

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

TITLEMAX OF NEVADA, INC., A
NEVADA CORPORATION,

Appellant,

vs.

THE STATE OF NEVADA
DEPARTMENT OF BUSINESS AND
INDUSTRY, FINANCIAL
INSTITUTIONS DIVISION,

Respondent.

Supreme Court No. 69807
District Court Case No. A-719576
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JOINT APPENDIX
(VOLUME II of III)
(JA000200 – JA000386)

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CERTIFICATE OF SERVICE

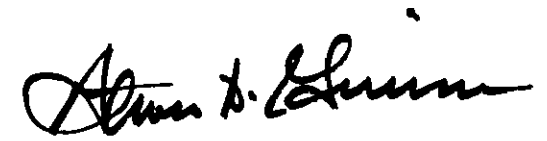
I, the undersigned, hereby certify that I electronically filed the forgoing **JOINT APPENDIX (VOLUME II OF III)** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on August 2, 2016.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System:

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DISTRICT COURT
CLARK COUNTY, NEVADA

TITLEMAX OF NEVADA, INC., a Nevada
corporation,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION,

Defendant.

Case No.: A-15-719176-C

Dept. No.: XXI

**PLAINTIFF'S REPLY IN SUPPORT OF
THE MOTION FOR PRELIMINARY
INJUNCTION**

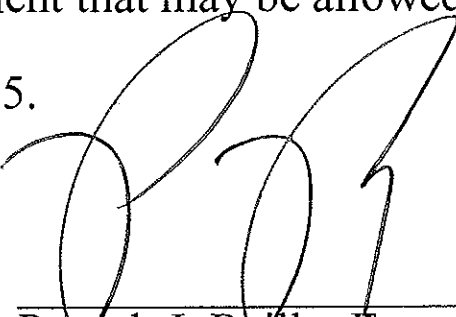
Plaintiff TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax"), by and through its attorneys of record, the law firm of Holland & Hart LLP, hereby submit this Reply in Support of its Motion for Preliminary Injunction ("Motion") and in response to the Opposition to Motion for Preliminary Injunction ("Opposition") filed by the Defendant State of Nevada, Department of Business and Industry Financial Institutions Division (the "FID").

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///

1 This Reply is based upon the attached Memorandum of Points and Authorities, the papers
2 and pleadings on file herein, and oral argument that may be allowed at the evidentiary hearing.

3 DATED this 9th day of October 2015.

4 
5 _____
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11 *Attorneys for Plaintiff*

12 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
13 **PLAINTIFF'S REPLY IN SUPPORT OF ITS**
14 **MOTION FOR PRELIMINARY INJUNCTION**

15 **I.**

16 **INTRODUCTION**

17 This is a case about the interpretation of certain laws and regulation. Yet, as
18 demonstrated in the Opposition, it is also about the separation of powers. The FID's jurisdiction
19 is limited to licensing, investigation, and enforcement. *See generally* NRS Chapter 604A. It is
20 not the place of the FID to rewrite statutes or otherwise make public policy—that is the job of the
21 Legislature. It is not the place of the FID to be the final adjudicator of the interpretation of a
22 statute—that is the job of the judiciary. Yet, in the Opposition, the FID effectively contends that
23 it should have the role of the other two branches. Indeed, the FID wants, *without any oversight*,
24 to interpret the law as it deems fit, enforce its interpretation of the law on licensees, discipline
25 licensees pursuant to its interpretation of the law, and not allow licensees any viable process to
26 dispute the FID's interpretation of the law. This hubris cannot be tolerated, and the separate
27 branches of government must be respected.

28 Importantly, this case should be simple and resolved quickly. There are no disputes
about the facts. This matter involves pure questions of law based upon the proper interpretation
of NRS 604A.210, NRS 604A.445, and NAC 604A.230. Yet, the FID is not willing to wait for

1 the Court to interpret these laws. Rather, after the instant Motion was filed, on October 8,
2 2015, the FID filed an Administrative Complaint For Disciplinary Action against TitleMax that
3 seeks revocation or suspension of TitleMax's license. See Opposition, Exh. C. It is baffling why
4 the FID cannot wait approximately six weeks for the Court to issue an opinion.¹ As set forth in
5 the Motion and *infra*, TitleMax has established that all the requirements have been met and that a
6 preliminary injunction should be issued without delay to maintain the *status quo ante* until this
7 Court has rendered a decision on the appropriate interpretation of the disputed statutes and
8 regulation.

9 II.

10 LEGAL ANALYSIS

11 Just days ago, the FID filed an Administrative Complaint For Disciplinary Action against
12 TitleMax that seeks revocation or suspension of TitleMax's license based upon the very
13 violations that are the subject of this litigation. It is undisputed that the FID is seeking to
14 suspend or revoke TitleMax's license based upon statutes and regulations where the parties
15 merely disagree about the proper interpretation and application. To obtain a resolution of that
16 dispute, TitleMax filed this litigation and, in good faith, asserted no claims for money damages,
17 attorney's fees, or even costs of suit. See Complaint and Amended Complaint. Yet, TitleMax is
18 being punished by the FID—with administrative sanctions sought—simply for seeking a
19 determination from this Court as to what the law is. Thus, the Court should immediately and
20 temporarily enjoin the FID from pursuing disciplinary action against TitleMax based upon the
21 alleged violations that are the subject of this litigation, pending resolution of this Declaratory
22 Relief action. As discussed below and in the Motion, TitleMax has established that all the
23 requirements have been met and that a preliminary injunction should be issued without delay to
24 maintain the *status quo ante* until this Court has rendered a decision on the appropriate
25 interpretation of the disputed statutes and regulation.

26
27 ¹ TitleMax has repeatedly asked the FID to agree to set a briefing schedule on cross motions for summary judgment,
28 but the FID has refused to do so. No matter, TitleMax intends to file a motion for summary judgment within one week.

1 **A. TitleMax Has a Reasonable Likelihood of Success on the Merits.**

2 In order to obtain a preliminary injunction, a party must establish that it has a reasonable
3 likelihood of prevailing on the merits of the case. *See Dixon v. Thatcher*, 103 Nev. 41, 415, 742
4 P.2d 1029, 1029 (1987). Here, as set forth below, TitleMax has a strong likelihood of prevailing
5 on its declaratory relief claims.

6 **1. The FID’s Administrative Exhaustion Argument Is So Extremely Meritless**
7 **That Sanctions May Be Warranted.**

8 The FID maintains that TitleMax failed to exhaust administrative remedies prior to suit,
9 thereby precluding this Court from interpreting NRS 604A.210, NRS 604A.445, and NAC
10 604A.230. This argument is utterly without merit and ignores two binding Nevada Supreme
11 Court cases (in which it participated) as well as common sense. Not only is there no
12 administrative process to object to the FID’s interpretation of the law, but it is futile for TitleMax
13 to seek any administrative remedy from the FID. Further, there is no dispute over facts, but
14 merely a dispute as to how Nevada law should be interpreted. Yet, following the FID’s odd
15 reasoning, TitleMax must literally place its license at risk to obtain an interpretation of law from
16 the exact agency that TitleMax believes is misinterpreting that law. This “logic” has been
17 rejected repeatedly by Nevada courts, most recently by the Nevada Supreme Court in a published
18 opinion involving the FID.

19 It is true that generally a party must first exhaust available administrative remedies before
20 benefiting from district court relief from an agency decision. *See Malecon Tobacco, LLC v. State*
21 *ex rel. Dept. of Taxation*, 118 Nev. 837, 839, 59 P.3d 474 (2002) citing *State, Dep’t of Taxation v.*
22 *Scotsman Mfg. Co.*, 109 Nev. 252, 254, 849 P.2d 317, 319 (1993). However, there are two
23 notable exceptions to exhaustion doctrine—**one of them is when a party seeks interpretation of**
24 **a statute.** *Malecon Tobacco*, 118 Nev. at 839, 59 P.3d at 476. The other exception occurs “**when**
25 **a resort to administrative remedies would be futile.**” *Id.* (emphasis added).

26 Here, both exceptions are easily met. First, TitleMax is unquestionably seeking an
27 interpretation of NRS 604A.210, NRS 604A.445, and NAC 604A.230 from this Court. That is
28 the heart of this declaratory relief action. TitleMax is not seeking money damages, trying to set

1 aside an agency decision, or even recover attorney's fees and costs. Also, this is not a case where
2 the parties disagree about facts—it is solely about the proper interpretation of NRS 604A.210,
3 NRS 604A.445, and NAC 604A.230.

4 As to futility, it is well-settled under Nevada law that an aggrieved party is not obligated
5 to exhaust its administrative remedies if resorting to such remedies would be futile. *See, e.g.,*
6 *Malecon Tobacco*, 118 Nev. at 839, citing *Karches v. City of Cincinnati*, 38 Ohio St.3d 12, 526
7 N.E.2d 1350, 1355-56 (1988) (where pursuit of administrative remedies would be futile or
8 unusually onerous, it was unnecessary to exhaust administrative remedies in order to challenge
9 the constitutionality of a zoning ordinance as applied to a specific parcel of property) and
10 *Memorial Hosp. v. Dept. of Rev. & Tax.*, 770 P.2d 223, 226 (Wyo. 1989); *see also State v.*
11 *Scotsman Mfg. Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993) (“Neither will the exhaustion
12 doctrine deprive the court of jurisdiction where initiation of administrative proceedings would be
13 futile.”); *see also Engelmann v. Westergard*, 98 Nev. 348, 353, 647 P.2d 385, 389 (1982).
14 Resorting to administrative remedies is “futile” if there is certainty of an adverse decision or the
15 agency has “evidenced a strong position on the issue together with an unwillingness to
16 reconsider.” *James v. United States*, 824 F.2d 1132, 1139 (D.C. Cir. 1987); *Randolph-Sheppard*
17 *Vendors v. Weinberger*, 795 F.2d 90, 105 (D.C. Cir.1986).

18 Tellingly, the FID neglects to mention these two exceptions in its Motion. This omission
19 is glaring because the FID regularly raises—and loses—this same argument in other cases. While
20 there has been a variety of trial court orders against the FID on this exact issue, there are two
21 Nevada Supreme Court cases that are binding precedent, which are *Department of Bus. & Indus.,*
22 *Fin. Insts. Div. v. Check City Partnership, LLC*, — Nev. —, 337 P.3d 755 n.5 (Nev. 2015) and
23 *Dep't of Bus. & Indus., Fin. Insts. Div. v. Nevada Ass'n Servs., Inc.*, 128 Nev. —, —, 294
24 P.3d 1223, 1228 (2012). The FID was a party litigant in both cases—and lost both of them as to
25 this issue.

26 In *Check City*, a licensee of the FID filed a complaint for declaratory relief in the Eighth
27 Judicial District seeking clarification of NRS 604A.425. The FID filed a motion to dismiss,
28 arguing that Check City had not exhausted its administrative remedies. The district court rejected

1 these arguments and the Nevada Supreme Court upheld this portion of the trial court's decision.

2 The Court provided:

3 The FID argues that Check City has not exhausted its
4 administrative remedies and that this matter does not
5 present a justiciable case or controversy. We disagree.
6 Exhaustion is not required where, as here, the only issue is
7 the interpretation of a statute. *Malecon Tobacco, LLC v.*
8 *Dep't of Taxation*, 118 Nev. 837, 839, 59 P.3d 474, 475–76
9 (2002). Additionally, the possibility of a license
10 suspension—a consequence Check City might have faced if
11 it failed to comply with the FID's interpretation of NRS
12 604A.425—may constitute irreparable harm for the
13 purpose of granting a preliminary injunction, *see Dep't of*
14 *Bus. & Indus., Fin. Insts. Div. v. Nev. Ass'n Servs., Inc.*,
15 128 Nev. —, —, 294 P.3d 1223, 1228 (2012), which
16 would be sufficient to form a justiciable case or
17 controversy, *see Doe v. Bryan*, 102 Nev. 523, 525, 728
18 P.2d 443, 444 (1986).

19 337 P3d at n. 5. This precedent is binding against the FID and is dispositive of the FID's
20 argument of exhaustion.

21 In addition, the aforementioned *NAS* litigation—first before Judge Susan Johnson at the
22 district court level and then on appeal before the Nevada Supreme Court—is directly on point and
23 dispositive of this issue. In that case, the FID issued an advisory opinion, interpreting a portion of
24 NRS Chapter 116—a chapter of the Nevada Revised Statutes over which the FID has no
25 jurisdiction. Nevada Association Services and others sued, and the FID raised its traditional
26 “failure to exhaust” defense. Judge Johnson flatly rejected the FID's argument, holding that not
27 only was administrative exhaustion not required, but the threat of regulatory discipline constituted
28 irreparable harm justifying the issuance of a preliminary injunction. In short, Judge Johnson held
that licensees should not be forced to risk disciplinary action when it appears that the agency is
indeed going to enforce a given rule. Order (Dec. 10, 2010), at p. 14-15, a copy of which is
attached hereto as **Exhibit “1”**. This order was affirmed by the Nevada Supreme Court in a
published opinion. *NAS*, 128 Nev. —, —, 294 P.3d 1223, 1228.

The FID contends that TitleMax must first participate in an administrative hearing, risk
administrative discipline, and only then can it petition the court for judicial review pursuant to
NRS 233B.130 if TitleMax is not satisfied with the outcome of the administrative hearing. Opp.

1 at 6. Given that such an administrative proceeding would require no findings of fact only an
2 interpretation of law, this is a pointless exercise. Just like in Check City and NAS, taking these
3 steps would be futile and are not required because this case exclusively involves the interpretation
4 of law. This is especially true when the FID has insinuated that the administrative hearing will
5 result in suspension, suggesting the very rigged game that the FID wants.

6 The FID's position is extremely troubling. It has recently lost two identical cases before
7 the Nevada Supreme Court—NAS and Check City—as it pertains to administrative exhaustion.
8 Yet, it continues to take the same position before this Court, even though it is now frivolous based
9 upon those two published and binding decisions. Worse yet, **the FID failed to alert this Court**
10 **to those binding cases in its Opposition brief**. The FID does not explain why it failed to bring
11 to this Court's attention that binding precedent. It certainly cannot claim ignorance, as it has
12 participated in and lost both times as to that issue. Therefore, not only must this argument be
13 summarily rejected, but the FID's counsel should be reminded of its obligations under the Rules
14 of Professional Conduct.²

15 **2. TitleMax is Likely To Succeed on Its Declaratory Relief Claim Regarding**
16 **NAC 604A.230(1)(a).**

17 In arguing that the FID's interpretation of NAC 604A.230(1)(a) has merit, the FID failed
18 to even once address the actual language of the regulation at issue. Opp. at 12-13. Yet, the
19 FID's silence as to the regulation at issue, **along with** the equally deafening silence on the basic
20 law of borrowers and guarantors, unequivocally demonstrates the FID's interpretation of NAC
21 604A.230(1) is without merit.

22 The parties do not dispute that TitleMax allows co-borrowers on its title loans. Thus, the
23 sole issue is whether the presence of a co-borrower on a title loan violates NAC
24 604A.230(1)(a)—the alleged violation set forth in the reports of examination. In the Opposition,
25

26 ² Specifically, NRPC 3.1 provides "lawyer shall not bring or defend a proceeding, or assert or controvert an issue
27 therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument
28 [f]ail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly
adverse to the position of the client and not disclosed by opposing counsel."

1 the FID does not even attempt to argue that the existence of a co-borrower violates NAC
2 604A.230(1)(a). This is because the FID's position is wrong.

3 NAC 604A.230(1)(a) provides:

4 1. A licensee shall not:

5 (a) Require or accept a **guarantor** to a transaction entered into
6 with a customer.

7 NAC 604A.230(1)(a)(emphasis added). This provision is unambiguous and must be interpreted
8 according to its plain language, which only prohibits having a guarantor on a title loan. *See, e.g.,*
9 *We The People Nev. ex rel. Angle v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1170 (2008)
10 (explaining that this court interprets unambiguous language "in accordance with its plain
11 meaning"); *State Dep't of Ins. v. Humana Health, Ins.*, 112 Nev. 356, 360 (1999). Thus, NAC
12 604A.230(1)(a) has no application to co-borrowers. A co-borrower and a guarantor are not the
13 same—a co-borrower is a principal obligor, while a guarantor is a secondary obligor. *See, e.g.,*
14 RESTATEMENT (THIRD) OF SURETYSHIP & GUARANTY §15.

