4420 S Decatur Blvd Las Vegas, NV 89103 <hr/> <small>(Defendant's(s) Telephone Number:</small> <hr/>	<div style="border-bottom: 1px solid black; margin-bottom: 10px;">             Case No. <span style="float: right;">15A002996</span> </div> <div style="border-bottom: 1px solid black; margin-bottom: 10px;">             Department No.           </div> <div style="text-align: center; font-weight: bold; font-size: 1.2em;">             SMALL CLAIMS ANSWER           </div>
---	--

*There is no statutory filing fee for filing a Small Claims Answer. Each Defendant must file his or her own Answer and must pay any applicable E-Filing fee imposed by the Court*

*PLEASE TYPE OR PRINT LEGIBLY.*

Defendant's Answer to the Small Claims Complaint:

- |  |                                     |     |                          |    |
|--|-------------------------------------|-----|--------------------------|----|
| 1. Are you currently a resident of the Las Vegas Township?           | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 2. Do you currently do business in the Las Vegas Township?           | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| 3. Are you currently employed within the Las Vegas Township? [ ] Yes | <input checked="" type="checkbox"/> | Yes | <input type="checkbox"/> | No |

**Please check the applicable box below.**

- ☐ I agree that I owe the amount of money claimed by the Plaintiff(s).
- ☐ I do not agree that I owe the amount of money claimed by the Plaintiff(s), for the following reasons:

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☐ Check here if you need more space. Add additional sheet(s) of paper and attach to this form with "SMALL CLAIMS ANSWER" on top.

**TO DEFENDANT: Your original Answer must be filed with the Las Vegas Justice Court Clerk's Office and a copy provided to the Plaintiff(s) within 20 calendar days of service of the Complaint.** Your failure to answer (respond to) the Complaint within 20 calendar days from service of the Complaint, may result in the Plaintiff filing a Motion for Default Judgment against you. This means the Referee or Judge may grant a Judgment for the Plaintiff based on the claims/allegations in the Complaint without considering your possible defense(s) or explanation(s).

You may electronically file your Answer, (\$2.50 charge) at: <http://efilenv.com>, or you may come to the Court and electronically file, for free, the original copy of your Answer at either:

Self-Help Center  
 Regional Justice Center, 1<sup>st</sup> Floor  
 200 Lewis Avenue, Las Vegas, NV 89155-2511

Justice Court Clerks' Office, Las Vegas Township  
 Regional Justice Center, 2<sup>nd</sup> Floor  
 200 Lewis Avenue, Las Vegas, NV 89155-2511

**Please check the applicable box below.**

☐ In conjunction with the filing of the Answer, I am mailing a copy of the Answer to the Plaintiff(s) at the following address: \_\_\_\_\_

(Printed/Typed Name of Answering Defendant) : _____ (Agent's/Representative's Name if a Business): _____ (Defendant's Signature) : _____ (Date): _____ Answering Defendant's Address : _____ Phone Number: _____
---

*Both the Plaintiff(s) and Defendant(s) will be notified by mail of the date and time that the Court has scheduled this case for mandatory Mediation, unless the case is exempted from Mediation.*

**You MUST have this affidavit notarized** (block on the left) **or sign the unsworn declaration per NRS 53.045** (block on the right) :

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

NOTARY PUBLIC  
 in and for the  
 County of \_\_\_\_\_, State of \_\_\_\_\_.

**OR UNSWORN DECLARATION: Per NRS 53.045**

"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

(Signature) : \_\_\_\_\_  
 (Date) : \_\_\_\_\_



## INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

### Read Carefully

1. **Before filing a Small Claims Complaint**, the PLAINTIFF must do the following:

- Send a demand letter, with return receipt requested, to the DEFENDANT. The demand letter must instruct the DEFENDANT to pay the amount due within 10 days of the date that the letter is sent, or the PLAINTIFF will file a Small Claims case against the DEFENDANT.
- Wait at least 10 days from the date the demand letter is sent before filing a Small Claims case against the DEFENDANT.
- Include a copy of the demand letter along with the signed return receipt (as proof of mailing) with the Small Claims Complaint when the Small Claims case is filed against the DEFENDANT.

**If the PLAINTIFF does not follow the steps above,** including filing a copy of the demand letter and proof of mailing, or waiting 10 days from the date the demand letter is sent before filing a Small Claims case, the Referee or Judge may dismiss the Small Claims case and/or impose another sanction.

2. The PLAINTIFF must file a Small Claims action in the township where the DEFENDANT currently resides, works, or does business.

3. The PLAINTIFF cannot sue in Small Claims court for more than \$7,500.00, excluding interest and costs. Payment by the losing party of the attorney's fees of the winning party is not allowed except in cases involving shoplifting.

4. The PLAINTIFF must show the complete name and address of the DEFENDANT in the caption (Name & Address of Defendant(s)) to ensure service on the DEFENDANT. If there are two DEFENDANTS and they reside at different addresses, the PLAINTIFF must include both addresses.

5. The PLAINTIFF may serve the DEFENDANT by licensed private process server, a disinterested third party, or the Constable. The PLAINTIFF, himself or herself, may not serve the Small Claims Complaint on the DEFENDANT. The fully completed Affidavit of Service Form must be filed immediately after the Complaint is served.

6. If a Small Claims Complaint is not served for one year after it is filed, the Judge or Clerk may dismiss the case without prejudice (this means the case may be refiled within the statute of limitations for such cases, but a new filing fee would be required).

7. The PLAINTIFF must pay court costs at the time of filing this Complaint. If a Plaintiff cannot afford the costs, he or she may apply for a fee waiver.

8. The DEFENDANT may electronically file the Answer, no later than 20 calendar days from the date of service of the Complaint, making any defense to the claim. The Defendant may electronically file the Answer,

(\$2.50 charge using credit or debit card)

at: <http://efilnv.com>, or the Defendant may come to the Court and electronically file, for free, the original copy of the Answer. A copy of this Answer **must be mailed by U.S. Mail, first-class postage, to PLAINTIFF immediately after E-Filing the Answer with the Las Vegas Justice Court.**

9. If an Answer is filed, the Court will schedule the case for mandatory mediation and will notify all parties of the date, time, and location by mail. All parties, not otherwise exempted from mediation, must appear for mandatory mediation. If the DEFENDANT fails to appear, a mediation judgment may be entered against the DEFENDANT.

10. Standard forms are supplied in order to expedite the handling of Small Claims cases. The forms are designed to cover the most common claims but are not specifically designed for any individual case.

11. If DEFENDANT believes the case should be dismissed, DEFENDANT may petition the Court to dismiss the case and must explain the reasons for the request. A Motion to Dismiss form is available for use. It is designed to cover the most common reasons for dismissal but is not specifically designed for any individual case.

12. Hearings in Small Claims cases are informal and are designed to promote fair and speedy justice. The PLAINTIFF and DEFENDANT may offer evidence, including witnesses, to support their arguments.

13. If English is not your first language and you would like someone to interpret for you during your court appearance, you are encouraged to use a volunteer language interpreter. You may ask a friend, relative, or coworker to come to court to interpret for you. Bringing your own interpreter with you is both effective and efficient and will allow you to better understand the proceedings.

14. If a court-appointed interpreter is needed for a party who does not speak English, or for a party with a communications disability, that party must file a written motion to request an interpreter, and the compensation for that interpreter shall be paid as provided by law.

**15. The Las Vegas Justice Court Clerks can neither give legal advice nor assist in completing Court forms. The staff of the Self-Help Center, located on the 1<sup>st</sup> floor of the Regional Justice Center, can assist in providing information and forms for people who are representing themselves in Court. If you need more detailed assistance, you should consult an attorney.**

16. Additional Small Claims information is available on the Court's website at: [http://www.lasvegasjusticecourt.us/divisions/small\\_claims/index.php](http://www.lasvegasjusticecourt.us/divisions/small_claims/index.php).

**EXHIBIT "2"**

**JUSTICE COURT, LAS VEGAS TOWNSHIP**

**Clark County Nevada**

)  
)  
) CASE NO.: **15A002996**  
)  
) DEPT NO.: **07**  
)  
)  
)  
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)

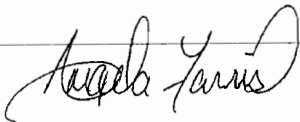
**Peter M Southworth, Plaintiff(s)**

**vs.**

**Las Vegas Paving Corporation, Defendant(s)**

**Certificate of Mailing**

I, Angela Farris, hereby certify that I am an employee of the Las Vegas Justice Court and that on **December 05, 2016** I deposited for mailing a true and correct copy of the foregoing, **Referee's Findings of Fact, Conclusions of Law and Recommendations** in the United States Post Office, first class, postage prepaid, addressed to the following at the below address:



\_\_\_\_\_  
**COURT CLERK**

\_\_\_\_\_  
**BIRK, ANNE-MARIE**

1055 Whitney Ranch Dr #120  
Henderson, NV 89014

**RECEIVED DEC 07 2016**

RA000004

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

15A002996

Peter M Southworth, Plaintiff(s)  
vs.  
Las Vegas Paving Corporation,  
Defendant(s)

REFEREE'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDATIONS

After hearing the above matter, this referee submits the following:

FINDINGS OF FACT: *On defense stipulated that they were liable for traffic incident. Plaintiff provided ample evidence of damages for rental, food, lost wages, gas, hotel, & reports.*

CONCLUSIONS OF LAW: *Case law does not allow for recovery of diminished value + potential rental car repairs for a person making significant income. Defense did not prove by showing Plaintiff's hourly wage that he could afford a rental, so the Court will mitigate some of the rental, but not all.*

REFEREE'S RECOMMENDATIONS:

- ☒ Plaintiff should be awarded 2,572 in damages and — in costs.  
☐ Plaintiff should be awarded nothing against Defendant.  
☐ Confession ☐ Default ☐ Dismissed With Prejudice ☐ Dismissed Without Prejudice  
☐ Plaintiff should be awarded                      in damages and                      in costs on Defendant's Counterclaim (if applicable)  
☐ Defendant should be awarded                      in damages and                      in costs on Defendant's Counterclaim (if applicable)  
☐ Defendant should be awarded nothing on Defendant's Counterclaim (if applicable).  
☐ Other:

DATED:                      Referee: *[Signature]*  
This form was ☐ HANDED TO ☒ MAILED TO ☒ THE PARTIES ☐ THE FRONT COUNTER on 12/5/16 by *[Signature]*

NOTICE

If either Plaintiff or Defendant has failed to appear for the scheduled court date, the party that failed to appear may not file a formal objection. Instead, relief must be sought from the referee who presided on that date.

If both the Plaintiff and Defendant have appeared for hearing before the referee, either party may object to the referee's findings of fact, conclusions of law, and recommendations by filing a formal objection within **5 days** after the receipt of this document. Because of this rule, two outcomes are possible.

- (1) A timely objection can be filed, and a justice of the peace will review the matter by a trial de novo before issuing a final judgment.
- OR
- (2) If a timely objection is not filed, the Court will automatically accept these findings, and this referee's decision will become a judgment. At that time, copies of the final judgment can be obtained at the Justice Court Front Counter and the case can be appealed to District Court. However, a notice of appeal must be filed within **5 days** from the entry of the judgment. (Detailed information relating to small claims appeals is contained in the small claims information packet).

PLEASE NOTE THAT THIS REFEREE'S DECISION DOES NOT BIND THE PARTIES AND IS NOT ENFORCEABLE IN ANY MANNER UNTIL THE FORMAL OBJECTION PERIOD HAS EXPIRED.

**EXHIBIT "3"**

**Justice Court, Las Vegas Township**  
**CLARK COUNTY, NEVADA**

Peter M. Southworth )

PLAINTIFF )

-VS- )

Las Vegas Paving Corp. )

DEFENDANT )

CASE NO: 15A002996

**FORMAL OBJECTION NOTICE**

The Plaintiff, Peter M. Southworth, In the above entitled matter formally objects to the decision  
entered on the 2nd Day of December, 20 16 In the above entitled Court and requests  
A new Trial.

DATE: 07-DEC-2016

Per NRS 53.045, "I declare under penalty of perjury that the foregoing is true and correct."

Peter M. Southworth  
Name

406 S Desert Candles St

(Type Address)

Ridgecrest, CA 93555

**CERTIFICATION OF MAILING**

The Undersigned certifies that on the 7th Day of December, 20 16, a copy of the foregoing Notice

Of Formal Objection was mailed to Attorney for Las Vegas Paving Corp. at 1055 Whitney Ranch Dr.,

Suite 120, Henderson, NV 89014 By depositing a copy in the United States Mail in an addressed sealed envelope,

Postage prepaid.

DATE: 07-DEC-2016

Per NRS 53.045, "I declare under penalty of perjury that the foregoing is true and correct."

Peter M. Southworth  
Name

**TO BE COMPLETED BY COURT STAFF ONLY**

Courtroom No: \_\_\_\_\_ At the hour of \_\_\_\_\_ On \_\_\_\_\_, 20 \_\_\_\_\_

**RECEIVED DEC 09 2016**

**EXHIBIT "4"**

**JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA**

**Peter M Southworth, Plaintiff(s)  
vs.  
Las Vegas Paving Corporation,  
Defendant(s)**

)  
) **CASE #: 15A002996**

)  
) **JC Department 4**

)  
) **SMALL CLAIMS  
NOTICE TO APPEAR**

YOU ARE HEREBY NOTICED TO APPEAR ON THE ABOVE CASE IN:

**JUSTICE COURT, LAS VEGAS TOWNSHIP  
200 LEWIS AVE, LAS VEGAS, NV 89155**

**DATE:**

03/17/2017

**TIME:**

10:00 AM

**LOCATION:**

RJC Courtroom 7A

**REFERENCE TO:** Small Claims Individual - Formal Objection Hearing - CONTINUED PER THE REQUEST OF THE DEFENDANT

You are encouraged to arrive at the courthouse at least 30 minutes prior to your scheduled hearing failure to appear may result in the court taking action against you. Appropriate courtroom attire and shoes are required. No shorts, halter tops, tank tops, food or drink are permitted.

If you are non-English speaking, you may request a court interpreter by contacting the Interpreters Office at (702) 671-4578. Please request an interpreter as soon as you receive your Notice to Appear to make sure that one will be available on the scheduled date. There will be a charge for the interpreter. If you prefer to bring your own interpreter, they need to be a disinterested third party. No spouses or relatives may interpret for the parties.

Si usted no habla Inglés, puede solicitar un intérprete de la corte contactando con la Oficina de Intérpretes al teléfono (702) 671-4578. Por favor solicite un intérprete en cuanto usted reciba su notificación de comparecencia para asegurarse de que uno va a estar disponible en la fecha programada. Habrá un cargo por el intérprete. Si prefiere llevar su propio intérprete, necesita ser una persona imparcial.

Please ensure you have two copies of exhibits; one copy for the opposing party and one copy for the Judge. Originals should always be kept by you and brought to court in case the Judge wants to refer to the original during court.

Court Reporter are not available for Small Claims trials. Parties must arrange their own Court Reporter if they want a transcript.

Please arrive to court at 12:30 p.m. for check in. If all parties are available and have been checked in prior to 1:00 p.m., there is a possibility the Judge will hear the case earlier.

**ANNE-MARIE BIRK  
1055 Whitney Ranch Dr #120  
Hendersson NV 89014**

**RECEIVED FEB 06 2017**

RA000007



**EXHIBIT "5"**

**JUSTICE COURT, LAS VEGAS TOWNSHIP**Clark County Nevada

**Peter M Southworth, Plaintiff(s)**  
**vs.**  
**Las Vegas Paving Corporation, Defendant(s)**

CASE NO.: **15A002996**DEPT NO.: **04****Certificate of Mailing**

I, Eva Cervantes, hereby certify that I am an employee of the Las Vegas Justice Court and that on **March 24, 2017** I deposited for mailing a true and correct copy of the foregoing, **Small Claims Judgment** in the United States Post Office, first class, postage prepaid, addressed to the following at the below address:




---

**COURT CLERK**
**BIRK, ANNE-MARIE**

1055 Whitney Ranch Dr #120  
Hendersson, NV 89014

BIRK

RA000008

**JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA**

Southworth, Peter M.

Plaintiff,

v.

Las Vegas Paving Corporation

Defendant.

Case No. 15A002996

Dept. No. JC IV

**SMALL CLAIMS JUDGMENT**

After hearing the above matter, the Court finds the following:

**FINDINGS OF FACT:**

On August 19, 2012, Mr. Southworth drove his BMW M3 from Las Vegas to Southern California and at approximately mile marker 21 (which was reduced to a single lane) Las Vegas Paving caused a foreign object of some size, weight, and heft to cause significant damage to Mr. Southworth's vehicle. The vehicle was drivable but not at highway speeds. This incident forced Mr. Southworth to bring the vehicle back to Las Vegas for repair. Mr. Southworth had to spend the night in Las Vegas and undergo considerable inconvenience in going back and forth while dealing with the damage to his vehicle.

It is worth noting that Mr. Southworth's insurance paid for the actual repairs to the vehicle in the sum of \$8,791, which was subrogated from Las Vegas Paving's insurance carrier. Therefore, Mr. Southworth does not seek the actual damage to his car, but rather reimbursement for a number of different items and expenses incurred concurrent to the accident.

The following expenses are not in dispute, and Defendant does not dispute liability for them.

<u>Expense</u>	<u>Cost</u>
Hotel	\$172.48
Rental Car from Las Vegas	\$150.60
Gasoline	\$112.04
Meals	\$ 65.13
Rental Car to Las Vegas	\$179.25
Nevada Highway Report	\$10.00

The expenses in dispute are:

<u>Expense</u>	<u>Cost</u>
Loss of wages	\$340.65
Driving Time	\$302.80
Carfax Report	\$39.99
Diminished Value to Plaintiff's Car	\$4275.00
Rental car value or loss of use	\$4,859.77

## **1.0 CONCLUSIONS OF LAW:**

### **1.1 Calculation of Damages**

"It is widely recognized, however, that if the insurer has paid only part of the loss, both the insured and insurer have substantive rights against the tortfeasor which qualify them as real parties in interest." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 367, 252 P.3d 206, 207 (2011). While Mr. Southworth was compensated for the damage to his car, he does have other damages available to him in order to make him whole, as if the negligent act had not occurred.

#### **1.1.2 Loss of wages**

In Nevada, wages are defined as the amount which an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time. NRS 608.012.

Mr. Southworth did not actually lose wages. Mr. Southworth was able to take vacation time for which he was paid. However, Mr. Southworth testified that in taking this time off, he lost vacation time that he would have taken in the future. It would be absurd to require Mr. Southworth to request an unpaid day off for the sole purpose of maintaining his right to lost wages, because Mr. Southworth in fact lost the equivalent of wages: earned vacation time. Paid time off is earned by an employee, per the amount that an employer agrees to pay an employee for the time the employee worked.

