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IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

MICHAEL SCHAEFER,

Landlord

v.

RUSSELL GREER,

Tenant

**MOTION TO SET ASIDE SUMMARY
EVICTION ORDER (JCRCP 60(b)(1), (2),
& (3)) AND, IN THE ALTERNATIVE,
MOTION TO MODIFY STAY UNDER
JCRCP 59(e)**

Case No.: 26E003020

Dept: JC CIVIL EVICTIONS

Judge: Jessica Goodey

Russell Greer (tenant), appearing in proper person, respectfully moves the Court to set aside the Order of Summary Eviction entered on February 23rd, 2026. The Order should be set aside, pursuant to **JCRCP 60(b)(1)** (mistake), **60(b)(2)** (newly discovered evidence), and **60(b)(3)** (misrepresentation). This relief is warranted because the Court applied the wrong legal standard under **NRS 40.253(6)** and **JRCP 105**, relied upon testimony later proven false by newly discovered transcript evidence, and overlooked mandatory statutory procedures under **NRS 118A.490**.

In the alternative, Tenant requests modification of the stay to the full **10 judicial days**, required under **JCRCP 59(e)** because the three-day stay deprives Tenant of a meaningful opportunity to prepare for an appeal.

This motion is based on the following Memorandum of Points and Authorities, all documents on file, and any further evidence or argument permitted.

MEMORANDUM OF POINTS AND AUTHORITIES

I. APPLICABLE LEGAL STANDARDS

A. JCRCP 60(b)(1): Mistake

Rule 60(b)(1) authorizes relief from an order entered as a result of:

- legal mistake,
- factual mistake,
- misapplication of a statutory standard, or
- overlooking required procedural steps.

Failure to apply mandatory statutes, failure to use the correct burden of proof, or reliance on incorrect factual assumptions all qualify as “mistake.” JRCP 60(b) should be read in harmony with NRCP 60(b), which requires that a “district court must address the *Yochum* factors when determining if the NRCP 60(b)(1) movant established, by a preponderance of the evidence, that sufficient grounds exist to set aside "a final judgment, order, or proceeding." *Willard v. Berry-Hinckley Industries*, 469 P.3d 176 (NV 2020),

B. JCRCP 60(b)(2): Newly Discovered Evidence

Rule 60(b)(2) permits relief where:

1. The evidence existed at the time of hearing but
2. could not reasonably have been presented, and
3. would likely have changed the result.

Nevada courts treat audio recordings and transcripts that contradict sworn testimony as classic examples of 60(b)(2) evidence.

C. JCRCP 60(b)(3): Misrepresentation

Relief is proper where the opposing party:

- made false statements,
- concealed material facts, or
- misled the Court in a way that affected the outcome.

D. JRCP 105: Court's Duty to Determine Truthfulness AND Sufficiency

Justice Court Rule 105 states that: "hearings are intended to determine the **truthfulness and sufficiency** of any affidavit, notice, or service." This imposes two separate requirements:

1. **Truthfulness** – factual evaluation.
2. **Sufficiency** – legal evaluation under NRS 40.253(6).

The Court must do both.

E. NRS 40.253(6): Legal Defenses Bar Summary Eviction

This subsection is mandatory: if the tenant raises ANY legal defense, the court SHALL deny the summary eviction. Supporting this mandatory standard, NRS 0.025(1)(II)(d) states that "shall" is defined as a "duty to act".

The legal standard under NRS 40.253(6), per the Nevada Supreme Court, is "viable". It requires raising a "viable legal defense" supported by some kind of evidence. *Rodriguez v. Second Judicial District Court*, No. 81219-COA (NV App. 2020). Once a viable defense is raised, the Court has a duty to act by dismissing the summary eviction affidavit.

