

Code: 2385
Alexander M. Falconi

11-11-68

THOUSANDS OF DIFFERENT TYPES

BY [Signature] DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

**ALEXANDER M. FALCONI and
BRITTANY AMES FALCONI fka
BRITTANY AMES, Husband and Wife;**

Case #:

CV13 01765

Petitioners,

vs.

THE NEVADA REAL ESTATE DIVISION,
an administrative agency;

Respondent.

Dept 10

APPLICATION TO PROCEED IN FORMA PAUPERIS

COMES NOW, Petitioners, Alexander M. Falconi and Brittany Ames Falconi, appearing in proper person, and hereby file a motion to proceed *in forma pauperis*. This motion is based upon the following memorandum of points and authorities and all pleadings on file herein.

Memorandum of Points and Authorities

I. Affidavit in Support of Motion to Proceed in Forma Pauperis

State of Nevada }
 } ss.
County of Washoe }

We, Brittany Ames Falconi and Alexander M. Falconi, being first duly sworn, depose and say that we are the Petitioners in the above-entitled case; that in support of the motion to proceed without being required to prepay fees, cost or give security therefore, we state that because of our poverty we are unable to pay the costs of said proceeding or to give security

1 therefore; that we believe we are entitled to redress; and that the issues which we desire to
2 present are as follows:

3 Existing law allows the indigent access to the courts *in forma pauperis*. NRS 12.015.

4 Existing law prohibits homeowners from accessing the courts without first filing a non-binding
5 arbitration complaint through The Nevada Real Estate Division ('NRED'). NRS 38.310. The
6 NRED has refused to establish a process by which the indigent can establish poverty and on that
7 basis obtain a full subsidization of non-binding arbitration and a waiver of the filing fee. This is a
8 well-established violation the equal protection clause of the State and federal constitutions.
9

10 Barnes v. Eighth Judicial Dist. Court, 748 P. 2d 483 - Nev: Supreme Court (1987) at page 487.

11 1. I, Alexander M. Falconi, am presently employed as a paralegal at Collection Service of
12 [REDACTED]
13

14 month. Exhibit 1; and

15 2. I, Brittany Ames, am indefinitely on medical leave because of a recent surgery, but that
16 under ordinary circumstances I would be employed as a waitress at Darden Inc. d.b.a.
17 Olive Garden; and,
18

19 3. We have not received², within the past twelve months, any income from a business,
20 profession, or other form of self-employment, or in the form of rent payments, interest,
21 dividends; and,
22

23 4. We checking and savings accounts with a combined value of \$145.97. Exhibit 2; and,
[REDACTED]

25 89506; and,
26
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28 ¹ This income used to be \$200-\$300 higher, but the industry in the Reno area has slowed immensely.

² The mother of Alexander Falconi's son is ordered to pay child support in the amount of \$73.91, however, she has not paid in months and a motion to modify child support is currently pending. FV08-03200, Department 11, Sec. Jud. Dist. Court.

1 6. We do not own any stocks, bonds, or notes; and,

2 7. I, Alexander M. Falconi, own a Toyota Corolla 2009³ with an approximate value of
3 \$10,350.00. Exhibit 3; and,

4 8. I, Brittany Ames, own a 2000 Nissan Altima GLE with an approximate value of
5 \$3295.00. Exhibit 4; and,

6 9. 5. We have student loan debt in the amount of \$6078.20. Exhibit 5; and,

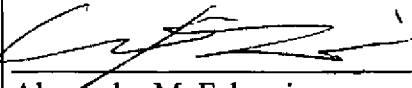
7 10. 6. Alexander M. Falconi's minor child of age six (6) is dependent upon us. Exhibit 6;

8 11. 7. Our monthly expenses include \$500.00 in food, \$200.00 in transportation, \$0.00⁴ in
9 child care, \$109.00 in rent, \$450.00 in utilities, \$150.00 in car insurance, and \$64.33 in
10 property taxes; and

11 12. Our leftover income is needed to cover educational expenses for the minor child, severe
12 dental expenses for the minor child (Exhibit 7), and medical expenses for Brittany Ames.

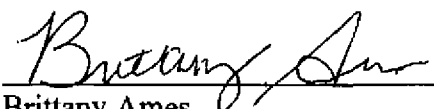
13 *I declare⁵ under penalty of perjury that the foregoing is true and correct*

14 EXECUTED this 6 day of AUGUST, 2013.

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19 
20 Alexander M. Falconi

21 *I declare under penalty of perjury that the foregoing is true and correct*

22 EXECUTED this 6th day of AUGUST, 2013.

23
24 
25 Brittany Ames
26

27 ³ My son and I rely heavily on my vehicle for drives to the sitter and his kindergarten, to work, etc.

