FILED SUPREME COURT STATE OF WASHINGTON 6/16/2017 2:05 PM BY SUSAN L. CARLSON CLERK

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9	LADDAD DALEM) C Nr 04501 7				
10	LARRY D. RILEY, Appellant,) Case No.: 94521-7				
11	Appendit, VS)) MOTION FOR				
12) EXTENSION) OF TIME TO FILE				
13	IRON GATE SELF STORAGE; ESMS PARTNERS LP; GLEN L. ARONSON) PETITION FOR				
14	EVE ARONSON TRUST; PRIME COMMERCIAL PROPERTY, INC.; all) REVIEW				
15	dba IRON GATE SELF STORAGE; dba	ĺ				
	IRON GATE STORAGE – CASCADE PARK)				
16	Respondants.)				
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18						
19		ONUNC DA DEN				
20	I. IDENTITY OF MOVING PARTY					
21	Larry D. Riley, by and through his attorney of record, James L.					
22	Sellers, asks this Court to grant an extension of time to file Mr. Riley's					
23	Petition for Review.					
24						
25	MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR	SELLERS LAW OFFICE James L. Sellers, Attorney at Law				
26	REVIEW - page I	PO Box 61535, 415 East Mill Plain Blva Vancouver, WA 98666 360.695.0464 Fax: 360 695 0464				

П. STATEMENT OF RELIEF SOUGHT.

Larry D. Riley requests an extension of time to file the Appellant's Petition for Review to the time on which it is actually accepted as filed; it was received by the Court on May 18, 2017 at approximately 5:04 PM, but stamped as received the following morning, May 19, 2017.

III. **FACTS RELEVANT TO MOTION**

The details of the problems of attempting to send the Petition through the Portal and its ultimate transmission are contained in the Declaration of Christine Tracy in Support of Motion for Extension of Time to File Petition for Review, and accompanying exhibits, all of which accompany this motion.

To summarize, Larry D. Riley, by and through his attorney, James L. Sellers, attempted to file the Petition for Review through the Court's Portal and the JIS-Link, starting at 4:42 PM on May 18, 2017, within the 30-day period required to file the Petition. A legal assistant with experience filing through the Portal made approximately 25 attempts to send the Petition between 4:42 PM and 4:53 PM. In each instance, either an error message was shown on the Portal path or the attempts were knocked off the path to the Portal and the filer returned to the Court's web site.

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MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR 26 REVIEW - page 2

When a message instructed calling the site administrator was shown, the legal assistant for Sellers Law Office who had been trying to connect to the Portal contacted the Court by phone to see what could be done. This assistant was informed in the phone call that the Court had been having problems with the Portal and that an attempt would be made to obtain permission for the legal assistant to email the Petition. The legal assistant was put on hold while the person at the Court attempted to obtain permission for the legal assistant to email the Petition for Review. When approval to email was given, the assistant was first able to send the email at 5:04 PM.

IV. GROUNDS FOR RELIEF AND ARGUMENT

The rule permitting this extension of time is RAP 18.8(b).

Extensions are granted "only in extraordinary circumstances and to

In Reichelt v. Raymark Industries, Inc, 52 Wn. App 763, 764 P.2d 653 (1988), after noting that this rigorous test has rarely been satisfied, the

In each of those cases, the moving party actually filed the notice of appeal within the 30-day period but some aspect of the filing was challenged. See Weeks v. Chief of Wash. State Patrol, 96 Wash. 2d 893, 895-96, 639 P.2d 732 (1982), notice timely filed, but filed in wrong court; State v. Ashbaugh, 90 Wash. 2d 432, 438, 583 P.2d 1206 (1978), notice timely filed but rejected by court for lack of filing fee; Structurals Northwest, Ltd. v. Fifth & Park Place,

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW - page 3

prevent a gross miscarriage of justice".

court summarized cases in which it had been met:

SELLERS LAW OFFICE James L. Sellers, Attorney at Law PO Box 61535, 415 East Mill Plain Blvd Vancouver, WA 98666 360.695.0464 Fax: 360 695 0464

Inc., 33 Wash. App. 710, 714, 658 P.2d 679 (1983), notice timely when filed within 30 days of entry of stipulated "amended" judgment. In each case, the defective filings were upheld due to "extraordinary circumstances", i.e., circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. In such a case, *766 the lost opportunity to appeal would constitute a gross miscarriage of justice because of the appellant's reasonably diligent conduct. RAP 18.8(b).