15 As a matter of law, there cannot be a violation of NAC 604A.230(1)(a) based upon the
16 mere existence of a co-borrower, which is fatal to the FID's interpretation of the regulation.
17 Thus, TitleMax will likely succeed on declaratory relief claim and the Court should enjoin the
18 FID from pursuing disciplinary action against TitleMax based upon the alleged violations that
19 are the subject of this litigation.

20 **3. TitleMax is Likely To Succeed on Its Declaratory Relief Claim Regarding**
21 **NRS 604A.210 and NRS 604A.445.**

22 Despite the FID's contentions, TitleMax is also likely to prevail on its declaratory relief
23 claim that it is not in violation of NRS 604A.210 or NRS 604A.445 when the continued accrual
24 of contractual simple interest occurs during a grace period. Again, in the very limited argument
25 set forth by the FID in the Opposition, the FID seems utterly confused as to the purpose of this
26 lawsuit and argues points of fact—completely ignoring the actual statutes at issue. Indeed, the
27 FID argues as if there are questions of fact, rather than a legal dispute as to the interpretation of
28 specific laws as applied to those undisputed facts.

1 Rather than set forth arguments of why its interpretation of law is correct, the FID merely
2 cites its interpretation as if it is correct. For example, there is no dispute that TitleMax charges
3 simple interest during the grace period. Yet, the FID argues this fact with vigor as if it needs to
4 be proven, then simply states its conclusion, without any legal authority, that this is a violation of
5 NRS 604A.210. Opp., 19-24. Yet, the FID must demonstrate how NRS 604A.210 can be read
6 to not allow interest to be charged during the grace period. The FID did not do so because the
7 FID cannot support this interpretation. Rather, as set forth in the Motion, the canons of statutory
8 interpretation directly contradict the FID's position.

9 NRS 604A.210 provides:

10 The provisions of this chapter do not prohibit a licensee from offering a customer
11 a grace period on the repayment of a loan or an extension of a loan, except that
the licensee shall not charge the customer:

- 12 1. Any fees for granting such a grace period; or
- 13 2. Any additional fees or additional interest on the outstanding loan
14 during such a grace period.

15 NRS 604A.210 (emphasis added). To support its interpretation that NRS 604A.210(2) prohibits
16 the accrual of any interest on the outstanding loan during a grace period, the FID must
17 completely strike the word "additional" from the statute and change it to "any". Yet, this is
18 improper. The FID cannot rewrite the unambiguous words of the statute. *Southern Nev.*
19 *Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (quotation
20 omitted) (courts must consider a statute's provisions "in a way that would not render words or
21 phrases superfluous or make provisions nugatory.")

22 Moreover, without any explanation, the FID claims that TitleMax admits the loans are
23 not fully amortized, contending that the loan must be fully amortized. Opp. at 11:10-12. Yet,
24 this is not accurate. NRS 604A.445 provides that the "original term of a title loan may be up to
25 210 days if...the payments are calculated to ratable and fully amortize the entire amount of
26 principal and interest payable..." This does not require that the grace period be amortized. This
27 is just another example of the FID rewriting the plain language of a statute to serve its own
28 political purposes.

1 Because TitleMax will likely succeed on this declaratory relief claim and the FID is
2 already taking enforcement action against TitleMax, the Court should preliminarily enjoin the
3 FID from pursuing disciplinary action against TitleMax based upon the alleged violations that
4 are the subject of this litigation.

5 **B. TitleMax Will Suffer Irreparable Injury if the FID Continues Enforcement Actions.**

6 The FID's commencement of an administrative action after receiving the underlying
7 Motion for Preliminary Injunction is extremely telling. It is plain that the FID wants to fabricate
8 an administrative proceeding and force "compliance" before this Court even has a chance to
9 interpret the law. It is forum shopping and gamesmanship, plain and simple. And it is wrong.

10 The FID seems to argue that TitleMax would not be irreparably harmed if it is allowed to
11 continue its enforcement action against TitleMax. The FID reasons that TitleMax would be
12 allowed to seek an injunction after the FID issues a suspension. Opp. 14:6-11. This is absurd.
13 The threat of suspension alone warrants injunctive relief. The FID knows this because it was
14 party to a published Nevada Supreme Court case whereby the Court concluded that the threat of
15 administrative discipline was sufficient to create irreparable harm because the FID holds the
16 power to suspend or revoke a license. NAS, 128 Nev. —, 294 P.3d 1223. Forcing TitleMax to
17 endure an administrative hearing with the threat of discipline means that TitleMax must place its
18 license at risk simply to obtain an interpretation of law. That is precisely what NAS and Check
19 City forbid.

20 Rather than deal with the clear precedent that establishes the irreparable harm that
21 TitleMax will suffer,³ the FID pretends that TitleMax "alleges that the statutory administrative
22 remedies enacted by the Legislature are the proposed causes of its asserted irreparable harm."
23 This is not accurate. Rather, the irreparable harm is forcing TitleMax to endure an administrative
24 hearing—with the attendant threat of administrative discipline and possible suspension—merely
25 to obtain an interpretation of law. Because TitleMax will suffer immediate, irreparable harm if

26 ³ The Nevada Supreme Court has repeatedly maintained that there would be an irreparable injury to a business
27 when an act unreasonably interferes with the business or destroy its credits or profits. See, e.g., Sobol v. Capital
28 Mgmt. Consultants, Inc., 102 Nev. 444, 446, 726 P.2d 335, 337 (1986); State, Dept. of Business and Industry,
Financial Institutions Div. v. Nevada Ass'n Services, 128 Nev. Adv. Op. 34, 294 P.3d 1223 (2012); Finkel v.
Cashman Professional, Inc., 128 Nev. Adv. Op. 6, 270 P.3d 1259 (2012).

1 the FID is allowed to continue its steps in disciplining TitleMax—merely over a disagreement as
2 to the meaning of two statutes and a regulation—injunctive relief is warranted.

3 **C. The Required Bond Should Be Nominal.**

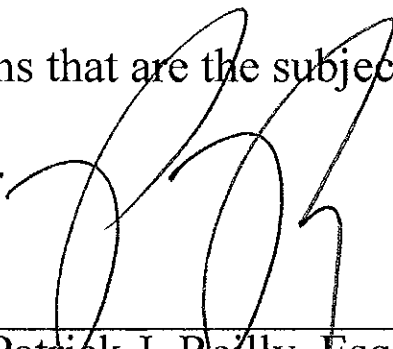
4 Finally, there only should be a nominal bond requirement for the issuance of an
5 injunction. TitleMax simply seeks to maintain the *status quo ante*. The preliminary injunction
6 would cause no injury to the FID, especially given that TitleMax intends to file a dispositive
7 motion in this matter within one week. Thus, the Court should require a nominal bond, not to
8 exceed the sum of \$500.00.

9 **III.**

10 **CONCLUSION**

11 Because TitleMax enjoys a likelihood of success on the merits of its claim for declaratory
12 relief, and because it will suffer irreparable harm if the FID proceeds with disciplinary action, a
13 preliminary injunction should be granted to enjoin the FID from pursuing disciplinary action
14 against TitleMax based upon alleged violations that are the subject of this litigation.

15 DATED this 9th day of October 2015.

16 
17 _____
18 Patrick J. Reilly, Esq.
19 Joseph G. Went, Esq.
20 HOLLAND & HART LLP
21 9555 Hillwood Drive, Second Floor
22 Las Vegas, Nevada 89134

23 *Attorneys for Plaintiff*
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2015, a true and correct copy of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF THE MOTION FOR PRELIMINARY INJUNCTION** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Adam Paul Laxalt
Attorney General
Christopher A. Eccles
Deputy Attorney General
David J. Pope
Sr. Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
Email: ceccles@ag.nv.gov
dpope@ag.nv.gov
Attorneys for Defendant

☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

☐ Email: by electronically delivering a copy via email to the following e-mail address:

☐ Facsimile: by faxing a copy to the following numbers referenced below:


An Employee of Holland & Hart LLP

EXHIBIT “1”


CLERK OF THE COURT

1 **ORDR**

2
3
4 **DISTRICT COURT**

5 **CLARK COUNTY, NEVADA**

6 **NEVADA ASSOCIATION SERVICES,**
7 **INC.; RMI MANAGEMENT, LLC;**
8 **ANGIUS & TERRY COLLECTIONS,**
9 **LLC,**

10 **Plaintiffs,**

11 **Vs.**

12 **STATE OF NEVADA, DEPARTMENT**
13 **OF BUSINESS AND INDUSTRY,**
14 **FINANCIAL INSTITUTIONS DIVISION;**
15 **GEORGE E. BURNS, individually and in**
16 **his official capacity as Commissioner of**
17 **State of Nevada, Department of Business**
18 **and Industry, Financial Institutions**
19 **Division,**

20 **Defendants.**

Case No. A-10-630298-C
Dept. No. XXII

21 **ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND**
22 **PRELIMINARY INJUNCTION**

23 This matter, concerning Plaintiffs' Motion for Preliminary Injunction filed December 1,
24 2010, came on for hearing, on an Order Shortening Time, before Department XXII of the Eighth
25 Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON
26 presiding; Plaintiffs NEVADA ASSOCIATION SERVICES, INC., RMI MANAGEMENT, LLC
27 and ANGIUS & TERRY COLLECTIONS, LLC appeared by and through their attorney, PATRICK
28 J. REILLY, ESQ. of the law firm, HOLLAND & HART; Defendants STATE OF NEVADA,
DEPARTMENT OF BUSINESS AND INDUSTRY AND FINANCIAL INSTITUTIONS

1 DIVISION appeared by and through their attorneys, DANIEL EBIHARA, ESQ., Deputy Attorney
2 General, and DAVID J. POPE, ESQ., Senior Deputy Attorney General; and PREM
3 INVESTMENTS, LLC appeared by and through its attorney, JAMES R. ADAMS, ESQ. of
4 ADAMS LAW GROUP. Having reviewed the papers and pleadings on file herein, heard extensive
5 oral argument of the parties and taken this matter under advisement, this Court makes the following
6 Findings of Fact and Conclusions of Law:
7

8 **FINDINGS OF FACT**

9 1. Plaintiffs NEVADA ASSOCIATION SERVICES, INC., RMI MANAGEMENT,
10 LLC, and ANGIUS & TERRY COLLECTIONS, LLC are collection agencies who pursue past due
11 charges and assessments from delinquent homeowners on behalf of several homeowners'
12 associations (referred to as "HOAs" herein).
13

14 2. PREM INVESTMENTS, LLC is a real estate investor, who purchases homes or other
15 properties at foreclosure auctions.

16 3. On or about November 18, 2010, Defendant GEORGE E. BURNS, Commissioner of
17 Defendant STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY,
18 FINANCIAL INSTITUTIONS DIVISION, rendered a Declaratory Order and Advisory Opinion
19 Regarding Collection Agency Fees from Homeowner Association Liens Following Foreclosure.¹
20 Within his Declaratory Order and Advisory Opinion, COMMISSIONER BURNS concluded, p. 10:
21

22 a. A collection agency is limited to a total of nine (9) months of assessments for
23 common charges on the amount it can collect pursuant to priority status provided in NRS
24 116.3116.(2). This nine (9) month cap includes any additional fees, charges, interest, costs,
penalties or finds which the association could apply towards a lien pursuant to NRS
116.3116;

25 b. Additionally, prior to the imposition of any additional fees, charges, penalty
26 and interest to any assessment or find by a collection agency, the association must expressly
approve the fees, charges, penalty and interest pursuant to the provisions in its governing
27

28 ¹See Exhibit 1 attached to Plaintiffs' *Ex Parte* Application for Temporary Restraining Order and Motion for Preliminary Injunction filed December 1, 2010.

documents; and

c. Finally, neither associations nor their collection agencies are required to initiate civil action in order to secure the priority status of an association lien pursuant to NRS 116.3116.

4. Approximately four (4) days later, PAUL P. TERRY, JR., a principal of Plaintiff ANGIUS & TERRY COLLECTIONS, LLC, was informed by a senior auditor for Defendant FINANCIAL INSTITUTIONS DIVISION that COMMISSIONER BURNS' Declaratory Order and Advisory Opinion would be enforced immediately.² MR. TERRY also attested the FINANCIAL INSTITUTIONS DIVISION informed him "that any collection agency found in violation of the Opinion will be subject to discipline and potential loss of license." Such action, in MR. TERRY'S view, would "be devastating to Plaintiffs."³

5. Plaintiffs now move the Court to enjoin enforcement of COMMISSIONER BURNS' Declaratory Order and Advisory Opinion, which they claim was "unlawfully issued" by Defendant STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION, for the following reasons:

First, Plaintiffs propose COMMISSIONER BURNS and the FINANCIAL INSTITUTIONS DIVISION have no jurisdiction to interpret the provisions of NRS Chapter 116. In their view, the State's Real Estate Division has exclusive jurisdiction to issue advisory opinions concerning the applicability or interpretation of NRS Chapter 116. *See* NRS 116.615, 116.620 and 116.623.

Second, the request made by PREM INVESTMENT, LLC and RUTT PRESIRUT, its Manager, to COMMISSIONER BURNS to render an advisory opinion violated NAC⁴ 232.040(2), which requires an original and copy of the petition be forwarded to the "chief who is authorized to administer or enforce the statute or regulation or to issue the decision." Here, Plaintiffs note

²*See* Affidavit of PAUL P. TERRY, JR., attached as Exhibit 7 to the Motion for Preliminary Injunction filed December 1, 2010.

³*Id.*

⁴"NAC" is short for "Nevada Administrative Code."

1 COMMISSIONER BURNS did not forward the petition to the Real Estate Division, the entity
2 having jurisdiction to issue decisions and advisory opinions involving the interpretation of NRS
3 Chapter 116. *See* NRS 116.615, 116.620 *and* 116.623.

4 *Third*, the request made by PREM INVESTMENT, LLC and MR. PRESRIRUT to
5 COMMISSIONER BURNS to render an advisory opinion violated NAC 232.040(4), in that parties
6 with an interest in current legal proceedings may not file a petition for a declaratory order or
7 advisory opinion concerning a question or matter involved in those actions. In particular, Plaintiffs
8 note arbitration proceedings currently are pending before the Real Estate Division to determine
9 whether, and to what extent, collection costs are included in the “super priority” lien as addressed in
10 NRS 116.3116.⁵

12 *Fourth*, Plaintiffs propose COMMISSIONER BURNS’ advisory opinion “squarely
13 contradicts” District Court Judge Jackie Glass’ Order in Korbel Family Trust v. Spring Mountain
14 Ranch Master Association, Case No. 06A523959, “which has been recognized as the industry
15 standard for several years now.”⁶

17 *Fifth*, the advisory opinion was sought improperly in an attempt to influence a pending
18 arbitration before the Real Estate Division. Plaintiffs propose PREM INVESTMENTS, LLC, MR.
19 PRESRIRUT and their lawyer did not advise the parties to the arbitration they were seeking an
20 opinion from the FINANCIAL INSTITUTIONS DIVISION, and consequently, the declaratory order
21 and advisory opinion was issued based upon an incomplete record and one-sided view of the law
22 presented to COMMISSIONER BURNS.

24
25
26 ⁵Notably, the Arbitrator for the Real Estate Division, PERSI J. MISHEL, ESQ., has issued his Order Granting
27 in Part, Denying in Part, Motion for Summary Judgment on Claim of Declaratory Relief filed October 28, 2010. *See*
28 Exhibit 1 to PREM INVESTMENTS, LLC’S Request for Leave to File Amicus Curiae Brief and Amicus Curiae Brief
filed December 6, 2010.

⁶*See Ex Parte* Application for Temporary Restraining Order and Motion for Preliminary Injunction filed
December 1, 2010, p. 4.

1 Sixth, Plaintiffs noted both the FINANCIAL INSTITUTIONS DIVISION and Petitioners'
2 attorney have refused to provide them a copy of the Petition, whereby it is impossible to know the
3 kind of *ex parte* communications that have taken place between PREM INVESTMENTS, LLC, MR.
4 PRESRIRUT and the FINANCIAL INSTITUTIONS DIVISION.⁷

5 6. Plaintiffs propose injunctive relief should be afforded as they have shown a
6 "reasonable likelihood of prevailing on the merits," and that absent a preliminary injunction, they
7 will suffer irreparable harm. In Plaintiffs' view, and as noted above, the enforcement of
8 COMMISSIONER BURNS' Declaratory Order and Advisory Opinion or the imposition of stiff
9 regulatory discipline could include immediate license suspension and revocation proceedings against
10 Plaintiffs, who rely upon their licenses to conduct the collection business on behalf of HOAs.
11 Questioning the propriety of Plaintiffs' licenses not only will damage, but possibly would destroy
12 their businesses and "wreak havoc"⁸ on HOAs' abilities to collect past due assessments. Plaintiffs
13 further note the Declaratory Order and Advisory Opinion severely limits the rights of HOAs to
14 recover collection costs, whereby the practical result would shift fees, collection costs and interest
15 back to the HOAs as opposed to the delinquent homeowner or the real estate investor who takes title
16 to the property at foreclosure auctions. Such is particularly troubling in the situation where HOAs
17 have incurred additional expenses in maintaining foreclosed homes in their communities that have
18 fallen into disrepair.
19

20
21 7. Defendants, on the other hand, argue Plaintiffs have failed to present any evidence of
22 "great or irreparable injury,"⁹ in that, under NRS 649.395, Defendants cannot impose any
23 disciplinary action against any licensee without a hearing.
24
25

26
27 ⁷A copy of the Petition was provided to Plaintiffs' counsel during the December 7, 2010 hearing before this
28 Court.

