

## I.

**THE JUSTICE COURT HAS EXCLUSIVE JURISDICTION OVER  
ACTIONS TO VACATE JUSTICE-COURT DEFAULT JUDGMENTS**

The district court lacks subject matter jurisdiction to set aside justice court default judgments, as motions and even independent actions to set aside those judgments are within the exclusive original jurisdiction of the justice court.

A court must dismiss a claim when it lacks subject matter jurisdiction to adjudicate it. *In re S.M.M.D.*, 128 Nev. Adv. Op. 2, --- P.3d ----, 2012 WL 247964 at \*3 (Nev. Jan. 26, 2012) (citing *In re Orthopedic Products Liab. Litigation*, 132 F.3d 152, 155 (3d Cir. 1997)). “Whether a court lacks subject matter jurisdiction ‘can be raised by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties.’” *Landreth v. Malik*, 127 Nev. ----, 251 P.3d 163, 166 (2011) (citing *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990)).

**A. The Justice Court has Authority to  
Grant Relief from its Own Judgments**

The justice court has the authority and jurisdiction to grant relief from judgments entered in that court, either through a JCRCP 60(b) motion or through that court’s inherent authority to set aside its own judgments.

**1. The Justice Court has Authority to Set Aside its  
own Judgments through a JCRCP 60 Motion**

Rule 60 of the Justice Court Rules of Civil Procedure 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 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

1 reasonable time, and for reasons (1), (2), and (3) not more than 6 months  
 2 after the proceeding was taken or the date that written notice of entry of the  
 3 judgment or order was served. A motion under this subdivision (b) does not  
 4 affect the finality of a judgment or suspend its operation. This rule does not  
 5 limit the power of a court to entertain an independent action to relieve a  
 6 party from a judgment, order, or proceeding, or to set aside a judgment for  
 7 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.

8  
 9 **(c) Default Judgments: Defendant Not Personally Served.** When  
 a default judgment shall have been taken against any party who was not  
 10 personally served with summons and complaint, either in the State of  
 Nevada or in any other jurisdiction, and who has not entered a general  
 11 appearance in the action, the court, after notice to the adverse party, upon  
 motion made within 6 months after the date of service of written notice of  
 12 entry of such judgment, may vacate such judgment and allow the party or  
 the party's legal representatives to answer to the merits of the original  
 13 action. When, however, a party has been personally served with summons  
 and complaint, either in the State of Nevada or in any other jurisdiction, the  
 14 party must make application to be relieved from a default, a judgment, an  
 order, or other proceeding taken against the party, or for permission to file  
 15 an answer, in accordance with the provisions of subdivision (b) of this rule.  
 16

17  
 18 Justice Court Rule of Civil Procedure 60, therefore, allows the justice courts to  
 19 grant relief from "void" justice court judgments by motion.

20 **2. *The Justice Court Possesses Inherent Authority to Entertain  
 Independent Actions to Set Aside its Own Judgments***

21 In addition to Rule 60 motions, the justice court also has the inherent power  
 22 to entertain an independent action to vacate its own default judgments. The  
 Nevada Supreme Court has long recognized that a "court possesses the inherent  
 23 power of controlling its own judgment and of vacating, amending or correcting the  
 24 same...." *Finley v. Finley*, 65 Nev. 113, 127, 196 P.2d 766, 768 (Nev. 1948).  
 25 "The power of a court to set aside a prior judgment as obtained [by fraud upon the  
 26 court] is inherent and independent of statute...." *Filler v. Richland County*, 806  
 27 P.2d 537, 539 (Mont. 1991); *accord* 11 Charles Alan Wright, Arthur R. Miller &  
 28

1 Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 2870 (2d ed. 1995) (“The  
2 power to vacate a judgment that has been obtained by fraud upon the court is  
3 inherent in courts.”). An “independent action” brought in the same court that  
4 rendered an allegedly void default judgment is essentially a continuation of the  
5 prior suit based on the court’s inherent power over its own judgments. *See Pacific*  
6 *R. Co. of Mo. V. Missouri Pacific R. Co.*, 111 U.S. 505 (1884). Such a suit  
7 therefore does not require an independent basis for jurisdiction; rather, a proper  
8 exercise of jurisdiction over the underlying claim serves as a basis for jurisdiction  
9 over the independent action. *See United States v. Beggerly*, 524 U.S. 38, 46 (1998)  
10 (holding that an independent action for relief from a judgment brought in the same  
11 court as the original lawsuit does not require an independent basis for jurisdiction).

12 Here, the justice court has jurisdiction to entertain an independent action to  
13 set aside a default judgment arising from a substantive claim within the justice  
14 courts’ jurisdiction. *See Beggerly*, 524 U.S. at 46. The breach of contract claims  
15 that Rapid Cash asserted in justice court were clearly within justice court  
16 jurisdiction. *See* NRS 4.370(1)(a) (justice courts have jurisdiction “[i]n actions  
17 arising on contract for the recovery of money only, if the sum claimed, exclusive  
18 of interest, does not exceed \$10,000”). Because the justice court had subject  
19 matter-jurisdiction over the substantive breach of contract claim, it also has subject  
20 matter jurisdiction over an independent action to set aside a void judgment on  
21 those claims. *See Beggerly*, 524 U.S. at 46.

### 22 3. *Any Sanctions Must also be Addressed in the Justice Court*

23 Any court action that affects the merits of the justice court breach of contract  
24 claims must be addressed through sanctions in the justice court cases rather than an  
25 independent action. *See Timber Tech Engineered Bldg. Prods. v. The Home Ins. Co.*,  
26 118 Nev. 630, 633, 55 P.3d 952, 954 (2002) (holding that a party may not bring a  
27 separate tort action for spoliation of evidence); *see also id.* at n.5 (citing various cases  
28 from other jurisdictions holding that sanctions or adverse jury instructions are the

1 appropriate means for punishing and deterring such conduct). Sanctions for alleged  
2 litigation misconduct, moreover, are properly left to the court in which the action is  
3 pending, which is “in the best position to ‘evaluate the circumstances surrounding an  
4 alleged violation and render an informed judgment.’” *Mendez-Aponte v. Bonilla*, 645  
5 F.3d 60, 68 (1st Cir. 2011) (quoting *McLane, Graf, Raulerston & Middleton, P.A. v.*  
6 *Rechberger*, 280 F.3d 26, 44 (1st Cir. 2002).

7 Here, if plaintiffs have any claims alleging misconduct in the justice-court  
8 actions, they must pursue those actions in the justice court, rather than through a  
9 separate action in this Court.

10 **B. There is No Concurrent Jurisdiction**  
11 **Between Justice and District Courts**

12 The district court has no original jurisdiction in matters in which the justice  
13 court has original jurisdiction. *K.J.B. Inc. v. District Court*, 103 Nev. 473, 475, 745  
14 P.2d 700, 701 (1987). The claims to seek relief from or to invalidate the justice-court  
15 default judgments must be brought in the justice court.

16 In *K.J.B.*, a landlord sued a delinquent tenant in district court, claiming  
17 unlawful detainer and damages for unpaid rent. *Id.*, 103 Nev. at 474-75, 745 P.2d at  
18 701. Although justice courts had subject matter jurisdiction over actions for unlawful  
19 detainer by statute, the plaintiff argued that district courts had concurrent jurisdiction  
20 over unlawful detainer claims where a damage claim within the district court’s  
21 jurisdiction arose from the same facts. *Id.*, 103 Nev. at 476, 745 P.2d at 701-02. The  
22 Supreme Court held that the district court’s subject matter jurisdiction was limited to  
23 the claim for damages, and that it must dismiss the unlawful detainer claim for lack of  
24 subject matter jurisdiction. *Id.*, 103 Nev. at 475, 745 P.2d at 701. The court explained  
25 that the 1978 amendment to the Nevada constitution eliminated all concurrent  
26 jurisdiction between justice courts and district courts:

27 Prior to 1978, the Nevada Constitution allowed the district  
28 courts and the justices’ courts to exercise concurrent  
jurisdiction in some areas, including unlawful detainer  
actions. In 1978, however, Article 6, section 6 of the Nevada



1 Constitution was amended to provide, in part: "The District  
2 Courts ... shall have original jurisdiction in all cases  
3 excluded by law from the original jurisdiction of the  
4 justices' courts." *Therefore, the district courts have no  
original jurisdiction in matters in which the justices'  
courts have original jurisdiction.*

5 *Id.* The court concluded that, "[a]lthough the district court had jurisdiction to  
6 entertain [plaintiff's] cause of action for damages, it lacked jurisdiction over  
7 [plaintiff's] unlawful detainer action." *Id.* The district court was therefore prohibited  
8 from adjudicating that claim. *Id.*; accord *G.C. Wallace, Inc. v. District Court*, 127  
9 Nev. \_\_\_, 262 P.3d 1135, 1141 n.2 (2011) (explaining that justice courts and district  
10 courts must adjudicate claims within their jurisdiction separately to avoid  
11 unconstitutionally concurrent jurisdiction, even where those claims arise from the  
12 same facts).

13 More recently, in *State v. Kopp*, the Nevada Supreme Court held that district  
14 courts may not exercise jurisdiction over misdemeanor charges joined in the same  
15 indictment with felony charges because "*concurrent jurisdiction between the district  
16 courts and the justices' courts can no longer exist.*" 118 Nev. 199, 203, 43 P.3d 340,  
17 342-43 (2002) (citing *K.J.B.*, 103 Nev. at 475, 745 P.2d at 701). The Court explained  
18 that "grant[ing] the district and justices' courts concurrent jurisdiction over  
19 misdemeanors [would be] a result that is directly at odds with the intent of Article 6,  
20 Section 6 of the Nevada Constitution." *Id.*

21 Put simply, if a matter *may* be brought in the justice court, it *can only* be  
22 brought in the justice court.

23 **C. The District Court Does Not Have Appellate**  
24 **Oversight on Issues Not Raised in the Justice Court**

25 Nevada's district courts are limited to appellate jurisdiction in matters within  
26 the justice court's original jurisdiction. *See* Nev. Const. Art. 6 Sec. 6; accord  
27 *Caballero v. District Court*, 123 Nev. 316, 320, 167 P.3d 415, 418 (2007). The  
28 borrowers here, however, are not appealing from their justice court judgments; rather,

1 they have bypassed justice court procedure entirely and have invoked the district  
2 court's *original* jurisdiction.

3 Even if the borrowers were seeking district court review of the justice court's  
4 handling of this issue through *mandamus* or a similar writ, such review is precluded in  
5 this instance. Simply put, the borrowers have not asked the justice court to take any  
6 action in this context, and so there is nothing for this Court to review. Put another  
7 way, invoking an appellate court's original jurisdiction to challenge a lower court  
8 proceeding is inappropriate where the party seeking relief has "a plain, speedy, and  
9 adequate remedy in the ordinary course of law." *Merits Incentives, LLC v. District*  
10 *Court*, 127 Nev. \_\_\_, 262 P.3d 720, 723 (2011). In this case, the appropriate remedy  
11 is for borrowers to seek relief in the justice court, not to raise it in the first instance in  
12 an independent action in the district court.

13 The Nevada Supreme Court has recently observed that "comity and efficiency  
14 make a 'motion in the court that rendered the judgment' the preferred and 'normal  
15 procedure to attack a judgment' for fraud on the court." *NC-DSH, Inc. v. Garner*, 125  
16 Nev. 647, 653, 218 P.3d 853, 857-58 (2009) (quoting 11 Wright, Miller & Kane,  
17 FEDERAL PRACTICE AND PROCEDURE § 2868 (2d ed. 1995)). Plaintiffs' attempt here to  
18 circumnavigate this "preferred and normal procedure" is inappropriate.

## 19 II.

### 20 **THE COURT SHOULD DECERTIFY THE CLASS BECAUSE** 21 **IT LACKS JURISDICTION OVER THE CERTIFIED CLAIMS**

22 This Court limited the class certification in this case to only the "injunctive and  
23 equitable issues" raised by plaintiffs' independent action and abuse of process claims.  
24 In other words, class certification was limited to the claims seeking relief from the  
25 judgments in the justice courts. Yet, the power to grant relief from those justice-court  
26 judgments is within the exclusive, original jurisdiction of the justice court. Because  
27  
28

1 this Court lacks subject-matter over those claims, no class claims remain. The Court  
2 should therefore decertify the class and dismiss those claims.<sup>1</sup>

### 3 CONCLUSION

4 Nevada's Constitution prohibits concurrent jurisdiction between justice courts  
5 and district courts. The claims that were certified, that is, those for relief from the  
6 default judgments, are within the justice court's jurisdiction—and outside this Court's  
7 jurisdiction. No class claims remain, and the class should be decertified. The  
8 remaining damages claims should be compelled to arbitration.

9 DATED this 22<sup>nd</sup> day of May 2012.

10 LEWIS AND ROCA LLP

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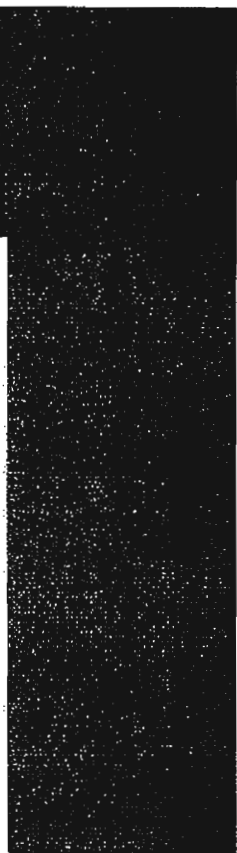
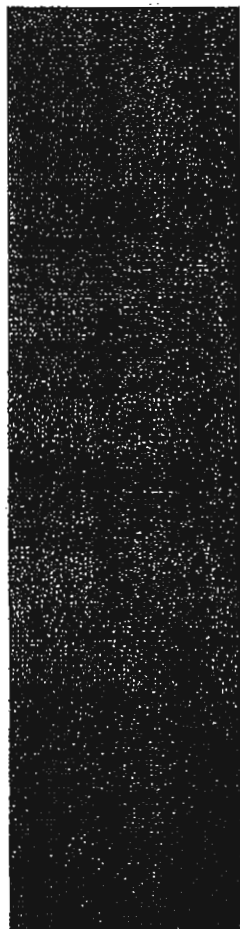
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*Inc. d/b/a Rapid Cash; Prime Group,*  
*Inc. d/b/a Rapid Cash; Advance*  
*Group, Inc. d/b/a Rapid Cash*

25 <sup>1</sup> Plaintiffs' other claims for damages have not been certified for class treatment. Nor  
26 could they be. The damages issues in those cases raise individualized issues  
27 incompatible with class certification. See *Wal-Mart Stores v. Dukes*, \_\_\_ U.S. \_\_\_,  
28 131 S. Ct. 2541, 2551 (2011). This Court should continue to hold that the remaining  
claims—those claims that do seek relief from or invalidation of the justice-court  
judgments—are not certified as a class under Rule 23.

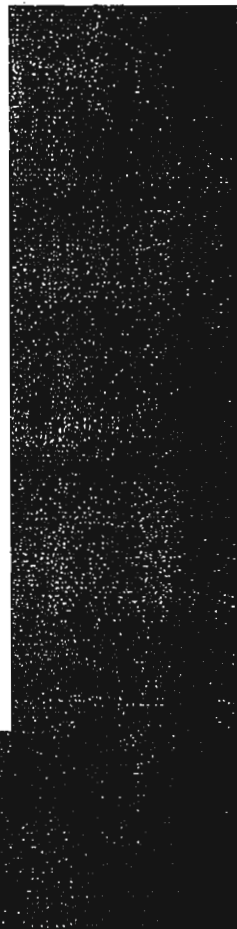




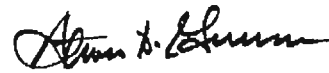
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**Class Counsel**

**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

**MOTION FOR ORDER TO  
SHOW CAUSE WHY RAPID  
CASH SHOULD NOT BE HELD  
IN CONTEMPT OF COURT  
FOR VIOLATION OF STAY;  
MOTION TO STRIKE**

**Date of Hearing:  
Time of Hearing:**

**MOTION FOR ORDER TO SHOW CAUSE WHY RAPID CASH SHOULD  
NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF STAY;  
MOTION TO STRIKE**

Plaintiffs and Class Representatives, CASANDRA HARRISON, EUGENE  
VARCADOS, CONCEPCION QUINTINO, and MARY DUNGAN, individually and on  
behalf of themselves and all others similarly situated, by and through counsel, Dan L.  
Wulz, Esq. and Venicia Considine, Esq., LEGAL AID CENTER OF SOUTHERN  
NEVADA, INC., and J. Randall Jones, Esq. and Jennifer C. Dorsey, Esq., KEMP,  
JONES & COULTHARD, LLC, pursuant to Nevada Revised Statutes 1.210(3),  
22.010(3), NRS 22.100, and move this Court for an Order to Show Cause why Rapid  
Cash should not be held in contempt of court for filing Motion to Dismiss during stay,  
and ask this Court to strike the Motion as a fugitive document.

DATED this 1<sup>st</sup> day of June, 2012.

Respectfully Submitted by Class Counsel:

**LEGAL AID CENTER OF  
SOUTHERN NEVADA, INC.**

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## 001116



## MEMORANDUM OF POINTS AND AUTHORITIES

### I. FACTUAL AND PROCEDURAL HISTORY

On May 8, 2012, Defendants filed a Motion for Stay pending Rapid Cash's appeal on the denial of the Motion to Compel Arbitration. On May 15, 2012, this Court heard oral argument from both parties regarding Defendants' motion. The Court granted in part Defendants' Motion for Stay. The order granting stay was entered on May 22, 2012.

During oral argument, Mr. Polsenberg asked, "How about if we have [Rust Consulting] continue the process but not go forward in the adversary proceeding so that there wouldn't be anything going on between and among the parties, but we wouldn't actually pull the plug on their accumulation of cards?" Hearing on Motion for Stay, filed May 17, 2012, p. 25, ln. 3-7. The Court responded, "Okay. So you guys aren't going to fight with each other until we come back in July. And if somebody needs something between now and then, you can file a motion and that will not be a violation of the stay, and then we'll talk about it." Id. at 25-26, ln. 23-2. The Court then gave the following example, "So if you think that you have to go take Mr. Carol's [sic] deposition because something horrible is going to happen to him if you don't take it right now I anticipate a motion." Id. at 26, ln. 2-5. The written order of the Court as entered states: "Discovery **and further adversarial proceedings** in this matter are hereby temporarily stayed until July 10, 2012 at 9:00 a.m." (Emphasis added). This stay was entered at the request of Defendants, and the order was drafted by Defendants, approved and agreed to by Plaintiffs, and filed by Defendants on May 22, 2012.

1 Yet, on the same day, Rapid Cash retread its previously rejected December 2010  
2 Motion To Dismiss For Lack Of Subject Matter Jurisdiction, and now (re)moves this  
3 court to dismiss the case on the grounds that proper jurisdiction over this action rests in  
4 the justice court – a very “adversarial” move. The Class hereby moves this Court to  
5 strike the motion as a fugitive document and order the Rapid Cash Defendants to show  
6 cause why they should not be held in contempt of their own stay order.<sup>1</sup>  
7

## 8 II. ARGUMENT

9  
10 Nevada Revised Statutes 1.210(3) states that the Court has the power to “compel  
11 obedience to its lawful judgments, orders and process. . .” and Nevada Revised Statutes  
12 22.010(3) defines contempt as “[d]isobedience or resistance to any lawful writ, order,  
13 rule or process issued by the court or judge at chambers.” NRS 22.100 provides:  
14

15 (1) Upon the answer and evidence taken, the court or judge or jury, as the case  
16 may be, shall determine whether the person proceeded against is guilty of the  
17 contempt charged.

18 (2) Except as provided in NRS 22.110 if a person is found guilty of contempt, a  
19 fine may be imposed on the person not exceeding \$500 or the person may be  
20 imprisoned not exceeding 25 days, or both.

21 Rapid Cash is plainly in violation of the very stay it secured. Upon its own  
22 insistence, all adversarial proceedings in this case were stayed until July 10, 2012. A  
23 motion to dispose of this case is obviously adversarial and, although this court noted that  
24 there may be an exception for certain emergency motions during the pendency of the  
25

26 <sup>1</sup> The Class will not file any opposition to the newly filed Motion to Dismiss until after the  
27 instant motion is decided or absent further order from this Court, so as to not run afoul of the  
28 temporary stay. Accordingly, the Class reserves its arguments in opposition to the merits of the  
motion until such time.

1 stay, the rehashing of a motion filed and rejected more than a year ago is certainly not  
2 such an emergency. Accordingly, Rapid Cash has violated its own stay, and this court  
3 should issue an order striking the motion to dismiss as a fugitive document and ordering  
4 the Rapid Cash Defendants to show cause why they should not be held in contempt for  
5 this violation.  
6

7 DATED this 1<sup>st</sup> day of June, 2012.

8  
9 Respectfully Submitted by Class Counsel:

10 **LEGAL AID CENTER OF**  
11 **SOUTHERN NEVADA, INC.**

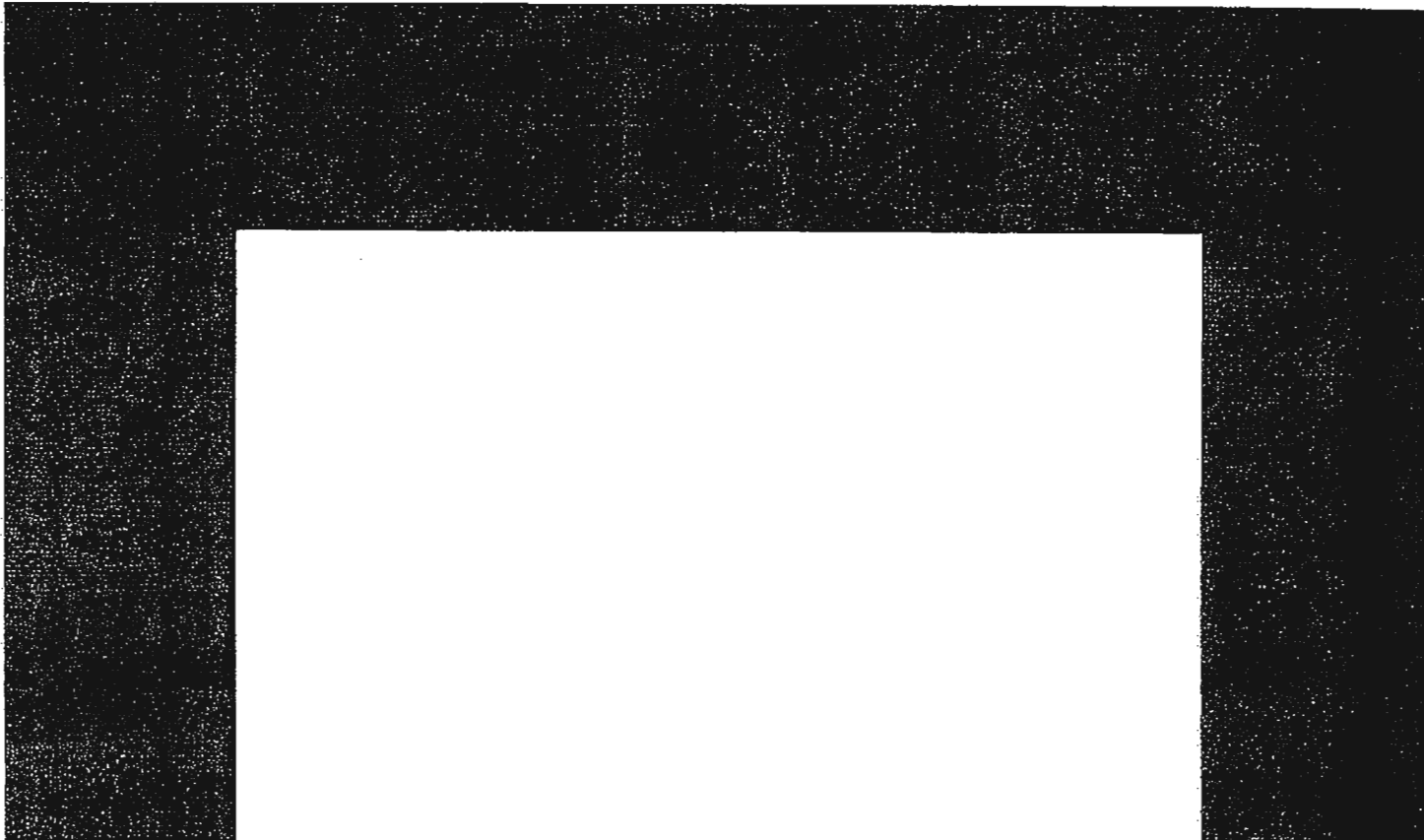
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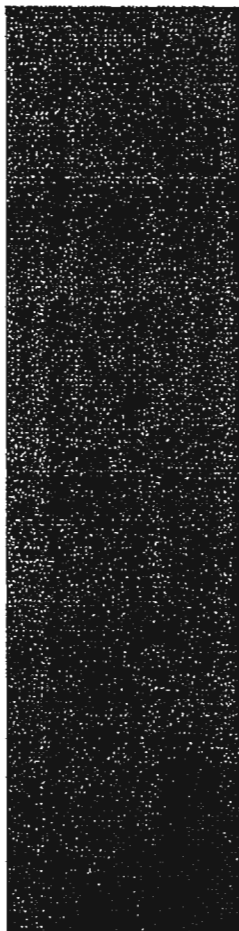
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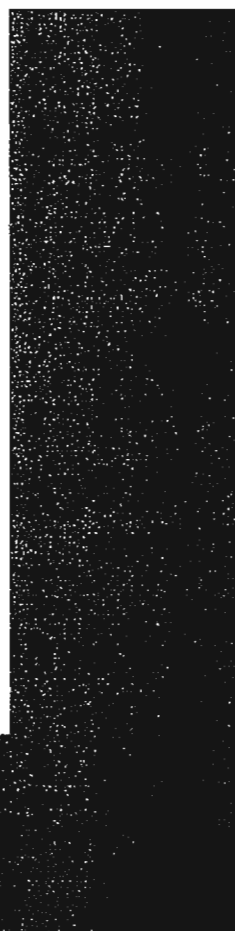
Class Counsel



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ORIGINAL

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 CLERK OF THE COURT

*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,

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

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,

**EX PARTE MOTION FOR  
ORDER SHORTENING TIME**

Date of Hearing:  
 Time of Hearing:

Defendants.

**EX PARTE MOTION FOR ORDER SHORTENING TIME**

Plaintiffs and Class Representatives, CASANDRA HARRISON, EUGENE VARCADOS, CONCEPCION QUINTINO, and MARY DUNGAN, individually and on behalf of themselves and all others similarly situated, by and through counsel, Dan L. Wulz, Esq. and Venicia Considine, Esq., LEGAL AID CENTER OF SOUTHERN NEVADA, INC., and J. Randall Jones, Esq. and Jennifer C. Dorsey, Esq., KEMP, JONES & COULTHARD, LLC, pursuant to EJD CR 2.26 hereby respectfully moves this Court for an order shortening time for a hearing on the "Motion for Order to Show Cause Why Rapid Cash Should Not Be Held in Contempt of Court for Violation of Stay; Motion to Strike" filed on June 1, 2012. An Affidavit of counsel in support of this motion and describing the circumstances which constitute good cause for granting this Motion is attached hereto.

In support of this motion, Plaintiffs and Class Representatives submit the following Memorandum of Points and Authorities, the Affidavit attached hereto, and all pleadings and papers on file herein.

DATED this 1 day of June, 2012.

Respectfully Submitted by Class Counsel:

**LEGAL AID CENTER OF  
SOUTHERN NEVADA, INC.**

By: 

DAN L. WULZ, ESQ. (5557)  
VENICIA CONSIDINE, ESQ. (11544)  
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*Class Counsel*

**MEMORANDUM OF POINTS AND AUTHORITIES**

Rule 2.26 of the Eighth Judicial District Court Rules states :

Ex parte motions to shorten time may not be granted except upon an unsworn declaration under penalty of perjury or affidavit of counsel describing the circumstances claimed to constitute good cause and justify shortening of time. If a motion to shorten time is granted, it must be served upon all parties promptly. An order which shortens the notice of a hearing to less than ten days may not be served by mail. In no event may the notice of the hearing of a motion be shortened to less than one full judicial day.

Good cause for expeditiously setting the “Motion for Order to Show Cause Why Rapid Cash Should be held in Contempt of Court for Violation of Stay; Motion to Strike” has been set forth in the attached Affidavit of Counsel and herein: hearing Rapid Cash’s Motion to Dismiss first will moot Plaintiff’s Motion for Order to Show Cause.

On May 8, 2012, Rapid Cash filed a Motion for Stay pending Rapid Cash’s appeal on the denial of the Motion to Compel Arbitration. On May 15, 2012, this Court heard oral argument from both parties regarding Rapid Cash’s Motion. The Court granted in part Rapid Cash’s Motion for Stay. The order granting stay was entered on May 22, 2012. Yet, on May 22, 2012, Rapid Cash filed its Motion to Dismiss.

A hearing on Rapid Cash’s Motion to Dismiss is currently scheduled for June 26, 2012. Plainly, the Court needs to first hear Plaintiffs’ “Motion for Order to Show Cause Why Rapid Cash Should be held in Contempt of Court for Violation of Stay; Motion to Strike” and thus an Order shortening time is necessary.

1 Accordingly, it is respectfully requested that the hearing of Plaintiffs' "Motion for Order  
2 to Show Cause Why Rapid Cash Should Not Be Held in Contempt of Court for Violation of  
3 Stay; Motion to Strike" be shortened and set on the Court's next available date, but not during  
4 June 15 through 26, 2012, as counsel Jennifer C. Dorsey, Esq., will be out of the country.

5 DATED this 1 day of June, 2012.

6 Respectfully Submitted by Class Counsel:

7  
8 **LEGAL AID CENTER OF**  
9 **SOUTHERN NEVADA, INC.**

10 By: 

11 DAN E. WULZ, ESQ. (5557)  
12 VENICIA CONSIDINE, ESQ. (11544)  
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16 J. Randall Jones, Esq. (1927)  
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22 *Class Counsel*



AFFIDAVIT OF COUNSEL


STATE OF NEVADA )

) ss:

COUNTY OF CLARK )

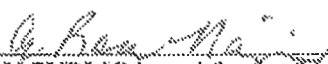
DAN L. WULZ, ESQ., pursuant to EJDOR 2.26, being first duly sworn, upon oath, deposes and says:

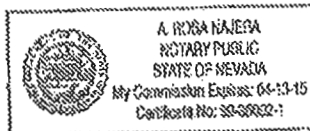
1. I am an attorney duly licensed to practice law in the State of Nevada.
  2. On May 8, 2012, Rapid Cash filed a Motion for Stay pending Rapid Cash's appeal on the denial of the Motion to Compel Arbitration.
  3. On May 15, 2012, this Court heard oral argument from both parties regarding Rapid Cash's Motion. The Court granted in part Rapid Cash's Motion for Stay.
  4. The order granting stay was entered on May 22, 2012. Yet, on May 22, 2012, Rapid Cash filed its Motion to Dismiss.
  5. A hearing on Rapid Cash's Motion to Dismiss is currently scheduled for June 26, 2012.
  6. Plainly, the Court needs to first hear Plaintiffs' "Motion for Order to Show Cause Why Rapid Cash Should be held in Contempt of Court for Violation of Stay; Motion to Strike" and thus an Order shortening time is necessary.
  7. Good cause for expeditiously setting the "Motion for Order to Show Cause Why Rapid Cash Should be held in Contempt of Court for Violation of Stay; Motion to Strike" exists in that first hearing Rapid Cash's Motion to Dismiss will moot Plaintiff's Motion for Order to Show Cause.
- FURTHER YOUR AFFIANT SAYETH NAUGHT.

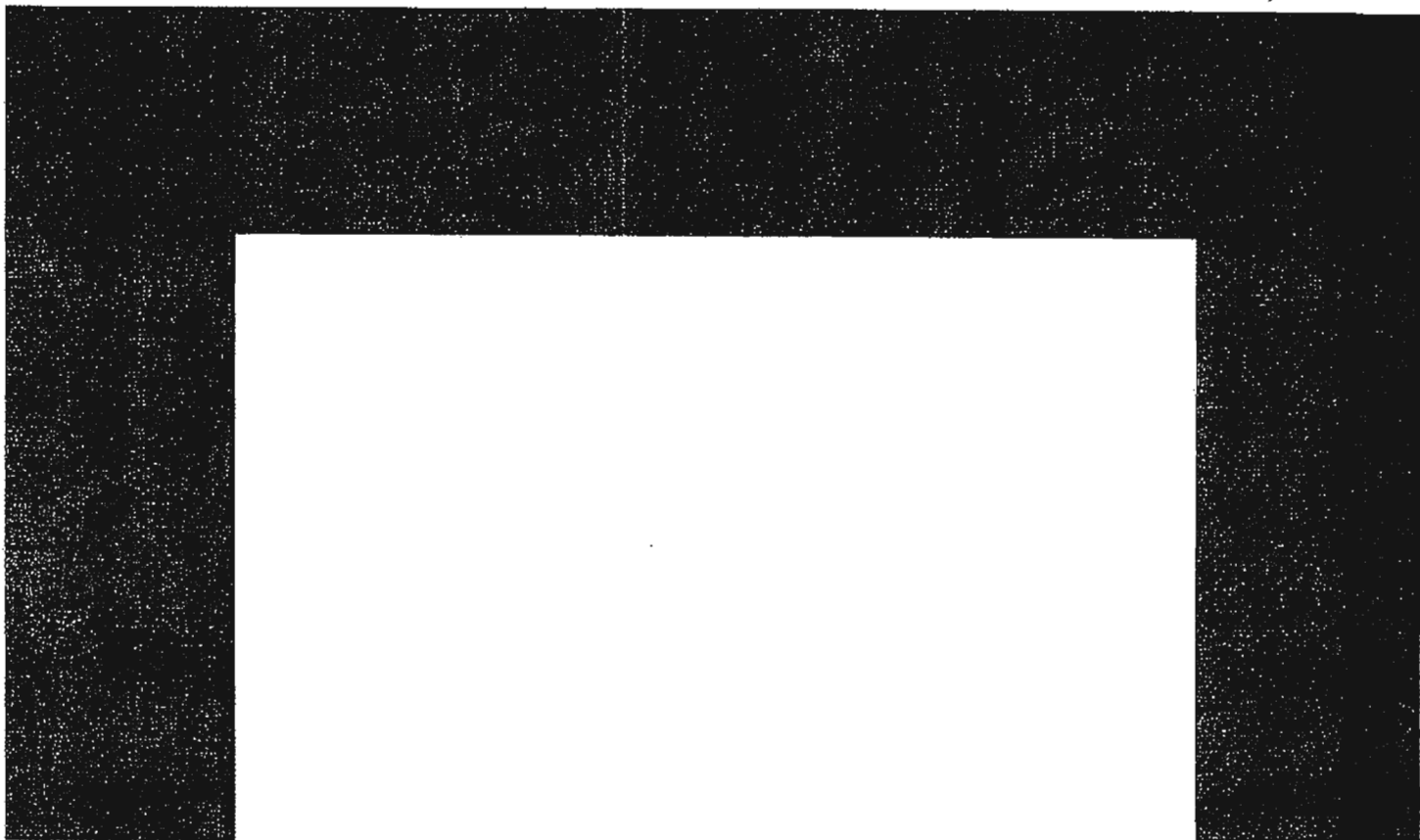
  
DAN L. WULZ

Subscribed and sworn to before me this

This 1<sup>st</sup> day of June, 2012.

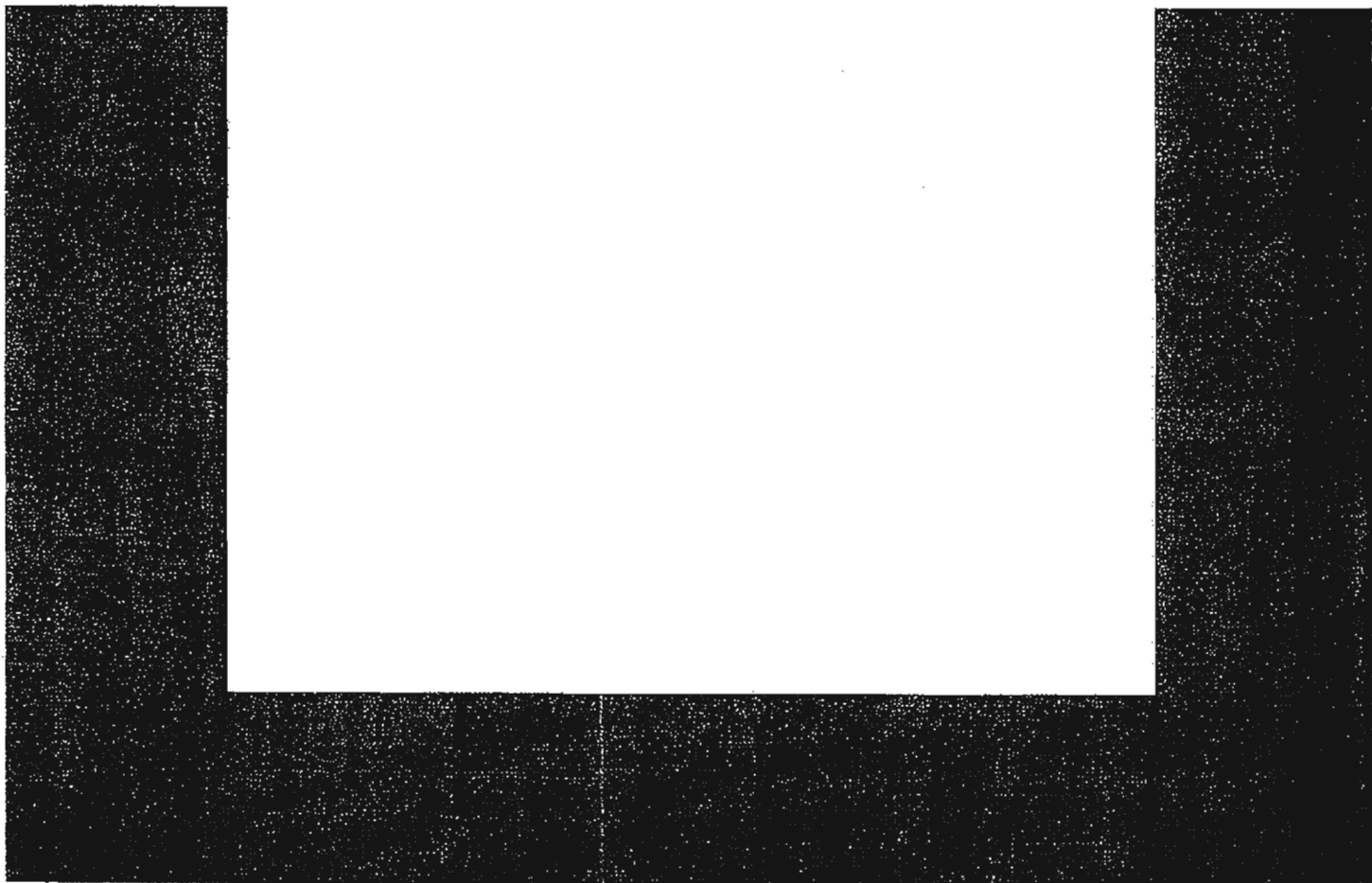
  
NOTARY PUBLIC in and for the County  
Of Clark, State of Nevada



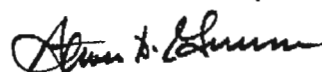


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*Attorneys for Rapid Cash Defendants*

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  
1 through X, inclusive,

Defendants.

Case No. A624982

Dept. No. XI

**OPPOSITION TO MOTION  
FOR ORDER TO SHOW  
CAUSE AND TO STRIKE**

**HEARING DATE: JUNE 21, 2012**

In a hastily-constructed and ill-conceived motion, borrowers seek to have this Court avoid addressing the jurisdictional issues raised, first, at the May 15 hearing and, again, in Rapid Cash's May 22 motion. This Court has an obligation, however, to address the jurisdictional arguments and cannot simply set them aside.

Moreover, Rapid Cash's motion does not violate the interim stay. This Court granted an interim stay on some aspects of this case until it addresses the appeal stay

1 at a status hearing, currently set for July 10.<sup>1</sup> Rapid Cash's motion on subject matter  
2 jurisdiction<sup>2</sup> did not violate the interim stay, because the jurisdictional arguments are  
3 *part* of appeal stay issues. This is clear from the events of the May 15 hearing, at  
4 which Rapid Cash indicated that it would file a motion developing the jurisdictional  
5 arguments presented there. Filing the jurisdictional motion ensured that these  
6 arguments could be fully developed and considered as part of the district court's  
7 decision on a full stay pending appeal.

8 I.

9 **THIS COURT MUST RULE ON SUBJECT MATTER JURISDICTION**

10 **A. Subject Matter Jurisdiction can be Raised at Any Time**

11 "Lack of subject matter jurisdiction can be raised at any time during the  
12 proceedings and is not waivable." *Mainor v. Nault*, 120 Nev. 750, 761 n.9; 101 P.3d  
13 308, 315 n.9 (2004); *see also Landreth v. Malik*, \_\_\_ Nev. \_\_\_, 251 P.3d 163, 166  
14 (2011). This is so because subject matter jurisdiction "goes to the very power of the  
15 court to act." *Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 196 (4th Cir.  
16 2008). If a court lacks subject matter jurisdiction, the district court has "no power to  
17 do anything with the case except dismiss" it. *Morongo Band of Mission Indians v.*  
18 *Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). Any other order  
19 that a court issues (including, potentially, the very stay at issue here) would be a  
20 nullity. *See id.* Procedural hurdles that may bar other motions are therefore no  
21 obstacle to a challenge to subject matter jurisdiction. *See, e.g., Grupo Dataflux v.*  
22 *Atlas Global Grp., L.P.*, 541 U.S. 567, 571 (2004) (challenge to subject matter  
23 jurisdiction may be raised "shortly after filing, after the trial, or even for the first time  
24

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25 <sup>1</sup> Rapid Cash's undersigned counsel has a conflict with that day, however, and will  
26 seek another day when the stay issue can be addressed.

27 <sup>2</sup> Although Rapid Cash's jurisdictional motion sought alternatively to dismiss the  
28 claims, to decertify the class and/or to compel arbitration, for the sake of simplicity, it  
is occasionally referred to herein as a motion to dismiss.

on appeal”); *Virginian-Pilot Media v. Dow Jones & Co.*, 698 S.E.2d 900, 902-03 (Va. 2010) (lack of subject matter jurisdiction may be raised at any time, in any manner, before any court, or by the court itself); *see also Coffey v. Kehoe Rock & Stone, LLC*, 270 S.W.3d 902, 904 (Ky. Ct. App. 2008) (subject matter jurisdiction is “different than other issues” because it can be raised at any time).

**B. This Court Must Rule on the Jurisdictional Arguments**

Indeed, the Court *must* consider Rapid Cash’s jurisdictional arguments. *See* NRCP 12(h)(3) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court *shall* dismiss the action”) (emphasis added). “[A] court’s subject matter jurisdiction may be challenged at any time, and . . . [a] court has no discretion whether to consider the challenge.” *Patterson v. Patterson*, 266 P.3d 828, 832 n.4 (Utah 2011) (citing Utah’s analogue to NRCP 12(h)(3)). Courts have a continuing duty to evaluate challenges to their subject matter jurisdiction and to dismiss an action if it appears that jurisdiction is lacking. *See Billingsley v. Comm’r*, 868 F.2d 1081, 1085 (9th Cir.1989). This inquiry is so crucial that, even in the *absence* of a formal motion, a mere “suggestion of the parties” that subject matter jurisdiction is lacking triggers a court’s duty to assess its own jurisdiction. NRCP 12(h)(3); *accord Clissuras v. City Univ. of N.Y.*, 359 F.3d 79, 81 n.3 (2d. Cir. 2004) (citing FRCP 12(h)(3)); *see also* 5A Charles A. Wright & Arthur R. Miller, *FEDERAL PRACTICE AND PROCEDURE* § 1393 (3d. ed. 2012). Given that Rapid Cash *has* filed a formal motion raising jurisdictional questions, the Court has a clear duty to consider that motion. *See Reynolds v. Sheet Metal Workers Local 102*, 702 F.2d 221, 223 (D.C. Cir. 1981) (court may not ignore potential issues regarding subject matter jurisdiction).<sup>3</sup>

---

<sup>3</sup> Should the Court decline to consider Rapid Cash’s jurisdictional arguments, Rapid Cash would have no choice but to resort to *mandamus* relief from the Nevada Supreme Court to ensure that those arguments are considered. *See also, Friedman v. District Court*, \_\_\_ Nev. \_\_\_, 264 P.3d 1161 (2011) (holding that writ relief is an

(continued)

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1           **A.     Arguing for the Appeal Stay, Which the Court Still Has Pending,**  
2           **Rapid Cash Raised These Jurisdictional and Procedural Issues**

3           On May 8, Rapid Cash moved to stay all district court proceedings pending  
4 resolution of its interlocutory appeal of the Court's denial of arbitration. This Court  
5 heard the motion on May 15. During argument, in the context of the stay motion,  
6 Rapid Cash challenged the district court's conclusion both that Rapid Cash had  
7 waived arbitration and that the allegations of fraud upon the justice court created a  
8 special circumstance that prevented arbitration.

9                   ***1.     The Court Raised Fraud Upon the Court as a Basis for Denial***

10           At the hearing, the district court made clear its position that arbitration is not  
11 appropriate when there are claims of fraud upon the court:

12                   THE COURT: ... [H]ere's my problem with this case. This is  
13 not a regular public policy case as to whether arbitration is in the  
14 best interests of the public and whether we should enforce  
15 contractual provisions, because absolutely, and I do it all the time,  
this is a very different situation, and in my mind the cases the U.S.  
Supreme Court has decided do not apply in a circumstance where  
there has been fraud upon the court in obtaining judgments.

16 (May 15 Tr. at 9:22-10:4.)

17                   ***2.     Rapid Cash Pointed Out that the District Court***  
18                   ***is Not the Appropriate Court for These Issues***

19           Although the district court indicated that those circumstances allowed it to deny  
20 arbitration—and apparently also a stay pending appeal its arbitration decision—Rapid  
21 Cash posited that relief from the justice-court default judgments needed to be raised in  
those underlying collection cases.

22                   MR. POLSENBERG: ... There's alleged fraud upon the court,  
23 but the timing I think we need to bear in mind, especially in light  
24 of your waiver reasoning before, is that we're not talking about  
fraud upon this Court, and we're not talking about --

25                   THE COURT: No. Justice Court. People downstairs.

26                   MR. POLSENBERG: I understand. Right. And we're not  
27 talking about fraud in this case. We're talking about cases in the  
Justice Court where fraud upon the court is a remedy in that case.

1 (May 15 Tr. at 12:7-16.)<sup>4</sup> Following up on these statements, Rapid Cash advocated  
2 that relief from the justice-court judgments is not within the district court's original  
3 subject matter jurisdiction:

4 MR. POLSENBERG: . . . I don't see the reason for this Court to think  
5 it has jurisdiction over the fraud upon the court claims so as to  
6 make them override the Federal Arbitration Act and its very stern  
7 directive that cases need to be arbitrated.

8 (May 15 Tr. at 13:2-6). Rapid Cash clarified its view that the Eighth Judicial District  
9 Court's jurisdiction is limited to appellate jurisdiction of issues that were actually  
10 raised in the justice court:

11 THE COURT: . . . . This [case presents] a very unusual  
12 situation. Wouldn't you agree?

13 MR. POLSENBERG: Unusual in the sense that the District  
14 Court, which has direct appellate jurisdiction over the Justice  
15 Court, is exercising some kind of collateral review when there  
16 hasn't been a final resolution of the same issues that should have  
17 been raised in the Justice Court.

18 (May 15 Tr. at 13:13-19.) Rapid Cash concluded that the justice court has exclusive  
19 subject matter jurisdiction to set aside its own judgments, and that borrowers alleging  
20 non-service must move to set their default judgments aside in that court before  
21 seeking appellate review in District Court:

22 THE COURT: So are you suggesting that you think the better  
23 practice is for the defendants in all 13,000-and-some default  
24 judgments in Justice Court to request that the Justice Court judges  
25 entertain a motion to set aside the judgment on each of those  
26 individual cases?

27 <sup>4</sup> Rapid Cash also made clear that its arguments extended to the district court's prior  
28 reasoning that arbitration had been waived:

29 MR. POLSENBERG: You [the Court] had said before that there's  
30 waiver because we brought the collection actions in the [Justice]  
31 Court. And I would go so far as to say there would only be  
32 waiver, and Mr. Dzarnoski has argued this to you, there would  
33 only be waiver as to issues that could be raised in the Justice  
34 Court and were raised in the Justice Court.

35 (May 15 Tr. at 12:16-21.)



1 MR. POLSENBERG: Short answer, yes. \* \* \* So, yes, I do  
2 think that the proper procedure is for the motions to be brought in  
the Justice Court. . . .

3 (May 15 Tr. at 13:22-14:14.)

4 **3. Rapid Cash Offers to Brief the "Brand-new" Jurisdictional Issue**

5 Borrowers expressed concern that they were not afforded an opportunity to  
6 brief the issue of the Court's subject matter jurisdiction prior to the hearing:

7 MS. DORSEY: First, I'm a tad concerned about Dan  
8 raising—or Mr. Polsenberg raising brand-new jurisdictional  
arguments that we've never heard before.

9 (May 15 Tr. at 15:9-11.) Rapid Cash responded by offering to make a separate  
10 motion to allow full briefing of the issue:

11 THE COURT: Hold on. Mr. Polsenberg wants to say  
12 something.

13 MR. POLSENBERG: I'd be happy to make a motion [on the  
14 jurisdictional argument], if you want. But I thought the point that I  
was making went to [the Court's point about] unusual  
15 circumstances.

16 THE COURT: Thank you.

17 (May 15 Tr. at 15:19-24.) Neither borrowers nor the district court voiced any protest  
18 to the notion of Rapid Cash raising these arguments in a motion.

19 **4. The Court Grants a "very narrow" Temporary  
Stay of Discovery, but Allows Motions**

20 The Court set a status check hearing for July 10 at 9:00 a.m. At Rapid Cash's  
21 request, the Court granted a "narrow" temporary stay until that time, but noted that the  
22 parties may file motions until that time without violating the stay:

23 THE COURT: Okay. So you guys aren't going to fight with  
24 each other until we come back in July. And *if somebody needs  
something between now and then, you can file a motion, and that  
25 will not be a violation of the stay*, and then we'll talk about it. So  
26 if you think that you have to go take Mr. Carol's deposition  
because you think something horrible is going to happen to him if  
you don't take it right now, then I would anticipate a motion.

