IN THE SUPREME COURT OF NEVADA

Case Nos. 57371, 57625 and 59837

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, individually and on behalf of all persons similarly situated,

Real Parties in Interest.

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,

Appellants,

vs.

CASANDRA HARRISON; EUGENE VARCADOS; CONCEPCION QUINTINO; and MARY DUNGAN, individually and on behalf of all persons similarly situated,

Respondents.

REPLY IN SUPPORT OF MOTION TO CONSOLIDATE CASES

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,

Appellants,

vs.

CASANDRA HARRISON; EUGENE VARCADOS; CONCEPCION QUINTINO; and MARY DUNGAN, individually and on behalf of all persons similarly situated,

Respondents.

REPLY IN SUPPORT OF MOTION TO CONSOLIDATE

I. THIS COURT SHOULD CONSOLIDATE THESE CASES TO RENDER MOOT THE JURISDICTIONAL AND PROCEDURAL ISSUES IN ONLY TWO CASES AND THEN TURN TO THE MERITS PRESENTED BY ALL THREE.

Consolidation of these Matters Would Serve Judicial Economy

This Court has recognized that consolidation is appropriate "[i]n the interest of judicial economy." *Jackson v. State*, 115 Nev. 21, 22, 973 P. 2d 241 (1999).[1]

[1] This Court has used several standards in consolidating matters before it. Under Rule 3(b), this Court has frequently used consolidation where it has concluded that such a move "will assist" in the disposition of the cases. *Dept. of Motor Vehicles v. Hutchings*, 106 Nev. 453 n.1, 795 P. 2d 497, 498 n.1 (1990); *Hansen v. Harrah's*, 100 Nev. 60 n.1, 675 P. 2d 394, 395 n.1 (1984); *Public Service Com'n v. Southwest Gas Corp*., 99 Nev. 268 n. 1, 662 P. 2d 624, 625 n.1 (1983*); Koenig v. State*, 99 Nev. 780 n.1, 672 P. 2d 37, 38 n.1 (1983). This Court has also consolidated cases that raise similar questions of first impression (*Morgano v. Smith*, 110 Nev. 1025, 1026, 879 P. 2d 735, 736 (1994)), and cases that present identical issues and similar facts (*Barnes v. District Court*, 103 Nev. 679, 680, 748 P. 2d 483, 484 (1987); *Prieur v. DCI Plasma Center of Nevada*, 102 Nev. 472, 473, 726 P. 2d 1372, 1372 (1986)).

Even plaintiffs utilize this standard of judicial economy to arguing against consolidation.

Judicial economy and efficiency would be best served by consolidating these matters, however, as the Court can forego the jurisdictional and procedural issues raised in some cases and turn to the merits presented in all three. Here, jurisdiction and procedural issues are raised in only two cases, 57371 and 57625, while plaintiffs have repeatedly conceded that there is jurisdiction in the other case, 59837, to address the arbitration issues. It would be most economical to consolidate the matters in which jurisdictional and procedural issues are raised with the case where there is no such dispute. This could render the jurisdictional and procedural issues moot and allow this Court to move right to the merits without expending resources on the moot procedure points. Such an expedited course would also limit delay in reaching the merits of this important arbitration issue.

Consolidation Would Eliminate Unnecessary Work for the Court

Consolidating these matters and allowing them to proceed on the merits would eliminate the drain on resources caused by addressing the jurisdictional and procedural issues present in only two of the three cases. And these procedural points present formidable work.

Rapid *steadfastly* believes that, in Case 57371, its writ petition serves as a valid notice of appeal under the limited circumstances of this case. There is a wealth of authority from federal and other state courts that requires this conclusion.[2] Even though the great weight of legal decisions calls for this conclusion, it is still an issue of first impression in Nevada, and this Court would have to utilize its resources researching and resolving this procedural point. Alternatively, if this Court does not treat the petition as the functional equivalent of a notice of appeal, the Court equitably should then allow Rapid's notice of appeal in Case 57625 to initiate appellate review, as (1) the January 27, 2011 notice of appeal should be considered an amended notice of appeal curing any insufficiency in the writ petition to perform that function,[3] or (2) the deadline for filing the notice of appeal should be deemed tolled by the pendency of the writ petition.[4]