⁸See Motion for Preliminary Injunction filed December 1, 2010, p. 15, line 15.

⁹See NRS 33.010.

CONCLUSIONS OF LAW

- 1
2 1. NRS 33.010 identifies situations in which injunctive relief may be granted; it states:

3 An injunction may be granted in the following cases:

4 1. When it shall appear by the complaint that the plaintiff is entitled to
5 the relief demanded, and such relief or any part thereof consists in restraining the
6 commission or continuance of the act complained of, either for a limited period or
7 perpetually.

8 2. When it shall appear by the complaint or affidavit that the commission
9 or continuance of some act, during the litigation, would produce great or irreparable
10 injury to the plaintiff.

11 3. When it shall appear, during the litigation, that the defendant is doing
12 or threatens, or is about to do, or is procuring or suffering to be done, some act in
13 violation of the plaintiff's rights respecting the subject of the action, and tending to
14 render the judgment ineffectual.

15 2. Case law, interpreting NRS 33.010, provides a preliminary injunction is available if
16 an applicant can show a likelihood of success on the merits and a reasonable probability the non-
17 moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory
18 damages is an inadequate remedy. *See Boulder Oaks Community Association v. B & J Andrews*,
19 125 Nev. ___, 215 P.3d 27, 29 (2009); *Dangberg Holdings Nev., LLC v. Douglas County*, 115
20 Nev. 129, 142, 978 P.2d 311, 319 (1999); *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029
21 (1987), *citing Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780, 587 P.2d 1329, 1330
22 (1978). The decision whether to grant a preliminary injunction is within the sound discretion of the
23 district court, whose decision will not be disturbed on appeal absent an abuse of discretion.
24 *Dangberg Holdings Nev., LLC*, 115 Nev. at 142-143, *citing Number One Rent-A-Car*, 94 Nev. at
25 781, 587 P.2d at 1330; *also see Attorney General v. NOS Communications* 120 Nev. 65, 67, 84 P.3d
26 1052, 1053 (2004)(The district court's decision "will be reversed only where the district court
27 abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous
28 findings of fact.").

1 3. NRS Chapter 116 is Nevada's codification of the Uniform Common-Interest
2 Ownership Act. *See* NRS 116.001; *also see* Boulder Oaks Community Association, 125 Nev. _____,
3 215 P.3d at 29. The purpose of NRS Chapter 116 is to "make uniform the law with respect to the
4 subject of this chapter among states enacting it." *See* NRS 116.1109(2).

5 4. Notably, provisions of NRS Chapter 116 may not be varied by agreement, waived or
6 evaded, except as expressly provided within the chapter. *See* NRS 116.1104. Furthermore,
7 "principals of law and equity, including the law of corporations, the law of unincorporated
8 associations, the law of real property, and the law relative to capacity to contract, principal and
9 agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership,
10 substantial performance, or other validating or invalidating cause supplement the provisions of"
11 NRS Chapter 116, except to the extent inconsistent with this chapter. *See* NRS 116.1108.¹⁰

12 5. NRS 116.3102 defines the powers and limitations of the unit owners' association. It
13 states in pertinent part:
14

15 1. Except as otherwise provided in this section, and subject to the provisions of
16 the declaration, the association may do any or all of the following:

17 (a) Adopt and amend bylaws, rules and regulations.

18 (b) Adopt and amend budgets for revenues, expenditures and reserves and
19 collect assessments for common expenses from the units' owners.

20 (c) *Hire and discharge managing agents and other employees, agents and*
21 *independent contractors.*

22 ...

23 (e) *Make contracts and incur liabilities.* Any contract between the
24 association and a private entity for the furnishing of goods or services must not
25 include a provision granting the private entity the right of first refusal with respect to
26 extension or renewal of the contract.

27 ¹⁰NRS 116.11085 provides that where "a matter is governed by this chapter is also governed by chapter 78, 81,
28 82, 86, 87, 87A or 88A of NRS and there is a conflict between the provisions of this chapter and the provisions of those
 other chapters, the provisions of this chapter prevail.

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...

(k) *Impose charges for late payment of assessments pursuant to NRS 116.3115.*

(l) *Impose construction penalties when authorized pursuant to NRS 116.310305.*

(m) *Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.*

...

(Emphasis added)

6. NRS 116.310313 also provides:

1. *An association may charge a unit's owner reasonable fees to cover costs of collecting any past due obligation. The commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.*

2. *The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.*

3. As used in this section:

(a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

(Emphasis added)

1 7. NRS 116.615 provides as follows in salient part:

2 1. The provisions of this chapter *must* be administered by the Division,¹¹ subject
3 to the administrative supervision of the Director of the Department of Business and Industry.

4 2. The Commission¹² and the Division may do all things necessary and
5 convenient to carry out the provisions of this chapter, including, without limitation,
6 prescribing such forms and adopting such procedures as are necessary to carry out the
7 provisions of this chapter.

8 ...

9 (Emphasis added)

10 8. NRS 116.620 provides:

11 1. Except as otherwise provided in this section and within the limits of
12 legislative appropriations, the Division may employ experts, attorneys, investigators,
13 consultants and other personnel as are necessary to carry out the provisions of this chapter.

14 2. The Attorney General shall act as the attorney for the Division in all actions
15 and proceedings brought against or by the Division pursuant to the provisions of this chapter.

16 3. The Attorney General shall render to the Commission and the Division
17 opinions upon all questions of law relating to the construction or interpretation of this
18 chapter, or arising in the administration thereof, that may be submitted to the Attorney
19 General by the Commission or the Division.

20 9. NRS 116.623 sets forth in pertinent part:

21 1. The Division *shall* provide by regulation for the filing and prompt disposition
22 of petitions for declaratory orders and advisory opinions as to the applicability or
23 interpretation of:

24 (a) Any provision of this chapter or chapter 116A or 116B of NRS;

25 (b) Any regulation adopted by the Commission, the Administrator or the
26 Division; or

27 (c) Any decision of the Commission, the Administrator or the Division or
28 any of its sections.

29 ...

30 (Emphasis added)

31 ¹¹The term "Division" is defined in NRS 116.043 as "the Real Estate Division of the Department of Business
32 and Industry."

33 ¹²"Commission" is defined in NRS 116.015 as "the Commission for Common-Interest Communities and
34 Condominium Hotels created by NRS 116.600."

1 10. NRS Chapter 649 and the federal Fair Debt Collection Practices Act (FDCPA)
2 regulate "collection agencies" and were enacted to prevent abusive debt collection practices. *See*
3 Title 15, U.S.C. §1692(e)(stating the FDCPA's remedial purpose), NRS 649.045¹³ and NRS
4 649.370.¹⁴ NRS Chapter 649 is administered and enforced by the commissioner,¹⁵ who is also
5 charged with adopting such regulations as may be necessary to carry out the provisions of that
6 chapter. *See* NRS 649.051 and 649.053.

8 11. NRS 649.020 defines "collection agency." It states:

9 1. "Collection agency" means all persons engaging, directly or indirectly, and as
10 a primary or a secondary object, business or pursuit, in the collection of or in soliciting or
11 obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to
another.

12 2. "Collection agency" does not include any of the following unless they are
conducting collection agencies:

13 (a) Individuals regularly employed on a regular wage or salary, in the
14 capacity of credit men or in other similar capacity upon the staff of employees of any
15 person not engaged in the business of a collection agency or making or attempting to
make collections as an incident to the usual practices of their primary business or
profession.

16 (b) Banks.

17 (c) Nonprofit cooperative associations.

18 (d) Unit-owners' associations and the board members, officers, employees
and units' owners of those associations when acting under the authority of and in
19 accordance with chapter 116 or 116B of NRS and the governing documents of the
association, except for those community managers included within the term
"collection agency" pursuant to subsection 3.

20 (e) Abstract companies doing an escrow business.

21
22 ¹³NRS 649.045 provides:

The legislature finds and declares that:

23 1. There exists in this state a need for more stringent regulatory control over collection agencies
to ensure that they are composed only of responsible and well qualified personnel.

24 2. It is the purpose of this chapter to:

25 (a) Bring licensed collection agencies and their personnel under more stringent public
supervision;

26 (b) Establish a system of regulation to ensure that persons using the services of a
collection agency are properly represented; and

27 (c) Discourage improper and abusive collection methods.

28 ¹⁴NRS 649.370 provides: "A violation of any provision of the federal Fair Debt Collection Practices Act, 15
U.S.C. §§ 1682 et seq., or any regulation adopted pursuant thereto, shall be deemed a violation of this chapter."

¹⁵"Commissioner" as identified in NRS Chapter 649 is defined as "the commissioner of financial institutions.
See NRS 649.026.

1 (f) Duly licensed real estate brokers, except for those real estate brokers
2 who are community managers included within the term "collection agency" pursuant
to subsection 3.

3 (g) Attorneys and counselors at law licensed to practice in this State, so
4 long as they are retained by their clients to collect or to solicit or obtain payment of
such clients' claims in the usual course of the practice of their profession.

5 3. "Collection Agency": (sic)

6 (a) Includes a community manager while engaged in the management of a
7 common-interest community or the management of an association of a condominium
8 hotel if the community manager, or any employee, agent or affiliate of the
community manager, performs or offers to perform any act associated with the
foreclosure of a lien pursuant to NRS 116.31162 to 116.31168, inclusive, or
116B.635 to 116B.660, inclusive; and

9 (b) Does not include any other community manager while engaged in the
10 management of a common-interest community or the management of an association
of a condominium hotel.

11 4. As used in this section:

12 (a) "Community manager" has the meaning ascribed to it in NRS 116.023
or 116B.050.

13 (b) "Unit-owners' association" has the meaning ascribed to it in NRS
14 116.011 or 116B.030.

15 12. NRS 649.375 identifies what are "prohibited practices" under NRS Chapter 649. It
16 states in pertinent part:

17 A collection agency, or its manager, agents or employees, shall not:

18 ...

19 2. Collect or attempt to collect any interest, charge, fee or expense incident to
20 the principal obligation unless:

21 (a) Any such interest, charge, fee or expense as authorized by law or as
22 agreed to by the parties has been added to the principal of the debt by the creditor
before receipt of the item of collection;

23 (b) Any such interest, charge, fee or expense as authorized by law or as
24 agreed to by the parties has been added to the principal of the debt by the collection
agency and described as such in the first written communication with the debt; or

25 (c) The interest, charge, fee or expenses has been judicially determined as
proper and legally due from and chargeable against the debtor.

26 13. If a collection agency engages in a "prohibited practice," as defined in NRS 649.375,
27 it may be subject to disciplinary action. See NRS 649.385 to 649.395.
28

14. NRS 649.385 provides:

1. Upon the filing with the commissioner of a verified complaint against any collection agency or manager, the commissioner shall investigate the alleged violation of the provisions of this chapter.

2. If the commissioner determines that the complaint warrants further action, he shall send a copy of the complaint and notice of the date set for an informal hearing to the accused and the attorney general.

3. The commissioner may require the accused collection agency or manager to file a verified answer to the complaint within 10 days after service unless, for good cause shown, the commissioner extends the time for a period not to exceed 60 days.

4. If, at the hearing the complaint is not explained to the satisfaction of the commissioner, he may take such action against the accused as may be authorized by the provisions of this chapter.

15. NRS 649.395 sets forth:

1. The Commissioner may impose an administrative fine, not to exceed \$500 for each violation, or suspend or revoke the license of a collection agency, or both impose a fine and suspend or revoke the license, by an order made in writing and filed in his office and served on the licensee by registered or certified mail at the address shown in the records of the Commissioner, if:

(a) The licensee is adjudged liable in any court of law for breach of any bond given under the provisions of this chapter; or

(b) After notice and hearing, the licensee is found guilty of:

(1) Fraud or misrepresentation;

(2) An act or omission inconsistent with the faithful discharge of his duties and obligations; or

(3) A violation of any provision of this chapter.

2. The Commissioner may suspend or revoke the license of a collection agency without notice and hearing if:

(a) The suspension or revocation is necessary for the immediate protection of the public; and

(b) The licensee is afforded a hearing to contest the suspension or revocation within 20 days after the written order of suspension or revocation is served upon the licensee.

3. Upon revocation of his license, all rights of the licensee under this chapter terminate, and no application may be received from any person whose license has once been revoked.

4. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

...

1 16. Nowhere within NRS Chapters 116 and 649 has this Court found a section which
2 either authorizes or mandates the FINANCIAL INSTITUTIONS DIVISION or its Commissioner to
3 issue Declaratory Orders and Advisory Opinions regarding the interpretation or regulation of the
4 provisions of NRS Chapter 116.

5 17. In this case, as noted above, Plaintiffs move the Court for preliminary injunction to
6 enjoin Defendants STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY,
7 FINANCIAL INSTITUTIONS DIVISION and GEORGE E. BURNS from enforcing the
8 Commissioner's Declaratory Order and Advisory Opinion rendered November 18, 2010.¹⁶ As noted
9 more fully below, this Court concludes Plaintiffs have met their burden of showing a likelihood of
10 success on the merits. In this Court's view, the Real Estate Division and Commission for Common-
11 Interest Communities and Condominium Hotels have exclusive jurisdiction to interpret and/or
12 administer the provisions of NRS Chapter 116, Defendants FINANCIAL INSTITUTIONS
13 DIVISION and COMMISSIONER BURNS have no such jurisdiction, and thus, the Commissioner
14 acted outside of his authority to issue the November 18, 2010 Declaratory Order and Advisory
15 Opinion. This Court also concludes there is a reasonable probability the enforcement of the
16 November 18, 2010 Declaratory and Advisory Opinion will cause irreparable harm to Plaintiffs for
17 which compensatory damages is an inadequate remedy. This Court, therefore, grants preliminary
18 injunction to enjoin both Defendants from enforcing the Order and Opinion as against Plaintiffs
19 NEVADA ASSOCIATION SERVICES, INC., RMI MANAGEMENT, LLC and ANGIUS &
20 TERRY COLLECTIONS, LLC and the homeowner associations that have retained them to act on
21 their behalf.

22 18. As shown within the Declaratory Order and Advisory Opinion, COMMISSIONER
23 BURNS of the FINANCIAL INSTITUTIONS DIVISION interprets the provisions of NRS Chapter
24

25 16See Exhibit 1 attached to Plaintiffs' Motion for Preliminary Injunction filed December 1, 2010.
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1 116 to limit the amount of charges a collection agency may collect on behalf of a HOA. However,
2 such authority and mandates fall squarely upon the State's Real Estate Division and the Commission
3 for Common-Interest Communities and Condominium Hotels. *See* NRS 116.615, 116.620 and
4 116.623. Indeed, regulations establishing the amount of fees the HOA may charge *shall* be adopted
5 by the Commission for Common-Interest Communities and Condominium Hotels; that authority
6 does not fall upon the Commissioner for Defendant FINANCIAL INSTITUTIONS DIVISION. *See*
7 NRS 116.310313 ("The commission *shall* adopt regulations establish the amount of the fees that an
8 association may charge pursuant to this section.")(Emphasis added). NRS 116.310313 also indicates
9 its provisions apply to *any* costs of collecting a past due obligation charged to a unit's owner,
10 including, without limitation, those incurred for "any collection." *See* NRS 116.310313(3). In short,
11 it is the Commission for Common-Interest Communities and Condominium Hotels, *not* the
12 Commissioner of the FINANCIAL INSTITUTIONS DIVISION, who has the jurisdiction and
13 authority to adopt regulations establishing what the HOA may charge, pursuant to NRS Chapter 116.
14

15
16 19. In this Court's view, the jurisdiction of the FINANCIAL INSTITUTIONS
17 DIVISION and its Commissioner to administer and interpret NRS Chapter 116 does not become
18 invoked simply because the HOA may retain the services of a collection agency, whose licensing
19 requirements and practices are dictated by NRS Chapter 649. Indeed, as noted in NRS 116.3102,
20 the HOA has authority to hire independent contractors, such as collection agencies, to provide
21 services, which may include the collection of delinquent accounts from its units' owners. If this
22 Court took the view expressed by Defendants, HOAs, in effect, would be subject to and governed by
23 NRS Chapter 649 in every instance they retained a collection agency to collect delinquent
24 homeowner assessments and other charges, or to foreclose upon a lien. Such governance would
25 hinder the HOA's ability to enforce and collect assessments from its members, as so demonstrated
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28

1 by COMMISSIONER BURNS' Declaratory Order and Advisory Opinion.¹⁷ Furthermore and
2 perhaps more importantly, such a premise falls outside the purpose of NRS Chapter 116 which is to
3 "make uniform the law with respect to the subject of this chapter among states enacting it." See
4 NRS 116.1109(2).