28 ⁴ This is due to Brittany Ames being indefinitely on medical leave.

⁵ NRS 53.045(1): "Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form: If executed in this State: "I declare under penalty of perjury that the foregoing is true and correct."

II. Legal Analysis

Pursuant to NRS 12.015(1)(a), "Any person who desires to prosecute or defend a civil action may: File an affidavit with the court setting forth with particularity facts concerning the person's income, property and other resources which establish that the person is unable to prosecute or defend the action because the person is unable to pay the costs of so doing..." The affidavit set forth demonstrates that Plaintiffs are unable to prosecute the action because of their financial condition.

Mr. Falconi, has used *forma pauperis* status responsibly in the past. In CV12-02385, the Honorable Judge Freeman committed reversible error in dismissing the case. Chief Judge David Hardy allowed Plaintiff to appeal *in forma pauperis*; consequently, the Supreme Court of Nevada was able to review the appellant's opening brief and enter an order reversing and remanding. In another case, Falconi v. Secretary of State, 129 Nev. Adv. Op. No. 28, Mr. Falconi was published by the Supreme Court of Nevada after exposing statutory inconsistencies in the State's fictitious address program that required the extension of Nevada case law to include an expansion of New Jersey's *Sacharow* Procedure. In the district court case that followed, CV 13-01019, Chief Judge David Hardy allowed Plaintiff to proceed *in forma pauperis*; consequently, The Secretary of State entered non-opposition and the Real Party in Interest has failed to respond, indicating Mr. Falconi will prevail on the merits of the writ petition by August 19, 2013 at the latest. Mr. Falconi has also paid the filing fee when has been able to (see FV08-03200 and CV13-01019).

The writ petition Petitioners intend to file in the instant case presents pure questions of law of the utmost importance. The countless number of impoverished homeowners that have likely been funneled through the NRED's binding arbitration program or persuaded to file "intervention affidavits" with the Ombudsman's office cannot be minimized. Everyone, no

1 matter how poor, is constitutionally entitled to direct court access. It is quite troubling that this
2 may be the reason as to how this issue has escaped the publishing power of our Supreme Court
3 for so many years. Even if Petitioners fail at the district court level, an appeal to the Supreme
4 Court of Nevada will ultimately bring to their attention a novel question of law that would likely
5 result in a publication. Nevada Supreme Court Internal Operating Procedures, Rule 9(a).

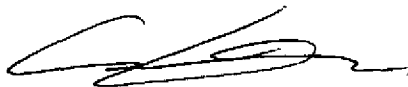
7 III. Conclusion

8 "Nevada has long recognized the importance of maintaining direct access to its state
9 courts. Accordingly, Nevada Supreme Court Rule 44 generally allows for self-representation in
10 all lower courts, and NRS 12.015 permits an indigent person to proceed *in forma pauperis*,
11 without the payment of court costs and fees. Such rules and statutes help to ensure that every
12 person in Nevada is afforded meaningful access to the courts, regardless of that person's financial
13 status." Jordan v. State Dep't of Motor Vehicles, 110 P. 3d 30 - Nev: Supreme Court (2005) at
14 page 39.

16 THEREFORE, Plaintiffs hereby requests that the Division allow them to proceed *in*
17 *forma pauperis*.

19 **AFFIRMATION⁶:** This document does not contain a social security number of any person.

20 DATED THIS 6 day of AUGUST, 2013.

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23 Alexander M. Falconi

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⁶ This affirmation is in accordance with NRS 239B.030."

VERIFICATION

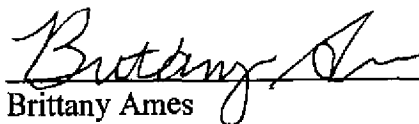
We, Alexander M. Falconi and Brittany Ames, declare that we have read this Motion and that the contents are true and correct of our own personal knowledge, except for those matters we have stated that are not of our own personal knowledge, but that we only believe them to be true, and as for those matters, we do believe they are true.

We declare⁷ under penalty of perjury that the foregoing is true and correct.

EXECUTED this 6 day of AUGUST, 2013. EXECUTED this 6th day of AUGUST, 2013.



Alexander M. Falconi



Brittany Ames

⁷ NRS 53.045(1): "Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form: If executed in this State: "I declare under penalty of perjury that the foregoing is true and correct."