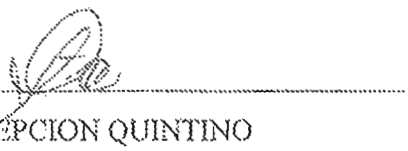
I, CONCEPCION QUINTINO, having been sworn declare and state,

1. I entered the Rapid Cash store on South Maryland Parkway to obtain a loan.
2. The store has two customer windows and a sign that states, "Wait in Line." There are no desks to sit and obtain a loan.
3. I got into the line with my husband, where approximately 7 people were waiting ahead of me.
4. After thirty to thirty-five minutes, it was my turn to approach the window.
5. At the window, the Rapid Cash employee asked me where I worked, for documents to prove my income, and checking account information.
6. The Rapid Cash employee walked away to obtain approval for the loan, this was the bulk of the time I stood at the window, waiting for approval.
7. The employee returned and typed into a computer. She then walked away and returned with several loose papers.
8. The employee put the signature page in front of me and asked me to sign it.
9. I signed and then the employee signed.
10. The papers were presented on a take-it-or-leave it bases; there was no discussion of any opportunity to negotiate any of its terms.
11. There was no discussion about the arbitration provision contained in the loan agreement.
12. The entire process took place standing at the window with a line of people behind me, making me feel rushed.
13. To the best of my knowledge and recollections, the statements, dates, and amounts contained in paragraphs 1 through 7 above are true and accurate.

I declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 5th day of October, 2010.



CONCEPCION QUINTINO

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SUBSCRIBED AND SWORN to before
me this 5th day of October, 2010.

Elizabeth Montes
Notary Public

Notary Public - State of Nevada
County of Clark
ELIZABETH MONTES
My Appointment Expires
June 3, 2012
No: 98-1878-1

I declare that I translated every line of the Affidavit of Concepcion Quintino in Spanish is an authentic and correct translation.

Violeta Hernandez
Violeta Hernandez

SUBSCRIBED AND SWORN to before
me this 5th day of October, 2010.

Elizabeth Montes
Notary Public

Notary Public - State of Nevada
County of Clark
ELIZABETH MONTES
My Appointment Expires
June 3, 2012
No: 98-1878-1

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EXHIBIT "4"

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Attorneys for Plaintiffs and Putative Class Counsel

DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman; and DOES I through X, inclusive,

Defendants.

Case No.: A-10-624982-B
Dept. No.: XI

AFFIDAVIT OF MARY DUNGAN

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I, MARY DUNGAN, having been sworn declare and state,

1. I am a resident of Clark County, Las Vegas, Nevada.
2. I signed loan agreements with Rapid Cash at a store on Boulder Highway and Nellis Boulevard.
3. The store had several customer windows. There are no desks to sit at and read loan documents.
4. Excluding the finance charge, the amount financed, the total of payments, and the payment schedule, there was no discussion of the additional contents of the loan agreement.
5. The pages of the loan agreement were stapled when presented to me and the Rapid Cash agent folded the loan agreement to the last page and said "sign here," without discussing the contents of the pages of the loan agreement between the first page and the last page.
6. I cannot recall whether Rapid Cash provided me with a copy of the loan agreement.
7. Rapid Cash's pre-printed form loan agreements were presented to me on a take-it-or-leave-it basis.
8. There was no opportunity presented to negotiate the terms of the loan agreement prior to signing.
9. To the best of my knowledge and recollections, the statements, dates, and amounts contained in paragraphs 1 through 10 above are true and accurate.

I declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 5th day of October 2010.

Mary A. Dungan

MARY DUNGAN

SUBSCRIBED AND SWORN to before me this 5th day of October, 2010.

Violeta L. Hernandez

Notary Public

Notary Public - State of Nevada
County of Clark
VIOLETA L. HERNANDEZ
My Appointment Expires
April 15, 2011
No: 98-1137-1

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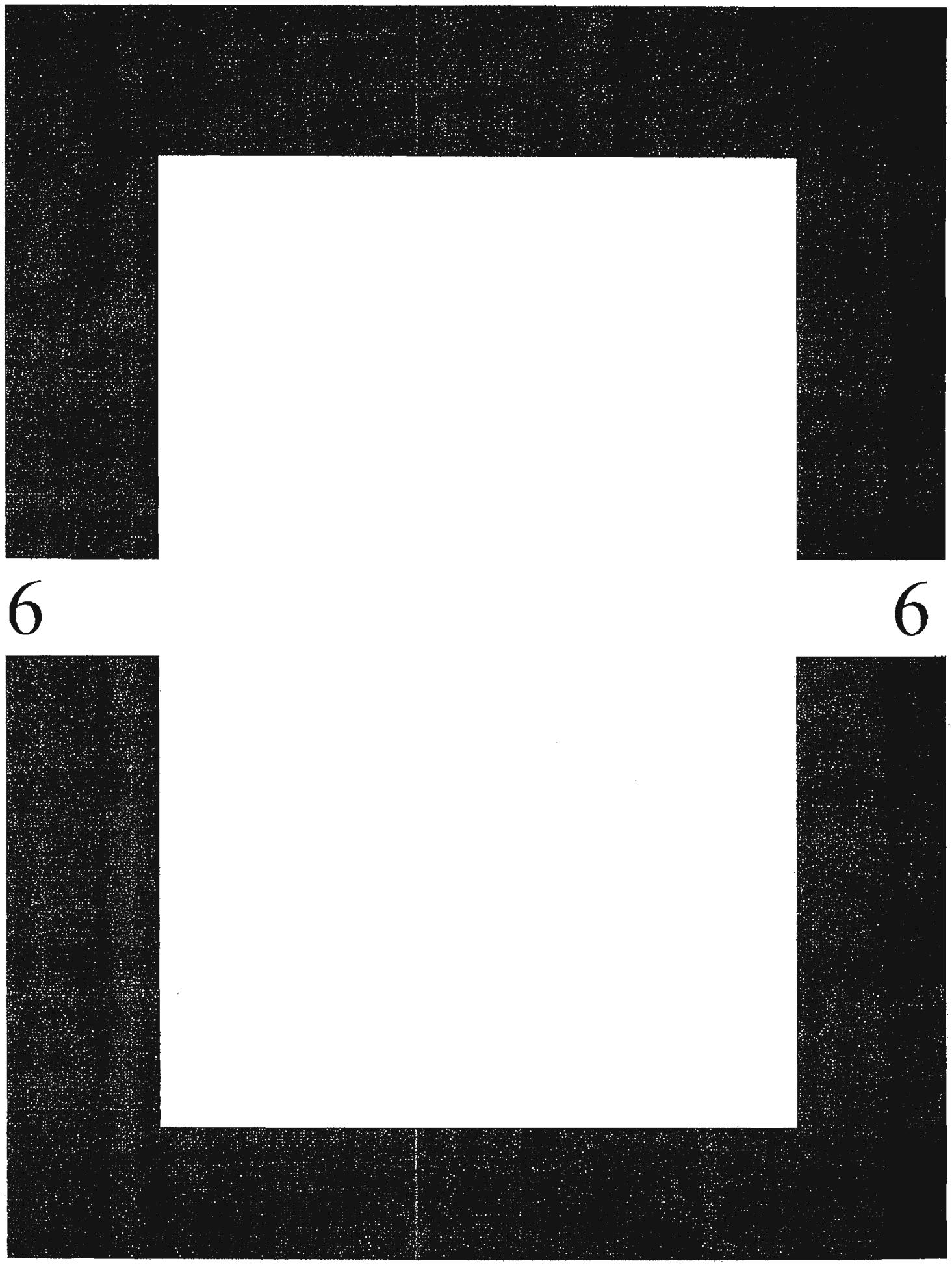

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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; ADVANCE GROUP, INC. d/b/a RAPID CASH; MAURICE CARROLL, individually and d/b/a ON SCENE MEDIATIONS; VILISIA COLEMAN, and DOES I through X, inclusive,

Defendants.

CASE NO. A-10-624982-B
DEPT. XI

REPLY TO OPPOSITION TO MOTION TO COMPEL ARBITRATION AND STAY OF PROCEEDINGS

COMES NOW Defendants 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 (the "Rapid Cash

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Defendants"), by and through their counsel Gordon Silver, and file this Reply.

This Reply is made and based upon the following Memorandum of Points and Authorities, the pleadings and other papers on file herein and any oral argument the Court may permit at the hearing of this matter.

DATED this 8TH day of October, 2010.

GORDON SILVER

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MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION

In the Rapid Cash Defendants' initial Memorandum in Support of their Motion to Compel Arbitration and Stay all Proceedings ("Initial Memorandum"),[1] Defendants established that all of the Plaintiffs' claims in this putative class action are subject to individual (non-class) arbitration pursuant to the parties' Arbitration Agreements (contained within their individual loan agreements) as well as the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1, et seq. In this

[1] Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Initial Memorandum.

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Reply Memorandum, the Rapid Cash Defendants address the arguments made by Plaintiffs in their Opposition (the "Opposition Brief") to the Rapid Cash Defendants' Motion to Compel Arbitration.

First, Plaintiffs argue that Defendants "waived" their right to compel arbitration in this case by having instituted prior collection actions against the individual Plaintiffs in state court. As discussed in greater detail below, there is absolutely ***no*** basis for a finding of waiver in this case. To the contrary, the plain terms of the parties' individual Arbitration Agreements specifically provide that, with regard to any other litigation pending, "nothing in that litigation shall constitute a waiver of any rights under this Arbitration Provision." Arbitration Provision ¶ 2.[2] Furthermore, and leaving aside the controlling language of the Arbitration Agreements, there is absolutely no factual basis for a finding of waiver in any event.

Second, Plaintiffs argue that the Arbitration Agreements and the Class Action Waiver are "unconscionable." To the contrary, as discussed below, courts uniformly have held that where, as here, the Plaintiffs could have opted out of their Arbitration Agreements and/or rescinded their loans, there is ***no*** basis for a finding of "unconscionability." In addition, the terms of the Arbitration Agreements were clear and unequivocal, and the Arbitration Provision and the Class Action Waiver applied ***equally*** to the Plaintiffs and the Rapid Cash Defendants.

Third, Plaintiffs argue that the claims they raise are outside the scope of the Arbitration Agreements. However, the Arbitration Agreements provide that it is up to the arbitrator to determine the scope of the Arbitration Agreements. Further, the scope of contractually-defined

[2] The term "Arbitration Provision" derives from the parties' loan agreements and is used throughout this Memorandum to refer to the Plaintiffs' agreements to arbitrate. The Arbitration Provisions in the Agreements of Plaintiffs Mary Dungan, Casandra Harrison, and Eugene Varcados are identical. See Gee Affidavit, filed with Initial Memorandum, Exhs. A-G. The arbitration provision set forth in the plaintiff Concepcion Quintino's agreement (the "Quintino Agreement") is substantively similar to the other plaintiffs' agreements in many regards, and has the same notices just above the signature line, as referenced *infra*.

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"claims" covered by the Arbitration Agreements is extremely broad, and clearly encompasses Plaintiffs' claims in this action.

Finally, Plaintiffs argue that enforcement of the Arbitration Agreements would be against public policy and the public interest. However, enforcing the contract entered into between the parties by requiring the parties to arbitrate Plaintiffs' claims in this matter does not preclude recovery for the Plaintiffs, nor does it preclude Plaintiffs from moving to open the default judgments against them if they so desire. No public policy is violated and the public interest is not being harmed.

In sum, Plaintiffs have not advanced (and cannot advance) any valid argument why the parties' Arbitration Agreements should not be enforced in this case. As established in the Rapid Cash Defendants' Initial Memorandum and herein, those Agreements should be enforced according to their terms.

II. ARGUMENT

(a) The Rapid Cash Defendants Have Not Waived Their Right To Compel Arbitration.

As established more fully below, the Rapid Cash Defendants have not waived their right to compel arbitration in this case by having previously filed state court collection actions against the individual Plaintiffs. To the contrary, Plaintiffs' waiver argument is defeated by the plain language of the Arbitration Provision, as well as case law interpreting similar agreements, and finds no basis in the facts of this case in any event.

1. The Federal Arbitration Act Applies When Determining Whether A Party May Have Waived Its Right To Compel Arbitration.

The Arbitration Provision at issue here explicitly provides that it is governed by the FAA. The Arbitration Provision states that it "is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA, and not . . . any state laws that pertain specifically

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to arbitration . . . ." Arbitration Provision ¶ 8. The Quintino Agreement similarly reads: "This Arbitration Agreement is made pursuant to a transaction involving interstate commerce. It will be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as amended ("FAA")." See Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 3. This language makes unmistakably clear that any issues concerning the interpretation of the Arbitration Provision are to be considered under the FAA, and not under state law.

In addition, the federal courts have clearly held that whether a party has waived its contractual right to compel arbitration is governed by the FAA, and not state law. See, e.g., Fid. Fed. Bank, FSB v. Durga Ma Corp., 386 F.3d 1306, 1312 (9th Cir. 2004) ("the FAA, not state law, supplied the standard for waiver of the right to compel arbitration.") (citing Sovak v. Chugai Pharm. Co., 280 F.3d 1266, 1270 (9th Cir. 2002)); Konica Minolta Business Solutions, U.S.A., Inc. v. Allied Office Products, Inc., No. 06-71, 2006 WL 3827461, at *11 (S.D. Ohio Dec. 27, 2006) (noting that "the issue of arbitrability under the FAA is a matter of federal law"). Indeed, the United States Supreme Court has made clear that state law concerning the interpretation of an arbitration agreement can only be applied if the parties clearly evidence their intent to be bound by such law. See Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 61-62 (1995). "In other words, the strong default presumption is that the FAA, not state law, applies the rules for arbitration." Sovak v. Chugai Pharmaceutical Co., 280 F.3d 1266, 1269 (9th Cir. 2002). Accord Shaw Group, Inc. v. Triplefine Int'l Corp., 322 F.3d 115, 123 (2d Cir. 2003) (without clear language of incorporation, a general choice of law provision held not to have incorporated state arbitration law into an arbitration agreement); Action Indus., Inc. v. U.S. Fidelity & Guaranty Co., 358 F.3d 337, 341 (5th Cir. 2004) (same).

Under the foregoing authority, even when faced with a general choice-of-law clause requiring the application of state law, the federal courts have refused to apply state law to

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arbitration issues such as waiver. See, e.g., Sovak, 280 F.3d at 1269-70 (where arbitration agreement contained an Illinois choice-of-law clause, the court held that "waiver of the right to compel arbitration is a rule for arbitration, such that the FAA controls."); see also Mastrobuono, 514 U.S. at 64 (general choice-of-law provision in contract did not require application of state law to arbitration clause); Smith Barney, Inc. v. Critical Health Sys. of N.C., 212 F.3d 858 861 n.1 (4th Cir. 2000) (same); Chiron Corp. v. Otho Diagnostic Sys., 207 F.3d 1126, 1131 (9th Cir. 2000) ("Mastrobuono dictates that general choice of law clauses do not incorporate state rules for arbitration.").

There is nothing, and Plaintiffs cannot point to anything, in the Loan Agreements or the Arbitration Provision that even purports to require the application of state law to arbitration issues such as waiver. Furthermore, as noted above, there is clear and unmistakable language in the Arbitration Provision that requires the application of the FAA. Therefore, Plaintiffs' waiver argument must be considered under the FAA.

2. **The Rapid Cash Defendants Did Not Waive Their Right To Compel Arbitration Under The Express Language Of The Parties' Arbitration Provision.**

Plaintiffs argue that the Rapid Cash Defendants, by filing prior collection actions against Plaintiffs in state court, have waived their right to compel the arbitration of the claims raised in this litigation. Any such argument fails under the clear language of the Arbitration Provision and as a matter of common sense.

The Arbitration Provision provides that a party may file a lawsuit against the other, and then the other party may elect to arbitrate the dispute. Specifically, the Arbitration Provision states that the party electing to arbitrate must provide the other party with written notice, and that such notice "may be given after a lawsuit has been field and may be given in papers or motions in the lawsuit." Arbitration Provision ¶ 3. The Arbitration Provision also explicitly states that,

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regarding any other pending or previous litigation, ***"nothing in that litigation shall constitute a waiver of any rights under this Arbitration Provision."*** Arbitration Provision ¶ 2. This language plainly defeats Plaintiffs' "waiver" argument.

Significantly, numerous courts faced with the same "waiver" argument advanced by Plaintiffs here – i.e., that the institution of some prior form of litigation as permitted by the parties' arbitration agreement constituted a waiver of the right to compel arbitration of a subsequent claim - have unhesitatingly rejected it. See, e.g., Credit Acceptance Corp. v. Davisson, 644 F. Supp.2d 948, 956-57 (N.D. Ohio 2009) (collection agency did not waive its right to compel arbitration of class action counterclaim by filing suit against debtor in state court, because the arbitration clause specifically contemplated either party could file a lawsuit and the other could elect arbitration); Lewallen v. Green Tree Servicing, L.L.C., 487 F.3d 1085, 1091 (8th Cir. 2007) (lender's civil action to collect debt through proof of claim could not constitute waiver of right to compel arbitration of subsequent adversary complaint as the parties' arbitration agreement explicitly permitted lender to file such a claim); Citifinancial, Inc. v. Farmer, No. 06-4LR, 2006 WL 1273712 (S.D. Miss. May 9, 2006) (institution of collection action could not constitute waiver of right to compel arbitration of subsequent counterclaim in light of the express language of the arbitration agreement permitting such); Fidelity Nat'l Corp. v. Blakely, 305 F. Supp.2d 639, 642 (S.D. Miss. 2003) (same).

As in the above-cited cases, the "waiver" argument raised by Plaintiffs here must fail on the shoals of the express language of the parties' Arbitration Provision.

3. **Plaintiffs Cannot Establish Any Factual Basis For A Finding Of Waiver.**

In any event, Plaintiffs cannot establish any factual basis for a finding of waiver by the Rapid Cash Defendants.

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The law is clear that the Rapid Cash Defendants are to be afforded the presumption that they did not waive the right to compel arbitration, as any doubts concerning waiver must be resolved in favor of arbitration as held by the United States Supreme Court. See Moses H. Cohn Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983); Sovak v. Chugai Pharm. Co., 280 F.3d 1266, 1270 (9th Cir. 2002) (citing Moses H. Cohn Mem'l Hosp.); Hoxworth v. Blinder, Robinson & Co., 980 F.2d 912, 926 (3d Cir. 1992). Moreover, waiver may only be found as a result of a party's "substantial invocation of the litigation process" inconsistent with its right to compel arbitration. Moses H. Cohn Mem'l Hosp., 460 U.S. at 24-25. Accord Benson Pump Co. v. S. Cent. Pool Supply, 325 F. Supp. 2d 1152, 1157 (D. Nev. 2004) ("A party asserting waiver of a right to arbitration must demonstrate . . . acts inconsistent with that existing right."). Furthermore, "prejudice or harm to the party alleging waiver by litigation" is a necessary element of any claim as to waiver. Motors Ins. Corp. v. Pasco, Inc., No. 06-2911, 2007 WL 184718, at *8 (N.D. Ohio Jan. 19, 2007); Sovak, 280 F.3d at 1270 (in order to establish waiver of an arbitration provision, party must prove that he "suffered prejudice from [Movant's] delay in moving to compel arbitration"). Accord Zimmer v. CooperNeff Advisors, Inc., 523 F.3d 224, 231 (3d Cir. 2008) ("Whether party has waived its right to arbitrate by its litigation conduct depends on prejudice to opposing party."); Cotton v. Sloan, 4 F.3d 176, 179 (2d Cir. 1993) ("[w]aiver will be inferred when a party engages in protracted litigation that results in prejudice to the opposing party"); Walker v. J.C. Bradford & Co., 938 F.2d 575, 577 (5th Cir. 1991) ("[w]aiver will be found when the party seeking arbitration substantially invokes the judicial process to the detriment or prejudice of the other party.").

In the present case, the Rapid Cash Defendants' institution of simple collection actions cannot be considered to be inconsistent with their contractual right to compel arbitration of Plaintiffs' subsequent claims in this putative class action. Indeed, the claims raised herein

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present factual and legal issues distinct from those raised in the collection actions. Therefore, it would strain credulity to conclude that the Rapid Cash Defendants' institution of those collection actions could amount to a waiver of their right to compel arbitration of legally and factually distinct claims, asserted in a later-filed class action, and of which the Rapid Cash Defendants had no prior notice. See, e.g., Subway Equip. Leasing Corp. v. Forte, 169 F.3d 324, 328 (5th Cir. 1999) (party only invokes the judicial process so as to waive arbitration when it litigates a specific claim it subsequently seeks to arbitrate); Blakely, 305 F. Supp.2d at 642 (waiver impossible where lender did not seek to litigate issues surrounding the present counterclaim in its instant collection action).

(b) **The Arbitration Provision Is Not "Unconscionable."**

Plaintiffs also argue that the Arbitration Provision at issue here should not be enforced because it is purportedly "unconscionable." As set forth below, there is absolutely ***no*** basis for a finding of "unconscionability" in this case, and the Arbitration Provision should be enforced as written.

1. **Arbitration Provision Is Enforceable Under Kansas Law.**

The Arbitration Provision provides that, to the extent that state law is relevant to determining the enforceability of the Arbitration Provision, the law of the state of Kansas shall apply. Arbitration Provision ¶ 8. In considering choice-of-law questions for contractual disputes, Nevada courts follow "the choice of law approach outlined in the Restatement (Second) of Conflicts (1971)." SEC v. Elmas Trading Corp., 683 F. Supp. 743, 749 (D. Nev. 1987). Under the Restatement, the "law of the state chosen by the parties to govern their contractual rights and obligations will be applied . . . ." Id. Plaintiffs assert that the choice-of-law provision should not be enforced because there is no relationship between the Agreements and Kansas. This argument entirely overlooks the choice-of-law provision's explicit reference to the fact that

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the Rapid Cash Defendants are headquartered in Kansas, which explains the reasoning behind the choice-of-law provision and provides the necessary relationship between the Arbitration Provision and the application of Kansas law. See Lloyd v. MBNA America Bank, N.A., 2002 U.S. App. LEXIS 1027, at *4 (3d Cir. Jan. 7, 2002) ("Because Delaware is MBNA's state of incorporation and principal place of business, the forum with the most significant contacts with the class is Delaware, not California [plaintiff's state of residence].").

Here, to the extent Kansas law controls in determining the enforceability of the Arbitration Provision (and Class Action Waiver), there is no basis to conclude that such Provision would be unenforceable under Kansas law. See, e.g., Wilson v. Mike Steven Motors, Inc., 111 P.3d 1076, at *7 (Kan. Ct. App. 2005) (enforcing arbitration agreement containing class action waiver and rejecting various arguments challenging enforceability of agreement).

2. **The Arbitration Provision Is Not "Unconscionable" Under Nevada Law.**

Nor is there any basis to conclude that the Arbitration Provision is unenforceable on the ground of "unconscionability" under Nevada law.

In Nevada, "[s]trong public policy favors arbitration because arbitration generally avoids the higher costs and longer time periods associated with traditional litigation." D.R. Horton, Inc. v. Green, 96 P.3d 1159, 1162 (Nev. 2004) (citing Burch v. Second Judicial Dist. Ct., 49 P.3d 647, 650 (Nev. 2002)). Consistent with the policy favoring arbitration, arbitration provisions may ***only*** be invalidated if they are both procedurally and substantively unconscionable. Id.

Under Nevada law, a "clause is procedurally unconscionable when a party lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract," and "often involves the use of fine print or complicated, incomplete or

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misleading language that fails to inform a reasonable person of the contractual language's consequences." Id.

Substantive unconscionability, on the other hand, focuses on the "one-sidedness" of the contract terms. D.R. Horton, 96 P.3d at 1162-62 (citing Ting v. AT&T, 319 F.3d 1126, 1149 (9th Cir. 2003)); Estate of Wildhaber v. Life Care Ctrs. of Am., Inc., Case No. 2:10-cv-00015-RLH-PAL, 2010 U.S. Dist. LEXIS 80563 (D. Nev. July 13, 2010) ("The Nevada Supreme Court approved of the approach taken by the Ninth Circuit in Ting, applying California law in examining substantive unconscionability."). Thus, the doctrine of substantive unconscionability provides that the arbitration agreement must contain a "modicum of bilaterality," and "limits the extent to which a stronger party may, through a contract of adhesion, impose the arbitration forum on the weaker party ***without accepting that forum for itself***." Ting, 319 F.3d at 1149 (emphasis added) (citing Armendariz v. Foundation Health Psychcare Services, Inc., 6 P.3d 669, 692 (Cal. 2000)).

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As explained in depth below, the Arbitration Provision at issue here is not procedurally unconscionable because, inter alia, Plaintiffs had the unfettered right to reject it, though they chose not to do so, and clear and conspicuous disclosures about that right were provided to Plaintiffs. Nor is the Arbitration Provision (or the Class Action Waiver within it) substantively unconscionable because ***both*** the Rapid Cash Defendants and the Plaintiffs had the same right to seek arbitration of any claims, according to precisely the same terms. In short, Plaintiffs' argument that the Arbitration Provision should not be enforced on the ground of "unconscionability" should be squarely rejected.

> The Arbitration Provision Is Not Procedurally Unconscionable Because Plaintiffs Had the Unconditional Right to Reject It Or To Rescind Their Loan Transaction And Clear And Conspicuous Disclosures Were Provided To Plaintiffs.

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As noted above, procedurally unconscionability may be found under Nevada law only if the Plaintiffs lacked "a meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects were not readily ascertainable upon a review of the contract." D.R. Horton, 96 P.3d at 1162. The Arbitration Provision at issue here does not even come close to satisfying this standard for procedural unconscionability.

As an initial matter, the vast majority of courts have held that, where consumers have the right to reject arbitration provisions, there is no procedural unconscionability.[3] Here, the Plaintiffs clearly had a meaningful opportunity to review, and agree to or reject, the terms of the Arbitration Provision, or to rescind the Agreement. The Arbitration Provision contains the following heading in bold face and capitalization: "**RIGHT TO REJECT ARBITRATION**." Immediately thereafter, the Arbitration Provision provides:

> If you do not want this Arbitration Provision to apply, you may reject it within 30 days after the date of your application ("Application") for check cashing, credit, loan or other services from us ("Services") [by delivering to us at any of our offices or] by mailing to us in care of Tiger Financial Management, LLC,

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[3] See, e.g., Clerk v. ACE Cash Express, Inc., No. 09-05117, 2010 U.S. Dist. LEXIS 7978, at *25 (E.D. Pa. Jan. 29, 2010); Freedman v. Comcast Corp., 2010 Md. App. LEXIS 12, at *39-40 (Ct. of Special App. of Md. Jan. 28, 2010); Circuit City Stores, Inc. v. Ahmed, 283 F.3d 1198 (9th Cir. 2002); Circuit City Stores, Inc. v. Najd, 294 F.3d 1104, 1108 (9th Cir. 2002); Providian National Bank v. Screws, 894 So. 2d 625 (Ala. Oct. 3, 2003); Tsadilas v. Providian Nat'l Bank, 13 A.D. 3d 190, 786 N.Y.S. 2d 478 (1st Dep't. 2004); Marley v. Macy's South, No. CV 405-227, 2007 WL 1745619, at *3 (S.D. Ga. June 18, 2007); SDS Autos, Inc. v. Chrzanowski, Case No. 1D06-4293, 2007 WL 4145222 (Fla Ct. App., 1st Dist. Nov. 26, 2007); Honig v. Comcast of Georgia, LLC, Civil Action No. 1:07-cv-1839-TCB, 537 F. Supp. 2d 1277 (N.D. Ga. Jan. 31, 2007); Sanders v. Comcast Cable Holdings, LLC, No. 3:07-cv-918-J-33HTS (M.D. Fla. Jan. 14, 2008); Davidson v. Cingular Wireless, LLC, No. 2:06-cv- 00133, 2007 WL 896349, at *6 (E.D. Ark. Mar. 23, 2007); Martin v. Delaware Title Loans, Inc., No. 08-3322, 2008 WL 4443021 (E.D. Pa. Oct. 1, 2008); Columbia Credit Services, Inc. v. Billingslea, No. B190776, 2007 WL 1982721 (Cal. Ct. App. July 10, 2007); Eaves-Leanos v. Assurant, Inc., No. 07-18, 2008 WL 1805431 (W.D. Ky. Apr. 21, 2008); Enderlin v. XM Satellite Radio Holdings, Inc., No. 06-0032, 2008 WL 830262 (E.D. Ark. March 25, 2008); Crandall v. AT&T Mobility, LLC, No. 07-750, 2008 WL 2796752 (S.D. Ill. July 18, 2008); Webb v. ALC of West Cleveland, Inc., No. 90843, 2008 WL 4358554 (Ohio Ct. App., 8th App. Dist. Sept. 25, 2008); Wright v. Circuit City Stores, Inc., Case No. CV 97-B-0776-5 (N.D. Ala. Feb. 5, 2001); Stiles v. Home Cable Concepts, Inc., 994 F. Supp. 1410 (M.D. Ala. 1998); Guadagno v. E*Trade Bank, No. CV 08-03628 SJO (JCX), 2008 WL 5479062 (C.D. Calif. Dec. 29, 2008); Magee v. Advance America Servicing of Ark., Inc., No 6:08-CV-6105, 2009 WL 890991 (W.D. Ark. April 1, 2009); Fluke v. CashCall, No. 08-05776, 2009 U.S. Dist. LEXIS 43231 (E.D. Pa. May 21, 2009); Credit Acceptance Corporation v. Davisson, 644 F. Supp. 2d 948 (N.D. Ohio June 30, 2009).

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> Attn: Legal Department, 3527 North Ridge Road, Wichita, Kansas 67205, a written rejection notice which provides your name, address, the date of the Application, the address of the store where you submitted the Application and states that you are rejecting the related Arbitration Provision. If you want proof of the date of such a notice, you should send the notice by "certified mail, return receipt requested." If you use such a method, we will reimburse you for the postage upon your request. Nobody else can reject arbitration for you; this is the only way you can reject arbitration. Your rejection of arbitration will not affect your right to Services or the terms of Services. If you reject this Arbitration Provision, it shall have the effect of rejecting any prior arbitration provision or agreement between you and us that you did not have the right to reject; it will not affect any prior arbitration provision or agreement which you had a right to reject that you did not exercise.

Arbitration Provision at ¶ 1. In other words, Plaintiffs were clearly and directly notified of their right to reject the Arbitration Provision within thirty (30) days of the date of their individual applications. Moreover, Plaintiffs were on notice that the rejection of the Arbitration Provision "[would] not affect [their] right to Services or the terms of Services." Id. As such, the Arbitration Provision cannot be found to have been a procedurally unconscionable contract of adhesion, as Plaintiffs were clearly notified of their right to reject the Provision, and thus had a meaningful opportunity to agree to, or alternatively reject, the terms.[4]

The Plaintiffs cite to Hoffman v. Citibank, N.A., 546 F.3d 1078 (9th Cir. 2008) for the proposition that California courts have held arbitration agreements procedurally unconscionable despite the presence of an opt-out clause. Opposition Brief p. 16. However, this is a misleading application of the Hoffman case. In fact, Hoffman did not decide that an opt-out right is ineffectual to defeat a procedural unconscionability argument. Rather, Hoffman stated that the "dispositive questions that the district court has thus far not addressed, however, are the practical impacts of Citibank's 'non-acceptance instructions' and whether, when placed on California's sliding scale, the non-acceptance provision renders the class arbitration waiver conscionable when compared to the degree of substantive unconscionability. We have held that providing a

[4] Relatedly, the Quintino Agreement provided the right to rescind the loan transaction without charge. See Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 1.

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'meaningful opportunity to opt out' ***can preclude a finding of procedural unconscionability and render an arbitration provision enforceable***." Hoffman, 546 F.3d at 1085 (9th Cir. Cal. 2008) (emphasis added) (citing Circuit City Stores, Inc. v. Ahmed, 283 F.3d 1198, 1199 (9th Cir. 2002)). The Ninth Circuit remanded the issue to the district court for further consideration. Id.

In addition, the Arbitration Provision and its effects were clearly and "readily ascertainable upon a review of the contract." See D.R. Horton, 96 P.3d at 1162. In this regard, the Court should note that the Arbitration Provision spans three of the five pages making up the Deferred Deposit Agreement & Disclosure Statement. The first paragraph contains the following heading in bold face and capitalization: "**ARBITRATION PROVISION**." Immediately thereafter, the Arbitration Provision provides in capitalized letters:

> VERY IMPORTANT. READ THIS ARBITRATION PROVISION CAREFULLY. IT SETS FORTH WHEN AND HOW CLAIMS (AS DEFINED IN SECTION 2 BELOW) WHICH YOU OR WE HAVE AGAINST ONE ANOTHER WILL BE ARBITRATED INSTEAD OF LITIGATED IN COURT. IF YOU DON'T REJECT THIS ARBITRATION PROVISION IN ACCORDANCE WITH SECTION 1 BELOW, UNLESS PROHIBITED BY APPLICABLE LAW. IT WILL HAVE A SUBSTANTIAL IMPACT ON THE WAY IN WHICH YOU OR WE RESOLVE ANY CLAIM WHICH YOU OR WE HAVE AGAINST EACH OTHER NOW OR IN THE FUTURE.

Arbitration Provision at preamble.

Regarding the Class Action Waiver contained within the Arbitration Provision, the fifth numbered paragraph contains the following heading in bold face and capitalization: "**NO CLASS ACTIONS OR SIMILAR PROCEEDINGS: SPECIAL FEATURES OF ARBITRATION**." Immediately thereafter, the Arbitration Provision provides in capitalized letters:

> IF YOU OR WE ELECT TO ARBITRATE A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (A) HAVE A COURT OR A JURY DECIDE THE CLAIM; (B) OBTAIN INFORMATION PRIOR TO THE HEARING TO THE SAME EXTENT THAT YOU OR WE COULD IN COURT; (C) PARTICIPATE IN A CLASS ACTION IN COURT OR IN

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> ARBITRATION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR CLASS OPPONENT; (D) ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; OR (E) JOIN OR CONSOLIDATE CLAIM(S) INVOLVING YOU WITH CLAIMS INVOLVING ANY OTHER PERSON. THE RIGHT TO APPEAL IS MORE LIMITED IN ARBITRATION THAN IN COURT. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.

Arbitration Provision at ¶ 5 (the "Class Action Waiver").

The Arbitration Provision also contains a clear waiver of the right to a jury trial, setting forth the following heading in bold face and capitalization: "**JURY TRIAL WAIVER.**" The paragraph immediately following this heading states:

> YOU AND WE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, YOU AND WE, AFTER HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS JURY TRIAL WAIVER SHALL NOT AFFECT OR BE INTERPRETED AS MODIFYING IN ANY FASHION ANY SEPARATE ARBITRATION PROVISION BETWEEN YOU AND US, WHICH CONTAINS ITS OWN SEPARATE JURY TRIAL WAIVER.

Arbitration Provision p. 5.[5]

The Arbitration Provision clearly explains that it sets forth "WHEN AND HOW CLAIMS . . . WHICH YOU OR WE HAVE AGAINST ONE ANOTHER WILL BE ARBITRATED INSTEAD OF LITIGATED IN COURT" and that "IF YOU OR WE ELECT TO ARBITRATE A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (A) HAVE A COURT OR A JURY DECIDE THE CLAIM . . . (C) PARTICIPATE IN A CLASS

[5] The Quintino Agreement similarly provides in bold and capital letters that "**YOU WILL NOT BE ENTITLED TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM AGAINST US.**" Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 3 (emphasis in original).

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ACTION IN COURT OR IN ARBITRATION EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR CLASS OPPONENT . . . ." Arbitration Provision at preamble, ¶ 5.

In addition, at the end of the Arbitration Provision, just above the signature line, contains the following "Important Notices:"

> **Important Notices**
>
> **BY SIGNING THIS AGREEMENT OR APPLYING FOR A LOAN:**
>
> **YOU WILL NOT BE ENTITLED TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM AGAINST US.**
>
> **YOU WILL NOT BE ENTITLED TO HAVE A COURT, OTHER THAN A SMALL CLAIMS COURT OR JUSTICE COURT, RESOLVE ANY CLAIMS AGAINST US.**
>
> **YOU WILL NOT BE ABLE TO BRING, JOIN OR PARTICIPATE IN ANY CLASS ACTION LAWSUIT AGAINST US.**

Arbitration Provision p. 5.[6]

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Plaintiffs were given the Agreements with the Arbitration Provision each time they sought a loan with the Rapid Cash Defendants. None of the Plaintiffs rejected the Arbitration Provision or acted to rescind their Agreements, and all of the Plaintiffs executed their respective Agreements on the signature line under the bolded notices. Due to the above-quoted abundantly clear language and the bolded and capitalized terms, it would stretch the imagination to believe that the Plaintiffs were unable to ascertain the effect of the Arbitration Provision upon even a cursory review of their Agreements.

In short, because the Plaintiffs had an unconditional right to reject the Arbitration Provision without losing any other contractual rights, including the basic right to obtain the loan sought, or to rescind the contract without charge, and because the Arbitration Provision was

[6] The Quintino Agreement contained substantially the same notices. See Quintino Agreement, Gee Affidavit at Exhibits H-J, pp. 3-4.

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clearly labeled, spanned more than half of the Agreement, had numerous bolded and capitalized notices regarding the "important" rights being given up, and contained a reiteration of the waiver of a right to bring claims in court or to bring a class action immediately above the signature line, the Arbitration Provision contained in the Agreement cannot be found to have been procedurally unconscionable.

a) The Arbitration Provision and Class Action Waiver Are Not Substantively Unconscionable.

Because the Arbitration Provision is not procedurally unconscionable, this Court need not reach the issue of substantive unconscionability. See D.R. Horton, 96 P.3d at 1162 ("both procedural ***and*** substantive unconscionability must be present in order for a court to exercise its discretion to refuse to enforce" an arbitration provision) (emphasis added). However, as discussed *infra*, the Arbitration Provision and the Class Action Waiver are not substantively unconscionable in any event.

As noted above, the Court can find the Arbitration Provision (and Class Action Waiver) substantively unconscionable under Nevada law only if the Provision is one-sided and lacks a "modicum of bilaterality." Ting, 319 F.3d at 1149 ("Although parties are free to contract for asymmetrical remedies and arbitration clauses of varying scope . . . the doctrine of unconscionability limits the extent to which a stronger party may, through a contract of adhesion, impose the arbitration forum on the weaker party without accepting that forum for itself."). That standard is not satisfied here because the terms of the Arbitration Provision apply equally to both parties.

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i) The Arbitration Provision.

The Arbitration Provision, by its terms, applies ***equally*** to the Plaintiffs and the Rapid Cash Defendants.[7] Indeed, the preamble notes that the Arbitration Provision sets forth how claims that the Plaintiffs and the Rapid Cash Defendants have ***against one another*** will be arbitrated. It also states that, "you and we agree that ***either party may elect to require arbitration*** of any Claim under the following terms and conditions." Arbitration Provision at Preamble (emphasis added). The Arbitration Provision goes on to state that, in order to make the arbitration election, "you or we must give written notice . . . ." Arbitration Provision ¶ 3. In other words, the Arbitration Provision is not one-sided, but rather applies equally to both Plaintiffs and the Rapid Cash Defendants – allowing either party to the Agreement to elect to arbitrate claims brought by the other party.

In addition to the bilateral nature of the Arbitration Provision, the Arbitration Provision contains numerous features to ensure that customers such as the Plaintiffs are able to pursue claims against the Rapid Cash Defendants in an individual arbitration in a fair, and cost-effective, manner. For example, in addition to allowing the Plaintiffs to reject the Arbitration Provision altogether by providing notice within 30 days after entering the Agreement, the Rapid Cash Defendants have agreed in the Arbitration Provision, inter alia:

- To hold any arbitration hearing, if one is necessary, at a place that is reasonably convenient for the customer;[8]

[7] The Quintino Agreement is similarly bilateral, requiring both parties to submit to mediation prior to a lawsuit or arbitration. It states that "[y]ou and we agree that before either of us starts a lawsuit, arbitration proceeding or any other legal proceeding, we will submit any and all "Claims" that we have against you, and you will submit any and all Claims that you have against us, to neutral, individual (and not class) mediation. Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 2. It goes on to state that "[i]f you and we are not able to resolve a Claim in mediation, then you and we agree that such Claim will be resolved by neutral, individual (and not class) arbitration." Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 3.

[8] Arbitration Provision ¶ 4. The Quintino Agreement similarly provides that "[a]ny arbitration hearing, if one is held, will take place at a location near your residence." Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 3.

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- To consider any good faith request made by a customer for the Rapid Cash Defendants to pay the administrator's or arbitrator's filing, administrative, hearing and/or other fees if the customer cannot obtain a waiver of such fees from the administer. The Rapid Cash Defendants will not seek or accept reimbursement of any such fees; [9]

- That the arbitrator is authorized to follow applicable substantive law and shall be authorized to "award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory and punitive damages . . . declaratory, injunctive and other equitable relief, and attorneys' fees and costs;" [10] and

- That if the customer prevails in an individual (non-class) arbitration, the arbitrator shall award as a minimum amount of damages (excluding amounts for arbitration fees, attorney's fees, and costs, if any), "an amount that is $100 greater than the jurisdictional limit of the small claims court (or your state's equivalent court) in the county in which you reside." [11]

These consumer-friendly aspects of the Arbitration Provision defeat any claim by Plaintiffs that it is substantively unconscionable in requiring them to arbitrate on an individual basis.

The Arbitration Provision also enables Plaintiffs to pursue their claims in a cost-effective manner – by allowing recovery of reasonable attorneys' fees if successful -- in an individual arbitration.[12] Indeed, numerous courts have held that the ability to recover attorneys' fees is a powerful incentive for an attorney to represent a plaintiff in an individual arbitration, even in a small-dollar case. See, e.g., Johnson v. West Suburban Bank, 225 F.3d 366, 374 (3d Cir. 2000)

[9] Id. In this regard, the Quintino Agreement provides that, if the arbitrator does not waive the fees for Quintino, the Rapid Cash Defendants will advance Quintino's fees. No reimbursement is required if Quintino prevails.

[10] Arbitration Provision ¶ 8.

[11] Arbitration Provision ¶ 8. In other words, if the applicable court can "decide claims up to $5,000, then if [the customer] prevail[s] in an individual arbitration, [the customer] will receive a minimum of $5,100 even if the amount [the customer] would otherwise be entitled to receive is less than that amount." Id.

[12] Id. Because the Arbitration Provision requires the arbitrator to apply applicable substantive law, if a statute that is the basis for a customer's claim authorizes the prevailing party to recover attorneys' fees, that statute will be given effect in arbitration. But even if a statute or common law claim does not authorize fee-shifting, the Rapid Cash Defendants have contractually agreed to pay reasonable attorneys' fees to a prevailing plaintiff. The arbitrator is not authorized to limit the attorney's fees and costs to which the prevailing plaintiff is entitled because of the small nature of the claim brought. In this regard, the Quintino Agreement gives the arbitrator discretion to "award the prevailing party its attorneys' fees and arbitration expenses." Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 3.

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(holding that an arbitration clause that prohibited class actions would not choke off the supply of lawyers willing to represent Truth in Lending Act ("TILA") debtors because TILA permits successful plaintiffs to recover attorneys' fees), cert. denied, 531 U.S. 1145 (2001); Jenkins v. First American Cash Advance of Ga., LLC, 400 F.3d 868 (11th Cir. 2005) (court enforced class action waiver in arbitration agreement between consumer and payday lender, holding that where arbitration agreement permits fee shifting if allowed by applicable law and preserves the parties' substantive remedies, lawyers will be willing to represent the consumer on an individual basis and the company will not be immunized against unlawful conduct), cert. denied, 126 S. Ct. 1457 (2006); Snowden v. CheckPoint Check Cashing, 290 F.3d 631, 638-39 (4th Cir. 2002) (rejecting argument that plaintiff "will be unable to maintain her legal representation given the small amount of her individual damages" where statute permitted fee-shifting), cert. denied, 537 U.S. 1087 (2002); Gipson v. Cross Country Bank, 294 F. Supp. 2d 1251, 1261-62 (M.D. Ala. 2003) (rejecting argument that class action was necessary for plaintiff to vindicate her statutory rights because plaintiff could recover her attorneys' fees if she was successful in the arbitration).[13]

All of the above-referenced terms contained within the Arbitration Provision make arbitration a fair, and cost-effective, method of adjudicating a dispute outside of a court and outside of a class action lawsuit, and defeat the argument that such Provision is substantively unconscionable.

