Harrison was not honored by her bank.

17. Ultimately, Rapid Cash filed a lawsuit in Justice Court to collect upon this debt. The affidavit of service indicates that Harrison was served on August 8, 2009.

18. Despite leaving twenty (20) voice messages on her answering machine during April, 2009, Harrison never returned a single call made to her attempting to collect upon her debt. In fact, the only telephone call Rapid Cash ever received from Harrison occurred on September 2, 2009, less than one month after service of process had purportedly been made. On September 2, 2009, Harrison spoke with customer service representative Jessica Tripp. Harrison advised that Rapid Cash could speak with PDL Assistance as her credit counselor in this matter. Pursuant to Rapid Cash's standard policies and procedures, Harrison would have been made aware of her balance and the status of her account at this time including the pendency of the legal action that had been filed. At no time during this conversation do Rapid Cash's records reflect that Harrison stated that she had not been served process or didn't know about the lawsuit.

19. Rapid Cash records reflect that wage garnishment against Harrison to collect upon the default judgment started in August 2010. There are no entries in Rapid Cash records

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reflecting that Harrison contacted Rapid Cash to complain about the garnishment, a lack of service or any other matter.

All of the foregoing are true to the best of my knowledge and this Affidavit is made subject to the penalties of perjury.

WHEREFOR AFFIANT SAYETH FURTHER NAUGHT

Executed this _____ day of November, 2010 at Las Vegas, Clark County, Nevada.

_____
Randolph Charles Rhode, Jr.

CLARK COUNTY }
} ss.
STATE OF NEVADA }

This instrument was acknowledged before me on ____ day of _____, 2010 by Randolph Charles Rhode, Jr..

SUBSCRIBED AND SWORN to before me
this _____ day of November, 2010.

_____
NOTARY PUBLIC in and for said
County and State

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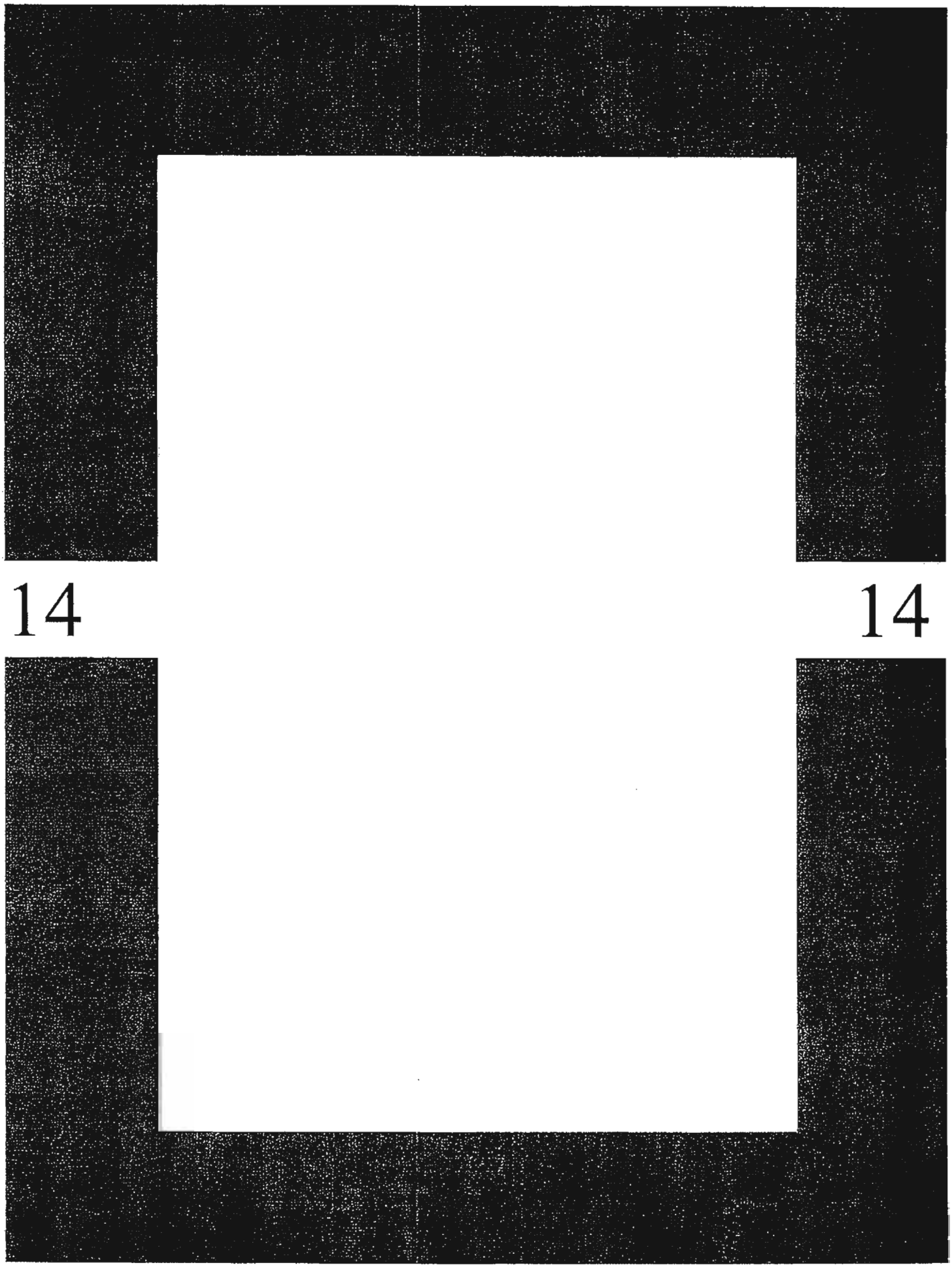

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASANDRA HARRISON, et al. Plaintiffs vs. FMMR INVESTMENTS, INC., et al. Defendants	CASE NO. A-624982 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

STATUS CHECK RE CLASS NOTICE PRELIMINARY INJUNCTION

TUESDAY, NOVEMBER 2, 2010

APPEARANCES:

FOR THE PLAINTIFFS: DAN I. WULZ, ESQ.
JENNIFER DORSEY, ESQ.

FOR THE DEFENDANTS: MARK S. DZARNOSKI, ESQ.
DANIEL F. POLSENBERG, ESQ.

COURT RECORDER: JILL HAWKINS
District Court

TRANSCRIPTION BY: FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

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LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 2, 2010, 9:04 A.M.

(Court was called to order)

THE COURT: Good morning. Is there anybody who's appearing on a pro bono basis?

That would be Harrison versus Principal Investments, A-624982.

MR. DZARNOSKI: Good morning, Your Honor. Mark Dzarnoski on behalf of the Rapid Cash defendants.

MR. POLSENBERG: And Dan Polsenberg, also, Your Honor.

MS. DORSEY: Good morning, Your Honor. Jennifer Dorsey and Dan Wulz on behalf of the plaintiffs.

THE COURT: Did everybody get a copy of the affidavit that I was handed this morning of --

MS. DORSEY: We did get that yesterday --

THE COURT: -- Mr. Gonzalez? No relation.

MS. DORSEY: -- yesterday afternoon. But we're going to be quick for you today here, Your Honor.

THE COURT: Okay.

MS. DORSEY: I think that we're in agreement that what we're going to do -- the TRO hasn't actually gone into effect yet because we've had a snafu with the Constable's Office. Without an order basically terminating the garnishments from you they wouldn't stop the garnishments. So, so far we don't have any relief. So --

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THE COURT: Why's that?

MR. DZARNOSKI: Your Honor, the -- I contacted the Las Vegas Constable's Office, and their position is they have a duly issued order from a court and that therefore they didn't care much what I said or what my clients wanted, that unless they had an order from the -- a court, that they would not stop garnishments.

I spoke with counsel for the plaintiffs immediately after that, and we figured that we couldn't go forward and file in front of Justice Court, so we thought we thought we'd come back to you.

THE COURT: You could. It just wouldn't be practical.

MR. DZARNOSKI: That's correct. I do have an order, by the way, for you to sign today. And we've also agreed to extend the relief for two weeks, if we could, for you to set a preliminary injunction evidentiary hearing. So there's some --

MS. DORSEY: Two weeks from now.

MR. DZARNOSKI: So there's some fill-in-the-blanks here.

MS. DORSEY: Yes.

THE COURT: Okay. Let me ask a couple questions. Does anybody feel the need to do any discovery prior to having the preliminary injunction hearing?

MS. DORSEY: One of the other things that we're hopeful in doing, Your Honor, is possibly sitting down in the next two weeks and figuring out where we're at and Rapid Cash is at in determining if they're able to obtain information about our class members. And we've been talking about that and through their progress, also. So we're sort of conducting informal discovery in that way right now.

THE COURT: Here is my problem, and it is a problem that I face because of the nature of the cases assigned to me. I have scheduled the CityCenter litigation for a hearing related to whether something is in substantial compliance with my CMO. I've already had two and a half days of hearings, I've scheduled five more hearings on that single issue for the week of November 15th. I can schedule you on the 19th of November, hoping they will be able to finish this what should be a very discrete issue in four more days.

MR. DZARNOSKI: Okay. That's fine with me, Your Honor.

MS. DORSEY: 19th?

MR. WULZ: We'll make it work.

MS. DORSEY: We'll make it work. That works for us.

THE COURT: And instead of the day that it's going to remain in, I'm going to say the conclusion of the hearing scheduled here.

MS. DORSEY: Okay.

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THE COURT: Because my practice is to leave the restraining order in practice until we conclude the hearing, because I can only give you a day we're going to start. I can't guess when you're going to finish.

MR. DZARNOSKI: May we have an expedited discovery in case we decide to take the depositions of the plaintiffs?

THE COURT: Certainly. Why don't you tell me what you want to do.

MR. DZARNOSKI: At this point we would probably just limit it to depositions of the plaintiffs.

THE COURT: The class member plaintiffs?

MR. DZARNOSKI: Yes.

THE COURT: Okay. Ms. Dorsey.

MS. DORSEY: Before the hearing? Is that what the request is?

THE COURT: Yes.

MR. DZARNOSKI: Yeah.

MS. DORSEY: On limited topics, or on the topics related specifically to the preliminary injunction relief?

THE COURT: I usually permit it on the issues related to the preliminary injunction because I want everybody to be ready and nobody to argue there's a due process issue after I've had a lengthy preliminary injunction hearing.

MR. POLSENBERG: Touche.

THE COURT: Remember who you got sitting over here.

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MR. POLSENBERG: Yeah, Mr. Due Process.
THE COURT: I was pointing to Mr. Polsenberg.
MS. DORSEY: I -- could -- I would have known that with a blindfold, Your Honor. That's fine.
THE COURT: And, Ms. Dorsey, I'm going to leave you as the individual in charge of coordinating with my staff about how we're doing for the 19th.
MS. DORSEY: I will.
THE COURT: I have put you in at 9:30, because that's probably a better time than others.
MS. DORSEY: Right.
THE COURT: Okay. 9:30. Preliminary injunction hearing.
MR. DZARNOSKI: Would you like an update on some other matters?
THE COURT: Anything else?
MR. DZARNOSKI: Yes, Your Honor. You had asked for some -- basically on a status check some information.
THE COURT: Yes.
MR. DZARNOSKI: I wanted to advise the Court that I have contacted the three attorneys who did file collection actions on behalf of Rapid Cash during 2004 to 2010, those three being Mr. Hillin --
THE COURT: You okay?
MR. DZARNOSKI: -- excuse me -- Mr. Hillin, Mr.

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Callister, and Lizzy Hatcher. I have received a spreadsheet from Mr. Hillin's office that has approximately 14,000 entries on it. We're sorting through that data now. Unfortunately, it does not include the years 2005, 2006, and part of 2007. So we are missing probably at this point, I'm estimating, 5,000 cases that were probably sent to Mr. Hillin's office during that time frame. He's indicated that he has some data in his offices but it would require hiring temporary help to input information into his computer spreadsheet.

As to Mr. Callister, I've received a spreadsheet indicating that Mr. Callister's office had approximately 1,847 lawsuits that had been filed on behalf of -- excuse me, I do have a little bit of a cold.

THE COURT: It's okay.

MR. DZARNOSKI: 1,175 of them were served by Mr. Carol, 650 have not finished service. So those would be reserved. So it looks like we have a universe of somewhere in a neighborhood of 1,175 cases out of Mr. Callister's office, although we haven't identified that they're all default judgments.

As to Ms. Hatcher's --

THE COURT: Hold on a second. For Callister's office you have 1,175?

MR. DZARNOSKI: 1,175 served.

THE COURT: By On Scene Mediations.

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MR. DZARNOSKI: Correct.

THE COURT: Okay. Thank you.

MR. DZARNOSKI: As to Ms. Hatcher, I received a notice that -- from Ms. Hatcher's office indicating she couldn't give me any numbers, that the files are in alphabetical order and it will take temporary help in order to go through all of her files to accumulate any data. And we haven't determine whether to move forward with that at this point in time.

As to Rapid Cash's records, they do not have a records retention policy that involves destroying records, fortunately. Those documents are all inputted into databases and computer systems. There was at some point between 2004 and 2010 a migration of data from one computer system to another, and we haven't confirmed that that didn't corrupt anything as of yet. But it looks like there is a computer database that has at least all of the customers of Rapid Cash.

The difficulty we have right now is the only place I have seen in any of the data that identifies whether a judgment had been issued is in a note section of a history report, and it's amongst a whole bunch of other text. And Rapid Cash, it has hired or is hiring a computer IT consultant to determine whether or not it is possible to sort those fields by --

THE COURT: It is possible.

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MR. DZARNOSKI: -- the word "judgment."
THE COURT: It is possible.
MR. DZARNOSKI: Okay.
THE COURT: I know this from other cases.
MR. DZARNOSKI: Maybe it will be possible. I don't what's entailed in it. But that's what they -- where they're hiring somebody to do so that I can report back to you what success they have had and what form the data may come out in.
THE COURT: Let me ask the question a different way. So the Rapid Cash records that were kept include in a note section the entry of whether a judgment is or is not in place.
MR. DZARNOSKI: As a policy, yes.
THE COURT: Right.
MR. DZARNOSKI: I can't tell you 100 percent right now.
THE COURT: Right. That's the goal.
MR. DZARNOSKI: Yes.
THE COURT: Does the Rapid Cash information for each customer include who served the summons?
MR. DZARNOSKI: No. It shows the summons was served, but it is --
THE COURT: Not by whom.
MR. DZARNOSKI: It is my information that the sole person who -- or sole entities that did serve during the relevant time frame is On Scene Mediation.

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THE COURT: Okay. So we're just going to make the assumption at this point that all of them that have a judgment were served by On Scene Mediation --

MR. DZARNOSKI: Correct, Your Honor.

THE COURT: -- except for those Mr. Callister has that hadn't been served yet.

MR. DZARNOSKI: Correct. And there are 1,000 -- out of the 14,000 entries for Mr. Hillin, there's something in the neighborhood of 1400 entries where On Scene Mediations reported that they could not effectuate service and as a result those cases were dismissed for non service. There's an additional 1,700-and some cases that were pending service that had not yet been made. So there's a large group, maybe 20-some percent of the 14,000 that are entered in the Hillin files that have not been served, some of them have been dismissed for non service, and some of them will be out for re-service.

THE COURT: Okay.

MR. DZARNOSKI: We have also contacted an entity called Russ Consulting that are apparently settlement or class action administrators regarding sending out of notices. It's our position that because of the breadth of the notices that we are being asked to send out to all Rapid Cash customers who were purportedly served by Mr. Carol who would not have complaints, we'd like to protect the integrity of that list

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and not turn it over to the plaintiffs in order to basically do whatever they want with the Rapid Cash customer list. Ultimately in a case management order what we would like to see happen is either a special master appointed and/or a class action administrator under the authority of the Court to handle the mailings.

THE COURT: I'm happy to consider that on an appropriately noticed motion. It doesn't have to be noticed in the normal course, because some of the things we're dealing with are rather urgent.

MR. DZARNOSKI: Very good.

THE COURT: But that is certainly something I will consider as part of the discussion. And, remember, our class notice needs to have two boxes, one, do you claim that you weren't served, and, two, do you opt out of this class. Because first they've got to tell me whether they claim they weren't served to be part of the class, and the only one who knows that is them.

MR. DZARNOSKI: Actually opt-in as you have made the order box to say they --

THE COURT: Well, it's essentially an opt-in because they got two boxes, but then once I know whether they're in the class, then they have to opt out. But I can't -- there's no way for me to know who claims they weren't served.

MR. DZARNOSKI: Right. And so far the -- just to

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give you an idea of the cost, the cost was estimated at $21,000 for a two-page letter, an opt-in form, and a return envelope, and I'm sure our package will end up being larger. Ultimately my clients would agree to pay this if we can get a special master or administrator.

Finally, you had asked for any further information regarding the procedure to be followed here as an alternative to an opt-in class. We still maintain, believe that an opt-in class is not --

THE COURT: Remember I said it was essentially an opt-in class because they've got to check as to whether they claim they were served.

MR. DZARNOSKI: Our alternative that we are proposing is that, similar to -- well, first of all, you decertify the class, declare this complex litigation, and then, similar to like Southwest Exchange and some other cases you have had, you have the plaintiffs end up filing a master complaint in this matter and that as part of the CMO and the notice that is going out we provide the individuals the right to opt to basically join the action by filing a simple joinder. I don't know if you have the authority to waive appearance fees for these individuals, because obviously that would be a stumbling block. But that's the procedure that we believe would be more effective and basically accomplish everything the Court wanted.

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THE COURT: And that's something also you might want to put in a written motion, probably as a motion to decertify the class, because I can't do that on the fly.

MR. DZARNOSKI: And finally, Your Honor, we still don't have an order yet on the arbitration motion that you denied for us. And we would like to get an arbitration order --

THE COURT: Did you submit it to me?

MS. DORSEY: I don't think we've submitted it yet. We'll get it to you, Your Honor, later today.

THE COURT: Will you please send it to them for them to review and comment.

MS. DORSEY: Absolutely.

THE COURT: Thank you.

MR. DZARNOSKI: Thank you.

THE COURT: Okay. So it sounds like you have some motion practice that you're considering doing. All of the things you're talking about, Mr. Dzarnoski, seems like good ideas for discussion, and I assume that the plaintiffs will have a position and we'll figure out a fair way to do things.

MR. DZARNOSKI: Thank you, Your Honor.

THE COURT: All right. Have a nice day. And if -- you think the order I just signed is going to be sufficient for the Constable to stop the efforts of the garnishments?

MR. DZARNOSKI: I am hopeful. I drafted it that

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way. If it's not, I hope you throw him in jail.

THE COURT: If it's --

MR. POLSENBERG: Can I watch?

THE COURT: If it's not sufficient, can we have a conference call between counsel in this case and counsel for the Constable so that we can determine exactly what the Constable needs --

MR. DZARNOSKI: Yes, Your Honor.

THE COURT: -- so that I can make sure that we write it correctly so the Constable will honor what I've asked them to do.

MR. DZARNOSKI: Yes, Your Honor.

MS. DORSEY: Thank you, Your Honor.

MR. DZARNOSKI: Thank you.

THE COURT: Thank you. Have a lovely day.

MR. POLSENBERG: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 9:19 A.M.

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

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Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

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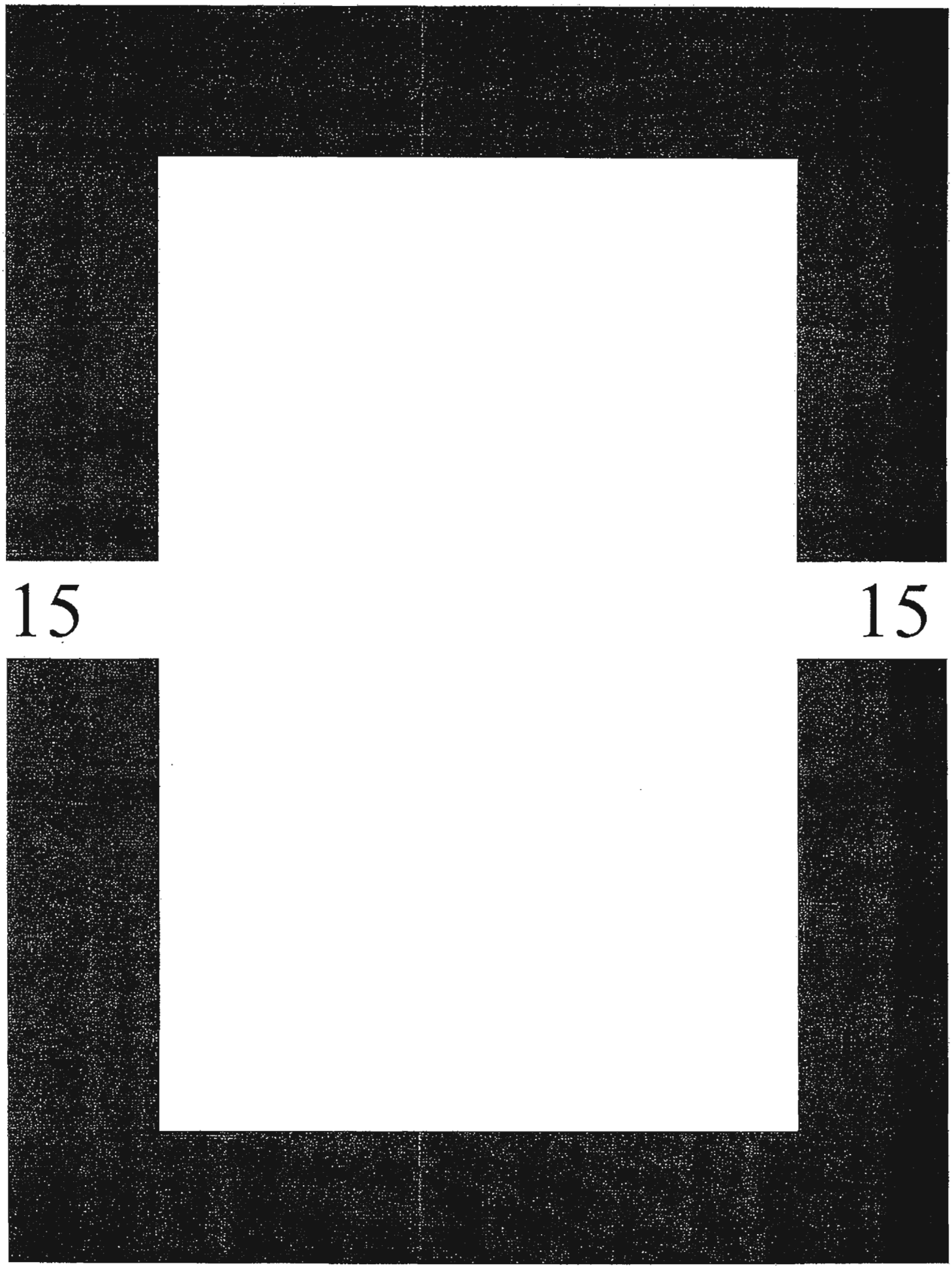
DATE



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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

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Hearing Date:
Hearing Time:

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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 ("Rapid Cash Defendants") by and through their counsel MARK S. DZARNOSKI., Esq. of Gordon Silver and moves this Court for an Order dismissing Plaintiffs' causes of action for (1) Abuse of Process; (2) Negligent Hiring/Supervision/Retention; (3) Negligence; (4) Civil Conspiracy; and (5) Violation of NRS Chapter 598 for lack of subject matter jurisdiction and dismissing Plaintiffs' cause of action for Violation of NRS Chapter 604A for failure to state a claim upon which relief may be granted. This Motion is made and based upon NRCP 12(b)(1) and (5), the Memorandum of Points an Authorities attached hereto, the pleadings and other papers on file herein and such argument as the Court may permit.

DATED this 16 day of December, 2010.

GORDON SILVER

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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 DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED** on for hearing before the Court on the 25 day of Jan, 2011 at the hour of 9:00 am/pm in Department XI.

DATED this _____ day of December, 2010.

GORDON SILVER

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MEMORANUM OF POINTS AND AUTHROTIES

I.

THE COURT'S SUBJECT MATTER JURISDICTION: LEGAL STANDARDS

The Nevada Constitution provides that district courts do not have original jurisdiction over actions that fall within the original jurisdiction of the justice courts. Nev. Const. art. 6, § 6. NRS 4.370(1)(b) confers original jurisdiction upon justices' courts over civil actions for damages for personal injury, if the damages claimed do not exceed $10,000.00. Thus, the district court has

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original jurisdiction over such actions only if the plaintiff claims more than $10,000.00 in damages.

Federal courts apply a "legal certainty" test to determine whether a complaint satisfies the amount-in-controversy requirement of diversity jurisdiction under 28 U.S.C. § 1332. In order to dismiss a case based on lack of subject matter jurisdiction, it must appear to a legal certainty that the claim is worth less than the jurisdictional amount. *See St. Paul Indemnity Co. v. Cab Co.*, 303 U.S. 283, 288-89, 58 S.Ct. 586, 82 L.Ed. 845 (1938); *Budget Rent-A-Car Inc. v. Higashiguchi*, 109 F.3d 1471, 1473 (9th Cir.1997).

The Nevada Supreme Court has adopted the federal courts' legal certainty test for determining the jurisdictional amount in controversy in Nevada district courts. *Morrison v. Beach City LLC*, 116 Nev. 34, 38, 991 P.2d 982 (2000). The district court need not accept the allegations of the complaint as true and may conduct a hearing to determine whether the potential damages in a case fall below the jurisdictional threshold, *Id.* at 39.

In a consolidated litigation or class action context, individual plaintiff's damages claims may not be aggregated to satisfy the jurisdictional amount requirement unless the individual plaintiffs have a common and undivided interest in a claim for damages. *Snyder v. Harris*, 394 U.S. 332, 89 S.Ct. 1053, 22 L.Ed.2d 319 (1969); See also *In re Ford Motor Co./Citibank (South Dakota), N.A.* 264 F.3d 952, 957 (9th Cir., 2001). "When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount." *Troy Bank of Troy, Ind., v. G.A. Whitehead & Co.*, 222 U.S. 39, 40, 32 S.Ct. 9, 56 L.Ed. 81 (1911)

When the amount in controversy depends largely on alleged punitive damages, the court "will scrutinize a claim more closely than a claim for actual damages to ensure Congress's limits on diversity jurisdiction are properly observed." *McCorkindale v. American Home Assurance Co.*, 909 F.Supp. 646, 655 (N.D. Iowa 1995). Whether punitive damages are sufficient to meet the amount in controversy requirement is a two-part test. *Wiemers v. Good Samaritan Society*, 212 F.Supp. 1042, 1047 (N.D. Iowa 2002). First, punitive damages must be available as a matter of state law. *Id.* Secondly, the court inquires "whether the amount of punitive damages will more

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likely than not exceed the required amount in controversy." *Id.*

Further, as with compensatory damages, Punitive damages asserted on behalf of a putative class may not be aggregated for purposes of satisfying jurisdictional requirements for amount in controversy. *In re Ford Motor Co./Citibank (South Dakota), N.A.*, 264 F.3d 952, 963 (9th Cir., 2001).

NRCP 12(b) provides as follows:

> **(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a claim upon which relief can be granted, (6) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

II.

DAMAGES ARE NOT IN EXCESS OF THE JURISDICTIONAL MINIMUM

A. Plaintiffs Concede Their Individual Damages are Under $10,000

On November 15, 2010, Defendants had the opportunity to conduct limited discovery by deposing each of the named Plaintiffs except for Concepcion Quintino. These Plaintiffs acknowledged that their damages were below the jurisdictional threshold.[1]

1. Eugene Varcados

Paragraph 94 of the Complaint sets forth the following allegation: "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." Said

[1] As to Quintino, Rapid Cash obtained a default judgment against Quintino on August 19, 2009 as follows: Judgment Amount: $625.00 Attorney Fees: $156.00 Court Costs: $81.00 Judgment Total: $862.00. A Satisfaction of Judgment for the amount of $862.00 was filed on September 20, 2010. Thus, damages can legitimately be estimated as being less than $1,000.00.

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paragraph was shown to Plaintiff Varcados at his deposition and the following exchange occurred.

Q. I'll show you. Look at paragraph 94.

A. I see that statement. That doesn't mean individually.

Q. Do you believe that you have suffered damages in excess of $10,000?

MS. DORSEY: Object to form.

A. Me personally?

BY MR. DZARNOSKI:

Q. Yes.

A. That's not what that statement says.

Q. Well we'll leave that for other people to decide what that says. My question to you is: Do you allege you have suffered damages in excess of $10,000?

MS. DORSEY: Object to form, calls for a legal conclusion.

A. I don't really understand the purpose of your question. That statement doesn't say me personally. It says the class, and as far as the class is concerned, yeah, I could see where it's possible.

BY MR. DZARNOSKI:

Q. Regardless of what you believe that statement says, I'm asking you do you believe you have suffered damages in excess of $10,000?

MS. DORSEY: Same objection.

A. I personally have not had those kinds of damages against me personally at this point, but as far as the possibility that that could have been the entire class, that's understandable.

[Varcados Deposition, 40:24 -42:3 attached as Exhibit A].

On December 17, 2009, a default judgment was entered against Varcados as follows: Judgment Amount -- $1,839.70; Attorney Fees -- $460.00; Court Costs -- $109.50; Judgment Total -- $2,409.20. Defendant Rapid Cash's records indicate that, although garnishment proceedings started, only $171.28 was received by Defendant from such garnishment. Clearly,

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there is no reasonable basis to conclude that Plaintiff Varcados suffered damages remotely near the jurisdictional minimum; rather, they are more than likely less than $250.00. Further, it is Varcados' belief that the damages allegation in the Complaint involves the aggregation of all class members' damages claims.

2. Mary Dungan

Similarly, Mary Dungan was asked questions about damages she suffered in connection with this matter.

Q. Do you recall how much money was garnished from your account or garnished from your wages?

A. I think about $900.

Q. Do you believe that you are completely paid up now with respect to Rapid Cash?

A. Yes.

Q. Other than the money that was garnished out of your wages, have you lost any money because of anything Rapid Cash has done?

A. As far as money lost, I would say probably no, but it caused some havoc with my finances.

Q. How so?

A. They took -- they took so much out of each paycheck that there was not enough for -- for bills, made it difficult to pay my bills.

[Dungan Deposition, 38:12 - 39:3 attached as Exhibit B].

On October 16, 2009, a default judgment was entered against Dungan as follows: Judgment Amount -- $730.88; Attorney Fees --$183.00; Court Costs -- $90.00; Judgment Total -- $1,003.88. Rapid Cash records indicate that Rapid Cash received $888.88 from garnishment, substantially confirming Plaintiff's recollection and testimony that approximately $900 was garnished. On April 21, 2010, Defendant Rapid Cash filed a satisfaction of judgment for the entire judgment amount of $1,003.88. Thus, except for some unquantifiable amount related to causing "some havoc with [her] finances," Plaintiff Dungan's monetary damages are approximately $1,000.00.

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3. Cassandra Harrison

The following exchange occurred during the deposition of Plaintiff Harrison:

Q. Have you lost any money because of the Rapid Cash lawsuit other than the money that has been garnished from your wages?

A. Have I lost any money pertaining to this?

Q. Yes.

A. It -- it screwed up my bank account if that's what you're talking about. Is that what you mean?

Q. How did it screw up your bank account?

A. Well, because of the way it happened, some things that I had automatically deducted, that didn't happen or part of it happened, and because it just happened so quickly, I didn't -- you know, I couldn't make reservations about calling them and telling them what happened because it just happened so quickly. So as a result of that, some things that would come out, it didn't happen. My rent didn't happen. My car insurance didn't happen. Believe it or not, I pay Palms Mortuary. That didn't happen either, and the gym didn't happen. You know, I can't -- those are the main things I know.

Q. Did you lose your car?

A. No, I didn't lose my car.

Q. Did you get evicted from your apartment?

A. No, I didn't get evicted from my apartment.

Q. So you caught up and made those payments that you just talked about missing?

A. Angrily, if that is a word, yes.

Q. Did you have a few bad check charges coming out of the bank or anything because of

A. Yes, several.

Q. How much are those, 35 apiece?

A. Yes, uh-huh.

Q. Less than five?

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A. No, I had more than five because when I couldn't make up for those items I named, that hit and it -- it kept hitting until I could get it together to try to get it settled or just wait until I had the money, which made it scarce because the next payday Rapid Cash hit again, so it wasn't once a month with Rapid Cash. It was every pay period.

[Harrison Deposition 31:19 - 33:11 attached as Exhibit C].

The default judgment against Plaintiff Harrison was entered on October 26, 2009 as follows: Judgment Amount -- $1,205.30; Attorney Fees -- $301.00; Court Costs -- $112.00; Judgment Total --$1,618.30. A satisfaction of judgment for $1,618.30 was filed by Rapid Cash on September 20, 2010. Thus, exclusive of additional fees for the garnishment and some unspecified number of $35 charges for bounced checks which she attributes to the wrongful garnishment, Plaintiff Harrison's damages approximate $1,600.00 or far from the required jurisdictional minimum.

4. Offsets

As set forth above, damages claimed by Plaintiffs are primarily limited to the amounts collected by Rapid Cash Defendants from garnishments obtained following entry of default judgments. A substantial component of any such "damages" includes the principal amount of the loan and the interest thereon. Yet, Plaintiffs do not deny owing the principal and interest portion of the loan. Any of their claimed "damages" would be substantially offset by the amount of the loan plus interest owed to Rapid Cash Defendants.

a. Varcados Deposition

Q. Do you dispute the fact that you owed them the sum of $588.24? [2]

A. I don't dispute that fact. The class-action suit is not disputing that fact.

Q. So you acknowledge you owe that money?

A. I have never disavowed it. I have never said I didn't. That's not what this action is about.

[Varcados Deposition, 17:10-17 attached as Exhibit D].

[2] In fact, the loans in default respecting Varcados were two $588.24 loans for a total of $ 1,176.48. As set forth above, garnishments only collected $171.28.

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b. Harrison Deposition

Q. Do you dispute that you owe -- that you borrowed the money from Rapid Cash?

A. I borrowed the money from Rapid Cash.

Q. And you don't dispute that you owe them the money; right?

MR. WULZ: Object to form.

A. I was getting PDL to pay off my debt. They were going to handle my business with Rapid Cash.

BY MR. DZARNOSKI:

Q. But you acknowledge you owe Rapid Cash money?

A. Well that's why I hired them, yes.

[Harrison Deposition, 23:9-21 attached as Exhibit E].

c. Dungan Deposition

Q. You did know you owed Rapid Cash money; right?

A. Yes.

Q. You don't dispute they gave you a loan?

A. No.

Q. And you don't dispute that you didn't pay them back?

A. No.

[Dungan Deposition, 30:9-16 attached as Exhibit F].

B. Plaintiffs Fail to Adequately Plead Jurisdictional Minimum Damages

1. Abuse of Process

In paragraph 86 of the Complaint, Plaintiffs allege as follows: "Therefore, Defendants abused the legal process to the detriment of the Class, entitling the Class to equitable and/or legal relief, including compensatory damages." As to this claim for relief, Plaintiffs wholly fail to allege ***any*** amount of damages suffered either by the Class Representatives individually or by the Proposed Class Members in the aggregate.