Therefore, it is legally not important whether he took the day off without pay or took the day off with pay but lost a vacation day in the bargain. Had Las Vegas Paving not been negligent, Mr. Southworth would not have had to take the day off from work. Therefore, I find that he should be reimbursed for this loss of wages.

#### **1.1.3 Driving Time**

Mr. Southworth testified that he was charging \$302.80 for his time in driving to retrieve his vehicle. He comes to this amount by multiplying his normal hourly wage by the time spent transporting the vehicle. I might not normally find that he should be paid for engaging in this activity in itself. However, Southworth testified and provided credible evidence that had he paid

for his car to be transported, the standard price for this from Direct Express Auto Transport would have been \$330, and it would have taken more time. Accordingly, by providing the service himself, he saved the defendant \$27.20. Accordingly, I find that Mr. Southworth is properly owed the \$302.80.

#### **1.1.4 Diminished Value**

The Carfax Report and diminished value to his vehicle fall under one theory: the diminished value of the vehicle. The Defense provided citation to the administrative code stating that insurance companies were not required to pay for diminished value, however, that was a citation to the insurance code. In the case of *Dugan v. Gotsopoulos*, 117 Nev. 285, 22 P.3d 205 (2001), the Nevada Supreme court suggested that diminished value is an available remedy in Nevada.

The Court said that the owner of the vehicle could introduce evidence of fair market value including market "tabulations, lists, directories or other published compilations generally used and relied upon by the public or persons in particular occupations." *Id.* at 288. The Court ruled that the trial court abused its discretion by failing to permit Dugan to present evidence about both the value of her car before and after the accident. *Id.* at 290. Thus, diminished value is properly awarded to the victim of another party's negligence.

Mr. Southworth provided credible evidence of the diminished value. He provided a printout from DV assess, a website that provided a report that his loss of market value of his vehicle be \$4,275 and a printout from Desert BMW of Las Vegas that his car's actual value was \$35,000 and that the CarFax report diminished the value by \$5,000. He also provided Blue Book estimates from the Kelley Blue Book, Auto Nation Smart Pricing and his own personal testimony. While Mr. Southworth did not provide any basis for his personal testimony to be given any weight, the documentary evidence that he gave sustains (at least) his claim for \$4,275 in diminished value.

#### **1.1.5 Loss of Use Value**

Mr. Southworth claims that although he did not rent a vehicle during the time that his car was out of commission, he sustained significant inconvenience. Again, relying on *Dugan v. Gotsopoulos*, 117 Nev. 285, 22 P.3d 205 (2001), Mr. Southworth claimed that the law supports his position. Las Vegas Paving argues that a Plaintiff can only collect loss of use if one does not rent a vehicle *and* that failure to rent a replacement vehicle is due to the Plaintiff's financial inability to do so.

Mr. Southworth did not testify as to his income but I do not find strong support in the *Gotsopolos* case that this is a remedy only available to those who are unable to afford to rent a replacement vehicle. *Gotsopolos* does say that, "*A party need not actually rent a vehicle to recover loss of use damages if that party is financially unable to rent a substitute vehicle.*" However it does not seem to limit its application or have a means test. This suggests to me that the *Gotsopolos* court specifically excused a party from being forced to either rent a replacement vehicle or forego the ability to recover. Just because the *Gotsopolos* court dealt with an impecunious plaintiff does not mean the *Gotsopolos* rule is limited to the poverty stricken. I read the *Gotsopolos* case to stand for the proposition that one need not actually rent a vehicle to recover for loss of use of one's own vehicle. Mr. Southworth was subjected to significant inconvenience due to the loss of his vehicle, and he should not have been forced to rent one in order to recover. As quoted in the *Gotsopolos* case, "*The owner has suffered compensable inconvenience and deprivation of the right to possess*

and use her chattel whether or not a substitute was obtained." *Id.* at 206. There is no means test requirement in *Gotsopolos*.

That said even if there were a means test, which I could apply, I do not know that Mr. Southworth would not qualify for it. While he clearly earns a good income, he has significant expenses and I do not believe it would be proper to subject him to a quasi-bankruptcy interrogation in order to determine whether he should recover a remedy that *Gotsopolos* grants him.

Mr. Southworth provided ample evidence of what a rental car would have cost for that period of time; a BMW comparable to his own would have cost \$4,859.77. That said, this would have been a brand-new BMW, although it would not have been the more expensive and sporty M3 model to which he is accustomed. He also provided evidence of a perfectly adequate economy car that he could have driven during this period of time. That amount was \$3,224.53. Accordingly, I believe that somewhere between the average of the two is an adequate compensation to Mr. Southworth for the lack of use of his vehicle and therefore he should be compensated in the amount of \$4,059.

## 2.0 Damages

I award Mr. Southworth \$9706.94 in damages plus court costs of \$129, for a total of \$9835.94.

### JUDGMENT:

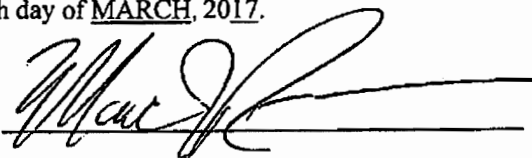
#### On Plaintiff's Claim(s)

#### On Defendant's Counterclaim(s) (if applicable)

<p>X Plaintiff is awarded <u>\$9706.94</u> in damages from Defendant <u>Las Vegas Paving.</u></p> <p>X Plaintiff is awarded <u>\$129.00</u> in costs from Defendant <u>Las Vegas Paving.</u></p>	
--	--

DATED this 20th day of MARCH, 2017.

Marc J. Randazza, PRO TEMPORE:



**EXHIBIT "6"**

**EMERSON LAW GROUP**

ATTORNEYS AT LAW  
1055 WHITNEY RANCH DRIVE, SUITE 120  
HENDERSON, NEVADA 89014  
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 **PHILLIP R. EMERSON, ESQ.**  
Nevada Bar No. 5940  
2 **EMERSON LAW GROUP**  
1055 Whitney Ranch Drive, Suite 120  
3 Henderson, Nevada 89014  
receptionist@emersonlawgroup.com  
4 Attorney for Defendant,  
5 **LAS VEGAS PAVING CORPORATION**

6 **JUSTICE COURT**  
7 **LAS VEGAS TOWNSHIP**

8 PETER SOUTHWORTH, ) Case No. 15A002996  
9 Plaintiff, ) Dept No. LVJC VII  
10 vs. )  
11 LAS VEGAS PAVING CORPORATION, )  
12 Defendant. )  
13 )  
14 )

15 **NOTICE OF APPEAL**

16 Notice is hereby given that Defendant LAS VEGAS PAVING  
17 CORPORATION appeals to the District Court from the following  
18 judgments and orders:

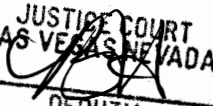
19 1. Small Claims Judgment entered on March 22, 2016  
20 (attached as Exhibit 1)

21 Defendant also appeals from all other rulings and orders  
22 made final and appealable by the foregoing.

23 The basis for the appeal is the fact that Nevada does not  
24 recognize diminished value or loss of use value. The Court's  
25 rulings was based on a misreading of Dugan v. Gotsopoulos, 117  
26 Nev. 285, 22 P.3d 203 (2001). Dugan does not address diminished  
27 value and only provides for loss of use in the event that a  
28

**RECEIVED** APR 10 2017

RA000013

**FILED**  
2017 APR -7 A 10:05  
JUSTICE COURT  
LAS VEGAS, NEVADA  
BY  DEPUTY



**EMERSON LAW GROUP**

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 Plaintiff cannot afford a rental car. Plaintiff was offered but  
2 declined a rental car and the vehicle was restored to pre-  
3 accident condition thus eliminating both loss of use and  
4 diminished value claims.

5 In addition to the above, there were also several procedural  
6 missteps. Plaintiff repeatedly referenced a "brief" that had been  
7 filed and apparently reviewed by the Court that had not been  
8 served upon Defendant. Defendant was prejudiced as it was not  
9 permitted to review or respond to this filing.

11 With respect to the evidence presented at trial, Defendant  
12 was not afforded an opportunity to review the copious exhibits  
13 prior to the court appearance. Plaintiff appeared at the trial  
14 with three binders of documents supporting his claim that had not  
15 been provided to Defendant. Defendant objected to the admission  
16 of these documents but was informed that the Court had the  
17 prerogative to review any documents. Defendant should have been  
18 provided an opportunity to review these documents prior to the  
19 hearing.  
20

21 DATED this 6th day of April, 2017.

22 EMERSON LAW GROUP

23 /s/ Phillip R. Emerson

24  
25 PHILLIP R. EMERSON, ESQ.  
26 Nevada Bar No. 5940  
27 1055 Whitney Ranch Drive, Suite 120  
28 Henderson, Nevada 89014  
Attorney for Defendant,

**EMERSON LAW GROUP**

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

**CERTIFICATE OF SERVICE**


Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby  
certify that service of the foregoing, **NOTICE OF APPEAL**, was made  
this 6th day of April, 2017 via mailing addressed as follows:

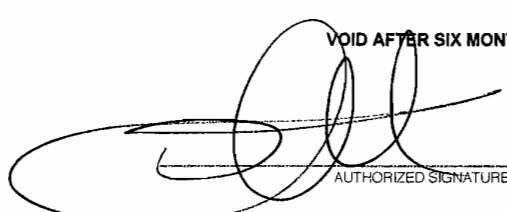
Peter Southworth  
406 South Desert Candles Street  
Ridgecrest, California 93555  
Plaintiff

/s/ Veronica Pacheco  
An Employee of EMERSON LAW GROUP

EMERSON LAW GROUP/GENERAL ACCOUNT

32566

DATE		DESCRIPTION	INVOICE #	AMOUNT	CHECK DEDUCTION	NET AMOUNT
Las Vegas Justice Court 04/06/17 Court Fees - LVPC adv. Southworth (1524.014)			15A002996		97.00	97.00
CHECK DATE 04/06/17	CONTROL NUMBER 32566	TOTALS  Gross: 97.00 Ded: 0.00 Net: 97.00				

<b>EMERSON LAW GROUP GENERAL ACCOUNT</b> 1055 WHITNEY RANCH DR., SUITE 120 HENDERSON, NV 89014 (702) 384-9444	NEVADA STATE BANK LAS VEGAS, NV 89125 94-77/1224	32566  DATE 04/06/17      CHECK      AMOUNT *****\$97.00  *** NINETY-SEVEN & 00/100 DOLLARS  VOID AFTER SIX MONTHS   AUTHORIZED SIGNATURE
PAY TO THE ORDER OF Las Vegas Justice Court		
⑈032566⑈ ⑆122400779⑆979444163⑈		

 Details on Back  
 Security Features Included

EMERSON LAW GROUP/GENERAL ACCOUNT

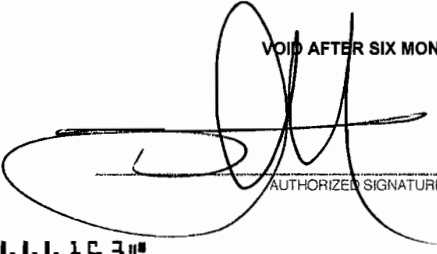
32566

		CHECK			
DATE	DESCRIPTION	INVOICE #	AMOUNT	DEDUCTION	NET AMOUNT
CHECK DATE	CONTROL NUMBER	TOTALS ▶			

EMERSON LAW GROUP/GENERAL ACCOUNT

32565

		CHECK		
DATE	DESCRIPTION	INVOICE #	AMOUNT DEDUCTION	NET AMOUNT
04/06/17	Las Vegas Justice Court Court Fees - LVPC adv. Southworth (1524.014)	15A002996	250.00	250.00
CHECK DATE	CONTROL NUMBER			
04/06/17	32565	TOTALS	Gross: 250.00 Ded: 0.00 Net: 250.00	

<b>EMERSON LAW GROUP GENERAL ACCOUNT</b> 1055 WHITNEY RANCH DR., SUITE 120 HENDERSON, NV 89014 (702) 384-9444		<b>NEVADA STATE BANK</b> LAS VEGAS, NV 89125 94-777/1224		32565
DATE		CHECK	AMOUNT	
04/06/17			****\$250.00	
*** TWO HUNDRED FIFTY & 00/100 DOLLARS				
PAY TO THE ORDER OF	Las Vegas Justice Court		VOID AFTER SIX MONTHS	
		 AUTHORIZED SIGNATURE		MP
⑈032565⑈ ⑆122400779⑆979444163⑈				

Details on Back  
Security Features Included

EMERSON LAW GROUP/GENERAL ACCOUNT

32565

		CHECK		
DATE	DESCRIPTION	INVOICE #	AMOUNT DEDUCTION	NET AMOUNT
CHECK DATE	CONTROL NUMBER			
		TOTALS		

# OFFICIAL RECEIPT

Las Vegas Justice Court 200 Lewis Avenue 2nd Floor Las Vegas NV 89155 Civil Division

Payor  
Emerson Law Group

Receipt No.  
**CIV-2017-37490**

Transaction Date  
04/7/2017

Description		Amount Paid
On Behalf Of Las Vegas Paving Corporation		
15A002996		
Peter M Southworth, Plaintiff(s) vs. Las Vegas Paving Corporation, Defendant(s)		
Appeal Bond \$250		
Appeal Bond \$250		250.00
SUBTOTAL		250.00
PAYMENT TOTAL		250.00
Check (Ref #32565) Tendered		250.00
Total Tendered		250.00
Change		0.00
04/07/2017	Cashier BH	Audit
10:02 AM	Station CV01	38188302

## OFFICIAL RECEIPT

RECEIVED APR 10 2017  
RA000018

# OFFICIAL RECEIPT

Las Vegas Justice Court 200 Lewis Avenue 2nd Floor Las Vegas NV 89155 Civil Division

Payor  
Emerson Law Group

Receipt No.  
**CIV-2017-37492**

Transaction Date  
04/7/2017

Description	Amount Paid
Las Vegas Paving Corporation 15A002996 Peter M Southworth, Plaintiff(s) vs. Las Vegas Paving Corporation, Defendant(s)	
District Court Filing Fee \$47	47.00
Notice of Appeal \$25	25.00
Transmit Papers on Appeal \$25	25.00
<b>SUBTOTAL</b>	<b>97.00</b>
Remaining Balance Due: \$0.00	

**PAYMENT TOTAL** **97.00**

Check (Ref #32566) Tendered	97.00
Total Tendered	97.00
Change	0.00

04/07/2017  
10:04 AM

Cashier BH  
Station CV01

Audit  
38188323

# OFFICIAL RECEIPT

RECEIVED APR 10 2017  
RA000019

**EXHIBIT "7"**

  
CLERK OF THE COURT

1 **MDSM**  
2 **PETER M. SOUTHWORTH**  
3 406 S Desert Candles St  
4 Ridgecrest, CA 93555  
5 (760) 608-3986  
6 No fax number  
7 peter.m.southworth@gmail.com  
8 Respondent, In Proper Person  
9

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**  
8  
9

10 LAS VEGAS PAVING CORPORATION, ) Case No. A-17-754175-A  
11 ) Dept. No. XXXII  
12 Appellant, )  
13 vs. )  
14 PETER M. SOUTHWORTH, )  
15 Respondent. )

16 **RESPONDENT'S MOTION TO DISMISS APPEAL**

17 Date of Hearing:

18 Time of Hearing:

19 COMES NOW, Plaintiff/Respondent, PETER M. SOUTHWORTH, appearing in proper  
20 person, and submits this Motion to Dismiss Appeal and respectfully requests that this Honorable  
21 Court enter an Order dismissing Appellant's Appeal for lack of jurisdiction.

22 ///

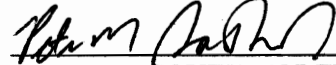
23 ///



1 This Motion to Dismiss Appeal is based upon the following Memorandum of Points and  
2 Authorities, the pleadings and papers on file in this case, and the argument allowed by the Court  
3 at the time of hearing.

4 DATED this 24th day of APRIL, 2017.

5 Pursuant to NRS 53.045, I declare under penalty of  
6 perjury under the law of the State of Nevada that the  
foregoing is true and correct.

7 

PETER M. SOUTHWORTH

406 S Desert Candles St

Ridgecrest, CA 93555

(760) 608-3986

No fax number

peter.m.southworth@gmail.com

Respondent, In Proper Person

1 NOTICE OF MOTION

2 TO: LAS VEGAS PAVING CORPORATION, Appellant

3 PHILLIP R. EMERSON, ESQ., Attorney for Appellant

4 YOU AND EACH OF YOU take notice that on the 31 day of MAY  
5 20 17, at the hour of 10:00 o'clock A.m., of said day, the above RESPONDENT'S MOTION

6 TO DISMISS APPEAL will be heard in Department XXXII of the above-entitled Court.

7 DATED this 24th day of APRIL, 2017.

8 Pursuant to NRS 53.045, I declare under penalty of  
9 perjury under the law of the State of Nevada that the  
foregoing is true and correct.

10   
PETER M. SOUTHWORTH

11 406 S Desert Candles St

12 Ridgecrest, CA 93555

13 (760) 608-3986

14 No fax number

15 peter.m.southworth@gmail.com

16 Respondent, In Proper Person

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Appellant purports to appeal from the adverse Small Claims Judgment entered March 22,  
4 2017, in Las Vegas Justice Court (LVJC) in a small claims action. Appellant's Notice of Appeal  
5 was untimely filed under Justice Court Rules of Civil Procedure (JCRCP) 98. As such, the Court  
6 lacks jurisdiction to hear the matter and Respondent moves to dismiss the Appeal.

7 **II. STATEMENT OF FACTS**

8 **A. Relevant Facts and Procedural History**

9 Only those facts necessary to facilitate a preliminary determination are presented here.  
10 Respondent filed a small claims complaint in LVJC (Case No. 15A002996) on August 17, 2015.  
11 Numerous actions transpired before trial but the matter was heard on the merits March 17, 2017.  
12 The case was taken under advisement and the Small Claims Judgment in favor of Respondent was  
13 entered on March 22, 2017. The LVJC Clerk served the Small Claims Judgment by mail to both  
14 parties on March 24, 2017. Appellant filed a Notice of Appeal on April 7, 2017 and served same  
15 by mail to Respondent thereafter.

16 **III. ARGUMENT**

17 **A. Appellant's Notice of Appeal Was Untimely Filed**

18 Small claims appeals from Justice Court to District Court are governed by JCRCP 98  
19 through JCRCP 100. The requirement to initiate a small claims appeal from Justice Court to  
20 District Court is timely filing a Notice of Appeal pursuant to JCRCP 98. JCRCP 98 states:

21 A plaintiff or defendant may appeal from the judgment against him or her to the district  
22 court as in other cases arising in the justice courts, pursuant to Rule 72 *et seq.*, except that  
23 the filing of a notice of appeal must be done within 5 days from the entry of the judgment,  
24 rather than the 20-day period provided for in Rule 72B. No formal Notice of Entry of  
25 Judgment is required. The form of appeal and appeal bond shall be pursuant to Rules 99  
and 100. [As amended; effective July 1, 2005.]

