

**FILED**

2014 JAN 16 AM 3:53

JOEY DRDUNA HASTINGS  
CLERK OF THE COURT  
Electronically Filed  
Jan 20 2014 10:32 a.m.  
DEPUTY  
Tracie K. Lindeman  
Clerk of Supreme Court

Code: 2515  
Alexander M. Falconi  
2218 Running Dog Cir.  
Reno, NV 89506  
exavior75@yahoo.com  
775-391-9139  
Appearing in Proper Person

CV12-02385  
ALEXANDER FALCONI VS CORAZON REAL ESTATE  
District Court Washoe County  
01/16/2014 03:53 PM  
2515  
DNC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

ALEXANDER M. FALCONI, an individual;  
  
Plaintiff,  
  
vs.  
  
CORAZON REAL ESTATE, a domestic  
corporation; and DOES I-X, inclusive;  
  
Defendant.

Case #: CV12-02385

Dept #: 9

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Alexander M. Falconi, Plaintiff above named, hereby  
appeals to The Supreme Court of the State of Nevada from the *Order Granting Motion for  
Judgment on the Pleadings* entered in this action on the 10<sup>th</sup> day of January, 2014.

**AFFIRMATION**<sup>1</sup>: This document does not contain a social security number of any person.

SIGNED this 15 day of JANUARY, 2014.



Alexander M. Falconi

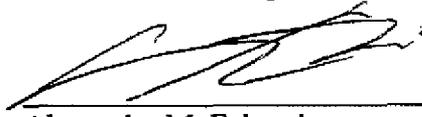
<sup>1</sup> This affirmation is in accordance with NRS 239B.030."

**NRCP 5 CERTIFICATE OF SERVICE**

1  
2 I, Alexander M. Falconi, do hereby solemnly swear under penalty of perjury that I am  
3 over the age of 18 and a party to this action and that I **personally**<sup>2</sup> served a true and correct copy  
4 of this *Notice* to:

5 Katherine F. Parks, Esq.  
6 Brandon Price, Esq.  
7 6590 S. McCarran Blvd., Suite B  
8 Reno, Nevada 89509

9 SERVED THIS 16 day of JANUARY, 2014.

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11 Alexander M. Falconi

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<sup>2</sup> Because this *Notice* was personally served, NRCP 6(e) does not apply.

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**Code 1310**

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

**ALEXANDER M. FALCONI, an individual,**

**Plaintiff,**

**vs.**

**Case No. CV12-02385  
Dept. No. 9**

**CORAZON REAL ESTATE, a domestic corporation;  
and DOES I-X. inclusive,**

**Defendant.**

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**CASE APPEAL STATEMENT**

This case appeal statement is filed pursuant to NRAP 3(2).

1. This appeal is from an order entered by the Honorable Scott Freeman.
2. Appellant is Alexander M Falconi. Appellant is representing himself in Proper Person on appeal:
3. Appellant's address is:  
Alexander Falconi  
9218 Running Dog Circle  
Reno, Nevada 89506
4. Respondent is Corazon Real Estate. Respondent was represented in District Court by:  
Katherine Parks, Esq.  
1108 Aristicon Drive  
Reno, Nevada 89523
5. Respondent's attorney is licensed to practice law in Nevada.

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- 6. Appellant was not represented by appointed counsel in District Court.
- 7. Appellant is not represented by appointed counsel on appeal.
- 8. Appellant was granted leave to proceed in forma pauperis in the District Court filed on January 30, 2013.
- 9. Proceeding commenced by the filing of a Complaint on September 20, 2012.
- 10. This is a civil proceeding and the Appellants are appealing the Order Granting Defendant's Motion for Judgment on the Pleadings filed January 10, 2014.
- 11. The case has been the subject of a previous appeals to the Supreme Court: Supreme Court No. 62296.
- 12. This case does not involve child custody or visitation.
- 13. It is unknown if the case involves the possibility of a settlement.

Dated this 22nd day of January, 2014.

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By: /s/ Annie Smith  
Annie Smith  
Deputy Clerk

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE**

Case History - CV12-02385

**DEPT. D9**

**HON. SCOTT N. FREEMAN**

Report Date & Time

1/23/2014

8:52:19AM

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<b>Case ID:</b>	<b>CV12-02385</b>	<b>Case Description:</b> ALEXANDER FALCONI VS. CORAZON REAL ESTATE (ARB)	<b>Case Type:</b> LEGAL/TORT	<b>Initial Filing Date:</b> 9/20/2012
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**Parties**

PLTF	ALEXANDER M FALCONI - @1131463
DEFT	CORAZON REAL ESTATE - @1184648
ATTY	Katherine F. Parks, Esq. - 6227

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**Charges**

<i>Charge No.</i>	<i>Charge Code</i>	<i>Charge Date</i>	<i>Charge Description</i>
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**Plea Information**

<i>Charge No.</i>	<i>Plea Code</i>	<i>Plea Date</i>	<i>Plea Description</i>
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**Release Information**

*Custody Status*

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**Hearings**

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<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
1 D9	Request for Submission	10/9/2012	14:00:00	10/11/2012

Event Extra Text: EX-PARTE MOTION FOR TEMPORARY  
RESTRAINING ORDER (PAPER ORDER PROVIDED)

**Disposition:**  
S200 10/11/2012

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2 D9	Request for Submission	10/19/2012	11:05:00	12/5/2012
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Event Extra Text: MOTION TO REQUIRE CORAZON REAL ESTATE  
TO OBTAIN COUNSEL (PAPER ORDER PROVIDED)

**Disposition:**  
S200 12/5/2012

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3 D9	Request for Submission	11/1/2012	16:59:00	12/5/2012
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Event Extra Text: MOTION TO DISMISS CASE WITH PREJUDICE  
(PAPER ORDER NOT PROVIDED)

**Disposition:**  
S200 12/5/2012

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**Case Description: ALEXANDER FALCONI VS. CORAZON REAL ESTATE (ARB)****Case ID: CV12-02385 Case Type: LEGAL/TORT Initial Filing Date: 9/20/2012**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
4	D9 Request for Submission	11/26/2012	16:40:00	12/5/2012

Event Extra Text: MOTION TO AMEND COMPLAINT (PAPER ORDER PROVIDED)

**Disposition:**  
S200 12/5/2012

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
5	D9 Request for Submission	11/26/2012	16:35:00	12/5/2012

Event Extra Text: DEFENDANTS OPPOSITION TO PLAINTIFFS REQUEST FOR ARBITRATION (PAPER ORDER PROVIDED)

**Disposition:**  
S200 12/5/2012

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
6	D9 Request for Submission	12/10/2012	11:30:00	1/30/2013

Event Extra Text: APPLICATION TO PROCEED IN FORMA PAUPERIS (PAPER ORDER PROVIDED)

**Disposition:**  
S200 1/30/2013  
APPLICATION TO PROCEED IN FORMA PAUPERIS

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
7	D9 Request for Submission	5/13/2013	15:36:00	5/24/2013

Event Extra Text: COURT OF AN ORDER OF REVERSAL ENTERED BY THE SUPREME COURT OF THE STATE OF NEVADA (ORDER ATTACHED AS EXHIBIT)

**Disposition:**  
S200 5/24/2013

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
8	D9 Request for Submission	5/15/2013	09:25:00	7/26/2013

Event Extra Text: MOTION TO REQUIRE CORAZON REAL ESTATE TO PAY COSTS OF FILING (PAPER ORDER PROVIDED)

**Disposition:**  
S200 7/26/2013

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
9	D9 Request for Submission	10/10/2013	12:24:00	11/20/2013

Event Extra Text: MOTION FOR JUDGMENT ON THE PLEADINGS (NO PAPER ORDER PROVIDED)

**Disposition:**  
S200 11/20/2013

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
10	D9 Request for Submission	11/18/2013	14:11:00	12/19/2013

Event Extra Text: DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTARY

**Disposition:**  
S200 12/19/2013

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
11	D9 Tickle Start Code	12/5/2013	07:00:00	1/8/2014

Event Extra Text: PARTIES TO SET HEARING ON MOTION FOR JUDGMENT ON PLEADINGS

**Disposition:**  
T200 1/8/2014

**Case Description: ALEXANDER FALCONI VS. CORAZON REAL ESTATE (ARB)****Case ID: CV12-02385****Case Type: LEGAL/TORT****Initial Filing Date: 9/20/2012**