II. GROUNDS FOR RELIEF UNDER JCRCP 60(b)(1): THE COURT MADE MULTIPLE LEGAL AND FACTUAL MISTAKES

A. The Court Applied the Wrong Legal Standard Under NRS 40.253(6)

Tenant raised multiple statutory defenses that don't require escrow deposits, including:

- unlawful entry (118A.330) (Answer, page 2)
- retaliation (118A.510). (Answer, page 3)
- smoking exposure (Answer, page 4)
- food contamination (Answer, page 4)
- offset (118A.490) (Answer, page 1)
- unconscionability. (Answer, page 4)

Under NRS 40.253(6) and *Rodriguez*, these defenses are legally viable to bar summary eviction. Instead, the Court incorrectly focused solely on whether rent was owed and the Court seemed to evict simply because a balance was owed.

Tenant's Answer had defenses that explained why there was a balance and to which tenant verbally recited to the Court: tenant signed a promise to pay in December 2025 with a due date of Jan 12th, 2026. Tenant's money was delayed. The 12th hadn't even transpired, yet Landlord barged into Tenant's room on the 11th, at midnight, and began calling Tenant a trespasser, a liar and said a realtor was coming over the next day to take photos. No 24 hour notice was given. This was after landlord found online smut about Tenant and began harassing Tenant with things Tenant is trying to scrub from the internet.

It was also during this time that Tenant discovered landlord was charging more for his 1st floor condo than other condos were charging, thus making the rent contract unconscionable. Plus, Landlord lied about his smoking habits. He said he only smokes in his room and that it stays in his room, yet the smoke seeps into Tenant's room. It also appeared Landlord was pouring alcohol into Tenant's food, thus causing Tenant not to be able to use the fridge.

Given the harm tenant suffered with these facts, Tenant decided he would withhold rent, per NRS 118A.490, because the amount owed was in dispute. Tenant read the statute as not needing to deposit escrow. The statute was read plainly that "after the day of the hearing," deposits would

be made. It was also implied that offsets would be determined at an evidence hearing after summary hearing is dismissed.

It seems this Court overlooked the relevant statutes and Tenant's thorough defenses and ordered eviction simply because of a balance (which Tenant was prepared to make daily payments until a new hearing could be held to determine offsets).

This is a mistake of law requiring the Court to set aside the eviction and order an evidence hearing.

B. The Court Made a Mistake in Presuming Plaintiff Sought to Stay in Possession

Tenant believes this Court thought Greer wanted to stay in possession. To the contrary, Tenant Greer was only staying to defeat the summary eviction hearing under 40.253(6) because two weeks between the Answer and the hearing wasn't enough time to find new housing and so Greer thought he could move out before the evidence hearing. The Court seemed to have granted the eviction to get Greer out of the environment. By doing so, it has robbed Greer of his viable legal defenses he raised to buy him extra time to find housing. The Order should be set aside because Greer presented a viable legal defense and thus will give him time to move out before an evidence hearing.

C. The Court Only Addressed Certain Defenses, But Not Every Defense Listed in the Answer

While the Court addressed heat, and heard unlawful entry and mail tampering, this Court didn't hear unconscionability, food contamination, smoke inhalation and denying summary for an evidence hearing determining offsets. The defenses Greer presented already warranted dismissal, but by not being able to present every defense in the answer, Greer was robbed of presenting a robust defense to have dismissal FULLY considered. This was a mistake on the Court's end.

Greer was going to argue that landlord's smoking was a habitable violation (which requires escrow, yes, and only applies to **that** subsection and not the entire chapter), but was also going to

argue private nuisance under NRS 40.140, which would have fallen under an offset argument as well — which doesn't require escrow.

Greer has a disability (a facial paralysis) and gets nervous speaking in public because of it and forgot to raise it orally, but the Court had the Answer in her hands and didn't address it. The Order should be set aside to allow an evidence hearing for every defense to be presented, including the private nuisance offset defense.

D. Failed Its Mandatory JRCP 105 Duty to Determine “Truthfulness AND Sufficiency”

Justice Court Rule 105 obligates the Court to evaluate: (1) whether the asserted facts are **truthful** and (2) whether the defenses are **legally sufficient**. The Court performed neither analysis.