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2. Negligent Hiring/Supervision/Retention

As set forth hereinbefore, paragraph 94 sets forth the claim that the "Class Representatives and the Class" suffered damages in excess of ten thousand dollars. If the Court were to read this allegation as meaning the aggregated damages of all class members exceeds $10,000 (as was done by Plaintiff Varcados), the claim is deficient as a matter of law because aggregation is not permissible. Each individual Plaintiff must independently meet the jurisdictional requirement of damage.[3]

Alternatively, if the Court were to interpret the allegation as meaning that each individual Plaintiff has suffered damages in excess of $10,000, it should conduct a hearing regarding whether this claim is made in good faith as it appears obvious that no individual Plaintiff (by their own admissions) have suffered monetary loss nearly approaching the jurisdictional threshold.

3. Negligence

Paragraph 98 of the Complaint alleges that "Defendants' negligence has directly and proximately caused Class Representatives and the Class to suffer damages in an amount in excess of ten thousand dollars." Therefore, the same infirmities exist with respect to this claim as in the Negligent Hiring claim addressed above.

4. Civil Conspiracy.

Paragraph 103 sets forth the claimed damages in the same fashion as paragraphs 94 and 98 addressed above. Interestingly, paragraph 102 seems to implicitly recognize that the actual damage to each class member is "nominal." ("as notice is fundamental to due process, damage, even if nominal, is inherent in being deprived of a fundamental right.")

Paragraph 104 contains an allegation that punitive damages are appropriate "in an amount to be determined at trial." There is no allegation that each Plaintiff is entitled to punitive damages in an amount in excess of ten thousand dollars which might provide some basis for Plaintiffs to assert subject matter jurisdiction. Even if Plaintiffs were to make such an allegation,

[3] This is particularly true in this case because the Court has declined to certify any class on any damages cause of action alleged by Plaintiffs.

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it would be necessary for this Court to conduct some analysis to determine whether such a claim for punitive damages is sufficient to confer subject matter jurisdiction over this claim.

5. Violation of NRS Chapter 598

NRS Chapter 598 generally provides for a **public** cause of action for deceptive trade practices. NRS 41.600, however, provides for a **private** cause of action by a person who is a victim of consumer fraud and defines "consumer fraud" to include "[a] deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive." See NRS 41.600(2)(d); See also *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. County of Clark*, 120 Nev. 948 at fn7, 102 P.3d 578 (2004). However, NRS 41.600(3) only provides for the relief of monetary damages. ("If the claimant is the prevailing party, the court shall award the claimant: (a) Any damages that the claimant has sustained; and (b) The claimant's costs in the action and reasonable attorney's fees.") Thus, while equitable relief for violations of NRS 598 may properly be sought by the district attorney or attorney general, only damages are available to a private litigant pursuing a claim under NRS 41.600.

In paragraph 117 of the Complaint, Plaintiffs merely allege that the Class Representatives and the Class suffered damages. No amount is specified. Plaintiffs fail to meet the jurisdictional minimum amount required for District Court jurisdiction.

C. Claims for Equitable Relief Do Not Confer Jurisdiction Over What Are Essentially Damages Actions

To be sure, Plaintiffs generally allege they are entitled to equitable relief for some of their claims (para. 86 for Abuse of Process; para. 98 for Negligence; para. 103 for Conspiracy).. However, the equitable relief prayed for in the Complaint is as follows:

> 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 file 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.

Regarding the Abuse of Process, Negligence, Conspiracy and Chapter 598 claims, the

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injunctive relief requested is simply not available. NRCP 60(b) provides as follows:

> **(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Thus, the only ways to set aside an allegedly void judgment are by motion or by independent action seeking such relief. Further, Abuse of Process, Negligence, Civil Conspiracy and/or violations of NRS Chapter 598 are not grounds for setting aside a judgment in either a motion or an independent action. Plaintiffs cannot obtain the functional equivalent of setting aside a judgment by pursuing injunctive relief based upon these claims.

Clearly, the gravamen of the other "equitable relief" prayed for is to return money to those members of the proposed class from whom Defendants have collected money based upon a void judgment. However characterized, that is a request for monetary relief. To confer subject matter jurisdiction upon the District Court when the amount in controversy cannot satisfy jurisdictional requirements merely because one calls the monetary relief prayed for in the Complaint "restitution" rather than "damages" would undermine the very concepts of subject matter jurisdiction set forth in the Nevada Constitution.

Further, the Court implicitly seemed to recognize the damages nature of the majority of the Plaintiffs' claims during the hearing on Certification of the Class. The Court stated as follows:

At this time the Court is going to grant the motion to certify the class in part. I am

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> granting the motion to certify as to the injunctive and equitable issues raised in the sixth and seventh causes of action as to all customers of Rapid Cash .....

[Transcript at 28:5-13 attached as Exhibit G].

The Court did not certify any class for a damages action. Nor did the Court indicate it would consider any damages issues as part of a class action.[4]

III.

CLAIM FOR VIOLATION OF NRS CHAPTER 604A FAILS TO STATE A CLAIM FOR RELIEF

Plaintiffs base their claim for violation of NRS Chapter 604A upon an alleged violation of NRS 604A.415(1). [See Complaint at paragraph 107.] While Plaintiffs set forth a portion of the statute in their allegation, they fail to include the entire section of said statute that they cited. In its entirety, NRS 604A.415(1) provides as follows:

> 1. 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. When collecting such a debt, the licensee must act in accordance with and must not violate sections 803 to 812, inclusive, of the federal Fair Debt Collection Practices Act, as amended, 15 U.S.C. §§ 1692a to 1692j, inclusive, even if the licensee is not otherwise subject to the provisions of that Act.

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It is clear that NRS 604A.415(1) and sections 803 to 812, inclusive, of the federal Fair Debt Collection Practices Act are intended to cover and address non-judicial collection procedures used by creditors (i.e. harassment and abuse, form and time of communication, disclosure of debt to third persons, etc.) Section 811 of the Fair Debt Collection Practices Act is the only provision dealing with judicial remedies and it is a venue provision requiring the lawsuit to be brought in the judicial district where the consumer signed the agreement or where the consumer resides. This provision is similar to NRS 604A.415(3) requiring Justice Court actions to be filed in the township where the loan agreement was signed.

Plaintiffs claim that the statute was violated because Defendants obtained default judgments using false affidavits of service prepared by On Scene Mediations. [Complaint at

[4] Unfortunately, the Complaint did not number the causes of action as set forth by the Court in the transcript. It appears as if the Court intended to certify a class for the equitable claims set forth in paragraphs bearing Roman Numerals VI (Action in Equity for Fraud Upon the Court) and VII (Abuse of Process). Inasmuch as Plaintiffs have not submitted a written order to the Court nor has the Court issued a written order sua sponte regarding this hearing, the uncertainty set forth herein remains.

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paragraph 108]. Once the complaint has been filed, the matter is governed by rules of judicial process. Upon the filing of the complaint in a proper venue, it is not a collection issue covered by NRS 604A.415(1) or sections 803 to 812 of the Fair Debt Collection Practices Act. As such, there is no relief afforded under NRS Chapter 604A for the conduct alleged in the Complaint.

IV.

CONCLUSION

For the above and foregoing reasons, all claims for relief except for the Independent Action in Equity for Fraud Upon the Court should be dismissed.

DATED this 16 day of December, 2010.

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CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 16th day of December, 2010, she served a copy of the **MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED**, by facsimile, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Dan L. Wulz, Esq.
Venicia Considine, Esq.
Legal Aid Center of Southern Nevada, Inc.
800 South Eighth Street
Las Vegas, NV 89101
Fax: (702) 388-1642

J. Randall Jones, Esq.
Jennifer C. Dorsey, Esq.
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Fax: (702) 385-6001

Anna Dang, an employee of
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EXHIBIT A

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

DEPOSITION OF EUGENE VARCADOS

Taken on Monday, November 15, 2010
At 9:38 a.m.
At 3960 Howard Hughes Parkway, Ninth Floor
Las Vegas, Nevada

Reported by: William C. LaBorde, CCR 673, RPR, CRR
Job No. 2313-A

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MR. DZARNOSKI: Would you read me my last question and his answer.

(Record read by the court reporter.)

BY MR. DZARNOSKI:

Q. Have you read a copy of the complaint that's been filed on your behalf?

A. Have I read a copy of the class-action suit?

Q. Yes.

A. Yes.

Q. In the class-action lawsuit there is a cause of action that is set forth for negligent hiring, supervision and retention, and it involves the use of On Scene Mediations to serve process for Rapid Cash. Are you familiar with that?

A. I recall those names and that issue.

Q. And in paragraph 94 of the complaint there's an allegation that you as a class representative have suffered damages in excess of $10,000. Did you know that?

A. I don't recall that without seeing the document in front of me.

Q. I'll show you. Look at paragraph 94.

A. I see that statement. That doesn't mean

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individually.

Q. Do you believe that you have suffered damages in excess of $10,000?

MS. DORSEY: Object to form.

A. Me personally?

BY MR. DZARNOSKI:

Q. Yes.

A. That's not what that statement says.

Q. Well we'll leave that for other people to decide what that says. My question to you is: Do you allege you have suffered damages in excess of $10,000?

MS. DORSEY: Object to form, calls for a legal conclusion.

A. I don't really understand the purpose of your question. That statement doesn't say me personally. It says the class, and as far as the class is concerned, yeah, I could see where it's possible.

BY MR. DZARNOSKI:

Q. Regardless of what you believe that statement says, I'm asking you do you believe you have suffered damages in excess of $10,000?

MS. DORSEY: Same objection.

A. I personally have not had those kinds of

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damages against me personally at this point, but as far as the possibility that that could have been the entire class, that's understandable.

BY MR. DZARNOSKI:

Q. What damages have you suffered personally?

MS. DORSEY: I'm going to object also that we are getting far afield of the preliminary injunction issues right now.

MR. WULZ: And same objections.

MS. DORSEY: Yes, and of course the same objections as to calls for a legal conclusion.

MR. WULZ: That's an unfair question.

MS. DORSEY: Yeah, I don't think this is necessary for the preliminary injunction.

MR. DZARNOSKI: Well, I appreciate your position, but I do because you have to show a chance of success on the merits of the case in order to entitle you to a preliminary injunction, and whether or not this gentleman has suffered any damages is an important issue.

MS. DORSEY: And I think that continues to call for a legal conclusion.

BY MR. DZARNOSKI:

Q. How have you been harmed, sir?

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EXHIBIT B

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

DEPOSITION OF MARY DUNGAN

Taken on Monday, November 15, 2010
At 2:53 p.m.
At 3960 Howard Hughes Parkway, Ninth Floor
Las Vegas, Nevada

Reported by: William C. LaBorde, CCR 673, RPR, CRR
Job No. 2313-C

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Q. Why not?
A. Well, bad judgment call.
Q. I'm sorry?
A. Bad judgment call.
Q. Did you know that there was an arbitration agreement in the document?
A. No.
Q. Did you ever write to Rapid Cash telling them that you didn't want to accept the arbitration agreement?
A. No.
Q. Do you recall how much money was garnished from your account or garnished from your wages?
A. I think about $900.
Q. Do you believe that you are completely paid up now with respect to Rapid Cash?
A. Yes.
Q. Other than the money that was garnished out of your wages, have you lost any money because of anything Rapid Cash has done?
A. As far as money lost, I would say probably no, but it caused some havoc with my finances.
Q. How so?

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A. They took -- they took so much out of each paycheck that there was not enough for -- for bills, made it difficult to pay my bills.

Q. You know the constable's the one that took the money out of your check; right?

A. Yes.

MR. DZARNOSKI: I appreciate you taking time out of your day and coming over here. Thank you. I have no further questions.

(Deposition recessed at 3:50 p.m.)

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EXHIBIT C

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

DEPOSITION OF CASANDRA HARRISON

Taken on Monday, November 15, 2010
At 1:07 p.m.
At 3960 Howard Hughes Parkway, Ninth Floor
Las Vegas, Nevada

Reported by: William C. LaBorde, CCR 673, RPR, CRR
Job No. 2313-B

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Q. -- from work?
A. From Rapid Cash?
Q. Yes.
A. 1,600. I think $1,681, something like that.
Q. Do you know if the debt has been completely satisfied?
A. Yes, sir. They made sure of it.
Q. Did you first contact the Legal Aid Clinic after all the garnishments had been completed?
A. Yes. It -- yes, I believe they were. Yes.
Q. What did PDL tell you when you told them that your wages were being garnished by Rapid Cash?
A. I don't recall what they told me at that time because I was in shock and I was surprised, so like I can't remember.
Q. Have you lost any money because of the Rapid Cash lawsuit other than the money that has been garnished from your wages?
A. Have I lost any money pertaining to this?
Q. Yes.
A. It -- it screwed up my bank account if that's what you're talking about. Is that what you

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mean?

Q. How did it screw up your bank account?

A. Well, because of the way it happened, some things that I had automatically deducted, that didn't happen or part of it happened, and because it just happened so quickly, I didn't -- you know, I couldn't make reservations about calling them and telling them what happened because it just happened so quickly.

So as a result of that, some things that would come out, it didn't happen. My rent didn't happen. My car insurance didn't happen. Believe it or not, I pay Palms Mortuary. That didn't happen either, and the gym didn't happen. You know, I can't -- those are the main things I know.

Q. Did you lose your car?

A. No, I didn't lose my car.

Q. Did you get evicted from your apartment?

A. No, I didn't get evicted from my apartment.

Q. So you caught up and made those payments that you just talked about missing?

A. Angrily, if that is a word, yes.

Q. Did you have a few bad check charges coming out of the bank or anything because of --

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A. Yes, several.
Q. How much are those, 35 apiece?
A. Yes, uh-huh.
Q. Less than five?
A. No, I had more than five because when I couldn't make up for those items I named, that hit and it -- it kept hitting until I could get it together to try to get it settled or just wait until I had the money, which made it scarce because the next payday Rapid Cash hit again, so it wasn't once a month with Rapid Cash. It was every pay period.
Q. Do you get a direct deposit or do you get a check?
A. Direct deposit.
Q. And did you know -- the first time that a garnishment happened, did you realize that money had been deducted from your paycheck?
A. When I realized it, I received an E-mail from my finance department and that was at the end of the day. I looked at it and then it was just in a matter of a few days after that that that was the first -- the first one.
Q. So you were notified in advance by your finance department that your wages were going to be garnished?

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EXHIBIT D

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.

Certified Copy

Case No. A-10-624982-B

DEPOSITION OF EUGENE VARCADOS

Taken on Monday, November 15, 2010
At 9:38 a.m.
At 3960 Howard Hughes Parkway, Ninth Floor
Las Vegas, Nevada

Reported by: William C. LaBorde, CCR 673, RPR, CRR
Job No. 2313-A

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arbitration. There was no arbitration.

Q. Would you like it to go to arbitration?

MS. DORSEY: Object to form.

A. No. They violated my rights and the rights of the 1,600 [sic] other people that they did this to.

BY MR. DZARNOSKI:

Q. You don't dispute --

A. Which is what our case is about.

Q. Do you dispute the fact that you owed them the sum of $588.24?

A. I don't dispute that fact. The class-action suit is not disputing that fact.

Q. So you acknowledge you owe that money?

A. I have never disavowed it. I have never said I didn't. That's not what this action is about.

Q. And after you went on the Internet and you looked at the things that you say you should have gotten, what did you do next?

MS. DORSEY: Object to form.

A. Called an attorney.

BY MR. DZARNOSKI:

Q. Who did you call?

A. My counsel.

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EXHIBIT E

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

DEPOSITION OF CASANDRA HARRISON

Taken on Monday, November 15, 2010
At 1:07 p.m.
At 3960 Howard Hughes Parkway, Ninth Floor
Las Vegas, Nevada

Reported by: William C. LaBorde, CCR 673, RPR, CRR
Job No. 2313-B

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was just where I wanted PDL to handle it.

Q. When you hired PDL, did you tell them that Rapid Cash filed a lawsuit against you?

A. That was before I ever knew about a lawsuit. I didn't know about a lawsuit until August of this year.

Q. So your answer's no, you didn't tell PDL?

A. No, I didn't.

Q. Do you dispute that you owe -- that you borrowed the money from Rapid Cash?

A. I borrowed the money from Rapid Cash.

Q. And you don't dispute that you owe them the money; right?

MR. WULZ: Object to form.

A. I was getting PDL to pay off my debt. They were going to handle my business with Rapid Cash.

BY MR. DZARNOSKI:

Q. But you acknowledge you owe Rapid Cash money?

A. Well that's why I hired them, yes.

Q. In March -- strike that.

In August of 2009, were you working?

A. Yes.

Q. Where were you working?

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EXHIBIT F

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

DEPOSITION OF MARY DUNGAN

Taken on Monday, November 15, 2010
At 2:53 p.m.
At 3960 Howard Hughes Parkway, Ninth Floor
Las Vegas, Nevada

Reported by: William C. LaBorde, CCR 673, RPR, CRR
Job No. 2313-C

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Q. I'm sorry. They said what?
A. I just said I kept getting -- you know, I kept -- you know, this guy kept -- every time I talked to him he said he would send me papers and I never saw any and I was just waiting for the papers to show up when I got the garnishment papers and then I, you know, was shocked because I wasn't expecting it.
Q. You did know you owed Rapid Cash money; right?
A. Yes.
Q. You don't dispute they gave you a loan?
A. No.
Q. And you don't dispute that you didn't pay them back?
A. No.
Q. At least not till the garnishment where money was taken; right?
A. Yes.
Q. And possibly some of those payments that I've referenced that you don't recall. You owed them -- you owed them something?
A. Oh, yes. That's why I was waiting for that gentleman to fax me the papers.
Q. Do you recall anyone from Rapid Cash

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EXHIBIT G

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASANDRA HARRISON, et al. Plaintiffs vs. PRINCIPAL INVESTMENTS, INC., et al. Defendants	CASE NO. A-624982 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION FOR CLASS CERTIFICATION

THURSDAY, OCTOBER 21, 2010

APPEARANCES:

FOR THE PLAINTIFFS:	DAN I. WULZ, ESQ. JENNIFER DORSEY, ESQ.
FOR THE DEFENDANTS:	MARK S. DZARNOSKI, ESQ. DANIEL F. POLSENBERG, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

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been a request to certify under 23(b)(2) in this case, and I want to highlight just briefly -- we have made the argument in the brief that that is appropriate mainly for equitable relief and not for claims of damages and that if you look at the complaint, you've got seven causes of action, abuse of process, negligent hiring, negligence, civil conspiracy, violation of 604A, NRS 598, and all of those are predominantly damages claims. I imagine, and we're researching this now, when we are put in a position where we need to answer or file a responsive pleading that there'd certainly be challenges also on the basis of subject matter jurisdiction here; because, although there has been some allegations that were freely made in the complaint that the amount in controversy is in excess of $10,000 worth of damages, I think just looking at the remainder of the complaint you can clearly see that somebody has a $300 loan that has been made in this case and that the judgment that was entered in the Justice Court was for $300 plus attorney fees of 150, and maybe service of process of $50 or $60 or something like that.

THE COURT: The interest isn't included in the judgment?

MR. DZARNOSKI: Most of these judgments don't have anywhere near a judgment that, it is my understanding, over -- about $500 is the amount of the judgments that we have at issue, I believe.

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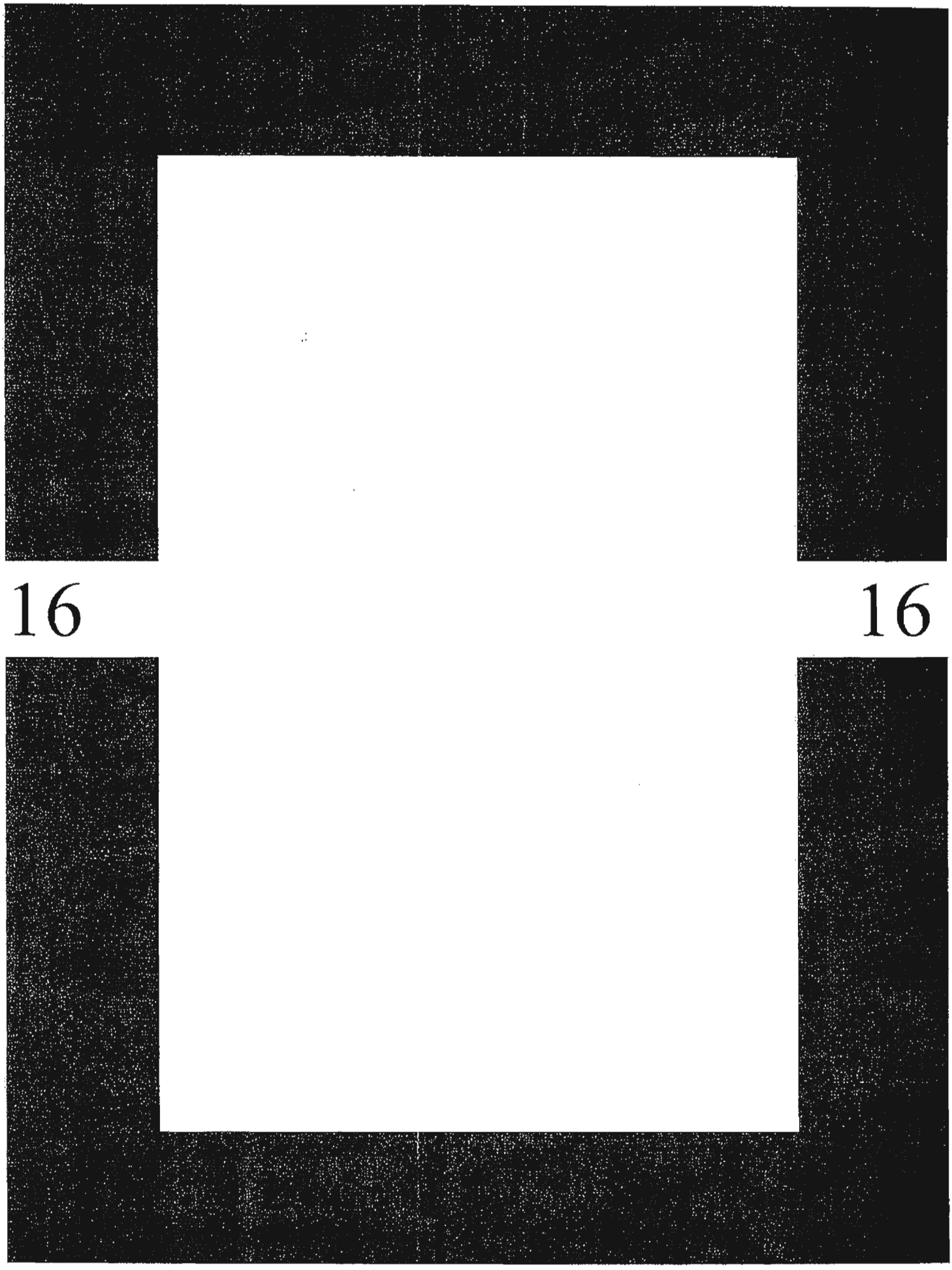

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CLERK OF THE COURT

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Attorneys for Plaintiffs/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

OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

Date of Hearing: January 25, 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, obtained potentially thousands of default judgments against allegedly defaulting borrowers, eviscerating their due process rights while destroying their credit. While Class Plaintiffs seek monetary damages for Defendants' egregious conduct against them, their claims for equitable relief are the thrust of this class action that seeks, inter alia, to set aside these illegally obtained judgments.

The Court's exercise of jurisdiction over this entire matter is wholly consistent with Nevada's Constitution and case law. The Rapid Cash Defendants contend that this Court lacks jurisdiction because the various fraudulent default judgments entered against the Class Plaintiffs do not individually meet the district court's $10,000 jurisdictional limit. But Rapid Cash ignores Class Plaintiffs' equitable claims, which by themselves confer original jurisdiction upon the district court over the entire case, as well as the fact that aggregation of small claims is the hallmark of consumer class actions. Rapid Cash also asks this Court to determine that Plaintiffs' individual tort claims absolutely cannot meet the jurisdictional minimum. But the facts of this case not only demonstrate the possibility that Plaintiffs' damages can exceed $10,000, it is likely that they will. Finally, Rapid Cash moves for dismissal of the NRS 604A claim as a matter of law, using a highly contorted interpretation of that law that is just plain unsupportable. Because this Court has original jurisdiction over this action on multiple grounds, and Defendants cannot satisfy their burden under NRCP 12(b)(5), Defendants' motion must be denied.

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II.

ARGUMENT

Class Plaintiffs' Complaint seeks two separate and distinct forms of relief. First, and foremost, Plaintiffs ask this Court to exercise its equitable power to set aside all of the default judgments entered against them that were procured by the fraudulent "sewer service" affidavits. Secondarily, Class Plaintiffs seek monetary damages that both compensate them for Defendants' tortious conduct and punish the Defendants for their fraudulent, oppressive, and malicious actions. Both of these forms of relief independently confer proper jurisdiction over this entire class action upon this Court.

A. This Court has Jurisdiction over this Entire Case Because it has Original Jurisdiction Over Class Plaintiffs' Independent Action in Equity for Fraud Upon the Court.

Nevada law holds, "if a court of equity obtain[s] jurisdiction of a controversy on any ground and for any purpose, it will retain jurisdiction for the purpose of administering complete relief." *Parascandolo v. Christensen*, 65 Nev. 578, 583, 199 P.2d 629, 631 (1948), quoting *Seaborn v. District Court*, 55 Nev. 206, 222, 29 P.2d 500, 505 (1934). This Court has original jurisdiction over this equitable action to set aside Rapid Cash's default judgments. Therefore, under clear Nevada law, it has supplemental jurisdiction over all claims in this class action, preventing dismissal under NRCP 12(b)(1).

1. Plaintiffs Have Pled Equitable Claims over which this Court has Original Jurisdiction.

Two of the primary goals of this class action are to set aside Rapid Cash's legion of default judgments procured through Defendants' fraud upon the court and judicially compel Rapid Cash to disgorge the substantial sums that it has collected from the Class Members under the purported force and effect of those illegally obtained judgments.[1] Thus, the Class's equitable

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[1] *See* Complaint at ¶ 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

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action to set aside Rapid Cash's default judgments and obtain the equitable remedy of disgorgement lies at the heart of this case.

a. Nevada's District Courts have original jurisdiction over equitable claims.

Nevada's district courts have original jurisdiction over actions in equity to set aside default judgments. Nevada's Constitution gives its district courts original jurisdiction in all cases excluded by law from the original jurisdiction of the justice courts. Nev. Const. Art. 6 § 6(1). NRS 4.370 carves out the matters in which the justice court has original jurisdiction. Nowhere in that statute's exhaustive list of justice court matters are actions to set aside judgments for fraud upon the Court. In fact, NRS 4.370 does not include any equitable actions, tacitly leaving them to the district courts. *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 130 P.3d 1280, 1284 (2006) ("the District Court possesses original jurisdiction . . . over claims for injunctive relief") and *id.* at 1285 n. 14 (citing *Jasper County Lumber Co. v. Biscamp*, 77 S.W.2d 571, 572 (Tex. Civ. App. 1934) (noting that a district court's jurisdiction over suits for injunctive relief "does not necessarily depend upon the amount in controversy")).

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b. The Nevada Supreme Court has acknowledged the District Courts' jurisdiction over independent actions in equity to set aside judgments.

This Court's original jurisdiction over independent actions in equity to set aside improperly procured judgments like the ones that Rapid Cash obtained against the Class members is also demonstrated by the Nevada Supreme Court's decisions in *Nevada Indus. Dev. v. Benedetti*, 103 Nev. 360, 741 P.2d 802 (1987), and *Savage v. Salzmann*, 88 Nev. 193, 495 P.2d 367 (1972). In *Benedetti*, the Court held that Nevada has two methods for seeking to set aside a judgment: NRCP 60(b) and an independent action in equity to set aside the judgment. *Benedetti*, 741 P.2d at 805 ("A court, in an independent action, may modify a final judgment in a former proceeding on the ground of mistake as well as fraud"). Nowhere in the *Benedetti* decision does

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65 against Rapid Cash with respect to enforcement of the void default judgments obtained, as well as equitable remedies.").

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the Court question or deny the district court's jurisdiction over that independent action in equity to set aside the judgment and for the equitable remedy of restitution.

The same holds true for *Savage*. Salzmann obtained a default judgment in a separate action against Savage in violation of the parties' agreement. *Id.* at 194. Savage filed an independent action to set aside the judgment for fraud, but the district court dismissed Savage's action on the basis that Savage failed to act within the six month time limit of NRCP 60(b). *Id.* at 195. In reversing the district court's decision, the Nevada Supreme Court recognized that NRCP 60(b) does not limit the district court's power to entertain an independent action to set aside a judgment for fraud upon the court. *Id.* The Court held that the purpose of the rule is to allow parties to set aside judgments obtained by extrinsic fraud. "Extrinsic fraud has been held to exist when. . . the other party to the suit [] ***prevents the losing party either from knowing about his rights or defenses, or from having a fair opportunity of presenting them upon trial.***" *Id.*, quoting *Murphy v. Murphy*, 65 Nev. 264, 271, 193 P.2d 850, 854 (1948) (emphasis added). The Court concluded that Savage had alleged facts which, if proved, would support a finding of extrinsic fraud. *Id.* 195-96. And not once did the Court question the district court's power to hear the plaintiff's independent action in equity to set aside the judgment. Indeed, the amount in controversy, or any dollar amount for that matter, is never mentioned throughout the entire opinion.

From a jurisdictional standpoint, the instant case is materially similar to *Savage* and *Benedetti*. Class Plaintiffs allege that Defendants attested to having served them with process, but in fact never really even attempted to serve them. These allegations, when proven, will demonstrate ***Defendants prevented Plaintiffs from knowing about their rights or defenses, or from having a fair opportunity to prevent them upon trial.*** As our High Court has already considered this type of independent action in equity to set aside default judgments for fraud and has never dismissed one for want of original jurisdiction, it is clear that Nevada's district courts have jurisdiction over independent actions in equity to set aside default judgments.

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c. Plaintiffs clearly seek equitable relief, as disgorgement and restitution are equitable – not legal – remedies.

Rapid Cash acknowledges that the Class seeks "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." Motion at 12:25-27. Rapid Cash nevertheless argues – without citing any authority – that this is really just a request for monetary relief and jurisdiction cannot be created "merely because one calls the monetary relief prayed for in the Complaint 'restitution' rather than 'damages.'" *Id.* at 13:18-24. The notion that equitable remedies of disgorgement or restitution are the same thing as "damages" or other remedies at law was specifically rejected by the Ninth Circuit in *SEC v. Rind*, 991 F.2d, 1486 (9th Cir., 1993). Rind argued that when the SEC sued for disgorgement it was looking for money damages, but the Court disagreed, explaining that the crux of this equitable remedy is deterrence, not compensation:

> The fact that disgorgement involves money does not change the nature of the remedy. The Commission seeks disgorgement in order to deprive the wrongdoer of his or her unlawful profits and thereby eliminate the incentive for violating the securities laws.

Id. at 1490.

Thus, contrary to Rapid Cash's bald assertion, disgorgement is not a legal remedy at all, but a form of injunctive and equitable relief. *Id. at* 1493, citing *SEC v. Clark*, 915 F.2d 439, 453 (9th Cir. 1990) (disgorgement of profits is a way to obtain injunctive relief), *Chauffeurs, Teamsters and Helpers Local No. 391 v. Terry*, 494 U.S. 558, 570, 108 L.Ed. 2d 519, 110 S. Ct. 1339 (1990), and *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 95-96 (2nd Cir. 1978) (the fact that disgorgement involves money does nothing to change its nature as an equitable remedy).[2] This district court clearly has jurisdiction over this equitable action. However, should

[2] *See also Golden v. Kelsy-Hayes Co.*, 73 F.3d 648, 661 (6th Cir. 1996); *Broussard v. Foti*, 2001 U.S. Dist. LEXIS 8564, 2001 WL 699525 (E.D. La. June 18, 2001) (finding that action by

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this Court believe that the Class has not sufficiently pled this equitable claim or requested this equitable relief, the Class alternatively moves this Court for leave to amend its complaint to cure that deficiency. *See* NRCP 15(a) ("leave shall be freely given when justice so requires").

2. *This Court's Original Jurisdiction over Plaintiffs' Independent Action in Equity gives it Jurisdiction over All of the Plaintiffs' Claims.*

Because this Court has original jurisdiction over Plaintiffs' equitable claim to set aside the judgments, it has jurisdiction over all of Plaintiffs' claims in this case. *Parascandolo v. Christensen*, 65 Nev. 578, 583, 199 P.2d 629, 631 (1948) ("[I]f a court of equity obtain[s] jurisdiction of a controversy on any ground and for any purpose, it will retain jurisdiction for the purpose of administering complete relief.") (quoting *Seaborn v. District Court*, 55 Nev. 206, 222, 29 P.2d 500, 505 (1934)). The Nevada Supreme Court recently applied this rule in *Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 130 P.3d 1280 (2006), with a discussion that squarely defeats Rapid Cash's instant motion. Edwards sued a Chinese restaurant under the federal Telephone Consumer Protection Act (TCPA) asserting claims for injunctive relief and seeking $3,000 in compensatory damages for the alleged TCPA violations. Emperor's Garden successfully moved to dismiss the complaint for lack of subject matter jurisdiction, contending that (1) plaintiff's purported damages did not meet the $7,500 jurisdictional minimum[3], and (2) injunctive relief was unavailable because the restaurant had discontinued the allegedly violative conduct. *Id.*

The Nevada Supreme Court reversed the dismissal on appeal. The Court found that the district court had original jurisdiction over the equitable claim for injunctive relief, even though it eventually agreed with the district court that an injunction was ultimately unavailable. *Id.* at 324-25. The Court found that Edwards properly alleged an equitable claim for injunctive relief and in doing so invoked the district court's original jurisdiction because NRS 4.370, the statute

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prisoner class seeking restitution of a surcharge they were required to pay was primarily equitable and certifying the class under Rule 23(b)(2)).

[3] NRS 4.370 has since been amended and the current jurisdictional threshold is $10,000.

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delineating matters within the justice court's original jurisdiction, did not include equitable remedies. *Id.* at 325. The Court concluded:

> Thus, as Edwards' request for monetary damages and his request for injunctive relief arose out of the same two [ ] events, **the district court properly acquired jurisdiction over the entirety of Edwards' complaint, regardless of whether the monetary threshold was met.**

Id. (emphasis added).

Like Edwards, the Class has alleged a mixed bag of claims seeking both monetary and equitable relief. Whatever their nature, all of these claims arise "out of the same" sewer-service events, and thus, this court "properly acquired jurisdiction over the entirety of" the Class's complaint, "regardless of whether the monetary threshold was met." *Id.* Accordingly, Nevada law requires this Court to deny Defendants' motion to dismiss Plaintiffs' claims for lack of subject matter jurisdiction.

B. Class Plaintiffs' Individual Monetary Damages Sufficiently Satisfy the Minimum Jurisdictional Amount.

Dismissal is unavailable for the independent reason that Plaintiffs' damages claims potentially exceed the $10,000 jurisdictional minimum. "In order to dismiss a case based on lack of subject matter jurisdiction, it must appear **to a legal certainty** that the claim is worth less than the jurisdictional amount." *Morrison v. Beach City, LLC*, 116 Nev. 34, 38, 991 P.2d 982, 984 (2000) (emphasis added). And as the Nevada Supreme Court has warned, dismissal must be denied unless the district court is confident that the individual claim cannot reach the jurisdictional threshold:

> A court should be cautious about dismissing a complaint for failing to meet the jurisdictional requirement[.] Under the "legal certainty" test, it should be emphasized, the plaintiff must establish merely that it does not appear to a legal certainty that the claim is below the jurisdictional minimum. Thus, under this standard, **courts must be very confident that a party cannot recover the jurisdictional amount before dismissing the case for want of jurisdiction**.