Department	Event Description	Sched. Date & Time	Disposed Date
12 D9	ORAL ARGUMENTS	1/8/2014 13:30:00	1/8/2014

Event Extra Text: MOTION FOR JUDGMENT ON THE PLEADINGS

**Disposition:**

D840 1/8/2014

DEFT'S MOTION TO STRIKE - GRANTED

MOTION TO DISMISS TAKEN UNDER ADVISEMENT

Department	Event Description	Sched. Date & Time	Disposed Date
13 D9	Request for Submission	1/8/2014 14:30:00	1/13/2014

Event Extra Text: DEFT'S MOTION TO DISMISS TAKEN UNDER ADVISEMENT

**Disposition:**

S200 1/13/2014

**Agency Cross Reference**

Code	Agency Description	Case Reference I.D.
SC	Supreme Court	SCN 62296

**Actions**

Action Entry Date	Code	Code Description	Text
9/20/2012	COV	**Civil Cover Sheet	
9/20/2012	2610	Notice ...	NOTICE OF EXTENSION OF TIME TO FILE ANSWER
9/20/2012	PAYRC	**Payment Received	A Payment of -\$260.00 was made on receipt DCDC377298.
9/20/2012	\$1425	\$Complaint - Civil	
10/3/2012	2610	Notice ...	NOTICE REGARDING OCTOBER RENT AND THE DESTRUCTION OF EVIDENCE
10/3/2012	3720	Proof of Service	
10/9/2012	1670	Ex-Parte Mtn...	EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER
10/9/2012	3860	Request for Submission	DOCUMENT TITLE: EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER (PAPER ORDER PROVIDED)
10/11/2012	NEF	Proof of Electronic Service	Transaction 3277677 - Approved By: NOREVIEW : 10-11-2012:15:41:32
10/11/2012	2842	Ord Denying Motion	ORDER DENYING EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER - Transaction 3277632 - A
10/11/2012	S200	Request for Submission Complet	
10/12/2012	1137	Answer and Counterclaim	
10/12/2012	PAYRC	**Payment Received	A Payment of -\$213.00 was made on receipt DCDC380390.
10/12/2012	\$1560	SDef 1st Appearance - CV	
10/15/2012	2490	Motion ...	MOTION FTO REQUIRE CORAZON REAL ESTATE TO OBTAIN COUNSEL
10/15/2012	2525	Notice of Change of Address	
10/15/2012	3795	Reply...	REPLY TO COUNTERCLAIM
10/17/2012	2645	Opposition to Mtn ...	OPPOSITION TO PLTF'S MOTION TO REQUIRE REAL ESTATE TO OBTAIN COUNSEL
10/17/2012	2290	Mtn to Dismiss Case	MOTION TO DISMISS CASE WITH PREJUDICE
10/19/2012	3860	Request for Submission	DOCUMENT TITLE: MOTION TO REQUIRE CORAZON REAL ESTATE TO OBTAIN COUNSEL (PAPER ORDER PROVIDED)
10/19/2012	3795	Reply...	REPLY TO OPPOSITION TO MOTION TO REQUIRE CORAZON REAL ESTATE TO OBTAIN COUNSEL
10/29/2012	2645	Opposition to Mtn ...	OPPOSITION CORAZON REAL ESTATE'S TO MOTION TO DISMISS
11/1/2012	3860	Request for Submission	DOCUMENT TITLE: MOTION TO DISMISS CASE WITH PREJUDICE (PAPER ORDER NOT PROVIDED)
11/1/2012	3795	Reply...	REPLY TO PLTF'S OPPOSITION TO DEFT'S MOTION TO DISMISS

**Case Description: ALEXANDER FALCONI VS. CORAZON REAL ESTATE (ARB)**

<b>Case ID:</b>	<b>CV12-02385</b>	<b>Case Type:</b>	<b>LEGAL/TORT</b>	<b>Initial Filing Date:</b>	<b>9/20/2012</b>
11/19/2012	2610	Notice ...	NOTICE DISPUTING ITEMIZED WRITTEN ACCOUNTING		
11/19/2012	3870	Request	REQUEST FOR ARBITRATION		
11/19/2012	2490	Motion ...	MOTION TO AMEND COMPLAINT		
11/21/2012	3975	Statement ...	NRCP 7.1 DISCLOSURE STATEMENT		
11/21/2012	2645	Opposition to Mtn ...	OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT		
11/21/2012	2645	Opposition to Mtn ...	OPPOSITION TO PLAINTIFF'S REQUEST FOR ARBITRATION		
11/26/2012	3795	Reply...	REPLY TO OPPOSITION TO MOTION TO AMEND COMPLAINT		
11/26/2012	3860	Request for Submission	DOCUMENT TITLE: DEFENDANTS OPPOSITION TO PLAINTIFFS REQUEST FOR ARBITRATION (PAPER (		
11/26/2012	3860	Request for Submission	DOCUMENT TITLE: MOTION TO AMEND COMPLAINT (PAPER ORDER PROVIDED)		
11/26/2012	3790	Reply to/in Opposition	REPLY TO OPPOSITION TO PLAINTIFF'S REQUEST FOR ARBITRATION		
12/5/2012	F135	Adj Motion to Dismiss by DEFT			
12/5/2012	3060	Ord Granting Mtn ...	ORDER GRANTING DEFENDANTS MOTION TO DISMISS - Transaction 3388192 - Approved By: NOREVIEW		
12/5/2012	NEF	Proof of Electronic Service	Transaction 3388201 - Approved By: NOREVIEW : 12-05-2012:14:05:02		
12/5/2012	S200	Request for Submission Complet			
12/5/2012	S200	Request for Submission Complet			
12/5/2012	S200	Request for Submission Complet			
12/5/2012	S200	Request for Submission Complet			
12/10/2012	2515	Notice of Appeal Supreme Court	ALEXANDER FALCONI		
12/10/2012	1325	** Case Reopened			
12/10/2012	2385	Mtn Proceed Forma Pauperis	APPLICATION TO PROCEED IN FORMA PAUPERIS		
12/10/2012	1310	Case Appeal Statement	ALEXANDER M. FALCONI		
12/10/2012	3860	Request for Submission	DOCUMENT TITLE: APPLICATION TO PROCEED IN FORMA PAUPERIS (PAPER ORDER PROVIDED)		
12/14/2012	1310E	Case Appeal Statement	Transaction 3408177 - Approved By: NOREVIEW : 12-14-2012:12:56:49		
12/14/2012	NEF	Proof of Electronic Service	Transaction 3408183 - Approved By: NOREVIEW : 12-14-2012:12:58:11		
12/14/2012	1365	Certificate of Transmittal	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 3408177 - Approved By: I		
12/17/2012	1097	Amended Notice of Appeal			
12/27/2012	NEF	Proof of Electronic Service	Transaction 3428844 - Approved By: NOREVIEW : 12-27-2012:09:29:10		
12/27/2012	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 62296/RECEIPT FOR DOCUMENTS - Transaction 3428836 - Approved By: NO		
12/28/2012	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - AMENDED NOTICE OF APPEAL - Transaction 3431247 - Ap		
12/28/2012	NEF	Proof of Electronic Service	Transaction 3431292 - Approved By: NOREVIEW : 12-28-2012:08:40:07		
1/7/2013	2610	Notice ...	NOTICE OF SUPPLEMENTARY EXHIBIT TO FORMA PAUPERIS APPLICATION		
1/14/2013	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 62296/RECEIPT FOR DOCUMENTS - Transaction 3462724 - Approved By: NOREVIEW		
1/14/2013	NEF	Proof of Electronic Service	Transaction 3462741 - Approved By: NOREVIEW : 01-14-2013:15:19:54		
1/30/2013	3035	Ord Grant in Forma Pauperis	ALEXANDER FALCONI - Transaction 3499862 - Approved By: NOREVIEW : 01-30-2013:16:11:56		
1/30/2013	NEF	Proof of Electronic Service	Transaction 3499906 - Approved By: NOREVIEW : 01-30-2013:16:18:32		
1/30/2013	S200	Request for Submission Complet	APPLICATION TO PROCEED IN FORMA PAUPERIS		
1/31/2013	NEF	Proof of Electronic Service	Transaction 3501371 - Approved By: NOREVIEW : 01-31-2013:10:52:41		
1/31/2013	2540	Notice of Entry of Ord			
1/31/2013	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 3501326 - Approved By: I		