1 The procedure to calculate such a deadline is given in *Winston Products Co. v. DeBoer*,  
2 122 Nev. 517, 134 P.3d 726 (2006). Pursuant to JCRCP 6(a), the 5 days to file a Notice of Appeal  
3 under JCRCP 98 are to be judicial days. As the Small Claims Judgment was mailed, an additional  
4 3 calendar days are appended to the prescribed period pursuant to JCRCP 6(e). The LVJC Clerk  
5 served the Small Claims Judgment by mail to both parties on Friday, March 24, 2017 and this day  
6 must be excluded from any deadline calculation. Therefore, the period for filing a Notice of Appeal  
7 from this Small Claims Judgment was Monday, March 27, 2017 through Monday, April 3, 2017.  
8 Even construing all 8 days of the filing period as judicial, the deadline would extend only through  
9 Wednesday, April 5, 2017. Appellant filed the Notice of Appeal on Friday, April 7, 2017, making  
10 the filing untimely and infecting it with an incurable jurisdictional defect.

11 Under JCRCP 6(b), Appellant could have petitioned for an extension of the filing deadline,  
12 but did not, and no extension was granted. Appellant, represented by experienced counsel, has  
13 failed to meet the mandatory deadline for appealing a small claims judgment thus depriving the  
14 Court of jurisdiction to hear the matter. Appellant is culpable for its actions.

#### 15 IV. CONCLUSION

16 For the above reason, Respondent respectfully requests that this Honorable Court enter an  
17 Order dismissing Appellant's untimely small claims Appeal for lack of jurisdiction.

18 DATED this 24th day of APRIL, 2017.

19 Pursuant to NRS 53.045, I declare under penalty of  
20 perjury under the law of the State of Nevada that the  
foregoing is true and correct.

21   
22 PETER M. SOUTHWORTH

23 406 S Desert Candles St  
Ridgecrest, CA 93555  
(760) 608-3986

24 No fax number  
peter.m.southworth@gmail.com  
Respondent, In Proper Person  
25


1 **CERTIFICATE OF MAILING**

2 Pursuant to Nev. R. Civ. P 5(b), I HEREBY CERTIFY that on the 24th day of APRIL,  
3 2017, I placed a true and correct copy of the above **RESPONDENT'S MOTION TO DISMISS**  
4 **APPEAL**, in the United States Mail, with first-class postage prepaid, addressed to the following:

5 PHILLIP R. EMERSON, ESQ.  
6 Nevada Bar No. 5940  
7 1055 Whitney Ranch Drive, Suite 120  
8 Henderson, NV 89014  
9 Attorney for Appellant,  
10 LAS VEGAS PAVING CORPORATION

11 DATED this 24th day of APRIL, 2017.

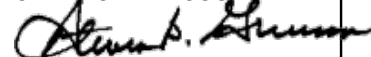
12 Pursuant to NRS 53.045, I declare under penalty of  
13 perjury under the law of the State of Nevada that the  
14 foregoing is true and correct.

15   
16 PETER M. SOUTHWORTH  
17 406 S Desert Candles St  
18 Ridgecrest, CA 93555  
19 (760) 608-3986  
20 No fax number  
21 peter.m.southworth@gmail.com  
22 Respondent, In Proper Person  
23  
24  
25

**EXHIBIT "8"**

**EMERSON LAW GROUP**  
ATTORNEYS AT LAW  
1055 WHITNEY RANCH DRIVE, SUITE 120  
HENDERSON, NEVADA 89014  
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

Electronically Filed  
5/19/2017 2:22 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **PHILLIP R. EMERSON, ESQ.**  
Nevada Bar No. 5940  
2 **EMERSON LAW GROUP**  
1055 Whitney Ranch Drive, Suite 120  
3 Henderson, Nevada 89014  
4 receptionist@emersonlawgroup.com  
Attorney for Defendant,  
5 *LAS VEGAS PAVING CORPORATION*

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 PETER SOUTHWORTH, ) Case No. A-17-754175-A  
9 Plaintiff, ) Dept No. XXXII  
10 vs. )  
11 LAS VEGAS PAVING CORPORATION, )  
12 Defendant. )  
13 )  
14 )

15 **APPELLANT/DEFENDANT'S OPPOSITION**  
16 **TO PLAINTIFF'S MOTION TO DISMISS APPEAL**

17 Appellant/Defendant, *LAS VEGAS PAVING CORPORATION*, by and  
18 through its Attorney of Record, Phillip R. Emerson, Esq., of the  
19 EMERSON LAW GROUP, hereby submits the following Opposition to  
20 Respondent/Plaintiff's Motion to Dismiss Appeal.

21 / / /

22 / / /

23 / / /

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL/PROCEDURAL BACKGROUND

This is an action arising from an incident which occurred on August 19, 2012. Respondent/Plaintiff ("Respondent") filed his Small Claims Complaint on August 17, 2015. On December 2, 2016 The Referee's Findings of Fact, Conclusions of Law, and Recommendations were entered. On December 7, 2016 Respondent filed a Formal Objection Notice. On March 17, 2017 The Formal Objection Hearing was heard before Justice Court. Judgment entered on March 22, 2017 and on April 7, 2017 Appellant/Defendant ("Appellant") timely appealed. (See *Appellant's Notice of Appeal*, attached hereto as "Exhibit A"). Appellant has subsequently submitted a Notice of Posting and Acceptance of Supersedeas Bond, presently pending before Justice Court.

In addition, despite the timing of Appellant's Opposition, Appellant prays this Honorable Court hear the present Motion and Opposition on their merits. On May 1, 2017, Anne Marie Birk, Esq. tendered her resignation to Defense Counsel, Emerson Law Group. Subsequently on May 5, 2017 Defense Counsel's paralegal, Krystina Butenschoen resigned from the Emerson Law Group. Ms. Birk was the assigned attorney and Ms. Butenschoen was the assigned paralegal to the present matter. Due to their resignation and transition out of the Emerson Law Group, Defense



1 Counsel was not made immediately aware of Respondent's Motion,  
2 and as such, Appellant's Opposition is tardy. (See *Defense*  
3 *Counsel's Affidavit*, attached hereto as "Exhibit B"). However,  
4 as this Court may know, the transitioning of an attorney and  
5 paralegal from a law firm can cause challenges with respect to  
6 reassignment of cases, files and tasks. Here, a clerical error  
7 was brought on by the resignation of the two principle employees  
8 appointed to the subject matter. Accordingly, Appellant prays  
9 Your Honor hear the Motion and Opposition on its merits, which  
10 warrant a denial of Respondent's Motion.  
11

12 **II.**

13 **LEGAL ARGUMENT**

14 **A. In this Matter, JRCRP 72B is Applicable, Because This Case**  
15 **Was Appealed to District Court from a Justice Court Trial,**  
16 **and as such, Appellant's Appeal was Timely Filed.**

17 Respondent's sole argument is that Appellant filed an  
18 untimely Notice of Appeal. Under JRCRP 72(a):

19 (a) **Filing the Notice of Appeal.** An appeal  
20 permitted by law from a justice court to the  
21 district court shall be taken by filing a  
22 notice of appeal with the clerk or justice of  
23 the justice court within the time allowed by  
24 Rule 72B. Failure of an appellant to take any  
25 step other than the timely filing of a notice  
26 of appeal does not affect the validity of the  
27 appeal, but is ground only for such action as  
28 the district court deems appropriate which  
may include dismissal of the appeal.  
(Emphasis added).

1 In addition, under JRCRP 72B(a):

2 (a) Appeals in Civil Cases. In a civil case  
3 in which an appeal is permitted by law from a  
4 justice court to the district court the  
5 notice of appeal required by Rule 72(a) shall  
6 be filed with the clerk or justice of the  
7 justice court within 20 days of the date of  
8 service of written notice of the entry of the  
9 judgment or order appealed from, except as  
10 otherwise provided by law. It shall also be  
11 served within the prescribed time. If an  
12 applicable statute provides that a notice of  
13 appeal must be filed within a different time  
14 period, the notice of appeal required by  
these rules must be filed within the time  
period established by the statute. If a  
timely notice of appeal is filed by a party,  
any other party may file and serve a notice  
of appeal within 14 days of the date on which  
the first notice of appeal was served, or  
within the time otherwise prescribed by this  
subdivision, whichever period last expires.  
(Emphasis added).

15 In this case, a Small Claims hearing was held on November  
16 29, 2016. Thereafter, a Referee's Findings of Fact, Conclusions  
17 of Law and Recommendations were entered on December 5, 2016.  
18 Respondent subsequently filed a timely appeal, in the form of a  
19 Formal Objection Notice, pursuant to JRCRP 98, which requires a  
20 notice of appeal within 5 days from the entry of the judgment.  
21 However, in this case, JRCRP 72B is applicable.

22 Following Respondent's appeal, the case was heard before  
23 Justice Court Department IV and an informal Justice Court trial  
24 went forward on March 17, 2017. Thereafter the Judgment was  
25 served on March 24, 2017. Appellants appeal arose from the  
26 Justice Court trial. As such, Appellant's appeal is from Justice  
27  
28

1 Court to District Court, not Small Claims to Justice Court.  
2 Thus, the 20 day rule, pursuant to JRCRP 72B applies. Here,  
3 Appellant's Notice of Appeal was filed on April 7, 2017, well  
4 within 20 days of the date of service of entry of the judgment.

5 Accordingly, Appellant's appeal was timely and Respondent's  
6 Motion to Dismiss Appeal should be denied.  
7

8 **B. Appellant's Pray This Honorable Court Will Hear the Present**  
9 **Motion and Opposition on its Merits, Pursuant to NRCP**  
10 **60(b)(1) and Given the Recent Resignation of the Attorney**  
11 **and Paralegal Assigned to Handle the Present Matter.**

12 NRCP 60(b)(1) provides, in pertinent part:

13 "On motion and upon such terms as are just,  
14 the court may relieve a party or his legal  
15 representative from a final judgment, order,  
16 or proceeding of the following reasons: (1)  
17 mistake, inadvertence surprise, or excusable  
18 neglect."

19 The presence of the following factors indicates that the  
20 requirements of this rule have been satisfied: (1) a prompt  
21 application to remove the judgment; (2) an absence of an intent  
22 to delay the proceedings; (3) a lack of knowledge of the  
23 procedural requirements on the part of the moving party; and (4)  
24 good faith. *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215,  
25 1216 (1982). A showing of a meritorious defense to the action is  
26 also required. *Deros v. Stern*, 87 Nev. 148, 152, 483 P.2d 648,  
27 650 (1971). The district court must consider the state's  
28 underlying basic policy of deciding a case on the merits whenever  
possible. *Kahn v. Orme*, 108 Nev. 510, 835 P.2d 790, 793 (1992).  
As a proper guide to the exercise of discretion, the basic

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1 underlying policy to have each case decided upon its merits. In  
2 the normal course of events, justice is best served by such a  
3 policy. *Hotel Last Frontier Corp. v. Frontier Properties*, 79  
4 Nev. 150, 156, 380 P.2d 293, 295 (1963).

5 In this case, Appellant's tardy Opposition is the result of  
6 mistake and excusable neglect. Ms. Birk, the assigned attorney,  
7 and Ms. Butenschoen, the assigned paralegal, resigned from  
8 Defense Counsel Office on May 1, 2017 and May 5, 2017,  
9 respectively. Unfortunately, their resignation dates fall  
10 precisely within the timeline for Appellant's opposition.  
11 Moreover, the former employees had previously handled the  
12 reception of incoming mail and Motion, along with the drafting  
13 and preparing of the responsive pleadings in this case. As a  
14 result, a mistake and clerical error occurred in the assignment  
15 of Respondent's Motion and Appellant's Opposition.  
16

17 Here, Appellant's response is prompt. Although this  
18 Opposition was filed after the Opposition deadline, same is filed  
19 twelve days prior to the date of the hearing. No Order has been  
20 issued granting Respondent's Motion; thus Appellant's response is  
21 well before any Order on the present Motion. Moreover, Appellant  
22 is willing to stipulate to a continuance of the hearing on  
23 Respondent's Motion in order to afford Respondent time to submit  
24 a Reply. Accordingly, Appellant's response is prompt, as the  
25 Opposition is served twelve days prior to the hearing date and  
26 within one week of the original Opposition deadline.  
27  
28

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1 The Second factor is met. There is no intent to delay the  
2 proceedings. As noted above, this Opposition is being served  
3 well before the date of the hearing on the present Motion.  
4 Further, the delay in the Opposition is due to the reassignment  
5 of cases, files and assignments following the resignations of the  
6 attorney and paralegal originally assigned to this matter.  
7 Appellant is willing to go forward with the original hearing  
8 date; however, Appellant is also willing to stipulate to a  
9 continuance in order to afford Respondent ample time to submit a  
10 Reply.  
11

12 Here, there was a lack of knowledge of the filing of  
13 Respondent's Motion due to the fact that when the Motion was  
14 filed Defense Counsel's office was in the midst of transitioning  
15 from two resigning employees; specifically, the two assigned to  
16 the present case. Thus, Appellant and his Defense Counsel were  
17 not aware of the status of Respondent's Motion until after the  
18 opposition deadline.  
19

20 This request pursuant to NRCP 60 (b)(1) is not made for the  
21 purposes of delay and is genuinely the result of a clerical error  
22 arising out of the resignation of Ms. Birk and Ms. Butenschoen.  
23 (See *Defense Counsel's Affidavit*, attached hereto as "Exhibit  
24 B"). Moreover, Appellant does not seek to unnecessarily delay  
25 the hearing on this Motion and as token of good faith is amenable  
26 to proceeding with the hearing as presently scheduled or to a  
27  
28

1 continuance to afford Respondent sufficient time to submit a  
2 Reply. As such, Appellant's Opposition is made in good faith.

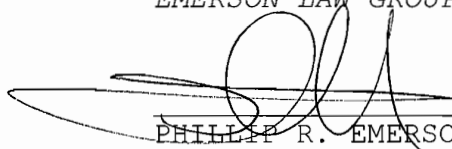
3 In addition, the *Deros* case requires a showing of a  
4 meritorious defense. As argued above, Appellant's Appeal from  
5 Justice Court to District Court was timely filed, as JRCRP 72B  
6 applies rather than JRCRP 98. Here, the appeal is from a  
7 judgment in Justice Court not Small Claims. Accordingly,  
8 Appellant's Opposition is meritorious. Finally, rejecting  
9 Appellant's appeal would prevent the District Court from deciding  
10 this case on its merits, as is the States underlying policy under  
11 *Kahn*. Pursuant to *Hotel Last Frontier Corp.*, it is this State's  
12 policy that justice is best served by hearing cases on the  
13 merits. *v. Frontier Properties*, 79 Nev. 150, 156, 380 P.2d 293,  
14 295 (1963).  
15  
16

17 **III.**  
18 **CONCLUSION**

19 Based on the foregoing, Appellant respectfully requests this  
20 Honorable Court deny Respondent, PETER SOUTHWORTH'S Motion to  
21 Dismiss Appeal.

22 DATED this 19th day of May, 2017.

23 EMERSON LAW GROUP

24 

25 PHILLIP R. EMERSON, ESQ.  
26 Nevada Bar No. 5940  
27 1055 Whitney Ranch Drive, Suite 120  
28 Henderson, Nevada 89014  
Attorney for Defendant,  
LAS VEGAS PAVING CORPORATION

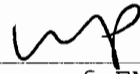
**EMERSON LAW GROUP**

ATTORNEYS AT LAW  
1055 WHITNEY RANCH DRIVE, SUITE 120  
HENDERSON, NEVADA 89014  
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby  
certify that service of the foregoing, **APPELLANT/DEFENDANT'S**  
**OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS APPEAL**, was made this  
18th day of August, 2017 via mailing addressed as follows:

Peter Southworth, Esq.  
406 South Desert Candles Street  
Ridgecrest, California 93555  
Plaintiff



\_\_\_\_\_  
An Employee of EMERSON LAW GROUP

## **EXHIBIT "A"**



**EMERSON LAW GROUP**

ATTORNEYS AT LAW  
1055 WHITNEY RANCH DRIVE, SUITE 120  
HENDERSON, NEVADA 89014  
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 **PHILLIP R. EMERSON, ESQ.**  
Nevada Bar No. 5940  
2 **EMERSON LAW GROUP**  
1055 Whitney Ranch Drive, Suite 120  
3 Henderson, Nevada 89014  
receptionist@emersonlawgroup.com  
4 Attorney for Defendant,  
5 **LAS VEGAS PAVING CORPORATION**

6 **JUSTICE COURT**  
7 **LAS VEGAS TOWNSHIP**

8 PETER SOUTHWORTH, ) Case No. 15A002996  
9 ) Dept No. LVJC VII  
Plaintiff, )  
10 vs. )  
11 LAS VEGAS PAVING CORPORATION, )  
12 )  
13 Defendant. )  
14

15 **NOTICE OF APPEAL**

16 Notice is hereby given that Defendant LAS VEGAS PAVING  
17 CORPORATION appeals to the District Court from the following  
18 judgments and orders:

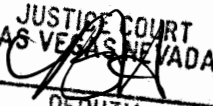
19 1. Small Claims Judgment entered on March 22, 2016  
20 (attached as Exhibit 1)

21 Defendant also appeals from all other rulings and orders  
22 made final and appealable by the foregoing.

23 The basis for the appeal is the fact that Nevada does not  
24 recognize diminished value or loss of use value. The Court's  
25 rulings was based on a misreading of Dugan v. Gotsopoulos, 117  
26 Nev. 285, 22 P.3d 203 (2001). Dugan does not address diminished  
27 value and only provides for loss of use in the event that a  
28

**RECEIVED** APR 10 2017

RA000036

**FILED**  
2017 APR -7 A 10:05  
JUSTICE COURT  
LAS VEGAS, NEVADA  
BY  DEPUTY

**EMERSON LAW GROUP**

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 Plaintiff cannot afford a rental car. Plaintiff was offered but  
2 declined a rental car and the vehicle was restored to pre-  
3 accident condition thus eliminating both loss of use and  
4 diminished value claims.

5 In addition to the above, there were also several procedural  
6 missteps. Plaintiff repeatedly referenced a "brief" that had been  
7 filed and apparently reviewed by the Court that had not been  
8 served upon Defendant. Defendant was prejudiced as it was not  
9 permitted to review or respond to this filing.