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Id. (citing 15 *Moore's* § 102.106(1)) (emphasis added). Thus, even if this Court did not have original jurisdiction over this entire case, Class Plaintiffs would only be required to demonstrate the possibility that their individual damages could reach $10,000 – including punitive damages, *see Gibson v. Chrysler Corp.*, 261 F.3d 927, 946 (2001) – in order to avoid dismissal.

1. Class Plaintiffs' Individual Claims for Abuse of Process Alone Demonstrate that Each Plaintiff's Damages Are Not Below $10,000 to a Legal Certainty.

Defendants contend that it is legally certain that Plaintiffs' individual claims cannot meet the jurisdictional limit because none of the fraudulent defaults entered against them exceed $10,000. But Defendants fail to consider all of the avenues by which compensatory damages are available to each Plaintiff. For example, the compensatory damages recoverable for Plaintiffs' abuse of process claim "***include compensation for fears, anxiety, and emotional distress.***" *Bull v. McCuskey*, 96 Nev. 706, 710, 615 P.2d 957, 960 (1980), abrogated in part on other grounds by *Ace Truck v. Kahn*, 103 Nev. 503, 746 P.2d 132 (1987) (emphasis added).

Attorney Bull instituted a medical malpractice action against Dr. McCuskey on behalf Catherine Doucette, an 86-year-old-woman injured in a car accident and cared for by Dr. McCuskey. *Id.* at 708. Before filing suit, Bull did not examine or even obtain Ms. Doucette's medical records. *Id.* He did not confer with a doctor, submit his claim to a Joint Screening Panel, which was required by the Washoe County Bar Association, or even retain an expert. *Id.* Instead, he sought to resolve the case for $750. *Id.* When Dr. McCuskey refused, the matter proceeded to trial where Bull verbally abused McCuskey while he was questioning him, calling him an idiot. *Id.* The jury returned a verdict in McCuskey's favor. *Id.*

Thereafter, McCuskey filed a Complaint against Bull for abuse of process ***in the district court.*** *Id.* at 709. The jury returned a verdict in Dr. McCuskey's favor, awarding him ***$35,000 in compensatory damages*** and $50,000 in punitive damages. *Id.* at 710. Bull appealed the jury's award, claiming that the evidence did not establish the elements of the tort of abuse of process and did not support the jury's award of damages. *Id.* The Nevada Supreme Court upheld both. *Id.* When addressing the damages, the Nevada Supreme Court held that "compensatory damages

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recoverable in an action for abuse of process are the same as in an action for malicious prosecution (citation omitted), and include compensation for fears, anxiety, [and] mental and emotional distress." *Id.* (citing *Spellens v. Spellens*, 49 Cal.2d 210, 317 P.2d 613 (1957)). Additionally, the Court relied on *Miller v. Schnitzer*, 78 Nev. 301, 371 P.2d 824 (1962), a malicious prosecution case in which the Court held:

> [T]he ***plaintiff may recover general money damages to compensate for injury to reputation. . ., humiliation embarrassment, mental suffering, and inconvenience***, provided they are shown to have resulted as the proximate consequence of the defendant's act. These elements of damage are wholly subjective. ***The monetary extent of damage cannot be calculated by reference to an objective standard. The extent of such damage, by its very nature, falls peculiarly within the province of the trier of fact.***

Id. (emphasis added). Thus, the potential compensatory damages for an abuse of process claim are not limited to any actual out-of-pocket amounts, but can include various other factors such as humiliation and inconvenience, and must be determined by the trier of fact.

It is hardly a legal certainty that the trier of fact will conclude that Class Plaintiffs' abuse of process claims cannot satisfy the jurisdictional minimum. The Court's inquiry is not restricted to the actual value of the judgments, but it must include and consider all of the Plaintiffs' individual hardships before deciding, to a legal certainty, that Class Plaintiffs cannot meet the jurisdictional minimum.

Class Plaintiffs have suffered more than minimal damages as a result of Defendants' tortious conduct. Even looking at the deposition testimony of some of the Class Representatives, cited in Rapid Cash's Motion, the Court can tell that these plaintiffs have suffered humiliation and inconvenience as a result of Defendants' fraudulent judgments and improper garnishments. Mary Dungan testified about the "havoc" caused in her life:

> Q. Other than the money that was garnished out of your wages, have you lost any money because of anything Rapid Cash has done?
>
> A. As far as money lost, I would say probably no, but ***it caused some havoc with my finances.***
>
> Q. How so?

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A. ***They took so much out of each paycheck that there was not enough for bills, made it difficult to pay my bills.***

Similarly, Cassandra Harrison's bank account was "screwed up" resulting in her inability to pay bills:

Q. Have you lost any money because of the Rapid Cash lawsuit other than the money that has been garnished from your wages?

A. ***It screwed up my bank account*** if that's what you're talking about.

Q. How did it screw up your bank account?

A. Well, because of the way it happened, ***some things that I had automatically deducted, that didn't happen or part of it happened. . . My rent didn't happen. My car insurance didn't happen. Believe it or not, I pay Palms Mortuary. That didn't happen either, and the gym didn't happen.***

Q. Did you have a few bad check charges coming out of the bank or anything because of

A. Yes, several.

Q. Less than five?

A. No, I had more than five. . .

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Regardless of the validity of the debts owed, Plaintiffs were denied the opportunity to repay their obligations. Instead, Defendants fraudulently swore that Plaintiffs were served with process and procured default judgments without ever notifying Plaintiffs of the claims against them. As a result, Plaintiffs were embarrassed, suffered anxiety, and had their wages improperly garnished. Regardless of whether the jury will return damages in excess of $10,000 for this abuse of process, it is possible that they might. It is simply not possible to determine to a legal certainty that Plaintiffs' individual compensatory damages will not reach the jurisdictional requirement.

2. This Court Must Also Consider the Potential Punitive Damages Attributed to Each Individual Plaintiff Before Determining Plaintiffs Cannot Meet the Jurisdictional Minimum to a Legal Certainty.

Rapid Cash's argument also ignores the potential that it could get tagged with substantial punitive damages by each Class Member. NRS 42.005 provides that "[a] plaintiff, in addition to compensatory damages, may recover damages for the sake of example and by way of punishing

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the defendant." These damages may not exceed $300,000 if the amount of compensatory damages awarded is less than $100,000, or three times the amount of compensatory damages if the award is more. NRS 42.005(1)(a) & (b). If punitive damages are claimed, "***the trier of fact shall make a finding of whether such damages will be assessed.***" NRS 42.005(3) (emphasis added). Because these damages do not compensate for harm, plaintiffs cannot precisely calculate the amount of any potential award. *Gibson*, 261 F.3d at 946. But the amount may be influenced by the presence of a large class of plaintiffs, each of whom was wronged by the defendant in some way. *Id.*

Given Defendants' reprehensible conduct of obtaining – and oftentimes collecting – judgments against the Plaintiffs through sewer service, the potential for punitive damages is very real and must be taken into account. Even considering a potentially large class and the statutory limits, these damages are not inconsequential. Because any punitive damages would be considered in addition to Plaintiffs' potential compensatory damages, it is far from a legal certainty that Plaintiffs' individual damages will not reach $10,000. Accordingly, this Court has proper jurisdiction and Defendants' motion to dismiss for lack of subject matter jurisdiction must be denied.

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C. Public Policy Requires the District Courts to Be Given Jurisdiction over Consumer Class Actions.

Rapid Cash's argument that this Court lacks jurisdiction over this consumer-class action because the class members' claims are worth less than $10,000 each is also antithetical to the purpose of the class action vehicle. As Newberg on Class Actions explains, "aggregation of claims of members to meet the federal jurisdictional amount may be permitted in certain class actions certified under Rule 23(b)(1) or (2), but rarely in Rule 23(b)(3) actions." Newberg on Class Actions at § 4:1, citing *Gallagher v. Continental Ins. Co.*, 502 F.2d 827 (10th Cir. 1974) (Plaintiffs' individual claims for rent in a housing class action were allowed to be aggregated, since the complaint sought enforcement of a single right in which plaintiffs had a common and undivided interest). And Nevada courts have allowed claims to be aggregated to confer

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jurisdiction upon the district court. *See, e.g., El Ranco, Inc. v. New York Meat & Provision Co.*, 88 Nev. 111, 493 P.2d 1318 (1972) (supplier sold meat in 26 separate transactions where the price of the goods were less than the jurisdictional threshold; court found the plaintiff had a right to aggregate separate claims to meet district court requirement and was not required to bring separate actions in justice court); *Hartford Mining Co. v. Home Lumber & Coal Co.*, 61 Nev. 17, 107 P.2d 132 (1941) (complaint alleged two causes of action each for less than the jurisdictional minimum for the district court but in aggregate met the minimum; the Nevada Supreme Court held that the district court properly had jurisdiction because, in aggregate, the amounts sued for were greater than the jurisdictional minimum).

Aggregation of claims is the hallmark of the class action as most class actions consist of claims too small to pursue on an individual basis. *See e.g. Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809, 105 S. Ct. 2965, 86 L.Ed. 2d 628 (1985) ("Class actions also may **permit the plaintiffs to pool claims** which would be uneconomical to litigate individually. For example, this lawsuit involves claims averaging about $100 per plaintiff; most of the plaintiffs would have no realistic day in court if a class action were not available.") (emphasis added). Indeed, satisfaction of the requirement that a class action is superior to other litigation often includes a demonstration that the members of the class have claims with small value or are unaware of the violation of their rights and that a failure of justice will occur without the class action. *Hayes v. Logan Furniture Mart, Inc.*, 503 F.2d 1161 (7th Cir. 1974). As the United States Supreme Court explained in the seminal case of *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997):

> The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her own rights. **A class action solves this problem by aggregating the relatively paltry potential recoveries** into something worth someone's (usually an attorney's) labor.

521 U.S. at 617 (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 388, 344 (7th Cir. 1997)) (emphasis added). Moreover, "[a] proper class action prevents identical issues from being 'litigated over and over thus avoiding duplicative proceedings and inconsistent results.'" *Shuette*

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v. Beazer Homes Holding Corp., 121 Nev. 837, 852, 124 P.3d 530, 540-541 (2005), *quoting Ingram v. Coca-Cola Co.*, 200 F.R.D. 685 (N.D. Ga. 2001). And it is within a court's discretion to proceed as a single action instead of many individual actions in order to address a single fundamental wrong." *Deal v. 999 Lake Shore Association*, 94 Nev. 301, 306, 579 P.2d 775, 778-779 (1978). As the alternative to finding that this Court has jurisdiction would be to send this case to the justice court to handle this complex litigation, which the justice court would be unfamiliar with and far less equipped to handle than this Court, permitting the class members' claims to be aggregated to satisfy jurisdictional concerns is entirely consistent with the nature, goals, and purpose of class actions.

D. Plaintiffs Have Sufficiently Stated a Claim for Violation of NRS Chapter 604A.

Finally, Rapid Cash argues – without citation to authority – that the Class's claim for violation of NRS Chapter 604A fails to state a claim upon which relief may be granted. Rapid Cash correctly notes that Plaintiffs allege a violation of NRS 604A.415(1) which provides that a payday loan licensee "may collect the debt owed to the licensee only in a professional, fair and lawful manner." It then claims that the remainder of subsection (1) makes the federal Fair Debt Collections Practices Act (FDCPA) applicable to licensees in collecting a debt even when it is not otherwise applicable. Rapid Cash then leaps to the conclusion that it is "clear" that NRS 604A.415(1) and the FDCPA are intended to cover and address "*non-judicial*" collection procedures, Motion at 14:16-17, and because Rapid Cash is alleged to have obtained default judgements using false affidavits of service (which are judicial procedures), NRS 604A.415(1) has not been violated.

The premises underlying this argument are just plain wrong, and without them, Rapid Cash's argument fails. First, there is nothing whatsoever in NRS 604A.415(1) distinguishing between judicial and non-judicial collection activities. Second, the FDCPA *does* cover and address judicial collection activities.[4] Therefore, there can be no imagined inference that the

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[4] The Act applies to lawyers engaged in litigation. *Heintz v. Jenkins*, 514 U.S. 291, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995); *see also Todd v. Weltman, Weinberg & Reis, Co., L.P.A.*, 434

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second sentence in NRS 604A.415(1) dealing with the FDCPA means that the first sentence was not meant to cover judicial collection activities. Third, NRS 604A.930, which provides the right to bring a civil action for certain violations of NRS Chapter 604A, including NRS 604A.415, makes no distinction whatsoever between judicial and non-judicial acts.

Rapid Cash is asking the Court to read something into NRS Chapter 604A that is simply not there. For the purpose of considering a Rule 12(b)(5) motion, a court must "regard all factual allegations in the complaint as true and draw all inferences in favor of the non-moving party." *Stockmeier v. Nevada Dep't of Corrections Psych. Review Panel*, 124 Nev. 30, 183 P.3d 133, 135 (2008). "Such a motion should not be granted unless it appears to a certainty that plaintiff is entitled to no relief under any set of fact which could be proved in support of the claim." NEVADA CIVIL PRACTICE MANUAL § 12.07. Rapid Cash has not met its burden, and its motion to dismiss this claim must be denied.

III.

CONCLUSION

Nevada law clearly gives this Court jurisdiction over this independent action in equity, and that original jurisdiction also gives this Court the full authority over Plaintiffs' damages claims. Were that not sufficient, Plaintiffs' claims for compensatory and punitive damages will likely exceed the $10,000 jurisdictional threshold, and the strong public policies behind class

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F.3d 432 (6th Cir., 2006), *cert den.*, 549 U.S. 886 (2006) (the FDCPA was violated by an affidavit filed by a collection lawyer in court falsely swearing that the consumer's bank account contained no exempt funds); *Kimber v. Financial Corp.*, 668 F. Supp. 1480 (M.D.Ala. 1987) (it is unfair under the FDCPA to file a time-barred suit collection suit); *Druther v. Hamilton*, 75 Fed.R.Serv.3d 316, 2009 U.S.Dist. LEXIS 112187 (D.Wa. 2009) (Defendants' motion to dismiss denied where Plaintiff alleged Defendants violated FDCPA in failing to serve Plaintiff with legal notice of the garnishment proceeding and failing to make a reasonable attempt to locate and serve Plaintiff); *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226 (4th Cir., 2007) (litigation activities involving interrogatories and motion for summary judgment in debt collection action may violate FDCPA).

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actions necessitate that this case be maintained in this Court. As this Court has multiple bases for exercising jurisdiction over this case, its dismissal for lack of subject jurisdiction would be clear error. And as Rapid Cash's motion to dismiss Plaintiffs' Chapter 604A claim is based on faulty legal premises, that, too, must be denied. Accordingly, and for all the foregoing reasons, Rapid Cash's motion to dismiss must be denied in its entirety.

DATED this 6th day of January, 2011.

Respectfully Submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2011, the foregoing **OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED** was served on the following person(s) by U.S. Mail:

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An employee of Kemp, Jones & Coulthard

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"readily ascertainable by objective criteria" simply because the defendant could more readily ascertain whether or not a member of the class *actually* had his or her rights violated, i.e., was strip-searched without reasonable suspicion; rather it put the onus on the defendant to provide individualized grounds for a reasonable belief that a member of the putative class should be excluded:

> There is no prejudice to defendants. They may move to exclude any class member who was not subjected to a strip search in violation of the standards required by the Fourth Amendment as outlined by the Court [before] . . . . Defendants retain the burden of proving "reasonable suspicion" as to any potential class member whom defendants may move to exclude from the class prior to trial on the damages issue.

Smith, 117 F.R.D. at 378-79 (emphasis added); accord, General Motors Corp. v. Bryant, 374 Ark. 38, 285 S.W.2d 634 (Ark. 2008) (rejecting defendant's argument that the class was too broad because it included unharmed individuals, reasoning, "such issues cannot defeat class certification where there are common questions concerning the defendant's alleged wrong-doing that must be resolved for all class members.").

This Court should employ the Smith court's approach and put the burden on the defendants to identify the Rapid Cash customers who were actually served with process in accordance with the law before having default judgments entered against them. The putative class consists of those individuals who were victims of sewer service by On Scene Mediations, whose owner, Maurice Carroll, has now been convicted *beyond a reasonable doubt* of perjury involving a failure to serve process in *17 out of 17* instances. Detective Chio interviewed On Scene Mediations employees, who admitted that service of process was not made when affidavits of service were filed. An initial and limited review of Rapid Cash's justice court filings contains evidence of "superman syndrome" – a miraculous record of successful service of process by On Scene Mediations *in Rapid Cash cases*, consistent with those known in Richland Holdings cases. For example, Rapid Cash filed affidavits of service of process claiming that "Y. Gutierrez" (an On Scene Mediations employee) received and successfully served process on 17 persons on June 17, 2008, a highly dubious and suspicious achievement.

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Hernandez Affidavit, Exhibit 2 at ¶ 9. And Vilisia Coleman's criminal defense attorney told District Court Judge Cadish that Maurice Carroll had procedures in place to commit criminal wrongdoing long before Coleman was hired. Under these unique circumstances, one could reasonably infer that an Affidavit of Service from On Scene Mediations is *prima facie* dubious; and, it should not rest on the plaintiff-victims to prove that they were not served; rather the defendants should have to validate the class members' affidavits to exclude them from the Class. Thus, this Court should certify the class as proposed and hold as the Smith court did that all Rapid Cash customers meeting this definition are members of the certified class unless Rapid Cash and its co-defendants can provide other, individualized proof that a particular putative class member was, in fact, properly served.

2. The Non-injury of Certain Class Members is Irrelevant to the Class Certification Inquiry; at most, the Class Definition Could Be Narrowed to Exclude Non-Injured Borrowers at a Later Time.

Rapid Cash's argument that the class definition is overly broad because it includes non-injured borrowers is premature because, at this stage, the Court need only identify one class member who has sustained injury and has standing to permit this case to proceed as a class action. Indeed, the inclusion in the class of potentially non-injured parties warrants at most a narrowing of the class definition after discovery, not denial of class certification. The Seventh Circuit Court of Appeals addressed this very issue a last year in Kohen v. Pacific Investment Management Co., LLC, 571 F.3d 672 (2009). The defendant in this securities suit opposed class certification in part based upon the argument that some of the class members sustained no injury. The court rejected this argument as premature and irrelevant to the class certification inquiry:

> PIMCO argues that before certifying a class the district judge was required to determine which class members had suffered damages. But putting the cart before the horse in a way would vitiate the economies of class action procedure; in effect the trial would precede the certification. It is true that injury is a prerequisite to standing. But as long as one member of a certified class has a plausible claim to have suffered damages, the requirement of standing is satisfied. . . .PIMCO tried to show in the district court that two of the named plaintiffs could not have been injured . . . We need not decide whether it succeeded in doing so, because even if it did, that left one named plaintiff with standing, and one

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> is all that is necessary. . . . **A class will often include persons who have not been injured by the defendant's conduct . . . Such a possibility or indeed inevitability does not preclude class certification.**[11]

The potential that the class definition sweeps in non-injured members does not defeat class certification in this case. As their affidavits establish, the four named Plaintiffs/proposed class representatives all sustained actual injury as a result of Rapid Cash's policies and practices because each was sued by Rapid Cash and not served with process, yet Rapid Cash filed an affidavit of service of process, signed by a representative of On Scene Mediations, falsely swearing that they were served. Given the evidence before the Court (see also the Declaration of Detective Chio, attached as Exhibit 1 to Plaintiffs' Reply to Opposition to Motion For Rule 23 No Contact Order Or, Alternatively, For Preliminary Injunction, incorporated herein by reference), it is implausible that the named plaintiffs are the only victims of this criminally fraudulent conduct. Thus, the class includes persons who have, and who have not, been injured by the defendants' conduct, and this "possibility or indeed inevitability does not preclude class certification." Kohen, 571 F.3d at 677.

3. Alternatively, the Court May Narrow the Class Definition to Include Only Those Who Were Not Served.

Although the law clearly does not require it, as an alternative, this Court may narrow the class definition to include only those Rapid Cash borrowers who were not served with process. See Kohen at 677 (noting that the Court has the option of narrowing the class definition). This approach would be supported by Nevada jurisprudence. In Meyer v. Eighth Judicial District Ct., 110 Nev. 1357, 885 P.2d 622, 626 (1994), on a Writ to the Supreme Court of Nevada, the Court held that the District Court acted arbitrarily and capriciously in refusing to certify a class. Meyer involved the alleged policy and practice of a corporate landlord (Bigelow) of illegally locking tenants out of their apartments by placing a pin in the lock ("pinning") at many Bigelow properties (typically weekly rentals, e.g., Budget Suites). This illegal practice was employed on

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[11] Kohen, 571 F.3d at 676-77 (emphasis added), attached hereto as Exhibit 5 for the Court's reference.

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allegedly thousands of tenants, and the plaintiffs sought to certify the class of:

> All tenants who live, will live or have lived at those apartment complexes known as South Cove Apartments or Blue Harbor Club Apartments since September 1, 1990, and **who have been or will be evicted or excluded from their rented apartments prior to being served an eviction notice as required by law.**

Id. at 623 (emphasis supplied). Like Rapid Cash, Bigelow denied the conduct and argued that plaintiffs were pinned in different apartment complexes run by different employees on different dates and for different reasons. While the Meyer court's discussion focuses almost exclusively on commonality, importantly, the Court did not voice any problem with the scope of the class definition, which defined the class according to the members' status as victims of the illegal conduct. This Court could follow Meyer and define 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, 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 *who were not served with process as required by law.*

D. The Plaintiffs Satisfy Rule 23, and Class Certification Should Be Granted.

Rapid Cash next offers this Court its analysis of the Rule 23 factors and argues that the putative class does not satisfy the requirements for class certification. Rapid Cash's arguments are centered mostly on its assertion that the class definition is flawed because it includes persons who were served. Even if this is true, class certification remains wholly appropriate for the probable hundreds if not thousands of remaining victims of Defendants' sewer service.

1. The Numerosity Prong is Satisfied Because Joinder of these Financially Disadvantaged Borrowers' Claims Against this Payday Lender is Impracticable.

Rapid Cash challenges the putative class's satisfaction of the numerosity requirement with three arguments: (1) The number of class members is wholly speculative; (2) The participation of just four class representatives makes it unlikely that the Court will be faced with a multitude of lawsuits, and (3) defense counsel spoke with Detective Chio, who "has spoken

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with numerous Rapid Cash customers as part of his investigation who have acknowledged to him that they were, in fact, served with process. . . ." Opposition at 13:18-19. None of these arguments defeats numerosity.

a. The Number of Class Members is Not Prohibitively Speculative.

Rapid Cash's mere suggestion that the number of class members is "speculative" is absurd because the allegations in the complaint[12] and mounting evidence suggests that the number of class members is in the hundreds if not thousands:

- Rapid Cash has obtained default judgments against nearly 17,000 customers in the last five years and knows how many of those default judgments were based on affidavits of service filed by On Scene Mediations, yet it curiously has not shared that number with this Court;
- Detective Chio interviewed On Scene Mediations employees, who copped to a company-wide practice of filing affidavits falsely swearing to service when, in fact, service was not made;
- Last week, Defendant Maurice Carroll was convicted on 34 out of 34 counts of perjury in falsely completing affidavits of service;
- The initial, brief review of Justice Court files reveals that On Scene Mediations employee "Y. Gutierrez" claims to have received summonses and complaints and successfully served seventeen (17) persons on a single day, June 17, 2008. All of those Affidavits of Service show Maurice Carroll as the notary; and
- Defendant Vilisia Coleman's criminal defense attorney told District Court Judge Cadish that Maurice Carroll had procedures in place to commit criminal wrongdoing long before Coleman was hired.

The fact that the Plaintiffs currently only have the names of a handful of these class members is irrelevant. We know they exist. We know they number in the hundreds, if not thousands, and discovery will give us a true and accurate tally. Courts have certified borrower

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[12] See Meyer, 110 Nev. at 1363-64 (during class certification analysis, district court must accept the allegations in the complaint as true).

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class actions with far more play in the numbers. For example, in Markocki v. Old Republic Nat'l Title Ins. Co., 254 F.R.D. 242, 247 (E.D. Pa. 2008), "potentially thousands of borrowers received an improper premium rate," and the plaintiff was unaware of the true number. That, however, did not bar certification as the Court found that "even if only a small percentage" of the borrowers were injured, "the claims are still easily too numerous for joinder." Markocki, 254 F.R.D. at 248; see also Pierce v. NovaStar Mortg., Inc., 238 F.R.D. 624, 630 (W.D. Wash., 2006) (finding the numerosity prong satisfied with 60 mortgagors). Given this overwhelming evidence that we have now -- even before discovery -- the likelihood that the class is sufficiently numerous is far from speculative.

b. The Prospective Class Easily Satisfies the Numerosity Considerations of Shuette.

Although the Nevada Supreme Court's comments in Shuette v. Beazer Homes Holding Corp., 121 Nev. 837, 124 P.3d 530 (Nev., 2005) emphasize impracticality of joinder -- not class size -- as the new touchstone for numerosity, this is no barrier to certification of this class. The Shuette court did not say that a 200-member class is no longer sufficiently numerous; it said that certification of a Chapter 40 construction defect action on behalf of 200 immediate neighbors who live in the same subdivision constructed by a single developer may not be necessary. Shuette, 124 P.3d at 538. Shuette also stands for the proposition that district courts should look to various factors to determine if joinder is impracticable including: (1) "geographic dispersion of class members," (2) "financial resources of class members," (3) "the ability of claimants to institute individual suits." (4) "requests for prospective injunctive relief which would involve future class members," and (5) "judicial economy arising from the avoidance of a multiplicity of actions." Id. Each of these factors weighs heavily in favor of certifying this class.

We can presume that the class members are geographically dispersed. Rapid Cash is in possession of all of its borrowers' demographic information but has offered this Court nothing to believe that the class members are not geographically disbursed across the entire Las Vegas Valley. Thus, unlike the Shuette plaintiffs, the Borrowers do not reside in a single neighborhood. And as Rapid Cash's yellow-pages advertisement boasts 14 locations, it is more

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than likely that its borrowers are spread across the Southern Nevada map.

It is also undisputable that the class members have limited financial resources because they were Rapid Cash customers out of financial desperation, needing "payday" or extremely short-duration loans at triple-digit interest rates, who were unable to pay those loans back. Persons with significant financial resources do not resort to loan sharks like Rapid Cash. The Borrowers' financial situation, and the fact that so few of Rapid Cash's customers have put up any defense to Rapid Cash's nearly 17,000 justice court default judgments, leave little doubt that these class members lack the ability to institute individual suits. Indeed, for any defendant who was indeed actually served with process, it is most likely their economic status and lack of access to the court system -- not their disinterest -- that has kept them from filing counterclaims (or responding in any way) to Rapid Cash's justice court actions. To even suggest that the proper way to handle their claims is in individual suits, when they have failed to protect their own rights in response to Rapid Cash's individual actions, is laughable. These considerations, particularly when overlayed by the fact that judicial economy will be fostered by combining all of the Rapid Cash matters into a single action, more than satisfy the Shuette analysis.

c. The Class is Sufficiently Numerous.

Defense counsel has represented to this Court that he spoke with Detective Chio, who "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." Opposition at 13:18-19 (emphasis supplied). To call this representation "misleading" would be exceedingly diplomatic. When Class Counsel spoke with Detective Chio, the Detective said he had spoken to just seven Rapid Cash defendants allegedly served by On Scene Mediations, four of whom acknowledged being served, and **three of whom said they indeed had not been served.** Affidavit of Venicia Considine, Esq., Exhibit 1 at ¶ 13. While no one would argue this is a statistically valid sample, 3 out of 7 (43%) is not out of line with what one might expect given what little we do know for certain at this stage of the litigation.

2. The Similarities in the Class Claims Satisfy the Commonality Requirement.

Rapid Cash next revisits its argument that the class definition potentially includes

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persons who were actually served and thus, not injured, in an effort to defeat commonality. But, as addressed above, this potential does not defeat class certification. See Kohen, 571 F.3d at 677 ("Such a possibility or indeed inevitability does not preclude class certification."). Instead, "commonality is met in circumstances calling into question a general corporate policy," Meyer, 885 P.2d at 626, and the Meyer case offers the clearest illustration of why commonality exists in this case. As this Court might well imagine, at the class certification hearing in district court, defendant Bigelow denied locking out anyone illegally and argued that even if illegal lockouts occurred, then every incident was different and there could be no common question of law or fact; some tenants might have been locked out for a minute, some an hour, some for days; tenants might have been locked out for various and sundry reasons under myriad circumstances; the tenants would be impossible to identify and if they could be identified, they would be impossible to locate; several different legal theories of liability were alleged, each with different elements, and on, and on, and on. District Court Judge Pavlikowski found merit in Bigelow's arguments and denied class certification based upon a lack of commonality. The Nevada Trial Lawyers filed a Writ to the Nevada Supreme Court, which found the denial of class certification to be arbitrary and capricious, ordered the class be certified, and, on this point of commonality, held:

> With respect to questions of fact, the NTLA argues that when a general corporate policy is the focus of the litigation, class status for those adversely affected by the policy is appropriate.
> . . .
> With respect to questions of law. . . . Both the tenants and NTLA argue that questions of whether pinning violated landlord-tenant law, constituted trespass, civil conspiracy, etc., are held in common by all potential class members.
> . . .
> We conclude that the Tenants and the NTLA are correct.

Meyer 885 P.2d at 626-27.

The same principles and factors support commonality in this case. With respect to questions of fact, the Class Representatives have alleged general corporate policies as the focus of the litigation including the On Scene Mediations policy and practice of providing falsified affidavits of service to its employers and/or principals, and a Rapid Cash policy and practice of

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using an unlicensed process server, and either condoning sewer service or willfully and recklessly disregarding highly suspicious claims of superhuman service-of-process feats. With respect to questions of law, another common question of mixed fact and law is whether Rapid Cash may be held accountable for the acts of its employee or agency, On Scene Mediations.[13] Rapid Cash fails to demonstrate how these claims lack the common nucleus of facts or legal theory required to satisfy this prong of the class certification analysis. See e.g. In Re Synthroid Marketing Litig., 188 F.R.D. 287, 291 (N.D. Ill., 1999) (noting that where "allegations involve standardized conduct by the defendants toward the potential class members." courts "have readily found a common nucleus of operative facts"). Accordingly, this Court should find the commonality prong satisfied.

3. The Class Representatives' Claims are Not Merely Typical of the Class's Claims; All of the Claims Are Materially Identical.

Rapid Cash's typicality argument suffers from the same defect as its commonality argument. Again focusing on the definition of the Class, Rapid Cash argues that the named Class Representatives' claims are not typical because while they allege they were not served with process, the definition of the putative Class necessarily includes persons who were served. This concern was addressed above. In any event, typicality "concentrates on the defendants' actions, not on the plaintiffs' conduct." Shuette, 124 P.3d at 538. If "each class member's

[13] The Complaint at paragraph no. 69 provides a laundry list of common questions: "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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claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability," the typicality prong is satisfied. Id. at 538-39. Each of the class members' claims arises from the same course of events and each class member is challenging Rapid Cash's actions under identical legal theories. As a result, the typicality prong is thoroughly satisfied.

4. The Class Representatives and Experienced Class Counsel Can Adequately Protect the Interests of the Class.

The crux of Rapid Cash's challenge to the adequacy prong of this class certification analysis is two-fold: first Rapid Cash reiterates its concern over the scope of the class, which has been throughly dispelled supra,[14] and second, Rapid Cash argues that some members of the putative Class who were indeed not served might receive greater compensation were they to pursue individual arbitrations. While Rapid Cash's purported concern for the compensation of putative Class members is laudable, it does not defeat class certification.

Rapid Cash asserts that Plaintiffs, by attempting to certify a class, are abrogating a individual absent class member's right to arbitrate and possibly obtain an award of $5,100.00.[15] This argument ignores that simple reality that if certified under NRCP 23(b)(3), each class member will be given an opportunity, after notice pursuant to NRCP 23(c)(2), to opt out of this

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[14] Relying on In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088 (5th Cir. 1977) and Kresefky v. Panasonic Comm.& Sys. Co., 169 F.R.D. 54 (D.N.J. 1996), Rapid Cash asserts that the class definition is overbroad. Rapid Cash's reliance on Nissan is completely misplaced in the context of its argument, as that case concerned a lower court's order that *two* FRCP 23(c)(2) notices be provided to absentees class plaintiffs - one that did not inform the absentee plaintiffs of a proposed partial settlement of their claims and another, to be sent three weeks later to those persons who had not opted out of the class, informing the absentee plaintiffs of the proposed partial settlements. Id. at 1092-93. Naturally, the court found that two notices, the latter containing facts that were material to determining whether to remain in the class, were inadequate and absentee class members could not make an "informed, intelligent decision of whether to opt out or remain a member of the class and be bound by the final judgment." 552 F.2d at 1105. Rapid Cash's reliance on Kresefky is similarly misplaced because Kresefky, an employment discrimination action in which proposed class consisted of plaintiffs who worked in different geographic areas, different jobs with different responsibilities, different managers, and different grounds for termination, is distinguishable on its facts.

[15] Eugene Varcados's contract contains a clause which provides, in pertinent part, ". . . if you prevail in an individual 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 an amount that is $100 greater than the jurisdictional limit of the small claims court in the county in which you reside."

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litigation and pursue his or her claims individually, in arbitration or otherwise. Thus, should any class member see the arbitration opportunity as the brass ring Rapid Cash touts it to be, he or she can certainly pursue it. Considering that not one of Rapid Cash's customers in Nevada has ever pursued arbitration (a fact that Rapid Cash's representative acknowledged at last week's hearing on the Motion to Compel Arbitration), it appears that Rapid Cash's customers do not consider that process as attractive as Rapid Cash believes it should be. This argument also assumes without analysis that every member of the putative Class herein will receive less than $5,100.00 as their remedy through the class action vehicle.

Adequacy of class representatives requires the court to find that the representative parties will fairly and adequately represent the interests of the class. NRCP 23(a)(4). If the class representatives have the same interest in the outcome of the litigation and the same injury as the absent class members, the adequacy requirement is satisfied. Dancer v. Golden Coin, Ltd., 176 P.3d 271 (Nev. 2008). "Precise alignment of the representative's interest in the case with those of putative class members is not required; what matters is sufficient coextensiveness of interest's and the representative's 'abilit[y] to pursue the class claims vigorously and represent the interests of the absentee class members.'" Santoro v. Aargon Agency, Inc., 252 F.R.D. 675, 683 (D. Nev. 2008) (citing Walters v. Reno, 145 F.3d 1032, 1046 (9th Cir. 1998). The named Class Representatives, all victims of the same alleged wrongful practices, clearly meet these requirements.

5. The Class's Pursuit of Monetary Relief and Injunctive Relief Does Not Defeat the Propriety of NRCP 23(b)(2) Certification.

Rapid Cash contends that Rule 23(b)(2) certification is unavailable because the Plaintiffs seek some monetary relief in addition to injunctive or declaratory relief.[16] But class action jurisprudence does not support Defendant's argument. The pursuit of 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.