5 20. As this Court concludes Defendants FINANCIAL INSTITUTIONS DIVISION and
6 GEORGE E. BURNS have no jurisdiction to administer or interpret the provisions of NRS Chapter
7 116, it declines to address the other five bases to support Plaintiffs' position there is a likelihood of
8 success on the merits in the interest of judicial expediency.

9
10 22. As this Court has determined Plaintiffs have sustained the burden of proof there is a
11 likelihood of success upon the merits, the next issue it addresses is whether Plaintiffs have
12 demonstrated a reasonable probability Defendants' enforcement of the November 18, 2010
13 Declaratory Order and Advisory Opinion would cause irreparable harm for which compensatory
14 damages is an inadequate remedy. Defendants argue Plaintiffs will suffer no injury as no
15 disciplinary action has been filed, and Plaintiffs cannot be subject to any regulatory discipline
16 without a hearing. Defendants' premise ignores at least two points. *First*, in this Court's view, the
17 filing of a complaint, charge or accusation of committing a prohibited practice against a collection
18 agency under NRS Chapter 649 is, in and of itself, a harm. In this case, MR. TERRY, one of the
19 principals of Plaintiff ANGIUS & TERRY COLLECTIONS, LLC, has been informed by one of
20 Defendants' internal auditors the Declaratory Order and Advisory Opinion will be enforced
21 immediately. Plaintiffs should not be placed in the position where they may act to violate
22 COMMISSIONER BURNS' Declaratory Order and then face disciplinary action before they can
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27 ¹⁷See Exhibit 1 of Plaintiffs' Motion for Preliminary Injunction filed December 1, 2010, p. 10 ("Additionally,
28 prior to the imposition of any additional fees, charges, penalty and interest to any assessment or fine by a collection
agency, the association must expressly approve the fees, charges, penalty and interest pursuant to the provisions in its
governing documents.").

1 seek injunctive relief. *Second*, Defendants' position Plaintiffs cannot be subject to discipline
2 without a hearing is not necessary true. NRS 649.395(2) provides the Commissioner may suspend
3 or revoke the license of a collection agency without notice and hearing if he deems it necessary for
4 the immediate protection of the public. In that case, the licensee is afforded a hearing to contest the
5 suspension or revocation sometime within twenty (20) days *thereafter*. Upon revocation of the
6 license, all rights of the licensee terminate, meaning, in that situation, Plaintiffs could not conduct
7 their collection business during the time of revocation. *See* NRS 649.395(3). Furthermore, an order
8 that imposes discipline, along with the findings of fact and conclusions of law supporting the order,
9 are public records. *See* NRS 649.395(4). To wit, *even if*, in the instance where the Commissioner
10 ultimately determined his initial assessment that the collection agency's license should be suspended
11 or revoked without hearing was incorrect, the revocation or suspension still would remain a matter
12 of public record. In short, this Court concludes Plaintiffs have met the second prong of NRS 33.010
13 by demonstrating that, if Defendants' conduct were allowed to continue, it would cause them
14 irreparable harm for which compensatory damages is an inadequate remedy.

17 Accordingly, based upon the foregoing,

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Plaintiffs' Motion for
19 Preliminary Injunction filed December 1, 2010 is granted, as Plaintiffs have sustained their burden
20 of demonstrating there is a likelihood of success upon the merits, and that if Defendants' conduct
21 was allowed to continue, such will cause irreparable harm to Plaintiffs for which compensatory
22 damages is an inadequate remedy, pursuant to NRS 33.010;

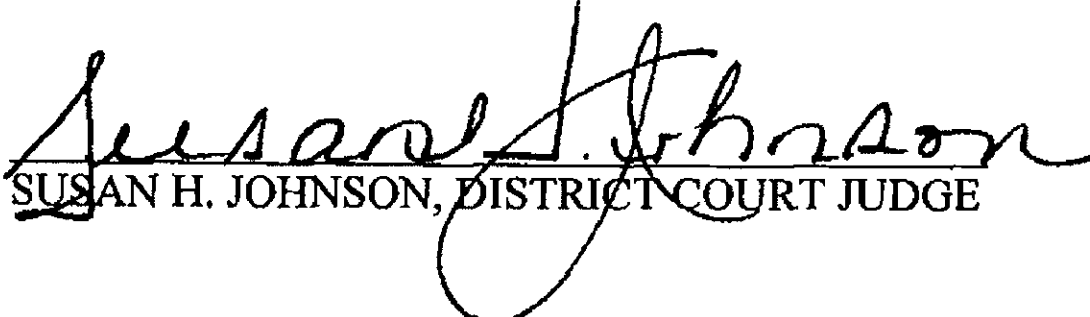
24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendants STATE OF
25 NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS
26 DIVISION and GEORGE E. BURNS are prohibited from enforcing COMMISSIONER BURNS'
27 November 18, 2010 Declaratory Order and Judgment against Plaintiffs NEVADA ASSOCIATION
28

1 SERVICES, INC., RMI MANAGEMENT, LLC and ANGIUS & TERRY COLLECTIONS, LLC
2 and the homeowners' associations in which these Plaintiffs are employed or hired to collect
3 delinquent assessments and other charges identified in NRS Chapter 116 against delinquent units'
4 owners.

5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** this Preliminary Injunction
6 shall take effect immediately upon the filing of this Order, and its terms shall be enforced until
7 further Order of this Court.
8

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the bond or cash
10 previously posted by Plaintiffs in the amount of **TWO THOUSAND FIVE HUNDRED AND**
11 **NO/100 DOLLARS (\$2,500.00)** in accordance with Rule 65(c) as security shall remain posted as
12 security for the payment of such costs and damages as may be incurred or suffered by any party who
13 is found to have been wrongfully enjoyed or restrained in this action.
14

15 DATED and DONE this 10th day of December 2010 at 4:45 p.m.

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17 
18 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that, on the 10th day of December 2010, I electronically served (E-served), placed within the attorneys' folders located within the Court Clerk's Office or mailed a true and correct copy of the foregoing ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND PRELIMINARY INJUNCTION to the following counsel of record, and that first-class postage was fully prepaid thereon:

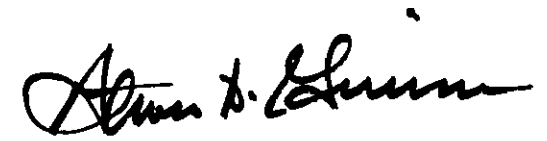
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Laura Banks, Judicial Executive Assistant


CLERK OF THE COURT

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3 Nevada Bar No. 6103
4 Joseph G. Went, Esq.
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11 preilly@hollandhart.com
12
13 *Attorneys for Plaintiff*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

11 TITLEMAX OF NEVADA, INC., a Nevada
12 corporation,

13 Plaintiff,

14 vs.

15 STATE OF NEVADA, DEPARTMENT OF
16 BUSINESS AND INDUSTRY FINANCIAL
17 INSTITUTIONS DIVISION,

18 Defendant.

Case No.: A-15-719176-C

Dept. No.: XXI

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

18 Plaintiff TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax"), by and
19 through its attorneys of record, the law firm of Holland & Hart LLP, hereby moves for summary
20 judgment in the above-entitled action against the State of Nevada, Department of Business and
21 Industry, Financial Institutions Division (the "FID").

22 ///

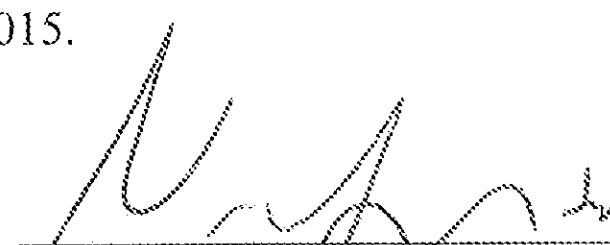
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This Motion is made pursuant to Rule 56(a) of the Nevada Rules of Civil Procedure ("NRCP") and Rule 2.20 of the Eighth District Court Rules ("EDCR") and is based on the attached Memorandum of Points and Authorities and supporting documentation, the Declaration of Carrie Carbone¹ attached hereto as **Exhibit 1**, the papers and pleadings on file in this action, and any oral argument this Court may allow.

DATED this 13th day of October 2015.


Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

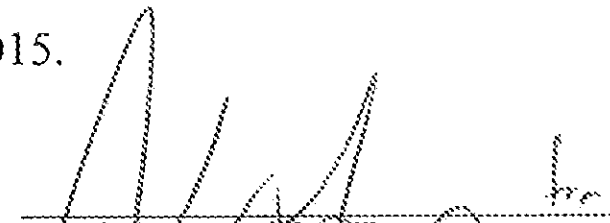
Attorneys for Plaintiff

NOTICE OF MOTION

TO: All Interested Parties and/or their Counsel of Record

PLEASE TAKE NOTICE the undersigned will bring the foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** on for hearing before the _____
on the 18 day of November, 2015, at the hour of 9:30 a.m./~~p.m.~~ or as soon thereafter as may be heard.

DATED this 13th day of October 2015.


Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Plaintiff

¹ Mr. Carbone executed the attached declaration in support of Plaintiff's Motion for Preliminary Injunction. The same exhibit authenticated in said declaration is attached hereto as Exhibit 2.

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

3 **I.**

4 **INTRODUCTION**

5 This is an action for declaratory relief in which TitleMax seeks from this Court an
6 interpretation as to NRS 604A.210, NRS 604A.445, and NAC 604A.230. TitleMax does not at
7 this time seek money damages, attorney's fees, or costs from the FID. Yet, since the filing of
8 this action, the FID has commenced disciplinary action in retaliation against TitleMax, even
9 though the FID's sole dispute with TitleMax arises from the legal interpretation of the three rules
10 before the Court. Despite the foregoing, TitleMax seeks summary judgment on its declaratory
11 relief claim so that it has some guidance as to the interpretation of three rules.

12 **II.**

13 **STATEMENT OF FACTS**

14 **A. The Parties.**

15 The FID is an agency of the State of Nevada with regulatory authority over loans made
16 pursuant to NRS Chapter 604A. *See generally* NRS 604A.400 *et seq.* TitleMax is a lender
17 licensed pursuant to NRS Chapter 604A and is a "licensee" within the meaning of NRS
18 604A.075. Exhibit 1. TitleMax thus offers title loans to its borrowers, which are governed by
19 NRS Chapter 604A and are regulated by the FID and its Commissioner. *Id.*

20 **B. Examinations of TitleMax and the Legal Dispute Between the Parties.**

21 This dispute does not involve the breaking of well-worn black and white rules. Rather,
22 this declaratory relief action involves a mere dispute over the interpretation of two statutes and
23 one regulation. The FID has gone from giving TitleMax a "Needs Improvement" rating in 2014
24 to an "Unsatisfactory" rating in 2015. Notably, the "Unsatisfactory" rating and the threat of
25 discipline came *after* TitleMax commenced this action seeking declaratory relief, and the FID
26 has now commenced an administrative disciplinary proceeding against TitleMax in apparent
27 retaliation for commencing this action.

Specifically, in 2014, the FID conducted an examination of TitleMax and issued reports of examination (collectively the “2014 ROEs”) covering statutory and regulatory compliance at TitleMax’s various retail stores located in the State of Nevada. Exhibit 1. In the 2014 ROEs, the FID stated that TitleMax was in violation of NRS 604.210, NRS 604.445, and NAC 604A.230. *Id.* Based upon the examiner’s incorrect application of NRS 604.210, NRS 604.445, and NAC 604A.230, the FID issued a “Needs Improvement” rating, thereby indicating that TitleMax had demonstrated less than satisfactory compliance in the examination. *Id.* TitleMax disagreed with the FID’s findings and filed the instant action to settle the disputes over the interpretation of NRS 604.210, NRS 604.445, and NAC 604A.230, which resulted in the alleged violations. *Id.*

While this case was pending, the FID issued reports of examination for 2015 and again found that TitleMax was in violation of NRS 604.210, NRS 604.445, and NAC 604A.230. The FID provided that TitleMax’s rating was deemed “Unsatisfactory” and that TitleMax “may be subject to disciplinary action due to the nature of the violations.”

1. The Alleged Violations of NAC 604A.230.

TitleMax allows co-borrowers to be on a title loan. The FID alleged that TitleMax violated NAC 604A.230(1)(a) anytime a co-borrower was not listed on title of the vehicle associated with said loan. Yet, as set forth below, to be successful, the FID would have to persuade this Court to ignore basic surety law and deem that a co-borrower and a guarantor are one and the same in the eyes of the law.

2. The Alleged Violations of NRS 604A.210 and NRS 604A.445.

TitleMax offers a 210-day installment loan product, which the FID agrees complies with the applicable statutes and regulations. Exhibit 1. At the time of making the title loan, TitleMax unilaterally offers each borrower under the installment loan a grace period of deferment gratuitously (without additional charge) pursuant to the terms of a Grace Period Payments Deferment Agreement (the “Grace Period Agreement”). Attached hereto as **Exhibit 2** is a true and correct copy of the Grace Period Agreement.

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/ / /

1 TitleMax has a policy of working with borrowers and giving them every
2 opportunity to fulfill their contractual obligations and thus avoid defaults. Exhibit 1. Indeed, it
3 is the goal for TitleMax for each customer to repay the loan, not for TitleMax to repossess any
4 motor vehicle. *Id.* As such, TitleMax has adopted customer friendly policies to allow borrowers
5 grace periods without additional charge. *Id.* There are no additional charges or increased
6 interest, but the customer merely has to pay the original interest that was agreed to during the
7 grace period. *Id.* The Grace Period Agreement provides:

8 Consideration. You acknowledge and agree that you and
9 we entered into a Title Loan Agreement on ("Loan
10 Agreement."). Under the Title Loan Agreement, we agreed
11 with you that we may subsequently offer you a "Grace
12 Period" which is a **gratuitous period of payments**
13 **deferment**. You agree that we are offering you a "Grace
14 Period" and you are voluntarily accepting such offer after
15 entering into a Loan Agreement pursuant to the provisions
16 of NRS 604A.70 and NRS 604A.210. Please note that
17 since this is a "Grace Period" it is not an "extension" as
18 defined in NRS. 604A.065. Under the Title Loan
19 Agreement, your obligation to pay simple interest under the
20 Loan Agreement remains unchanged. Other than the
21 interest and fees originally provided for in the Title Loan
22 Agreement, **we do not charge you any additional fees or**
23 **interest for entering into this Grace Period Payments**
24 **Deferment Agreement**.

25 Exhibit 2 (emphasis added). Under the Grace Period Agreement, the borrower has the right to
26 prepay without penalty.