11 With respect to the evidence presented at trial, Defendant  
12 was not afforded an opportunity to review the copious exhibits  
13 prior to the court appearance. Plaintiff appeared at the trial  
14 with three binders of documents supporting his claim that had not  
15 been provided to Defendant. Defendant objected to the admission  
16 of these documents but was informed that the Court had the  
17 prerogative to review any documents. Defendant should have been  
18 provided an opportunity to review these documents prior to the  
19 hearing.  
20

21 DATED this 6th day of April, 2017.

22 EMERSON LAW GROUP

23 /s/ Phillip R. Emerson

24  
25 PHILLIP R. EMERSON, ESQ.  
26 Nevada Bar No. 5940  
27 1055 Whitney Ranch Drive, Suite 120  
28 Henderson, Nevada 89014  
Attorney for Defendant,

**EMERSON LAW GROUP**

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby  
certify that service of the foregoing, **NOTICE OF APPEAL**, was made  
this 6th day of April, 2017 via mailing addressed as follows:

Peter Southworth  
406 South Desert Candles Street  
Ridgecrest, California 93555  
Plaintiff

/s/ Veronica Pacheco  
An Employee of EMERSON LAW GROUP

## **EXHIBIT "B"**

1 PHILLIP R. EMERSON, ESQ.

Nevada Bar No. 5940

2 EMERSON LAW GROUP

1055 Whitney Ranch Drive, Suite 120

3 Henderson, Nevada 89014

4 receptionist@emersonlawgroup.com

Attorney for Respondent,

5 LAS VEGAS PAVING CORPORATION

6  
7 AFFIDAVIT OF PHILLIP R. EMERSON, ESQ. IN SUPPORT OF OPPOSITION TO  
8 RESPONDENT'S MOTION TO DISMISS APPEAL

9 STATE OF NEVADA )

) ss:

10 COUNTY OF CLARK )

11 I, PHILLIP R. EMERSON, ESQ., do hereby state and declare as  
12 follows:

13 1. I am an attorney licensed to practice law in the state  
14 of Nevada, and the managing partner of the law firm Emerson Law  
15 Group, attorney of record in this matter for the Defendants;

16 2. Affiant previously employed Anne Marie Birk, Esq., as  
17 an associate attorney at Emerson Law Group. Ms. Birk tendered  
18 her resignation to Affiant and Emerson Law Group on May 1, 2017.  
19 Prior to her resignation, Ms. Birk was the attorney assigned to  
20 the present case.

21 3. Affiant previously employed Krystina Butenschoen, as a  
22 paralegal at Emerson Law Group. Ms. Butenschoen tendered her  
23 resignation to Affiant and Emerson Law Group on May 5, 2017.  
24 Prior to her resignation, Ms. Butenschoen was the attorney  
25 assigned to the present case.

26 / / /  
27  
28

**EMERSON LAW GROUP**

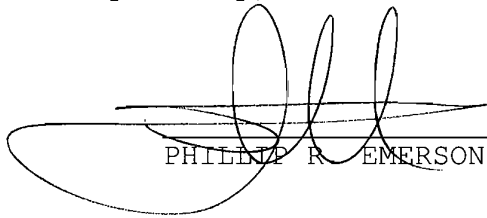
ATTORNEYS AT LAW  
1055 WHITNEY RANCH DRIVE, SUITE 120  
HENDERSON, NEVADA 89014  
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 4. Due to the resignation of the attorney and paralegal  
2 assigned to the subject case, a clerical error occurred, whereby  
3 Affiant was not made aware of Respondent's Motion to Dismiss  
4 Appeal and the Opposition was prepared after the Opposition  
5 deadline.

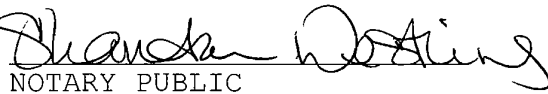
6  
7 5. This Opposition is made in good faith and not merely  
8 for purposes of delay, but that justice may be done and this  
9 matter may be heard on its merits.

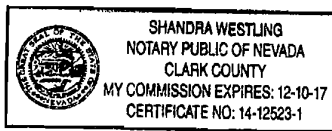
10 Further Affiant sayeth naught.

11 Dated this 8th day of May, 2017.


12  
13  
14   
15 PHILLIP R. EMERSON, ESQ.

16 SUBSCRIBED AND SWORN to before  
17 me this 18th day of May, 2017.

18   
19 NOTARY PUBLIC



**EXHIBIT "9"**



**ROPP**  
PETER M. SOUTHWORTH  
406 S Desert Candles St  
Ridgecrest, CA 93555  
(760) 608-3986  
No fax number  
peter.m.southworth@gmail.com  
Respondent, In Proper Person

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

LAS VEGAS PAVING CORPORATION,	)	Case No. A-17-754175-A
	)	Dept. No. XXXII
Appellant,	)	
	)	
vs.	)	
	)	
PETER M. SOUTHWORTH,	)	
	)	
Respondent.	)	

**RESPONDENT'S REPLY TO APPELLANT'S OPPOSITION TO RESPONDENT'S**

**MOTION TO DISMISS APPEAL**

Date of Hearing: June 1, 2017

Time of Hearing: 9:30 a.m.

COMES NOW, Plaintiff/Respondent, PETER M. SOUTHWORTH, appearing in proper person, and submits this Reply to Appellant's Opposition to Respondent's Motion to Dismiss Appeal.

///

///



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Appellant purports to appeal from the adverse Small Claims Judgment entered March 22,  
4 2017, in Las Vegas Justice Court ("LVJC") in a small claims action. Respondent filed the Motion  
5 to Dismiss Appeal as a result of Appellant's untimely filed Notice of Appeal. In its additionally  
6 untimely Opposition to Respondent's Motion to Dismiss Appeal ("Opposition"), Appellant  
7 contends that the Notice of Appeal was timely because the deadline to file the Notice of Appeal  
8 was governed by Justice Court Rules of Civil Procedure ("JCRCP") 72B(a) instead of the more  
9 restrictive JCRCP 98 specifically addressing small claims appeals. Appellant's argument is  
10 baseless and must not prevail. Respondent reiterates that the Notice of Appeal was untimely and,  
11 as such, the Court lacks jurisdiction to hear the matter and must grant Respondent's Motion to  
12 Dismiss Appeal.

13 **II. STATEMENT OF FACTS**

14 **A. Relevant Facts and Procedural History**

15 Only those facts necessary to facilitate a preliminary determination are presented here.  
16 Plaintiff/Respondent filed a small claims complaint in LVJC (Case No. 15A002996) on August  
17 17, 2015. A hearing on the merits was conducted November 29, 2016. The case was taken under  
18 advisement and the Referee's Findings of Fact, Conclusions of Law and Recommendations  
19 ("Referee's Findings") was entered December 2, 2016, and is attached as Exhibit 1. The LVJC  
20 served the Referee's Findings by mail to both parties on December 5, 2016. Plaintiff/Respondent  
21 filed a Formal Objection Notice on December 7, 2016. The matter was then heard on the merits  
22 March 17, 2017, as a trial de novo. The case was taken under advisement and the Small Claims  
23 Judgment in favor of Respondent was entered on March 22, 2017. The LVJC Clerk served the  
24 Small Claims Judgment by mail to both parties on March 24, 2017. Appellant subsequently filed

1 a Notice of Appeal on April 7, 2017, and the Appeal was filed in District Court on April 19, 2017.  
2 Respondent then filed a Motion to Dismiss Appeal on April 24, 2017. After the expiration of the  
3 deadline to file a response to the Motion to Dismiss, Respondent filed a Notice of Appellant's  
4 Non-Opposition to Respondent's Motion to Dismiss on May 12, 2017. Appellant filed an  
5 Opposition to Respondent's Motion to Dismiss on May 19, 2017 and served same by mail to  
6 Respondent thereafter.

### 7 III. ARGUMENT

#### 8 A. Appellant's Notice of Appeal Was Untimely Filed

9 In its Opposition, Appellant contends that the Notice of Appeal was timely because the  
10 Formal Objection Hearing transpired in Justice Court and the deadline to file the Notice of Appeal  
11 was thus governed by JCRCP 72B(a). Appellant contends that the Formal Objection Notice filed  
12 by Plaintiff/Respondent constitutes an appeal, is governed by JCRCP 98, and that jurisdiction is  
13 transferred from small claims court to Justice Court as a result. Appellant is incorrect on all  
14 assertions.

15 Under JCRCP 72A(b)(1), "[a]n appeal may be taken: [f]rom a final judgment in an action  
16 or proceeding commenced in the court in which the judgment is rendered." Here, the Formal  
17 Objection Notice cannot be construed as an appeal because the Referee's Findings is not a Final  
18 Order. As shown in Exhibit 1, the Referee's Findings plainly states: "PLEASE NOTE THAT THIS  
19 REFEREE'S DECISION DOES NOT BIND THE PARTIES AND IS NOT ENFORCEABLE IN  
20 ANY MANNER UNTIL THE FORMAL OBJECTION PERIOD HAS EXPIRED."  
21 Plaintiff/Respondent's timely Formal Objection Notice thus precluded the Referee's Findings  
22 from becoming a Final Order.

23 The Formal Objection process is governed by NRS 4.355(4), not JCRCP 98 as Appellant  
24 contends. NRS 4.355(4) states:

1 The findings of fact, conclusions of law and recommendations of the referee must be  
2 furnished to each party or his or her attorney at the conclusion of the proceeding or as soon  
3 thereafter as possible. Within 5 days after receipt of the findings of fact, conclusions of law  
4 and recommendations, a party may file a written objection. If no objection is filed, the court  
5 shall accept the findings, unless clearly erroneous, and the judgment may be entered  
thereon. If an objection is filed within the 5-day period, the justice of the peace shall review  
the matter by trial de novo, except that if all of the parties so stipulate, the review must be  
confined to the record.

6 Here, as there was no stipulation, the Formal Objection Notice can be thought of as a Motion for  
7 New Trial, as opposed to an appeal, and therefore does not change the venue. Appellant contends  
8 that the Formal Objection process transfers jurisdiction from small claims court to Justice Court.  
9 There is no mention in NRS 4.355(4) of a transfer of jurisdiction because small claims court is  
10 Justice Court. This is codified in NRS 4.370. In part, NRS 4.370 states:

11 1. Except as otherwise provided in subsection 2, justice courts have jurisdiction of the  
12 following civil actions and proceedings and no others except as otherwise provided by  
specific statute: ...

13 (o) In small claims actions under the provisions of chapter 73 of NRS. . . .  
14 [Effective January 1, 2017]

15 The distinction between proceedings in Justice Court versus small claims court is merely in the  
16 purpose. According to JCRCP 96, the sole purpose of small claims court is to dispense “fair and  
17 speedy justice between the parties.” This is manifested by a relaxation of formality and rigor.

18 The mechanism to formally appeal a small claims judgment is governed by JCRCP 98.  
19 JCRCP 98 states:

20 A plaintiff or defendant may appeal from the judgment against him or her to the district  
21 court as in other cases arising in the justice courts, pursuant to Rule 72 *et seq.*, except that  
22 the filing of a notice of appeal must be done within 5 days from the entry of the judgment,  
rather than the 20-day period provided for in Rule 72B. No formal Notice of Entry of  
Judgment is required. The form of appeal and appeal bond shall be pursuant to Rules 99  
and 100. [As amended; effective July 1, 2005.]

1 A Formal Objection Notice can therefore never be filed pursuant to JCRCP 98 as that would  
2 precipitate transfer of jurisdiction from Justice Court to District Court.

3 As the Formal Objection Hearing did not take place in District Court, was a trial de novo  
4 not presided over by a Justice of the Peace, and there is no vehicle to “move” a case from small  
5 claims court to Justice Court, the Formal Objection Hearing can only have been a small claims  
6 court action. This is further reflected in the Case Summary, attached as Exhibit 2, where the Formal  
7 Objection Hearing conducted March 17, 2017, is entitled “Small Claims Individual.” As can also  
8 be seen in Exhibit 2, the case type is “Small Claims – General Individual Plaintiff,” the Hearing  
9 Master is “Referee, Small Claims,” the LVJC Clerk’s certificate of mailing is called “Small Claims  
10 Certificate of Mailing – Clerk,” and indeed even the judgment Appellant purports to appeal from  
11 is entitled “Small Claims Judgment.” It is curious how it could be construed that the proceedings  
12 took place anywhere other than small claims court. Here then, the requirement to initiate a small  
13 claims appeal from Justice Court to District Court is timely filing a Notice of Appeal pursuant to  
14 JCRCP 98 not JCRCP 72B(a).

15 The procedure to calculate the deadline under JCRCP 98 is given in *Winston Products Co.*  
16 *v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006). Pursuant to JCRCP 6(a), the 5 days to file a Notice  
17 of Appeal under JCRCP 98 are to be judicial days. As the Small Claims Judgment was mailed, an  
18 additional 3 calendar days are appended to the prescribed period pursuant to JCRCP 6(e). The  
19 LVJC Clerk served the Small Claims Judgment by mail to both parties on Friday, March 24, 2017  
20 and this day must be excluded from any deadline calculation. Therefore, the period for filing a  
21 Notice of Appeal from this Small Claims Judgment was Monday, March 27, 2017, through  
22 Monday, April 3, 2017. Even construing all 8 days of the filing period as judicial, the deadline  
23 would extend only through Wednesday, April 5, 2017. Appellant filed the Notice of Appeal on  
24  
25

1 Friday, April 7, 2017, making the filing untimely and infecting it with an incurable jurisdictional  
2 defect. Despite Appellant's prayer, an Appellate Court can bestow no relief for an untimely Notice  
3 of Appeal; in *Walker v. Scully*, 99 Nev. 45, 657 P.2d 94 (1983), the Supreme Court of Nevada  
4 writes "[a]ccordingly, the notice of appeal was untimely. We are therefore without jurisdiction to  
5 entertain the appeal."


6 Appellant, represented by experienced counsel, has failed to meet the mandatory deadline  
7 for appealing a small claims judgment thus depriving the Court of jurisdiction to hear the matter.  
8 Appellant is culpable for its actions.

#### 9 IV. CONCLUSION

10 For the above reason, Respondent respectfully requests that this Honorable Court grant the  
11 Motion to Dismiss Appeal.

12 DATED this 24th day of MAY, 2017.

13 Pursuant to NRS 53.045, I declare under penalty of  
14 perjury under the law of the State of Nevada that the  
foregoing is true and correct.

15 

16 PETER M. SOUTHWORTH

17 406 S Desert Candles St

18 Ridgecrest, CA 93555

19 (760) 608-3986

20 No fax number

21 peter.m.southworth@gmail.com

22 Respondent, In Proper Person

1 **CERTIFICATE OF MAILING**

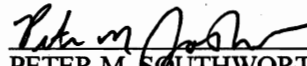
2 Pursuant to Nev. R. Civ. P 5(b), I HEREBY CERTIFY that on the 24th day of MAY, 2017,  
3 I placed a true and correct copy of the above **RESPONDENT'S REPLY TO APPELLANT'S**  
4 **OPPOSITION TO RESPONDENT'S MOTION TO DISMISS APPEAL**, in the United States

5 Mail, with first-class postage prepaid, addressed to the following:

6 PHILLIP R. EMERSON, ESQ.  
7 Nevada Bar No. 5940  
8 1055 Whitney Ranch Drive, Suite 120  
9 Henderson, NV 89014  
10 Attorney for Appellant,  
11 LAS VEGAS PAVING CORPORATION

12 DATED this 24th day of MAY, 2017.

13 Pursuant to NRS 53.045, I declare under penalty of  
14 perjury under the law of the State of Nevada that the  
15 foregoing is true and correct.

16   
17 PETER M. SOUTHWORTH  
18 406 S Desert Candles St  
19 Ridgecrest, CA 93555  
20 (760) 608-3986  
21 No fax number  
22 peter.m.southworth@gmail.com  
23 Respondent, In Proper Person  
24  
25

# EXHIBIT 1

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

15A002996

Peter M Southworth, Plaintiff(s)  
vs.  
Las Vegas Paving Corporation,  
Defendant(s)

REFeree's FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDATIONS

After hearing the above matter, this referee submits the following:

FINDINGS OF FACT: *for Defense stipulated that they were liable for traffic incident. Plaintiff provided ample evidence of damages for rental, food, lost wages, gas, hotel, & reports.*

CONCLUSIONS OF LAW: *Case law does not allow for recovery of diminished value & potential rental car & repairs for a person making significant income. Defense did not prove by showing Plaintiff's hourly wage that he could afford a rental, so the Court will mitigate some of the rental, but not all.*

REFeree's RECOMMENDATIONS:

- ☒ Plaintiff should be awarded 2,572 in damages and        in costs.  
☐ Plaintiff should be awarded nothing against Defendant.  
☐ Confession ☐ Default ☐ Dismissed With Prejudice ☐ Dismissed Without Prejudice  
☐ Plaintiff should be awarded        in damages and        in costs on Defendant's Counterclaim (If applicable)  
☐ Defendant should be awarded        in damages and        in costs on Defendant's Counterclaim (If applicable)  
☐ Defendant should be awarded nothing on Defendant's Counterclaim (If applicable).  
☐ Other:

DATED:       

Referee:       

This form was ☐ HANDED TO ☒ MAILED TO ☒ THE PARTIES ☐ THE FRONT COUNTER on 12/5/16 by       

NOTICE

If either Plaintiff or Defendant has failed to appear for the scheduled court date, the party that failed to appear may not file a formal objection. Instead, relief must be sought from the referee who presided on that date.

If both the Plaintiff and Defendant have appeared for hearing before the referee, either party may object to the referee's findings of fact, conclusions of law, and recommendations by filing a formal objection within 5 days after the receipt of this document. Because of this rule, two outcomes are possible.

(1) A timely objection can be filed, and a justice of the peace will review the matter by a trial de novo before issuing a final judgment.

OR

(2) If a timely objection is not filed, the Court will automatically accept these findings, and this referee's decision will become a judgment. At that time, copies of the final judgment can be obtained at the Justice Court Front Counter and the case can be appealed to District Court. However, a notice of appeal must be filed within 5 days from the entry of the judgment. (Detailed information relating to small claims appeals is contained in the small claims information packet).

PLEASE NOTE THAT THIS REFeree's DECISION DOES NOT BIND THE PARTIES AND IS NOT ENFORCEABLE IN ANY MANNER UNTIL THE FORMAL OBJECTION PERIOD HAS EXPIRED.