[16] Rapid Cash actually leads into this argument by reiterating its argument that the scope of the class definition defeats this prong, too. For the reasons previously addressed, this argument falls short.

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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 F.3d 1234, 1240 (9th Cir. 1998) (quoting Probe v. State Teachers' Retirement Sys., 780 F.2d 776, 780 (9th Cir. 1986)).

Moreover, it is difficult to imagine a case more suited to classwide relief than one in which an injunction is needed to set aside void default judgments. 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. See e.g. Stolz v. United Bhd of Carpenters and Joiners of Amer., Local Union No. 971, 620 F.Supp. 396 (D.Nev. 1985) (certifying a (b)(2) class where plaintiffs sought a declaration that a union dues increase was invalid, an injunction against future collection of the dues, and a refund of past dues); Ballard v. Equifax Check Servs., Inc., 186 F.R.D. 589 (E.D.Cal. 1999) (certifying a (b)(2) class on the issues of liability, declaratory relief, *statutory damages*, injunctive relief and *restitution*). And as the Class has asked for certification of any monetary damages claims under Rule 23(b)(3), too, any concern about giving notice and allowing opt outs is non-existent.

6. Certification under Rule 23(b)(3) is also Appropriate.

Rapid Cash next argues[17] without analysis that litigation of class claims for compensatory and punitive damages would not result in the accelerated and efficient disposition of the case, and multiple juries would be needed to try the compensatory and punitive damages claims, citing Bacon v. Honda of America Mfg., Inc., 205 F.R.D. 466 (S.D. Ohio 2001). But Bacon – a racial, employment discrimination case alleging both disparate impact and disparate treatment theories, which present a distinct specialized legal framework for analysis nothing like the instant case – is too factually distinct to have any relevance in this case. Indeed, the instant class claims for compensatory and punitive damages are cohesive and capable of generalized

[17] Rapid Cash leads into this argument, too, by arguing that the scope of the class definition defeats (b)(3) certification, and it again fails for the reasons previously addressed.

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and not individual proof. Thus, Bacon and its reasoning have no application here.

Rapid Cash then contends that a class action is not superior to other available methods for fairly and efficiently adjudicating this controversy because each putative Class member can pursue a remedy in each member's Justice Court action. This is ludicrous. As fully explained supra, we have empirical evidence that the putative class members do not have the financial ability or likelihood to pursue these affirmative claims in Justice Court: they did not even *defend themselves* against Rapid Cash's justice court actions.[18] And, indeed, these putative class members are the ones in the most dire financial straits – willing to borrow money on onerous terms with the highest of interest rates. They clearly cannot afford attorneys, and, if employed, they likely do not have the flexibility to take off work to prepare pleadings and sit in justice court. If these claims are not brought as a class action, they will not be brought at all.

Lastly, this Court is not presented with the Sophie's Choice of having to certify either a (b)(2) class or a (b)(3) only; courts can – and do – certify hybrid class actions, i.e., both (b)(2) and (b)(3) class actions. For example, in Ballard v. Equifax Check Servs., Inc., 186 F.R.D. 589 (E.D.Cal. 1999), the Court certified a class under (b)(2) on the issues of liability, declaratory relief, *statutory damages*, injunctive relief and *restitution*, and certified a class under (b)(3) on the issue of actual damages. Ballard was a case against a collection agency on behalf of 1.4 million persons seeking a refund of $20 per check service charge claimed to be illegally imposed on writers of checks returned for insufficient funds. Although sequential certification was not sought, the Ballard case is yet another example of appropriate hybrid certification.

E. This Class Certification Request Is Not Premature.

Finally, Rapid Cash suggests that the Court defer making a decision as to class certification pending discovery. But no discovery is necessary because there is adequate evidence in the record to grant certification now. As Judge Reed explained when denying a request for pre-certification class discovery in the Stolz case, "[t]he Court need resort to an

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[18] Assuming, of course, that any of these nearly 17,000 customers were served with process and had proper notice that their rights were being adjudicated. Even based on Detective Chio's random sampling, we would assume that 57% of these customers did receive service, but they did not hire attorneys or appear themselves to protect themselves from having a judgment entered against them.

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evidentiary hearing or allow discovery in the certification stage of a class action only where the record itself is insufficient to make the determination." 620 F. Supp at 398. He cited to the Ninth Circuit case of Blackie v. Barrack, which elaborated:

> An extensive evidentiary showing of the sort requested by defendants is not required. So long as [the judge] has sufficient material before him to determine the nature of the allegations, and rule on compliance with [Rule 23]'s requirements, and he bases his ruling on that material, his approach cannot be faulted because plaintiffs' proof may fail at trial.

524 F.2d 891, 901 (9th Cir. 1975). Judge Reed also noted that "certification of the class is not an immutable decision." Stolz, 620 F.Supp at 402. Thus, "[i]f it later appears that plaintiff fails to meet any of the requirements of Rule 23, the certification may be withdrawn." Id.; see also Bartek v. State, Dept. of Natural Resources, Div. of Forestry, 31 P.3d 100, 103 (Alaska 2001) ("The defendants suggest that the judge abused his discretion because he certified the class without holding an evidentiary hearing. Although it is within a judge's discretion to hold an evidentiary hearing, there is no such requirement. Here, the motion judge reviewed the pleadings, affidavits, briefs, and the earlier memorandum on summary judgment in light of the requirements of [R]ule 23. There is no indication that a reasoned decision on the motion for class certification required anything more."); Ellis v. Costco Wholesale Corp., 240 F.R.D. 627, 635 (N.D.Cal. 2007) ("[a]n evidentiary hearing on class certification is not required, but the court should assess all relevant evidence to determine whether each of the Rule 23 requirements have been met").

The evidence presently before this Court supports class certification now. Rapid Cash obtained default judgments in Clark County's justice court against nearly 17,000 customers over the last five years alone. Rapid Cash utilized now-convicted-sewer-server Maurice Carroll and his company to effectuate (or not) service of process on Rapid Cash customers. 43% of the Rapid-Cash-default-judgment subjects whose service of process was sworn to by an On Scene Mediations representative, who were interviewed by Detective Chio, stated that they never received service of the lawsuit against them. And the daily volume of affidavits of service on Rapid Cash customers demonstrates either flat-out lies or superhuman feats of process service.

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This Court can and should certify the class at this time, as this Court retains the power to decertify this class in the future should new, surprise evidence surface that makes it apparent that class certification is no longer appropriate.

III.

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. Class certification is necessary to protect the rights of these putative class members and the integrity of the justice system.

DATED this 18th day of October, 2010.

Respectfully Submitted by:

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: /s/ Dan L. Wulz
Dan L. Wulz, Esq. (5557)
Venicia Considine, Esq. (11544)
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Las Vegas, Nevada 89101

J. Randall Jones, Esq. (1927)
Jennifer C. Dorsey, Esq. (6456)
KEMP, JONES & COULTHARD, LLP
Attorneys for Plaintiffs/Putative Class Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of October, 2010, I placed a true and correct copy of the attached **REPLY IN SUPPORT OF MOTION TO CERTIFY CLASS** via facsimile and in the United States Mail, postage fully pre-paid thereon addressed as follows:

By U.S. Mail and Facsimile to:

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

By U.S. Mail to:

Maurice Carroll
6376 Briney Deep Ave.
Las Vegas, NV 89139

Maurice Carroll
5911 Red Dawn St.
North Las Vegas, NV 89031

Vilisia Coleman
4255 N. Nellis Blvd., Apt. 1014
Las Vegas, NV 89115

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

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

AFFIDAVIT OF VENICIA CONSIDINE IN SUPPORT OF MOTION TO CERTIFY CLASS

I, VENICIA CONSIDINE, ESQ., being duly sworn, deposes and states as follows:

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1. I am an attorney licensed to practice law in the State of Nevada and am employed as such by the Legal Aid Center of Southern Nevada, representing Casandra Harrison, Eugene Varcados, Conception Quintino, Mary Dungan and all persons similarly situated.

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

3. I first met Detective Chio on September 15, 2010 when he came to the Legal Aid Center of Southern Nevada.

4. Det. Chio is a detective with the Metropolitan Police Department who was the lead investigator in the Maurice Carroll/On Scene Mediations criminal case.

5. Since that time I have communicated with Det. Chio a few times through phone calls and emails.

6. I provided Det. Chio with contact information on four Rapid Cash customers who were not served a summons and complaint when sued by Rapid Cash.

7. I received the Defendants *Opposition to Motion to Certify Class* with an attached affidavit.

8. On October 14, 2010, I called Det. Chio and asked about his investigation in connection with Rapid Cash.

9. Det. Chio stated to me that he obtained approximately 30 to 35 Rapid Cash affidavits of service from the Justice Court.

10. Det. Chio stated to me that he requested, via a grand jury subpoena, customer records from Rapid Cash which he stated he has not received as of this date.

11. Det. Chio stated to me that he attempted to contact the Rapid Cash customers from the affidavits he received from the Justice Court.

12. Det. Chio told me he was successful in finding only seven (7) people.

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13. Of those seven Rapid Cash customers Det. Chio stated he was successful in contacting, Det. Chio stated that four said they were served the summons and complaint and three said they were never served.

14. To the best of my knowledge and recollections, the statements, dates, and amounts contained in paragraphs 1 through 12 above are true and accurate

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Venicia Considine

VENICIA CONSIDINE, ESQ.

SUBSCRIBED AND SWORN to before me this 14th day of October, 2010.

Elizabeth Montes

Notary Public

Notary Public - State of Nevada
County of Clark
ELIZABETH MONTES
My Appointment Expires
No: 96-1678-1 June 3, 2013

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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; Vilisia Coleman; and DOES I through X, inclusive,

Defendants.

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

AFFIDAVIT OF VIOLETA L. HERNANDEZ

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AFFIDAVIT OF VIOLETA L. HERNANDEZ

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

VIOLETA L. HERNANDEZ, first being duly sworn deposes and says:

1. I am a Paralegal currently employed at Legal Aid Center of Southern Nevada.

2. I personally reviewed the following Rapid Cash default case files at Justice Court:

08C018084
08C018098
08C018328
08C018326
08C018086
08C018321
08C018827

3. My review of the above seven cases showed that V. Coleman both received and served the Summons and Complaint of each of the above cases on June 13, 2008.

4. All of the Affidavits of Service for the above cases listed Maurice Carroll as the notary.

5. I personally reviewed the following Rapid Cash default case files at Justice Court:

08C018711
08C018703
08C018812
08C018809
08C018708
08C018643
08C018798
08C018638
08C018713

6. My review of the above nine case files showed that Y. Gutierrez both received and served the Summons and Complaint of each of the above cases on June 13, 2008.

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7. All of the Affidavits of Service for the above cases listed Maurice Carroll as the notary.

8. I also personally reviewed the following additional Rapid Cash default case files at Justice Court:

08C018662	08C018681
08C018662	08C018852
08C018424	08C018696
08C018468	08C018323
08C018676	08C018463
08C018838	08C018653
08C018098	08C018828
08C018436	08C018857
08C018649	

9. My review of the seventeen case files listed above showed that in each of the above cases, the Summons and Complaint was both received and served on June 17, 2008, by Y. Gutierrez.

10. All of the Affidavits of Service for the above cases listed Maurice Carroll as the notary.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

VIOLETA L. HERNANDEZ

SUBSCRIBED and SWORN to before me this 15th day of October, 2010.

Notary Public in and for said County and State

Notary Public - State of Nevada
County of Clark
ELIZABETH MONTES
My Appointment Expires
June 3, 2012
No: 96-1872-1

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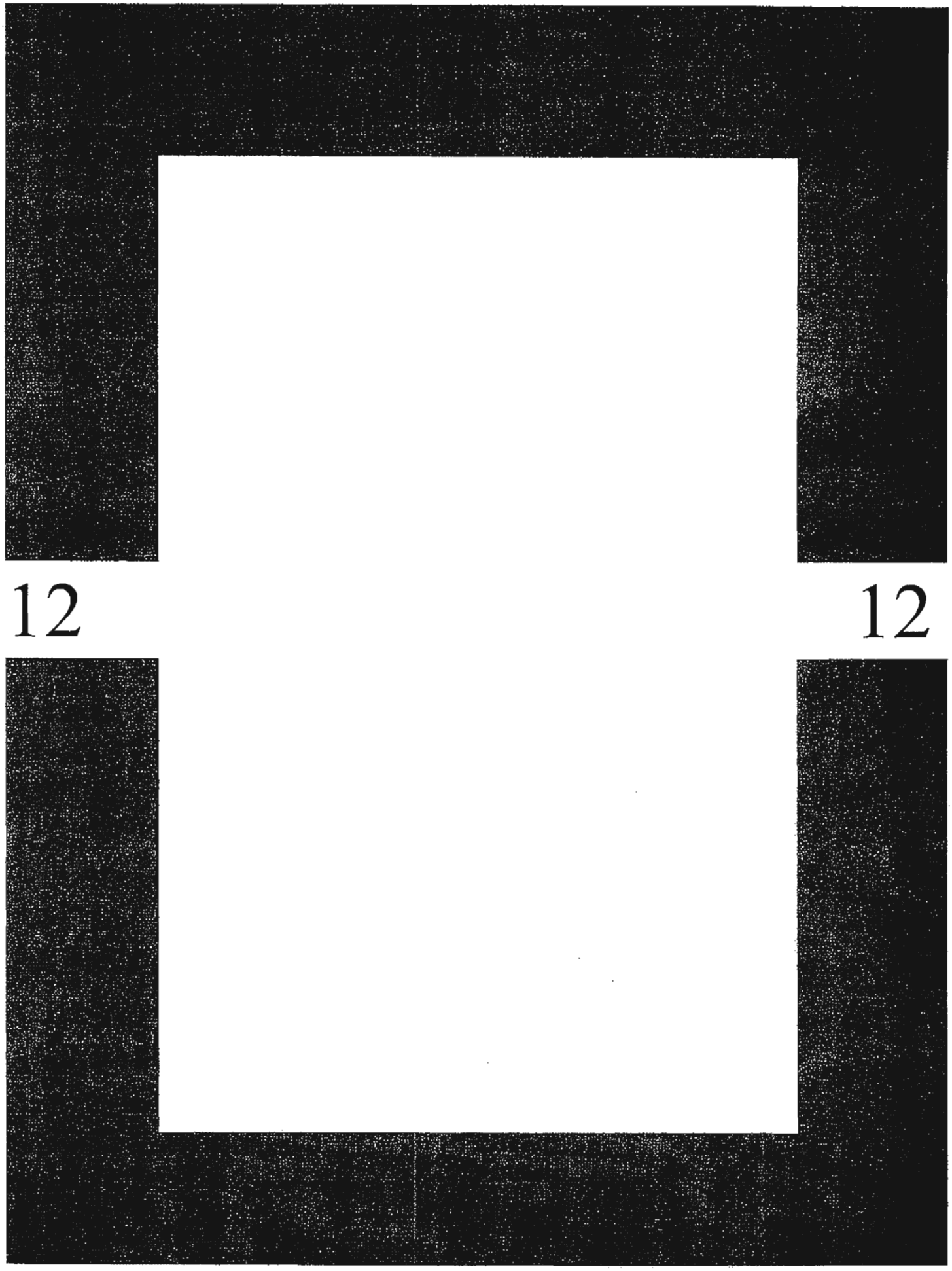

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASANDRA HARRISON, et al. Plaintiffs vs. PRINCIPAL INVESTMENTS, INC., et al. Defendants	CASE NO. A-624982 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION FOR CLASS CERTIFICATION

THURSDAY, OCTOBER 21, 2010

APPEARANCES:

FOR THE PLAINTIFFS: DAN I. WULZ, ESQ.
JENNIFER DORSEY, ESQ.

FOR THE DEFENDANTS: MARK S. DZARNOSKI, ESQ.
DANIEL F. POLSENBERG, ESQ.

COURT RECORDER: JILL HAWKINS
District Court

TRANSCRIPTION BY: FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

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LAS VEGAS, NEVADA, THURSDAY, OCTOBER 21, 2010, 9:08 A.M.

(Court was called to order)

THE COURT: Good morning. I'd like to do the motion for class certification first. Is that okay?

MR. DZARNOSKI: Good morning, Your Honor. Mark Dzarnoski on behalf of Rapid Cash defendants.

MR. POLSENBERG: And Dan Polsenberg, as well, Your Honor.

THE COURT: Good morning, Mr. Polsenberg.

MR. POLSENBERG: Good morning, Your Honor.

THE COURT: Does anybody not know that I was Mr. Polsenberg's best man? It's been forever, though, but --

MS. DORSEY: You performed my wedding ceremony.

THE COURT: Okay. I forgot that one, too.

MR. POLSENBERG: Which one's better?

THE COURT: You don't ever win anyway. You might have a better chance today.

MR. POLSENBERG: That is true. That is true.

THE COURT: All right. Ms. Poppick.

MS. DORSEY: Good morning, Your Honor.

THE COURT: Ms. Dorsey. Sorry.

MS. DORSEY: Thank you.

And before I start this morning, Your Honor, I also want to introduce also with me is my co-counsel Dan Wulz from Legal Aid Center, and we have two main plaintiffs and

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potential class representatives here with us today. We have Casandra Harrison and Mary Dungan with us over here in the front row.

THE COURT: Good morning.

MS. DORSEY: Your Honor, I'm confident that you've read all of this, and so I'm going to just hit some of the highlights for you, starting with --

THE COURT: Can you hit the highlight between the difference in the contractual language between Ms. Quintino's contract and the other named plaintiffs.

MS. DORSEY: And are we -- I suppose we can start with the pre-dispute resolution language is where they kind of highlight it, Your Honor. And I think either way it's not going to matter. And the reason is because for the same reason that they've waived the arbitration clause by their conduct in this case, they clearly waived any possibility for pre-dispute resolution by their conduct in this case. We don't have any evidence that they attempted in any way to accommodate any of the plaintiffs, any of the class members by engaging in this pre-dispute resolution procedure with anyone whatsoever. So when you look at it, both of these provisions essentially require -- it's a mutual provision, and it says that essentially, if this happens, before we institute litigation against you we're going to do this pre-dispute resolution, we're going to notify you, we're going to do all

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of these things. They didn't do any of that, Your Honor. As you know, instead they went and filed almost 17,000 lawsuits over the course of five years in our Justice Court. So, either way, it's not going to matter, because the language was mutual enough that it required Rapid Cash to undertake the same type of pre-dispute resolution procedure, and they didn't do it for any of -- excuse me, any of these class members. And by ignoring those provisions that applied to them, as well, they've indicated a clear intent that those provisions never be applicable for anyone that's a party to these contracts. So for the same reasons that you held last week that they had waived the arbitration clause, they've also waived the pre-dispute resolution clause.

And if you'd like, I'll move on to the class action ban, if you'd like to hear about that a little bit. Class action ban is sort of along the same lines as the arbitration clause. There's about four reasons why this one is unenforceable. The first one is that the class action ban is actually part of the arbitration clause that you held unenforceable last week for waiver and public policy reasons. It's also unconscionable for a number of reasons.

First of all, this provision, as we explained with the arbitration clause, lacked a meaningful opportunity to agree to negotiated terms. Now, we all acknowledged last week that this is a better arbitration clause than we've seen in

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many consumer contracts, but that's still not good enough; because even though this provision allowed these customers to later, after they had signed, after they had gone home, within 30 days to go back and send a certified letter and ask that they not be held to the arbitration clause, they still -- this was still a contract of adhesion at that point, because truly they didn't have any ability to negotiate the terms of this contract. IT was presented to them on a take-it-or-leave-it basis, and in fact, as we knew -- as we heard last week, we didn't hear of -- Rapid Cash had no evidence that anyone had attempted to, after leaving the Rapid Cash store, send one of these letters to exempt themselves from arbitration and this class action ban. So realistically it -- there was no negotiation going on here, and certainly none of these consumers felt like they had the ability to change these terms.

Secondly, this provision is extremely one sided. It eliminates class actions, but the only people who are going to file a class action are going to be Rapid Cash's customers. It's very unlikely that any of the conduct that would be covered by this contract and by this -- by this class action ban would give rise to a class action where Rapid Cash was the plaintiff in a class action. So this provision is never going to prevent, really, Rapid Cash from attempting to bring a class action.

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Another reason why this is per se unconscionable is that this provision acts as an exculpatory clause, because its net effect is that if these Rapid Cash customers can't bring these claims based on a class action vehicle, the vast majority of them are simply not going to bring an action at all.

We talked about how these are in many cases financially desperate people. These are currently customers of Legal Aid, so they qualify for legal aid, so we know that financially that's where they fall. So essentially what this does is it prevents relief for small claims or for people who lack the means to bring them individually. And that is exactly the type of class that we have here, Your Honor.

So, because of the nature of the plaintiffs that we have here and their financial situation and their unlikelihood of seeking counsel to bring individual actions to set aside these default judgments that were obtained against them, essentially Rapid Cash will be off the hook if we can't bring these claims as a class action where we and Legal Aid represent them all together.

And as our briefs pointed out, Your Honor, numerous courts have held that class action bans in consumer contracts are unenforceable for unconscionability when they prevent relief for small claims or fraud or where without the class action the majority of these consumers wouldn't even know that

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they have claims. And that's exactly the kind of case that we're talking about here.

The final reason why this is unconscionable, and this bleeds over into the public policy argument, as well, is the scale on which Rapid Cash was filing these lawsuits, again, more than 16,000 in just five years. And by doing this on such a grand scale they had to expect that the only real vehicle for relief for these consumers that they were suing would have been a class action. And for those same reasons enforcement of this class action ban would violate public policy.

I think the Discover Card case points this out very well. This is the one we cited in our reply brief. This is Discover Bank versus Superior Court. It was a credit card case where there were millions, where here we have thousands, if not tens of thousands, of consumers. But essentially what the court said was, "This provision violates fundamental notions of fairness. It's not only substantively unconscionable; it violates public policy by granting Discover," here Rapid Cash, "a get out of jail free card while compromising important consumer rights."

And that's exactly what happened here, Your Honor. As you know, the allegations in our complaint are that they got default judgments against these consumers with sua service, and so these persons were not even aware that they

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were having their rights adjudicated. And it would violate public policy if we were not able to bring these on a manageable basis as a class action.

I know you've read the briefs, so if you --

THE COURT: Because you're primarily arguing a public policy issue, you're not going to address, at least not to a very significant degree, the difference between Ms. Quintino's contractual provisions and the other class reps'?

MS. DORSEY: Because we don't --

THE COURT: Because she doesn't have a class action waiver provision in her agreement.

MS. DORSEY: Right. And so the only provisions that would really matter to her would be the pre-dispute resolution.

THE COURT: Pre-dispute resolution portion.

MS. DORSEY: And for the same reasons those are mutual enough they waived those by their filing of all of these lawsuits. So simply they can't preclude this class action or those consumers that were subject to that contract from participating in this class action based on that provision.

If you'd like, I can hit the highlights of why the class should be certified, the Rule 23(a) and (b) requirements. Unless you want me to go ahead and let --

THE COURT: Let me ask a liability question, then,

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that relates to part of the decisions -- or the analysis as to whether it's appropriate for a class. Each of the particular potential class members may or may not have been served under the definition that you've provided in your class -- motion to certify the class. How do you anticipate the Court making decisions on the appropriateness of a class to only include those who were not actually served?

MS. DORSEY: There's a couple answers to that. The first one is that at this point, at the class certification point it's okay to certify a class that may include non-injured members. And that's what the Myer court recognized, that's what the Smith case recognized that we cited in our briefs. And that's because after discovery this Court can certainly narrow the class definition based on the information that's provided.

The second answer to that, Your Honor, though, is that the parties that -- well, the second answer is that this Court can currently narrow the scope of the class to include only those who were actually -- who were not served. And we believe that there will still be plenty of class members there to satisfy numerosity. And if this Court does that, then what would have to happen is that the burden of demonstrating who was truly served is going to have to be put back on the defendant, who is the party in the best position to be able to provide us with that evidence. Again, the Smith case is sort

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of the paradigm for that, where they shifted the burden onto the defendants to show -- it's that strip search case where they had reasonable suspicion and so the defendants then had to provide evidence that there was reasonable suspicion, just like here Rapid Cash would have to tell us and provide us with actual evidence that in fact these parties had been served.

THE COURT: The only way we can get that is from Mr. Carroll, their agent.

MS. DORSEY: Their agent. I would -- well, I don't know that. I don't know what their files look like at this point, Your Honor, so I don't know how much information --

THE COURT: Okay.

MS. DORSEY: -- they maintained. But because this Court can put the burden on the defendants to do that, to provide us the information -- and essentially it would be the defendants' responsibility to whittle down the list of these 17,000 people by showing which ones were in fact served. We would be able to narrow the class definition that way.

THE COURT: Okay. Thank you.

MS. DORSEY: Thank you.

THE COURT: Mr. Dzarnoski.

MR. DZARNOSKI: Again good morning, Your Honor.

THE COURT: 'Morning.

MR. DZARNOSKI: Let me start where you started, which dealt with the difference in the contracts between Ms.

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Quintino and the other three parties. Counsel has represented that regarding the pre-dispute resolution provisions that Rapid Cash has not followed the pre-dispute resolution provisions, meaning that we had to give a prior notice of the claim within I think it was 15 days of filing a lawsuit. Unlike the request for going to mediation or unlike the submission to arbitration, that's not the case with respect to this submission of this prior notice of claim.

I would point out that the statute itself, NRS 604A, has a requirement that all short-term loan lenders, including Rapid Cash, before they can file a lawsuit, after the default occurs they have to send out a notice, there's another requirement within 15 days that they send out a notice, and then there's a requirement within -- after 30 days and before filing a lawsuit that a notice is sent out to them. Rapid Cash fully and completely has followed that procedure and is in full compliance with NRS 604A with respect to the prior notification before going into court. All of those notifications under NRS 604A would fully satisfy the requirement in the contract for a notice to go prior to a claim being filed and having the opportunity for the parties to sit down and resolve this prior to a lawsuit.

So as to the pre-dispute resolution, with respect to the newer contract where three out of four of the plaintiffs are under that newer contract, there is a provision that Rapid

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Cash has not waived, has fully complied with prior to bringing their lawsuit. So we have a separate situation than we do with respect to whether or not they have filed arbitration claims. So as a predicate to bringing this lawsuit it's still our position that these plaintiffs needed to file a notice of claim with Rapid Cash. They have not done so by their own admission, and therefore actually this case ought to be dismissed, which we'll get to in the motions to dismiss later. But for purposes of certification of a class now, I think that is an important consideration for you to make. And you have brought up the difference in those two contracts.

THE COURT: But don't you think the kind of claim that's being made in this case is one that the public and all the rest of us have an interest in being appropriately resolved? I mean --

MR. DZARNOSKI: The public -- I suppose in a way yes. But you've got to understand that there are parallel proceedings on how this is done.

THE COURT: Well, you've seen some of the comments that have been in the newspaper about the court's process server and things like that. Public confidence has been eroded by what has occurred in this case, wouldn't you say that, Mr. Dzarnoski? Or it appears to be from reading the newspaper.

MR. DZARNOSKI: I think I'd agree with that, Your

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Honor. But I think that there's also the public confidence is being restored by the fact that the person who perpetrated the problem has been criminally charged. That's what our system does to vindicate.

THE COURT: Been convicted.

MR. DZARNOSKI: He's been convicted. Been criminally charged, he's been convicted. He hasn't been sentenced yet. Presumably he's going to be sentenced to some form of imprisonment. And that -- his sentence is something that that judge will consider the public policy issues as to how to restore the confidence of the judicial system.

Further, there is an ongoing investigation that is still -- that is still participating, and information is being turned over to find out the extensiveness of whether or not this same issue exists with Rapid Cash. So there is a forum, and it's a darn good forum, to restore public confidence, that being put somebody in jail when they violate the law. I mean, that's one.

The second thing is that in setting aside a fraud upon the court, which this is, or setting aside --

THE COURT: Or alleged to be.

MR. DZARNOSKI: Alleged to be. And if there is a fraud upon the court, to lift a void judgment there's only two procedures that are set forth to vindicate the public policy and to vindicate the court system. That is you file a motion,

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according to 60(b), in the case that the void service was made or the lack of service was made, or you file this independent action in equity. It doesn't mean you need a class action to do this.

Now, I find it very interesting, the point that is continually raised to you in pleadings and in the arguments twice, that this is a situation where these individuals have no remedy and they wouldn't pursue anything other than through a class action. We've recently begun to explore the legislative history of NRS 604, and in fact the legislators, including Ms. Barbara Buckley as the chairwoman of the committee and the minutes of the meeting of the Assembly Committee on Commerce and Labor from the 73rd session on April 6 of 2005, there was an issue that was brought up as to the scope of the statute and how do you make sure that individuals' rights can be vindicated. And there was a provision that was put in that statute specifically to address that issue. And that is that you give a -- there's a $1,000 statutory damages provision that was put into the statute.

This is what Ms. Buckley said. "One of our other suggestions in the language is to have a remedy for an aggrieved consumer besides filing a complaint with financial institutions. When consumers have private remedies they are often able to have more options. In Sections 54 and 55 we create statutory damages of $1,000 for each violation. This

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is similar to what we have in NRS 118A for violations of the Landlord-Tenant Act."

In other words, the Nevada Legislature has already considered the issue that you're talking about with regard to public confidence and whether or not there is a remedy for people to validly pursue. When this statute was enacted the legislature, including Ms. Buckley, said that a thousand-dollar statutory damages provision in here would open the doors for individuals to have remedies in this kind of a case.

Now, I submit to you that my client, Rapid Cash, has gone one better -- actually ten better, ten times better than the Nevada Legislature. As you know, there's a provision, and we talked about it last time, where any individual who files a claim in arbitration against my client and prevails is awarded a minimum amount of damages of $10,100, $100 more than the jurisdictional limit of the Justice Court. That's what the statute -- that's what the arbitration provision says.

So what we have is a situation where the legislature by public policy has already said there's a reasonable remedy available because we're giving a thousand dollars statutory damages, and yet we have a client, a customer in a consumer-friendly arbitration provision, who is allowing for up to $10,100 in damages, 10 times the amount that the legislature decided was appropriate in order to give these people a remedy.

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You correctly -- or then you asked about, and I'd like to move to this, the liability. And you appropriately have indicated that the definition of this class that has been proposed may or may not -- or includes individuals who may or may or may not have been served by Mr. Carroll or anybody else in On Scene Mediations. In order to certify a class, I mean, you're supposed to do a rigorous analysis, first of all, and the plaintiffs have the burden of demonstrating to you -- they have the burden of proof -- I don't have any burden of proof here, nor does Rapid Cash -- that they have met every requirement of the class action certification. Rehashing allegations of a complaint aren't enough to satisfy that, and you're required ultimate to make findings.

What you've got to find is you've got to find a class that was defined in such a way that all class members suffer some legally cognizable injury. The Myer case that was brought up, that's -- the holding as Counsel said is not that. The Myer case found that everybody had injuries. They were different injuries, but the class at least was defined by people who had injury. What we have is a group of -- we have a definition of a class that doesn't include a definition of an injury at all. It's just that if Mr. Carroll had an affidavit of service, you're part of the class. That's no injury.

Second, you must have an ascertainable and

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identifiable class, and it must be ascertainable and identifiable by objective criteria. Now, in their reply brief and in their argument today Counsel and plaintiffs have indicated that there are some exceptions, and they cite to you four cases supposedly to uphold the fact that there are exceptions to these requirements for class certification. None of those cases create exceptions to the class certification rules that I've just talked about. In fact, they are fully supportive of the position that I've advanced in my own briefing.

For instance, in Cohen, which is the most recent case and it's one of the few appellate cases that they cited, the others were simply District Court cases that hadn't gone up on appeal -- not to say that a District Court judge's decision shouldn't be considered, but when you've got something coming from Arkansas from a District Court, that certainly doesn't provide precedential value to this Court. Cohen --

THE COURT: Although those judges may be very fine judges, is what you're trying to say, right?

MR. DZARNOSKI: They may be very, very fine judges.

THE COURT: You're digging out of the hole?

MR. DZARNOSKI: I think I've put my foot in my mouth a few times in your courtroom, but --

THE COURT: It's okay. You've been in here a lot,

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so --

MR. DZARNOSKI: Page -- well, I guess it wouldn't be page 5. It's page 5 in my Westlaw printout. But the Cohen court, United States Court of Appeals for the Second Circuit, recognizes specifically in the following language the rules that I've just outlined. And they cited a series of cases, and they say, "Those cases focus on the class definition. If the definition is so broad that it sweeps within it persons who could not have been injured by the defendant's conduct, it is too broad. A related point is that a class should not be certified if it is apparent that it contains a great many persons who have suffered no injuries at the hands of the defendant." And then they go on and they cite multiple cases from many jurisdictions.

I would submit to you, Your Honor, that that's exactly the case as the class has been submitted to you for definition. And the Cohen case does not create an exception. What it did is it found that the -- that this was satisfied in the Cohen case. It wasn't a situation where, oh, they couldn't find an objectively identifiable class. They could find an objectively identifiable class and the people were injured.

Second, they brought up a significant amount of briefing in the Smith case and represented to you in the Smith case that that somehow is an aberration from the rules. And

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in fact that is not the case. In the Smith case what the court ended up doing was it had a situation where the defendants in that case asserted that they did not have records that would provide objective evidence in order to decide who the class was. And the court expressly found that the -- there was evidence, from documents it could be determined, an objectively identifiable class.

We don't have that situation here. The only thing we have is we have affidavits of service by Maurice Carroll and/or individuals under his employment. That does in no way give any evidence as to who was not served. To the contrary, it gives us evidence as to who supposedly was served. The only possible evidence that Rapid Cash could have in its files would be if someone at some time between 2004 and 2010 called and complained that they have a garnishment that is now in place and that therefore -- and that they knew nothing about the case because they weren't served. That's the only possible evidence that there might exist in Rapid Cash's files.

Now, if that were -- if that is the case and there are some, I suppose it would be possible for you to say, well, there's an objectively identifiable class of Rapid Cash customers with default judgments where evidence of service is an affidavit of Maurice Carroll and people who complained to Rapid Cash that they were not served. That is potentially

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objectively verifiable.

The problem with that is that there is probably such an insignificant number of those people over the course of five years that it wouldn't satisfy the numerosity requirement and that this is something that ought to be probed through discovery of a class, rather than you making a decision now. And second of all, if anybody ever called Rapid Cash over the course of the last six years and complained about a default judgment being entered into them, I can almost guarantee you and with 99 percent certainty that has already been satisfied, Rapid Cash and that customer came to some kind of a conclusion in a settlement of that claim in order to resolve it.

So there'd be a serious problem with you trying to identify the class in that fashion. But that's the only fashion by which you could end up having an objectively verifiable class in this case.

And the Smith case specifically recognized that -- again, that the documents were there, but further it has nothing to do with the shifting of a burden of proof. I want to remind the Court that this case is about fraud upon the court. The plaintiffs have a burden of proof, in fact, under Nevada law the most recent case -- I don't recall the name, but it had to do with Lawrence Davidson --

THE COURT: I know which case you're talking about.