**Case Description: ALEXANDER FALCONI VS. CORAZON REAL ESTATE (ARB)**

Case ID:	CV12-02385	Case Type:	LEGAL/TORT	Initial Filing Date:	9/20/2012
3/7/2013	NEF	Proof of Electronic Service	Transaction 3575163 - Approved By: NOREVIEW : 03-07-2013:09:01:41		
3/7/2013	4126	Supreme Ct Order Directing...	SUPREME COURT NO. 62296/ORDER PLACING APPEAL IN PILOT PROGRAM FOR CIVIL PROPER PERSC		
3/12/2013	NEF	Proof of Electronic Service	Transaction 3586805 - Approved By: NOREVIEW : 03-12-2013:16:23:46		
3/12/2013	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - RECORD ON APPEAL - Transaction 3586789 - Approved By		
4/15/2013	1075	Affidavit ...	AFFIDAVIT REGARDING GHOST LAWYERING		
4/15/2013	2490	Motion ...	MOTION TO REQUIRE COAZON REAL ESTATE TO PAY COSTS OF FILING FEES TO THE COURT		
4/19/2013	NEF	Proof of Electronic Service	Transaction 3674319 - Approved By: NOREVIEW : 04-19-2013:16:05:43		
4/19/2013	4140	Supreme Court Ord Reversing	SUPREME COURT NO. 62296/ORDER OF REVERSAL AND REMAND - Transaction 3674305 - Approved By:		
4/23/2013	1090	Amended Complaint			
4/23/2013	3863	**Submit regarding Appeals	DOCUMENT TITLE: SUPREME COURT ORDER OF REVERSAL AND REMAND		
5/6/2013	NEF	Proof of Electronic Service	Transaction 3706844 - Approved By: NOREVIEW : 05-06-2013:14:27:14		
5/6/2013	1140	Answer to Amended Complaint	CORAZON REAL ESTATE - Transaction 3706781 - Approved By: YLLOYD : 05-06-2013:14:24:04		
5/13/2013	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT NO. 55765/CLERKS CERTIFICATE AND JUDGMENT - Transaction 3721952 - Approved B		
5/13/2013	3860	Request for Submission	DOCUMENT TITLE: COURT OF AN ORDER OF REVERSAL ENTERED BY THE SUPREME COURT OF THE		
5/13/2013	4145	Supreme Court Remittitur	SUPREME COURT NO. 62296/REMITTITUR - Transaction 3721952 - Approved By: NOREVIEW : 05-13-2013:		
5/13/2013	4140	Supreme Court Ord Reversing	SUPREME COURT NO. 62296/ORDER OF REVERSAL AND REMAND - Transaction 3721952 - Approved By:		
5/13/2013	2525	Notice of Change of Address			
5/13/2013	3863	**Submit regarding Appeals	DOCUMENT TITLE: ORDER OF REVERSAL AND REMAND		
5/13/2013	NEF	Proof of Electronic Service	Transaction 3721995 - Approved By: NOREVIEW : 05-13-2013:15:04:01		
5/14/2013	3860	Request for Submission	DOCUMENT TITLE: MOTION TO REQUIRE CORAZON REAL ESTATE TO PAY COSTS OF FILING (PAPER		
5/14/2013	2475	Mtn to Strike...	MOTION TO STRIKE PLAINTIFF'S REQUEST FOR SUBMISSION OF MOTION AND/OR OPPOSITION TO PL		
5/15/2013	NEF	Proof of Electronic Service	Transaction 3725942 - Approved By: NOREVIEW : 05-15-2013:08:18:21		
5/16/2013	3795	Reply...	REPLY TO OPPOSITION TO MOTION TO REQUIRE CORAZON REAL ESTATE TO PAY COSTS OF FILING I		
5/22/2013	4125	Supreme Court Order...	SUPREME COURT CASE NO 62296/ORDER - Transaction 3741146 - Approved By: NOREVIEW : 05-22-2013:		
5/22/2013	NEF	Proof of Electronic Service	Transaction 3741156 - Approved By: NOREVIEW : 05-22-2013:09:42:45		
5/24/2013	S200	Request for Submission Complet			
5/24/2013	NEF	Proof of Electronic Service	Transaction 3746734 - Approved By: NOREVIEW : 05-24-2013:10:15:19		
5/24/2013	3250	Ord Striking ...	ORDER STRIKING PLEADINGS - Transaction 3746720 - Approved By: NOREVIEW : 05-24-2013:10:13:43		
6/24/2013	A095	**Case Stayed Pending Arb			
6/26/2013	3373	Other ...	DEFENDANT'S NRCP 7.1 DISCLOSURE		
7/2/2013	A600	List of Stricken Arbitrators			
7/26/2013	S200	Request for Submission Complet			
7/26/2013	3060	Ord Granting Mtn ...	ORDER GRANTING PLAINTIFF'S MOTION TO REQUIRE DEFENDANT TO PAY COSTS OF FILING FEES TC		
7/26/2013	NEF	Proof of Electronic Service	Transaction 3881547 - Approved By: NOREVIEW : 07-26-2013:10:26:30		
9/6/2013	2490	Motion ...	DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS - Transaction 3978802 - Approved By: MFEF		
9/6/2013	NEF	Proof of Electronic Service	Transaction 3979021 - Approved By: NOREVIEW : 09-06-2013:15:52:46		
10/2/2013	2645	Opposition to Mtn ...	OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS: ALEXANDER FALCONI		
10/9/2013	3795	Reply...	REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR JU		
10/9/2013	3860	Request for Submission	MOTION FOR JUDGMENT ON THE PLEADINGS (NO PAPER ORDER PROVIDED) - Transaction 4056748 - A		

**Case Description: ALEXANDER FALCONI VS. CORAZON REAL ESTATE (ARB)**

<b>Case ID:</b>	<b>CV12-02385</b>	<b>Case Type:</b>	<b>LEGAL/TORT</b>	<b>Initial Filing Date:</b>	<b>9/20/2012</b>
10/10/2013	NEF	Proof of Electronic Service	Transaction 4057530 - Approved By: NOREVIEW	10-10-2013:10:45:47	
10/10/2013	NEF	Proof of Electronic Service	Transaction 4057034 - Approved By: NOREVIEW	10-10-2013:08:57:49	
10/23/2013	4105	Supplemental ...	SUPPLEMENTARY POINTS AND AUTHORITIES REGARDING MOTION FOR JUDGMENT ON THE PLEADIN		
10/29/2013	2475	Mtn to Strike...	MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTARY [SIC.] POINTS AND AUTHORITIES REGARDING MOT		
10/30/2013	NEF	Proof of Electronic Service	Transaction 4100873 - Approved By: NOREVIEW	10-30-2013:09:49:15	
11/1/2013	2645	Opposition to Mtn ...	OPPOSITION TO MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTARY POINTS AND AUTHORITIES REGA		
11/8/2013	NEF	Proof of Electronic Service	Transaction 4124103 - Approved By: NOREVIEW	11-08-2013:12:16:16	
11/8/2013	3795	Reply...	REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO STR		
11/18/2013	3860	Request for Submission	DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTARY - Transaction 4140287 - Approved By:		
11/18/2013	NEF	Proof of Electronic Service	Transaction 4140392 - Approved By: NOREVIEW	11-18-2013:13:57:43	
11/20/2013	NEF	Proof of Electronic Service	Transaction 4149534 - Approved By: NOREVIEW	11-20-2013:16:45:07	
11/20/2013	S200	Request for Submission Complet			
11/20/2013	3347	Order to Set	Transaction 4149471 - Approved By: NOREVIEW	11-20-2013:16:36:14	
11/22/2013	2550	Notice of Hearing	01/08/14 - DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS - Transaction 4154638 - Approvec		
11/22/2013	NEF	Proof of Electronic Service	Transaction 4154830 - Approved By: NOREVIEW	11-22-2013:13:26:27	
12/19/2013	S200	Request for Submission Complet			
1/8/2014	T200	Tickle End Code			
1/10/2014	NEF	Proof of Electronic Service	Transaction 4251070 - Approved By: NOREVIEW	01-10-2014:16:50:37	
1/10/2014	3060	Ord Granting Mtn ...	ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS - Transaction 4251017 - Approved By: N		
1/13/2014	NEF	Proof of Electronic Service	Transaction 4252217 - Approved By: NOREVIEW	01-13-2014:11:00:00	
1/13/2014	2540	Notice of Entry of Ord	Transaction 4252204 - Approved By: NOREVIEW	01-13-2014:10:58:10	
1/13/2014	S200	Request for Submission Complet			
1/16/2014	2515	Notice of Appeal Supreme Court	01/10/2014		
1/17/2014	1950	Memorandum of Costs	DEFENDANT'S VERIFIED MEMORANDUM OF COSTS - Transaction 4266163 - Approved By: ASMITH : 01-17		
1/17/2014	NEF	Proof of Electronic Service	Transaction 4266305 - Approved By: NOREVIEW	01-17-2014:16:28:33	
1/22/2014	NEF	Proof of Electronic Service	Transaction 4269833 - Approved By: NOREVIEW	01-22-2014:14:59:41	
1/22/2014	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4269826 - Approved By: I		
1/22/2014	1310E	Case Appeal Statement	Transaction 4269826 - Approved By: NOREVIEW	01-22-2014:14:58:25	

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4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR THE COUNTY OF WASHOE  
6

7 ALEXANDER M. FALCONI, an  
8 individual,

Plaintiff,

Case No. CV12-02385

9 vs.