Truthfulness error:

The Court relied on the landlord's “choking” explanation for entering Tenant's locked bedroom. Landlord, respectfully, lied, and Plaintiff has the video transcript to prove so (and the actual video and audio). Landlord also lied about Tenant not being employed. Because landlord lied, summary eviction should be set aside because the landlord is an unreliable source, who presented no evidence to the contrary.

Sufficiency error:

The Court did not determine whether Tenant's defenses were **legally sufficient under NRS 40.253(6)**, and it incorrectly assumed that escrow was required to assert **any** defense. This is a **legal mistake**. NRS 118A only requires escrow for heat and essential service defenses. Nowhere in the statute chapter does it require escrow for every defense Tenant raised. In fact, an offset defense under 490 requires deposit **AFTER** the summary hearing.

E. The Court Misapplied Escrow Requirements

Only one defense requires escrow: NRS 118.355. Section 355 even says escrow only applies to that subsection. Other defenses—unlawful entry, food contamination, retaliation, habitability

violations, offset, smoking exposure—**do not require** escrow. The Court mistakenly treated escrow as a prerequisite to **all** defenses. This is another mistake under 60(b)(1) and require the order to be set aside.

F. The Court Failed to Apply NRS 118A.490’s Mandatory Offset Procedures

Under NRS 118A.490, offset requires:

1. denial of summary eviction,
2. an evidentiary hearing,
3. and a daily rent deposit before the evidence hearing.

The Court skipped all three. This is a **statutory error** and therefore the Court needs to set the Order aside. Although Tenant is trying to move out, an offset hearing is needed to reduce outstanding rent because Landlord might sue tenant for outstanding rent. As stated, tenant believes a large portion should be offset.

G. The Court Improperly Relied on Irrelevant and Prejudicial Character Evidence

During the hearing, the landlord stated Tenant was previously evicted. The Court replied: “I’m about to evict him a second time.” Prior eviction history is **irrelevant** under NRS 40.253(6). It was further irrelevant because Landlord never required a background check. Tenant believes this comment unduly influenced the Court and thus the Court should set the order aside to allow a hearing with relevant evidence and facts.

F. Material Factual Disputes Existed, Eliminating Jurisdiction

Under *Anvui v. G.L. Dragon*, summary eviction is similar to summary judgement: both procedures are used to determine issues with facts. *Anvui v. G.L. Dragon*, 163 P.3d 405 (NV 2007). In this case, disputes existed regarding:

- the reason for the unlawful entry,,
- payments
- Offsets
- unconsciousability,
- smoking/private nuisance
- food contamination,
- threats,
- retaliation motives.

Because there existed genuine issues and viable defenses, it was inappropriate for this Court to order eviction. *Id.*

III. RELIEF IS REQUIRED UNDER JCRCP 60(b)(2) BECAUSE THE TRANSCRIPT IS NEWLY DISCOVERED EVIDENCE

At the hearing, landlord swore he entered Tenant's bedroom because Tenant was "choking."

Tenant did not have a transcript of the audio, an authenticated exhibit, nor was the audio played.

After the hearing, Tenant obtained the transcript (Exhibit A), which proves: that the landlord entered solely to criticize Tenant about a realtor coming and calling tenant a trespasser.

Landlord (1:36–2:11):

"I haven't seen what it looks like but I have a realtor coming over tomorrow at 5:00... That's one reason I'm coming in... plus you're late..." **EXHIBIT A**

This evidence is:

- new,
- material,
- contradictory to sworn testimony,
- and outcome-changing.

Thus 60(b)(2) applies.

IV. RELIEF IS REQUIRED UNDER JCRCP 60(b)(3) BECAUSE THE LANDLORD MADE MATERIAL MISREPRESENTATIONS AND THE COURT DID NOT PROVIDE TENANT ANY OPPORTUNITY TO REBUT THEM

Relief is warranted under JCRCP 60(b)(3) because the landlord made material misrepresentations and omissions during the hearing, and the Court permitted those statements to remain uncorrected, while not affording Tenant any opportunity to rebut or clarify the record. As a result, the Court relied on a distorted and incomplete factual presentation.