In the *Riley v Iron Gate* case before this Court, Mr. Riley actually filed within the 30-day period, but some aspect of the filing was a problem as in the cited cases. Mr. Riley's filing through the Portal was commenced in sufficient time to conclude it, but there were problems with the Portal that prevented his transmission of his Petition for Review after approximately 25 attempts. A legal assistant at the Sellers Law Office sought help from the Court on the phone with a person where the filing had to be made, who sought out permission to email the Petition while the legal assistant was put on hold. When the Petition could be finally filed, it was four minutes late. In other words, the defective filing was due to "extraordinary circumstances", i.e., circumstances wherein the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond Mr. Riley's control.

If the extension is not granted the lost opportunity to petition the Supreme Court for review would constitute a gross miscarriage of just

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25 MOTION FOR EXTENSION OF 26

TIME TO FILE PETITION FOR REVIEW - page 4

1	i
1	because of Mr. Riley reasonably diligent conduct or excusable error, like
2	in the cited cases.
3	
4	V. CONCLUSION
5	For the reasons described above, Larry D. Riley respectfully
6	
7	requests this Court to grant his Motion for Extension of Time to File the
8	Petition for Review.
9	Dated the 16th day of June, 2017
10	
11	Respectfully submitted,
12	\mathcal{L}
13	
14	James L. Sellers, Attorney for Appellant, WSBA #4770
15	P.O. Box 61535 Vancouver, WA 98666
16	(360) 695 0464
17	jsellers@sellerslawoffice.com
18	
19	
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25	MOTION FOR EXTENSION OF SELLERS LAW OFF

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW - page 5

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2	CERTIFICATE OF SERVICE
3	I certify that on the 16 th day of June, 2017, I caused a true and correct
4	copy of this Declaration to be served on the following by email:
5	Attorneys for Respondents:
6	Paul R. Xóchihua Davis·Rothwell·Earle&Xóchihua
7	111 Southwest Fifth Avenue, Suite 2700
8	Portland, Oregon 97204-3650 PXOCHIHUA@davisrothwell.com
9	Chris Parker
10	Davis·Rothwell·Earle & Xóchihua 111 Southwest Fifth Avenue, Suite 2700
11	Portland, Oregon 97204-3650
12	cparker@davisrothwell.com
13	Pat Rothwell Davis·Rothwell·Earle & Xóchihua
14	701 5 th Ave, Suite 5500
15	Seattle, WA 98104-7096 prothwell@davisrothwell.com
16	
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18	James L. Sellers, Attorney for Appellant, WSBA #4770
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25	SELLERS LAW OFF

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW - page 6

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7	IN THE SUPREME COURT OF THE	TATE OF WASHINGTON	
8			
9	LARRY D. RILEY, Appellant,) Case No.: 94521-7	
10	Appenant, Vs) DECLARATION OF) CHRISTINE TRACY	
11	IRON GATE SELF STORAGE; ESMS) IN SUPPORT OF	
12	PARTNERS LP; GLEN L. ARONSON) MOTION FOR) EXTENSION	
13	EVE ARONSON TRUST; PRIME COMMERCIAL PROPERTY, INC.; all) OF TIME TO FILE) PETITION FOR	
14	dba IRON GATE SELF STORAGE; dba IRON GATE STORAGE – CASCADE) REVIEW	
15	PARK)	
16	Respondents.)	
17	COMES NOW, Christine Tracy, and	ones haraby cartify and daglara	tho.
18	following to be true under penalty of perjury a	• •	
19	Washington:		
20	(1) That I am over the age of 21 a	-	
21	herein, and make this Declaration to the best of belief.	my own personal knowledge	and
22	bener.		
23			
24	DECLARATION OF CHRISTINE TRACY	SELLERS LAW OF	FICE
25	IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE	James L. Sellers, Attor PO Box 61535, 415 East l Vancouver, WA 98666	ney at Law Mill Plain Blvd
26	APPELLANT'S PETITION FOR REVIEW - page 1	Fax: 360 695 0	464