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[2] *See, e.g., In re Urohealth Sys., Inc*., 252 F.3d 504 (1st Cir. 2001) (writ petition was functional equivalent of notice of appeal); *Benson v. SI Handling Sys., Inc*., 188 F.3d 780, 782 (7th Cir. 1999) (same); *In re Bethesda Mem'l Hosp*., 123 F.3d at 1408-09 (same); *Diamond v. United States Dist. Court*., 661 F.2d 1198, 1198 (9th Cir. 1981) (same); *accord Smith v. Barry*, 502 U.S. 244, 245 (1992); *Casey v. Long Island R.R. Co*., 406 F.3d 142, 146 (2d Cir. 2005); *United States v. RMI Co*., 599 F.2d 1183, 1187 (3d Cir. 1979); *Yates v. Mobile County Personnel Bd.*, 658 F.2d 298, 299 (5th Cir. 1981); *National City Bank v. Battisti*, 581 F.2d 565 (6th Cir. 1977); *Madej v. Briley*, 371 F.3d 898, 899 (7th Cir. 2004); *In re SDDS, Inc*., 97 F.3d 1030, 1034 (8th Cir. 1996); *In re Copley Press, Inc*., 518 F.3d 1022, 1025-26 (9th Cir. 2008); *United States v. Gundersen*, 978 F.2d 580, 582-83 (10th Cir. 1992).

[3] *See Ex Parte Singleton*, 475 So.2d 186, 189 (Ala. 1985) (allowing amendment to correct a defective notice of appeal even after the period for filing an appeal had elapsed where the "amendment [does] not in any way change the merits of the

(continued)

Rapid's jurisdictional and procedural arguments are appropriate and compelling, especially those in Case 57371 that have been adopted by courts throughout the country. But Rapid realizes that researching and ruling on even commonly accepted procedural principles consumes this Court's resources. That drain is unnecessary in this case, however, because the same result can be reached—and the same issues on the merits addressed—by consolidating these matters with Case 59837 and considering the procedural issues to be moot.

Plaintiffs Concede All the Merits are Presented in Case 59837

It would take time and work for this Court to resolve the jurisdictional and procedural issues, even where Rapid's position in Case 57371 has virtually

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appeal."); *Stuart v. United States*, 23 F.3d 1483, 1485 (9th Cir. 1994) (permitting appellant to amend notice of appeal after thirty-day period had elapsed where intent to appeal was obvious from an initial timely filing and appellee was not prejudiced). *See also Chan v. Chan*, 748 P.2d 807, 811 (Haw. Ct. App. 1987) (amendment to a notice of appeal relates back to the date of the notice it amends); *In re Marriage of Betts*, 558 N.E.2d 404, 415 (Ill. Ct. App. 1990) (noting that amendments relate back under Illinois law and that the "purpose of an amended notice of appeal is to permit correction of omissions from the original notice of appeal.").

[4] *Cf., State Dep't of Motor Vehicles v. Moss*, 106 Nev. 866, 868, 802 P.2d 627, 628 (1990) (Nevada's public policy strongly favors adjudicating disputes on their merits rather than disposing of them on procedural technicalities.); *Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 526, 134 P.3d 726, 732 (2006) (Nevada's procedural rules are intended to provide a simple and efficient framework for ensuring a fair appeal on the merits rather than to trap the unwary.); *AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190, 1194 (2010) (abolishing procedural distinction which "serve[d] no purpose except to put an appellant who misjudges which category a post-judgment motion falls into at risk").

universal acceptance. This attention to procedural disputes is needless here, however, especially as plaintiffs *concede* that this Court will have to face the same merits in case 59837, whether it finds jurisdiction in the other cases, or not.

Plaintiffs have conceded that all the issues raised in all three matters are presented in Case 59837:

> Rapid Cash has since secured itself a proper vehicle for this Court to review the merits of the district court's waiver finding by timely appealing from the denial of the second motion to compel arbitration [in Case 59837].

(Answer to Petition for Reconsideration, Case 57371, Document 12-08710 at 2:1-3 and n.4.) In the same document, they concede:

> Rapid will not be precluded from appellate review of the merits [presented in Case 57625] because the same arguments will be heard when this Court considers Rapid Cash's second appeal[Case 59837].

(*Id*. at 5:23-26. *See also, id*. at 5:10-13 (Rapid's "dispute of the district court's refusal to compel arbitration of the class's claims will be heard by the Court in Rapid Cash's second appeal [Case 59837]").)

Because this Court will have to address all the same issues on the merits, it would save time and work, for the Court and the parties, simply to consolidate the cases now. Then the parties and the Court can turn to the merits, rather than expend resources on moot procedural points.

Consolidation Does Not Prejudice Plaintiffs

Because plaintiffs concede that the same issues on the merits will be addressed whether Cases 57371 and 57625 are dismissed or not, there is no prejudice to plaintiffs if all three cases proceed in a consolidated manner without needlessly addressing the jurisdictional and procedural issues. Ironically, however, plaintiffs use this same concession to encourage this Court to gloss over—and summarily reject as moot—Rapid's jurisdictional and procedural position in the other matters. For example in Case 57625, they argue:

> Rapid Cash will not be prejudiced by the inability to have the writ-challenged order reviewed [in Case 57371]. Rapid Cash renewed its motion to compel arbitration, had its request rejected by the district court a second time, and has filed an appeal from that decision, too. *See* Case #59837.