27 MR. DZARNOSKI: So my order is -- our motion is denied, but  
28 you're granting a temporary stay up until July --

1 THE COURT: I granted your motion in part, *but [the stay is]*  
2 *very narrow*. How's that?

3 (May 15 Tr. at 25:23-26:9, emphasis added.) It seems clear that the stay was intended  
4 to allow the collection of cards to continue, in a sense to preserve the process of  
5 accumulating information, but not to require the actual requests for and exchange of  
6 information. There was no restriction, however, placed on legal arguments or Rule 7  
7 requests for relief, especially those related to the arguments bearing on the issue of a  
8 more permanent stay.

9 **5. The Court Offers to Reconsider Rapid Cash's Motion  
for a Stay Pending Appeal After the Status Check**

10 At the hearing, the Court stated that it would reconsider Rapid Cash's motion  
11 for a stay pending appeal after all of the class action cards had been processed:

12 THE COURT: . . . Here's the problem I have. I have a claims  
13 administrator who's out there sending out the class notice,  
14 gathering information. That's why I do not want to impose a stay  
15 now, because I don't want to disrupt that process. *I set the [July*  
16 *10] status check so that the process would be complete when you*  
*come back, and then I will have a better sense of the disruption*  
*that I will cause to that process if a stay is entered. So that's the*  
*reason that I've said you can renew [the stay motion] in about 60*  
*days.*

17 (See May 15 Tr. at 24:3-11) (emphasis added).

18 **6. Rapid Cash Briefs the Jurisdictional Issue**

19 Just a week after the hearing, on May 22, Rapid Cash made a motion, as it  
20 indicated it would, to dismiss borrowers' claims, to decertify the class and to compel  
21 arbitration based on the district court's lack of subject matter jurisdiction, briefing the  
22 arguments that it raised at the May 15 hearing. At the time it submitted the motion,  
23 Rapid Cash envisioned that it would be heard on July 10, when the Court took up the  
24 matter of the stay pending appeal, which timing would afford both parties the chance  
25 to brief the issue fully.<sup>5</sup>

26  
27 <sup>5</sup> At the time, counsel was worried that the motion would be set for hearing *after* the  
28 July 10 hearing on the stay issues, requiring an order shortening time to reschedule the

(continued)

1        Instead of filing an opposition on the merits of the jurisdictional arguments,  
2        however, borrowers have moved for contempt charges. This Court should simply  
3        deny borrowers' motion.

4        **B.     The Motion Does Not Violate the Interim Stay Because it**  
5        **Addresses Arguments Raised Regarding the Appeal Stay Itself**

6        By making its motion, Rapid Cash is essentially fleshing out the jurisdictional  
7        arguments that arose during the May 15 hearing. Thus, Rapid Cash is allowing this  
8        Court to fully consider the merits of those arguments when the interim stay is lifted  
9        and creating a complete record for appeal.

10       Although borrowers took the position that Rapid Cash's jurisdictional  
11       arguments were "brand new," those arguments were wholly consistent with Rapid  
12       Cash's overarching theory that the district court is simply not the appropriate forum  
13       for adjudicating borrowers' claims. As such, Rapid Cash could properly raise these  
14       arguments on its appeal from the Court's order denying arbitration. *See* 4 C.J.S.  
15       *Appeal and Error* § 309 (updated Dec. 2011) ("On appeal, a party may bolster his  
16       preserved issues with additional legal authority or make further arguments within the  
17       scope of the legal theory articulated to the trial court."); *accord Western Technologies*  
18       *v. All-American Golf Center*, 122 Nev. 869, 873 n.8, 139 P.3d 858, 160 n.8 (2006).

19       Because this Court did not have the benefit of full briefing on the jurisdictional  
20       issue, however, it is wholly appropriate for Rapid Cash to brief those arguments—and  
21       to allow borrowers to develop any opposition arguments they can muster—so that this  
22       Court may fully consider the merits of those arguments before Rapid Cash resorts to  
23       appellate review. *See Landmark Hotel & Casino, Inc. v. Moore*, 757 P.2d 361, 362  
24       (1988) (raising arguments in the district court "allow[s] the trial court to rule  
25       intelligently and to give the opposing party the opportunity to respond to the

26       jurisdictional arguments to heard together with the stay matters. The clerk set the  
27       motion to dismiss for June 26. The motion does *not* need to be heard *before* the July  
28       10 hearing on the stay pending appeal, however, and the Court could reset the hearing

(continued)

objection”). Rapid Cash’s motion also serves to more fully articulate the arguments this Court must consider when it revisits Rapid Cash’s motion for a stay pending appeal. Specifically, this Court must again weigh “whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.” NRAP 8(c)(4); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Rapid Cash did not violate the interim stay by briefing the issue and giving this Court the opportunity to make an informed ruling.

### III.

#### **THE MOTION FULFILLS, RATHER THAN VIOLATES, THE PURPOSE BEHIND THE STAY OF THE CLAIMS AGAINST RAPID CASH, AS IT SEEKS TO PREVENT THOSE CLAIMS FROM PROCEEDING IN THE DISTRICT COURT**

##### **A. The Purpose of the Stay Was to Halt Discovery While the Class Cards were Collected**

The parties’ arguments and this Court’s comments at the May 15 hearing make clear that the purpose of the interim stay was to prevent further discovery in the case while simultaneously permitting the class cards to be processed, which would allow the Court to reconsider Rapid Cash’s motion for a stay pending appeal based on complete information.

##### **1. The Parties’ Arguments on the Stay Focused on Discovery**

Both of the parties’ arguments at the stay hearing centered around the prejudice that allowing discovery would or would not cause in the absence of a stay. During oral argument, Rapid Cash noted that borrowers’ argument that they would be prejudiced by a stay centered around potential delays of discovery:

MR. DZARNOSKI: \* \* \* And Micon [sic] Gaming in terms of [borrowers] claiming that they should be able to proceed with discovery specifically addresses that point. In Micon Gaming the plaintiff, who didn’t want to be in arbitration, wanted discovery. Micon Gaming says, hey, doesn’t matter that we’re going to be staying discovery, that is not any prejudice to you, Mr. Plaintiff, you’re just going to have to sit there and wait until we decide on

for the jurisdictional motion for July 10, as the issues go hand-in-hand.

1 whether or not to grant the stay.

2 (See May 15 Tr. at 7:12-19.) Similarly, counsel for borrowers indicated that  
3 their opposition to a stay was primarily based on potential discovery delays:

4 MS. DORSEY: . . . I think that this motion that is before you  
5 right now, the motion to stay, comes down to the fact that the  
6 object of the appeal will not be defeated if you deny the stay today  
7 and if they are forced to go forward with discovery in this case at  
8 long last. \* \* \* Rapid Cash has no prejudice if they're forced to  
9 go forward with the same types of discovery that they'd have to go  
10 forward with in arbitration of 405 of their customers' claims.

11 (May 15 Tr. at 16:1-5; 17:12-15.)

## 12 2. *This Court's Ruling on the Interim Stay*

13 The Court ultimately declined to grant a stay pending appeal due to a concern  
14 that granting a stay would halt the accumulation of class notice cards. (May 15 Tr. at  
15 24:4-7.) At that time, Rapid Cash asked for a temporary stay of further discovery:

16 MR. POLSENBERG: Is there -- while I don't like to negotiate  
17 with judges, is there a middle ground where we could--

18 THE COURT: Absolutely. What do you want to propose?

19 MR. POLSENBERG: \* \* \* How about if we have them  
20 continue the process [of collecting the cards], but not go forward in  
21 the adversary proceeding so that there wouldn't be anything going  
22 on between and among the parties, but we wouldn't actually pull  
23 the plug on their accumulation of cards?

24 THE COURT: I don't have a problem with that until the close  
25 of -- until the next status check.

26 (May 15 Tr. at 23-25.) As much of the hearing centered on discovery, it is clear that  
27 "anything going on between and among the parties" was also a reference to discovery.  
28 As this court noted to borrowers a few sentences later, "[b]ut you're not going to do  
anything anyways until you get the stuff [from the cards]." (*Id.* at 25.)

In short, the purpose behind the interim stay was to halt discovery while having  
the claims administrator continue collecting the class notification cards. Once all of  
the cards are collected and processed, the Court will revisit the propriety of a stay  
pending appeal based on the information that the cards disclosed.

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1 “procedure is proper and calculated to be most economical of the effort of courts and  
 2 parties.” *Huneycutt*, 94 Nev. at 80, 575 P.2d at 585 (citing *Life of the Land v.*  
 3 *Ariyoshi*, 553 P.2d 464, 466 (Haw. 1976)). In other words, allowing the district court  
 4 to reconsider a prior ruling based on new (or more fully developed) arguments  
 5 potentially obviates the need for an appeal, which promotes judicial economy. *See id.*

## 6 V.

### 7 THE MAY 22 MOTION IS NOT A “RETREAD” OF A PRIOR MOTION

8 Contrary to its prior argument that these jurisdictional issues were “brand new”  
 9 (May 15 Tr. at 15:10-11), borrowers now assert that Rapid Cash’s May 22 motion to  
 10 dismiss is a “retread” of its December 2010 motion to dismiss for lack of subject  
 11 matter jurisdiction. (*See* Mot. for OSC at 5:1.) On the contrary, Rapid Cash’s motion  
 12 raises important jurisdictional issues that this Court has not resolved.

13 Rapid Cash’s prior motion sought dismissal of borrowers’ damages<sup>6</sup> claims on  
 14 grounds that they did not meet the jurisdictional amount-in-controversy requirement.  
 15 (*See Generally* Dec. 16, 2010 Mot. to Dismiss at 5-14.) Rapid Cash did not move to  
 16 dismiss borrowers’ claims for equitable, declaratory, or injunctive relief at that time.  
 17 The May 22 motion, however, challenges the Eighth Judicial District Court’s subject  
 18 matter jurisdiction to set aside justice-court default judgments (the “equitable” relief  
 19 that borrowers seek).

## 20 VI.

### 21 THE PROPER TIMING OF THIS COURT’S 22 CONSIDERATION OF THE MOTION

23 Borrowers’ objection to this motion can be, at most, only a matter of timing. If  
 24 the essence of borrowers’ concern is that this motion should not be heard before the  
 25 stay matter set for July 10, this concern could have been addressed in a simple phone

26 <sup>6</sup> *See* Dec. 16, 2010 Mot. to Dismiss at 2:5-9 (“[Rapid Cash] moves this Court for an  
 27 Order dismissing Plaintiffs’ causes of action for (1) Abuse of Process; (2) Negligent  
 28 Hiring/Supervision/Retention; (3) Negligence; (4) Civil Conspiracy; and (5) Violation

(continued)

1 call to reschedule the hearing. If, however, borrowers want to put this issue out  
 2 beyond the time the Court decides the stay pending appeal, that would be  
 3 inappropriate, as these arguments bear on points raised in the stay issues. Borrowers  
 4 cannot believe, however, that they can postpone this issue indefinitely, as the motion  
 5 goes to the Court's jurisdiction, and the Court has a duty to address them. *See* NRCP  
 6 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court  
 7 lacks jurisdiction of the subject matter, the court shall dismiss the action").

### 8 CONCLUSION

9 Rapid Cash's motion is appropriate, as Rapid Cash notified the parties and the  
 10 Court that it intended to brief the subject matter jurisdiction issue, filing motions was  
 11 expressly permitted under the stay, and the motion addresses an issue that may be  
 12 raised at any time. The Court should, therefore, deny both of borrowers' motions, for  
 13 sanctions and to strike and, instead, grant Rapid Cash's motion to dismiss claims, to  
 14 decertify the class or to compel arbitration.

15 DATED this 19<sup>th</sup> day of June, 2012.

16 LEWIS AND ROCA LLP

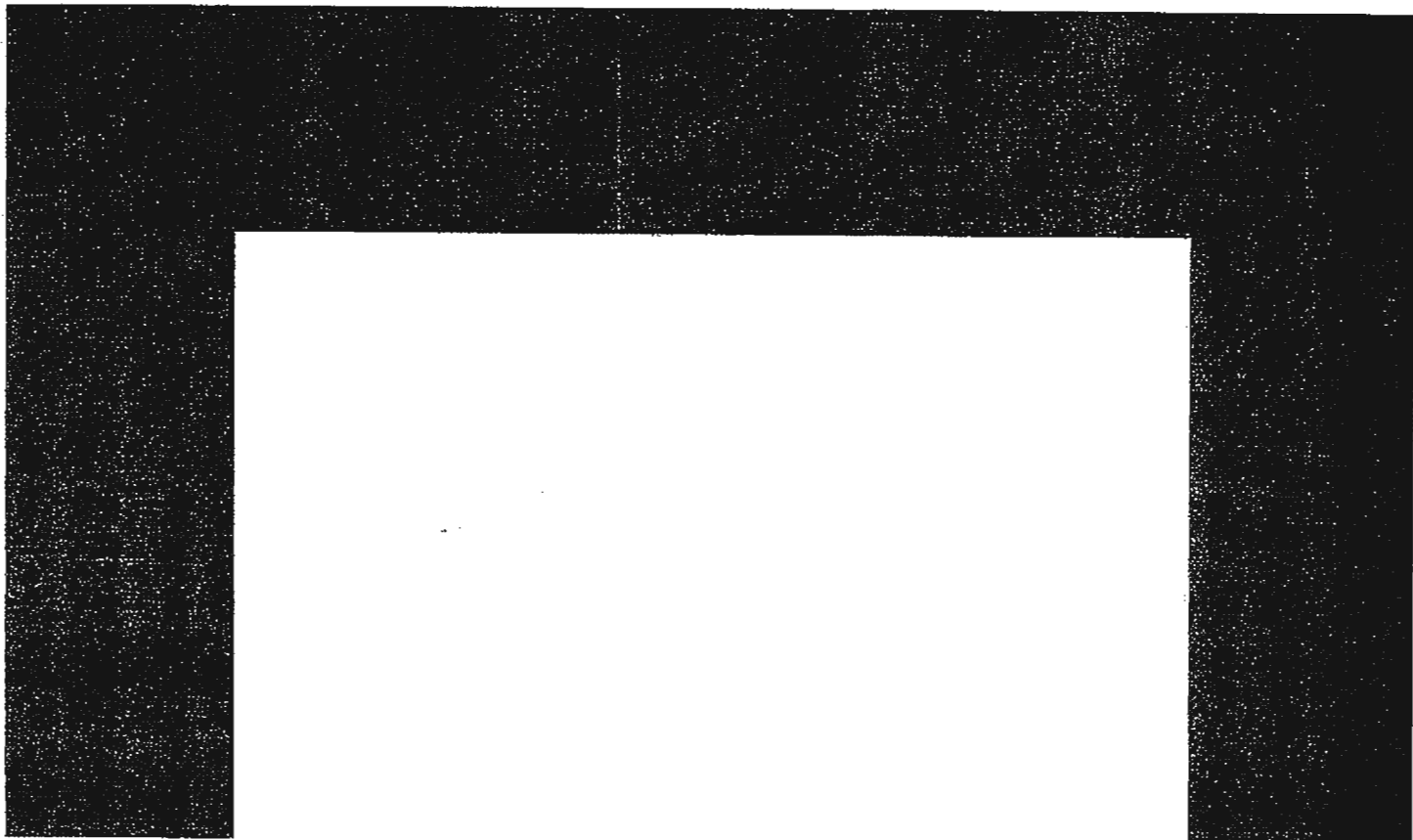
17  
 18 MARK S. DZARNOSKI (SBN 3398)  
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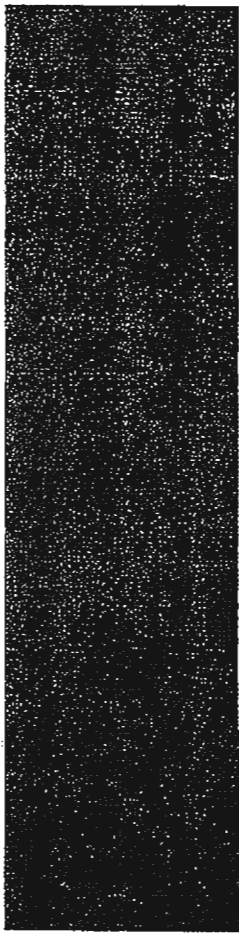
22 *Attorneys for Defendants*  
 23 *Principal Investments, Inc. d/b/a Rapid*  
 24 *Cash, Granite Financial Services, Inc.*  
 25 *d/b/a Rapid Cash; FMMR Investments,*  
 26 *Inc. d/b/a Rapid Cash; Prime Group,*  
 27 *Inc. d/b/a Rapid Cash; Advance*  
 28 *Group, Inc. d/b/a Rapid Cash*

of NRS Chapter 598 for lack of subject matter jurisdiction . . . .").

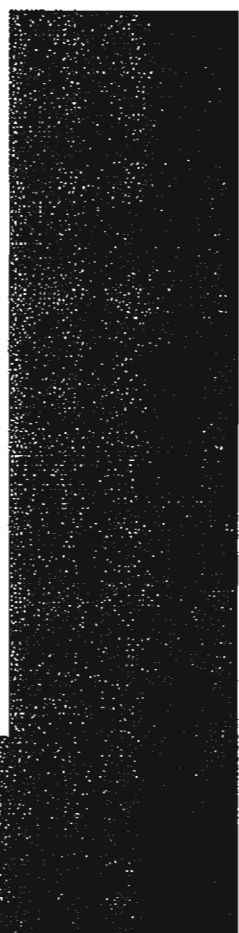




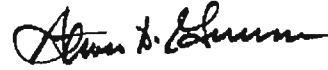
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**Class Counsel**

**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

**REPLY TO OPPOSITION TO  
MOTION FOR ORDER TO  
SHOW CAUSE WHY RAPID  
CASH SHOULD NOT BE HELD  
IN CONTEMPT OF COURT  
FOR VIOLATION OF STAY;  
MOTION TO STRIKE**

**Date of Hearing: June 21, 2012  
Time of Hearing: 9:00 a.m.**

1                   **REPLY TO OPPOSITION TO MOTION FOR ORDER TO SHOW**  
2                   **CAUSE WHY RAPID CASH SHOULD NOT BE HELD IN CONTEMPT**  
3                   **OF COURT FOR VIOLATION OF STAY; MOTION TO STRIKE**

4                   **MEMORANDUM OF POINTS AND AUTHORITIES**

5                   Rapid Cash moved for a stay pending the appeal of its second motion to compel arbitration,  
6 argued for the stay, was granted the stay in part, wrote the Order for the stay, violated the stay,  
7 and now argues that the stay is not applicable. Rapid Cash should be held in contempt for  
8 violating the stay. In its Opposition, Rapid Cash attempts to revise what occurred at the May 15,  
9 2012 hearing to avoid being held in contempt for a blatant violation of its own stay, but it is clear  
10 the stay included adversarial proceedings like its motion to dismiss.

11                   “The district court has the ‘inherent power to enforce its decrees through civil contempt  
12 proceedings.’” Bland v. Bland, 124 Nev. 1453, 238 P.3d 796 (2008) (citing Matter of Water  
13 Rights of Humboldt River, 118 Nev. 901, 909, 59 P.3d 1226, 1231 (2002)). Under NRS  
14 22.010(3), disobedience to any lawful order issued by a court is contempt. A court may punish a  
15 party found guilty of such contempt by requiring the party to pay the reasonable expenses of a  
16 party seeking to enforce the order, including attorney fees. Bland, 124 Nev. 1453, 238 P.3d 796.

17  
18  
19                   **I.       RAPID CASH CLEARLY VIOLATED THE COURT’S WRITTEN ORDER IN THIS MATTER**  
20                   **AS WELL AS THE SPIRIT OF THE STAY.**

21                   The written order of the Court as entered states: “Discovery **and further adversarial**  
22 **proceedings** in this matter are hereby temporarily stayed until July 10, 2012 at 9:00 a.m.” Order  
23 Granting in Part Rapid Cash’s Motion for Stay Pending Appeal of the Order Denying  
24 Defendants’ Motion to Compel Arbitration, filed May 22, 2012 (Emphasis added). On May 15,  
25 2012, during oral argument regarding Defendants’ Motion for Stay, the Court stated, “**Okay. So**  
26 **you guys aren’t going to fight with each other until we come back in July.** And if somebody  
27 needs something between now and then, you can file a motion and that will not be a violation of  
28

1 the stay, and then we'll talk about it." Transcript Hearing on Motion for Stay, filed May 17,  
2 2012, 25:23-26:2 (Emphasis added). The Court then gave the following example, "So if you  
3 think that you have to go take Mr. Carol's [sic] deposition because something horrible is going to  
4 happen to him if you don't take it **right now** I anticipate a motion." Id. at 26:2-5 (Emphasis  
5 added).  
6

7 The term "adversary proceeding" is defined as one with opposing parties where the party  
8 seeking relief has given legal notice to the other party, and afforded the latter an opportunity to  
9 contest it. See *Black's Law Dictionary* (Bryan A. Garner, 6<sup>th</sup> Ed. West, 1991). It cannot  
10 honestly be disputed that a Motion to Dismiss is an adversarial proceeding, and that such  
11 proceedings have been stayed by the written order of the Court that **Rapid Cash sought,**  
12 **obtained, and drafted.** Furthermore, the Court's reference to making a motion "because  
13 something horrible is going to happen" defines the spirit of the stay as it was clearly a direction  
14 that the only motions the Court was willing to entertain were **emergency** motions.  
15  
16

17 Here, Rapid Cash filed a Motion to Dismiss based on subject matter jurisdiction, that  
18 incorporated a request to compel arbitration and a request to decertify the class. None of Rapid  
19 Cash's requests constitute an emergency which is "an unforeseen combination of circumstances .  
20 . . that calls for immediate action." Merriam-Webster's Collegiate Dictionary 407 (11<sup>th</sup> ed,  
21 Merriam-Webster, Inc. 2005). Rapid Cash would not have been prejudiced by waiting for the  
22 stay to be removed before bringing these motions. Rapid Cash might have, and should have,  
23 addressed the issue at the July 10, 2012 status check by requesting that its own stay be lifted to  
24 file a motion to dismiss. Instead, Rapid Cash initiated an adversarial motion to dismiss in  
25 violation of the stay.  
26  
27

28 ...



1 Cash should be found in contempt of court and the motion to dismiss should be stricken as a  
2 fugitive document.<sup>1</sup>

3 DATED this 20<sup>th</sup> day of June, 2012.

4 Respectfully Submitted by Class Counsel:

5 **LEGAL AID CENTER OF**  
6 **SOUTHERN NEVADA, INC.**

7  
8 By: /s/ Dan L. Wulz  
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27 Class Counsel

28 <sup>1</sup> Should this Court disagree and instruct the class to respond to Rapid Cash's motion, the class respectfully requests that this Court set its time to respond no earlier than June 29, 2012.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2012, I served the foregoing **REPLY TO**  
**OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE WHY RAPID CASH**  
**SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF STAY;**  
**MOTION TO STRIKE on:**

Mark S. Dzarnoski, Esq.  
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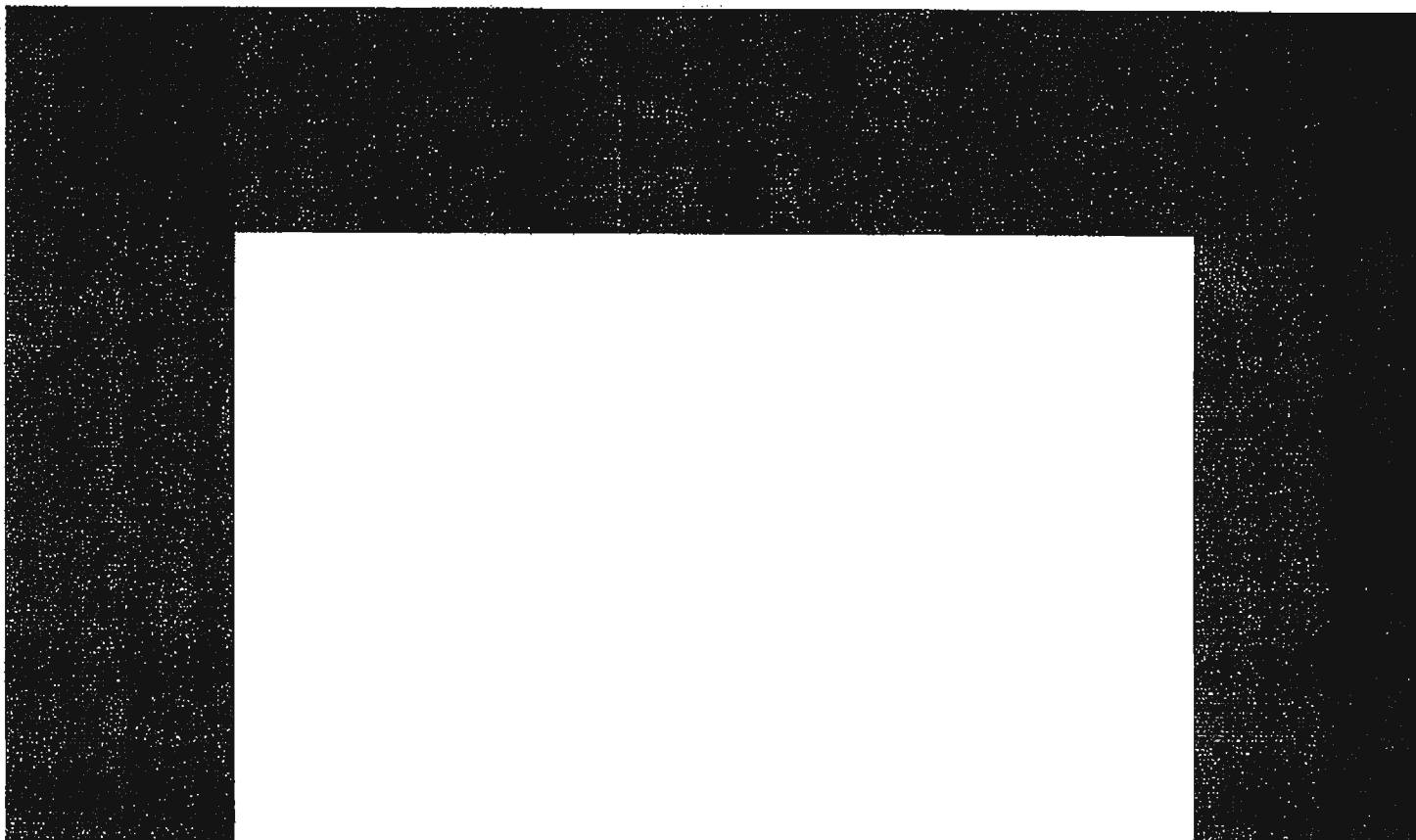
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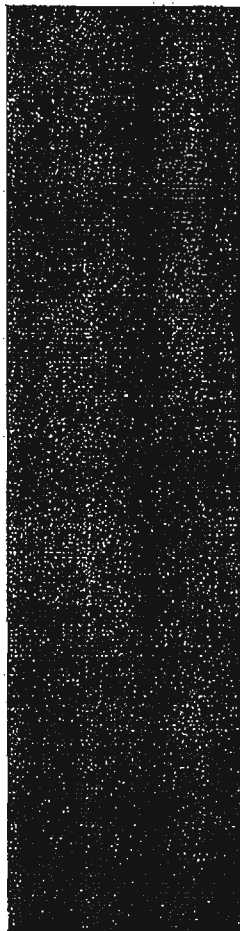
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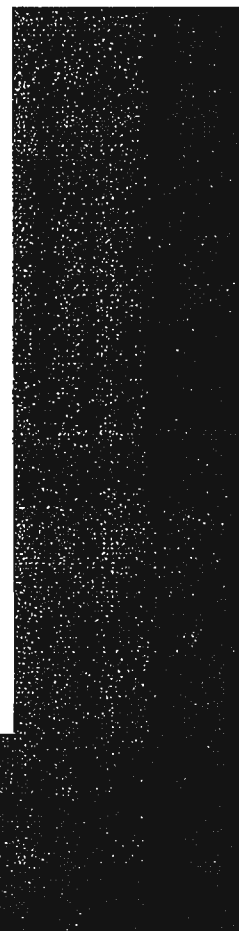
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 /s/ Rosie Najera  
 An employee of Legal Aid Center of Southern Nevada



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CLERK OF THE COURT

MDSM  
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*Attorneys for Rapid Cash Defendants*

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  
1 through X, inclusive,

Defendants.

Case No. A624982

Dept. No. XI

**MOTION TO DISMISS CLAIMS  
SEEKING RELIEF FROM  
JUSTICE-COURT JUDGMENTS**

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; ADVANCE GROUP, INC. d/b/a RAPID

1 CASH (collectively "RAPID CASH"), move (1) to dismiss those claims seeking relief  
2 from justice-court judgments, as those issues should be raised primarily and  
3 exclusively in the justice court; (2) to decertify the class, as all claims that have  
4 been—and conceivably could be—certified should be dismissed as raised in the  
5 wrong court; and (3) to compel arbitration on the remaining claims for damages, as  
6 any "waiver" of arbitration by Rapid Cash's bringing justice-court actions would  
7 apply only to those claims and arguments that need to be raised in justice court.

8  
9 NOTICE OF MOTION

10 TO ALL PARTIES AND THEIR COUNSEL:

11 PLEASE TAKE NOTICE that the foregoing MOTION TO DISMISS CLAIMS SEEKING  
12 RELIEF FROM JUSTICE COURT JUDGMENTS is scheduled to be heard in the above-  
13 entitled Court on the 9 day of August, 2012, at 9:00 a.m./~~p.m.~~ in  
14 Department XI.

15 DATED this 9<sup>th</sup> day of July 2012.

16 LEWIS AND ROCA LLP

17  
18 By: /s/ Daniel F. Polsenberg  
19 DANIEL F. POLSENBERG (SBN 2376)  
20 JOEL D. HENRIOD (SBN 8492)  
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*Attorneys for Rapid Cash Defendants*

1                                    POINTS AND AUTHORITIES

2            There are two types of claims against Rapid Cash in this case: those seeking  
3 relief from the justice-court judgments and those seeking monetary damages. The  
4 claims seeking relief from the justice-court judgments, themselves, are within the  
5 exclusive subject-matter jurisdiction of the justice courts and not the district court.  
6 This Court should dismiss those claims and decertify the class in which they are being  
7 litigated.

8                                    PROCEDURAL BACKGROUND

9    *The Putative Class Complaint*

10           The named plaintiffs filed the complaint in this case asserting various claims,  
11 including an independent action for fraud upon the court, abuse of process,  
12 negligence, civil conspiracy, and violations of NRS chapters 604A and 598.

13    *This Court Certified a Limited Class*

14           The named plaintiffs moved for class certification. This Court ultimately  
15 granted class certification only as to the “legal and equitable issues” raised in the  
16 claims for independent action for fraud upon the court and abuse of process:

17                                    THE COURT: At this time the Court is going to grant  
18 the motion to certify the class in part. I am granting the  
19 motion to certify as to the injunctive and equitable issues  
20 raised in the sixth [Independent Action for Fraud Upon the  
21 Court] and seventh [Abuse of Process] causes of action as to  
22 all customers of Rapid Cash offices in Clark County,  
23 Nevada, against whom Rapid Cash obtained default  
24 judgments in the Justice Courts of Clark County, Nevada,  
25 and for which the only evidence of service was an affidavit  
26 signed by a representative of On Scene Mediations and who  
27 claim not to have in fact been served.

28           (“Hearing on Motion for Class Certification,” filed October 27, 2011, at 30:5-13;  
accord “Order Granting Class Certification and Appointing Class Counsel,” filed  
September 29, 2011, at 4:3-11.)

1 ***Rapid Cash's First Motion to Dismiss for Lack of Subject Matter Jurisdiction***

2 Rapid Cash previously moved to dismiss plaintiffs' claims for lack of subject  
3 matter jurisdiction. Rapid Cash argued that plaintiffs' claims could not meet the  
4 amount in controversy requirement and pointed out that the class complaint did not  
5 even allege that the plaintiffs' damages exceeded the jurisdictional minimum.

6 Plaintiffs opposed the motion. Plaintiffs argued that their independent action  
7 for fraud upon the court claim was equitable in nature and that this equitable claim  
8 gave the court ancillary jurisdiction over the plaintiffs' damage claims. Plaintiffs also  
9 argued that their claims for emotional distress and putative damages placed in  
10 controversy more than the jurisdictional minimum.

11 The Court never squarely ruled on the merits of these arguments. Instead, the  
12 Court ordered plaintiffs to amend their complaint to clarify the alleged bases for  
13 subject matter jurisdiction:

14 THE COURT: All right. I'm going to grant the motion  
15 in part with respect to the request for an amendment of  
16 certain claims. I am ordering an amendment to add a more  
17 specific declaratory relief claim and a more specific  
18 injunctive relief claim related to the class that I have  
19 certified.

20 In addition, for any claim that is seeking damages you will  
21 need to clarify the aggregation or separateness of the  
22 individual claims of the class members and plead the  
23 jurisdictional amounts in any of the claims seeking damages,  
24 as opposed to dec or injunctive relief.

25 ("Hearing on Motions," filed January 31, 2011, at 13:14-24.)

26 The Court also noted that many of the Plaintiff's claims for damages could *not*  
27 exceed the jurisdictional amount, but indicated that "supplemental jurisdiction" may  
28 be appropriate for those claims:

29 MS. DORSEY: So we need to say "in excess of  
30 \$10,000" if we want to keep monetary claims?

31 THE COURT: For those -- no. For those claims that  
32 you are seeking, which is, for instance, the abuse of process  
33 claim where you claim there are punitive damages --

34 MS. DORSEY: Yeah.

1 THE COURT: -- as well as compensatory damages  
2 which you allege exceed \$10,000, that needs to be  
3 specifically pled in that particular claim.

4 With respect to some of the other claims you're  
5 probably never going to get to the \$10,000, but you need to  
6 specifically say that you're not grouping the claims together;  
because I am going to exercise supplemental jurisdiction  
over those claims since they are here. But I want it clearer  
on the pleadings as to how we're dealing with them.

7 (*Id.* at 14:1-15.)

8 The Court issued its written order on February 11, 2011. The order required  
9 plaintiffs to clarify their jurisdictional allegations:

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT  
11 Defendants' Motion to Dismiss is GRANTED with respect to  
the request for an amendment of certain claims;

12 IT IS FURTHER ORDERED that Plaintiffs must amend their  
13 Complaint on file herein to add a more specific declaratory  
14 relief claim and a more specific injunctive relief claim  
related to the class that was previously orally certified  
during the hearing on October 21, 2010;

15 IT IS FURTHER ORDERED that, for any claim that is seeking  
16 damages, Plaintiffs shall amend their Complaint on file  
17 herein to clarify whether the damages alleged are the  
18 aggregated damages of all proposed class members or the  
19 individualized damages of each individual class  
representative and to plead the jurisdictional amounts of  
damages for each particular damages claim (i.e. either as in  
excess of \$10,000 for original jurisdiction or in some lesser  
amount if supplemental jurisdiction is alleged).

20 ("Order on Defendants' Motion to Dismiss," filed February 11, 2011, at 2:13-24.)

21 ***The Amended Complaint***

22 Plaintiffs filed their amended complaint purportedly clarifying plaintiff's theory  
23 of subject matter jurisdiction in this case. First, plaintiffs alleged that this Court has  
24 subject matter jurisdiction over their independent action for fraud upon the court  
25 claim, and that original jurisdiction over that claim gave rise to ancillary jurisdiction  
26 over all other claims. (See "First Amended Class Action Complaint," filed February  
27 28, 2011, at 3:3-17.)  
28

1 Plaintiffs also alleged that the Court “has original jurisdiction over the claims  
2 for damages in excess of Ten Thousand Dollars in the Aggregate . . . as well as the  
3 claim for punitive damages in excess of Ten Thousand Dollars.” (*Id.* at 3:18-21;  
4 citations omitted).

5 ***The Current Motion to Dismiss***

6 Rapid Cash now renews its motion to dismiss certain claims for lack of subject  
7 matter jurisdiction. Rapid Cash also moves to decertify the class and to compel  
8 arbitration of the remaining claims. The Court lacks subject matter jurisdiction over  
9 these claims notwithstanding Plaintiffs’ amendments to their complaint.

10 **ARGUMENT**

11 Plaintiffs’ equitable, declaratory, and injunctive claims must be dismissed for  
12 lack of subject matter jurisdiction because these claims raise issues that are within the  
13 exclusive jurisdiction of the justice court. There is no concurrent jurisdiction between  
14 the Nevada Justice Courts and the Nevada District Courts. The Las Vegas Justice  
15 Court has subject matter jurisdiction to provide relief from void default judgments  
16 emanating from that court. Plaintiffs’ claims for relief from the justice court  
17 judgments therefore must be brought in that court, either through a JCRCP 60(b)  
18 motion or through an independent action in justice court. These claims cannot be  
19 brought in the district court and must be dismissed for lack of subject matter  
20 jurisdiction.

21 With the proper dismissal of the challenges to the validity of the justice-court  
22 judgments, no class issues remain, and the district court must decertify the class. The  
23 remaining damages claims have not and cannot be certified, moreover, as individual  
24 issues predominate.

## I.

**THE JUSTICE COURT HAS EXCLUSIVE JURISDICTION OVER  
ACTIONS TO VACATE JUSTICE-COURT DEFAULT JUDGMENTS**

The district court lacks subject matter jurisdiction to set aside justice court default judgments, as motions and even independent actions to set aside those judgments are within the exclusive original jurisdiction of the justice court.

A court must dismiss a claim when it lacks subject matter jurisdiction to adjudicate it. *In re S.M.M.D.*, --- Nev. ---, 272 P.3d 126, 130 (2012) (citing *In re Orthopedic Products Liab. Litigation*, 132 F.3d 152, 155 (3d Cir. 1997)). “Whether a court lacks subject matter jurisdiction ‘can be raised by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties.’” *Landreth v. Malik*, 127 Nev. ---, 251 P.3d 163, 166 (2011) (citing *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990)).

**A. The Justice Court has Authority to  
Grant Relief from its Own Judgments**

The justice court has the authority and jurisdiction to grant relief from judgments entered in that court, either through a JCRCP 60(b) motion or through that court’s inherent authority to set aside its own judgments.

***1. The Justice Court has Authority to Set Aside its  
own Judgments through a JCRCP 60 Motion***

Rule 60 of the Justice Court Rules of Civil Procedure 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 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

1 reasonable time, and for reasons (1), (2), and (3) not more than 6 months  
2 after the proceeding was taken or the date that written notice of entry of the  
3 judgment or order was served. A motion under this subdivision (b) does not  
4 affect the finality of a judgment or suspend its operation. This rule does not  
5 limit the power of a court to entertain an independent action to relieve a  
6 party from a judgment, order, or proceeding, or to set aside a judgment for  
7 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.

8  
9 **(c) Default Judgments: Defendant Not Personally Served.** When  
10 a default judgment shall have been taken against any party who was not  
11 personally served with summons and complaint, either in the State of  
12 Nevada or in any other jurisdiction, and who has not entered a general  
13 appearance in the action, the court, after notice to the adverse party, upon  
14 motion made within 6 months after the date of service of written notice of  
15 entry of such judgment, may vacate such judgment and allow the party or  
16 the party's legal representatives to answer to the merits of the original  
17 action. When, however, a party has been personally served with summons  
18 and complaint, either in the State of Nevada or in any other jurisdiction, the  
19 party must make application to be relieved from a default, a judgment, an  
20 order, or other proceeding taken against the party, or for permission to file  
21 an answer, in accordance with the provisions of subdivision (b) of this rule.

22 Justice Court Rule of Civil Procedure 60, therefore, allows the justice courts to  
23 grant relief from "void" justice court judgments by motion.

24 **2. *The Justice Court Possesses Inherent Authority to Entertain***  
25 ***Independent Actions to Set Aside its Own Judgments***

26 In addition to Rule 60 motions, the justice court also has the inherent power  
27 to entertain an independent action to vacate its own default judgments. The  
28 Nevada Supreme Court has long recognized that a "court possesses the inherent  
power of controlling its own judgment and of vacating, amending or correcting the  
same...." *Finley v. Finley*, 65 Nev. 113, 127, 196 P.2d 766, 768 (Nev. 1948).  
"The power of a court to set aside a prior judgment as obtained [by fraud upon the  
court] is inherent and independent of statute...." *Filler v. Richland County*, 806  
P.2d 537, 539 (Mont. 1991); *accord* 11 Charles Alan Wright, Arthur R. Miller &



1 Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE § 2870 (2d ed. 1995) (“The  
2 power to vacate a judgment that has been obtained by fraud upon the court is  
3 inherent in courts.”). An “independent action” brought in the same court that  
4 rendered an allegedly void default judgment is essentially a continuation of the  
5 prior suit based on the court’s inherent power over its own judgments. *See Pacific*  
6 *R. Co. of Mo. V. Missouri Pacific R. Co.*, 111 U.S. 505, 521-22 (1884). Such a  
7 suit therefore does not require an independent basis for jurisdiction; rather, a  
8 proper exercise of jurisdiction over the underlying claim serves as a basis for  
9 jurisdiction over the independent action. *See United States v. Beggerly*, 524 U.S.  
10 38, 46 (1998) (holding that an independent action for relief from a judgment  
11 brought in the same court as the original lawsuit does not require an independent  
12 basis for jurisdiction).

13 Here, the justice court has jurisdiction to entertain an independent action to  
14 set aside a default judgment arising from a substantive claim within the justice  
15 courts’ jurisdiction. *See Beggerly*, 524 U.S. at 46. The breach of contract claims  
16 that Rapid Cash asserted in justice court were clearly within justice court  
17 jurisdiction. *See* NRS 4.370(1)(a) (justice courts have jurisdiction “[i]n actions  
18 arising on contract for the recovery of money only, if the sum claimed, exclusive  
19 of interest, does not exceed \$10,000”). Because the justice court had subject  
20 matter jurisdiction over the substantive breach of contract claim, it also has subject  
21 matter jurisdiction over an independent action to set aside a void judgment on  
22 those claims. *See Beggerly*, 524 U.S. at 46.

### 23 3. *Any Sanctions Must also be Addressed in the Justice Court*

24 Any court action that affects the merits of the justice court breach of contract  
25 claims must be addressed through sanctions in the justice court cases rather than an  
26 independent action. *See Timber Tech Engineered Bldg. Prods. v. The Home Ins. Co.*,  
27 118 Nev. 630, 633, 55 P.3d 952, 954 (2002) (holding that a party may not bring a  
28 separate tort action for spoliation of evidence); *see also id.* at n.5 (citing various cases

1 from other jurisdictions holding that sanctions or adverse jury instructions are the  
2 appropriate means for punishing and deterring such conduct). Sanctions for alleged  
3 litigation misconduct, moreover, are properly left to the court in which the action is  
4 pending, which is “in the best position to ‘evaluate the circumstances surrounding an  
5 alleged violation and render an informed judgment.’” *Mendez-Aponte v. Bonilla*, 645  
6 F.3d 60, 68 (1st Cir. 2011) (quoting *McLane, Graf, Raulerston & Middleton, P.A. v.*  
7 *Rechberger*, 280 F.3d 26, 44 (1st Cir. 2002).

8 Here, if plaintiffs have any claims alleging misconduct in the justice-court  
9 actions, they must pursue those actions in the justice court, rather than through a  
10 separate action in this Court.

11 **B. There is No Concurrent Jurisdiction**  
12 **Between Justice and District Courts**

13 The district court has no original jurisdiction in matters in which the justice  
14 court has original jurisdiction. *K.J.B. Inc. v. District Court*, 103 Nev. 473, 475, 745  
15 P.2d 700, 701 (1987). The claims to seek relief from or to invalidate the justice-court  
16 default judgments must be brought in the justice court.

17 In *K.J.B.*, a landlord sued a delinquent tenant in district court, claiming  
18 unlawful detainer and damages for unpaid rent. *Id.*, 103 Nev. at 474-75, 745 P.2d at  
19 701. Although justice courts had subject matter jurisdiction over actions for unlawful  
20 detainer by statute, the plaintiff argued that district courts had concurrent jurisdiction  
21 over unlawful detainer claims where a damage claim within the district court’s  
22 jurisdiction arose from the same facts. *Id.*, 103 Nev. at 476, 745 P.2d at 701-02. The  
23 Supreme Court held that the district court’s subject matter jurisdiction was limited to  
24 the claim for damages, and that it must dismiss the unlawful detainer claim for lack of  
25 subject matter jurisdiction. *Id.*, 103 Nev. at 475, 745 P.2d at 701. The court explained  
26 that the 1978 amendment to the Nevada constitution eliminated all concurrent  
27 jurisdiction between justice courts and district courts:

28 Prior to 1978, the Nevada Constitution allowed the district  
courts and the justices’ courts to exercise concurrent

jurisdiction in some areas, including unlawful detainer actions. In 1978, however, Article 6, section 6 of the Nevada Constitution was amended to provide, in part: "The District Courts ... shall have original jurisdiction in all cases excluded by law from the original jurisdiction of the justices' courts." *Therefore, the district courts have no original jurisdiction in matters in which the justices' courts have original jurisdiction.*

*Id.* (emphasis added.) The court concluded that, "[a]lthough the district court had jurisdiction to entertain [plaintiff's] cause of action for damages, it lacked jurisdiction over [plaintiff's] unlawful detainer action." *Id.* The district court was therefore prohibited from adjudicating that claim. *Id.*; accord *G.C. Wallace, Inc. v. District Court*, 127 Nev. \_\_\_, 262 P.3d 1135, 1141 n.2 (2011) (explaining that justice courts and district courts must adjudicate claims within their jurisdiction separately to avoid unconstitutionally concurrent jurisdiction, even where those claims arise from the same facts).

More recently, in *State v. Kopp*, the Nevada Supreme Court held that district courts may not exercise jurisdiction over misdemeanor charges joined in the same indictment with felony charges because "*concurrent jurisdiction between the district courts and the justices' courts can no longer exist.*" 118 Nev. 199, 203, 43 P.3d 340, 342-43 (2002) (emphasis added; citing *K.J.B.*, 103 Nev. at 475, 745 P.2d at 701). The Court explained that "grant[ing] the district and justices' courts concurrent jurisdiction over misdemeanors [would be] a result that is directly at odds with the intent of Article 6, Section 6 of the Nevada Constitution." *Id.*

Put simply, if a matter *may* be brought in the justice court, it *can only* be brought in the justice court.

**C. The District Court Does Not Have Appellate Oversight on Issues Not Raised in the Justice Court**

Nevada's district courts are limited to appellate jurisdiction in matters within the justice court's original jurisdiction. *See* Nev. Const. Art. 6 Sec. 6; accord *Caballero v. District Court*, 123 Nev. 316, 320, 167 P.3d 415, 418 (2007). The

1 borrowers here, however, are not appealing from their justice court judgments; rather,  
2 they have bypassed justice court procedure entirely and have invoked the district  
3 court's *original* jurisdiction.

4 Even if the borrowers were seeking district court review of the justice court's  
5 handling of this issue through *mandamus* or a similar writ, such review is precluded in  
6 this instance. Simply put, the borrowers have not asked the justice court to take any  
7 action in this context, and so there is nothing for this Court to review. Put another  
8 way, invoking an appellate court's original jurisdiction to challenge a lower court  
9 proceeding is inappropriate where the party seeking relief has "a plain, speedy, and  
10 adequate remedy in the ordinary course of law." *Merits Incentives, LLC v. District*  
11 *Court*, 127 Nev. \_\_\_, 262 P.3d 720, 723 (2011). In this case, the appropriate remedy  
12 is for borrowers to seek relief in the justice court, not to raise it in the first instance in  
13 an independent action in the district court.

14 The Nevada Supreme Court has recently observed that "comity and efficiency  
15 make a 'motion in the court that rendered the judgment' the preferred and 'normal  
16 procedure to attack a judgment' for fraud on the court." *NC-DSH, Inc. v. Garner*, 125  
17 Nev. 647, 653, 218 P.3d 853, 857-58 (2009) (quoting 11 Wright, Miller & Kane,  
18 FEDERAL PRACTICE AND PROCEDURE § 2868 (2d ed. 1995). Plaintiffs' attempt here to  
19 circumvent this "preferred and normal procedure" is inappropriate.

## 20 II.

### 21 **THE COURT SHOULD DECERTIFY THE CLASS BECAUSE** 22 **IT LACKS JURISDICTION OVER THE CERTIFIED CLAIMS**

23 This Court limited the class certification in this case to only the "injunctive and  
24 equitable issues" raised by plaintiffs' independent action and abuse of process claims.  
25 In other words, class certification was limited to the claims seeking relief from the  
26 judgments in the justice courts. Yet, the power to grant relief from those justice-court  
27 judgments is within the exclusive, original jurisdiction of the justice court. Because  
28

1 this Court lacks subject-matter over those claims, no class claims remain. The Court  
2 should therefore decertify the class and dismiss those claims.<sup>1</sup>

### 3 CONCLUSION

4 Nevada's Constitution prohibits concurrent jurisdiction between justice courts  
5 and district courts. The claims that were certified, that is, those for relief from the  
6 default judgments, are within the justice court's jurisdiction—and outside this Court's  
7 jurisdiction. No class claims remain, and the class should be decertified. The  
8 remaining damages claims should be compelled to arbitration.