# EXHIBIT 2

JC DEPARTMENT 4  
**CASE SUMMARY**  
**CASE NO. 15A002996**

**Peter M Southworth, Plaintiff(s)**  
**vs.**  
**Las Vegas Paving Corporation, Defendant(s)**

§  
§  
§  
§

Location: **JC Department 4**  
Judicial Officer: **Saragosa, Melissa**  
Hearing Master: **Referee, Small Claims**  
Filed on: **08/17/2015**  
Case Number History:

CASE INFORMATION

**Statistical Closures**

03/23/2017 Bench Trial - Judgment Reached  
12/02/2016 Bench Trial - Judgment Reached

Case Type: **Small Claims - General  
Individual Plaintiff**

Case  
Status: **03/23/2017 Closed**

Case Flags: **Notice of Appeal Filed**

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number 15A002996  
Court JC Department 4  
Date Assigned 12/09/2016  
Judicial Officer Saragosa, Melissa  
Hearing Master Referee, Small Claims

PARTY INFORMATION

**Plaintiff Southworth, Peter M**

*Lead Attorneys*

**Pro Se**

760-608-3986(H)

**Defendant Las Vegas Paving Corporation**

**BIRK, ANNE-MARIE**





*Retained*

702-384-7000(W)

**DATE**

**EVENTS & ORDERS OF THE COURT**


**INDEX**

06/21/2017	<b>Small Claims Examination of Judgment Debtor (2:30 PM)</b> (Judicial Officer: Pro Tempore, Judge) Events: 04/04/2017 Ex Parte Motion for Examination of Judgment Debtor
04/19/2017	 <b>Certification on Appeal</b> Party: Defendant Las Vegas Paving Corporation <i>Certification of Appeal</i>
04/07/2017	 <b>Notice of Appeal</b> Assess To: Defendant Las Vegas Paving Corporation
04/04/2017	 <b>Ex Parte Motion for Examination of Judgment Debtor</b> Party: Plaintiff Southworth, Peter M <i>Motion for Examination of Judgment Debtor</i>
03/24/2017	 <b>Small Claims Certificate of Mailing - Clerk</b> Party: Attorney BIRK, ANNE-MARIE; Plaintiff Southworth, Peter M; Defendant Las Vegas Paving Corporation <i>Small Claims Judgment</i>
03/22/2017	<b>Order for Judgment</b> (Judicial Officer: Randazza, Marc) Debtors: Las Vegas Paving Corporation (Defendant)


JC DEPARTMENT 4  
**CASE SUMMARY**  
**CASE NO. 15A002996**

Creditors: Peter M Southworth (Plaintiff)  
Judgment: 03/22/2017, Docketed: 03/23/2017  
Total Judgment: 9,835.94


03/22/2017

 Judgment  
*Small Claims Judgment*

03/17/2017

 **Small Claims Individual (10:00 AM)** (Judicial Officer: Randazza, Marc)  
Events: 12/07/2016 Formal Objection  
*Formal Objection Hearing - CONTINUED PER THE REQUEST OF THE DEFENDANT*

**MINUTES**

 Formal Objection  
Filed by: Plaintiff Southworth, Peter M  
*Formal Objection Notice*  
Case Taken Under Advisement  
Under Advisement;  
Journal Entry Details:  
*Matter called at 11:19 a.m. Parties sworn in. Amanda Bell, witness present on behalf of the Plaintiff. Defendant's exhibits received and marked. A- White binder of exhibits B- White binder of exhibits Matter heard. Case taken under advisement. ;*  
Parties Present: Attorney     BIRK, ANNE-MARIE  
                         Plaintiff     Southworth, Peter M  
                         Defendant     Las Vegas Paving Corporation

03/17/2017

Case Taken Under Advisement

01/31/2017

 Order  
Party: Defendant Las Vegas Paving Corporation  
*Order Regarding Motion to Continue Formal Objection Hearing - GRANTED*

01/31/2017

 Civil Notice to Appear

01/27/2017

 Motion  
Party: Defendant Las Vegas Paving Corporation  
*Defendant, Las Vegas Paving Corporation's Motion to Continue Formal Objection Hearing*

12/12/2016

 Civil Notice to Appear


12/09/2016

Administrative Reassignment to Department 4  
*Case reassigned from Department 07 (Judge Karen P. Bennett-Haron)*


12/09/2016

**Amended Set Aside: Order for Judgment** (Judicial Officer: Vander Heyden, Adam)  
Debtors: Peter M Southworth (Plaintiff)  
Creditors: Peter M Southworth (Plaintiff)  
Judgment: 12/09/2016, Docketed: 12/02/2016  
Comment: Formal Objection to be heard.


12/09/2016


 Order  
Party: Plaintiff Southworth, Peter M  
*Order: Small claims Formal Objection Hearing*


12/07/2016

 Formal Objection  
Filed by: Plaintiff Southworth, Peter M  
*Formal Objection Notice*


JC DEPARTMENT 4  
**CASE SUMMARY**  
**CASE No. 15A002996**

12/05/2016  **Small Claims Certificate of Mailing - Clerk**  
Party: Attorney BIRK, ANNE-MARIE; Plaintiff Southworth, Peter M; Defendant Las Vegas Paving Corporation  
*Referee's Findings of Fact, Conclusions of Law and Recommendations*


12/02/2016  **Referee Findings of Fact Conclusions of Law and Recomm**  
*Referee's Findings of Fact, Conclusions of Law and Recommendations*

11/29/2016  **Small Claims Individual (12:55 PM)** (Judicial Officer: Vander Heyden, Adam)  
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500


**MINUTES**


 **Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500**  
Assess To: Plaintiff Southworth, Peter M  
*Small Claims Complaint \$7,500.00*  
Case Taken Under Advisement  
Under Advisement;  
Journal Entry Details:  
*Matter called at 1:28 p.m. Both parties duly sworn in. Kim lovelady present on behalf of the Defendant. Matter heard. Case taken under advisement. ;*  
*Parties Present: Attorney Emerson, Phillip R.*  
*Plaintiff Southworth, Peter M*  
*Defendant Las Vegas Paving Corporation*


11/29/2016 Case Taken Under Advisement

10/24/2016  **Small Claims Mediation (8:30 AM)**  
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500


**MINUTES**

 **Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500**  
Assess To: Plaintiff Southworth, Peter M  
*Small Claims Complaint \$7,500.00*

 **Small Claims Individual (11/29/2016 at 12:55 PM)** (Judicial Officer: Vander Heyden, Adam)  
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500  
*Parties Present: Attorney Emerson, Phillip R.*  
*Plaintiff Southworth, Peter M*  
*Defendant Las Vegas Paving Corporation*


 **Civil Notice to Appear**  
No Agreement;  
Journal Entry Details:  
*Interpreter, Brittany Walker and Tina Zhang, present. Parties unable to reach agreement.*  
*Small Claims Referee Hearing scheduled.;*  
*Parties Present: Attorney Emerson, Phillip R.*  
*Attorney BIRK, ANNE-MARIE*  
*Plaintiff Southworth, Peter M*  
*Defendant Las Vegas Paving Corporation*

**SCHEDULED HEARINGS**


 **Small Claims Individual (11/29/2016 at 12:55 PM)** (Judicial Officer: Vander Heyden, Adam)  
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500  
*Parties Present: Attorney Emerson, Phillip R.*  
*Plaintiff Southworth, Peter M*  
*Defendant Las Vegas Paving Corporation*


10/24/2016

JC DEPARTMENT 4  
**CASE SUMMARY**  
**CASE NO. 15A002996**


10/24/2016  Civil Notice to Appear


10/24/2016 Mediation Outcome: No Agreement


10/24/2016  Mediator's Statement


09/27/2016  **Small Claims Referee Motion (1:00 PM)** (Judicial Officer: Vander Heyden, Adam)  
Events: 09/07/2016 Motion  
09/20/2016 Opposition  
*Motion to Set Aside Default*


**MINUTES**


 Motion  
Party: Defendant Las Vegas Paving Corporation  
*Motion for Reconsideration of Denial of Motion to Set Aside*

 Opposition  
Filed By: Plaintiff Southworth, Peter M  
*Opposition to Motion for Reconsideration*


 **Small Claims Mediation (10/24/2016 at 8:30 AM)**  
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500  
Parties Present: Attorney Emerson, Phillip R.  
Attorney BIRK, ANNE-MARIE  
Plaintiff Southworth, Peter M  
Defendant Las Vegas Paving Corporation


 Order  
*Referee's Order Regarding Motion to Set Aside Clerk's Default*


 Civil Notice to Appear


 Summons & Order to Appear  
Motion Granted;  
Journal Entry Details:  
*Matter called at 1:01 p.m. All parties sworn in. Motion to Set Aside Default Judgment - Granted. Referee's Order Regarding Motion to Set Aside Clerk's Default signed/filed in open court. Copies of Order to be mailed to the parties on 09/28/16. Case set for mandatory Mediation. All parties notified in open court and by mail.;*  
Parties Present: Attorney BIRK, ANNE-MARIE  
Plaintiff Southworth, Peter M


**SCHEDULED HEARINGS**

 **Small Claims Mediation (10/24/2016 at 8:30 AM)**  
Events: 08/17/2015 Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500  
Parties Present: Attorney Emerson, Phillip R.  
Attorney BIRK, ANNE-MARIE  
Plaintiff Southworth, Peter M  
Defendant Las Vegas Paving Corporation


09/27/2016  Summons & Order to Appear


09/27/2016  Civil Notice to Appear


09/27/2016  Order  
*Referee's Order Regarding Motion to Set Aside Clerk's Default*

09/20/2016  Opposition  
Filed By: Plaintiff Southworth, Peter M  
*Opposition to Motion for Reconsideration*


JC DEPARTMENT 4  
**CASE SUMMARY**  
**CASE NO. 15A002996**


09/09/2016  Civil Notice to Appear


09/08/2016  Order  
Party: Defendant Las Vegas Paving Corporation  
*Order Setting Hearing of Defendant's Motion to Reconsider Their Motion to Set Aside Clerk's Default*

09/07/2016  **Small Claims Referee Motion (1:00 PM)** (Judicial Officer: Stoebling, David)  
Events: 08/10/2016 Motion  
08/22/2016 Opposition  
*Motion to Set Aside Default*


**MINUTES**


 Motion  
Party: Defendant Las Vegas Paving Corporation  
*Motion to Set Aside Default*


 Opposition  
Filed By: Plaintiff Southworth, Peter M  
*Opposition to Motion to Set Aside Default*


 Order  
*Referees Order Regarding Motion to Set Aside Default signed/filed in open court.*  
**DENIED.**


Motion Denied;  
Journal Entry Details:  
*Matter called at 1:33 p.m. Plaintiff parties sworn in. Defendant not present. Counsel for the Defendant arrived at 1:50 p.m. after case had been called already. Motion to Set Aside Default Judgment - Denied Referee's Order Regarding Motion to Set Aside Default signed/filed in open court. Copies of Order to be mailed to the parties on 09/08/16;*  
*Parties Present: Plaintiff Southworth, Peter M*


09/07/2016  Motion  
Party: Defendant Las Vegas Paving Corporation  
*Motion for Reconsideration of Denial of Motion to Set Aside*


09/07/2016  Order  
*Referees Order Regarding Motion to Set Aside Default signed/filed in open court. DENIED.*

08/22/2016  Opposition  
Filed By: Plaintiff Southworth, Peter M  
*Opposition to Motion to Set Aside Default*




08/12/2016  Civil Notice to Appear

08/11/2016  Order  
*Order Regarding Motion to Set Aside Default*

08/10/2016  Motion  
Party: Defendant Las Vegas Paving Corporation  
*Motion to Set Aside Default*

08/09/2016  **Small Claims Motion for Default Judgment**  
Party: Plaintiff Southworth, Peter M  
*Motion and Declaration for Judgment by Default*

**JC DEPARTMENT 4**  
**CASE SUMMARY**  
**CASE NO. 15A002996**

08/09/2016	 <b>Default</b> Party: Plaintiff Southworth, Peter M <i>Small Claims Default</i>
07/20/2016	 <b>Affidavit of Service</b> Party: Plaintiff Southworth, Peter M <i>Affidavit of Service</i>
08/17/2015	 <b>Small Claims Affidavit of Complaint - \$5,000.01 to \$7,500</b> Assess To: Plaintiff Southworth, Peter M <i>Small Claims Complaint \$7,500.00</i>
08/17/2015	Start Time Tracking: JCRCP 93
08/17/2015	Start Time Tracking: JCRCP 4(i)
08/17/2015	Start Time Tracking: JCRCP 41(e) - 2 years

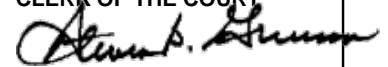
DATE		FINANCIAL INFORMATION	
	<b>Defendant Las Vegas Paving Corporation</b>		
	Total Charges		97.00
	Total Payments and Credits		97.00
	<b>Balance Due as of 4/19/2017</b>		<b>0.00</b>
04/07/2017	Charge	Defendant Las Vegas Paving Corporation	97.00
04/07/2017	Payment (Window) Receipt # CIV-2017-37492	Defendant Las Vegas Paving Corporation	(97.00)
	<b>Plaintiff Southworth, Peter M</b>		
	Total Charges		146.00
	Total Payments and Credits		146.00
	<b>Balance Due as of 4/19/2017</b>		<b>0.00</b>
08/17/2015	Charge	Plaintiff Southworth, Peter M	146.00
08/17/2015	File and Serve Receipt # CIV-2015-76729 Payments	Plaintiff Southworth, Peter M	(146.00)
	<b>Defendant Las Vegas Paving Corporation</b>		
	Appeal Bond \$250 Balance as of 4/19/2017		<b>250.00</b>
	Registry Deposit		250.00

**EXHIBIT "10"**



EMERSON LAW GROUP  
ATTORNEYS AT LAW  
1055 WHITNEY RANCH DRIVE, SUITE 120  
HENDERSON, NEVADA 89014  
TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

Electronically Filed  
6/1/2017 6:03 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 PHILLIP R. EMERSON, ESQ.  
Nevada Bar No. 5940  
2 EMERSON LAW GROUP  
1055 Whitney Ranch Drive, Suite 120  
3 Henderson, Nevada 89014  
4 receptionist@emersonlawgroup.com  
Attorney for Defendant,  
5 LAS VEGAS PAVING CORPORATION

6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA

8 PETER SOUTHWORTH, ) Case No. A-17-754175-A  
) Dept No. XXXII  
9 Plaintiff, )  
)  
10 vs. )  
)  
11 LAS VEGAS PAVING CORPORATION, )  
)  
12 )  
13 Defendant. )  
14 \_\_\_\_\_ )

15 APPELLANT/DEFENDANT'S SUPPLEMENT TO OPPOSITION  
16 TO PLAINTIFF'S MOTION TO DISMISS APPEAL

17 Appellant/Defendant, LAS VEGAS PAVING CORPORATION, by and  
18 through its Attorney of Record, Phillip R. Emerson, Esq., of the  
19 EMERSON LAW GROUP, hereby submits the following Supplement to  
20 Opposition to Respondent/Plaintiff's Motion to Dismiss Appeal.

21 / / /

22 / / /

23 / / /

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**FACTUAL/PROCEDURAL BACKGROUND**

This is an action arising from an incident, which occurred on August 19, 2012.

The parties appeared before this Court on June 1, 2017 for the hearing on Respondent's present Motion. Oral arguments were made by Appellant's Counsel regarding the ambiguity of applying JCRCP 72B or JCRCP 98 to the issue before this Court in Respondent's Motion. Accordingly, this brief shall serve as a supplement to same.

**II.**

**LEGAL ARGUMENT**

**A. The Application of JCRCP 72B or JCRCP 98 is Ambiguous, As Demonstrated by the Civil Law Self-Help Center Website, In Which 72B(a) is Cited as the Applicable Rule to Appeals of a Judgment Entered in Justice Court.**

As noted in Appellant's Opposition, Respondent's sole argument is that Appellant filed an untimely Notice of Appeal. However, there is ambiguity and vagueness as to whether JRCRP 72B or JRCRP 98 should apply regarding the time afforded to appeal a judgment. In fact, the procedural ambiguity was conceded by this Court at the hearing on Respondent's present Motion. Specifically, the ambiguity arises out of the fact that JRCRP 72B governs appeals of judgments from Justice Court. As this court knows, a trial de novo on this matter was previously held before

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1 Justice Court. As such, Appellant filed a notice of appeal of  
2 the judgment under the twenty day rule provided by JCRCP 72B.

3 There is limited case law addressing this very issue.  
4 Moreover, there is also some confusion in the Civil Law Self-Help  
5 Center. Specifically, on the website under the section *Appealing*  
6 *The Case*, there is an explanation of "Step 2: Calculate your time  
7 limit to appeal," in which it is stated that in order to appeal a  
8 judgment entered in Justice Court, a notice of appeal must be  
9 filed within twenty days. (See *Civil Law Self-Help Website -*  
10 *Appealing The Case*, attached here to as Exhibit A, page 2).

12 There is also a section in the Civil Law Self-Help Center  
13 website for "Appealing A Small Claims Judgment." (See *Civil Law*  
14 *Self-Help Website - Appealing A Small Claims Judgment*, attached  
15 here to as Exhibit B, page 1). The website explains that either  
16 party has five business days to **object or appeal** the decision.  
17 *Id.* (Emphasis added). As this Court knows, Respondent appealed  
18 the original small claims referee's decision via an objection in  
19 December, 2016. Appellant's Opposition argued this demonstrated  
20 its appeal was an appeal of a judgment made in Justice Court,  
21 distinguishable from Respondent's earlier appeal or objection  
22 from small claims court.  
23

25 Overall, this demonstrates an unclear ambiguity on the  
26 applicability of JCRCP 72B or JCRCP 98. As the Civil Law Help  
27 Center noted that an appeal or objection could be made within  
28 five days following a small claims judgment, Appellant naturally

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1 deduced that the appeal of a small claims judgment had already  
2 occurred and that an appeal of a Justice Court judgment was now  
3 appropriate. Thus, Appellant filed its notice of appeal pursuant  
4 to JCRCP 72B.

5  
6 In the event that this Court is inclined to rule JCRCP 98 is  
7 applicable, the interest of justness and fairness are better  
8 served by this Court hearing the matter of appeal on its merits.  
9 In the event JCRCP 98 is deemed to be applicable, this instance  
10 is most accurately described by excusable neglect. The issue is  
11 vague as both JCRCP 72B and JCRCP 98 fall within the purview of  
12 civil procedure rules in Justice Court. Moreover, the erroneous  
13 interpretation is the result of a genuine mistake, given that the  
14 Civil Law Help Center Website advises of the twenty day rule for  
15 appeals of judgments in Justice Court. The website also adds to  
16 the ambiguity by advising readers that either party can appeal or  
17 object a small claims decision. This is exactly what Respondent  
18 did following the original hearing of this matter before Small  
19 Claims. Naturally, when the matter was heard again as trial de  
20 novo before Justice Court, Appellant believed JCRCP 72B was now  
21 applicable.  
22

23  
24 Moreover, assuming JCRCP 98 is applicable, Appellant's  
25 Notice of Appeal was two days tardy. This further demonstrates  
26 an error arising out of a reasonable misinterpretation of the  
27 rule. As this Court knows, this not an issue that is commonly  
28 addressed before Your Honor and thus there is a lack of

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1 established case law interpreting the distinction between the two  
2 rules. As this Court stated at the June 1, 2017 hearing on the  
3 present Motion, under JCRCP 1: "Whenever it is made to appear to  
4 the court that a particular situation does not fall within any of  
5 these rules or that the literal application of a rule would work  
6 hardship or injustice in a particular situation, the court shall  
7 make such order as the interests of justice require."  
8

9 Here, the fact that under JCRCP 98 Appellant's Notice of  
10 Appeal was only two days tardy, the lack of case law history  
11 establishing a clear interpretation of the rule and the added  
12 ambiguity in relying upon the Self-Help website all weigh in  
13 favor of excusable neglect. As such, the interests of justice  
14 would be served by hearing Appellant's appeal on its merits and  
15 not disposing of it due to clerical error or excusable neglect.  
16 Accordingly, Appellant prays Your Honor find JCRCP 72B is  
17 applicable and deny Respondent's Motion. In the alternative,  
18 Appellant prays Your Honor find excusable neglect exists whereby  
19 Appellant's two-day tardy Notice of Appeal did not cause  
20 prejudice to Appellant.  
21

22 / / /

23 / / /

24 / / /

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**III.**  
**CONCLUSION**

Based on the foregoing, Appellant respectfully requests this Honorable Court deny Respondent, PETER SOUTHWORTH'S Motion to Dismiss Appeal.