MR. DZARNOSKI: -- the Lawrence Davidson case, the

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Nevada Supreme Court made it clear that in a fraud upon the court case that the burden of proof is upon the plaintiffs to show by clear and convincing evidence that the fraud occurred. In other words, these plaintiffs are going to have to come forward -- either in representative capacity or not, they're going to have to come forward and prove by clear and convincing evidence that they were not served. They can't just stand up there and say, I wasn't served. Everybody in the world who had a default judgment against them would stand up and say they weren't served. Are we going to have a situation come into this court or any other court where somebody in 2004 had a default judgment entered against them, a garnishment occurred, they did nothing about it, they allowed the garnishment to continue, they had their loan satisfied, and they have been silent for six years, and now this Court is going to consider that their word alone is enough to say that they weren't served when by all objective criteria it would appear that they either were served or they certainly knew about the action at the time of the garnishment? And I'd further point out that Nevada is one of the minority jurisdictions in this country that ends up saying that a void judgment or a fraud upon the court is not something -- it doesn't have a statute of limitations, but it does have an inquiry of due diligence. We're in a minority, but that's what the Nevada Supreme Court has said, that

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anybody who has been sitting on their rights and can't prove that they had reasonable diligence in challenging a fraud upon the court, then they're out of luck. So that's the situation we have in the state of Nevada.

What the plaintiffs are suggesting to you is remarkable. They're suggesting to you that they have a burden of clear and convincing evidence in this case, and yet they want to try and shift the burden of proof to Rapid Cash at this stage of the proceedings and say everybody who has a default judgment against them that was served by Maurice Carroll should be presumed somehow to have proved to you by clear and convincing evidence that a fraud on the court was perpetrated. That simply doesn't make any sense, and that's not what Smith does, nor does any other case obviously in the country, or it probably would have been cited by the plaintiffs in their reply brief.

The GMAC case, which is the third of the four cases that were cited, there is a specific finding made in that case that the product defect was present at the time of the manufacture on all set of vehicles that were defined in the class. The court was very careful in pointing out that in this class definition it was not too broad because it included within it people who'd purchased the cars for which the injury or the defect was there. And they specifically recognized that there was a need to ascertain the identity of class

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members, and this language is critical, "without an investigation of the court into the merits of each individual's claim.

So in this case we're sitting on a situation where the class as proposed to you would require you to do an investigation of the merits of each individual's claim. If you were to try and narrow it only to people who were not served, there's no objective evidence from which we can find out who those people are. So again you would be put in a position -- or we'd be put in a position where we don't know the members of the class until they have made proof to this Court of their individual claim. So you can't narrow it that small, because it's just simply not identifiable.

And the Bigelow case that was also cited, it didn't deal with class definition at all. It dealt with commonality issues.

For the most part I would like to rely upon the briefing as to the issues of numerosity, typicality, and -- numerosity, typicality --

THE COURT: No adequate --

MR. DZARNOSKI: -- and commonality. I think those are briefed sufficiently. And the defect obviously is as long -- I can only -- I can only oppose on the basis of the class that they have in the complaint.

THE COURT: That they've alleged.

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MR. DZARNOSKI: Right.

THE COURT: Right.

MR. DZARNOSKI: And their briefing and their request for certification, all their arguments say that we have commonality, typicality, and numerosity because our class is people who have not been served, just like the plaintiffs. Well, that's not at all the class that they've proposed. So, I mean, based on the class they have proposed, then clearly they don't meet those.

However, on the fourth I would like to add something that was not put in our opposition, and that is the inquiry as to the adequacy of representation of the class. I do not for a moment state that either Mr. Jones or the legal clinic does not have the expertise to adequately represent a class in a class action case. They clearly do. But the inquiry goes beyond that. And the inquiry has to go beyond that to the point where you have to analyze whether or not the counsel is representing the individuals who are members of the class for interests of those class members and the best interests of the class or whether they pursuing -- possibly pursuing some other agenda or some other political -- political agenda.

It is no surprise -- I'm sure it's no surprise to you, and I don't think it's a surprise to anybody in this courtroom that Ms. Buckley has a history over the course of many, many years of I'm going to use the word "targeting,"

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other people may use a different word, the payday loan industry, and many would argue that she has tried to legislate that industry out of existence.

THE COURT: It's at least heavily regulated at this point.

MR. DZARNOSKI: It is at least heavily regulated, and it's -- and some of the stuff that you read in the legislative history when people say it is inevitable that this industry is going to be legislated out of existence because we can regulate it effectively. That's what we see.

I would suggest to you that in light of a number of things we have reason to question at least at this point whether or not there is an agenda to put Rapid Cash out of business, as opposed to representing individuals who have meritorious claims based upon non service. One of the indices of that is clearly this class definition. They have asked you in their pleadings and papers to certify what is clearly an uncertifiable class because it involves thousands, potentially thousands, maybe all, maybe -- we don't know how many people who do not have a legally cognizable injury. But not only have they asked you to certify that, in their initial pleadings they ask you to issue an order preventing Rapid Cash from collecting upon what are at the current time legally enforceable judgments for which there has been no challenge by any individual defendant in those cases as to the legitimacy

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of those claims. I mean, if that doesn't strangle hold --

THE COURT: Mr. Carroll's conviction calls into significant question the validity of some of those judgments, without knowing which ones.

MR. DZARNOSKI: Some.

THE COURT: But how do you know which ones?

MR. DZARNOSKI: Exactly. How do you know which ones? So the answer is that you put a company out of business while you try to find out whether there's 20 or whether there's 16,000? That can't be the answer. I have a legal judgment. Until clear and convincing evidence is presented, that is a legally enforceable judgment. They haven't presented any evidence to you to indicate how many of those judgments should be -- are circumspect. I mean, how -- what the damage --

THE COURT: I understand your concern. I share that concern, Mr. Dzarnoski. It requires certain tailoring, I expect, if we're going to go down this road.

MR. DZARNOSKI: May I have a moment to confer?

THE COURT: You can.

(Pause in the proceedings)

MR. DZARNOSKI: Sometimes it's good to bring help.

THE COURT: And he's really good if you're going to Carson City for any reason.

MR. DZARNOSKI: I would point out that there has

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been a request to certify under 23(b)(2) in this case, and I want to highlight just briefly -- we have made the argument in the brief that that is appropriate mainly for equitable relief and not for claims of damages and that if you look at the complaint, you've got seven causes of action, abuse of process, negligent hiring, negligence, civil conspiracy, violation of 604A, NRS 598, and all of those are predominantly damages claims. I imagine, and we're researching this now, when we are put in a position where we need to answer or file a responsive pleading that there'd certainly be challenges also on the basis of subject matter jurisdiction here; because, although there has been some allegations that were freely made in the complaint that the amount in controversy is in excess of $10,000 worth of damages, I think just looking at the remainder of the complaint you can clearly see that somebody has a $300 loan that has been made in this case and that the judgment that was entered in the Justice Court was for $300 plus attorney fees of 150, and maybe service of process of $50 or $60 or something like that.

THE COURT: The interest isn't included in the judgment?

MR. DZARNOSKI: Most of these judgments don't have anywhere near a judgment that, it is my understanding, over -- about $500 is the amount of the judgments that we have at issue, I believe.

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THE COURT: Okay.

MR. DZARNOSKI: We're not in a position where we're talking about judgments of thousands and thousands of dollars. We're talking about a very small judgment. So there is a significant challenge that is going to be made about this Court's jurisdiction on these individual claims, because they do not satisfy the jurisdictional limits.

And finally I would like to make a comment that, you know, this case has been portrayed in a fashion that, as you have said, has raised some concerns in the community. And, unfortunately, my client, that is a victim as much as anybody else, has been painted as a loan-sharking payday lender who doesn't care about process of service and that type of thing. Now, what we really have in this situation is we have a process server who is a retired policeman, we have a process server who not only was a retired policeman, but he was an employee and supervised by a licensed member of the Nevada Bar, that this -- that the Nevada Attorney General's Office in 2006 was advised by Rapid Cash that Rapid Cash was using the services of Mr. Carroll for process serving, and that they were wondering about whether or not he needed a license. The Nevada Attorney General's Office, representing the Private Investigator Licensing Board, ended up giving him a pass and a green light indicating that because of his relationship with the licensed member of the Nevada Bar that he did not need a

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license and that there were no problems or issues for five years that had come up of any significance to alert anybody, including the court system, that there was a problem here.

Meanwhile, my clients over the course of years paid five hundred, six hundred or $700,000 for the provision of a service that was supposedly done for them. And the fact of the matter is that -- apparently and based on a conviction, that Mr. Carroll defrauded my client out of money, he obtained money under false pretenses. I would point out that the company, Richland Holdings, was viewed as a victim in the criminal prosecution of Mr. Carroll, and in fact one of the charges upon which he was convicted was that he obtained money under false pretenses from them because they paid him to conduct a service. My client is in that same position, and in fact my client is one better, because they did do all these things. And, you know, perhaps there's going to be an inquiry down the line as to why in 2006 the Nevada Attorney General's Office did not tell my client that he needed licensing, if he -- if he did, which hasn't been proven, by the way. Nor was Mr. Carroll charged with a criminal charge of process serving without a license. He was charged with 17 discrete acts, and that's it.

Thank you, Your Honor. If there's any further questions you have, I'll answer them. If not, I'll sit down.

THE COURT: Nope. Thank you.

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Given the unusual conduct which defendant and its agent is alleged to have committed, the provision requiring pre-dispute resolution has been waived and are inconsistent with public policy.

At this time the Court is going to grant the motion to certify the class in part. I am granting the motion to certify as to the injunctive and equitable issues raised in the sixth and seventh causes of action as to 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 of service was an affidavit signed by a representative of On Scene Mediations and who claim not to have in fact been served.

Because of the difficulty in establishing which of those customers will claim not to have been served, I am going to order that the notice of class action be provided to the following group: 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 of service was an affidavit signed by a representative of On Scene Mediations. This essentially makes it an opt-in class, because the individual must notify us that they claim they had not in fact been served to appropriately be a member of my class. But because it is impossible given the admitted fraudulent execution of certain

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proofs of service by defendants' agent in at least some instances, the Court will allow this broader notice to be sent to all.

Mr. Polsenberg.

MR. POLSENBERG: Your Honor, I don't think we have the chance to brief this, but I don't think there is under 23(c) any such thing as an opt-in class. I think under Scheutte versus Beazer that would be a joinder action. In fact, we briefed that in Scheutte versus Beazer and one other case that was up there at the same time, and because I was trying to convince Judge Earl to have an opt-in class and he pointed out to me that there was no such thing.

THE COURT: I know. Judge Earl and I have had that discussion historically, as well. Do you have another suggestion, Mr. Polsenberg, as to how to make a determination, since I want the class to include those individuals who claim not to have in fact been served, since I -- so I don't have to make the factual determination on a case-by-case basis as to which individual is a member of the class?

MR. POLSENBERG: I think there's probably some way to do that under a joinder action, but I don't -- and it -- we may be -- you have to let me give it a little thought, but we may be able to do something similar to what you're saying, very similar to what you're saying, just maybe under another rule.

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THE COURT: Well, at this point this is my ruling. I'm not saying I won't clarify it or modify it for purposes of modifying the notice. I do have to approve the notice before it goes out to the class members, and that may be an appropriate time, Mr. Polsenberg, for you to raise the issue. I certainly understand that a joinder action may also be an appropriate mechanism, and I am waiting to find out how the Supreme Court is going to rule on some of those joinder action issues, as well.

MS. DORSEY: Your Honor, will the defendant be required to provide us with the list of addresses so that we can send the notices to this scope of individuals?

THE COURT: Yes. How long is it going to take you to --

MR. POLSENBERG: I think that notice would probably come from the Court, Your Honor.

THE COURT: No. The Court doesn't send the notice. Plaintiffs' counsel sends the notice.

How long is it going to take to get together the list of those individuals to whom you have -- from whom you have default judgments where On Scene Mediations was the process server?

MR. DZARNOSKI: Your Honor, you haven't limited this by any time. Are you going back to -- I mean, then we've got statute of limitations issues, as well, later. But are you

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going back to 2004?

THE COURT: Yes, at this point.

MR. DZARNOSKI: 2004 to the present? I would have to check with my client. I don't know that my client maintains records going back to 2004. I don't know --

THE COURT: Well, how long did On Scene Mediations do their service?

MR. DZARNOSKI: I believe since --

THE COURT: I thought you said it was 2006 was how long they'd been doing it.

MR. DZARNOSKI: No, Your Honor. I believe that they've been serving since 2004. The inquiry to the Nevada Attorney General's Office where the Attorney General's Office passed -- or indicated that he could serve process was 2006.

THE COURT: Okay. So then at this --

MR. DZARNOSKI: I believe we're going back to 2004.

THE COURT: 2004.

MR. DZARNOSKI: And I don't know without talking to my client -- I don't think my client representative who is in the legal office in Wichita would know right now what the status of the records are and whether that's even -- whether that's doable and how far back and how they --

THE COURT: Was Mr. Hillin the attorney in all of these cases?

MR. DZARNOSKI: No, Your Honor.

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THE COURT: Okay. Who were the attorneys?

MR. DZARNOSKI: Lizzie Hatcher, who was the licensed attorney for whom Maurice Carroll was employed, was an attorney in many of the cases. Sean Hillin was an attorney in many of the cases. And I'm not certain --

THE COURT: And don't you think -- and I know this only from the Hillin versus Richland case. It seems like the attorneys, at least Mr. Hillin, didn't keep a record of all the judgments he had obtained.

MR. DZARNOSKI: Your Honor, I believe that's accurate.

THE COURT: So how do you suggest a good way to get the record of the default judgments that your client obtained against Rapid Cash customers in Clark County for which On Scene Mediations was the representative who served?

MR. DZARNOSKI: I don't have an answer for you today.

THE COURT: Okay. How long will it take you to figure out an answer?

MR. DZARNOSKI: Can I have a week?

THE COURT: Week sounds good.

MS. DORSEY: And, Your Honor, we'd also request -- I don't know how you want us to handle the notice issue, if you want us to brief this later. We would want to do publication, too, just because these are kind of transient class members,

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and we would want to do some type of a published notice, as well.

THE COURT: I don't have a problem with a published notice, as well. But we do need to mail to the last-known address that Rapid Cash had.

MS. DORSEY: Absolutely. Completely agree.

THE COURT: Okay. So do you want a week to have a discussion with me about -- how about we go a little longer than that? You have a week to get it together, and then you come back -- come back on November 2. Gives you 10 days. Does that work?

MS. DORSEY: Just for sort of a status?

THE COURT: For status on the class notice. And I'm interested in any suggestions that any of you have, because you've all done class actions much more than I have. And I am happy to listen to any input you have as to the appropriateness or the best way to phrase and deliver the notices to get to the potential class members.

The other way to do it is to go through all the records in Justice Court, Mr. Dzarnoski. And I know that Judge Saragosa and Judge Sullivan and Judge Sciscento would love to have you come spend weeks in their Clerk's Office to try and figure that out.

MR. DZARNOSKI: I would send a paralegal.

THE COURT: But, I mean, I don't know an easy way.

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After the experience I had with the Hillin Richland dispute, I don't think the attorneys are the place to go.

MR. DZARNOSKI: I think I agree with you, at least based on the knowledge I have right now.

THE COURT: But I'm open to suggestions.

All right. You want to go to your other motion?

MR. WULZ: Yes.

MS. DORSEY: Yes. Actually, Mr. Wulz will be arguing that.

THE COURT: Mr. Wulz.

MS. DORSEY: Thank you, Your Honor.

MR. WULZ: After all that, Your Honor, I will be very brief. I might just -- I suppose I should begin by asking the defendant with the relief as narrowed in our reply, do you oppose any of that?

THE COURT: And you're referring to page 3 of your reply brief, Items 1 through 5?

MR. WULZ: Yes.

THE COURT: Just so I'm clear.

MR. DZARNOSKI: Yes. Because we don't have the class, that same class. They're asking for a broader relief than is now what you have ordered for the class. I don't see how any of that can be done until we end up going through the process of the opt in.

THE COURT: But don't you agree it would probably be

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not really a good idea for you to be collecting on judgments that are arguably void?

MR. DZARNOSKI: I'm sorry, Your Honor? Would you say again?

THE COURT: Don't you agree it's not such a good idea for you to be out there collecting on judgments that are arguably void? Some of these other things I certainly agree with you. But --

MR. DZARNOSKI: Your Honor, if somebody says that there is a judgment that has not been -- that they have not been served on, absolutely that my client has no intention and no desire to collect on people who have void judgments.

On the other hand, my client would like to stay in business. And to say that you're going to impose any kind of relief that -- regarding the collection of actions for people who are not part of this class punishes my client severely. And I don't see how the modifications that Counsel has made are effective unless it -- I'll agree to that if it's limited to the class as you've defined it.

THE COURT: That was all I was going to suggest. And I was going to give you one additional thing you could do. You could agree with any one of those people to set aside the default judgment.

MR. DZARNOSKI: Your Honor, my client has done that in the past, will do that in the future. Further, my client

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hasn't even applied for default judgments for hundreds of cases for which service has been made.

THE COURT: Well, you know they weren't going to sign them once they figured out there was an issue in Justice Court.

MR. DZARNOSKI: Excuse me?

THE COURT: They weren't going to sign them in Justice Court once they figured out there was an issue without an evidentiary hearing.

MR. DZARNOSKI: Well, my client has the process service affidavits on file. My client hasn't attempted to do anything to obtain judgments. I was retained prior to this litigation, as I've told you, to try and assess this problem.

THE COURT: I know.

MR. DZARNOSKI: My client has legitimate --

THE COURT: And you called the court to try and find out how to help us; right?

MR. DZARNOSKI: On behalf of my client.

THE COURT: Even if you didn't talk to me, we all talked to see who we could send you to, and decided there wasn't much we could do for you.

MR. DZARNOSKI: Correct. My client has a history in this case in evidence of bending over backwards in order to try and make sure that they are not collecting from people who have void judgments.

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MR. POLSENBERG: Right.

THE COURT: So, as I have described the class, Mr. Dzarnoski, is your client agreeable to that limited group not to execute on any of the default judgments at this point until we have a further hearing to establish -- well, if it's a TRO, which is how I'm considering issuing it, having another hearing in two or three weeks?

MR. DZARNOSKI: Can we -- can we put off the answer to that question at least until November 2nd? One problem I have in saying yes right now is if you grant this relief now, I still don't know who it applies to. I mean, so your relief -- and you don't know who it applies to. So your relief doesn't do any good, because none of us know who the order applies to until somebody opts in, except for the four plaintiffs.

THE COURT: Well, anybody who claims they weren't served.

MR. DZARNOSKI: I'm sorry?

THE COURT: Anybody who claims they weren't served.

MR. DZARNOSKI: Claims in what way?

MR. WULZ: And they were served by On Scene.

MR. DZARNOSKI: Yes. But sends a notice, what, in response to the notice sent by the Court, sends a letter to Rapid Cash, picks up a telephone and says, I wasn't served?

THE COURT: Doesn't matter what way they do it.

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They just claim they weren't served.

MR. DZARNOSKI: May we take this up next week, Your Honor, on November 2nd?

THE COURT: I would prefer to take it up next week if you tell me you're not going to have any execution efforts during the week while we try and figure out a better way to frame this interim relief.

MR. DZARNOSKI: Does that mean -- and I'm trying to -- I don't want something to happen that you end up thinking was incorrect here. Does that mean that if there is a present garnishment -- and there may be hundreds of cases that my client currently has garnishments pending and that people -- garnishments are occurring. Are you asking them to withdraw --

THE COURT: It means you should tell the constable not to execute on any writs of garnishments until after we have a chance to talk about this further.

MR. POLSENBERG: Your Honor, we'll agree not to execute on anybody who has claimed to us not to have been served.

THE COURT: That's not what I'm looking for.

MR. DZARNOSKI: May I ask -- talk to my class representative -- my client representative?

THE COURT: Yes. And talk to your appellate lawyer.

(Pause in the proceedings)

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MR. DZARNOSKI: Your Honor, at the present time and making it as broad as you have, I don't think that we're in a position to say that we can do that.

THE COURT: Okay, Mr. Wulz. Keep going. It's your motion, Mr. Wulz.

MR. WULZ: Okay. Your Honor, Rapid Cash has default judgments against the putative -- against the certified class members, and in the absence of a Rule 23 limited contact order, Rapid Cash can do anything it wants. It can undermine the class, it can limit their remedies, it can moot their claims. We're asking for a limited contact order which will prevent that from happening.

The Court has the power and the duty to prevent harm before it happens and to police class member contacts. And at this point we're at the same point as the Court was in the Kleiner case, where the Court had ordered that a notice be given and the bank out and got 175 employees to start calling class members to get them to opt out of the class. In the absence of a Rule 23 limited contact order, that could happen here.

And so we request that the Court prevent that type of harm from happening, as well as settling their claims without the approval of the Court, ex parte, without our being a party to those settlement discussions should they decide to have any.

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THE COURT: Okay. Mr. Dzarnoski.

MR. DZARNOSKI: Very briefly, Your Honor, as to the class as you have defined it, temporarily or otherwise, we don't have any objection to that relief, although we don't believe there's been any proof that has been submitted to the Court, which is required under this, that any abuse contacts have been made. So, I mean, absent proof that my client has had abusive contacts, I don't think the relief is necessarily appropriate. But I don't see that there's any harm in agreeing to it as to the class members that you have indicated. There is nothing in the relief that was modified reflect that was requested dealing with suspending any collection matters. And I think it would be overreaching if one were to impose a no contact order on a group of people who aren't even in the class.

THE COURT: Okay. The Court is going to grant the motion as injunctive relief to the extent that Rapid Cash will be precluded from collecting on any Clark County Justice Court judgment against any customer 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 of service was an affidavit signed by a representative of On Scene Mediations.

However, Rapid Cash may, to the sole extent of seeking to set aside a judgment, file orders or other efforts

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in each of those Justice Court actions or agree with a putative class member to set aside a judgment.

MR. DZARNOSKI: Just for clarification, the relief as requested in the reply brief does not deal with collection. Are you granting this as injunctive relief --

THE COURT: The relief --

MR. DZARNOSKI: -- without collections?

THE COURT: The only portion of the relief I am granting is the alternative relief for an injunction, and the only portion of the requested relief that I am granting is the portion that was defined as subpart (5), which specifically related to collection efforts.

MR. DZARNOSKI: Only part you're granting is subpart (5). And it's not limited to the class?

THE COURT: I read you what it was limited to.

MR. DZARNOSKI: Just trying to clarify to make --

MR. POLSENBERG: Is that a TRO, Judge?

THE COURT: It's a TRO, which means you get -- it's 14 days unless you guys stipulate to extend it, and I will have a hearing November 4.

MR. DZARNOSKI: What about a bond, Your Honor?

THE COURT: What do you want the bond to be?

MR. DZARNOSKI: As I've indicated, if -- to November 2nd?

THE COURT: I have it November 4th, because that's

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two weeks. I can do it on November 2nd if you all only want to come once that week.

MR. POLSENBERG: 2nd would be better, Your Honor. I'm somewhere else on the 4th.

THE COURT: Okay. So how much of a bond are you asking for?

MR. DZARNOSKI: We need to consult one more time, Your Honor, with --

MR. POLSENBERG: Your Honor, we'll waive a bond.

THE COURT: Okay. Bond will be $50.

MS. DORSEY: Thank you.

THE COURT: And if any of you want to call live witnesses, I will not have time to hear them on November 2nd. If you have a conference call with me if you decide you want to call live witnesses at your preliminary injunction hearing, we will have a further discussion about scheduling. But I encourage you to do what research you can between now and then as to the class notice, the availability of the names and addresses, and also how many defaults have been set aside by the time you come back.

MR. POLSENBERG: Thank you, Your Honor.

MS. DORSEY: Thank you, Your Honor.

MR. DZARNOSKI: Thank you, Your Honor.

THE COURT: Have a nice day.

THE PROCEEDINGS CONCLUDED AT 10:10 A.M.

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

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Florence M. Hoyt

FLORENCE HOYT, TRANSCRIBER

10/24/10

DATE

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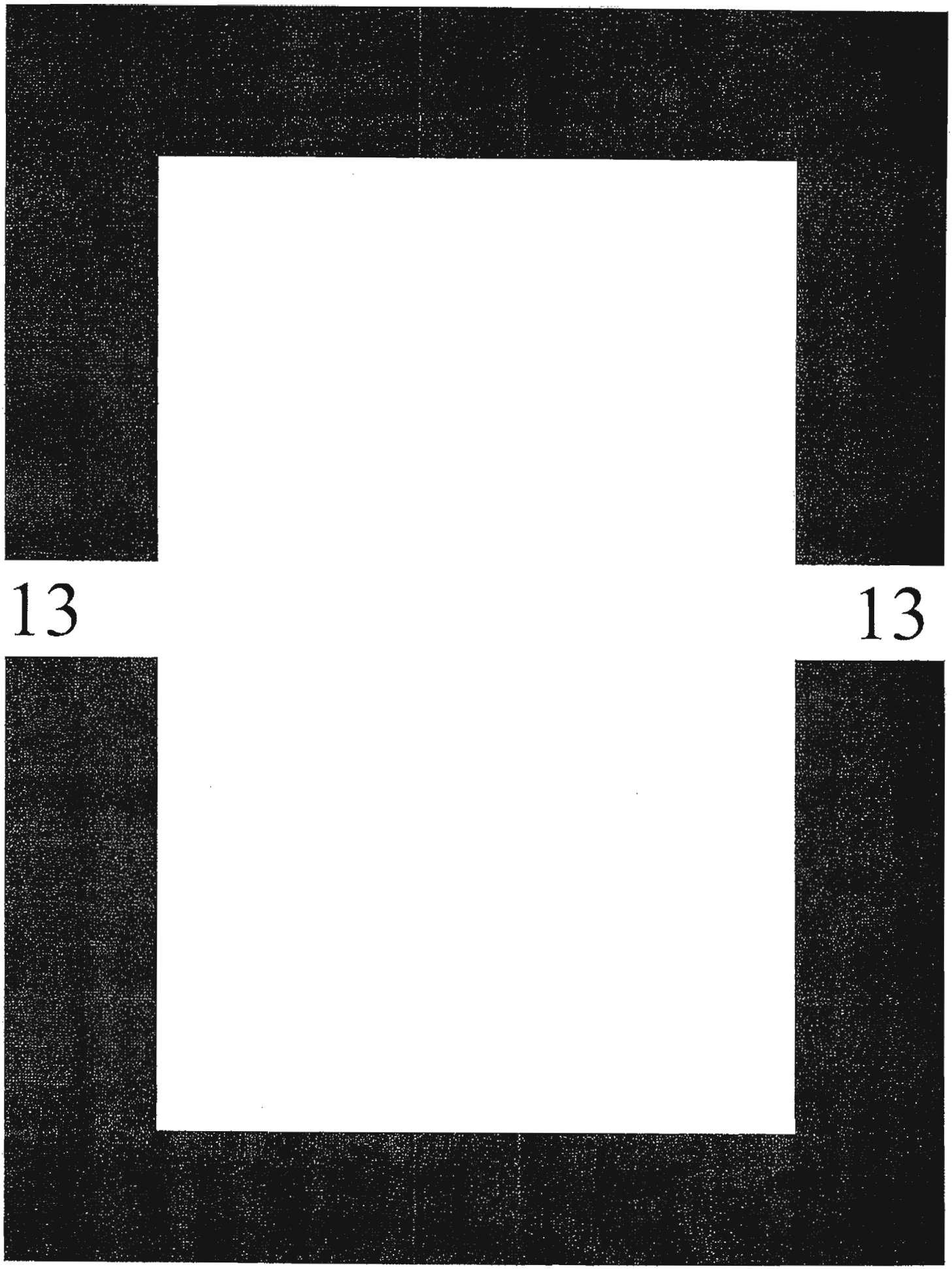

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CLERK OF THE COURT

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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

RAPID CASH DEFENDANTS' SUBMISSION OF AFFIDAVITS IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Hearing Date: November 2, 2010
Hearing Time: 9:00 a.m.

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 Rapid Cash Defendants'

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Submission Of Affidavits In Opposition To Motion For Preliminary Injunction.

Attached hereto as Exhibit A is the Affidavit of Jorge Gonzalez. Attached hereto as Exhibit B is the Affidavit of Randolph Charles Rhode, Jr. Defendants further intend on relying upon the pleadings and other papers on file herein, including but not limited to the Declaration of Warrant/Summons of Det. N Chio attached as Exhibit 1 to the Plaintiffs' Reply To Opposition To Motion For Rule 23 No Contact Order Or, Alternatively, For A Preliminary Injunction.

DATED this 1 day of November, 2010.

GORDON SILVER

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MARK S. DZARNOSKI
Nevada Bar No. 3398
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EXHIBIT A

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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. NO. XI **AFFIDAVIT OF JORGE GONZALEZ**

I, Jorge Gonzalez, being first duly sworn according to law and under penalty of perjury pursuant to the laws of the State of Nevada and the laws of the United States do hereby depose and say:

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1. I am over 18 years of age and I am competent to testify regarding the matters in this Affidavit.

2. I am the Vice President of Call Center Operations of the above captioned defendants d/b/a "Rapid Cash". My job responsibilities include, among other things, managing the collection of defaulted loans in Nevada. As such, I am familiar with the general policies and procedures used by Rapid Cash in connection with loans that have fallen into default.

3. I am authorized to make this Affidavit on behalf of the defendants and the facts set forth herein are based upon my personal knowledge including my review of the business records of Rapid Cash maintained and created in the regular course of business.

4. Following a default by a Rapid Cash customer, Rapid Cash has adopted standardized practices which have been designed to meet and/or exceed the requirements of NRS 604A.475. Such standardize practices are as set forth below.

5. One business day following the default, Rapid Cash sends out a form letter to the customer advising him/her of the default, the toll free number to resolve and work out the loan and the opportunity to remain a customer in good standing. A true and correct copy of the one day letter is attached hereto as Exhibit 1.

6. Ten days following a default of a Rapid Cash customer, Rapid Cash sends out a form letter to the customer advising him/her of the default, the toll free number to resolve and work out the loan, the amount past due and the Nevada statutory payment plan. A true and correct copy of this ten day letter is attached hereto as Exhibit 2.

7. In the past, thirty days following a default of a Rapid Cash customer, Rapid Cash sends out a form letter to the customer advising him/her of amount of the outstanding loans, and that adverse action may be taken against the customer for failure to pay.

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8. In conformity with NRS 604A.475(1), before Rapid Cash attempts to collect the outstanding balance on a loan in default by commencing any civil action or process of alternative dispute resolution or repossessing a vehicle, Rapid Cash offers the customer an opportunity to enter into a repayment plan. See Exhibit 2, *supra*.

9. In conformity with 604A.475(2), Rapid Cash delivers to the customer, not later than 15 days after the date of default, written notice of the opportunity to enter into a repayment plan. See Exhibit 2, *supra*.

10. In conformity with NRS 604A.475(4)(e)., if a repayment plan is entered into, during the term of the repayment plan, Rapid Cash does not attempt to collect the outstanding balance by commencing any civil action or process of alternative dispute resolution or by repossessing a vehicle, unless the customer defaults on the repayment plan.

11. If the customer defaults on the repayment plan, Rapid Cash may, but does not necessarily attempt to collect the outstanding balance by commencing a civil action in Clark County Justice Court as permitted by NRS 604A.475(7).

12. In the event a defaulting Rapid Cash customer chooses not to enter into a repayment plan authorized by NRS 604A.475, Rapid Cash may, but does not necessarily attempt to collect the outstanding balance by commencing a civil action in Clark County Justice Court.

13. Before Rapid Cash chooses to initiate a civil action in Clark County Justice Court to collect upon a customer who has defaulted under a repayment plan or a customer who defaulted and has chosen not to enter into a repayment plan, Rapid Cash conducts an investigation/analysis of the likelihood of Rapid Cash being able to collect upon a judgment entered in its favor against the defaulting customer. As a general rule, such investigation includes performing a "skip trace" to determine whether the defaulting customer can be located and served with process and whether the defaulting customer is employed so that wage

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garnishment can be used as a tool for collection upon a judgment. Unless Rapid Cash's investigation/analysis concludes that the defaulting customer has a known address at which location the defaulting customer can be served and that the defaulting customer is employed and wages can be garnished, typically, no civil action will be commenced against the defaulting customer. As a matter of corporate policy, Rapid Cash has chosen not to intentionally obtain uncollectible judgments against defaulting customers.

14. In the event Rapid Cash has concluded that the defaulting customer's whereabouts are known so as to effect service and that the judgment is potentially collectible because of gainful employment or other reasons, Rapid Cash retains an independent, outside attorney to file a civil action in Clark County Justice Court.

15. From in or about 2004 through approximately April of 2010, upon receipt of a file stamped copy of the Complaint and a duly executed Summons, the Complaint, Summons and skip tracing results have been provided to On Scene Mediations for service of process. Because the location of the residence and/or work address of a defaulting customer has already been determined through skip tracing and because this information was supplied to On Scene Mediations, Rapid Cash expected that On Scene Mediations would have a very high rate of successful service and that service would be able to be effectuated without delay.

16. In a number of instances, service could not be obtained on the customer and the lawsuit would have to be dismissed and abandoned.

17. In the event we did not hear from a customer to satisfy the judgment within 60 days of it being entered, we would prepare the documents necessary to obtain a wage garnishment. Then, the garnishment papers would be provided to our attorney for review, comment, signature and filing.

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16. Although the exact number of times is presently unknown to me, on information and belief, on some limited number of occasions, either following receipt of a Notice of Entry of Judgment or following a wage garnishment, a defaulting Rapid Cash customer has claimed that he/she was never served process.

17. In circumstances as outlined in paragraph 16 hereof, as a matter of policy and rather than incurring legal fees to contest the service issue, Rapid Cash is willing to stipulate to setting aside a default judgment and either negotiating a settlement with the defaulting customer or commencing a new case. Because the obligation of the defaulting customer has never, to my knowledge, been contested, most cases falling into this category result in some form of settlement with the defaulting customer.

18. Most Rapid Cash default judgments fall within a dollar range of $700 to $900.

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Typically, the amount of the judgment is the original contracted principal and interest set forth in the loan agreement, plus attorneys fees and costs. As a matter of policy, Rapid Cash does not seek damages which include accumulating interest after the date of default

WHEREFOR AFFIANT SAYETH FURTHER NAUGHT

Executed this ____ day of November, 2010 at Las Vegas, Clark County, Nevada.

Jorge Gonzalez

COUNTY OF Sedgwick }
} ss.
STATE OF Kansas }

This instrument was acknowledged before me on 1st day of Nov, 2010 by Jorge Gonzalez

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

Pamela K Magdaleno
NOTARY PUBLIC in and for said
County and State

PAMELA K. MAGDALENO
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 11/8/2011

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EXHIBIT A-1

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EXHIBIT A-1

3611 N. Ridge Rd. Wichita, KS 67205

(Date)

Comment [j1]: Insert Correct Company Name Logo. The Field to look for is <<CompanyName>>. 3 Company Names: Speedy Cash, AAA Title Loans and Rapid Cash

Comment [j2]: Date of Letter

RE: Account #: (ReturnRefno)
Amount Past Due: $(ReturnBalance)

Dear (CustomerName):

Please consider this notification that the above referenced payment has been returned unpaid to (CompanyName) as (ReturnReason). Your immediate attention is required to rectify this situation and remain a valued Customer. Please contact our Customer Relations Department at 1-800-856-2911 for assistance with your past due account.