9 DATED this 9<sup>th</sup> day of July 2012.

10 LEWIS AND ROCA LLP

11  
12 By: /s/ *Daniel F. Polsenberg*

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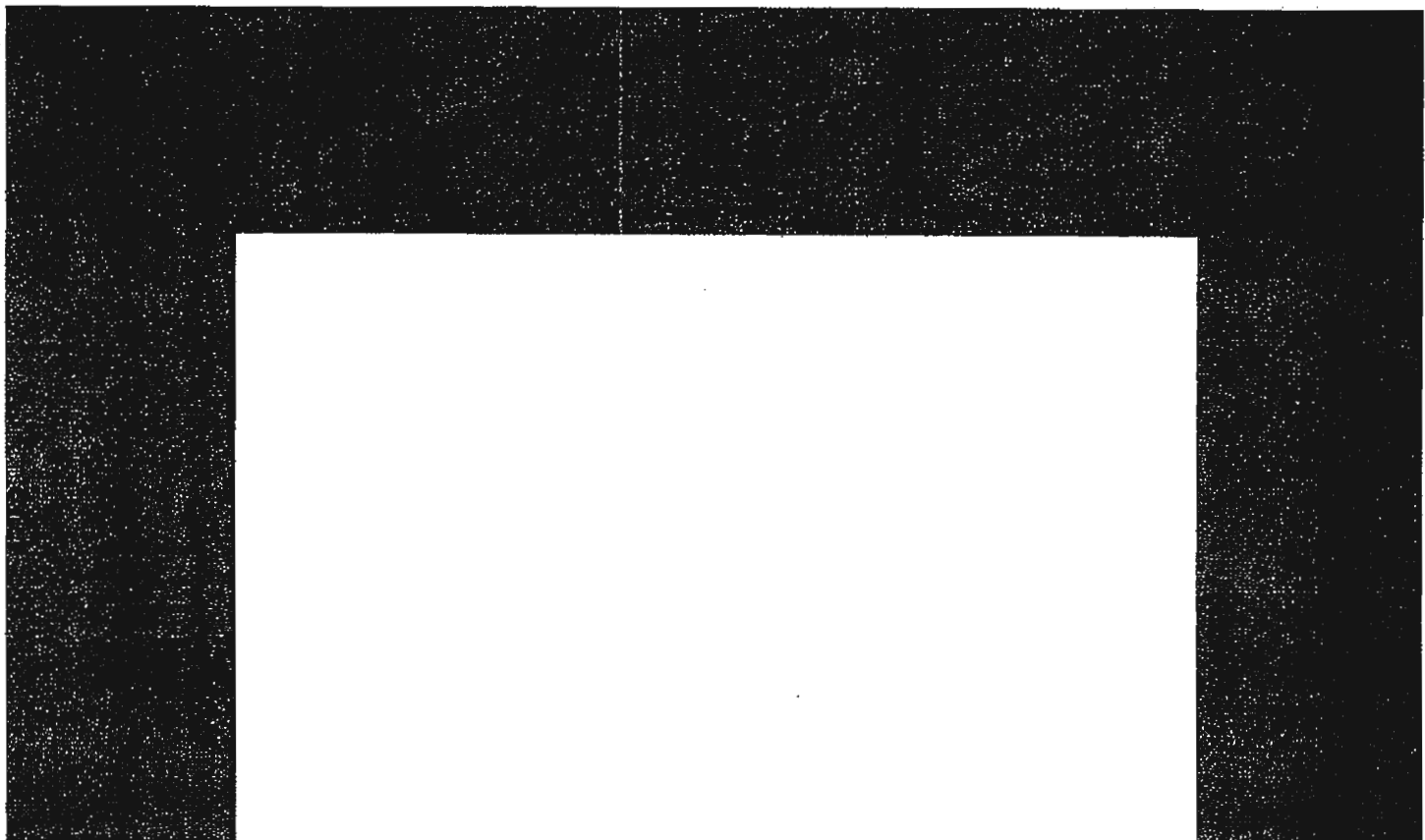
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*d/b/a Rapid Cash; FMMR Investments,*  
*Inc. d/b/a Rapid Cash; Prime Group,*  
*Inc. d/b/a Rapid Cash; Advance*  
*Group, Inc. d/b/a Rapid Cash*

25 <sup>1</sup> Plaintiffs' other claims for damages have not been certified for class treatment. Nor  
26 could they be. The damages issues in those cases raise individualized issues  
27 incompatible with class certification. *See Wal-Mart Stores v. Dukes*, 564 U.S. \_\_\_\_,  
28 131 S. Ct. 2541, 2551 (2011). This Court should continue to hold that the remaining  
claims—those claims that do seek relief from or invalidation of the justice-court  
judgments—are not certified as a class under Rule 23.

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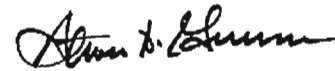


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CLERK OF THE COURT

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*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 DEFENDANTS' MOTION TO DISMISS**

**Date of Hearing:** July 12, 2012  
**Time of Hearing:** 9:00 a.m.



## INTRODUCTION

This certified class action seeks to redress the fraud perpetrated upon the courts and perhaps thousands of justice court defendants in the Clark County, Nevada, judicial system<sup>1</sup> 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 default judgments against allegedly defaulting borrowers, eviscerating their due process rights and destroying their credit. This case is not based on the breach of payday loan contract claims brought in the Justice Court, nor is it one for monetary damages as Rapid Cash contends. While the Class members seek disgorgement, restitution, and punitive damages, the thrust of this class action is their equitable relief claims that seek relief from these illegally obtained, void judgments.

The district court’s exercise of jurisdiction over this entire matter is wholly consistent with Nevada’s Constitution and case law. The Rapid Cash Defendants contend (again)<sup>2</sup> that this Court lacks jurisdiction over this case because exclusive jurisdiction rests *exclusively* with the justice court. Rapid Cash’s argument again ignores the critical and dispositive fact that Plaintiffs’ equitable claims alone confer original jurisdiction upon the district court over the entire case as the justice courts lack jurisdiction over such equitable claims. Because this Court has original jurisdiction over the class members’ equitable claims in this independent action and

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<sup>1</sup> In any event, at least 465 such Rapid Cash Customers. See Rapid Cash’s July 10, 2012, Status Report.

<sup>2</sup> This court denied the defendant’s first run at this motion in early 2011. The Class reiterates and incorporates herein by reference all of the arguments it made during that proceeding.

1 supplemental jurisdiction over all other claims, Rapid Cash's motion must be denied,  
2 again.

### 3 ARGUMENT

4 This action asks for declaratory and injunctive relief, both of which come  
5 under the original jurisdiction of the district court. Rapid Cash's argument relies  
6 heavily on JCRCP 60(b), which authorizes motions to set aside justice court  
7 judgments. But JCRCP 60(b) has no relevance because this case was not brought  
8 under Rule 60. This is an independent and original action in equity, and it is the  
9 district court—not the justice court—that has exclusive original jurisdiction over such  
10 cases.

#### 12 **A. This Case is Equitable, Not Procedural as Defendants Contend, and the 13 District Court Has the Power to Exercise Jurisdiction over the Entirety of 14 it.**

15 Nevada's Constitution gives the district courts original jurisdiction in all cases  
16 excluded by law from the original jurisdiction of the justice courts. Nev. Const. Art.  
17 6 §6(1). The Supreme Court relies on NRS 4.370 in determining the jurisdiction of  
18 the courts. *G.C. Wallace, Inc. v. District Court*, 127 Nev. Ad. Op. 64, 262 P.3d 1135  
19 (2011). NRS 4.370, which defines the scope of the justice court's jurisdiction, does  
20 not list equitable actions among the matters subject to the justice court's exclusive  
21 jurisdiction, tacitly leaving such claims to the jurisdiction of the district courts. *See*  
22 *e.g. Edwards v. Emperor's Garden Restaurant*, 122 Nev. 317, 130 P.3d 1280, 1284  
23 (2006) ("the District Court possesses original jurisdiction . . . over claims for  
24 injunctive relief") (citing *Jasper County Lumber Co. v. Biscamp*, 77 S.W.2d 571, 572  
25 (Tex. Civ. App. 1934) (noting that a district court's jurisdiction over suits for  
26 injunctive relief "does not necessarily depend upon the amount in controversy")).  
27 This Court's original jurisdiction over independent actions in equity to set aside  
28 improperly procured default judgments like the ones that Rapid Cash obtained against

1 the Class members is also demonstrated by the Nevada Supreme Court's decision in  
2 *Nevada Indus. Dev. v. Benedetti*, 103 Nev. 360, 741 P.2d 802 (1987). In *Benedetti*,  
3 the Court held that Nevada has two methods for seeking to set aside a judgment: Rule  
4 60(b) *or* an independent action in equity to set aside the judgment. *Benedetti*, 741  
5 P.2d at 805. That principal was reiterated in *Libro v. Walls*, 103 Nev. 540, 542-543,  
6 746 P.2d 632, 634 (1987), in which the Nevada Supreme Court recognized, "Where  
7 the fraud is so successful the other party is not even aware he has a claim or defense,  
8 it may be said he had no reasonable opportunity to present it. That which keeps one  
9 party away from court by conduct preventing a real trial on the issues is extrinsic  
10 fraud and *forms a sufficient basis for equitable relief from the judgment.*" (emphasis  
11 supplied) (citing *Villalon v. Bowen* 70 Nev. 456, 273 P.2d 409 (1954)).<sup>3</sup>

12  
13 Jurisdiction over the Class's declaratory relief claims also rests in the district  
14 court. NRCP 57 states, "[t]he procedure for obtaining a declaratory judgment  
15 pursuant to statute, shall be in accordance with these rules . . . . The existence of  
16 another adequate remedy does not preclude a judgment for declaratory relief in cases  
17 where it is appropriate." NEV. R. CIV. PROC. 57. And NRS 30.030 provides, "Courts  
18 of record within their respective jurisdictions shall have power to declare rights, status  
19 and other legal relations whether or not further relief is or could be claimed." NEV.  
20 REV. STAT. § 30.030. These provisions are important for two reasons. First, they  
21 allow an action for declaratory relief to be filed even if the plaintiff has another  
22 remedy. Second, as the justice court rules contain no similar provision regarding  
23 declaratory relief (JCRCP 57 has been "reserved"), and equitable relief is not listed in  
24 NRS 4.370 as falling within the subject matter jurisdiction of the justice courts, these  
25 provisions further demonstrate that the district courts have original jurisdiction over  
26

27 <sup>3</sup> See also *Savage v. Salzman*, 88 Nev. 193, 195, 495 P.2d 367, 368 (1972); *Colby v.*  
28 *Colby*, 78 Nev. 150, 153-154, 369 P.2d 1019, 1021 (1962); *Murphy v. Murphy*, 65 Nev.  
264, 271, 193 P.2d 850, 854 (1948).

1 such claims. The same principles are true for the Class's injunctive relief claims.  
2 They fall under NRCP 65, which has no corresponding justice court rule, as  
3 injunctive relief actions fall outside the jurisdiction of the justice courts. Because the  
4 district court has original jurisdiction over the Class's equitable and declaratory relief  
5 claims, it has supplemental jurisdiction over any remaining claims. *Parascandolo v.*  
6 *Christensen*, 65 Nev. 578, 583, 199 P.2d 629, 631 (1948) (quoting *Seaborn v. District*  
7 *Court*, 55 Nev. 206, 222, 29 P.2d 500, 505 (1934)) ("[I]f a court of equity obtain[s]  
8 jurisdiction of a controversy on any ground and for any purpose, it will retain  
9 jurisdiction for the purpose of administering complete relief.")).

10 Rapid Cash relies on *K.J.B., Inc. v. District Court*, 103 Nev. 473, 745 P.2d 700  
11 (1987), *State v. Kopp*, 118 Nev. 199, 43 P.3d 340 (2002), and *G.C. Wallace, Inc.* to  
12 further dispute this Court's ability to exercise jurisdiction over the Class's claims,  
13 contending that each stands for the proposition that these claims *must* be brought in  
14 justice court because they *may* be. But all three of these cases are materially  
15 distinguishable from this one because, in each—and unlike in this case—the claims at  
16 issue actually fell within the scope of the justice court's original jurisdiction.

17 In *K.J.B. Inc.*, the action that was filed was for unlawful detainer. *K.J.B., Inc.*,  
18 103 Nev. at 474. Unlawful detainer is a type of claim listed within the exclusive  
19 jurisdiction of the justice court: "[o]f actions for the possession of lands and  
20 tenements where the relation of landlord and tenant exists, when damages claimed do  
21 not exceed \$10,000 or when no damages are claimed." NRS 4.370(g). Because the  
22 unlawful detainer action was for an amount under \$10,000.00, the *K.J.B., Inc.* court  
23 not surprisingly determined that it must be brought in justice court in accordance with  
24 the statute. In *Kopp*, the Court similarly held that the justice court had original  
25 jurisdiction over "misdemeanors" and therefore the case could not be brought in  
26  
27  
28

1 district court, but rather, must be brought in justice court. *See* 118 Nev. at 203, 43  
2 P.3d at 343.

3 Finally, contrary to Defendants' characterizations, in *G.C. Wallace, Inc.*, the  
4 Court held that an unlawful detainer action, traditionally within the sole jurisdiction  
5 of the justice court, may be brought in the district court when the dollar amount  
6 exceeds the justice court's jurisdictional limits. There, the landlord sued for summary  
7 eviction in justice court and then filed a subsequent unlawful detainer action in  
8 district court. The Court stated that in bringing the action the landlord had four  
9 options, the dollar amount of damages being determinative of the court in which the  
10 action could be brought. For damages exceeding \$10,000 (the jurisdictional  
11 limitation of the dollar amount as set forth by NRS 4.370), an action for summary  
12 eviction (otherwise proper only in Justice Court) could be brought in district court  
13 with the unlawful detainer action because the claim's value brought it within the  
14 original jurisdiction of the district court. *See G.C. Wallace, Inc.*, 127 Nev. Ad. Op. 64,  
15 262 P.3d at 1141; *Kimball v. State*, 100 Nev. 190, 678 P.2d 675 (1984) (district court  
16 had jurisdiction to convict and sentence for a misdemeanor although, under Nev. Art.  
17 6, Sec. 6, original jurisdiction of district court is limited to felonies and gross  
18 misdemeanors, because once court properly obtained jurisdiction over defendant  
19 when he was charged with a gross misdemeanor, its jurisdiction was maintained to  
20 convict and sentence on any lesser included offense).

21  
22 This class action seeks equitable relief for fraud upon the court—claims that  
23 fall outside of the justice court's original jurisdiction. Thus, unlike in *K.J.B., Kopp*,  
24 and *G.C. Wallace*, the justice court has no jurisdiction over *this case*, and these claims  
25 may and must remain in district court.

26 From a jurisdictional standpoint, the instant case is materially similar to  
27 *Benedetti and Savage v. Salzmann*, 88 Nev. 193, 495 P.2d 367 (1972). In *Benedetti*,  
28

1 the court held, "A court, in an independent action, may modify a final judgment in a  
2 former proceeding on the ground of mistake as well as fraud." *Benedetti*, 741 P.2d at  
3 805. Nowhere in *Benedetti* does our State's High Court question or deny the district  
4 court's jurisdiction over that independent action in equity to set aside the judgment  
5 and for the equitable remedy of restitution. The same holds true for *Savage*, in which  
6 Salzmann obtained a default judgment in a separate action against Savage in violation  
7 of the parties' agreement. *Savage*, 88 Nev. at 194. The court held that Savage had  
8 alleged facts which, if proved, would support a finding of extrinsic fraud. *Id.* 195-  
9 196. Not once in the *Savage* opinion did the court question the district court's power  
10 to hear the plaintiff's independent action in equity to set aside the judgment.

11 As this Court is well aware,<sup>4</sup> the Class alleges that Rapid Cash's agents attested  
12 to having served thousands of Rapid Cash's payday loan customers with legal process  
13 but, in fact, never even attempted to serve them. Rapid Cash then utilized these  
14 fraudulent affidavits of service to procure default judgments with zero notice.<sup>5</sup> These  
15 allegations, when proven, will demonstrate that Rapid Cash prevented Plaintiffs from  
16 knowing about their rights or defenses and from having a fair opportunity to present  
17 them upon trial. As our High Court has already considered this type of independent  
18 action in equity to set aside default judgments and has never dismissed one for want  
19 of original jurisdiction, it is clear that Nevada's district courts have jurisdiction over  
20 independent actions in equity to set aside default judgments like this one.

21 ...

22 ...

23  
24  
25 <sup>4</sup> See First Amended Class Action Complaint, incorporated herein by reference.

26  
27 <sup>5</sup> Class notice has been served, and Rapid Cash's most recent status report indicates  
28 that only 81 class members have voluntarily asked to opt out. 465, however, returned  
post cards confirming that they were not served. See July 10, 2012, Status Report.

1           **B.       This Case is Not a Continuation of Rapid Cash's Justice Court**  
2           **Actions, it is an Independent Action Challenging Rapid Cash's Abuse**  
3           **of the Justice System.**

4           As further support for its argument that this action belongs exclusively in justice  
5           court, Rapid Cash attempts to bootstrap the Class members' claims into Rapid Cash's  
6           original breach of contract claims that gave rise to the now-challenged, illegally  
7           obtained default judgments. This payday lender argues that because those claims  
8           were within justice court jurisdiction, these challenges are just "a continuation of"  
9           Rapid Cash's justice court actions, and that's where they belong. Defendant's Motion  
10          to Dismiss at 9. Rapid Cash cites *Pacific R. Co. of Mo. v. Missouri Pacific R. Co.*,  
11          111 U.S. 505 (1884), and *United States v. Beggerly*, 524 U.S. 38 (1998), for this  
12          proposition. But these cases undermine—not support—Rapid Cash's point. Both  
13          deem an independent action a continuance of the original one only if the action is  
14          brought in the same court as the original suit, which is clearly not the case here.  
15          Neither of these decisions holds or even implies that the independent action must be  
16          brought in the same court as the original lawsuit. "An independent action is  
17          considered to be a new civil action, not a motion under Rule 60(b)." *Atlas Const Co.*  
18          *v. District Court in and for Boulder County*, 589 P.2d 953, 955 (Colo. 1979).

19          **C.       This is Not a Request for Sanctions or an Appellate Challenge of a**  
20          **Justice Court Order.**

21          Rapid Cash's citation to *Timber Tech Engineered Bldg. Prods. v. The Home Ins.*  
22          *Co.*, 118 Nev. 630, 633, 55 P.2d 952, 954 (2002), and Nev. Const. Art. 6 Sec. 6 misses  
23          the point. This is not an independent action for "sanctions." Nor is this an attempt to  
24          obtain "appellate oversight" from the district court akin to a mandamus or similar writ  
25          proceeding. This is an action to set aside judgments procured through fraud on the  
26          court, and a litigant's ability to file a new action for this purpose has been expressly  
27          recognized by the Nevada Supreme Court. *See Benedetti*, 741 P.2d at 805 ("A court, in  
28

1 an independent action, may modify a final judgment in a former proceeding on the  
2 ground of mistake as well as fraud.”); *accord, Savage*.

3 Nor is the Nevada Supreme Court’s statement in *NC-DSH, Inc. v. Garner*, 218  
4 P.3d 853, 858-59 (2009), that a Rule 60 motion to set aside a judgment for fraud on the  
5 court is “the preferred” procedure, *see* Motion at 12, of any consequence to this  
6 jurisdictional discussion. The Court preceded that comment with the recognition that it  
7 made no “difference that” the plaintiff there “proceeded by motion in the underlying  
8 case instead of filing an independent action,” because the Nevada Supreme Court “has  
9 already interpreted NRCP 60(b)’s ‘savings clause’ to permit a party seeking to vacate a  
10 judgment because of fraud on the court to ‘proceed by motion or [to] bring an  
11 independent action.’ He or she just may not pursue both remedies simultaneously.” *Id.*  
12 at 858 (quoting *Murphy v. Murphy*, 103 Nev. 185, 186, 734 P.2d 739 (1987)).

13 **D. JCRCP 60 Does Not Prevent the District Court’s Exercise of**  
14 **Jurisdiction Over Justice Court Judgments Challenged by an**  
15 **Independent Action in Equity.**

16 Rapid Cash also heavily relies on JCRCP 60, suggesting that its existence  
17 demonstrates the exclusive jurisdiction of the justice court over this case. But nothing  
18 in or about Rule 60 supports this notion. The salutary purpose of Rule 60(b) is to  
19 redress any injustices that may have resulted because of excusable neglect or the  
20 wrongs of an opposing party. Rule 60 should be liberally construed to effectuate that  
21 purpose. *See Benedetti*, 103 Nev. at 364, 741 P.2d at 805 (citing *Mendenhall v.*  
22 *Kingston*, 610 P.2d 1287, 1289 (Utah 1980)). JCRCP Rule 60 does not purport to  
23 limit jurisdiction over Justice Court judgments to the justice court. To the contrary,  
24 the rule specifically states, “[t]his rules does not limit the power of a court to entertain  
25 an independent action to relieve a party from a judgment, order, or proceeding, or to  
26 set aside a judgment for fraud upon the court.” JCRCP 60(b) (emphasis added).  
27 Thus, the rule expressly recognizes that an action to set aside a justice court judgment  
28 may be brought in another forum. At a minimum, the drafters had the opportunity to



1 say that the independent action had to be brought in the court in which the judgment  
2 was entered but chose not to do so, leaving it open for the action to be brought in “a”  
3 court, and we must presume that the rule drafters did that intentionally. *See So. Nev.*  
4 *Homebuilders Assn. v. Clark County*, 121 Nev. 446, 451, 117 P.3d. 171, 174 (2005)  
5 (Legislature’s failure to include language in a statute or court rule should be  
6 interpreted as intentional).

7 Defendants also argue that the justice court’s inherent authority to set aside its  
8 own judgments prevents this court from exercising jurisdiction. Defendants rely on  
9 *Finley v. Finley*, 65 Nev. 113, 196 P.2d 766 (Nev. 1948), and *Filler v. Richland*  
10 *County*, 806 P.2d 537 (Mont. 1991); but neither case stands for this proposition, as  
11 both cases recognize only that an issuing court “may” set aside its own judgment;  
12 neither case holds or even suggests that only the issuing court can do so. Thus,  
13 neither Rule 60 nor the justice court’s inherent authority to set aside these judgments  
14 divests this Court of jurisdiction over this case. Rapid Cash’s motion to dismiss must  
15 be denied.  
16

17 **E. As this Court has Repeatedly Held, Neither Decertification, Nor**  
18 **Arbitration is Warranted.**

19 Rapid Cash concludes this renewed motion to dismiss by renewing its request  
20 for class decertification and an order compelling arbitration. This Court has  
21 repeatedly denied these requests, and Rapid Cash’s instant arguments offer nothing to  
22 change this Court’s mind. Like the motion to dismiss, these requests must be denied.  
23  
24  
25  
26  
27  
28

## CONCLUSION

Nevada law clearly gives this Court jurisdiction over this case. Accordingly, for all the reasons set forth herein and in the previous briefing on this issue, Rapid Cash's motion to dismiss and requests to decertify this Class, and compel arbitration must be denied in their entirety.

DATED this 11<sup>th</sup> day of July, 2012.

Respectfully Submitted by Class Counsel:

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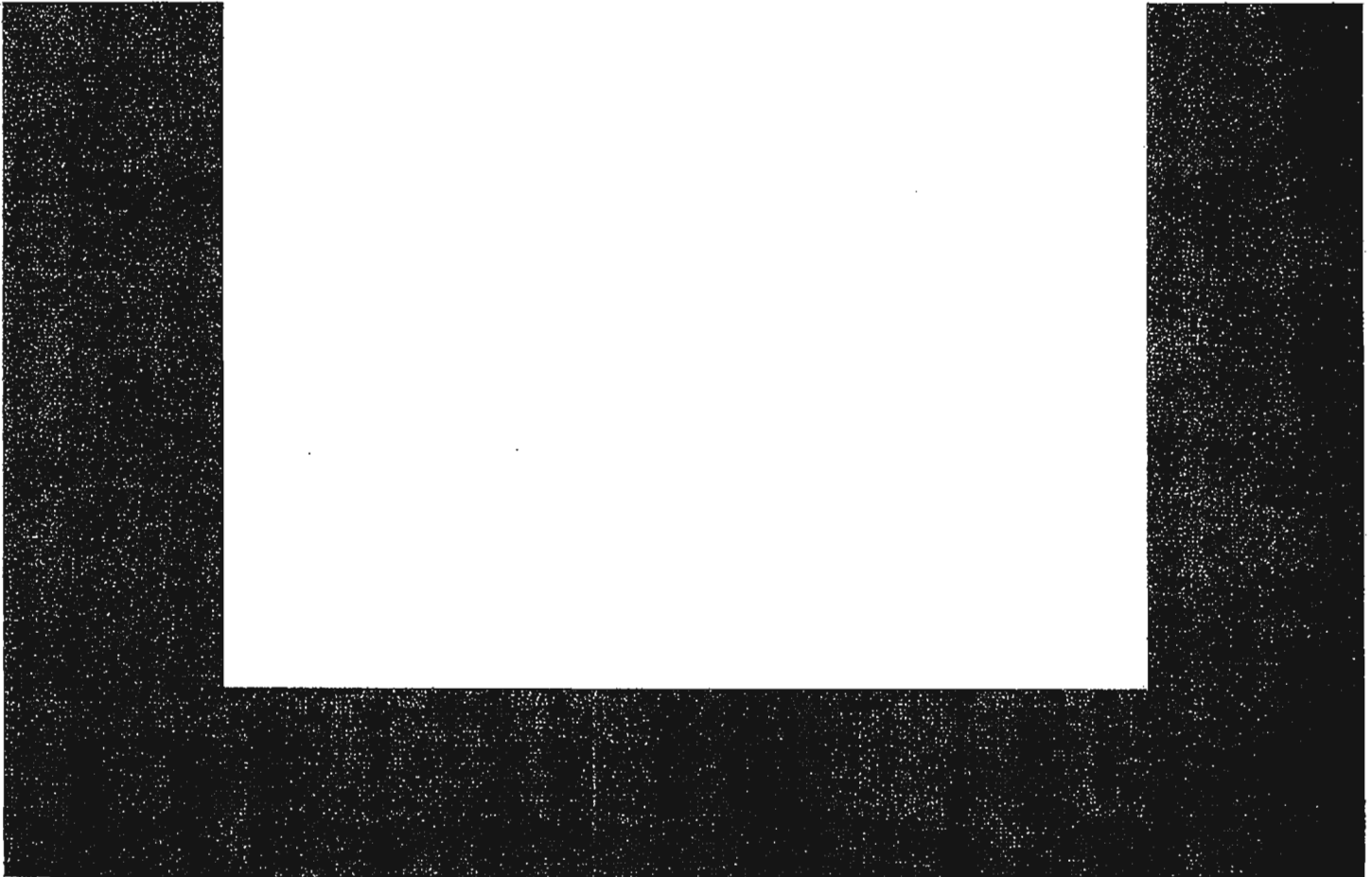
### *Class Counsel*

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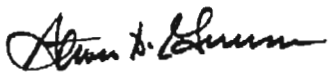


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**ORD**

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*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,

Plaintiff,

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;  
ADVANCED 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. A624982  
Dept. XI

**ORDER GRANTING MOTION TO  
DISMISS DEFENDANTS'  
COUNTERCLAIMS,  
DENYING DEFENDANTS' MOTION  
TO AMEND NOTICE, AND  
GRANTING DEFENDANTS' MOTION  
TO ENLARGE TIME FOR MAILING  
CLASS NOTICE**

Date of Hearing: February 28, 2012

Now on the 28<sup>th</sup> day of February, 2012, comes on for hearing Plaintiff's "Motion to  
Dismiss Defendants' Counterclaims; Alternative Motion to Strike Counterclaim Class Action

1 Allegations” and Defendant’s “Motion to Amend Class Notice” and “Motion to Enlarge Time  
2 for Mailing Class Notice.” Plaintiffs appeared by and through Class Counsel, Jennifer C.  
3 Dorsey, Esq., Kemp, Jones and Coulthard, LLP, and Dan L. Wulz, Esq., Legal Aid Center of  
4 Southern Nevada, Inc. Defendants, Principal Investments, Inc. d/b/a Rapid Cash; Granite  
5 Financial Services, Inc. d/b/a Rapid Cash; FMMR Investments, Inc. d/b/a Rapid Cash; Prime  
6 Group, Inc. d/b/a Rapid Cash; and Advanced Group, Inc. d/b/a Rapid Cash (hereafter “Rapid  
7 Cash”), appeared by counsel Mark S. Dzarnoski, Esq., Gordon & Silver, Ltd.  
8

9 The Court, having reviewed the Motions, Oppositions, Replies, file and the pleadings on  
10 file herein and having considered the arguments of counsel hereby FINDS, CONCLUDES, and  
11 ORDERS as follows:

12 1. The **Motion to Dismiss Defendants’ Counterclaims** is **GRANTED**. To the  
13 extent that judgments in favor of Rapid Cash exist, it would be premature to allow Defendants to  
14 pursue counterclaims seeking the objects of those judgments. Accordingly, all of the  
15 Counterclaims filed by Defendants are **DISMISSED**.  
16

17 2. The Defendants’ **Motion to Amend Class Notice** is **DENIED**.

18 3. The Defendants’ **Motion to Enlarge Time for Mailing Class Notice** is  
19 **GRANTED**. Rapid Cash shall cause the Notice and return postcard (in the form attached hereto  
20 as Exhibit 1) to be mailed out via first class mail to all customers of Rapid Cash offices in Clark  
21 County, Nevada, against whom Rapid Cash obtained default judgments in the Justice Courts of  
22 Clark County, Nevada, and for which the only evidence of service of process was an affidavit  
23 signed by a representative of On Scene Mediations. **These notices shall be mailed and**  
24 **postmarked on or before March 22, 2012**, and simultaneously with the mailing, Rapid Cash or  
25 shall provide Class Counsel with a copy of the notice and a list of the names and addresses that  
26 the notices were mailed to.  
27  
28

1 4. Class Counsel shall provide counsel for Rapid Cash with the Notice and postcard  
2 in Word format by 5 p.m. on February 29, 2012.


3 5. Promptly after mailing the notices, Rapid Cash or its appointed claims  
4 administrator shall file with the court a notice of compliance stating when and how many Class  
5 Notices were mailed out.

6  
7 6. In the September 29, 2011, Order Granting Class Certification and Appointing  
8 Class Counsel, this Court approved a notice for newspaper publication in the form attached  
9 hereto as Exhibit 2. That order directs the notice to be published "in the following newspapers:  
10 Las Vegas Review Journal in English and El Mundo in Spanish. The Published Notice shall be  
11 at least one-quarter of a page large, and shall be published for six consecutive weeks." 9/29/11  
12 Order at ¶ 10.

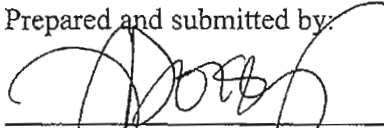
13  
14 7. Class Counsel shall provide Rapid Cash with a Spanish translation version of the  
15 Notice on or before 3/14/12, and Rapid Cash shall cause publication of the notice to begin no  
16 later than 3/21/12.

17 **IT IS SO ORDERED.**

18 DATED this 6<sup>th</sup> day of March, 2012.

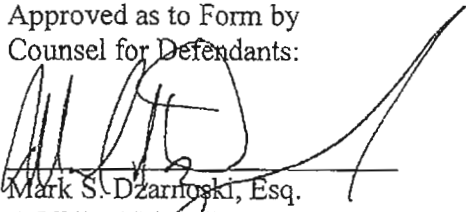
19  
20   
DISTRICT COURT JUDGE

21 Prepared and submitted by:

22   
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24 Venicia Considine, Esq. (11544)  
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9 **Class Counsel**

10 Approved as to Form by  
11 Counsel for Defendants:

12   
13 Mark S. Dzarnoski, Esq.

14 **GORDON SILVER**  
15 3960 Howard Hughes Pkwy  
16 Ninth Floor  
17 Las Vegas, Nevada 89169  
18 Telephone: (702) 796-5555  
19 [mdzarnoski@gordonsilver.com](mailto:mdzarnoski@gordonsilver.com)  
20  
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## EXHIBIT 1

**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

CLASS ACTION

**DO NOT BE ALARMED. YOU HAVE NOT BEEN SUED.**

**THIS NOTICE IS MERELY TO TELL YOU THAT THE ABOVE LAWSUIT HAS BEEN CERTIFIED AS A CLASS  
ACTION AND THAT YOU HAVE BEEN IDENTIFIED AS A POTENTIAL CLASS MEMBER.**

**PLEASE READ THE ENTIRE NOTICE TO LEARN HOW TO EXERCISE YOUR RIGHTS**

**THIS NOTICE EXPLAINS:**

- A. WHAT THE LAWSUIT IS ABOUT
- B. PURPOSE OF THIS NOTICE
- C. BECOMING A CLASS MEMBER
- D. OPT OUT

**A. WHAT THIS LAWSUIT IS ABOUT:** A class action lawsuit was filed in the Eighth District Court of Nevada alleging that Rapid Cash unlawfully obtained default judgments in collections actions filed in Justice Court, Clark County, Nevada, without first serving the summons and complaint on its customers as required by law. It is alleged that the process server, Maurice Carroll and On Scene Mediations, failed to serve the summons and complaint but filed an affidavit with the Justice Court certifying that they completed service, which allowed Rapid Cash to obtain default judgments against its customers based upon the false affidavits. The Complaint seeks to set aside the default judgments obtained using false affidavits of service and to recover some money Rapid Cash collected in satisfaction of the default judgments. Rapid Cash denies the allegations.

**WHAT IS SERVICE OF PROCESS?** Service of Process means the personal delivery of documents (a summons and complaint) to the person being sued. It is the procedure used to give a legal notice of a court case to a person. It allows the person being sued to respond to the court.

**B. PURPOSE OF THIS NOTICE:** This Notice is sent to inform you about your legal rights. It is being sent to all Rapid Cash customers who may be class members under the lawsuit description above, to advise that Department XI of the Eighth Judicial District Court, Clark County, Nevada, has certified a class action on their behalf. If you want to pursue a claim individually or do not wish to be included in this class action, fill in the OPT OUT form in this packet and return via US Postal Service to Rust Consulting, 625 Marquette Ave # 880, Minneapolis, MN 55402.

**C. YOUR RIGHTS:** You must return the Postcard Questionnaire (see #1) checking the "WAS NOT" box if it is true that *you were not served*, in order to be a class member. But if you were served, then check the "WAS" box and return the Postcard Questionnaire. If you fail to return the Postcard Questionnaire, the Court will presume you are a class member until further notice.

**D. OPT OUT:** You may OPT OUT of the case (see #2) by returning the Postcard Questionnaire stating you request exclusion. You will not be allowed to pursue individual claims against Rapid Cash unless you opt out.

**#1 RETURN THE POSTCARD:** If you were not served with a summons and complaint by Rapid Cash and want to be included in this Class Action, check the appropriate box on the POSTCARD and mail the POST CARD on or before April 20, 2012.

**#2 OPT OUT:** If you do not want to be a member of the Class or receive any other benefit of the litigation including any future settlement, you must inform the Court that you are going to OPT OUT of the Class by checking the Request for Exclusion box below and mailing the POST CARD on or before ~~April 20, 2012~~.

May 20, 2012.

When the Court first certified this case as a class action, it appointed the following attorneys to represent all members of the Class: Dan Wulz and Venecia Considine at Legal Aid Center, 800 South Eighth St., Las Vegas, NV 89101; and J. Randall Jones and Jennifer Dorsey at Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, 17<sup>th</sup> Flr., Las Vegas, NV 89169. Together, these attorneys are Class Counsel. You will not be charged for these lawyers.

## POSTCARD

Check the appropriate box, fill in your name, complete address and phone number and return the pre-addressed postcard. A stamp is required.

NAME: \_\_\_\_\_ PHONE : \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Question #1: If you were not served, check the ☐ WAS NOT box to become a member of the class. If you were served, check the ☐ WAS box; which means you will not be a class member.

#1: I ☐ WAS NOT ☐ WAS  
SERVED A SUMMONS AND COMPLAINT BY RAPID CASH IN A  
COLLECTION ACTION FILED IN JUSTICE COURT.

Question #2: Whether you were served or not served, check the box below if you would like to opt out of this class action and be removed from the class action completely.

#2: REQUEST FOR EXCLUSION

☐ I REQUEST TO BE EXCLUDED FROM THE CLASS ACTION. I DO NOT  
WANT TO TAKE PART IN THIS LAWSUIT.

EXHIBIT 2

**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**

**CLASS ACTION**

**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 of process was an affidavit signed by a representative of On Scene Mediations and who claim not to have been served.

**PLEASE READ THE ENTIRE NOTICE TO LEARN HOW TO EXERCISE YOUR RIGHTS**

**I. PURPOSE OF THIS NOTICE:** This Notice is given to you pursuant to an Order certifying a class action under Rule 23(b)(2) of the Nevada Rules of Civil Procedure, entered on August 29, 2011, by the Honorable Elizabeth Gonzalez of the Eighth Judicial District Court, Clark County, Nevada. You may be a member of the class described herein. This notice is to inform you of the pendency of a class action lawsuit and to explain how to identify yourself to the Court as a Class member or to request exclusion from the Class if you do not wish remain a member.

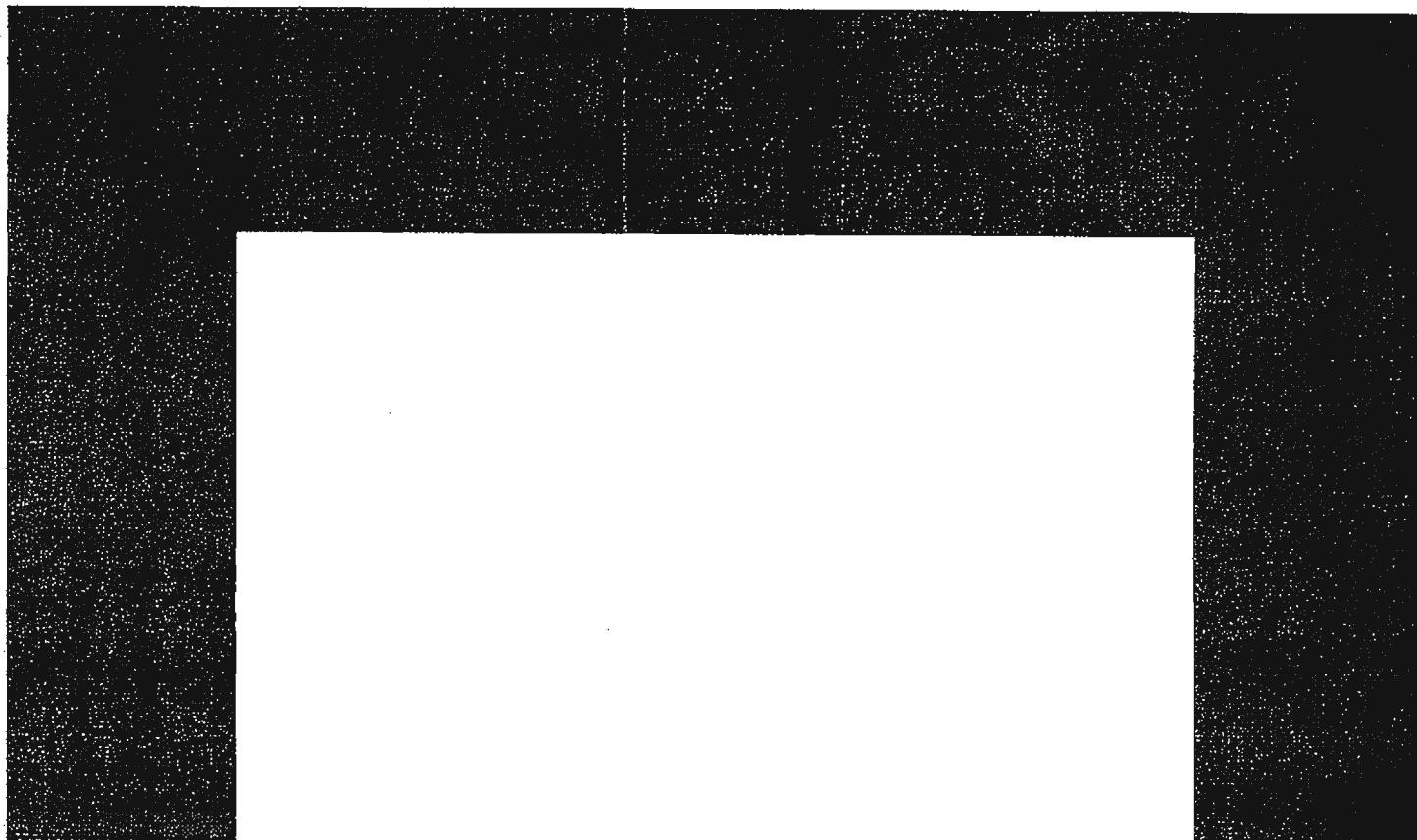
**II. WHAT THIS LAWSUIT IS ABOUT:** A class action lawsuit was filed in the Eighth Judicial District Court of Nevada alleging that Rapid Cash unlawfully obtained default judgments in collections actions filed in Justice Court, Clark County, Nevada, without first serving the summons and complaint on its customers as required by law. It is alleged that the process server, Maurice Carroll and On Scene Mediations, failed to serve the summons and complaint but filed an affidavit with the Justice Court certifying that they completed service, which allowed Rapid Cash to obtain default judgments against its customers based upon the false affidavits. The Complaint seeks to set aside the default judgments obtained using false affidavits of service and to recover some money Rapid Cash collected in satisfaction of the default judgments. Rapid Cash denies the allegations.

**WHAT IS SERVICE OF PROCESS?:** Service of Process means the personal delivery of documents (a summons and complaint) to the person being sued. It is the procedure used to give a legal notice of a court case to a person. It allows the person being sued to respond to the court.

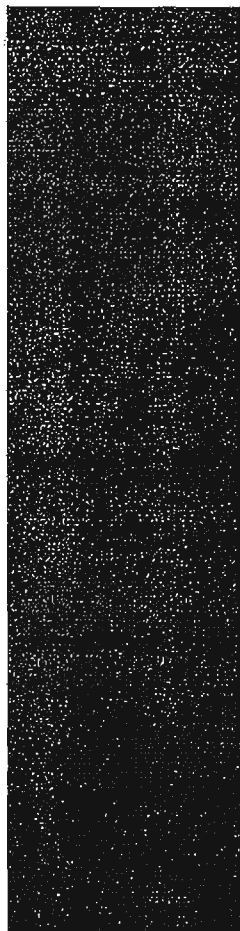
**III. CHOICES YOU NEED TO MAKE NOW:** IF YOU MEET THE DEFINITION OF THE CLASS, YOU NEED TO CALL OR VISIT THE OFFICES OF THE LEGAL AID CENTER OF SOUTHERN NEVADA, INC., 800 S. 8<sup>TH</sup> STREET, LAS VEGAS, NV., 89101, 702-386-1070 TO OBTAIN A FORM TO COMPLETE (OR YOU MAY ALSO FIND THE FORM AT [WWW.LACSN.ORG](http://WWW.LACSN.ORG)) AND COMPLETE THE FORM ON OR BEFORE ~~APRIL 20, 2012~~ 5/30/2012. IF YOU WISH TO BE EXCLUDED FROM THIS CLASS, YOU MUST SUBMIT A WRITTEN REQUEST FOR EXCLUSION ON OR BEFORE ~~APRIL 20, 2012~~ 5/30/2012.

If you are a member of the Class, you will be deemed a party to this action for all purposes unless you request exclusion from the class action. To request exclusion, you need to call or visit the offices of the Legal Aid Center of Southern Nevada, Inc., 800 S. 8<sup>th</sup> Street, Las Vegas, NV., 89101, 702-386-1070 (or you may also find the form to request exclusion as [www.lacsn.org](http://www.lacsn.org)), and complete the form on or before ~~April 20, 2012~~ 5/30/2012. Class members who do not request exclusion will be bound by any settlement or judgment, whether favorable or not, of the class, and will not have the right to maintain a separate action. You have the right to consult with your own attorney about any matters related to this Notice of Class Action. If you so desire, you may enter an appearance through counsel of your own choice. You will be represented by counsel for the class representatives unless you choose to enter an appearance through your own legal counsel. If you choose to enter an appearance through your own legal counsel, you will be responsible for the legal fees and costs of your personal counsel.

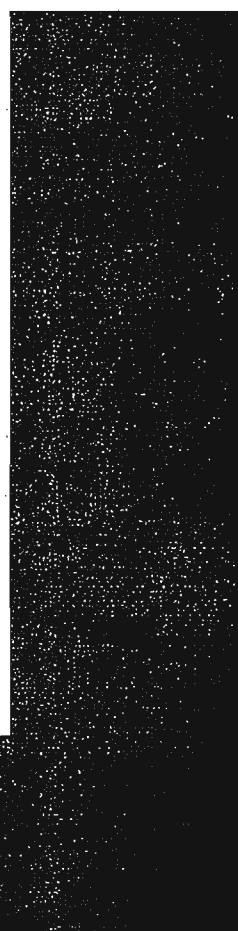
**IV. PLAINTIFFS' CLASS COUNSEL:** The Plaintiffs and the Class are represented by the following attorneys and law firms: Dan L. Wulz, Esq., and Venicia Considine, Legal Aid Center of Southern Nevada, Inc., and Randall Jones, Esq. and Jennifer C. Dorsey, Esq., of Harrison, Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, 17th Floor, Las Vegas, Nevada 89169.



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**MOT**

GORDON SILVER  
 WILLIAM M. NOALL  
 Nevada Bar No. 3549  
 Email: [wnoall@gordonsilver.com](mailto:wnoall@gordonsilver.com)

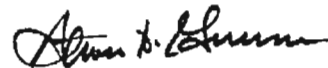
MARK S. DZARNOSKI  
 Nevada Bar No. 3398  
 Email: [mdzarnoski@gordonsilver.com](mailto:mdzarnoski@gordonsilver.com)  
 3960 Howard Hughes Pkwy., 9th Floor  
 Las Vegas, Nevada 89169  
 Tel: (702) 796-5555  
 Fax: (702) 369-2666

DANIEL F. POLSENBERG (SBN 2376)  
 JOEL D. HENRIOD (SBN 8492)  
 LEWIS AND ROCA LLP  
 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, Nevada 89169  
 (702) 474-2616

Attorneys for Defendants  
 Principal Investments, Inc., d/b/a Rapid  
 Cash, Granite Financial Services, Inc., d/b/a  
 Rapid Cash, FMMR Investments, Inc., d/b/a  
 Rapid Cash, Prime Group, Inc., d/b/a Rapid  
 Cash and Advance Group, Inc., d/b/a Rapid  
 Cash

**ORIGINAL**

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 05/08/2012 01:07:09 PM



CLERK OF THE COURT

**FILE WITH  
MASTER CALENDAR****DISTRICT COURT****CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

PRINCIPAL INVESTMENTS, INC. d/b/a  
 RAPID CASH; GRANITE FINANCIAL  
 SERVICES, INC. d/b/a RAPID CASH; FMMR  
 INVESTMENTS, INC. d/b/a RAPID CASH;  
 PRIME GROUP, INC. d/b/a RAPID CASH;  
 ADVANCE GROUP, INC. d/b/a RAPID CASH;  
 MAURICE CARROLL, individually and d/b/a  
 ON SCENE MEDIATIONS; VILISIA  
 COLEMAN, and DOES I through X, inclusive,

Defendants.

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

**MOTION FOR STAY PENDING APPEAL  
 OF THE ORDER DENYING  
 DEFENDANTS' MOTION TO COMPEL  
 ARBITRATION AND APPLICATION  
 FOR ORDER SHORTENING TIME**

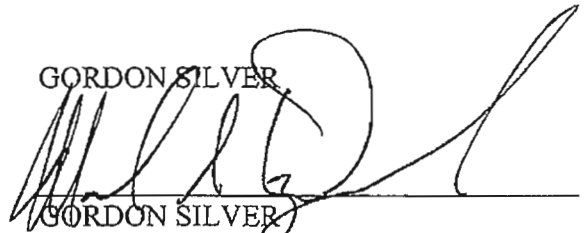
Date of Hearing:  
 Time of Hearing:

1 Defendants Principal Investments, Inc., d/b/a Rapid Cash, Granite Financial Services,  
 2 Inc., d/b/a Rapid Cash, FMMR Investments, Inc., d/b/a Rapid Cash, Prime Group, Inc., d/b/a  
 3 Rapid Cash and Advance Group, Inc., d/b/a Rapid Cash (the "Rapid Cash Defendants") by and  
 4 through their counsel, Mark S. Dzarnoski, Esq. of the law firm Gordon Silver, hereby move this  
 5 Court for a stay of all proceedings pending the outcome of appeal.

6 This motion is made and based upon the Memorandum of Points and Authorities; the  
 7 Affidavit of Mark S. Dzarnoski (the "Dzarnoski Affidavit") contained herein; the pleadings and  
 8 other papers on file herein; and such argument as the Court may permit at a hearing on this  
 9 matter.

10 DATED this 3 day of May, 2012.

11 GORDON SILVER



12 GORDON SILVER

13 WILLIAM M. NOALL

14 Nevada Bar No. 3549

15 MARK S. DZARNOSKI

16 Nevada Bar No. 3398

17 JEFFREY HULET

18 Nevada Bar No. 10621

19 3960 Howard Hughes Pkwy., 9th Floor

20 Las Vegas, Nevada 89169

21 Tel: (702) 796-5555

22 Attorneys for Defendants

23 Principal Investments, Inc., d/b/a Rapid Cash,

24 Granite Financial Services, Inc., d/b/a Rapid

25 Cash, FMMR Investments, Inc., d/b/a Rapid

26 Cash, Prime Group, Inc., d/b/a Rapid Cash

27 and Advance Group, Inc., d/b/a Rapid Cash

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1 **ORDER SHORTENING TIME**

2 TO: ALL INTERESTED PARTIES AND THEIR ATTORNEY OF RECORD:

3 IT IS HEREBY ORDERED that the request for an order shortening time is granted, and  
4 that counsel for Defendants will bring the foregoing MOTION FOR STAY PENDING APPEAL OF THE  
5 ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION on for hearing on the  
6 15<sup>th</sup> day of May, 2012, at the hour of 9 o'clock 9 .m. in Department XI  
7 of the above-entitled Court.

8 IT IS SO ORDERED this 7<sup>th</sup> day of May, 2012.

9  
10   
11 DISTRICT COURT JUDGE

12 Prepared and Submitted By:

13   
14 GORDON SILVER

15 WILLIAM M. NOALL

16 Nevada Bar No. 8549

17 MARK S. DZARNOSKI

18 Nevada Bar No. 3398

19 3960 Howard Hughes Pkwy., 9th Floor

20 Las Vegas, Nevada 89169

21 Tel: (702) 796-5555

22 Attorneys for Defendants

23 Principal Investments, Inc., d/b/a Rapid

24 Cash, Granite Financial Services, Inc., d/b/a

25 Rapid Cash, FMMR Investments, Inc., d/b/a

26 Rapid Cash, Prime Group, Inc., d/b/a Rapid

27 Cash and Advance Group, Inc., d/b/a Rapid

28 Cash

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**AFFIDAVIT OF MARK S. DZARNOSKI IN SUPPORT OF MOTION FOR STAY  
PENDING APPEAL OF THE ORDER DENYING DEFENDANTS' MOTION TO  
COMPEL ARBITRATION AND APPLICATION FOR ORDER SHORTENING TIME**

STATE OF NEVADA                    )  
  ) ss.  
COUNTY OF CLARK                )

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

1. I am an attorney duly licensed to practice law in the State of Nevada and am a shareholder with the law firm of Gordon Silver, which maintains an office at 3960 Howard Hughes Parkway, 9th Floor, Las Vegas, Nevada 89169.