DATED this 1st day of June, 2017.

EMERSON LAW GROUP

---

PHILLIP R. EMERSON, ESQ.  
Nevada Bar No. 5940  
1055 Whitney Ranch Drive, Suite 120  
Henderson, Nevada 89014  
Attorney for Defendant,  
LAS VEGAS PAVING CORPORATION

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**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby  
certify that service of the foregoing, **APPELLANT/DEFENDANT'S**  
**OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS APPEAL**, was made this  
1st day of June, 2017 via mailing addressed as follows:

Peter Southworth, Esq.  
406 South Desert Candles Street  
Ridgecrest, California 93555  
Plaintiff

Veronica Pacheco  
An Employee of EMERSON LAW GROUP

## **EXHIBIT "A"**



[Home](#) | [Self-Help](#) | [Lawsuits For Money](#) | [Post-Trial Stage: After The Dust Settles](#) | [Appealing The Case](#)

# Appealing The Case

Learn how to "appeal" your case if you disagree with the decision reached by the judge (or jury) after your trial.

## Overview

If you disagree with the decision reached after your trial, you can file an "appeal." An "appeal" is a request to have a higher court change or reverse a judgment of a lower court.

When you appeal, the entire case is reviewed by a higher court. The appeals court will look at the evidence that was presented to the trial court to decide whether some legal error was made. Depending on what the appeals court decides, it can set aside, confirm, or modify the trial court's judgment and could even order a new trial.

**CAUTION!** An appeal doesn't allow you to re-do your trial. You won't be able to introduce any new evidence. All the appeals judge is going to look at is what you submitted to the trial judge. So at your hearing or trial make sure your exhibits are filed as part of the court's record, that your written submissions are as thorough as possible, and that you have preserved any objections to the trial court proceedings.

If your case is in district court, both sides normally have thirty days from the written notice of entry of the judgment to appeal to the Nevada Supreme Court. The Nevada Supreme Court has the option of assigning your case to the Nevada Court of Appeals to handle instead. If your case is in justice court, you typically have twenty days to appeal to the district court. It is important to make sure you are applying the correct appeal time for your type of case and calculating it correctly. Missing your appeal deadline can preclude your appeal.

Broadly speaking, to appeal a civil judgment you need to take the following steps:

- Step 1: Determine whether you can file an appeal
- Step 2: Calculate your time limit to appeal
- Step 3: File a notice of appeal and a cost bond
- Step 4: Serve the notice of appeal
- Step 5: Decide whether to "stay" execution of the judgment
- Step 6: Order a transcript or file a statement of evidence and points on appeal
- Step 7: File a brief to the supreme court or wait for instructions from the district court

An in-depth discussion of appeals is beyond this website's scope. This page provides only a general overview. Appeals can be complicated. So make sure you understand all the rules you must comply with for your type of case and appeal.

**FYI!** There's a great resource available at your local law library called the *Nevada Appellate Practice Manual*. It's basically a "how to" guide for appeals in Nevada and will be an invaluable resources, especially if you're appealing your case to the Nevada Supreme Court. Click to visit [Law Libraries](#) for location and contact information.

## Step 1: Determine whether you can file an appeal

Not every court order can be appealed. For a list of many of the orders that you can appeal, study Rule 3A(b) of the Nevada Rules of Appellate Procedure (if you are appealing a district court judgment) and Rule 72A of the Justice Court Rules of Civil Procedure (if you are appealing a justice court judgment). Click to visit [Rules and Laws](#) to find these rules.

Even though you may not be able to appeal a particular court order, there might be other avenues you can use to challenge the order. Talking to a lawyer about your case is the best way to evaluate your options. Click to visit [Lawyers and Legal Help](#).

## Step 2: Calculate your time limit to appeal

The time you have to appeal a civil judgment depends on when the judgment was "entered" and "noticed." Missing your appeal deadline can preclude your appeal. Click to visit [After the Trial](#) for more information about entering and noticing a judgment.

- If the judgment was entered in the justice court, you must typically file your Notice of Appeal (Step 3 below) within twenty days after the date of service of the written notice of entry of the judgment. (JCRCP 72B(a).)
- If the judgment was entered in the district court, you must typically file your notice of appeal within thirty days after service of the notice of entry of the judgment or order. (NRAP 4(a)(1).)

To locate the rules governing time to appeal, click to visit [Rules and Laws](#).

## Step 3: File a notice of appeal and a cost bond

- If you are appealing a justice court judgment:

To appeal a justice court case, file a Notice of Appeal with the justice court that heard your case. A form Notice of Appeal is available for free at the Self-Help Center, or you can download the form by clicking one of the formats underneath the form's title below:

### JUSTICE COURT NOTICE OF APPEAL

[Pdf Fillable](#)
[Pdf Nonfillable](#)

When you file the Notice of Appeal, you must pay a filing fee of \$97 to the court clerk. If the court has already issued an order waiving your filing fees, the order will waive the filing fee on appeal. If you cannot afford the filing fee, you can file an Application to Proceed in Forma Pauperis (sometimes called a "fee waiver application"), which is available, free of charge, at the Self-Help Center. You can also download the form on your computer by clicking one of the formats underneath the form's title below:

### JUSTICE COURT APPLICATION TO WAIVE FILING FEE (OTHER THAN LAS VEGAS)

[Pdf Fillable](#)
[Pdf Nonfillable](#)

### JUSTICE COURT APPLICATION TO WAIVE FILING FEE (LAS VEGAS ONLY)

[LV Pdf Fillable](#)

You must also post a bond with the court clerk for the costs on appeal of \$250. (JCRCP 73.) A "bond" is a guarantee for payment that you obtain from a bonding company for a fee. You can also post the \$250 in cash. The \$250 cost bond cannot be waived with a fee waiver application.

- If you are appealing a district court judgment:

To appeal a district court case, you must file a Notice of Appeal with the district court that heard your case. The Self-Help Center does not currently have forms for an appeal from the district court to the Nevada Supreme Court. But the supreme court has samples on its website that you can use to draft your own. Click to visit the [Appellate Practice Forms](#) website.

When you file the Notice of Appeal, you must pay a filing fee of \$24 to the district court and \$250 to the supreme court. (NRAP 3 (e).) If the court has already issued an order waiving your filing fees, the order will waive the filing fee on appeal. If you cannot afford the filing fee, you can file an Application to Proceed in Forma Pauperis (sometimes called a "fee waiver application"), which is available, free of charge, at the Self-Help Center. You can also download the form on your computer by clicking one of the formats underneath the form's title below:

### DISTRICT COURT APPLICATION TO WAIVE FILING FEES

**AUTOMATED FORMS INTERVIEW AVAILABLE!**

There is an automated interview for applicants filling out the Fee Waiver. This interview will complete the fee waiver forms for you after you answer a series of questions. To use the interview, click [here](#) and select the "Clark County District Court Fee Waiver" interview. At the end of the interview, you will have to print your forms, sign them, and file them. This interview will only generate the Fee Waiver forms.



You must also post a bond with the court clerk for the costs on appeal of \$500. (NRAP 7.) A "bond" is a guarantee for payment that you obtain from a bonding company for a fee. You can also post the \$500 in cash. The \$500 cost bond cannot be waived with a fee waiver application.

You must also prepare and file a Case Appeal Statement with the district court clerk. (NRAP 3(f).) If you are representing yourself, the district court clerk will complete this for you. (NRAP 3(f)(2).) Click to visit the Appellate Practice Forms website for an example of a Case Appeal Statement.

## Step 4:

### Serve the notice of appeal

You must mail a copy of the filed Notice of Appeal (stamped by the court clerk) to the other side's attorney or, if there is no attorney, to the other side directly. (NRAP 3(d); JCRCP 72(d).)

## Step 5:

### Decide whether to "stay" execution of the judgment

Your filing of an appeal does not automatically prevent the other side from collecting a judgment in their favor. In other words, after a short period (usually ten days after service of notice of entry of a judgment), the other side can try to execute the judgment and collect it by garnishing your wages or attaching your bank accounts.

If you want to prevent the other side from collecting the judgment while you appeal, you must take steps to "stay" (pause) enforcement of the judgment:

- A justice court judgment can be stayed by filing a "supersedeas bond" with the justice court clerk. (JCRCP 73A.) A "supersedeas bond" is a guarantee for payment that you obtain from a bonding company for a fee. The amount of the bond you will need depends on the type of judgment you are appealing. If you are appealing from a judgment that awarded money to the other side, you must file a bond in the entire amount of the judgment, plus costs and interest.

A form Notice of Posting and Acceptance of Bond on Appeal, which you should file with your bond, is available for free at the Self-Help Center, or you can download it by clicking one of the formats underneath the form's title below:

**NOTICE OF POSTING AND ACCEPTANCE OF BOND ON APPEAL**



- A district court judgment can be stayed by filing a motion in the district court asking the judge to stay the judgment pending appeal. (NRAP 8(a)(1).) The request for a stay can also be filed directly with the supreme court under certain circumstances. (NRAP 8(a)(2).) The district court will typically require the party asking for the stay to post a "supersedeas bond" to guarantee payment of any money judgment in the case.

To learn more about filing motions, click to visit [Filing Motions to Resolve the Case or Narrow Issues](#).

## Step 6:

### Order a transcript or file a statement of evidence and points

The deadlines and procedures for this step depend on which court you are appealing from and whether the trial or hearing was recorded.

- If you are appealing from a justice court judgment:

Within ten days after you file the Notice of Appeal, you must do one of the following:

1. Order a transcript of the proceedings (the trial or hearing) and deposit \$100 with the justice court to absorb the cost of the transcript. (JCRCP 74(b)(1).) If the cost of the transcript is less, you will get a refund. If it is more, you will need to pay the additional amount. You must provide a copy of the transcript to every other party (or their attorney) in the case.
2. If the proceedings were not recorded, prepare a Statement of the Evidence or Proceedings which must be served on the opposing party. (JCRCP 74(c).) You should also file a Certificate of No Transcript on Appeal.

A form Statement of the Evidence or Proceedings and a form Certificate of No Transcript on Appeal are available for free at the Self-Help Center, or you can download them by clicking one of the formats underneath the form's title below:

#### JUSTICE COURT STATEMENT OF EVIDENCE OR PROCEEDINGS

[Pdf Fillable](#)
[Pdf Nonfillable](#)

#### JUSTICE COURT CERTIFICATE OF NO TRANSCRIPT ON APPEAL

[Pdf Fillable](#)
[Pdf Nonfillable](#)

3. Regardless of whether the proceedings were recorded, the parties can agree and prepare a signed Statement of the Case showing how the issues presented by the appeal arose and were decided by the justice court. (JCRCP 74(e).)

If there are no findings of facts and conclusions in the record (and if the parties cannot agree on findings), you must also prepare, file, and serve a Statement of Points on Appeal. (JCRCP 74(d).) This statement must include all important facts of the appeal and a general statement of why appellate relief is sought.

A form Statement of the Points on Appeal is available for free at the Self-Help Center, or you can download it by clicking one of the formats underneath the form's title below:

#### JUSTICE COURT STATEMENT OF POINTS ON APPEAL

[Pdf Fillable](#)
[Pdf Nonfillable](#)

#### • If you are appealing from a district court judgment:

Within fifteen days after the appeal is docketed with the Nevada Supreme Court, you must do one of the following:

1. If the proceedings were recorded, file an original Transcript Request Form with the district court and file a copy with the supreme court clerk. (NRAP 9(a)(3).) You must serve a copy of the form on all parties to the case and to the court reporter who recorded the proceeding, along with a deposit for the transcript. If your fees have been waived, do not serve the court reporter. The appellate court will determine which transcripts are needed and will issue an order directing that they be prepared. Click to visit the Appellate Practice Forms website for an example of a Transcript Request Form. You must provide a copy of the completed transcript to all other parties (or their attorneys) in the case. (NRAP 9(a)(4).)
2. If you do not want any transcripts, file a "Certificate of No Transcript Request" with the appellate court. Visit the Appellate Practice Forms website for an example.
3. If the trial or hearing was not recorded, prepare a Statement of the Evidence or Proceedings, which must be served on all other parties. (NRAP 9(d).)

## Step 7:

### File a brief to the supreme court or wait for instructions from the district court

#### • If you are appealing from a justice court judgment:

The parties may or may not be required to file briefs. The district court can send the parties a briefing schedule, instructing the parties to prepare briefs and giving them their deadlines.

If the court orders you to submit a brief, a form Appellate Brief is available, free of charge, at the Self-Help Center, or you can download it on your computer by clicking one of the formats underneath the form's title below:

**DISTRICT COURT APPELLATE BRIEF**[Pdf Fillable](#)[Pdf Nonfillable](#)

- **If you are appealing from a district court judgment:**

In the supreme court, the parties are required to file briefs with the supreme court clerk and to serve them on the other side.

1. The appellant must file an opening brief within 120 days after the date that the appeal was docketed in the supreme court.
2. The respondent then has thirty days from the date that the opening brief was served to file an answering brief.
3. The appellant then has thirty days from the date the answering brief was served to file a reply brief.

Your case can be referred to the Nevada Court of Appeals or the Nevada Supreme Court might handle the case. The appellate court can reach a decision based solely on the briefs, or the court can decide to hear from the parties at an oral argument. If the Supreme Court decides to hear your case, oral argument will take place before the entire Supreme Court or a panel of three Justices. The court will issue its ruling in writing once it has made a decision.

To learn more about supreme court briefs and what you must include in them, study Rule 28 of the Nevada Rules of Appellate Procedure. Click to visit [Rules and Laws](#).

## **EXHIBIT "B"**

[Home](#) | [Self-Help](#) | [Small Claims](#) | [Appealing A Small Claims Judgment](#)

# Appealing A Small Claims Judgment

## Overview

If you disagree with the decision reached by the judge after your small claims trial, you can file an appeal. The court's decision will not be binding or enforceable until the appeal period has expired. Both the plaintiff and the defendant have five business days from the date the decision was filed (plus three calendar days if the decision was mailed) to object or appeal the decision.

## Filing An Appeal

If you disagree with the decision made by the justice of the peace, you will need to file an appeal.

When you appeal, the entire case is reviewed by a district court judge. The judge will look at the evidence that was presented to the justice of the peace to decide whether some legal error was made. Depending on what the district court judge decides, the judge can set aside, confirm, or modify the small claims judgment, and could even order a new trial.

**CAUTION!** An appeal doesn't allow you to re-do your hearing. You won't be able to introduce any new evidence. All the new judge is going to look at is what you submitted to the justice of the peace. So at your small claims hearing make sure your exhibits are filed as part of the court's record and that your written submissions are as thorough as possible.

To file an appeal you must pay a filing fee of \$97 to the justice court where your case was filed. If the court has already issued an order waiving your filing fees, the order will waive the filing fee on appeal. If you cannot afford the filing fee, you can file an Application to Proceed in Forma Pauperis (sometimes called a "fee waiver application"), which is available, free of charge, at the Civil Law Self-Help Center. You can also download the form on your computer by clicking one of the formats underneath the form's title below:

### APPLICATION TO WAIVE FILING FEE (OTHER THAN LAS VEGAS)

[Pdf Fillable](#)
[Pdf Nonfillable](#)

### APPLICATION TO WAIVE FILING FEE (LAS VEGAS ONLY)

[LV Pdf Fillable](#)

You must also post a cost bond of \$250 at the time you file your appeal. The \$250 cost bond cannot be waived with a fee waiver application.

If the justice of the peace entered a judgment for money against you, and if you want to prevent the other side from collecting that money during your appeal (called a "stay of execution"), you will also have to post the entire amount of the judgment with the justice court (in cash or by obtaining a bond), including costs and interest, unless the court orders something else.

In order to file an appeal, you will need to complete several forms and file them with the justice court. A simplified, combined version of these forms is available, free of charge, at the Self-Help Center, or you can download it on your computer by clicking one of the formats underneath the form's title below:

### APPEAL OF SMALL CLAIMS CASE

[PDF NONFILLABLE](#)
[INSTRUCTIONS](#)

Alternatively, you can prepare each of the following forms individually (instead of using the combined form above):

### NOTICE OF APPEAL TO DISTRICT COURT

[PDF FILLABLE](#)
[PDF NONFILLABLE](#)

**STATEMENT OF EVIDENCE OR PROCEEDINGS**[PDF FILLABLE](#)[PDF NONFILLABLE](#)**STATEMENT OF POINTS ON APPEAL**[PDF FILLABLE](#)[PDF NONFILLABLE](#)**CERTIFICATE OF NO TRANSCRIPT ON APPEAL**[PDF FILLABLE](#)[PDF NONFILLABLE](#)**NOTICE OF POSTING AND ACCEPTANCE OF BOND ON APPEAL**[PDF FILLABLE](#)[PDF NONFILLABLE](#)**APPELLATE BRIEF**[PDF FILLABLE](#)[PDF NONFILLABLE](#)

Click to visit [Basics of Court Forms and Filing](#) to learn about filling out legal forms and filing with the justice courts, or click to visit [Justice Courts](#) for links and contact information for your court.

*TIP!* Different justice courts may have different filing requirements, so be sure to familiarize yourself with your court's procedures. The Las Vegas Justice Court, for instance, requires all documents to be filed electronically, so anyone filing in that court needs an e-mail address to set up an electronic filing account. To learn more about electronic filing, visit the [Las Vegas Justice Court website](#).

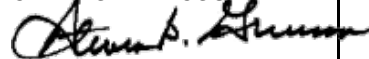
Once your small claims has been appealed to the district court, there is no further appeal available to you.