A. The landlord made affirmative false statements that were never tested or struck

During the hearing, the landlord made several false or misleading statements, including: claiming he entered Tenant's locked bedroom due to a "choking" emergency, referring to Tenant as a "squatter," asserting Tenant was unemployed, implying Tenant simply "refused" to pay rent without acknowledging statutory defenses or offsets. These statements were contradicted by the

audio transcript and written evidence. The Court did not strike, correct, or inquire further into any of these statements.

B. The landlord omitted all conduct forming Tenant's statutory defenses and offset rights

While the landlord testified as if unpaid rent were the only relevant issue, he omitted:

- his unlawful midnight entry into Tenant's locked bedroom,
- calling Tenant a trespasser and sending harassing messages,
- smoking inside the unit,
- contaminating Tenant's food,
- defacing Tenant's mail and contacting Tenant's family,
- providing inconsistent rent amounts and overcharging under the agreement.

These omissions removed from the Court's view the very conduct that forms statutory defenses under NRS 40.253(6) and justification for offset under NRS 118A.490. The landlord's testimony presented a materially incomplete and misleading narrative.

C. The landlord misrepresented the rental agreement and concealed facts relevant to unconscionability

At the hearing, the landlord presented only the monthly rent figure and omitted facts showing:

- Mr. Schaefer has no employment,
- told Tenant he relies on rent as his personal income,
- he priced the unit high because he depends on that rent,
- he cannot substantiate the unit's value being higher than comparable units (such as the ninth-floor condo).

These withheld facts go directly to Tenant's unconscionability argument under NRS 118A.230. By failing to disclose them, the landlord misrepresented both the economic reality and the fairness of the rental terms.

E. The landlord's misrepresentations influenced the ruling because the Court did not allow Tenant to rebut or correct them

Critically, the Court did not:

- ask Tenant to respond to the landlord's statements,
- allow Tenant to rebut the false "choking" claim,
- allow Tenant to respond to the "squatter" remark,
- allow Tenant to address the inflated rent and unconscionability issues,
- permit explanation of the omitted misconduct.

Because the Court never provided any opportunity for Tenant to rebut the landlord's assertions, the misrepresentations—and all omissions—remained in the record unchallenged. This deprived the Court of accurate factual context and allowed a materially distorted narrative to shape the ruling. This denial of rebuttal opportunity, combined with the landlord's misstatements and omissions, satisfies the prejudice requirement of JCRCP 60(b)(3) and warrants setting the eviction aside.

V. ALTERNATIVE RELIEF — MODIFY THE STAY TO 10 JUDICIAL DAYS UNDER NRS 40.385

If the Court will not set aside the eviction, Tenant requests the judgement be altered under JCRCP 59(e).

NRS 40.385 allows a party to appeal an order under 40.253 within 10 judicial days. This Court only allowed a three-day stay, even though Tenant asked for ten days in writing and orally because he was planning on appealing.

This three-day stay violates NRS 40.385 because Tenant must be allowed:

- 10 judicial days to appeal,
- time to obtain transcripts,
- time to compile the record.

A stay shorter than the statutory appeal period is inconsistent with the statute's plain language. Tenant requests the stay be modified to the full 10 judicial days to help him better prepare for appeal.

VI. REQUEST FOR RELIEF

Tenant thinks Judge Goodey is kind, empathetic and patient; however, he respectfully believes the statutes controlling summary eviction were misapplied. Therefore, he asks the Court to:

1. Set aside the Summary Eviction Order under JCRCP 60(b)(1), (2), and (3) because:

- the Court applied the wrong legal standards,
- the Court failed its JRCP 105 obligations,
- the video audio transcript disproves the landlord's testimony,
- the Court ignored mandatory procedures under NRS 118A.490,

- factual disputes existed,
- viable legal defenses were established
- and landlord misrepresented material facts.