27 In addition, the Grace Period Agreement obtains each borrower's written
28 acknowledgement and agreement that simple interest continues to accrue as set forth in the loan
agreement. Specifically, it provides:

Acknowledgment of Simple Interest Accrual. You
acknowledge that we use the simple interest method to
calculate and accrue the interest owing under the Loan
Agreement. Interest is not compounded under the Loan
Agreement. You acknowledge that simple interest is
charged on the outstanding principal balance. Payments
will be applied first to accrued interest, second to
outstanding charges, if any, and third to principal. We
calculated and estimated the simple interest under the Loan
Agreement and disclosed in the "Finance Charge"
disclosure assuming you would pay each scheduled
payment in the amount scheduled and on the scheduled
Payment Dates. **The original Payment Schedule in the**

1 Loan Agreement provided for payments which would
2 ratably and fully amortize the entire Principal Amount
3 and interest payable. The interest rate under the Loan
4 Agreement remains unchanged. You acknowledge that
5 simple interest is charged on the unpaid principal balance
6 of this Loan Agreement at the daily rate of
7 _____% from the date of this Loan Agreement
8 until the earlier of: (i) the due date of your last payment as
9 set forth in the original Payment Schedule; or (ii) payment
10 in full. Now that the Payment Schedule has changed,
11 you acknowledge that the new Payment Schedule
12 provided for in this Grace Period Payments Deferment
13 Agreement, if followed, will ratably and fully amortize
14 the entire Principal Amount and interest payable over a
15 longer period of time than the original Payment
16 Schedule in the Loan Agreement. As such you
17 acknowledge and agree you will continue to incur
18 interest as provided in the Loan Agreement. You
19 further agree that in setting the amount of the payments
20 and dates of the payments, we have estimated the
21 accrued interest owing to us assuming you make the
22 payments in the amounts scheduled and on the exact
23 dates set forth in the Grace Periods Payments
24 Deferment Schedule above. Early payments may
25 decrease the amount of interest you owe. Making a
26 payment in an amount greater than scheduled above may
27 decrease the amount of interest you owe. Late payments
28 may increase the amount of interest you owe. The
amount of this increase or decrease will be reflected in the
final payment. If an early payment is less than the
scheduled installment, then you must pay the difference on
or before the upcoming installment due date. You may
request a payoff at any time (emphasis added).

Exhibit 2.

Even though the law does not require a grace period, TitleMax offers a grace period at the outset of the loan for a variety of reasons. The “grace period” policy allows borrowers the opportunity to elect to reduce their monthly obligations and allows borrowers to make informed decisions about their cash flow throughout the loan process. Exhibit 1. Indeed, one of the benefits a borrower may receive in entering into a Grace Period Agreement is that the monthly payment for the borrower is lower than originally scheduled under the Loan Agreement. *Id.* While paying down debt has its obvious benefits, it is equally important for many borrowers to reduce monthly payment obligations. *Id.* Thus, many of TitleMax’s borrowers view the reduction in the monthly payment and resulting “cash flow cushion or margin” created thereby, as not only valuable option, but also a benefit not afforded by others in the market. *Id.*

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TitleMax only makes available its “grace period” program for those borrowers not currently in default and who want such option. Exhibit 1. TitleMax does not seek to change the terms of the loan, does not impose charges for offering the grace period, does not impose “additional” interest, and does not exact other concessions, as a traditional lender might when it offers or refinances a loan. *Id.* Borrowers may also make their payments as originally scheduled, even though they have entered into a Grace Period Agreement. *Id.* TitleMax charges no type of prepayment penalty for borrowers desiring to pay off early and save interest. *Id.* Likewise, borrowers always maintain a right to make payments under a repayment plan under NRS 604A.475. TitleMax fully complies with NRS 604A.475 for those customers requesting a repayment plan after default.

Despite the foregoing, the FID found that TitleMax’s offering of the grace period violated NRS 604A.210 and 604.A445. The FID seemingly ignores that TitleMax offers the grace period gratuitously, without additional charge, and without additional interest.

In taking its position, the FID has taken its authority too far. It has effectively rewritten NRS 604A.210(2) to suit its own agenda, in contradiction of the statute’s legislative history. As a result, this case is not just about the interpretation of certain provisions of Nevada law—it also is about the separation of powers. It is about the power of the Legislature to write laws. And, equally important, it is about the inability of the executive and judicial branch to rewrite laws which they want to change.

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III.

LEGAL ANALYSIS

A. Standard of Review.

The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

A party against whom a claim . . . is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCP 56(c). In *Wood v. Safeway, Inc.*, the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as *Anderson, Celotex*, and *Matsushita*. 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005); *see also* *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. *Celotex*, 477 U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. *Cuzze v. University & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the “slightest doubt” about the facts. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely “build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present genuine issues of material fact to avoid summary judgment. *Id.*

/ / /

Summary judgment is a particularly appropriate vehicle to resolve claims for declaratory relief. *Merrimack Mut. Fire Ins. Co. v. Batts*, 59 S.W.3d 142, 147-48 (Tenn. App. 2001); *Coalition for Canyon Preservation v. Slater*, 33 F. Supp.2d 1276, 1280 (D. Mont. 1999); *American Home Ins. Co. v. Martin*, 1992 WL 123132, at *5 (N.D. Ill. 1992).

B. TitleMax is Entitled to Declaratory Relief On Its Interpretation of NAC 604A.230(1)(a).

TitleMax seeks a declaration from this Court that an individual may be a co-borrower on a title loan without violating NAC 604A.230(1)(a) when said individual is not listed on title of the vehicle associated with said loan. The FID has deemed there is a violation of NAC 604A.230(1)(a) whenever a co-borrower on a title loan is not on the vehicle's title. The rule states simply that:

1. A licensee shall not:

(a) Require or accept a guarantor to a transaction entered into with a customer.

NAC 604A.230(1)(a)(emphasis added). This provision is unambiguous and must be interpreted according to its plain language, which only prohibits having a guarantor on a title loan. Nothing more. Thus, NAC 604A.230(1)(a) has no application to co-borrowers.

First, there is no express prohibition in NRS Chapter 604A or the accompanying regulations that prohibit co-borrowers from obtaining a title loan. Moreover, because NAC 604A.230(1)(a) is absolutely silent on the issue of co-borrower, it is bewildering to imagine how the existence of a co-borrower could violate NAC 604A.230(1)(a). It is a basic tenet of statutory interpretation that an unambiguous provision must be interpreted according to its plain meaning. *See, e.g., We The People Nev. ex rel. Angle v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1170 (2008) (explaining that this court interprets unambiguous language "in accordance with its plain meaning"); *State Dep't of Ins. v. Humana Health, Ins.*, 112 Nev. 356, 360 (1999). It is clear that NAC 604A.230 *only* prohibits "a guarantor" from guaranteeing a title loan. The FID cannot add a separate or additional meaning to this plain and clear regulation. Indeed, when interpreting the plain language of a statute, Nevada courts "presume that the Legislature intended to use words in

1 their usual and natural meaning.” *McGrath v. Dep’t of Public Safety*, 123 Nev. 120, 123, 159
2 P.3d 239, 241 (2007). Thus, the existence of a co-borrower cannot trigger a violation of NAC
3 604A.230(1)(a).

4 Because of this regulation’s silence as to co-borrowers, for the FID to claim that there is a
5 violation of NAC 604A.230(1)(a) whenever a co-borrower on a title loan is not on the vehicle’s
6 title, the FID must ignore basic legal principles of sureties and treat co-borrowers and guarantors
7 as one and the same. This is an absurd reading of the regulation and must be rejected—a co-
8 borrower is not a guarantor under the law.

9 The most poignant difference between a co-borrower and a guarantor is a co-borrower is
10 a principal obligor while a guarantor is a secondary obligor. *See, e.g.*, RESTATEMENT (THIRD) OF
11 SURETYSHIP & GUARANTY § 15. A co-borrower is primarily liable on the loan and whether his
12 or her fellow debtor defaults or has defenses is not pertinent to his or her obligation to repay. A
13 guarantor, on the other hand, is not liable at all, unless the principal obligor defaults. Indeed, to
14 collect on a guaranty, a lender would have to prove the default by the underlying borrower,
15 which, of course, is not the case with the co-borrower arrangement. *SEE, E.G.*, RESTATEMENT
16 (THIRD) OF SURETYSHIP & GUARANTY § 22. These distinctions between a co-obligor and a
17 guarantor render the FID’s position erroneous.

18 As a matter of law, there cannot be a violation of NAC 604A.230(1)(a) based upon the
19 mere existence of a co-borrower, which is fatal to the FID’s interpretation of the regulation.
20 Thus, Court should find that that an individual may be a co-borrower on a title loan without
21 violating NAC 604A.230(1)(a) when said individual is not listed on title of the vehicle associated
22 with said loan.

23 / / /

24 / / /

1 **C. TitleMax is Entitled to Declaratory Relief On Its Interpretation of NRS 604A.210**
2 **and NRS 604A.445.**

3 The Court should declare that the Grace Period Agreement cannot violate NRS 604A.210
4 or 604A.445. As set forth above, TitleMax does not charge any fees to grant a grace period, and
5 does not charge any additional fees or additional interest on an outstanding loan during such a
6 grace period. Exhibit 1. In fact, the grace period is offered unilaterally at the outset of the loan,
7 and is contained in the original loan agreement language—the customer merely needs to take
8 advantage of it—there is nothing “additional” about the grace period. Yet, despite these
9 undisputed facts, the FID contends that TitleMax violated NRS 604A.210 and 604A.445. The
10 FID’s interpretation of these statutes is incorrect.

11 The FID has taken the position that a licensee is prohibited from charging any interest
12 whatsoever during a grace period and, if it does charge interest during a grace period then it
13 violates NRS 604A.445, which limits the term of a title loan. The FID’s position is not
14 supported by law. The alleged statute violated, NRS 604A.210, provides:

15 The provisions of this chapter do not prohibit a licensee from offering a customer
16 a grace period on the repayment of a loan or an extension of a loan, except that
 the licensee shall not charge the customer:

- 17 1. Any fees for granting such a grace period; or
- 18 2. Any additional fees or additional interest on the outstanding loan
19 during such a grace period.

20 NRS 604A.210 (emphasis added). To support its interpretation that NRS 604A.210(2) prohibits
21 the accrual of any interest on the outstanding loan during a grace period, the FID must
22 completely strike the word “additional” from the statute. This is improper.

23 If the Legislature had intended to ban the accrual of “any” interest during the grace
24 period, it would not have inserted the word “additional” before “interest” in NRS 604A.210.
25 Yet, the statute clearly reads “additional interest” and courts must consider a statute’s provisions
26 “in a way that would not render words or phrases superfluous or make provisions nugatory.”
27 *Southern Nev. Homebuilders Ass’n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173
28 (2005) (quotation omitted). If it is the FID’s position that the prohibition of “additional fees” or

1 “additional interest” means that the total interest on the loan, for the entire period the loan is
2 unpaid, cannot exceed the total interest contracted to be paid within 210 days, it is also
3 misguided. This view would again render the word “additional” meaningless and superfluous,
4 which is contrary to well-settled maxims of statutory construction. *In re Steven Daniel P.*, 129
5 Nev. —, 309 P.3d 1041, 1043-44 (2013). Without question, the plain reading of the statute
6 allows the original contractual interest on a title loan to accrue during a grace period and only
7 prevents interest that is “additional” to the contractual simple interest.

8 In addition, Nevada law compels courts to use common sense when interpreting statutes.
9 *Southern Nev. Homebuilders*, 121 Nev. at 449, 117 P.3d at 173; *Matter of Petition of Phillip*
10 *A.C.*, 122 Nev. 1284, 1293 (2006). Here, if there is a grace period, by definition, the borrower
11 has not repaid the full contractual interest of a loan. As a result, the total interest for the original
12 term *plus* the grace period would always be higher than the interest accrued only for the original
13 term assuming the loan was repaid pursuant to its original terms. Therefore, under the FID’s
14 apparent interpretation, the word “additional” is again rendered meaningless and superfluous, as
15 the Legislature could have just omitted that word and prohibited all interest during the grace
16 period and reached the same conclusion.

17 Importantly, the legislative history involving NRS 604A.210 supports TitleMax’s
18 position. In April 2005, Sections 13 and 23 of Assembly Bill (“AB”) 384, were re-written and
19 added to what would ultimately become NRS 604A.210. Section 23 originally prohibited a
20 licensee from charging the following during a grace period:

- 21 1. Any fees for granting such a grace period; or
- 22 2. Any fees or interest on the outstanding loan during such a grace period.

23 Attached hereto as **Exhibit 3** is a true and correct copy of the original Section 23. The word
24 “additional” was not yet part of the proposed legislation. **Yet, the word “additional” was**
25 **specifically added after the original bill was drafted.** This legislative change is not only
26 significant, it alone is dispositive of this matter, because it evidences that the Legislature
27 specifically rejected the FID’s current position when it enacted AB 384. *Coast Hotels &*
28 *Casinos, Inc. v. Nev. State Labor Comm’n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001).

1 According to the United States Supreme Court, “[f]ew principles of statutory construction are
2 more compelling than the proposition that Congress does not intend *sub silentio* to enact
3 statutory language that it has earlier discarded in favor of other language.” *INS v. Cardoza-
4 Fonseca*, 480 U.S. 421, 442 (1987). Thus, “[w]here Congress includes [certain] language in an
5 earlier version of a bill but deletes it prior to enactment, it may be presumed that the [omitted
6 text] was not intended.” *Russello v. United States*, 464 U.S. 16, 23–24 (1983); *see also United
7 States v. NEC Corp.*, 931 F.2d 1493, 1502 (11th Cir. 1991) (changes in statutory language
8 “generally indicate [] an intent to change the meaning of the statute”); *Southern Pac. Transp.
9 Co. v. Usery*, 539 F.2d 386, 390–91 (5th Cir. 1976); *Bonner v. City of Prichard*, 661 F.2d 1206,
10 1207 (11th Cir. 1981) (*en banc*). Here, by including the word “additional”, the Nevada
11 Legislature specifically intended that interest at the contract rate could continue during the grace
12 period.

13 IV.

14 CONCLUSION

15 Accordingly, and based on the foregoing, TitleMax respectfully requests that this Court
16 enter summary judgment in its favor, granting declaratory relief as follows: and (i) an individual
17 may be a co-borrower on a title loan without violating NAC 604A.230(1)(a) when said
18 individual is not listed on title of the vehicle associated with said loan; and (ii) the Grace Period
19 Agreement does not violate NRS 604A.210 or NRS 604A.445.

20 DATED this 14th day of October 2015.

21
22
23 Patrick J. Reilly, Esq.
24 Joseph G. Went, Esq.
25 HOLLAND & HART LLP
26 9555 Hillwood Drive, Second Floor
27 Las Vegas, Nevada 89134
28

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2015, a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Adam Paul Laxalt
Attorney General
Christopher A. Eccles
Deputy Attorney General
David J. Pope
Sr. Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
Tel: (702) 486-3420
Fax: (702) 486-3416
Email: ceccles@ag.nv.gov
dpope@ag.nv.gov
Attorneys for Defendant

☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

☐ Email: by electronically delivering a copy via email to the following e-mail address:

☐ Facsimile: by faxing a copy to the following numbers referenced below:


An Employee of Holland & Hart LLP

EXHIBIT “1”

DECL

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Nevada Bar No. 6103
Joseph G. Went, Esq.
Nevada Bar No. 9220
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preilly@hollandhart.com

Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TITLEMAX OF NEVADA, INC., a Nevada
corporation,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION,

Defendant.

Case No.: A-15-719176-C

Dept. No.: XXI

**DECLARATION OF CARRIE E.
CARBONE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

I, Carrie E. Carbone, hereby declare under penalty of perjury of the laws of the State of Nevada as follows:

1. I am a resident of the State of South Carolina, over the age of eighteen (18) years and, in all respects, am competent to make this Declaration. This Declaration is based upon my personal knowledge and if called upon to testify I would testify as set forth in this Declaration.

2. I am the Senior Vice President of Compliance and General Counsel for TMX Finance LLC, the parent company of TitleMax of Nevada, Inc. ("TitleMax"), Plaintiff in the underlying action. I am an attorney, licensed to practice law in the States of Ohio and Texas and the Commonwealth of Massachusetts. I make this declaration in support of TitleMax's Motion for Preliminary Injunction.

1 3. TitleMax is a lender licensed pursuant to NRS Chapter 604A and is a “licensee”
2 within the meaning of NRS 604A.075. TitleMax offers title loans to its borrowers, which are
3 governed by NRS Chapter 604A and are regulated by the State of Nevada, Department of
4 Business and Industry, Financial Institutions Division (the “FID”) and its Commissioner.

5 4. In 2014, the FID conducted an examination of TitleMax and issued separate
6 reports of examination for each of its retail locations in Nevada (collectively the “2014 ROEs”)
7 covering statutory and regulatory compliance at TitleMax’s various retail stores located in the
8 State of Nevada.

9 5. In the 2014 ROEs, the FID stated that TitleMax was in violation of NRS
10 604.210, NRS 604.445, and NAC 604A.230. The FID issued a “Needs Improvement” rating in
11 each ROE, thereby indicating that TitleMax had demonstrated less than satisfactory compliance
12 in the examination.