**EXHIBIT "11"**

**EMERSON LAW GROUP**  
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 HENDERSON, NEVADA 89014  
 TELEPHONE: (702) 384-9444 ☎ TELEFAX: (702) 384-9447

Electronically Filed  
 6/7/2017 9:14 AM  
 Steven D. Grierson  
 CLERK OF THE COURT



**PHILLIP R. EMERSON, ESQ.**  
 Nevada Bar No. 5940  
**EMERSON LAW GROUP**  
 1055 Whitney Ranch Drive, Suite 120  
 Henderson, Nevada 89014  
 receptionist@emersonlawgroup.com  
 Attorney for Defendant,  
 LAS VEGAS PAVING CORPORATION

**DISTRICT COURT  
 CLARK COUNTY, NEVADA**

PETER SOUTHWORTH,	)	Case No. A-17-754175-A
	)	Dept No. XXXII
Plaintiff,	)	
	)	
vs.	)	
	)	
LAS VEGAS PAVING CORPORATION,	)	
	)	
Defendant.	)	
	)	

**ERRATA TO APPELLANT/DEFENDANT'S SUPPLEMENT TO OPPOSITION  
 TO PLAINTIFF'S MOTION TO DISMISS APPEAL**

Appellant/Defendant, LAS VEGAS PAVING CORPORATION, by and through its Attorney of Record, Phillip R. Emerson, Esq., of the EMERSON LAW GROUP, hereby submits this errata to Appellant/Defendant's Supplement to Opposition to Plaintiff's Motion to Dismiss Appeal. Phillip R. Emerson, Esq.'s electronic signature was inadvertently omitted from the document which was

/ / /

/ / /

/ / /

**EMERSON LAW GROUP**

ATTORNEYS AT LAW

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HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

1 filed on June 1, 2017. The e-signed document is submitted with  
2 this errata.

3 DATED this 7th day of June, 2017.

4 *EMERSON LAW GROUP*

5 /s/ Phillip R. Emerson

6 

---

PHILLIP R. EMERSON, ESQ.

7 Nevada Bar No. 5940

8 1055 Whitney Ranch Drive, Suite 120

9 Henderson, Nevada 89014

10 Attorney for Defendant,

11 *LAS VEGAS PAVING CORPORATION*

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**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby  
certify that service of the foregoing, **ERRATA TO**  
**APPELLANT/DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS**  
**APPEAL**, was made this 7th day of June, 2017 via mailing addressed  
as follows:

Peter Southworth, Esq.  
406 South Desert Candles Street  
Ridgecrest, California 93555  
Plaintiff

Veronica Pacheco  
\_\_\_\_\_  
An Employee of EMERSON LAW GROUP

1 **PHILLIP R. EMERSON, ESQ.**

Nevada Bar No. 5940

2 **EMERSON LAW GROUP**

1055 Whitney Ranch Drive, Suite 120

Henderson, Nevada 89014

receptionist@emersonlawgroup.com

Attorney for Defendant,

5 *LAS VEGAS PAVING CORPORATION*

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 PETER SOUTHWORTH, ) Case No. A-17-754175-A

) Dept No. XXXII

9 Plaintiff, )

10 vs. )

11 LAS VEGAS PAVING CORPORATION, )

12 Defendant. )

13 )  
14 **APPELLANT/DEFENDANT'S SUPPLEMENT TO OPPOSITION**  
15 **TO PLAINTIFF'S MOTION TO DISMISS APPEAL**

16 Appellant/Defendant, *LAS VEGAS PAVING CORPORATION*, by and  
17 through its Attorney of Record, Phillip R. Emerson, Esq., of the  
18 EMERSON LAW GROUP, hereby submits the following Supplement to  
19 Opposition to Respondent/Plaintiff's Motion to Dismiss Appeal.  
20

21 / / /

22 / / /

23 / / /

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**FACTUAL/PROCEDURAL BACKGROUND**

This is an action arising from an incident, which occurred on August 19, 2012.

The parties appeared before this Court on June 1, 2017 for the hearing on Respondent's present Motion. Oral arguments were made by Appellant's Counsel regarding the ambiguity of applying JCRCP 72B or JCRCP 98 to the issue before this Court in Respondent's Motion. Accordingly, this brief shall serve as a supplement to same.

**II.**

**LEGAL ARGUMENT**

**A. The Application of JCRCP 72B or JCRCP 98 is Ambiguous, As Demonstrated by the Civil Law Self-Help Center Website, In Which 72B(a) is Cited as the Applicable Rule to Appeals of a Judgment Entered in Justice Court.**

As noted in Appellant's Opposition, Respondent's sole argument is that Appellant filed an untimely Notice of Appeal. However, there is ambiguity and vagueness as to whether JRCRP 72B or JRCRP 98 should apply regarding the time afforded to appeal a judgment. In fact, the procedural ambiguity was conceded by this Court at the hearing on Respondent's present Motion. Specifically, the ambiguity arises out of the fact that JRCRP 72B governs appeals of judgments from Justice Court. As this court knows, a trial de novo on this matter was previously held before

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1 Justice Court. As such, Appellant filed a notice of appeal of  
2 the judgment under the twenty day rule provided by JCRCP 72B.

3 There is limited case law addressing this very issue.  
4 Moreover, there is also some confusion in the Civil Law Self-Help  
5 Center. Specifically, on the website under the section *Appealing*  
6 *The Case*, there is an explanation of "Step 2: Calculate your time  
7 limit to appeal," in which it is stated that in order to appeal a  
8 judgment entered in Justice Court, a notice of appeal must be  
9 filed within twenty days. (See *Civil Law Self-Help Website -*  
10 *Appealing The Case*, attached here to as Exhibit A, page 2).

12 There is also a section in the Civil Law Self-Help Center  
13 website for "Appealing A Small Claims Judgment." (See *Civil Law*  
14 *Self-Help Website - Appealing A Small Claims Judgment*, attached  
15 here to as Exhibit B, page 1). The website explains that either  
16 party has five business days to **object or appeal** the decision.  
17 *Id.* (Emphasis added). As this Court knows, Respondent appealed  
18 the original small claims referee's decision via an objection in  
19 December, 2016. Appellant's Opposition argued this demonstrated  
20 its appeal was an appeal of a judgment made in Justice Court,  
21 distinguishable from Respondent's earlier appeal or objection  
22 from small claims court.  
23

25 Overall, this demonstrates an unclear ambiguity on the  
26 applicability of JCRCP 72B or JCRCP 98. As the Civil Law Help  
27 Center noted that an appeal or objection could be made within  
28 five days following a small claims judgment, Appellant naturally

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1 deduced that the appeal of a small claims judgment had already  
2 occurred and that an appeal of a Justice Court judgment was now  
3 appropriate. Thus, Appellant filed its notice of appeal pursuant  
4 to JCRCP 72B.

5 In the event that this Court is inclined to rule JCRCP 98 is  
6 applicable, the interest of justness and fairness are better  
7 served by this Court hearing the matter of appeal on its merits.  
8 In the event JCRCP 98 is deemed to be applicable, this instance  
9 is most accurately described by excusable neglect. The issue is  
10 vague as both JCRCP 72B and JCRCP 98 fall within the purview of  
11 civil procedure rules in Justice Court. Moreover, the erroneous  
12 interpretation is the result of a genuine mistake, given that the  
13 Civil Law Help Center Website advises of the twenty day rule for  
14 appeals of judgments in Justice Court. The website also adds to  
15 the ambiguity by advising readers that either party can appeal or  
16 object a small claims decision. This is exactly what Respondent  
17 did following the original hearing of this matter before Small  
18 Claims. Naturally, when the matter was heard again as trial de  
19 novo before Justice Court, Appellant believed JCRCP 72B was now  
20 applicable.  
21

22 Moreover, assuming JCRCP 98 is applicable, Appellant's  
23 Notice of Appeal was two days tardy. This further demonstrates  
24 an error arising out of a reasonable misinterpretation of the  
25 rule. As this Court knows, this not an issue that is commonly  
26 addressed before Your Honor and thus there is a lack of  
27  
28



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1 established case law interpreting the distinction between the two  
2 rules. As this Court stated at the June 1, 2017 hearing on the  
3 present Motion, under JCRCP 1: "Whenever it is made to appear to  
4 the court that a particular situation does not fall within any of  
5 these rules or that the literal application of a rule would work  
6 hardship or injustice in a particular situation, the court shall  
7 make such order as the interests of justice require."  
8

9 Here, the fact that under JCRCP 98 Appellant's Notice of  
10 Appeal was only two days tardy, the lack of case law history  
11 establishing a clear interpretation of the rule and the added  
12 ambiguity in relying upon the Self-Help website all weigh in  
13 favor of excusable neglect. As such, the interests of justice  
14 would be served by hearing Appellant's appeal on its merits and  
15 not disposing of it due to clerical error or excusable neglect.  
16 Accordingly, Appellant prays Your Honor find JCRCP 72B is  
17 applicable and deny Respondent's Motion. In the alternative,  
18 Appellant prays Your Honor find excusable neglect exists whereby  
19 Appellant's two-day tardy Notice of Appeal did not cause  
20 prejudice to Appellant.  
21

22 / / /

23 / / /

24 / / /

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**III.**  
**CONCLUSION**

Based on the foregoing, Appellant respectfully requests this Honorable Court deny Respondent, PETER SOUTHWORTH'S Motion to Dismiss Appeal.

DATED this 1st day of June, 2017.

EMERSON LAW GROUP

/s/ Phillip R. Emerson

---

PHILLIP R. EMERSON, ESQ.  
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1055 Whitney Ranch Drive, Suite 120  
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Attorney for Defendant,  
LAS VEGAS PAVING CORPORATION

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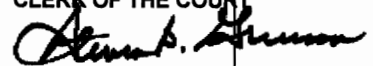
**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby  
certify that service of the foregoing, **APPELLANT/DEFENDANT'S**  
**OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS APPEAL**, was made this  
1st day of June, 2017 via mailing addressed as follows:

Peter Southworth, Esq.  
406 South Desert Candles Street  
Ridgecrest, California 93555  
Plaintiff

Veronica Pacheco  
An Employee of EMERSON LAW GROUP

**EXHIBIT "12"**



1 **RPLY**

2 PETER M. SOUTHWORTH

3 406 S Desert Candles St

4 Ridgecrest, CA 93555

5 (760) 608-3986

6 No fax number

7 peter.m.southworth@gmail.com

8 Respondent, In Proper Person

9  
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 LAS VEGAS PAVING CORPORATION, )

Case No. A-17-754175-A

Dept. No. XXXII

13 Appellant, )

14 vs. )

15 PETER M. SOUTHWORTH, )

16 Respondent. )

17 **RESPONDENT'S REPLY TO APPELLANT'S SUPPLEMENT TO OPPOSITION TO**

18 **RESPONDENT'S MOTION TO DISMISS APPEAL**

19 COMES NOW, Plaintiff/Respondent, PETER M. SOUTHWORTH, appearing in proper  
20 person, and submits this Reply to Appellant's Supplement to Opposition to Respondent's Motion  
21 to Dismiss Appeal.

22 ///

23 ///

24 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 A. Relevant Facts and Procedural History

4 Respondent's Motion to Dismiss Appeal was heard before this Court on June 1, 2017.  
5 Respondent made oral arguments regarding the applicability of Justice Court Rule of Civil  
6 Procedure (JCRCP) 98 in assessing the timeliness of Appellant's Notice of Appeal. This brief  
7 shall serve as a supplement to same.

8 **II. ARGUMENT**

9 A. JCRCP 98 Applies in the Instant Matter and Analogous Case Law Divests this  
10 Court of Jurisdiction to Entertain an Untimely Appeal.

11 In its Supplement to Appellant's Opposition to Respondent's Motion to Dismiss Appeal  
12 ("Supplement"), Appellant contends that JCRCP 72B applies in the instant matter because the  
13 Small Claims Judgment stemming from the Formal Objection Hearing was entered in Justice  
14 Court. All "small claims actions" necessarily take place in Justice Court; there is no separate  
15 court to hear them. See NRS 4.370(1)(o). Additionally, JCRCP 2 states:

16 There shall be three forms of action in justice courts to be known as "civil actions,"  
17 "small claims actions" and "summary eviction actions." **Rules 3 through 87 govern civil**  
18 **actions. Rules governing small claims actions begin with Rule 88 and end with Rule**  
**100.** Rules governing summary evictions commence with Rule 101. [Emphasis added]

19 Thus, JCRCP 72B applies to "civil actions" in Justice Court and JCRCP 98 applies to "small  
20 claims actions" in Justice Court. There is no conflict or ambiguity here; the rule numbers simply  
21 won't allow it. Additionally, there can be no doubt that the underlying case started life as a  
22 "small claims action." For completeness, the original complaint is attached as Exhibit 1.

23 In its Supplement, Appellant cites the Civil Law Self-Help website which indicates that a  
24 party has five business days to object or appeal a small claims decision. Appellant conflates the  
25

1 Formal Objection process and the Formal Appeal process when they are, in fact, two distinct  
2 courses of action. There can be no doubt that if the original Referee's Findings of Facts,  
3 Conclusions of Law, and Recommendations had been formally appealed, JCRCP 98 would have  
4 applied and jurisdiction transferred to District Court. Instead, a Notice of Objection was filed  
5 (attached as Exhibit 2). As can be seen in Exhibit 2, the Notice of Objection is merely a request  
6 for a new trial. The Order granting the Formal Objection Hearing is attached as Exhibit 3. It is  
7 the judgment from the Formal Objection Hearing that Appellant has attempted to appeal  
8 claiming that JCRCP 72B governed the appeal deadline.

9       The only mechanism for JCRCP 72B to apply in the instant matter would be to have had  
10 the Formal Objection process somehow elevate the proceedings from "small claims action" to  
11 "civil action". While Appellant may have mistakenly believed the Formal Objection process did  
12 just that, it is an absurd conclusion supported neither by documentation in the record nor the  
13 authoritative NRS or JCRCP and one that would have at least two far-reaching consequences if  
14 true.

15       While the JCRCP is silent on Formal Objections, the Formal Objection process is  
16 codified in NRS 4.355(4). NRS 4.355(4) states:

17       The findings of fact, conclusions of law and recommendations of the referee must be  
18       furnished to each party or his or her attorney at the conclusion of the proceeding or as  
19       soon thereafter as possible. Within 5 days after receipt of the findings of fact, conclusions  
20       of law and recommendations, a party may file a written objection. If no objection is filed,  
21       the court shall accept the findings, unless clearly erroneous, and the judgment may be  
22       entered thereon. If an objection is filed within the 5-day period, the justice of the peace  
23       shall review the matter by trial de novo, except that if all of the parties so stipulate, the  
24       review must be confined to the record.

22 Neither the Notice of Objection (Exhibit 2) nor the Order granting the Formal Objection Hearing  
23 (Exhibit 3) mention any sort of metamorphosis from "small claims action" to "civil action" and  
24 this cannot be inferred from NRS 4.355(4).

1           Additionally, if the Formal Objection process could transform a “small claims action”  
2 into a “civil action,” two far-reaching consequences would be engendered. First, as NRS Chapter  
3 73 would no longer apply, attorney’s fees could now be pursued. Second, a defendant could now  
4 request a jury trial. In *Cheung v. Eighth Judicial Dist. Court*, 121 Nev. 867, 124 P.3d 550 (2005),  
5 the Nevada Supreme Court ruled that there is no right to a jury trial in “small claims actions.”  
6 Surely it cannot be the interpretation that the Legislature intended to create a vehicle that could  
7 be used to allow a Defendant to circumvent both statute and Nevada Supreme Court opinion.

8           Any ambiguity that may have arisen in the instant matter is manufactured by Appellant.  
9 At the Hearing and in its Supplement, Appellant cited the Civil Law Self-Help Center website as  
10 its source of information regarding the appeal process. Appellant attached excerpts from the  
11 website entitled “Appealing The Case” and “Appealing A Small Claims Judgment” as exhibits in  
12 its Supplement. However, Appellant conveniently did not include the disclaimer from the very  
13 same website. As can be seen at the bottom of the attached Exhibit 4, the disclaimer states:

14           This website was designed and is maintained by Legal Aid Center of Southern Nevada,  
15 Inc., a private, nonprofit, 501(c) (3) organization that operates the Civil Law Self-Help  
16 Center through a contract with Clark County, Nevada. This website is intended to provide  
17 general information, forms, and resources for people who are representing themselves in  
18 a Clark County court without a lawyer. The information on this website is NOT a  
19 substitute for legal advice. Talk with a lawyer licensed in Nevada to get legal advice on  
20 your situation.

21           Appellant’s admitted reliance upon a court-affiliated but non-official website must doom  
22 its argument. The website may indeed have played a role in creating an ambiguity in Appellant’s  
23 mind, but that does not abdicate responsibility from utilizing an authoritative source to  
24 understand the procedural requirements of the mechanism Appellant attempted to invoke.  
25 Respondent, a Pro Se litigant with no legal background, was able to navigate the Civil Law Self-  
Help website for information regarding small claims but was always cognizant of the disclaimer  
and applied diligent searching and careful study of the authoritative JCRCP freely available at



1 <https://www.leg.state.nv.us/courtrules/JCRCP.html>. Here, Appellant must not be the beneficiary  
2 of its own incompetence.

3       Should this Court decide JCRCP 98 applies to the instant matter, thus making Appellant's  
4 Notice of Appeal untimely, the issue then becomes one of jurisdiction. Appellant may be correct  
5 when it states that case law on the instant matter is limited. There is, however, case law relating  
6 to the topic of appeal timeliness in Municipal Court. Since the legislature created "conformity of  
7 practice and proceedings" between Justice Courts and Municipal Courts in NRS 5.073(1), that  
8 case law should apply here. NRS 5.073(1) states:

9           The practice and proceedings in the municipal court must conform, as nearly as  
10 practicable, to the practice and proceedings of justice courts in similar cases. An appeal  
11 perfected transfers the action to the district court for trial anew, unless the municipal  
12 court is designated as a court of record as provided in NRS 5.010. The municipal court  
must be treated and considered as a justice court whenever the proceedings thereof are  
called into question.

13       In *City of Las Vegas v. Eighth Judicial Dist. Court*, 107 Nev. 885, 822 P.2d 115 (1991),  
14 the Supreme Court of Nevada writes: "[i]n this case, the district court is exceeding its jurisdiction  
15 by entertaining defendants' untimely appeals from their judgments of conviction." *See also Root*  
16 *v. City of Las Vegas*, 84 Nev. 258, 439 P.2d 219 (1968) (timely filing a notice of appeal from a  
17 judgment of the municipal court is jurisdictional).

18       NRS 189.010 governs the deadline to appeal a Municipal Court judgment. NRS 189.010  
19 states:

20       Except as otherwise provided in NRS 177.015, a defendant in a criminal action tried  
21 before a justice of the peace may appeal from the final judgment therein to the district  
22 court of the county where the court of the justice of the peace is held, at any time within  
10 days from the time of the rendition of the judgment.