(Reply, Motion to Dismiss in 57625, Document 12-03897 at 3:22-25, emphasis added.) Similarly in Case 57371, they represent:

> [T]he flat denial of its petition for mandamus [in Case 57371] will not have a "harsh result" or cause [Rapid] to suffer "injustice" because it will obtain appellate review of the merits in its second appeal [Case 59837].

(Answer to Petition for Reconsideration, Case 57371, Document 12-08710 at 2:20-22, emphasis added, footnote omitted.)

While plaintiffs and Rapid each argue that their respective positions do not result in prejudice to the other side because all issues are presented in Case 57371, there are at least two differences between their positions. First, plaintiffs'

contentions require this Court actually to rule on the jurisdictional and procedural points, even if it is to dismiss Cases 57371 and 57625 as moot because all the issues are presented in Case 59837. In contrast, under Rapid's position, the jurisdictional and procedural issues themselves can be disregarded as moot.

Second, allowing all three cases to proceed will remove any possibility that plaintiffs may later retreat from their concessions that all issues are presented in Case 59837.[5] Simply put, consolidating the cases both makes the resolution of these cases more efficient and creates fewer chances for mischief.

II. THIS COURT'S ABILITY TO CONSOLIDATE, UNDER RULES 2 OR 3 OR ITS INHERENT AUTHORITY, IS NOT LIMITED TO "APPEALS"

Plaintiffs also make a purely textual argument, contending that NRAP Rule 3(b) allows consolidation only of "appeals."[6] (Opp. at 3:7-9.) This argument is tenuous, at best, as even plaintiff acknowledge that this Court can—and has—used NRAP 3(b) to consolidate writ petitions. *See Barnes v. District Court*, 103 Nev. 679, 748 P.2d 483, 484 (1987). *See also, Williams v. District Court*, 127 Nev. ___, 262 P.3d 360, 362, 364 (2011); *DeRosa v. District Court*, 115 Nev. 225, 228, 985 P. 2d 157, 159 (1999). If the Court's authority were limited to "appeals,"

[5] This comment is not meant to degrade plaintiffs' counsel or to insinuate that they intend to do such a thing. They are outstanding and ethical attorneys.

[6] Rule 3(b)(2) provides: "When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Supreme Court upon its own motion or upon motion of a party."

consolidation of original petitions would be impossible. There is no reason to believe that the Court's authority to manage its docket precludes consolidating appeals with writ petitions from the same underlying case.

The Rules of Appellate Procedure do not define "appeals." See NRAP 1(e).[7] As such, there is nothing that limits the scope of the rules, including NRAP 3(b), only to those cases that are categorized as appeals, as opposed to writ petitions. Quite to the contrary, the March 15, 1973 order adopting the appellate rules makes clear that they "govern the procedure in appeals from the District Courts and in applications for writs and other relief" and, once in effect, "shall govern all proceedings and appeals and extraordinary writs…." It is clear, then, that the application of the rules should not be limited to appeal from the district court, and that only Rule 21 applies to writ petitions.

Once again, as with their opposition to treating the writ petition in Case 57371 as the functional equivalence of a notice of appeal, plaintiffs draw a harsh and artificially rigid distinction between appeals and other cases before this Court. While their resistance may be only tactical, their positions create injustices not contemplated by the rules.

[7] Rule 1(e)(1) does, however, make clear that the term "'Appellant' includes, if appropriate, a petitioner." This expansive definition underscores the conclusion that the rules apply broadly to writs as well as appeals from judgments.

Even if the rigid text of Rule 3(b) did somehow limit this Court's authority to consolidate an appeal only with other appeals and a petition only with other petitions, this Court has authority to "suspend any provision of these Rules in a particular case and order proceedings as it directs." NRAP 2. In addition, the Court has inherent authority over its docket, such that one cannot seriously argue that the Court's ability to consolidate the cases before it is limited to those cases that happen to be considered appeals. Without prejudice to plaintiffs, they cannot object to the Court exercising such a housekeeping function.[8] This Court should reject plaintiffs' argument.

[8] *See State v. McFadden*, 43 Nev. 140, 147, 182 P. 745, 747 (1919) (recognizing that the courts' "inherent power to regulate their own docket and control their own business" cannot be used to reset a trial without notice and in contravention of a statute and rule, where the procedure would prejudice a party.)

CONCLUSION

For these reasons, this Court should (1) consolidate these matters, (2) rule that the jurisdictional and procedural issues in cases 57371 and 57625 are moot, as plaintiffs concede that all the merits are presented in Case 59837, and (3) order consolidating briefing on the merits forthwith.

Dated this 16th day of April, 2012.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this REPLY TO MOTION TO CONSOLIDATE CASES was filed electronically with the Nevada Supreme Court on the 16th day of April, 2012, Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer C. Dorsey
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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

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An Employee of Lewis and Roca LLP