

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,

Appellants,

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,

Respondents.

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,

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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. 57625

Electronically Filed
APR 20 2012 2:10 p.m.
THE CLASS ACTION RESPONSE TO
RAPID CASH'S MOTION TO
CONSOLIDATE CASES
Clerk of Supreme Court

Case No. 59837

INTRODUCTION

Rapid Cash¹ asks this Court to consolidate its:

- twice-rejected petition for writ of mandamus, and
- untimely appeal from the district court's denial of its first motion to compel arbitration, which is subject to a pending motion to dismiss,

into its third action before this Court—the appeal from the district court's denial of its second motion to compel arbitration. Rapid Cash urges consolidation on the basis that all three of these proceedings challenge the district court's conclusion that Rapid Cash waived its contractual right to arbitration by litigating to judgment nearly 17,000 claims arising under those contracts, and thus, this now-certified class of judgment debtors cannot be forced to arbitrate their claims that those judgments are void because they were obtained through a fraud on the court. Rapid Cash's matters should not **now** be consolidated because the fate of two of these three proceedings is uncertain, and its motion should be denied as premature.

ARGUMENT

Rapid Cash's request is premature because the continued existence of the two oldest of its cases—the dismissed writ petition and the untimely first appeal—is in doubt. The Class's renewed motion to dismiss Rapid Cash's untimely appeal from the district court's denial of its first motion to compel arbitration (#57625) has been fully briefed and submitted,² and the Class filed its answer to Rapid Cash's petition for en banc reconsideration of the panel's dismissal (and denied rehearing) of Rapid Cash's petition for writ of mandamus on March 20, 2012.³ Judicial economy will be better served if this Court waits until after it decides whether or not to dispose of Cases

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 #57625, Doc. 11-39605, 12-01755 & 12-03897.

³ See #57371, Doc. 12-08710.

1 57371 and 57625—decisions that could easily moot this consolidation
2 request—before it contemplates consolidating these cases into what may be the only
3 matter still pending (#59837). At a minimum, one of these matters (either the petition
4 or the untimely appeal) will be extinguished because they both seek mutually
5 exclusive relief from the very same district court order. Until this Court knows the
6 fate of those matters, this motion is patently premature.

7 If the petition survives, consolidation still would not be appropriate. NRAP
8 3(b) permits appeals to be consolidated with other “appeals.” *See* NEV. R. APP. PROC.
9 3(b)(2). Although this Court has cited NRAP 3(b) when consolidating writ petitions
10 with other writ petitions, *see e.g. Barnes v. District Court*, 748 P.2d 483, 484 (Nev.
11 1987), that does not suggest that combining original proceedings with appellate
12 matters would be similarly appropriate. *See e.g. Karow v. Mitchell*, 878 P.2d 978, 981
13 (Nev. 1994) (“Thus, we deny Matrillaro’s petition for a writ of mandamus [t]he
14 arguments tendered in support of that petition, however, may be reviewed in the
15 context of Martillaro’s appeal. . . .”).⁴ Rapid Cash attempts to whittle the square peg
16 of its petition for writ of mandamus to fit the round hole created by NRAP 3(b) for
17 consolidating appellate cases of corresponding type by proffering, in a footnote, sound
18 bites from its argument for en banc reconsideration of the panel’s denial of Rapid
19 Cash’s petition for writ of mandamus. *Compare* Case #57371, Doc. 12-02756 *with*
20 Motion at n.2. But that argument is unpersuasive,⁵ and because it must first be
21 evaluated by this Court in the context of Rapid Cash’s petition for en banc
22 reconsideration, is yet another reason this motion is premature.

23 The Class acknowledges that consolidation might be appropriate if this Court
24 does not dismiss Rapid Cash’s first appeal as untimely. But until and unless such a

25
26 ⁴ Consolidation only at the time of disposition further supports the Class’s argument
27 that consolidation is premature here.

28 ⁵ The Class incorporates herein its arguments, and points and authorities in support
thereof, answering Rapid Cash’s petition for en banc reconsideration of the panel’s
dismissal of its petition for writ of mandamus. Case #57371, Doc. 12-08710.

1 decision is made, consolidation remains premature and procedurally inappropriate.
2 Accordingly, the Class respectfully requests that this Court deny Rapid Cash's instant
3 motion to consolidate these matters.

4 DATED this 9th day of April, 2012.

5 Respectfully Submitted by Class Counsel:

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8 By: /s/ Jennifer C. Dorsey

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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 9th day of April, 2012.

Respectfully Submitted by Class Counsel:

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2012, the foregoing **THE CLASS’S RESPONSE IN OPPOSITION TO RAPID CASH’S MOTION TO CONSOLIDATE CASES** 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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