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- On May 18, 2017, I was employed as a legal assistant for (2)Attorney James L. Sellers in Vancouver, Washington, who is the attorney of record for the Appellant herein.
- (3)On that date, I was told by Mr. Sellers that I would be filing a Petition for Review for Mr. Riley with the Supreme Court. I knew that it would probably be ready for transmission through the Court's Portal later in the afternoon. My familiarity with the Portal was the result of filings made by me in the Court of Appeals, Division II, on this case. A true and correct copy of the history from my computer, collected in the ordinary course of business with Mr. Sellers, of my efforts to transmit the Petition for Review to the Court is attached as Exhibit "A".
- (4) At approximately 2:45 PM I started the Portal log-in process by going to Washington State Courts and going through the steps, such as putting in my user name and password in order to get things ready to scan and upload the Petition for Review when the document was ready to send to the Court through the Portal. I don't remember what paths I actually took to log in. I had never had problems logging in through this system. When I had gone through the steps, I thought from my experience with the log in that when I came back to transmit the Petition for Review that the system would be ready for me to transmit the Petition. I was called away until Mr. Sellers could give me the Petition to scan and transmit.
- (5) Mr. Sellers brought me the ready-to-go Petition shortly before 4:42 PM so that I could scan it and transmit it through the Portal. Although my letter of May 24, 2017 that I sent to Ms. Armstrong (attached as Exhibit "B", which references the other exhibits to this Declaration, as well as other documents that were also sent) states that Mr. Sellers gave me the Petition at 4:42 PM, I believe that it was actually shortly before 4:42 PM when I got it because I had to scan the Petition when he gave it to me, and the history of this transaction from my internet record (Exhibit "A") on my computer showed that I was

DECLARATION OF CHRISTINE TRACY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S PETITION FOR REVIEW

actually attempting to connect at 4:42 PM. When I returned to my computer to make the transmission at 4:42 PM, I realized that I was not logged on the Portal. Until that time, I assumed that I had been connected to the Portal and logged in.

- (6) When I tried to connect at 4:42 PM, I kept getting error messages to the Portal and was being knocked off the path through JIS-Link (and returning me to the Court's web site).
- (7) I tried connecting through the Odyssey Portal and JIL-Link, but nothing would let me in. Then I received a message on my computer to call the site administrator. I began to panic and gave up attempting to transmit through the Portal at 4:53 PM and called the Supreme Court Clerk's office. I had tried to get on the Portal and JIS-Link 25 times in eleven minutes, when I explained to a woman on the phone at the Supreme Court that I was having trouble and needed to file a Petition for Review that day and wanted to know what they thought I should do. She commented to me that they had been having problems with the Portal that day.
- Joslyn, but I'm not completely sure. She told me that she was going to have to go ask someone if I could email the Petition. She put me on hold for at least a couple minutes. When she came back, she told me that I could email the Petition in for filing and gave me the email address. She said she would stand there and wait for it and stamp the Petition when it came in. I thanked her and we hung up. I then emailed the Petition to supreme@courts.wa.gov which my computer email history shows was sent at 5:04 PM. I wasn't sure if it went through, as I was in a

DECLARATION OF CHRISTINE TRACY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S PETITION FOR REVIEW

James L. Sellers, Attorney at Law PO Box 61535, 415 East Mill Plain Blvd Vancouver, WA 98666 360.695.0464 Fax: 360 695 0464

SELLERS LAW OFFICE

- page 3

panic, so I emailed it again; my computer email history shows that it was sent for the second time at 5:11 pm. From 4:42 PM until my last email, I had been frantically engaged in attempting to send the Petition.

- I printed and enclosed a copy of my history from my internet server for May 18, 2017, which shows when I was trying to log on to the Portal and JIS-link at 2:44 pm and again at 4:42 pm until I gave up at 4:53 pm and called the Court and got permission to email the Petition. I have also enclosed the copies of my two emails that I sent, each with a copy of the Petition for Review, which are attached as Exhibit "C" & "D".
- At no time prior to my attempting to transmit the Petition did I have any inkling that the Court had been having any problem with its Portal, or that I would have a problem accessing it myself.
- I also emailed the Petition for Review on May18, 2017 to opposing counsel, which had authorized service of the Petition by email. Exhibit "E" is the Declaration of Service.
- The filing fee was mailed to the Court along with the mailed copy of my letter and the other documents.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct; which I subscribe on the date of this letter, at Vancouver, Washington, as follows:

Signature of Declarant

DECLARATION OF CHRISTINE TRACY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S PETITION FOR REVIEW

page 4

SELLERS LAW OFFICE James L. Sellers, Attorney at Law PO Box 61535, 415 East Mill Plain Blvd Vancouver, WA 98666 360.695.0464