[13] Underscoring this point, there are numerous cases in which a sizeable attorneys' fee was awarded even though the plaintiff's individual recovery was relatively small. See, e.g., Dee v. Sweet, 218 Ga. App. 18, 460 S.E.2d 110 (1995) (awarding $258,360 in attorneys' fees and $1.00 in actual damages); Ex parte Edwards, 601 So. 2d 82 (Ala. 1992) ($43,000 in attorneys' fees regarding $2,544 note); Johnson v. Eaton, 958 F. Supp. 261, 264 (M.D. La. 1997) ($13,410 fee award, nearly 27 times damage award); Ratner v. Chemical Bank N.Y. Trust Co., 54 F.R.D. 412, 416 (S.D.N.Y. 1972) ($20,000 attorney fee; $0 actual damages and $100 of statutory damages). See also Christopher R. Drahozal, Arbitration Costs and Contingent Fee Contracts, 59 Vand. L. Rev. 729, 772 (2006) ("[C]ourts should take into account the applicability of fee shifting statutes in determining whether a claim is economical to bring in arbitration .... The prospect of a fee recovery may make even a case seeking small monetary damages attractive to an attorney. Thus, in evaluating the amount at stake in arbitration (and thus whether the claim is economical to bring), a court must consider not only the damages sought by the claimant but also any possible attorneys' fee recovery.").

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ii) The Class Action Waiver.

The Class Action Waiver (which is contained within the Arbitration Provision) similarly is not one-sided, but rather applies equally to both Plaintiffs and the Rapid Cash Defendants. It states that if "YOU OR WE ELECT TO ARBITRATE A CLAIM, **NEITHER YOU NOR WE WILL HAVE THE RIGHT TO . . . (C) PARTICIPATE IN A CLASS ACTION** IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR CLASS OPPONENT." Arbitration Provision ¶ 5 (emphasis added).[14]

In addition, it is well-established under the FAA that class action procedures are waivable by parties to an arbitration agreement. See, e.g, Gay v. CreditInform, 511 F.3d 369, 393 (3d Cir. 2007) (the right to a class action [is] 'merely a procedural one' pursuant to the Federal Rules of Civil Procedure, and ... 'may be waived'") (citation omitted); Sanders v. Robinson Humphrey/American Express, Inc., 634 F. Supp. 1048, 1065 (N.D. Ga. 1986) (class action rule a mere "procedural device"), aff'd in part and rev'd in part on different grounds, 827 F.2d 718 (11th Cir. 1987), cert. denied, 485 U.S. 959 (1988); Dienese v. McKenzie Check Advance of Wis., LLC, No. 99-C-50, 2000 U.S. Dist. LEXIS 20389, at *24 (E.D. Wis. Dec. 11, 2000) (enforcing arbitration clause barring class actions since "consumers are not signing away a substantive right"); Caudle v. American Arb. Ass'n, 230 F.3d 920, 921 (7th Cir. 2000) ("[a] procedural device aggregating multiple persons' claims in litigation does not entitle anyone to be in litigation"); Zawikowski v. Beneficial National Bank, No. 98 C 2178, 1999 WL 35304, at *2 (N.D. Ill. Jan. 11, 1999) ("[n]othing prevents the Plaintiffs from contracting away their right to a class action").

[14] In this regard, the Quintino Agreement provides that "**YOU WILL NOT BE ABLE TO BRING, JOIN OR PARTICIPATE IN ANY CLASS ACTION LAWSUIT AGAINST US.**" Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 4 (emphasis in original).

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Perhaps most significantly, just this year the United States Supreme Court in Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp. held that the FAA prohibits the imposition of class procedures where the parties did not explicitly agree to them. 130 S. Ct. 1758, 1782 (2010) ("a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so.") (emphasis in original). The Supreme Court emphasized that, when "enforcing an agreement to arbitrate or construing an arbitration clause, courts ... must 'give effect to the contractual rights and expectations of the parties'" and that "'the parties' intentions control.'" Id. at 1773-74 (citations omitted). Stolt-Nielsen was a case in which the parties' arbitration agreement was silent with respect to class proceedings, whereas the Arbitration Provision in this case sets forth the parties' express agreement that arbitration will be individual -- not class-wide -- in nature. Therefore, Stolt-Nielsen's holding applies with even greater force in this case given the parties' express agreement to forego class arbitration.

Further underscoring the enforceability of the Class Action Waiver, the Arbitration Provision explicitly exempts from the arbitration option afforded to both parties claims brought in small claims court or the equivalent court in the consumer's state of residence. Arbitration Provision ¶ 2.[15] Indeed, numerous courts have held that such a small claims court "carve-out" supports a finding that a class action waiver is ***not*** unconscionable or against public policy. See, e.g., Jenkins v. First American Cash Advance of Ga., Inc., 400 F.3d 868, 879 (11th Cir. 2005), cert. denied, 126 S. Ct. 1457 (2006); Howard v. Wells Fargo Minn., N.A., No. 06-2821, 2007 WL 2778664, at *5 (N.D. Ohio Sept. 21, 2007) (enforcing class action waiver because "small

[15] The Arbitration Provision provides that all "Claims" are subject to arbitration, but notes that the term "does not include any individual action brought by you in small claims court or your state's equivalent court . . . any such actions and assertions of this kind will be resolved by a court and not an arbitrator." Arbitration Provision ¶ 2. Similarly, the Quintino Agreement provides that "You and we each have the right to bring a Claim in a small claims or the proper Las Vegas Justice Court, as long as the Claim is within the jurisdictional limits of that court." Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 3.

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claims lawsuits are a viable option"); Providian National Bank v. Screws, 894 So.2d 625 (Ala. 2003) (same).

In short, Plaintiffs here had the unconditional ability to reject the Arbitration Provision, which contained abundantly clear terms setting forth the specific rights the Plaintiffs and the Rapid Cash Defendants were giving up. In addition, the Arbitration Provision and Class Action Waiver applied equally to Plaintiffs and the Rapid Cash Defendants, and contained additional provisions ensuring that Plaintiffs would have realistic and non-illusory access to a fair, convenient and affordable forum in which to bring their claims. As a matter of law, therefore, the Arbitration Provision and the Class Action Waiver are neither procedurally nor substantively unconscionable under Nevada law, and should be enforced according to their terms.

(c) The FAA Preempts Any Argument That The Arbitration Provision Is Unenforceable Under State Law.

Finally, the argument advanced by Plaintiffs that the Arbitration Provision is unenforceable under the laws of Nevada or Kansas should be rejected on the additional ground that it is preempted by federal law, specifically, the FAA.

The FAA "is a congressional declaration of a liberal policy favoring arbitration." Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983). The United States Supreme Court has demonstrated the primacy of federal law by repeatedly invalidating state laws that attempt to limit the enforceability of arbitration agreements. In invalidating these laws, the Supreme Court has explained that the FAA "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." Perry v. Thomas, 482 U.S. 483, 489 (1987) (emphasis added) (California statute that required litigants to be provided a judicial forum for resolving wage disputes "must give way" to Congress' intent to provide for enforcement of arbitration agreements). In Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 121 (2001), the Supreme

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Court specifically rejected arguments that broadly applying the FAA to employment contracts would "intrude[ ] upon the policies of the separate states." The Court found the policies of state laws irrelevant because "Congress intended the FAA . . . to preempt state anti-arbitration laws." Id. at 122. Accord Southland Corp. v. Keating, 465 U.S. 1 (1984).

Most recently, in Preston v. Ferrer, 128 S. Ct. 978 (2008), the Supreme Court held that "[w]hen parties agree to arbitrate all questions arising under a contract, the FAA supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative." Id. at 987. As the Supreme Court reiterated, the FAA's "national policy favoring arbitration" displaces any conflicting state law: "That national policy . . . appli[es] in state as well as federal courts and foreclose[s] state legislative attempts to undercut the enforceability of arbitration agreements. The FAA's displacement of conflicting state law is now well-established, and has been repeatedly reaffirmed." Id. at 983.

In light of the foregoing, courts, state and federal, repeatedly have held that a state law cannot invalidate an arbitration agreement because it contains certain terms, such as a bar on class actions, that are permitted by the FAA. See, e.g., Gay v. CreditInform, 511 F.3d 369 (3d Cir. 2007) (concluding that the FAA preempted a series of intermediate state court cases holding arbitration agreements with class action waivers unconscionable); Am. Gen'l Life & Accident Ins. Co. v. Wood, 429 F.3d 83, 89-90 (4th Cir. 2005); Ope Internat'l v. Chet Morrison Contractors, Inc., 258 F.3d 443, 446-47 (5th Cir. 2001); Management Recruiters Internat'l v. Bloor, 129 F.3d 851, 856 (6th Cir. 1997); In re David's Supermarkets, Inc., 43 S.W.3d 94, 98 (Tex. App. 2001); Pyburn v. Bill Heard Chevrolet, 63 S.W.3d 351, 361 (Tenn. App. 2001).

As noted by the Supreme Court, "[w]hile the interpretation of an arbitration agreement is generally a matter of state law, the FAA imposes certain rules of fundamental importance, including the basic precept that arbitration 'is a matter of consent, not coercion.'" Stolt-Nielsen

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S. A. v. AnimalFeeds Int'l Corp., 130 S. Ct. 1758, 1773 (2010) (citing Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 479 (1989)). The "central or 'primary' purpose of the FAA is to ensure that 'private agreements to arbitrate are enforced according to their terms.'" Id. In the instant case, there is no dispute in that the Arbitration Provision by its express terms precludes class actions. Under Stolt-Nielsen that should end the matter. Accordingly, notwithstanding the choice of law to be applied to this matter, the parties' Arbitration Provision is enforceable under Stolt-Nielsen.

Under the foregoing authority, the FAA specifically preempts any argument raised by Plaintiffs here that the Arbitration Provision is unenforceable under the laws of Nevada or Kansas.

(d) **The Dispute is Within the Scope of the Arbitration Provision.**

Plaintiffs argue that their claims against the Rapid Cash Defendants are outside the scope of the Arbitration Provision. However, as discussed below, the Arbitration Provision provides that questions of the scope of the Provision are to be determined by the arbitrator. In addition, Plaintiffs' claims clearly fall within the scope of the Arbitration Provision.

1. **The Arbitration Provision Provides That The Arbitrator Must Decide Whether A Dispute Is Within The Scope Of The Agreement.**

Foremost, the Arbitration Provision expressly provides that "you and we agree that either party may elect to require arbitration of any Claim ...." The term "Claim" – explicitly made subject to arbitration – is defined to include "any claim, dispute or controversy between you and us . . . that arises or relates in any way to . . . ***the validity, enforceability or scope of this Arbitration Provision***." Arbitration Provision ¶ 2 (emphasis added).[16]

[16] Similarly, the Quintino Agreement provides that "'Claims' also includes any and all claims that arise out of (i) the validity, scope and/or applicability of this Mediation Agreement or the Arbitration Agreement . . . ." Quintino Agreement, Gee Affidavit at Exhibits H-J, p. 2.

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The above-quoted contractual language makes clear that it is the arbitrator who is charged with determining whether a given dispute falls within the scope of the Arbitration Provision here. Indeed, while courts often decide so-called "gateway matters" such as "whether a concededly binding arbitration clause applies to a certain type of controversy," Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444, 452 (2003), this rule does not apply where the parties have "'clearly and unmistakably provided otherwise'" in their arbitration agreement. Howsam v. Dean Witter Reynolds, 537 U.S. 79, 83 (2002) (quoting AT&T Techs. Inc. v. Communications Workers, 475 U.S. 643, 649(1986)); First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943 (1995) ("Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about that matter.") (emphasis in original). As one federal court explained, "[g]enerally, courts and arbitrators need to look no further than the language of the written contract between the parties to find 'clear and unmistakable evidence' that the parties intended to submit the question of arbitrability to arbitration." Daugherty v. Washington Square Sec., Inc., 271 F. Supp.2d 681, 687 (W.D. Pa. 2003).

Here, the parties entered into the Arbitration Provision which clearly provided that any questions as to its scope, validity, or enforceability were for the arbitrator to decide. As such, this Court should grant the Rapid Cash Defendants' Motion to Compel and should allow the arbitrator to decide whether Plaintiffs' claims are within the scope of the Provision.

2. **Even If The Court Must Determine Whether A Dispute Is Within The Scope Of The Arbitration Agreement, Each And Every One Of Plaintiffs' Claims Are With The Broad Scope Of The Agreement.**

The Arbitration Provision broadly defines "Claims" subject to arbitration as follows:

> The term "Claim" means any claim, dispute or controversy between you and us ... that arises from or relates in any way to Services you request or we provide, now, in the past or in the future; the Application (or any prior or future application); any

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> agreement relating to Services ("Services Agreement"); any of our marketing, advertising, solicitations and conduct relating to your request for Services; our collection of any amounts you owe; our disclosure of or failure to protect any information about you; you're the validity, enforceability or scope of this Arbitration Provision. "Claim" is to be given the broadest possible meaning and includes claims of every kind and nature, including but not limited to, initial claims, counterclaims, cross-claims and third-party claims, and claims based on any constitution, statute, regulation, ordinance or common law rule (including rules relating to contracts, negligence, fraud or other intentional wrongs) and equity. It includes disputes that seek relief of any type, including damages and/or injunctive, declaratory or other equitable relief.

Arbitration Provision ¶ 2.

Under the above-quoted language of the Arbitration Provision and well-settled law, Plaintiffs' claims clearly fall within the broad scope of the Arbitration Provision. The FAA mandates that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H. Cohn Mem'l Hosp., 460 U.S. at 24-25 (1983); accord Fazio v. Lehman Bros., 340 F.3d 386, 392 (6th Cir. 2003); Howard v. Wells Fargo, No. 06-2821, 2007 WL 2778664, at *2 (N.D. Ohio Sept. 21, 2007). Accordingly, the United States Supreme Court has held that a presumption of arbitrability exists where a contract contains an arbitration clause, and that an order to arbitrate should not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute." AT&T Technologies, 475 U.S. at 650. The presumption in favor of arbitrability "is particularly strong when the arbitration clause in question is broad," as it is in this case. Id. Indeed, as reaffirmed by the Supreme Court in Randolph, "the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." Green Tree Fin. Corp. v. Randolph, 531 U.S. 79, 91 (2000); Inlandboatmens Union of the Pac. v. Dutra Group, 279 F.3d 1075, 1079 (9th Cir. 2002) ("The burden thus falls upon the party contesting arbitrability to show how the language of the arbitration clause excludes a dispute from the clause's purview.").

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Here, Plaintiffs' claims are all related to the Rapid Cash Defendants' collection efforts, and are clearly covered under the broad language of the Arbitration Provision. The Arbitration Provision expressly provides that the claims subject to arbitration include claims relating to "our collection of any amounts you owe." Arbitration Provision ¶ 2. The Arbitration Provision further provides that the term "Claim" is "to be given the broadest possible meaning and includes claims of every kind and nature . . . It includes disputes that seek relief of any type, including damages and/or injunctive, declaratory or other equitable relief." Id. Indeed, it is well settled that claims for injunctive relief are subject to arbitration. See Arriaga v. Cross Country Bank, 163 F.Supp.2d 1189, 1192-93 (S.D. Cal. 2001); Lozano v. AT&T Wireless, 216 F.Supp.2d 1071, 1076-77 (C.D. Cal. 2002).

"It is difficult to imagine broader general language than that contained in the ... arbitration clause 'any dispute' . . ." Sedco v. Petroleos Mexilanos Mexican Nat'l Oil, 767 F.2d 1140, 1145 (5th Cir. 1985) (citation omitted). Indeed, an arbitration clause that contains the phrase "any claim or controversy arising out of or relating to the agreement" is considered the paradigm of a broad clause. See, e.g., Collins & Aikman Products Co. v. Building Systems Inc., 58 F.3d 16, 20 (2nd Cir. 1995); ADR/JB, Corp. v. MCY III, Inc., 299 F. Supp.2d 110, 114 (E.D. N.Y. 2004).

Numerous courts have interpreted language in arbitration clauses similar to that in the present case to find that they had a broad reach and covered all manner of statutory and tort claims. See, e.g., Kiefer Specialty Flooring, Inc. v. Tarkett, Inc., 174 F.3d 907, 909 (7th Cir. 1999) ("Similar types of arbitration provisions have been characterized as extremely broad and capable of expansive reach."); Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 93 (4th Cir. 1996) (holding that an arbitration clause that provided arbitration for any dispute that "ar[ose] out of or related to" the agreement was a broad clause, "capable of

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expansive reach"); Coors Brewing Co. v. Molson Breweries, 51 F.3d 1511 (10th Cir. 1995) (arbitration clause covering "any dispute arising in connection with the implementation, interpretation or enforcement of agreement" covered antitrust disputes); Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1114 (3d Cir. 1993) (arbitration clause covering "all controversies" that may arise between signatories "broadly construed. . . to apply to all disputes between signatories"); Dean Witter Reynolds, Inc. v. Daily, 12 F. Supp.2d 1319, 1321 (S.D. Fla. 1998) (arbitration clause covering "all controversies" constituted "clear and unmistakable evidence that the parties agreed to submit all their claims to arbitration"); Leopold v. Delphi Internet Serv., No. 96-4475, 1996 WL 628593, at *2 (E.D. Pa. Oct. 24, 1996) (arbitration clause covering "any dispute arising" from contract covered fraud claims arising in signatories' business relationship); Acquaire v. Canada Dry Bottling, 906 F. Supp. 819, 835 (E.D.N.Y. 1995) (clause requiring arbitration of disputes "concerning the interpretation or application of" the contract held to encompass RICO claims).

The Plaintiffs rely on Aiken v. World Fin. Corp., 644 S.E.2d 705 (S.C. 2007) to argue that the Arbitration Provision should not apply to unforeseeable torts. Opposition Brief p. 24. However, the arbitration agreement in Aiken apparently did not contain specific language providing that tort and statutory claims are subject to arbitration, whereas the Arbitration Provision in the instant case provides that it applies to any "claim, dispute or controversy between you and us . . . that arises from or relates in any way to . . . our collection of any amounts you owe . . . ." and is to be "given the broadest possible meaning and includes claims of every kind and nature, including, but not limited to . . . claims based on any constitution, statute, regulation, ordinance, common law rule (including rules relating to contracts, negligence, ***fraud or other intentional wrongs***) and equity." Arbitration Provision ¶ 2 (emphasis added). Here, unlike in Aiken, the Arbitration Provision clearly contemplates that it would apply to claims

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brought between the parties for alleged fraudulent conduct and other intentional wrongs. It is hard to imagine a broader scope that the parties could have agreed to when they entered into the Arbitration Provision, and the language clearly envisions that every dispute between the parties related in any way to the loans provided by the Rapid City Defendants would be within the scope of the Arbitration Provision.

(e) **Enforcement of the Arbitration Provision is Not Against Public Policy or the Public Interest**

Plaintiffs contend that public policy mandates that the Court invalidate the parties' Arbitration Provision because this matter would otherwise be "swept under the rug." This argument fails for several reasons.

First, there is nothing preventing these Plaintiffs or any other members of the putative class from moving to open their defaults in court. The Rapid Cash Defendants are merely seeking to have the Plaintiffs' affirmative suit heard in arbitration as the parties have agreed.

Second, the courts have repeatedly rejected this precise argument. The Supreme Court in Gilmer rejected arguments in that case that the non-public nature of arbitration and the lack of a written decision would result in decreased public awareness of discriminatory employment policies and ineffective appellate review. Gilmer, 500 U.S. at 30-33. In Parilla v. IAP Worldwide Serv., 368 F.3d 269 (3d Cir. 2004), the District Court concluded that AAA Rules governing arbitration of employment disputes improperly required the confidentiality of arbitration and arbitration awards. The Third Circuit reversed holding that the AAA rules requiring confidentiality were not unreasonable: "Each side has the same rights and restraints under those provisions and there is nothing inherent in confidentiality itself that favors or burdens one party vis-à-vis the other in the dispute resolution process. Importantly, the confidentiality of the proceedings will not impede or burden in any way [the plaintiff's] ability to obtain any relief to which she may be entitled." Id. at 280. Significantly, the Third Circuit

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rejected the precise argument raised by Plaintiffs herein that the non-public nature of arbitration would make it more difficult for future claimants. Id. Noting that the Supreme Court upheld arbitration in Gilmer, the Third Circuit concluded that the arbitration agreement in that case was not unconscionable. Id. at 281. Accord Iberia Credit Bureau, Inc., 379 F.3d at 175-76 (argument consists of nothing more than outdated and generalized attacks on arbitration).

Finally, state public policies may not trump the FAA and the enforcement of the Arbitration Provision. The United States Supreme Court has demonstrated the primacy of federal law by repeatedly invalidating state laws that attempt to limit the enforceability of arbitration agreements. In invalidating these laws, the Supreme Court has explained that the FAA "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." Perry, 482 U.S. at 489 (emphasis added) (California statute that required litigants to be provided a judicial forum for resolving wage disputes "must give way" to Congress' intent to provide for enforcement of arbitration agreements). More recently, in Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 121, 121 S.Ct. 1302, 149 L.Ed.2d 234 (2001), the Supreme Court specifically rejected arguments that broadly applying the FAA to employment contracts would "intrude[ ] upon the policies of the separate states." The Court found the policies of state laws irrelevant because "Congress intended the FAA . . . to preempt state anti-arbitration laws." Id. at 122. Accord Southland Corp. v. Keating, 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984) (FAA "withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.").

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III. CONCLUSION

For the foregoing reasons as well as those set forth in their Initial Memorandum, the Rapid Cash Defendants' Motion to Compel Arbitration and Stay All Proceedings should be granted, and the claims asserted against them should be stayed pending the completion of arbitration. Further, Plaintiffs should be ordered to proceed with arbitration of their claims on an individual basis.

DATED this 8th day of October, 2010.

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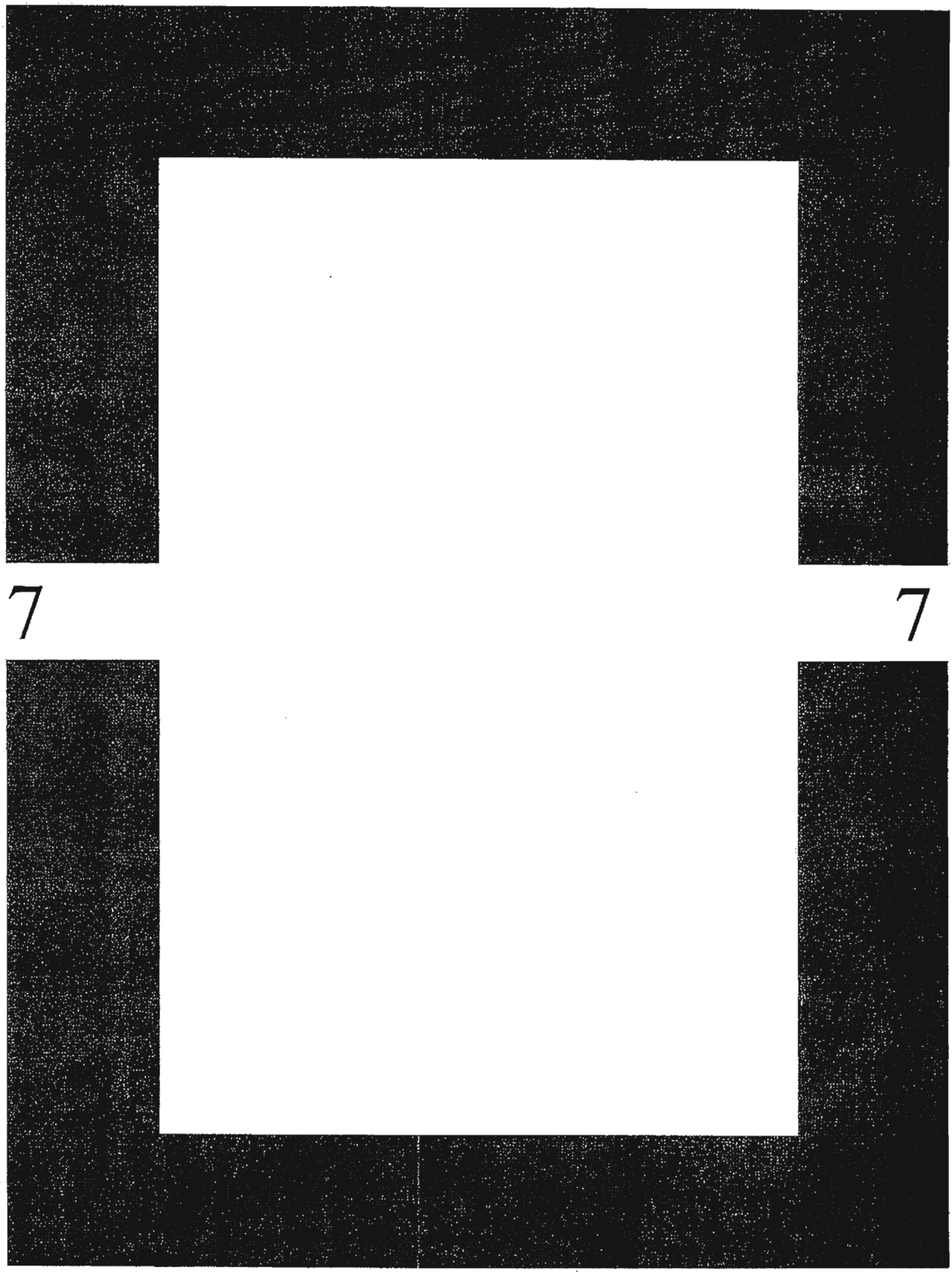

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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; ADVANCE GROUP, INC. d/b/a RAPID CASH; MAURICE CARROLL, individually and d/b/a ON SCENE MEDIATIONS; VILISIA COLEMAN, and DOES I through X, inclusive,

Defendants.

CASE NO. A-10-624982-B
DEPT. XI

OPPOSITION TO MOTION TO CERTIFY CLASS

Date: October 15, 2010
Time: In chambers

ORAL ARGUMENT REQUESTED

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COMES NOW Defendants 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 (the "Rapid Cash Defendants"), by and through their counsel Gordon Silver, and file this Opposition to Motion to Certify Class. This Opposition is made and based upon the following Memorandum of Points and Authorities, the Affidavit of Mark S. Dzarnoski, the pleadings and other papers on file herein and any oral argument the Court may permit at the hearing of this matter.

DATED this 8 day of October, 2010.

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MEMORANDUM OF POINTS AND AUTHORITIES

[This matter is currently scheduled for "in chambers" disposition on October 15, 2010. Defendants hereby request that the matter be scheduled for oral argument in the event Defendants' Motion to Compel Arbitration is denied. In filing this Opposition, Defendants do not waive their right to compel arbitration in this matter as set forth in their Motion to Compel Arbitration.]

I. PLAINTIFFS' CLAIMS ARE SUBJECT TO AN ARBITRATION AGREEMENT WHICH WAIVES THEIR ABILITY TO PURSUE CLASS ACTION CLAIMS

Plaintiffs herein each applied for and obtained loans from the Rapid Cash Defendants on which they defaulted. Each loan agreement they executed -- and some of the Plaintiffs executed multiple loan agreements as they sought and obtained multiple loans -- contained agreements requiring Plaintiffs to individually arbitrate any and all claims against any of the Rapid Cash Defendants. The Rapid Cash Defendants herein have filed a Motion to Compel Arbitration and Stay All Proceedings which filing is incorporated herein by this reference.

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Three of the Plaintiffs (CASANDRA HARRISON; EUGENE VARCADOS; and MARY DUNGAN) signed an agreement that is currently utilized by the Rapid Cash Defendants ("Current Loan Agreement"). The Current Loan Agreement contains the following provisions:

> **5. NO CLASS ACTIONS OR SIMILAR PROCEEDINGS; SPECIAL FEATURES OF ARBITRATION. IF YOU OR WE ELECT TO ARBITRATE A CLAM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (A) HAVE A COURT OR A JURY DECIDE THE CLAIM; (B) OBTAIN INFORMATION PRIOR TO THE HEARING TO THE SAME EXTENT THAT YOU OR WE COULD IN COURT; (C) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR CLASS OPPONENT, (D) ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; OR (E) JOIN OR CONSOLIDATE CLAIMS INVOLVING YOU WITH CLAIMS INVOLVING ANY OTHER PERSON. THE RIGHT TO APPEAL IS MORE LIMITED IN ARBITRATION THAN IN COURT. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.**
>
> ********
>
> **Important Notices**
>
> **BY SIGNING THIS AGREEMENT OR APPLYING FOR A LOAN:**
>
> - **YOU WILL NOT BE ENTITLED TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM AGAINST US.**
> - **YOU WILL NOT BE ENTITLED TO HAVE A COURT, OTHER THAN A SMALL CLAIMS COURT OR JUSTICE COURT, RESOLVE ANY CLAIM AGAINST US.**
> - **YOU WILL NOT BE ABLE TO BRING, JOIN OR PARTICIPATE IN ANY CLASS ACTION LAWSUIT AGAINST US**

One of the Plaintiffs (CONCEPCION QUINTINO) signed an older version of a loan agreement utilized by the Rapid Cash Defendants ("Old Loan Agreement"). The Old Loan Agreement contains the following provisions:

> You and We Agree to Arbitrate. If you and we are not able to resolve a Claim in mediation, then you and we agree that such Claim will be resolved by neutral, binding individual (and not class) arbitration.
>
> ********
>
> The arbitrator will not conduct class arbitration, and will not allow you to act as a representative, private attorney general or in any other representative capacity.

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Limited and Small Claims. You and we each have the right to bring a Claim in a small claims or the proper Las Vegas Justice Court, as long as the Claim is within the jurisdictional limits of that court. Neither you nor we will need to submit Claims to mediation or arbitration before doing *so*. However, neither you nor we may bring any Claims as a representative, private attorney general, member of a class *or* in any other representative capacity.

******

Important Notices

BY SIGNING THIS AGREEMENT OR APPLYING FOR A LOAN:

- **YOU WILL NOT BE ENTITLED TO HAVE A TRIAL BY JURY TO RESOLVE ANY CLAIM AGAINST US.**
- **YOU WILL NOT BE ENTITLED TO HAVE A COURT, OTHER THAN A SMALL CLAIMS COURT OR JUSTICE COURT, RESOLVE ANY CLAIM AGAINST US.**
- **YOU WILL NOT BE ABLE TO BRING, JOIN OR PARTICIPATE IN ANY CLASS ACTION LAWSUIT AGAINST US**

The Current Loan Agreement contains the following choice of law provision:

> 8. **GOVERNING LAW.** This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA, and not Federal or state rules of civil procedure or evidence or any state laws that pertain specifically to arbitration, provided that the law of Kansas, where we are headquartered, shall be applicable to the extent that any state law is relevant in determining the enforceability of this Arbitration Provision under Section 2 of the FAA.

The Old Loan Agreement contains the following choice of law provision:

> Governing Law. This Arbitration Agreement is made pursuant to a transaction involving interstate commerce. It will be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as amended ("FAA"). If for any reason a court of competent jurisdiction finds that the FAA does not apply, then this Arbitration Agreement will be governed by the Nevada Uniform Arbitration Act, as amended.

The FAA makes agreements to arbitrate "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. It is well-established under the FAA that class action procedures are waivable by parties to an arbitration agreement. See, e.g, Gay v. CreditInform, 511 F.3d 369, 393 (3d Cir. 2007) (the right

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to a class action [is] 'merely a procedural one' pursuant to the Federal Rules of Civil Procedure, and ... 'may be waived'") (citation omitted); Sanders v. Robinson Humphrey/American Express, Inc., 634 F. Supp. 1048, 1065 (N.D. Ga. 1986) (class action rule a mere "procedural device"), aff'd in part and rev'd in part on different grounds, 827 F.2d 718 (11th Cir. 1987), cert. denied, 485 U.S. 959 (1988); Dienese v. McKenzie Check Advance of Wis., LLC, No. 99-C-50, 2000 U.S. Dist. LEXIS 20389, at *24 (E.D. Wis. Dec. 11, 2000) (enforcing arbitration clause barring class actions since "consumers are not signing away a substantive right"); Caudle v. American Arb. Ass'n, 230 F.3d 920, 921 (7th Cir. 2000) ("[a] procedural device aggregating multiple persons' claims in litigation does not entitle anyone to be in litigation"); Zawikowski v. Beneficial National Bank, No. 98 C 2178, 1999 WL 35304, at *2 (N.D. Ill. Jan. 11, 1999) ("[n]othing prevents the Plaintiffs from contracting away their right to a class action").

Perhaps most significantly, just this year the United States Supreme Court in Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp. held that the FAA prohibits the imposition of class procedures where the parties did not explicitly agree to them. 130 S. Ct. 1758, 1782 (2010) ("a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so.") (emphasis in original). The Supreme Court emphasized that, when "enforcing an agreement to arbitrate or construing an arbitration clause, courts ... must 'give effect to the contractual rights and expectations of the parties'" and that "'the parties' intentions control.'" Id. at 1773-74 (citations omitted). Stolt-Nielsen was a case in which the parties' arbitration agreement was silent with respect to class proceedings, whereas the Arbitration Provision in this case sets forth the parties' express agreement that arbitration will be individual -- not class-wide -- in nature. Therefore, Stolt-Nielsen's holding applies with even greater force in this case given the parties' express agreement to forego class arbitration.

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To the extent Nevada law is applicable, Defendants' Reply to Opposition to Motion to Compel Arbitration and Stay Proceedings ("Defendants' Reply Memorandum") filed in conjunction herewith sets forth reasons for enforcing the class action waiver. Defendants' Reply Memorandum is incorporated herein by this reference.[1] Similarly, to the extent Kansas law is applicable, class action waivers contained in arbitration clauses are generally enforceable. Wilson v. Mike Steven Motors, Inc., 111 P.3d 1076, 2005 WL 1277948 (Kan.App. 2005) [unpublished[2]].

Thus, as an initial matter, this Court ought to grant Defendants' Motion to Compel Arbitration and Stay Further Proceedings and defer ruling upon this instant Motion until after arbitration. Alternatively, the Court should enforce the class action waiver and deny certification of the class.

II. PLAINTIFFS HAVE FAILED TO SATISFY A CONDITION PRECEDENT TO COMMENCEMENT OF THIS ACTION

Both the Current Loan Agreement and the Old Loan Agreement contain provisions which require Plaintiffs to satisfy conditions precedent before commencing any action. The Current Loan Agreement contains the following provision:

> PRE-DISPUTE RESOLUTION PROCEEDURE
>
> In the event that you or we have a claim *that* arises from or relates to any check cashing, credit, loan or other services you request or we provide *("Services")*, before commencing, joining or participating in any judicial or arbitration proceeding, as either *an* individual litigant or member of a class ("Proceeding"). the complaining party shall give the other party or any "related party": (1) *at* least 15 days' written notice of the claim ("Claim Notice"), explaining in reasonable detail the nature of the claim and any supporting facts; and (2) a reasonable good faith opportunity to resolve the claim without the necessity of a Proceeding. Our "related parties" are any parent company and affiliated entities (including Ad *Astra* Recovery *Savices,* Inc.); and our and their employees, directors, officers,

[1] By Order dated October 14, 2008, the Honorable Judge Denton granted a motion to compel arbitration which included a class action waiver in Case No. A567514 . The Nevada Supreme Court is currently considering the matter on a Petition for Writ of Mandamus (Supreme Court Case No. 53126). By Order filed October 8, 2008, the Honorable Elizabeth Gonzalez granted a Motion to Compel Arbitration enforcing a class action waiver in Case No. 567912.

[2] Pursuant to Kansas Supreme Court Rule 7.04(f), unpublished opinions are not precedential and are not favored for citation. They may be cited for persuasive authority on a material issue not addressed by a published Kansas appellate court opinion.

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> shareholders, governors, managers and members. Any Claim Notice to us shall be sent in care of Tiger Financial Management, LLC, Attn: Legal Department, 3527 North Ridge Road, Wichita, Kansas 67205 (or such other *address* as we shall subsequently provide to you) or to you at your address appearing in our records or, if you are represented by an attorney. to your attorney at his or her office address. Nothing in this paragraph is intended to affect or modify in any fashion any separate Arbitration Provision between you and us.

The Old Loan Agreement contains the following provision:

> Mediation Agreement
>
> You and We Agree to Mediate Claims. You and we agree that before either of us starts a lawsuit, arbitration proceeding or any other legal proceeding, we will submit any and all "Claims" that we have against you, and you will submit any and all Claims that you have against us, to neutral, individual (and not class) mediation.

Plaintiffs have not filed a Claim Notice or submitted any matter to mediation prior to filing the instant lawsuit. Thus, the Court should deny class certification and require Plaintiffs herein to satisfy the contractual preconditions to commencing a lawsuit set forth in the Current Loan Agreement and the Old Loan Agreement.

III. THE DEFINITION OF THE CLASS IS SERIOUSLY FLAWED

Each of the four (4) Lead Plaintiffs allege that (1) they obtained loans from one of the Rapid Cash Defendants; (2) one of the Rapid Cash Defendants obtained a default judgment against them; (3) proof of service in each case was an affidavit of service signed by a representative of On Scene Mediations; (4) each Plaintiff was not, in fact, served as claimed in the affidavit of service; and (5) each Plaintiff did not learn of the action and/or default judgment until after their wages were garnished. Hence, the sole basis for Plaintiffs' claims against any of the Rapid Cash Defendants is their allegation that they were not, in fact, served with process. Yet, the class definition sought by Plaintiffs expands well-beyond Plaintiffs' sole basis for their claims because it would include in the class not only those who ***were not*** served with process by On Scene Mediations, but those ***who were*** served with process by On Scene Mediation as well. Plaintiffs' proffered class definition is as follows:

> ...all customers of Rapid Cash offices in Clark County, Nevada, against whom Rapid Cash obtained default judgments in the Justice Courts of Clark County,

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> Nevada, and for which the only evidence that the defendant received service of process of Rapid Cash's lawsuit was an affidavit signed by a representative of On Scene Mediations.

Left conspicuously out of Plaintiffs' proposed class definition is the one allegation that is central to the determination that any member of the proposed class suffered a legally cognizable injury: Whether or not the individual Rapid Cash customer was, in fact, served with process. Thus, Plaintiffs want to represent and have certified as a class all customers of Rapid Cash against whom default judgments have been entered based upon affidavits of service signed by representatives of On Scene Mediations regardless of whether such customers actually received service of process. Such a generalized class definition would be entirely improper because customers of Rapid Cash against whom default judgments were obtained after receiving service of process have no legal claim against the Rapid Cash Defendants even if the only proof of service is an affidavit signed by a representative of On Scene Mediations.

The serious flaw in certifying such a class is easily manifest in Plaintiffs' Motion for No Contact Order where Plaintiffs seek an order preventing the Rapid Cash Defendants from contacting ***any*** customer served process by On Scene Mediations who has a default judgment entered against him/her. Further, Plaintiffs seek an order precluding the Rapid Cash Defendants from collecting upon ***any*** default judgments for such customers. Thus, Plaintiffs are basically seeking to put Rapid Cash Defendants out of business and prevent them from collecting upon perfectly valid default judgments.

In an attempt to cover their flawed proposed class definition, Plaintiffs' Motion to Certify Class misrepresents and mischaracterizes the class they have defined:

- "This Class consists of predominantly low-income individuals or consumers ... who **all were never served with process**..." [Motion to Certify, 10:19-23];
- "(H)undreds if not thousands of defendants were never served and void default judgments were obtained." [Motion to Certify, 11:24-26];
- "**All Class members' claims** arise from ... the lack of service of process..." [Motion to Certify, 13:17-19];

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- "Members of the Class, as defined, ...**suffered the same type of harm** as well..." [Motion to Certify, 14:5-6;
- "The named Class Representatives' claims are not only typical of the claims of the Class, **they are identical**." [Motion to Certify, 14:28 to 15:1];
- "It is Rapid Cash's actions through the use of an unlicensed process server who did not serve process, resulting in issuance of void default judgments which create **the common significant thread**." [Motion to Certify, 15:5-7];
- "The Class Representatives and the unnamed Class Members have **an identical interest** for relief from entry of those void default judgments." [Motion to Certify, 15:21-22]

As will be set forth in more detail below, Plaintiffs' improper class definition is fatal to the certification of this action as a class action because Plaintiffs' entire analysis regarding application of NRCP 23 relies upon the mischaracterization of the class as defined in the Complaint.

Furthermore and importantly, any after-the-fact attempt by Plaintiffs to narrow the proposed class definition by limiting the class to those Rapid Cash customers who had default judgments entered against them without receiving service of process is inappropriate because the key determination in this action – whether each class member had actually been served with process – would not be readily ascertainable based on objective criteria. Specifically, it has long been held that Rule 23 implicitly requires that prospective plaintiffs propose a class definition that is readily ascertainable based on objective criteria. See, e.g., Crosby v. Social Sec. Admin. of U.S., 796 F.2d 576, 580 (1st Cir.1986); Simer v. Rios, 661 F.2d 655, 669 (7th Cir.1981); Teamsters Local 445 Freight Div. Pension Fund v. Bombardier, Inc., 2006 WL 2161887, at *3 (S.D.N.Y.2006), aff'd, 546 F.3d 196 (2d Cir.2008); Annotated Manual for Complex Litigation (4th ed.), at § 21.222. Certification should be denied where "[d]etermining membership in the [sub]class would essentially require a mini-hearing on the merits of each case." Forman v. Data Transfer, Inc., 164 F.R.D. 400, 403 (E.D.Pa.1995) (denying certification of a class asserting violations of the Telephone Consumer Protection Act of 1991 where Plaintiffs defined the

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proposed class as "all residents and businesses who have received unsolicited facsimile advertisements"); See Dafforn v. Rousseau Assocs., 1976 WL 1358, *1 (N.D.Ind. July 27, 1976) (class certification denied for a class of all sellers of single family residences who paid "artificially fixed and illegal" brokerage fees because the class was defined in terms which prejudged the merits). A court must reject a proposed class or subclass definition that "inextricably intertwines identification of class members with liability determinations." Pichler v. UNITE, 228 F.R.D. 230, 247 (E.D.Pa.2005), aff'd, 542 F.3d 380 (3d Cir. 2008).

In the instant case, it is clearly impossible to ascertain or identify by any objective criteria Rapid Cash customers who had default judgments entered against them without being properly served by On Scene Mediations. It is only possible to determine customers who had default judgments entered against them based upon affidavits of service signed by representatives of On Scene Mediations, which casts a wider net than the wrongs alleged by the Plaintiffs. To make this cumbersome determination will require multiple "mini-trials" on the merits of the case, which defeats the policy behind class actions. Consequently, any attempt by Plaintiffs to narrow their proposed definition of the class would be as unavailing as the improper class definition they seek in their Motion.

IV. APPLICATION OF NRCP 23 MILITATES AGAINST CERTIFICATION

A. Legal Standards

NRCP 23 provides in relevant part:

> **(a) Prerequisites to a Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
>
> **(b) Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
>
> (1) the prosecution of separate actions by or against individual members of the class would create a risk of
>
> (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

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> (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
>
> (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

NRCP 23 authorizes one or more persons to sue as representative parties on behalf of a class only if the four prerequisites of NRCP 23(a) are satisfied. The plaintiff has the burden to prove that the case is appropriate for resolution as a class action. Cummings v. Charter Hosp. of Las Vegas, Inc., 111 Nev. 639, 643, 896 P.2d 1137, 1140 (1995). Once, and if, the plaintiff satisfies its four-pronged NRCP 23(a) burden, the plaintiff must still overcome a fifth hurdle by satisfying at least one of the prerequisites set forth in NRCP 23(b). Johnson v. Travelers Ins. Co., 89 Nev. 467, 515 P.2d 68 (1973).