Dept. No. 9

10 CORAZON REAL ESTATE, a domestic  
11 corporation; and DOES I-X, inclusive

12 Defendants.  
13

14 ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

15 This cause came on regularly for hearing on January 8, 2014, whereupon Plaintiff  
16 ALEXANDER M. FALCONI (hereinafter "Plaintiff") appeared *in propria persona*, and Defendant  
17 CORAZON REAL ESTATE (hereinafter "Defendant") appeared, by and through counsel, Brandon  
18 R. Price, Esq.

19 The Court is in receipt of Defendant's *Motion for Judgment on the Pleadings* filed on  
20 September 6, 2013. On October 2, 2013, Plaintiff filed an *Opposition to Motion for Judgment on*  
21 *the Pleadings*. On October 9, 2013, Defendant filed a *Reply Memorandum of Points and Authorities*  
22 *in Support of Defendant's Motion for Judgment on the Pleadings*.

23 **PROCEDURAL HISTORY**

24 This matter arises from a former landlord/tenant relationship between the Plaintiff and  
25 Defendant, which existed between October 2010 and October 2012. On September 7, 2012,  
26 Defendant served Plaintiff with a *Notice of Unlawful Detainer* for the non-payment of rent and  
27 demanded reimbursement of maintenance costs associated with prior repairs made to the Plaintiffs  
28 air conditioner and kitchen stove. On September 12, 2012, a summary eviction proceeding was held  
in the Sparks Justice Court, whereupon Plaintiff agreed to pay the unpaid rent, but did not agree to

1 pay for the maintenance costs as demanded. Ultimately, the Sparks Justice Court ordered Plaintiff  
2 to pay half of the costs for the repairs.

3 On September 18, 2012, Plaintiff provided Defendant with written notice of his intent to  
4 terminate the underlying lease agreement and vacate the residence within thirty (30) days.  
5 Thereafter, on September 20, 2012, Plaintiff filed a civil *Complaint* against Defendant, alleging: (1)  
6 wrongful eviction with oppression and malice in violation of NRS 118A.290(1)(i); (2) violation of  
7 NRS 118A.510(1)(b), oppression, and malice; and (3) violation of NRS 118A.355. On April 23,  
8 2013, Plaintiff filed an *Amended Complaint*, alleging: (1) wrongful eviction with oppression and  
9 malice in violation of NRS 118A.290(1)(i); (2) retaliatory eviction in violation of NRS  
10 118A.510(1)(b); (3) violation of NRS 118A.355; and (4) conversion of a security deposit.  
11 Defendant now seeks dismissal of Plaintiff's *Amended Complaint* pursuant to Nevada Rules of  
12 Civil Procedure ("NRCP") Rule 12(c).

#### 13 STANDARD OF REVIEW

14 NRCP Rule 12(c) provides in relevant part that "[a]fter the pleadings are closed but within  
15 such time as not to delay the trial, any party may move for judgment on the pleadings." Nev. R.  
16 Civ. Proc. Rule 12(c). The purpose of a Rule 12(c) motion is "to provide a means of disposing of  
17 cases when material facts are not in dispute and a judgment on the merits can be achieved by  
18 focusing on the content of the pleadings." *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734  
19 P.2d 1238, 1241 (1987) (per curiam). Such a motion "has utility only when all material allegations  
20 of fact are admitted in the pleadings and only questions of law remain." *Id.* "[A] defendant will not  
21 succeed on a motion under Rule 12(c) if there are allegations in the plaintiff's pleadings that, if  
22 proved, would permit recovery." *Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998) (per  
23 curiam). However, the principal difference between motions filed pursuant to NRCP Rule 12(b) and  
24 Rule 12(c) is the time of filing and, because both motions are functionally identical, "the same  
25 standard of review applicable to a Rule 12(b) motion applies to its Rule 12(c) analog." *Dworkin v.*  
26 *Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989); accord *Brown v. Kinross Gold, U.S.A.*,  
27 378 F. Supp. 2d 1280, 1284 (D. Nev. 2005); see also *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*,  
28 118 Nev. 46, 53, 38 P.3d 872, 876 (2002)(per curiam)("[f]ederal cases interpreting the Federal

1 Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil  
2 Procedure are based in large part upon their federal counterparts”).

3 Accordingly, the Court will decide this matter pursuant to NRCP 12(b)(5), where dismissal  
4 is proper when a complaint or cause of action fails to state a claim upon which relief can be granted.  
5 NRCP 12(b)(5) mandates the dismissal of a cause of action that fails to state a claim upon which  
6 relief can be granted. Nevada is a “notice-pleading” jurisdiction and, therefore, a complaint need  
7 only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the  
8 defending party has “adequate notice of the nature of the claim and relief sought.” *Hay v. Hay*, 100  
9 Nev. 196, 198, 678 P.2d 672, 674 (1984). In reviewing motions to dismiss under NRCP 12(b)(5),  
10 the district court must construe the pleadings liberally, accept all factual allegations in the  
11 complaint as true, and draw every fair inference in favor of the non-moving party. *Blackjack*  
12 *Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). A  
13 claim in any pleading should not be dismissed under NRCP 12(b)(5) unless it appears beyond a  
14 doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would  
15 entitle him or her to relief. *Id.* Further, dismissal under NRCP 12(b)(5) is proper where the  
16 allegations are insufficient to establish the elements of a claim for relief. *Stockmeier v. Nevada*  
17 *Dep’t of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008)(per  
18 curiam).

### 19 PLAINTIFF’S AND DEFENDANT’S ARGUMENTS

20 Defendant hereby moves this Court for an *Order* granting judgment on the pleadings as to  
21 all claims asserted by the Plaintiff in the *Amended Complaint*. Specifically, Defendant asserts that  
22 Plaintiffs first and second claims for relief relating to the alleged wrongful eviction must be  
23 dismissed because “based upon documents submitted to this Court by the Plaintiff in prior  
24 pleadings, [Plaintiff] was not evicted from his dwelling unit by the Defendant.” (Mot. J. Pleadings.  
25 p. 5). Defendant further asserts that Plaintiff’s third claim for relief must be dismissed because “the  
26 Defendant had made a good faith effort to repair . . . [the toilet] . . . in Plaintiff’s dwelling unit,”  
27 and that even if the third claim for relief is not subject to dismissal under NRCP 12(c), “Plaintiff’s  
28 third claim for relief is subject to dismissal on jurisdictional grounds” because this Court has  
original jurisdiction over actions that allege damages in excess of \$10,000.00. *Id.* at p. 7. With

1 respect to Plaintiff's fourth claim for relief, Defendant asserts that a claim for conversion "is not the  
2 proper remedy for a claim premised upon [an] alleged withholding of a security deposit" because  
3 NRS 118.242(b) provides the remedy for recovery of a security deposit. *Id.* at p. 8. Finally,  
4 Defendant asserts that the Plaintiff cannot invoke this Court's jurisdiction by simply asserting a  
5 claim for punitive damages. *Id.* at p. 7, fn. 4.