Fax: 360 695 0464

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2	CERTIFICATE OF SERVICE						
3	I certify that on the 16 th day of June, 2017, I caused a true and correct						
4	copy of this Declaration to be served on the following by email:						
5	Attorneys for Respondents:						
6	Paul R. Xóchihua Davis·Rothwell·Earle&Xóchihua						
7	111 Southwest Fifth Avenue, Suite 2700						
8	Portland, Oregon 97204-3650 PXOCHIHUA@davisrothwell.com						
9	Chris Parker						
10	Davis·Rothwell·Earle & Xóchihua						
11	111 Southwest Fifth Avenue, Suite 2700 Portland, Oregon 97204-3650						
12	cparker@davisrothwell.com						
13	Pat Rothwell Davis·Rothwell·Earle & Xóchihua						
14	701 5 th Ave, Suite 5500						
15	Seattle, WA 98104-7096 prothwell@davisrothwell.com						
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18	James L. Sellers, Attorney for Appellant, WSBA #4770						
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24	DECLARATION OF CHRISTINE TRACY SELLERS LAW OFFICE James L. Sellers, Attorney at Law						
25	IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S PETITION FOR REVIEW PO Box 61535, 415 East Mill Plain Blvd Vancouver, WA 98666 360.695.0464 Fax: 360 695 0464						

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May 24, 2017

Supreme Court of Washington Lisa Armstrong, Administrative Coordinator PO Box 40929 Olympia, WA 98504-0929 James L. Sellers, Attorney at Law Oregon & Washington Bars PO Box 61535 415 East Mill Plain Blvd Vancouver, WA 98666 (360) 695-0464 FAX: (360) 695-0466 A Professional Corporation

RE:

Larry D. Riley vs Iron Gate Self Storage, et al, Clark County Superior Court Case No. 10 2 05298 8 Washington Court of Appeals Case No. 47905-2-II Supreme Court of Washington Case No. 94521-7

Dear Ms. Armstrong,

On May 18, 2017, I tried to send you our *Petition for Review* though the Portal and though JIS-link. I started at approximately 2:45 pm or so, just to get logged on to the Washington State Courts to make sure that I could file the Petition. I was called away about 10 minutes later and was not successful in the login. At 4:42 pm my attorney, James Sellers, gave me the Petition to file. I tried again to log into the Portal and kept receiving error messages. I tried going through JIS-Link and it wouldn't let me login there either. I received the message to call the site administrator. I began to panic and gave up at 4:53 pm and called the Supreme Court Clerk's office. I explained that I was having trouble and needed to file the *Petition for Review* that day and wanted to know what they thought I should do. The woman on the phone, I believe her name was Joslyn but I'm not completely sure, put me on hold for a couple minutes and came back to tell me that I can email the Petition in for filing. She said she would be there to stamp it for me. I thanked her and we hung up. I then emailed the Petition to supreme@courts.wa.gov which my computer shows it was sent at 5:04 pm. I wasn't sure if it went through, like I said I was in a panic, so I emailed it again, my computer said it sent that one at 5:11 pm.

I printed and enclosed a copy of my history from my internet for May 18, 2017, which shows when I was trying to log on to the Portal and JIS-link at 2:44 pm and again at 4:42 pm until I gave up at 4:53 pm and called getting the email address. I have also enclosed the two copies of my emails that I sent the *Petition of Review*.

Please notify us if we have not provided adequate documentation and need to make a *Motion for an Extension*.

Mr. Sellers requested I send you a copy of the Declaration of Service that I emailed Mr. Xochihua the *Petition of Review* on May 18, 2017. Mr. Xochihua had previously agreed to accept service by email.

I have also enclosed our check no. 2994 for \$200.00 for the filing fee.

If you have any questions or concerns please call the office at the number above.

Thank you very much for your time and patience,

Chris Tracy

Paralegal to James Sellers

Enclosures

Chris

From: Sent:

Chris <chris@sellerslawoffice.com> Thursday, May 18, 2017 5:04 PM

To: Subject: 'supreme@courts.wa.gov'

Attachments:

Petition for Review DOC006.PDF

Thanks a million!

Chris Tracv Paralegal Sellers Law Office PO Box 61535 Vancouver, WA 98666

360-695-0464

Fax: 360-695-0466

chris@sellerslawoffice.com

NOTICE: This communication (including any attachments) may contain privileged or confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying or distribution of this communication, or the taking of any action based on it, is strictly prohibited. Thank you.

STATE OF WASHINGTON

) ss.

County of Clark

COMES NOW, the email sender above-identified, and does hereby certify and declare the following to be true under penalty of perjury and under the laws of the State of Washington:

(1) That I am over the age of 21 and I am competent to be a witness herein, and make this

Declaration to the best of my own personal knowledge and belief.