A class action "may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161 (1982). In deciding whether to certify a class, a Court must make a thorough examination of the factual and legal allegations involved in the complaint. Newton v. Merrill Lynch, Pierce, Fenner & Smith, 259 F.3d 154, 166 (3d Cir.2001) (citing Barnes v. Am. Tobacco Co., 161 F.3d 127, 140 (3d Cir.1998)). "It may be necessary for the court to probe behind the pleadings before coming to rest on the certification question." Newton, 259 F.3d at 166 (quoting Gen. Tel. Co. of Sw., 457 U.S. at 160, 102 S.Ct. 2364). "The decision to certify a class calls for findings by the court, not merely a threshold showing by a party, that each requirement of Rule 23 is met." Hydrogen Peroxide, 552 F.3d at 306. Indeed, class certification determinations require

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that a court "resolve all factual or legal disputes relevant to class certification, even if they overlap with the merits-including disputes touching on elements of the cause of action." Id. Even at the certification stage, a court may "consider the substantive elements of the plaintiffs' case in order to envision the form that a trial on those issues would take." Id. at 317. In determining what a trial will look like, a Court should make its own independent findings and need not afford plaintiff's claims any deference. Id. at 318 n. 18 (rejecting its previous statement in Chiang v. Veneman, 385 F.3d 256, 262 (3d Cir. 2004), that "in determining whether a class will be certified, the substantive allegations of the complaint must be taken as true."). As set forth below, Plaintiffs do not meet their burdens under NRCP 23(a) or (b).

B. Plaintiffs Cannot Satisfy Numerosity Requirement

Regarding numerosity, Plaintiffs claim that "(H)undreds if not thousands of defendants were never served and void default judgments were obtained." [Motion to Certify, 11:24-26]. Yet, as set forth above, Plaintiffs cannot satisfy the numerosity requirement because the class they are trying to certify includes Rapid Cash customers over which completely valid default judgments were obtained.

Even if the proposed class definition were somehow limited to those who were not served, however, Plaintiffs acknowledge that they do not know the precise number of potential class members; nor, as set forth above, can that number be determined or ascertained by objective criteria. Instead, Plaintiffs speculate that the number of putative class members ***could*** range from the hundreds to the thousands. Speculation is not sufficient, however, as it is Plaintiffs' burden to prove, not speculate, that the plaintiff class is so large that proceeding as a class action is the only manageable method of resolving the controversy. See Cummings v. Charter Hosp. of Las Vegas, Inc., 111 Nev. 639, 643, 896 P.2d 1137, 1140 (1995). It is "incumbent upon [the plaintiffs] under the numerosity requirement of [NRCP 23] to identify some individuals who fall within [the proposed class], and that their number is so great as to render joinder impracticable." Id. citing Perez v. Personnel Bd. of City of Chicago, 690 F.Supp. 670, 672 (N.D.Ill.1988).

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Plaintiffs assert that the Rapid Cash Defendants filed 16,000+ cases against their defaulting customers between 2004 and 2009. Plaintiffs believe that the Rapid Cash Defendants obtained thousands of default judgments during this period of time, and speculate that hundreds, if not thousands, of those default judgments were obtained without proper service being effectuated. [See Motion at 11:18-28]. The sole basis for Plaintiffs' speculation appears to be that Maurice Carroll is being criminally prosecuted for filing false affidavits of service with some Las Vegas Justice Courts. Yet, the Court is advised that none of the criminal charges against Maurice Carroll involve filing false affidavits of service in cases brought by any of the Rapid Cash Defendants. [See Affidavit of Mark S. Dzarnoski attached as Exhibit A hereto at paragraph 6]. Notably, despite the extremely high profile of the sewer service investigation, a grand total of four (4) Rapid Cash customers have come forward to claim that they were never served in connection with actions filed by the Rapid Cash Defendants. Putting that number in perspective, four Plaintiffs represent 0.025% of the cases Plaintiffs have alleged Rapid Cash commenced between 2004 and 2009. Consequently, Plaintiffs' speculation is not well-founded. There is simply no basis to presume or conclude that Maurice Carroll on a routine, regular or even sporadic basis executed false affidavits of service in cases commenced by Rapid Cash. Indeed, according to Nathan Chio, Detective, Criminal Intelligence, Las Vegas Metropolitan Police Department, he has spoken with numerous Rapid Cash customers as part of his investigation who have acknowledged to him that they were, in fact, served with process as set forth in affidavits submitted by representatives of On Scene Mediations. [See Affidavit of Mark S. Dzarnoski attached as Exhibit A hereto at paragraph 7]

Further, it is noted that the default judgments obtained against these Plaintiffs all occurred after August 19, 2009, and Plaintiffs claim to have first learned of the action against them when their wages were garnished following entry of the default judgments. But Plaintiffs have presented no evidence suggesting that a single default judgment was obtained with the use of a false affidavit of service prior to August 19, 2009.

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Finally, Plaintiffs cannot demonstrate that the class is so numerous that "proceeding as a class action is the only manageable method of resolving the controversy." The Court is well aware that an action has already been commenced by the Rapid Cash Defendants against each proposed class member. A docket number and file exists in Justice Court as to each proposed class member. Each proposed class member has an available remedy in an already existing case under NRCP 60(b) to set aside a void judgment if such class member can prove a lack of service. Plaintiffs do not explain how commencement of a new action in District Court is somehow more efficient than individual customers of Rapid Cash moving to set aside void default judgments on an individual basis in the existing cases.

C. Insufficient Commonality Exists

Plaintiffs assert that commonality is satisfied because "All Class members' claims arise from ... the lack of service of process..." [Motion to Certify, 13:17-19] and "Members of the Class, as defined, ...suffered the same type of harm as well..." [Motion to Certify, 14:5-6]. However, as set forth above, Plaintiffs' argument fails because the proposed class is not limited to customers who were never served process.

"It is not every common question that will suffice, however;" rather, it must be "a common issue the resolution of which will advance the litigation." *Sprague v. General Motors Corp.*, 133 F.3d 388, 397 (6th Cir.1998). If significant elements of a claim or defense require individualized proof by each class member, class certification is inappropriate. Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 624-25 (1997). As one court has noted, "at a sufficiently abstract level of generalization, almost any set of claims can be said to display commonality." Sprague v. Gen. Motors Corp., 133 F.3d 388 (6th Cir. 1998) (en banc). Here, Plaintiffs are seeking certification of a class with no injury because Plaintiffs cannot answer the central question that would entitle any class member to relief: Were the putative class members served with process? Accordingly, as to the single most important issue that can advance the litigation, there is no commonality between Lead Plaintiffs and the proposed class.

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D. Insufficient Typicality Exists

Plaintiffs' typicality argument fails for the same reasons their numerosity argument fails: the claims among the different putative class members are not the same. Plaintiffs claim typicality only through the mischaracterization of the proposed class. Plaintiffs assert that "The named Class Representatives' claims are not only typical of the claims of the Class, they are identical" [Motion to Certify, 14:28 to 15:1] and that "It is Rapid Cash's actions through the use of an unlicensed process server who did not serve process, resulting in issuance of void default judgments which create the common significant thread." [Motion to Certify, 15:5-7]

Despite Plaintiffs' mischaracterization, the reality is that claims of the Plaintiffs are clearly not typical of the claims of the putative class. "The rule is that a named representative for a plaintiff class must be injured in the same way as all members of the class." Golden v. Local 55 of Int'l Ass'n of Firefighters, 633 F.2d 817, 824 (9th Cir. 1980). Typicality is not present where a "named plaintiff who proved his own claim would not necessarily have proved anybody else's claim." Sprague v. General Motors Corp., *supra*, 133 F.3d 388, 399 (6th Cir.), cert. denied, 118 S. Ct. 2312 (1998).. To reiterate, Plaintiffs allege that they were personally injured because they were not served. Absolutely no allegations are made that the class has not been served nor are there any allegations that the class has been injured in any way. Thus, as Plaintiffs' claims are different from the putative class, the "typicality" requirement is not satisfied.

E. No Fair and Adequate Representation of the Class Exists

Regarding adequacy of representation, Plaintiffs assert that "The Class Representatives and the unnamed Class Members have an identical interest for relief from entry of those void default judgments." [Motion to Certify, 15:21-22]. As set forth hereinbefore, no identical interest exists because the class, as defined, is a class of persons who have suffered no legal injury. It is only Plaintiffs who are alleged to have suffered injury because of a lack of service of process. They have no motivation, and no ability, to prove the lack of service of process upon each proposed class member.

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An ill-defined class definition is all-the-more problematic when plaintiffs, such as these Plaintiffs, seek certification under Rule 23(b)(3). Under 23(b)(3), class members have to be able to determine whether they are in the class so that they can decide whether to exercise their right to object to or opt out of the class. See In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-1105, (5th Cir.1977) (Without a clear class definition, prospective class members lack adequate notice and cannot exercise their right to make an "informed, intelligent decision of whether to opt out or remain a member of the class and be bound by the final judgment."). If the class definition is based on a merits determination, prospective plaintiffs may not recognize that they are in the class, and may be deprived of the opportunity to object or opt out. See Kresefky v. Panasonic Communications and Systems Co., 169 F.R.D. 54, 62 (D.N.J.1996) ("Precision in pleading is essential because ... an overbroad class carries potential for unfairness to class members.").

Here, the Plaintiffs' proposed ill-defined class plays a significant factor in determining the adequacy of the representation of class members by the Plaintiffs. In seeking to certify this as a class action, Plaintiffs are significantly limiting the relief that any person who is subsequently found to be a class member could seek by pursuing individual arbitration. Pursuant to the Current Loan Agreement, a customer who proceeds with individual arbitration and prevails will be awarded attorneys fees and costs and obtain an award of damages for at least $100 more than the jurisdictional limit applicable to the Justice Court. Absent the award of significant punitive damages, the monetary relief obtained in this proposed class action is the amount of the loan (typically several hundred dollars) and/or the amount of dollars recovered by the Rapid Cash Defendants during enforcement of void judgments. Hence, if the class is certified, class members would be waiving their right to significant legal recourse without proper legal representation or advise from their own counsel. For these reasons, Plaintiffs do not satisfy their NRCP 23(a)(4) burden.

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F. Plaintiffs' Cannot Satisfy NRCP 23(b)(2)

Plaintiffs likewise fail to satisfy their NRCP 23(b)(2) burden. Specifically, NRCP 23(b)(2) indicates that certification is appropriate if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Because Plaintiffs' proposed class is defined as both individuals who claim not to have been served and individuals who have been properly served, it is clear that the requirements of 23(b)(2) are not met. By definition, no member of the class has been injured. Only through individualized proof can anyone prove an injury that might entitle them to injunctive relief. Under no circumstances would the entire class be entitled to injunctive relief. "Rule 23(b)(2) may not be invoked in a case requiring 'significant individual liability or defense issues which would require separate hearings for each class member in order to establish defendants' liability.'" Arch v. American Tobacco Co., Inc., 175 F.R.D. 469, 482 (E.D.Pa.1997) (quoting Santiago, 72 F.R.D. at 627)("Rule 23(b)(2) demands a certain cohesiveness among class members with respect to their injuries"); Maldonado v. Ochsner Clinic Found., 493 F.3d 521, 524 (5th Cir.2007) (denying certification of proposed 23(b)(2) class where "individualized issues overwhelm class cohesiveness"); In re St. Jude Medical, Inc., 425 F.3d 1116, 1121-22 (8th Cir.2005) (23(b)(2) class claims must be cohesive).

Further, certification under Rule 23(b)(2) is reserved for those cases in which a class of plaintiffs is primarily seeking injunctive or declaratory relief. See Senter v. General Motors Corp., 532 F.2d 511, 525 (6th Cir. 1976) (permitting certification under Rule 23(b)(2) where "[a]ppellant's primary prayer was for injunctive relief"); Lukenas v. Bryce's Mountain Resort Inc., 538 F.2d 594, 596 (4th Cir. 1976) ("It is a monetary judgment that the plaintiffs seek and that is obvious from the phrasing of their prayer. Such an action is not suitable for treatment as a class action under Rule 23(b)(2)"). Monetary relief predominates in (b)(2) class actions unless it is incidental to requested injunctive or declaratory relief, that is, damages which flow directly from liability to the class as a whole, to which class members are automatically entitled once liability to the class as a whole is established. *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 415 (5th Cir.1998).

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Plaintiffs in the present case seek compensatory and punitive damages and attorney's fees in addition to injunctive and declaratory relief. There is no evidence or allegation that each class member was affected in the same manner or that they suffered the same damages. Whether each class member is entitled to recover compensatory and punitive damages is a question which will mandate an inquiry into the circumstances of that class member. As such, certification under 23(b)(2) is inappropriate. See Bacon v. Honda of America Mfg., Inc., 205 F.R.D. 466, 485-486 (S.D. Ohio, 2001)

By filing a demand for jury trial with respect to Plaintiffs' damages claims -- which is appropriate only in cases seeking legal damages rather than equitable or declaratory relief -- Plaintiffs effectively concede that treatment under Rule 23(b)(2) would be inappropriate. Plaintiffs' claim for punitive damages also seeks a form of "legal" damages, not equitable relief. See Moll v. Parkside Livonia Credit Union, 525 F. Supp. 786, 793 (E.D. Mich. 1981) ("Punitive damages obviously are a legal rather than equitable remedy."). While Plaintiffs seem to argue that their claims for damages render this case more suitable for class certification under NRCP 23(b)(2), precisely the opposite is true, because the predominance of Plaintiffs' claims for legal damages defeat NRCP 23(b)(2) certification.

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G. Plaintiffs Cannot Meet Their Burden Of Proving Class Certification Is Proper Under NRCP 23(b)(3)

NRCP 23(b)(3) requires Plaintiffs to prove that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members" and that the proposed action "is superior to other available methods for fairly and efficiently adjudicating the controversy." NRCP 23(b)(3)'s predominance criterion is "far more demanding" than the NRCP 23(a)(2) commonality requirement. Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 624 (1997). NRCP 23(b)(3) requires Plaintiffs to demonstrate that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *Id.*

In citing Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 124 P.3d 530, 537, 544 (2005) as controlling law, Plaintiffs acknowledge that predominance requires that each "class member's effort to establish liability and entitlement to relief, and their resolution 'can be

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achieved through generalized proof.'" Shuette, 124 P.3d at 540 (quoting Amchem, 521 U.S. at 623-24). Plaintiffs claim that "by acting in the same way and violating the law in a uniform manner vis-à-vis every class member, Defendants' conduct easily satisfied the predominance prong of the Rule 23(b)(3) test." [Motion to Certify, 19:16-18]. Plaintiffs' argument fails, though, because Plaintiffs' proposed class definition includes no legal wrong; that is, the predominant issue in litigation with any and all of the proposed class members is as follows: Was each individual member of the class served? Since no generalized proof could answer that individual question, Plaintiffs cannot establish the required commonality of liability or entitlement to relief.

Plaintiffs also assert that a class action is superior to all other forms of action. However, The litigation of class claims for compensatory and punitive damages in a class action would not result in the accelerated and efficient disposition of the case. *Bacon v. Honda of America Mfg., Inc.*, 205 F.R.D. 466, 490 (S.D. Ohio, 2001). Multiple juries would be needed to try the compensatory and punitive damages claims of class members regardless of whether the action proceeds as a class action or as individual actions. Id.

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Plaintiffs completely overlook that a case has been filed, a docket number assigned and a file opened in Justice Court as to each and every potential class member's claim. Each class member would be required to present the same proof of non-service in a class action to entitle them to relief as they would if they were to file an individual motion to set aside default judgment in Justice Court pursuant to NRCP 60.

Additionally, each customer could bring their own claim in arbitration in which the relief they request would exceed that offered to them in this class action. As such, there is already a venue for any members of the putative class to adjudicate their claims.

V. MOTION IS PREMATURE

Rapid Cash Defendants respectfully assert that they have demonstrated good cause for this Court to deny, with prejudice, Plaintiffs' instant motion. However, in the event the Court is inclined to grant part or all of Plaintiffs' requested relief, Rapid Cash Defendants assert that the issue of class certification is premature. In such a circumstance, Rapid Cash Defendants request

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that the Court defer making a decision as to class certification and allow for discovery on the issue.

VI. CONCLUSION

In sum, Plaintiffs' Motion should be denied for the following main reasons, as more particularly set forth herein:

- Plaintiffs agreed-to valid and enforceable class action waivers in the subject loan agreements;
- Plaintiffs failed to satisfy the mediation requirements set forth in the loan agreements prior to commencing this action;
- Plaintiffs' proposed class definition is improperly overbroad and is incapable of objective determination; and
- Plaintiffs fall woefully short of each of their NRCP 23 burdens.

Therefore, for the above and foregoing reasons, Plaintiffs' Motion for Class Certification should be denied.

DATED this 8 day of October, 2010.

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EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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; ADVANCE GROUP, INC. d/b/a RAPID CASH; MAURICE CARROLL, individually and d/b/a ON SCENE MEDIATIONS; VILISIA COLEMAN, and DOES I through X, inclusive,

Defendants.

CASE NO. A-10-624982-B
DEPT. XI

AFFIDAVIT OF MARK S. DZARNOSKI IN SUPPORT OF OPPOSITION TO MOTION TO CERTIFY CLASS

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Mark S. Dzarnoski, Esq., being first duly sworn, deposes and states as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am a shareholder of the law firm of Gordon Silver, attorneys for Defendants 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 (the "Rapid Cash Defendants").

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

3. I make this Affidavit in support of Rapid Cash Defendants' Opposition to Motion to Certify Class in the matter styled Harrison, et al. v. Principal Investments, Inc. d/b/a Rapid Cash, et al., Case No. A-10-624982-B, filed in the Eighth Judicial District Court in and for Clark County, Nevada.

4. At various times since being retained by the Rapid Cash Defendants, I have spoken with Detective Nate Chio ("Det. Chio"), Criminal Intelligence, Las Vegas Metropolitan Police Department. Det. Chio represented himself to me as the lead investigator involved in investigating complaints against Maurice Carroll and On Scene Mediations involving allegations that Carroll and/or On Scene Mediations filed false affidavits of service with the Las Vegas Justice Courts.

5. During our various conversations, both in person and via telephone, Det. Chio advised me that none of the criminal charges currently pending against Carroll involve allegations of non-service of customers of the Rapid Cash Defendants.

6. Det. Chio has advised me that he is investigating whether false affidavits of service were filed in Justice Court regarding cases filed by Rapid Cash Defendants against customers who have defaulted on their loans. Det. Chio has advised me that he has interviewed numerous customers of Rapid Cash Defendants who have acknowledged that they were personally served with process in actions filed by Rapid Cash Defendants in Justice Court and for which the only proof of service was an affidavit signed by Carroll and/or other representatives of

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On Scene Mediations.

Further your affiant sayeth not.

Executed this 8 day of October, 2010.

MARK S. DZARNOSKI

SUBSCRIBED AND SWORN to before me this 8th day of October, 2010.

NOTARY PUBLIC in and for said County and State

ANNA DANG
Notary Public - State of Nevada
No. 08-8764-1
My Commission Expires Dec 5, 2012

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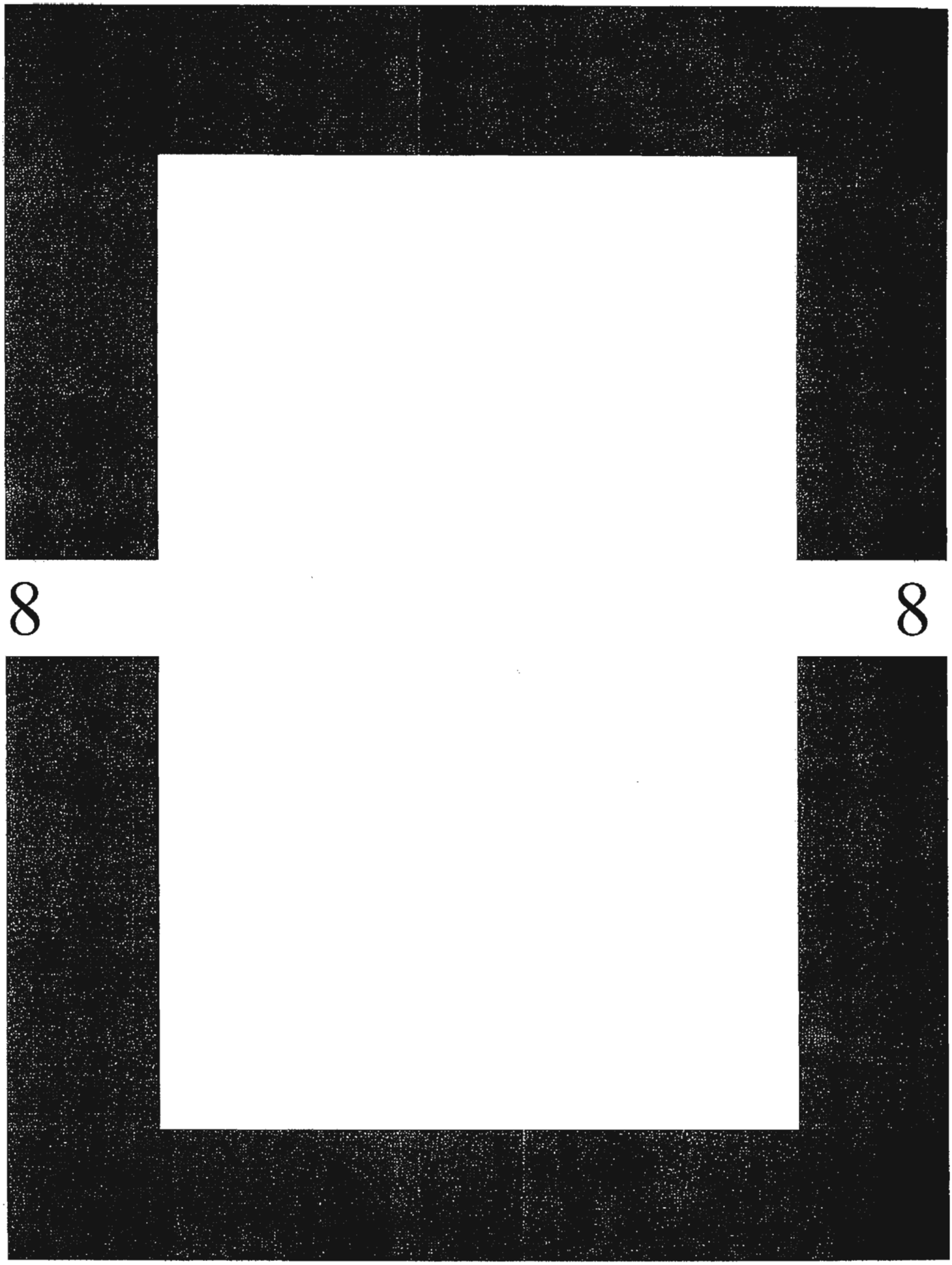

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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; ADVANCE GROUP, INC. d/b/a RAPID CASH; MAURICE CARROLL, individually and d/b/a ON SCENE MEDIATIONS; VILISIA COLEMAN, and DOES I through X, inclusive,

Defendants.

CASE NO. A-10-624982-B
DEPT. XI

OPPOSITION TO PLAINTIFFS' MOTION FOR RULE 23 NO CONTACT ORDER OR, ALTERNATIVELY, FOR A PRELIMINARY INJUNCTION

Date: October 12, 2010
Time: 9:00

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COMES NOW Defendants 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 (the "Rapid Cash Defendants"), by and through their counsel Gordon Silver, and file this Opposition to Motion For Rule 23 No Contact Order Or, Alternatively, For A Preliminary Injunction. This Opposition is made and based upon the following Memorandum of Points and Authorities, the pleadings and other papers on file herein and any oral argument the Court may permit at the hearing of this matter.

DATED this 8 day of October, 2010.

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MEMORANDUM OF POINTS AND AUTHORITIES

[This matter is currently scheduled for disposition on October 12, 2010. In filing this Opposition, Defendants do not waive their right to compel arbitration in this matter as set forth in their Motion to Compel Arbitration which is also scheduled for hearing on October 12, 2010.].

I. PLAINTIFFS' CLAIMS ARE SUBJECT TO AN ARBITRATION AGREEMENT WHICH WAIVES THEIR ABILITY TO PURSUE CLASS ACTION CLAIMS

Plaintiffs' claims are subject to an arbitration agreement which waives their ability to pursue class action claims. The Rapid Cash Defendants have filed a Motion to Compel Arbitration and an Opposition to Motion for Certification of Class, both of which are incorporated herein by this reference.

This action should be stayed and Defendants' Motion to Compel Arbitration should be granted.

II. PLAINTIFFS HAVE FAILED TO SATISFY A CONDITION PRECEDENT TO COMMENCEMENT OF THIS ACTION

As set forth in Defendants' Opposition to Motion for Certification of Class, Plaintiffs have failed to satisfy contractual conditions precedent to commencing this litigation. As a result, this action should be dismissed and the motion denied.

III. THE RELIEF REQUESTED IS INAPPROPRIATE UNDER NRCP 23(d)

A. Legal Standards

NRCP 23(d) authorizes courts, in appropriate circumstances, to regulate communication between a party and members of a class or putative class. See Gulf Oil v. Bernard, 452 U.S. 89 (1981). However, an order limiting communications between parties and potential class members should be based on a "clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties." Id. at 101-102. Any order should be carefully drawn and limit speech as little as possible. Id.

When a proposed protective order under Rule 23(d) involves "serious restraints on expression", the movant must demonstrate that "the restraint is justified by a likelihood of serious abuses." Id. at 104. Suggestions of "unsubstantiated fears" are not sufficient for a protective order under Rule 23(d). Gottstein v. Nat'l Ass'n for the Self Employed, 186 F.R.D. 654, 658 (D.

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Rule 23 "is not intended to permit a private litigant to enhance his own bargaining power by a claim that he is acting for a class of litigants." Free World Foreign Cars, Inc. v. Alfa Romeo, S.p.A., 55 F.R.D. 26, 30 (S.D.N.Y. 1972). Further, putative class members are not represented by Plaintiffs' attorneys, such that Defendants' contact with putative class members is not prohibited. See Atari, Inc. v. Superior Court, 166 Cal. App. 3d 867, 212 Cal. Rptr. 773 (1985); Bell v. Addus Healthcare, Inc., 2007 WL 2752893 (W.D. Wash. 2007)). As stated by the ABA's Committee on Ethics and Professional Responsibility, "putative class members are not represented parties for purposes of the Model Rules prior to certification of the class and the expiration of the opt-out period." ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 07-445, at 3 (2007).[1]

Courts have routinely recognized that the moving party must present an evidentiary showing of actual or threatened abuse by the party sought to be restrained. Cox Nuclear Med. v. Gold Cup Coffee Servs., Inc., 214 F.R.D. 696, 697 (S.D. Ala. 2003).[2] Two kinds of proof are required. First, the movant must show that a particular form of communication has occurred or is threatened to occur. Id. Second, the movant must show that the particular form of communication at issue is abusive in that it threatens the proper functioning of the litigation. Id.

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[1] Even if the class was certified, Defendants (without counsel) would not be precluded from contacting individual class members.

[2] As cited in Cox: See, e.g., O'Brien v. Morse, 2002 WL 1290392 at *2 (N.D.Ill.2002) ("A protective order should only be issued if the record reflects a clear finding of potential abuse."); Basco v. Wal-Mart Stores, Inc., 2002 WL 272384 at *3 (E.D.La.2002)("Courts should not limit communications without a specific record showing by the moving party of the particular abuses by which it is threatened."); Lee v. American Airlines, Inc., 2002 WL 226347 at *2 (N.D.Tex.2002)(the plaintiff "failed to allege or prove that Defendant was engaged in any abusive or unethical communications"); Payne v. Goodyear Tire & Rubber Co., 207 F.R.D. 16, 20 (D.Mass.2002)("Considering all the evidence put forth by the plaintiffs, [they] have failed to show that the defendant has engaged in any threatened or actual abusive or unethical communications with putative class members."); Hammond v. City of Junction City, 2002 WL 169370 at *3 (D.Kan.2002)("The record must show the particular abuses that have occurred or that are threatened ...."); Jenifer v. Delaware Solid Waste Authority, 1999 WL 117762 at *4 (D.Del.1999)("There must be some evidence that justifies an interference with [the defendant's] speech."); Burrell v. Crown Central Petroleum, Inc., 176 F.R.D. 239, 244 (E.D.Tex.1997)("Absent a clear record and specific findings of realized or threatened abuses, an order cannot be justified under the relevant standard."); *id.* at 245 ("Without evidence of coercion, misleading statements, or efforts to undermine the purposes of Rule 23, the court cannot make the proper findings required by the Supreme Court in Gulf Oil Co. v. Bernard."); Bublitz v. E.I. duPont de Nemours & Co., 196 F.R.D. 545, 547 (S.D.Iowa 2000) (Bernard "set forth a broad principle that limitations on communications with potential class members must derive from evidence in the record"); Hoffman v. United Telecommunications, Inc., 111 F.R.D. 332, 336 (D.Kan.1986)("To support limitations against its communicating with individual employees who may be claimants, the moving party should supply the court with facts, supported by the record, as distinguished from stereotyped or conclusory statements.").

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at 697-698. Abusive practices that have been considered sufficient to warrant a protective order include communications that coerce prospective class members into excluding themselves from the litigation; communications that contain false, misleading or confusing statements; and communications that undermine cooperation with or confidence in class counsel. Id.

B. Argument

1. Plaintiffs' Proposed Order Precludes Defendants From Communicating With Customers Who Have Suffered No Injury

As set forth in Defendants' Opposition to Motion to Certify Class, Plaintiffs are proposing a class definition that includes all Rapid Cash customers who have a default judgment entered against them whose service of process was established by an affidavit signed by a representative of On Scene Mediations. Such a definition includes customers who were properly served and over which the Rapid Cash Defendants have obtained completely valid default judgments. Plaintiffs seek to prevent Rapid Cash from taking collection actions against these customers and enforcing Rapid Cash's legally valid judgments.

Even limiting the definition of the class to those customers who were not, in fact, served process is insufficient. As further set forth in Defendants' Opposition to Motion for Class Certification, such a definition would be improper and unworkable because it does not allow ascertainment or identification of class members by any objective measure. Simply put, the Rapid Cash Defendants would not know who fell within the class and was entitled to protection of a "no contact order" until after liability had been determined on a customer by customer basis.

2. No Showing Has Been Made

Plaintiffs seek a no contact order precluding Defendants or their counsel from contacting putative class members, including garnishment on Defendants' judgments against putative class members. Plaintiffs improperly base the need for a no contact order on "unsubstantiated fears" of what might happen. Plaintiffs have wholly failed to present any evidence that the Rapid Cash Defendants have made any abusive communication to members of the putative class.

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The closest Plaintiffs can get to any support for their argument is that the Rapid Cash Defendants are executing on default judgments. Surely, any collection or garnishment proceedings to attempt to collect upon what the Rapid Cash Defendants believe to be legally valid default judgments cannot suffice to satisfy Plaintiffs' burden. Plaintiffs have no evidence that the judgments obtained by Defendants against the putative class are not valid. To preclude Defendants' execution on all of its judgments without evidence that those judgments are somehow invalid would be devastating and heavy-handed, and would be the opposite of the "fairness" required under NRCP 23(d). Plaintiffs should be required to make an evidentiary showing before a such an order enters, especially because, up to this point, Plaintiffs have produced nothing but "unsubstantiated fears."

IV. A PRELIMINARY INJUNCTION IS INAPPROPRIATE

A. Legal Standards

A preliminary injunction is available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damages is an inadequate remedy. *Number One Rent-A-Car v. Ramada Inns,* 94 Nev. 779, 780, 587 P.2d 1329, 1330 (1978). NRCP 65 further provides, in part as follows:

> **(c) Security.** No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof.
>
> **(d) Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

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B. Argument

1. Plaintiffs Fail to Demonstrate a Likelihood of Success on the Merits

Plaintiffs have presented no evidence to support their Motion. A preliminary injunction motion is not a NRCP 12(b)(5) motion where the allegations in a complaint are to be taken as true; a preliminary injunction should be denied without testimony or exhibits establishing the material grounds for the injunction. Coronet Homes, Inc. v. Mylan, 84 Nev. 435, 437, 442 P.2d 901, 902 (1968). Here, Plaintiffs seek a preliminary injunction despite their lack of evidence to support their claims. Specifically, Plaintiffs have no evidence that Defendants entered into a "scheme" involving "affirmative dishonesty";[3] no evidence that Plaintiffs had an "ulterior purpose" or engaged in a "willful act" to abuse process;[4] no evidence that Defendants did not check the background of the process server or that such a background check would have revealed that the process server was not licensed;[5] no evidence that not all members of the putative class were served.[6]

Further, and fatal to several of Plaintiffs' claims, Plaintiffs' fail to either allege or prove that On Scene Mediations was required to obtain a license from the Nevada Private Investigators Licensing Board . Plaintiffs state as follows:

> Here, Rapid Cash hired an unlicensed process server. This meant the Nevada Private Investigators Licensing Board ("PILB") did not have the opportunity to discharge its obligation of due diligence to screen Maurice Carroll/On Scene Mediations. (And, apparently, Rapid Cash did not do so independently).
>
> [Motion at 10:25 - 11:1].

This allegation is spun out of invisible thread and obviously without any investigation or inquiry whatsoever. If given the opportunity at an evidentiary hearing, the Rapid Cash Defendants are prepared to prove that as early as October 2006, the Rapid Cash Defendants contacted the PILB through the Nevada Attorney General's Office to inquire about the licensing

[3] See Motion, p. 10, ll. 13-18; discussing the required elements of Plaintiffs' Fraud Upon the Court claim.

[4] See Motion, p. 12, ll. 5-8; discussing the required elements of Plaintiffs' Abuse of Process claim.

[5] See Motion, p. 13, ll. 12-23; discussing the required elements of Plaintiffs' Negligent Hiring claim.

[6] See Motion, p. 15, ll. 6-9; discussing Plaintiffs' Negligence claim.

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requirements and status for Maurice Carroll and On Scene Mediations. In addition to informing the PILB that Mr. Carroll was serving process for the Rapid Cash Defendants, the Rapid Cash Defendants provided the PILB with a letter from a licensed member of the Nevada State Bar stating that Carroll and On Scene Mediations were employees of the law firm. The Rapid Cash Defendants were informed by the Attorney General's Office that, based upon the representations of the attorney that Carroll and On Scene Mediations were her employees, neither Carroll nor On Scene Mediations was required to obtain a license and that they could continue to serve process for the Rapid Cash Defendants. Thus, not only did the PILB have the " opportunity to discharge its obligation of due diligence to screen Maurice Carroll/On Scene Mediations," it gave the Rapid Cash Defendants the green light to continue using him/them for service of process.

Not only have Plaintiffs failed to present proof that none of the proposed class were, in fact, served with process, it cannot do so without calling each customer against whom a default judgment has been obtained as a witness. Nor can Plaintiff demonstrate a systematic procedure and policy of non-service for all customers of the Rapid Cash Defendants. As set forth in the Affidavit of Mark S. Dzarnoski attached as Exhibit A to Defendants' Opposition to Motion to Certify Class, Mr. Dzarnoski has spoken with Detective Nate Chio, Criminal Intelligence, Las Vegas Metropolitan Police Department. Mr. Chio has informed Mr. Dzarnoski that his investigation has included interviews with numerous customers of Rapid Cash who have acknowledged that they were served process by representatives of On Scene Mediations.

In light of the total lack of evidence provided by Plaintiffs and the above proffer of evidence, it cannot be said that Plaintiffs enjoy a probability of success on the merits for class wide relief.

2. Plaintiffs Fail to Demonstrate Irreparable Harm.

In addition to its failure to establish the likelihood of success on the merits, Plaintiffs also fail to meet their required showing to establish the existence of the threat of irreparable harm. See Sobol v. Capital Mgmt. Consultants, Inc., 102 Nev. 444, 726 P.2d 335 (1986). Plaintiffs argue that the putative class members' credit reports will be harmed if an injunction is not entered. Motion, p. 16, ll. 6-16. However, Plaintiffs overlook (but do not dispute) that Plaintiffs

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were in default of their loan obligations to Defendants prior to any Justice Court action being commenced. As a result of Plaintiffs' default, Defendants could properly make a negative report to credit reporting agencies. To put it plainly, any damage to Plaintiffs' credit is a result of their default of loan obligations which are not disputed rather than the subsequent judgments.

3. A Substantial Bond Would Be Required.

NRCP 65(c) requires the posting of a bond "for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." By way of their Motion, Plaintiffs would have the Court enter an order precluding Defendants from pursuing their collection efforts on all default judgments entered against Rapid Cash customers based upon affidavits of service signed by representatives of On Scene Mediation. This would include valid default judgments obtained after proper legal service.

By Plaintiffs own allegations, the number of customers involved could exceed 16,000. Even if the number of customers who did not receive proper service was in the hundreds, such an injunction could affect over ten thousand collection actions on perfectly valid judgments. If the average judgment is $500, the Rapid Cash Defendants would potentially suffer damages of $500,000 per 1,000 valid judgments that the Rapid Cash Defendants could not collect upon. Such an injunction would choke off virtually 100% of the Rapid Cash Defendants' current cash flow and potentially put it out of business. Further, during the collection hiatus, many of the putative class members would undoubtedly disappear from the Rapid Cash Defendants' vision and/or assets of the putative class members could be moved during the pendency of any injunction.

Thus, if the Court considers issuing a preliminary injunction, the bond requirement should be substantial.

4. A More Limited Injunction Cannot Be Reasonably Specific In Its Terms

As set forth in Defendants' Opposition to Motion for Certification of Class, any modified definition of the class which limits it to those customers who did not receive service of process is flawed because the class members cannot be identified or ascertained by any objective measurement. This would also be fatal to an injunction. Neither the Defendants nor the Court would know which customers the Rapid Cash Defendants were enjoined from contacting or

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collecting upon until after trial.

V. CONCLUSION

For the above and foregoing reasons, Plaintiffs motion should be denied.

DATED this 8 day of October, 2010.

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Even Rapid Cash's communications with class members and their employers through the process of garnishing wages (to collect upon the void default judgments) would constitute the dissemination of false or misleading information because it tacitly (and erroneously) suggests that Rapid Cash has the legal ability to enforce those void judgments. This Court has the power and authority under NRCP 23(d) to enjoin that conduct to protect the class members from Rapid Cash's further undue influences.

In fact, it is the duty of Class counsel and of the Court to protect the remedies available to the Class and to protect the integrity of the Class. In In re Currency Conversion Fee Antitrust Litigation, 361 F.Supp.2d 237, 252-53 (S.D.N.Y., 2005), speaking to defense communication with *potential* class members *prior to class certification*, the Court said:

> A court has supervisory authority over a defendant's communications with putative class members. See Fed. R. Civ. P. 23(d). * * * A court must take steps to further the policies embodies in Rule 23. One policy of Rule 23 is the protection of class members from "misleading communications from the parties or their counsel." (Citation omitted). * * * Communications that threaten the choice of remedies available to class members are subject to a district court's supervision . . . * * * [S]ee also Keystone Tobacco Co., Inc. v. U.S. Tobacco Co., 238 F.Supp.2d 151, 154 (D.D.C., 2002) ("The Court rejects defendants' position that it has no authority to limit communications between litigants and putative class members prior to class certification."); Ralph Oldsmobile, Inc. v. GMC, 2001 U.S. Dist. LEXIS 13893, No. 99 Civ. 4567 (AGS), 2001 WL 1035132, at (S.D.N.Y. Sept. 7, 2001) ("[A] court's power to restrict communications between parties and potential class members [ ] appl[ies] even before a class is certified." * * * A district court's duty and authority under Rule 23(d) to protect the integrity of the class and the administration of justice generally is not limited only to those communications that mislead, threaten to create confusion or attempt to influence the threshold decision whether to remain in the class. Communications that seek or threaten to influence the choice of remedies are . . . within a district court's discretion to regulate. * * * Indeed, when a defendant contacts putative class members for the purpose of altering the status of a pending litigation, such communication is improper without judicial authorization.

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See also Hampton Hardware, Inc. v. Cotter & Co., 156 F.R.D. 630,632 (D.Tex., 1994) (concluding in a potential class action case that a defendant's communications affecting a class member's decision to participate in the litigation were improper, and issuing a non-communication order pursuant to FRCP 23(d) *prior to* class certification).

Rule 23(d) grants this Court the most broad authority in the conduct of this class action. "In class actions we recognize, indeed insist upon, the court's participation as the manager of the case . . . Fed. R. Civ. P. 23(d) grants particularly broad powers to a court in managing a class action . . ." In re Air Crash Disaster at Florida Everglades on December 29, 1972, 549 F.2d 1006, 1012 (C.A.Fla., 1977) (Footnote 8) (*Citing* Huff v. N.D. Cass. Co., 485 F.2d 710, 713 (5th Cir., 1973) (other citations omitted)(Holding that the district court judge had power to award compensation to Committee to be paid by other plaintiff counsel out of fees they were entitled to receive). "Subsection (d) of our rule further provides that at any stage of the litigation the court may impose terms that will fairly and adequately protect the interests of the class." First Nat. Bank of Fort Smith v. Mercantile Bank of Jonesboro, 304 Ark. 196, 199, 801 S.W.2d 38, 40 (Ark., 1990) (dispute over adequacy of class representatives).

> "It has long been recognized that a Court has the inherent power to enter such Orders as may be necessary to the proper administration of the litigation before it. This concept is embodied in Rule 23(d), Federal Rules of Civil Procedure, which provides, inter alia, that the Court, in class actions such as these, 'may make appropriate orders: (1) determining the course of the proceedings * * * (3) imposing conditions on the representative parties * * * (and) (5) dealing with similar procedural matters.'"

See also, Peoples v. Wainwright, 325 F.Supp 402, 403 (D.C.Fla., 1971) (class action by inmates of state prison alleging that correspondence between prisoners and their counsel of record has been systematically opened, read, and censored by prison administration).

Courts in class actions have used Rule 23(d) to craft theretofore unique orders, for

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example, ordering a defendant to set aside funds to insure the availability of money to pay a judgment. "In class action suits filed in federal court, the district court's power to set aside funds derives from the court's inherent power to manage its own docket and its power under Rule 23(d) of the Federal Rules of Civil Procedure to make such orders as necessary to manage the class action." Turner v. Murphy Oil USA, Inc., 422 F.Supp.2d 676, 681 (E.D.La., 2006) (citing In re Air Crash Disaster at Florida Everglades, 549 F.2d 1006, 1021(5th Cir., 1977) (District Court would impose set asides, in class action brought by homeowners and business owners against oil refinery for damage allegedly sustained as a result of a post-Hurricane Katrina oil spill, to ensure that there would be adequate funds available for attorneys' fees under common-benefit or common-fund doctrine if claims were successful). "Because of the potential for abuse, a district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties." Payne v. Goodyear Tire & Rubber Co., 207 F.R.D. 16, 17 (D.Mass., 2002) (quoting Gulf Oil Co. v. Bernard, 452 U.S. 89, 100, 101 S.Ct. 2193, 2200 (1981).

Notably, the broad discretion conferred by Rule 23(d) also allows the courts to issue protective orders. To illustrate, the Eleventh Circuit Court in Kleiner v. First National Bank of Atlanta affirmed the issuance of a protective order prohibiting solicitation of class exclusion requests from plaintiff class members. *See* Kleiner v. First National Bank of Atlanta, 751 F.2d 1193 (11th Cir., 1985). While the defendant bank claimed they contacted plaintiffs to alleviate confusion surrounding the class action, the court rejected the excuse. Id. at 1201 n.16. Indeed, the court declared that the bank clearly intended to solicit exclusions and thus decreased its own liability. Id. Additionally, the court noted that in regards to the order, "the more relaxed prerequisites of Rule 23(d)" applied rather than Rule 65. Id. at 1201 (emphasis supplied).