23       The language in NRS 189.010 is remarkably similar to that contained in JCRCP 98 which  
24 governs small claims appeals. JCRCP 98 states:

1 A plaintiff or defendant may appeal from the judgment against him or her to the district  
2 court as in other cases arising in the justice courts, pursuant to Rule 72 *et seq.*, except that  
3 the filing of a notice of appeal must be done within 5 days from the entry of the  
4 judgment, rather than the 20-day period provided for in Rule 72B. No formal Notice of  
5 Entry of Judgment is required. The form of appeal and appeal bond shall be pursuant to  
6 Rules 99 and 100.

7 The same Municipal Court timeliness standard should therefore apply to an appeal from Justice  
8 Court. This standard would also be consistent with appeals from District Court to the Nevada  
9 Supreme Court. In *Alvis v. State Gaming Control Board*, 99 Nev. 184, 660 P.2d 980 (1983), the  
10 Supreme Court of Nevada writes: "[t]he notice of appeal is untimely and this court may not,  
11 therefore, consider the appeal." See *Walker v. Scully*, 99 Nev. 45, 657 P.2d 94 (1983); see also  
12 *Healy v. Volkswagenwerk*, 103 Nev. 329, 741 P.2d 482 (1987). The Supreme Court of Nevada  
13 does not discuss the idea of "relative untimeliness," whether it is two days or three weeks,  
14 because the issue is binary with respect to jurisdiction; an appellate court can bestow no relief for  
15 an untimely Notice of Appeal. Accordingly, this Court lacks jurisdiction to entertain the matter  
16 and Appellant's untimely Appeal should be dismissed.

### 17 III. CONCLUSION

18 For the above reasons, Respondent respectfully requests that this Honorable Court grant  
19 the Motion to Dismiss Appeal.

20 DATED this 13th day of JUNE, 2017.

21 Pursuant to NRS 53.045, I declare under penalty of  
22 perjury under the law of the State of Nevada that the  
23 foregoing is true and correct.

24   
25 PETER M. SOUTHWORTH

406 S Desert Candles St  
Ridgecrest, CA 93555  
(760) 608-3986

No fax number  
peter.m.southworth@gmail.com  
Respondent, In Proper Person

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nev. R. Civ. P 5(b), I HEREBY CERTIFY that on the 13th day of JUNE,  
3 2017, I placed a true and correct copy of the above **RESPONDENT'S REPLY TO**  
4 **APPELLANT'S SUPPLEMENT TO OPPOSITION TO RESPONDENT'S MOTION TO**  
5 **DISMISS APPEAL**, in the United States Mail, with first-class postage prepaid, addressed to the  
6 following:

7 PHILLIP R. EMERSON, ESQ.  
8 Nevada Bar No. 5940  
9 1055 Whitney Ranch Drive, Suite 120  
10 Henderson, NV 89014  
11 Attorney for Appellant,  
12 LAS VEGAS PAVING CORPORATION

13 DATED this 13th day of JUNE, 2017.

14 Pursuant to NRS 53.045, I declare under penalty of  
15 perjury under the law of the State of Nevada that the  
16 foregoing is true and correct.

17   
18 PETER M. SOUTHWORTH  
19 406 S Desert Candles St  
20 Ridgecrest, CA 93555  
21 (760) 608-3986  
22 No fax number  
23 peter.m.southworth@gmail.com  
24 Respondent, In Proper Person  
25

# EXHIBIT 1

**JUSTICE COURT, LAS VEGAS TOWNSHIP**  
**Clark County, Nevada**

Case No. 15A002996

Department No. Department #: LVJC 7

Name and Address of Plaintiff(s):  
**Peter M. Southworth**  
**406 S Desert Candles St**  
**Ridgecrest, CA 93555**

(Plaintiff's(s) Email Address) peter.m.southworth@gmail.com

Plaintiff's(s) Telephone Number (760) 608-3986

**VERSUS**

Name and Address of Defendant(s)  
**Las Vegas Paving Corporation**  
**4420 S Decatur Blvd**  
**Las Vegas, NV 89103**

(Defendant's(s) Telephone Number) (702) 251-5800

**SMALL CLAIMS  
COMPLAINT**

STATE OF NEVADA     )  
COUNTY OF CLARK    )

I, Peter M. Southworth, STATE THAT Defendant(s) owes Plaintiff(s) the sum of \$ 7500.00

for damages arising from a traffic incident on 19 AUG 2012 caused by Las Vegas Paving Corporation. The \$7500.00 sum is comprised of the following: a hotel stay, 2 one-way rental cars, gasoline, 2 meals, loss of wages, driving time, the NHP accident report, a Carfax report, the post-repair diminished value of my vehicle, and the value of a rental car during repairs. These costs are directly attributable to the incident referenced above.

that a letter demanding payment has been sent; that Defendant(s) refuses to pay; and that Defendant(s) either currently resides, works or does business in the Las Vegas Township, County of Clark, State of Nevada.

\* \* \* \* \*

(Signature) Peter M. Southworth

(Dated) 17 AUG 2015

Print Name: Peter M. Southworth

Attorney for Pro Se

**You MUST have this affidavit notarized (block on the left) or sign the unsworn declaration per NRS 53.045 (block on the right):**

SUBSCRIBED AND SWORN to before me this

       day       , 20      

NOTARY PUBLIC in and for the

County of       , State of       

**OR: UNSWORN DECLARATION Per NRS 53.045**

"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

(Date): 17 AUG 2015

(Signature): Peter M. Southworth

(Typed or printed name): Peter M. Southworth

**The Plaintiff(s) must serve three (3) documents: (Small Claims Complaint, Instructions to Plaintiff or Defendant, and Small Claims Answer), on each Defendant.**

**To the above-named DEFENDANT(S):**

**A SMALL CLAIMS ACTION HAS BEEN COMMENCED AGAINST YOU!**

**YOU ARE DIRECTED TO E-FILE (electronically file), with the Las Vegas Justice Court Clerk's Office, AN ANSWER WITHIN TWENTY (20) CALENDAR DAYS from the date of service of the Complaint. Use the attached ANSWER form. You must mail a copy of your Answer to Plaintiff(s) immediately after E-Filing your Answer with the Las Vegas Justice Court. Your failure to Answer (respond to) the Complaint within 20 calendar days may result in the Plaintiff(s) filing a Motion for Default Judgment against you. This means the Referee or Judge may grant a Judgment for the Plaintiff(s) based on the claims/allegations in the Complaint and without considering your possible defense(s) or explanation(s)**

LVJCVL Form -15 Revised 6/14

Pursuant to JCRCP 12(a)(3), the State of Nevada or any political subdivision thereof, and any officer, employee, board or commission member of the State of Nevada or political subdivision, and any state legislator shall file an answer or other responsive pleading within 45 days after their respective dates of service

Case Number: 15A002996

RA000092

# EXHIBIT 2

**Justice Court, Las Vegas Township**  
**CLARK COUNTY, NEVADA**

Peter M. Southworth

PLAINTIFF

-VS-

Las Vegas Paving Corp.

DEFENDANT

CASE NO: 15A002996

**FORMAL OBJECTION NOTICE**

The Plaintiff, Peter M. Southworth, In the above entitled matter formally objects to the decision  
entered on the 2nd Day of December, 20 16 In the above entitled Court and requests  
A new Trial.

DATE: 07-DEC-2016

Per NRS 53.045, "I declare under penalty of perjury that the foregoing is true and correct."

Peter M. Southworth  
Name

406 S Desert Candles St  
(Type Address)

Ridgecrest, CA 93555

**CERTIFICATION OF MAILING**

The Undersigned certifies that on the 7th Day of December, 20 16, a copy of the foregoing Notice  
Of Formal Objection was mailed to Attorney for Las Vegas Paving Corp. at 1055 Whitney Ranch Dr.,  
Suite 120, Henderson, NV 89014 By depositing a copy in the United States Mail in an addressed sealed envelope,

Postage prepaid.

DATE: 07-DEC-2016

Per NRS 53.045, "I declare under penalty of perjury that the foregoing is true and correct."

Peter M. Southworth  
Name

**TO BE COMPLETED BY COURT STAFF ONLY**

Courtroom No: \_\_\_\_\_ At the hour of \_\_\_\_\_ On \_\_\_\_\_, 20 \_\_\_\_\_

JC- (Civil) Rev. 09/01

This document to which this certificate is  
attached is a full, true and correct copy of  
the original on file and of record in Justice  
Court of Las Vegas Township, In and  
for the County of Clark, State of Nevada.  
By: [Signature] Deputy  
Date: 6/26/17

Case Number: 15A002996

RA000094

# EXHIBIT 3



**JUSTICE COURT, LAS VEGAS TOWNSHIP**  
**Clark County, Nevada**

Case No. 15A002996  
JC DEPARTMENT 7

Peter M Southworth, Plaintiff(s)  
vs.  
Las Vegas Paving Corporation, Defendant(s)

**ORDER: SMALL CLAIMS**  
**FORMAL OBJECTION**  
**HEARING**

The Court having reviewed the Formal Objection filed herein and good cause appearing therefore,

**IT IS HEREBY ORDERED that:**

☒ The Formal Objection Hearing is approved to be placed on calendar and shall be set for hearing on  
the 8<sup>th</sup> day of February 20 17 at 1:00 P. M. In  
Courtroom 1B of the Las Vegas Justice Court.

☐ The Small Claims Formal Objection is DENIED to be placed on calendar for the following reason(s):

☐ The formal objection was not timely filed.

☐ A formal objection may not be filed in response to the denial of a Motion for Exemption from  
Mandatory Small-Claims Mediation.

☐ A formal objection may not be filed in response to the denial of a Motion to Set Aside Default  
Judgment when the Defendant has failed to appear for trial before a referee.

☐ A formal objection may not be filed in response to the denial of a Motion to Set Aside  
Dismissal when the Plaintiff has failed to appear for trial before a referee.

☐ A formal objection may not be filed in response to the denial of a motion to dismiss  
before a referee.

☐ Other: \_\_\_\_\_

DATED this 8 day of Dec, 2016

\_\_\_\_\_  
JUSTICE OF THE PEACE  
Adam Vander Hayden - Pro Tempore

Original-File

This document to which this certificate is  
attached is a full, true and correct copy of  
the original on file and of record in Justice  
Court of Las Vegas Township, in and  
for the County of Clark, State of Nevada.

By: [Signature] Deputy

Date: 5/26/17

Case Number: 15A002996

SM

RA000096

# EXHIBIT 4

## Search

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www.civillawselfhelpcenter.org

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LEGAL AID CENTER

of Southern Nevada

This website was designed and is maintained by Legal Aid Center of Southern Nevada, Inc., a private, nonprofit, 501(c)(3) organization that operates the Civil Law Self-Help Center through a contract with Clark County, Nevada. This website is intended to provide general information, forms, and resources for people who are representing themselves in a Clark County court without a lawyer. The information on this website is NOT a substitute for legal advice. Talk with a lawyer licensed in Nevada to get legal advice on your situation.

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RA000099

**EXHIBIT "13"**

A-17-754175-A

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Appeal from Lower Court**

**COURT MINUTES**

**June 26, 2017**

---

A-17-754175-A      Las Vegas Paving Corporation, Appellant  
vs.  
Peter Southworth, Respondent

---

**June 26, 2017      8:01 AM      Decision**

**HEARD BY:** Bare, Rob

**COURTROOM:** RJC Courtroom 03C

**COURT CLERK:** Katrina Hernandez

**JOURNAL ENTRIES**

- This matter came before this Court on June 1, 2017 for Respondent Peter Southworth s Motion to Dismiss Appeal. After hearing oral arguments, the Court ordered supplemental briefing. The Supplemental Briefs were filed on June 1, 2017 and June 13, 2017. After carefully considering the submitted motions, supplemental briefs, evidence, and oral argument Court issued its Decision this 22nd day of June, 2017. COURT ORDERED Respondent s Motion to Dismiss Appeal is DENIED.

In this case, the Small Claims Judgment was entered on March 22, 2017 and mailed to the parties on March 24, 2017. On April 7, 2017, Appellant Las Vegas Paving Corporation filed their Notice of Appeal. At issue in this matter is whether the appeal from lower court was timely filed and what Justice Court Rule of Civil Procedure properly applies to the filing of an appeal from a justice court small claims matter.

Justice Court Rule of Civil Procedure 72B(a) provides that a notice of appeal from a justice court civil case shall be filed within 20 days of the date of service of written notice of the entry of the judgment. Rule 98 provides that, in small claims matters, a notice of appeal must be done within 5 days from the entry of the judgment. Under Rule 72B(a), the Appellant s notice of appeal would have been timely. In this case, under Rule 98, the appeal would have been two days late and, therefore untimely. Based upon a review of these rules and the Justice Court Rules of Civil Procedure as a whole it is clear to this Court that Rule 98 applies to this case and this appeal, and there is a requirement that an appeal from a small claims matter be done within 5 days, as opposed to 20 days.

However, based upon the oral arguments presented on June 1, 2017 and the supplemental briefing, this Court agrees that the timeline to file the appeal in this case may have been ambiguous, given the

PRINT DATE: 06/26/2017

Page 1 of 2

Minutes Date: June 26, 2017

procedure that occurred in the justice court small claims case. Further, Justice Court Rule of Civil Procedure 1 provides that [w]henver it is made to appear to the court that a particular situation does not fall within any of these rules or that the literal application of a rule would work hardship or injustice in a particular situation, the court shall make such order as the interests of justice require. Here, a literal application of the 5 day deadline would work hardship or injustice in this particular situation, given the procedure in the small claims case, and also given that the appeal was filed only 2 days late. Furthermore, in Nevada, there is a public policy favoring adjudication of cases on their merits. *Blanco v. Blanco*, 129 Nev. Adv. Op. 77, 311 P.3d 1170, 1174 (2013).

As such, in the interest of justice, this appeal will go forward on its merits. The Court will issue a new Order Setting Briefing Schedule.

Counsel for Appellant Las Vegas Paving Corporation is directed to submit a proposed order. The Order is to be consistent with this Minute Order, the submitted briefing, and oral argument. Counsel may add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. A Status Check: Order is set for July 26, 2017 in chambers for the order. Parties need not appear.

7/26/17 3:00 AM (CHAMBERS) STATUS CHECK: ORDER

\*CLERK'S NOTE: Minute Order E-Served./KH 6-26-17

**EXHIBIT "14"**



SECRET OF THE U.S.S.R.

**EMERSON LAW GROUP**

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby  
certify that service of the foregoing, **NOTICE OF ENTRY OF ORDER**,  
was made this 11th day of August, 2017 via mailing addressed as  
follows:

Peter Southworth, Esq.  
406 South Desert Candles Street  
Ridgecrest, California 93555  
Plaintiff

/s/ Veronica Pacheco  
An Employee of EMERSON LAW GROUP

ORIGINAL

Electronically Filed  
8/1/2017 10:43 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 PHILLIP R. EMERSON, ESQ.  
Nevada Bar No. 5940  
2 EMERSON LAW GROUP  
1055 Whitney Ranch Drive, Suite 120  
3 Henderson, Nevada 89014  
4 receptionist@emersonlawgroup.com  
Attorney for Defendant,  
5 LAS VEGAS PAVING CORPORATION

6 DISTRICT COURT  
7 CLARK COUNTY, NEVADA

8 PETER SOUTHWORTH, ) Case No. A-17-754175-A  
9 Plaintiff, ) Dept No. XXXII  
10 vs. )  
11 LAS VEGAS PAVING CORPORATION, )  
12 Defendant. )  
13

14 ORDER

15 Plaintiff's Motion to Dismiss Appeal, having regularly come  
16 on for hearing on June 1, 2017, and the Court having reviewed the  
17 papers and pleadings filed by the respective parties, and good  
18 cause appearing therefore,  
19

20 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's  
21 Motion to Dismiss Appeal is hereby DENIED.

22 In this case, the Small Claims Judgment was entered on March  
23 22, 2017 and mailed to the parties on March 24, 2014. On April  
24 7, 2017, Appellant Las Vegas Paving Corporation filed their  
25 Notice of Appeal. At issue in this matter is whether the appeal  
26 from lower court was timely filed and what Justice Court Rule of  
27  
28

JUL 26 2017

EMERSON LAW GROUP

ATTORNEYS AT LAW  
1055 WHITNEY RANCH DRIVE, SUITE 120  
HENDERSON, NEVADA 89014  
TELEPHONE: (702) 384-9444 • TELEFAX: (702) 384-9447

**EMERSON LAW GROUP**

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 Civil Procedure properly applies to the filing of an appeal from  
2 a justice court small claims matter.

3 The Court finds that under Justice Court Rule of Civil  
4 Procedure 72B(a), the Appellant's notice of appeal would have  
5 been timely. The Court further finds that under Rule 98, the  
6 appeal would have been two days late and, therefore untimely.  
7 The Court further finds that based upon a review of the Justice  
8 Court Rules of Civil Procedure as a whole, it is clear to the  
9 Court that Rule 98 applies to this case and this appeal, and  
10 there is a requirement that an appeal from a small claims matter  
11 be done within 5 days, as opposed to 20 days.

12 The Court further finds that the timeline to file the appeal  
13 in this case may have been ambiguous, given the procedure that  
14 occurred in the justice court small claims case. The Court  
15 further finds that under Justice Court Rule of Civil Procedure 1,  
16 whenever it is made to appear to the court that a particular  
17 situation does not fall within any of these rules or that the  
18 literal application of a rule would work hardship or injustice in  
19 a particular situation, the court shall make such order as the  
20 interests of justice require. The Court further finds that a  
21 literal application of the 5 day deadline would work hardship or  
22 injustice in this particular situation, given the procedure in  
23 the small claims case, and also given the appeal was filed only 2  
24 days late. The Court further finds in Nevada, there is a public  
25  
26  
27  
28

**EMERSON LAW GROUP**

ATTORNEYS AT LAW

1055 WHITNEY RANCH DRIVE, SUITE 120

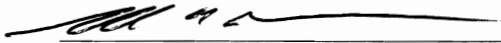
HENDERSON, NEVADA 89014

TELEPHONE: (702) 384-9444 & TELEFAX: (702) 384-9447

1 policy favoring adjudication of cases on their merits. *Blanco v.*  
2 *Blanco*, 129 Nev. Adv. Op. 77, 311 P.3d 1170, 1174 (2013).

3 IT IS FURTHER ORDER that the Court will allow the above  
4 referenced matter to proceed on the merits.

5 DATED this 28 day of July, 2017.

7   
8 DISTRICT COURT JUDGE

9 ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32


10 Approved as to form and content:

11 PETER SOUTHWORTH

12 Signature not received  
13 Peter Southworth  
14 406 South Desert Candles Street  
15 Ridgecrest, California 93555  
16 Plaintiff in Pro Per

17 Submitted by:

18 EMERSON LAW GROUP

19  *Bar No 13071 For*  
20 PHILLIP R. EMERSON, ESQ.  
21 Nevada Bar No. 5940  
22 1055 Whitney Ranch Drive,  
23 Suite 120  
24 Henderson, Nevada 89014  
25 Attorneys for Defendant,  
26 LAS VEGAS PAVING CORPORATION  
27  
28