(2) On date of this email or copy thereof, I did those of the following that are checked:] I deposited in the mails of the United States, a properly stamped and addressed envelope,

I transmitted by fax, [X] I transmitted by email,

which was addressed and directed to the recipient of this email, and which contained a true and correct copy of the document(s) attached to this email.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct; which I subscribe on the date of this email, at Vancouver, Washington,

Chris Tracy

Chris From: Chris <chris@sellerslawoffice.com> Sent: Thursday, May 18, 2017 5:11 PM To: 'supreme@courts.wa.gov' Subject: Petition for Review - Riley vs Iron Gate Attachments: Riley vs Iron Gate COA Case no. 47904-2-II.PDF Tracking: Recipient Read 'supreme@courts,wa.gov' Read: 5/19/2017 8:43 AM Hello, This is the second email I have sent. I just wanted to make sure you received the Petition for Review from Sellers Law I really appreciate you letting me email it to you. Thank you, Chris Tracy Paralegal Sellers Law Office PO Box 61535 Vancouver, WA 98666 360-695-0464 Fax: 360-695-0466 chris@sellerslawoffice.com NOTICE: This communication (including any attachments) may contain privileged or confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this communication and/or shred the materials and any attachments and are hereby notified that any disclosure, copying or distribution of this communication, or the taking of any action based on it, is strictly prohibited. Thank you. STATE OF WASHINGTON) ss. County of Clark

COMES NOW, the email sender above-identified, and does hereby certify and declare the following to be true under penalty of perjury and under the laws of the State of Washington:

(1) That I am over the age of 21 and I am competent to be a witness herein, and make this Declaration to the best of my own personal knowledge and belief.

(2) On date of this email or copy thereof, I did those of the following that are checked: I deposited in the mails of the United States, a properly stamped and addressed envelope, I transmitted by fax.

[X] I transmitted by email,

which was addressed and directed to the recipient of this email, and which contained a true and correct copy of the document(s) attached to this email.

DECLARATION OF SERVICE

STATE OF WASHINGTON)	
G)	No: 94521-7
County of Clark)	

On May 18, 2017 I did those of the following that are checked:

[] I deposited in the mails of the United States, a properly stamped and addressed envelope,

[] I transmitted by fax,

[X] I transmitted by email,

which was addressed and directed to Paul R. Xóchihua, 111 Southwest Fifth Avenue, Suite 2700, Portland, Oregon 97204-3650 (as shown below), and which contained a true and correct copy of the document, the *Petition of Review to the Supreme Court* to which this declaration is affixed. Mr. Xochihua agreed to accept service by email.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Chris Tracy

Date sent:

May 24, 2017

Place from which sent:

Vancouver, Washington

To Whom Sent: Paul R. Xóchihua

DAVIS-ROTHWELL EARLE XOCHIHUA PO

111 Southwest Fifth Avenue, Suite 2700 Portland, Oregon 97204-3650

PXOCHIHUA@davisrothwell.com cparker@davisrothwell.com





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Washington State Courts

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For Washington State laws, visit the Washington State Legislature

SELLERS LAW OFFICE

June 16, 2017 - 2:05 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: Case Initiation

Trial Court Case Title:

The following documents have been uploaded:

PRV Petition for Review Plus 20170616134440SC592946 3396.pdf

This File Contains:

Motion 1 - Extend Time to File

Petition for Review

The Original File Name was Motion for Extention of Time to File Petition for Review.PDF

A copy of the uploaded files will be sent to:

- chris@sellerlawoffice.com
- cparker@davisrothwell.com
- jsellers@sellerslawoffice.com
- larryirishriley@gmail.com
- prothwell@davisrothwell.com
- pxochihua@davisrothwell.com

Comments:

We have been asked to show documentation on how come the Petition for Review was received by the Supreme Court on 5/18/2017 @ 5:04 pm as the Portal erred and the JIS-link bumped us back to the WA State Court site, notified the clerk by phone at 4:53 pm and after verifying permission to email she gave us the email address and it was emailed promptly.

Sender Name: Chris Tracy - Email: chris@sellerslawoffice.com

Filing on Behalf of: James Lawrence Sellers - Email: jsellers@sellerslawoffice.com (Alternate Email:)

Address:

PO Box 61535

Vancouver, WA, 98666 Phone: (360) 695-0464

Note: The Filing Id is 20170616134440SC592946