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Specifically, a court may issue a protective order under Rule 23(d) so long as the order is within the court's power and specific enough for the parties to understand what the court requires of them. Id. The court found both criteria met. Id. Also, because soliciting exclusion requests reduced efficiency and undermined the purpose of the class action, the Court held the District Court properly made the protective order. Id. at 1202-03.

There is simply no dispute that Rule 23(d) affords this Court the broad powers to manage this class action, or that this Court has a duty to protect the interests of all class members in this action by issuing procedural orders that accomplish that goal. Accordingly, this Court should issue a Rule 23 no-contact order prohibiting the Defendants from contacting the Plaintiffs and the class members except through counsel, which includes a provision preventing Rapid Cash and its agents from taking any actions to enforce or collect upon the void judgments.

IV. ALTERNATIVELY, A PRELIMINARY INJUNCTION IS APPROPRIATE

Although Rule 23(d) plainly grants this Court the broad power to protect the class members from the contact by, and unlawful collection activities of, Rapid Cash and its agents, that same relief is also available through this Court's equitable power to grant injunctions.

A. Applicable Standards

Article 6, Section 6 of the Nevada Constitution specifically grants the district courts power to issue writs of injunction. *See* Nev. Const. Article 6 § 6(1). A preliminary injunction is available upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the non-moving party's conduct, if allowed to continue, will result in irreparable harm for which compensatory damage is an inadequate remedy. Dep't of Conservation & Natural Res., Div. of Water Res. v. Foley, 121 Nev. 77, 109 P.3d 760, 762

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(2005).

Generally, the question whether to grant or deny a preliminary injunction is up to the discretion of the district court. Nevada v. NOS Communications, Inc., 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004). This court has the discretion to prohibit further Rapid Cash litigation and collection activities on void default judgments.

B. The Class Enjoys a Reasonable Probability of Success on the Merits

1. Independent Action in Equity for Fraud Upon the Court

Fraud on the court can be intrinsic or extrinsic. Intrinsic fraud generally refers to fraud related to the cause of action and includes fraud upon the court, while extrinsic fraud involves fraud which is unrelated or collateral to the litigation. 11 CHARLES ALAN WRIGHT ET AL., Federal Practice and Procedure § 2861 (2d ed. 1995). Intrinsic fraud includes fraud on the court, which the Ninth Circuit Court of Appeals held must constitute "an unconscionable plan or scheme which is designed to improperly influence the court in its decisions." England v. Doyle, 281 F.2d 304, 309 (9th Cir. 1960). The Ninth Circuit has also described intrinsic fraud as "intentional fraud involving affirmative dishonesty." Cataphonte Corp. v. DeSoto Chem. Coatings, 450 F.2d 769, 772 (9th Cir. 1972) (in a case involving patent fraud). Extrinsic fraud consists of fraud which keeps one party away from the court and unaware of potential claims or defenses. Libro v. Wells, 103 Nev. 540, 542-43, 746 P.2d 632, 634 (1987). This type of fraud deprives the other party of a reasonable opportunity to be heard. *See, e.g.,* Savage v. Salzmann, 88 Nev. 193, 195, 495 P.2d 367, 368 (1972).

Here, Rapid Cash hired an *unlicensed* process server. This meant the Nevada Private Investigators Licensing Board ("PILB") did not have the opportunity to discharge its obligation of due diligence to screen Maurice Carroll/On Scene Mediations. (And, apparently, Rapid Cash

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did not do so independently.) Indeed, in 2003, when PILB did investigate a complaint against Maurice Carroll/On Scene Mediations, it affirmatively ordered him to stop doing business. He did not do so. Yet, Rapid Cash hired Maurice Carroll/On Scene Mediations anyway. And as a result, felons were purportedly serving process for Rapid Cash in payday loan lawsuits against the Class. Moreover, Rapid Cash employed Maurice Carroll/On Scene Mediations *for years* (believed to be 2004-2010). This alone is more than enough to hold Rapid Cash accountable. But, further, and as alleged in detail in the Complaint, there existed a pattern detectable to any honest and responsible person who cared to look—and noticed by Judges Sullivan and Saragosa once they began hearing the Justice Court civil docket---showing On Scene Mediations' Affidavits of Service could not possibly all be honest as they were purportedly served under highly dubious and suspicious circumstances.

Failure to provide notice of legal proceedings undermines the foundation of the legal system. Due to repeated and persistently falsified Affidavits of Service, victims were not notified of pending suits against them and therefore were deprived of due process of law (Due Process Clause of Nev. Art. 1, Sec. 8). As a direct result, Rapid Cash won void default judgments. This case, above all others, cries out for immediate and forceful Court involvement.

The outcome to date has been that Rapid Cash has obtained hundreds if not thousands of void default judgments, *and continues every day* to use those void default judgments to garnish and attach property of the Class---garnishments and attachments which Rapid Cash has absolutely no right to use the Clark County Justice Courts and the Clark County Constables to enforce. Each and every day, Rapid Cash thumbs its nose at the law and makes a mockery of justice in Clark County, Nevada. This must stop. Now.

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The Class has demonstrated a reasonable probability of success on its claim in equity for fraud upon the court.

2. Abuse of Process

Abuse of process requires two elements; an ulterior purpose by a party other than resolving a legal dispute, and a willful act in the use of the legal process not proper in the regular conduct of the proceeding. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d, 877, 879 (2002). Rapid Cash purported to fulfill its responsibility under JCRCP 4 to serve process by employing On Scene Mediations, which intentionally and willfully failed to effect service of process on the Class.

a. Rapid Cash's ulterior motive in hiring On Scene Mediations was to obtain an impossibly high number of summons/complaints served and that such service would result in an unusually low number, even for this population, of answering defendants.

The plaintiff must allege specific facts that point to an ulterior purpose for which the defendant issues legal process. *See LaMantia*, 118 Nev. at 30. The hinge is the misuse of normal legal process. *Nevada Credit Rating Bureau, Inc. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9 (1972). Here, Rapid Cash hired an unlicensed process server to serve process. That alone should be enough to hold Rapid Cash accountable. But, further, and as alleged in detail in the Complaint, there existed a pattern detectable to any honest and responsible person who cared to look---and noticed by Judges Sullivan and Saragosa once they began hearing the Justice Court civil docket---showing On Scene Mediations' Affidavits of Service could not possibly all be honest as they were purportedly served under highly dubious and suspicious circumstances.

As alleged in the Complaint, upon information and belief, Rapid Cash utilized On Scene Mediations to effect service of process when Rapid Cash knew or was willfully blind to and recklessly disregarded the fact that On Scene Mediations was falsifying Affidavits of Service

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which Rapid Cash then filed in a court of law. Rapid Cash's ulterior purpose was to obtain default judgments by denying the Class due process of law.

*b. **Rapid Cash employed On Scene Mediations willfully and intending that the Class would not be properly served in order to obtain a higher number of default judgments.***

The second element for abuse of process can be established by showing that acts complained of were willful and were not proper in the regular conduct of the proceeding. *See Childs v. Selznick*, 2009 Nev. Lexis 87, *3. The facts already stated establish this element as well.

3. Negligent Hiring/Supervision/Retention

In Nevada, a cause of action for negligent hiring will stand where there is ". . . a general duty on the employer to conduct a reasonable background check on a potential employee to ensure that the employee is fit for the position." Hall v. SSF, Inc. 112 Nev. 1384, 1392, 930 P.2d 94, 98 (Nev., 1996) (*Citing* Burnett v. C.B.A. Security Service, 107 Nev. 787, 789, 820 P.2d 750, 752 (1991)). That duty is breached when an employer hires an employee even though the employer knew, or should have known, of that employee's "dangerous propensities." Id. (Citing Kelley v. Baker Protective Services, Inc., 198 Ga. App. 378, 401 S.E.2d 585, 586 (Ga. Ct. App. 1991)). An employer may not be required to anticipate negligent or tortious behavior by a contractor, unless the employer "...either knew, or in the exercise of reasonable care might have ascertained, that the contractor was not properly qualified to undertake the work." Burke v. Quick Lift, Inc., 668 F.Supp. 2d 370, 381, 384 (E.D.N.Y., 2009) (*Quoting:* Maristany v. Patient Support Servs., Inc., 264 A.D.2d 302, 693 N.Y.S.2d 143, 145 (App. Div. 1999) (analyzing New York law)). "To hold a party liable under theories of negligent hiring, negligent

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retention, and negligent supervision, a plaintiff must establish that the party knew or should have known of the contractor's propensity for the conduct which caused the injury." Id.

From the facts alleged, Rapid Cash knew or should have known that On Scene Mediations was not a licensed process serving company. That is enough for the negligent hiring claim. But then the facts establish as well a compelling case for negligent supervision and certainly retention. It would have been evident to any responsible person employing even a minimal amount of oversight that On Scene Mediations' Affidavits of Service were suspicious. Yet, Rapid Cash continued to employ On Scene Mediations, evidently as its sole process server *for years*, and filed those Affidavits of Service in a court of law.

4. Negligence

To prevail on a negligence theory, a plaintiff generally must show that: (1) a defendant owed a duty of care to the plaintiff; (2) a defendant breached that duty; (3) the breach was the legal cause of the plaintiff's injury; and (4) a plaintiff suffered damages. Bower v. Harrah's Laughlin, Inc., 215 P.3d 709, 724, 125 Nev. Adv. Rep. 37 (2009) (*Quoting:* Doud v. Las Vegas Hilton Corp., 109 Nev. 1096, 1100 (1993)).

Public policy justifies the imposition of a duty of care on the part of process servers to the person served. Kappel v. Bartlett, 200 Cal. App. 3d 1457, 1464, 246 Cal Rptr. 815 (1988).

> "[T]he policy of encouraging process servers to perform their function responsibly is a sound one, justifying imposition of a legal duty of care towards the individual being served. The judicial system relies upon process servers to ensure that the due process rights of a defendant are protected, and potentially severe consequences are likely to result for a defendant when a process server does not perform his task as prescribed by law." Kappel v. Bartlett, 200 Cal. App. 3d 1457, 1464, 246 Cal Rptr. 815 (1988) *citing* Slaughter v. Legal Process & Courier Service, 162 Cal.App.3d 1236, 1249, 209 Cal.Rptr. 189 (1984).

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The Kappel court agreed that the process server acted as an agent and that was sufficient to hold all defendants, the process server and the persons who hired him, for trial on the issue of respondeat superior. Id. at 1466, 820. Both Rapid Cash and On Scene Mediations had a duty of care to ensure that members of the Class were properly served.

Both Rapid Cash and On Scene Mediations breached that duty when On Scene Mediations failed to serve the members of the Class, and breach of that duty caused injury to the Class. The Class has a reasonable probability of success on its claim of negligence.

5. NRS Chapter 604A

Rapid Cash is licensed, operates, and is subject to the provision of NRS Chapter 604A. NRS 604A.415(1) provides:

> If a customer defaults on a loan, the licensee may collect the debt owed to the licensee only in a professional, fair and lawful manner.

Rapid Cash violated NRS 604A.415(1) when in collecting the debt owed by a customer who had defaulted, it failed to act in a fair and lawful manner in that it (a) hired On Scene Mediations to fulfill its responsibility to serve summons and complaint on the Class when it knew or should have known that On Scene Mediations was unlicensed, (b) continued to employ and failed to supervise On Scene Mediations to fulfill Rapid Cash's responsibility to serve summons and complaint on the Class after it knew or should have known On Scene Mediations was falsifying returns of service, (c) obtained void default judgments based on invalid service of process; and (d) failed to voluntarily set aside all void default judgments obtained against the Class once it learned of On Scene Mediations' pattern of conduct.

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The Class has a cause of action against Rapid Cash for said violations of NRS 604A.415(1) pursuant to NRS 604A.930, and enjoys a substantial likelihood of success on a claim that Rapid Cash violated NRS 604A.415(1).

C. The Class will Suffer Irreparable Harm

The Class is suffering irreparable harm for which compensatory damages are an inadequate remedy if Rapid Cash is not stopped: it is common knowledge that the credit reporting agencies pick up and report judgments on every consumer's credit. If the theory of liability asserted by the Class herein is correct, the judgments are void. It is also common knowledge that negative reports from credit reporting agencies can hamper a consumer's chances of obtaining credit for years. And attempting to award compensatory damages for a judgment which was wrongfully taken but, technically, is truthfully reported on one's credit report is inadequate at best. A preliminary injunction is necessary because compensatory damages alone are inadequate in this situation.

The Supreme Court of Nevada has recognized that damage to reputation can be considered irreparable harm, stating:

> CMC's alleged usurpation of the name "Physicians Medical Center" clearly interferes with the operation of a legitimate business by creating public confusion, infringing on goodwill, *and damaging reputation in the eyes of creditors.* To allow CMC to continue this conduct pending a determination on the merits of Sobol's complaint may result in irreparable damage to Sobol.

Sobol v. Capital Management Consultants, Inc., 102 Nev. 444, 445, 726 P.2d 335, 337 (1986) (emphasis added) (Court concluded that district court had exceeded the bounds of judicial discretion by denying plaintiff's motion for a preliminary injunction). *See also:* AIG Risk Management, Inc. v. Motel 6 Operating L.P., 960 S.W.2d 301, 309 (Tex. Ct. App. 1998) (recognizing that damage to credit and reputation for creditworthiness is irreparable harm for

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which injunction may be issued); Countrywide Home Loans, Inc. v. Arbitration Alliance Int'l, 2004 WL 987131 at *8 (D. Utah, April 14, 2004) (unreported) ("Plaintiffs would be subjected to irreparable harm, including potential damage to their credit ratings . . . . The issuance of the preliminary injunction will prevent said irreparable harm from occurring"). Because the existence of void default judgments damages each victim's credit reputation, and because damage to one's reputation is irreparable harm, a preliminary injunction is appropriate and necessary.

Should the Class prevail, compensatory damages will not suffice to put the Class members back in the position they were in before the void default judgments were taken. First, lost opportunities at consumer credit are extremely difficult to quantify, and would involve an individual inquiry into the credit history of each victim. Such an inquiry is not amenable to class treatment in this or any other class action. Second, assuming each victim were put to the exceedingly time consuming task of contacting numerous credit reporting agencies to urge them to correct their records, we all know such contacts would fall on deaf ears because the credit reporting agencies would simply point to the Rapid Cash judgment; whether the judgment is void is not their concern.

D. Any Bond Requirement Should Be Minimal

Should this Court grant this requested relief under Rule 65 instead of Rule 23(d), any bond requirement should be nominal at most. NRCP 65(c) provides, "No . . . preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper . . . ." Nev. R. Civ. Proc. 65(c). The purpose of this security requirement is to protect the opposing party in the event that he is wrongfully enjoined only. American Bonding Co. V. Roggen Enters., 109 Nev. 588, 591, 854 P.2d 868, 870 (1993). In Barahona-

Gomez v. Reno, 167 F.3d 1228 (9th Cir., 1998) (upholding the District Court's injunction prohibiting enforcement of an amendment to the Immigration and Naturalization Act (INA), which injunction in effect prohibited the government from deporting a certain class of aliens), the Ninth Circuit upheld the District Court's decision requiring the posting of a $1,000 bond from the Class pursuant to Rule 65(c), specifically noting "the public interest underlying the litigation and the unremarkable financial means of the class as a whole." *Id.* at 1237.

In the remote event a preliminary injunction entered herein is later found to have been improvidently issued, Rapid Cash will have only *de minimus* losses. The losses would be only the post-judgment interest that would accumulate on amounts it would collect but for the preliminary injunction and until a hearing on a permanent injunction. The Class plans to aggressively pursue discovery and move for a permanent injunction as soon as possible. Accordingly, should this Court decide to award this requested relief through an injunctive order instead of one entered under NRCP 23(d), the bond requirement—if any—should be nominal.

V. CONCLUSION

The Class respectfully requests that this Court grant a Rule 23 no contact Order to preserve the integrity of the class, the remedies available to the Class, and to prevent the exercise of undue influence by Rapid Cash upon the Class, and including collection activity on void default judgments against the Class.

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In the alternative, the Class pursuant to NRCP 65 moves the Court to enter a Preliminary Injunction to preserve the *status quo*, with the same relief as that requested under Rule 23.

DATED this 9 day of September, 2010.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

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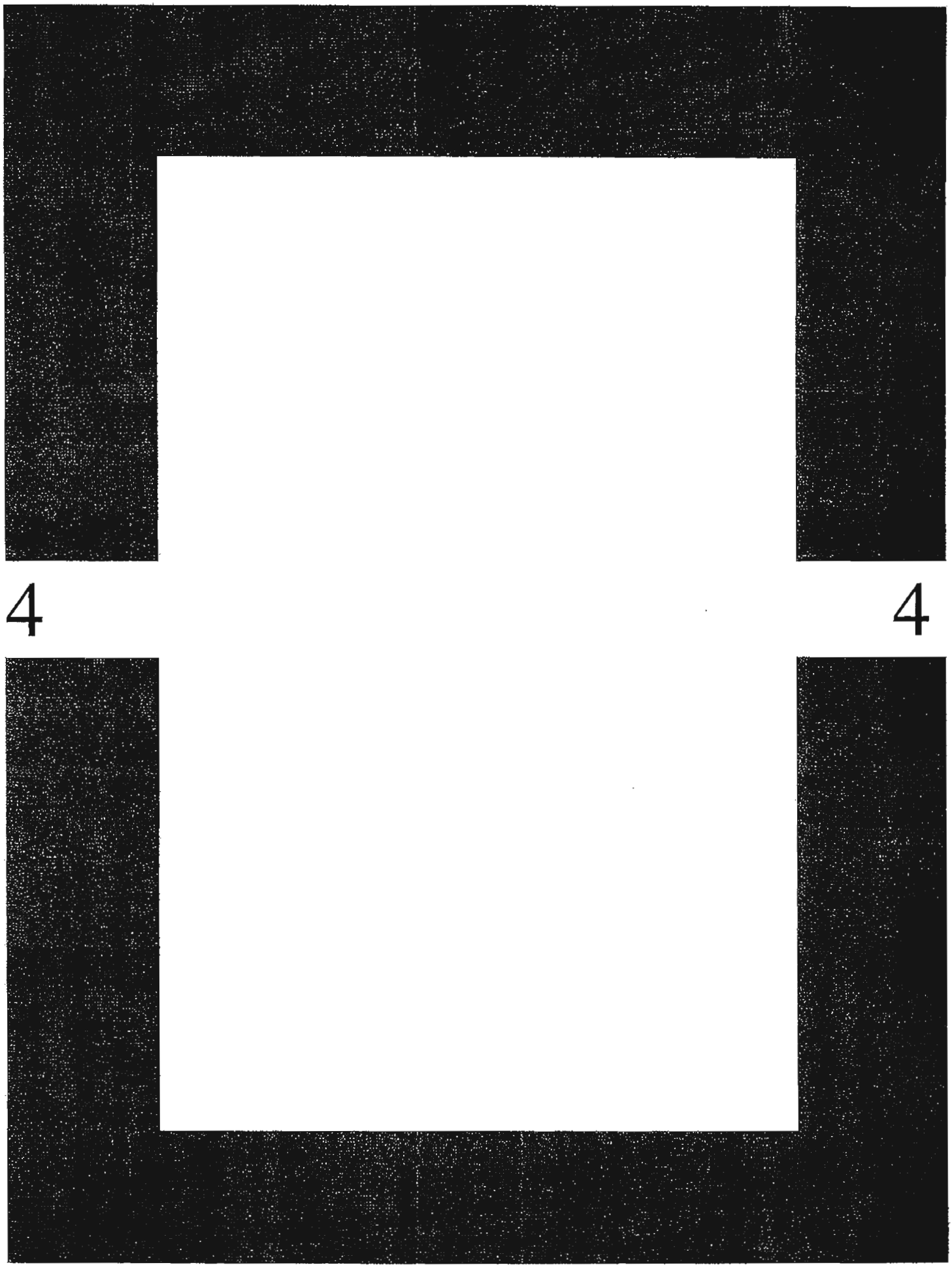

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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; ADVANCE GROUP, INC. d/b/a RAPID CASH; MAURICE CARROLL, individually and d/b/a ON SCENE MEDIATIONS; VILISIA COLEMAN, and DOES I through X, inclusive,

Defendants.

CASE NO. A-10-624982-B
DEPT. NO. XI

MOTION TO COMPEL ARBITRATION AND STAY ALL PROCEEDINGS;

APPLICATION FOR ORDER SHORTENING TIME

Date of Hearing: OCTOBER 12, 2010
Time of Hearing: 9:00 a.m.

FILE WITH
MASTER CALENDAR

Defendants 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 (the "Rapid Cash Defendants") hereby move this Court for an Order compelling arbitration of the matters set forth in Plaintiffs'

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Complaint on file herein and an Order Shortening Time to consider the Motion. These Motions are made and based upon the following Memorandum of Points and authorities, the Affidavit of Mark S. Dzarnoski, the Declaration of Richard Duke Gee attached hereto as **Exhibit 1** and any exhibits thereto, and any oral argument the Court may permit at the hearing of this matter.

DATED this 24 day of September, 2010.

GORDON SILVER

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ORDER SHORTENING TIME

Good Cause Appearing Therefore,

IT IS HEREBY ORDERED that the time for hearing of the foregoing Motion be and the same is hereby shortened to be heard on the 12 day of OCT., 2010, at the hour of 9:00 o'clock a.m., or as soon thereafter as counsel may be heard in Department XI.

IT IS FURTHER ORDERED that Plaintiffs shall file an Opposition to the Motion to Compel Arbitration, if any, on or before the ___ day of _____, 2010.

IT IS FURTHER ORDERED that Defendants shall file a Reply to Plaintiffs' Opposition to the Motion to Compel Arbitration, if any, on or before the ___ day of _____, 2010.

IT IS HEREBY ORDERED this 27 day of September, 2010.

DISTRICT COURT JUDGE

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AFFIDAVIT OF MARK S. DZARNOSKI, ESQ. IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Mark S. Dzarnoski, Esq., being first duly sworn, deposes and states as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am a shareholder of the law firm of Gordon Silver, attorneys for Defendants.

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

3. I make this Affidavit in support of the Application for Order Shortening Time in the matter styled Harrison, et al. v. Principal Investments, Inc. d/b/a Rapid Cash, et al., Case No. A-10-624982-B, filed in the Eighth Judicial District Court in and for Clark County, Nevada.

4. Plaintiffs commenced this action by filing a Complaint on or about September 9, 2010. On information and belief, the class action summons and complaint were received by the Defendants' Las Vegas registered agent on or about September 21, 2010. Gordon Silver has been retained to represent Defendants in this matter.

5. In addition to the Complaint, Plaintiffs filed, on September 9, 2010, a Motion to Certify Class which is currently set for in chambers disposition on October 15, 2010 and a Motion for Rule 23 No Contact Order or Preliminary Injunction currently scheduled for hearing on October 12, 2010 (collectively "Pending Motions"). The undersigned first obtained a copy of the Pending Motions on Friday afternoon September 17, 2010.

6. On information and belief, the named Plaintiffs in the underlying action all entered into loan agreements with Defendants which included an arbitration provision. The agreements entered into by the Rapid Cash Defendants with Plaintiffs are attached as Exhibits to the Declaration of Richard Duke Gee attached hereto as Exhibit 1. Defendants are exercising their rights to demand arbitration and are herewith filing a Motion to Compel Arbitration.

7. If set in the ordinary course, Defendants' Motion to Compel Arbitration will not

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be heard until after the dates set for disposition of the Pending Motions. The Pending Motions should not be considered until this Court determines whether the Plaintiffs' claims are subject to arbitration.

8. On Monday, September 20, 2010, the undersigned spoke with Plaintiffs' counsel, Dan Wulz, to discuss the possibility of entering into some kind of agreement to postpone the Court's consideration of the Pending Motions until after deciding Defendants' anticipated Motion to Compel Arbitration. On Thursday, September 23, 2010, the undersigned received an email from Mr. Wulz proposing terms for a possible agreement to delay the Court's consideration of the Pending Motions. However, no agreement has been reached between the parties as of the date of filing this Motion.

9. The above and foregoing establishes good cause for this Court to grant Defendants' Motion for Order Shortening Time and set a hearing date on Defendants' Motion to Compel Arbitration for a date and time prior to October 12, 2010.

FURTHER AFFIANT SAYETH NAUGHT.

Executed this 24 day of September, 2010.

MARK S. BZARNOSKI

SUBSCRIBED AND SWORN to before me
this 24 day of September, 2010.

NOTARY PUBLIC in and for said
County and State

ANNA DANG
Notary Public - State of Nevada
No. 08-8764-1
My Commission Expires Dec 5, 2012

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs applied for and obtained loans from the Rapid Cash Defendants on which they defaulted. Each loan agreement they executed -- and some of the Plaintiffs executed multiple loan agreements as they sought and obtained multiple loans -- contained agreements requiring Plaintiffs to individually arbitrate any and all claims against any of the Rapid Cash Defendants.

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Each of the Plaintiffs could have opted-out of their arbitration agreements or rescinded their loan transactions at no charge. They did not.

Notwithstanding the parties' arbitration agreements, Plaintiffs have commenced the instant class action. The Class Action Complaint contends that Plaintiffs' rights were violated by the Rapid Cash Defendants' collection efforts, and seeks a variety of forms of relief on behalf of Plaintiffs and the putative class, including compensatory damages, punitive damages, injunctive relief and the award of attorneys' fees. The Complaint purports to state claims for "Equity for Fraud upon the Court," abuse of process, negligent hiring/supervision/retention, negligence, civil conspiracy, violation of NRS Chapter 604A and violation of NRS Chapter 598.

Even if Plaintiffs' allegations were true and stated claims against the Rapid Cash Defendants, which they do not, they have been brought in the wrong forum. Rather, all of their individual claims are subject to individual (non-class) arbitration pursuant to the parties' Arbitration Agreements and the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1, et seq.

For the following reasons, the Rapid Cash Defendants respectfully request that this Court grant their Motion to Compel Arbitration and stay this action pursuant to the FAA.

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II. FACTS

(a) Plaintiffs' Loan Transactions And Arbitration Agreements.

Mary Dungan ("Dungan") sought a $600.00 loan in February 2009. Richard Duke Gee Affidavit ("Gee Affidavit") at ¶ 4; Complaint at ¶ 34. On February 25, 2009, she entered into the "Deferred Deposit Agreement & Disclosure Statement" ("Agreement"). Gee Affidavit at ¶ 4. A true and correct copy of the Agreement is attached to the Gee Affidavit as Exhibit A.

The third page of the Agreement contains the following heading in bold face and capitalization: "**ARBITRATION PROVISION**." Immediately thereafter, the Arbitration Provision provides in capitalized letters:

> VERY IMPORTANT. READ THIS ARBITRATION PROVISION CAREFULLY. IT SETS FORTH WHEN AND HOW CLAIMS (AS DEFINED IN SECTION 2 BELOW) WHICH YOU OR WE HAVE AGAINST ONE ANOTHER WILL BE ARBITRATED INSTEAD OF LITIGATED IN COURT. IF YOU DON'T REJECT THIS ARBITRATION PROVISION IN ACCORDANCE WITH

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> SECTION 1 BELOW, UNLESS PROHIBITED BY APPLICABLE LAW. IT WILL HAVE A SUBSTANTIAL IMPACT ON THE WAY IN WHICH YOU OR WE RESOLVE ANY CLAIM WHICH YOU OR WE HAVE AGAINST EACH OTHER NOW OR IN THE FUTURE.

The Arbitration Provision provides "that either party may elect to require arbitration of any Claim...."

The Arbitration Provision allowed Dungan the ability to opt-out of arbitration within 30 days by providing a written notice:

> 1. **RIGHT TO REJECT ARBITRATION.** If you do not want this Arbitration Provision to apply, you may reject it within 30 days after the date of your application ("Application") for check cashing, credit, loan or other services from us ("Services") [by delivering to us at any of our offices or] by mailing to us in care of Tiger Financial Management, LLC, Attn: Legal Department, 3527 North Ridge Road, Wichita, Kansas 67205, a written rejection notice which provides your name, address, the date of the Application, the address of the store where you submitted the Application and states that you are rejecting the related Arbitration Provision. If you want proof of the date of such a notice, you should send the notice by "certified mail, return receipt requested." If you use such a method, we will reimburse you for the postage upon your request. Nobody else can reject arbitration for you; this is the only way you can reject arbitration. Your rejection of arbitration will not affect your right to Services or the terms of Services. If you reject this Arbitration Provision, it shall have the effect of rejecting any prior arbitration provision or agreement between you and us that you did not have the right to reject; it will not affect any prior arbitration provision or agreement which you had a right to reject that you did not exercise.

Arbitration Provision at ¶ 1 (boldface in original). As stated above, Dugan's exercise of the opt-out right would have had no affect on her ability to obtain a loan or the terms of her loan.

Duggan did not exercise her right to opt-out of the Arbitration Provision. Gee Affidavit at ¶ 8.

The Arbitration Provision broadly defines "Claim" to cover every conceivable dispute: "The term 'Claim' means any claim, dispute or controversy between you and us (including 'related parties' identified below) that arises from or relates in any way to Services you request or we provide, now, in the past or in the future; the Application (or any prior or future

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application); any agreement relating to Services ('Services Agreement'); any of our marketing, advertising, solicitations and conduct relating to your request for Services; our collection of any amounts you owe; our disclosure of or failure to protect any information about you; or the validity, enforceability or scope of this Arbitration Provision." Arbitration Provision at ¶ 2. The Arbitration Provision defines "Services" as including a loan. Id. at ¶ 1.

The Arbitration Provision requires the individual arbitration of all Claims:

> 5. **NO CLASS ACTIONS OR SIMILAR PROCEEDINGS; SPECIAL FEATURES OF ARBITRATION**. IF YOU OR WE ELECT TO ARBITRATE A CLAIM, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (A) HAVE A COURT OR A JURY DECIDE THE CLAIM; (B) OBTAIN INFORMATION PRIOR TO THE HEARING TO THE SAME EXTENT THAT YOU OR WE COULD IN COURT; (C) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR CLASS OPPONENT; (D) ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; OR (E) JOIN OR CONSOLIDATE CLAIM(S) INVOLVING YOU WITH CLAIMS INVOLVING ANY OTHER PERSON. THE RIGHT TO APPEAL IS MORE LIMITED IN ARBITRATION THAN IN COURT. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION.

Arbitration Provision at ¶ 5 (boldface in original).

In the event of a successful individual arbitration, the Arbitration Provision provides that the award to Dungan would be increased to the jurisdictional limit of the small claims court with jurisdiction plus $100.00:

> In addition, if you prevail in an individual (non-class) arbitration against us in which you are seeking monetary relief from us, we agree that the arbitrator shall award as the minimum amount of your damages (excluding arbitration fees and attorneys' fees and costs, if any) an amount that is $100 greater than the jurisdictional limit of the small claims court (or your state's equivalent court) in the county in which you reside. For example, if such a court can decide claims up to $5,000, then if you prevail in an individual arbitration, you will receive a minimum of $5,100 even if the amount you would otherwise be entitled to receive is less than that amount.

Arbitration Provision at ¶ 8.

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The Arbitration Provision provides that it is governed by the Federal Arbitration Act: "This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA, and not Federal or state rules of civil procedure or evidence or any state laws that pertain specifically to arbitration, provided that the law of Kansas, where we are headquartered, shall be applicable to the extent that any state law is relevant in determining the enforceability of this Arbitration Provision under Section 2 of the FAA." Id.

The Arbitration Provision provides that Rapid Cash will consider paying all of the costs of arbitration and the arbitrator may award the successful borrower his attorneys' fees:

> We will consider any good faith request you make for us to pay the administrator's or arbitrator's filing, administrative, hearing and/or other fees if you cannot obtain a waiver of such fees from the administrator and we will not seek or accept reimbursement of any such fees. We will also pay any fees or expenses we are required by law to pay or that we must pay in order for this Arbitration Provision to be enforced. Each party must normally pay for its own attorneys, experts and witnesses. However, we will pay all such reasonable fees and costs you incur if you are the prevailing party and/or where required by applicable law and/or the administrator's rules. The arbitrator shall not limit the attorneys' fees and costs to which you are entitled because your Claim is for a small amount. Also, to the extent permitted by applicable law and provided in any Services Agreement, you will pay any reasonable attorneys' fees, collection costs and arbitration fees and costs we incur if we prevail in an arbitration in which we seek to recover any amount owed by you to us under the Services Agreement.

Arbitration Provision at ¶ 4.

CASANDRA HARRISON

Casandra Harrison ("Harrison") sought a $582.00 loan in March 2009. Complaint at ¶ 16; Gee Affidavit at ¶ 15. On March 5, 2009, she entered into the "Deferred Deposit Agreement & Disclosure Statement" ("March 5 Agreement"). Gee Affidavit at ¶ 15. A true and correct copy of the March 5 Agreement is attached to the Gee Affidavit as Exhibit B.

Harrison sought a second loan in late March 2009 in the amount of $400.00. Gee Affidavit at ¶ 16. On March 19, 2009, she entered into the "Deferred Deposit Agreement &

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Disclosure Statement" ("March 19 Agreement"). Id. A true and correct copy of the March 19 Agreement is attached to the Gee Affidavit as Exhibit C.

Both the March 5, 2009 Agreement and the March 19, 2009 Agreement contained the same Arbitration Provision as contained in Dungan's Agreement. Gee Affidavit at ¶ 17.

Harrison did not exercise her right to opt-out of the Arbitration Provision. Gee Affidavit at ¶ 18.

EUGENE VARCADOS

Eugene Varcados ("Varcados") sought a $500.00 loan in April 2008. Complaint at ¶ 22; Gee Affidavit at ¶ 20. On April 30, 2008, he entered into the "Deferred Deposit Agreement & Disclosure Statement" ("April Agreement"). Gee Affidavit at ¶ 20. A true and correct copy of the April Agreement is attached to the Gee Affidavit as Exhibit D.

Varcados sought a second loan in May 2008 in the amount of $500.00. Complaint at ¶ 22; Gee Affidavit at ¶ 21. On May 24, 2008, he entered into the "Deferred Deposit Agreement & Disclosure Statement" ("May Agreement"). Gee Affidavit at ¶ 21. A true and correct copy of the May Agreement is attached to the Gee Affidavit as Exhibit E.

Varcados sought a third loan in June 2008 in the amount of $500.00. Gee Affidavit at ¶ 22. On June 6, 2008, he entered into the "Deferred Deposit Agreement & Disclosure Statement" ("June Agreement"). Id. A true and correct copy of the June Agreement is attached to the Gee Affidavit as Exhibit F.

Varcados sought a fourth loan in late June 2008 in the amount of $500.00. Gee Affidavit at ¶ 23. On June 21, 2008, he entered into the "Deferred Deposit Agreement & Disclosure Statement" ("June 21 Agreement"). Id. A true and correct copy of the June 21 Agreement is attached to the Gee Affidavit as Exhibit F.

All four Agreements contained the same Arbitration Provision as contained in Dungan's Agreement. Gee Affidavit at ¶ 24.

Varcados did not exercise his right to opt-out of the Arbitration Provision. Gee Affidavit at ¶ 25.

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CONCEPCION QUINTINO

Concepcion Quintino ("Quintino") sought a $510.00 loan in April 2006. Complaint at ¶ 28; Gee Affidavit at ¶ 27. On April 21, 2006, he entered into the "Deferred Deposit Agreement & Disclosure Statement" ("April Agreement"). Gee Affidavit at ¶ 27. A true and correct copy of the April Agreement is attached to the Gee Affidavit as Exhibit G.

Quintino sought a second loan in late May 2006 in the amount of $510.00. Gee Affidavit at ¶ 28. On May 5, 2006, he entered into the "Deferred Deposit Agreement & Disclosure Statement" ("May Agreement"). Id. A true and correct copy of the May Agreement is attached to the Gee Affidavit as Exhibit H.

Quintino sought a third loan in late May 2006 in the amount of $510.00. Gee Affidavit at ¶ 29. On May 19, 2006, he entered into the "Deferred Deposit Agreement & Disclosure Statement" ("May 19 Agreement"). Id. A true and correct copy of the May 19 Agreement is attached to the Gee Affidavit as Exhibit I.

All three agreements permitted Quintino one day within which to rescind without being responsible for any finance charge. Gee Affidavit at ¶ 30. Quintino did not exercise his right to rescind. Id.

All three agreements contain an arbitration agreement where Quintino was to first seek mediation for any disputes and if mediation was unsuccessful, then submit the matter to binding arbitration. Gee Affidavit at ¶ 37. Quintino has not sought to exercise his right to mediation or presented the matter to arbitration. Id.

All three Agreements contain the identical "**Agreements for Resolving Disputes**."

> The Agreements broadly define the word Claims:
>
> **Meaning of "Claims."** Claims means any and all claims, disputes or controversies that arise under common law, federal or state statute or regulation, or otherwise, and that we or our servicers or agents have against you or that you have against us, our servicers, agents, directors, officers and employees. "Claims" also includes any and all claims that arise out of (i) the validity, scope and/or applicability of this Mediation Agreement or the Arbitration Agreement appearing below, (ii) your application for a Loan, (iii) the Agreement, (iv) any prior agreement between you and us,

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> including any prior loans we have made to you or (v) our collection of any Loan. "Claims" also includes all claims asserted as a representative, private attorney general, member of a class or in any other representative capacity, and all counterclaims, cross-claims and third party claims.

Agreements at page 2.

The Agreements for Resolving Disputes also contain an Arbitration Agreement providing for individual arbitration in the event the parties are unable to resolve their Claims in mediation. Agreements at page 3. The Agreements allow Quintino to select the arbitration administrator. Agreements at page 3. The Agreements also provide that they are governed by the Federal Arbitration Act. Agreements at page 3. Finally, the Agreements allow Quintino the right to bring a claim in small claims court. Agreements at page 3.

(b) The Allegations Of Plaintiffs' Complaint.

Plaintiffs acknowledge that they sought and obtained loans from one or more of the Rapid Cash Defendants. Complaint at ¶¶ 16, 22, 28 & 34. They further acknowledge that they were sued after defaulting on their various loans. Id. at ¶¶ 17, 23, 29, & 35. Plaintiffs contend that even though Affidavits of Service were executed providing that they had been served with the various complaints brought against them, they were not in fact served. Id. at ¶¶ 18-19, 24-25, 30-31, 36-37. They further contend that one or more of the Rapid Cash Defendants obtained default judgments against them. Id. at ¶¶ 20, 26, 32, 38.

Each and every one of Plaintiffs' claims are premised upon the foregoing allegations of wrongdoing. For the following reasons, these claims are subject to individual arbitration.

III. ARGUMENT

(c) The Federal Arbitration Act Applies To The Arbitration Provisions.

The FAA "is a congressional declaration of a liberal policy favoring arbitration." Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983). The FAA provides that a written arbitration provision contained in a "contract evidencing a transaction involving commerce. . . shall be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The Act defines "commerce" as

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"commerce among the several states." 9 U.S.C. § 1. In section 2 of the FAA, "the word 'involving' . . . signals an intent to exercise Congress's commerce power to the full," and the phrase "'evidencing a transaction' mean[s] only that the transaction . . . turn[s] out, in fact, to have involved interstate commerce." Allied-Bruce Terminix Companies v. Dobson, 513 U.S. 265, 273 (1995) (emphasis in original). In Citizens Bank v. Alafabco, Inc., 123 S. Ct. 2037 (2003), the United States Supreme Court confirmed that Congress, in section 2 of the FAA, exercised "the broadest permissible exercise" of its Commerce Clause power, and it admonished (and reversed) the Alabama Supreme Court for applying a "cramped view" of the Commerce Clause power. Id. at 1240, 1241. See also Fluor Daniel Intercontinental, Inc. v. General Elec. Co., No. 98 Civ. 7181(WHP), 1999 WL 637236, at *3 (S.D.N.Y. Aug. 23, 1999) ("As to the 'involving commerce' requirement, courts have construed the phrase broadly.").

The transactions at issue in this case meet the "commerce" requirement. The Rapid Cash Defendants are headquartered in Kansas. Arbitration Provision at ¶ 8. At the time that they obtained their loans, Plaintiffs each presented one of the Rapid Cash Defendants with a check which "may be presented to your bank as an Electronic Funds Transfers ('EFT') through the automated clearing house (ACH) network." Agreements at page 2 ("Electronic Check Deposit"). Those transactions necessarily utilized electronic networks and computer systems located outside of Nevada, and the transactions between Plaintiffs and the Rapid Cash Defendants indisputably flowed through interstate commerce. See, e.g., United States v. Baker, 82 F.3d 273, 275-76 (8th Cir. 1996) (ATM network was an instrumentality of interstate commerce, even if used intrastate), cert. denied, 519 U.S. 1020 (1996); Anderson v. Delta Funding Corp., 316 F. Supp.2d 554, 565 (N.D. Ohio 2004) ("loan transactions historically have been evaluated under the FAA because of the banking industry's connection to commerce"); Providian Nat'l Bank v. Screws, 894 So.2d 625, 627 (Ala. 2003) (credit card agreement between bank and the holders of its credit card clearly involves interstate commerce).

Furthermore, the Arbitration Provision in each of Plaintiffs' Agreements specifically provides that it is governed by the FAA: "This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA." Arbitration

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Provision at ¶ 8. The Quintino agreement reads "This Arbitration Agreement is made pursuant to a transaction involving interstate commerce. It will be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as amended ("FAA"). " Courts consider such language evidence of the satisfaction of the interstate commerce requirement. See, e.g., Credit Acceptance Corp. v. Davisson, 644 F. Supp.2d 948, 954 (N.D. Ohio 2009) (finding FAA applied because "the Contract itself provides that '[t]he Federal Arbitration Act governs this Arbitration Clause.... The Arbitration Clause is governed by the Federal Arbitration Act . . . and not by any state arbitration law.'"); Staples v. The Money Tree, Inc., 936 F. Supp. 856, 858 (M.D. Ala. 1996); Thomas O'Connor & Co. v. Ins. Co. of North America, 697 F. Supp. 563, 566 (D. Mass. 1988); Teel v. Beldon Roofing & Remodeling Co., 281 S.W.3d 446, 449 (Tex. App. 2007); see also Volt Info. Sciences, Inc. v. Bd. of Trustees, 489 U.S. 468, 479 (1989) (courts must "rigorously enforce [arbitration] agreements according to their terms.").

Accordingly, the transactions at issue in this case were ones "involving commerce" within the meaning of the FAA and the FAA applies to this action. See Government of the Virgin Islands v. United Indus. Workers, N.A., 169 F.3d 172, 176 (3d Cir. 1999) ("[t]he Supreme Court has stated that the FAA's reach coincides with that of the Commerce Clause.").

(d) Plaintiffs' Claims Fall Within The Broad Scope Of The Arbitration Provisions.

Federal law strongly favors the arbitration of disputes and the enforcement of arbitration agreements. Green Tree Fin. Corp. v. Randolph, 531 U.S. 79, 89 (2000); Simulate, Inc. v. Autoliv, Inc., 175 F.3d 716, 719 (9th Cir. 1999). Congress enacted the FAA to reverse centuries of judicial hostility to arbitration agreements by placing them on the same footing as other contracts. Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, 225-26 (1987). Nevada public policy also favors arbitration because arbitration generally avoids the higher costs and longer time periods associated with traditional litigation. See Rose v. Chase Manhattan Bank USA, No. 3:05-CV-00522, 2006 WL 1520238, at *5 (D. Nev. May 30, 2006) ("Federal law ... (as well as Nevada law) favors the enforcement of arbitration agreements.").