6 Plaintiff opposes and asserts that his rights were violated when the Defendant failed to  
7 maintain the toilet within the time prescribed in NRS 118A.290(1)(b) and, thus, was entitled to  
8 withhold rents due under NRS 118A.355(1)(d). More precisely, Plaintiff asserts that NRS  
9 118A.355(1) requires a landlord to use their "best efforts to remedy the [failure to maintain the  
10 dwelling unit] within 14 days **after** receipt of the notice" is received and, because Plaintiff sent a  
11 written notice regarding the toilet on January 24, 2012 to the Defendant but no attempt to repair the  
12 toilet was made until September 1, 2012, Plaintiff was entitled to withhold the rents due. See (Pl.'s  
13 Opp. Mot. J. Pleadings. p. 15); see also (Amend. Compl. p. 2, ¶¶ 12-15). Plaintiff also asserts that  
14 the "fact that [he] was not actually evicted at the summary eviction proceeding is immaterial" as to  
15 the issue of whether the Defendant has engaged in retaliatory conduct under NRS 118A.510(1).  
16 (Pl.'s Opp. Mot. J. Pleadings. p. 16). Plaintiff also asserts that his claim for conversion of a security  
17 deposit is "intrinsicly related" to his first claim for relief for wrongful eviction with oppression  
18 and malice under NRS 118A.290(1)(i) and, thus, should survive the instant *Motion*. See Id.

## 19 DISCUSSION

### 20 I. Claims for violation of NRS 118A.290(1)(i) and 118A.510(1)(b)

21 The Court has carefully reviewed the record and is familiar with the issues presented in this  
22 case. As such, the Court finds that Plaintiff's first and second claims for relief for wrongful eviction  
23 and retaliatory eviction, respectively, must be dismissed as a matter of law. As an initial matter,  
24 these particular claims are grounded on allegations that the Defendant threatened and attempted to  
25 evict the Plaintiff "without cause." See (Amended Compl. p. 4, ¶¶ 29, 30). The record before the  
26 Court, however, indicates that Plaintiff, upon his own volition, vacated the dwelling unit after  
27 providing Defendant with a signed "30-day Notice of Intent to Vacate, which was admitted by  
28 Plaintiff at oral argument. See (Mot. J. Plead. Ex. 1, p. 2). Thus, to the extent Plaintiff's claims are  
based upon an allegation of an actual wrongful eviction, they must be dismissed. Nevertheless,

1 Plaintiff does not present any evidence or documentation, other than the Defendant's written  
2 demand for payment of repairs, to support the conclusion that Defendant threatened eviction in  
3 response to, or for the purpose of, retaliating against Plaintiff for communicating a good-faith  
4 complaint under NRS 118A.510.<sup>1</sup> To the contrary, the record demonstrates that the Defendant  
5 demanded payment for repairs of the air conditioner and kitchen stove tops in accordance with the  
6 underlying lease agreement, which is a protected action under Nevada Law. See e.g. Paullin v.  
7 Sutton, 102 Nev. 421, 423, 724 P.2d 749, 750 (1986)(recognizing without ruling that a claim for  
8 retaliatory eviction may fail where there is evidence that the eviction was motivated by the tenant's  
9 failure to comply with the obligations of his or her lease, rather than for any retaliatory purpose). As  
10 consequence, Plaintiff's first and second claims for relief must be dismissed because they fail to  
11 state claim up which relief can be granted.

## 12 **II. Claim for violation of NRS 118A.355**

13 Similarly, the Court finds that Plaintiffs third claim for relief for violation of NRS 118A.355  
14 must be dismissed. The essence of Plaintiff's third claim for relief is that the Defendant failed to  
15 timely repair his toilet pursuant to NRS 118A.355(1), which requires a landlord to remedy an  
16

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17 <sup>1</sup> **NRS 118A.510: Retaliatory conduct by landlord against tenant prohibited; remedies; exceptions.**

18 1. Except as otherwise provided in subsection 3, the landlord may not, in retaliation, terminate a tenancy, refuse to  
19 renew a tenancy, increase rent or decrease essential items or services required by the rental agreement or this chapter, or  
bring or threaten to bring an action for possession if:

20 (a) The tenant has complained in good faith of a violation of a building, housing or health code applicable to the  
premises and affecting health or safety to a governmental agency charged with the responsibility for the enforcement of  
that code;

21 (b) The tenant has complained in good faith to the landlord or a law enforcement agency of a violation of this  
chapter or of a specific statute that imposes a criminal penalty;

22 (c) The tenant has organized or become a member of a tenant's union or similar organization;

23 (d) A citation has been issued resulting from a complaint described in paragraph (a);

24 (e) The tenant has instituted or defended against a judicial or administrative proceeding or arbitration in which the  
tenant raised an issue of compliance with the requirements of this chapter respecting the habitability of dwelling units;

25 (f) The tenant has failed or refused to give written consent to a regulation adopted by the landlord, after the tenant  
enters into the rental agreement, which requires the landlord to wait until the appropriate time has elapsed before it is  
enforceable against the tenant;

26 (g) The tenant has complained in good faith to the landlord, a government agency, an attorney, a fair housing agency  
or any other appropriate body of a violation of NRS 118.010 to 118.120, inclusive, or the Fair Housing Act of 1968, 42  
U.S.C. §§ 3601 et seq., or has otherwise exercised rights which are guaranteed or protected under those laws; or

27 (h) The tenant or, if applicable, a cotenant or household member, is a victim of domestic violence or terminates a  
rental agreement pursuant to NRS 118A.345.

28

1 existing problem in a dwelling unit within fourteen (14) days after receipt of a tenant's written  
2 notice. See (Amended. Compl. p. 5, ¶¶ 37-39). NRS 118A.355(1) provides in its entirety:

3 1. Except as otherwise provided in this chapter, if a landlord fails to maintain a  
4 dwelling unit in a habitable condition as required by this chapter, the tenant shall  
5 deliver a written notice to the landlord specifying each failure by the landlord to  
6 maintain the dwelling unit in a habitable condition and requesting that the landlord  
7 remedy the failures. If a failure is remediable and the landlord adequately remedies  
8 the failure or uses his or her best efforts to remedy the failure within 14 days after  
9 receipt of the notice, the tenant may not proceed under this section. If the landlord  
10 fails to remedy a material failure to maintain the dwelling unit in a habitable  
11 condition or to make a reasonable effort to do so within the prescribed time, the  
12 tenant may:

13 (a) Terminate the rental agreement immediately.

14 (b) Recover actual damages.

15 (c) Apply to the court for such relief as the court deems proper under the  
16 circumstances.

17 (d) Withhold any rent that becomes due without incurring late fees, charges for  
18 notice or any other charge or fee authorized by this chapter or the rental agreement  
19 until the landlord has remedied, or has attempted in good faith to remedy, the failure.  
20 (emphasis added).

21 Nev. Rev. Stat. §118A.355(1). Here, the record indicates that Plaintiff provided Defendant with a  
22 written notice to repair the toilet on July, 24, 2012, but the Defendant did not repair the toilet until  
23 September 1, 2012. See (Amended. Compl. ¶¶ 12, 14). The Court acknowledges that Defendant did  
24 not fully repair the toilet within the time prescribed by NRS 118A.355; however, the record does  
25 indicate that the Defendant had made repairs to the toilet prior to the July 24, 2012 notice, and that  
26 the toilet was successfully repaired on September 1, 2012. Thus, Defendant substantially complied  
27 with the statutory scheme by successfully repairing the toilet, albeit at a later date. Therefore,  
28 Plaintiffs third claim for relief for violation of NRS 118A.355(1) must be dismissed pursuant to  
NRCP 12(b)(5).

It must be noted, however, that the Defendant appropriately argues that Plaintiff's claims for  
relief would be insufficient to meet the jurisdictional threshold of this Court. The Nevada  
Constitution confers both original and appellate subject matter jurisdiction upon the district courts.  
The constitution provides that district courts do not have original jurisdiction over actions that fall  
within the original jurisdiction of the justices' courts. Nev. Const. art. 6, § 6. NRS 4.370(1)(b)  
confers original jurisdiction upon justices' courts over civil actions arising on contract if the

1 damages claimed do not exceed \$10,000.00. Accordingly, the district court has original jurisdiction  
2 over actions where a plaintiff claims damages in excess of \$10,000.00. Here, it is beyond dispute  
3 that the value of Plaintiff's actual damages do not exceed the \$10,000.00 threshold at the time the  
4 *Amended Complaint* was filed; however, Plaintiff contends that his request for an unspecified  
5 amount of punitive damages flowing from his third claim for relief is sufficient to meet this Court's  
6 jurisdictional requirement. To the contrary, the applicable statutes and relevant case law suggests  
7 that Plaintiff is not entitled to punitive damages as a matter of law. See NRS 118A.390(1)(limiting a  
8 tenants' recovery for wrongful eviction to actual damages in an amount "not greater than \$2,500");  
9 NRS 118A.355(1)(a)-(d)(limiting a tenants' options for the landlord's failure to maintain a dwelling  
10 unit in a habitable condition to the immediate termination of the rental agreement, the recovery of  
11 actual damages, such relief a court deems proper under the circumstances, or to withhold any rents  
12 due without incurring late fees); see also, *Paullin v. Sutton*, 102 Nev. 421, 424, 724 P.2d 749, 751  
13 (1986)(per curiam). Thus, Plaintiff's third claim for relief would also be dismissed for lack of  
14 subject-matter jurisdiction. See *Morrison v. Beach City LLC*, 116 Nev. 34, 38, 991 P.2d 982, 983  
15 (2000)(citing *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471, 1473 (9th Cir. 1997))(to  
16 dismiss a case based on lack of subject matter jurisdiction, it must appear to a legal certainty that  
17 the claim is worth less than the jurisdictional amount prescribed by Nevada law).