At (CompanyName), we understand temporary financial situations occur. Our desire is to be available to help you through these times. However, you must remain a Customer in good standing for us to do so.

For your convenience, the amount past due can be cleared up by calling 1-800-856-2911 and paying with your debit or credit card over the phone or by visiting the store to pay in cash, debit or credit card. Once your loan is paid in full, you will be eligible to take out another loan. You may also detach the lower portion of this letter and return with payment, preferably by credit/debit card, cashiers check or money order. (If you can not afford to pay the full balance, you can bring your account back in good standing by going to the store and paying $(ATR) and signing a new contract.)

Comment [j3]: Insert this sentence if <<ATR>> is greater than $0.01.

Any of these solutions will allow you to remain a Customer in good standing with (CompanyName) and negate the necessity of further collection or possible legal actions.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume that the debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Customer Relations
(CompanyName)
(800) 856-2911

This is an attempt to collect a debt and any information obtained will be used for that purpose. If you have satisfied the balance due on the account or have made acceptable payment arrangements, please disregard this letter.

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PO Box 101355
Birmingham, AL 35210

( ) MasterCard ( ) Visa Amount Paid $_____

Account #: (ReturnRefno)
Total Due: $(ReturnBalance)

Card Number _____ Exp Date___/____

Name on Card
_____

(CustomerName)
(CustomerAddr)
(CustomerCSZ)

Customer Relations
(CompanyName)
3611 North Ridge Road
Wichita, KS 67205

3611 N. Ridge Rd. Wichita, KS 67205

(Date)

Comment [j1]: Insert Correct Company Name Logo. The Field to look for is <<CompanyName>>. 3 Company Names: Speedy Cash, AAA Title Loans and Rapid Cash

Comment [j2]: Date of Letter

RE: Account #: (ReturnRefno)
Amount Past Due: $(ReturnBalance)

Dear (CustomerName):

Please consider this notification that the above referenced payment has not been made. Your Signature Loan account is now past due and in collections. Your immediate attention is required to rectify this situation and remain a valued Customer. Please contact our Customer Relations Department at 1-800-856-2911 for assistance with your past due account.

At (CompanyName), we understand temporary financial situations occur. Our desire is to be available to help you through these times. However, you must remain a Customer in good standing for us to do so.

For your convenience, the amount past due can be cleared up by calling 1-800-856-2911 and paying with your debit or credit card over the phone or by visiting the store to pay in cash, debit or credit card. Once your loan is paid in full, you will be eligible to take out another loan. You may also detach the lower portion of this letter and return with payment, preferably by credit/debit card, cashiers check or money order. (If you can not afford to pay the full balance, you can bring your account back in good standing by going to the store and paying $(ATR) and signing a new contract.)

Comment [j3]: Insert this sentence if <<ATR>> is greater than $0.01.

Any of these solutions will allow you to remain a Customer in good standing with (CompanyName) and negate the necessity of further collection or possible legal actions.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume that the debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Customer Relations
(CompanyName)
(800) 856-2911

This is an attempt to collect a debt and any information obtained will be used for that purpose. If you have satisfied the balance due on the account or have made acceptable payment arrangements, please disregard this letter.

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PO Box 101355
Birmingham, AL 35210

( ) MasterCard ( ) Visa Amount Paid $_____

Account #: (ReturnRefno)
Total Due: $(ReturnBalance)

Card Number _____ Exp Date___/____

Name on Card _____

(CustomerName)
(CustomerAddr)
(CustomerCSZ)

Customer Relations
(CompanyName)
3611 North Ridge Road
Wichita, KS 67205

EXHIBIT A-2

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EXHIBIT A-2

3611 N. Ridge Rd. Wichita, KS 67205

(Date)

Comment [j1]: Insert Correct Company Name Logo. The Field to look for is <<CompanyName>>. 3 Company Names: Speedy Cash, AAA Title Loans and Rapid Cash

Comment [j2]: Date of Letter

RE: Returned Check # (ReturnCheckNo)
Account #: (ReturnRefno)
Amount Past Due: $(ReturnBalance)

Dear (CustomerName):

This is your second and final notification that the above referenced check has been returned unpaid to (CompanyName) as (ReturnReason). Your immediate attention is required to rectify this situation and prevent (CompanyName) from reviewing your file for possible litigation or assignment to a 3rd party collection agency. Please be advised that 3rd party collection agencies may report to credit bureaus and any late payments, missed payments, or other defaults on your account may be reflected in your credit report.

You can still take care of the amount past due by calling 1-800-856-2911 and paying with your debit or credit card over the phone or by visiting the store to pay in cash, debit or credit card. Once your loan is paid in full, you will be eligible to take out another loan. You may also detach the lower portion of this letter and return with payment, preferably by credit/debit card, cashiers check or money order. (If you can not afford to pay the full balance, you can bring your account back in good standing by going to the store and paying $(ATR) and leaving a new post dated check to your next pay date.)

Comment [j3]: Insert this sentence if <<ATR>> is greater than $0.01.

You also have an opportunity to enter into a written payment plan no later than (ReturnDate + 30). You must go to one of our stores, pay at least 20% of you total balance and sign a payment plan agreement. We will arrange payments with you to cover the remaining balance after you make your initial payment of 20% over a period of time ending no later than 90 days after the date of default. Your total balance due is $(ReturnBalance), which includes a return check charge of $(ReturnSurcharge).

Comment [j4]: Look at <<ReturnDate>> field and ADD 30 Days.

Depending upon your financial situation, our trained account specialists may be able to work out a reasonable payment arrangement that will allow you to get the account back in good standing without paying the balance in full. To find out about this option, you will need to call 1-800-856-2911.

If you dispute that you owe us money, we will try to informally resolve the dispute. If you or we are not able to resolve the dispute, then you and we agree to resolve the dispute through arbitration. Please consult your original contract to learn how to take advantage of arbitration.

Sincerely,

Customer Relations
(CompanyName)
(800) 856-2911

This is an attempt to collect a debt and any information obtained will be used for that purpose. If you have satisfied the balance due on the account or have made acceptable payment arrangements, please disregard this letter.

PO Box 101355
Birmingham, AL 35210

( ) MasterCard ( ) Visa Amount Paid $_____

Account #: (ReturnRefno)
Total Due: $(ReturnBalance)

Card Number _____ Exp Date___/____

Name on Card
_____

(CustomerName)
(CustomerAddr)
(CustomerCSZ)

Customer Relations
(CompanyName)
3611 North Ridge Road
Wichita, KS 67205

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3611 N. Ridge Rd. Wichita, KS 67205

{Date}

Comment [j1]: Insert Correct Company Name Logo. The Field to look for is <<CompanyName>>. 3 Company Names: Speedy Cash, AAA Title Loans and Rapid Cash

Comment [j2]: Date of Letter

RE: Account #: (ReturnRefno)
Amount Past Due: $(ReturnBalance)

Dear (CustomerName):

This is your second notification that the above referenced payment on your Signature Loan has not been made. Your immediate attention is required to rectify this situation and prevent (CompanyName) from reviewing your file for possible litigation or assignment to a 3rd party collection agency. Please be advised that 3rd party collection agencies may report to credit bureaus and any late payments, missed payments, or other defaults on your account may be reflected in your credit report.

You can still take care of the amount past due by calling 1-800-856-2911 and paying with your debit or credit card over the phone or by visiting the store to pay in cash, debit or credit card. Once your loan is paid in full, you will be eligible to take out another loan. You may also detach the lower portion of this letter and return with payment, preferably by credit/debit card, cashiers check or money order. {If you can not afford to pay the full balance, you can bring your account back in good standing by going to the store and paying $(ATR) and signing a new contract.}

Comment [j3]: Insert this sentence if <<ATR>> is greater than $0.01.

You also have an opportunity to enter into a written payment plan no later than {ReturnDate + 30}. You must go to one of our stores, pay at least 20% of you total balance and sign a payment plan agreement. We will arrange payments with you to cover the remaining balance after you make your initial payment of 20% over a period of time ending no later than 90 days after the date of default. Your total balance due is $(ReturnBalance), which includes a return check charge of $(ReturnSurcharge).

Comment [j4]: Look at <<ReturnDate>> field and ADD 30 Days.

Depending upon your financial situation, our trained account specialists may be able to work out a reasonable payment arrangement that will allow you to get the account back in good standing without paying the balance in full. To find out about this option, you will need to call 1-800-856-2911.

If you dispute that you owe us money, we will try to informally resolve the dispute. If you or we are not able to resolve the dispute, then you and we agree to resolve the dispute through arbitration. Please consult your original contract to learn how to take advantage of arbitration.

Sincerely,

Customer Relations
(CompanyName)
(800) 856-2911

This is an attempt to collect a debt and any information obtained will be used for that purpose. If you have satisfied the balance due on the account or have made acceptable payment arrangements, please disregard this letter.

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PO Box 101355
Birmingham, AL 35210

( ) MasterCard ( ) Visa Amount Paid $_____

Account #: (ReturnRefno)
Total Due: $(ReturnBalance)

Card Number _____ Exp Date___/____

Name on Card _____

(CustomerName)
(CustomerAddr)
(CustomerCSZ)

Customer Relations
(CompanyName)
3611 North Ridge Road
Wichita, KS 67205

EXHIBIT B

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EXHIBIT B

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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

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 **AFFIDAVIT OF RANDOLPH CHARLES RHODE, JR.**

I, Randolph Charles Rhode, Jr., being duly sworn, depose and states as follows:

1. I am over 18 years of age and I am competent to testify regarding the matters in this Affidavit.

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2. I am the Customer Relations Manager for Nevada operations of the above captioned defendants d/b/a "Rapid Cash". My job responsibilities include, among other things, overseeing and managing personnel, communicating with customers and overseeing collections matters. As such, I am familiar with the policies and procedures used by Rapid Cash in attempting to collect upon loans that are in default.

3. I am authorized to make this Affidavit on behalf of the defendants and the facts set forth herein are based upon my personal knowledge including my review of the business records maintained and created in the regular course of business on the relevant loans.

4. Mary Dungan ("Dungan") sought a $600.00 loan in February 2009. On February 25, 2009, she entered into the "Deferred Deposit Agreement & Disclosure Statement" ("Agreement").

5. On or about March 13, 2009 Rapid Cash attempted to deposit a post dated instrument executed by Dungan that was initially presented to Rapid Cash on February 25, 2010 in reference to her deferred deposit agreement.

6. On or about March 19, 2009, Rapid Cash learned that the check tendered by Dungan was not honored by her bank. After default, arrangements were made with Dungan for her to pay off the loan. Dungan failed to keep these arrangments.

7. Ultimately, Rapid Cash filed a lawsuit in Justice Court to collect upon this debt. The affidavit of service indicates that Dungan was served on July 31, 2009.

8. On or about the evening of August 12, 2009 or the morning of August 13, 2009, a woman claiming to be Dungan telephoned Rapid Cash offices and left a message on voicemail. That same date, customer service representative Ryam Tolentino returned Dungan's call. Tolentino spoke with a woman who indicated that Dungan was not available. The August 12 or 13 telephone call was the first telephone call received from Dungan since May 7, 2009.

9. Dungan again contacted our call center in Kansas on September 16, 2009. She was directed to call the Nevada Customer Relations Legal Department. On that same date, Dungan contacted the specified office in Nevada. Records indicate that Dungan spoke with Tolentino and expressed the desire to make arrangements to pay her debt. Pursuant to Rapid

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Las Vegas, Nevada 89169
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Cash's standard policies and procedures, Dungan would have been made aware of her balance and the status of her account at this time including the pendency of the legal action that had been filed. Based upon Rapid Cash records, it appears that, near the end of the conversation, Dungan stated that she was at work and in the middle of a fire drill and would contact us back and hung up on our office. At no time during this conversation do Rapid Cash's records reflect that Dungan stated that she had not been served process or didn't know about the lawsuit.

10. Rapid Cash records indicate that Rapid Cash was advised on or about December 9, 2009 that a judgment had been obtained against Dungan.

11. Further, Rapid Cash records indicate that a garnishment first occurred on or about January 25, 2010.

12. Rapid Cash next heard from Dungan on or about February 16, 2010 when she called to complain about the garnishment. Dungan also called Rapid Cash offices on March 10, 2010 and March 26, 2010. During one or more of these calls Dungan, for the first time, asserted that she had not been served with process.

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13. I personally spoke to Dungan on March 10, 2010 and March 26, 2010. I reviewed the file entries on Dungan's account and determined that her claim of non-service was questionable because (1) her August 13, 2009 call was the first call to our offices in over 120 days and it occurred within two weeks of the date she was purportedly served with our lawsuit and (2) pursuant to our standard policies and procedures, she would have been advised of the pendency of our lawsuit during her September 16, 2009 telephone conversation with Tolentino. Nevertheless, I referred her to our collection attorney Sean Hillin. I do not know whether Dungan ever contacted Hillin.

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14. Casandra Harrison ("Harrison") sought a $582.00 loan in March 2009. On March 5, 2009, she entered into the "Deferred Deposit Agreement & Disclosure Statement"

15. On or about April 6, 2009 Rapid Cash attempted to deposit a post dated instrument that was initially presented to Rapid Cash on March 19, 2010 in reference to her deferred deposit agreement.

16. On or about April 9, 2009, Rapid Cash learned that the check tendered by

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3960 Howard Hughes Pkwy
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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 2
PAGES 231-465

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Attorneys for Appellants

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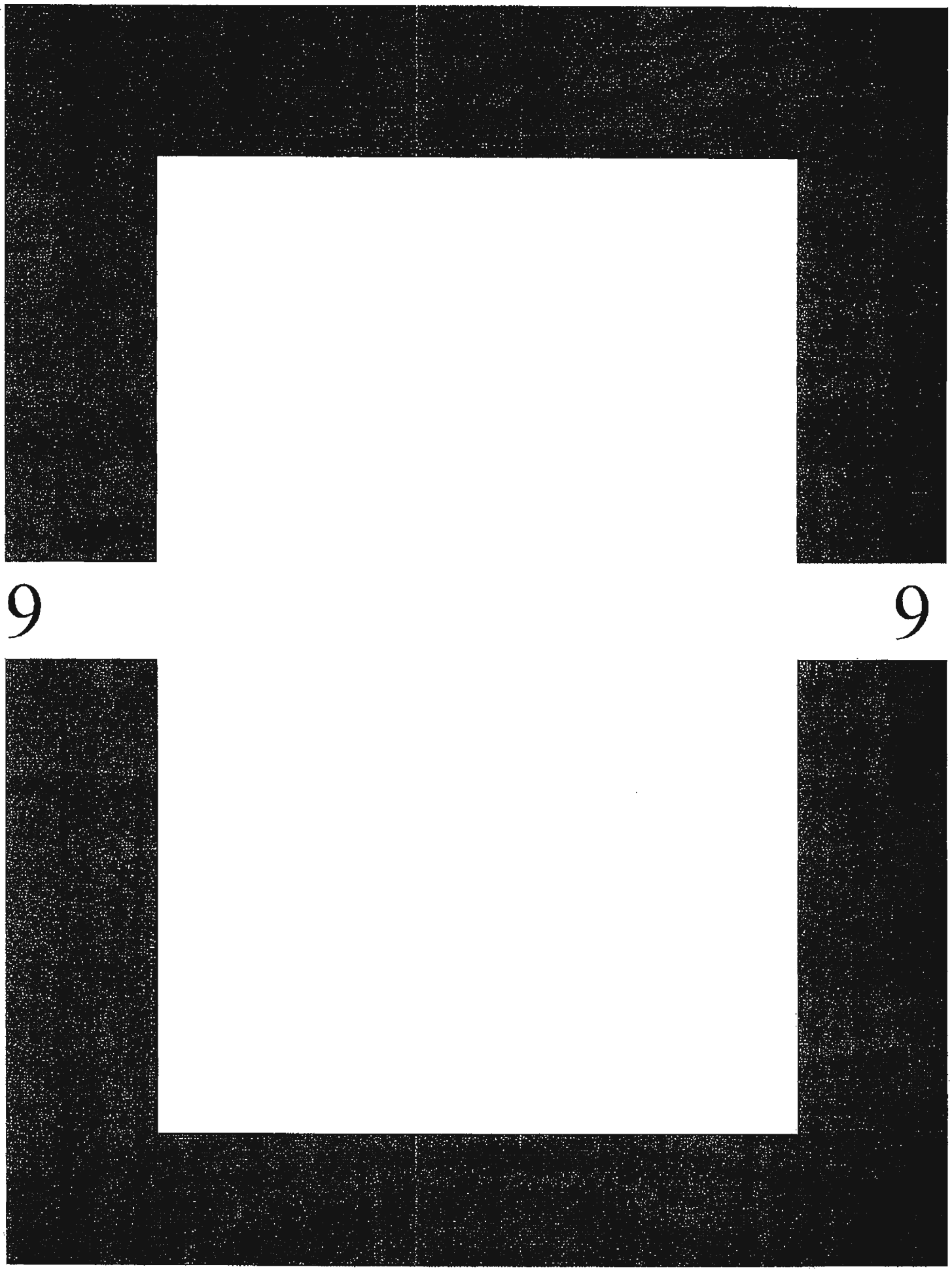

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASANDRA HARRISON, et al. Plaintiffs vs. PRINCIPAL INVESTMENTS, INC., et al. Defendants	CASE NO. A-624982 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

TUESDAY, OCTOBER 12, 2010

APPEARANCES:

FOR THE PLAINTIFFS:	DAN I. WULZ, ESQ. JENNIFER DORSEY, ESQ. J. RANDALL JONES, ESQ.
FOR THE DEFENDANTS:	MARK S. DZARNOSKI, ESQ. MARTIN BRYCE, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

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LAS VEGAS, NEVADA, TUESDAY, OCTOBER 12, 2010, 9:15 A.M.

(Court was called to order)

THE COURT: Oh. Good. My case I have to make disclosures on.

Mr. Jones, I was on the phone with Mr. Jones your brother and Mr. Peek and Mr. Campbell, and I apologize for being late.

MR. JONES: Your Honor, I understand.

THE COURT: All right. Here's my disclosures on this case. Or at least I think they relate to this case. This is Case Number A-624982. I used to be chairman of the board of Clark County Legal Services before I was a judge. And I think, Mr. Dzarnoski, you called me about issues related to this case and who you should talk to within the court system.

MR. DZARNOSKI: Spoke with Judge Togliatti.

THE COURT: And I sent you somewhere else. Or did she call me and say who I should send you to?

MR. DZARNOSKI: I spoke with Judge -- I spoke with -- I spoke with Judge Ritchie.

THE COURT: Okay.

MR. DZARNOSKI: Judge Ritchie asked Judge Togliatti to call me, and I spoke with Judge Togliatti. I never spoke with you, Your Honor.

THE COURT: My note says I can't remember if I

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actually talked to you or Jenna or Melissa asked me who you should talk to.

MR. DZARNOSKI: You did not speak with me.

THE COURT: Okay. I was on vacation when some of the issues related to these kind of things occurred, and as presiding civil judge I delegated an administrative investigation on this to Judge Togliatti, who was acting as presiding civil judge at that time. She reported on the results of her investigation, which was mainly how many cases did we have in District Court that were affected by the process server issue at a civil judges meeting. And when I was recruiting attorneys to do pro bono, I think at Jones Vargas, I asked Barbara Buckley if they were filing a class action, and she said yes.

And then I also have a disclosure about John Gutke, who I think now works for your firm and used to be my law clerk.

MR. DZARNOSKI: He does work for our firm.

THE COURT: Okay. Those are all my disclosures.

MR. DZARNOSKI: May I have a moment to speak with --

THE COURT: You may have a moment.

MR. DZARNOSKI: -- my client representative?

THE COURT: And by the way, I don't think that anything that I just told you would cause me not to be fair, which is why I didn't disqualify myself. But I went through

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the list for you.

MR. DZARNOSKI: Thank you.

(Pause in the proceedings)

MR. DZARNOSKI: None of those disclosures cause us concern, Your Honor.

THE COURT: All right. Then let's start with your motion to compel arbitration and stay all proceedings.

MR. DZARNOSKI: May I as a preliminary matter introduce Mr. Martin Bryce from Ballard Spar.

MR. BRYCE: Good morning, Your Honor.

THE COURT: Good morning.

MR. DZARNOSKI: And I tried to get an order shortening time on admitting him pro hac vice. We have circulated it to opposing counsel. If they would not object, I have an order.

THE COURT: Is there any objection?

MR. JONES: No objection, Your Honor.

THE COURT: I'd be happy to sign your order, Mr. Dzarnoski. And I'm sorry, but I got it yesterday and I couldn't set it for today because I didn't have a day's judicial notice.

MR. DZARNOSKI: I understand. We tried Friday, and you were in trial or something.

THE COURT: I'm always in trial. There you go.

MR. DZARNOSKI: Thank you, Judge.

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THE COURT: All right. It's your motion.

MR. DZARNOSKI: Again good morning, Your Honor.

Let me start with the observation that I'm fully aware that you have ruled on far more arbitration clauses than I'm ever going to read in my lifetime. That said, my review of the current arbitration agreement that Rapid Cash is using is that it's probably the most consumer-friendly arbitration provision I've ever seen, and I'm hoping that you also believe that.

Insofar as I am aware, the two most recent cases that have sort of bubbled through our District Court system that involve arbitration clauses and class action waivers were before you and were before Judge Denton. You compelled arbitration in an -- for an arbitration clause containing a class action waiver in the Nissan Motors case in October of 2008. Judge Denton compelled arbitration in the Hyundai Motors case about a week after your decision, and that has been sent up to the Nevada Supreme Court on a writ of mandamus and is currently pending before the Supreme Court of the State of Nevada.

THE COURT: For almost two years.

MR. DZARNOSKI: Yes. I had the opportunity last night to read the supplemental briefs that have recently been filed in that case, and I would first like to bring your attention to the fact that the Nevada Supreme Court is acutely

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aware of two recent United States Supreme Court cases that are at issue or are relevant to this case. And one is Stolt-Nielsen. Excuse me for turning my back, Your Honor.

THE COURT: It's all right, Mr. Dzarnoski. I know there's a lot of paperwork that you probably need to get.

MR. DZARNOSKI: The second is Rent-A-Center West, Inc. v. Jackson. And the Nevada Supreme Court had asked most recently for supplemental briefs in light of those two cases for the parties to brief whether or not the District Court would have jurisdiction to hear claims regarding the validity and enforceability of arbitration agreements if the arbitration agreement provides that that should go forward and be decided by an arbitrator.

THE COURT: Can I ask a question, though, to sort of cut to the chase here.

MR. DZARNOSKI: Yes, Your Honor.

THE COURT: I agree with you that this is a very well-written arbitration clause, and the right to reject arbitration provision is probably one that would generally make this clause valid.

My question is, though, given the filing of the litigation by Rapid Cash and its related entities, don't you think there has been a waiver of the arbitration provision given the wording that is contained in it?

MR. DZARNOSKI: No, Your Honor.

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THE COURT: Tell me why.

MR. DZARNOSKI: Yes, Your Honor. First, I believe that the issue of waiver, again, would be decided by the arbitrator, rather than before this Court. That goes to the issue of the validity, the enforceability, and the scope of the arbitration agreement. Those are covered clearly and unambiguously in both the older version of the arbitration agreement and the current version of the arbitration agreement. So that issue I don't even think is before you. So I think an arbitrator would be the one to decide whether there's been a waiver. But let's dispense with that for a moment and let me answer the question.

The old agreement specifically excludes from the definition of claims those things that were filed in the Small Claims Court, reserves the right for the parties to file actions in Small Claims Court. The newer version of the -- I'll call it the state-of-the-art arbitration agreement specifically indicates again that those cases can be filed in Small Claims Court, and it contains the language that there is no waiver that should be inferred or implied from filing the cases.

And let me look at the exact language in here. Quote, "Even if the parties have elected to litigate a claim in court, you or we may elect arbitration with respect to any claim made by a new party or any new claim asserted in that

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lawsuit, and nothing in that litigation shall constitute a waiver of any rights under this arbitration provision."

So therefore we have a clear statement that there's no waiver by filing of a Small Claims Court action. Does that answer your question?

THE COURT: Not really. But I understand the position.

MR. DZARNOSKI: Okay. May I ask, though, and cut to the chase, why is it the language isn't sufficient?

THE COURT: I think here you have claims that go beyond -- I'm sorry, litigation claims in this complaint that go beyond what could be argued would be subject to an arbitration provision especially given the manner in which at least one of the codefendants, who apparently has now been convicted, conducted himself.

MR. DZARNOSKI: Well, I --

THE COURT: So I certainly think that it is problematic for your client to try and enforce an arbitration provision that is brought as a result of a discovery of problems with process in the other actions that they chose to litigate despite the arbitration provision and the definition of claim.

MR. DZARNOSKI: Well --

THE COURT: Because the arbitration provision says -- it sets forth when and how claims "which you or we have

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against one another will be arbitrated instead of litigated in court." Okay. That's great. Your guys picked litigation. Even if it's in Small Claims, and I assume the argument the argument under the newer definition, that means that you don't get to -- you get to not have a waiver. But given some of the other conduct that's alleged, it is of concern to me as to whether I should determine that is a waiver of the provision because of at least the nature of what went on in these very unusual circumstances and the unusual nature of the claims in this particular case.

MR. DZARNOSKI: Thank you for that clarification.

THE COURT: Do you understand what I'm saying?

MR. DZARNOSKI: I do.

THE COURT: Because this complaint isn't just, we don't owe the money, or, we were forced to -- or executed this agreement for payday loan or whatever it's called under duress. This isn't -- that's not what this case is about. This case is a lot bigger than that.

MR. DZARNOSKI: Absolutely much bigger than that. However -- and let me respond in two ways. One, I think that the issue you're bringing up now is different than the issue of waiver. The case of Stolt-Nielsen, for instance, makes it very clear that under the Federal Arbitration Act the parties are free and the United States Supreme Court will allow parties to define anything they want to arbitrate. I mean,

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they could specifically identify this, this, this, and this that they want to arbitrate and exclude that. And when they have done that and they have specifically put the things that are included in the arbitration and they have excluded other claims from the arbitration agreement, then the agreement of the parties will be enforced. And you wouldn't have a waiver situation if you have carved out a specific portion of claims that you are not going to arbitrate. So you don't have the issue of waiver. That's what we've done here.

But the other issue, more directly to what you are speaking of, is that, again, in the definition of "claims" under both agreements the claims involve -- include a broad array --

THE COURT: Yeah, it does.

MR. DZARNOSKI: -- of matters, one of which is specifically included "disputes arising out of collection of any amounts you owe."

THE COURT: And that's small Arabic (5) -- or, I'm sorry, small Roman (v).

MR. DZARNOSKI: That's in the new arbitration agreement under "Definition of Claim."

THE COURT: And it's under "Meaning of Claims," small Roman (v).

MR. DZARNOSKI: That would be under the old arbitration agreement, correct. So we have a specific

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reference to anything that derives in both of them out of collection efforts. There is -- I don't see any way you can get around looking at this as the filing of a Small Claims Court matter that is excluded from the definition of claims for arbitration is not part of the collection effort that Rapid Cash has undertaken in order to get its money.

So we are specifically dealing with all claims that might arise out of the collection issues with respect to both agreements. And therefore, even though it involves failure to serve process, it still derives out of those collection claims. And keep in mind that every one of those parties or persons who claim -- although right now we have four, let's keep that in mind, we don't have a massive amount of people who have claimed that they have not been served process. The conviction that you just referred doesn't have anything to do with Rapid Cash customers. None of those victims that were subject to the criminal prosecution came from Rapid Cash's customers. That dealt solely with a collection agent, and I can't remember the collection company -- Richland Holdings, I believe. So we have four people that are sitting here. All four of those people could file a 60(b) motion to set aside their default judgment in Small Claims Court and proceed. And all four of those, as a matter of fact, could choose arbitration if they wanted to. They could make a filing and choose arbitration on their own. But --

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THE COURT: And do you think the County Commission is going to approve the master that Justice Court asked for to assist with that process?

MR. DZARNOSKI: Your Honor, I -- you mentioned that I have discussed with Judge Togliatti, and I'm not certain I should make that the request as to what I --

THE COURT: I don't -- yeah. Okay. I just know that there's something on the County Commission agenda about a master for Justice Court dealing with it.

MR. DZARNOSKI: And believe me, Your Honor, Rapid Cash is ready, willing, and able to assist the County and anybody else to try and resolve all of these claims.

Now, I would also like to point out, though, Your Honor, in terms of the first arbitration agreement -- because we -- you have to look at the terms of both.

THE COURT: Okay.

MR. DZARNOSKI: In the older arbitration agreement clearly the issue of falsification of affidavits would fall under the definition of claims, because the definition of claims is "Any claim, dispute, or controversy between you and us that arises from or relates in any way to service --" oh. I'm sorry. This is -- this is the new one. Let me get to the old one. Lots of paper.

"Claims means any and all claims, disputes, or controversies that arise under common law, federal or state

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statute or regulation, or otherwise." Doesn't say, in connection with this agreement. It doesn't say that are limited to collection matters. There's no limitation whatsoever. It is broad and covers every single claim or dispute that arises under common law or under statute.

Every claim that the plaintiffs have made in this case arise under common law or under statute. So under that circumstance, no matter how bizarre, you look at the situation that we're all facing now, clearly the first agreement covers all of those disputes. I argue strenuously that because it is in connection with collection efforts that it falls under both the current agreement and the initial agreement. But the first agreement certainly covers all of those claims.

THE COURT: Thank you, Mr. Dzarnoski.

MR. DZARNOSKI: Is there any further questions?

THE COURT: Not yet. I'll probably have more to you after the other side goes.

MR. DZARNOSKI: Thank you, Your Honor.

THE COURT: I do see a lot of arbitration provisions. This one's better than most.

MS. DORSEY: I would agree with you. It is better than most on the surface. It absolutely looks better. But in effect it's no better than any other.

And, Your Honor, I think that you got right to the heart of the question, which is, given the filing of the

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litigation in the ridiculous numbers by Rapid Cash -- we're talking about almost 17,000 Justice Court actions in the last five years, 17,000. We don't have a single anecdotal piece of evidence that they've ever tried to arbitrate a single claim under their agreement with any of these customers, but we do know that they've used the Justice Court in the last year -- last five years 17,000 times.

And so when we look at what constitutes a waiver under Nevada law we look to that Nevada Gold case particularly. And the two factors that I think are most important, the first one is conduct that indicates an intent to waive, conduct that indicates that you would prefer to use the District -- or prefer to use the court system over arbitration. I think 17,000 cases probably gets us there.

And interestingly enough, the defendant has failed to provide you with any case of litigation of this type of magnitude where a court did not find that there was waiver. And in fact I would suggest that this is such an egregious -- such an egregious case of using the court systems over invoking an arbitration clause that you won't find a case that's quite this severe.

And the second prong under the Nevada Gold case is prejudice. And we also know that of these 17,000 cases they've taken most of these to judgment, and there have been numerous courts that have held that if you take a case through

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litigation to judgment, the person you get the judgment against is sufficiently prejudiced that there's a waiver found. This is a pretty clear-cut case of waiver. I would -- I would argue that you probably wouldn't find a case of such a clear indication to waive the arbitration provision.

Now, defense counsel cited to two different recent Supreme Court cases, and he suggests that these Supreme Court cases would lead you to decide that there was no waiver here. The first one is the Stolt-Nielsen case. And he tells you that this case out of the Supreme Court says the parties' agreements have to be enforced on their terms.

The Stolt-Nielsen case is so completely distinguishable on its facts that it has absolutely no application here. In Stolt-Nielsen we were talking about two multi-national companies, not consumers, not payday loan consumers who really have no options monetarily like our clients do. The case is so distinguishable. And essentially what the Stolt-Nielsen case holds is that when you have two sophisticated, multi-national businesses you can apply the contract that they have -- that they've negotiated between them. It is not a case that applies any state law. It's completely a federal case. And the issues that you're presented with in this case are not present in that case. So that's just simply not a case that you need to look to when you decide the issue in front of you right now.

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The other thing that I want to talk about is how this clause truly, even though it may appear to be a better consumer clause, in fact I think defense counsel said that it was one of the most consumer-friendly provisions he's ever seen, how it doesn't in fact make it more consumer friendly. He essentially indicates that we've got this opt out clause and so --

THE COURT: It does. It has a right to reject arbitration after they give you the money.

MS. DORSEY: A right to reject the -- that's absolutely true. But what it doesn't do is it doesn't change the fact that this is a completely adhesion contract. None of these customers can change a single word in the agreement at the time that it's being signed. What it does allow someone to do is within the 30 days after they go home after signing this agreement they can send a certified letter to Kansas, saying, I don't want to have arbitration apply to me in the event that we have some kind of a dispute.

Well, in order for those kind of clauses to be enforceable they need to be meaningful. And the disputes in this case all arose more than 30 days after the signing of these contracts. So none of these customers would have ever had the opportunity to recognize that they should opt out of this arbitration clause, because the conduct that the defendants are involved in all happened more than 30 days

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later. So this is just not a meaningful opt out provision. It doesn't change the nature of this as an adhesion contract.

So essentially what you have here is a provision that forecloses the ability for these consumers to come into court. Now, they've suggested -- there are four plaintiffs at this point. They've suggested that all four of these plaintiffs could go to the Justice Court and they can file an action to have their default judgments reopened. Again, we need to look at how realistic this is. First of all, that's just the four that we represent right now. As you know, we framed this as a class action because we believe that of those 17,000 lawsuits they filed in the last five years there are going to be more than four people who were the victim of the service that was employed for our clients.

So essentially what they're saying is that these low-income clients need to get a lawyer, they need to go to court, and they need to set aside these judgments, so that they're suggesting that these people can actually, one, get a lawyer to do this for them, and, two, that the court system can actually shoulder the burden of having all of these people individually file lawsuits. And, as you know, Your Honor, that's not something that this court system can bear, particularly if we get up to the kind of numbers that we anticipate in this case, particularly 17,000.

And finally, what makes them think that they

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wouldn't then invoke the arbitration clause and force all of these people into arbitration even if they individually filed these lawsuit? So if they're suggesting that with these four we need to have the -- they're invoking the arbitration clause and that it should apply, there's no reason for us to believe that they wouldn't do the exact same thing if these people filed individual actions to set aside those default judgments.

I also want to address the scope of these arbitration clauses, because defense counsel discussed those with you. The -- he notes that the definition of "claims" is extremely broad. And I would agree with that. It's extremely broad. But what it isn't is so broad that these consumers should have known at the time that they signed these agreements that an action like this, an action arising from fraud, not from legitimate collection activities, but actual fraud would be covered under an arbitration provision in a loan agreement. That's just not something that's foreseeable.

And so even, Your Honor, if the language appears to include something all encompassing, he indicates that it includes any common-law or statutory claim whatsoever, so it's completely all encompassing. But the law says that there have to be -- says that there has to be limits on these incredibly broad provisions. Courts have held that you can't apply contractual arbitration agreement to tortious conduct that a consumer could not have reasonable foreseen when entering into

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the agreement; and here this dispute really has nothing to do with the contractual relationship between these parties, but the subsequent post-contractual tortious conduct by these parties and a fraud on the court.

So we cited to the Aiken case in our brief, Your Honor. And, like the court in the Aiken case, this Court should refuse to interpret this arbitration clause so broadly to apply it to outrageous tortious conduct that the consumers could not have possibly anticipated. And that's exactly what we're asking this Court to find here, that this is --

THE COURT: And that's your public policy argument.