13 6. TitleMax disagreed with the ROE and commenced the instant action specifically
14 to settle the disagreement between the parties over the interpretation of NRS 604.210, NRS
15 604.445, and NAC 604A.230, which resulted in the alleged violations. *Id.*

16 7. After TitleMax commenced this lawsuit, the FID conducted another examination
17 of TitleMax and again found that TitleMax was in violation NRS 604.210, NRS 604.445, and
18 NAC 604A.230. This time, however, the FID escalated its rating of TitleMax to
19 “Unsatisfactory,” based upon the same legal issue.

20 8. Based upon the “Unsatisfactory” rating, TitleMax is at risk of enforcement by
21 the FID which may include license suspension or even license revocation proceedings on short
22 notice under NRS 604A.800 *et seq.*

23 9. TitleMax offers a 210-day simple interest installment loan product, which the
24 FID agrees complies with the applicable statutes and regulations. At the time of making the
25 loan, TitleMax unilaterally offers each borrower under the installment loan a grace period of
26 deferment gratuitously (without additional charge) pursuant to the terms of a Grace Period
27 Payments Deferment Agreement (the “Grace Period Agreement”). Attached to the Motion for
28

1 Preliminary Injunction as **Exhibit 2** is a true and correct copy of TitleMax's Grace Period
2 Agreement.

3 10. TitleMax has a policy of working with borrowers and giving them every
4 opportunity to fulfill their contractual obligations and thus avoid defaults. Indeed, it is the goal
5 for TitleMax for each customer to repay the loan, not for TitleMax to repossess any motor
6 vehicle collateral that secures the repayment of the loan.

7 11. As such, TitleMax has adopted customer-friendly policies to allow borrowers
8 grace periods without additional charge. TitleMax assesses no additional charges or additional
9 interest as a condition to or a requirement of the grace period; rather, the customer merely is
10 required to pay during the grace period interest on the unpaid principal at the same annual rate
11 to which the borrower originally agreed in the loan agreement. In addition, borrowers may pay
12 their loans off early, thereby reducing the overall interest paid, and TitleMax charges no type of
13 prepayment penalty for early repayment.

14 12. Even though the law does not require a grace period, TitleMax offers a grace
15 period at the outset of the loan for a variety of reasons. The "grace period" policy allows
16 borrowers the opportunity to elect to reduce their monthly payment obligations and enables
17 them to make informed decisions about their cash flow throughout the loan process. Indeed,
18 one of the benefits a borrower may receive in entering into a Grace Period Agreement is that the
19 monthly payment for the borrower is lower than originally scheduled under the loan agreement.
20 If borrowers repay these simple interest loans under an extended repayment schedule as
21 compared to the original repayment schedule in the loan agreement and opt not to make
22 principal payments during the grace period, however, they ultimately will pay more interest in
23 the aggregate.

24 13. While paying down debt has its obvious benefits, it is equally important for
25 many borrowers to reduce monthly payment obligations. Thus, many TitleMax borrowers view
26 the reduction in the monthly payment and resulting "cash flow cushion or margin" created
27 thereby, as not only valuable option, but also a benefit not afforded by others in the market.

1 14. TitleMax only make available its "grace period" program for those borrowers not
2 currently in default and who want such option.

3 15. In offering grace period, TitleMax does not seek to change the terms of the loan,
4 does not impose charges or "additional" interest as a condition to or as a requirement of
5 extending the grace period, and does not exact other concessions, as a traditional lender might
6 when it extends or refinances a loan.

7 16. Borrowers may also make their payments as originally scheduled, even though
8 they have entered into a Grace Period Agreement. As noted above, borrowers may pay their
9 loans off early without incurring a prepayment penalty.

10 17. Likewise, borrowers always maintain a right to make payments under a
11 repayment plan under NRS 604A.475. TitleMax fully complies with NRS 604A.475 for those
12 customers requesting a repayment plan after default.

13 EXECUTED this 11th day of September 2015 in Savannah, Georgia.

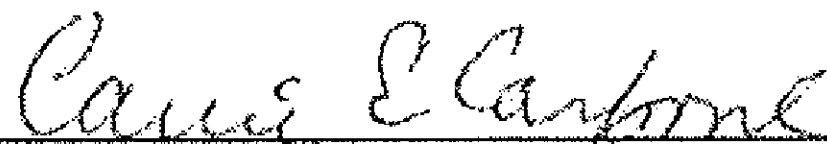
14 
15 CARRIE E. CARBONE
16 Senior Vice President of Compliance and General Counsel
17 TMX Finance LLC
18
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EXHIBIT “2”

GRACE PERIOD PAYMENTS DEFERMENT AGREEMENT

Date: <Print Date>

Account Number: <Loan ID>

| | |
|---|---|
| Customer Name: <Customer First Middle Last> Address: <Customer Address, City, State Zip> Co-Borrower Name: <Joint Applicant First Middle Last> Address: <Joint Applicant Address, City, State Zip> | Licensee Name: <TitleMax of Nevada, Inc. d/b/a <brand>> Address: <Store Address, City, State Zip> Vehicle Information: <Vehicle Year Make Model, VIN> |
|---|---|

Definitions and Terms. In this Grace Period Payments Deferment Agreement, "customer," "you," and "your" mean the customer who signed it. "Licensee", "we", "us" and "our" mean TitleMax of Nevada, Inc. d/b/a TitleMax, a title loan services provider licensed and regulated by the Nevada Financial Institutions Division, 2785 E Desert Inn Road, Suite 180, Las Vegas, Nevada 89121, Phone: (702) 486-4120, Fax: (702) 486-4563, <http://www.fid.state.nv.us/>. The word "Motor Vehicle" means the vehicle identified above. The word "Title" means a certificate of title or ownership to the Motor Vehicle.

Consideration. You acknowledge and agree that you and we entered into a Title Loan Agreement on <Loan Origination Date> ("Loan Agreement.") Under the Title Loan Agreement, we agreed with you that we may subsequently offer you a "Grace Period" which is a gratuitous period of payments deferment. You agree that we are offering you a "Grace Period" and you are voluntarily accepting such offer after entering into a Loan Agreement pursuant to the provisions of NRS 604A.70 and NRS 604A.210. **Please note that since this is a "Grace Period" it is not an "extension" as defined in NRS. 604A.065.** Under the Title Loan Agreement, your obligation to pay simple interest under the Loan Agreement remains unchanged. Other than the interest and fees originally provided for in the Title Loan Agreement, we do not charge you any additional fees or interest for entering into this Grace Period Payments Deferment Agreement.

NOW THEREFORE, in consideration of the mutual promises, herein you and we agree to the payments deferment in this written and signed Grace Period Payments Deferment Agreement.

Grace Period Payments Deferment. In the Title Loan Agreement, you agreed to make your scheduled payments in the amounts and on the dates set forth in the Payment Schedule listed in the Federal Truth In Lending Disclosures at the address indicated above, or at such other address as we direct you in writing. During this Grace Period, we have agreed to amend, modify, and defer your payments as set forth below in the Grace Period Payments Deferment Schedule. Therefore, you and we agree to the amended and deferred payments and periods set forth below in the Grace Period Payments Deferment Schedule. Therefore, you agree to pay us in cash the amount owing on the dates set forth in the Grace Period Payments Deferment Schedule set forth below. If any Deferred Due Date falls on a date we are not open for business, then you agree to pay us on the next business day, and we will credit such payment, as if we received it on the appropriate Deferred Due Date. The Grace Period Payments Deferment Agreement will be consummated upon the date you sign it. Time is of the essence in this Grace Period Payments Deferment Agreement. We will not attempt to collect an amount that is greater than the amount owed. We will not attempt to collect the outstanding balance during the term of the Grace Period by process of alternative dispute resolution, by repossessing the Motor Vehicle or by exercising any other right we have under Nevada law, unless you default on the Grace Period Payments Deferment Agreement.

Grace Periods Payments Deferment Schedule

| Payment Number | Amount of Payment | Deferred Periodic Due Date |
|----------------|---|----------------------------|
| 1 | <Interest Only Pymnt on New Principal Bal.> | <First 30 Day Due Date> |
| 2 | ^same as above | ^ Plus 30 Days |
| 3 | ^same as above | ^ Plus 30 Days |
| 4 | ^same as above | ^ Plus 30 Days |
| 5 | ^same as above | ^ Plus 30 Days |
| 6 | ^same as above | ^ Plus 30 Days |

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.

| | | |
|--|--|------------------------|
| 7 | ^same as above | ^ Plus 30 Days |
| 8 | <New Principal bal. divided by 7> | ^ Plus 30 Days |
| 9 | <New Principal bal. divided by 7> | ^ Plus 30 Days |
| 10 | <New Principal bal. divided by 7> | ^ Plus 30 Days |
| 11 | <New Principal bal. divided by 7> | ^ Plus 30 Days |
| 12 | <New Principal bal. divided by 7> | ^ Plus 30 Days |
| 13 | <New Principal bal. divided by 7> | ^ Plus 30 Days |
| 14 | <New Principal bal. divided by 7> **If odd amt list odd amt here | ^ Plus 30 Days |
| The total amount paid after making all payments under the terms of the Grace Period Payments Deferment Agreement: | | Total of above columns |

BECAUSE THIS IS ONLY AN AMENDMENT AND MODIFICATION OF THE LOAN AGREEMENT IN WHICH WE ARE ONLY MODIFYING AND DEFERRING YOUR PAYMENTS UNDER THE TITLE LOAN AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT ALL OF THE TERMS AND CONDITIONS OF THE TITLE LOAN AGREEMENT, INCLUDING THE CHARGING OF SIMPLE INTEREST AND WAIVER OF JURY TRIAL AND ARBITRATION PROVISION, REMAIN IN FULL FORCE AND EFFECT.

Right to Rescind. You have the right to rescind this Grace Period Payments Deferment Agreement. You may rescind on or before the close of business on the next day of business at the location where the Grace Period Payments Deferment Agreement was initiated. To rescind, you must come to the location where the Grace Period Payments Deferment Agreement was initiated and sign a Cancellation of the Grace Period Payments Deferment Agreement. If you rescind, then we will not charge you any amount for rescinding, and you will be required to make the payments as originally scheduled in the Title Loan Agreement.

Prepayment. You may also pay us in full or make prepayments at any time, without an additional charge or fee, before the final Deferred Periodic Due Date. If you pay the total amount due under the terms of the Title Loan Agreement in full, as deferred through negotiations and agreed to herein, then we shall return the Title to you. You may also make partial prepayments under this Grace Period Payments Deferment Agreement at any time without an additional charge or fee.

Repayment Plan Disclosure: If you default on the loan and this Grace Period Deferred Payments Agreement, we must offer a Repayment Plan to you before we commence any civil action or process of alternative dispute resolution, or before we repossesses the Motor Vehicle.

Default and Repayment Plan. You will be in default under Grace Period Payments Deferment Agreement if you fail to keep any promise made herein. Such default occurs on the day immediately following the date of your failure to perform as described herein. We may waive a default and reinstate your account to good status if you bring your account current or make satisfactory payment arrangements with us. You will have the opportunity to enter into a Repayment Plan with a term of at least 90 days after the Date of Default on the Grace Period Payments Deferment Agreement. Under the terms of any Repayment Plan and pursuant to Nevada law: (1) you must enter into the Repayment Plan not later than 30 days after the date of default, unless we allow a longer period; (2) we will allow the period for repayment to extend at least 90 days after the date of default, unless you agree to a shorter term; and (3) we may require you to make an initial payment of not more than 20 percent of the total amount due under the Repayment Plan. If you enter into a Repayment Plan, we will honor the terms and we will not charge any other amount as an incident to or as a condition of entering into a Repayment Plan. Such an amount includes, without limitation: (a) any interest, regardless of the name given to the interest, other than the interest charged pursuant to the original loan agreement at a rate which does not exceed the rate charged during the term of the original loan agreement; or (b) any origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee. Additionally, if you enter into a Repayment, we will honor the terms of the Repayment Plan, and unless otherwise authorized by Nevada law we will not (i) accept any additional security or collateral from you to enter into the Repayment Plan; (ii) sell to you any insurance (iii) require you to purchase insurance or any other goods or services to enter into the Repayment Plan; (iv) make any other loan to you, unless you are seeking multiple loans that do not exceed the limit set forth under Nevada law; (v) attempt to collect the outstanding balance

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.

during the term of the Repayment Plan by repossessing the Vehicle unless you default on the Repayment Plan or (vi) attempt to collect an amount that is greater than the amount owed under the terms of the Repayment Plan. Therefore, if you (I) default on Grace Period Payments Deferment Agreement and do not enter into a Repayment Plan and we do not waive the default, or (II) default on Grace Period Payments Deferment Agreement, enter into a Repayment Plan, and default on the terms of the Repayment Plan, then we may pursue any remedy Nevada law allows, including seeking repossession and sale of the Motor Vehicle.

Security Interest. You have given us possession of the Title to the vehicle, and granted us a security interest in the Title. We continue to maintain our security interest and possession of the Title during this Grace Period Payments Deferment Agreement.

Acknowledgment of Simple Interest Accrual. You acknowledge that we use the simple interest method to calculate and accrue the interest owing under the Loan Agreement. Interest is not compounded under the Loan Agreement. You acknowledge that simple interest is charged on the outstanding principal balance. Payments will be applied first to accrued interest, second to outstanding charges, if any, and third to principal. We calculated and estimated the simple interest under the Loan Agreement and disclosed in the "Finance Charge" disclosure assuming you would pay each scheduled payment in the amount scheduled and on the scheduled Payment Dates. The original Payment Schedule in the Loan Agreement provided for payments which would ratably and fully amortize the entire Principal Amount and interest payable. The interest rate under the Loan Agreement remains unchanged. You acknowledge that simple interest is charged on the unpaid principal balance of this Loan Agreement at the daily rate of <Original APR/365 (4 decimals)>% from the date of this Loan Agreement until the earlier of: (i) the due date of your last payment as set forth in the original Payment Schedule; or (ii) payment in full. Now that the Payment Schedule has changed, you acknowledge that the new Payment Schedule provided for in this Grace Period Payments Deferment Agreement, if followed, will ratably and fully amortize the entire Principal Amount and interest payable over a longer period of time than the original Payment Schedule in the Loan Agreement. As such you acknowledge and agree you will continue to incur interest as provided in the Loan Agreement. You further agree that in setting the amount of the payments and dates of the payments, we have estimated the accrued interest owing to us assuming you make the payments in the amounts scheduled and on the exact dates set forth in the Grace Periods Payments Deferment Schedule above. Early payments may decrease the amount of interest you owe. Making a payment in an amount greater than scheduled above may decrease the amount of interest you owe. Late payments may increase the amount of interest you owe. The amount of this increase or decrease will be reflected in the final payment. If an early payment is less than the scheduled installment, then you must pay the difference on or before the upcoming installment due date. You may request a payoff at any time.

Governing Law and Assignment. Nevada law governs the Loan Agreement and this Grace Period Payments Deferment Agreement, except the Federal Arbitration Act ("FAA") governs the Waiver of Jury Trial and Arbitration Provision. We may assign or transfer the Loan Agreement and Grace Period Payments Deferment Agreement or any of our rights.

By signing this Grace Period Payments Deferment Agreement, you acknowledge that it was filled in before you did so and that you have received a completed copy of it. You agree that the information you provided to before entering into this Grace Period Payments Deferment Agreement is accurate. You represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. **You acknowledge that you have read this Grace Period Payments Deferment Agreement, and agree to its terms. You further acknowledge that except as amended herein, all of the terms of the Title Loan Agreement remain enforceable including but not limited to the charging of simple interest and Waiver of Jury Trial and Arbitration Provision.**

Acknowledgments. By signing below, you acknowledge that the payment information noted above is accurate. If the term of this loan is shorter than 210 days, you further represent that the information previously provided on the Covered Borrower Identification Statement is still accurate. You agree to inform the company and sign a new statement if your status as an active duty member of the Armed Forces (Army, Navy, Marine Corps, Air Force, or Coast Guard), or as a dependent or spouse of such member changes.

| | | |
|-------------------------|----------------------|---|
| _____ | Date _____ | LICENSEE: TitleMax of Nevada, Inc. d/b/a <u><brand></u> |
| Customer's Signature | | |
| _____ | Date _____ | _____ |
| Co-Borrower's Signature | Its Authorized Agent | Date |

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.

