

CV12-02385
ALEXANDER FALCONI VS. CORAZON REAL ESTATE
District Court Washoe County
DC-09900052983-002
CORAZON 2 Pages
01/16/2014 03:53 PM
2515

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

FILED

2014 JAN 16 AM 3:53

JOEY ORDUNA HASTINGS
CLERK OF THE COURT
Electronically Filed
Jan 20 2014 02:32 p.m.
DEPUTY
Tracie K. Lindeman
Clerk of Supreme Court

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 10th day of January, 2014.

AFFIRMATION¹: This document does not contain a social security number of any person.

SIGNED this 15 day of JANUARY, 2014.



Alexander M. Falconi

¹ This affirmation is in accordance with NRS 239B.030."

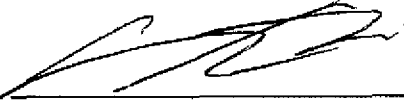
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NRCP 5 CERTIFICATE OF SERVICE

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

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

SERVED THIS 16 day of JANUARY, 2014.



Alexander M. Falconi

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

1 **Code 1310**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

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

9 **Plaintiff,**

Case No. CV12-02385

10 **vs.**

Dept. No. 9

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

13 **Defendant.**

14 _____ /
15 **CASE APPEAL STATEMENT**

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

17 1. This appeal is from an order entered by the Honorable Scott Freeman.

18 2. Appellant is Alexander M Falconi. Appellant is representing himself in Proper
19 Person on appeal:

20 3. Appellant's address is:

21 Alexander Falconi
22 9218 Running Dog Circle
23 Reno, Nevada 89506

24 4. Respondent is Corazon Real Estate. Respondent was represented in District Court
25 by:

26 Katherine Parks, Esq.
27 1108 Aristicon Drive
28 Reno, Nevada 89523

5. Respondent's attorney is licensed to practice law in Nevada.

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

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

Parties

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

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

Hearings

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & 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		

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
2	D9 Request for Submission	10/19/2012	11:05:00	12/5/2012
Event Extra Text: MOTION TO REQUIRE CORAZON REAL ESTATE TO OBTAIN COUNSEL (PAPER ORDER PROVIDED)		Disposition: S200 12/5/2012		

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
3	D9 Request for Submission	11/1/2012	16:59:00	12/5/2012
Event Extra Text: MOTION TO DISMISS CASE WITH PREJUDICE (PAPER ORDER NOT PROVIDED)		Disposition: S200 12/5/2012		

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
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	
Department		Event Description		Sched. Date & Time		Disposed Date
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	
Department		Event Description		Sched. Date & Time		Disposed Date
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		
Department		Event Description		Sched. Date & Time		Disposed Date
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	
Department		Event Description		Sched. Date & Time		Disposed Date
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	
Department		Event Description		Sched. Date & Time		Disposed Date
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	
Department		Event Description		Sched. Date & Time		Disposed Date
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	
Department		Event Description		Sched. Date & Time		Disposed Date
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
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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 Completed		
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	\$Def 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 PLTFS 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 PLTFS OPPOSITION TO DEFTS MOTION TO DISMISS	

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

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

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
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5 Thereafter, on September 20, 2012, Plaintiff filed a civil *Complaint* against Defendant, alleging: (1)
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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.
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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.510.¹ 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

17 ¹ **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.

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).² Here, Plaintiff pursued his claim relating to the security deposit under a
27

28 ² **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
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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 10th 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
10th 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

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

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,

Defendants.

CASE NO. CV12-02385

DEPT. NO. 9

NOTICE OF ENTRY OF ORDER

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

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 13th day of January, 2014.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: //s// Katherine F. Parks
Katherine F. Parks, Esq.
State Bar No. 6227
6590 S. McCarran Blvd., Suite B
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 13th day of January, 2014.

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

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INDEX OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
1	Order Granting Defendant’s Motion for Judgment on the Pleadings	9

FILED
Electronically
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
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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

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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**

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25 Defendant, which existed between October 2010 and October 2012. On September 7, 2012,
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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.510.¹ 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

17 ¹ 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.

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).² Here, Plaintiff pursued his claim relating to the security deposit under a
27

28 ² 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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17 _____
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.


1 **CERTIFICATE OF SERVICE**

2
3 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
4 that on the 10th day of Jan., 2014 I electronically filed the foregoing with the
5 Clerk of the Court system which will send a notice of electronic filing to the following:

6 KATHERINE PARKS, ESQ.

7 Further, Pursuant to NRCP 5(b), I hereby certify that I am an employee of the
8 Second Judicial District Court, in and for the County of Washoe; and that on this
9 10th day of Jan, 2014 I deposited in the County mailing system for
10 postage and mailing with the United States Postal Service in Reno, Nevada, a true and
11 correct copy of the attached document addresses as follows:

12 ALEXANDER FALCONI
13 9218 Running Dog Circle
14 Reno, NV 89506

15 
16 Linda Lopez
17 Department 9 Court Clerk
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1 **Code 1350**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

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

9 **Plaintiff,**

Case No. CV12-02385

10 **vs.**

Dept. No. 9

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

13 **Defendant.**

14 _____ /
15
16 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

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

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

22 Dated this 22nd day of January, 2014

23
24 **JOEY ORDUNA HASTINGS**
25 **CLERK OF THE COURT**

26 By /s/ Annie Smith
27 Annie Smith
28 Deputy Clerk