2. Gordon Silver is presently counsel of record for Defendants Principal Investments, Inc., d/b/a Rapid Cash, Granite Financial Services, Inc., d/b/a Rapid Cash, FMMR Investments, Inc., d/b/a Rapid Cash, Prime Group, Inc., d/b/a Rapid Cash and Advance Group, Inc., d/b/a Rapid Cash (the "Rapid Cash Defendants"). I make this declaration in support of Rapid Cash Defendants' Motion For Stay Pending Appeal Of The Order Denying Defendants' Motion To Compel Arbitration in the above-entitled action and in support of the application for order shortening time for the hearing of the Motion.

3. I have personal knowledge of the facts herein and am competent to testify thereto, except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

4. Rapid Cash Defendants do not bring the present motion for the purpose of causing any improper delay or prejudice to the non-moving parties.

5. On December 9, 2011, Rapid Cash Defendants filed a Notice of Appeal from the Court's November 30, 2011 order denying their motion to compel arbitration.

6. On March 20, 2012, plaintiffs' counsel made clear to the Nevada Supreme Court that plaintiffs *do not dispute* that the appeal from the November 30 order is "a proper vehicle" for appellate "review of the merits of the district court's waiver finding" and its decision to deny arbitration.

7. This Court has previously ordered that a Class Notice be mailed to potential class members no later than March 22, 2012. On Thursday, March 22, 2012, Rust Consulting mailed

1 13,903 Class Notices to individuals identified by Rapid Cash Defendants as "All customers of  
2 Rapid Cash offices in Clark County, Nevada, against whom Rapid Cash obtained default  
3 judgments in the Justice Courts of Clark County, Nevada, and for which the only evidence of  
4 service of process was an affidavit signed by a representative of On Scene Mediations." As of  
5 April 22, 2012, Rust Consulting reports that 5,855 mailings were returned as undeliverable and  
6 71 have been returned with a forwarding address. Additionally, Rust Consulting has received a  
7 total of 374 postcards. Of the 374 postcards processed:

- 8 • 59 checked the "Exclusion" box
- 9 • 20 checked the "WAS" box
- 10 • 327 checked the "Was Not" box

11 8. Additionally, pursuant to the Court's Orders, The first Class Action Notice  
12 published in El Mundo was on Friday, March 23, 2012 and has continued each Friday thereafter.  
13 The first Class Action Notice published in the Las Vegas Review Journal was on Thursday,  
14 March 29, 2012 and has continued each Thursday thereafter.

15 9. The cost of mailing and publication has involved significant expense normally  
16 born by Plaintiffs in a class action; however, the Court has ordered that Rapid Cash Defendants  
17 bear this cost.

18 10. On information and belief, the business records of Rapid Cash Defendants  
19 establish that, of the 13,903 potential class members to whom Class Notices were sent, 3,405 had  
20 some portion of their default judgments satisfied through garnishment while an additional 405  
21 satisfied their judgments, partially or wholly, solely via voluntary payments not involving any  
22 form of writ of execution or garnishment. Thus, 10,093 made no payments against their  
23 judgments, voluntary or otherwise.

24 11. If this case proceeds as a class action in District Court, the costs and fees will be  
25 significantly higher than if the four (4) named Plaintiffs are required to pursue individual claims  
26 in arbitration.

27 12. In the Class Notice, potential class members were given until May 30, 2012 to return  
28 their postcards.

13. Any further class proceedings would constitute a waste of resources should Rapid Cash Defendants prevail on the appeal regarding arbitrability. Further proceedings would also likely cause confusion among the recipients of the notice of class action should Rapid Cash Defendants prevail on the appeal regarding arbitrability.

14. The matter of the stay of proceedings should be first heard in the District Court. It should be heard before any other class proceedings occur in District Court to reduce prejudice to Rapid Cash Defendants from an erroneous ruling on arbitration. Thus, it would be in the best interests of justice to hear this matter on an order shortening time.

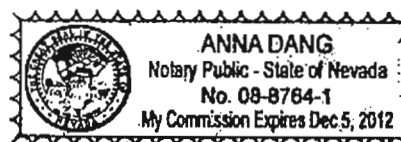
FURTHER AFFIANT SAYETH NAUGHT.

Executed this 3 day of May, 2012.

MARK S. DZARNOSKI

SUBSCRIBED AND SWORN to before me  
this 3 day of May, 2012.

NOTARY PUBLIC in and for said  
County and State



## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

### FACTS

1. On February 28, 2011, Plaintiffs filed their First Amended Class Action Complaint.

2. Because the parties were involved in settlement discussions pursuant to the NRAP 16 Settlement Program, the parties agreed that no answer or other responsive pleading would be required unless and until settlement discussions were deemed fruitless.

3. Settlement discussions terminated in or about September, 2011 and, on September 21, 2011, Rapid Cash Defendants filed a Motion to Compel Arbitration of First Amended Complaint and Stay All Proceedings.

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1 a stay should issue to avoid defeating the object of the appeal.” Mikohn Gaming Corp. v.  
 2 McCrea, 120 Nev. 248, 251-52, 89 P.3d 36, 38 (2004).

3 **B. The Circumstances in this Case Require a Stay of the Proceedings**

4 **1. The Object of the Appeal Would Be Defeated Without a Stay**

5 Regarding the first NRAP 8(c) factor, the Nevada Supreme Court has stated that “because  
 6 the object of an appeal seeking to compel arbitration will likely be defeated if a stay is denied, a  
 7 stay is generally warranted.” Mikohn Gaming Corp., 120 Nev. at 253, 89 P. 3d at 39. The  
 8 Supreme Court recognized that the very reason that arbitration clauses exist is to avoid the  
 9 expense and time of litigation:

10 arbitration, as an alternative dispute resolution mechanism, is generally designed  
 11 to avoid higher costs and longer time periods associated with traditional  
 12 litigation...the benefits of arbitration would likely be lost or eroded if it were  
 13 necessary for an appellant to simultaneously or sequentially proceed in both the  
 14 judicial and arbitral forums.

15 Id., 120 Nev. at 250, 89 P. 3d at 37 (citing Bradford-Scott Data v. Physician  
 16 Computer Network, 128 F.3d 504, 506 (7th Cir. 1997)).

17 And, a Nevada court’s stay analysis should “necessarily reflect arbitration’s unique  
 18 policies and purposes and the interlocutory nature of the appeal.” Mikohn Gaming Corp., 120  
 19 Nev. at 250, 89 P. 3d at 37. Here, Rapid Cash Defendants contracted for the right to arbitrate  
 20 these suits, and the litigation should not proceed until the Nevada Supreme Court is able to  
 21 review this Court’s conclusion that Rapid Cash Defendants waived that important right and/or  
 22 enforcement of that right violates Nevada public policy.

23 **2. Denying a Stay Would Significantly Prejudice Rapid Cash**

24 A stay should issue under the second NRAP 8(c) factor as well: i.e. “whether appellant  
 25 will suffer irreparable or serious injury if the stay is denied.” To begin with, *Rapid Cash is not*  
 26 *obligated to demonstrate a potential irreparable or serious injury* because this factor “will not  
 27 generally play a significant role” in determining whether district court proceedings should be  
 28 stayed pending the appeal of an order denying arbitration. Mikohn Gaming Corp., 120 Nev. at  
 253, 89 P. 3d at 39. Nevertheless, charging forward with this action before resolving arbitration  
 issues could cause significant prejudice to Rapid Cash Defendants.

1 The arbitration agreement at issue in this case expressly waived the right of Rapid Cash  
 2 Customers to participate in a class action. Yet, in addition to denying arbitration, the District  
 3 Court has certified the action as a class action. If the Supreme Court enforces the arbitration  
 4 agreement, Rapid Cash Defendants will only be defending against individual claims of the four  
 5 (4) named Plaintiffs (and potentially any potential class members who file their own individual  
 6 arbitration actions). As it is, Rapid Cash Defendants have already been required, over their  
 7 objection, to bear the cost of mailing Class Notices to 13,903 customers and publishing Class  
 8 Notices for six (6) weeks in the Las Vegas Review Journal and El Mundo. [See Affidavit of  
 9 Mark S. Dzarnoski].<sup>1</sup> As of April 22, 2012, only 374 have returned a questionnaire postcard  
 10 indicating whether they were or were not served with process.<sup>2</sup> [See Affidavit of Mark S.  
 11 Dzarnoski]. Pursuant to the District Court's Order, at the present time, all 13,529 who have not  
 12 returned postcards are still considered part of the class even though they have never made a  
 13 claim that they were not served with process in the Justice Court actions commenced by Rapid  
 14 Cash Defendants.

15 Sorting through complicated class issues threatens abnormal cost—and, possibly, a great  
 16 waste of resources. It is unlikely that the named Plaintiffs would be able to reimburse Rapid  
 17 Cash for its costs should Rapid Cash prevail on its arbitration appeal. Since a class remedy is not  
 18 available to named Plaintiffs in arbitration, additional class proceedings threaten the wasteful use  
 19 of many man hours in legal services and court time. If it is determined that the motion to compel  
 20 arbitration should have been granted, any subsequent judgment or relief in favor of Plaintiffs or  
 21 the Class would be a nullity. Kilgore v. KeyBank, Nat. Ass'n, 673 F.3d 947, 964-965, 12 Cal.  
 22 Daily Op. Serv. 2743, 2012 Daily Journal D.A.R. 3088 (9<sup>th</sup> Cir. 2012)

23 ...

24 ...

25 \_\_\_\_\_  
 26 <sup>1</sup> Ordinarily there is no warrant for shifting the cost of the representative plaintiff's obligations to provide class  
 27 notice. Only when the defendant may be able to perform a necessary task with less difficulty or expense than could  
 28 the representative plaintiff should the cost be shifted. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 359, 98  
 S.Ct. 2380, 2393, 57 L.Ed.2d 253, 25 Fed.R.Serv.2d 541, Fed. Sec. L. Rep. P 96,470 (1978).

<sup>2</sup> 59 checked the "Opt Out" box, 20 checked the "WAS Served" box and 327 checked the "WAS NOT" Served box.  
 Some postcards had multiple boxes checked.

1                   3.     *Plaintiffs Cannot Make the "Strong Showing" to Overcome the*  
2                             *Presumption that a Stay Is Warranted*

3             Plaintiffs bear the burden to prove that the District Court proceedings should not be  
4     stayed. *Mikohn Gaming Corp.*, 120 Nev. at 253-254, 89 P. 3d at 40. Specifically, Plaintiffs  
5     must both demonstrate that they "will suffer irreparable or serious injury if the stay is granted,"  
6     and make "a strong showing that appellate relief is unattainable." *Id.* Here, Plaintiffs can do  
7     neither.

8             First, this case does not present the type of exceptional circumstances that would  
9     constitute irreparable or serious injury to plaintiffs under the third NRAP 8(c) factor. The  
10    Nevada Supreme Court has explained that "[a]lthough irreparable or serious harm remains part  
11    of the stay analysis, this factor will not generally play a significant role in the decision whether to  
12    issue a stay." *Mikohn Gaming Corp.*, 120 Nev. at 253, 89 P. 3d at 39. The Nevada Supreme  
13    Court made equally clear, moreover, that neither "litigation costs, even if potentially substantial"  
14    nor "a mere delay in pursuing discovery and litigation" count as irreparable or serious harm. *Id.*

15            In the present case, Plaintiffs argued in favor of class certification by asserting that  
16    "potential recovery to individuals is small." [Reply in Support of Motion to Certify Class filed  
17    October 18, 2010 at 4:20]. In fact, Class Counsel represented that the individual amounts  
18    recoverable were so small that potential class members were unlikely to file their own actions to  
19    recover them. Further, even if the Court vacated the default judgments of all 13,903 potential  
20    class members, more than 70% would receive no direct financial benefit because nothing has  
21    been collected on 10,093 such default judgments. [See Affidavit of Mark S. Dzarnoski].

22            Nor are Rapid Cash Defendants instituting collection efforts to enforce any default  
23    judgments they obtained against potential class members. Thus, since recoverable amounts are  
24    concededly small, less than 30% of potential class members would be entitled to recover  
25    anything and no potential class member is threatened with execution or garnishment, Plaintiffs  
26    cannot claim that a stay would present any abnormal prejudice to them here.

27            Further, a stay cannot be denied based on the fourth NRAP 8(c) factor: i.e. "whether  
28    appellant is likely to prevail on the merits in the appeal." Undoubtedly, it is difficult for a district



1 court judge to objectively assess the probability that its own decision will be reversed by an  
 2 appellate court. But, the Nevada Supreme Court has provided enlightening direction. In the  
 3 context of an appeal from an arbitration ruling, the proceeding must be stayed unless plaintiffs  
 4 make “a strong showing that appellate relief is unattainable.” *Mikohn Gaming Corp.*, 120 Nev.  
 5 at 253-254, 89 P. 3d at 40. This Court would have to find that Rapid Cash’s points and  
 6 authorities in support of arbitration are “frivolous,” and that this motion for stay has been filed  
 7 “purely for dilatory purposes.” *Id.*

8 Plaintiffs can make no such showing here. It certainly is not untenable that the Nevada  
 9 Supreme Court might disagree with this Court’s conclusion that Rapid Cash waived its  
 10 contractual right to arbitration or with this Court that the U.S. Supreme Court’s opinion in *AT&T*  
 11 *Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011) compels a different result. This is not a  
 12 frivolous appeal. Indeed, cases decided post-*Concepcion*, *supra*, are highly supportive of Rapid  
 13 Cash Defendants’ argument that the FAA’s policy favoring enforcement of arbitration clauses  
 14 pre-empts state public policy justifications for denying motions to compel arbitration. See e.g.  
 15 *Marmet Health Care Center, Inc. v. Brown*, 132 S.Ct. 1201, 182 L.Ed.2d 42, 80 BNA USLW  
 16 3465, 80 BNA USLW 3466, 80 BNA USLW 4160, 2012 Daily Journal D.A.R. 2254, 23 Fla. L.  
 17 *Weekly Fed. S* 133 (2012) vacating the decision of the Supreme Court of Appeals of West  
 18 Virginia that the FAA does not pre-empt the state public policy against predispute arbitration  
 19 agreements that apply to claims of personal injury or wrongful death against nursing homes;  
 20 *Kilgore v. KeyBank, Nat. Ass’n*, 673 F.3d 947, 12 Cal. Daily Op. Serv. 2743, 2012 Daily Journal  
 21 *D.A.R.* 3088 (9<sup>th</sup> Cir. 2012) reversing district court order denying arbitration pursuant to FAA of  
 22 claims seeking broad public injunctive relief in California.

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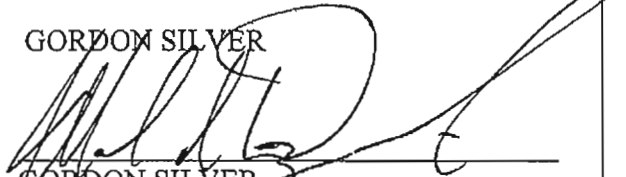
## III.

## CONCLUSION

Put simply, this case presents the typical circumstances that presumptively require a stay.  
The special circumstances only compound the necessity to stay the district court proceedings.

DATED this 3 day of May, 2012.

GORDON SILVER



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RECEIPT OF COPY

A RECEIPT OF COPY OF the **MOTION FOR STAY PENDING APPEAL OF THE ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION AND APPLICATION FOR ORDER SHORTENING TIME**, is hereby acknowledged by the undersigned on the \_\_\_\_ day of May, 2012.

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(Will be filed separately)

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# EXHIBIT A

# EXHIBIT A

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2  
3 Principal Investments, Inc. d/b/a Rapid  
4 Cash; Granite Financial Services, Inc.  
5 d/b/a Rapid Cash; FMMR Investments,  
6 Inc. d/b/a Rapid Cash; Prime Group, Inc.  
7 d/b/a Rapid Cash; and Advance Group,  
8 Inc. d/b/a Rapid Cash

9 Petitioners,

10 vs.

11 The EIGHTH JUDICIAL DISTRICT  
12 COURT of the State of Nevada, in and for  
13 the County of Clark; and THE  
14 HONORABLE ELIZABETH GOFF  
15 GONZALEZ, District Judge,

16 Respondents,

17 and

18 Casandra Harrison; Eugene Varcados;  
19 Concepcion Quintino; and Mary Dungan,

20 Real Parties in Interest

Electronically Filed  
Case No.: 57371-2012-08-16 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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THE CLASS'S ANSWER TO RAPID CASH'S  
PETITION FOR *EN BANC* RECONSIDERATION

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## I.

## INTRODUCTION

Not once in the 16,663 justice court actions filed by Petitioner Rapid Cash<sup>1</sup> in the last five years did this payday lender seek to enforce the arbitration clause in the loan agreements that it was collecting upon. But when its judgment debtors filed this now certified class action challenging those Justice Court default judgments on the grounds that they were obtained through “sewer service”—the practice of obtaining judgments against unwitting, never-served defendants upon false affidavits of service—Rapid Cash moved the district court—on two separate occasions—to compel arbitration of the class’s claims. As Rapid Cash had **exclusively** used the court system as its personal collection agency, however, Eighth Judicial District Court Judge Elizabeth Gonzalez found that it had long-since waived its contractual rights to arbitrate the class’s claims, and correctly denied both motions.

Rapid Cash sought to challenge the denial of its first motion to compel arbitration by filing a petition for writ of mandamus, but because Nevada statute and case law are clear that the denial of a motion to compel arbitration is immediately appealable, *see e.g.* NEV. REV. STAT. § 38.247(1)(a); *Mikohn Gaming Corp. v. McCrea*, 89 P.3d 36, 37 & n.2 (Nev. 2004), this Court rightly denied that petition. Doc. 11-01675. Rapid Cash responded by filing an untimely notice of appeal,<sup>2</sup> which the Class has moved to dismiss.<sup>3</sup>

<sup>1</sup> Petitioners Principal Investments, Inc. dba Rapid Cash; Granite Financial Services, Inc. dba Rapid Cash; FMMR Investments, Inc. dba Rapid Cash; Prime Group, Inc. dba Rapid Cash; and Advance Group, Inc. dba Rapid Cash are collectively referred to as “Rapid Cash.”

<sup>2</sup> Case #57625, Doc. 11-02632.

<sup>3</sup> The class’s renewed motion to dismiss Rapid Cash’s untimely first notice of appeal has been fully briefed and submitted to this Court. Case 57625, Doc. 11-39605, 12-01755 & 12-03897.

1 Although Rapid Cash has since secured itself a proper vehicle for this  
2 Court to review the merits of the district court's waiver finding by timely  
3 appealing from the denial of its second motion to compel arbitration,<sup>4</sup> Rapid  
4 Cash persists in its efforts to challenge the panel's denial of the writ petition,  
5 claiming there is a need for this Court to adopt the federal approach of treating  
6 certain denied petitions for writ of mandamus as the "functional equivalent" of  
7 a notice of appeal, and that need justifies use of the rarely used and disfavored  
8 en banc reconsideration. Petition for *En Banc* Reconsideration ("Petition"),  
9 Doc. 12-02756 at 2.

10 Rapid Cash, however, fails to establish that these circumstances meet the  
11 narrow standard for en banc reconsideration because it cannot. Rapid Cash  
12 tacitly admits that this Court's decisions on this issue are uniform,<sup>5</sup> *cf.* Petition  
13 pp. 8-9 (explaining the inconsistency that Rapid Cash perceives is between this  
14 Court and the federal courts), and this proceeding does not "involve[] a  
15 substantial precedential, constitutional[,] or public policy issue." *See* NEV. R.  
16 APP. PROC. 40A(a)(2). Regardless, the circumstances of this case do not merit  
17 application of the federal standard because it was not reasonable for Rapid Cash  
18 to believe that it could not immediately appeal the denial of its demand for  
19 arbitration, and the flat denial of its petition for mandamus will not have a  
20 "harsh result" or cause this repeat appellant to suffer "injustice"<sup>6</sup> because it will  
21 obtain appellate review of the merits in its second appeal. Rapid Cash's  
22 petition for en banc reconsideration should therefore be denied, its untimely  
23  
24

25  
26 <sup>4</sup> Case #59837.

27 <sup>5</sup> *See* NEV. R. CIV. PROC. 40A(a)(1).

28 <sup>6</sup> Petition pp. 6-8 (quoting *The Clorox Co. v. United States District Court for the Northern District of California*, 779 F.2d 517 (9th Cir. 1985) and *Lemmond v. State*, 954 P.2d 1179 (Nev. 1998) with approval).

1 notice of appeal dismissed, and the parties should proceed to the merits in  
2 Rapid Cash's second appeal.

## 3 II.

### 4 STATEMENT OF FACTS

5 When Rapid Cash filed lawsuits against its payday loan consumers from  
6 2004 to 2010, it hired unlicensed process server Maurice Carroll d/b/a On Scene  
7 Mediations to discharge its JCRCP 4 duty to serve the defendants with a  
8 summons and a copy of the complaint. The Class has alleged that, instead of  
9 serving Rapid Cash's consumers with process, On Scene disposed of the  
10 summons and complaints and provided false affidavits of service on which<sup>7</sup>  
11 Rapid Cash obtained default judgments against 16,663 of its consumers.  
12

13 After being garnished on default judgments of which they were not aware,  
14 the named Class Representatives, Real Parties in Interest, filed an independent  
15 action in equity in District Court in September 2010 seeking to set aside the  
16 Justice Court default judgments as they are void for lack of service of process  
17 and this widespread fraud on the court. Rapid Cash moved to compel  
18 arbitration of the class's claims, but that motion was denied after the district  
19 court found the payday lender had waived any right to arbitration it might have  
20 had under its loan agreements when it chose, thousands of time over, to litigate  
21 rather than arbitrate.

22 Rapid Cash did not timely appeal the denial of its first motion to compel  
23 arbitration; rather, it petitioned this Court for a writ of mandamus, but this  
24 Court dismissed Rapid Cash's petition because it had a plain and speedy  
25

26 <sup>7</sup>Maurice Carroll has been convicted of 17 counts of perjury, 17 counts of  
27 offering false instrument to be filed/recorded, and 1 count of obtaining money  
28 under false pretenses in having failed to serve defendants in numerous Las Vegas  
Justice Court collection actions. *See State v. Carroll*, Clark County Dist. Ct. Case  
C266917-1.

1 remedy in the form of a direct appeal from the denial of its motion under NRS §  
2 38.247. Rapid Cash then filed an untimely notice of appeal from the denial of  
3 its first motion to compel arbitration. In the meantime, the class amended its  
4 complaint and Rapid Cash filed a second motion to compel arbitration of the  
5 class's claims. The district court also denied Rapid Cash's second motion on  
6 waiver grounds, and also because the class's claims for fraud-on-the-court fall  
7 outside the scope of the arbitration clauses. Rapid Cash timely appealed from  
8 the denial of its second motion to compel arbitration; Rapid Cash's second  
9 appeal is still pending. *See* Case #59837. Although the district court's waiver  
10 finding is being challenged by Rapid Cash's second appeal, Rapid Cash seeks  
11 en banc review of the denial of writ relief.  
12

13 **III.**  
14 **ARGUMENT**

15 **A. Rapid Cash Fails to Satisfy the Narrow Standard for En Banc**  
16 **Reconsideration.**

17 Rapid Cash argues that this proceeding calls for en banc reconsideration  
18 because "interpretation of Nevada's appellate rules consistent with federal  
19 procedure is an important issue. . . ." Petition at 2 (emphasis omitted).<sup>8</sup> "En  
20 banc reconsideration of a panel decision is not favored and ordinarily will not  
21 be ordered except when (1) reconsideration by the full court is necessary to  
22 secure or maintain uniformity of its decisions, or (2) the proceeding involves a  
23 substantial precedential, constitutional or public policy issue." NEV. R. APP.  
24 PROC. 40A(a).  
25

26 <sup>8</sup> To the extent that Rapid Cash is attempting to rely on the federal standard for  
27 en banc rehearing—"question of exceptional importance"—that reliance is  
28 misplaced because NRCP 40A(a)(2) does not "echo" FRAP 35(a)(2) and, in fact,  
is a much more stringent standard than its federal counterpart. *Cf. AA Primo*  
*Builders, LLC v. Washington*, 245 P.3d 1190, 1192-93 (Nev. 2010).

1       The circumstances in this case do not satisfy either of NRAP 40A(a)'s two  
2 exceptions. The first exception does not apply because Rapid Cash is not  
3 claiming that this Court's opinions are inconsistent; rather, the inconsistency  
4 that Rapid Cash perceives is between how this Court has interpreted its  
5 jurisdiction and how some federal appellate courts have interpreted theirs.  
6 Petition at 8-9. The second exception is equally inapplicable because whether  
7 or not this Court should adopt the federal "functional equivalent" approach is  
8 simply not a "substantial precedential, constitutional[,] or public policy issue."  
9 *See* NEV. R. APP. PROC. 40A(a)(2). In fact, there can be no such issues here  
10 because this private, habitual litigant's dispute of the district court's refusal to  
11 compel arbitration of the class's claims will be heard by this Court in Rapid  
12 Cash's second appeal.  
13

14 **B. This Case Does Not Merit Application of the Federal "Functional**  
15 **Equivalency" Approach.**

16       Rapid Cash cites *Clorox Co. v. United States Dist. Ct.*<sup>9</sup> as support for its  
17 argument that this Court should adopt the federal "functional equivalency"  
18 approach. Petition at 4, 6 & 7. In that case, the Ninth Circuit treated Clorox's  
19 petition for writ of mandamus like a timely filed notice of appeal in order to  
20 avoid the "harsh result" and "injustice" of precluding Clorox from obtaining  
21 appellate review of the merits because it found Clorox's belief that the "district  
22 court's remand order was reviewable only by mandamus, not by direct  
23 appeal[,] was "reasonable." 779 F.2d at 520. Unlike Clorox, however, Rapid  
24 Cash will not be precluded from appellate review of the merits because the  
25 same arguments will be heard when this Court considers Rapid Cash's second  
26 appeal. Further unlike *Clorox*, it was not reasonable for Rapid Cash to believe  
27 that direct appellate review was not available to it. The reason the Ninth Circuit  
28

---

<sup>9</sup> 779 F.2d 517 (9th Cir. 1985).

1 found Clorox's belief to be "reasonable" was that there had been "an  
 2 unforeseeable change in the law of the circuit" after the time for Clorox's filing  
 3 a direct appeal had passed. *Id.* No such change occurred here and, in fact, the  
 4 Nevada Legislature has allowed "immediate appeal of an order denying a  
 5 motion to compel arbitration" since the enactment of NRS § 38.205 in 1969.  
 6 *See Mikohn Gaming Corp. v. McCrea*, 89 P.3d 36, 37 & n.2 (Nev. 2004); NEV.  
 7 REV. STAT. §§ 38.205 (repealed in 2001 and replaced with NRS 38.247(1)(a))  
 8 & 38.247. Rapid Cash's own petition for writ of mandamus tacitly  
 9 acknowledges that the denial of a motion to compel arbitration is immediately  
 10 appealable. *See* Petition for Writ of Mandamus, Doc. 10-33004 at 7 ("appeal  
 11 of the order denying arbitration" and "a party [] undergo[ing] the expense and  
 12 delay of litigation before being able to appeal" (emphasis added) (citing  
 13 *Bradford-Scott Data Corp. v. Physician Computer Network, Inc.*, 128 F.3d 504  
 14 (7th Cir. 1997) and *C.B.S. Employees' Fed. Credit Union v. Donaldson, Lufkin*  
 15 *& Jenrette Sec. Corp.*, 716 F. Supp. 307, 310 (W.D. Tenn. 1989), *aff'd*, 912  
 16 F.2d 1563 (6th Cir. 1990), respectively)). Because no "harsh result" or  
 17 "injustice" will befall Rapid Cash absent this Court treating its petition for writ  
 18 of mandamus like a timely filed notice of appeal, and it was not reasonable for  
 19 Rapid Cash to believe that immediate appellate review was unavailable, there is  
 20 no basis for this Court to apply the federal approach in this case.<sup>10</sup>

21 This is similar to the reason why this Court treated the writ of mandamus  
 22 in *Pan v. Eighth Jud. Dist. Ct.*, 88 P.3d 840 (Nev. 2004), like a timely filed  
 23 notice of appeal: "Given that our prior case law may have misled petitioners to  
 24 forego their appeal, we will consider this petition." 88 P.3d at 841. That this  
 25 Court has already applied its own version of the federal "functional equivalent"  
 26

27 <sup>10</sup> *Allah v. Superior Ct. of State of Cal.*, Los Angeles County, 871 F.2d 887 (9<sup>th</sup>  
 28 Cir. 1989) and *Smith v. Barry*, 112 S.Ct. 678 (1992), Petition at 3 & 10, are also  
 inapplicable because Rapid Cash is not a *pro se* litigant.

1 approach further eviscerates Rapid Cash's alleged need for en banc  
2 reconsideration for this Court to adopt that approach. Rapid Cash attempts to  
3 distinguish *Pan*, Petition at 9, and criticizes the panel for citing that case when  
4 it denied Rapid Cash's petition for writ of mandamus. *Id.* at p. 8-9. But Rapid  
5 Cash's claim that *Pan* "stands only for the proposition that a writ petition filed  
6 outside of the NRAP 4 period cannot be a substitute for a notice of appeal[.]"  
7 *id.* at 8-9, is not supported by this Court's opinion in that case. Although this  
8 Court stated in *Pan* that "writ relief is not available to correct an untimely  
9 notice of appeal[.]" it was simply reciting the general legal standard. 88 P.3d at  
10 841. Indeed, the *Pan* court ultimately considered the writ petition, but for  
11 reasons that Rapid Cash cannot now avail itself of.

12 **C. Rapid Cash's Reliance on Federal Authority is Unpersuasive.**

13 Rapid Cash relies on *Washington* for the proposition that adopting the  
14 federal "functional equivalent" approach would be consistent with this Court's  
15 prior practice of adopting federal interpretation of appellate jurisdiction. But  
16 unlike in *Washington* where this Court compared NRCP 59(e) and NRAP  
17 4(a)(4)(C) with FRCP 59(e) and FRAP 4(a)(4)(A)(iv), the Nevada rule at issue  
18 here, NRAP 4, does not "echo" its federal counterpart, FRAP 4, on the issue of  
19 appellate jurisdiction because the federal rule allows the district court to  
20 "extend the time to file a notice of appeal" and "reopen the time to file an  
21 appeal[.]" while the Nevada rule does not. Compare FED. R. APP. PROC. 4(a)(5)  
22 & (6) with NEV. R. APP. PROC. 4(a); see *Walker v. Scully*, 657 P.2d 94 (Nev.  
23 1983). Further, this Court found in *Washington* that "AA Primo's post-  
24 judgment 'motion to amend order' qualifie[d] as an NRCP 59(e) motion to alter  
25 or amend judgment with tolling effect under NRAP 4(a)(4)." 245 P.3d at 1193  
26 (emphasis added.). No such tolling motion was filed in this case.  
27  
28

1 **D. Treating Rapid Cash's Petition for Writ of Mandamus Like a Timely**  
2 **Filed Notice of Appeal Will Prejudice the Class.**

3 Rapid Cash relies on *Lemmond v. State* for the proposition that this Court  
4 will not dismiss an appeal "due to technical defects in the notice of appeal"  
5 where "the intent to appeal from a final judgment can be reasonably inferred  
6 and the respondent is not misled." 954 P.2d 1179, 1179 (1998). Unlike the  
7 petitioner in *Lemmond* and the other Nevada cases that Rapid Cash cites, *see*  
8 Petition at 8, n.7, Rapid Cash did not make the mistake of appealing an order  
9 rather than a judgment or appealing the wrong judgment; rather, Rapid Cash  
10 altogether failed to file a timely notice of appeal from the denial of its first  
11 demand for arbitration. If this Court treats Rapid Cash's petition for writ of  
12 mandamus like a timely filed notice of appeal, the Class will be prejudiced  
13 because it will have to defend against two appeals on the exact same issue.

14 **IV.**

15 **CONCLUSION**

16 Rapid Cash has failed to provide this court reasons for en banc  
17 reconsideration of the panel's decision to dismiss this two-time appellant's writ  
18 for petition of mandamus without treating it like a timely filed notice of appeal,  
19 and there is no reason for this Court to adopt the federal "functional equivalent"  
20 standard or apply it to these facts. Accordingly, and for all the foregoing  
21 reasons, this Court should deny Rapid Cash's petition for en banc  
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1 reconsideration, dismiss its first, untimely notice of appeal, and allow Rapid  
2 Cash to pursue its challenge only on its second appeal.

3 DATED this 19<sup>th</sup> day of March, 2012.

4 Respectfully Submitted by Class Counsel:

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**CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] It has been prepared in a proportionally spaced typeface using Microsoft Word 2007 with 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the page-or-type-volume limitations of NRAP 40A because it is either:

[ ] proportionately spaced, has a typeface of 14 points or more, contains no more than 4,667 words; or

[X] Does not exceed 10 pages.

DATED this 19<sup>th</sup> day of March 2012.

Respectfully Submitted by Class Counsel:

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/s/ Angela Embrey  
An employee of Kemp, Jones & Coulthard, LLP

Anna Dang

---

**From:** efilng@nvcourts.nv.gov  
**Sent:** Tuesday, March 20, 2012 8:18 AM  
**To:** Anna Dang  
**Subject:** Notification of Electronic Filing in PRINCIPAL INVESTMENTS, INC. VS. DIST. CT. (HARRISON), No. 57371

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

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Notice is given of the following activity:

**Date and Time of Notice:** Mar 20 2012 08:17 a.m.

**Case Title:** PRINCIPAL INVESTMENTS, INC. VS. DIST. CT. (HARRISON)  
**Docket Number:** 57371  
**Case Category:** Original Proceeding

**Document Category:** Answer to Petition for En Banc Reconsideration  
**Submitted by:** Jennifer C Dorsey  
**Official File Stamp:** Mar 20 2012 08:16 a.m.  
**Filing Status:** Accepted and Filed

**Docket Text:** Filed Answer to Petition for En Banc Reconsideration The Class's Answer to Rapid Cash's Petition for En Banc Reconsideration

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click [here](#) to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

**Clerk's Office has electronically mailed notice to:**

Mark Dzarnoski  
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Joel Henriod

Daniel Polsenberg

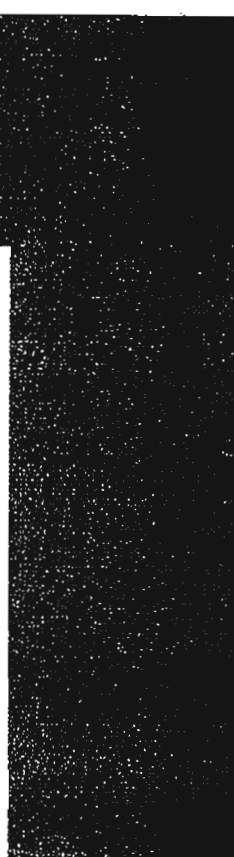
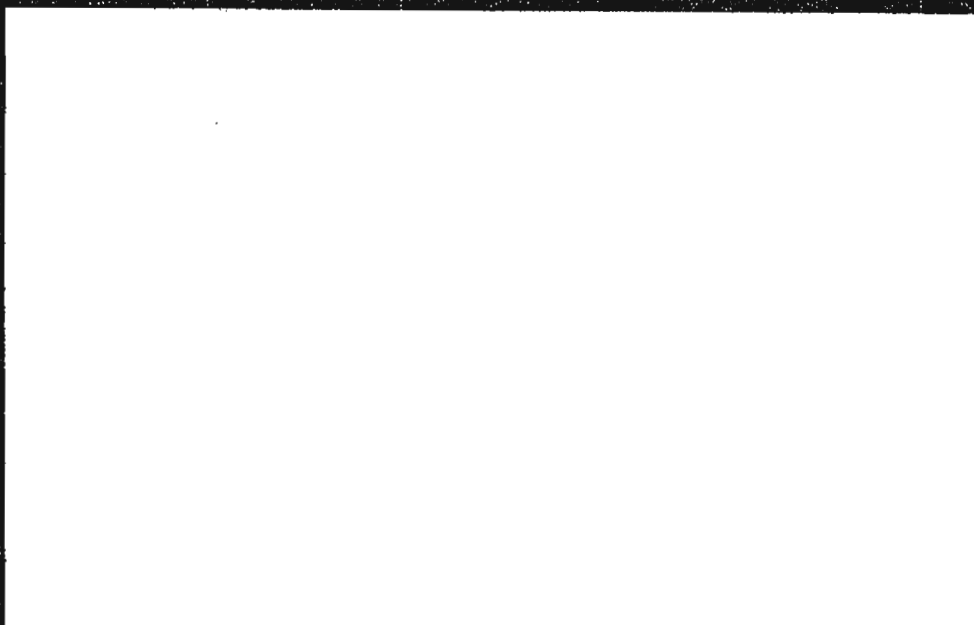
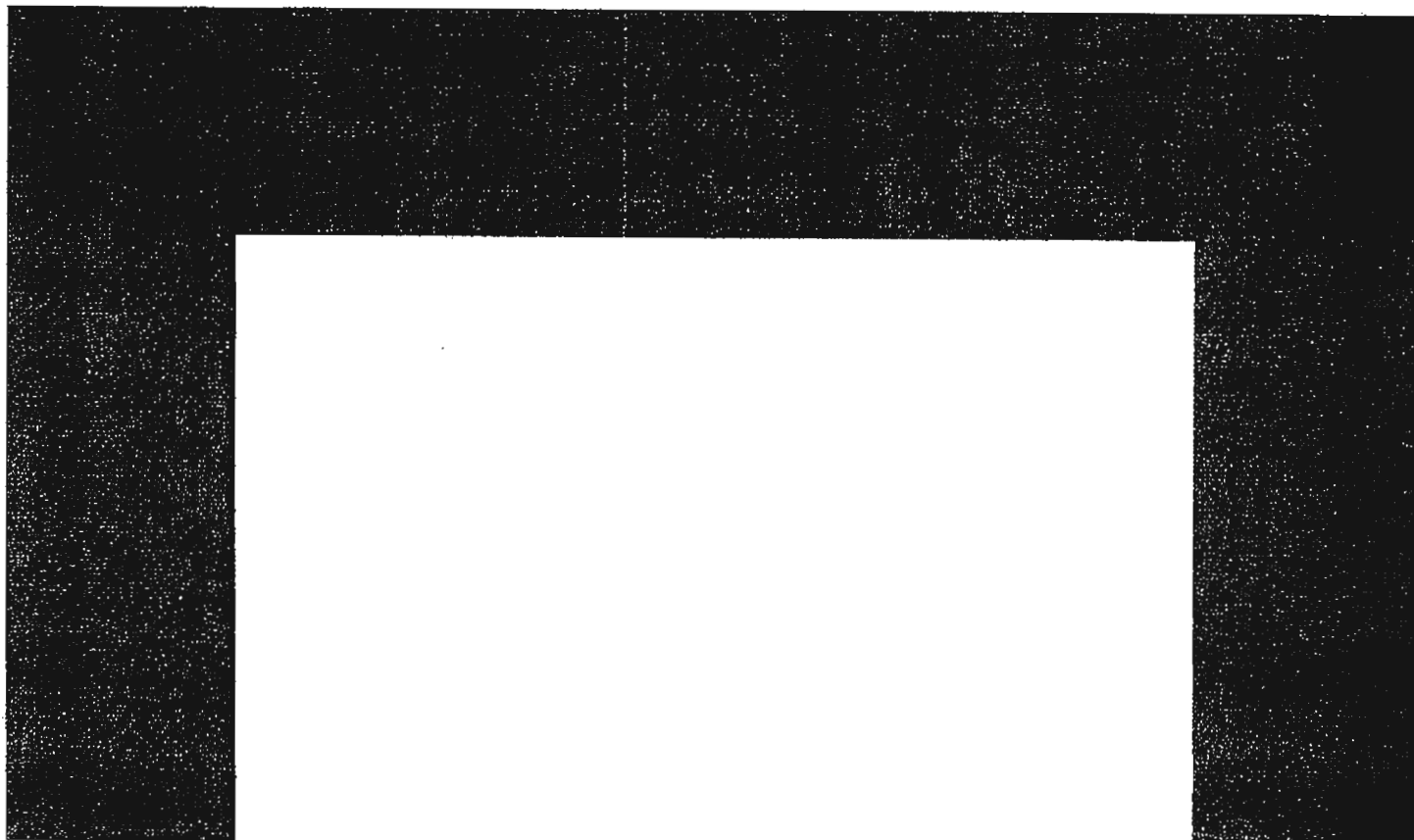
**No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:**

Ara Shirinian

Dan Wulz

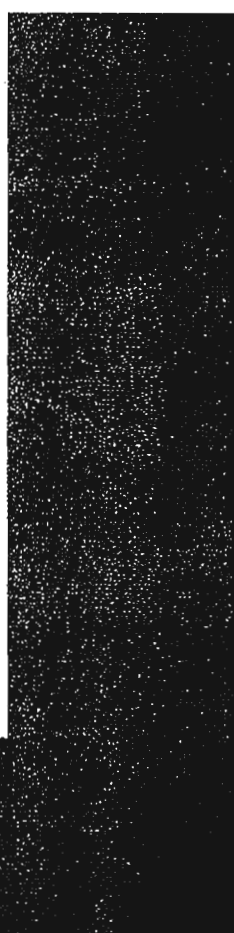
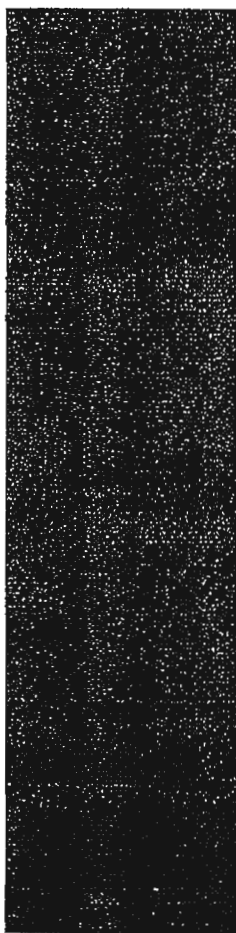
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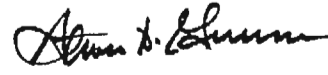


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CLERK OF THE COURT

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***Class Counsel***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

Cassandra 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  
DEFENDANTS' MOTION  
FOR STAY PENDING  
APPEAL OF THE ORDER  
DENYING DEFENDANTS'  
MOTION TO COMPEL  
ARBITRATION**

**Date of Hearing: 5/15/12  
Time of Hearing: 9 a.m.**

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.**

3   **INTRODUCTION**

4

5           A stay is not a matter of right, but an exercise of judicial discretion that is wholly

6 dependent “on the facts, circumstances, and equities of each individual case.” 5 Am. Jur.

7 2d Appellate Review § 405 (citing County of Sussex v. Merrill Lynch Pierce Fenner &

8 Smith, Inc., 796 A.2d 958 (N.J. Super. 2001)). The facts in this case are extreme. For

9 the last eight years, Rapid Cash has been allowed to keep monies to which it was never

10 entitled by executing on void default judgments. Now, fully aware that it secured void

11 default judgments based upon the affidavits of a felonious process server notorious for

12 sewer service, and with at least 327 of its former customers having mailed in forms

13 declaring that they were never served with its justice court lawsuits, Rapid Cash

14 continues to refuse to vacate the judgments and instead chooses to continue to force this

15 action to proceed.

16           Well, sort of.

17           Despite the fact that this Court has twice considered and twice rejected Rapid

18 Cash’s motion to compel arbitration of the class members’ challenges of the justice court

19 default judgment claims---claims arising out of judgments obtained by Rapid Cash not by

20 complying with its own arbitration clauses, but by invoking the jurisdiction of the courts--

21 --Rapid Cash continues to challenge that ruling in the Nevada Supreme Court and further

22 delay relief to these victims. It now asks this Court to compound that delay by staying

23 this entire, certified class action pending that appellate decision. The Class strongly

24 urges this Court to deny that request and not allow Rapid Cash to further attempt to

25 manipulate the system in its favor.

26

27 . . .

28 . . .



## II.

## ARGUMENT

**A. A Stay is not Warranted in this Case Due to the Advanced Stage of the Proceedings.**

Defendants rely almost solely on Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 89 P.3d 36 (2004). While that case at first glance seems to be on point, the facts are distinguishable. First, Mikohn was not a class action and did not concern more than 16,000 possible class members, but rather an employment case between an employee and employer. Second, and more importantly, in Mikohn the motion for stay was filed **at the same time** as the appeal of the District Court's denial of the motion to compel arbitration. Defendants chose to seek their stay five months after filing their appeal.

Furthermore, Defendants have already sent out and published the class notices. Out of the 374 class member postcards that have been returned and processed, Rapid Cash reports that 327 responded that they were, in fact, not served. *See* Affidavit of Mark S. Dzarnoski, May 3, 2012, p. 5 ¶ 7. That means that 87% of those who have responded were not properly served. Also, this 87% does not take into account those who have not returned the postcard, but are, regardless, members of the class. Based on the facts that: (1) Defendants delayed in requesting a stay pending the appeal of the denial of its motion to compel arbitration, (2) class notices have already been sent out, and (3) 87% of class responses indicate lack of service, Defendants' motion for stay pending appeal of motion to compel arbitration should be denied.

**B. The Circumstances of this Case Mandate that this Case Move Forward Pending the Appeal.**

Rapid Cash also fails to meet the requirements of NRAP 8(c) because: (1) the object of the appeal will not be defeated by denying the Motion for Stay because the same discovery will need to be conducted regardless of the forum; (2) Rapid Cash will

1 not suffer irreparable harm without a stay since it has already incurred all major costs  
2 including advertising the pending action as well as sending out the required class  
3 notifications; (3) Plaintiffs will be harmed in that possible class members have already  
4 been notified and have responded to the action before the request of this stay; and (4)  
5 Rapid Cash is not likely to prevail on the merits of the appeal due to the fact that, by  
6 choosing to obtain default judgments against class members through litigation rather than  
7 enforcing its own arbitration clause, this defendant was properly deemed to have waived  
8 any right it may have otherwise had to compel arbitration.

9  
10 **1. The Object of the Appeal Will Not Be Defeated if the Stay is Denied.**

11 Rapid Cash will lose nothing if a stay is denied, it must participate in discovery,  
12 and the Nevada Supreme Court later reverses this Court's arbitration order and compels  
13 arbitration of these (now 327 or more) claims. Regardless of the forum these claims  
14 ultimately get adjudicated in, the same types of discovery will still need to be conducted.  
15 The named representatives have waited many months to get to the point of this case  
16 where discovery could be conducted (as Rapid Cash did not file its answer until January  
17 4, 2012, 16 months after this case commenced). They should not be subject to further  
18 delay simply because Rapid Cash is unhappy with this Court's two-time rejection of its  
19 arbitration demand.

20 **2. Defendants Will Not Suffer Irreparable Injury if the Stay is Denied.**

21 Rapid Cash argues that, without a stay, it will suffer irreparable harm because  
22 "[s]orting through complicated class issues threatens abnormal costs. . . ." Mot. at 9. But  
23 the Nevada Supreme Court has held that "litigation costs, even if potentially substantial"  
24 are not irreparable or serious harm. Mikohn Gaming Corp., 89 P.3d at 39. Regardless,  
25 Rapid Cash has not identified any truly "complicated class issue" or "abnormal cost" that  
26 it will be forced to wrestle with in the absence of a stay. Thus, Rapid Cash will suffer no  
27 irreparable harm without a stay.  
28

1       **3. Plaintiffs Will Suffer Irreparable Injury if the Stay is Denied.**

2       On the other hand, the class members *will* suffer real harm if the stay is granted  
3 and Rapid Cash gets another reprieve from this class action, which has only recently  
4 started to get some traction. The class notices have finally gone out, and at least 327  
5 people are now tuned into this case and waiting eagerly for their rights to be determined.  
6 And, as this Court well knows, time passes, memories fade, documents get lost or  
7 destroyed, and it becomes increasingly difficult to obtain discovery. Time is not on the  
8 class members' side, though it certainly has benefitted Rapid Cash, who continues to hold  
9 onto the monies garnished and otherwise collected from these class members to satisfy  
10 these improperly obtained judgments.

11       **4. Defendants Are Not Likely to Prevail on the Merits of the Appeal.**

12       “[T]he party opposing the stay motion can defeat the motion by making a strong  
13 showing that appellate relief is unattainable.” Mikohn Gaming Corp., 120 Nev. at 253, 89  
14 P.3d at 40. In Mikohn the court stated “[i]n this case, the merits are unclear at this stage.  
15 Without a full appellate review of the record, we cannot determine if Mikohn’s appeal is  
16 likely to succeed.” Id. at 254. However, in the current case the exact opposite is true as  
17 the merits are clear. This Court has twice determined that Rapid Cash waived any right  
18 to dictate arbitration as the forum for its customers to challenge the default judgments it  
19 obtained through justice court actions in nearly 17,000 lawsuits – not arbitration actions –  
20 that Rapid Cash itself filed. This Court’s reasoning was sound and well supported by  
21 authority, and it simply cannot be said that this Court abused its authority in thoughtfully  
22 reaching that decision (twice). Accordingly, based on the unique facts of this case and  
23 Rapid Cash’s own, habitual use of the justice court as its personal collection agency  
24 while categorically ignoring the arbitration clauses in its own payday loan agreements, it  
25 is unlikely that Rapid Cash will succeed on the merits of its appeal.  
26  
27  
28

1 **C. Even if a Stay is Granted, Discovery Should Still Proceed.**

2  
3 In the alternative, in the unlikely event that the Court grants the temporary stay,  
4 Plaintiffs ask that discovery continue to be permitted to move forward. The class notice  
5 has been sent and published, and at long last, Rapid Cash finally has an answer on file.  
6 And, regardless of which forum these more than 300 class members ultimately get to try  
7 their claims in, the same information will still need to be discovered. Because this  
8 process began long before Defendants requested a temporary stay, Defendants will not be  
9 harmed by allowing discovery to go forward. Accordingly, even if the Court does not  
10 hear any further substantive matters until the Nevada Supreme Court has ruled, discovery  
11 should nevertheless proceed.

12 **III.**

13 **CONCLUSION**

14 Rapid Cash will not suffer irreparable harm by moving forward with this case  
15 while waiting for a decision on its challenge to this Court's two-time denial of its motion  
16 to compel arbitration. The class members have received notice, and many have already  
17 responded, and Rapid Cash is not likely to prevail on appeal as the Court is likely to  
18 agree that Rapid Cash waived any right it had to compel arbitration when it chose –  
19 nearly 17,000 times – to bring actions against each individual borrower rather than  
20

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1 comply with its own arbitration clause. Therefore, this motion for stay should be denied,  
2 and in any event, the class must be permitted to proceed with discovery.