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Decisions under the FAA – including those in Nevada – have consistently made it clear that the FAA applies to consumer contracts. See, e.g., Randolph, 531 U.S. at 91-92 (enforcing arbitration clause between consumer and lender); Shearson/American Express, 482 U.S. at 222 (enforcing arbitration agreement between customer and brokerage firm); Coleman v. Assurant, Inc., 508 F. Supp.2d 862 (D. Nev. 2007) (enforcing arbitration provision in consumer credit card agreement); see also Stout v. J.D. Byrider, 228 F.3d 709, 715-716 (6th Cir. 2000) (enforcing arbitration agreement where plaintiff alleged violations of state consumer fraud statute with respect to sale of a car); Snowden v. CheckPoint Check Cashing, 290 F.3d 631, 639 (4th Cir. 2002) (enforcing arbitration agreement in payday loan contract), cert. denied, 123 S. Ct. 695 (2002); Harris v. Green Tree Fin. Corp., 183 F.3d 173 (3d Cir. 1999) (enforcing arbitration agreement between borrower and consumer finance company); Hill v. Gateway 2000, Inc., 105 F.3d 1147 (7th Cir. 1997) (enforcing arbitration agreement between consumer and computer manufacturer), cert. denied, 522 U.S. 808 (1997); Howard v. Wells Fargo Minn., N.A., No. 06-2821, 2007 WL 2778664 (N.D. Ohio Sept. 21, 2007) (enforcing arbitration agreement in residential mortgage). The United States Supreme Court itself has acknowledged that the FAA is intended to apply to consumer transactions and benefits consumers:

> "We agree that Congress, when enacting this law [the Federal Arbitration Act] had the needs of consumers, as well as others, in mind. See S. Rep. No. 536, 68th Cong., 1st Sess., 3 (1924) (the Act, by avoiding 'the delay and expense of litigation,' will appeal 'to big business and little business alike, . . . corporate interests [and] . . . individuals'). Indeed, arbitration's advantages often would seem helpful to individuals . . . complaining about a product, who need a less expensive alternative to litigation. See, e.g., H.R. Rep. No. 97-542, p. 13 (1982)."

Allied-Bruce Terminix Cos., 513 U.S. at 290. In short, arbitration is highly favored for its "simplicity, informality, and expedition." Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985).

Under the FAA, a court must compel arbitration if it finds: (1) that a valid arbitration agreement exists between the parties, and (2) that the dispute before it falls within the scope of

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the agreement. See, e.g., Mitsubishi Motors Corp., 473 U.S. at 626-28; Fazio v. Lehman Bros., Inc., 340 F.3d 386, 392 (6th Cir.2003); Hartford Accident & Indemnity Co. v. Swiss Reinsurance Am. Corp., 246 F.3d 219, 226 (2d Cir. 2001); Glass v. Kidder Peabody & Co., 114 F.3d 446, 453 (4th Cir. 1997). It has long been well-settled law that the merits of the plaintiff's claims cannot be considered when deciding an arbitration motion. See, e.g., AT&T Technologies, Inc. v. Comm. Workers of Am., 475 U.S. 643, 649 (1986). As the Sixth Circuit succinctly explained: "Under the FAA, a district court's consideration of a motion to compel arbitration is limited to determining whether the parties entered into a valid Arbitration Agreement, and does not reach the merits of the parties' claims." Burden v. Check into Cash of Kentucky, LLC, 267 F.3d 483, 487 (6th Cir. 2001), cert. denied, 535 U.S. 970 (2002). The requirements for enforcement of an arbitration agreement are satisfied in the present case.

1. A Valid And Enforceable Arbitration Agreement Exists Between The Parties.

Plaintiffs, of course, bear the burden of proving that the Arbitration Provision is invalid in some way. Randolph, 531 U.S. at 92; Inlandboatmens Union of the Pac. v. Dutra Group, 279 F.3d 1075, 1079 (9th Cir. 2002) ("The burden thus falls upon the party contesting arbitrability to show how the language of the arbitration clause excludes a dispute from the clause's purview."). Lyman v. Mor Furniture For Less, Inc., No. 3:06-CV-00666, 2008 WL 624705, at *3 (D. Nev. Feb. 28, 2008) (plaintiff's burden to prove invalidity of arbitration agreement). Furthermore, courts may only invalidate arbitration agreements based upon generally applicable contract defenses. 9 U.S.C. § 2; Doctor's Assocs. v. Casarotto, 517 U.S. 681, 687 (1996). However, even when using doctrines of general applicability, such as unconscionability, courts are not permitted to employ those doctrines in a manner which would subject arbitration agreements to special scrutiny. See, e.g., Perry v. Thomas, 482 U.S. 483, 493 n.9 (1987). This is a heavy burden that Plaintiffs cannot satisfy.

The United States Supreme Court has specifically held that a court may only consider challenges directed specifically and solely to the arbitration agreement. Buckeye Check Cashing, Inc. v. Cardegna, 126 S. Ct. 1204, 1210 (2006); Prima Paint Corp. v. Flood & Conklin

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Mfg. Co., 388 U.S. 395, 403-04 (1967). Thus, an arbitration agreement must be upheld and enforced by the courts even though the rest of the contract may later be held invalid by the arbitrator. Prima Paint, 388 U.S. at 404; Harris, 183 F.3d at 179; Coleman, 508 F. Supp.2d at 866 ("Plaintiff agreed to the terms of the Agreement, including the arbitration provision, by using the MBNA credit card. Therefore, the Court finds that the Agreement is valid.").

There can be no serious dispute that the Arbitration Provisions here are valid and fully enforceable under the FAA. As detailed in the Gee Affidavit, in applying for and obtaining loans, Plaintiffs agreed to the terms of their Agreements, including the Arbitration Provisions. Indeed, three of four Plaintiffs could have rescinded their loan transactions or opted-out of the Arbitration Provisions, but did not. The Complaint does not contend otherwise.

2. The Complaint Falls Squarely Within The Scope Of The Arbitration Provision.

Plaintiffs' Complaint and the claims stated therein fall squarely within the scope of the Arbitration Provision. The FAA mandates that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H. Cone Mem. Hosp., 460 U.S. at 24-25; accord Fazio, 340 F.3d at 392; Mundi v. Union Sec. Life Ins. Co., 555 F.3d 1042, 1044 (9th Cir. 2009) ("In determining whether parties have agreed to arbitrate a dispute, we apply 'general state-law principles of contract interpretation, while giving due regard to the federal policy in favor of arbitration by resolving ambiguities as to the scope of arbitration in favor of arbitration.'") (citing Wagner v. Stratton Oakmont, Inc., 83 F.3d 1046, 1049 (9th Cir. 1996)); Balar Equip. Corp. v. VT Leeboy, Inc., 336 Fed. Appx. 688, 689 (9th Cir. 2009) ("In the absence of any express provision excluding a particular grievance from arbitration, . . . only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail.") (citing AT&T Technologies, Inc., 475 U.S. at 650). Accordingly, the United States Supreme Court has held that a presumption of arbitrability exists where a contract contains an arbitration clause, and that an order to arbitrate should not be denied "unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute." AT&T Technologies, Inc., 475 U.S. at 650. The presumption in favor of arbitrability "is particularly

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strong when the arbitration clause in question is broad," id., as it is in this case. See Coleman, supra, 508 F. Supp.2d at 866 (holding that "all of Plaintiff's claims ... fall within the scope of [the] arbitration provision.... [T]he broad language of [the] arbitration provision encompasses all [of] Plaintiff's claims as to all parties.").

Nevada courts have also repeatedly recognized that arbitration provisions are to be given the benefit of the doubt in favor of arbitration. See, e.g., Lyman, supra, 2008 WL 624705, at *3 (applying Nevada law); Mundi, supra, 555 F.3d at 1044; Eagle Star Ins. Co. v. Highlands Ins. Co., 165 Fed. Appx. 529, 531 (9th Cir. 2006) ("The existence of an arbitration agreement establishes a federal presumption in favor of arbitration, and 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration'") (citing Moses H. Cone Mem. Hosp., 460 U.S. at 24-25). An arbitration agreement creates a presumption that the parties agreed to arbitrate all disputes, including those regarding the validity of the contract in general. Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1263-64 (9th Cir. 2006) (challenges to the validity or enforceability of the agreement containing the arbitration provision are referred to the arbitrator) (citing Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440 (2006)); Roberts v. Synergistic Int'l, LLC, 676 F. Supp. 2d 934, 947 (E.D. Cal. 2009) (If "a party challenges the validity of the contract as a whole, and not specifically [] the arbitration clause," the issue "must go to the arbitrator.") (citing Buckeye, 546 U.S. at 449).

Moreover, in addition to the strong presumption in favor of arbitrability, Plaintiffs' claims are clearly covered under the broad language of the Arbitration Provisions. All of Plaintiffs' claims relate to the Rapid Cash Defendants' attempts to collect on their loans. The Arbitration Provisions expressly provide that the claims subject to arbitration include claims relating to "our collection of any amounts you owe." Arbitration Provisions at ¶ 2. The Arbitration Provisions further provide that they are "to be given the broadest possible meaning and include[] claims of every kind and nature . . . .[They] include[] disputes that seek relief of any type, including damages and/or injunctive, declaratory or other equitable relief." Id. Indeed, it is well settled that claims for injunctive relief are subject to arbitration. See Arriaga v. Cross

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Country Bank, 163 F.Supp.2d 1189, 1192-93 (S.D. Cal. 2001); Lozano v. AT&T Wireless, 216 F.Supp.2d 1071, 1076-77 (C.D. Cal. 2002).

Accordingly, each and every one of Plaintiffs' claims falls within the scope of the Arbitration Provision.

(e) Plaintiffs Agreed To Arbitrate On An Individual Basis.

Arbitration under the FAA is a matter of consent and arbitration agreements must be enforced as written. Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 57 (1995); Volt Info. Scis., Inc., 489 U.S. at 479. Indeed, the law recognizes a strong interest in the enforceability of contracts in accordance with their terms. See Sander v. Alexander Richardson Investments, 334 F.3d 712, 721 (8th Cir. 2003) ("Public policy demands enforcing contracts as written and recognizing the parties' freedom to contract."). The FAA's "principal purpose" is to "ensur[e] that private arbitration agreements are enforced according to their terms." Volt Info. Scis., Inc., 489 U.S. at 478. "[I]t is the language of the contract that defines the scope of disputes subject to arbitration . . . nothing in the statute [FAA] authorizes a court to compel arbitration of any issues, or by any parties, that are not already covered in that agreement." EEOC v. Waffle House, 534 U.S. 279, 289 (2002).

In recognition of this principle, state and federal courts applying Nevada law have repeatedly enforced class action waivers. See, e.g., Lux v. Good Guys, No. SACV 05-300 CJC, 2005 U.S. Dist. LEXIS 35567, at *3 (C.D. Cal. June 27, 2005) (court enforced Nevada choice of law clause and upheld validity of a class action waiver in the arbitration agreement); Santos v. Household Int'l, Inc., No. 03-cv-01243 MJJ, 2003 U.S. Dist. LEXIS 27936, at *16-17 (N.D. Cal. Oct. 24, 2003) (in usury case court enforced Nevada choice-of-law clause and class action waiver); Picardi, et al. v. FT Automotive III, LLC, Case No. A567514, Dept. No. XIII (District Court of Clark County, Nevada) (Order dated October 14, 2008 granting Defendants' Motion to Compel Arbitration) ("Plaintiff is ordered to submit her claims [against Defendants] to binding and neutral arbitration without Plaintiffs' participation, in any manner, in any class action in the manner identified by the valid Arbitration Agreement.").

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In accordance with the parties' Arbitration Agreements requiring Plaintiffs to submit their claims to arbitration if requested, and to do so only on an individual basis and not as a class action, Plaintiffs should be ordered to proceed with the individual arbitrations of their claims.

IV. CONCLUSION

The Rapid Cash Defendants' Motion to Compel Arbitration should be granted and the claims asserted against them should be stayed pending the completion of arbitration. Further, Plaintiffs should be ordered to proceed with arbitration of their claims on an individual basis.

DATED this 24 day of September, 2010.

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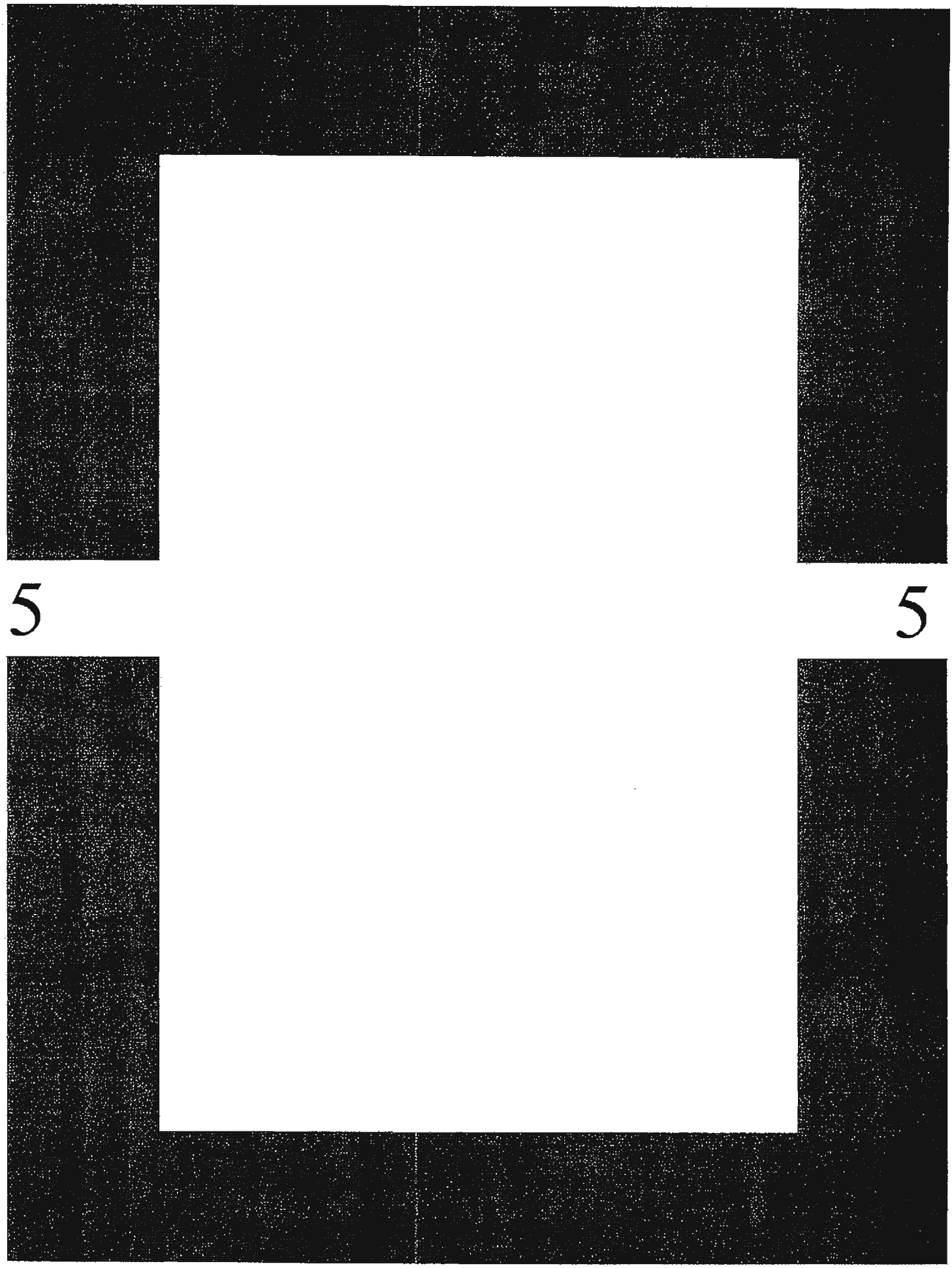

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DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman, and DOES I through X, inclusive,

Defendants.

Case No.: A-10-624982-B
Dept. No.: XI

OPPOSITION TO MOTION TO COMPEL ARBITRATION AND STAY ALL PROCEEDINGS

Date of Hearing: October 12, 2010

Time of Hearing: 9:00 a.m.

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I.

INTRODUCTION

This class action seeks to redress the fraud perpetrated on the courts and perhaps thousands of defendants in the Clark County, Nevada, judicial system through "sewer service," the despicable practice by which a process server attests to having served a summons and complaint upon a defendant when, in fact, the defendant was never served and is unaware that his legal rights are being adjudicated. Payday lender Rapid Cash, with sewer-service affidavits provided by its unlicensed process server On Scene Mediations,[1] obtained potentially thousands of default judgments against allegedly defaulting borrowers, eviscerating their due process rights while destroying their credit. Not once in the 16,663 justice court actions filed by Rapid cash in the last five years did Rapid Cash abide by the arbitration clause in each of the loan agreements it was collecting upon.

Having exclusively used the court system as its personal collection agency in thousands upon thousands of cases, this payday lender now wants to force the claims asserted in this putative class action into four individual arbitrations. Rapid Cash asks this Court to enforce the contractual arbitration clauses it has long ignored to force its victims into arbitration where there will be no meaningful accountability, when this case springs from Rapid Cash's actions taken during litigation and in categorical disregard of its own arbitration provision. No court should be a party to such blatant misuse of its process, and Rapid Cash must not be allowed to use its arbitration clause as both a sword and a shield, while leaving its victims completely defenseless.

Rapid Cash's arbitration clause and class action ban – buried within its adhesion contract – is unenforceable for at least five reasons, any one of which independently requires its motion be denied: (1) Rapid Cash waived the clause by filing litigation and taking default judgments against every member of the putative Class; (2) the class action ban is unconscionable and therefore the arbitration clause is null and void by its own terms; (3) the facts in this putative class action are

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[1] For purposes of this motion, "On Scene Mediations" or "On Scene" refers to Defendant Maurice Carroll, individually and d/b/a On Scene Mediations, and any employee or agent thereof.

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beyond the scope of the arbitration clause, (4) the arbitration clause is unenforceable on grounds of public policy; and (5) enforcement of the arbitration clause is against the public interest.

Rapid Cash has litigated to judgment against every member of the putative Class, and never once sought arbitration. While various legal theories of recovery are alleged in this case, it is predominately an independent action in equity for fraud upon the Court, seeking injunctive and other equitable relief. The important public policy and public interest issues presented by this case make it highly unsuitable for arbitration, and even more unsuitable for hundreds if not thousands of individual arbitrations. Rapid Cash's motion to compel arbitration must be denied, and this Court should promptly proceed to the class certification stage.

II.

STATEMENT OF FACTS[2]

A. On Scene Was Rapid Cash's Process Server for Rapid Cash's Clark County, Nevada, Justice Court Actions against Allegedly Defaulting Payday Loan Customers.

Rapid Cash is a short term, or "payday" lender, and also an automobile-title pawn lender. From 2004-2010, Maurice Carroll, d/b/a On Scene Mediations served as Rapid Cash's employee or agent to fulfill Rapid Cash's responsibility under JCRCP 4(a) to serve the Summons and a copy of the Complaint on each defendant borrower sued by Rapid Cash. An investigation by the Justice Court and Metro has revealed that On Scene did not actually deliver the summonses and complaints it was tasked to serve, but merely executed affidavits fraudulently attesting that service had been accomplished. An unreasonably high number of those affidavits attest that the documents were personally served on the day they were received from Rapid Cash (a near-miracle in process serving), and in the rare case that a defendant learned of his suit in time to set aside the default Rapid Cash easily obtained against him, Rapid Cash would swiftly stipulate to the set-aside to avoid any evidentiary hearing on the validity of the service. Sewer service became an all too frequent occurrence for On Scene and its employees pursuant, according to

[2] These facts are taken from the Complaint and Rapid Cash's Motion to Compel Arbitration, as well as Plaintiffs' attached Affidavits.

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"office manager" Vilisia Coleman, a policy directive that came from owner Maurice Carroll, who were both indicted for these practices in August 2010.

On Scene's sewer service allowed Rapid Cash to file an incredible number of collection lawsuits against its customers, rather than invoke its arbitration clause. During the six-year period from 2004-2009, Rapid Cash filed 16,663 cases in the Clark County Justice Court system, a whopping average of 2,777 cases per year and 53 cases each week, collecting default judgments and garnishing wages of borrowers who had zero notice that their rights had been judicially determined.

Sometime after January, 2009, when civil cases began being assigned to only two Justices of the Peace in Clark County, Nevada, Las Vegas Township, the Court noticed the unusual pattern of purported same-day service in On Scene's affidavits, and the Court made counsel for Rapid Cash aware of the suspicious nature of such representations. But nothing changed, except the affidavits began showing an interval of time between receipt of the Summons and successful completion of service.

Also, if a Rapid Cash defendant would move to set aside a default judgment on the basis of lack of service, the Rapid Cash attorney -- presumably with the express consent of his/her client, Rapid Cash, and in any event an act done on behalf of Rapid Cash for which Rapid Cash is responsible and charged with knowledge -- would stipulate to set the default judgment aside instead of having the process server come in and testify at an evidentiary hearing, suppressing discovery of the fraud.

B. The Universal Victimization of an Entire Class of Rapid Cash Borrowers.

Rapid Cash, through the acts of its agent On Scene, and by condoning or -- at the very least -- overlooking the blatant misconduct by its process server, perpetrated a widespread fraud on the Clark County Justice Courts and potentially thousands of Rapid Cash customers. This illegal, fraudulent pattern, policy, and practice by Rapid Cash and On Scene deprived these defendants of due process of law (Nev. Const. Art. 1, Sec. 8), resulting in hundreds if not thousands of void default judgments being entered without the opportunity to respond or defend.

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The outcome was that Rapid Cash obtained hundreds -- if not thousands -- of void default judgments and garnishments, undermining the foundation of the legal system.

There is no evidence that Rapid Cash sought to arbitrate any of these cases.

Plaintiffs, Cassandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary Dungan, were all Rapid Cash customers. Each was sued by Rapid Cash. At no time—until now—did Rapid Cash ever invoke its arbitration clause. Instead, in each of thousands of cases, Rapid Cash invoked judicial power by filing a Complaint in Justice Court, and obtained issuance of a Summons, ordering the defendant to answer in Court. It then filed affidavits of service signed by On Scene representatives attesting that Plaintiffs herein and each member of the putative Class were served with a summons and complaint. But they weren't. In fact, they never received service. Rapid Cash then filed a Default, an Application for Default Judgment, an Affidavit in Support of Application for Entry of Default Judgment, a Memorandum of Costs and Disbursements, an Affidavit in Support of Attorney's Fees, and a Default Judgment. As to some Plaintiffs and members of the putative Class, Rapid Cash then filed a Writ of Execution. Most did not learn that Rapid Cash had sued them until their paychecks were garnished after entry of default. (*See*: Affidavits of Cassandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary Dungan, attached as Exhibit Nos. 1, 2, 3 and 4, respectively, to Plaintiff's Motion to Certify Class.)

C. Plaintiffs Initiated this Class Action on behalf of all Similarly Situated Victims of Rapid Cash's and On Scene's Sewer Service, and Motions for Class Certification and Injunctive Relief are Pending.

On September 9, 2010, Plaintiffs filed this action on behalf of the class of "all customers of Rapid Cash offices in Clark County, Nevada, against whom Rapid Cash obtained default judgments in the Justice Courts of Clark County, Nevada, and for which the only evidence that the defendant received service of process of Rapid Cash's lawsuit was an affidavit signed by a representative of On Scene Mediations," and their motion to certify this class is pending. The widespread nature of this practice and its universal impact on the Rapid Cash customers victimized by it makes this case perfect for class treatment and extraordinarily unsuitable for

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individual arbitrations. With potentially thousands of class members, numerosity is obvious. By making sewer service the policy and practice for Rapid Cash's lawsuits, On Scene ensured that all class members would share the very same predominant questions of law and fact. And the unique facts and circumstances of this case make the class action vehicle the superior method by which to litigate this case.

D. After Ignoring its Arbitration Clause to File nearly 17,000 Justice Court Lawsuits, Rapid Cash Now Seeks to Compel Arbitration.

Having obtained a default judgment against every member of the putative Class by ignoring its arbitration clause, and facing a class action lawsuit as a result, Rapid Cash now wants to invoke this provision and the class action ban contained in its payday loan agreements. All of the payday loan agreements are pre-printed forms, offered on a take-it-or-leave-it basis; there was no discussion of any opportunity to negotiate any of its terms. (Affidavits of Cassandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary Dungan, attached as Exhibit Nos. 1, 2, 3 and 4, respectively).

In its Motion and supporting documents, Rapid Cash correctly sets forth the relevant provisions of the payday loan agreements, with the exception of the omission of, on page 4 of 5, Section 9, which provides: "...if Section 5(C) [class action ban], (D) and/or (E) [joinder or consolidation of claims] is declared invalid in a proceeding between you and us...this entire Arbitration Provision (other than this sentence) shall be null and void..."[3] (*See:* Exhibit A, among other loan agreements, attached to Affidavit of Richard Duke Gee).

Plaintiffs seek *inter alia* declaratory and injunctive relief, the setting aside of the void default judgments obtained through On Scene's sewer service, restitution, disgorgement, damages, and punitive damages for the egregious practices alleged in the Complaint.

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[3] In the contracts of Casandra Harrison, Eugene Varcados, and Mary Dungan, Section 9 states, "If any part of this Arbitration Provision cannot be enforced, the rest of this Arbitration Provision will continue to apply; provided, however, that if Section 5(C),(D) and/or (E) is declared invalid in a proceeding between you and us, without in any way impairing the right to appeal such decision, this entire Arbitration Provision (other than this sentence) shall be null and void in such proceeding." There is no class action ban in Conception Quintino's contract.

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III.

ARGUMENT

Rapid Cash's arbitration clause and class action ban – buried within its adhesion contract – is unenforceable for at least five independent reasons. First, Rapid Cash waived the clause by filing litigation and taking default judgments against every member of the putative Class. Courts do not allow a party to use the judicial process to litigate and then seek to invoke an arbitration clause. After litigating cases to judgment, and now once Rapid Cash is sought to be held accountable for its conduct in the very litigation it initiated rather than seek arbitration, Rapid Cash cannot be permitted to hypocritically invoke its arbitration clause to its own advantage.

Second, the class action ban is both procedurally and substantively unconscionable, and it effectively serves as an exculpatory clause, relieving Rapid Cash of any realistic liability for widespread harm. Once this Court finds the class action ban unenforceable, then the arbitration clause is "null and void" by its own terms.

Third, the facts in this putative class action are beyond the scope of the arbitration clause. Courts interpreting the scope of broadly worded arbitration clauses such as that present in the Rapid Cash payday loan agreement nevertheless require that an arbitrable dispute have a significant relationship to the contract, and at least one court has refused to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings.

Fourth, the arbitration clause is unenforceable on grounds of public policy. The essence of this case concerns a fraud upon the court, and this Court must not permit any party to any contract containing an arbitration clause who is alleged to have committed fraud upon the court to send the determination of such conduct to private arbitration, under the Court's inherent authority to control its docket and to prevent an abuse of the judicial process.

Fifth, this case is brought at least in part in the public interest to restore public confidence in the integrity of the judicial system. It demands a public hearing, rather than being swept under the rug in private, individual arbitrations.

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A. State Law Concerning Contract Enforceability Applies to Arbitration Clauses.

"[S]tate law, whether of legislative or judicial origin," may be applied to invalidate arbitration clauses "*if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally." Perry v. Thomas, 482 U.S. 483, 492 n.9 (1987) (emphasis in original). In particular, the U.S. Supreme Court has stated that state contract law of unconscionability "may be applied to invalidate arbitration agreements without contravening" the Federal Arbitration Act (FAA). Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681, 687 (1996). The FAA policy in favor of enforcing arbitration clauses does not come into play in determining whether an enforceable agreement to arbitrate exists.[4] To the contrary, the question of whether the parties have entered into an agreement to arbitrate is resolved through application of state contract principles that govern the formation of any contractual agreement including fraud, waiver, duress, and unconscionability.[5] Accordingly, challenges to the enforcement of

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[4] Carson v. Giant Food, Inc., 175 F.3d 325, 329 (4th Cir. 1999); Va. Carolina Tools, Inc. v. Int'l Tool Supply, Inc., 984 F.2d 113, 117 (4th Cir. 1993); Badie v. Bank of Am., 67 Cal.App.4th 779, 790, 79 Cal.Rptr.2d 273, 280 (1998).

[5] *See e.g.*: BancOne Acceptance Corp. v. Hill, 367 F.3d 426, 431, 432 (5th Cir. 2004) (holding FAA does not preempt state unconscionability law); In re Media Arts Group, 116 S.W.3d 900, 906 (Tex.App. 2003) (FAA does not preempt state waiver law).

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arbitration clauses based on these defenses are governed by state law,[6] even when the FAA applies to the arbitration clause.[7]

B. There Could Be No Clearer Case That Rapid Cash Has Waived its Right to Invoke the Arbitration Clause/Class Action Ban by its Litigation Conduct in Filing and Taking Cases Against Class Members to Judgment.

The arbitration clause with class action ban is unenforceable because Rapid Cash, by its categorical rejection of this provision, has waived any right to invoke the arbitration clause in its payday loan contracts. The Supreme Court of Nevada has articulated a three-prong test for waiver of an arbitration clause. A waiver may be shown when the party seeking to arbitrate (1)

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[6] Although at p. 8, line 4 of its Motion to Compel Arbitration and Stay All Proceedings Rapid Cash quotes the arbitration clause/class action ban as requiring application of Kansas law, nowhere does Rapid Cash argue for application of Kansas law generally or any particular Kansas law. In fact, Rapid Cash itself occasionally cites Nevada case law, which suggest that Rapid Cash consents to application of Nevada law and has waived its choice-of-law clause. If Rapid Cash argues otherwise, then Plaintiffs contend Rapid Cash's choice-of-law clause is invalid. In Engel v. Ernst, 102 Nev. 390, 724 P.2d 215 (1986), the Supreme Court of Nevada provided that it is "well settled that parties are permitted to select the law that will govern the validity and effect of their contract." 724 P.2d at 216. However, the parties are limited in that they must act in good faith and not for the purpose of "evading the law of the real situs of the contract." Id. at 217. Moreover, the situs must have a **substantial relationship** to the agreement and the agreement must not be contrary to the public policy of the forum. Id.

A substantial relationship with a certain situs can be established by formation of the contract occurring within the selected situs. Ferdie Sievers and Lake Tahoe Land Co., Inc. v. Diversified Mort. Investors, 95 Nev. 811, 603 P.2d 270 (1979). A substantial relationship may also be created through having bank accounts within the selected situs and making payments to an entity within the situs. Id. 603 P.2d at 273. A substantial relationship can be formed by having the headquarters of a business in the chosen situs. Engel, 724 P.2d at 217. It can also be established through visiting the foreign situs for matters related to the business, evincing a belief that the foreign situs is recognized as the site of the headquarters. Id.

For Kansas law to apply, Kansas must have a substantial relationship to the case. Otherwise, Nevada law will apply. Similar to the facts in Ferdie Sievers, the contract was formed in Nevada, the plaintiffs lived in Nevada, the bank accounts that were used by the plaintiffs were in Nevada, and the plaintiffs were required to make their payments to Rapid Cash locations in Nevada. Therefore, Kansas does not have a substantial relationship to the case and as a result, Nevada law must apply.

[7] Strictly for purposes of clarity, Plaintiffs note that both parties have presented the issues of existence and enforceability of the arbitration clause/class action ban for decision by this Court, as opposed to suggesting an arbitrator must decide anything at this point. This case has nothing whatever to do with the payday loan agreement of any member of the putative Class and does not seek to challenge the validity of the payday loan agreement *per se*, though they challenge the enforceability of Rapid Cash's arbitration clause/class action ban, which are issues for this Court to decide.

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knew of its right to arbitrate, (2) acted inconsistently with that right, and (3) prejudiced the other party by his inconsistent acts. *See:* Nevada Gold & Casinos, Inc. v. Am. Heritage, Inc., 121 Nev. 84, 90-91, 110 P.3d 481 (2005) (finding waiver through litigation conduct). Rapid Cash's conduct satisfies all three elements of the waiver test.

First, there can be no legitimate dispute that Rapid Cash is aware of this provision as it is contained in its own form contracts. Second, Rapid Cash has acted in a manner completely inconsistent with its right to arbitrate claims arising from its payday loan agreements by filing *thousands* of lawsuits per year *for years* in the Justice Courts of Clark County, purportedly to enforce its rights under these agreements. There is no evidence that Rapid Cash has ***even once*** demanded arbitration in one of these payday loan cases. And, indeed, ***every member of the putative Class as defined has not only been sued by Rapid Cash but also suffered entry of a default judgment in Justice Court months or years before Rapid Cash now utters the phrase "arbitration clause."*** For Rapid Cash to now claim that it wants to arbitrate any putative Class member's claim from this point forward is laughably hypocritical. Rapid Cash has not merely acted in a manner inconsistent with a right to arbitrate, with 16,663 justice court lawsuits – an average of 53 new cases filed each week in blatant disregard of its own arbitration clauses – Rapid Cash may very well be our court system's Customer of the Decade. The Ninth Circuit has held that when a defendant makes a "conscious decision to continue to seek judicial judgment on the merits of the arbitrable claims," he has then waived the right to compel arbitration. Van Ness Townhouses v. Mar Indus. Corp., 862 F.2d 754, 759 (9th Cir. 1988).

Third and finally, Rapid Cash's conduct has caused significant prejudice to the putative Class members. In the context of waiver of the right to arbitrate, "prejudice" refers to inherent unfairness, i.e., a party's attempt to have it both ways by switching between litigation and arbitration to its own advantage. As articulated by the Supreme Court of Nevada, prejudice may be shown *inter alia* where a party has litigated "substantial issues on the merits." Nevada Gold and Casinos, Inc., 121 Nev. at 91. Rapid Cash chose to litigate against every member of the putative Class. Rapid Cash filed suit, and then falsely represented to the Justice Court that it had

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successfully served the Summons and Complaint. Rapid Cash then filed applications for default and default judgments, with affidavits, further invoking the power of the Justice Court and seeking a judicial resolution. It then applied for court costs and attorney's fees, and obtained judgments against every member of the putative Class and then enforced those judgments through garnishments and other action. Such deliberate invocation of the judicial process and power to one party's advantage and another's detriment is precisely the kind of inherent unfairness and prejudice that requires this Court to find a waiver.

It is difficult to imagine greater prejudice than having suffered entry of a fraudulent and void default judgment. Yet now, when Rapid Cash is sought to be held accountable for its misconduct **in the very litigation it initiated by ignoring its own arbitration clauses**, Rapid Cash hypocritically invokes those clauses to its own advantage. Indeed, the facts of this case are so outrageous that no reported case could be found wherein a party demanded arbitration after having secured a judgment against its opposing party. But the jurisprudence in this area demonstrates that courts consistently find waiver on far less court-based conduct. Simply bringing a motion to dismiss or seeking summary judgment is inconsistent with arbitration and waives the right to arbitrate the dispute. Karnette v. Wolpoff & Abramson, L.L.P., 444 F. Supp.2d 640 (E.D. Va. 2006); see also: Atkins v. Rustic Woods Partners, 171 Ill.App.3d 373, 379, 525 N.E.2d 551, 555 (1988) ("submitting substantive issues to the court for determination manifests an intent to abandon the right to arbitrate"); Cox v. Howard, Weil, Labouisse, Friedrichs, Inc., 619 So.2d 908, 914 (Miss. 1993) (waiver found after party sought summary judgment). The overarching inquiry is the degree to which the party seeking to compel arbitration has engaged in acts that demonstrate a desire to resolve the claims judicially rather than through arbitration. Thus, it goes without saying that filing suit and applying for and securing a default judgment indicates a desire to resolve claims judicially and rather than through arbitration. Rapid Cash's choice to litigate with its borrowers waived any right it had to force its borrowers into arbitration.

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C. Rapid Cash's Arbitration Clause with Class Action Ban Is Unconscionable, and Therefore Unenforceable under Nevada Law.

1. If the Class Action Ban is Unenforceable Then the Arbitration Clause is Null and Void.

If this Court finds the class action ban unenforceable for any of the following reasons, then the entire arbitration clause is void by its own text. Section 9 states, "...if Section 5(C) [class action ban], (D) and/or (E) [joinder or consolidation of claims] is declared invalid in a proceeding between you and us...this entire Arbitration Provision (other than this sentence) shall be null and void..."[8] This kind of contract term – "if we can't have the class action ban, we don't want arbitration at all" – is often referred to as a "blow up" clause.

It is not difficult to discern why Rapid Cash would write a "blow up" clause into its deals. Courts, constrained by review provisions of federal law, will not overturn an arbitrator's decision except in the most narrow and rare of circumstances. One federal court of appeals recently held that arbitrators' decisions may not be overturned even when their legal reasoning is "wacky,"[9] and another federal court of appeals held that arbitrators' decisions can't be overturned even if they include "gross errors"[10] of legal reasoning. The United States Supreme Court itself has held that arbitrators' decisions can't be overturned even when their findings of fact are "silly."[11] So, while it is apparent that Rapid Cash is happy to force individual disputes with its borrowers into arbitration without any meaningful review, if the Court strikes the class action ban, then Rapid

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[8] In the contracts of Casandra Harrison, Eugene Varcados, and Mary Dungan, Section 9 states, "If any part of this Arbitration Provision cannot be enforced, the rest of this Arbitration Provision will continue to apply; provided, however, that if Section 5(C),(D) and/or (E) is declared invalid in a proceeding between you and us, without in any way impairing the right to appeal such decision, this entire Arbitration Provision (other than this sentence) shall be null and void in such proceeding." There is no class action ban in Conception Quintino's contract.

[9] *Wise v. Wachovia Sec., LLC*, 450 F.3d 265, 269 (7th Cir. 2006).

[10] *Pfeifle v. Chemoil Corp.*, 73 Fed.Appx. 720, 723 (5th Cir. 2003) (quoting *Widell v. Wolf*, 43 F.3d 1150, 1151 (7th Cir. 1994).

[11] *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001).

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Cash wants no part of a class action taking place in arbitration; instead, Rapid Cash wants what it denies its borrowers: the protection of due process and meaningful review in court.

In any event, as there is no federal or state policy favoring class action bans, Rapid Cash's choice to include a "blow-up" clause places the validity of the entire arbitration provision on the enforceability of the class action ban.

2. Rapid Cash's Arbitration Clause with Class Action Ban Is Procedurally and Substantively Unconscionable.

The Court in D.R. Horton, Inc. v. Green, stated, "[g]enerally, both procedural and substantive unconscionability must be present in order for a court to exercise its discretion to refuse to enforce a . . . clause as unconscionable." 120 Nev. 549, 553, 96 P.3d 1159 (2004) (citing Burch v. Dist. Ct., 118 Nev. 438, 443, 49 P.3d 647, 650 (2002)). Procedural unconscionability concerns unequal bargaining power. D.R. Horton, 120 Nev. at 554 (citing Armendariz v. Foundation Health Psychcare, 6 P.3d 669, 690 (Cal. 2000)). Substantive unconscionability "focuses on the one-sidedness of the contract terms." Id. (quoting Ting v. AT & T, 319 F.3d 1126, 1149 (9th Cir. 2003), cert. denied, 540 U.S. 811). While both procedural and substantive unconscionability are required in order for a court to refuse to enforce a contract clause as unconscionable, the Nevada Supreme Court has held that in order to establish unconscionability, less evidence of substantive unconscionability is required where procedural unconscionability is great. See Burch, 118 Nev. at 444 (citing Armendariz, 6 P.3d at 690). It is reasonable that the reverse is also true -- that less procedural unconscionability is required in cases involving great substantive unconscionability. In fact, the California Supreme Court held precisely that in Armendariz: "In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." Armendariz, 6 P.3d at 690.

Learned treatises on this issue share that view. See, e.g., 15 WILLISTON ON CONTRACTS § 1763A (3d ed. 1972) ("Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves.").

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Thus, where great substantive unconscionability exists, less evidence of procedural unconscionability is necessary in order to find a contract clause unconscionable.

a. Rapid Cash's Arbitration Clause is Procedurally Unconscionable As a Contract of Adhesion; the Opi-Out Provision Does Not Make an Invalid Arbitration Clause Enforceable.

"An adhesion contract has been defined as a standardized contract form offered to consumers of goods and services essentially on a 'take it or leave it' basis, without affording the consumer a *realistic* opportunity to bargain, and under such conditions that the consumer cannot obtain the desired product or service except by acquiescing to the form of the contract." Obstetrics and Gynecologists v. Pepper, 101 Nev. 105, 107, 693 P.2d 1259, 1260 (1985) (emphasis supplied) (arbitration agreement form handed to patient at medical clinic by receptionist as a condition of receiving treatment was a contract of adhesion). "The distinctive feature of an adhesion contract is that the weaker party has no choice as to its terms." Id. There can be no doubt here but that Rapid Cash's pre-printed, form loan contract is a contract of adhesion. It was presented on a take-it-or-leave-it basis with no discussion that any of its terms were negotiable. (*See:* Affidavits of Plaintiffs, attached as Exhibit Nos. 1, 2, 3, and 4). This alone establishes procedural unconscionability in Nevada. D.R. Horton, 120 Nev. at 554 ("clause is procedurally unconscionable when a party lacks a *meaningful* opportunity to agree to the clause terms. . . because of unequal bargaining power, as in an adhesion contract....") (emphasis added).

To fend off the trend of courts finding arbitration clauses in form contracts with or without class action bans unenforceable, companies cleverly started to add new contract terms, including opt-out provisions, as Rapid Cash has done here. These "Opt-Out" clauses purport to give consumers the right to reject forced, binding, pre-dispute arbitration. The implication the companies would like the courts to draw is that since the clause exists, the consumers have been provided an opportunity to bargain and so the pre-printed form contract is not procedurally unconscionable. However, this theory does not hold up because there is no *realistic* or *meaningful* opportunity to bargain. F. Paul Bland, Jr. & Claire Prestel, Challenging Class Action

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Bans in Mandatory Arbitration Clauses, 10 CARDOZO J. CONFLICT RESOL. 369, 387-389 (2009). "Burying an opt-out clause in a fine-print contract does not mean that every consumer or employee who fails to opt out has chosen arbitration voluntarily." Id. at 387. Companies utilize such language as a strategy, knowing that most consumers, and few if any potential class members, fully read contracts. Simply adding this language does not indicate that the consumer understands arbitration or how it differs from litigation.

> Commentators have explained why this is so: optimism bias means that potential plaintiffs will underestimate the risk of a future dispute and undervalue their right to proceed in court; status quo bias encourages the default option and makes opt outs unlikely; many consumers and employees will not read a standard-form agreement, let alone understand it; contracts are often confusingly written...consumers and employees often face a paralyzing information overload. . . . and consumers and employees have less information than corporate defendants about the arbitration process, and this lack of information makes a meaningful choice more difficult.

Id. at 387-388 (citing multiple sources). There are numerous examples where opt-out rights are rarely utilized. These include music subscription clubs, "Free Credit Report" clubs, and athletic clubs. Companies rely on the "status quo" or "inertia bias" where subscribers fail to cancel automatically renewed subscriptions. Id. Arbitration opt out clauses carry the same result, meaning there was no true voluntary choice.

Rapid Cash argues that the consumer has a meaningful time to opt out because three of the four contracts allow 30 days to opt out.[12] Any such opt out provision is not *meaningful* and does not substitute for a *realistic* opportunity to bargain. The Rapid Cash consumer is someone without credit options who is forced to sign whatever triple digit interest paperwork is set before them in order to acquire funds they are under pressure to obtain at that moment. A meaningful time to be allowed to opt out would be after a dispute has developed. It is highly probable that few, if any, Rapid Cash consumers have opted out of arbitration. However, this clause does not change the contract from a take-it-or-leave-it contract of adhesion to an equally negotiated

[12] Conception Quintino's loan agreement does not contain the opt out provision.

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contract. Between the unsophisticated consumer and the business savvy payday loan companies, there is a great disparity and, in reality, no bargaining power on the part of the consumer. A six page contract, in 10 point font, with the arbitration provision covering 2 ½ single-spaced pages at the end of the contract, does not present the consumer with a meaningful choice.

