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IN THE SUPREME COURT OF THE STATE OF NEVADA

PRINCIPAL INVESTMENTS, INC.,
dba RAPID CASH, GRANITE
FINANCIAL SERVICES, INC., dba
RAPID CASH, FMMR
INVESTMENTS, INC., dba RAPID
CASH, PRIME GROUP, INC., dba
RAPID CASH, AND ADVANCE
GROUP, INC., dba RAPID CASH,

Appellants

v.

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

Respondents

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Tracie K. Lindeman
Clerk of Supreme Court
Case # A624982
(District Court Case # 12-00000)

**REPLY IN SUPPORT OF MOTION
TO DISMISS UNTIMELY APPEAL**

I.

INTRODUCTION

When the district court denied Rapid Cash's Motion to Compel Arbitration, Rapid Cash attempted to challenge that decision with a petition for writ of mandamus instead of a proper and timely notice of appeal. This Court made Rapid Cash aware of its jurisdictionally significant mistake when denying the petition, prompting Rapid Cash to try and correct that error by filing a fatally late notice of appeal. Because the rules and precedent of this Court **require** this Court to dismiss Rapid Cash's untimely appeal of this arbitration denial, this payday lender asks this Court to make an exception and find that its petition for mandamus relief was close enough to a notice of appeal to invoke this Court's limited appellate jurisdiction. This Court's rules do not allow for such an exception, and even if this Court were inclined to create one, this is not the case to do it in.

II. ARGUMENT

A. **This Court Lacks Authority to Excuse Rapid Cash’s Failure to Timely File a Notice of Appeal.**

NRS 38.247 provides that an appeal from an order denying a motion to compel arbitration “**must** be taken as from an order or a judgment in a civil action.” NEV. REV. STAT. § 38.247(2) (emphasis added). NRAP 3(a)(1), which governs appeals from orders and judgments, is clear: “an appeal permitted by law from a district court to the Supreme Court may be taken **only** by filing a notice of appeal with the district court clerk within the time allowed by Rule 4.” Nev. R. App. Proc. 3(a)(1) (emphasis added). In enforcing these provisions, this Court has consistently held that “the proper and timely filing of a notice of appeal is jurisdictional,” *Rust v. Clark County Sch. Dist.*, 747 P.2d 1380, 1382 (Nev. 1987), and “an untimely appeal may not be considered.” *Ross v. Giacomo*, 635 P.2d 298, 300 (Nev. 1981) (*ovr’d on other grounds in Winston Products Co. v. DeBoer*, 134 P.3d 726 (Nev. 2006)). A notice of appeal is the only way to properly invoke this Court’s appellate jurisdiction to challenge the denial of a motion to compel arbitration.

B. **A Writ of Mandamus is not a Substitute for a Timely Notice of Appeal.**

The filing of a petition for writ relief is no substitute for a timely notice of appeal. As this Court noted in *Duran v. Second Judicial District Court, Washoe County*, 2011 WL 1045539 *1 n.3 (Nev. Mar. 18, 2011), when denying a petition for writ relief in a forfeiture matter, “[t]o the extent that petitioner filed the underlying writ as a vehicle to appeal that order, that avenue is closed **as we have previously held that writ relief cannot correct a failure to file a timely notice of appeal.**” (Emphasis added). The same sentiment was expressed in *Maheu v. Eighth Jud. Dist. Court*, 493 P.2d 709, 722 (Nev. 1972), wherein the Court noted, “Writs of mandamus and prohibition are extraordinary writs and . . . may not be

1 utilized as a substitute for an appeal.” Thus, the only way to invoke the *appellate*
2 jurisdiction of this Court is with a proper notice of appeal.

3 Rapid Cash urges this Court to treat its writ petition as “the functional
4 equivalent” of a notice of appeal or exercise its discretion under a number of
5 theories to allow this appeal to continue despite the untimeliness of its ultimately
6 filed notice of appeal, and it cites primarily to federal cases in which the federal
7 courts, applying the federal rules, have allowed this substitution. But federal
8 authority in this regard cannot be persuasive because the federal rules are far more
9 lenient than our state rules with respect to timeliness of a notice of appeal.

10 Although the 30-day appellate period in the Nevada Rules of Appellate Procedure
11 may not be extended or waived,¹ *Walker v. Scully*, 657 P.2d 94 (Nev. 1983), the
12 federal counterpart allows the district court to extend the time to file a notice of
13 appeal by up to 30 days or reopen the time to file an appeal. *See* FED. R. APP.
14 PROC. 4(a)(5) & (6). Nevada’s rules are clear, allow for no exceptions, and should
15 not be compromised to allow Rapid Cash’s late appeal to invoke the appellate
16 jurisdiction of this Court.

17 **C. This Case Does Not Merit an Exception.**

18 Even if this Court were inclined to relax its rules and allow a petition for
19 writ relief to invoke this Court’s limited appellate jurisdiction, this is not the case
20 to blaze that trail with. Rapid Cash was represented by several fine law firms, was
21 in no way unwary of the rules of this Court, and made its choice to pursue a writ,
22 not an appeal. But more importantly, Rapid Cash will not be prejudiced by the
23 inability to have the writ-challenged order reviewed. Rapid Cash renewed its
24 motion to compel arbitration, had its request rejected by the district court a second
25 time, and has filed an appeal from that decision, too. *See* Case #59837.
26 Accordingly, this case fails to present the type of compelling circumstances that
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28 ¹ Except by tolling motion.

1 should compel this Court to make an exception for its failure to file a timely notice
2 of appeal.

3 **III.**

4 **CONCLUSION**

5 Rapid Cash failed to timely take the steps required by the Rules of
6 Appellate Procedure to perfect its right to appeal from the Order Denying Motion
7 to Compel Arbitration. This Court should reject Rapid Cash's request to carve a
8 new exception into the notice of appeal requirement and dismiss this appeal
9 outright.

10 DATED this 6th day of February, 2012.

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12 Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2012, the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS UNTIMELY APPEAL** was served on the following person(s) by U.S. Mail:

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