Skip to Main Content Logout My Account Search Menu New District Civil/Criminal Search Refine
Search Close

Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE No. A-15-719176-C

**Titlemax of Nevada Inc, Plaintiff(s) vs. Nevada Department of
Business and Industry Financial Institutions, Defendant(s)**

§
§
§
§
§
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§
§

Case Type: **Other Civil Matters**
Date Filed: **06/01/2015**
Location: **Department 21**
Cross-Reference Case Number: **A719176**
Supreme Court No.: **69807**

PARTY INFORMATION

**Defendant Nevada Department of Business and
Industry Financial Institutions**

Lead Attorneys
Adam Paul Laxalt
Retained
702-486-3420(W)

Plaintiff Titlemax of Nevada Inc

Patrick J. Reilly
Retained
702-669-4600(W)

EVENTS & ORDERS OF THE COURT

10/14/2015 **Motion for Preliminary Injunction** (9:30 AM) (Judicial Officer Adair, Valerie)

10/14/2015, 10/19/2015

Plaintiff's Motion For Preliminary Injunction and Ex Parte Application For Order Shortening Time and Order Thereon

Minutes

10/14/2015 9:30 AM

- Upon Court's inquiry, the defense stated they received the reply. Mr. Pope advised that this matter should be handled administratively; he cited case law in support of his position. Mr. Pope stated that he filed a Motion to Dismiss and Mr. Reilly advised that he filed a Motion for Summary Judgment. Following further arguments, counsel provided a case for the Court to read. As the print was extremely small, COURT ORDERED, matter CONTINUED in order to review and to render a decision. CONTINUED TO: 10/19/15 IN CHAMBERS

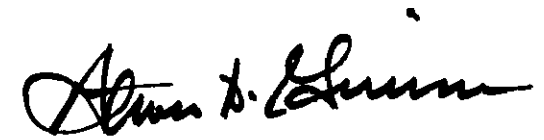
10/19/2015 3:00 AM

- COURT ORDERED, Motion for Preliminary Injunction is DENIED. CLERK'S NOTE: A copy of this minute order placed in the attorney folder of: Paul Reilly (HOLLAND & HART LLP) and mailed to: David Pope, Sr. Deputy Attorney General 555 E. Washington, Suite 3900 Las Vegas, NV 891101

[Parties Present](#)

[Return to Register of Actions](#)

JA000253.1


CLERK OF THE COURT

ERR

Patrick J. Reilly, Esq.
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

TITLEMAX OF NEVADA, INC., a Nevada
corporation,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION,

Defendant.

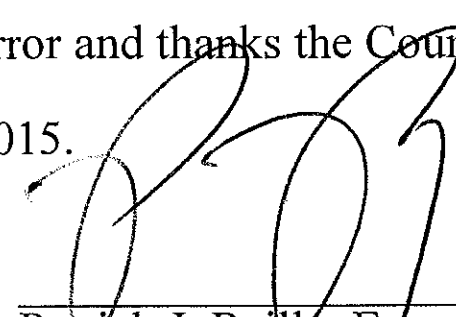
Case No.: A-15-719176-C

Dept. No.: XXI

**ERRATA TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION AND
MOTION FOR SUMMARY JUDGMENT**

Plaintiff TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax"), by and through its attorneys of record, the law firm of Holland & Hart LLP, hereby submits its Errata to Plaintiff's Motion for Preliminary Injunction and its Motion for Summary Judgment. Exhibit "3" to both Motions was inadvertently left off. Plaintiff files this Errata to attach Exhibit "3" to both Motions. Plaintiff apologizes for this error and thanks the Court for its time.

DATED this 26th day of October, 2015.



Patrick J. Reilly, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2015, a true and correct copy of the foregoing **ERRATA TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND MOTION FOR SUMMARY JUDGMENT** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Adam Paul Laxalt
Attorney General
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☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

☐ Email: by electronically delivering a copy via email to the following e-mail address:

☐ Facsimile: by faxing a copy to the following numbers referenced below:


An Employee of Holland & Hart LLP

EXHIBIT “3”

Amendment No. 869

| | |
|---|--------------|
| Senate Amendment to Assembly Bill No. 384 First Reprint | (BDR 52-806) |
| Proposed by: Committee on Commerce and Labor | |
| Amendment Box: | |
| Resolves Conflicts with: N/A | |
| Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: No | |

| ASSEMBLY ACTION | Initial and Date | SENATE ACTION | Initial and Date |
|--|------------------|--|------------------|
| Adopted <input type="checkbox"/> Lost <input type="checkbox"/> | _____ | Adopted <input type="checkbox"/> Lost <input type="checkbox"/> | _____ |
| Concurred In <input type="checkbox"/> Not <input type="checkbox"/> | _____ | Concurred In <input type="checkbox"/> Not <input type="checkbox"/> | _____ |
| Receded <input type="checkbox"/> Not <input type="checkbox"/> | _____ | Receded <input type="checkbox"/> Not <input type="checkbox"/> | _____ |

Amend sec. 2, page 1, line 5, by deleting:

“3 to 21,” and inserting:

“2.5 to 21.5,”.

Amend the bill as a whole by adding a new section designated sec. 2.5, following sec. 2, to read as follows:

“Sec. 2.5. 1. “Automated loan machine” means any machine or other device, regardless of the name given to it or the technology used, that:

(a) Is automated;

(b) Is designed or intended to allow a customer, without any additional assistance from another person, to receive or attempt to receive a deferred deposit loan or short-term loan through the machine or other device; and

SH/KP

Date: 5/25/2005

A.B. No. 384—Makes various changes relating to certain short-term, high-interest loans.



(c) Is set up, installed, operated or maintained by or on behalf of the person making the loan or any agent, affiliate or subsidiary of the person.

2. The term does not include any machine or other device used directly by a customer to access the Internet unless the machine or other device is made available to the customer by the person making the loan or any agent, affiliate or subsidiary of the person.”.

Amend sec. 8, page 2, by deleting lines 30 and 31 and inserting:

“the extension or repayment plan does not violate the provisions of this chapter.”.

Amend sec. 9, page 2, line 35, by deleting “*written*” and inserting “*loan*”.

Amend sec. 9, page 3, line 2, by deleting “*the electronic*” and inserting “*an electronic*”.

Amend the bill as a whole by adding a new section designated sec. 15.5, following sec. 15, to read as follows:

“Sec. 15.5. “Refund anticipation loan” means a loan offered or made to a taxpayer by a lender or through a facilitator based on the taxpayer’s anticipated federal income tax refund.”.

Amend sec. 16, page 3, by deleting lines 32 and 33 and inserting:

“Sec. 16. “Regulation Z” means the federal regulations, as amended, 12 C.F.R. Part 226, adopted pursuant to the Truth in Lending Act and commonly known as Regulation Z.”.

Amend sec. 17, page 3, by deleting lines 37 through 43 and inserting:

“(a) Charges an annual percentage rate of more than 40 percent; and

(b) Requires the loan to be paid in full in less than 1 year.

2. The term does not include:

(a) A deferred deposit loan;

(b) A title loan; or

(c) A refund anticipation loan.”.

Amend sec. 19, page 4, by deleting lines 5 through 11 and inserting:

“pursuant to a loan agreement which, under its original terms:

(a) Charges an annual percentage rate of more than 35 percent; and

(b) Requires the customer to secure the loan by giving possession of the title to a vehicle legally owned by the customer to the person making the loan, or to any agent, affiliate or subsidiary of the person, whether or not the person making the loan or taking possession of the title perfects a security interest in the vehicle by having the person’s name noted on the title as a lienholder.

2. The term does not include:

(a) A loan which creates a purchase-money security interest in a vehicle or the refinancing of any such loan; or

(b) Any other loan for which a vehicle is used as security or collateral if the person making the loan,”.

Amend sec. 21, page 4, by deleting lines 17 through 19 and inserting:

“Sec. 21. “Title to a vehicle” or “title” means a certificate of title or ownership issued pursuant to the laws of this State that identifies the legal owner of a vehicle or any similar”.

Amend the bill as a whole by adding new sections designated sections 21.2 through 21.8, following sec. 21, to read as follows:

“Sec. 21.2. “Truth in Lending Act” means the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq.

Sec. 21.5. 1. “Vehicle” means any vehicle, whether or not self-propelled, that is designed or intended for land transportation if the legal owner of the vehicle is required to have a title.

2. The term includes, without limitation:

(a) Passenger vehicles;

(b) Recreational vehicles; and

(c) House trailers and travel trailers.

3. The term does not include:

(a) Farm vehicles;

(b) Vehicles of a common or contract carrier;

(c) Commercial vehicles;

(d) Construction vehicles;

(e) Military vehicles;

(f) Vehicles used exclusively upon stationary rails or tracks; or

(g) Any other vehicles which are similar in nature to the vehicles listed in paragraphs (a) to (f), inclusive, and which the Commissioner, by regulation, excludes from the definition of “vehicle.”

Sec. 21.8. 1. As used in this chapter, unless the context otherwise requires, the following terms have the meanings ascribed to them in the Truth in Lending Act and Regulation Z:

(a) “Amount financed.”

(b) “Annual percentage rate.”

(c) “Finance charge.”

(d) “Payment schedule.”

(e) "Total of payments."

2. For the purposes of this chapter, proper calculation of the amount financed, annual percentage rate and finance charge for a loan must be made in accordance with the Truth in Lending Act and Regulation Z."

Amend sec. 23, page 4, line 28, before "*loan*," by inserting:

"loan or an extension of a".

Amend sec. 23, page 4, line 30, by deleting:

"fees or interest" and inserting:

"additional fees or additional interest".

Amend sec. 27, page 6, between lines 6 and 7, by inserting:

"15. A person who makes a refund anticipation loan, unless the person operates a check-cashing service, deferred deposit loan service, short-term loan service or title loan service."

Amend sec. 28, page 6, by deleting lines 7 through 13 and inserting:

"Sec. 28. 1. The Commissioner may establish by regulation the fees that a licensee who provides check-cashing services may impose for cashing checks.

2. The Commissioner shall adopt any other regulations as are".

Amend sec. 29, page 6, line 24, by deleting "*means*." and inserting:

"means, except that the person shall not operate such a service through any automated loan machine in violation of the provisions of subsection 3.

3. A person shall not operate a deferred deposit loan service or short-term loan service through any automated loan machine, and the Commissioner shall not issue a license that authorizes the licensee to conduct business through any automated loan machine."

Amend sec. 30, page 6, by deleting lines 26 through 29 and inserting:

“every location at which he conducts business under his license:

(a) A notice that states the fees he charges for providing check-cashing services, deferred deposit loan services, short-term loan services or title loan services.

(b) A notice that states a toll-free telephone number to the Office of the Commissioner to handle concerns or complaints of customers.

↪ The Commissioner shall adopt regulations prescribing the form and size of the notices required by this subsection.”.

Amend sec. 30, page 6, line 33, after “*means,*” by inserting:

“except for an automated loan machine prohibited by section 29 of this act,”.

Amend sec. 31, page 7, by deleting lines 11 through 25 and inserting:

“(b) The nature of the security for the loan, if any;

(c) The date and amount of the loan, amount financed, annual percentage rate, finance charge, total of payments, payment schedule and a description and the amount of every fee charged, regardless of the name given to the fee and regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z;

(d) A disclosure of the right of the customer to rescind a loan pursuant to the provisions of this chapter;

(e) A disclosure of the right of the customer to pay his loan in full or in part with no additional charge pursuant to the provisions of this chapter;

(f) A disclosure stating that, if the customer defaults on the loan, the customer has the opportunity within 30 days of the date of default to enter into a repayment plan with a term of at

least 90 days, and that the licensee must offer the repayment plan to the customer before the licensee commences any civil action or process of alternative dispute resolution or, if appropriate for the loan, before the licensee repossesses a vehicle; and

(g) Any other disclosures required under the Truth in Lending Act and Regulation Z or under any other applicable federal or state statute or regulation.”.

Amend sec. 32, page 7, line 30, after “Act,” by inserting “as amended,”.

Amend sec. 32, page 7, line 33, by deleting “initiates” and inserting “commences”.

Amend sec. 32, page 7, line 39, by deleting “is” and inserting “was”.

Amend sec. 32, page 7, after line 45, by inserting:

“3. Notwithstanding any provision of NRS 66.010 to the contrary, if:

(a) A licensee intends to commence a civil action in a justice’s court against a customer to collect a debt; and

*(b) The customer resides in the county where the loan was made,
↪ the licensee is required to commence the civil action in the justice’s court for the township where the loan was made unless, after the date of default and before the licensee commences the civil action, the customer signs an affidavit agreeing to try the action in another justice’s court having jurisdiction over the subject matter and the parties. A licensee shall not, directly or indirectly, require, intimidate, threaten or coerce a customer to sign such an affidavit.”.*

Amend sec. 33, page 8, line 12, after “Garnish” by inserting:

“or threaten to garnish”.

Amend sec. 33, page 8, line 14, after “Contact” by inserting:

“or threaten to contact”.

Amend the bill as a whole by adding a new section designated sec. 33.5, following sec. 33, to read as follows:

“Sec. 33.5. 1. A licensee shall not:

(a) Make a deferred deposit loan that exceeds 25 percent of the expected gross monthly income of the customer when the loan is made; or

(b) Make a short-term loan which, under the terms of the loan agreement, requires any monthly payment that exceeds 25 percent of the expected gross monthly income of the customer.

2. A licensee is not in violation of the provisions of this section if the customer presents evidence of his gross monthly income to the licensee and represents to the licensee in writing that:

(a) For a deferred deposit loan, the loan does not exceed 25 percent of his expected gross monthly income when the loan is made; or

(b) For a short-term loan, the monthly payment required under the terms of the loan agreement does not exceed 25 percent of his expected gross monthly income.”.

Amend sec. 34, page 8, by deleting lines 19 through 38 and inserting:

“Sec. 34. A licensee shall not make more than one deferred deposit loan or short-term loan to the same customer at one time or before any outstanding balance is paid in full on an existing loan made by that licensee to the customer unless:

1. The customer is seeking multiple loans that do not exceed the limits set forth in section 33.5 of this act;

2. The licensee charges the same or a lower annual percentage rate for any additional loans as he charged for the initial loan;

3. *Except for that part of the finance charge which consists of interest only, the licensee does not impose any other charge or fee to initiate any additional loans, except that a licensee who makes deferred deposit loans or short-term loans in accordance with the provisions of subsection 2 of section 43 of this act may charge a reasonable fee for preparing documents in an amount that does not exceed \$50; and*

4. *If the additional loans are deferred deposit loans and the”.*

Amend sec. 35, page 9, line 2, by deleting “motor”.

Amend sec. 35, page 9, by deleting lines 7 through 22 and inserting:

“(d) More than one check or written authorization for an electronic transfer of money for each deferred deposit loan.

(e) A check or written authorization for an electronic transfer of money for any deferred deposit loan in an amount which exceeds the total of payments set forth in the disclosure statement required by the Truth in Lending Act and Regulation Z that is provided to the customer.

2. *Take any note or promise to pay which does not disclose the date and amount of the loan, amount financed, annual percentage rate, finance charge, total of payments, payment schedule and a description and the amount of every fee charged, regardless of the name given to the fee and regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z.*

3. *Take any instrument, including a check or written authorization for an electronic transfer of money, in which blanks”.*

Amend sec. 36, page 9, by deleting lines 36 through 38 and inserting:

“2. Commence a civil action or any process of alternative dispute resolution or repossess a vehicle before the customer defaults under the original term of a loan agreement or before the customer defaults under any repayment plan, extension or grace period negotiated and agreed”.

Amend sec. 36, page 10, line 2, before *“payment”* by inserting *“the”*.

Amend the bill as a whole by adding a new section designated sec. 36.5, following sec. 36, to read as follows:

“Sec. 36.5. Notwithstanding any other provision of this chapter to the contrary:

- 1. The original term of a title loan must not exceed 30 days.*
- 2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:*
 - (a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;*
 - (b) The annual percentage rate charged on the title loan during any period of extension is not more than the annual percentage rate charged on the title loan during the original term; and*
 - (c) No additional origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fees, are charged in connection with any extension of the title loan.”.*

Amend sec. 37, page 10, line 18, by deleting *“motor”*.

Amend sec. 37, page 10, by deleting line 27 and inserting:

“obligations, employment and ownership of the vehicle; and”.

Amend sec. 38, page 10, line 30, by deleting *“chapter,”* and inserting *“section,”*.

Amend sec. 38, page 10, line 35, by deleting:

“to commence a legal action”.

Amend sec. 38, page 10, lines 36, 40, 41 and 43, by deleting *“motor”*.

Amend sec. 38, page 11, lines 1 and 3, by deleting *“motor”*.

Amend sec. 38, page 11, by deleting lines 4 through 15 and inserting:

“before he entered into the title loan.