The California courts have held several arbitration agreements procedurally unconscionable despite the presence of an opt-out clause. Gentry v. Super. Ct., 42 Cal.4th 443, 457, 165 P.3d 556 (Cal. 2007), Hoffman v. Citibank, *N.A.*, 546 F.3d 1078, (9th Cir. 2008). In Hoffman, the Court of Appeals looked at contract provisions that included the option for the consumer to file in small claims court, Citibank picking up the tab in certain circumstances, and an "opt-out" clause which required the consumer to notify Citibank, in writing, within 26 days if she wished to not accept the binding arbitration provision. The court stated, "two district courts in our circuit have determined that the ability to rescind a contract within 21 or 30 days does not necessarily insulate class arbitration waivers within such contracts from procedural unconscionability. Additionally, this circuit has 'consistently followed the courts that reject the notion that the existence of 'marketplace alternatives' bars a finding of procedural unconscionability.'" Id. at 1085.

Rapid Cash loan agreements are procedurally unconscionable contracts of adhesion, and the opt out provision does not change that fact.

b. Rapid Cash's Class Action Ban is Substantively Unconscionable Because It Is Exculpatory in this Case.

Rapid Cash's class action ban is substantively unconscionable because it effectively serves as an exculpatory clause, relieving Rapid Cash of any liability for wrongdoing in situations like this, where the potential recovery to individuals is small and a lack of financial and legal sophistication by the consumer is the norm. Noted conservative Judge Posner has cogently observed, "The *realistic* alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30." Carnegie v. Household Int'l, Inc., 376 F.3d 656, 661 (7th Cir. 2004). The Ninth Circuit affirmed this reasoning in Ting

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v. AT & T, 182 F. Supp. 2d 902 (N.D. Cal. 2002), aff'd with regard to unconscionability, 319 F.3d 1126 (9th Cir. 2003). In *Ting*, the district court not only held that the prohibition on class actions was substantively unconscionable because it was one-sided and non-mutual, but also because it acted as a *de facto* exculpatory clause. Ting, 182 F. Supp. 2d at 930-31. The facts revealed that "[s]imply put, the potential reward would be insufficient to motivate private counsel to assume the risks of prosecuting the case for just an individual on a contingency basis." *Id.* at 918; see also Gentry v. Super. Ct., 42 Cal.4th 443, 457, 165 P.3d 556, 564 (Cal. 2007) (stating that class action waivers can be exculpatory in practical terms when they make it "very difficult for those injured by unlawful conduct to pursue a legal remedy" even if more than minimal amounts of damages are at issue).

Numerous reported state courts and federal court decisions interpreting state law have similarly declared class action bans unconscionable where they exculpate corporations from liability for small claims. See, e.g., Skirchak v. Dynamics Research Corp., Inc., 432 F. Supp. 2d 175, 181 (D. Mass. 2006), aff'd, 508 F.3d 49 (1st Cir. 2007) (holding a class action ban substantively unconscionable because it "circumscribes the legal options of these employees, who may be unable to incur the expense of individually pursuing their claims"); Ting, 182 F. Supp. 2d at 930 (holding a class action ban substantively unconscionable in part because it "will prevent class members from effectively vindicating their rights in certain categories of claims, especially those involving practices applicable to all members of the class but as to which any consumer has so little at stake that she cannot be expected to pursue her claim"); Leonard v. Terminix Int'l Co., 854 So.2d 529, 539 (Ala. 2002) (by "foreclosing the Leonards from an attempt to seek practical redress through a class action and restricting them to a disproportionately expensive individual action," the defendants had essentially closed the door of justice to these consumers); Szetela v. Discover Bank, 97 Cal.App. 4th 1094, 1001 (Cal. Ct. App. 2002) ("It is the *manner* of arbitration, specifically, prohibiting class or representative actions, we take exception to here . . . . By imposing this clause on its customers, Discover has essentially

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granted itself a license to push the boundaries of good business practices to their fullest limits, fully aware that relatively few, if any, customers will seek legal remedies[.]"); S.D.S. Autos, Inc. v. Chrzanowski, 976 So.2d 600, 608 (Fl. Dist. Ct. App. 2007) (holding that a class action ban "effectively prevents consumers with small, individual claims based upon motor vehicle dealers' violations of [Florida's Unfair or Deceptive Acts or Practices Statute], from vindicating their statutory rights"); Whitney v. All-Tel Communications, 173 S.W.3d 300, 314 (Mo. Ct. App. 2005) (holding class action bans in consumer contracts unconscionable where exculpatory because they "would effectively strip consumers of the protections afforded to them under the [Missouri] Merchandising Practices Act and unfairly allow companies like Alltel to insulate themselves from the consumer protection laws of this State"); Muhammad v. County Bank of Rehobeth Beach, 912 A.2d 88, 91, 99 (N.J. 2006) (holding that "[T]he class-arbitration waiver in this consumer contract is unenforceable" because of the fact that the plaintiff's "individual consumer fraud case involves a small amount of damages, rendering individual enforcement of her rights, and the rights of her fellow consumers, difficult if not impossible."); Fiser v. Dell Computer Corp., 188 P.3d 1215, 1220 (N.M. 2008) ("In view of the fact that Plaintiff's alleged damages are just ten to twenty dollars, by attempting to prevent him from seeking class relief, Defendant has essentially foreclosed the possibility that Plaintiff may obtain any relief . . . . On these facts enforcing the class action ban would be tantamount to allowing Defendant to unilaterally exempt itself from New Mexico consumer protection laws."); Schwartz v. Alltel Corp., 2006 WL2243649, at *4 (Ohio Ct. App. June 29, 2006) ("By eliminating a consumer's right to proceed through a class action, the arbitration clause directly hinders the consumer protection purposes of the [Consumer Sales Practice Act]."); Vasquez-Lopez v. Beneficial Oregon, Inc., 152 P.3d 940, 950 (Or. Ct. App. 2007) (holding that enforcement of the class action ban would exculpate the lender from liability); Thibodeau v. Comcast Corp., 912 A.2d 874, 885 (Pa. Super. Ct. 2006) ("it is only the class action vehicle that makes consumer litigation possible . . . Should the law require consumers to litigate or arbitrate individually, defendant corporations are effectively immunized from redress of grievances."); Scott v. Cingular Wireless L.L.C., 161

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P.3d 1000, 1003 (Wash. 2007) ("Class action and arbitration waivers are not, in the abstract, exculpatory clauses. But because . . . damages in consumer cases are often small and because '[a] company that wrongfully exacts a dollar from each of millions of customers will reap a handsome profit,' .. . 'the class action is often the only effective way to halt and redress such exploitation.'") (internal citations omitted); West Virginia ex rel. Dunlap v. Berger, 567 S.E.2d 265, 278-9 (W. Va.2002) (holding an arbitration clause that effectively barred class actions unconscionable, stating that in the consumer and employment context, where contracts of adhesion are common, allowing a class action ban to stand "would go a long way toward allowing those who commit illegal activity to go unpunished, undeterred, and unaccountable"). These decisions represent a clear trend in the law, as there is an increasing sense on the part of courts that corporate accountability to consumers in the marketplace is being eliminated by class action prohibitions. Thus, the weight of authority establishes that, where class action bans are exculpatory due to the small claims at issue in a case, the bans are substantively unconscionable. Here we have empirical evidence that very few, if any, Class members are able to arbitrate with Rapid Cash on an individual basis: none of potentially thousands have ever done so.

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Moreover, several courts have found class action bans to be exculpatory for additional reasons that apply to the facts of this case. The California Supreme Court found a class action ban to be impermissibly exculpatory where the ban impedes the pursuit of statutory legal remedies for those harmed by fraudulent activity. Gentry, 42 Cal.4th at 457 (holding that "such a waiver can be exculpatory in practical terms because it can make it very difficult for those injured by unlawful conduct to pursue a legal remedy"). The same principle similarly should hold true if a class action ban impedes the pursuit of a judicial remedy, here for fraud on the court. In addition, at least four state supreme courts have struck down class action bans in part on the ground that the vast majority of consumers, absent the class action device, would not realize that they have a claim. *See* Kinkel, 857 N.E.2d at 268 ("The typical consumer may feel that such a charge is unfair, but only with the aid of an attorney will the consumer be aware that he or she may have a claim that is supported by law...."); Muhammad, 912 A.2d at 100

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("[W]ithout the availability of a class-action mechanism, many consumer fraud victims may never realize that they may have been wronged."); Scott, 161 P.3d at 1007 ("Without [class actions], many consumers may not even realize that they have a claim. The class action provides a mechanism to alert them to this fact.") (internal citations omitted); cf. Gentry, 42 Cal.4th at 461 ("some individual employees may not sue because they are unaware that their legal rights have been violated"). This is the quintessential case to invoke this principle where Rapid Cash has thwarted the pursuit of legal remedies by denying class members their right to know they were *even being sued.* Rapid Cash fraudulently manipulated the court to obtain default judgments leaving hundreds of consumers in the putative Class unaware that their legal rights were violated. It is obvious these consumers are unaware there is a remedy. A class action is the only practical manner to stop Rapid Cash from benefitting from its fraud.

Even proponents of class action bans have admitted that their primary use is to exculpate their drafters from liability. As one lawyer encouraging the use of class action bans wrote:

> [T]he franchisor with an arbitration clause should be able to require each franchisee in the potential class to pursue individual claims in a separate arbitration. Since many (and perhaps most) of the putative class members may never do that . . . strict enforcement of an arbitration clause should enable the franchisor to dramatically reduce its aggregate exposure.

Edward Wood Dunham, The Arbitration Clause as a Class Action Shield, 16 FRANCHISE L.J. 141, 141 (1997). Another lawyer has advocated the use of arbitration clauses as a "defense" for banks because they act as a "deterrent" to class actions. Alan Kaplinsky, Excuse Me, But Who's the Predator: Banks Can Use Arbitration Clauses as a Defense, 7-JUN BUS. L. TODAY 24 (1998).

These premeditated "deterrents" to class actions are directly connected to a company like Rapid Cash's slide into dubious and illegal behavior because the company has effectively created a wall against a Nevada consumer's ability to seek assistance when wronged. The purposeful creation of a class action ban encourages not just pushing the legal envelope, but with a company like Rapid Cash, going beyond the legal and intentionally hindering the constitutional rights of consumers in order to streamline collection practices.

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Lastly, this Court must consider the policy implications of class action bans. "A company which wrongfully exacts a dollar from each of millions of customers will reap a handsome profit; the class action is often the only effective way to halt and redress such exploitation." Discover Bank, 113 P.3d at 1105 (internal citations omitted). If this Court enforces Rapid Cash's class action ban, it will not only encourage Rapid Cash's illegal behavior, but that of all other corporations who wrongfully exact relatively small sums from thousands of Nevada's citizens. Upholding this ban would also eliminate the deterrent effect of class actions, "violat[ing] public policy by granting . . . a 'get out of jail free' card while compromising important consumer rights." *Id.* at 1108 (quoting Szetela, *supra.*).

A class action ban that acts as an exculpatory clause is substantively unconscionable. Because Rapid Cash's class action ban exculpates Rapid Cash from liability on a class-wide scale, its class action ban is substantively unconscionable and cannot be enforced.

c. Rapid Cash's Class Action Ban is Also Substantively Unconscionable Because It Is One Sided.

Rapid Cash's class action ban is unconscionable because in reality it is one sided. The provision states that neither Rapid Cash nor the consumer has the right to participate in a class action as a class representative or class member. It is highly doubtful that Rapid Cash would ever sue its customers in a class action, but Rapid Cash's customers may, at times, have reason to bring a class action against Rapid Cash. Thus, Rapid Cash is not giving up an equal right because Rapid Cash's rights remain intact while the consumers are stripped of a remedy. This class action ban lacks the bilaterality required in an arbitration clause.

The facts of this case illustrate the non-mutuality of this clause *in practice*, too. In every case for every putative Class member, Rapid Cash chose to resort to the court. Rapid Cash hired attorneys, filed litigation, hired the process server, filed multiple pleadings to obtain default judgments, and often issued writs and garnished income. At every step, Rapid Cash failed to choose arbitration. On the other hand, the putative Class members in this case, arguably following Rapid Cash's lead, are looking to this Court for relief. At this moment, Rapid Cash

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has decided that the arbitration provision, and particularly the class action ban, is now required. Should this Court adopt Rapid Cash's approach, the as-applied effect will be to require only the consumers to adhere to arbitration while Rapid Cash remains free to initiate court proceedings at whim. Rapid Cash must not be permitted to use this provision as a sword and a shield, while leaving its consumers defenseless.

D. Plaintiffs' Claims Against Rapid Cash are Outside of the Scope of the Arbitration Clause.

The Rapid Cash arbitration clause/class action ban is worded in the most broad way imaginable, requiring that the parties arbitrate any dispute that "arises from or relates in any way to," the payday loan agreements. See, e.g., Deferred Deposit Agreement and Disclosure Statement, page 3, ¶ 2, Exhibit A, among other loan agreements, attached to Affidavit of Richard Duke Gee. Courts interpreting and applying such broadly worded arbitration clauses have held that the dispute must bear a significant relationship to the contract, and at least one court has refused to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings. As the instant dispute has no real relationship to the payday loan contracts that contain the arbitration clauses that Rapid Cash has long ignored, arbitration should not be compelled.

1. The Dispute Does Not Have a Significant Relationship to the Contract.

The Court in Jones v. Halliburton Co., 583 F.3d 228, 240 (5th Cir. 2009), noted the principle that "[w]hen deciding whether a claim falls within the scope of an arbitration agreement, courts 'focus on factual allegations in the complaint rather than the legal causes of action asserted.'" (quoting Waste Mgmt., Inc. v. Residuos Industriales Multiquim, S.A. de C.V., 372 F.3d 339, 344 (5th Cir. 2004)). Jones v. Halliburton Co. demonstrates the inapplicability of contractual arbitration clauses to certain tort claims. Jones involved an alleged rape of an employee by her coworkers in Iraq that was covered by worker's compensation, but nonetheless held beyond the scope of an arbitration clause in her employment contract, which provided: "You understand that the Dispute Resolution Program requires, as its last step, that *any and all claims* that you might have against

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Employer *related to your employment . . .* must be submitted to binding arbitration instead of to the court system." 583 F.3d at 235 (emphasis original). Discussing broad arbitration clauses and Fifth Circuit and United States Supreme Court precedent, the Jones court noted:

> Of course, although this [expansive reach, governing disputes of anything "related to" the contract] reach is broad, it is not unbounded. *Pennzoil* recognized that a dispute need only "'touch' matters covered by" the arbitration agreement to be arbitrable, (citations omitted); in the same discussion, however, it defined an arbitrable dispute under a broad clause as one "having a significant relationship to the contract,"—here, Jones' employment contract—"regardless of the label attached to the dispute"—(citation omitted). It further noted: "[E]ven broad clauses have their limits."

Id. At 235 (citation omitted). Thus, even the most broadly worded arbitration clauses, which are construed such that a dispute need only "touch" matters covered by the arbitration agreement, are not unbounded: **the arbitrable dispute must bear a significant relationship to the contract.**

The dispute in this case is not an arbitrable dispute because it has nothing whatsoever to do with the payday loan contract, let alone a significant relationship to the contract. The essence of this case is the commission of a fraud upon the court through the filing of falsified affidavits of service of process. This claim stands without reference to and independent of the payday loan contract. Hill v. Hilliard, 945 S.W.2d 948 (Ky.App. 1996), relied upon in Jones, illustrates this point. Rejecting the argument that a broad clause requiring arbitration of any controversy "arising out of employment" compelled arbitration of a claim arising from sexual assault by a coworker, the Hill court held, "The only connection those torts and crimes have with [plaintiff]'s employment is that they were committed by a co-worker and occurred while on a business trip. The mere fact that these tort claims might not have arisen but for the fact that the two individuals were together as a result of an employer-sponsored trip cannot be determinative. What [the supervisor] is accused of doing is independent of the employment relationship." Jones, 583 F.3d at 236 (internal citations omitted). The Jones Court further noted that Jones's claim that Halliburton was vicariously liable for the assault strengthened its conclusion that the case was beyond the scope of the arbitration clause. Id. at 237.

The Plaintiffs' claims in this case – based on the tortious conduct of Rapid Cash and its agent, On Scene, in abusing the justice court system and Plaintiffs' due process rights – similarly bear an insufficient relationship to the payday loan contracts in which the subject arbitration clauses are found. Parties cannot reasonably be held to have intended to contract to arbitration of events with no significant relationship to the contract in making a payday loan agreement of a few hundred dollars. In denying Defendant's Motion to Compel Arbitration for lack of relation between putative class Plaintiffs' claims and the underlying loan agreements, this Court would be in good company. See, e.g., Hyde v. RDA, Inc., 389 F. Supp. 2d 658, 664 (D. Md., 2005) (finding that Fair Credit Reporting Act (FCRA) claim did not bear any significant relationship to the automobile contract and that the transaction giving rise to the FCRA claim was separate and independent from the transaction involving the arbitration agreement); see also Ford v. NYLCare Health Plans of Gulf Coast, Inc., 141 F.3d 243, 251 (5th Cir., 1998) (holding that a doctor's false advertising claim against health maintenance organization (HMO) was not related to contract between doctor and HMO covering the performance of medical services; Coors Brewing Co. v. Molson Breweries, 51 F.3d 1511, 1516 (10th Cir., 1995) (finding that antitrust claim based on market behavior was not related to parties' licensing agreement); Parfi Holding, AB v. Mirror Image Internet, Inc., 817 A.2d 149, 151 (Del. 2002) (finding breach of fiduciary duty claim unrelated to contract containing arbitration clause).

2. This Court Should Refuse to Apply a Contractual Arbitration Clause to Unforeseeable Torts.

A court is within its discretion to refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings. Aiken v. World Fin. Corp., 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2007), reh. den., 2007 S.C. LEXIS 234 (S.C. May 23, 2007), cert. den. sub nom. World Fin. Corp. v. Aiken, 552 U.S. 991, 128 S.Ct. 497, 169 L.Ed.2d 340 (2007). Aiken took out a series of loans from World Finance in 1997-1999, paying off the last loan in 2000. In the course of that relationship, he provided personal information. Sometime around 2002, certain employees of World Finance stole his personal information and obtained sham loans. Aiken sued World

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Finance alleging various identity theft legal theories. World Finance moved to compel arbitration, under a clause in the loan agreements Aiken had signed, that broadly provided:

> . . . ALL DISPUTES, CONTROVERSIES OR CLAIMS OF ANY KIND AND NATURE BETWEEN LENDER AND BORROWER ARISING OUT OF OR IN CONNECTION WITH THE LOAN AGREEMENT, **OR ARISING OUT OF ANY TRANSACTION OR RELATIONSHIP BETWEEN LENDER AND BORROWER OR ARISING OUT OF ANY PRIOR OR FUTURE DEALINGS BETWEEN LENDER AND BORROWER,** SHALL BE SUBMITTED TO ARBITRATION AND SETTLED BY ARBITRATION IN ACCORDANCE WITH THE UNITED STATES ARBITRATION ACT, THE EXPEDITED PROCEDURES OF THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (THE "ARBITRATION RULES OF THE AAA"), AND THIS AGREEMENT.

Id., 644 S.E.2d at 707 (emphasis added). The Court denied World Finance's motion to compel arbitration. The Court first noted that cases holding that even in broadly-worded arbitration agreements, the matter must still involve a "significant relationship" between the asserted claims and the contract in which the arbitration clause is contained. Id. at 708. The Court then rejected World Finance's argument that because Aiken's contracts with World Finance gave its employees access to Aiken's information in order to carry out their crimes, there was a significant relationship between Aiken's claims and the underlying loan agreement, thereby warranting arbitration:

> We find this argument unpersuasive. In our opinion, the "relationship" asserted by World Finance between Aiken's tort claims and the parties' prior dealings under the loan agreements hardly rises to the level of "significant." Applying what amounts to a "but-for" causation standard essentially includes every dispute imaginable between the parties, which greatly oversimplifies the parties' agreement to arbitrate claims between them. Such a result is illogical and unconscionable. "[T]he mere fact that the dispute would not have arisen but for the existence of the contract and consequent relationship between the parties is insufficient by itself to transform a dispute into one 'arising out of or relating to' the agreement.").

Id., 644 S.E.2d at 708 (internal citations omitted). And although Aiken had paid his loans in full when the employees' tortious acts occurred, the Court did not consider the timing of the employees' tortious conduct relevant to the arbitrability of Aiken's claim, saying:

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> Instead, we pronounce a more definitive rule for determining whether a significant relationship exists between a dispute between parties to a contract and the underlying contract, thereby implicating an arbitration agreement in the contract. Because even the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings.

Id.

Plaintiffs' claims against Rapid Cash concern egregious tortious conduct that could not possibly have been foreseen by the putative Class members at the time they entered into the payday loan agreements containing the arbitration clause. Consequently, in signing the agreement to arbitrate, no member of the putative Class was agreeing to provide an alternative forum for settling claims arising from this wholly unexpected tortious conduct. Accordingly, this Court should follow Aiken and similarly refuse to compel arbitration.

E. The Arbitration Clause As Applied In This Case Is Void As Against Public Policy.

It is well settled that a Court will not enforce a contract provision in violation of public policy. State Farm Mut. Auto. Ins. Co. v. Hinkle, 87 Nev. 478, 488 P.2d 1151 (1971) (lack of uninsured motorist protection in auto insurance contract against public policy and void). The Rapid Cash arbitration clause as applied to the facts of this case is void as against the public policy of the courts to control their own dockets and to prevent abuses of the judicial process.

By way of analogy, courts refuse to enforce "no waiver" provisions in arbitration clauses because a court's authority to determine that a party has waived its right to arbitration through litigation conduct derives from its inherent authority to control its docket, which cannot be limited by a contract between parties to litigation. Republic Ins. Co. v. PAICO Receivables, LLC, 383 F.3d 341, 348 (5th Cir. 2004) ("The inclusion of a 'no-waiver' clause does not eliminate the district court's inherent power to control its docket."). Moreover, enforcing such provisions would sanction an abuse of the judicial process. Id.; S & R Co. of Kingston v. Latona Trucking, Inc., 159 F.3d 80, 85-86 (2nd Cir. 1998); Home Gas Corp. v. Walter's of Hadley, Inc., 532 N.E.2d 681, 684-85 (Mass. 1989).

Once Rapid Cash filed one case, and indeed thousands of cases, it submitted itself to the jurisdiction of the courts. If indeed Rapid Cash engaged in the litigation conduct of which it is accused herein, then it simply cannot be permitted to tell the Court it is helpless to correct such an abuse of the judicial process due to the presence of a contractual arbitration clause. The Court always retains its inherent power to control its own docket, and parties before the Court simply cannot contract it away. Rapid Cash's arbitration provision must be held unenforceable in this case in violation of public policy.

F. Enforcement of Rapid Cash's Arbitration Clauses Would Violate the Public Interest Purpose of this Lawsuit.

Turning to another analogy, Courts have refused to enforce arbitration clauses in cases brought in the public interest. Broughton v. Cigna Health Plans, 988 P.2d 67 (Cal. Ct. App. 1999) (motion to compel arbitration denied where plaintiffs sought a public interest injunction to restrain future deceptive advertising practices); see also Cruz v. PacifiCare Health Sys., Inc., 66 P.3d 1157, 1164-65 (Cal. 2003) (extending Broughton to claims for public injunctive relief under California's unfair competition law); Zavala v. Scott Brothers Dairy, Inc., 143 Cal. App. 4th 585, 596, 49 Cal. Rptr. 3d 503, 510 (2006) ("Certainly, plaintiffs' injunctive relief claim under the unfair business practices act (Bus. & Prof. Code, § 17200) is not arbitrable.").

While Plaintiffs do seek relief for themselves and those similarly situated and not solely in the interest of the public, there can be no doubt that this case presents a significant public interest component. If indeed Rapid Cash engaged in the litigation conduct of which it is accused herein, then it has undermined the integrity of the judicial system. It is in the public interest that the judicial system hear this matter in a public proceeding, rather than sweep it under the rug in four private, individual arbitrations. Rapid Cash's arbitration provision must be held unenforceable in this case brought in the public interest.

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IV.

CONCLUSION

Rapid Cash's years of utilizing Clark County's justice courts as its personal collection agency through nearly 17,000 cases has dispossessed this well-seasoned litigant of any right to now compel arbitration of this consumer-protection class action. Even if this payday lender had not blatantly waived its right to enforce its arbitration clause, that clause would still be unenforceable because its class action ban is unconscionable, the claims in this case fall outside the reasonable scope of the arbitration clause, and the provision is unenforceable on public policy and public interest grounds. Defendants' Motion to Compel Arbitration and Stay All Proceedings must be denied, and this Court should promptly proceed to the Class Certification motion.

DATED this 7th day of October, 2010.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

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Attorneys for Class Representatives and Putative Class Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of October, 2010, I placed a true and correct copy of the foregoing **OPPOSITION TO MOTION TO COMPEL ARBITRATION AND STAY ALL PROCEEDINGS** via facsimile and in the United States Mail, postage fully pre-paid thereon addressed as follows:

William M. Noall, Esq.
GORDON SILVER
3960 H. Hughes Pkwy., 9th Floor
Las Vegas, NV 89169
Fax: (702) 369-2666

/s/ Rosie Najera
An employee of Clark County Legal Services Program, Inc.

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EXHIBIT "1"

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DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.
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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman; and DOES I through X, inclusive,

Defendants.

Case No.: A-10-624982-B
Dept. No.: XI

AFFIDAVIT OF CASANDRA HARRISON

I, CASANDRA HARRISON, being duly sworn deposes and states as follows:

1. I entered the Rapid Cash store on North Jones Blvd to obtain a loan.

2. The store has customer windows. There are no desks to sit at to obtain a loan.

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3. I walked up to a window and the Rapid Cash employee asked me where I worked, for documents to prove my income, and checking account information.

4. The employee typed into a computer.

5. After I was approved for the loan, the employee pushed the papers through her window to me to sign. She held the loan money in her other hand at the time.

6. The employee went over when the payment was due but there was no discussion of the additional contents of the loan agreement.

7. The papers were presented on a take-it-or-leave it basis; there was no discussion of any opportunity to negotiate any of its terms.

8. There was no discussion about the arbitration provision contained in the loan agreement, or the ability to opt-out of the arbitration provision within thirty (30) days after the date of my application.

9. To the best of my knowledge and recollections, the statements, dates, and amounts contained in paragraphs 1 through 9 above are true and accurate

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Casandra Harrison

CASANDRA HARRISON

SUBSCRIBED AND SWORN to before me this 1st day of October, 2010.

Notary Public

Notary Public - State of Nevada
County of Clark
ELIZABETH MONTES
My Appointment Expires
June 3, 2012
No. 96-1875-1

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EXHIBIT "2"

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DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman; and DOES I through X, inclusive,

Defendants.

Case No.: A-10-624982-B
Dept. No.: XI

AFFIDAVIT OF EUGENE VARCADOS

I, EUGENE VARCADOS, after first being duly sworn, deposes and states as follows:

1. I am a resident of Clark County, Las Vegas, Nevada.

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2. I signed loan agreements with Rapid Cash at a store on Maryland Parkway and Karen Avenue and a store located on Sahara Avenue and Decatur Boulevard.

3. The store had several customer windows. There are no desks to sit and read loan documents.

4. Typically, there were four or five people in the store at one time.

5. Excluding the annual percentage rate, the finance charge, the amount financed, the total of payments, and the payment schedule, there was no discussion of the additional contents of the loan agreement.

6. There was no discussion about the arbitration provision contained in the loan agreement, or the ability to opt-out of the arbitration provision within thirty (30) days after the date of my application.

7. The pages of the loan agreement were loose when presented to me, and the last page, the signature page, was on top of the pile of papers and obscured the remainder of the loan agreement.

8. Rapid Cash obtained my signature on the signature page of the loan agreement, kept the signed copy, and gave me a complete unsigned copy of the loan agreement with a receipt stapled over the terms on the first page.

9. Rapid Cash's pre-printed form loan agreements were presented to me on a take-it-or-leave-it basis.

10. There was no opportunity to negotiate the terms of the loan agreement prior to signing.

11. To the best of my knowledge and recollections, the statements, dates, and amounts contained in paragraphs 1 through 11 above are true and accurate.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EUGENE VARCADOS

SUBSCRIBED AND SWORN to before me this 5th day of October, 2010.

Notary Public

Notary Public - State of Nevada
County of Clark
VIOLETA L. HERNANDEZ
My Appointment Expires
No: 95-1187-1 April 13, 2011

Notary Public - State of Nevada
County of Clark
VIOLETA L. HERNANDEZ
My Appointment Expires
No: 95-1187-1 April 13, 2011

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EXHIBIT "3"

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DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman; and DOES I through X, inclusive,

Defendants.

Case No.: A-10-624982-B
Dept. No.: XI

AFFIDAVIT OF CONCEPCION QUINTINO

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Case No. 59837

In the Supreme Court 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.

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

Respondents.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable ELIZABETH GONZALEZ, District Judge
District Court Case No. A624982

APPELLANTS' APPENDIX
VOLUME 1
PAGES 1-230

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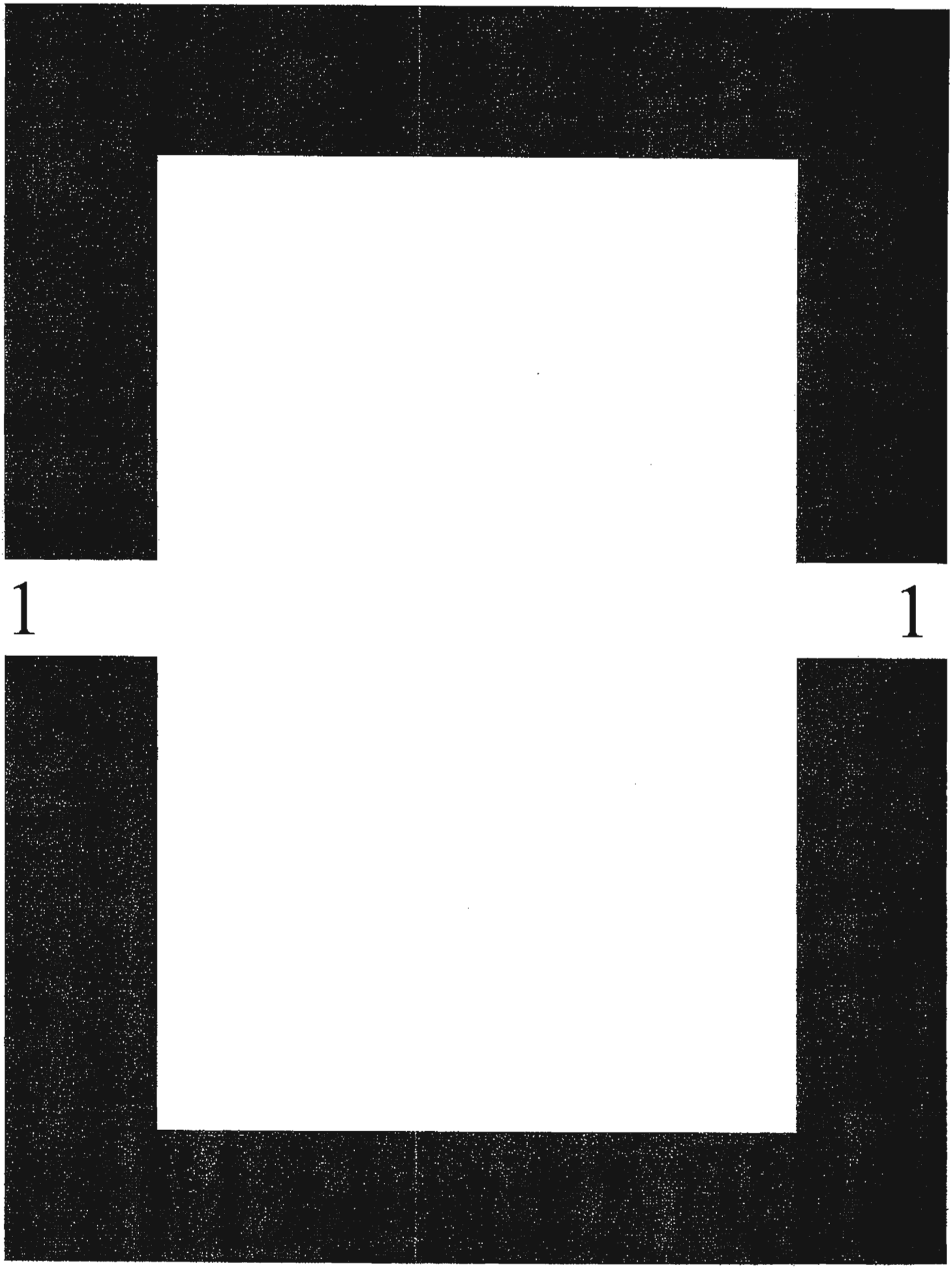

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman, and DOES I through X, inclusive,

Defendants.

A-10-624982-B
Case No.:
Dept. No.: XI

CLASS ACTION COMPLAINT

Exempt from Arbitration
Class Action; Declaratory and Injunctive Relief Sought

Plaintiffs, Casandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary

Dungan, individually and on behalf of all others similarly situated (hereafter "Class Representatives") for their Complaint against Defendants and DOES I thru X, allege and state as follows:

I.

NATURE OF THIS ACTION

1. This is a class action to redress the fraud perpetrated on the courts and perhaps thousands of defendants in the Clark County, Nevada, judicial system through "sewer service," the despicable practice by which a process server attests to having served a summons and complaint upon a defendant when, in fact, the defendant is never served and is left ignorant that his legal rights are being adjudicated. It arises from thousands of payday loan lawsuits filed in the Clark County Justice Courts by payday lender Rapid Cash in which Rapid Cash employed On Scene Mediations to fulfill Rapid Cash's responsibility under JCRCP 4(a) to serve the Summons and a copy of the Complaint on each Defendant borrower. On Scene Mediations did not serve process but executed an affidavit of service falsely stating it did serve process. Rapid Cash then filed the return of service with the Justice Court and obtained default judgments against the unwitting defendants. Default judgments have been entered in every case at issue in this action. Every such default judgment is void.

2. The Class seeks declaratory relief pursuant to NRS 30.010 *et seq.* for a declaration of the rights, status, or other legal relations of the parties. They also seek injunctive relief pursuant to Article 6, Section 6 of the Nevada Constitution, NRS 33.010 *et seq.*, and NRCP 65 against Rapid Cash with respect to enforcement of the void default judgments obtained, as well as equitable remedies. This action also arises under NRS Chapter 604A against Rapid Cash seeking declaratory and injunctive relief, punitive damages, prejudgment

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interest, reasonable attorney's fees, costs, and other legal and equitable relief. This is an independent action in equity for fraud upon the court, and legal theories of recovery set forth below include abuse of process, violations of NRS Chapter 604A and Chapter 598, negligent hiring, negligence, and civil conspiracy.

3. Class Representatives make the following allegations upon information and belief:

II.

PARTIES

4. The Class Representatives are natural persons and are currently residing in Las Vegas, Clark County, Nevada.

5. Principal Investments, Inc. d/b/a Rapid Cash is a corporation organized and existing under and by virtue of the laws of the State of Nevada and may be served with service of process upon its resident agent, Ellis & Gordon, A Professional Corporation, at 510 S. Ninth St., Las Vegas, NV 89101.

6. Granite Financial Services, Inc. d/b/a Rapid Cash is a corporation organized and existing under and by virtue of the laws of the State of Nevada and may be served with service of process upon its resident agent, Ellis & Gordon, A Professional Corporation, at 510 S. Ninth St., Las Vegas, NV 89101.

7. FMMR Investments, Inc. d/b/a Rapid Cash is a corporation organized and existing under and by virtue of the laws of the State of Nevada and may be served with service of process upon its resident agent, Ellis & Gordon, A Professional Corporation, at 510 S. Ninth St., Las Vegas, NV 89101.

8. Prime Group, Inc. d/b/a Rapid Cash is a corporation organized and existing under

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and by virtue of the laws of the State of Nevada and may be served with service of process upon its resident agent, Ellis & Gordon, A Professional Corporation, at 510 S. Ninth St., Las Vegas, NV 89101.

9. Advance Group, Inc. d/b/a Rapid Cash is a corporation organized and existing under and by virtue of the laws of the State of Nevada and may be served with service of process upon its resident agent, Ellis & Gordon, A Professional Corporation, at 510 S. Ninth St., Las Vegas, NV 89101.

10. The Rapid Cash Defendants[1] are currently doing business at fourteen (14) locations in Clark County, Nevada.

11. Maurice Carroll, individually and d/b/a On Scene Mediations,[2] is an individual and resident of Clark County, and may be served with process at his residence in Clark County, Nevada.

12. W.A.M. Rentals, LLC and d/b/a On Scene Mediations ("On Scene Mediations") is a limited liability company organized and existing under and by virtue of the laws of the State of Nevada, and may be served with process by service of process upon its resident agent, Maurice Carroll, located at 1000 N. Green Valley Pkwy, #440-305, Henderson, NV 89074.

13. Vilisia Coleman is an individual and resident of Clark County, Nevada, and may be served with process at her residence in Clark County, Nevada. Vilisia Coleman was

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[1] The Rapid Cash Defendants: 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 will collectively be referred to herein throughout as "Rapid Cash."

[2] Maurice Carroll, individually and d/b/a On Scene Mediations, and W.A.M. Rentals, LLC and d/b/a On Scene Mediations, will collectively be referred to herein throughout as "Carroll/On Scene Mediations" or "On Scene Mediations."

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employed by Carroll/On Scene Mediations, claimed to have served process upon some members of the Class when she did not do so, and signed false Affidavits of Service which were provided to Rapid Cash.

14. All of the acts or failures to act alleged herein were duly performed by and are attributable to Defendants acting by and through their agents and employees. Said acts and failures to act were within the scope of said agency and/or employment, and Defendants ratified said acts and omissions.

15. Pursuant to NRCP 10(a) and Nurenberger Hercules-Werke GMHB v. Virostek, 107 Nev. 873, 822 P.2d 1100 (1991), the identity of Defendants designated as DOEs I through X are unknown at the present time; however, it is alleged and believed these Defendants were involved in the initiation, approval, support, or execution of the wrongful acts upon which this litigation is premised, or of similar actions directed against the Class about which the Class is presently unaware. As the specific identities of these parties are revealed through the course of discovery, the DOE appellation will be replaced to identify these parties by their true names and capacities.

III.

GENERAL FACTUAL ALLEGATIONS – PLAINTIFF CLASS REPRESENTATIVES

A. Casandra Harrison

16. On or about March 19, 2009, Rapid Cash made payday loans in the amounts of $582.00 and $400.00, to Casandra Harrison pursuant to written loan agreements.

17. Rapid Cash filed a complaint against Ms. Harrison in Justice Court, Las Vegas Township, Clark County, Nevada, on or about July 21, 2009, for defaulting on the loans.

18. The Affidavit of Service for the Summons and Complaint purportedly served on

Ms. Harrison was signed by a "T. Smith," notarized by Maurice Carroll, and affirmed that service was both received and made by personal service on Ms. Harrison on the same day, August 8, 2009.

19. Not only was Ms. Harrison not served on August 8, 2009, she was not served at any other time by On Scene Mediations or any other server of process in connection with the Complaint.

20. Rapid Cash obtained a default judgment against Ms. Harrison on October 26, 2009.

21. Ms. Harrison did not know that she had been sued by Rapid Cash until she was garnished for the void default judgment, which garnishments caused her bank account to be overdrawn.

B. Eugene Varcados

22. In 2008, Rapid Cash made a series of payday loans to Mr. Varcados pursuant to written loan agreements.

23. Rapid Cash filed a complaint against Mr. Varcados in Justice Court, Las Vegas Township, Clark County, Nevada, on or about October 10, 2008, for defaulting on the loans.

24. The Affidavit of Service for the Summons and Complaint purportedly served on Mr. Varcados was served by an On Scene Mediations process server, notarized by Lizzie Hatcher, and affirmed that process was both received and served personally on Mr. Varcados on the same day, March 4, 2009.

25. Not only was Mr. Varcados not served on March 4, 2009, he was not served at any other time by On Scene Mediations or any other server of process in connection with the Complaint.

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26. Rapid Cash obtained a default judgment against Mr. Varcados on December 17, 2009.

27. Mr. Varcados did not learn of the Rapid Cash lawsuit against him until his wages began being garnished by Rapid Cash.

C. Concepcion Quintino

28. On or about May 20, 2006, Rapid Cash made a payday loan in the amount of $500.00 to Ms. Quintino pursuant to a written loan agreement.

29. Rapid Cash filed a complaint against Ms. Quintino in Justice Court, Las Vegas Township, Clark County, Nevada, on or about October 6, 2008, for defaulting on the loan.

30. The Affidavit of Service for the Summons and Complaint purportedly served on Ms. Harrison was signed by a "C. Mack," notarized by Maurice Carroll, and affirmed that process was both received and served personally on Ms. Quintino on the same day, November 14, 2008.

31. Not only was Ms. Quintino not served on November 14, 2008, she was not served at any other time by On Scene Mediations or any other server of process in connection with the Complaint.

32. Rapid Cash obtained a default judgment against Ms. Quintino on August 19, 2009.

33. Ms. Quintino did not learn of the Rapid Cash lawsuit against her until her paycheck was garnished.

D. Mary Dungan

34. On or about spring, 2009, Rapid Cash made a payday loan in the amount of $600.00 to Mary Dungan pursuant to a written loan agreement.

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35. Rapid Cash filed a complaint against Ms. Dungan in Justice Court, Las Vegas Township, Clark County, Nevada, on or about July 17, 2009, for defaulting on the loan.

36. The Affidavit of Service for the Summons and Complaint purportedly served on Ms. Dungan was signed by a "J. Rivera," notarized by Maurice Carroll, and affirmed that service was both received and made by personal service on Ms. Dungan on the same day, July 31, 2009.

37. Not only was Ms. Dungan not served on July 31, 2009, she was not served at any other time by On Scene Mediations or any other server of process in connection with the Complaint.

38. Rapid Cash obtained a default judgment against Ms. Dungan on October, 16, 2009.

39. Ms. Dungan did not know that she had been sued by Rapid Cash until her wages were garnished.

IV.

GENERAL FACTUAL ALLEGATIONS – DEFENDANTS

40. In late 2003, the Nevada Private Investigators Licensing Board, charged by law with licensing process servers, issued Maurice Carroll individually and d/b/a On Scene Mediations a $2,500 citation for serving summons/complaints without a license. The Board ordered Carroll to stop doing business. He did not do so.

41. One of Maurice Carroll's principal assistants, who signed many of the false affidavits of service provided to and filed by Rapid Cash, was Defendant, Vilisia Coleman, who during her employment, was a convicted felon.

42. On information and belief, the Las Vegas Metropolitan Police Department

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("Metro") has taken calls from people who complained that they were never served with process from as early as 2004 and claimed that Maurice Carroll's company never served them the required court papers, and default judgments were taken.

43. During 2004-2010, On Scene Mediations served as Rapid Cash's agent to fulfill Rapid Cash's responsibility under JCRCP 4(a) to serve the Summons and a copy of the Complaint on each defendant borrower.

44. Rapid Cash, by and through its employee and/or agent, On Scene Mediations, practiced "sewer service," an egregious fraud against the Class (defined below) and the Justice Courts of Clark County, Nevada whereby Rapid Cash failed to provide proper legal notification to hundreds if not thousands of southern Nevadans facing Rapid Cash's payday loan lawsuits.

45. Lack of service deprived the Class of due process of law (Due Process Clause of Nev. Art. 1, Sec. 8), resulting in hundreds if not thousands of void default judgments being entered without the opportunity to respond or defend. The outcome was that Rapid Cash obtained hundreds if not thousands of void default judgments and garnishments.