3 DATED this 11th day of May, 2012.

4 Respectfully Submitted by Class Counsel:

5 **KEMP, JONES & COULTHARD, LLP**

6  
7  
8 By/s/ Jennifer C. Dorsey

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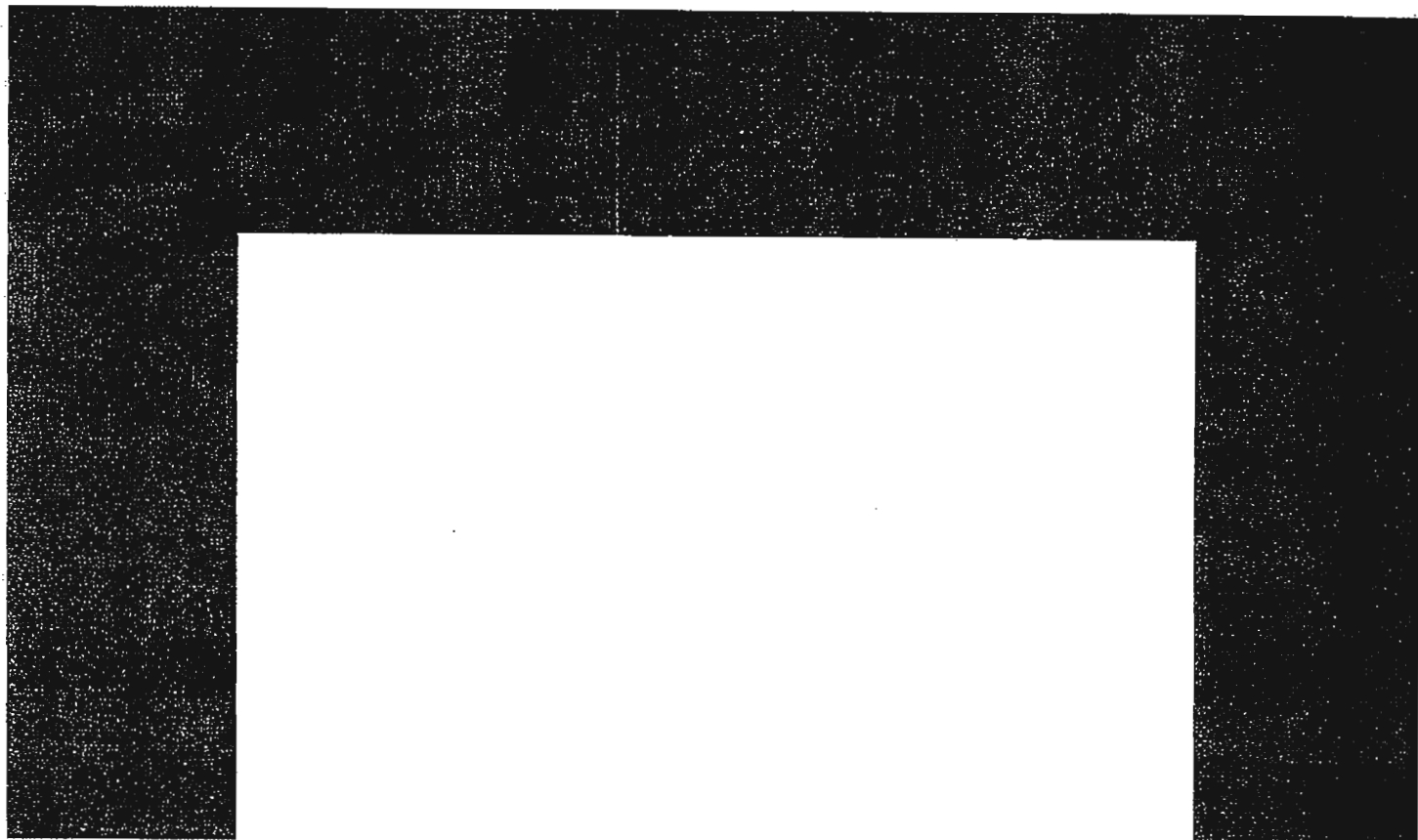
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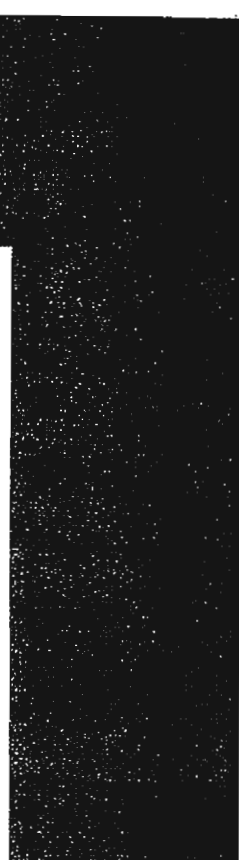
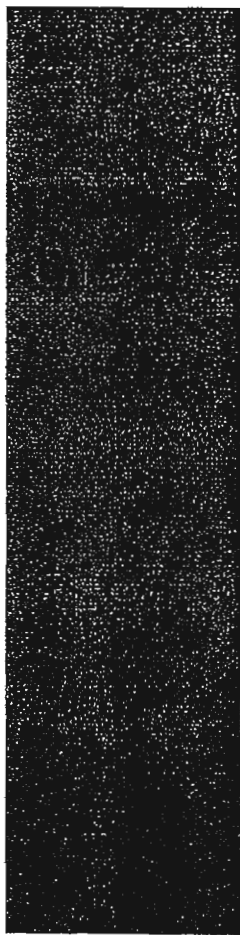
dwulz@lacsns.org

17 *Class Counsel*

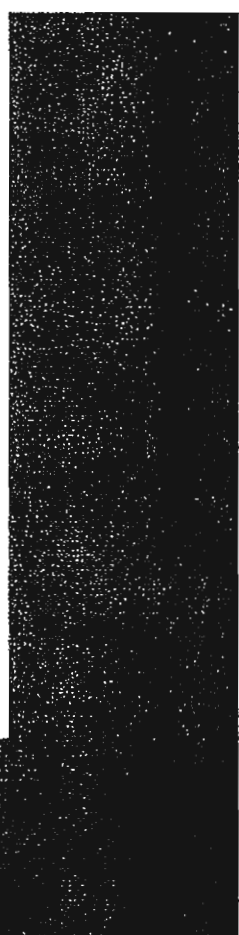
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*Alvin D. L...*

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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

**HEARING ON MOTION FOR STAY PENDING APPEAL**

TUESDAY, MAY 15, 2012

APPEARANCES:

FOR THE PLAINTIFFS:

DAN I. WULZ, ESQ.  
JENNIFER DORSEY, ESQ.  
VENICIA CONSIDINE, 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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MAY 17 2012

CLERK OF THE COURT

*[Signature]*



1 LAS VEGAS, NEVADA, TUESDAY, MAY 15, 2012, 9:05 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. Is there anyone who's  
4 appearing on a matter on a pro bono basis?

5 MS. DORSEY: Yes, Your Honor.

6 THE COURT: Notice the pregnant pause, because I  
7 knew there was somebody today.

8 MS. DORSEY: Good morning.

9 THE COURT: Are you okay, Mr. Dzarnoski?

10 MR. DZARNOSKI: Yes, I am. Good morning, Your  
11 Honor.

12 THE COURT: And you've brought Mr. Polsenberg with  
13 you.

14 Mr. Polsenberg, it is so nice to see you.

15 MR. POLSENBERG: Thank you, Your Honor.

16 THE COURT: Ms. Dorsey.

17 Everyone please identify yourselves for my record.

18 THE CLERK: Case, Your Honor?

19 THE COURT: Harrison versus Rapid Cash, I think.

20 MS. DORSEY: Approximately, yes.

21 THE COURT: How about page 14?

22 THE CLERK: Thank you.

23 THE COURT: Mr. Dzarnoski, can you please identify  
24 yourself first for my record.

25 MR. DZARNOSKI: Yes. Mark Dzarnoski, Bar Number

1 3398, on behalf of the Rapid Cash defendants.

2 THE COURT: And who did you bring with you?

3 MR. DZARNOSKI: Oh. Mr. Polsenberg.

4 MS. DORSEY: And for the record, Jennifer Dorsey and  
5 Venicia Considine on behalf of the plaintiff -- on behalf of  
6 class counsel.

7 THE COURT: Thank you.

8 It's your motion to stay.

9 MR. DZARNOSKI: Yes. Again good morning, Your  
10 Honor. It's been a while.

11 THE COURT: Yes, it has.

12 MR. DZARNOSKI: I don't think that there's any  
13 dispute, really, that Micon Gaming case does set the standard  
14 for which our motion is based on. Plaintiffs have cited one  
15 Am-Jur reference that brings forth a New Jersey case; however,  
16 that case involves staying post-judgment recovery enforcement  
17 actions. It has nothing to do with orders denying motions to  
18 compel arbitration. And that's the only case they had cited  
19 for anything other Micon Gaming. So Micon Gaming is directly  
20 on point in terms of the legal standards to apply. And I know  
21 you've read the motion. I got the opposition yesterday, so  
22 let me just reply to the opposition.

23 At first plaintiffs do argue that the object of the  
24 appeal will not be defeated if the stay is denied here.  
25 Frankly, I mean, if you read Micon, the object of the appeal

1 here is to prevent these plaintiffs from moving forward with a  
2 class action here in District Court. If you don't stay this,  
3 then that's what's going to be happening. Therefore, the  
4 object of our appeal most clearly is being denied by virtue of  
5 not granting the stay. I mean, that is just very, very clear.

6 The claims bring forth the fact they say that, well,  
7 if they're later reversed you're still going to have to go  
8 through discovery and 327 claims, so therefore the object of  
9 the appeal is not being denied. In the first instance --

10 THE COURT: Or you could satisfy all the defaults in  
11 Justice Court.

12 MR. DZARNOSKI: You know, and if --

13 THE COURT: Default judgments. I'm sorry.

14 MR. DZARNOSKI: We're down to only 405 who have  
15 claimed that they weren't served, so maybe we're getting  
16 closer, as opposed to the 13,903 that are subject to the  
17 action.

18 In the first instance, that argument has nothing to  
19 do with whether the object the appeal would be denied. It has  
20 to do with prejudice.

21 THE COURT: No. But then my whole case would be  
22 over, and you could go back and do whatever you wanted to do;  
23 right?

24 MR. DZARNOSKI: I'm sorry?

25 THE COURT: Then the whole case would be over, and

1 you could do whatever you wanted to do, and I wouldn't need a  
2 class action.

3 MR. DZARNOSKI: If we set aside 13,903 judgments?

4 THE COURT: However many there are.

5 MR. DZARNOSKI: Well, there are 13,903. That's what  
6 you told me the solution was. And we're going through a  
7 process now and we're finding that approximately 5 percent of  
8 those people who were told, return this card and you'll get  
9 free money, have actually returned the card, who have received  
10 their notice. Which also gets to the issues we've talked  
11 about before, which is how they can possibly have generalized  
12 proof of a policy and practice when you've got 405 people out  
13 of 13,000 who have even claimed not to have received service  
14 of process. But that's for a different time. That's really  
15 not on the motion to stay.

16 THE COURT: I know. But I was -- you said it would  
17 defeat the object of your appeal.

18 MR. DZARNOSKI: And it would.

19 THE COURT: And there's an easy way for you to solve  
20 this problem.

21 MR. DZARNOSKI: I understand that you view it as  
22 easy. We view 13,903 as very difficult.

23 The second -- and again, that gets to prejudice.  
24 Their argument really does get to prejudice. And they say  
25 that we will not suffer irreparable injury if the stay is

1 denied. According to Micon, first of all, we don't have to do  
2 that. It's a very insignificant factor on an order denying a  
3 motion to compel arbitration. However, we did bring forth the  
4 fact that we will suffer prejudice if you don't grant the  
5 stay.

6 I'm surprised by the argument that they brought up  
7 that we would have to defend 327 arbitration actions when the  
8 whole basis of their motion to have class certification was  
9 that the number and amount involved in this case is so small  
10 for each of these people that they are not going to go forward  
11 with their arbitration cases, and that was basically the  
12 substantive reason they told you you needed to have class  
13 certification. Now when we ask for a stay, they all of a  
14 sudden have changed their tune and said, well, no, no, all  
15 these 327 or now 405 people are going to go to arbitration.  
16 But even if they were going to arbitration and we might have  
17 to defend those, the defense of a class action is  
18 substantially different than challenging the individualized  
19 proof that would be required in an arbitration setting for the  
20 individual people who brought their arbitration claims.

21 Here, as I already mentioned, the proof is going to  
22 have to be of a generalized policy and practice, whereas a  
23 generalized policy and practice is going to make no difference  
24 in an arbitration action. So we would be doing substantial  
25 amount of discovery and a substantial amount of work on the

1 class action basis, whereas there isn't going to be a class  
2 action if the Supreme Court turns around and says, all right,  
3 these cases have to go to arbitration. So we do have some  
4 prejudice.

5           They don't have any. Their prejudice they brought  
6 up is something very ephemeral that says, well, the class  
7 action finally has some traction. Well, I mean, fine. It's  
8 that traction that prejudices us as we move down the course of  
9 a class action that shouldn't have ever been certified because  
10 it should be an arbitration, if we prevail, then we will have  
11 expended significant resources along that line.

12           And Micon Gaming in terms of them claiming that they  
13 should be able to proceed with discovery specifically  
14 addresses that point. In Micon Gaming the plaintiff, who  
15 didn't want to be in arbitration, wanted discovery. Micon  
16 Gaming says, hey, doesn't matter that we're going to be  
17 staying discovery, that is not any prejudice to you, Mr.  
18 Plaintiff, you're just going to have to sit there and wait  
19 until we decide on whether or not to grant the stay.

20           Those are the few points that have been raised in  
21 the opposition here, and clearly -- and the one thing I just  
22 want to emphasize is that the Nevada Supreme Court has been  
23 pretty clear in Micon, and that is if the object of appeal on  
24 a motion to compel arbitration is to be denied, these other  
25 factors are insignificant, there's a virtual presumption in

1 favor of the District Court granting the stay. And it doesn't  
2 have to be where you have to concede that your decision's  
3 wrong, we don't have to persuade you that we're likely to have  
4 a change in your decision once we go to the Nevada Supreme  
5 Court. The only measure there is whether or not our appeal is  
6 frivolous. And I certainly don't think, having you gone  
7 through the briefings, that you think our argument on motion  
8 to compel arbitration was frivolous when we brought it. But  
9 even if you thought it was almost frivolous, the United States  
10 Supreme Court has subsequent to Concepcion, as I put in my  
11 brief, issued another opinion indicating that arbitration, the  
12 FAA trumps public policy, and the Ninth Circuit Court of  
13 Appeals has issued a case subsequent to Concepcion again  
14 dealing with public policy issues and saying, listen, you  
15 can't deny arbitration based on public policy. So if you ever  
16 felt that we were close to being frivolous, these two cases  
17 help show that we're not.

18 THE COURT: So what about fraud upon the court? Can  
19 we have --

20 MR. DZARNOSKI: I'm sorry?

21 THE COURT: -- deny the motion for arbitration when  
22 there's fraud upon the court?

23 MR. DZARNOSKI: On what basis?

24 THE COURT: A little different than public policy,  
25 don't you think? I've got 13,000 judgments down in Justice

1 Court, and we don't know how many of those were sewer service;  
2 right?

3 MR. DZARNOSKI: No, we don't.

4 THE COURT: And we know that about 4,000 of those  
5 people or so have satisfied their judgments one way or the  
6 other.

7 MR. DZARNOSKI: That's probably right, yes.

8 THE COURT: And we know that when we mailed the  
9 class notice we got about 6,000 back as undeliverable.

10 MR. DZARNOSKI: Correct. That number is 5,548 as of  
11 this week.

12 THE COURT: Okay.

13 MR. DZARNOSKI: Which means 7,955 have been  
14 delivered, and 5 percent of those who've been said, you get  
15 free money, just say you weren't served, only 5 percent have  
16 returned.

17 THE COURT: I don't think that saying the class  
18 notice says you can get free money is a very accurate way to  
19 portray what the class notice says.

20 MR. DZARNOSKI: A reader of it is going to --

21 THE COURT: So let me ask you another question, Mr.  
22 Dzarnoski, because here's my problem with this case. This is  
23 not a regular public policy case as to whether arbitration is  
24 in the best interests of the public and whether we should  
25 enforce contractual provisions, because absolutely, and I do



1 it all the time, this is a very different situation, and in my  
2 mind the cases the U.S. Supreme Court has decided do not apply  
3 in a circumstance where there has been fraud upon the court in  
4 obtaining judgments. Now, whether it ultimately turns out  
5 that the person who did the sewer service is in fact the agent  
6 of your client, which is a significant issue we're going to  
7 have to hit some day, is one that we'll deal with. But at  
8 this point I am significantly beyond a simple public policy  
9 argument.

10 MR. DZARNOSKI: Well, regardless of how far beyond  
11 that you are, Your Honor --

12 THE COURT: No. We. We, as a group.

13 MR. DZARNOSKI: Okay. We're well beyond that. The  
14 Supreme Court of the State of Nevada has not decided that.

15 THE COURT: I know.

16 MR. DZARNOSKI: It's on appeal. And there's  
17 standards for which we can get relief. And as firmly as you  
18 hold the position you've just said, and I truly respect that,  
19 I've never disrespected an opinion, I might have disagreed  
20 with it, but I never disrespected it, you know, the question  
21 is am I being frivolous. And as firmly as you have your  
22 position, I just don't believe that in light of what the United  
23 States Supreme Court and the Ninth Circuit Court of Appeals  
24 has said with regard to issues that are so close except for  
25 the issue of fraud upon the court that you can say we're

1 frivolous. And if you can't say we're frivolous, then there  
2 is a presumption that we should be granted the stay, and  
3 particularly because there's no harm that's being done to the  
4 defendants -- or the plaintiffs here. Some of these people --  
5 this class goes back to 2004, eight years. None of these 405  
6 that have returned the card at any time over the course of  
7 eight years ever made a claim that they weren't served  
8 process. And so now all of a sudden they file a thing that  
9 says, okay, I wasn't served process. Well, what harm is there  
10 if we wait six more months?

11 THE COURT: It's not going to be six months if I  
12 stayed something.

13 MR. DZARNOSKI: A year.

14 THE COURT: I stayed the -- I got stayed in the  
15 CityCenter. I didn't stay it, I got stayed. And, Mr.  
16 Kennedy, it was what, 11 months?

17 MR. KENNEDY: Yes.

18 THE COURT: Eleven months. And that was an  
19 emergency while I'm in the middle of an evidentiary hearing.

20 MR. DZARNOSKI: And that one had prejudice, I'm  
21 sure. But this one doesn't.

22 THE COURT: Well, no. Apparently it doesn't have  
23 prejudice, but that's a different issue, you know. Don't tell  
24 me it's going to take the Supreme Court six months to do  
25 anything. Their docket is probably the busiest docket in the

1 country. And while they do their best to address things in a  
2 timely fashion, it is not realistic for any of us to expect  
3 they will resolve an issue in six months to even 12 months.

4 Mr. Polsenberg, do you want to talk to us about how  
5 long it takes the Nevada Supreme Court right now?

6 MR. POLSENBERG: No. I want to talk about this case  
7 and perhaps even the District Court cases. There's alleged  
8 fraud upon the court, but the timing I think we need to bear  
9 in mind, especially in light of your waiver reasoning before,  
10 is that we're not talking about fraud upon this Court, and  
11 we're not talking about --

12 THE COURT: No. Justice Court. People downstairs.

13 MR. POLSENBERG: I understand. Right. And we're  
14 not talking about fraud in this case. We're talking about  
15 cases in the Justice Court where fraud upon the court is a  
16 remedy in that case. You had said before that there's waiver  
17 because we brought the collection actions in the District  
18 Court. And I would go so far as to say there would only be  
19 waiver, and Mr. Dzarnoski has argued this to you, there would  
20 only be waiver as to issues that could be raised in the  
21 Justice Court and were raised in the Justice Court. All these  
22 parties, all these plaintiffs, all these potential class  
23 members have the opportunity under Justice Court Rule 60(b)  
24 and 60(c) to set aside those defaults, either by simple motion  
25 or by independent action. Now, independent action is a

1 throwback to the old days. I think here they could make  
2 separate motions, and those motions could be raised. I don't  
3 see the reason for this Court to think it has jurisdiction  
4 over the fraud upon the court claims so as to make them  
5 override the Federal Arbitration Act and its very stern  
6 directive that cases need to be arbitrated.

7 And Mr. Dzarnoski in his motion to compel -- in the  
8 briefing on the motions to compel arbitration even brought out  
9 the fraud cases where Federal Courts have said, no, even fraud  
10 cases, in addition to public policy cases, have to go to  
11 arbitration.

12 THE COURT: But those aren't this kind of fraud, Mr.  
13 Polsenberg. This is a very unusual situation. Wouldn't you  
14 agree?

15 MR. POLSENBERG: Unusual in the sense that the  
16 District Court, which has direct appellate jurisdiction over  
17 the Justice Court, is exercising some kind of collateral  
18 review when there hasn't been a final resolution of the same  
19 issues that should have been raised in the Justice Court.

20 I think this is a rather thrown-together procedure  
21 to be able to present these issues. I think the issues --

22 THE COURT: So are you suggesting that you think the  
23 better practice is for the defendants in all 13,000-and-some  
24 default judgments in Justice Court to request that the Justice  
25 Court judges entertain a motion to set aside the judgment on

1 each of those individual cases?

2 MR. POLSENBERG: Short answer, yes. Longer answer,  
3 I don't think all 13,000 are going to move. You're assuming  
4 that there has been improper service in all those cases or  
5 whether the defendants in all those cases actually care about  
6 whether they were properly served, because they may have made  
7 the decision, as the Nevada cases under Rule 55 point out,  
8 that there are circumstances when somebody can see the  
9 complaint, realize that they have no defense, and simply not  
10 bother to answer, knowing that the only judgment that could be  
11 entered against them in the Justice Court would be for  
12 collection of the money that they owe.

13 So, yes, I do think the proper procedure is for the  
14 motions to be brought in the Justice Court. If they don't  
15 prevail, there's appellate jurisdiction in this court, and --

16 THE COURT: Well, not in this court, but in some  
17 other District Court judge.

18 MR. POLSENBERG: Well, by this court I mean the  
19 District Court.

20 THE COURT: The Eighth Judicial District.

21 MR. POLSENBERG: Right. So I think it's very --  
22 that what I think the unusual circumstance is. The unusual  
23 circumstance to which you seem to be alluding I don't think  
24 outweighs Mr. Dzarnoski's argument on Micon. Micon says,  
25 look, arbitration -- you defeat the purpose of the arbitration

1 agreement if you don't do the interlocutory appeal.

2 THE COURT: Thank you.

3 MR. POLSENBERG: Thank you, Your Honor.

4 MR. DZARNOSKI: Thank you, Your Honor.

5 THE COURT: Anything else, Mr. Dzarnoski?

6 Ms. Dorsey.

7 MS. DORSEY: Good morning, Your Honor.

8 THE COURT: 'Morning.

9 MS. DORSEY: First, I'm a tad concerned about Dan  
10 raising -- or Mr. Polsenberg raising brand-new jurisdictional  
11 arguments that we've never heard before.

12 THE COURT: But that's why he's here. We know that.

13 MS. DORSEY: I don't like not having the opportunity  
14 to brief an opposition to such brand-new concerns that I fear  
15 may be attempted to be raised in the Nevada Supreme Court,  
16 which may make this two years instead of a single year before  
17 we get a resolution on your second order denying the motion to  
18 compel arbitration.

19 THE COURT: Hold on. Mr. Polsenberg wants to say  
20 something.

21 MR. POLSENBERG: I'd be happy to make a motion, if  
22 you want. But I thought the point that I was making went to  
23 your unusual circumstances.

24 THE COURT: Thank you.

25 All right. Ms. Dorsey.

1 MS. DORSEY: Thank you. I think that this motion  
2 that is before you right now, the motion to stay, comes down  
3 to the fact that the object of the appeal will not be defeated  
4 if you deny the stay today and if they are forced to go  
5 forward with discovery in this case at long last. This case  
6 has been going on for more than a year. It has had an  
7 unbelievable amount of delays, primarily because of the  
8 motions to compel arbitration and the fact that there have  
9 been three, possibly four appellate matters in some form or  
10 another. I think we're down to two right now, possibly.

11 But what we're seeking in this case is class-wide  
12 relief, and until we get relief, then the object of their  
13 appeal cannot possibly be defeated. So if you allow this case  
14 to go forward through discovery and let us conduct discovery  
15 at a minimum on behalf of the -- it was 327 when they filed  
16 their motion, but it sounds like additional postcards have  
17 come back, and I'm hopeful that we will be getting a copy of  
18 all of those postcards soon, but it looks like 405 people  
19 have now at least sent in a postcard saying, I didn't get  
20 served. And it's those people at a minimum and the people  
21 who either didn't get served with the notice yet because  
22 they've moved or they don't know about this class action yet,  
23 who you've also said are still members of this class because  
24 this is essentially an opt-out class and they'll still be  
25 members of the class for now even if they don't send in their

1 postcards --

2 THE COURT: I didn't say it was essentially opt out.  
3 I said it was opt out.

4 MS. DORSEY: I'm sorry. I misspoke. You're right.  
5 It's those people who are going to be harmed, because they now  
6 they -- now they at least know that they have the opportunity  
7 to obtain relief from fraudulently obtained default judgments,  
8 and further delay is going to be a problem for them; because,  
9 as you know, Your Honor, the longer you delay, evidence goes  
10 away, witnesses go away, memories fade, and they're going to  
11 naturally be prejudiced.

12 Now, on the flip side of that Rapid Cash has no  
13 prejudice if they're forced to go forward with the same types  
14 of discovery that they'd have to go forward with in  
15 arbitration of 405 of their customers' claims. That would  
16 include agency, theory, discovery, as you indicated, it would  
17 include the policy and practices of the service of process  
18 that Rapid Cash was engaging in, it essentially includes at a  
19 minimum all liability discovery. And there's simply no reason  
20 to stay that, and the Micon case and any other authority that  
21 Rapid Cash has provided you does not give you a reason to stay  
22 this case when we could be moving forward and at least  
23 collecting the discovery that we will be entitled to  
24 regardless of the forum that we're in.

25 I think that's my argument.



1 THE COURT: Mr. Polsenberg, Mr. Dzarnoski, anything  
2 else?

3 MR. DZARNOSKI: Very briefly, Your Honor. First  
4 regarding the discovery issue, the arbitrator or arbitrators  
5 would set the scope of discovery. We don't know what the  
6 scope of discovery might be in individual claims that would be  
7 brought forth in arbitration.

8 Second, what we have --

9 THE COURT: One would certainly hope that somebody  
10 would do discovery on the agency issue on the service; right?

11 MR. DZARNOSKI: Well, somebody might want to do some  
12 discovery on the agency issue. That's fine. It doesn't mean  
13 that -- it doesn't mean that it's going to be done on behalf  
14 on a class-wide basis for generalized proof of a policy and  
15 practice of 405 people or 13,000 people. Once again, just  
16 because 405 people put in a card does not mean that they all  
17 would file an arbitration case. And that is a 180-degree spin  
18 on what the plaintiffs have asserted before in this  
19 litigation.

20 And the last thing I just would like to comment in  
21 terms of delays. This case has not been unduly delayed at  
22 all. It might be long, but it has not been unduly delayed.  
23 And to the extent it has been delayed I'd remind the Court  
24 that on the class certification order that took over a year  
25 for plaintiffs to submit a class certification order to this

1 Court after you made your decision.

2 The second long break that we had in this case  
3 involved the Supreme Court settlement program where we in good  
4 faith worked on a settlement of the case for several, several  
5 months. So I don't think that there's any undue delay,  
6 although it has been a longstanding case. Thank you.

7 THE COURT: Thank you.

8 The motion is denied. I do not believe that the  
9 purpose of the appeal will be defeated by our continuing to  
10 gather the responsive information from the class notices.

11 I am, however, going to set a status check in  
12 60 days, which should give the all the parties adequate time  
13 following the receipt of the last responses that we anticipate  
14 being due at the end of this month so that we can then assess  
15 where we are with the case.

16 You may, of course, renew your motion at that time,  
17 Mr. Dzarnoski. But at this point in time I do not think a  
18 stay will defeat the purpose of the appeal.

19 MS. DORSEY: Would that assume, Your Honor, that  
20 they're going to provide us with copies of everything that  
21 they've obtained through this notice process?

22 THE COURT: Absolutely.

23 MS. DORSEY: Thank you.

24 MR. DZARNOSKI: Your Honor, two things. Can I write  
25 the order so we can get it in quickly?

1 THE COURT: Yes, you can. But you have to send it  
2 Ms. Dorsey to look at.

3 MR. DZARNOSKI: I will.

4 The second thing is I did have some housekeeping, if  
5 I could.

6 THE COURT: Well, wait. I've got to give you a  
7 date. Billie Jo, how about June 26th at 9:00 a.m.?

8 THE CLERK: June 26th at 9:00 a.m.

9 MS. DORSEY: I will be out of the country, Your  
10 Honor.

11 THE COURT: How about July 3?

12 MS. DORSEY: That's fine.

13 THE CLERK: July 3, 9:00 a.m.

14 THE COURT: You don't like that day? I can move it  
15 to another day.

16 MR. DZARNOSKI: I'd like July 10.

17 THE COURT: July 10.

18 THE CLERK: July 10, 9:00 a.m.

19 THE COURT: Anybody else want to negotiate dates  
20 with me?

21 All right. Housekeeping?

22 MR. DZARNOSKI: Yes. I've been informed -- first of  
23 all, the status report that I gave, that's -- I get that  
24 information weekly, and I can file another status report, but  
25 that's the only information I have directly gotten from Russ

1 Consulting. They have advised me that their standard policy  
2 is regarding records retention and destruction on these  
3 things, and I can't remember exactly how long, but it was like  
4 six months after the breakoff of the time period where the  
5 notices were to be coming back in. So I wanted to get  
6 direction from the Court. What do you want done with --

7 THE COURT: I'd like them to hold it longer.

8 MR. DZARNOSKI: You want them to hold it, rather  
9 than repatriate it here and filed with the court or something?

10 THE COURT: I don't want it.

11 MR. DZARNOSKI: They don't want it, either.

12 THE COURT: I want it to be available, though.

13 MR. DZARNOSKI: Yeah. You want them to maintain  
14 those documents.

15 THE COURT: For an additional six months beyond the  
16 close.

17 MR. DZARNOSKI: And, you know, they do have returned  
18 -- 5,548 retained items, and I guess maybe you could bring it  
19 up on -- in July 10th when --

20 THE COURT: 5,779 were returned as undeliverable,  
21 and 71 returned with a forwarding address, according to your  
22 status report. Because I did read it.

23 MR. DZARNOSKI: I'm sure you did. And prior to  
24 mailing, Russ Consulting had done the address checking that is  
25 done through the Post Office, so this isn't that we just used

1 old addresses. And I don't know what the Court has in mind or  
2 plaintiffs have in mind or anything else regarding any further  
3 action with respect to returned items, but it's something I  
4 did want to bring to your attention, and maybe we'll address  
5 it later in July.

6 THE COURT: I think that's what we're going to do.  
7 It may be that you want to -- somebody wants to file a motion  
8 or have some other issue brought up in that form prior to the  
9 status check.

10 MR. DZARNOSKI: Well --

11 THE COURT: But I'll leave it to your discretion.

12 MR. DZARNOSKI: I haven't gotten yet -- I'm assuming  
13 we'll get a spreadsheet that will identify which of the  
14 individual people are the ones that have returned exclusions  
15 and whatnot. We haven't done that.

16 THE COURT: Usually they just give you all the  
17 postcards.

18 MR. DZARNOSKI: Well, in this case I think they're  
19 -- I think these were actually done --

20 THE COURT: It would be nice if they would do more.

21 MR. DZARNOSKI: I think they bar-coded them, in  
22 fact, when they came in. I think this is the way they're  
23 doing it. It was pretty clever.

24 THE COURT: That'd be great. Usually they don't  
25 give that up, whether it's the postcards or something else,

1 until after the close of the response period, and sometimes I  
2 get motions from the class administrator asking me to extend  
3 the notice period because of certain issues that have  
4 occurred. So that's one of the reasons that I set the status  
5 check a few weeks beyond the close of the response period.

6 MR. DZARNOSKI: Well, if they don't give us a  
7 summary, then I guess somehow we've got to get the cards. But  
8 I'm thinking that -- not a summary, but a specific  
9 identification. And I will file a report with the Court after  
10 May 30th I think was the deadline when Russ --

11 THE COURT: May 31st I thought was what they said.  
12 The end of the month. But if they want to come to have a  
13 decision with me about the formatting of the response, that  
14 would be helpful, as well.

15 MR. DZARNOSKI: Thank you.

16 MS. DORSEY: At a minimum, Your Honor, can we get  
17 copies of the postcards that have been returned?

18 THE COURT: Usually we don't do that until the end.

19 MS. DORSEY: At the end of the period?

20 THE COURT: Yes.

21 MS. DORSEY: Yes. Which would still be before our  
22 July 10th status check.

23 THE COURT: Should be.

24 Mr. Polsenberg.

25 MR. POLSENBERG: May I have a temporary stay while I

1 ask the Supreme Court for a stay?

2 THE COURT: And what do you anticipate your  
3 temporary stay to cover? Here's the problem I have. I have a  
4 claims administrator who's out there sending out the class  
5 notice, gathering information. That's why I do not want to  
6 impose a stay now, because I don't want to disrupt that  
7 process. I set the status check so that that process would be  
8 complete when you come back, and then I will have a better  
9 sense of the disruption that I will cause to that process if a  
10 stay is entered. So that's the reason that I've said you can  
11 renew it in about 60 days. But if you want to go to the  
12 Nevada Supreme Court, that's great. I just don't want to  
13 disrupt the claims process right now.

14 MR. POLSENBERG: And by claims process you mean the  
15 accumulation of the cards?

16 THE COURT: By Russ Consulting.

17 MR. POLSENBERG: Is there -- while don't like to  
18 negotiate with judges, is there a middle ground where we  
19 could --

20 THE COURT: Absolutely. What do you want to  
21 propose?

22 MR. POLSENBERG: -- where they -- that's right. You  
23 know me.

24 THE COURT: I'm waiting for the third jury  
25 instruction --

1 MR. POLSENBERG: The third jury instruction. That's  
2 always the good one.

3 How about if we have them continue the process, but  
4 not go forward in the adversary proceeding so that there  
5 wouldn't be anything going on between and among the parties,  
6 but we wouldn't actually pull the plug on their accumulation  
7 of cards?

8 THE COURT: I don't have a problem with that until  
9 the close of -- until the next status check.

10 MR. POLSENBERG: Very good. Thank you.

11 MS. DORSEY: I still don't like it.

12 THE COURT: I know. But that's what I was trying to  
13 accomplish. You may have noticed that.

14 MS. DORSEY: I understand. But I still think that  
15 the object of the appeal is not defeated regardless of how --

16 THE COURT: I don't think it is. But you're not  
17 going to do anything anyways until you get the stuff.

18 MS. DORSEY: We need to get some discovery out.

19 MR. DZARNOSKI: And I will inform the Court the  
20 publications are all done. It's been six solid weeks now in  
21 both R-J and El Mundo, so that's not impacted by any of your  
22 rulings.

23 THE COURT: Okay. So you guys aren't going to fight  
24 with each other until we come back in July. And if somebody  
25 needs something between now and then, you can file a motion,



1 and that will not be a violation of the stay, and then we'll  
2 talk about it. So if you think that you have to go take Mr.  
3 Carol's deposition because something horrible is going to  
4 happen to him if you don't take it right now, then I would  
5 anticipate a motion.

6 MR. DZARNOSKI: So my order is -- our motion is  
7 denied, but you're granting a temporary stay up until July --

8 THE COURT: I granted your motion in part, but it's  
9 very narrow. How's that?

10 MR. DZARNOSKI: Okay. I'll change it to that.  
11 Thank you.

12 MR. POLSENBERG: Thank you, Your Honor.

13 MS. DORSEY: Thank you, Your Honor.

14 THE COURT: Have a lovely day.

15 THE PROCEEDINGS CONCLUDED AT 9:36 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

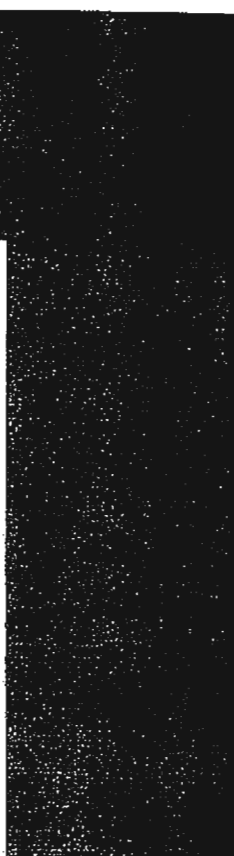
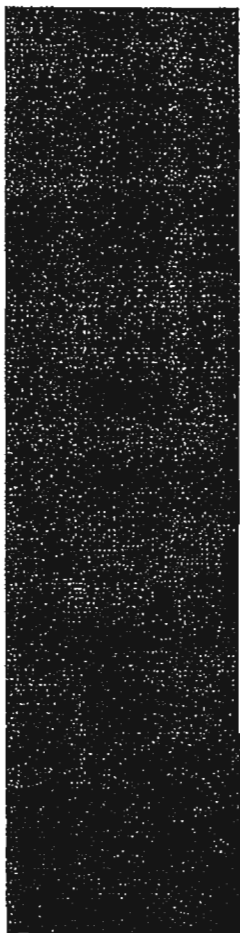
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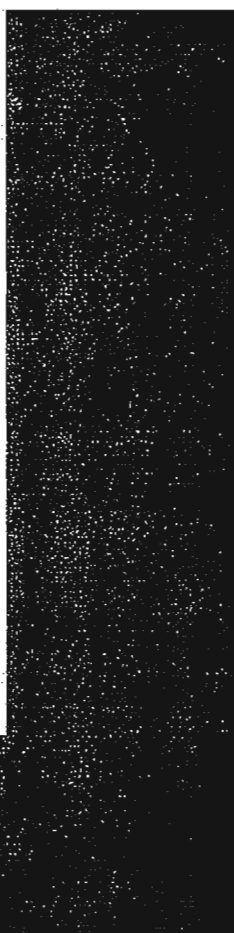
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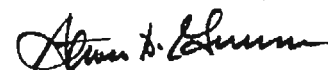


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# ORIGINAL



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24 Cash and Advance Group, Inc., d/b/a Rapid

25 Cash

## DISTRICT COURT

### CLARK COUNTY, NEVADA

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

22 Plaintiffs,

23 vs.

24 PRINCIPAL INVESTMENTS, INC. d/b/a  
25 RAPID CASH; GRANITE FINANCIAL  
26 SERVICES, INC. d/b/a RAPID CASH; FMMR  
27 INVESTMENTS, INC. d/b/a RAPID CASH;  
28 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

**ORDER GRANTING IN PART RAPID  
CASH'S MOTION FOR STAY PENDING  
APPEAL OF THE ORDER DENYING  
DEFENDANTS' MOTION TO COMPEL  
ARBITRATION**

1 Defendants' Motion For Stay Pending Appeal of the Order Denying Defendants' Motion  
2 to Compel Arbitration (the "Motion") came before the Court for hearing on the 15<sup>th</sup> day of May,  
3 2012. Plaintiffs appeared by and through Class Counsel, Jennifer C. Dorsey, Esq., Kemp, Jones  
4 and Coulthard, LLP, and Venicia Considine, Esq., Legal Aid Center of Southern Nevada, Inc.  
5 Defendants, Principal Investments, Inc. d/b/a Rapid Cash; Granite Financial Services, Inc. d/b/a  
6 Rapid Cash; FMMR Investments, Inc. d/b/a Rapid Cash; Prime Group, Inc. d/b/a Rapid Cash;  
7 and Advanced Group, Inc. d/b/a Rapid Cash (hereafter "Rapid Cash"), appeared by and through  
8 counsel Mark S. Dzarnoski, Esq., Gordon & Silver, Ltd. and Daniel F. Polsenberg, Esq., Lewis  
9 and Roca.

10 The Court, having reviewed the Motion, Plaintiffs' Opposition, the pleadings and other  
11 papers on file herein and having heard the arguments of counsel hereby FINDS, CONCLUDES,  
12 and ORDERS as follows:

13 Defendants' Motion is GRANTED, in part. Discovery and further adversarial  
14 proceedings in this matter are hereby temporarily stayed until July 10, 2012 at 9:00 a.m. During  
15 the temporary stay, Rust Consulting ("Rust") shall continue to receive, process, and report on  
16 Opt-Out and Questionnaire postcards mailed to potential class members and returned to Rust;  
17 Class Counsel shall be provided with a copy of all postcards or other responses returned to Rust  
18 upon the close of the prescribed postcard-return period.

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27 ...

28 ...


1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED a Status Conference shall  
 2 be held in Department XI on July 10, 2012 at the hour of 9:00 a.m. or as soon thereafter as the  
 3 matter may be heard.

4 IT IS SO ORDERED this 22<sup>nd</sup> day of May, 2012.

5   
 6 DISTRICT COURT JUDGE

7 Submitted by:

8 GORDON SILVER

9   
 10 WILLIAM M. NOALE

11 Nevada Bar No. 3549

12 MARK S. DZARNOSKI

13 Nevada Bar No. 3398

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15 Las Vegas, Nevada 89169

16 Tel: (702) 796-5555

17 Attorneys for Defendants

18 Principal Investments, Inc., d/b/a Rapid

19 Cash, Granite Financial Services, Inc., d/b/a

20 Rapid Cash, FMMR Investments, Inc., d/b/a

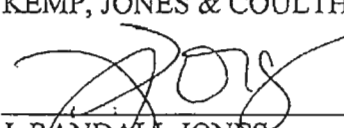
21 Rapid Cash, Prime Group, Inc., d/b/a Rapid

22 Cash and Advance Group, Inc., d/b/a Rapid

23 Cash

24 Approved as to Form:

25 KEMP, JONES & COULTHARD, LLP

26   
 27 J. RANDALL JONES

28 Nevada Bar No. 1927

JENNIFER C. DORSEY

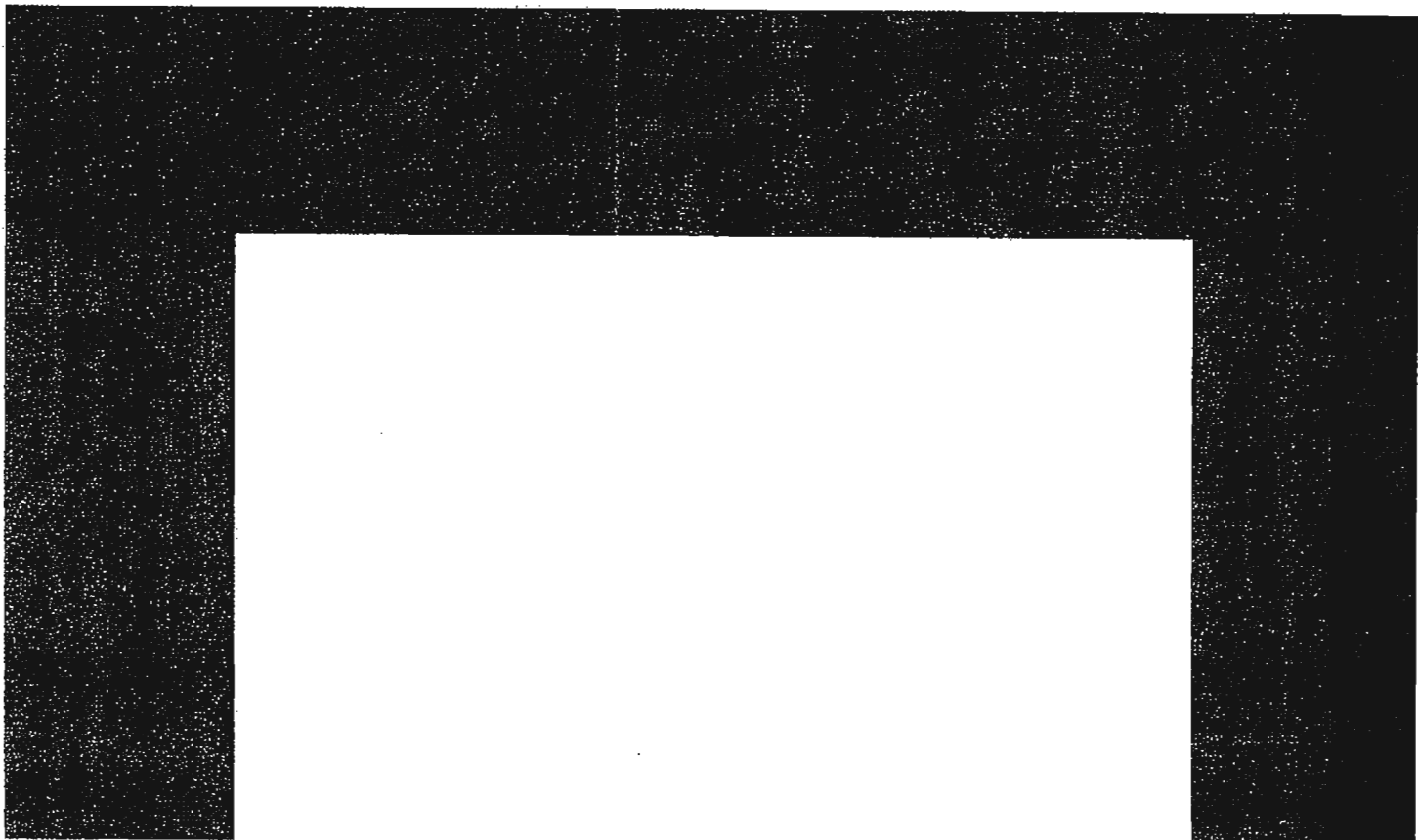
Nevada Bar No. 6456

3800 Howard Hughes Pkwy, 17<sup>th</sup> Floor

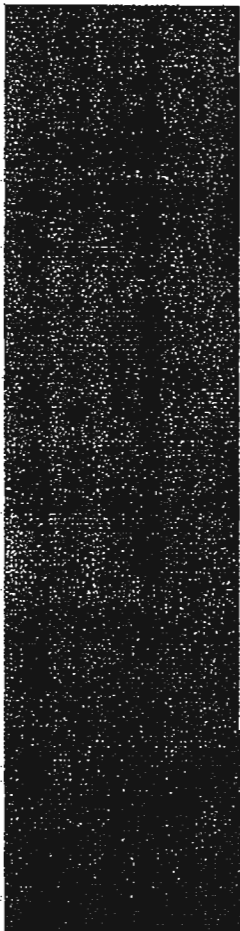
Las Vegas, Nevada 89169

Telephone: (702) 385-6000

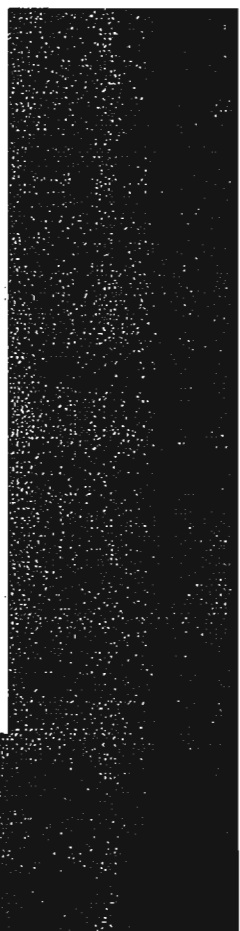
Class Counsel



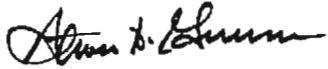
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CLERK OF THE COURT

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*Attorneys for Rapid Cash Defendants*

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  
1 through X, inclusive,

Defendants.

Case No. A624982

Dept. No. XI

**MOTION TO DISMISS CLAIMS  
SEEKING RELIEF FROM  
JUSTICE-COURT JUDGMENTS**

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; ADVANCE GROUP, INC. d/b/a RAPID



1 CASH (collectively "RAPID CASH"), move (1) to dismiss those claims seeking relief  
2 from justice-court judgments, as those issues should be raised primarily and  
3 exclusively in the justice court; (2) to decertify the class, as all claims that have  
4 been—and conceivably could be—certified should be dismissed as raised in the  
5 wrong court; and (3) to compel arbitration on the remaining claims for damages, as  
6 any "waiver" of arbitration by Rapid Cash's bringing the justice-court action would  
7 apply only to those claims and arguments that need to be raised in justice court.

8 NOTICE OF MOTION

9 TO ALL PARTIES AND THEIR COUNSEL:

10 PLEASE TAKE NOTICE that the foregoing MOTION TO DISMISS CLAIMS SEEKING  
11 RELIEF FROM JUSTICE COURT JUDGMENTS is scheduled to be heard in the above-  
12 entitled Court on the 26 day of June, 2012, at 9:00 a.m./p.m. in  
13 Department XI.

14 DATED this 22nd day of May 2012.

15 LEWIS AND ROCA LLP

16  
17 By: /s/ Daniel F. Polsenberg

18 DANIEL F. POLSENBERG (SBN 2376)

19 JOEL D. HENRIOD (SBN 8492)

20 RYAN T. O'MALLEY (SBN 12461)

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28 9<sup>th</sup> Floor

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*Attorneys for Rapid Cash Defendants*

1 POINTS AND AUTHORITIES

2 There are two types of claims against Rapid Cash in this case: those seeking  
3 relief from the justice-court judgments and those seeking monetary damages. The  
4 claims seeking relief from the justice-court judgments, themselves, are within the  
5 exclusive subject-matter jurisdiction of the justice courts, not the district court. This  
6 Court should dismiss those claims and decertify the class in which they are being  
7 litigated.

8 PROCEDURAL BACKGROUND

9 *The Putative Class Complaint*

10 The named plaintiffs filed the complaint in this case asserting various claims,  
11 including an independent action for fraud upon the court, abuse of process,  
12 negligence, civil conspiracy, and violations of NRS chapters 604A and 598.

13 *This Court Certified a Limited Class*

14 The named plaintiffs moved for class certification. This Court ultimately  
15 granted class certification only as to the "legal and equitable issues" raised in the  
16 claims for independent action for fraud upon the court and abuse of process:

17 THE COURT: At this time the Court is going to grant  
18 the motion to certify the class in part. I am granting the  
19 motion to certify as to the injunctive and equitable issues  
20 raised in the sixth [Independent Action for Fraud Upon the  
21 Court] and seventh [Abuse of Process] causes of action as to  
22 all customers of Rapid Cash offices in Clark County,  
23 Nevada, against whom Rapid Cash obtained default  
24 judgments in the Justice Courts of Clark County, Nevada,  
25 and for which the only evidence of service was an affidavit  
26 signed by a representative of On Scene Mediations and who  
27 claim not to have in fact been served.