MS. DORSEY: That is the public policy argument.

And unless you have any questions --

THE COURT: No. Thanks.

Mr. Dzarnoski.

MR. JONES: Your Honor, and I apologize, I've got a deposition that starts at 10:00, and I'm going to have to run. So I wanted to let you know that's why I was leaving.

THE COURT: Thank you, Mr. Jones. Have a nice day.

MR. JONES: Although I would be very interested to stay to the end of this argument, but --

THE COURT: I'm sure we'll be done soon.

MR. JONES: In that case, Your Honor, I may --

THE COURT: It's only 9:41.

MR. JONES: I may wait another few minutes.

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THE COURT: Unless you've got to drive down to Howard Hughes, you might make it.

MR. JONES: I will wait for a few more minutes, Your Honor. Thank you.

THE COURT: Mr. Dzarnoski.

MR. DZARNOSKI: Thank you, Your Honor.

I'm going to start out a little bit in a backwards direction. But let me address the last point as to foreseeability and Counsel's argument that nobody could foresee that this might -- these arbitration provisions might include claims of fraud. Let me read from the 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, common law, including rules relating to contracts, negligence, fraud, or other intentional wrongs in equity."

You've got an arbitration agreement that in its own explicit language tells the person that it is going to include claims of fraud. I don't see how you can make a claim that anybody who reads that would not understand that the arbitration agreement would cover claims of fraud.

THE COURT: But don't you think it's against public

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policy to have all fraud claims covered by an arbitration provision?

MR. DZARNOSKI: No, Your Honor.

THE COURT: Okay.

MR. DZARNOSKI: The Federal Arbitration -- the Federal Arbitration provision -- or Administration Act has been specifically found by the United States Supreme Court to trump state statutes and/or state public policy provisions because the parties are allowed to arbitrate. And in this particular case the Federal Arbitration Act applies. Public policy issue just simply isn't going to fly in the face of the public policy that the United States Congress had when it enacted the Federal Arbitration Act. So you've got two public policies. I mean, you can either enforce the public policy that the United States Supreme Court set for us, and the Congress of the United States said is preeminent, or you can enforce what the Counsel here believes is a state public policy. We think the choice is pretty clear and ought to be done with the United States Supreme Court and the Congressional legislation.

As to, again, issue of waiver, Counsel had brought up some Nevada caselaw dealing with the issues of waiver. I'd point out that all of those cases involve proceeding in litigation with respect to a particular claim. We wouldn't be sitting here today saying that since we proceeded with a claim

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to collect and we went into the Justice Court to collect, that we --

THE COURT: But don't you think that's in and of itself against public policy to go in and get a judgment and then under your arbitration provision to try and specifically take out any actions relating to those collection activities, including, arguably, setting aside the judgment?

MR. DZARNOSKI: They can bring those claims in the Small Claims Court action. We're not saying they can't bring those claims. They have the relief in that action. And we would not be able to remove those claims in that action to arbitration, because we have proceeded with the litigation.

THE COURT: But the claims that are being made in this case, which would then be a compulsory counterclaim in the Small Claims Court action, would not fall within the jurisdiction of either the Small Claims Court or the Justice Court, and then I have a joinder problem when all of those cases get transferred by Justice Court up to District Court from a practical standpoint.

MR. DZARNOSKI: And from a practical standpoint if that happened and they did -- and you're right, if they asserted those compulsory counterclaims, we had the issues of jurisdiction and it gets moved back up here to you, you know what, we file another motion to compel arbitration because these provisions say that any counterclaims or new claims that

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come in are then subject to the arbitration provision. So we're right back where we are today.

But you're right, that is -- that is what should happen under this agreement if they are going to be following the agreement, is they should be asserting those in Small Claims Court. We will then have to decide what happens in Small Claims Court when the facts play out. But you can't make a decision based on what might happen later after Small Claims.

But I also want to point out that they indicate that that's unworkable, and you seem to be accepting that a little bit --

THE COURT: Only from a practical, administrative standpoint as the presiding judge of the Civil Division, not in my capacity here today as a Business Court judge.

MR. DZARNOSKI: And I am ever hopeful that we will find a way to work with the special master and the Legal Aid Society of Southern Nevada to find a mechanism to keep the judicial system from being overburdened by this problem. That is in all of our interests, and I think that we can do that. But we don't need to do it within the context of this case.

THE COURT: Let me ask you another question to focus on. Ms. Popick [sic] said there were about 17,000 examples anecdotally of times that your client had chosen the litigation system and there was never a selection by your

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client of arbitration in this jurisdiction for any of its customers enforcing an agreement.

MR. DZARNOSKI: Collection actions. We've only brought collection actions.

THE COURT: Okay. But all of them have been litigation, as opposed to some other collection actions have an arbitration that they proceed through for purposes of the collection, and then file a petition with the court to confirm an arbitration award.

MR. DZARNOSKI: We have never filed -- we, my clients, have never filed a direct claim for arbitration. It is my understanding that there has been, and I'm not sure in this jurisdiction, maybe I could get a nod, that there has been a request for removal to arbitration. I'm not sure in this jurisdiction, as well. In other jurisdictions there have been requests to remove Small Claims Court actions to arbitration by the customer.

Now, and I also want to bring this out as very important, because Counsel's saying these people, it's not workable for them to file in Small Claims Court. Don't discount the fact that each of these people could claim or file for removal and arbitration on their own. As you saw in this -- in this agreement, that is a very, very valid alternative for each of these individuals to follow because of the bump-up provision in terms of damages.

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THE COURT: Extra hundred bucks?

MR. DZARNOSKI: No. An extra 10,000, Your Honor. The minimum amount of the judgment is the jurisdictional limit of the Justice Court plus $100. So if they're out there with a $300 loan and they go to arbitration and they win and they get a money judgment against my client, in arbitration they get a judgment for a minimum of $10,100 plus attorney fees. So you tell me how this prejudices any of these customers to have -- to have the ability to go in and challenge in arbitration. This is what makes this so consumer friendly.

THE COURT: No, I think this is a better arbitration provision. I've said it a couple of times. This arbitration provision taken in total is a better arbitration provision than many I have seen. My concerns are, and I think I've hit them for you, are waiver and the public policy issue. And, you know, those are to me the two central concerns, because I think your client in drafting the agreement probably did a very, very good job. The question is once we get past the drafting and we're in the how do they act with respect to the agreement, we may have some problems.

MR. DZARNOSKI: But when you get to how you act -- and again, on the issue of waiver I've already covered the aspect that the cases that have been brought forward by plaintiffs' counsel are cases where we've proceeded in litigation as to a specific claim. They say we have never --

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we haven't shown a case to you where there's been this number of Small Claims Court actions that have been filed where a court has not found a waiver. Well, Your Honor, they haven't brought forth a case where anybody's filed Small Claims Court actions and collection agent actions in a Small Claims Court and subsequently had somebody or some court rule that there is a waiver. That has not happened, and they don't have a case that they can provide to you that shows that.

The fact of the matter is that the Rapid Cash defendants have not taken any action or filed any action or proceeded in any litigation that is inconsistent with their rights under this arbitration agreement. And again, and I can't emphasize the Stolt-Nielsen case enough, the Stolt-Nielsen case stands squarely for that proposition that the parties can decide which claims get arbitrated and which claims don't. And when the parties decide that, then that's the way the agreement is going to be enforced.

The Rapid Cash defendants have filed their actions in Small Claims Court because that was a carve out from the arbitration provision agreement. For a carve out, something not covered by the arbitration agreement, to now be considered a waiver of the agreement ignores the carve out to begin with. The carve out was there for a reason, and that reason was to prevent that from occurring.

Very briefly, this clearly is not a contract of

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adhesion when, as you noted, they have 30 days to opt out of the arbitration provision. Not only do they have the right to opt out of the provision, but they keep the money. This isn't a question where they opt out and they have to return the money and rescind the agreement. The agreement is in full force and effect, they keep the money, and the terms of the agreement -- the lending agreement stay in full force and effect.

I fear that one of the things that is going through your head, and Counsel is bringing this up, they're saying there's more than four people. And you're talking about case manageability already at this point in the litigation.

THE COURT: I don't know we're going to have more than four people, because the motion to certify a class is on the chamber calendar in a couple weeks, and I may not certify the class given the no class provision in the agreements. But that's a different issue that we're not doing today.

MR. DZARNOSKI: Okay. And there's other deficiencies there. But you're right. We have four people. That's what we've got. I don't care that there were 17,000 complaints filed or default judgments taken in this case. First of all, it's a big leap of faith for these plaintiffs to come forward to you, Your Honor, and tell you that there's going to be more than four people or that there's going to be a hundred or there's going to be a thousand. There is no

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evidence that they've presented, no evidence that has been presented in the criminal trial, no evidence before this Court or anywhere that this was a systematic and systemic problem that spanned for five years. And I have put in as a proffer of proof in one of our other motions that is before you the fact that I've spoken with the lead detective, Nate Chio [phonetic], in this case, and we are cooperating and providing information and names and contact information. And he's told me outright, I've contacted customers of Rapid Cash, I'm looking for victims so I can add you as a victim to our file, Rapid Cash, because you paid $500,000 for this guy to serve process, and he sits there and he tells me numerous people that he's interviewed acknowledge that they've been served process. I don't have a number yet of people who haven't been served process. Nor do they. Despite this ongoing investigation -- I mean, this has been in the papers for how long? Months.

THE COURT: Since this summer.

MR. DZARNOSKI: Yeah. And we have four --

THE COURT: I was on vacation.

MR. DZARNOSKI: We have a grand total of four customers of Rapid Cash who are saying that they weren't served. And there's no proof of that yet. They're just saying that they haven't been served or that they had no notice of these.

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Now, we have our own little goody bag when we get into discovery, if we have to, where we can show them the contacts that were made with these individual plaintiffs and what was done to apprise them of their problems and for them -- I mean, we're not at the evidentiary stage. But what you're faced with now is four people and a valid, binding arbitration agreement.

And, like I said, I fear that you're thinking down the road towards manageability issues that -- in a worst-case scenario. And believe me, if I were in your shoes as the person who has to handle this huge building, I might be doing the same thing. But my clients today are entitled to a decision based on the case that is before us. And that case before us is four people and a valid arbitration agreement and no issues of manageability, and the fact that each of these four people could walk in, demand arbitration after trying to set aside their judgment, get $10,100 plus attorney fees if they prevail, which is far more relief than they would ever get in a class action lawsuit. The class action lawsuit is not protecting their interests better than the arbitration would. It's being pursued for other purposes, but not for the protection and the ultimate outcome for these four people. And you shouldn't be making your decision based on those four people and manageability.

THE COURT: Thank you, Mr. Dzarnoski. I appreciate

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that. And I want to compliment counsel on the briefs. They were very well done, and the arbitration provision in my mind is very clear.

Unfortunately, the conduct of the defendant in its collection efforts in my constitutes a waiver of the right to elect arbitration. In the Court's opinion it is against public policy to allow litigation, even if it is in the Small Claims Court, and then require arbitration of those claims which arise from the alleged tortious and fraudulent conduct of defendants and its agents in those collection activities.

So the motion to compel arbitration and stay the proceedings is denied.

There's one other motion that's on calendar for today, and then there's also a motion to certify the class that is on for October 15th on the chambers calendar. First, do you want to have oral argument on the motion to certify the class, Mr. Dzarnoski?

MR. DZARNOSKI: Yes, Your Honor. I've made that request in my opposition.

THE COURT: Do you want me to move you to the 19th, or the 21st, a Tuesday or a Thursday?

MR. DZARNOSKI: Either one is fine.

MS. DORSEY: I think I'd prefer the 21st.

THE COURT: 21st?

MR. DZARNOSKI: Could we do both those motions, the

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one today and the certification of the class on that day?

THE COURT: Well, let me get to my note on that one, because I do have a note to ask a question. Shift my file a little here.

So, Susan, if we could move the motion that's on the 15th to the 21st.

And then the other motion we have is the motion for essentially a no contact order. Is that an easy way to phrase it?

MS. DORSEY: Yes.

THE COURT: And basically what you're asking me, Mr. Wulz and Ms. Popick, is that I not permit any additional collection efforts with requests to any Rapid Cash judgment at this point.

MR. WULZ: That's true. And we also have other concerns since they have judgments against a few of the class members, and we would have concerns about oral contacts with them, trying to get them to settle, give up their remedies in this case.

THE COURT: I'm not inclined to grant such a broad order until I certify the class. Do you want me to wait and hear the motion on the same day as I have the motion to certify the class?

MR. WULZ: That's -- it's more -- typically it's more appropriate to hear the motion for class cert and then

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the motion for a Rule 23 order.

THE COURT: So I'm going to continue that motion which is on today for the 21st, as well, Mr. Dzarnoski?

MR. DZARNOSKI: I'm sorry?

THE COURT: So the 21st, as well.

MR. DZARNOSKI: Yes.

THE COURT: Just so you're getting all these notes of dates.

MR. DZARNOSKI: Thank you.

THE COURT: Okay. Anything else?

MS. DORSEY: No.

THE COURT: Any housekeeping matters?

Thank you for coming. Go to your Department 9 case.

MS. DORSEY: Thank you.

THE PROCEEDINGS CONCLUDED AT 9:59 A.M.

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt — 10/14/10

FLORENCE HOYT, TRANSCRIBER — DATE

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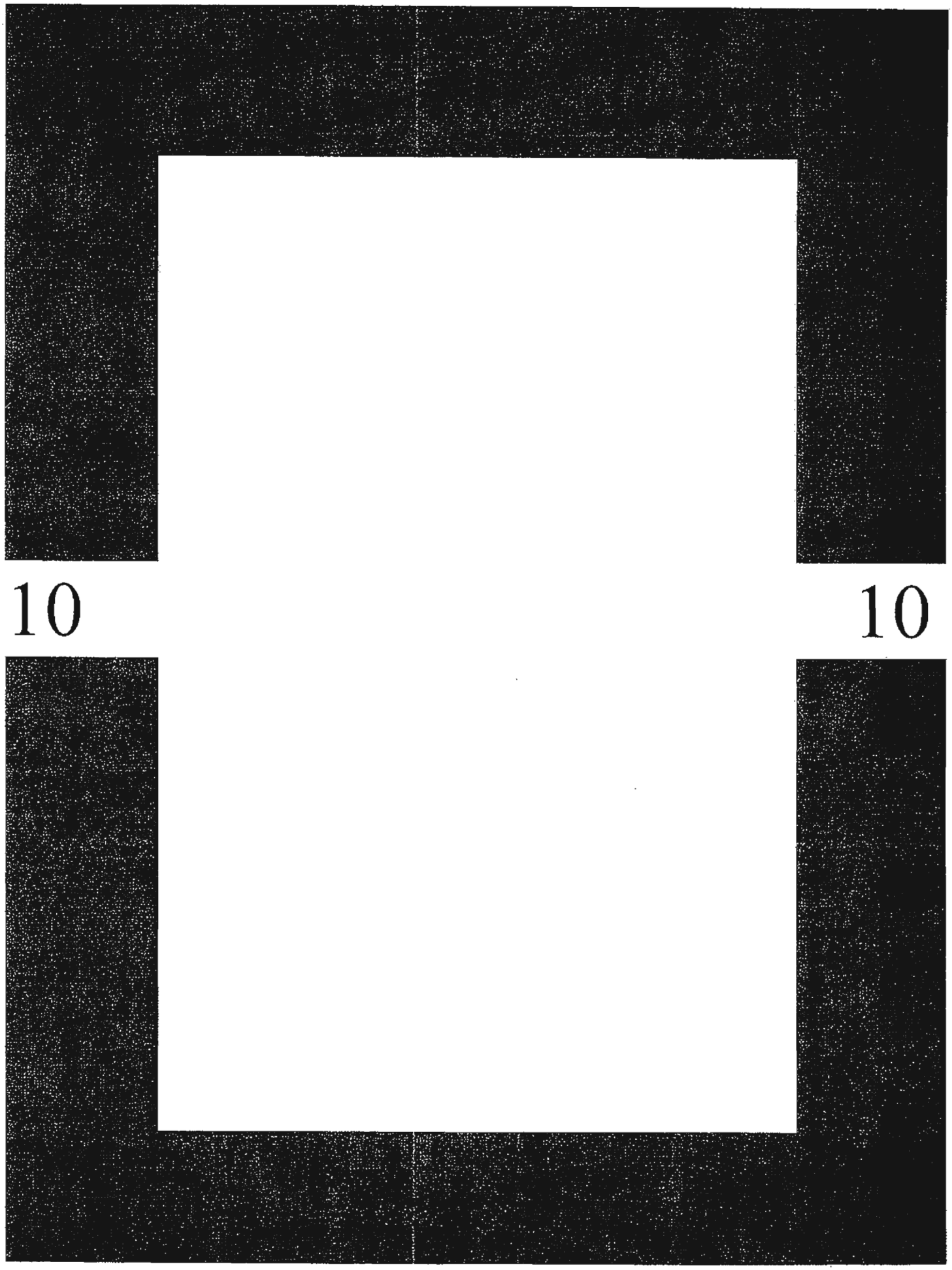

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DISTRICT COURT

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

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

Date of Hearing: October 21, 2010
Time of Hearing: 9:00 A.M.

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.,

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Legal Aid Center of Southern Nevada, Inc., hereby file this Reply.

This Reply 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 15th day of October, 2010.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In Plaintiffs' Motion For Rule 23 No Contact Order Or, Alternatively, For A Preliminary Injunction (the "Motion"), Plaintiffs requested 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 moved the Court to enter a Preliminary Injunction to preserve the *status quo*, with the same relief as that requested under Rule 23.

In Opposition, Rapid Cash claimed the requested Order was *inter alia* overbroad.[1] Plaintiffs hereby specify with greater particularity the relief requested and narrow the relief

[1] Rapid Cash also argued that borrowers who were served with process in Justice Court and thus have not been not injured are included due to the overbroad class definition. The definition of the Class will be addressed in Plaintiffs' Reply concerning class certification.

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requested as to Rapid Cash and its counsel as follows:

> 1. Prohibiting *ex parte* contact in writing concerning this litigation, which inherently includes the underlying Justice Court litigations, other than normal business communications, without prior approval of the Court.
>
> 2. Prohibiting *ex parte* oral contact which might concern or relate to any effort to settle and/or obtain a release of any claim made in this litigation, which inherently includes the underlying Justice Court litigations.
>
> 3. Prohibiting *ex parte* oral contact which might concern or relate to any effort to obtain a disavowal, disapproval or a desire to opt out of this litigation.
>
> 4. Prohibiting any action in the underlying Justice Court litigations against any member of the putative Class which has the effect of limiting or mooting any remedy available herein, without prior approval of the Court.
>
> 5. Collection of any Justice Court judgment against a putative Class member who has indicated they were not served with process.[2]

As narrowed, the relief requested is entirely appropriate under Rule 23, or alternatively may be ordered as a preliminary injunction.

II. THE RELIEF REQUESTED IS APPROPRIATE UNDER RULE 23

A. The Evidence

Rapid Cash complains of a lack of proof of the main issue of liability, to wit: that employees of On Scene Mediations did not serve process upon members of the putative Class in Rapid Cash's Justice Court actions. Of course, the case has just begun and the putative Class has not been provided the opportunity to obtain any discovery, much less discovery on a class-wide basis. Regardless, we do know this much: (1) the Justice Court noticed a pattern of a unreasonably high number of On Scene Mediations affidavits of service of process attesting that the documents were personally served on the day they were received (a near-miracle in process serving) (Declaration of Detective N. Chio, attached as Exhibit No. 1); (2) in the rare case that a

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[2] Plaintiffs no longer seek an order with respect to present ongoing collection from putative Class members at this time. Rapid Cash, however, should be well advised that ongoing collection from putative Class members on judgments which indeed are void will create requests for additional and enhanced relief herein.

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 (Id.); (3) 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 (Id.); (4) Sergio Pinto told Metro that Maurice Carroll also directed him to falsify affidavits of service (Id.); (5) 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 (Id.); (6) Maurice 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 (Id.); (7) in August, 2010, Maurice Carroll and Vilisia Coleman were both criminally indicted (judicial notice); (8) Coleman's criminal defense attorney, meanwhile, has stated in open court that On Scene Mediations owner Maurice Carroll had procedures in place to commit criminal wrongdoing long before she was hired (Exhibit No. 2, attached); (9) all four Plaintiffs were not served with process when Rapid Cash filed an affidavit of service of process completed by an On Scene Mediations employee (Plaintiffs' Affidavits attached to Plaintiffs' Motion To Certify Class); (10) Maurice Carroll was convicted on 34 of 34 counts of perjury in completing affidavits of service of process for Richland Holdings (judicial notice). It would strain credulity to believe that On Scene Mediations behaved any differently in its service of process practices depending upon the identity of the creditor.

Accordingly, while it is not the position of the Plaintiff Class that On Scene Mediations *never* served process upon a Rapid Cash defendant, all objective evidence points toward a high probability that hundreds if not thousands of putative Class members were not served.

B. No or Limited Contact Orders under Rule 23

On this issue, Defendants typically cite and selectively quote from Gulf Oil v. Bernard, 452 U.S. 89 (1981), as Rapid Cash has done in its Opposition. But, Gulf Oil concerned a quite bizarre district court order imposing a complete ban on all communications by *Plaintiff Class*

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Counsel concerning the class action *with counsel's own putative class* (as well as on the parties and their counsel, but Gulf Oil was exempted from the order as to communications involving an earlier EEOC conciliation agreement and its settlement process, which undercut the entire class action litigation). It is hardly surprising this generated a unanimous United States Supreme Court opinion finding the district court abused its discretion in limiting "communications from named plaintiffs and their counsel to prospective class members, during the pendency of a class action." Id., at 91. As such, the Court's analysis was set in the context that the order "...created at least potential difficulties for them [class counsel] as they sought to vindicate the legal rights of a class of employees," "...interfered with their efforts to inform potential class members of the existence of this lawsuit...," and "made it more difficult for ... the class representatives, to obtain information about the merits of their case from the persons they sought to represent." Id. at 101. It was in the next sentence that the Court said:

> *Because of these potential problems*, 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. Only such a determination can ensure that the court is furthering, rather than hindering, the policies embodied in the Federal Rules of Civil Procedure, especially Rule 23.

Id., at 101-102 (emphasis supplied). Moreover, as concerns the policies embodied in Rule 23 that should be furthered rather than hindered, the Court had earlier said: "Class actions serve an important function in our system of civil justice." Id., at 99. We then see further evidence that the Court was looking at Rule 23 no contact orders through the lens of furthering the policies in Rule 23 when it said: "But the mere possibility of abuses does not justify routine adoption of a communication ban *that interferes with the formation of a class or the prosecution of a class action in accordance with the Rules.*" Id., at 104. When Defendants—as Rapid Cash has done in its Opposition—pick phrases out of Gulf Oil to give the impression that Rule 23 no contact orders can be imposed only in the most narrow of circumstances on Defendants (who, indeed, may be seeking to hinder Rule 23 policies by preventing the formation of a class or the prosecution of a class action), they turn the rationale of Gulf Oil on its head.

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And of course, courts have so read Gulf Oil in imposing Rule 23 no contact orders on defendants in class actions. Kleiner v. First Ntl. Bank of Atlanta, 751 F.2d 1193 (11th Cir. 1985) (Rule 23 no contact order imposed on bank, and bank's counsel sanctioned for soliciting exclusion requests from potential class members), contains a careful analysis of Gulf Oil. In Kleiner, the defendant Bank organized a force of 175 loan officers to telephone potential class members to, according to the Bank, "insure that the class members in the Kleiner litigation understood the merits of the dispute and their right to opt out" with the objective being "to persuade the borrowers to 'withdraw from the class.'" Id., at 1198. Needless to say, the Court had little trouble in saying and holding:

> Unsupervised, unilateral communications with the plaintiff class sabotage the goal of informed consent by urging exclusion on the basis of a one-sided presentation of the fact, without opportunity for rebuttal. The damage from misstatements could well be irreparable. * * * The Bank's actions obstructed the district court in the discharge of its duty to 'protect both the absent class and the integrity of the judicial process by monitoring the actions before it.' The Bank's subterfuge and subversion constituted an intolerable affront to the authority of the district court to police class member contacts. Accordingly, we hold that the trial court had ample discretion under Rules 23(b)(3) and 23(d) to prohibit the Bank's overtures.

Id., at 1203 (internal citations omitted). But more importantly under the circumstances presented at this early stage of litigation herein, the Court found that particularized findings and explicit proof or findings of harm or injury were not required, not when a communication is *inherently* conducive to overreaching, and a court can *prevent harm before it happens*:

> [I]t is unnecessary for a trial court to issue particularized findings of abusive conduct when a given form of speech is inherently conducive to overreaching and duress. * * * Under such circumstances, 'the absence of explicit proof or findings of harm or injury is immaterial,' and the trial court is empowered to enter prophylactic orders designed to prevent harm before it happens.
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> Given the inherent coercion conveyed by the Bank's covert campaign, we agree that the district court possessed the authority to regulate such contacts without the predicate record and findings required in *Bernard*.

Id., at 1206 (internal citations omitted).

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Another reason the Kleiner case is so important here is that it cogently observes that where the parties to the litigation have an ongoing business relationship, communications from the class opponent may be inherently coercive:

> The class consisted of Bank borrowers, many of whom were dependent on the Bank for future financing. Bank customers affected by the litigation included 'those who anticipated seeking a note "rollover," new loans, extension of lines of credit, or any type of discretionary financial indulgence from their loan officers, and who did not have convenient access to other credit sources.' As the district court pointed out, the high number of exclusion requests was witness to the inherent coercion of the Bank's machinations.

Id., at 1202 (internal citations omitted). Here, the putative Class consists of Rapid Cash borrowers, and Rapid Cash *has a judgment against* every member of the putative Class. The power of a judgment creditor is substantial, and even more so against unsophisticated payday loan borrowers who now find themselves as judgment debtors.

Lastly, this Court should prohibit any action in the underlying Justice Court litigations against any member of the putative Class which has the effect of limiting or mooting any remedy available herein, without prior approval of the Court.

The Court must exercise its power and duty under Rule 23 to protect the putative Class, and to prevent harm before it happens by policing class member contacts.

III. ALTERNATIVELY, A PRELIMINARY INJUNCTION IS APPROPRIATE

Although Rule 23(d) plainly grants this Court the broad power to police class member contacts, that same relief is also available through this Court's equitable power to grant injunctions.

The irreparable harm from the narrow scope of communications sought to be enjoined is self-evident. There can be no doubt that it would irreparably harm a putative Class member to be secretly approached to have his/her claim herein (and the underlying Justice Court actions) settled and released, or to be approached about opting out of or disavowing the class as well. Repeating Kleiner, *supra.*:

> Unsupervised, unilateral communications with the plaintiff class sabotage the goal of informed consent by urging exclusion on the basis of a one-sided presentation of the fact, without opportunity

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> for rebuttal. The damage from misstatements could well be irreparable.

Id., at 1203. It is true as well that, under the circumstances present here, any putative Class member who has disavowed service should not be subjected to ongoing collection on a void judgment.

IV. CONCLUSION

The Class respectfully requests that this Court grant a Rule 23 *limited* contact Order or Preliminary Injunction to prevent Rapid Cash and its counsel from the following:

1. Prohibiting *ex parte* contact in writing concerning this litigation, which inherently includes the underlying Justice Court litigations, other than normal business communications, without prior approval of the Court.

2. Prohibiting *ex parte* oral contact which might concern or relate to any effort to settle and/or obtain a release of any claim made in this litigation, which inherently includes the underlying Justice Court litigations.

3. Prohibiting *ex parte* oral contact which might concern or relate to any effort to obtain a disavowal, disapproval or a desire to opt out of this litigation.

4. Prohibiting any action in the underlying Justice Court litigations against any member of the putative Class which has the effect of limiting or mooting any remedy available herein, without prior approval of the Court.

5. Collection of any Justice Court judgment against a putative Class member who has indicated they were not served with process.

DATED this 15th day of October, 2010.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: /s/ DAN L. WULZ
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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 15th day of October, 2010, I placed a true and correct copy of the attached **PLAINTIFFS' REPLY TO OPPOSITION TO MOTION FOR RULE 23 NO CONTACT ORDER OR, ALTERNATIVELY, FOR A PRELIMINARY INJUNCTION** via facsimile and in the United States Mail, postage fully pre-paid thereon addressed as follows:

By U.S. Mail and Facsimile to:

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

By U.S. Mail to:

Maurice Carroll
6376 Briney Deep Ave.
Las Vegas, NV 89139

Maurice Carroll
5911 Red Dawn St.
North Las Vegas, NV 89031

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

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EXHIBIT "1"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF WARRANT/SUMMONS

(N.R.S. 171.106)
(N.R.S. 53 amended 07/13/93)

EVENT: 100629-2141

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

MAURICE CARROLL
ID#1030280

DETECTIVE N. CHIO, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 14 years, assigned to investigate the crime(s) of PERJURY (17CTS.), FALSIFYING INSTRUMENT TO BE FILED IN COURT (17CTS.), OBTAINING MONEY UNDER FALSE PRETENSES committed on or about May 2010 - June 2010, which investigation has developed MAURICE CARROLL as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

On May 6, 2010, at 1330hrs., Sgt. M. Pence and I met with Justice Court Judges Dianne Sullivan and Melissa Saragosa at the Regional Justice Center. The purpose of the meeting was to discuss possible criminal activity discovered by the two judges involving civil process servers, and several lawyers. Also present at that meeting was Colin T. Murphy from the State of Nevada Private Investigators Licensing Board.

Judge Sullivan and Saragosa told us the following:

On every civil case, the person being sued must be formally served a summons and complaint filed by the lawyers representing the plaintiffs, to ensure that the person being sued has due process and is aware of the lawsuit. This is routinely done by process servers who are either contracted by the lawyers or work directly for the lawyer. The process servers are regulated by the State of Nevada Private Investigators Licensing Board. There are three different types of service that the process server can conduct:

1. Personal service: when the process server serves the actual person being sued by handing that person the summons and complaint.

2. Sub-service: when the process server serves a person of legal age and who is related to the person being sued such as a spouse, significant other, or family member.

3. Public notice: After the process server has made several attempts at service and can't serve anyone, the summons and complaint is published publicly in the newspaper.

The process servers fill out a sworn affidavit of service under penalty of perjury, which details the date they received the summons from the lawyer, the date they served the defendant, where they contacted the defendant during service, and also whether the service was done personally, sub-serviced, or the due diligence attempts of service for public notice. These affidavits of service are then notarized, under penalty of perjury, and filed with the court by the attorney.

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Prior to January 2009, civil cases were distributed to all Justice court judges. After January 2009, all civil cases were assigned to Judges Sullivan and Saragosa. Since that date, the two judges have become very familiar with the lawyers , plaintiffs, and names of the process servers involved in the cases. The two judges began noticing some peculiarities in the cases involving several lawyers. The lawyers were Lizzie Hatcher, who represents Rapid Cash; Wilde and Associates who routinely represent Richland Holdings; and Shumway Van & Hansen who also routinely represent Richland Holdings.

They noticed that cases involving these lawyers routinely went to a default judgement. The plaintiffs were providing the court with an affidavit of service of the defendant, but the defendant was not present and the plaintiffs were granted a default judgement in their favor. In those instances that the defendants would claim they were never served, the judges would set an evidentiary hearing. However, in each case the plaintiffs counsel would stipulate to setting aside the default judgement instead of having the process server come in and testify.

On numerous affidavits of service, the process server would only use their first initial and last name, which made it difficult to identify the process server. Also, on numerous affidavits, the process server would receive several summons and be able to serve the defendants the same day, which was highly suspect. The judges also noticed that the signatures on the affidavits of service from the same process server were sometimes noticeably different.

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Judge Sullivan and Saragosa felt that on numerous occasions, the court was in effect, being provided false documents which deprived the defendants their due process and was also against the law. They suspected that the affidavits of service were false, which constituted the crime of perjury by the process servers. They felt ethically bound to report their suspicions but also stressed that they needed to remove themselves from the investigation so that they may remain impartial as judges.

Judge Sullivan's executive assistant, Jennifer Clark had been compiling data on these suspicious cases on behalf of the judges. She provided me a printout and copies of the cases in question and also several names of the process servers that had completed suspect affidavits of service.

From examining several of the cases, several names of the process servers and/ or notary publics seemed to be recurring more than others. These were Maurice Carroll, Lizzie Hatcher, Terri Smith, and Visilia Coleman. I was able to identify each of these individuals through SCOPE and Nevada Department of Motor Vehicle (DMV) records as having the following personal identifiers:

- Maurice Carroll DOB [redacted], LVMPD ID# [redacted] Nevada DMV license number [redacted] with a listed address of [redacted] North Las Vegas, Nevada.
- Lizzie Hatcher DOB [redacted] LVMPD ID# [redacted] Nevada DMV license number [redacted] with a listed address of [redacted] Las Vegas, Nevada.
- Terri Smith DOB [redacted]. Nevada DMV license number [redacted] with a listed address of [redacted], Las Vegas, Nevada 89115.
- Visilia Coleman DOB [redacted], LVMPD ID# [redacted] Nevada DMV license number [redacted] with a listed address of [redacted]

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According to Maurice Carroll's SCOPE records, Carroll was a former police officer with the Las Vegas Metropolitan Police Department (LVMPD). Your declarant conducted a records check with LVMPD personnel department and learned that Carroll was hired in September 1990 and was terminated in March 2000. During his career with LVMPD, Carroll underwent Defensive Tactics training, firearms training and also training in police tactics. Carroll also has a current Concealed Weapons Permit authorizing him to carry a Springfield XD .45 semi-automatic handgun. On his application, Carroll listed his address as [redacted] North Las Vegas, Nevada. Your declarant also learned through an administrative subpoena to Nevada Power and Southwest Gas that Maurice Carroll currently has service at that address from both companies. A check through LVMPD Pawn records also showed that Carroll has numerous firearms registered to him. Carroll has a prior arrest for Coercion with Force in 2008.

Your declarant discovered that all the suspects were notary publics for the State of Nevada. Hatcher is also a licensed attorney in Nevada. On all of the suspected cases of false service, one of the four persons listed above were the Notary Publics on the affidavits. With the exception of Lizzie Hatcher, the other three suspects also completed affidavits of service as process servers.

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Upon reviewing the cases given by Judge Sullivans clerk, I noticed that there were several instances where the process server was able to serve an extraordinarily large amount of persons in one day. For instance, on June 19, 2008, Visilia Coleman served 38 affidavits of service, all of which were notarized by Maurice Carroll. This is indicative of what has been called"sewer service" and "superman syndrome" by the courts, where process servers falsely claim to have served affidavits when they have not and when a large amount of affidavits are falsely claimed to have been served at one time.

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Your declarant learned through court filings that Visilia Coleman was listed as being employed by a company called On Scene Mediations with an address of [redacted] North Las Vegas, Nevada 89031. Your declarant conducted a public records check of On Scene Mediations, and learned that Maurice Carroll was listed as the business owner of On Scene Mediators through the City of North Las Vegas business license database. However, the license for the business expired in 12-31-2004. I also learned that Carroll had obtained a Fictitious Firm name certificate for On Scene Mediations, filed in August 2009.