46. Rapid Cash filed 1,760 cases in 2004, 3,009 cases in 2005, 2,020 cases in 2006, 2,886 cases in 2007, 3,162 cases in 2008, and 3,826 cases in 2009, and typically employed On Scene Mediations to serve process.

47. The affidavits of service of process submitted in support of those filings reflect an unusually high percentage of personal service of process purportedly completed the same day that On Scene Mediations received the summons, a highly dubious and suspicious achievement.

48. Sometime after January, 2009, when civil cases began being assigned to only two Justices of the Peace in Clark County, Nevada, Las Vegas Township, the Court noticed this unusual pattern, and the Court made counsel for Rapid Cash aware of the suspicious nature of

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such representations.

49. Thus, Rapid Cash was on actual notice of or was willfully blind to and recklessly disregarded this pattern, and continued to file such affidavits of service.

50. Another pattern becomes evident from Rapid Cash's Justice Court practices: when a Rapid Cash defendant would move to set aside a default judgment on the basis of lack of service, the Rapid Cash attorney---presumably with the express consent of his/her client, Rapid Cash, and in any event an act done on behalf of Rapid Cash for which Rapid Cash is responsible and charged with knowledge---would stipulate to set the default judgment aside instead of having the process server come in and testify at an evidentiary hearing, suppressing discovery of the fraud. This pattern points to guilty knowledge by Rapid Cash that it was filing falsified affidavits of service.

51. On information and belief, Sergio Pinto, employed to serve process by Maurice Carroll/On Scene Mediations, admitted to Metro that he was told by "the ladies in the office" to falsify affidavits of service, claiming that he made service of process to individuals, but had not done so.

52. On information and belief, Sergio Pinto told Metro that Maurice Carroll also directed him to falsify affidavits of service.

53. On information and belief, Niekyta Lonsoria, employed to serve process by Maurice Carroll/On Scene Mediations, admitted to Metro that she signed affidavits of service at the direction of Maurice Carroll without ever having gone out to perform the services, in effect falsifying Affidavits.

54. On information and belief, Maurice Carroll admitted to Metro that he had falsified affidavits of service, but claimed that his office manager, Vilisia Coleman, told him the

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documents had been served while he was out of town.

55. In August, 2010, Maurice Carroll and Vilisia Coleman were both criminally indicted.

56. Coleman's criminal defense attorney, meanwhile, has stated the On Scene Mediations sewer service policy was in place at Carroll's direction at the time she was hired.

57. Accordingly, at all times relevant herein, Rapid Cash knew or was on constructive notice that Maurice Carroll and On Scene Mediations were not operating a licensed process serving company.

58. At all times relevant herein, Rapid Cash knew, or was willfully blind to and recklessly disregarded, or was on constructive notice that On Scene Mediations was providing false affidavits of service to Rapid Cash, which Rapid Cash nevertheless proceeded to file in the Justice Courts of Clark County, Nevada.

59. Rapid Cash, as the plaintiff in actions it filed in the Justice Courts of Clark County, Nevada, was responsible for the service of the summons and complaint to each defendant it sued. JCRCP 4(a); JCRCP 4(d)(6).

60. Rapid Cash did not properly serve members of the Class. Instead, Rapid Cash employed On Scene Mediations, which it knew or should have known was not a licensed process server, and which provided to Rapid Cash false affidavits of service claiming to have completed service of process on the Class. The affidavits were sworn under penalty of perjury and notarized, and filed by Rapid Cash.

61. Because those affidavits were not supported by proper service, the default judgments obtained are void. *Gassett v. Snappy Car Rental*, 111 Nev. 1416, 906 P.2d 258 (1995).

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62. Failure to provide notice of legal proceedings undermines the foundation of the legal system. Due to repeated and persistently falsified affidavits of service, victims were not notified of pending suits against them and therefore were deprived of due process of law. Nev. Art. 1, Sec. 8.

63. As a direct result, Rapid Cash won void default judgments.

64. Rapid Cash's act of obtaining default judgments based on false affidavits of service have a self-evident and serious but generic impact upon each member of the Class regardless of individual circumstance. These impacts include but are not limited to: 1) deprivation of due process of law, a fundamental, Constitutional right; 2) suffering of a default judgment in a falsely and fraudulently inflated amount in that the judgment includes the cost of service of process which was never made; and 3) lost opportunity to negotiate or repay a debt without credit-damaging or public consequences.

65. Rapid Cash is entirely responsible for the acts of its employee and/or agent, On Scene Mediations, under common law *respondeat superior* and/or as its agent. Alternatively, Rapid Cash is entirely responsible for the acts of On Scene Mediations in that it either intentionally or negligently hired an unlicensed process server, and then either intentionally or negligently failed to supervise and retained the unlicensed process server. Alternatively, Rapid Cash is entirely responsible for the acts of On Scene Mediations in that Rapid Cash knew, or was willfully blind to and recklessly disregarded, or should have known, and/or was on actual or constructive notice that On Scene Mediations was unlicensed and allegedly served an impossibly high number of people on a given day, or even at one given time, by a single process server, and also that On Scene Mediations claimed to have successfully served process on the same day that it was received in a very high number of cases, and thus Rapid Cash routinely

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filed falsified returns of service of process against the Class, resulting in void default judgments against the Class.

V.

CLASS ACTION ALLEGATIONS

66. This is a uniquely local class action on behalf of the victims of defendants' sewer service that resulted in Rapid Cash obtaining default judgments against its customers in the Justice Courts in Clark County, Nevada. The perpetration of this fraud in the Justice Courts of Clark County, Nevada, makes this an intrastate controversy against a handful of distinctly local defendants whose practices have deprived Rapid Cash customers of their rights under Nevada's laws, court rules, and Constitution.

67. The Class Representatives bring this action individually and on behalf of all others similarly situated pursuant to NRCP 23(a) and NRCP 23(b)(1), (b)(2), or (b)(3), and that Class consists of:

> **Customers of Rapid Cash offices in Clark County, Nevada, against whom Rapid Cash obtained default judgments in the Justice Courts of Clark County, Nevada, and for which the only evidence that the defendant received service of process of Rapid Cash's lawsuit was an affidavit signed by a representative of On Scene Mediations.**

68. Numerosity. Membership in the Class is so numerous as to make joinder of all Class members impracticable. During the time period applicable to the Class, upon information and belief, there were thousands of default judgments obtained by Rapid Cash employing On Scene Mediations to serve process. Rapid Cash filed 1,760 cases in 2004, 3,009 cases in 2005, 2,020 cases in 2006, 2,886 cases in 2007, 3,162 cases in 2008, and 3,826 cases in 2009, and typically employed On Scene Mediations to serve process. On information and belief, hundreds if not thousands of defendants were never served, and void default judgments were obtained as a

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result of this sewer service. The disposition of the Class's claims in a class action will obviate the need for repeated individual adjudications of the same issues.

69. Commonality. There are questions of law or fact common to all members of the Class that control this litigation and which predominate over any individual issues. The common questions of law or fact include, but are not limited to, the following: (a) whether Rapid Cash obtained void default judgments based on false affidavits of service in cases too numerous to join together; (b) whether Rapid Cash is responsible for the acts of its employee and/or agent On Scene Mediations; (c) whether, in hiring and supervising its employee and/or agent On Scene Mediations to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash engaged in a fraud upon the Court; (d) whether, in hiring and supervising its employee and/or agent On Scene Mediations to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash engaged in abuse of process; (e) whether, in hiring and supervising its employee and/or agent On Scene Mediations to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash was negligent; (f) whether, in hiring and supervising its employee and/or agent On Scene Mediations to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash engaged in a civil conspiracy; (g) whether in hiring and supervising its employee and/or agent, On Scene Mediations, to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash violated NRS 604A.415 in failing to collect a debt in a "fair and lawful manner;" (h) whether, at some point during its employment of On Scene Mediations, Rapid Cash became aware of or was willfully blind to and recklessly disregarded the fact that Rapid Cash was filing false returns of service in its lawsuits against the Class such that it might be responsible for punitive damages; and (i) whether the Class has a remedy for Defendants' actions as described and, if so, the nature of that remedy.

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70. Typicality. The claims of the Class Representatives are typical of the claims of the Class in that each seeks the same remedies and relief upon the same legal theories and operable facts, and the Class Representatives have no interest adverse to the interests of the other members of the Class.

71. Adequacy of Representation. The Class Representatives and experienced Class Counsel will fairly and adequately protect the interests of the Class.

72. Superiority. A class action is superior to other methods for the fair and efficient adjudication of this controversy because, *inter alia*: (a) the prosecution of separate actions would create a risk of inconsistent or varying adjudications; (b) Rapid Cash has acted on grounds generally applicable to the Class, and has committed the same unlawful acts against the Class; (c) the complexity of the issues involved, the size of the individual Class member's claims, and the limited resources of the Class members would clearly make it impracticable for all individual members of the Class to individually seek legal redress for the actions of Rapid Cash; (d) this action would facilitate an orderly and expeditious resolution of the Class' claims, and will foster economies of time, effort, and expense; (e) when the Court has adjudicated whether Rapid Cash is liable, then the claims of all Class members may be determined by the Court; and (f) this action presents no difficulty that would impede its maintenance by the Court as a class action and is the best available means by which the Class Representatives and all Class members may seek redress for the harm caused by Rapid Cash.

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VI.

INDEPENDENT ACTION IN EQUITY FOR FRAUD UPON THE COURT

(All Defendants)

73. Class Representatives incorporate all prior paragraphs as though fully set forth herein.

74. Rule 60(b) provides that the Rule "does not limit the power of a court to entertain an independent action . . . for fraud upon the court."

75. Rapid Cash's judgments against the Class ought not, in equity and good conscience, be enforced.

76. Each member of the Class has the same good defense to each judgment in that each judgment is void for lack of proper service.

77. Fraud, accident, or mistake on the part of Defendants prevented the Class from obtaining the benefit of his/her defense as Rapid Cash misrepresented to the Court that service was completed by filing false affidavits. This misrepresentation led the Court in each instance to believe that each member of the Class was aware of the Rapid Cash complaint and chose not to oppose the complaint. This fraud kept each member of the Class away from the court and deprived the Class of the opportunity to voice opposition to the complaint and/or the amounts Rapid Cash was requesting.

78. There is no fault or negligence on the part of the Class because the Class was not served with process. When Class members were later garnished, many unsophisticated Class members naturally assumed that Rapid Cash had acted legally because, after all, the Court had granted it judgment.

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79. Without the relief afforded by this independent action, Class Representatives and the Class have no adequate remedy at law.

80. To remedy the Defendants' fraud upon the Court, Class Representatives and the Class are entitled to equitable relief including but not limited to the setting aside of the default judgments secured against them by Rapid Cash.

81. Class Representatives and the Class have been required to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys fees and costs of suit therefor.

VII.

ABUSE OF PROCESS
(All Defendants)

82. Class Representatives incorporate all prior paragraphs as though fully set forth herein.

83. When initiating a lawsuit in Nevada, Rapid Cash is subject to the laws and rules of the State of Nevada. By utilizing On Scene Mediations to undertake a legal process against Class Representatives and the Class primarily to accomplish a purpose for which it was not designed, Defendants have committed abuse of process.

84. Defendants had the ulterior motive of depriving Rapid Cash's customers of due process of law or otherwise depriving them of rights and defenses by utilizing affidavits of service that were known to be – or which a reasonable person would have known to be – false and fraudulent.

85. Defendants' actions were willful in the use of the process, and not proper in the regular conduct of the proceeding. *See Childs v. Selznick*, 2009 Nev. LEXIS 87, *3 (Nev. Sept. 28, 2009) (citations omitted), as evidenced, *inter alia*, by the facts that: 1) On Scene Mediations,

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with the actual or constructive knowledge of Rapid Cash, was knowingly operating as an unlicensed server; and 2) On Scene Mediations and its employees knew, and Rapid Cash knew or should have known, that the affidavits they were submitting and filing were false and fraudulent.

86. Therefore, Defendants abused the legal process to the detriment of the Class, entitling the Class to equitable and/or legal relief, including compensatory damages.

87. Class Representatives and the Class have been required to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys fees and costs of suit therefor.

VIII.

NEGLIGENT HIRING/SUPERVISION/RETENTION
(Rapid Cash)

88. Class Representatives incorporate all prior paragraphs as though fully set forth herein.

89. To fulfill its JCRCP 4 responsibility for service of the summons and complaint, Rapid Cash employed On Scene Mediations, who served as its agent.

90. As a result of this agency relationship, Rapid Cash is liable for any and all harm, damage, and injury resulting from On Scene Mediations' conduct.

91. Rapid Cash was under a general duty to conduct a reasonable background check or other reasonable investigation into On Scene Mediation's fitness for use as Rapid Cash's process server.

92. Rapid Cash was required to anticipate negligent or tortious behavior by On Scene Mediations because Rapid Cash either knew, or in the exercise of reasonable care might have ascertained, that On Scene Mediations was not properly qualified to undertake the work.

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Rapid Cash knew or should have known of On Scene Mediations' propensity for the conduct that caused injury to the Class because, *inter alia*:

a) Rapid Cash began using On Scene Mediations after On Scene Mediations was cited in 2003 for not being licensed;

b) On Scene Mediations gave Rapid Cash returns of service which were highly suspicious to any honest and responsible person who cared to look. On Scene Mediations provided Rapid Cash many false affidavits of service showing successful service made on the same day the Summons was received, and all achieving personal direct service on the Defendant, a highly dubious and suspicious achievement. Rapid Cash knew, or should have known, that such service is not possible and therefore Rapid Cash knew, or should have known, that On Scene Mediations was negligent, or engaged in other wrongful conduct, in completing the assignment Rapid Cash hired it to do.

93. On Scene Mediations acted as employee and/or agent for Rapid Cash when effecting service of process. Therefore, Rapid Cash is responsible for On Scene Mediations' tortious conduct in making false affidavits of service and in denying members of the Class the basic right of due process of law.

94. Rapid Cash's negligent hiring, supervision, and/or retention of On Scene Mediations has caused Class Representatives and the Class to suffer damages in excess of ten thousand dollars.

95. Class Representatives and the Class have been required to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys fees and costs of suit therefor.

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IX.

NEGLIGENCE
(All Defendants)

96. Process servers and others tasked with the obligation to serve process owe a duty of due care to the persons upon whom service is to be effectuated.

97. Both Rapid Cash (under JCRCP4) and Maurice Carroll/On Scene Mediations/Vilisia Coleman (as Rapid Cash's hired process server) had a duty of care to ensure that members of the Class were properly served. Both Rapid Cash and Maurice Carroll/On Scene Mediations/Vilisia Coleman breached that duty and failed to exercise due care when Maurice Carroll/On Scene Mediations/Vilisia Coleman, acting as an agent of Rapid Cash, did not properly serve the Class; Rapid Cash further breached its duty and failed to exercise due care when it failed to ensure that Maurice Carroll/On Scene Mediations/Vilisia Coleman was licensed, that Maurice Carroll/On Scene Mediations/Vilisia Coleman properly served defendants, and after receiving numerous affidavits which showed Maurice Carroll/On Scene Mediations/Vilisia Coleman could not have personally served defendants as quickly as claimed, Rapid Cash continued using Maurice Carroll/On Scene Mediations/Vilisia Coleman.

98. Defendants' negligence has directly and proximately caused Class Representatives and the Class to suffer damages in an amount in excess of ten thousand dollars and require the services of counsel to prosecute this action. As a result, they are entitled to equitable relief, actual and compensatory damages, attorneys fees, and costs of suit.

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X.

CIVIL CONSPIRACY
(All Defendants)

99. Class Representatives incorporate all prior paragraphs as though fully set forth herein.

100. Defendants and each of them conspired with one another with the intention of causing debtors (all Class members) to default when sued, by deliberately failing to serve them. This act deprived members of the Class of their right to due process of law (Due Process Clause of Nev. Art. I, Section 8). The result of this conspiracy was that Rapid Cash obtained void default judgments in violation of court rules and due process of law, and further in amounts that included costs of service that was never made and which included amounts the Class lost the opportunity to compromise.

101. Defendants agreed to deprive members of the Class the opportunity to oppose the complaints against them in violation of court rules, public policy, and the Due Process Clause of Nev. Art. 1, Section 8, resulting in void default judgments for Rapid Cash to the damage of the Class.

102. The conspiracy damaged members of the Class because default judgments were entered against them without due process of law and included costs of service that was never made; as notice is fundamental to due process, damage, even if nominal, is inherent in being deprived of a fundamental right.

103. This conspiracy has directly and proximately caused Class Representatives and the Class to suffer fraudulent default judgments against them, suffer damages in an amount in excess of ten thousand dollars, and require the services of counsel to prosecute this action. As a

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result, they are entitled to equitable relief, actual and compensatory damages, attorneys fees, and costs of suit.

104. Defendants' actions were fraudulent, intentional, and/or malicious, and Class Representatives and the Class are also entitled to punitive damages in an amount to be determined at trial.

XI.

VIOLATION OF NRS CHAPTER 604A
(Rapid Cash)

105. Class Representatives incorporate all prior paragraphs as though fully set forth herein.

106. Rapid Cash is licensed, operates, and is subject to the provisions of NRS Chapter 604A.

107. NRS 604A.415(1) provides: "If a customer defaults on a loan, the licensee may collect the debt owed to the licensee only in a professional, fair and lawful manner."

108. Rapid Cash violated NRS 604A.415(1) when in collecting the debt owed by a customer who had defaulted, it failed to act in a fair and lawful manner in that it: (a) hired On Scene Mediations to fulfill its responsibility to serve summons and complaint on the Class when it knew or should have known that On Scene Mediations was unlicensed, (b) continued to employ and failed to supervise On Scene Mediations to fulfill its responsibility to serve summons and complaint on the Class after it knew or should have known On Scene Mediations was falsifying returns of service, (c) obtained void default judgments based on invalid service of process; and (d) failed to voluntarily set aside all void default judgments obtained against the Class once it learned of On Scene Mediations' pattern of conduct.

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109. Rapid Cash's violations of NRS 604A.415(1) entitle Class Representatives and the Class to recover damages under NRS 604A.930.

110. Rapid Cash's conduct was intentional, willful, fraudulent and/or malicious and Rapid Cash is therefore liable for punitive or exemplary damages in an amount sufficient to punish Rapid Cash and to deter others from like conduct, under NRS 604A930(1).

111. For willful violation of the provisions of NRS Chapter 604A, Rapid Cash's loans are void and Rapid Cash is not entitled to collect, receive or retain any principal, interest or other charges or fees with respect to the loans as provided in NRS 604A.900(1).

112. Class Representatives and the Class are further entitled to attorney's fees and costs of suit pursuant to NRS 604A.930.

XII.

VIOLATION OF NRS CHAPTER 598
(All Defendants)

113. Class Representatives incorporate all prior paragraphs as though fully set forth herein.

114. NRS Chapter 598 imposes obligations upon anyone "in the course of his or her business or occupation." NRS 598.0915 et seq.

115. Rapid Cash, by and through its employee or agent, On Scene Mediations, knowingly made a false representation in a transaction in violation of NRS 598.0915(15) when it falsely represented to the Court that proper service of process had been made upon the Class.

116. On Scene Mediations violated NRS 598.0923(1) when, in the course of its business or occupation, it conducted the business or occupation without all required state, county, or city licenses in violation of NRS 598.0923(1).

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117. Such violations have legally and actually caused the Class Representatives and the Class to suffer damages, and they are entitled to an award of damages, plus attorney's fees and costs pursuant to NRS 41.600(3).

XIII.

JURY TRIAL DEMAND

Class Representatives demand a trial by jury as to all issues triable to a jury.

XIV.

PRAYER FOR RELIEF

WHEREFORE, the Class Representatives, individually and on behalf of all persons similarly situated, pray for judgment against Defendants, jointly and severally, on the aforesaid causes of action, for:

1. An Order under NRCP 23 that Rapid Cash immediately cease any and all form of communication with the Class to preserve the remedies available to the Class, the integrity of the Class, and to protect the Class from undue influence of Rapid Cash;

2. An injunction that Rapid Cash vacate and set aside all void default judgments entered against the Class and, further, as a sanction for fraud upon the Court, that Rapid Cash dismiss all cases filed against the Class with prejudice;

3. All equitable relief that arises from or is implied by the facts, whether or not specifically requested, including but not limited to disgorgement or restitution of or imposition of a constructive trust on all funds collected under void default judgments against the Class, and a declaration of the rights of the parties;

4. Compensatory damages, as well as restitution of all costs of service paid by a Class member where service of process was not made;

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5. Punitive damages in an amount sufficient to punish Defendants and to deter others from like conduct in an amount to be determined at trial;

6. For violation of the provisions of NRS Chapter 604A, pursuant to NRS 604A.900(1), a declaration that all of Rapid Cash's written loan contracts with the Class are void and that Rapid Cash is not entitled to collect, receive or retain any principal, interest or other charges or fees with respect to the loans, and an injunction against collection of same;

7. Attorney's fees;

8. Prejudgment interest;

9. Costs of suit; and

10. Any such other and further relief as the Court deems just and equitable.

DATED this 9 day of September, 2010.

Respectfully Submitted by:

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

Dan L. Wulz, Esq. (5557)
Venicia Considine, Esq. (11544)
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DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated, Plaintiff/Petitioner, v. 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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman and DOES I through X, inclusive, Defendant/Respondent.	CASE NO.: _____ DEPT.: _____ **STATEMENT OF LEGAL AID REPRESENTATION (PURSUANT TO NRS 12.015)**

Party Filing Statement: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

STATEMENT

Casandra Harrison; Eugene Varcados; Concepcion Quintino and Mary Dungan, have qualified and been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, INC., a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: Sept. 9, 2010

DAN L. WULZ, ESQ.
Printed Name of Legal Aid Center of Southern Nevada Preparer
Nevada Bar No.: 5557

Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:
LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.
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A-10-624982-B

XI

CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I. Party Information

Plaintiff: Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated, Attorney: Dan L. Wulz, Nev. Bar #5557, Legal Aid Center of Southern Nevada, 800 S. Eighth Street, Las Vegas, NV 89101 (702) 386-1070	Defendant: 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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman, and DOES I through X, inclusive, Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence
- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

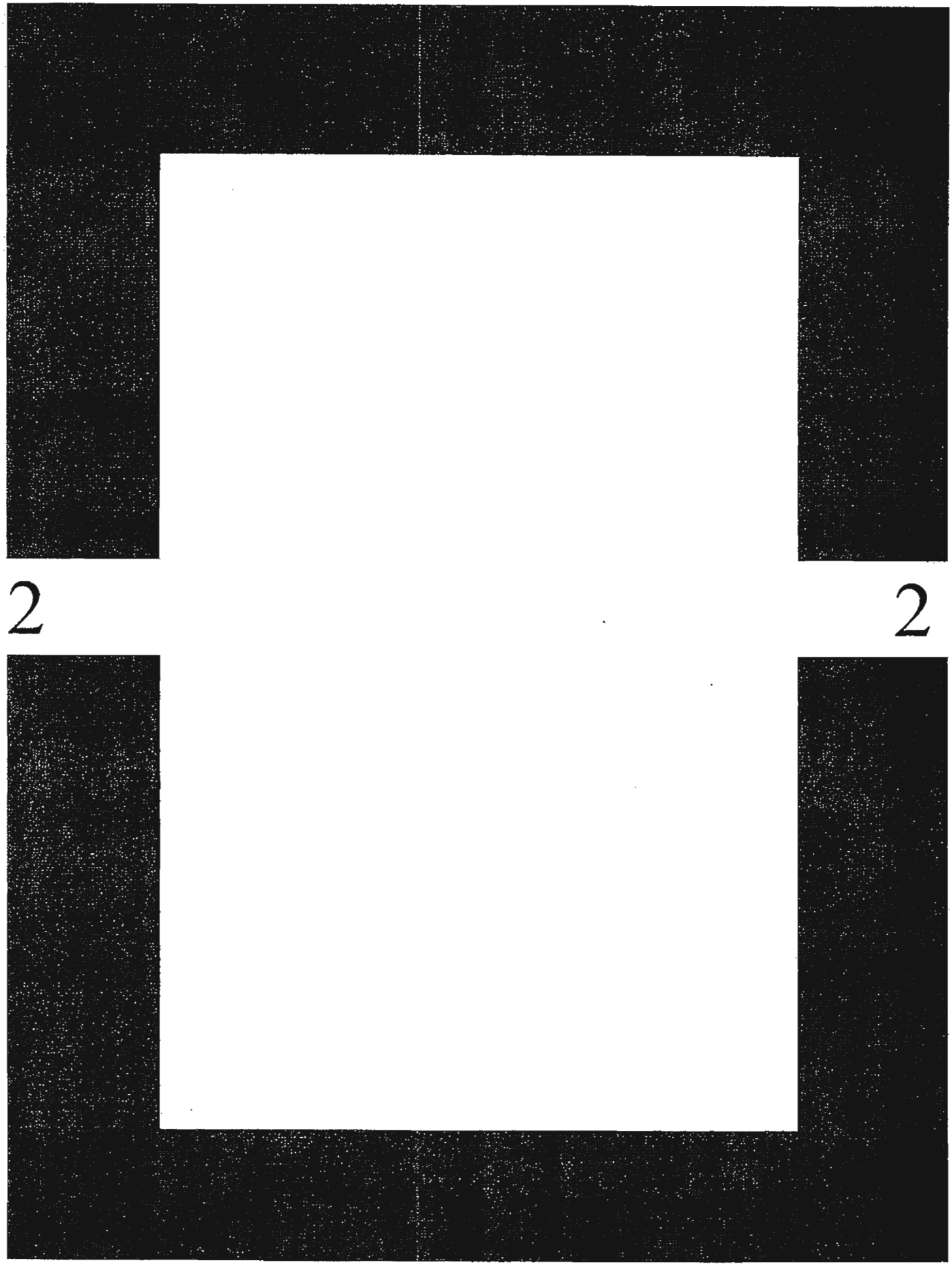
- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category: *for Clark or Washoe Counties only.*)

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☒ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

SEPT. 9, 2010
Date

Signature of initiating party or representative



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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman, and DOES I through X, inclusive,

Defendants.

Case No.: A-10-624982-B
Dept. No.: XI

PLAINTIFFS' MOTION TO CERTIFY CLASS

Date of Hearing: _____
Time of Hearing: _____

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Plaintiffs and Class Representatives, Casandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary Dungan, individually and on behalf of themselves and all others similarly situated, by and through counsel, J. Randall Jones, Esq. and Jennifer C. Dorsey, Esq., KEMP, JONES & COULTHARD, LLC, and Dan L. Wulz, Esq. and Venicia Considine, Esq., LEGAL AID CENTER OF SOUTHERN NEVADA, INC., hereby respectfully move this Court for an order certifying this proceeding as a Class action pursuant to NRCP 23.

This motion is made and based upon NRCP 23, all pleadings and papers on file herein, the following Memorandum of Points and Authorities, the Affidavits of the Class Representatives, J. Randall Jones, Esq., and Dan L. Wulz, Esq., and any oral argument that this Court might entertain at the hearing on this matter.

DATED this 9 day of September, 2010.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

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Venicia Considine, Esq. (11544)
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Attorneys for Class Representatives and
Putative Class Counsel

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NOTICE OF MOTION

TO: ALL PARTIES.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above MOTION TO CERTIFY CLASS on for hearing before the Court at the courtroom of the above-entitled Court on the 15 day of Oct, 2010, at In Chambers a.m. in Department XI of said Court.

DATED this ____ day of September, 2010.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

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Putative Class Counsel

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case seeks to redress the fraud perpetrated on the courts and perhaps thousands of defendants in the Clark County, Nevada, judicial system through "sewer service," the despicable practice by which a process server attests to having served a summons and complaint upon a

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defendant when, in fact, the defendant was never served and is unaware that his legal rights are being adjudicated.

Payday lender Rapid Cash[1] hired unlicensed process server On Scene Mediations[2] to serve allegedly defaulting borrowers with Rapid Cash's collection lawsuits. An investigation by the Justice Court and Metro has revealed that On Scene did not actually deliver the summonses and complaints it was tasked to serve, but merely executed affidavits fraudulently attesting that service had been accomplished. An unreasonably high number of those affidavits attest that the documents were personally served on the day they were received from Rapid Cash (a near-miracle in process serving), and in the rare case that a defendant learned of his suit in time to set aside the default Rapid Cash easily obtained against him, Rapid Cash would swiftly stipulate to the set-aside to avoid any evidentiary hearing on the validity of the service. Sewer service became an all too frequent occurrence for On Scene and its employees pursuant, according to "office manager" Vilisia Coleman, a policy directive that came from owner Maurice Carroll, who were both indicted for these practices in August 2010.

On Scene's sewer service allowed Rapid Cash to file an incredible number of collection lawsuits against its customers. During the six-year period from 2004-2009, Rapid Cash filed 16,663 cases in the Clark County Justice Court system, a whopping average of 2,777 cases per year and 53 cases each week, collecting default judgments and garnished wages of borrowers who had zero notice that their rights had been judicially determined.

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[1] For purposes of this motion, "Rapid Cash" consists of Defendants 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] For purposes of this motion, "On Scene Mediations" or "On Scene" refers to Defendant Maurice Carroll, individually and dba On Scene Mediations, and any employee or agent thereof.

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The widespread nature of this practice and its universal impact on the Rapid Cash customers victimized by it makes this case perfect for class treatment. With potentially thousands of class members, numerosity is obvious. By making sewer service the policy and practice for Rapid Cash's lawsuits, On Scene ensured that all class members would share the very same predominant questions of law and fact. The Plaintiffs have the same claims and seek relief typical of the rest of the class and can adequately represent the Class's interest. And the unique facts and circumstances of this case make the class action vehicle the superior method by which to litigate this case. Accordingly, Plaintiffs move this Court to certify this case as a class action on behalf of:

> **all customers of Rapid Cash offices in Clark County, Nevada, against whom Rapid Cash obtained default judgments in the Justice Courts of Clark County, Nevada, and for which the only evidence that the defendant received service of process of Rapid Cash's lawsuit was an affidavit signed by a representative of On Scene Mediations**

and make all other rulings necessary for the administration of this case as a class action.

II.

ALLEGATIONS IN THE COMPLAINT

In analyzing whether a class should be certified, the Court should accept the allegations of the complaint as true. Meyer v. District Court, 110 Nev. 1357, 1363-64, 885 P.2d 622 (1994), (citing Blackie v. Barrack, 524 F.2d 891, 901 (9th Cir. 1975), cert. denied, 429 U.S. 816, 97 S.Ct. 57, 50 L.Ed.2d 75 (1976)). The allegations in the Complaint can be summarized as follows:

A. On Scene Was Rapid Cash's Process Server for Rapid Cash's Clark County, Nevada, Justice Court Actions against Allegedly Defaulting Payday Loan Customers.

Rapid Cash is a short term, or "payday" lender, and also a auto title pawn lender. During

2004-2010, Maurice Carroll, dba On Scene Mediations served as Rapid Cash's agent to fulfill Rapid Cash's responsibility under JCRCP 4(a) to serve the Summons and a copy of the Complaint on each defendant borrower sued by Rapid Cash. Rapid Cash filed 1,760 cases in 2004, 3,009 cases in 2005, 2,020 cases in 2006, 2,886 cases in 2007, 3,162 cases in 2008, and 3,826 cases in 2009, and typically employed On Scene to serve process.

The affidavits of service of process submitted by On Scene and filed by Rapid Cash reflect an unusually high percentage of personal service of process purportedly completed the same day that On Scene received the summons, a highly dubious and suspicious achievement. Sometime after January, 2009, when civil cases began being assigned to only two Justices of the Peace in Clark County, Nevada, Las Vegas Township, the Court noticed this unusual pattern, and the Court made counsel for Rapid Cash aware of the suspicious nature of such representations. But nothing changed, except the affidavits began showing an interval of time between receipt of the Summons and successful completion of service.

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B. On Scene's Unlicensed Sewer Service Enterprise.

Carroll, through On Scene, was issued a $2,500 citation by the Nevada Private Investigators Licensing Board 2003 for serving summonses and complaints without a license. The Board ordered Carroll to stop doing business. Not only did he not cease his business operations, he apparently added "sewer service" to his menu of unlicensed services.

The Las Vegas Metropolitan Police Department has taken calls from people who complained that they were never served with process from as early as 2004 and claimed that On Scene never served them the required court papers, and a default judgment was taken. Sergio Pinto, employed to serve process for On Scene, admitted to Metro that he was told by "the ladies in the office" and Carroll to falsify affidavits of service, claiming that he made service of

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process to individuals when, in fact, he had not done so. Niekyta Lonsoria, also employed to serve process by On Scene, admitted to Metro that she signed affidavits of service at the direction of Maurice Carroll without ever having gone out to perform the services, falsifying affidavits. Carroll admitted to Metro that he had falsified affidavits of service, but claimed that his office manager, Vilisia Coleman, told him the documents had been served while he was out of town. At the time of her employment at On Scene, Coleman was a convicted felon. In August, 2010, both Carroll and Coleman were criminally indicted for their practices. Coleman's criminal defense attorney, meanwhile, has stated the On Scene sewer service policy was in place at Carroll's direction at the time she was hired.

C. The Universal Victimization of an Entire Class of Rapid Cash Borrowers.

Rapid Cash, through the acts of its agent On Scene, and by condoning or – at the very least – overlooking the blatant misconduct by its process server, perpetrated a widespread fraud on the Clark County Justice Courts and potentially thousands of Rapid Cash customers, more than 16,000 of which have been sued by Rapid Cash in Clark County, Nevada, since On Scene was given the job of serving Rapid Cash's collection lawsuits. This illegal, fraudulent pattern, policy, and practice by Rapid Cash and On Scene deprived these defendants of due process of law (Nev. Art. 1, Sec. 8), resulting in hundreds if not thousands of void default judgments being entered without the opportunity to respond or defend. The outcome was that Rapid Cash obtained hundreds – if not thousands – of void default judgments and garnishments, undermining the foundation of the legal system.

When a Rapid Cash defendant would move to set aside a default judgment on the basis of lack of service, the Rapid Cash attorney---presumably with the express consent of his/her client, Rapid Cash, and in any event an act done on behalf of Rapid Cash for which Rapid Cash

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is responsible and charged with knowledge – would stipulate to set the default judgment aside instead of having the process server come in and testify at an evidentiary hearing, suppressing discovery of the fraud.

Rapid Cash's act of obtaining default judgments based on false affidavits of service have a self-evident and serious but generic impact upon each person against whom Rapid Cash obtained a default without service regardless of individual circumstance. These impacts include but are not limited to: 1) deprivation of due process of law, a fundamental, Constitutional right; 2) suffering of a default judgment in a falsely and fraudulently inflated amount in that the judgment includes the cost of service of process which was never made; and 3) lost opportunity to negotiate or repay a debt without credit-damaging or public consequences.

Plaintiffs, Cassandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary Dungan, were all Rapid Cash customers. Each was sued by Rapid Cash, and affidavits of service signed by On Scene representatives attest that they were served with a summons and complaint. But they weren't. In fact, they never received service, and most did not learn that Rapid Cash had sued them until their paychecks were garnished after entry of default. (*See*: Affidavits of Cassandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary Dungan, attached as Exhibit Nos. 1, 2, 3 and 4, respectively.) They bring this action on behalf of themselves and all similarly situated customers of Rapid Cash locations in Clark County seeking, *inter alia*, declaratory and injunctive relief, the setting aside of the default judgments obtained through On Scene's sewer service, restitution, disgorgement, damages, and punitive damages for these egregious practices.

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III.

ARGUMENT

A. Requirements for Class Action Certification Under NRCP 23.

Nevada Rule of Civil Procedure 23 governs the process of class certification. Under NRCP 23(a), one or more members of a Class may sue as representative parties on behalf of all Class members if:

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In determining whether or not to certify a class action, the district court must pragmatically determine whether it is better to proceed as a single action, or many individual actions to redress a single fundamental wrong. Deal v. 999 Lakeshore Ass'n, 94 Nev. 301, 304-305, 579 P.2d 775, 778-779 (1978). In analyzing whether a class should be certified, the Court should accept the allegations of the complaint as true. Meyer, 110 Nev. at 1363-64. Therefore, an extensive evidentiary showing is not required. Id. Likewise, protracted discovery prior to class certification is not required. Id. The court must undertake a "thorough and documented" analysis and "pragmatically determine" whether "it is better to proceed as a single action, than as many individual actions, in order to redress a single fundamental wrong." Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 124 P.3d 530, 537, 544 (2005) (quoting Deal, 579 P.2d at 778-79). The Court should resolve any doubt regarding class certification "in favor of allowing the class action," particularly when it can be an effective vehicle for deterring corporate wrongdoing. Esplin v. Hirschi, 402 F.2d 94, 101 (10th Cir. 1968); accord, In re Folding Carton Antitrust Litigation, 75 F.R.D. 727 (N.D.Ill. 1977).

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B. Class Certification is Appropriate in the Present Case.

The Nevada Supreme Court has deemed class actions worthwhile as providing a "method to redress wrongs otherwise irremediable because the individual claims are too small or the claimants too widely dispersed." Johnson v. Travelers Insurance Co., 89 Nev. 467, 515 P.2d 68, 71 (1973). The class action remedy is important, especially with consumer protection claims. Newberg on Class Actions explains:

> The desirability of providing recourse for the injured consumer who would otherwise be financially incapable of bringing suit and the deterrent value of class litigation clearly render the class action a viable and important mechanism . . .

6 Alba Conte & Herbert Newberg, Newberg on Class Actions § 21:30 (4th ed. 2002). The Court considered the "judicial economy arising from the avoidance of a multiplicity of actions, geographic dispersion of class members, financial resources of class members, and the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members." Shuette, 124 P.3d at 538 (quoting Robidoux v. Celani, 987 F.2d 931, 936 (2d Cir. 1993)).

This Class consists of predominantly low-income individuals or consumers desperate enough or unsophisticated enough to take out short term, triple digit interest payday loans from Rapid Cash, who all defaulted on those payday loans, who all were sued in the Justice Courts of Clark County, Nevada, who all were never served with process, and who all as a result had a default judgment entered against them which is void as a matter of law. Certification of the Class would streamline the litigation process by avoiding the multiplicity of actions and possible inconsistent rulings. The ability of claimants to institute individual suits is unlikely in light of the claimants' limited resources. Named Plaintiffs are members of the Class as defined above

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and in the Complaint.

1. The Class is so Numerous That Joinder of All Members is Impracticable.

Impracticability of joinder, also known as the numerosity prerequisite in a Rule 23 class action, is generally satisfied where it is reasonable to conclude that the number of members of the proposed class is greater than the minimum number required for class certification. See Swanson v. American Consumer Industries, 415 F.2d 1326 (7th Cir., 1969) (151 class members sufficient, with a 40 member subclass); Riordan v. Smith Barney, 113 F.R.D. 60 (N.D.Ill. 1986) (approximately 29 class members sufficient); Sala v. National Railroad Passenger Corp., 120 F.R.D. 494, 497 (E.D.Pa. 1988) (estimated 40-50 class members sufficient); 7A Charles A. Wright, et al., FEDERAL PRACTICE AND PROCEDURE; Civil § 1762 (1986). Although courts have not established rigid rules or guidelines regarding the size of a certifiable class, courts have indicated that a showing of extreme difficulty or inconvenience in joining all members of a class is sufficient. Harris v. Palm Springs Alpine Estates, 329 F.2d 909, 913-14 (9th Cir. 1964) ("impracticable" does not mean "impossible").

Plaintiffs do not know the precise number of potential Class members but believe the number of Class members to range from hundreds to thousands. During the time period applicable to the Class, upon information and belief there were thousands of default judgments obtained by Rapid Cash employing On Scene to serve process. Rapid Cash filed 1,760 cases in 2004, 3,009 cases in 2005, 2,020 cases in 2006, 2,886 cases in 2007, 3,162 cases in 2008, and 3,826 cases in 2009, and typically employed On Scene to serve process. On information and belief, hundreds if not thousands of defendants were never served and void default judgments were obtained. The disposition of the Class' claims in a class action will obviate the need for repeated individual adjudications of the same issues. In the present case, class treatment is

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necessary because of the large number of Class members.

2. This Action Involves Common Questions of Law or Fact.

The second requirement for a class action requires questions of law or fact common to the class. NRCP 23(a)(2). "Commonality does not require that all questions of law and fact be identical, but that an issue of law or fact exists that inheres in the complaint of all the class members." Shuette at 538; see also Meyer at 626. The Nevada Supreme Court has stressed that the requirement must be read and applied in the disjunctive. Id. Therefore, factual differences between common legal questions are not fatal to class certification. Id. "Questions of law in common are therefore sufficient alone to establish commonality." Id.

The Ninth Circuit Court of Appeals stated, "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

This action involves questions of law and questions of fact common to all members of the Class. The common questions of law or fact include the following: (a) whether Rapid Cash obtained void default judgments based on false Affidavits of Service in cases too numerous to join together; (b) whether Rapid Cash is responsible for the acts of its employee and/or agent, On Scene; (c) whether in hiring and supervising its employee and/or agent, On Scene, to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash engaged in a fraud upon the Court; (d) whether in hiring and supervising its employee and/or agent, On Scene, to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash engaged in abuse of process; (e) whether in hiring and supervising its employee and/or agent, On Scene, to fulfill its JCRCP 4(a)

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responsibility to serve process, Rapid Cash was negligent; (f) whether in hiring and supervising its employee and/or agent, On Scene, to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash engaged in a civil conspiracy; (g) whether in hiring and supervising its employee and/or agent, On Scene, to fulfill its JCRCP 4(a) responsibility to serve process, Rapid Cash violated NRS 604A.415 in failing to collect a debt in a "fair and lawful manner;" (h) whether at some point during its employment of On Scene Rapid Cash became aware of or was willfully blind to the fact that Rapid Cash was filing false returns of service in its lawsuits against the Class such that it might be responsible for punitive damages; and (i) whether the Class has a remedy for the actions of Rapid Cash as described and, if so, the nature of that remedy.

A "common nucleus of operative facts and law" is enough to meet the commonality requirement. Johnson v. Travelers Ins. Co., 89 Nev. 467, 470-71, 515 P.2d 68, 73 (1973); see also Meyer at 626. The Ninth Circuit ruled the requirements of Rule 23(a)(2) to be "minimal." Hanlon, supra. 150 F.3d at 1020.

In addition, all Class members' claims arise from Rapid Cash's uniform act of employing On Scene to serve process in its payday loan lawsuits against its borrowers, the lack of service of process, and the obtaining of default judgments based thereon. There is nothing to defeat commonality among the individual members of the Class as defined.

Common issues of liability may be adjudicated on a Class basis despite the existence of separate issues concerning the damages sustained by various Class members. See generally Johnson, supra; McQuilken v. A & R Development Corp., 576 F. Supp. 1023, 1029 (E.D. Penn. 1983) ("Although it is possible that the harm suffered by the named plaintiffs in this case may differ in degree from that suffered by others in the class, the alleged harm suffered by all members is of the same type . . . Class certification is not precluded by the fact that the amount

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of individual damages may differ or may have to be determined on an individual basis.") Here, this point is not at all troublesome as each member of the Class suffered the same harm (entry of a void default judgment) which deserves the same remedy (an order at the very least that Rapid Cash set aside each void default judgment).[3] Members of the Class, as defined, who have been forced to satisfy a default judgment in whole or in part, suffered the same type of harm as well, albeit in different amounts, but those amounts can be determined to the penny from the records of Rapid Cash, and an order of disgorgement or restitution or imposition of a constructive trust with an order to return the funds would be an appropriate uniform remedy. Consequently, the commonality element is clearly satisfied in the current case.

3. The Claims or Defenses of the Class Representative are Typical of the Class.

The third element under NRCP 23(a) requires the class representative to show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Typicality focuses on the Defendant's actions, not the Plaintiff Class' conduct. Shuette at 538. If "each member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability," typicality is satisfied, despite factual variations among the individual claims. Id. This rule has not been interpreted to mean that all claims of the class members must be identical, but merely that a common significant thread of law or fact must run throughout all of the claims. Stolz v. United Broth. of Carpenters and Joinders, 620 F.Supp. 396 (1985). See also Hanlon at 1020.