28 ("Hearing on Motion for Class Certification," filed October 27, 2011, at 30:5-13;  
accord "Order Granting Class Certification and Appointing Class Counsel," filed  
September 29, 2011, at 4:3-11.)

1 ***Rapid Cash's First Motion to Dismiss for Lack of Subject Matter Jurisdiction***

2 Rapid Cash previously moved to dismiss plaintiffs' claims for lack of subject  
3 matter jurisdiction. Rapid Cash argued that plaintiffs' claims could not meet the  
4 amount in controversy requirement and pointed out that the class complaint did not  
5 even allege that the plaintiffs' damages exceeded the jurisdictional minimum.

6 Plaintiffs opposed the motion. Plaintiffs argued that their independent action  
7 for fraud upon the court claim was equitable in nature and that this equitable claim  
8 gave the court ancillary jurisdiction over the plaintiffs' damage claims. Plaintiffs also  
9 argued that their claims for emotional distress and putative damages placed in  
10 controversy more than the jurisdictional minimum.

11 The Court never squarely ruled on the merits of these arguments. Instead, the  
12 Court ordered plaintiffs to amend their complaint to clarify the alleged bases for  
13 subject matter jurisdiction:

14 THE COURT: All right. I'm going to grant the motion in part  
15 with respect to the request for an amendment of certain  
16 claims. I am ordering an amendment to add a more specific  
declaratory relief claim and a more specific injunctive relief  
claim related to the class that I have certified.

17 In addition, for any claim that is seeking damages you will  
18 need to clarify the aggregation or separateness of the  
19 individual claims of the class members and plead the  
jurisdictional amounts in any of the claims seeking damages,  
as opposed to dec or injunctive relief.

20 ("Hearing on Motions," filed January 31, 2011, at 13:14-24.)

21 The Court also noted that many of the Plaintiff's claims for damages could *not*  
22 exceed the jurisdictional amount, but indicated that "supplemental jurisdiction" may  
23 be appropriate for those claims:

24 MS. DORSEY: So we need to say "in excess of  
25 \$10,000" if we want to keep monetary claims?

26 THE COURT: For those -- no. For those claims that  
27 you are seeking, which is, for instance, the abuse of process  
claim where you claim there are punitive damages --

28 MS. DORSEY: Yeah.

1 THE COURT: -- as well as compensatory damages  
2 which you allege exceed \$10,000, that needs to be  
specifically pled in that particular claim.

3 With respect to some of the other claims you're  
4 probably never going to get to the \$10,000, but you need to  
specifically say that you're not grouping the claims together;  
5 because I am going to exercise supplemental jurisdiction  
over those claims since they are here. But I want it clearer  
6 on the pleadings as to how we're dealing with them.

7 (*Id.* at 14:1-15.)

8 The Court issued its written order on February 11, 2011. The order required  
9 plaintiffs to clarify their jurisdictional allegations:

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT  
Defendants' Motion to Dismiss is GRANTED with respect to  
11 the request for an amendment of certain claims;

12 IT IS FURTHER ORDERED that Plaintiffs must amend their  
Complaint on file herein to add a more specific declaratory  
13 relief claim and a more specific injunctive relief claim  
related to the class that was previously orally certified  
14 during the hearing on October 21, 2010;

15 IT IS FURTHER ORDERED that, for any claim that is seeking  
damages, Plaintiffs shall amend their Complaint on file  
16 herein to clarify whether the damages alleged are the  
aggregated damages of all proposed class members or the  
17 individualized damages of each individual class  
representative and to plead the jurisdictional amounts of  
18 damages for each particular damages claim (i.e. either as in  
excess of \$10,000 for original jurisdiction or in some lesser  
19 amount if supplemental jurisdiction is alleged).

20 ("Order on Defendants' Motion to Dismiss," filed February 11, 2011, at 2:13-24.)

21 ***The Amended Complaint***

22 Plaintiffs filed their amended complaint purportedly clarifying plaintiff's theory  
23 of subject matter jurisdiction in this case. First, plaintiffs alleged that this Court has  
24 subject matter jurisdiction over their independent action for fraud upon the court  
25 claim, and that original jurisdiction over that claim gave rise to ancillary jurisdiction  
26 over all other claims. (See "First Amended Class Action Complaint," filed February  
27 28, 2011, at 3:3-17.)  
28

1 Plaintiffs also alleged that the Court “has original jurisdiction over the claims  
2 for damages in excess of Ten Thousand Dollars in the Aggregate . . . as well as the  
3 claim for punitive damages in excess of Ten Thousand Dollars.” (*Id.* at 3:18-21;  
4 citations omitted).

5 ***The Current Motion to Dismiss***

6 Rapid Cash now renews its motion to dismiss certain claims for lack of subject  
7 matter jurisdiction. Rapid Cash also moves to decertify the class and to compel  
8 arbitration of the remaining claims. The Court lacks subject matter jurisdiction over  
9 these claims notwithstanding Plaintiffs’ amendments to their complaint.

10 **ARGUMENT**

11 Plaintiffs’ equitable, declarative and injunctive claims must be dismissed for  
12 lack of subject-matter jurisdiction because these claims raise issues that are within the  
13 exclusive jurisdiction of the justice court. There is no concurrent jurisdiction between  
14 the Nevada Justice Courts and the Nevada District Courts. The Las Vegas Justice  
15 Court has subject matter jurisdiction to provide relief from void default judgments  
16 emanating from that court. Plaintiffs’ claims for relief from the justice court  
17 judgments therefore must be brought in that court, either through a JCRCP 60(b)  
18 motion or through an independent action in justice court. These claims cannot be  
19 brought in the district court and must be dismissed for lack of subject matter  
20 jurisdiction.

21 With the proper dismissal of the challenges to the validity of the justice-court  
22 judgments, no class issues remain, and the district court must decertify the class. The  
23 remaining damages claims have not and cannot be certified, moreover, as individual  
24 issues predominate.

**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.

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Jan 04 2013 04:11 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**APPEAL**

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

**APPELLANTS' APPENDIX**

**VOLUME 5**

**PAGES 929-1175**

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*Attorneys for Appellants*

## **TABLE OF CONTENTS TO APPENDIX**

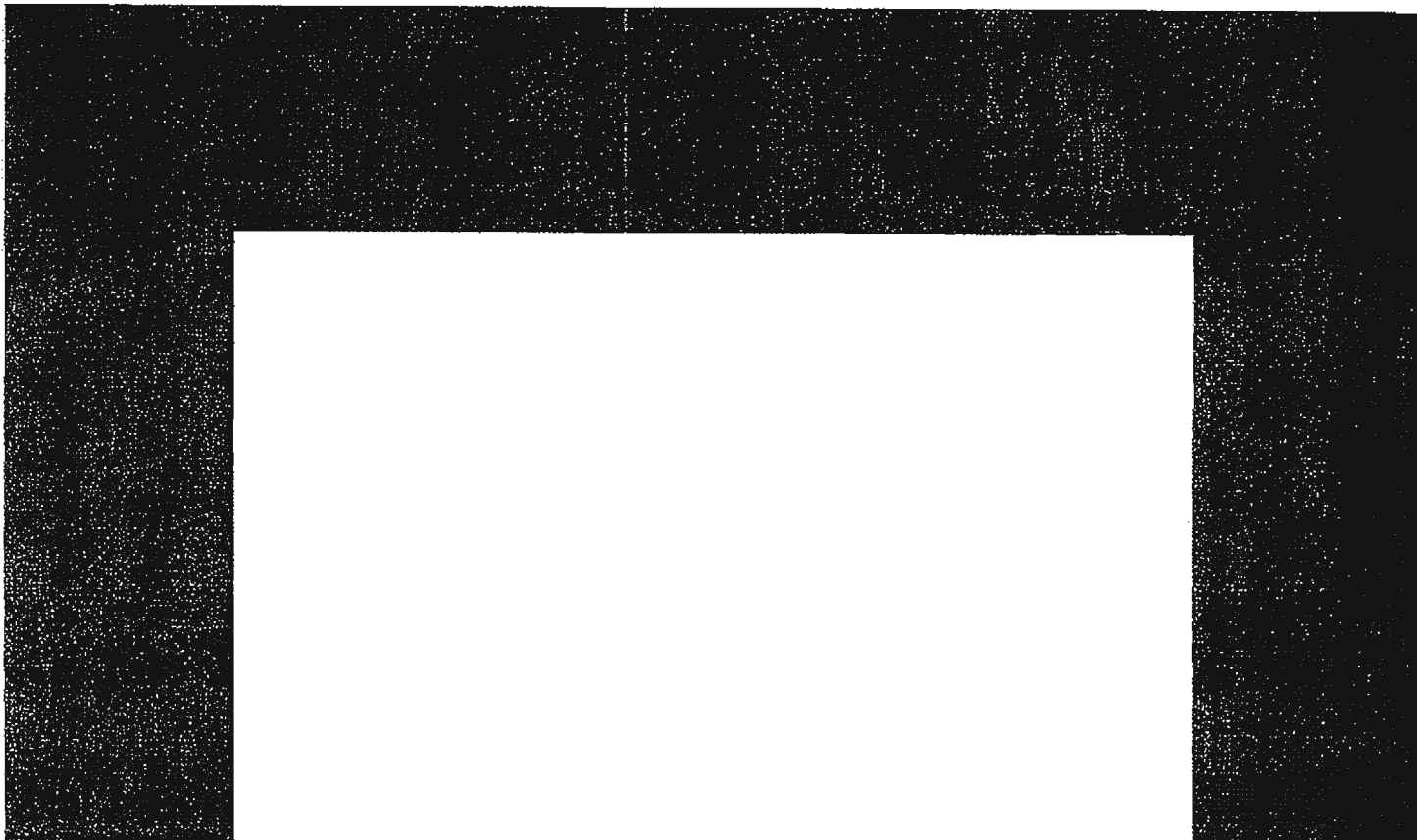
<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
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02	Plaintiffs' Motion to Certify Class	09/09/10	1	29-78
03	Plaintiffs' Motion for Rule 23 No Contact Order or, Alternatively, for a Preliminary Injunction	09/09/10	1	79-98
04	Motion to Compel Arbitration and Stay All Proceedings; Application for Order Shortening Time	09/30/10	1	99-118
05	Opposition to Motion to Compel Arbitration and Stay All Proceedings	10/07/10	1	119-161
06	Reply to Opposition to Motion to Compel Arbitration and Stay of Proceedings	10/08/10	1	162-194
07	Opposition to Motion to Certify Class	10/08/10	1	195-219
08	Opposition to Plaintiffs' Motion for Rule 23 No Contact Order or, Alternatively, for a Preliminary Injunction	10/08/10	1	220-230
09	Transcript of Hearing on Motions	10/12/10	2	231-264
10	Plaintiffs' Reply to Opposition to Plaintiffs' Motion for Rule 23 No Contact Order or, Alternatively, for a Preliminary Injunction	10/15/10	2	265-285
11	Reply in Support of Motion to Certify Class	10/18/10	2	286-320
12	Transcript of Hearing on Motion for Class Certification	10/21/10	2	321-366
13	Rapid Cash Defendants' Submission of Affidavits in opposition to Motion for Preliminary Injunction	11/01/10	2	367-388
14	Transcript of Status Check Re: Class Notice Preliminary Injunction	11/02/10	2	389-404
15	Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim Upon Which Relief May be Granted	12/16/10	2	405-447
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28	Opposition to Motion to Compel Arbitration and Stay All Proceedings	10/07/11	4	680-766
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33	Opposition to Plaintiffs' Motion to Approve Notice	11/02/11	4	835-841
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35	Transcript of Hearing on motions	11/11/11	4	857-882
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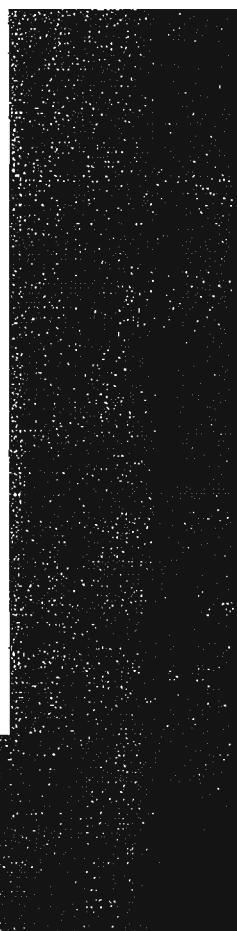
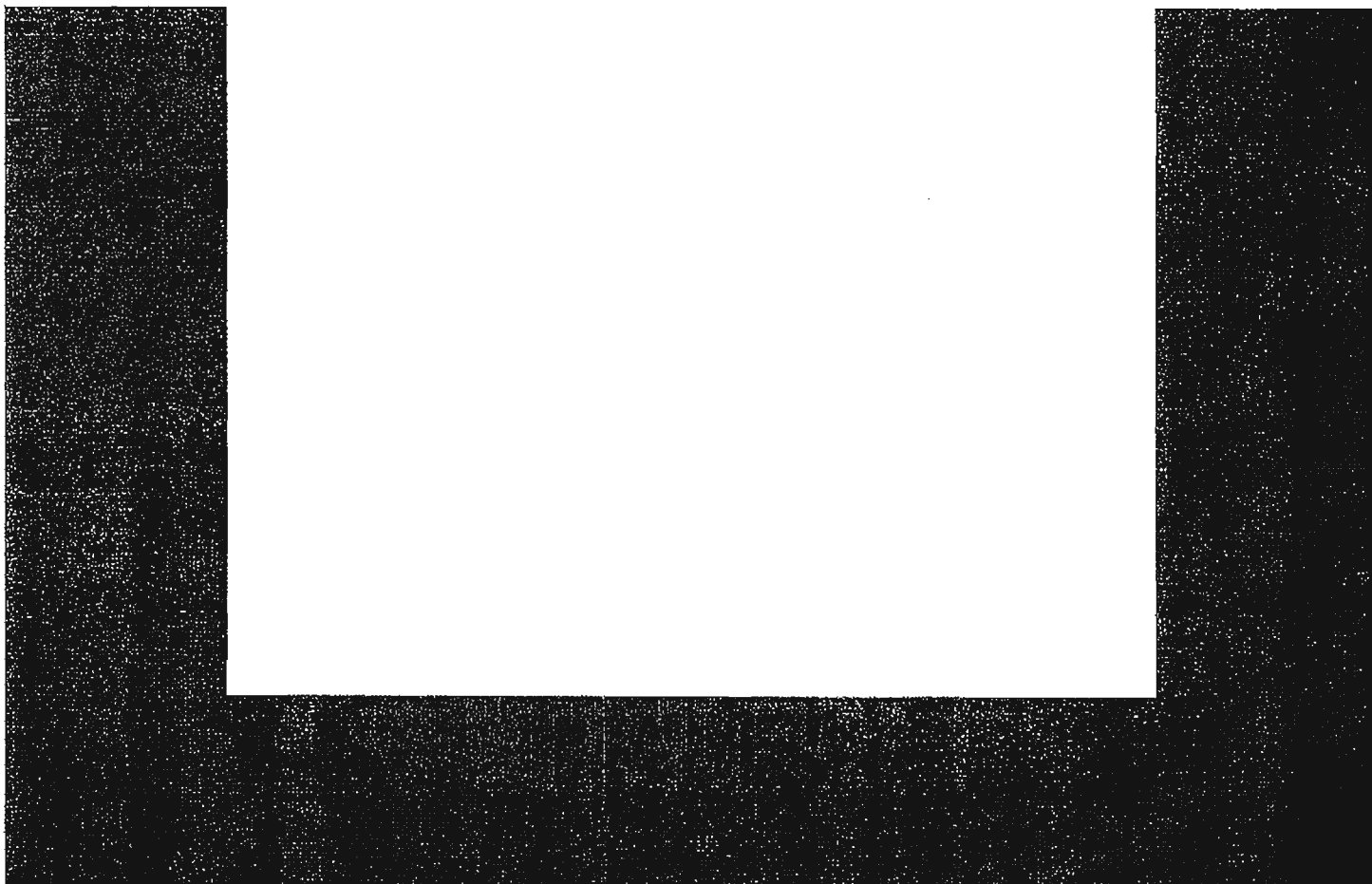
38	Notice of Entry of Order to Reconsider Class Certification or, in the Alternative, Motion to Decertify Class	12/09/11	4	894-898
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62	Affidavit of Richard Duke Gee	09/27/10	6	1240-1312



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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

**ORIGINAL**

*Alvin D. Quinn*

CLERK OF THE COURT

**FILE WITH  
MASTER CALENDAR**

**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':**

- (1) **MOTION TO AMEND CLASS NOTICE;**
- (2) **MOTION TO ENLARGE TIME FOR MAILING CLASS NOTICE; AND**
- (3) **MOTION FOR ORDER SHORTENING TIME**

Date of Hearing:  
Time of Hearing:

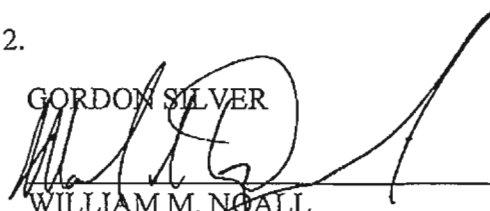
COMES NOW, Defendants Principal Investments, Inc., d/b/a Rapid Cash, Granite Financial Services, Inc., d/b/a Rapid Cash, FMMR Investments, Inc., d/b/a Rapid Cash, Prime Group, Inc., d/b/a Rapid Cash and Advance Group, Inc., d/b/a Rapid Cash (the "Rapid Cash Defendants") by and through their counsel, Mark S. Dzarnoski, Esq. of the law firm Gordon Silver, hereby move this Court for an Order to Amend Class Notice and to Enlarge Time For

1 Mailing Class Notice on a Motion for Order Shortening Time.

2 This motion is made and based upon the Memorandum of Points and Authorities attached  
3 hereto, the pleadings and other papers on file herein and such argument as the Court may permit  
4 at a hearing on this matter.

5 DATED this 8 day of February, 2012.

6 GORDON SILVER

7   
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17 Granite Financial Services, Inc., d/b/a Rapid

18 Cash, FMMR Investments, Inc., d/b/a Rapid

19 Cash, Prime Group, Inc., d/b/a Rapid Cash

20 and Advance Group, Inc., d/b/a Rapid Cash

# 21 ORDER SHORTENING TIME

22 TO: ALL INTERESTED PARTIES AND THEIR ATTORNEY OF RECORD:

23 IT IS HEREBY ORDERED that the request for an order shortening time is granted, and  
24 that counsel for Defendants will bring the foregoing Motion to Amend Class Notice and Motion  
25 to Enlarge Time For Mailing Class Notice on for hearing on the 28<sup>th</sup> day of  
26 Feb, 2012, at the hour of 9 o'clock a.m. in Department XI of the  
27 above-entitled Court.

28 IT IS SO ORDERED this 9<sup>th</sup> day of February, 2012.

29   
30 DISTRICT COURT JUDGE

Prepared and Submitted By:

GORDON SILVER

WILLIAM M. NOALL

Nevada Bar No. 3549

MARK S. DZARNOSKI

Nevada Bar No. 3398

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

Tel: (702) 796-5555

Attorneys for Defendants

Principal Investments, Inc., d/b/a Rapid

Cash, Granite Financial Services, Inc., d/b/a

Rapid Cash, FMMR Investments, Inc., d/b/a

Rapid Cash, Prime Group, Inc., d/b/a Rapid

Cash and Advance Group, Inc., d/b/a Rapid

Cash

**DECLARATION OF MARK S. DZARNOSKI IN SUPPORT OF MOTION TO  
AMEND CLASS NOTICE, MOTION TO ENLARGE TIME FOR MAILING CLASS  
NOTICE AND APPLICATION FOR ORDER SHORTENING TIME**

I, Mark S. Dzarnoski hereby declare as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada and am a shareholder with the law firm of Gordon Silver, which maintains an office at 3960 Howard Hughes Parkway, 9th Floor, Las Vegas, Nevada 89169.

2. Gordon Silver is presently counsel of record for Defendants Principal Investments, Inc., d/b/a Rapid Cash, Granite Financial Services, Inc., d/b/a Rapid Cash, FMMR Investments, Inc., d/b/a Rapid Cash, Prime Group, Inc., d/b/a Rapid Cash and Advance Group, Inc., d/b/a Rapid Cash (the "Rapid Cash Defendants"). I make this declaration in support of Rapid Cash Defendants' Motion to Amend Class Notice and Motion to Enlarge Time for Mailing Class Notice in the above-entitled action and in support of the application for order shortening time for the hearing of the Motion.

3. I have personal knowledge of the facts herein and am competent to testify thereto, except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.



1 On January 13, 2012, the Court entered an Order Granting Motion to Approve Notice to  
2 the Class. Said Order required Rapid Cash Defendants to dispatch the Court approved Notice on  
3 or before January 29, 2012. A Notice of Entry of this Order was mailed to the undersigned  
4 counsel on January 17, 2012.

5 On January 26, 2012, Plaintiffs filed a Motion to Dismiss Rapid Cash Defendants'  
6 Counterclaim or Alternatively to Strike Class Action Allegations. A hearing is presently  
7 scheduled on this Motion for February 28, 2012. The decision on Plaintiffs' Motion could have  
8 considerable bearing on what constitutes a sufficient class notice for purposes of Class Members  
9 exercising their opt out privilege.

10 Rapid Cash Defendants have retained Rust Consulting, Inc. ("RCI") of Minneapolis, MN  
11 to mail the Class Notice. RCI has indicated that it should be able to complete a mailing within 2  
12 to 3 weeks of receipt of a final Class Notice in Word format. Because of the expense associated  
13 with printing and mailing a Class Notice of this size, Rapid Cash Defendants have filed the  
14 instant motion to prevent the possibility of multiple and inconsistent mailings being sent to  
15 potential class members that would be more likely to confuse rather than elucidate their rights  
16 and obligations.

## 17 II.

### 18 CLASS NOTICE SHOULD INCLUDE NOTICE OF DEFENSES AND 19 COUNTERCLAIMS

20 The mandatory notice provisions of C.R.C.P. 23(c)(2) are designed to fulfill due process  
21 requirements to which the class action procedure is subject, since without such notice class  
22 members might be unaware of litigation affecting their rights and obligations. Eisen v. Carlisle  
23 and Jacquelin, 417 U.S. 156, 173-74, 94 S.Ct. 2140, 2150-51, 40 L.Ed.2d 732 (1974). In order to  
24 ensure adequate notice to the class, the notice must be given to each identifiable class member.  
25 Id. at 175, 94 S.Ct. at 2151.

26 Counterclaims may increase the likelihood that a large number of class members might  
27 seek to be excluded, especially when the potential recovery of the counterclaims might exceed  
28 the gains from the original action. Alpert v. U.S. Industries, Inc., 59 F.R.D. 491, 499 (1973).



1 Failure to provide notice of counterclaims and defenses subjects the final judgment to attack via  
2 claims that the due process rights of the class members were violated because the defenses and  
3 counterclaim resulted in a judgment against them on a claim of which they had no notice and  
4 opportunity to be heard. See e.g., Parks v. Department of Youth Services, 439 So.2d 690, 693  
5 (Ala.,1983). Even with adequate notice, where counterclaims might make it desirable for many  
6 class members to exclude themselves, some may fail to heed the notice and might find  
7 themselves faced with a new judgment against them. Alpert v. U.S. Industries, Inc., 59 F.R.D.  
8 491, 499 (1973); Cotchett v. Avis Rent A Car System, Inc., 56 F.R.D. 549, 553 (1972).

9 In the case sub judice, Rapid Cash Defendants have set forth counterclaims against both  
10 the class and, as DOE Defendants, any of its customers who maintain that they were not served  
11 with process prior to issuance of a default judgment against them. Among the counterclaims are  
12 breach of contract, fraud and unjust enrichment. Additionally, Rapid Cash Defendants have set  
13 forth multiple affirmative defenses including that Class Members committed fraud against Rapid  
14 Cash Defendants (13<sup>th</sup> Affirmative Defense) and a right to offset based upon fraud and breach of  
15 contract (14<sup>th</sup> Affirmative Defense). Rapid Cash Defendants seek compensatory damages plus  
16 cost of collection, punitive damages and attorney fees.

17 The current Class Notice approved by the Court does nothing to advise potential class  
18 members of the defenses and claims of Rapid Cash Defendants against the potential class  
19 members. The sole disclosure made to them is that "Rapid Cash denies the allegations" set forth  
20 in the Complaint. Thus, in exercising their Opt-Out privilege, class members receiving the  
21 notice would naturally view inclusion in the Class as a "no risk" proposition for them: i.e. either  
22 they have default judgments set aside and/or money returned to them or nothing happens to  
23 them.

24 Due process requires that they be notified that one of the repercussions to them for not  
25 opting out is that they may become subject of new judgments which could include compensatory  
26 damages, punitive damages and attorney fees and costs which are in excess of default judgments  
27 which Plaintiffs are seeking to set aside. Most importantly, they are not informed that doing  
28 nothing could subject them to this outcome.

1 III.

2 PROPOSED AMENDMENT TO CLASS NOTICE

3 Rapid Cash Defendants propose the following changes to the Class Notice:

4 1. In the BOLD preamble on page 1, delete the words "YOU HAVE NOT BEEN  
5 SUED" as the counterclaims have, in fact, rendered this statement either false or misleading.

6 2. In the BOLD preamble on page 1, delete the word "MERELY" as it masks the  
7 fact that both action and inaction have significant legal repercussions.

8 3. Under the BOLD preamble on page 1, include the following disclosure:

9 If you fit the description of a Plaintiff class member, you have a choice  
10 whether or not to remain a member of the class. Either choice will have its  
11 consequences, which you should understand before making your decision.

12 **Your Rights Will Be Affected Whether You Act or Don't Act. Please  
13 Read This Notice Carefully**

14 4. In Section A on page 1, delete the last sentence stating "Rapid Cash denies the  
15 allegations and add a new paragraph as follows:

16 In addition to denying the allegations, Rapid Cash has set forth certain  
17 defenses and filed its own action against Class Members. Rapid Cash  
18 asserts that Class Members breached the terms of their loan agreements  
19 and obtained their loan by fraudulent representations regarding their intent  
20 to repay their loans and will have been unjustly enriched if the default  
21 judgments are set aside. Rapid Cash seeks compensatory damages,  
22 punitive damages and attorney fees and costs which could be in excess of  
23 default judgments which Plaintiffs are seeking to set aside.

24 5. In Section D on page 2, following the first sentence add the following:

25 A class member who opts out of a class will not be bound by a judgment  
26 unfavorable to the class or be found further liable to Rapid Cash if Rapid Cash  
27 prevails on its claims. If you do not Opt Out, your liability, if any, on Rapid  
28 Cash' counterclaims will depend on the results of this lawsuit. However, if you  
choose to Opt Out and the Class prevails, you will not participate in the benefits  
of a favorable judgment rendered on behalf of the Class.

Attached hereto as **Exhibit A**, is a marked version of the Class Notice to show changes.

Attached hereto as **Exhibit B** is a conformed version of the Class Notice accepting the changes.

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## IV.

## ENLARGING TIME FOR MAILING IS NECESSARY

As set forth hereinbefore, the Order dated January 13, 2012 was not mailed to Rapid Cash Defendants until January 17, 2012 making notice of entry effective on January 20, 2012. It was not possible to create a complete mailing list, retain Rust Consulting, print the thousands upon thousands of Class Notices required and mail them by January 29, 2012. On information and belief, Rust Consulting now estimates that it will take two to three weeks to complete a mailing from the date it receives the final Class Notice in WORD format.

Since the Class Notice originally approved by the Court has been rendered misleading and constitutionally infirm under the due process clause by virtue of the Answer and Counterclaim filed by Rapid Cash Defendants, this Court should reschedule the date for completion of mailing for three weeks following new approval of a Class Notice. Plaintiffs have filed a Motion to Dismiss Counterclaims which is scheduled for hearing on February 28, 2012. Said Motion to Dismiss does not expressly seek dismissal of the Counterclaims filed against Doe Defendants. Even if the Court granted the Motion to Dismiss as to the Class, revision of the Class Notice will need to occur as will be more fully set forth in Rapid Cash's Opposition to Motion to Dismiss which, although not yet filed, is incorporated herein by this reference.

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V.

CONCLUSION

For the above and foregoing reasons, Rapid Cash Defendants' Motions should be granted.

DATED this 8 day of February, 2012.

GORDON SILVER

WILLIAM M. NOALL

Nevada Bar No. 3549

MARK S. DZARNOSKI

Nevada Bar No. 3398

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

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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

OF COUNSEL:

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Philadelphia, PA 19103

Telephone: 215.665.8500

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# EXHIBIT A

000940

000940

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 1 through X, inclusive,

Defendants.

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

CLASS ACTION

~~DO NOT BE ALARMED. YOU HAVE NOT BEEN SUED.~~

THIS NOTICE IS MERELY TO TELL YOU THAT THE ABOVE LAWSUIT HAS BEEN CERTIFIED AS A CLASS  
ACTION AND THAT YOU HAVE BEEN IDENTIFIED AS A POTENTIAL CLASS MEMBER. PLEASE READ THE  
ENTIRE NOTICE TO LEARN HOW TO EXERCISE YOUR RIGHTS

If you fit the description of a Plaintiff class member, you have a choice whether or not to remain a member of the class. Either  
choice will have its consequences, which you should understand before making your decision.

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Your Rights Will Be Affected Whether You Act or Don't Act. Please Read This Notice Carefully

THIS NOTICE EXPLAINS:

- A. WHAT THE LAWSUIT IS ABOUT
- B. PURPOSE OF THIS NOTICE
- C. BECOMING A CLASS MEMBER
- D. OPT OUT

**A. WHAT THIS LAWSUIT IS ABOUT;** A class action lawsuit was filed in the Eighth District Court of Nevada alleging that Rapid Cash unlawfully obtained default judgments in collections actions filed in Justice Court, Clark County, Nevada, without first serving the summons and complaint on its customers as required by law. It is alleged that the process server, Maurice Carroll and On Scene Mediations, failed to serve the summons and complaint but filed an affidavit with the Justice Court certifying that they completed service, which allowed Rapid Cash to obtain default judgments against its customers based upon the false affidavits. The Complaint seeks to set aside the default judgments obtained using false affidavits of service and to recover some money Rapid Cash collected in satisfaction of the default judgments. ~~Rapid Cash denies the allegations.~~

In addition to denying the allegations, Rapid Cash has set forth certain defenses and filed its own action against Class Members. Rapid Cash asserts that Class Members breached the terms of their loan agreements and obtained their loan by fraudulent representations regarding their intent to repay their loans and will have been unjustly enriched if the default judgments are set aside. Rapid Cash seeks compensatory damages, punitive damages and attorney fees and costs which could be in excess of default judgments which Plaintiffs are seeking to set aside.

**WHAT IS SERVICE OF PROCESS?** Service of Process means the personal delivery of documents (a summons and complaint) to the person being sued. It is the procedure used to give a legal notice of a court case to a person. It allows the person being sued to respond to the court.

**B. PURPOSE OF THIS NOTICE:** This Notice is sent to inform you about your legal rights. It is being sent to all Rapid Cash customers who may be class members under the lawsuit description above, to advise that Department XI of the Eighth Judicial District Court, Clark County, Nevada, has certified a class action on their behalf. If you want to pursue a claim individually or do not wish to be included in this class action, fill in the OPT OUT form in this packet and return via US Postal Service to Rust Consulting, 625 Marquette Ave # 880, Minneapolis, MN 55402.

**C. YOUR RIGHTS:** You must return the Postcard Questionnaire (see #1) checking the "WAS NOT" box if it is true that *you were not served*, in order to be a class member. But if you were served, then check the "WAS" box and return the Postcard Questionnaire. If you fail to return the Postcard Questionnaire, the Court will presume you are a class member until further notice.

**D. OPT OUT:** You may OPT OUT of the case (see #2) by returning the Postcard Questionnaire stating you request exclusion. You will not be allowed to pursue individual claims against Rapid Cash unless you opt out. A class member who opts out of a class will not be bound by a judgement unfavorable to the class or be found further liable to Rapid Cash if Rapid Cash prevails on its claims. If you do not Opt Out, your liability, if any, on Rapid Cash' counterclaims will depend on the results of this lawsuit. However, if you choose to Opt Out and the Class prevails, you will not participate in the benefits of a favorable judgement rendered on behalf of the Class.

**#1 RETURN THE POSTCARD:** If you were not served with a summons and complaint by Rapid Cash and want to be included in this Class Action, check the appropriate box on the POSTCARD and mail the POST CARD on or before \_\_\_\_\_

**#2 OPT OUT:** If you do not want to be a member of the Class or receive any other benefit of the litigation including any future settlement, you must inform the Court that you are going to OPT OUT of the Class by checking the Request for Exclusion box below and mailing the POST CARD on or before \_\_\_\_\_

When the Court first certified this case as a class action, it appointed the following attorneys to represent all members of the Class: Dan Wulz and Venecia Considine at Legal Aid Center, 800 South Eighth St, Las Vegas, NV 89101; and J. Randall Jones and Jennifer Dorsey at Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, 17th Flr., Las Vegas, NV 89169. Together, these attorneys are Class Counsel. You will not be charged for these lawyers.

## POSTCARD

Check the appropriate box, fill in your name, complete address and phone number and return the pre-addressed postcard. A stamp is required.

NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**Question #1:** If you were not served, check the ☐ WAS NOT box to become a member of the class. If you were served, check the ☐ WAS box; which means you will not be a class member.

**#1:** I ☐ WAS NOT ☐ WAS



SERVED A SUMMONS AND COMPLAINT BY RAPID CASH IN A  
COLLECTION ACTION FILED IN.-JUSTICE COURT.

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Question #2: Whether you were served or not served, check the box below if you would like to opt out of this class action and be removed from the class action completely.

#2: REQUEST FOR EXCLUSION

☐ I REQUEST TO BE EXCLUDED FROM THE CLASS ACTION. I DO NOT WANT TO  
TAKE PART IN THIS LAWSUIT.

# EXHIBIT B

000944

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  
DEPT. XI**

**CLASS ACTION**

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**THIS NOTICE IS TO TELL YOU THAT THE ABOVE LAWSUIT HAS BEEN CERTIFIED AS A CLASS ACTION AND  
THAT YOU HAVE BEEN IDENTIFIED AS A POTENTIAL CLASS MEMBER. PLEASE READ THE ENTIRE NOTICE TO  
LEARN HOW TO EXERCISE YOUR RIGHTS**

If you fit the description of a Plaintiff class member, you have a choice whether or not to remain a member of the class. Either choice will have its consequences, which you should understand before making your decision.

**Your Rights Will Be Affected Whether You Act or Don't Act. Please Read This Notice Carefully**

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In addition to denying the allegations, Rapid Cash has set forth certain defenses and filed its own action against Class Members. Rapid Cash asserts that Class Members breached the terms of their loan agreements and obtained their loan by fraudulent representations regarding their intent to repay their loans and will have been unjustly enriched if the default judgments are set aside. Rapid Cash seeks compensatory damages, punitive damages and attorney fees and costs which could be in excess of default judgments which Plaintiffs are seeking to set aside.

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**D. OPT OUT:** You may OPT OUT of the case (see #2) by returning the Postcard Questionnaire stating you request exclusion. You will not be allowed to pursue individual claims against Rapid Cash unless you opt out. A class member who opts out of a class will not be bound by a judgment unfavorable to the class or be found further liable to Rapid Cash if Rapid Cash prevails on its claims. **If you do not Opt Out, your liability, if any, on Rapid Cash' counterclaims will depend on the results of this lawsuit.** However, if you choose to Opt Out and the Class prevails, you will not participate in the benefits of a favorable judgment rendered on behalf of the Class.

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**#2 OPT OUT:** If you do not want to be a member of the Class or receive any other benefit of the litigation including any future settlement, you must inform the Court that you are going to OPT OUT of the Class by checking the Request for Exclusion box below and mailing the **POST CARD** on or before \_\_\_\_\_

When the Court first certified this case as a class action, it appointed the following attorneys to represent all members of the Class: Dan Wulz and Venecia Considine at Legal Aid Center, 800 South Eighth St, Las Vegas, NV 89101; and J. Randall Jones and Jennifer Dorsey at Kemp, Jones & Coulthard, LLP, 3800 Howard Hughes Parkway, 17th Flr., Las Vegas, NV 89169. Together, these attorneys are Class Counsel. You will not be charged for these lawyers.

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Check the appropriate box, fill in your name, complete address and phone number and return the pre-addressed postcard. A stamp is required.

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#1: I ☐ WAS NOT ☐ WAS  
SERVED A SUMMONS AND COMPLAINT BY RAPID CASH IN A  
COLLECTION ACTION FILED IN.-JUSTICE COURT.

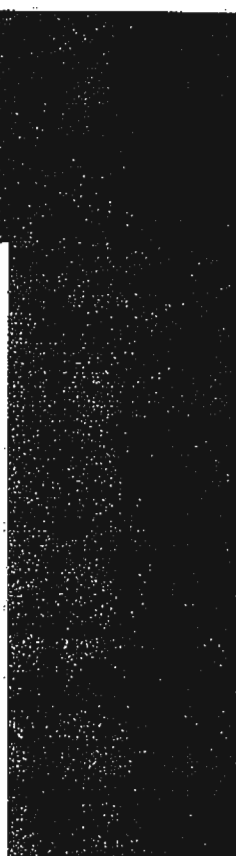
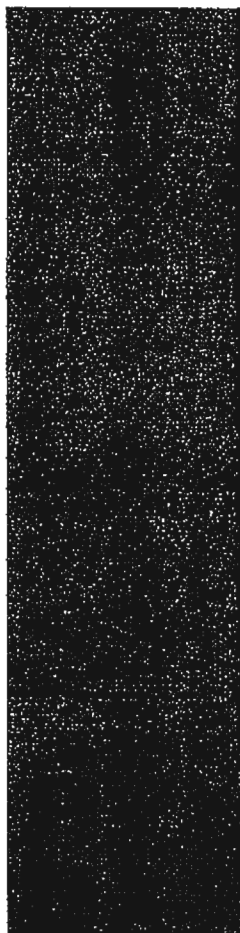
Question #2: Whether you were served or not served, check the box below if you would like to opt out of this class action and be removed from the class action completely.

#2: REQUEST FOR EXCLUSION

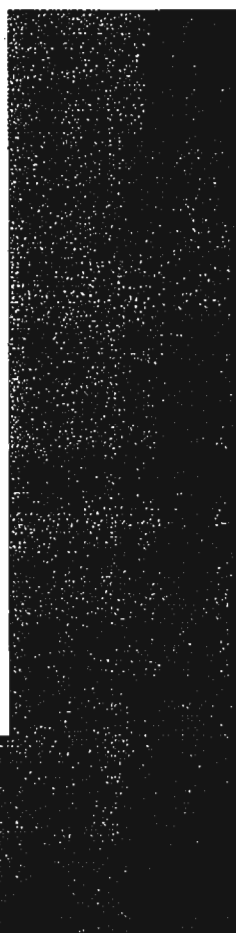
☐ I REQUEST TO BE EXCLUDED FROM THE CLASS ACTION. I DO NOT WANT TO TAKE PART IN THIS LAWSUIT.



42



42



**OPPS**

GORDON SILVER

WILLIAM M. NOALL

Nevada Bar No. 3549

Email: [wnoall@gordonsilver.com](mailto:wnoall@gordonsilver.com)

MARK S. DZARNOSKI

Nevada Bar No. 3398

Email: [mdzarnoski@gordonsilver.com](mailto:mdzarnoski@gordonsilver.com)

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Las Vegas, Nevada 89169

Tel: (702) 796-5555

Fax: (702) 369-2666

Attorneys for Defendants

Principal Investments, Inc., d/b/a Rapid

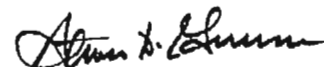
Cash, Granite Financial Services, Inc., d/b/a

Rapid Cash, FMMR Investments, Inc., d/b/a

Rapid Cash, Prime Group, Inc., d/b/a Rapid

Cash and Advance Group, Inc., d/b/a Rapid

Cash

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CLERK OF THE COURT

**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. A624982  
DEPT. XI**OPPOSITION TO PLAINTIFFS'  
MOTION TO DISMISS  
COUNTERCLAIMS OR  
ALTERNATIVELY TO STRIKE  
COUNTERCLAIM CLASS ACTION  
ALLEGATIONS****Hearing Date: February 28, 2012****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, Mark S. Dzarnoski, Esq. of the law firm Gordon Silver, hereby file this OPPOSITION TO PLAINTIFFS' MOTION TO DISMISS COUNTERCLAIMS OR ALTERNATIVELY TO STRIKE COUNTERCLAIM CLASS ACTION ALLEGATIONS.

This Opposition is made and based upon the Memorandum of Points and Authorities attached hereto, the pleadings and other papers on file herein and such argument as the Court may permit at a hearing on this matter.

DATED this 14 day of February, 2012.

GORDON SILVER

GORDON SILVER

WILLIAM M. NOALL

Nevada Bar No. 3549

MARK S. DZARNOSKI

Nevada Bar No. 3398

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Cash and Advance Group, Inc., d/b/a Rapid

Cash

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### CLAIM PRECLUSION IS NOT APPLICABLE

Plaintiffs herein argue that Rapid Cash Defendants' Counterclaim is barred by the doctrine of res judicata or claim preclusion. Plaintiffs correctly note that three factors must be satisfied for the doctrine of claim preclusion to apply: "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." Five Star Capital Corporation v. Ruby, 194 P.3d 709, 713 (Nev. 2008).



1 In their First Amended Class Action Complaint ("Amended Complaint"), Plaintiffs allege  
 2 that the default judgments obtained by Rapid Cash Defendants are void. ["Every such default  
 3 judgment is void." Amended Complaint at para. 12; See also Amended Complaint at para. 21,  
 4 45, 61, 63, 68, 76, 80, 100, 103, 107, 125]. Indeed, the only reason Plaintiffs' claims are not  
 5 barred by the doctrines of res judicata and claims preclusion is that they maintain the final  
 6 judgments obtained by Rapid Cash Defendants are void and are invalid.

7 The doctrine of res judicata is inapplicable to void judgments.

8 "Obviously a judgment, though final and on the merits, has no  
 9 binding force and is subject to collateral attack if it is wholly void for lack  
 10 of jurisdiction of the subject matter or person, and perhaps for excess of  
 11 jurisdiction, or where it is obtained by extrinsic fraud. [Citations.]" (7  
 12 Witkin, Cal. Procedure, *supra*, Judgment, § 286, p. 828.)

13 Rochin v. Pat Johnson Manufacturing Co., 67 Cal.App.4th 1228, 1239-40,  
 14 79 Cal.Rptr.2d 719, 98 Daily Journal D.A.R. 12,569, 98 Daily Journal  
 15 D.A.R. 11,839. (Cal.App. 2 Dist.,1998).

16 A "final" but void order can have no preclusive effect. " 'A void  
 17 judgment [or order] is, in legal effect, no judgment. By it no rights are  
 18 divested. From it no rights can be obtained. Being worthless in itself, all  
 19 proceedings founded upon it are equally worthless. It neither binds nor  
 20 bars any one.' [Citation.]" (Bennett v. Wilson (1898), 122 Cal. 509, 513-  
 21 514, 55 P. 390.)

22 Id. at 1240.

23 A judgment is void only when the court rendering judgment "had no jurisdiction of the parties or  
 24 property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or  
 25 no capacity to act." Browning v. Prostok, 165 S.W.3d 336, 346 (Tex.2005) (citing Austin Indep.  
 26 Sch. Dist. v. Sierra Club, 495 S.W.2d 878, 881 (Tex.1973)); see Geldard v. Watson, 214 S.W.3d  
 27 202, 209 (Tex.App.-Texarkana 2007, no pet.) (judgment void because justice court lacked  
 28 jurisdiction to adjudicate the merits of title). Tex.App.-Texarkana,2007. Pyles v. Young. Not  
 Reported in S.W.3d, 2007 WL 4462738 (Tex.App.-Texarkana,2007).

Notwithstanding that the entire basis of Plaintiffs' lawsuit is the allegation that the default  
 judgments are void, they nonetheless assert that Rapid Cash Defendants are precluded from  
 bringing any counterclaims because the judgments satisfy the second prong of the three part

1 claims preclusion test: i.e. "the final judgment is valid." If the final judgments are valid,  
2 Plaintiffs have no claim. If the final judgments are not valid, claims preclusion does not apply.

3 In defense against the allegations contained in the First Amended Complaint, Rapid Cash  
4 Defendants, among other things, deny the allegations that the default judgments are void, assert  
5 various affirmative defenses, including a right of offset, and set forth various counterclaims.  
6 The counterclaims are based upon the possibility that the default judgments are void. They are  
7 alternative to and inconsistent with the general denial that the default judgments are void.

8 NRCP 8(e)(2) expressly authorizes the pleading of alternative or hypothetical claims or  
9 defenses. NRCP 8(e)(2) states as follows:

10 (2) A party may set forth two or more statements of a claim or defense  
11 alternately or hypothetically, either in one count or defense or in separate  
12 counts or defenses. When two or more statements are made in the  
13 alternative and one of them if made independently would be sufficient, the  
14 pleading is not made insufficient by the insufficiency of one or more of  
15 the alternative statements. A party may also state as many separate claims  
or defenses as the party has regardless of consistency and whether based  
on legal or on equitable grounds or on both. All statements shall be made  
subject to the obligations set forth in Rule 11.

16 Rapid Cash Defendants have plead their counterclaims in the hypothetical as follows:

17 In the event the court in the Class Action Lawsuit voids any or all  
18 judgments obtained by RAPID CASH in actions commenced in the Las  
19 Vegas Township Justice Court against HARRISON, VARCADOS,  
20 QUINTINO, DUNGAN and/or the Putative Class Members, RAPID  
21 CASH has compulsory counterclaims to assert against said customers as  
22 more fully set forth below. Further, inasmuch as the Court has already  
asserted original and pendant jurisdiction over the claims of Plaintiffs and  
the Putative Class members, it is necessary and appropriate for the Court  
to exercise jurisdiction over the Claims of Counterclaimants as they are  
compulsory or permissive counterclaims.

23 Paragraph 22 of Counterclaim.

24 In the event the Court views such hypothetical pleading as insufficient to avoid claims  
25 preclusion, Rapid Cash Defendants request that the Court permit the filing of an amended  
26 Answer and Counterclaim wherein Rapid Cash Defendants plead in the alternative by including  
27 an allegation as follows: "Alternatively to the general denials set forth in Rapid Cash  
28 Defendants' Answer, the default judgments obtained by RAPID CASH in actions commenced in

1 the Las Vegas Township Justice Court against HARRISON, VARCADOS, QUINTINO,  
 2 DUNGAN and/or the Putative Class Members are void.”<sup>1</sup> Such an allegation would clearly  
 3 render Plaintiffs’ argument regarding claims preclusion moot. Rapid Cash Defendants assert that  
 4 requiring such amendment exalts form over substance where Rapid Cash Defendants’  
 5 Counterclaim expressly states that it is premised upon the hypothetical that the Court or jury  
 6 finds the default judgments to be void.

## 7 II.

### 8 RAPID CASH DEFENDANTS’ COUNTERCLAIM IS RIPE

9 Plaintiffs assert that Rapid Cash Defendant’s Counterclaim is not ripe “because Rapid  
 10 Cash’s default Judgments have not yet been overturned.” The primary focus of a ripeness  
 11 inquiry is the degree to which the harm alleged is “sufficiently concrete, rather than remote or  
 12 hypothetical, to yield a justiciable controversy. Alleged harm that is speculative or hypothetical  
 13 is insufficient: an existing controversy must be present.” *Herbst Gaming, Inc. v. Heller*, 122  
 14 Nev. 877, 887, 141 P.3d 1224, 1231 (2006). In the present case, an existing controversy is  
 15 clearly present. By their First Amended Complaint, Plaintiffs have placed directly in  
 16 controversy the validity of the default judgments.

17 Further, as with Plaintiffs’ claim preclusion argument, the simple amendment inserting  
 18 the alternative allegation that the default judgments are void defeats Plaintiffs’ ripeness  
 19 argument. If the Court is inclined to grant Plaintiffs’ Motion based upon the ripeness doctrine,  
 20 Rapid Cash Defendants request the right to file an amended counterclaim.

21 Assuming arguendo that On Scene Mediations filed false affidavits of service upon which  
 22 void default judgments were issued, Rapid Cash Defendants are injured parties and victims of  
 23 such conduct. Rapid Cash Defendants have a clear interest in obtaining valid judgments against  
 24 their defaulting customers not void judgments. Plaintiffs do not have any exclusive right to file  
 25 an action alleging that the judgments are void.

26 ...

27 <sup>1</sup> Alternative and inconsistent claims for relief or defenses cannot be used as admissions. *Auto Fair, Inc. v.*  
 28 *Spiegelman*, 92 Nev. 656, 658, 557 P.2d 273, 275 (1976).

1 Rapid Cash Defendants assert that requiring such an amendment exalts form over  
2 substance and maintain that a justiciable controversy exists without such amendment.

3 III.

4 **RAPID CASH DEFENDANTS HAVE ADEQUATELY ALLEGED FRAUD**

5 Plaintiffs seek dismissal of all fraud claims set forth against Plaintiffs Varcados (6<sup>th</sup>  
6 Claim for Relief), Harrison (7<sup>th</sup> Claim for Relief) and Dungan (8<sup>th</sup> Claim for Relief) as well as  
7 against Putative Class Members and Doe Counterdefendants entering Loan Agreements on or  
8 after September 9, 2007 (9<sup>th</sup> Claim for Relief). The actual basis for seeking a dismissal of the  
9 fraud alleged against the identified Plaintiffs is a mystery. Plaintiffs correctly cite to the  
10 particularity requirements set forth in Brown v. Kellar, 636 P.2d 874 (Nev. 1981). However,  
11 they do not identify what particularity requirements Rapid Cash Defendants have failed to satisfy  
12 with respect to Varcados, Harrison and Dungan.

13 As to Varcados, the particularity requirements are met in paragraphs 72-74, 77 and 78 of  
14 the Counterclaim.

15 72. On June 21, 2008, VARCADOS expressly represented and  
16 warranted to RAPID CASH that, if RAPID CASH loaned him the amount of  
17 \$500.00, he would repay to RAPID CASH the amount of \$588.24 on or before  
18 July 5, 2008.