Your declarant contacted Colin Murphy from the Nevada Private Investigators Licensing Board (PILB), who licenses process servers and process serving companies, and asked him to query their database to check if On Scene Mediations was a licensed process serving company, and also if Maurice Carroll, Visilia Coleman, and Terri Smith were licensed process servers. Colin Murphy informed me that none of the persons were licensed and On Scene Mediations was not a licensed company. Mr. Murphy also told me that Carroll had been previously cited in 2003 for doing business as On Scene Mediations as a process serving company without a license from the PILB. Mr. Murphy provided a copy of the citation dated December 23, 2003.

On June 21, 2010, your declarant contacted Paul Liggio, the owner of Richland Holdings Inc, and Acctcorp of Southern Nevada. Richland Holdings was on numerous court filings with suspected false affidavits of service connected with Carroll and Visilia Coleman. Richland Holdings is a collection agency contracted by several local companies. Liggio told me that he uses several process serving companies, including On Scene Mediations. Liggio stated that he has been using On Scene Mediations

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for several years and knows that Maurice Carroll is the owner and that Visilia Coleman is one of his employees who regularly comes to their office to pick up court papers and to drop off invoices. Liggio provided me a copy of the last invoice that he paid to On Scene Mediation dated June 14, 2010. The invoice showed Carroll billed Liggio for the service of 23 persons for a total cost of $750. Liggio also provided me a copy of the negotiated check he paid to Carroll for $750. The check was drawn on Richland Holdings business account through Wells Fargo bank and deposited into a business account at Bank of America by W.A.M. Rentals LLC. DBA On Scene Mediation, account number [redacted] on June 14, 2010.

Liggio provided me a copy of all the affidavits of service completed by Carroll. Each affidavit of service was signed by Maurice Carroll and notarized by Terri Smith. Although Liggio was billed for 23 persons, only eighteen affidavits of service were completed. This was due to one affidavit of service being used for a husband/wife service. For instance, Roger and Elizabeth Alvarez were allegedly served using one affidavit of service on Elizabeth Alvarez.

Criminal Intelligence detectives attempted to contact each person allegedly served by Carroll, and were able to contact all except Stacey Barrack. All the persons contacted claimed to never have been served any court papers during the times stated by Carroll in the affidavits he completed. In several instances, there was no way that Carroll had served the person he claimed to have. The following is a synopsis of the follow up investigation and interviews conducted with the persons contacted:

1. **Roger and Elizabeth Alvarez; alleged date of service on May 13th, 2010 at 0945hrs., at [redacted], Henderson, Nevada, in person on Elizabeth Alvarez.** On June 29, 2010, Declarant went to the above address, also known as the Villa Serena Apartments. After getting no answer at the apartment, I contacted the front office to inquire if Roger and Elizabeth Alvarez lived there. Shilo Wasilko, a rental agent of the apartment complex, told me that the Alvarez's had not lived at that apartment since April, 2010. She stated that they had moved to another apartment inside the same complex, apartment [redacted], on April 2, 2010. I left my contact information with Wasilko and asked her to have Elizabeth Alvarez contact me. Later that day, I received a phone call from Elizabeth Alvarez who corroborated the above facts and confirmed she was never served any court papers. Alvarez completed a voluntary statement to the above facts.

2. **Stacey Barrack; alleged date of service on May 13, 2010 at 1035hrs., at [redacted], Henderson, Nevada, 89002, on "boyfriend, co-occupant".** On June 25, 2010 and on July 6, 2010, detectives went to the above address to attempt to contact Barrack. On both occasions, there was no answer at the residence. Business cards were left on the front door, but no contact has been made at this time.

3. **Brent A. Cox; alleged date of service on May 13, 2010 at 1115hrs., at [redacted] Henderson, Nevada, 89074, in person on Brent A. Cox.** Detective Denton went to that address and saw that the home was vacant and for sale. Declarant contacted the listing real estate agent, Jacob Mitro from ReMax Advantage who told me that Mr. Cox had moved to England in March 2010 and the home had been vacant since then. Declarant contacted Agent William Hedges from Immigrations and Customs Enforcement, who confirmed that according to US Customs records,

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Brent Cox left the United States on March 31, 2010 from Atlanta, Georgia to Manchester, England and as of this date, there was no record of re-entry into the United States. Declarant asked Mr. Mitro to get in touch with Brent Cox. Mitro told me that the only contact he has had with Cox has been via email and that he would forward my contact information to him. On July 12, 2010, Declarant was able to contact Cox via long-distance telephone and obtained a taped voluntary statement with his consent to the above facts.

4. **Charmaine Fobbs; alleged date of service June 13, 2010 at 1135hrs., at [redacted] Las Vegas, Nevada, in person on Charmaine Fobbs.** Detective Downing P#7042 attempted to contact Fobbs at that address on June 30, 2010 and received no answer at the apartment. Det. Downing contacted the apartment manager at the front office, Michael Mortensen (702) [redacted]. Mortensen told Det. Downing that Fobbs moved out in April 2010 and left no forwarding address or contact number. Mortensen provided Det. Downing a copy of the final account statement for Fobbs which showed the move out date of April 21, 2010.

5. **Oyuki Gainey and Doan Gainey; alleged date of service May 13th, 2010 at 1045hrs., at [redacted] North Las Vegas, Nevada, 89081, in person on Oyuki Gainey.** On June 24, 2010, Detective Hunkins P#7309, contacted Oyuki Gainey at her home. Gainey stated she was at work during that time, never received any court documents and filled out a voluntary statement to that fact.

6. **Robyn Haskett; alleged date of service May 13, 2010, at 0900hrs., at [redacted] Las Vegas, Nevada, 89130, served on "Joyce, co-occupant..".** Detective Hunkins contacted Haskett on July 2, 2010. Haskett told Detective Hunkins she had moved from that address in February 2010, and did not know a "Joyce". Haskett also stated she was in Ebeneezer, Mississippi on that date on vacation.

7. **Joshua T. Howard; alleged date of service on June 13,2010, at 0018hrs., at [redacted], Las Vegas, Nevada, served in person on Joshua T. Howard.** Detective Gregory P#4112, contacted Howard on June 28,2010. Howard claimed to never being served on that day or within the last 90 days.

8. **Tisha and Thomas Keiser, alleged date of service on May 13, 2010, at 0915hrs., at [redacted] North Las Vegas, Nevada, served in person on Tisha Keiser.** Detective Downing contacted Tisha Keiser on June 30, 2010. Keiser stated she had not been served any court papers and was at work from 0826hrs. to 1536hrs. on that day.

9. **Gendi Masin Devazzo, alleged date of service on May 13, 2010, at 1025hrs., at [redacted] Las Vegas, Nevada, served in person on Gendi Masin Devazzo.** Declarant contacted Masin Devazzo on June 29, 2010. She stated she never lived at that address and has lived at her current address, [redacted] since February 2009.

10. **Brandy Norris, alleged date of service on June 13, 2010, at 1130hrs., at [redacted] North Las Vegas, Nevada 89084 in person on Brandy Norris.** Detective Downing

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contacted Norris on June 30,2010. Norris stated she was never served any paperwork and was at work from 0800hrs.- 1600hrs. on that day.

11. **Jennifer Olson, alleged date of service on May 13, 2010, at 1100hrs., at [redacted], Henderson, Nevada, 89015, in person on Jennifer Olson.** On June 30, 2010, declarant went to the above address and contacted the current resident, Daniel Ortiz. Ortiz stated that he had lived there since April 2010 and did not know a Jennifer Olson. Ortiz gave me a contact number for the owner of the home, who is Ortiz's landlord. I spoke with the owner of the home, Dustin, who was able to confirm that Jennifer Olson had not lived at that address since April and would give my number to her to contact me. I spoke with Olson later that day and she confirmed that she had moved from [redacted] in April 2010, and arranged for her to meet with Detective Hunkins the following day to complete a statement.

12. **Guillermo T. Ramos, alleged date of service on May 13, 2010, at 1055hrs., at [redacted], Henderson, Nevada, 89015, in person on Guillermo T. Ramos.** On July 1, 2010, declarant contacted Ramos who claimed to have never been served any court papers on that day. Ramos claimed to have been on his way to work at that time since he starts his shift at 1130hrs at McCarran International airport, which is an approximately 40 minute commute.

13. **Matt Rich, alleged date of service on June 13, 2010 at 1045hrs., at [redacted] Henderson, Nevada, 89002 in person on Matt Rich.** On July 6, 2010, declarant contacted Desiree Conriquez, the resident at the above address. She stated that Matt Rich was her ex-boyfriend who she has a child in common with and does not live at that address. She forwarded my contact information to Rich who later called me that day. Rich stated he was never served any court paperwork and currently lives in St. George, Utah. Rich agreed to do a taped statement over the telephone since he was not in town.

14. **Cesar Sanches, alleged date of service on May 13, 2010, at 1125hrs., at [redacted] Las Vegas, Nevada, 89104 in person on Cesar Sanches.** On July 1, 2010, declarant attempted to contact Sanches at the above listed address. When I arrived there I found that [redacted] did not exist. The homes there go from [redacted] Avenue to [redacted] Avenue.

15. **Randy Sebastian, alleged date of service on May 13, 2010, at 1105hrs., at [redacted], Henderson, Nevada 89074, in person on Randy Sebastian.** Declarant contacted Mr. Sebastian, he told me that he was never served and had not lived at that address for several months. The apartment complex manager confirmed to investigators that Mr. Sebastian had moved out of his apartment on March 31, 2010.

16. **Nicole Tetrev, alleged date of service on May 13, 2010, at 0955hrs., at [redacted] Henderson, Nevada 89012, in person on Nicole Tetrev.** On June 23, 2010, Detective Denton contacted Tetrev at her home. Tetrev claimed to have never been served any court paperwork and stated she was at work at the Mirage Hotel & Casino at that time. I confirmed with Tetrev's supervisor, Mary McKenzie, that Tetrev was at work that day. McKenzie

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provided me a copy of Mirage's employee management database confirming that Tetrev did work that day, clocking in at 0748hrs and clocking out at 1548hrs.

17. **Aaron Valentine, alleged date of service on June 13, 2010, at 1010hrs., at [redacted] Henderson, Nevada 89002, in person on Aaron Valentine.** Detective Hunkins contacted Valentine on July 1, 2010. Valentine claimed to never been served and stated he was out of town in Utah with his family on that date.

18. **Valerie Villanueva, alleged date of service on June 13, 2010, at 1145hrs., at [redacted], Las Vegas, Nevada, 89122, served on "..her boyfriend, co-occupant..."** Declarant contacted Villanueva on June 29, 2010. Villanueva claimed to have never been served, and stated she was home the whole day on June 13, 2010.

Voluntary statements were obtained from those persons contacted by detectives. Due to the fact that Carroll did perpetrate a scheme to defraud by acting as a licensed process server/ company, claiming to have served persons when he, in fact did not ,and charging Liggio's company for the service, a crime report was completed for Liggio for the crime of Obtaining Money Under False Pretenses, listing Maurice Carroll A.K.A. On Scene Mediations as the suspect.

On June 30, 2010, Declarant obtained a search warrant for Carroll's residence at [redacted] North Las Vegas, Nevada. The search warrant was signed by Judge T. Williams. LVMPD SWAT team was utilized for the service due to Carroll's prior law enforcement training. The warrant was executed without incident. Several persons were taken into custody, including Maurice Carroll. Two other persons, whose name I recognized as process servers from the copies of documents provided to me were also taken into custody, Niekyta Lonsoria DOB [redacted] and Sergio Pinto DOB [redacted].

Declarant conducted post Mirandas interviews and subsequent taped statements with all three suspects. Det. Denton P#7306, was also present during all three interviews.

The first suspect I interviewed was Niekyta Lonsoria. Lonsoria stated that on several occasions, she signed Affidavits of Service at the direction of Carroll, without ever having gone out to do the services, in effect falsifying affidavits. Lonsoria stated she was paid by Carroll $200 to do this.

I next interviewed Pinto who stated he has worked for Maurice Carroll for three years as a process server. Pinto stated that the majority of times, he would serve persons with court papers and fill out affidavits of service swearing to that fact. However, Pinto told us that on several occasions, he was told by "the ladies in the office", who he identified as Lisa and Yvette, to falsify affidavits. He also stated that Carroll himself directed him to falsify affidavits on several occasions.

Carroll was interviewed last. During the interview with Carroll, he admitted to falsifying all of the affidavits he billed to Richland Holdings on June 14, 2010, which I had been investigating. Carroll stated his office manager, Vilisia Coleman told him the documents had been served while he was out of town. Carroll stated it was bad judgement on his part to falsify the service but he had faith in his office manager

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF WARRANT/SUMMONS

EVENT: 100629-2141

that the documents had been served. However, Carroll signed the documents saying that he himself served the documents, falsifying the affidavit of service.

The original affidavits of services signed by Carroll were recovered from Richland Holdings office, Justice Court and Henderson Justice Court by me and impounded into evidence. Arrangements were made by Liggio to have the court papers properly served by another process serving company.

From the evidence gathered it appears that Maurice Carroll is perpetrating an ongoing scheme to defraud the courts and his "clients" using his false business of On Scene Mediation. Each false affidavit filled out by Maurice Carroll is an act of Perjury in violation of NRS 199.120 and Falsifying an Instrument to be filed in court in violation of NRS 239.300. From the invoice dated June14, 2010, billed by Carroll to AcctCorp A.K.A. Richland Holdings for $750, Investigators confirmed that Carroll did falsify seventeen affidavits of service and defrauded AcctCorp A.K.A. Richland Holdings out of $750.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect MAURICE CARROLL on a charge(s) of PERJURY (17CTS.), FALSIFYING AN INSTRUMENT TO BE FILED IN COURT (17CTS.), OBTAINING MONEY UNDER FALSE PRETENSES.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 21st day of July, 2010.

DECLARANT: _____

WITNESS: _____ DATE: 7-21-10

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EXHIBIT "2"

Sep. 02, 2010

Suspect in court documents case directs blame at business owner

By JEFF GERMAN
LAS VEGAS REVIEW-JOURNAL

Vilisia Coleman, the former office manager of an embattled process serving company, was a "pawn" in a courthouse scheme to file false affidavits, her lawyer told a district judge on Wednesday.

Attorney Dan Winder said the company's owner, Maurice Carroll, had "procedures in place" to commit criminal wrongdoing long before Coleman went to work for the company.

Winder would not elaborate, but he told District Judge Elissa Cadish that his client, whom he described as an "avid churchgoer," is not "as culpable as the allegations make her out to be. This is a defensible case."

Carroll's lawyer, Craig Mueller, declined to comment on Winder's allegations.

Coleman, a 46-year-old convicted felon, pleaded not guilty to a nine-count felony indictment, charging her with perjury and filing false court documents and a false notary public application with the state.

Cadish reduced her bail from $50,000 to $35,000, despite objections from Chief Deputy District Attorney Mike Staudaher, who cited her criminal history. An Oct. 4 trial was set.

The charges are tied to what authorities call a sweeping scheme by Carroll's unlicensed company, On Scene Mediations, to file false affidavits that allowed payday loan and debt collection companies to get Justice Court default judgments.

Las Vegas Justice Court officials plan to review some 20,000 default cases that might have links to On Scene Mediations in an effort to determine whether the rights of the defendants were violated. Las Vegas Police believe the company has been operating without a license since 2003.

Carroll, a 41-year-old former Las Vegas police officer, faces a separate 35-count indictment charging him with perjury and filing false court documents. In an interview with detectives earlier this year, Carroll blamed his troubles on Coleman, who has since left the company.

Authorities allege in both criminal cases that Carroll and Coleman lied in the notarized affidavits when swearing they had served defendants with copies of court papers on behalf of debt collection agency Richland Holdings. The company obtained default judgments after the defendants failed to respond to the lawsuits.

Contact Jeff German at jgerman@review journal.com or 702-380-8135 or read more courts

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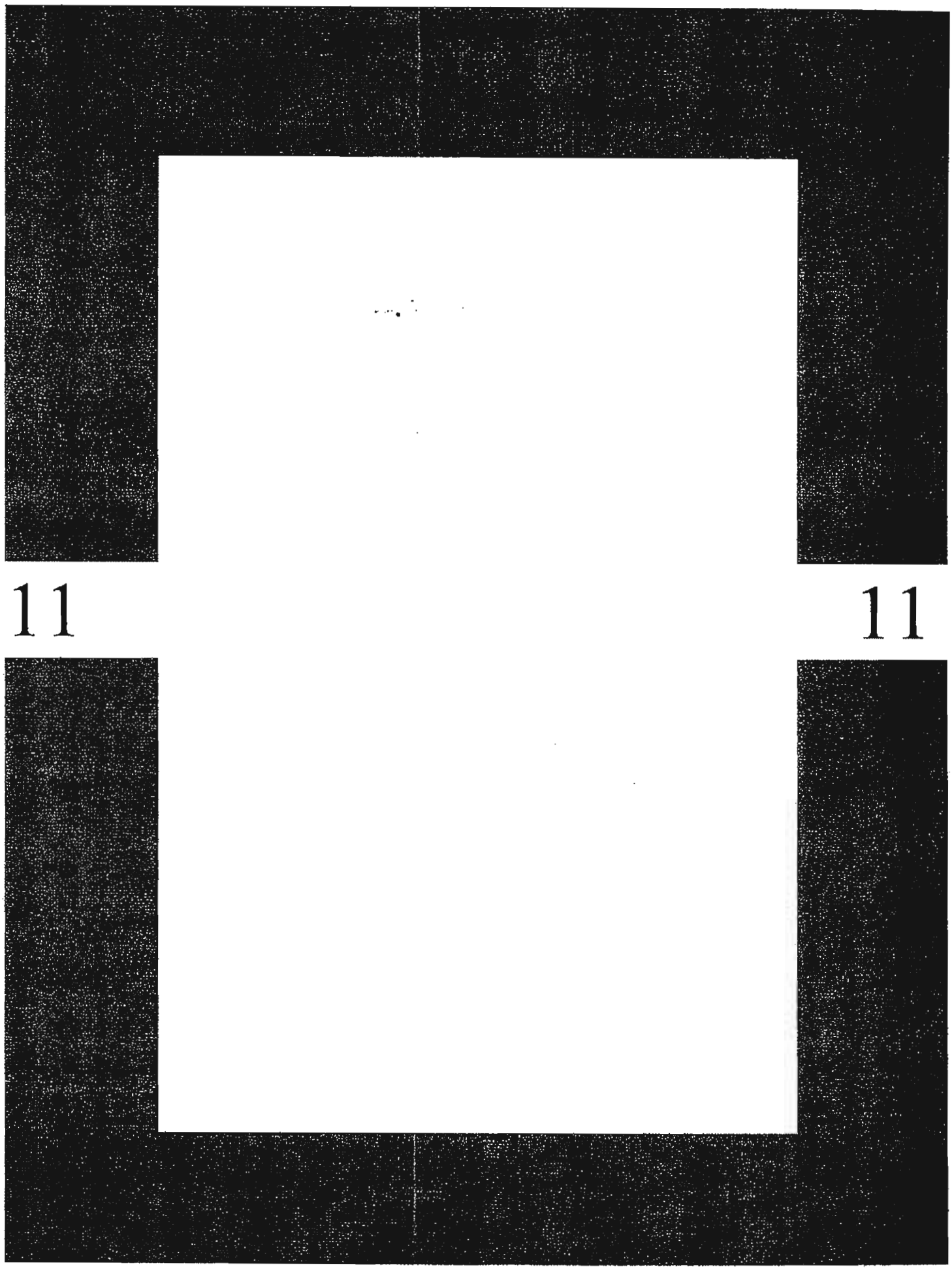

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DISTRICT COURT

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

REPLY IN SUPPORT OF MOTION TO CERTIFY CLASS

Date of Hearing: October 21, 2010
Time of Hearing: 9:00 AM

I.

INTRODUCTION

Rapid Cash's lead arguments in opposition to Plaintiffs' class certification motion are based on the premise that this Court rejected last week when denying Rapid Cash's Motion to

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Compel Arbitration: this class action is prohibited because Rapid Cash's lending agreements with its payday loan customers bar the courthouse doors for these victims of Rapid Cash's outrageous tortious conduct. These arguments fail for the very same reasons that Rapid Cash's arbitration clause is unenforceable. Rapid Cash's class action ban has no force or effect because it is contained inside the arbitration clause that this Court already deemed waived. Even if this ban survived that determination, it is independently unenforceable because it is unconscionable and it would violate public policy to deny Rapid Cash's victims the only litigation vehicle that they can afford to redress these wrongs. And any defense that the plaintiffs cannot pursue this litigation because they failed to follow the pre-litigation dispute resolution procedures in their contracts that Rapid Cash ignored nearly 17,000 times surely has been waived.

Rapid Cash next attacks the definition of the Class, claiming – almost as a refrain throughout its opposition – that the potential that the class definition includes Rapid Cash customers who were, in fact, served with process and therefore not injured prevents class certification of such a broadly defined class. But the law is clear: the inclusion of potentially non-injured persons within the class does not defeat class certification because these persons can be excluded after discovery or by a later narrowing of the class definition.

Finally, Rapid Cash argues that the prerequisites for Rule 23 class certification cannot be met. To take this position, Rapid Cash operates with blinders on, repeatedly stating that the identification of four class representatives means there are only four class *members* and wishing the Court to infer that no other Rapid Cash defendants in Justice Court were the victims of sewer service. But this Court must accept the allegations in the Complaint as true when evaluating the propriety of class certification, and the Complaint is rife with detailed circumstantial evidence that easily satisfies Rule 23. Nevertheless, Plaintiffs hereby supplement the facts with the affidavits of Legal Aid employees, Violeta Hernandez and Venicia Considine, Esq. (attached as Exhibits 1 and 2, respectively), which provide more strong circumstantial evidence that customers of Rapid Cash sued in Justice Court and who were allegedly served by a representative of On Scene Mediations in fact were not served.

Rapid Cash has failed to offer this Court any legitimate and fair reason to deny class

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certification for the claims arising from the uniformly illegal conduct and policies, practices, and procedures for which it is sought to be held accountable involving hundreds, if not thousands, of its customers. This Court should grant Plaintiffs' motion for class certification and permit this action to proceed under NRCP 23(b)(2) and NRCP 23(b)(3).

II.

ARGUMENT

A. The Class Action Ban Is Unenforceable.

1. Putative Class Claims are not Subject to the Class-Action Ban in its Arbitration Clause because Rapid Cash Waived its Right to Invoke its Arbitration Provision.

Rapid Cash cannot argue that Plaintiffs' claims are subject to an arbitration agreement due to the Court's decision on October 12, 2010, finding that Rapid Cash waived arbitration by litigating to judgment against every member of the putative class without once seeking arbitration, and that such a clause in any contract would violate public policy as applied to the facts in this case. The Federal Arbitration Act now has no influence on this case because Rapid Cash waived its right to arbitration.

Even if the class-action ban survives the waiver, the FAA does not preempt state laws that invalidate unconscionable terms. Burch v. Dist. Ct., 118 Nev. 438, 442 (2002). Defendants cite Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp, 130 S. Ct. 1758 (2010) to force arbitration. Stolt-Nielson is not applicable here because, unlike the agreement between the parties in Stolt-Nielson, here there is no dispute that the Rapid Cash contract includes a provision on classwide proceedings. Further, Stolt-Nielson is not applicable because it was decided under federal antitrust and Maritime law, and the issue in this case turns on Nevada law, which contains a wealth of authority on unconscionability.[1]

2. Rapid Cash's Class-Action Ban is Unconscionable and Therefore Unenforceable.

Like the rest of its arbitration clause, Rapid Cash's class-action ban is both procedurally

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[1] See authority collected in Opposition to Motion to Compel Arbitration and Stay All Proceedings at 15-16, incorporated herein by reference.

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and substantively unconscionable, and it effectively serves as an exculpatory clause, relieving Rapid Cash of any realistic liability for widespread harm. When a contractual provision is both procedurally and substantively unconscionable, the Court can refuse its enforcement. D.R. Horton, Inc. v. Green, 120 Nev. 549, 553, 96 P.3d 1159 (2004). Procedural unconscionability concerns unequal bargaining power, whereas substantive unconscionability "focuses on the one-sidedness of the contract terms." D.R. Horton, 120 Nev. at 554 (quoting Ting v. AT & T, 319 F.3d 1126, 1149 (9th Cir. 2003). "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."[2]

Contained in a textbook, take-it-or-leave-it adhesion contract,[3] Rapid Cash's class-action ban is procedurally unconscionable. And the plaintiffs and the other class members lacked any meaningful opportunity to agree to its terms and the inclusion of this class action ban. This characteristic alone establishes procedural unconscionability in Nevada. See 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).

The class action ban is also substantively unconscionable because it is entirely one-sided (indeed, Rapid Cash would never have reason to sue its customers in a class action) and 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,

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[2] Armendariz v. Foundation Health Psychcare, 6 P.3d 669, 690 (Cal. 2000); accord, Chalk v. T-Mobile USA, Inc., 560 F.3d 1087, 1093 (9th Cir. 2009) ("only substantive unconscionability is absolutely necessary."); 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.").

[3] See e.g Obstetrics and Gynecologists v. Pepper, 101 Nev. 105, 693 P.2d 1259, 1260 (1985) ("The distinctive feature of an adhesion contract is that the weaker party has no choice as to its terms.").

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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 reached a similar conclusion in Ting v. AT & T, 182 F. Supp. 2d 902, 930-31 (N.D. Cal. 2002), *aff'd as to unconscionability*, 319 F.3d 1126 (9th Cir. 2003), holding not only 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 that would "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." Id. at 930.[4] "Simply 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.

Numerous reported state court and federal court decisions interpreting state law have similarly declared class action bans unconscionable where they exculpate corporations from liability for small claims.[5] Others have found class action bans to be exculpatory where the ban

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[4] Even proponents of class action bans have admitted that their primary use is to exculpate their drafters from liability. See e.g. Edward Wood Dunham, The Arbitration Clause as a Class Action Shield, 16 FRANCHISE L.J. 141, 141 (1997) ("the 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.")

[5] 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) (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"); Leonard v. Terminix Int'l Co., 854 So.2d 529, 539 (Ala. 2002) (by "foreclosing the Leonards from an attempt to seek practical 23 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); S.D.S. Autos, Inc. v. Chrzanowski, 976 So.2d 600, 606 (Fl. Dist. Ct. App. 2007) (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 Comm., 173 S.W.3d 300, 314 (Mo. Ct. App. 2005) (class action bans in consumer contracts held 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

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impedes the pursuit of statutory legal remedies for those harmed by fraudulent activity. See e.g. 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"). And 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.[5]

Each of these unconscionability touchstones is present here, and each independently requires this Court to find Rapid Cash's class-action ban unenforceable as a result. By fraudulently manipulating the court system to obtain default judgments, leaving hundreds of consumers in the putative Class unaware that their legal rights were violated, Rapid Cash has thwarted the pursuit of legal remedies by denying class members their right to know they were *even being sued*. A class action is the only practical manner to remedy this illegal conduct and stop Rapid Cash from benefitting from its fraud. As this provision is procedurally and substantively unconscionable, it cannot be enforced.

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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."); 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 LLC, 161 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).

[6] 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 ("[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 462 ("some individual employees may not sue because they are unaware that their legal rights have been violated").

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3. Enforcing the Class Action Ban in this Case Would Violate Public Policy.

The Rapid Cash class action ban as applied to this case is also void as against the public policy of the courts to control their own dockets and prevent abuses of the judicial process. Republic Ins. Co. v. PAICO Receivables LLC, 383 F.3d 341 (5th Cir. 2004). Rapid Cash's process servers did not alert members of the putative class that Rapid Cash was suing them. The result was numerous default judgments. Rapid Cash used On Scene Mediations and the Nevada courts to obtain at least 16,663 default judgments. Now, when the Plaintiffs, representing hundreds if not thousands of people, some of whom may *still* be unaware that a default judgment has been entered against them[7], desire to efficiently resolve the problem through a class action, Rapid Cash moves to block them with its class-action ban. As the California Supreme Court expressed when finding a class-action ban unconscionable in Discover Bank v. Superior Ct:

> "Fully aware that few customers will go to the time and trouble of suing in small claims court, Discover has instead sought to create for itself virtual immunity from class or representative actions despite their potential merit, while suffering no similar detriment to its own rights." ... The clause is not only harsh and unfair to Discover customers who might be owed a relatively small sum of money, but it also serves as a disincentive for Discover to avoid the type of conduct that might lead to class action litigation in the first place. By imposing this clause on its customers, Discover has essentially granted itself a license to push the boundaries of good business practices to their furthest limits, fully aware that relatively few, if any, customers will seek legal remedies, and that any remedies obtained will only pertain to that single customer without collateral estoppel effect. The potential for millions of customers to be overcharged small amounts without an effective method of redress cannot be ignored. Therefore, **the provision violates fundamental notions of fairness. ... This is not only substantively unconscionable, it violates public policy by granting Discover a "get out of jail free" card while compromising important consumer rights.**[8]

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[7]Rapid Cash may hold on to default judgments for significant periods of time before garnishing a person. Therefore, default judgments obtained many months ago, if not a year or more, may be sitting in Rapid Cash's office and, outside this litigation, customers may not know of the litigation against them until their wages are garnished or bank accounts are frozen.

[8] 113 P.3d 1100, 1107-08 (Cal. 2005) (emphasis added) (in part quoting Szetela v. Discover Bank, 97 Cal.App.4th 1094, 1101, 118 Cal. Rptr. 2d 862, 867 (2002) (holding that a class action prohibition in a credit card consumer contract was both procedurally and substantively unconscionable.

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Rapid Cash cannot be permitted to use its "get out of jail free" card after having compromised these consumers' rights. This case must continue as a class action to illustrate to the public that if Rapid Cash did in fact knowingly participate in a scheme to deny Nevadans of their rights, the public judicial system is the proper forum and the class action is the proper action to litigate and correct the behavior.

B. Defendants Waived Pre-dispute Resolution When they Obtained 16,663 Default Judgments in Court and Not Once Followed their Own Pre-dispute Resolution Procedures.

Rapid Cash next audaciously argues that Plaintiffs' claims are subject to pre-dispute resolution procedures including mediation, and the failure to follow those procedures operates as a bar to class certification. What Rapid Cash conveniently ignores, however, is that these pre-dispute resolution provisions **are mutual** and put the same obligation on Rapid Cash to follow these procedures prior to commencing any action against its customers. See Opposition at 7 (quoting the mediation agreement, "You and **We Agree to Mediate Claims**. You and we agree that **before either of us starts a lawsuit . .. We will submit any and all "Claims" that we have against you** . . . to a neutral, individual (and not class) mediation") (emphasis added). Of course, Rapid Cash failed to comply with **its own promise to mediate** before obtaining almost 17,000 default judgments, demonstrating a clear intent that its pre-dispute procedures never be enforced. By categorically ignoring this pre-dispute resolution process – just like it ignored its arbitration clause – 17,000 times, Rapid Cash has clearly waived its right to now invoke this provision as a shield to this lawsuit or class certification.[9]

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emphasizing the "manifest one-sidedness" of the provision and noting that the clause was intended to preclude customers with small claims from obtaining relief, thereby providing Discover with "virtual immunity" from class actions); see also State ex. rel. Dunlap v. Berger, 567 S.E.2d 265 (W.Va., 2002) (finding a class action waiver unconscionable in a contract for jewelry insurance, reasoning that the waiver effectively gave companies immunity to commit illegal acts when the $8.46 added to plaintiff's jewelry purchase was "precisely the sort of small-dollar/high volume (alleged) illegality that class action claims and remedies are effective at addressing").

[9] See argument and collected authorities in Plaintiffs' Opposition to Motion to Compel Arbitration and Stay all Proceedings at 9-11, incorporated herein by reference.

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C. The Class Definition Is Adequate.

The primary argument advanced by Rapid Cash in its Opposition to the Motion to Certify Class is that at least some Rapid Cash borrowers when sued in Justice Court *were served* by On Scene Mediations, thus the class definition is overly broad as including non-injured borrowers. Although the general rule is that class definitions should be made according to objective criteria, there are notable exceptions to that rule, particularly for exceptional cases like this one. Should this Court have concerns about the scope of the class based on the proposed definition, this Court can: (1) shift the burden to the defendant to exclude persons from a defined class; (2) narrow the class definition at a later time after discovery; or (3) narrow the class definition to add the criteria "and who were not served with process," all without defeating class certification.

1. The Court Should Shift The Burden To Rapid Cash To Exclude Persons From The Class As Defined.

First, it bears noting that the class definition is *not* over-broad; it's narrow, and it does not include all persons against whom Rapid Cash obtained default judgments, or all persons who were "served" by On Scene Mediations. It includes only all persons against whom Rapid Cash obtained default judgments *and* for which Rapid Cash's *only* evidence of service of process is an affidavit signed by a representative of On Scene Mediations.

Second, although Rule 23 requires that prospective plaintiffs propose a class definition that is readily ascertainable, it is not necessarily the case that it be "readily ascertainable" by the *plaintiffs*. Rather, this court should put the burden of excluding persons from the Class on the defendants because they are in a better position to know whether or not the Affidavits signed by the representative of On Scene Mediations were *actually* served.

This is precisely the approach taken by the court in Smith v. Montgomery County, Md., 117 F.R.D. 372 (D.Md.1987). Plaintiff Vivian Smith filed a 42 U.S.C. § 1983 action on behalf of herself and as a putative named class representative of two classes of similarly situated persons alleging that the Montgomery County Detention Center's policy of indiscriminately "strip-searching" all persons detained at the Center violated the Fourth Amendment. 117 F.R.D.

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at 373. Smith had been detained for contempt of court after failing to appear in court on a child support action. Upon her arrival at the detention center, Smith was strip-searched. One of her prospective classes sought an injunction prohibiting the detention center from permitting or promulgating a policy requiring a strip search of detainees except upon probable cause to believe that such detainee had weapons or contraband concealed on his or her person; the other sought damages resulting from the detention center's policy of indiscriminate strip-searching.[10] The court certified the second class but redefined it to include all persons who were temporary detainees (held for fewer than 24 hours) at the detention center during the time in question, and who were strip-searched ***without probable cause*** to believe that they possessed either weapons or contraband. Id. at 611.

Predictably, the defendant protested that the class was not ascertainable because the existence of "probable cause" would be too indefinite to support class certification. Id. But the Court disagreed and held that the class could be readily ascertained by the defendant's records, as "probable cause" could be determined by its own data detailing the nature of the charge, the reason for release, and the subsequent history of the detainee. See id. The defendant then obtained addresses through the DMV for persons that fit the description of the class based on its own records. *See* Smith v. Montgomery County, Md., 643 F. Supp. 435, 437 (D. Md.,1986). The court later redefined the class, this time restricting it to temporary detainees that were searched without "reasonable suspicion" of weapons or contraband and held that the court would:

> ...leave it to the parties to determine which members of the class of temporary detainees were strip searched in violation of their Fourth Amendment rights under the terms of the Court's ruling. If defendants believe that they had individualized grounds for a reasonable belief that a detainee arrested for a minor offense was concealing weapons or contraband, the defendants shall submit a written statement of those individualized reasons to the Court. If any of those statements of reasonable suspicion create issues of fact, brief evidentiary hearings may be necessary.

Id. at 443 (emphasis added). Thus, the court did not conclude that the putative class was not

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[10] See Smith v. Montgomery County, Md, 573 F. Supp. 604, 607 (D. Md., 1983) (superseded by subsequent appellate history, discussed infra).

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