The named Class Representatives' claims are not only typical of the claims of the Class,

[3] The Class is not conceding such would be the sole remedy, as it may be fair and appropriate that Rapid Cash pay a uniform amount to each member of the Class as damages for having been deprived of the fundamental right to due process of law. Regardless, this too only argues for, not against, commonality.

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they are identical. No Class Representative has any interest adverse to the other members of the Class or his/her Subclass. Each Class Representative's claim rests on identical legal arguments as those of the Class, and the relief he/she seeks is typical of the relief that could be sought by each member of the Class. It is Rapid Cash's actions through the use of an unlicensed process server who did not serve process, resulting in issuance of void default judgments which create the common significant thread. The claims of the Class Representatives are therefore typical of the claims of the Class members generally, and class certification is appropriate.

4. The Class Representatives will Fairly and Adequately Protect the Interests of the Class.

The final prerequisite to be met under NRCP 23(a) is that the class representative adequately represents the interests of the unnamed class members. See NRCP 23(a)(4). The Nevada Supreme Court in Shuette adopted the adequacy analysis from the United States Supreme Court case Amchem Products, Inc. v. Windsor. 521 U.S. 591, 625-26 (1997). The purpose is to uncover conflicts of interest between the representative(s) and the class. Shuette at 539 (quoting Amchem). The Court requires that "class members 'possess the same interest and suffer the same injury' as other class members." Id.

Each of the Class Representatives suffered entry of a void default judgment against them at the hands of Rapid Cash. The Class Representatives and the unnamed Class members have an identical interest for relief from entry of those void default judgments; there is no antagonism whatsoever between the named Class Representatives and the other Class members.

Further, as evidenced by the affidavits of Dan L. Wulz, Esq. and J. Randall Jones, Esq., class counsel are qualified, experienced, and make the perfect team for conducting this litigation and achieving the Class's goals through quality representation. See Affidavits of Messrs Wulz and Jones, attached hereto as Exhibits 5 and 6, respectively. Legal Aid and Kemp, Jones &

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Coulthard, LLP represented a certified class of payday loan borrowers subjected to the abusive practices of payday lender Lucky Cash in the action entitled *Lucky Credit v. Bozis,* case No. A577847, pending in Department IX of this Court and awaiting a final fairness hearing for a class-wide settlement. Mr. Wulz and the other fine attorneys at Legal Aid have substantial experience dealing with the type of collection actions and justice court default judgments at issue in this case. Kemp, Jones & Coulthard is highly experienced in the prosecution of class actions, having successfully litigated a number of class actions in this jurisdiction including but not limited to *Forsyth v. Humana*, 119 S. Ct. 710 (1999)(an 84,000 member class action by Nevadans against Humana, Inc., and Humana Insurance, that ultimately resulted in a settlement of approximately $28.8 million after a favorable ruling from the United States Supreme Court), and *In re Kitec Fitting Litigation*, Eighth Judicial District Court case A493302, Department XVI (certified class action on behalf of the owners of approximately 32,000 homes plumbed with defective Kitec fittings). Kemp, Jones & Coulthard has also been actively involved in the tobacco, breast implant, pedicle bone screw, Fen-Phen, Vioxx, Endoscopy, and Hot Fuel litigations. These factors round out the NRCP 23(a) analysis in favor of class certification.

C. **Additional Requirements for Class Certification Under NRCP 23(b) are Satisfied.**

In addition to meeting the NRCP 23(a) prerequisites, the Class can also establish that a class action is "logistically possible and superior to other actions," Meyer, 885 P.2d at 626, by satisfying one of the three additional conditions in NRCP 23(b). The Class seeks certification under both NRCP 23(b)(2) (opposing party has acted against the class in a manner making classwide injunctive or declaratory relief appropriate) and (b)(3) (common questions of law or fact predominate, making a class action the superior method for adjudication). See Shuette, 124 P.3d at 539.

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1. The Court Should Certify this Case as an NRCP 23(b)(2) Class Action.

Class certification under NRCP 23(b)(2) is appropriate when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." See e.g. Stolz v. United Brotherhood of Carpenters and Joiners, 620 F. Supp. 396 (D.Nev. 1985) (a (b)(2) class was certified where plaintiffs sought a declaration that a union dues increase was invalid, and injunction against future collection of the dues, and a refund of past dues). The quintessential case for NRCP 23(b)(2) certification is one where policies applicable to a large number of persons are challenged as unlawful. This is just such a case.

In this case, hundreds, if not thousands, of payday loan borrowers have been subjected to entry of void default judgments based upon false and fraudulent affidavits of service of process filed by Rapid Cash. The consumers targeted by Rapid Cash are not likely to have the financial ability to bring litigation on their own, and it is difficult to imagine a case more suited to class relief than one in which an injunction is needed to set aside void default judgments. And in this case, declaratory and injunctive relief will affect more persons and have consequences over a greater period of time than merely an award of monetary damages.

But Plaintiffs' prayer for monetary damages in addition to declaratory and injunctive relief does not undermine (b)(2) certification. A case seeking substantial and meaningful declaratory and injunctive relief on the basis of a classwide practice may be certified under NRCP 23(b)(2) even though damages are sought. See e.g. Williams v. Lane, 129 F.R.D. 636, 639 (N.D. Ill 1990). As the Ninth Circuit has specifically made clear, "Class actions certified under Rule 23(b)(2) are not limited to actions requesting only injunctive or declaratory relief, but may include cases that also seek monetary damages." Linney v. Cellular Alaska Pshp., 151

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F.3d 1234, 1240 (9th Cir. 1998).

This Court would be on solid legal ground in certifying this case as a Rule 23(b)(2) class action. Sums sought to be returned via this class action in terms of unlawful garnishments or attachments under void judgments are properly viewed as disgorgement or restitution or subject to a constructive trust, all of which remedies are properly considered equitable and appropriate in a Rule 23(b)(2) class.

2. Class Certification Is Also Appropriate Under NRCP 23(b)(3).

This case is also perfectly certifiable under NRCP 23(b)(3) if this Court views the case as one in which damages claims predominate. Class certification under NRCP 23(b)(3) is appropriate if questions of law or fact common to the class predominate over questions affecting the individual putative class members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Shuette, 124 P.3d at 539. "Common questions predominate over individual questions if they significantly and directly impact each class member's effort to establish liability and entitlement to relief, and their resolution 'can be achieved through generalized proof.'" Id. (quoting Amchem Products, Inc. v. Windsor, 521 U.S. 591, 623-24 (1997)). Both predominance of common issues and superiority of a class action over other methods are plainly established.

The predominance element "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 625. "Implicit in the satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy." Zinser v. Accufix Research Institute, Inc., 253 F.3d 1180, 1189 (9th Cir. 2001) quoting Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996). "Common questions predominate over individual questions if they significantly and directly impact each

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class member's effort to establish liability and entitlement to relief, and their resolution 'can be achieved through generalized proof.'" Shuette, 124 P.3d at 540 (quoting Amchem, 521 U.S. at 623-24).

Plaintiffs' and the putative class members' claim is based on the simple, generalized corporate practice of Defendants' subjecting payday loan borrowers to entry of void default judgments based upon false affidavits of service of process. There can be no doubt that the creation of false returns of service by On Scene is unlawful and tortious. The predominant issue is whether Rapid Cash is legally responsible for that unlawful and tortious conduct. Once that determination is made, and assuming Rapid Cash is held responsible, then the predominant issue will be the appropriate remedy for the Class. The Nevada Supreme Court has recognized that "When a general corporate policy is the focus of litigation, class status for those adversely affected by the policy is appropriate." Meyer v. Eighth Judicial District Court, 110 Nev. 1357, 885 P.2d 622, 626 (1994) (citing Bowling v. Pfizer, Inc., 143 F.R.D. 141 (S.D. Ohio 1992)). By acting in the same way and violating the law in a uniform manner vis-a-vis every class member, Defendants' conduct easily satisfies the predominance prong of the Rule 23(b)(3) test.

So, too, is the superiority requirement met. "Class treatment is the superior method for adjudicating claims when "management difficulties and any negative impacts on all parties' interests 'are outweighed by the benefits of classwide resolution of common issues.'" SURVEY OF STATE CLASS ACTION LAW 2010, *Nevada*, at 354 (quoting Shuette, 124 P.3d at 540). Relative little difficulty should be encountered in the management of this class action. When this case is certified as a class action, after discovery it will be requested that Rapid Cash be held responsible for the acts of On Scene as a matter of law, thereby effectively deciding a legal issue central to all of hundreds if not thousands of void default judgments obtained in the Justice

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Courts of Clark County, Nevada. That question can and should be decided in one case by one court. Adjudication of the issues common to the putative class will achieve judicial economy as well as determine the common Class issues. Allowing this litigation to proceed as a Class action ensures the protection of all Class member's interests and avoids litigation of hundreds of separate suits. Additionally, a significant number of putative Class members are likely to be unaware that they have claims against Rapid Cash as they were not served with process. Class certification will promote uniformity of decision and achieve economies of time, effort and expense. 4 Alba Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS § 13:9 (4th ed. 2002). Therefore, class certification under NRCP 23(b)(2) and (b)(3) is appropriate and should be granted.

IV.

CONCLUSION

This Class action is necessary as potentially hundreds if not thousands of borrowers have been and are being harmed by void default judgments entered against them by Rapid Cash based on false returns of service of process filed by Rapid Cash. Judicial economy will result if these claims receive class certification.

Based upon the foregoing, Class representatives, by and through counsel, respectfully requests the court enter an Order:

1. Certifying this case as a class action under NRCP 23(b)(2) and (b)(3);

2. Defining the Class as:

> **all customers of Rapid Cash offices in Clark County, Nevada, against whom Rapid Cash obtained default judgments in the Justice Courts of Clark County, Nevada, and for which the only evidence that the defendant received service of process of Rapid Cash's lawsuit was an affidavit signed by a representative of On Scene Mediations**

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3. Appointing Casandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary Dungan as the Class Representatives;

4. Appointing Legal Aid Center of Southern Nevada, Inc. and Kemp, Jones, and Coulthard, LLP as Co-Class Counsel.

DATED this 9 day of September, 2010.

Respectfully Submitted by:

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

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Attorneys for Class Representatives and Putative Class Counsel

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EXHIBIT "1"

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Attorneys for Plaintiffs and Putative Class Counsel

DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman; and DOES I through X, inclusive,

Defendants.

Case No.:
Dept. No.:

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AFFIDAVIT OF CASANDRA HARRISON

I, CASANDRA HARRISON, being duly sworn deposes and states as follows:

1. I am a resident of Clark County, Las Vegas, and reside at 913 North Jones, #203, Las Vegas, NV 89108.

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2. On or about March 19, 2009, I took out payday loans from Rapid Cash in the amounts of $582.00 and $400.00, pursuant to written loan agreements.

3. On or about July 21, 2009, Rapid Cash filed a complaint against me in Justice Court, Las Vegas Township, Clark County, Nevada, for defaulting on the loans.

4. The Affidavit of Service for the Summons and Complaint purportedly served on me was signed by a "T. Smith," notarized by Maurice Carroll, and affirmed that service was both received and made by personal service on Ms. Harrison on the same day, August 8, 2009.

5. I was not served on August 8, 2009, nor was I served at any other time by On Scene Mediations or any other server of process in connection with the Complaint.

6. Rapid Cash obtained a default judgment against me on October 26, 2009.

7. I did not know that I had been sued by Rapid Cash until I was garnished for the full amount of the void default judgment, which garnishments caused my bank account to be overdrawn.

8. To the best of my knowledge and recollections, the statements, dates, and amounts contained in paragraphs 1 through 8 above are true and accurate.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Casandra Harrison
CASANDRA HARRISON

SUBSCRIBED AND SWORN to before me this 3rd day of Sept., 2010.

Notary Public State of Nevada
County of Clark
ALICE MCCANN
My Appointment Expires
No: 04-08662-1 November 18, 2011

Alice McCann
Notary Public

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EXHIBIT "2"

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Attorneys for Plaintiffs and Putative Class Counsel

DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M Rentals, LLC and d/b/a On Scene Mediations; and DOES I through X, inclusive,

Defendants.

Case No.:
Dept. No.:

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AFFIDAVIT OF EUGENE VARCADOS

I, EUGENE VARCADOS, after first being duly sworn, deposes and states as follows:

1. I am a resident of Clark County, Las Vegas, Nevada and reside at 701 Wheat Ridge Lane, Las Vegas, NV 89145.
2. In 2008, I took out loans from Rapid Cash pursuant to written loan agreements.
3. Rapid Cash filed a complaint against me in Justice Court, Las Vegas Township, Clark County, Nevada, on or about October 10, 2008, for defaulting on the loans.
4. The Affidavit of Service for the Summons and Complaint purportedly served on me was served by an On Scene Mediations process server, notarized by Lizzie Hatcher, and affirmed that process was both received and served personally on me on the same day, March 4, 2009.
5. However, I was not served on March 4, 2009. I was not served at any time by On Scene Mediations, or any other server of process in connection with the Complaint.
6. Rapid Cash obtained a default judgment against me on December 17, 2009.
7. I did not learn of the Rapid Cash lawsuit against me until my wages were being garnished by Rapid Cash.
8. To the best of my knowledge and recollections, the statements, dates, and amounts contained in paragraphs 1 through 7 above are true and accurate.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EUGENE VARCADOS

SUBSCRIBED AND SWORN to before me this 3rd day of Sept, 2010.

Notary Public

Notary Public State of Nevada
County of Clark
ALICE MCCANN
My Appointment Expires
November 18, 2011
No: 04-89061-1

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EXHIBIT "3"

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DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated, Plaintiffs, v. 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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman; and DOES I through X, inclusive, Defendants.	Case No.: Dept. No.: AFFIDAVIT OF CONCEPCION QUINTINO

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I, CONCEPCION QUINTINO, having been sworn declare and state,

1. My name is Concepcion Quintino, I live at 4225 S. Decatur Blvd., Apt. 1124, Las Vegas, Nevada, 89103.
2. On or about the 20 of May 2006, I took out a loan of $500.00 from Rapid Cash.
3. Rapid Cash filed a Summons and Complaint against me in the Justice Court, Las Vegas Township, Clark County, Nevada on or about the 6th of October 2008 for the nonpayment of the loan.
4. I was not served with the Summons and Complaint and had no idea that I had been sued.
5. The first time that I found out that I was being sued was when my wages were garnished.
6. Nevertheless, the Affidavit of Service states I was personally served with the Summons and Complaint by a person named "C. Mack" the same day he received the papers on the 14th of November 2008. The Affidavit was notarized by Maurice Carroll.
7. Furthermore, the Affidavit of Service states that the Summons and Complaint were served at an address where we were not living.
8. I was never served with the Summons and Complaint from On Scene Mediations, nor any other person.
8. Rapid Cash obtained a judgment against me the 19th of August 2009.

I declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 8th day of September 2010.

CONCEPCION QUINTINO

SUBSCRIBED AND SWORN to before me this 8 day of September, 2010.

Notary Public - State of Nevada
County of Clark
VIOLETA L. HERNANDEZ
My Appointment Expires
No: 98-1137-1 April 13, 2011

Notary Public

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I declare that the attached English translation of the Affidavit of Concepcion Quintino in Spanish is an authentic and correct translation.

Alice McCann

ALICE MCCANN

Notary Public - State of Nevada
County of Clark
VIOLETA L. HERNANDEZ
My Appointment Expires
No: 98-1157-1 April 13, 2011

SUBSCRIBED AND SWORN to before me this 8th day of September 2010.

Violeta L. Hernandez

Notary Public

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DECLARACION DE CONCEPCION QUINTINO

Yo, CONCEPCION QUINTINO, habiendo sido debidamente juramentada, declaro y digo

1. Mi nombre es Concepcion Quintino, y vivo a 4225 S. Decatur Blvd., Apt. 1124, Las Vegas, Nevada, 89103;
2. En o cerca del 20 de mayo, 2006, saque un prestamo con Rapid Cash para $500.00.
3. Rapid Cash hizo una demanda contra mi en la corte Justicia del municipio de Las Vegas, condado de Clark en o cerca del 6 de octubre, 2008, para restituir el prestamo.
4. No me sirvieron con el emplazamiento y la queja asi que no tenia ninguna idea que me demandaban.
5. La primera vez que supe del demanda era cuando mis salarios eran quarnicado.
6. Sin embargo, La Declaracion jurada del servicio indica que me sirvieron en personal con el emplazamiento y la queja por alguien se llamo "C. Mack," el mismo dia que el las recibio, el 14 de noviembre 2008. Esta Declaracion fue notarizada por Maurice Carroll.
7. Ademas, la Declaracion jurada del servicio indica que el emplazamiento y la queja fue servido a una direccion en que no viviamos.
8. Nunca he recibido servicio del emplazamiento ni la queja, ni del servidor de proceso de On Scene Mediations, ni de cualquiera otra persona.
9. Rapid Cash obtuvo una sentencia predeterminada contra mi el 19 de agosto, 2009.

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Afirmo y declaro bajo la pena de perjurio que el precedente es verdad y correcto al mejor de mi conocimiento.

ESTE 8 DIA DE SEPTIEMBRE 2010

CONCEPCION QUINTINO

SUBSCRIBED AND SWORN to before me this 8 day of September 2010.

Notary Public - State of Nevada
County of Clark
VIOLETA L. HERNANDEZ
My Appointment Expires
April 13, 2011
No: 08-1137-1

Notary Public

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EXHIBIT "4"

AFF
Dan L. Wulz, Esq. (5557)
Venicia Considine, Esq. (11544)
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
800 South Eighth Street
Las Vegas, Nevada 89101
Telephone: (702) 386-1070 x 106
Facsimile: (702) 388-1642
dwulz@lacsn.org

J. Randall Jones, Esq. (1927)
Jennifer C. Dorsey, Esq. (6456)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Facsimile: (702) 385-6001
jrj@kempjones.com
Attorneys for Plaintiffs and Putative Class Counsel

DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated, Plaintiffs, v. 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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman; and DOES I through X, inclusive, Defendants.	Case No.: Dept. No.: **AFFIDAVIT OF MARY DUNGAN**

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I, MARY DUNGUN, having been sworn declare and state,

1. My name is MARY DUNGUN, I live at 8445 Las Vegas Blvd. South, #2156, Las Vegas, Nevada, 89123.
2. On or about February 25, 2009, I took out a payday loan from Rapid Cash in the amount of $600.00 pursuant to a written loan agreement.
3. On or about July 17, 2009, FMMR Investments, Inc. dba Rapid Cash filed a complaint against me in Justice Court, Las Vegas Township, Clark County, Nevada, for defaulting on the loan.
4. The Affidavit of Service for the Summons and Complaint purportedly served on me was signed by a "J. Rivera," notarized by Maurice Carroll, and affirmed that service was both received and made by personal service on the same day, July 31, 2009.
5. I was not served on July 31, 2009.
6. I was not served at any other time by On Scene Mediations or any other server of process in connection with the Complaint.
7. Rapid Cash obtained a default judgment against me on October 16, 2009.
8. I did not know that I had been sued by Rapid Cash until my paycheck was garnished.

I declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 8th day of September 2010.

Mary A. Dungun

MARY ~~DUNGUN~~ DUNGAN

SUBSCRIBED AND SWORN to before me this 8 day of September 2010.

Notary Public

SANDRA ARBALLO
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 7-22-14
Certificate No: 08-10784-1

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EXHIBIT "5"

AFF
Dan L. Wulz, Esq. (5557)
Venicia Considine, Esq. (11544)
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
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Las Vegas, Nevada 89101
Telephone: (702) 386-1070 x 106
Facsimile: (702) 388-1642
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J. Randall Jones, Esq. (1927)
Jennifer C. Dorsey, Esq. (6456)
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3800 Howard Hughes Pkwy, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Facsimile: (702) 385-6001
jrj@kempjones.com
Attorneys for Plaintiffs and Putative Class Counsel

DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman; and DOES I through X, inclusive,

Defendants.

Case No.:
Dept. No.:

AFFIDAVIT OF DAN L. WULZ

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AFFIDAVIT OF DAN L. WULZ, ESQ.
IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

DAN L. WULZ, first being duly sworn deposes and says:

1. I am an attorney admitted to practice before the courts of the states of Nevada, California (inactive), Arizona (inactive), and Kansas (inactive). I am also admitted to practice in the United States District Court for the District of Nevada, the United States District Court for the District of Kansas, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court.

2. I was first admitted to the bar of the State of Kansas in 1978.

3. My resume is attached.

4. One of the first cases I worked on was a class action case by service station attendants for wages unlawfully withheld, filed in the District Court of Shawnee County, Kansas. (Marn v. Hudson Oil Company). Marn was successfully resolved with money being distributed to the class. I also worked on the similar case of Foltz v. Clark Oil Company, filed in the same court, which too was successfully resolved with money being distributed to the class. I filed and successfully resolved the class action case of Helton v. Walker House Associates, Case No. CV-S-94-01118-LDG, in United States District Court. I have worked on the class action case of Meyer v. Bigelow, Case No. A322738, filed in the District Court of Clark County, Nevada, involving a widespread practice of illegal lockouts of tenants by a Las Vegas landlord, which was successfully resolved. I have worked on the class action case of Marton v. Metmore Financial,

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Inc., Case No. A293583, filed in District Court of Clark County, Nevada, involving excessive mortgage escrow accounts, which was successfully resolved in July, 1997. I have worked on the class action case of Lucky Credit Company, LLC d/b/a Lucky Cash 4 U v. Shafer, Case No. A577847, Department 9, District Court, Clark County, Nevada, currently pending final approval for settlement.

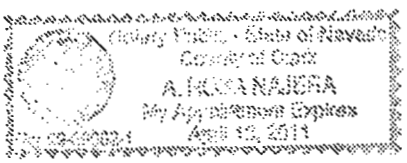
5. I have litigated cases to jury verdict and through the appellate courts in both state and federal courts since 1978. I have handled or participated in handling 24 appellate court cases.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DAN L. WULZ

SUBSCRIBED and SWORN to before me this 8th day of September, 2010.

Notary Public in and for said County and State



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DAN L. WULZ

800 South 8th Street, Las Vegas, Nevada 89101
(702) 386-1070, Extension 106

EDUCATION:

1978- J.D. - Washburn University School of Law, Topeka, Kansas,
Dean's Honors.

1973- B.A. - University of Kansas, Lawrence, Kansas.
Major: Speech Communication and Human Relations.

EMPLOYMENT HISTORY:

LEGAL AID CENTER OF SOUTHERN NEVADA, INC., Las Vegas, Nevada, Deputy Executive Director
1/96 to present

- Present - Supervision and Administrative Duties; selected consumer and class action litigation
- Past - Litigation (ADA; Consumer Law, i.e., contract disputes w/ car dealers & pay day lenders; UCC; Deceptive Trade Practices Act; Odometer Act; TILA; ECOA; FCRA)

NEVADA LEGAL SERVICES, Las Vegas, Nevada, Staff Attorney,
3/94 to 12/31/95

- Practice emphasized federally subsidized housing and class action litigation.

BRYAN LYKINS HEJTMANEK & WULZ, P.A., Topeka, Kansas, Partner,
6/1/86-12/31/91.

- Practice emphasized plaintiff personal injury litigation.
- Co-counseled personal injury trial resulting in $1 million jury verdict.
- Handled over 100 client files at any one time, from initial client call to final appeal.
- Handled or participated in handling 23 appeals in State and Federal courts.
- Co-managed office with sixteen employees.

SCHROER RICE BRYAN & LYKINS, P.A., Topeka, Kansas, Partner,
12/82-5/31/86.

- Practice emphasized research, writing, litigation and appellate practice in personal injury cases.

JONES SCHROER RICE BRYAN & LYKINS, P.A., Topeka, Kansas, Associate,
6/78-12/82.

- Practice emphasized product liability litigation; two class action cases.

JONES SCHROER RICE BRYAN & LYKINS, P.A., Topeka, Kansas, Law Clerk,
9/77-6/78.

MEMBERSHIP AND PROFESSIONAL ACTIVITIES:

1995 - Arbitrator, Nevada Court Annexed Arbitration Program.

1989-1990 - Board of Editors, Journal of the Kansas Trial Lawyers Association.

1989 - Judge, Moot Court Competition, Washburn University School of Law.

1988 - Adjunct Professor, Legal Assistant Program, Washburn University.

1987 - Received training and certification as Special Education Due Process Hearing Officer.

1978-1991 - Kansas Trial Lawyers Association.

PUBLISHED AUTHOR:

Co-Author: "Product Liability-Defective Design of Rotary Power Mower." 33 P.O.F.2d 447 (1983).

Product Liability Column: "Sorry, This Courthouse is Closed." Journal of Kansas Trial Lawyers, Vol. 10, No. 2.

General Column: "Recent Developments in Premises Liability: A Suggestion Of Denial Of Equal Protection." Journal of Kansas Trial Lawyers, Vol. 8, No. 6.

Lead Column: "Causation: Distinguishing The Existence of Liability From The Extent of Liability." Journal of Kansas Trial Lawyers. Vol. 6, No. 4.

Article: "Farm Machinery: Compression Roller Design Is Unreasonably Dangerous." Trial. Vol. 17, No. 11.

Article: "Lawn Mower Makers Shortcut Safety." Trial. Vol. 16, No. 11.

ADMITTED TO THE BAR:

1978 - Kansas Supreme Court and all inferior courts of the State of Kansas. United States District Court - Kansas.

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1980 - United States Court of Appeals, Tenth Circuit.

1982 - United States Supreme Court.

1993 - California Supreme Court and all inferior courts of the State of California.

1994 - Arizona Supreme Court and all inferior courts of the State of Arizona. (Received second highest score on bar exam).

1994 - Nevada Supreme Court and all inferior courts of the State of Nevada. United States District Court - Nevada.

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REFERENCES AND WRITING SAMPLES AVAILABLE UPON REQUEST

APPELLATE EXPERIENCE AND PUBLISHED DECISIONS:

1. Lippis v. Peters, 112 Nev. 1008, 921 P.2d 1248 (1994) (constitutionality of summary eviction; assisted in preparation of brief)

2. Wahwasuck v. Kansas Power & Light Co., 250 Kan. 606, 828 P.2d 923 (1992). (personal injury; prepared brief).

3. Lowe v. American Family Mutual Insurance Co., 1991 Kan.App. LEXIS 1052, unpublished opinion. (personal injury; uninsured motorist insurance issues; prepared brief and argued appeal).

4. Masters v. Daniel International Corporation, 895 F.2d 1295 (10th Cir. 1990), vac. and remanded, 496 U.S. 933, 110 S.Ct. 3208, 110 L.Ed.2d 656 (1990), on remand, 917 F.2d 455 (10th Cir. 1990). (retaliatory discharge, federal preemption; prepared brief and argued appeal in Tenth Circuit; prepared brief in U.S. Supreme Court).

5. Willoughby v. Willoughby, 758 F.Supp. 646 (D.Kan. 1990) (life insurance, change of beneficiary, divorce, restraining order, summary judgment granted).

6. Mason v. Coker, 1989 Kan.App. LEXIS 661, unpublished opinion. (personal injury; prepared brief).

7. Duncan v. City of Osage City, 13 Kan.App.2d 364, 770 P.2d 843 (1989). (worker's compensation; co-authored brief and argued appeal).

8. Bridges v. Bentley, 244 Kan. 434, 769 P.2d 635 (1989). (personal injury; co-counsel at trial, prepared brief and argued appeal; $1 million verdict).

9. Tomlinson v. Celotex Corp., 244 Kan. 474, 770 P.2d 825 (1989). (personal injury, asbestos, statute of limitations; assisted in preparation of brief and argued appeal).

10. Patterson v. Hartford Accident and Indemnity Co., Case No. 88-1107, 10th Cir., per curiam, 6/23/89. (insurance policy coverage, premises liability; co-authored brief).

11. Menne v. Celotex Corp., 861 F.2d 1453 (10th Cir. 1988). (personal injury, asbestos; co-authored brief).

12. Patrons Mut. Ins. Ass'n v. Harmon, 240 Kan. 707, 732 P.2d 741 (1987). (interpretation of homeowner's insurance policy; prepared brief and argued appeal).

13. Bowers v. Ottenad, 240 Kan. 208, 729 P.2d 1103 (1986). (personal injury, premises liability; prepared KTLA amicus curiae brief successfully urging adoption of active negligence exception to status classifications of premises liability).

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14. Mercer v. Fritts, 9 Kan.App.2d 150 (1984), aff'd. 236 Kan. 73, 689 P.2d 774 (1984). (personal injury, urged rejection of status classifications of premises liability or adoption of active negligence exception; prepared both briefs and argued both appeals).

15. Unified School Dist. No. 503 v. McKinney, 236 Kan. 224, 689 P.2d 860, 21 Ed.Law Rep. 353 (1984). (violation of teacher's constitutional rights by school board; prepared brief and argued appeal).

16. Hanna v. Huer, Johns, Neel, Rivers and Webb, 233 Kan. 206, 662 P.2d 243 (1983). (personal injury, architect liability; co-authored brief).

17. Griffin v. Rogers, 232 Kan. 168, 653 P.2d 463 (1982). (liability of State, sheriff and contractor arising out of capsizing of Whipporwill showboat; co-authored brief).

18. Halpin v. Frankenberger, 231 Kan. 344, 644 P.2d 452 (1982). (subrogation and contribution rights of co-guarantor; prepared brief).

19. Hardin v. Manitowoc-Forsythe Corp., 691 F.2d 449 (10th Cir. 1982). (personal injury product liability; procedural issues involving phantom parties under Kansas comparative negligence; prepared brief and argued appeal).

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20. Greenwood v. McDonough Power Equipment, Inc., 687 F.2d 338 (10th Cir. 1982), rev'd, 464 U.S. 548, 104 S.Ct. 845, 78 L.Ed.2d 663 (1984), rehearing, 731 F.2d 690 (1984). (personal injury, product liability; prepared briefs in Tenth Circuit and United States Supreme Court and argued appeal in Tenth Circuit).

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21. Viestenz v. Fleming Companies, Inc., 687 F.2d 338 (10th Cir. 1982). (F.L.S.A. preemption of employee's suit against employer; prepared brief and argued appeal).

22. Vogel v. Missouri Valley Steel, Inc., 229 Kan. 492, 625 P.2d 1123 (1981). (service of process on dissolved corporation; co-authored brief and argued appeal).

23. Temmen v. Kent-Brown Chevrolet Co., 227 Kan. 45, 605 P.2d 95 (1980). (payment of wages; prepared KTLA amicus curiae brief).

24. State, ex rel., v. Hill, 223 Kan. 425, 573 P.2d 1078 (1978). (unauthorized practice of law; worked on brief as law clerk).

25. Pauley v. Gross, 1 Kan.App.2d 736, 574 P.2d 234 (1977), rev'd den., 225 Kan. 845 (1978). (denial of bail and detention of a juvenile; prepared KTLA amicus curiae brief as law clerk).

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EXHIBIT "6"

AFFIDAVIT OF J. RANDALL JONES IN SUPPORT OF MOTION TO CERTIFY CLASS

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

J. RANDALL JONES, Esq., being first duly sworn, deposes and attests the following, all of which is stated upon personal knowledge except for those matters stated upon information and belief, if any, and as for those matters, Affiant believes them to be true.

1. I am over the age of eighteen and competent to testify as to the matters stated herein.

2. I am a partner in the law firm of Kemp, Jones & Coulthard, LLP, ("KJ&C," fka Harrison, Kemp, Jones & Coulthard) and licensed to practice law in the State of Nevada.

3. Kemp, Jones & Coulthard is an AV-rated firm. I am an AV-rated litigator with almost 30 years of practice in Clark County, Nevada. Attached hereto as Exhibit A is my profile printed from www.martindale.com.

4. I was named Trial Lawyer of the Year in 1998 by the Nevada Trial Lawyers Association, included in *Las Vegas Magazine's* "Top Lawyers, Las Vegas's Best Attorneys as Chosen by Their Peers," listed among *Nevada Women Magazine's* "Best Lawyers in Nevada" 2003-2004, and have been named as one of Nevada's Top Litigators in several national publications including *Superlawyers, Chambers and Partners USA*, and *The Best Lawyers in America*.

5. I also have been inducted into the American College of Trial Lawyers and the American Board of Trial Attorneys, both long-standing organizations dedicated to excellence in trial advocacy, whose members are inducted only after a rigorous investigation which evidences a

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high level of trial skill and experience, having tried to verdict at least 25 jury trials before even being considered for membership.

6. KJ&C is also highly experienced in the prosecution of class actions, having successfully litigated numerous class actions in this jurisdiction including but not limited to *Forsyth v. Humana*, 119 S. Ct. 710 (1999) (an 84,000 member class action by Nevadans against Humana, Inc., and Humana Insurance, that ultimately resulted in a settlement of approximately $28.8 million after a favorable, 9-0 ruling from the United States Supreme Court). KJ&C was actively involved in the prosecution of some of the largest multi-district litigation cases in the United States during the last two decades, having been appointed to the Plaintiffs' Executive or Plaintiffs' Steering Committees in the tobacco, breast implant, pedicle bone screw, Fen-Phen, and Vioxx litigations, and most recently in the *In re: Motor Fuel* case in Kansas City, Kansas. KJ&C was also a pioneer in construction defect class action litigation in Clark County in the 1990s.

7. I am currently lead class counsel in the *In re: Kitec Litigation*, a certified class action involving defective brass plumbing fittings installed in tens of thousands of Clark County, Nevada, homes. To date, we have reached settlements with various defendants totaling more than $150 million, and trial is scheduled to commence on May 18, 2009, with any remaining parties.

8. Along with Legal Aid Center of Southern Nevada, Inc., KJ&C is co-class counsel for the Plaintiff class in the action entitled *Lucky Credit Company, LLC dba Lucky Cash 4U v. George Bozis*, case number A577847, now pending in Department IX of the Eighth Judicial District Court for Clark County, Nevada. A settlement was reached in that case on behalf of the class-member/customers of payday lender, Lucky Cash, and the parties are simply awaiting the final fairness hearing.

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9. Along with my partner, Jennifer C. Dorsey, Esq., I have co-authored the Nevada section of the ABA's publication, SURVEY OF STATE CLASS ACTION LAW, for the past ten years.

10. In my 28 years of practice, I have tried dozens of jury trials and bench trials, participated in and conducted numerous arbitrations, and participated in more than 100 mediations.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

J. RANDALL JONES, ESQ.

Subscribed and sworn to before me, a
Notary Public, this 8th day of September, 2010.

Notary Public in and for said
County and State

J. MELNAR
Notary Public-State of Nevada
APPT. NO. 94-6467-1
My App. Expires November 04, 2010

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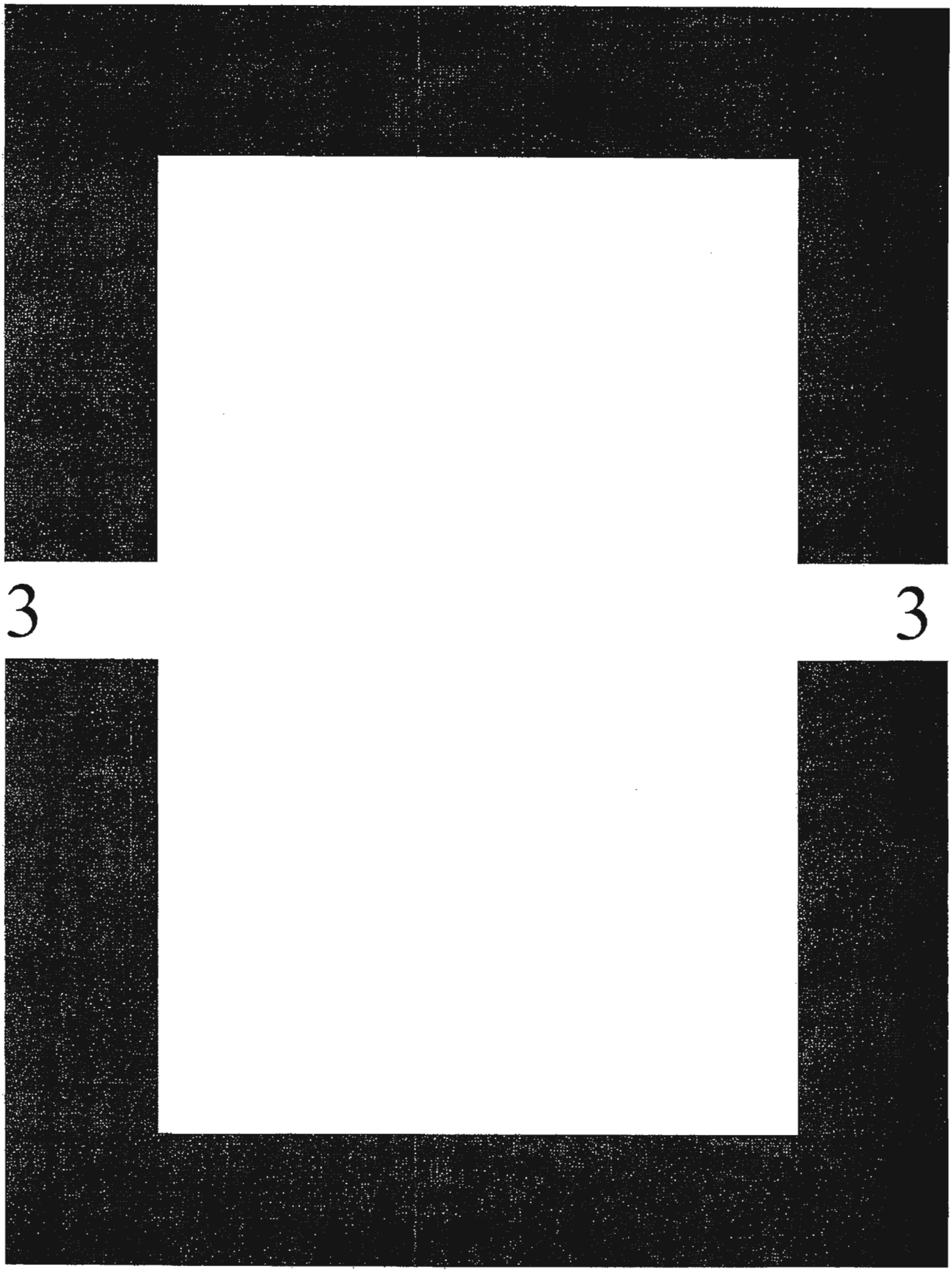

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CLERK OF THE COURT

MOT
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Venicia Considine, Esq. (11544)
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3800 Howard Hughes Pkwy, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Facsimile: (702) 385-6001
jrj@kempjones.com
Attorneys for Plaintiffs and Putative Class Counsel

DISTRICT COURT

CLARK COUNTY, NEVADA

Casandra Harrison; Eugene Varcados; Concepcion Quintino; and Mary Dungan, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

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; Advance Group, Inc., d/b/a Rapid Cash; Maurice Carroll, individually and d/b/a On Scene Mediations; W.A.M. Rentals, LLC and d/b/a On Scene Mediations; Vilisia Coleman, and DOES I through X, inclusive,

Defendants.

Case No.: A-10-624982-B
Dept. No.: XI

PLAINTIFFS' MOTION FOR RULE 23 NO CONTACT ORDER OR, ALTERNATIVELY, FOR A PRELIMINARY INJUNCTION

Date of Hearing: _____
Time of Hearing: _____

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Plaintiffs, Casandra Harrison, Eugene Varcados, Concepcion Quintino, and Mary Dungan, individually and on behalf of all persons similarly situated, (hereafter "Class Representatives" or "the Class"), by and through counsel, J. Randall Jones, Esq. and Jennifer C. Dorsey, Esq., Kemp, Jones & Coulthard, LLP, Dan L. Wulz, Esq., and Venicia Considine, Esq., Legal Aid Center of Southern Nevada, Inc., pursuant to NRCP 23 hereby respectfully move this Court for a Rule 23 no contact Order or, alternatively, pursuant to NRCP 65, a Preliminary Injunction against the Rapid Cash[1] Defendants. The Class respectfully requests that this Court grant a Rule 23 no contact Order to preserve the integrity of the class, the remedies available to the Class, and to prevent the exercise of undue influence by Rapid Cash upon the Class, and including collection activity on void default judgments against the Class. In the alternative, the Class pursuant to NRCP 65 moves the Court to enter a Preliminary Injunction to preserve the *status quo*, with the same relief as that requested under Rule 23.

This Motion is based upon the pleadings and papers filed herein, the following Memorandum of Points and Authorities, supporting exhibits, and any argument which the court will allow.

DATED this 9 day of September, 2010.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

Dan L. Wulz, Esq. (5557)
Venicia Considine, Esq. (11544)
800 South Eighth Street
Las Vegas, Nevada 89101

[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 will collectively be referred to herein throughout as "Rapid Cash."

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J. Randall Jones, Esq. (1927)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Class Representatives and
Putative Class Counsel

NOTICE OF MOTION

TO: All Parties.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above PLAINTIFF'S MOTION FOR ORDER OR PRELIMINARY INJUNCTION on for hearing before the Court at the courtroom of the above-entitled Court on the 12 day of Oct, 2010, at 9:00 a.m. in Department XI of said Court.

DATED this 9 day of September, 2010.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As detailed in the Complaint and Motion for Class Certification (filed herein and incorporated by reference), this class action seeks, *inter alia*, declaratory and injunctive relief directing Rapid Cash to set aside the void default judgments it obtained against its customers in Clark County's Justice Courts through On Scene Mediations' fraudulent "sewer service." Rapid Cash's pattern and practice of obtaining default judgments against its unwitting customers through this despicable conduct makes this case uniquely suited for class action treatment. And the breadth and vileness of this conduct highlights the need to immediately implement safeguards to prevent the Defendants from having any contact with Plaintiffs and the putative class members or taking steps to enforce or collect upon these void default judgments. Accordingly, Plaintiffs move this Court to exercise its broad managerial powers under NRCP 23(d) and enter an order preventing Defendants from having any contact with Plaintiffs and the putative class members except through counsel or otherwise taking steps to enforce these void default judgments. Alternatively, Plaintiffs request a preliminary injunction to restrict the Defendants from such contact and enforcement activities.

II. STATEMENT OF THE FACTS

The Class incorporates the facts and class action allegations stated in the Complaint and the accompanying Motion for Class Certification, with Exhibits, filed contemporaneously herewith. Accordingly, those facts will not be repeated here.

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III. RULE 23(d) ORDERS IN CLASS ACTIONS

Rule 23(d) permits broad orders in the conduct of class actions. The Court may make appropriate orders, "imposing conditions on the representative parties . . ." and "dealing with similar procedural matters," in a class action, according to Nevada Rules of Civil Procedure 23(d)(3) and (5). "A district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties." Gulf Oil Co. v. Bernard, 452 U.S. 89, 100 (1981)(homeowners moved for an order preventing manufacturer from communicating with putative class members and preventing manufacturer's ex parte inspections of homes of absent class members pursuant to FRCP 23(d)). The relief requested is consistent with NRCP 23. The Court's authority includes "the authority to enjoin communications with class members to protect them from undue influence." In re McKesson HBOC, Inc. Sec. Litig., 126 F.Supp.2d 1239, 1242, citing Gulf Oil Co., *supra*, 452 U.S. at 100.

As the Court might well imagine, once a class action has been filed, some Defendants engage in efforts to sabotage the case. Such actions may include, but may not be limited to, contacting the Class Representatives to offer settlements to buy them off; contacting putative class members in an effort to persuade them to repudiate the class action by making misrepresentations concerning the action, or to sign releases, or to sign exclusion requests, or to quickly and cheaply settle their potential claims, thereby affecting the integrity of the Class and the remedies available to the Class-----all behind the backs of the Court and Class Counsel. As such, courts in class actions have the authority *and duty* to enter orders governing such conduct by both the parties and counsel.

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