19 73. On June 21, 2008, VARCADOS tendered to RAPID CASH a post-  
20 dated check in the amount of \$588.24 dated July 5, 2008 and expressly  
21 represented and warranted to RAPID CASH that, as of July 5, 2008 he would  
22 have made sufficient money available in his checking account to pay the amounts  
23 due on his loan.

24 74. On June 21, 2008, VARCADOS further expressly represented and  
25 warranted to RAPID CASH that he would not close his checking account or stop  
26 payment on the post-dated check tendered to RAPID CASH.

27 77. In truth and in fact, as of June 21, 2008, VARCADOS was heavily  
28 indebted to multiple secured lenders and, at least, four other unsecured lenders  
and he was aware that his income was insufficient to repay RAPID CASH  
amounts due on July 5, 2008.

78. VARCADOS ultimately closed the bank account upon which he  
wrote the post-dated check to RAPID CASH and/or stopped payment on said  
check with his bank.

1 As to Harrison, the particularity requirements are met in paragraphs 83-88, 91 and 92 of  
2 the Counterclaim.

3 83. On March 5, 2009, HARRISON expressly represented and  
4 warranted to RAPID CASH that, if RAPID CASH loaned her the amount of  
5 \$582.00, she would repay to RAPID CASH the amount of \$684.71 on or before  
6 March 20, 2009.

7 84. On March 5, 2009, HARRISON tendered to RAPID CASH a post-  
8 dated check in the amount of \$684.71 dated March 20, 2009 and expressly  
9 represented and warranted to RAPID CASH that, as of March 20, 2009 she would  
10 have made sufficient money available in her checking account to pay the amounts  
11 due on her loan.

12 85. On March 19, 2009, HARRISON expressly represented and  
13 warranted to RAPID CASH that, if RAPID CASH loaned her the amount of  
14 \$400.00, she would repay to RAPID CASH the amount of \$470.59 on or before  
15 April 4, 2009.

16 86. On March 19, 2009, HARRISON tendered to RAPID CASH a  
17 post-dated check in the amount of \$470.59 dated April 4, 2009 and expressly  
18 represented and warranted to RAPID CASH that, as of April 4, 2009 she would  
19 have made sufficient money available in her checking account to pay the amounts  
20 due on her loan.

21 87. Further, on March 19, 2009, in order to secure the additional \$400  
22 loan, HARRISON orally represented to RAPID CASH that she would have  
23 sufficient funds in her account to cover the payment of the March 20, 2009 check  
24 upon presentment representing repayment of the March 5, 2009 loan.

25 88. On both March 5, 2009 and again on March 19, 2009, HARRISON  
26 further expressly represented and warranted to RAPID CASH that she would not  
27 close her checking account or stop payment on the post-dated checks tendered to  
28 RAPID CASH.

91. In truth and in fact, as of March 5, 2009 HARRISON knew that  
her income was insufficient to repay RAPID CASH amounts due on March 20,  
2009.

92. Further, on March 19, 2009, HARRISON knew that it was  
impossible for her to have sufficient funds in her account the next day to repay  
RAPID CASH amounts due on the March 5, 2009 loan and that she could not  
repay both the March 5 and the March 19, 2009 loans by April 4, 2009.  
HARRISON ultimately closed the bank account upon which she wrote the post-  
dated checks to RAPID CASH and/or stopped payment on said checks with her  
bank.

1 As to Dungan, the particularity requirements are met in paragraphs 97-99, 102 and 103 of  
2 the Counterclaim.

3 97. On February 25, 2009, DUNGAN expressly represented and  
4 warranted to RAPID CASH that, if RAPID CASH loaned her the amount of  
5 \$600.00, she would repay to RAPID CASH the amount of \$705.88 on or before  
6 March 13, 2009.

7 98. On February 25, 2009, DUNGAN tendered to RAPID CASH a  
8 post-dated check in the amount of \$705.88 dated March 13, 2009 and expressly  
9 represented and warranted to RAPID CASH that, as of March 13, 2009 she would  
10 have made sufficient money available in her checking account to pay the amounts  
11 due on her loan.

12 99. On February 25, 2009, DUNGAN further expressly represented  
13 and warranted to RAPID CASH that she would not close her checking account or  
14 stop payment on the post-dated check tendered to RAPID CASH.

15 102. In truth and in fact, as of February 25, 2009, DUNGAN was  
16 heavily indebted to and she was aware that her income was insufficient to repay  
17 RAPID CASH amounts due on March 13, 2009.

18 103. DUNGAN ultimately closed the bank account upon which she  
19 wrote the post-dated check to RAPID CASH and/or stopped payment on said  
20 check with her bank.

21 That Rapid Cash Defendants did not assert claims of fraud in their collection cases  
22 against these customers is immaterial to whether they have adequately plead the claims herein.  
23 The Court should take notice that Rapid Cash Defendants did not plead a fraud claim against  
24 Plaintiff Quintino because they did not have sufficient facts to plead the claim with particularity.

25 As to Doe Defendants and absent Class Members, Rapid Cash Defendants have generally  
26 plead the nature and scope of the fraudulent representations in paragraphs 108-110.

27 108. In entering into the Deferred Deposit Agreement & Disclosure  
28 Statement with RAPID CASH, each of the Putative Class Members and Doe  
Counterdefendants expressly represented and warranted to RAPID CASH that, if  
RAPID CASH loaned them an amount certain that they would repay the amount  
of the loan plus a financing charge on a date certain.

109. In entering into the Deferred Deposit Agreement & Disclosure  
Statement with RAPID CASH, each of the Putative Class Members and Doe  
Counterdefendants expressly represented and warranted to RAPID CASH that, as  
of the due date they would have made sufficient money available in their  
checking accounts to pay the amounts due on their loans.

110. In entering into the Deferred Deposit Agreement & Disclosure Statement with RAPID CASH, each of the Putative Class Members and Doe Counterdefendants further expressly represented and warranted to RAPID CASH that they would not close their checking account or stop payment on the post-dated check tendered to RAPID CASH.

It is entirely disingenuous for Plaintiffs to claim this is inadequate because "(i)t is assumed that Rapid Cash knows the time, place and identity of the parties to whom it lent money, yet those particulars are not alleged." Rapid Cash Defendants do know who they lent money. However, they are not claiming that everyone who had a default judgment entered against them committed fraud.

What Rapid Cash Defendants don't know is who will claim they have not been served as no objective evidence exists from which the identity of class members can be ascertained, which is one reason the class should never have been certified in the first place. Once a name can be affixed to each DOE Counterdefendant, Rapid Cash Defendants can amend the Counterclaim and provide more particularity. Alternatively, once Rapid Cash Defendants know the identity of class members, it can provide generalized proof impacting all class members.

#### IV.

#### UNJUST ENRICHMENT SHOULD NOT BE DISMISSED

As set forth elsewhere herein, it is permissible to plead alternative and inconsistent claims. While Rapid Cash Defendants cannot obtain relief on both breach of contract and unjust enrichment claims, it is appropriate to plead them both and make an election later. Further, Plaintiffs seek a declaration that the written loan contracts are void. If such relief were granted, Rapid Cash Defendants could pursue a claim in unjust enrichment.

#### V.

#### COUNTERCLAIMS ARE AVAILABLE IN CLASS ACTIONS

Plaintiffs' argument that counterclaims are not permitted is pure fiction and the product of wishful thinking rather than any serious analysis of the law. In citing the National Consumer Law Center as authority for the proposition that "[g]enerally, trial courts should use their management powers to prevent counterclaims from undermining class actions,"

1 [emphasis added]. Plaintiffs clearly demonstrate that theirs is a political and policy  
2 argument rather than one setting forth the current state of the law.

3 NRCP 23(a) sets forth as follows:

4 a) **Prerequisites to a Class Action.** One or more members of a class  
5 may sue or be sued as representative parties on behalf of all only if (1) the  
6 class is so numerous that joinder of all members is impracticable, (2) there  
7 are questions of law or fact common to the class, (3) the claims or  
8 defenses of the representative parties are typical of the claims or defenses  
9 of the class, and (4) the representative parties will fairly and adequately  
10 protect the interests of the class. (emphasis added).

11 Thus, the Rule itself indicates that an action may be maintained against a class just as an action  
12 may be maintained on behalf of a class. Just because a Plaintiff filed a class action against a  
13 Defendant first does not mean that Defendant cannot file suit against the Plaintiffs' class. Where  
14 those claims against the class constitute compulsory counterclaims, the Defendant has no choice  
15 but to file the action as a counterclaim or suffer the possibility his claims will be subject to  
16 claims preclusion later.

17 The cases cited by Plaintiffs do not establish a per se rule that counterclaims may not be  
18 asserted by a Defendant in a class action. Indeed, Rental Car of New Hampshire, Inc. v.  
19 Westinghouse Elect. Corp., 496 F. Supp. 373, 381 (D. Mass. 1980), cited by Plaintiffs, clearly  
20 established the right of defendants to assert counterclaims in a class action. The quote cited by  
21 Plaintiffs is taken entirely out of context from the court's ruling. At issue therein was whether  
22 the counterclaims asserted by defendant "threaten to overwhelm the common issues in the [class]  
23 antitrust claims" such that class certification should have been denied. Id. The court certified  
24 the class BUT did not dismiss the counterclaims asserted by Defendants.

25 Further Plaintiffs rely upon Agostine v. Sidcon Corp., 69 F.R.D. 437, 443 (E.D. Penn.,  
26 1975). The basis for the decision to dismiss counterclaims in that case was that they were  
27 permissive state claims rather than compulsory counterclaims and the federal court chose not to  
28 assert supplemental jurisdiction over them. However, Agostine and its progeny have been  
severely criticized for simply ignoring Rule 13(a) in order to reach a predisposed outcome (i.e.  
class certification).



The trouble with the reasoning in Roberts is that it ignores the language of the rule [Rule 13(a)] and, in an effort to achieve a desired result (the certification of a class without the problems attendant to the litigation of a large number of counterclaims), simply begs the question by holding that the counterclaims are permissive rather than reasoning the matter out on the basis of the law and the plain language of the rule.

Carter v. Public Finance Corp., 73 F.R.D. 488, 494 (D.C.Ala. 1977).

As to Agostine and Ball, both cases rely heavily upon Roberts, which in itself relies upon nothing but wishful thinking on the part of the court (that is, the wishful desire to arrive at a desired result). Fallacious reasoning permeates the Agostine and Ball decisions. They read essentially as complaints against the rule itself. They want to get around it. This court will abide by the rule and will not indulge either in wishful thinking or in judicial legislation to avoid its plain, clear statement and intentment.

Id.

In Carter, the court highlighted the fact that the “majority of courts in Truth in Lending cases confronted with the presence of counterclaims have treated them as compulsory,” Id. at 493

NRCP 13(a) is consistent with its federal counterpart and states as follows:

**(a) Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

A counterclaim will be considered compulsory if it “arises out of the transaction or occurrence that is the subject matter of the opposing party's claim” NRCP 13(a). NRCP 13 is modeled after its federal counterpart and it is appropriate to rely upon federal precedent in interpreting it. Executive Management, Ltd. v. Ticor Title Ins. Co., 114 Nev. 823, 842, 963 P.2d 465, 477 (1998). Courts give the phrase “transaction or occurrence” a broad interpretation in order to achieve judicial economy by preventing a multiplicity of actions. Warsawsky & Co. v. Arcata Nat. Corp., 552 F.2d 1257, 1261 (7th Cir.1977); In re Oil Spill, 491 F.Supp. 161, 168

(N.D.Ill.1979). A counterclaim arises out of the same transaction or occurrence when it is "logically related" to the opposing party's claim. Moore v. New York Cotton Exchange, 270 U.S. 593, 610, 46 S.Ct. 367, 371, 70 L.Ed. 750 (1926); Warshawsky & Co. v. Arcata Nat. Corp., supra, 552 F.2d at 1261.

The Ninth Circuit Court of Appeals has found a similar rule in Washington State to incorporate the "logical relationship" test to determine whether a claim and counterclaim arise from the same transaction or occurrence and is therefore compulsory or permissive. Noel v. Hall, 341 F.3d 1148, 1168, 03 Cal. Daily Op. Serv. 8004, 2003 Daily Journal D.A.R. 9949 (9<sup>th</sup> Cir. 2003). That is, "[A]ny claim that is logically related to another claim that is being sued on is properly the basis for a compulsory counterclaim." Id.

In Revere Copper & Brass, Inc. v. Aetna Cas. & Sur. Co., 426 F.2d 709 (1970), the broadness of the rule was exemplified when the court stated that the counterclaim had a logical relationship to the original claim if it arose out of the same aggregate of operative facts as the original claim, either because the same aggregate of operative facts served as a basis of both claims or the core of facts upon which the original claim rests activates additional legal rights in the party defendant that otherwise would remain dormant. (emphasis added). Using this rationale, the court in Carter v. Public Finance Corp., 73 F.R.D. 488, 494 (D.C.Ala. 1977) determined that claims of customer default under financing contracts was a compulsory counterclaim in a class action complaint alleging violations under the Truth in Lending Act. Because the defendant would be required to assert counterclaims against 85 customers out of 383 potential class members, the court recognized the impact of difficulties in the management of a class action stemming from the counterclaims. Rather than create the fiction that the counterclaims were permissive solely in order to pursue a class action (as it severely criticized a minority of courts for doing), the court appropriately denied class certification.<sup>2</sup>

...

<sup>2</sup> If compulsory counterclaims make the class unmanageable, then the trial court should not certify the class. In Marshall Durbin & Co. of Jasper, Inc. v. Jasper Utilities Board, 437 So.2d 1014, 1025 (Ala.1983), trial court did not abuse its discretion in finding that class certification would be inappropriate because approximately 28% of the members of the proposed class would be subject to compulsory counterclaims.

As noted in Carter, the majority of cases considering the matter acknowledge the propriety of asserting counterclaims in class action contexts. See National Super Spuds, Inc. v. New York Mercantile Exch., 75 F.R.D. 40 (S.D.N.Y.1977) (holding absent class members would be regarded as "opposing parties" within rule allowing counterclaim to be asserted only against "opposing parties"); In re Financial Partners Class Action Litig., 597 F.Supp. 686 (N.D.Ill.1984) (absence of members of plaintiff class did not require dismissal of counterclaims filed against them); Wolfson v. Artisans Sav. Bank, 83 F.R.D. 552 (D.Del.1979) (claim can be asserted against absent class members because members of the named plaintiffs' class are opposing parties for purpose of Federal Rule of Civil Procedure 13). For instance, in National Super Spuds, Inc. v. New York Mercantile Exchange, supra., defendant counterclaimed against eight named members of putative class and others as yet unnamed. The court found it was an appropriate one for retaining jurisdiction over counterclaims, subject to court's authority under rules to determine, at appropriate time, proper place for counterclaims in a trial or trials arising out of the members' actions, and, in context of case under Commodity Exchange Act and Sherman Anti-Trust Act, absent class members, whether or not specified by name, would be regarded as "opposing parties" within rule allowing counterclaim to be asserted only against "opposing party." See also Key Club Associates, L.P. v. Mayer, 718 So.2d 346, 23, Fla. L. Weekly D 2215 (Fla.App. 2 Dist.,1998) (appeals court reversed and remanded trial court's decision that counterclaim cannot be asserted against a class as a matter of law.); Ex parte Water Works and Sewer Board of City of Birmingham, 738 So.2d 783 (Ala.,1998) (In class action against water works involving claims that illegal disbursement of public funds wrongfully inflated water bills, water works' counterclaims against class members for nonpayment of bills were compulsory and water works was not precluded from asserting compulsory counterclaims in class actions.)

Even those cases squarely holding that absent class members are not "opposing parties" indicated that such counterclaims would be considered at a later stage of the litigation, i. e., in the event liability is established on the primary complaint. In re Sugar Industry Antitrust Litigation, 73 F.R.D. 322, 349, 22 Fed.R.Serv.2d 634, 1976-2, Trade Cases P 61,215, 1 Fed. R. Evid. Serv. 1219 (D.C.N.Y. 1977) ("In accordance with the procedures outlined in Donson and

1 Weit, supra, counterclaims may be brought against unnamed class members only if and when  
2 these class members intervene or file claims in these actions. Although these counterclaims may  
3 not be asserted against absent class members at this time, it is entirely appropriate that a brief  
4 description of each potential counterclaim be included in the class action notice.”

5 Rule 13 promotes the policies of allowing the defendant to litigate all related claims in a  
6 single action, affording the defensive tactic of asserting counterclaims against the plaintiffs, and  
7 promoting economy. Newberg & Conte, § 4.34, at pp. 4-147 to -148 (citing Montecatini Edison,  
8 S.P.A. v. Ziegler, 486 F.2d 1279, 1282 (D.C.Cir.1973), and Frederick County Fruit Growers  
9 Ass'n v. McLaughlin, 703 F.Supp. 1021 (D.D.C.1989), aff'd, 968 F.2d 1265 (D.C.Cir.1992)).

10 Rule 23 promotes the policies of allowing plaintiffs access to judicial relief, affording the  
11 offensive tactic of asserting large dollar claims against the defendant, and promoting economy.  
12 Newberg & Conte, § 4.34, at pp. 4-153 to -154 (citing Deposit Guaranty Nat'l Bank v. Roper,  
13 445 U.S. 326, 338-39, 100 S.Ct. 1166, 63 L.Ed.2d 427 (1980), American Pipe & Constr. Co. v.  
14 Utah, 414 U.S. 538, 553, 94 S.Ct. 756, 38 L.Ed.2d 713 (1974)). The policies behind Rule 23 do  
15 not trump the policies of Rule 13. Both Rules must be enforced in accordance with their terms.

16 In the present case, the logical connection between Plaintiffs' claims and Rapid Cash  
17 Defendants' counterclaims is clear and undeniable. The central fact to both the claims and the  
18 counterclaims that the Court must determine is whether the default judgments are valid or void.  
19 The core of facts upon which the original claim rests (i.e. a finding that the default judgments are  
20 void) activates additional legal rights in Rapid Cash Defendants that otherwise would remain  
21 dormant within the meaning of Carter, supra. Further, but for the class members defaulting upon  
22 their loan obligations, there would have been no collection action filed against the class members  
23 to begin with. Most/many of the same issues relating to Rapid Cash Defendants' affirmative  
24 defense of set-off are directly at issue in the counterclaims. Thus, the same proof will be offered  
25 in defense of the claims asserted by Plaintiffs as will be offered to support Rapid Cash  
26 Defendants' counterclaims. Additionally, Plaintiffs seek the relief of invalidating the loan  
27 contracts entered into by and between class members and Rapid Cash Defendants. Finally, it is  
28 highly probable that some other court could determine that Rapid Cash Defendants would not be

1 entitled to file a new collection action under the doctrine of claims preclusion.

2 If the counterclaims raise case management problems, this is a problem relating to the  
3 propriety of class certification not Rapid Cash Defendants' entitlement/requirement to assert the  
4 counterclaims in this action. This Court should not start with a "wishful desire" to maintain this  
5 action as a class action and then eviscerate all other rules of civil procedure to accommodate that  
6 desire as criticized in Carter, supra.

7 Finally, the Rapid Cash Defendants have asserted counterclaims against the class  
8 generally, against the Class Representatives individually and against Doe Defendants  
9 individually. Even if not pursued on a classwide basis, once the identity of customers who claim  
10 not to have been served can be ascertained, Rapid Cash Defendants can and may move to amend  
11 the counterclaim to substitute the actual customers names in place of the allegations against Doe  
12 Defendants. This is entirely consistent with NRCP 14.

#### 13 VI.

#### 14 RULE 23 ARGUMENTS ARE PREMATURE AND NOT WELL FOUNDED

15 This matter is before the Court on a Motion to Dismiss rather than a Motion to Certify a  
16 Counterclaim Class. The distinction is important because of differing standards of review. On a  
17 motion to certify a class, a class action "may only be certified if the trial court is satisfied, after a  
18 rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." Gen. Tel. Co. of Sw.  
19 v. Falcon, 457 U.S. 147, 161 (1982). In deciding whether to certify a class, a Court must make a  
20 thorough examination of the factual and legal allegations involved in the complaint. Newton v.  
21 Merrill Lynch, Pierce, Fenner & Smith, 259 F.3d 154, 166 (3d Cir.2001) (citing Barnes v. Am.  
22 Tobacco Co., 161 F.3d 127, 140 (3d Cir.1998)). "It may be necessary for the court to probe  
23 behind the pleadings before coming to rest on the certification question." Newton, 259 F.3d at  
24 166 (quoting Gen. Tel. Co. of Sw., 457 U.S. at 160, 102 S.Ct. 2364).

25 On a motion to dismiss, the trial court must construe the pleading liberally and draw  
26 every fair intendment in favor of the plaintiff. Merluzzi v. Larson, 96 Nev. 409, 610 P.2d 739  
27 (1980). Allegations in the complaint must be accepted as true. San Diego Prestressed v. Chicago  
28 Title Ins., 92 Nev. 569, 555 P.2d 484 (1976). There can be no doubt that Rapid Cash Defendants

1 have included all necessary allegations for certification of a class in their counterclaims. Thus,  
2 under the standards applicable to a motion to dismiss, the Plaintiffs' motion should be denied.  
3 Plaintiffs may make these arguments in opposition to a subsequent Motion to Certify Class and  
4 demand that the Court apply a "rigorous analysis" standard.

5 It is truly amazing that, in light of the substantial evidence presented to the Court that On  
6 Scene Mediations personnel actually served the overwhelming majority of summonses and  
7 complaints to defaulting customers of Rapid Cash Defendants, Plaintiffs would maintain that  
8 Rapid Cash Defendants counterclaims do not present common issues capable of resolution  
9 through generalized proof. To the contrary, Rapid Cash Defendants' counterclaims are much  
10 more susceptible to generalized proof than Plaintiffs' claims. For instance, each member of the  
11 class, by Plaintiffs' definition, must have claimed not to have been served with process. Thus,  
12 they are acknowledging that they both borrowed money from Rapid Cash and were sued in  
13 collection actions. Rapid Cash can establish a generalized policy of notifying all defaulting  
14 customers of the default, offering each a payment and settlement plan and then only filing  
15 collection actions against defaulting customers. Rapid Cash Defendants should also be in a  
16 position to offer proof that no customer against whom a collection action was filed ever claimed  
17 to have satisfied their payment obligations. Rapid Cash Defendants will also likely be able to  
18 present statistical evidence that virtually all defaulting customers who are served with process  
19 never answer the complaint filed in the collection action and voluntarily accept entry of a default  
20 judgment. Indeed, most defaulting customers (and all that are subject to collection actions)  
21 accept as a part of the loan transaction that their repayment will be made through wage  
22 garnishment following entry of a default judgment against them. In many instances, the process  
23 of loan, payment default, collection action, default judgment and wage garnishment are repeated  
24 several times with regard to several loans made to the same customer.

25 Rapid Cash Defendants will be fully prepared to withstand a "rigorous analysis" of their  
26 claims for class certification when they file a Motion to Certify a Counterclaim Class.

27 ...

28 ...

## VII.

## STRIKING ALLEGATIONS IS INAPPROPRIATE

The legal predicate for the requested relief of striking class allegations in the Counterclaim is that Rapid Cash Defendants cannot pursue their counterclaims in a class action. As set forth above, this is an incorrect statement of the law. Indeed, it is directly inapposite to the very language of NRCP 13 which expressly authorizes the filing of a lawsuit against defendants on a class basis. To the extent the relief requested necessitates entertaining a "rigorous analysis" of class claims for certification, it is premature.

## VIII.

## CONCLUSION

For the above and foregoing reasons, this Court should deny Plaintiffs' Motion.

DATED this 14 day of February, 2012.

GORDON SILVER

GORDON SILVER  
WILLIAM M. NOALL

Nevada Bar No. 3549

MARK S. DZARNOSKI

Nevada Bar No. 3398

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

Tel: (702) 796-5555

Attorneys for Defendants

Principal Investments, Inc., d/b/a Rapid  
Cash, Granite Financial Services, Inc., d/b/a  
Rapid Cash, FMMR Investments, Inc., d/b/a  
Rapid Cash, Prime Group, Inc., d/b/a Rapid  
Cash and Advance Group, Inc., d/b/a Rapid  
Cash

## OF COUNSEL:

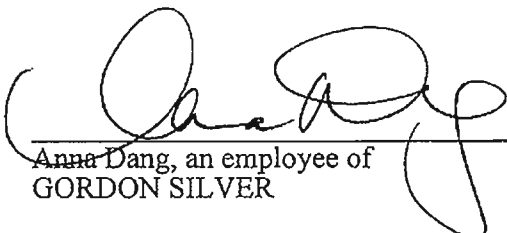
Alan S. Kaplinsky  
Martin C. Bryce, Jr.  
Ballard Spahr LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215.665.8500  
Facsimile: 215.864.8999

## CERTIFICATE OF SERVICE

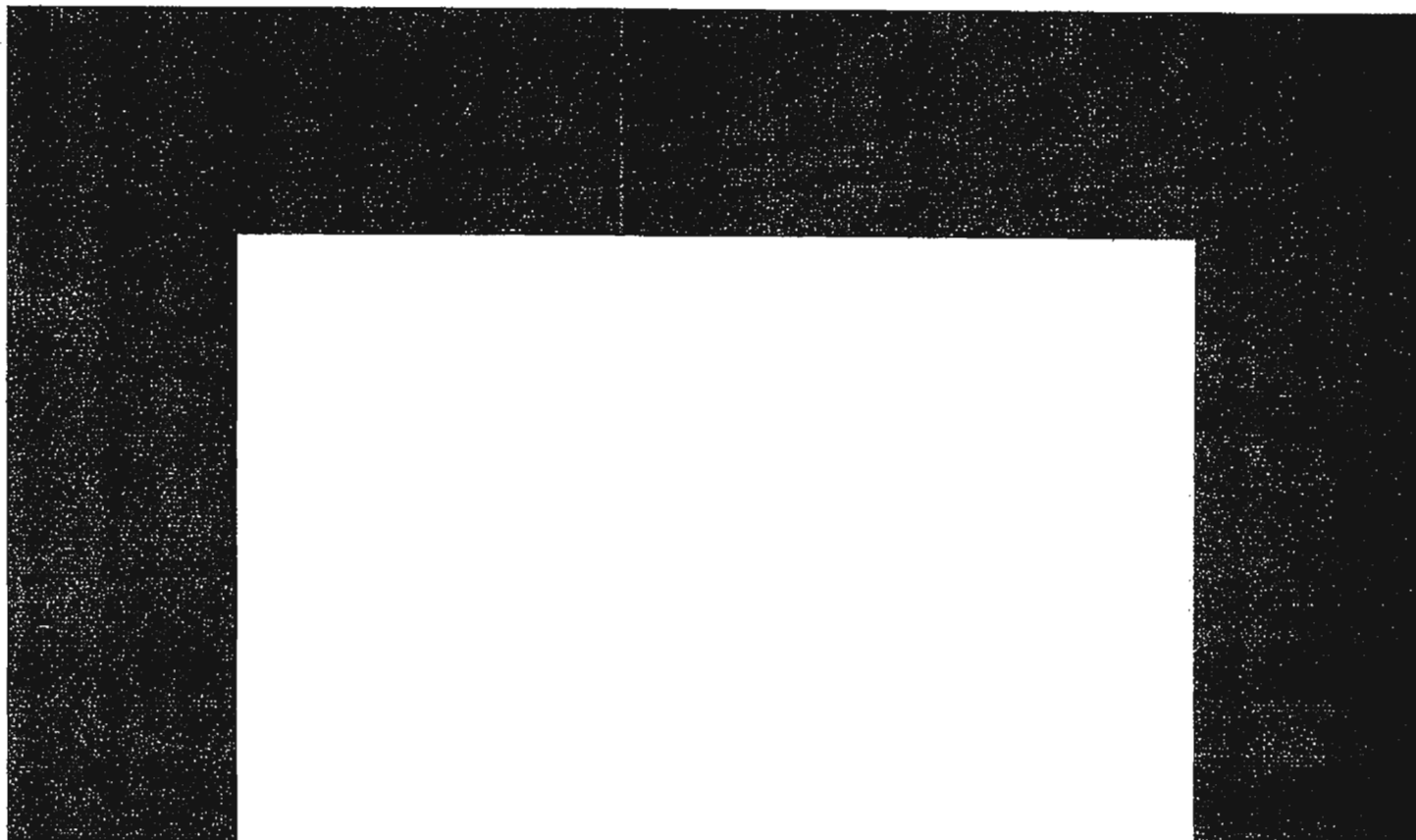
The undersigned, an employee of Gordon Silver, hereby certifies that on the 14<sup>th</sup> day of February, 2012, she served a copy of the **OPPOSITION TO PLAINTIFFS' MOTION TO DISMISS COUNTERCLAIMS OR ALTERNATIVELY TO STRIKE COUNTERCLAIM CLASS ACTION ALLEGATIONS**, by facsimile, and by placing said 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

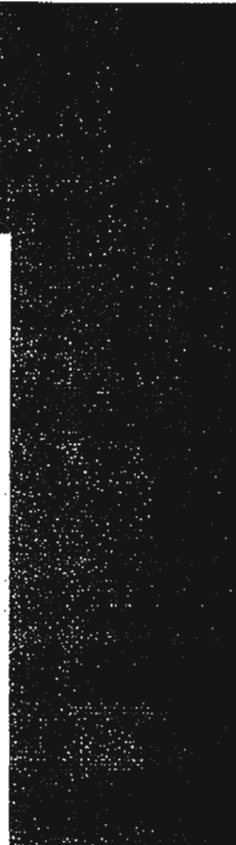
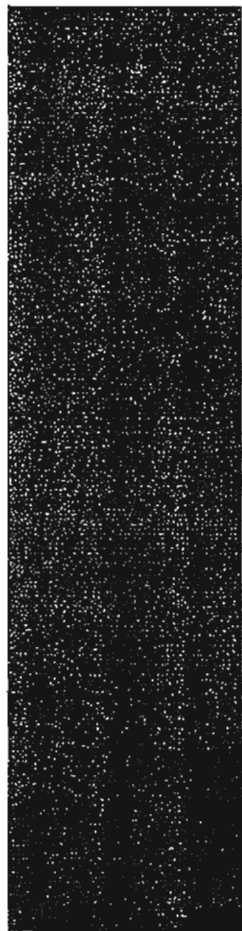
J. Randall Jones, Esq.  
Jennifer C. Dorsey, Esq.  
Kemp, Jones & Coulthard, LLP  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, NV 89169  
Fax: (702) 385-6001

  
\_\_\_\_\_  
Anna Dang, an employee of  
GORDON SILVER

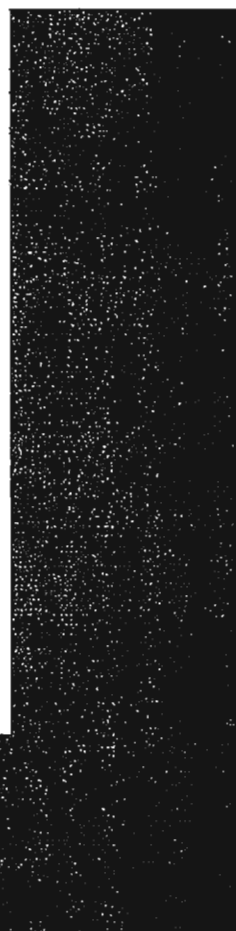




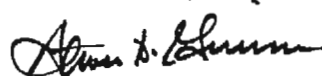
43



43



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02/22/2012 11:19:54 AM



CLERK OF THE COURT

**OPPS**

Dan L. Wulz, Esq. (5557)  
Venicia Considine, Esq. (11544)  
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Jennifer C. Dorsey, Esq. (6456)  
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Telephone: (702) 385-6000  
Facsimile: (702) 385-6001  
[jjrj@kempjones.com](mailto:jjrj@kempjones.com)  
**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

**CLASS PLAINTIFFS'  
OPPOSITION TO  
RAPID CASH DEFENDANTS' (1)  
MOTION TO AMEND CLASS  
NOTICE, (2) MOTION TO  
ENLARGE TIME FOR MAILING  
CLASS NOTICE, AND (3)  
MOTION FOR ORDER  
SHORTENING TIME**

**MEMORANDUM OF POINTS AND AUTHORITIES****STATEMENT OF FACTS**

The history of this class notice is long and tortured.

At the November 22, 2011, hearing at which this Court denied Rapid Cash's Motion to Reconsider Class Certification or, alternatively, to Deny Class Certification, this Court reminded counsel that it had long-since approved the notice and ordered Rapid Cash (as the keeper of the class membership list) to bear the burden of cost of the mailing. The minutes of that hearing further reflect, "Court directed counsel to get the notice out. . . ." Minutes, attached hereto as Exhibit 1. Although Rapid Cash's counsel "expressed concern to the Court" that a newly drafted notice would be required because Rapid Cash would be asserting counterclaims, that concern did not sway this Court, and the notice – as approved – was ordered to be mailed. See January 11, 2011, email in email string attached as Exhibit 2.

Class Counsel promptly drafted the order and sent it to Rapid Cash's counsel for review and approval. Counsel requested that Rapid Cash's deadline be extended from the proposed January 1, 2012, deadline to January 15<sup>th</sup>. See 12/6/11 email entry in Exhibit 2. Plaintiffs agreed and asked Rapid Cash's counsel to change the date, execute the order, and return it. Id. (12/6/11 email entry). It was not returned; however, Rapid Cash did file its counterclaim on January 4, 2012. When Class Counsel followed up after the holidays, Rapid Cash's counsel indicated on January 11<sup>th</sup> that this defendant would not be able to complete the mailing by the January 15<sup>th</sup> deadline he had previously requested. Id. ((1/11/12 entry). Plaintiffs advised Rapid Cash that, if it needed extra time, it would need to file a motion, and Plaintiffs submitted the order with the January 15<sup>th</sup> date. Id. (second 1/11/12 entry). This Court graciously and sua sponte enlarged

1 Rapid Cash's class-notice-dispatch date to January 29<sup>th</sup>. See interlineated order at 2, attached  
2 hereto as Exhibit 3.

3 **Rapid Cash just blatantly ignored the order**, and January 29<sup>th</sup> passed without any  
4 notice or communication from Rapid Cash.

5 More than a week after the extended deadline for sending out the class notice passed,  
6 Rapid Cash submitted the instant motion to the Court on an order shortening time, asking for  
7 more time and a newly worded notice. This belated motion should be denied.

9 **ARGUMENT**

10 EJDRCR 2.25(a) allows the Court to grant extensions only for diligent litigants, as it  
11 provides in part: "A request for extension made after expiration of the specified period shall not  
12 be granted unless the moving party . . . demonstrates that the failure to act was the result of  
13 excusable neglect." Rapid Cash has not even attempted to demonstrate excusable neglect for its  
14 flagrant disobedience of this Court's Order, and none could be shown. Nor has Rapid Cash  
15 offered any excuse for its utterly abject failure to seek relief from this Court's Order before the  
16 Court-imposed mailing deadline of January 29, 2012. If anything, Rapid Cash should be  
17 sanctioned, not rewarded, for this delay-causing conduct.

18  
19  
20 Aside from the fact that this Court has previously rejected Rapid Cash's voiced concern  
21 that the notice should contain some discussion of its counterclaims, and thus, this is essentially  
22 yet another Rapid Cash request for reconsideration of something this Court has already decided,  
23 there is no current need to amend the language of the notice. The only thing that has changed  
24 since the last time Rapid Cash made this request is that Rapid Cash succeeded in delaying the  
25 dispatch of the notice long enough to get its counterclaims on file. But, as Plaintiffs have  
26 explained in their pending motion to dismiss those counterclaims, Rapid Cash's counterclaims  
27  
28

1 are not well founded and should not have any impact on the class notice. Plaintiffs will not  
2 reiterate the reasons that these counterclaims are not well founded and should be dismissed and  
3 instead direct this court to, and hereby reassert all arguments presented by, their pending Motion  
4 to Dismiss Defendants' Counterclaims/Alternative Motion to Strike Counterclaim Class Action  
5 Allegations, filed on January 26, 2012, and incorporated herein by reference. Rapid Cash's  
6 counterclaims should be dismissed, and they should not have any impact on the timing or  
7 wording of the Class Notice.  
8

9 **CONCLUSION**

10 This case has suffered enough as a result of Rapid Cash's dilatory tactics. This Court  
11 should deny Rapid Cash's motion and order Rapid Cash to immediately mail the approved notice  
12 to all class members.  
13

14 DATED this 22<sup>nd</sup> day of February, 2012.

15 Respectfully Submitted by Class Counsel:

16  
17 **LEGAL AID CENTER OF**  
18 **SOUTHERN NEVADA, INC.**

19 By: /s/ Dan L. Wulz  
20 DAN L. WULZ, ESQ. (5557)  
21 VENICIA CONSIDINE, ESQ. (11544)  
22 800 South Eighth Street  
23 Las Vegas, Nevada 89101  
24 Telephone: (702) 386-1070 x 106  
25 Facsimile: (702) 388-1642  
26 dwulz@lacsni.org

27 J. Randall Jones, Esq. (1927)  
28 Jennifer C. Dorsey, Esq. (6456)  
**KEMP, JONES & COULTHARD, LLP**  
3800 Howard Hughes Pkwy, 17<sup>th</sup> Floor  
Las Vegas, Nevada 89169  
Telephone: (702) 385-6000  
Facsimile: (702) 385-6001  
jjr@kempjones.com

**CERTIFICATE OF MAILING**

I hereby certify that on the 22<sup>nd</sup> day of February, 2012, the foregoing **CLASS**  
**PLAINTIFFS' OPPOSITION TO RAPID CASH DEFENDANTS' (1) MOTION TO**  
**AMEND CLASS NOTICE, (2) MOTION TO ENLARGE TIME FOR MAILING CLASS**  
**NOTICE, AND (3) MOTION FOR ORDER SHORTENING TIME** was served on the  
following person(s) by U.S. Mail and through the District Court's e-filing service:

Mark S. Dzarnoski, Esq.  
Gordon & Silver, Ltd.  
3960 Howard Hughes Parkway 9th Floor  
Las Vegas, NV 89169

/s/ Rosie Najera  
An employee of Legal Aid Center of Southern Nevada

# EXHIBIT 1

Plaintiff Varcados, Eugene

Dan L Wulz

Retained

7023861070(W)

---

EVENTS & ORDERS OF THE COURT

---

11/22/2011 All Pending Motions (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)

Minutes

11/22/2011 9:00 AM

- NOTICE OF HEARING ON MOTION TO RECONSIDER...MOTION TO RECONSIDER CLASS CERTIFICATION OR, IN THE ALTERNATIVE, MOTION TO DECERTIFY CLASS...PLAINTIFF'S MOTION TO APPROVE NOTICE Attorney Venicia Considine also present with Ms. Dorsey. AS TO MOTION TO RECONSIDER: Arguments by counsel. COURT ORDERED, Motion to Reconsider is DENIED. AS TO MOTION FOR DECERTIFICATION: Arguments by counsel. Court stated its findings, and ORDERED, Motion for Decertification is DENIED. AS TO PLAINTIFF'S MOTION TO APPROVE NOTICE: Arguments by counsel. Court stated its findings, and ORDERED, Defendants to bear the burden of costs of mailing. The Court previously approved the notice. Court directed counsel to get the notice out and to submit Orders in a timely fashion from now on.

Parties PresentReturn to Register of Actions



## EXHIBIT 2

**From:** Jennie Dorsey  
**Sent:** Wednesday, January 11, 2012 3:09 PM  
**To:** 'Mark S. Dzarnoski'; Venicia Considine; Anna Dang  
**Cc:** Dan Wulz  
**Subject:** RE: Rapid Cash. Order Granting Motion to Approve Notice

I think a written order reflecting the Judge's decision needs to get entered regardless of the new filing of the counterclaims. The Judge has approved this notice, and I think she fully intends that it will be served promptly. As we were under the impression that your office was going to put in the new date and send the order to the Judge, I will change the language to reflect the extension that we did agree to, and I'll get it over to the Court immediately, as I am sure I will already be in hot water for not having ensured this order went over to the court sooner.

If Rapid Cash does not intend to comply with the new date you requested, I think you'll need to file a motion, as we cannot agree to another extension or to include language about the new counterclaims.

*Jennie*

Jennifer C. Dorsey, Esq.  
 Partner  
**Kemp, Jones & Coulthard, LLP**  
 3800 Howard Hughes Pkwy  
 17<sup>th</sup> Floor  
 Las Vegas, Nevada 89169  
 Ph (702)385-6000  
[j.dorsey@kempjones.com](mailto:j.dorsey@kempjones.com)

**From:** Mark S. Dzarnoski [mailto:mdzarnoski@gordonsilver.com]  
**Sent:** Wednesday, January 11, 2012 2:31 PM  
**To:** Venicia Considine; Anna Dang; Jennie Dorsey  
**Cc:** Dan Wulz  
**Subject:** RE: Rapid Cash. Order Granting Motion to Approve Notice

Guess the holidays interfered with the Order. However, now that we have filed the Answer and Counterclaim, I believe the Notice needs revision. If you recall, I expressed concern to the Court that a new Notice would be required because our Counterclaims would be important for potential class members to decide upon whether to opt out.

I would like to draft a Motion for the Court to clarify or reconsider the content of the class notice. It is certainly possible that we could agree on additional language and submit it as a Stip and Order.

What are your thoughts regarding working on a new Notice that includes counterclaims?

In any case, we can't be ready to mail in 4 days.

Mark Dzarnoski Esq.  
 Gordon Silver  
 3960 Howard Hughes Pkwy.

Ninth Floor  
 Las Vegas, NV 89169  
 Tel: 702.796.5555  
 Fax: 702.369.2666  
 E-mail: [mdzarnoski@gordonsilver.com](mailto:mdzarnoski@gordonsilver.com)



**From:** Venicia Considine [mailto:[VConsidine@lacs.org](mailto:VConsidine@lacs.org)]  
**Sent:** Tuesday, January 10, 2012 10:59 AM  
**To:** Mark S. Dzarnoski; Anna Dang  
**Cc:** Dan Wulz  
**Subject:** RE: Rapid Cash. Order Granting Motion to Approve Notice

Mark,

We have not received the Order yet (please see the string below). Please let me know when you can get it to us.

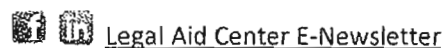
Thank you,  
 Venicia Considine



Venicia Considine, Esq.  
 Consumer Rights Project  
 Legal Aid Center of Southern Nevada  
 800 S. 8th St.  
 Las Vegas, NV 89101  
 702-386-1070 ext. 159  
 702-388-1642  
[vconsidine@lacs.org](mailto:vconsidine@lacs.org)

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**From:** Mark S. Dzarnoski [mailto:mdzarnoski@gordonsilver.com]  
**Sent:** Tuesday, December 06, 2011 4:38 PM  
**To:** Venicia Considine  
**Cc:** Dan Wulz; Jennie Dorsey; Anna Dang  
**Subject:** RE: Rapid Cash. Order Granting Motion to Approve Notice

Yes. I'll do that tomorrow.

Thanks.

Mark Dzarnoski Esq.  
 Gordon Silver  
 3960 Howard Hughes Pkwy.  
 Ninth Floor  
 Las Vegas, NV 89169  
 Tel: 702.796.5555  
 Fax: 702.369.2666  
 E-mail: [mdzarnoski@gordonsilver.com](mailto:mdzarnoski@gordonsilver.com)



**From:** Venicia Considine [mailto:VConsidine@lacsns.org]  
**Sent:** Tuesday, December 06, 2011 4:36 PM  
**To:** Mark S. Dzarnoski  
**Cc:** Dan Wulz; Jennie Dorsey  
**Subject:** RE: Rapid Cash. Order Granting Motion to Approve Notice

Mark,

Changing the date from January 1, 2012 to January 15, 2012 on the notice mailing is fine with us. Would you modify the date, then sign and return it to us?

Thank you,  
 Venicia Considine

Since 1958  
**LEGAL AID CENTER**  
 ■ ■ ■ ■ of Southern Nevada

Venicia Considine, Esq.  
 Consumer Rights Project  
 Legal Aid Center of Southern Nevada  
 800 S. 8th St.  
 Las Vegas, NV 89101  
 702-386-1070 ext. 159  
 702-388-1642  
[vconsidine@lacsns.org](mailto:vconsidine@lacsns.org)

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---

**From:** Mark S. Dzarnoski [mailto:mdzarnoski@gordonsilver.com]  
**Sent:** Tuesday, December 06, 2011 3:30 PM  
**To:** Venicia Considine  
**Cc:** Dan Wulz; Jennie Dorsey  
**Subject:** RE: Rapid Cash. Order Granting Motion to Approve Notice

With the Holidays coming up and with thousands of Notices to mail, I would like until January 15.

Mark Dzarnoski Esq.  
 Gordon Silver  
 3960 Howard Hughes Pkwy.  
 Ninth Floor  
 Las Vegas, NV 89169  
 Tel: 702.796.5555  
 Fax: 702.369.2666  
 E-mail: [mdzarnoski@gordonsilver.com](mailto:mdzarnoski@gordonsilver.com)




---

**From:** Venicia Considine [mailto:VConsidine@lacsn.org]  
**Sent:** Friday, December 02, 2011 4:36 PM  
**To:** Mark S. Dzarnoski  
**Cc:** Dan Wulz; Jennie Dorsey  
**Subject:** Rapid Cash. Order Granting Motion to Approve Notice

Mark,

Please review the attached Order. If you can get it back to us by noon on Tuesday, we'd appreciate it.

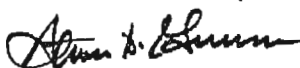
Thank you,  
 Venicia Considine

086000

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# EXHIBIT 3

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CLERK OF THE COURT

**ORDG**

Dan L. Wulz, Esq. (5557)

Venicia Considine, Esq. (11544)

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Facsimile: (702) 385-6001

[jjrj@kempjones.com](mailto:jjrj@kempjones.com)*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,

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;  
ADVANCED 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. A624982  
Dept. XI

**ORDER GRANTING MOTION TO  
APPROVE NOTICE**

Date: November 22, 2011  
Time: 9:00 a.m.

Plaintiffs, CASANDRA HARRISON; EUGENE VARCADOS; CONCEPCION  
QUINTINO; and MARY DUNGAN, individually and on behalf of all persons similarly situated  
brought this "Motion to Approve Notice" (the "Motion") on for hearing before this Court on

1 November 22, 2011. The Class appeared by and through Class Counsel, Jennifer C. Dorsey,  
2 Esq., Kemp, Jones and Coulthard, LLP, and Venicia Considine, Esq., Legal Aid Center of  
3 Southern Nevada, Inc.; PRINCIPAL INVESTMENTS, INC. d/b/a RAPID CASH; GRANITE  
4 FINANCIAL SERVICES, INC. d/b/a RAPID CASH; FMMR INVESTMENTS, INC. d/b/a  
5 RAPID CASH; PRIME GROUP, INC. d/b/a RAPID CASH; ADVANCED GROUP, INC. d/b/a  
6 RAPID CASH ("the Rapid Cash defendants") appeared by counsel Mark S. Dzarnoski, Esq.,  
7 Gordon & Silver, Ltd. The Court, having reviewed the Motion, Rapid Cash's Opposition,  
8 Plaintiffs' Reply, the file, and the pleadings on file herein, and having heard and considered the  
9 arguments of the parties, and for good cause appearing:

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to  
11 Approve Notice is hereby GRANTED, the form of Notice (for mailing) attached to the Motion is  
12 APPROVED for mailing. <sup>29</sup> *BB*

13 On or before January ~~25~~, 2012, the Rapid Cash defendants shall dispatch these notices by  
14 first class mail to all persons against whom the Rapid Cash defendants or any of them obtained a  
15 default judgment where the service of process affidavit was signed by a representative of On  
16 Scene Mediations; the Rapid Cash defendants shall bear the costs associated with preparation  
17 and service of the notices.

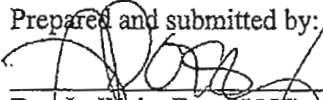
18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Rapid Cash  
19 defendants shall provide Class Counsel with a full and complete copy of the mailing list utilized  
20 for service of the notices no later than five calendar days following the mailing of the Notices.

