

IN THE SUPREME COURT OF THE STATE OF NEVADA

Principal Investments, Inc. d/b/a Rapid Cash; Granite Financial Services, Inc. d/b/a Rapid Cash; FMMR Investments, Inc. d/b/a Rapid Cash; Prime Group, Inc. d/b/a Rapid Cash; and Advance Group, Inc. d/b/a Rapid Cash,

Petitioners,

vs.

The EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and THE HONORABLE ELIZABETH GOFF GONZALEZ, District Judge,

Respondents,

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan,

Real Parties in Interest.

Case No. 57371

Electronically Filed
APR 20 2018 10:16 a.m.
THE CLASS'S RESPONSE TO
RAPID CASH'S MOTION TO FILE
A REPLY IN SUPPORT OF
PETITION FOR EN BANC
RECONSIDERATION
Clerk of Supreme Court

INTRODUCTION

Rapid Cash¹ asks this Court to grant it leave to file a reply in support of its petition for en banc reconsideration of the panel's decision to dismiss Rapid Cash's petition for writ of mandamus, but with its proposed reply brief raises an issue that is completely new to the package of its motion for reconsideration—consolidating Rapid Cash's two appeals with its writ petition. Because that portion—section IV—of Rapid Cash's proposed reply brief exceeds the bounds set by NRAP 28(c), this Court should deny the request to file this reply; alternatively, this Court should grant the Class leave to file a surreply, and as the Class has already responded to Rapid Cash's stand-alone motion for consolidation,² consider the Class's response as that authorized surreply.

¹ Principal Investments, Inc. d/b/a Rapid Cash; Granite Financial Services, Inc. d/b/a Rapid Cash; FMMR Investments, Inc. d/b/a Rapid Cash; Prime Group, Inc. d/b/a Rapid Cash; and Advance Group, Inc. d/b/a Rapid Cash.

² Doc. 12-10609.

ARGUMENT

It is well established that new arguments cannot be raised for the first time in a reply brief. *See* NEV. R. APP. PROC. 28(c) (“A reply brief . . . must be limited to answering any new matter set forth in the opposing brief.”); *accord Browning v. State of Nev.*, 91 P.3d 39, n.53 (Nev. 2004) (“NRAP 28(c) does not allow the raising of new claims in reply briefs; it limits a reply brief to addressing new matters raised in the answering brief.”); *see also Thompson v. Commr. of Internal Revenue Serv.*, 631 F.2d 642, 649 (9th Cir. 1980) (“the general rule is that the [movants] cannot raise a new issue for the first time in their reply briefs”); *White v. City of Sparks*, 341 F.Supp.2d 1129, 1134 (D. Nev. 2004) (providing that it is improper to raise new arguments in a reply brief because it denies the opposing party an opportunity to respond). “[T]he purpose of the reply brief is *not* to rehash arguments already addressed in the appellant’s brief, raise new arguments[,] or to make emotional pleas or personal attacks against the appellee[,]” Maria Pellegrino, *Brief-Writing Tips For the Illinois Appellate Court*, 96 Ill. B.J. 412, 416 (2008), but to “respond[] to factually incorrect statements made by the respondent, distinguish[] the respondent’s authorities, or answer[] preservation arguments.” Thomas R. Haggard, *Writing the Reply Brief*, 12 S.C. Law 43, 45 (Mar./Apr. 2001). When new arguments are made for the first time in a reply brief, this Court generally has three options: (1) strike the offending portions from the brief;³ (2) deem the arguments waived and refuse to consider them,⁴ or (3) grant leave to the nonmoving party to file a surreply.⁵

³ *See Brundy v. Bramlet*, 692 P.2d 493, n. 5 (Nev. 1985) (denying motion to strike new argument raised in reply brief because motion to strike was untimely, however, not considering alleged “new” arguments as they “were not properly preserved for [this Court’s] review.”).

⁴ *Bongiovi v. Sullivan*, 138 P.3d 433, n.5 (Nev. 2006).

⁵ *Cf. Pellegrini v. State*, 34 P.3d 519, 524 (Nev. 2001); NRAP 27.

1 Section IV of Rapid Cash’s proposed reply brief is more of a presentation of a
2 new issue for this Court to consider—consolidation—than it is an answer to concerns
3 that the Class raised in response to Rapid Cash’s petition for en banc reconsideration.
4 This section also causes the proposed reply brief to exceed the five-page limit. That
5 portion of Rapid Cash’s reply therefore fails to comply with NRAP 28(c). Because
6 Rapid Cash has already filed a stand-alone motion to consolidate its two appeals with
7 its writ petition,⁶ the Class respectfully requests that this Court deny this motion.
8 Alternatively, should Rapid Cash be granted leave, this court should grant the Class
9 leave to file a surreply to section IV of Rapid Cash’s proposed reply brief, and simply
10 consider the Class’s response to Rapid Cash’s stand-alone motion to consolidate as
11 that surreply.⁷

12 DATED this 12th day of April, 2012.

13 Respectfully Submitted by Class Counsel:

14 **KEMP, JONES & COULTHARD, LLP**

15 By: /s/ Jennifer C. Dorsey

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28 ⁶ Doc. 12-10609.

⁷ Case #57625, Doc. 12-11224.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this response complies with the formatting requirements of NRAP 27(d)(1), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] It has been prepared in a proportionally spaced typeface using Microsoft Word 2007 with 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the page-or-type-volume limitations of NRAP 27(d)(2) because it:

[X] Does not exceed 10 pages.

DATED this 12th day of April, 2012.

Respectfully Submitted by Class Counsel:

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2012, the foregoing **THE CLASS'S RESPONSE TO RAPID CASH'S MOTION TO FILE A REPLY IN SUPPORT OF PETITION FOR *EN BANC* RECONSIDERATION** was filed electronically with the Nevada Supreme Court. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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