### 18 **III. Conversion of Security Deposit**

19 Lastly, Defendants assert that Plaintiff's fourth and final claim for relief for conversion of a  
20 security deposit must be dismissed because it is not the proper remedy for an alleged wrongful  
21 withholding of a security deposit. See (Mot. J. Plead. P. 8). As an initial matter, NRS Chapter 118A  
22 "applies to, regulates and determines rights, obligations and remedies under a rental agreement,  
23 wherever made, for a dwelling unit or premises located within this State." Nev. Rev. Stat.  
24 §180A.180. That being said, NRS 118A.242 provides the exclusive remedy for claims arising out of  
25 a rental agreement, which are grounded on an alleged wrongful withholding of a security deposit.  
26 See NRS 118A.242(6)-(9).<sup>2</sup> Here, Plaintiff pursued his claim relating to the security deposit under a  
27

28 <sup>2</sup> **NRS 118A.242(6)-(9):** "6. If the landlord fails or refuses to return the remainder of a security deposit within 30 days after the end of a tenancy, the landlord is liable to the tenant for damages:

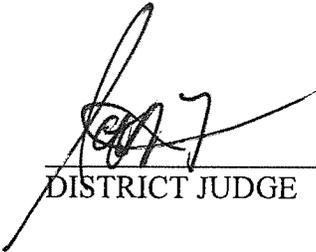
(a) In an amount equal to the entire deposit; and

1 theory of common-law conversion; however, this remedy is not contemplated by the applicable  
2 statute and this Court declines to hold as such. See *Stockmeier v. Nevada Dep't of Corr.*  
3 *Psychological Review Panel*, 124 Nev. at 317 (declining to "engraft any additional remedies" in a  
4 statute where the express provision of the statute "reflects the Legislature's intent to provide only  
5 those specified remedies"). Consequently, Plaintiff's fourth and final claim for relief for conversion  
6 of a security deposit must be dismissed as the proper remedy for the alleged wrongful withholding  
7 of a security deposit is prescribed in NRS 118A.242(6). Therefore, because each claim for relief  
8 alleged by Plaintiff is dismissed for the reasons stated above, the *Amended Complaint* must be  
9 dismissed in its entirety.

10 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that Defendant  
11 Corazon Real Estate's *Motion for Judgment on the Pleadings* is hereby GRANTED.

12 IT IS FURTHER ORDERED that Plaintiff Alexander M. Falconi's request for leave to  
13 amend is hereby DENIED based upon the reasons stated above.

14 DATED: This 10 day of January, 2014.

15  
16   
17 \_\_\_\_\_  
18 DISTRICT JUDGE

- 19  
20  
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23
- 24 (b) For a sum to be fixed by the court of not more than the amount of the entire deposit.  
25 7. In determining the sum, if any, to be awarded under paragraph (b) of subsection 6, the court shall consider:  
26 (a) Whether the landlord acted in good faith;  
27 (b) The course of conduct between the landlord and the tenant; and  
28 (c) The degree of harm to the tenant caused by the landlord's conduct.  
8. Except for an agreement which provides for a nonrefundable charge for cleaning, in a reasonable amount, no  
rental agreement may contain any provision characterizing any security under this section as nonrefundable or any  
provision waiving or modifying a tenant's rights under this section. Any such provision is void as contrary to public  
policy.  
9. The claim of a tenant to security to which the tenant is entitled under this chapter takes precedence over the  
claim of any creditor of the landlord.

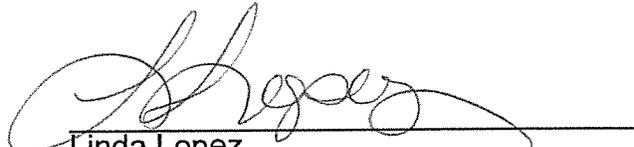
CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 10<sup>th</sup> day of Jan, 2014 I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

KATHERINE PARKS, ESQ.

Further, Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 10<sup>th</sup> day of Jan, 2014 I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addresses as follows:

ALEXANDER FALCONI  
9218 Running Dog Circle  
Reno, NV 89506

  
Linda Lopez  
Department 9 Court Clerk

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1 2540  
Katherine F. Parks, Esq.  
2 State Bar No. 6227  
Thorndal, Armstrong, Delk, Balkenbush & Eisinger  
3 6590 S. McCarran Blvd., Suite B  
Reno, Nevada 89509  
4 (775) 786-2882  
Attorneys for Defendant  
5 CORAZON REAL ESTATE

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CASE NO. CV12-02385  
DEPT. NO. 9

**NOTICE OF ENTRY OF ORDER**

15 NOTICE IS HEREBY GIVEN that on the 10<sup>th</sup> day of January, 2014, the Court entered an  
16 **ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS.** A copy of the  
17 order is attached hereto as Exhibit 1.

18 **AFFIRMATION**  
19 **Pursuant to NRS 239B.030**

20 The undersigned hereby affirms that this document does not contain the social security  
number of any person.

21 DATED this 13<sup>th</sup> day of January, 2014.

22 THORNDAL, ARMSTRONG,  
23 DELK, BALKENBUSH & EISINGER

24 By: //s// Katherine F. Parks  
Katherine F. Parks, Esq.  
25 State Bar No. 6227  
6590 S. McCarran Blvd., Suite B  
26 Reno, Nevada 89509  
(775) 786-2882

Attorneys for Defendant  
CORAZON REAL ESTATE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,  
3 Balkenbush & Eisinger, and that on this date I caused the foregoing **NOTICE OF ENTRY OF**  
4 **ORDER** to be served on all parties to this action by placing an original or true copy thereof in a  
5 sealed, postage prepaid, envelope in the United States mail at Reno, Nevada, fully addressed as  
6 follows:

7 **Alexander M. Falconi**  
8 **9218 Running Dog Circle**  
9 **Reno, NV 89506**  
10 **(775) 391-9139**

11 DATED this 13<sup>th</sup> day of January, 2014.

12 *//s// Ashley Lordon*  
13 An employee of Thorndal, Armstrong,  
14 Delk, Balkenbush & Eisinger

**INDEX OF EXHIBITS**

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<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>	<b>NO. OF PAGES</b>
1	Order Granting Defendant's Motion for Judgment on the Pleadings	9

**FILED**  
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01-13-2014:10:56:56 AM  
Joey Orduna Hastings  
Clerk of the Court  
Transaction # 4252204

**EXHIBIT "1"**

**EXHIBIT "1"**

1 CODE: 3060  
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4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR THE COUNTY OF WASHOE

6  
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9 vs.

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12 Defendants.  
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16 Civ. Proc. Rule 12(c). The purpose of a Rule 12(c) motion is "to provide a means of disposing of  
17 cases when material facts are not in dispute and a judgment on the merits can be achieved by  
18 focusing on the content of the pleadings." *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734  
19 P.2d 1238, 1241 (1987) (per curiam). Such a motion "has utility only when all material allegations  
20 of fact are admitted in the pleadings and only questions of law remain." *Id.* "[A] defendant will not  
21 succeed on a motion under Rule 12(c) if there are allegations in the plaintiff's pleadings that, if  
22 proved, would permit recovery." *Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998) (per  
23 curiam). However, the principal difference between motions filed pursuant to NRCPP Rule 12(b) and  
24 Rule 12(c) is the time of filing and, because both motions are functionally identical, "the same  
25 standard of review applicable to a Rule 12(b) motion applies to its Rule 12(c) analog." *Dworkin v.*  
26 *Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989); accord *Brown v. Kinross Gold, U.S.A.*,  
27 378 F. Supp. 2d 1280, 1284 (D. Nev. 2005); see also *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*,  
28 118 Nev. 46, 53, 38 P.3d 872, 876 (2002)(per curiam)("[f]ederal cases interpreting the Federal

1 Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil  
2 Procedure are based in large part upon their federal counterparts”).