21 DATED this 3<sup>rd</sup> day of January, 2012.

22  
23   
24 DISTRICT COURT JUDGE  
25  
26  
27  
28



1 Prepared and submitted by:

2   
Dan L. Wulz, Esq. (5557)

3 Vericia Considine, Esq. (11544)

4 **LEGAL AID CENTER OF SOUTHERN NEVADA, INC.**

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7 J. Randall Jones, Esq. (1927)

8 Jennifer C. Dorsey, Esq. (6456)

9 **KEMP, JONES & COULTHARD, LLP**

3800 Howard Hughes Pkwy, 17<sup>th</sup> Floor

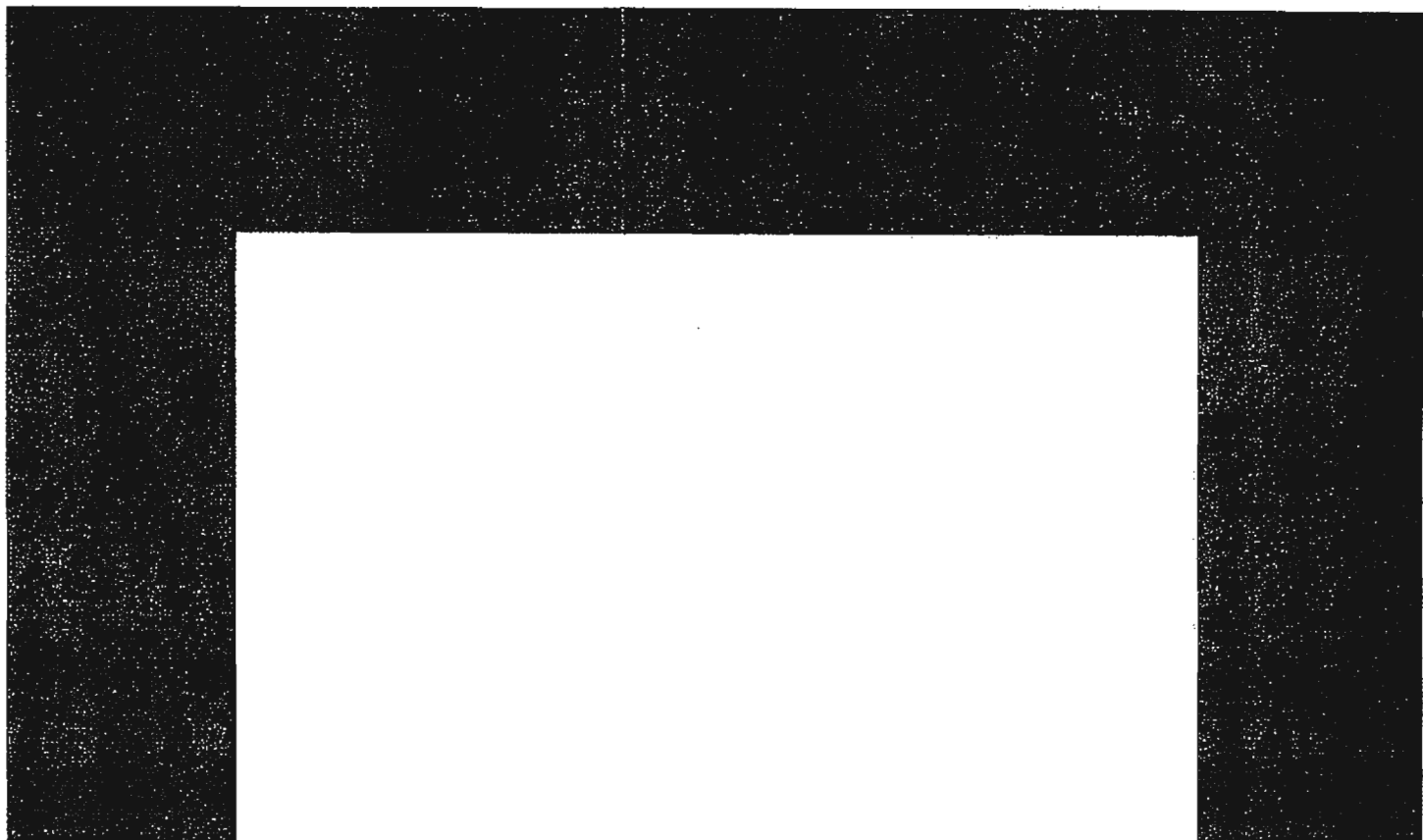
Las Vegas, Nevada 89169

Telephone: (702) 385-6000

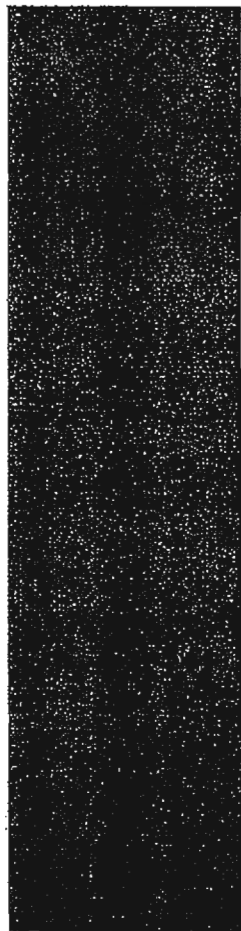
Facsimile: (702) 385-6001

[irj@kempjones.com](mailto:irj@kempjones.com)

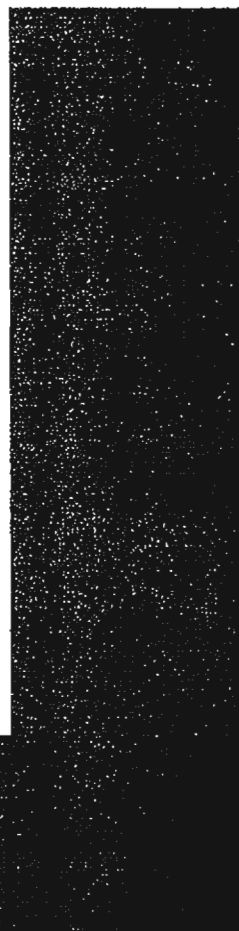
*Class Counsel*



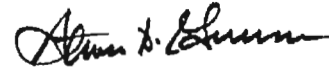
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44



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CLERK OF THE COURT

**RPLY**

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Venicia Considine, Esq. (11544)  
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**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

**REPLY TO DEFENDANTS'  
OPPOSITION TO MOTION TO  
DISMISS DEFENDANTS'  
COUNTERCLAIMS;  
ALTERNATIVE MOTION TO  
STRIKE COUNTERCLAIM  
CLASS ACTION  
ALLEGATIONS**

**Date of Hearing: 2/28/12  
Time of Hearing: 9 a.m.**

**REPLY TO DEFENDANT'S OPPOSITION TO MOTION TO DISMISS DEFENDANTS'  
COUNTERCLAIMS; ALTERNATIVE MOTION TO STRIKE COUNTERCLAIM  
CLASS ACTION ALLEGATIONS**

**I. Rapid Cash's Counterclaims are Barred by the Doctrine of Claim Preclusion  
Because They Have Already Been Adjudicated, and Rapid Cash Has Obtained its  
Full Relief.**

The purpose of claim preclusion is "to obtain finality by preventing a party from filing another suit that is based on the same set of facts that were present in the initial suit." *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 712 (Nev. 2008). All three of Rapid Cash's counterclaims seek repayment of, or damages arising from, a payday loan customer's receipt of, and default upon, a Rapid Cash loan. However, Rapid Cash has already sued these customers to recover these loan funds and, in each case, was awarded a default judgment.

Rapid Cash argues that the doctrine of claim preclusion is inapplicable to void judgments and therefore Plaintiffs have failed to meet the requirement of the second prong of the three-part test set forth in *Five Star Capital Corp. v. Ruby*. 194 P.3d at 713. If Rapid Cash is now willing to stipulate that its judgments were fraudulently obtained and therefore void, its counterclaims might become ripe.<sup>1</sup> However, as this case is currently postured, they are not. Even though the Class challenges the validity of those judgments and seeks to have this Court invalidate them, unless and until that occurs, they remain facially valid, and claim preclusion attaches.

Rapid Cash arguments are incredibly disingenuous because there is no question that Rapid Cash continuously acted as if its relief was final and enforceable when it sues Rapid Cash's interests. Rapid Cash acknowledges that its attorneys "obtained default judgments in favor of RAPID CASH against each of" these class members, and "ultimately . . . obtained orders of wage garnishment" against the named class representatives and others "to collect upon the

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<sup>1</sup> Though likely subject to dismissal on other grounds.

1 judgments obtained in the Justice Court Collection Actions.” Counterclaim at 9, ¶ 18. And  
2 Rapid Cash admits that it has already enforced the judgments in question by obtaining wage  
3 garnishments against the named class representatives and others “to collect upon the judgments  
4 obtained in the Justice Court Collection Actions.” Counterclaim at 9, ¶ 18.

5 Rapid Cash further asserts that its Counterclaims are “based on the possibility that the default  
6 judgments are void.” Opposition to Motion to Dismiss Counterclaims, at 4:6. But that makes no  
7 difference here. Unless and until these judgments are voided, the present and only salient fact  
8 remains that Rapid Cash’s counterclaims are barred.

9  
10 “Alleged harm that is speculative or hypothetical is insufficient: an existing controversy must  
11 be present.” *Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1230-31 (Nev. 2006) (citing *In re*  
12 *T.R.*, 80 P.3d 1276, 1279 (Nev. 2003)). While it is true, as Rapid Cash asserts, that Plaintiffs’  
13 claims do challenge the validity of the default judgments, that issue has not yet been decided, and  
14 therefore the outcome is hypothetical. Indeed, Rapid Cash expressly acknowledges this  
15 prematurity, as it prefaces its claims with the statement that its debt-collection claims are  
16 “compulsory counterclaims”<sup>2</sup> asserted “in the event the court in the Class Action Lawsuit voids  
17 any or all judgments” in the justice court actions. Counterclaim, ¶ 22 and ¶ 121-22. Unless and  
18 until that happens, Rapid Cash’s injuries are purely hypothetical, its claims are all premature and  
19 unripe, and they should be dismissed without prejudice to reassert them at a later time (subject,  
20 of course, to all valid defenses and other rights and remedies) and in the appropriate forum  
21 (Justice Court).  
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27 <sup>2</sup> These claims are not compulsory counterclaims either, as they go beyond the very narrow,  
28 sewer-service facts that give rise to this class action lawsuit. See *Executive Mgmt., Ltd. v. Ticor*  
*Title Ins. Co.*, 963 P.2d 465, 478 (Nev. 1998).

1 **II. Rapid Cash Has Failed to State a Cognizable Fraud Counterclaim, Subjecting its**  
2 **Sixth through Ninth Claims for Relief to Dismissal.**

3 “Pleading with particularity is required ‘in order to afford adequate notice to the opposing  
4 part[ies],’ ‘so that they can defend against the charge and not just deny that they have done  
5 anything wrong.’” *Rocker v. KPMG, LLP.*, 148 P.3d 703, 707-08 (Nev. 2006) (abrogated on  
6 other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 181 P.3d 670 (Nev. 2008)). “The  
7 circumstances that must be detailed include averments to the time, the place, the identity of the  
8 parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 636 P.2d 874 (Nev.  
9 1981). Malice, intent, knowledge and other conditions of the mind of a person may be averred  
10 generally. *Id.*

11  
12 Plaintiffs clearly argue that Rapid Cash failed to allege that each of the approximate 16,000  
13 class members knowingly made false representations regarding their willingness to repay the  
14 money that they borrowed. See Motion to Dismiss Memorandum of Points and Authorities at p.  
15 10. Again, this would be a practical impossibility as Rapid Cash, given the nature of its payday  
16 loan business, lends money to a population that is forced by whatever circumstance to borrow  
17 money on incredibly unfavorable terms. Furthermore, Rapid Cash did not allege fraud in the  
18 individual original actions brought against the named Plaintiffs or any member of the Class.

19  
20 Rapid Cash admits that even now it does not have sufficient facts to plead fraud with  
21 sufficient particularity against Plaintiff Quintino. See Opposition to Plaintiff’s Motion to  
22 Dismiss Counterclaims at p. 9. If Rapid Cash cannot allege fraud with sufficient particularity  
23 against each of the four named class representatives, it clearly will not be able to do so against  
24 approximately 16,000 unnamed class members. Rapid Cash’s fraud claims must be disallowed  
25 because the inability to allege fraud against all class members destroys the commonality required  
26 for a class. Furthermore, fraud requires particularity of the facts of each specific case. This  
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means that each specific instance of fraud would have to be plead individually. Based on this, fraud claims are inappropriate as counterclaims in this case.

### **III. Rapid Cash's Unjust Enrichment Claims Must Be Dismissed as a Matter of Law.**

The Nevada Supreme Court has made it clear that "[a]n action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement." *LeasePartners Corp. v. Robert L. Brooks Trust*, 942 P.2d 182, 187 (Nev. 1997). In *Village Pointe, LLC v. Resort Funding, LLC*, the court held:

[Village Pointe's] unjust enrichment argument relies on a known faulty premise; it acknowledges that its "action based on a theory of unjust enrichment is not available because there is an express, written contract, and no agreement can be implied when there is an express agreement." See *LeasePartners Corp. v. Brooks Trust*, 113 Nev. 747, 755–56, 942 P.2d 182, 187 (1997) (" 'The doctrine of unjust enrichment or recovery in quasi contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another [or should pay for].' " (alteration in original) (quoting 66 Am.Jur.2d Restitution § 11 (1973))); *Lipshie v. Tracy Investment Co.*, 93 Nev. 370, 379, 566 P.2d 819, 824 (1977) ("To permit recovery by [unjust enrichment] where a written agreement exists would constitute a subversion of contractual principles.").

--- P.3d ----, 56026, 2011 WL 5844289 (Nev., Nov. 18, 2011). At page 9 of the Opposition, Rapid Cash, while acknowledging that it cannot obtain relief on both breach of contract and unjust enrichment claims, argues: (1) it can plead alternative and inconsistent claims at this point, and (2) if the written loan contracts were held void as Plaintiffs seek, then Rapid Cash could pursue a claim for unjust enrichment.

Rapid Cash is correct that courts typically do allow a party to a written contract to inconsistently plead unjust enrichment at the pleading stage. The rationale is that the written contract has not yet been proven at the pleading stage and, once proven, an unjust enrichment claim will be subject to summary judgment. However, in this case, the named Plaintiffs have

1 repeatedly admitted they entered into a written contract. See First Amended Complaint,  
2 paragraph nos. 17 (Harrison), 22 (Varcados), 28 (Quintino) and 34 (Dungan), and the foundation  
3 each of the justice court lawsuits that give rise to this Class Action is a contractual relationship.  
4 Thus, it would be futile and a waste of judicial time and resources to allow a counterclaim based  
5 on unjust enrichment to stand in this case.  
6

7         Rapid Cash alternatively argues that if this Court declares its payday loan contracts void,  
8 then it can pursue a claim for unjust enrichment. Plaintiffs have indeed alleged that Rapid Cash  
9 violated NRS 604A.415(1) (collection of debt by payday lender only in fair and lawful manner),  
10 triggering the statutory remedy in NRS 604A.900(1) that the payday loans be declared void.  
11 Nevertheless, if Plaintiffs prove same, then it is inconceivable that any court could ever conclude  
12 that Rapid Cash was unjustly deprived of the proceeds of its payday loan services if they were  
13 first found to have been performed pursuant to contracts held void because Rapid Cash violated a  
14 consumer protection statute. Under those circumstances, to permit Rapid Cash to recover based  
15 on the equitable remedy of unjust enrichment would undermine the remedial purpose and  
16 policies underlying NRS Chapter 604A as a matter of law. (See e.g. *Lawrence v. The Richman*  
17 *Group Capital Corp.*, 2005 WL 3448056 (D.Conn. 2005) (where Plaintiff's five claims  
18 dismissed based on finding written contract was illegal under federal securities laws, Plaintiff's  
19 sixth claim of unjust enrichment must be dismissed as a matter of law; *Fabricant v. Sears*  
20 *Roebuck*, 202 F.R.D. 306 (S.D. Fla. 2001) (counterclaim of insurers for unjust enrichment in the  
21 event that the court found insurance contracts to be illegal and unenforceable failed to state a  
22 claim in class action suit arising from sale of credit protection plan involving credit, life,  
23 disability, property, and unemployment insurance, since if the court found that the contracts were  
24 illegal based on the plaintiff's allegations, defendants would be wrongdoers not entitled to  
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1 restitution). Accordingly, Rapid Cash's Tenth Claim for Relief for Unjust Enrichment must be  
2 dismissed as a matter of law.

3 **IV. Rapid Cash's Counterclaims Are Not Available In This Class Action.**

4 At pp. 9 – 15 of the Opposition, Rapid Cash states that counterclaims are available in  
5 class actions, arguing that its "claims against the class constitute compulsory counterclaims," and  
6 that Rapid Cash has "no choice but to file the action as a counterclaim" or run the risk that its  
7 claims will later be precluded. See Opposition at 10:11-14. Rapid Cash further asserts that  
8 Plaintiffs' argument is contrary to the weight of authority on this issue. Rapid Cash is wrong for  
9 two independent reasons.  
10

11 **A. A Counterclaim Is Not Compulsory When It Is Not Mature.**

12 NRCP 13(a) contains explicit exceptions to the general rule that a counterclaim is  
13 compulsory and must be asserted if it arises out of the same transaction as the opposing party's  
14 claim. The first exception is that the party need not assert a counterclaim that has not matured at  
15 the time he serves his pleading (derived from the language of the rule limiting its application to  
16 claims the pleader has "at the time of serving the pleading," NRCP 13(a)). See e.g. Universal  
17 Underwriters Ins. Co. v. Sec. Indus., Inc., 391 F. Supp. 326, 329 (W.D. Wash. 1974) ("If the  
18 claim arises out of the bringing of the main action, it generally cannot be asserted either as a  
19 compulsory or permissive counterclaim, since such claim would be premature prior to  
20 determination of the main action, and therefore said claim would not be barred in a subsequent  
21 action."); Steinberg v. St. Paul Mercury Ins. Co., 108 F.R.D. 355, 358 (S.D. Ga. 1985) ("A  
22 counterclaim which is likely to arise or is contingent at the time the defendant serves his answer,  
23 is not "matured" for the purposes of Rule 13(a) See Slavics v. Wood, 36 F.R.D. 47 (E.D.Pa.  
24  
25  
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1 1964). Defendant's counterclaim must be completely vested at the time defendant serves his  
2 answer for such claim to be "matured" for the purposes of Rule 13(a).")

3 **B. In an Action Which Does Not Concern or Relate to a Contract Between Two**  
4 **Parties, a Counterclaim for Default on that Contract is Not Compulsory.**

5 To support its position that its counterclaim is compulsory, Rapid Cash relies on Carter v.  
6 Public Finance Corp., 73 F.R.D. 488, 496 (N.D.Ala. 1977), which holds that a counterclaim  
7 based on a default under an installment contract is a compulsory counterclaim in a lawsuit  
8 brought for violations of the federal Truth in Lending Act ("TILA") in that installment contract.  
9 Carter concerned a Motion for Class Certification brought by a putative Class of persons who  
10 had entered into finance contracts with Public Finance Corp. Id. at 490. The putative Class  
11 alleged that the finance contracts violated the TILA, and Public Finance Corp. asserted that 85  
12 of the 383 potential class members had defaulted on their finance contracts. Id. The Court in  
13 Carter denied the Motion for Class Certification because 85 of the 383 Class Members would  
14 have compulsory counterclaims brought against them by Public Finance Corp., and Public  
15 Finance Corp.'s counterclaims were compulsory because they arose out of the same "transaction  
16 or occurrence" as the putative Class Plaintiffs' TILA claims. Id. at 491, 496. In reaching the  
17 conclusion that a counterclaim based on a failure to perform under an installment contract is a  
18 compulsory counterclaim in a TILA case, Carter relied solely on cases brought under the TILA  
19 or similar cases alleging failure to disclose contract terms. See Cotchett v. Avis Rent A Car  
20 System, Inc., 56 F.R.D. 549 (1972) (putative class action alleging failure to disclose \$1.00  
21 surcharge in car rental contracts. Court found counterclaims for damages for unpaid parking  
22 tickets, uninsured damage to rented automobiles, and rental bills to be compulsory  
23 counterclaims); Turoff v. Union Oil Co. of Cal., 61 F.R.D. 51 (1973) (Putative class action  
24 alleging violations of the TILA in revolving credit account; court denied class certification in  
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1 part because class members subject to counterclaims on amounts owing on accounts); *Alpert v.*  
2 *U.S. Industries, Inc.*, 59 F.R.D. 491 (putative class alleging violations of TILA in spa  
3 membership agreement. Court denied class certification because individual class members  
4 subject to counterclaims for nonpayment of agreements); *Considine v. Park National Bank*, 64  
5 F.R.D. 646 (1974) (putative class action alleging usurious credit card agreements. Court denied  
6 class certification in part because class members subject to counterclaims on amounts due and  
7 owing).<sup>3</sup>

9 If the Class's claims were based on disclosure violations in their individual loan  
10 agreements, like the claims in *Carter*, then Rapid Cash has some weak and entirely  
11 distinguishable support for an argument that counterclaims for breach of contract could be  
12 determined to be compulsory counterclaims. But Plaintiffs' claims are not based on the terms of  
13 their individual loan agreements, but rather the abuse of process that occurred in wholly  
14 unrelated collection activity well after Plaintiffs entered into loan agreements with Rapid Cash.  
15 Plaintiffs' injuries occurred after Plaintiffs defaulted on their loan agreements<sup>4</sup> and were then  
16

18 <sup>3</sup> These district court decisions have not been followed by circuit Courts of Appeal. See *Maddox*  
19 *v. Kentucky Finance Company, Inc.*, 736 F.2d 380 (6th Cir.1984) (TILA claim, Court held that  
20 counterclaim on underlying debt was permissive, not compulsory, and declined to exercise  
21 jurisdiction over that counterclaim); *Peterson v. United Accounts, Inc.*, 638 F.2d 1134, 1137 (8th  
22 Cir. 1981) (in dicta, Court states that a debt counterclaim to a TILA claim is permissive);  
23 *Valencia v. Anderson Bros. Ford*, 617 F.2d 1278 (7th Cir. 1980) (court found that "[t]he sole  
24 connection between a TILA claim and a debt counterclaim is the initial execution of the loan  
document . . . this connection is so insignificant that compulsory adjudication of both claims in a  
single lawsuit will secure few, if any, of the advantages envisioned in Rule 13(a).") (overruled  
on other grounds by *Anderson Bros. Ford v. Valencia*, 101 S.Ct. 2266 (U.S.1981)).

25 <sup>4</sup> Plaintiffs will assume *arguendo* Rapid Cash's assertion that "but for the class members  
26 defaulting on their loan obligations, there would have been no collection action filed against the  
27 class members to begin with." See Opposition at 14: 21-23. Of course, many class members  
28 may have had defenses to Rapid Cash's allegations that they were in default but never had the  
opportunity to raise those defenses because they were never served with process before  
having default judgments entered against them.

1 subjected to Rapid Cash's unlawful collections process. As Rapid Cash correctly points out, the  
2 only logical relation between Plaintiffs' claims and Rapid Cash's counterclaims is the fact that  
3 but for entering into loan agreements with Rapid Cash, Plaintiffs would have no reason to bring  
4 this class action lawsuit in the first place. See Opposition at 14: 21-23. The analysis of any  
5 logical relationship between Plaintiffs' claims and Rapid Cash's counterclaims begins and ends  
6 there. Because Rapid Cash's counterclaims against Plaintiffs are permissive, not compulsory,  
7 this Court is entirely within its discretion to deny jurisdiction over those counterclaims, and this  
8 is particularly true when the counterclaims are "no more than debt collection actions which may  
9 be prosecuted separately." *Rental Car of New Hampshire, Inc. v. Westinghouse Elect. Corp.*,  
10 496 F. Supp. 373, 381 (D. Mass. 1980) (court permitted counterclaims on franchise agreements  
11 but characterized them as permissive).  
12  
13

14 Cases brought under the federal Fair Debt Collection Practices Act ("FDCPA") as  
15 opposed to cases brought under the TILA, are far more analogous to the claims presented herein  
16 and are illustrative of the permissive nature of Rapid Cash's counterclaims. Courts virtually  
17 uniformly hold that in cases brought for collection abuse under the FDCPA against debt  
18 collectors, a defendant's alleged counterclaim based on the underlying debt is permissive only,  
19 and ordinarily dismissed. This is because claims brought under the FDCPA concern abusive  
20 debt collection practices, not parties' contractual obligations to one another. For example, in  
21 *Taylor v. Bryant, Inc.*, the United States District Court, District of Nevada found that while  
22 federal courts "have supplemental jurisdiction over compulsory counterclaims," permissive  
23 counterclaims require their own jurisdictional basis. 275 F.Supp.2d 1305, 1306 (D. Nevada,  
24 2003). The Taylor court found that the defendant-debt collector's counterclaims on the  
25 underlying debt were permissive because:  
26  
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1 [P]laintiff's FDCPA claim relates to the alleged use of abusive  
2 debt collection practices, while defendant's counterclaim  
3 encompasses a private duty under state law [requiring] a broad  
4 proof of facts establishing the existence and performance of a  
5 contract, the validity of the contract's provisions, a breach of the  
6 contract by plaintiff and monetary damages resulting from the  
7 breach.

8 Id. at 1307 (citing *Hart v. Clayton-Parker and Associates, Inc.*, 869 F.Supp. 774, 776 (D. Ariz,  
9 1994); 6 Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, *Federal Practice and*  
10 *Procedure*, § 1422 (1989); *Leatherwood v. Universal Business Service Co.*, 115 F.R.D. 48, 49  
11 (W.D.N.Y. 1987)); see also *Campos v. Western Dental Services, Inc.*, 404 F. Supp.2d 1164, 1169  
12 (N.D. Cal., 2005) ("[w]hether a Plaintiff in an unfair debt collection practices action actually has  
13 outstanding debt is irrelevant to the merits of the FDCPA claim," and therefore a counterclaim  
14 based on an outstanding debt is permissive); and *Jones v. Ford Motor Credit Company*, 358 F.3d  
15 205, 209-10 (2nd Cir. 2004) (Court found that relationship between counterclaims on underlying  
16 debt and Plaintiff's Equal Credit Opportunity Act (ECOA) claims were logically related "only in  
17 the sense that the sale, allegedly on discriminatory credit terms, was the "but for cause" of the  
18 non-payment," and that "[t]he essential facts for proving counterclaims and the ECOA claim are  
19 not so closely related that resolving both sets of issues in one lawsuit would yield judicial  
20 efficiency.")

21 This Court is entirely within its discretion to treat Rapid Cash's counterclaims as  
22 permissive and refuse to exercise jurisdiction over those counterclaims. After all, Rapid Cash's  
23 counterclaims, by themselves, do not meet the jurisdictional requirements of the Eighth Judicial  
24 District Court, i.e. the counterclaims as applied to individual class members neither seek  
25 damages in excess of ten thousand dollars nor equitable relief. Rapid Cash, as evidenced by the  
26 fact that it has filed in excess of sixteen thousand cases in the Las Vegas Justice Court, is well  
27  
28

1 aware that the proper forum in which to bring its claims against individual class members for  
2 amounts due and owing is in the Las Vegas Justice Court. Rapid Cash's counterclaims are  
3 permissive and need not be heard in this Court for risk of injury to Rapid Cash from claims  
4 preclusion. The exercise of this Court's management powers to prevent Rapid Cash's permissive  
5 counterclaims from turning this case into a collection class action would not amount to an abuse  
6 of discretion.

8 **V. The Class's Rule 23 Arguments Are Not Premature.**

9 In order for a defendant to assert class-wide counterclaims, the defendant "would have to  
10 satisfy all Rule 23 criteria" for its counterclaim class, because "whatever adequate representation  
11 exists for a class representative with respect to common issues does not extend to individual  
12 issues arising from counterclaims against individual class members." ALBA CONTE and  
13 HERBERT NEWBERG, NEWBERG ON CLASS ACTIONS § 4:34, 302 (4<sup>th</sup> ed. 2002);  
14 NEWBERG, supra § 3:2 at 217 ("Such a counterclaim, if permitted by the court under  
15 applicable civil procedure rules, would also have to satisfy Rule 23 class criteria.")  
16

17 While Rapid Cash is correct that this is a motion to dismiss counterclaims, rather than an  
18 opposition to class certification, Rapid Cash has attempted to assert counterclaims against a class  
19 of unnamed Plaintiffs and therefore should be held to a higher standard. See Opposition to  
20 Plaintiffs' Motion to Dismiss Counterclaims, p. 15. However, it is not true, as Rapid Cash  
21 asserts, that "Rapid Cash Defendants have included all necessary allegations for certification of a  
22 claim in their counterclaims." Id. at 51-16.  
23

24 To defend against the claims, especially fraud, class members will have to appear  
25 individually:  
26

27 Most significantly, whatever adequate representation exists for a class  
28 representative with respect to common issues does not extend to individual issues

1 arising from counterclaims against individual class members. Thus, individual  
2 class members will have to defend individually against a counterclaim against  
3 them, and they cannot rely on the class representative to defend against their  
individual counterclaim.

4 NEWBERG, supra § 4:34 at 302. Taking Rapid Cash's fraud claim as an example, each  
5 individual member of the class would have to defend against the assertion that "each of the  
6 representations and warranties of each of the Putative Class members and Doe Counter-  
7 defendants set forth in paragraphs 108 to 110 were false at the time they were made and each of  
8 the Putative Class Members and Doe Counter-defendants knew such representations were false  
9 at the time they were made." Defendants' Answer and Counterclaim, p. 11, ¶ 111.

11 [C]ounterclaims in a class action serve to promote the economies of neither the  
12 parties not the court, as envisioned by Rule 13. From the defendant's perspective,  
13 allowing counterclaims against passive class members will invite participation of  
14 numerous counsel who personally represent the various countersued parties . . . .  
This participation will likely add to the complexity of managing the lawsuit and in  
expanding the proceedings in inefficient, duplicative ways.

15 NEWBERG, supra § 4:34, at 304. Based on this and all the arguments and points raised  
16 in the motion to dismiss, Rapid Cash has clearly not met the requirements for asserting a  
17 counterclaim against all class members, and its counterclaims must be dismissed.

18  
19 **VI. Rapid Cash's Counterclaim Class Action Allegations Should Be Stricken.**

20 Rapid Cash lastly suggests that it is allowed to bring counterclaims against the class  
21 pursuant to NRCP 13. Opposition at 17:5-7. However, "strong reasons support a determination  
22 that Rule 13 governing counterclaims is inapplicable in class action suits based on the language  
23 of Rule 13 as well as its underlying policies." NEWBERG, supra § 4:34, at 299. "A court may  
24 properly conclude that absent class members are not opposing or litigating adversaries for  
25 purposes of Rule 13, and therefore Rule 13 is inapplicable in a class context." Id. at 299-300.

26 Here, Rapid Cash has attempted to allege unsupportable class action counterclaims  
27 against a class of unnamed Plaintiffs under NRCP 13. However, based on the class action status  
28 of the underlying lawsuit, these counterclaims are not allowed under NRCP 13 and could never

1 be awarded class status. Accordingly, these allegations are necessarily superfluous and should  
2 be stricken.

### 3 CONCLUSION

4 Rapid Cash has already had its day in court to recover the funds it loaned to the class  
5 members, and it obtained full relief in the form of default judgments, many of which Rapid Cash  
6 even collected upon by garnishing class members' wages. Until this Court declares those  
7 judgments void and sets them aside, Rapid Cash lacks the right to reassert those claims in any  
8 form or forum – particularly a counterclaim designed to hijack this very narrow class action.  
9 The counterclaims are entirely permissive, not compulsory, and this Court would be well within  
10 its discretion to dismiss them without prejudice. Even if its claims were not res judicata and  
11 unripe, dismissal would still be required because they are inadequately pled, and cannot be  
12 alleged against absent class members. Accordingly, and for all the foregoing reasons, Rapid  
13 Cash's Counterclaim must be dismissed in its entirety. But should this Court permit any portion  
14 of those counterclaims to survive, Rapid Cash's counterclaim-class allegations must be stricken  
15 under NRCP 12(f) and 23(d)(4).

16 DATED this 23rd day of February, 2012.

17 Respectfully Submitted by Class Counsel:

18 **LEGAL AID CENTER OF**  
19 **SOUTHERN NEVADA, INC.**

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27 **Class Counsel**  
28



**CERTIFICATE OF MAILING**

I hereby certify that on the 23<sup>rd</sup> day of February, 2012, the foregoing **REPLY TO  
DEFENDANT'S OPPOSITION TO MOTION TO DISMISS DEFENDANTS'  
COUNTERCLAIMS; ALTERNATIVE MOTION TO STRIKE COUNTERCLAIM  
CLASS ACTION ALLEGATIONS** was served on the following person(s) by U.S. Mail and  
through the District Court's e-filing service:

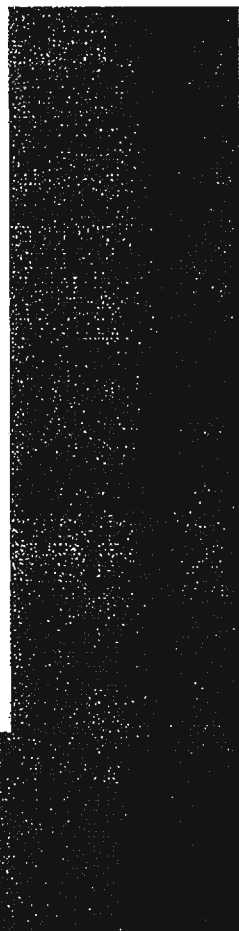
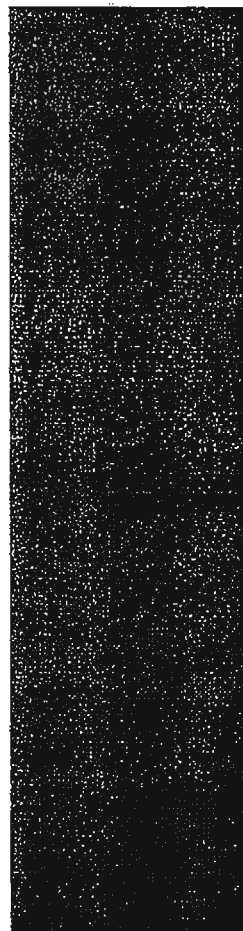
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/s/ Rosie Najera  
An employee of Legal Aid Center of Southern Nevada

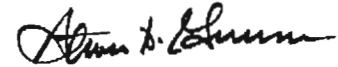


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CLERK OF THE COURT

**RPLY**  
GORDON SILVER  
WILLIAM M. NOALL  
Nevada Bar No. 3549  
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Attorneys for Defendants  
Principal Investments, Inc., d/b/a Rapid  
Cash, Granite Financial Services, Inc., d/b/a  
Rapid Cash, FMMR Investments, Inc., d/b/a  
Rapid Cash, Prime Group, Inc., d/b/a Rapid  
Cash and Advance Group, Inc., d/b/a Rapid  
Cash

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

PRINCIPAL INVESTMENTS, INC. d/b/a  
RAPID CASH; GRANITE FINANCIAL  
SERVICES, INC. d/b/a RAPID CASH; FMMR  
INVESTMENTS, INC. d/b/a RAPID CASH;  
PRIME GROUP, INC. d/b/a RAPID CASH;  
ADVANCE GROUP, INC. d/b/a RAPID CASH;  
MAURICE CARROLL, individually and d/b/a  
ON SCENE MEDIATIONS; VILISIA  
COLEMAN, and DOES I through X, inclusive,

Defendants.

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

**REPLY IN SUPPORT OF RAPID CASH  
DEFENDANTS': (1) MOTION TO  
AMEND CLASS NOTICE; AND (2)  
MOTION TO ENLARGE TIME FOR  
MAILING CLASS NOTICE**

**Hearing Date: February 28, 2012  
Hearing Time: 9:00 a.m.**

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") submit  
this Reply in Support of their: (1) Motion To Amend Class Notice; and (2) Motion to Enlarge

1 Time for Mailing Class Notice.

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

5 DATED this 27 day of February, 2012.

6 GORDON SILVER

7   
8 GORDON SILVER

9 WILLIAM M. NOALL

10 Nevada Bar No. 3549

11 MARK S. DZARNOSKI

12 Nevada Bar No. 3398

13 3960 Howard Hughes Pkwy., 9th Floor

14 Las Vegas, Nevada 89169

15 Tel: (702) 796-5555

16 Attorneys for Defendants

17 Principal Investments, Inc., d/b/a Rapid

18 Cash, Granite Financial Services, Inc., d/b/a

19 Rapid Cash, FMMR Investments, Inc., d/b/a

20 Rapid Cash, Prime Group, Inc., d/b/a Rapid

21 Cash and Advance Group, Inc., d/b/a Rapid

22 Cash

## 23 MEMORANDUM OF POINTS AND AUTHORITIES

### 24 I.

#### 25 PLAINTIFFS FAIL TO ADDRESS THE MERITS OF THE PROPOSED AMENDMENT

26 Other than the timeliness of filing the Motion, Plaintiffs sole basis for opposing the  
27 instant motion is their assumption that the Court will grant their motion to dismiss Rapid Cash's  
28 class-wide counterclaims. Therefore, assuming the counterclaims are not dismissed, such silence  
should be viewed as agreement that the proposed modifications thereto are appropriate.

Further, as set forth in Rapid Cash Defendants' Opposition to Motion to Dismiss  
Counterclaims, even those cases squarely holding that absent class members are not "opposing  
parties" indicated that such counterclaims would be considered at a later stage of the litigation, i.  
e., in the event liability is established on the primary complaint. In re Sugar Industry Antitrust  
Litigation, 73 F.R.D. 322, 349, 22 Fed.R.Serv.2d 634, 1976-2, Trade Cases P 61,215, 1 Fed. R.

1 Evid. Serv. 1219 (D.C.N.Y. 1977) ("In accordance with the procedures outlined in Donson and  
2 Weit, supra, counterclaims may be brought against class members only if and when these class  
3 members intervene or file claims in these actions. Although these counterclaims may not be  
4 asserted against absent class members at this time, it is entirely appropriate that a brief  
5 description of each potential counterclaim be included in the class action notice." Thus, even if  
6 the Court were to find the counterclaims premature pending the filing of a Notice of Claim, the  
7 Class Notice should still disclose the nature of the proposed counterclaim and the theory and  
8 nature of the defense insofar as it is relevant to the decision to opt-out.

9 Further, while Plaintiffs imply that this Court has already determined that the Class  
10 Notice doesn't need to include notice of counterclaims, that is not the case. In fact, the Court  
11 rejected Rapid Cash Defendants' argument that Class Notice was premature because Rapid Cash  
12 Defendants had not yet filed its Answer and Counterclaim. The Court emphasized it could only  
13 craft and approve a Class Notice based upon the pleadings that had been filed.

14 Rapid Cash Defendants' Answer and Counterclaim was filed on January 4, 2012. This is  
15 the first opportunity this Court has to determine what disclosures should be in the Class Notice  
16 based upon that filing.

## 17 II.

### 18 LATE FILING SHOULD NOT PRECLUDE THE COURT GRANTING THE 19 REQUESTED RELIEF

20 Counsel acknowledges that the instant motion was filed after the January 29, 2012 date set for  
21 mailing in the Court Order dated January 13, 2012. As set forth in the Motion and the attached  
22 Declaration of Mark S. Dzarnoski (Exhibit A hereto), Notice of Entry was made by mail dated  
23 January 17, 2012 which made service effective on January 20, 2012. Rust Consulting Inc. has  
24 indicated that it requires 2 to 3 weeks from receipt of the final Class Notice in Word format to  
25 accomplish a mailing of this size. The Class Notice could not have been mailed by January 29,  
26 2012 under any event.

27 Undersigned counsel does acknowledge that a Motion to Enlarge Time should have been  
28

1 filed on or before January 27 or January 30, 2012.<sup>1</sup> Indeed, by email dated January 11, 2012,  
2 Rapid Cash Defendants notified Plaintiffs that it intended to file a "Motion for the Court to  
3 clarify or reconsider the content of the class notice." [See Exhibit 2 to the Opposition]. This was  
4 prior to the proposed Order being submitted to the Court, signed by the Court and noticed to  
5 Rapid Cash Defendants and it was prior to Plaintiffs filing a Motion to Dismiss.

6 Plaintiffs suggest that Rapid Cash Defendants should be called to account for a Proposed  
7 Order on Class Notice not being filed before January 13, 2012. However, it is clear that both  
8 Plaintiffs and Defendants can be considered equally to blame for this oversight. Rapid Cash  
9 Defendants indicated on December 6, 2011 that it was prepared to sign off on the proposed  
10 Order. [See Exhibit 2 to the Opposition]. No further communication occurred regarding this  
11 proposed Order until January 10, 2012. [See Exhibit 2 to the Opposition]. Yet, Plaintiffs had  
12 communicated with counsel for Rapid Cash Defendants on December 28, 2011 by email [Exhibit  
13 B hereto] and December 29, 2011 by letter demanding that an Answer be filed within three (3)  
14 days [Exhibit C hereto]. In neither of those communications did Plaintiffs address the issue of  
15 the Class Notice Order.

16 Further, the Court is advised that substantially all of the last three weeks of December,  
17 2011, undersigned counsel was preparing for depositions and a two week evidentiary hearing due  
18 to commence on January 3, 2012 in Eliades et al v. Eliades et al, CASE NO. A639230  
19 (coordinated with Case No. A606362 and A651018) in Department XI ("Eliades Matter"). This  
20 Court is acutely aware of unusual circumstances presented by that case in which undersigned  
21 counsel was subpoenaed to appear as a witness for proceedings on January 12, 23 and 26, 2012.  
22 Notwithstanding the depositions and hearing preparation, on January 4, 2012, Rapid Cash  
23 Defendants filed an Answer and Counterclaim. On December 26, 2012, Plaintiffs filed their  
24 Motion to Dismiss which raised issues relating to the amended class notice that Rapid Cash  
25 Defendants intended to request.

26 Also, counsel for Rapid Cash Defendants had a complicated post-trial closing brief due  
27 on January 30, 2012 in Aristocrat Technologies, Inc. v. Young, United States District Court,

28 <sup>1</sup> January 29, 2012 was a Sunday.

District of Nevada, Case No. 2:09-cv-00348-PMP-LRL.<sup>2</sup>

If the Court believes the failure to file a Motion to Amend Class Notice and Motion to Enlarge Time for Mailing Class Notice in a more timely fashion is sanctionable, undersigned counsel asks that the sanctions be imposed personally against him rather than his client. Just as counsel advised Plaintiffs of the intent to file a Motion to Amend Class Notice, so too did he advise his clients. He also advised that he would file the Motion to Enlarge Time. At no time could counsel's clients have had sufficient time to mail Class Notices by January 29, 2012.

### III.

### CONCLUSION

For the above and foregoing reasons, Rapid Cash Defendants instant Motion should be granted.

DATED this 21 day of February, 2012.

GORDON SILVER

GORDON SILVER

WILLIAM M. NOALL

Nevada Bar No. 3549

MARK S. DZARNOSKI

Nevada Bar No. 3398

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

Tel: (702) 796-5555

Attorneys for Defendants

Principal Investments, Inc., d/b/a Rapid

Cash, Granite Financial Services, Inc., d/b/a

Rapid Cash, FMMR Investments, Inc., d/b/a

Rapid Cash, Prime Group, Inc., d/b/a Rapid

Cash and Advance Group, Inc., d/b/a Rapid

Cash

### OF COUNSEL:

Alan S. Kaplinsky

Martin C. Bryce, Jr.

Ballard Spahr LLP

1735 Market Street, 51<sup>st</sup> Floor

Philadelphia, PA 19103

Tel: 215.665.8500/Fax: 215.864.8999

<sup>2</sup> This matter was a bench trial in which Judge Pro requested briefing of legal and factual issues presented during trial with citations to the testimony and exhibits supporting each party's position.

1  
2 RECEIPT OF COPY

3 A RECEIPT OF COPY OF the REPLY IN SUPPORT OF RAPID CASH  
4 DEFENDANTS': (1) MOTION TO AMEND CLASS NOTICE; AND (2) MOTION TO  
5 ENLARGE TIME FOR MAILING CLASS NOTICE, is hereby acknowledged by the  
undersigned this \_\_\_\_ day of February, 2012.

6 Legal Aid Center of Southern Nevada, Inc.

7 (Will be filed separately)

8 Dan L. Wulz, Esq.  
9 Venicia Considine, Esq.  
800 South Eighth Street  
Las Vegas, NV 89101  
10 Fax: (702) 388-1642

11 Kemp, Jones & Coulthard, LLP

12 (Will be filed separately)

13 J. Randall Jones, Esq.  
14 Jennifer C. Dorsey, Esq.  
3800 Howard Hughes Parkway, 17<sup>th</sup> Floor  
Las Vegas, NV 89169  
15 Fax: (702) 385-6001



# EXHIBIT A

001007

# EXHIBIT A

DECL  
 GORDON SILVER  
 WILLIAM M. NOALL  
 Nevada Bar No. 3549  
 Email: [wnoall@gordonsilver.com](mailto:wnoall@gordonsilver.com)  
 MARK S. DZARNOSKI  
 Nevada Bar No. 3398  
 Email: [mdzarnoski@gordonsilver.com](mailto:mdzarnoski@gordonsilver.com)  
 3960 Howard Hughes Pkwy., 9th Floor  
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 Tel: (702) 796-5555  
 Fax: (702) 369-2666  
 Attorneys for Defendants  
 Principal Investments, Inc., d/b/a Rapid  
 Cash, Granite Financial Services, Inc., d/b/a  
 Rapid Cash, FMMR Investments, Inc., d/b/a  
 Rapid Cash, Prime Group, Inc., d/b/a Rapid  
 Cash and Advance Group, Inc., d/b/a Rapid  
 Cash

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

**DECLARATION OF MARK S.  
 DZARNOSKI IN SUPPORT OF MOTION  
 TO AMEND CLASS NOTICE, MOTION  
 TO ENLARGE TIME FOR MAILING  
 CLASS NOTICE AND APPLICATION  
 FOR ORDER SHORTENING TIME**

I, Mark S. Dzarnoski hereby declare as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada and am a  
 shareholder with the law firm of Gordon Silver, which maintains an office at 3960 Howard  
 Hughes Parkway, 9th Floor, Las Vegas, Nevada 89169.

1           2.     Gordon Silver is presently counsel of record for Defendants Principal  
2 Investments, Inc., d/b/a Rapid Cash, Granite Financial Services, Inc., d/b/a Rapid Cash, FMMR  
3 Investments, Inc., d/b/a Rapid Cash, Prime Group, Inc., d/b/a Rapid Cash and Advance Group,  
4 Inc., d/b/a Rapid Cash (the "Rapid Cash Defendants"). I make this declaration in support of  
5 Rapid Cash Defendants' Motion to Amend Class Notice and Motion to Enlarge Time for Mailing  
6 Class Notice in the above-entitled action and in support of the application for order shortening  
7 time for the hearing of the Motion.

8           3.     I have personal knowledge of the facts herein and am competent to testify thereto,  
9 except as to those matters that are stated on information and belief, and as to those matters I  
10 believe them to be true.

11          4     On or about December 6, 2011, I had reviewed a proposed Order on Class Notice  
12 and requested that Plaintiffs agree to a mailing date of January 15, 2012. In the email attached to  
13 Plaintiffs' Opposition at Exhibit 2, I indicated that I would send an approved version to them the  
14 following day.

15          5.     During most of December 2011, I was heavily involved in preparing for  
16 depositions and a two week evidentiary hearing scheduled to start on January 3, 2012 in Eliades  
17 et al v. Eliades et al, CASE NO. A639230 (coordinated with Case No. A606362 and A651018)  
18 in Department XI ("Eliades Matter").

19          6.     Clearly, I did not sign the proposed Order and send it to Plaintiffs' counsel on  
20 December 7, 2011. The matter slipped my mind and I do not recall hearing anything more from  
21 Plaintiffs regarding the matter until I received an email dated January 10, 2012 which is attached  
22 as Exhibit 2 to Plaintiffs' Opposition.

23          7.     By the time I had received the January 10, 2012 email referenced above, I already  
24 received from Plaintiffs an email dated December 28, 2011 [Exhibit B to Reply] and a letter  
25 dated January 29, 2011 demanding that an Answer be filed within three (3) days [Exhibit C to  
26 Reply]. Neither of these communications referenced the proposed Order on Class Notice.

27          8.     Also, Rapid Cash Defendants' Answer and Counterclaim was filed on January 4,  
28 2012. Because the Answer and Counterclaim had been filed, by email dated January 11, 2012, I

1 notified Plaintiffs that I intended to file a "Motion for the Court to clarify or reconsider the  
2 content of the class notice." [See Exhibit 2 to the Opposition].

3 9 I learned that the Court issued its Order dated January 13, 2012 by a Notice of  
4 Entry mailed January 17, 2012 which made service effective on January 20, 2012.

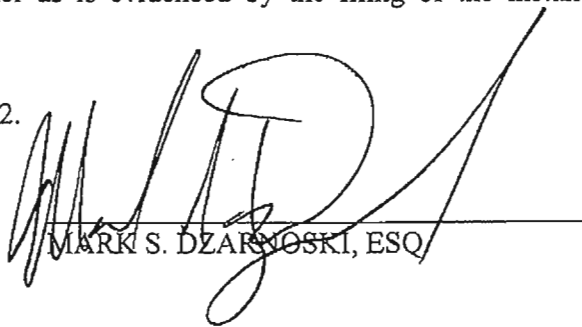
5 10. Also at or about that time, I learned that Rust Consulting Inc. indicated that it  
6 requires 2 to 3 weeks from receipt of the final Class Notice in Word format to accomplish a  
7 mailing of the size contemplated. It was my full intention to file a Motion to Amend Class  
8 Notice and to Enlarge Time for Mailing by January 29, 2012.

9 11. This Court is acutely aware of unusual circumstances presented by the Eliades  
10 Matter in which undersigned counsel was subpoenaed to appear as a witness for proceedings on  
11 January 12, 23 and 26, 2012. Beyond the scheduled witness dates, this matter disrupted my daily  
12 work performance in many ways.

13 12. Further, I had a complicated post-trial closing brief due on January 30, 2012 in  
14 Aristocrat Technologies, Inc. v. Young, United States District Court, District of Nevada, Case  
15 No. 2:09-cv-00348-PMP-LRL. This was a bench trial following which Judge Pro ordered post-  
16 trial briefing which necessitated review of all trial transcripts and exhibits not to mention  
17 significant further legal research.

18 13. Rapid Cash Defendants most certainly did not simply ignore your Order of January  
19 13, 2012. They acted in conformity with information I had provided to them. Nor was it my  
20 intent to simply ignore the Court's Order either as is evidenced by the filing of the instant  
21 motion, albeit late.

22 DATED this 27 day of February, 2012.

23  
24   
25  
26  
27  
28

MARK S. DZARNOSKI, ESQ

# EXHIBIT B

001011

001011

# EXHIBIT B

**Mark S. Dzarnoski**

---

**From:** Dan Wulz <DWulz@lacsns.org>  
**Sent:** Wednesday, December 28, 2011 5:04 PM  
**To:** Mark S. Dzarnoski  
**Cc:** Venicia Considine; Jennie Dorsey  
**Subject:** Rapid Cash

Mark –

I believe Rapid Cash's Answer is overdue. Do you see it otherwise?

Since 1956  
**LEGAL AID CENTER**  
■■■■ of Southern Nevada

Dan L. Wulz, Esq.  
Deputy Executive Director  
Legal Aid Center of Southern Nevada, Inc.  
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[www.lacsns.org](http://www.lacsns.org)

# EXHIBIT C

001013

EXHIBIT C

Since 1958  
**LEGAL AID CENTER**  
■ ■ ■ ■ of Southern Nevada

December 29, 2011

RECEIVED

BY: \_\_\_\_\_

Mark S. Dzarnoski, Esq.  
GORDON SILVER  
3960 H. Hughes Pkwy., 9<sup>th</sup> Floor  
Las Vegas, NV 89169

RE: Harrison v. Rapid Cash

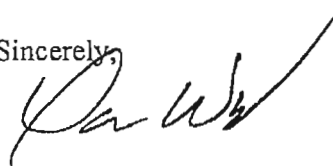
Dear Mark:

Although your motion to compel arbitration and stay proceedings did not cite that it was brought pursuant to any Rule of Civil Procedure, defenses prior to pleading are governed by NRCP 12. Pursuant to NRCP 12(a)(4)(A), an Answer is due 10 days after notice of the court's action denying a motion.

As notice of entry of order denying the motion to compel arbitration was given on December 1, 2011, we view Rapid Cash's Answer as being long overdue.

Please consider this a 3-day notice of intent to take default.

Sincerely,



Dan L. Wulz, Esq.  
Deputy Executive Director

cc: Jennifer C. Dorsey, Esq.