Tenant is willing to comply with daily rent deposits, ordered under NRS 118A.490.

2. Alternatively, modify the stay to the full 10 judicial days required by NRS 40.385, which would be staying the order until March 9th, 2026, to allow an effective appeal.

Truthfully submitted.

Russell Greer

/rgreer/

A handwritten signature in black ink, appearing to be 'R Greer', written over a horizontal line.

2-24-26

CERTIFICATE OF SERVICE

I swear under penalty of perjury that a copy of the JCRC Motion was delivered to Lamdlord via ECF on 2-24-26

EXHIBIT A

(Transcribed by Uniscribe (https://www.uniscribe.co).)

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Speaker 00:00

I didn't lie to you, dude. Dude, I was a fucking missionary, okay? So don't you fucking tell me what I have and haven't done in my life. Yeah.

Speaker 00:30

and he, he vouched that you were a stand-up guy. I am a stand-up guy. You're the one guy in my career, 15 years plus of landlord, that I'd let stay here for a month without paying rent. Not because I felt it was hard for you or a disability, because I helped you out with that, I'm not, I would never make fun of that. It's because you said I have a check coming. I do. So there was hope and therefore I let you stay.

Speaker 01:04

And I do have one coming, sir. Read it. But what happens if it doesn't come Monday? You literally said you were going to go to the courthouse and do an eviction. I mean, I'm not going to have a lien put on my counter because of fucking you. Okay, then go to the courthouse because I don't appreciate you coming in here and harassing me. Well, it looks like shit. I came in here to look at it and tell you that...

Speaker 01:36

I haven't seen what it looks like but I have a real shit agent coming over tomorrow at 5:00. Hopefully she doesn't flake but she's a friend of mine. Okay. And she's gonna take photos and this looks like shit. If you could clean it up a little bit that'd be great. Yeah, you could have just told me that and I would have done it. Okay, well that's one reason I'm coming in. Plus you're late so... Okay, well, alright.

Speaker 02:11

I'm sorry that you had the wrong idea about me.

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1 JUSTICE COURT, LAS VEGAS TOWNSHIP
2 CLARK COUNTY, NEVADA

3 Michael Schaefer,
4 Landlord(s)

CASE NO.: 26E003020
DEPT. NO.: JC CIVIL EVICTIONS

5 vs.

6 Russell Greer,
7 Tenant(s)

8 ORDER REGARDING MOTION TO
9 SET ASIDE SUMMARY EVICTION
10 ORDER (JCRCP 60(b)(1),(2) & (3) AND,
11 IN THE ALTERNATIVE, MOTION TO
12 MODIFY STAY UNDER JCRCP 59(e)

13 The Court having reviewed the Motion to Set Aside Summary Eviction Order (JCRCP
14 60(b)(1),(2), & (3) and, in the Alternative, Motion to Modify Stay Under JCRCP 59(e) filed
15 herein and good cause appearing therefore,

16 **IT IS HEREBY ORDERED** that:

17 The Motion to Set Aside Summary Eviction Order (JCRCP 60(b)(1),(2), & (3)
18 and, in the Alternative, Motion to Modify Stay Under JCRCP 59(e) shall be **SET FOR**
19 **HEARING** on the ____ day of _____ 20____ at _____ m. in
20 Courtroom _____, Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV 89155.

21 The Motion to Set Aside Summary Eviction Order (JCRCP 60(b)(1),(2), & (3)
22 and, in the Alternative, Motion to Modify Stay Under JCRCP 59(e) is **GRANTED**.

23 The Motion to Set Aside Summary Eviction Order (JCRCP 60(b)(1),(2), & (3)
24 and, in the Alternative, Motion to Modify Stay Under JCRCP 59(e) is **DENIED**.

25 Other: _____

26 DATED this 25th day of February, 2026.

27 
28 Amy Ferreira
JUDICIAL OFFICER