3 Accordingly, the Court will decide this matter pursuant to NRCP 12(b)(5), where dismissal  
4 is proper when a complaint or cause of action fails to state a claim upon which relief can be granted.  
5 NRCP 12(b)(5) mandates the dismissal of a cause of action that fails to state a claim upon which  
6 relief can be granted. Nevada is a “notice-pleading” jurisdiction and, therefore, a complaint need  
7 only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the  
8 defending party has “adequate notice of the nature of the claim and relief sought.” *Hay v. Hay*, 100  
9 Nev. 196, 198, 678 P.2d 672, 674 (1984). In reviewing motions to dismiss under NRCP 12(b)(5),  
10 the district court must construe the pleadings liberally, accept all factual allegations in the  
11 complaint as true, and draw every fair inference in favor of the non-moving party. *Blackjack*  
12 *Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). A  
13 claim in any pleading should not be dismissed under NRCP 12(b)(5) unless it appears beyond a  
14 doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would  
15 entitle him or her to relief. *Id.* Further, dismissal under NRCP 12(b)(5) is proper where the  
16 allegations are insufficient to establish the elements of a claim for relief. *Stockmeier v. Nevada*  
17 *Dep’t of Corr. Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008)(per  
18 curiam).

### 19 PLAINTIFF’S AND DEFENDANT’S ARGUMENTS

20 Defendant hereby moves this Court for an *Order* granting judgment on the pleadings as to  
21 all claims asserted by the Plaintiff in the *Amended Complaint*. Specifically, Defendant asserts that  
22 Plaintiffs first and second claims for relief relating to the alleged wrongful eviction must be  
23 dismissed because “based upon documents submitted to this Court by the Plaintiff in prior  
24 pleadings, [Plaintiff] was not evicted from his dwelling unit by the Defendant.” (Mot. J. Pleadings.  
25 p. 5). Defendant further asserts that Plaintiff’s third claim for relief must be dismissed because “the  
26 Defendant had made a good faith effort to repair . . . [the toilet] . . . in Plaintiff’s dwelling unit,”  
27 and that even if the third claim for relief is not subject to dismissal under NRCP 12(c), “Plaintiff’s  
28 third claim for relief is subject to dismissal on jurisdictional grounds” because this Court has  
original jurisdiction over actions that allege damages in excess of \$10,000.00. *Id.* at p. 7. With

1 respect to Plaintiff's fourth claim for relief, Defendant asserts that a claim for conversion "is not the  
2 proper remedy for a claim premised upon [an] alleged withholding of a security deposit" because  
3 NRS 118.242(b) provides the remedy for recovery of a security deposit. *Id.* at p. 8. Finally,  
4 Defendant asserts that the Plaintiff cannot invoke this Court's jurisdiction by simply asserting a  
5 claim for punitive damages. *Id.* at p. 7, fn. 4.

6 Plaintiff opposes and asserts that his rights were violated when the Defendant failed to  
7 maintain the toilet within the time prescribed in NRS 118A.290(1)(b) and, thus, was entitled to  
8 withhold rents due under NRS 118A.355(1)(d). More precisely, Plaintiff asserts that NRS  
9 118A.355(1) requires a landlord to use their "best efforts to remedy the [failure to maintain the  
10 dwelling unit] within 14 days after receipt of the notice" is received and, because Plaintiff sent a  
11 written notice regarding the toilet on January 24, 2012 to the Defendant but no attempt to repair the  
12 toilet was made until September 1, 2012, Plaintiff was entitled to withhold the rents due. *See* (Pl.'s  
13 Opp. Mot. J. Pleadings. p. 15); *see also* (Amend. Compl. p. 2, ¶¶ 12-15). Plaintiff also asserts that  
14 the "fact that [he] was not actually evicted at the summary eviction proceeding is immaterial" as to  
15 the issue of whether the Defendant has engaged in retaliatory conduct under NRS 118A.510(1).  
16 (Pl.'s Opp. Mot. J. Pleadings. p. 16). Plaintiff also asserts that his claim for conversion of a security  
17 deposit is "intrinsically related" to his first claim for relief for wrongful eviction with oppression  
18 and malice under NRS 118A.290(1)(i) and, thus, should survive the instant *Motion*. *See Id.*

## 19 DISCUSSION

### 20 I. Claims for violation of NRS 118A.290(1)(i) and 118A.510(1)(b)

21 The Court has carefully reviewed the record and is familiar with the issues presented in this  
22 case. As such, the Court finds that Plaintiff's first and second claims for relief for wrongful eviction  
23 and retaliatory eviction, respectively, must be dismissed as a matter of law. As an initial matter,  
24 these particular claims are grounded on allegations that the Defendant threatened and attempted to  
25 evict the Plaintiff "without cause." *See* (Amended Compl. p. 4, ¶¶ 29, 30). The record before the  
26 Court, however, indicates that Plaintiff, upon his own volition, vacated the dwelling unit after  
27 providing Defendant with a signed "30-day Notice of Intent to Vacate, which was admitted by  
28 Plaintiff at oral argument. *See* (Mot. J. Plead. Ex. 1, p. 2). Thus, to the extent Plaintiff's claims are  
based upon an allegation of an actual wrongful eviction, they must be dismissed. Nevertheless,

1 Plaintiff does not present any evidence or documentation, other than the Defendant's written  
2 demand for payment of repairs, to support the conclusion that Defendant threatened eviction in  
3 response to, or for the purpose of, retaliating against Plaintiff for communicating a good-faith  
4 complaint under NRS 118A.510.<sup>1</sup> To the contrary, the record demonstrates that the Defendant  
5 demanded payment for repairs of the air conditioner and kitchen stove tops in accordance with the  
6 underlying lease agreement, which is a protected action under Nevada Law. See e.g. Paullin v.  
7 Sutton, 102 Nev. 421, 423, 724 P.2d 749, 750 (1986)(recognizing without ruling that a claim for  
8 retaliatory eviction may fail where there is evidence that the eviction was motivated by the tenant's  
9 failure to comply with the obligations of his or her lease, rather than for any retaliatory purpose). As  
10 consequence, Plaintiff's first and second claims for relief must be dismissed because they fail to  
11 state claim up which relief can be granted.

## 12 II. Claim for violation of NRS 118A.355

13 Similarly, the Court finds that Plaintiffs third claim for relief for violation of NRS 118A.355  
14 must be dismissed. The essence of Plaintiff's third claim for relief is that the Defendant failed to  
15 timely repair his toilet pursuant to NRS 118A.355(1), which requires a landlord to remedy an  
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17 <sup>1</sup> NRS 118A.510: Retaliatory conduct by landlord against tenant prohibited; remedies; exceptions.

18 1. Except as otherwise provided in subsection 3, the landlord may not, in retaliation, terminate a tenancy, refuse to  
19 renew a tenancy, increase rent or decrease essential items or services required by the rental agreement or this chapter, or  
bring or threaten to bring an action for possession if:

20 (a) The tenant has complained in good faith of a violation of a building, housing or health code applicable to the  
premises and affecting health or safety to a governmental agency charged with the responsibility for the enforcement of  
that code;

21 (b) The tenant has complained in good faith to the landlord or a law enforcement agency of a violation of this  
chapter or of a specific statute that imposes a criminal penalty;

22 (c) The tenant has organized or become a member of a tenant's union or similar organization;

23 (d) A citation has been issued resulting from a complaint described in paragraph (a);

24 (e) The tenant has instituted or defended against a judicial or administrative proceeding or arbitration in which the  
tenant raised an issue of compliance with the requirements of this chapter respecting the habitability of dwelling units;

25 (f) The tenant has failed or refused to give written consent to a regulation adopted by the landlord, after the tenant  
enters into the rental agreement, which requires the landlord to wait until the appropriate time has elapsed before it is  
enforceable against the tenant;

26 (g) The tenant has complained in good faith to the landlord, a government agency, an attorney, a fair housing agency  
or any other appropriate body of a violation of NRS 118.010 to 118.120, inclusive, or the Fair Housing Act of 1968, 42  
U.S.C. §§ 3601 et seq., or has otherwise exercised rights which are guaranteed or protected under those laws; or

27 (h) The tenant or, if applicable, a cotenant or household member, is a victim of domestic violence or terminates a  
rental agreement pursuant to NRS 118A.345.

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1 existing problem in a dwelling unit within fourteen (14) days after receipt of a tenant's written  
2 notice. See (Amended. Compl. p. 5, ¶¶ 37-39). NRS 118A.355(1) provides in its entirety:

3 1. Except as otherwise provided in this chapter, if a landlord fails to maintain a  
4 dwelling unit in a habitable condition as required by this chapter, the tenant shall  
5 deliver a written notice to the landlord specifying each failure by the landlord to  
6 maintain the dwelling unit in a habitable condition and requesting that the landlord  
7 remedy the failures. If a failure is remediable and the landlord adequately remedies  
8 the failure or uses his or her best efforts to remedy the failure within 14 days after  
9 receipt of the notice, the tenant may not proceed under this section. If the landlord  
10 fails to remedy a material failure to maintain the dwelling unit in a habitable  
11 condition or to make a reasonable effort to do so within the prescribed time, the  
12 tenant may:

- 13 (a) Terminate the rental agreement immediately.  
14 (b) Recover actual damages.  
15 (c) Apply to the court for such relief as the court deems proper under the  
16 circumstances.  
17 (d) Withhold any rent that becomes due without incurring late fees, charges for  
18 notice or any other charge or fee authorized by this chapter or the rental agreement  
19 until the landlord has remedied, or has attempted in good faith to remedy, the failure.  
20 (emphasis added).

21 Nev. Rev. Stat. §118A.355(1). Here, the record indicates that Plaintiff provided Defendant with a  
22 written notice to repair the toilet on July, 24, 2012, but the Defendant did not repair the toilet until  
23 September 1, 2012. See (Amended. Compl. ¶¶ 12, 14). The Court acknowledges that Defendant did  
24 not fully repair the toilet within the time prescribed by NRS 118A.355; however, the record does  
25 indicate that the Defendant had made repairs to the toilet prior to the July 24, 2012 notice, and that  
26 the toilet was successfully repaired on September 1, 2012. Thus, Defendant substantially complied  
27 with the statutory scheme by successfully repairing the toilet, albeit at a later date. Therefore,  
28 Plaintiff's third claim for relief for violation of NRS 118A.355(1) must be dismissed pursuant to  
NRCP 12(b)(5).

It must be noted, however, that the Defendant appropriately argues that Plaintiff's claims for  
relief would be insufficient to meet the jurisdictional threshold of this Court. The Nevada  
Constitution confers both original and appellate subject matter jurisdiction upon the district courts.  
The constitution provides that district courts do not have original jurisdiction over actions that fall  
within the original jurisdiction of the justices' courts. Nev. Const. art. 6, § 6. NRS 4.370(1)(b)  
confers original jurisdiction upon justices' courts over civil actions arising on contract if the

1 damages claimed do not exceed \$10,000.00. Accordingly, the district court has original jurisdiction  
2 over actions where a plaintiff claims damages in excess of \$10,000.00. Here, it is beyond dispute  
3 that the value of Plaintiff's actual damages do not exceed the \$10,000.00 threshold at the time the  
4 *Amended Complaint* was filed; however, Plaintiff contends that his request for an unspecified  
5 amount of punitive damages flowing from his third claim for relief is sufficient to meet this Court's  
6 jurisdictional requirement. To the contrary, the applicable statutes and relevant case law suggests  
7 that Plaintiff is not entitled to punitive damages as a matter of law. See NRS 118A.390(1)(limiting a  
8 tenants' recovery for wrongful eviction to actual damages in an amount "not greater than \$2,500");  
9 NRS 118A.355(1)(a)-(d)(limiting a tenants' options for the landlord's failure to maintain a dwelling  
10 unit in a habitable condition to the immediate termination of the rental agreement, the recovery of  
11 actual damages, such relief a court deems proper under the circumstances, or to withhold any rents  
12 due without incurring late fees); see also, *Paullin v. Sutton*, 102 Nev. 421, 424, 724 P.2d 749, 751  
13 (1986)(per curiam). Thus, Plaintiff's third claim for relief would also be dismissed for lack of  
14 subject-matter jurisdiction. See *Morrison v. Beach City LLC*, 116 Nev. 34, 38, 991 P.2d 982, 983  
15 (2000)(citing *Budget Rent-A-Car, Inc. v. Higashiguchi*, 109 F.3d 1471, 1473 (9th Cir. 1997))(to  
16 dismiss a case based on lack of subject matter jurisdiction, it must appear to a legal certainty that  
17 the claim is worth less than the jurisdictional amount prescribed by Nevada law).

### 18 III. Conversion of Security Deposit

19 Lastly, Defendants assert that Plaintiff's fourth and final claim for relief for conversion of a  
20 security deposit must be dismissed because it is not the proper remedy for an alleged wrongful  
21 withholding of a security deposit. See (Mot. J. Plead. P. 8). As an initial matter, NRS Chapter 118A  
22 "applies to, regulates and determines rights, obligations and remedies under a rental agreement,  
23 wherever made, for a dwelling unit or premises located within this State." Nev. Rev. Stat.  
24 §180A.180. That being said, NRS 118A.242 provides the exclusive remedy for claims arising out of  
25 a rental agreement, which are grounded on an alleged wrongful withholding of a security deposit.  
26 See NRS 118A.242(6)-(9).<sup>2</sup> Here, Plaintiff pursued his claim relating to the security deposit under a

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27  
28 <sup>2</sup> NRS 118A.242(6)-(9): "6. If the landlord fails or refuses to return the remainder of a security deposit within 30 days  
after the end of a tenancy, the landlord is liable to the tenant for damages:

(a) In an amount equal to the entire deposit; and

1 theory of common-law conversion; however, this remedy is not contemplated by the applicable  
2 statute and this Court declines to hold as such. See *Stockmeier v. Nevada Dep't of Corr.*  
3 *Psychological Review Panel*, 124 Nev. at 317 (declining to "engraft any additional remedies" in a  
4 statute where the express provision of the statute "reflects the Legislature's intent to provide only  
5 those specified remedies"). Consequently, Plaintiff's fourth and final claim for relief for conversion  
6 of a security deposit must be dismissed as the proper remedy for the alleged wrongful withholding  
7 of a security deposit is prescribed in NRS 118A.242(6). Therefore, because each claim for relief  
8 alleged by Plaintiff is dismissed for the reasons stated above, the *Amended Complaint* must be  
9 dismissed in its entirety.

10 THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that Defendant  
11 Corazon Real Estate's *Motion for Judgment on the Pleadings* is hereby GRANTED.

12 IT IS FURTHER ORDERED that Plaintiff Alexander M. Falconi's request for leave to  
13 amend is hereby DENIED based upon the reasons stated above.

14 DATED: This 10 day of January, 2014.

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18 DISTRICT JUDGE

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24 (b) For a sum to be fixed by the court of not more than the amount of the entire deposit.  
25 7. In determining the sum, if any, to be awarded under paragraph (b) of subsection 6, the court shall consider:  
26 (a) Whether the landlord acted in good faith;  
27 (b) The course of conduct between the landlord and the tenant; and  
28 (c) The degree of harm to the tenant caused by the landlord's conduct.  
8. Except for an agreement which provides for a nonrefundable charge for cleaning, in a reasonable amount, no rental agreement may contain any provision characterizing any security under this section as nonrefundable or any provision waiving or modifying a tenant's rights under this section. Any such provision is void as contrary to public policy.  
9. The claim of a tenant to security to which the tenant is entitled under this chapter takes precedence over the claim of any creditor of the landlord.

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 10<sup>th</sup> day of Jan., 2014 I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

KATHERINE PARKS, ESQ.

Further, Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 10<sup>th</sup> day of Jan., 2014 I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addresses as follows:

ALEXANDER FALCONI  
9218 Running Dog Circle  
Reno, NV 89506

  
Linda Lopez  
Department 9 Court Clerk

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**Code 1350**

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

**ALEXANDER M. FALCONI, an individual,**

**Plaintiff,**

**vs.**

**Case No. CV12-02385  
Dept. No. 9**

**CORAZON REAL ESTATE, a domestic corporation;  
and DOES I-X. inclusive,**

**Defendant.**

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**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 22nd day of January, 2014, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 22nd day of January, 2014

JOEY ORDUNA HASTINGS  
CLERK OF THE COURT

By /s/ Annie Smith  
Annie Smith  
Deputy Clerk