3. If a vehicle is repossessed pursuant to this section:

(a) By the licensee or his employees, the licensee shall make reasonably available to the customer any personal property in or upon the vehicle; or

(b) By a third party acting on behalf of the licensee, the licensee shall instruct the third party to make reasonably available to the customer any personal property in or upon the vehicle.

4. If a customer uses fraud to secure a title loan or if the customer wrongfully transfers any interest in the vehicle to a third party before the title loan is repaid, the licensee may bring a civil action against the customer for any or all of the following relief:

(a) The amount of the loan obligation, including, without limitation, the aggregate amount of the interest, charges and fees negotiated and agreed to by the licensee and customer as permitted under this chapter, less any prior payments made by the customer;”.

Amend sec. 38, page 11, line 24, by deleting *“motor”*.

Amend sec. 39, page 11, line 31, by deleting *“loan:”* and inserting *“loan;”*.

Amend sec. 39, page 12, line 6, by deleting *“motor”*.

Amend sec. 40, page 12, line 14, by deleting *“customer,”* and inserting:

“customer as permitted under this chapter,”.

Amend sec. 40, page 12, line 23, by deleting “*motor*”.

Amend sec. 42, pages 13 and 14, by deleting lines 7 through 45 on page 13 and lines 1 through 22 on page 14, and inserting:

“Sec. 42. 1. Before a licensee attempts to collect the outstanding balance on a loan in default by commencing any civil action or process of alternative dispute resolution or by repossessing a vehicle, the licensee shall offer the customer an opportunity to enter into a repayment plan. The licensee:

(a) Is required to make the offer available to the customer for a period of at least 30 days after the date of default; and

(b) Is not required to make such an offer more than once for each loan.

2. Not later than 15 days after the date of default, the licensee shall provide to the customer written notice of the opportunity to enter into a repayment plan. The written notice must:

(a) Be in English, if the initial transaction was conducted in English, or in Spanish, if the initial transaction was conducted in Spanish;

(b) State the date by which the customer must act to enter into a repayment plan;

(c) Explain the procedures the customer must follow to enter into a repayment plan;

(d) If the licensee requires the customer to make an initial payment to enter into a repayment plan, explain the requirement and state the amount of the initial payment and the date the initial payment must be made;

(e) State that the customer has the opportunity to enter into a repayment plan with a term of at least 90 days after the date of default; and

(f) Include the following amounts:

- (1) The total of payments or the remaining balance on the original loan;*
 - (2) Any payments made on the loan;*
 - (3) Any charges added to the loan amount allowed pursuant to the provisions of this chapter; and*
 - (4) The total amount due if the customer enters into a repayment plan.*
- 3. Under the terms of any repayment plan pursuant to this section:*
- (a) The customer must enter into the repayment plan not later than 30 days after the date of default, unless the licensee allows a longer period;*
 - (b) The licensee must allow the period for repayment to extend at least 90 days after the date of default, unless the customer agrees to a shorter term;*
 - (c) The licensee may require the customer to make an initial payment of not more than 20 percent of the total amount due under the terms of the repayment plan;*
 - (d) For a deferred deposit loan:*
 - (1) The licensee may require a customer to provide, as security, one or more checks or written authorizations for an electronic transfer of money which equal the total amount due under the terms of the repayment plan;*
 - (2) The licensee shall, if the customer makes a payment in the amount of a check or written authorization taken as security for that payment, return to the customer the check or written authorization stamped "void" or destroy the check or written authorization; and*
 - (3) The licensee shall not charge any fee to the customer pursuant to section 45 of this act for a check which is provided as security during the repayment plan and which is not paid upon*

presentment if, in connection with that loan, the licensee has previously charged at least one such fee.

4. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall honor the terms of the repayment plan, and the licensee shall not:

(a) Except as otherwise provided by this chapter, charge any other amount to a customer, including, without limitation, any amount or charge payable directly or indirectly by the customer and imposed directly or indirectly by the licensee as an incident to or as a condition of entering into a repayment plan. Such an amount includes, without limitation:

(1) Any interest, regardless of the name given to the interest, other than the interest charged pursuant to the original loan agreement at a rate which does not exceed the annual percentage rate charged during the term of the original loan agreement; or

(2) Any origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee;

(b) Except as otherwise provided in this section, accept any additional security or collateral from the customer to enter into the repayment plan;

(c) Sell to the customer any insurance or require the customer to purchase insurance or any other goods or services to enter into the repayment plan;

(d) Make any other loan to the customer, unless the customer is seeking multiple loans that do not exceed the limit set forth in section 33.5 of this act;

(e) During the term of the repayment plan, attempt to collect the outstanding balance by commencing any civil action or process of alternative dispute resolution or by repossessing a vehicle, unless the customer defaults on the repayment plan; or

(f) Attempt to collect an amount that is greater than the amount owed under the terms of the repayment plan.

5. If the licensee and customer enter into a repayment plan pursuant to this section, the licensee shall:

(a) Prepare a written agreement establishing the repayment plan; and

(b) Give the customer a copy of the written agreement. The written agreement must:

(1) Be signed by the licensee and customer; and

(2) Contain all of the terms of the repayment plan, including, without limitation, the total amount due under the terms of the repayment plan.”.

Amend sec. 42, page 14, between lines 35 and 36, by inserting:

“7. If the customer defaults on the repayment plan, the licensee may, to collect the outstanding balance, commence any civil action or process of alternative dispute resolution or repossess a vehicle as otherwise authorized pursuant to this chapter.”.

Amend sec. 43, page 14, by deleting lines 36 through 41 and inserting:

“Sec. 43. 1. Except as otherwise provided in subsection 2, if a customer agrees to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new deferred deposit loan or short-term loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond 60 days after the expiration of the initial loan period.

2. *This section does not apply to a deferred deposit loan or short-term loan if the licensee:*
- (a) *Makes the deferred deposit loan or short-term loan to a customer pursuant to a loan agreement which, under its original terms:*
- (1) *Charges an annual percentage rate of less than 200 percent;*
- (2) *Requires the customer to make a payment on the loan at least once every 30 days;*
- (3) *Requires the loan to be paid in full in not less than 150 days; and*
- (4) *Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;*
- (b) *Performs a credit check of the customer with a major consumer reporting agency before making the loan;*
- (c) *Reports information relating to the loan experience of the customer to a major consumer reporting agency;*
- (d) *Gives the customer the right to rescind the deferred deposit loan or short-term loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan;*
- (e) *Participates in good faith with a counseling agency that is:*
- (1) *Accredited by the Council on Accreditation for Services for Families and Children, Inc., or its successor organization; and*
- (2) *A member of the National Foundation for Credit Counseling, or its successor organization; and*
- (f) *Does not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.”.*

Amend sec. 44, pages 14 and 15, by deleting lines 42 through 45 on page 14 and lines 1 through 12 on page 15, and inserting:

“Sec. 44. 1. Except as otherwise provided in section 36.5 of this act, if a customer defaults on a loan or on any extension or repayment plan relating to the loan, whichever is later, the licensee may collect only the following amounts from the customer, less all payments made before and after default:

(a) The principal amount of the loan.

(b) The interest accrued before the expiration of the initial loan period at the annual percentage rate set forth in the disclosure statement required by the Truth in Lending Act and Regulation Z that is provided to the customer. If there is an extension relating to the loan, the licensee may charge and collect interest pursuant to this paragraph for a period not to exceed 60 days after the expiration of the initial loan period, unless otherwise allowed by section 43 of this act.

(c) The interest accrued after the expiration of the initial loan period or after any extension or repayment plan that is allowed pursuant to this chapter, whichever is later, at an annual percentage rate”.

Amend sec. 44, page 15, lines 17 and 18, by deleting “*12 weeks.*” and inserting “*90 days.*”.

Amend sec. 44, page 15, line 24, by deleting “*I,*” and inserting:

“I and any other charges expressly permitted pursuant to sections 34, 36.5 and 42 of this act,”.

Amend sec. 48, page 17, line 21, by deleting “*business,*” and inserting:

“business under the license,”.

Amend sec. 48, page 17, line 25, by deleting “*means.*” and inserting:

“means, except that the applicant shall not propose to do business through any automated loan machine prohibited by section 29 of this act.”.

Amend sec. 48, page 17, between lines 40 and 41, by inserting:

“4. The Commissioner shall consider an application to be withdrawn if the Commissioner has not received all information and fees required to complete the application within 6 months after the date the application is first submitted to the Commissioner or within such later period as the Commissioner determines in accordance with any existing policies of joint regulatory partners. If an application is deemed to be withdrawn pursuant to this subsection or if an applicant otherwise withdraws an application, the Commissioner may not issue a license to the applicant unless the applicant submits a new application and pays any required fees.”.

Amend sec. 49, page 17, by deleting lines 44 and 45 and inserting:

“the State of Nevada in the amount of \$50,000 plus an additional \$5,000 for each branch location at which the applicant proposes to do business under the license. Thereafter, each licensee shall maintain the surety bond so that the amount of the surety bond is \$50,000 plus an additional \$5,000 for each branch location at which the licensee does business under the license. The surety bond required by this section is for the use and benefit of any customer receiving the services of the licensee at any location at which the licensee does business under the license.”.

Amend sec. 51, page 19, line 39, by deleting “means.” and inserting:

“means, except that the applicant shall not conduct business in this State through any automated loan machine prohibited by section 29 of this act.”.

Amend sec. 52, page 19, line 43, by deleting “section” and inserting:

“sections 53.5 and”.

Amend the bill as a whole by adding a new section designated sec. 53.5, following sec. 53, to read as follows:

“Sec. 53.5. 1. In addition to any other requirements set forth in this chapter, each applicant must submit proof satisfactory to the Commissioner that the applicant:

(a) Has a good reputation for honesty, trustworthiness and integrity and is competent to transact the business for which the applicant seeks to be licensed in a manner which protects the interests of the general public.

(b) Has not made a false statement of material fact on the application for the license.

(c) Has not committed any of the acts specified in subsection 2.

(d) Has not had a license issued pursuant to this chapter suspended or revoked within the 10 years immediately preceding the date of the application.

(e) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(f) If the applicant is a natural person:

(1) Is at least 21 years of age; and

(2) Is a citizen of the United States or lawfully entitled to remain and work in the United States.

2. In addition to any other lawful reasons, the Commissioner may refuse to issue a license to an applicant if the applicant:

(a) Has committed or participated in any act which, if committed or done by a holder of a license, would be grounds for the suspension or revocation of the license.

(b) Has previously been refused a license pursuant to this chapter or has had such a license suspended or revoked.

(c) Has participated in any act which was a basis for the refusal or revocation of a license pursuant to this chapter.

(d) Has falsified any of the information submitted to the Commissioner in support of the application for the license.”.

Amend sec. 54, page 20, line 21, by deleting “*that the*” and inserting:

“*that:*

(a) The”.

Amend sec. 54, page 20, by deleting line 25 and inserting:

“*efficiently; and*

(b) The applicant has satisfied the requirements set forth in section 53.5 of this act.”.

Amend sec. 54, page 20, line 41, by deleting “*means.*” and inserting:

“*means, except that the Commissioner shall not issue any license that would authorize the licensee to operate through any automated loan machine prohibited by section 29 of this act.”.*

Amend sec. 54, page 20, line 44, by deleting “*shall:*” and inserting “*must:*”.

Amend sec. 57, page 21, line 41, after “**Sec. 57.**” by inserting “*I.*”.

Amend sec. 57, page 22, between lines 2 and 3, by inserting:

“*2. A licensee must obtain the approval of the Commissioner before using or changing a business name.*

3. A licensee shall not:

(a) Use any business name which is identical or similar to a business name used by another licensee under this chapter or which may mislead or confuse the public.

(b) Use any printed forms which may mislead or confuse the public.”.

Amend sec. 59, page 23, line 8, by deleting “*means.*” and inserting:

“means, except that the licensee shall not operate any automated loan machine prohibited by section 29 of this act.”.

Amend sec. 60, page 23, line 12, after “*separate*” by inserting:

“written or electronic”.

Amend sec. 64, page 25, line 1, after “**Sec. 64.**” by inserting “**I.**”.

Amend sec. 64, page 25, between lines 6 and 7, by inserting:

“2. If, after auditing one or more branch locations of the licensee, the Commissioner or his authorized representatives conclude that the loans, disclosures, loan practices, computer processes, filing systems and records are identical at each branch location, the Commissioner may make an examination of only those branch locations he deems necessary.”.

Amend the bill as a whole by adding a new section designated sec. 65.5, following sec. 65, to read as follows:

“Sec. 65.5. In addition to any other lawful reasons, the Commissioner may suspend or revoke a license if the licensee has engaged in any act that would be grounds for denying a license pursuant this chapter.”.

Amend the bill as a whole by adding a new section designated sec. 73.5, following sec. 73, to read as follows:

“Sec. 73.5. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than \$10,000 upon a person who, without a license, conducts any business or activity for which a license is required pursuant to the provisions of this chapter.”.

Amend sec. 74, page 28, by deleting lines 9 through 21 and inserting:

“Sec. 74. 1. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, if a person violates any provision of section 29, 31 to 47, inclusive, 49, 50, 57 or 58 of this act or any regulation adopted pursuant thereto, the customer may bring a civil action against the person for any or all of the following relief:

- (a) Actual and consequential damages;*
- (b) Punitive damages, which are subject to the provisions of NRS 42.005;*
- (c) Reasonable attorney’s fees and costs; and*
- (d) Any other legal or equitable relief that the court deems appropriate.*

2. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, the customer may bring a civil action against a person pursuant to subsection 1 to recover an additional amount, as statutory damages, which is equal to \$1,000 for each violation if the person knowingly:

- (a) Operates a check-cashing service, deferred deposit loan service, short-term loan service or title loan service without a license, in violation of section 29 of this act;*
- (b) Fails to include in a loan agreement a disclosure of the right of the customer to rescind the loan, in violation of section 31 of this act;*
- (c) Violates any provision of section 33 of this act;*

(d) Accepts collateral or security for a deferred deposit loan, in violation of section 35 of this act, except that a check or written authorization for an electronic transfer of money shall not be deemed to be collateral or security for a deferred deposit loan;

(e) Uses or threatens to use the criminal process in this State or any other state to collect on a loan made to the customer, in violation of section 36 of this act;

(f) Includes in any written agreement a promise by the customer to hold the person harmless, a confession of judgment by the customer or an assignment or order for the payment of wages or other compensation due the customer, in violation of section 36 of this act;

(g) Violates any provision of section 44 of this act; or

(h) Violates any provision of section 45 of this act.

3. A person may not be held liable in any civil action brought pursuant to this section if the person proves, by a preponderance of evidence, that the violation:

(a) Was not intentional;

(b) Was technical in nature; and

(c) Resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

4. For the purposes of subsection 3, a bona fide error includes, without limitation, clerical errors, calculation errors, computer malfunction and programming errors and printing errors, except that an error of legal judgment with respect to the person's obligations under this chapter is not a bona fide error."

Amend the bill as a whole by adding a new section designated sec. 75.5, following sec. 75, to read as follows:

“Sec. 75.5. NRS 41.620 is hereby amended to read as follows:

41.620 1. ~~{Any}~~ *Except as otherwise provided in section 45 of this act, any* person who:

(a) Makes, utters, draws or delivers a check or draft for the payment of money drawn upon any financial institution or other person, when he has no account with the drawee of the instrument or has insufficient money, property or credit with the drawee to pay; or

(b) Uses a credit card or debit card to obtain money, goods, property, services or anything of value, when he knows or should have known the credit card or debit card is no longer valid,

↪ and who fails to pay the amount in cash to the payee, issuer or other creditor within 30 days after a demand therefor in writing is mailed to him by certified mail, is liable to the payee, issuer or other creditor for the amount of the check, draft or extension of credit, and damages equal to three times the amount of the check, draft or extension of credit, but not less than \$100 nor more than \$500.

2. As used in this section, unless the context otherwise requires:

(a) “Credit card” has the meaning ascribed to it in NRS 205.630;

(b) “Debit card” has the meaning ascribed to it in NRS 205.635; and

(c) “Issuer” has the meaning ascribed to it in NRS 205.650.”.

Amend sec. 80, page 32, line 44, by deleting “*act.*” and inserting:

“act with regard to those services regulated pursuant to sections 2 to 74, inclusive, of this act.”.

Amend sec. 83, page 33, line 39, by deleting “A” and inserting:

“Except as otherwise provided in subsections 3 and 4, a”.

Amend sec. 83, page 34, between lines 6 and 7, by inserting:

“3. A person described in subsection 1 is not required to comply with the following provisions of sections 2 to 74, inclusive, of this act sooner than October 1, 2005, or the date of any extension granted by the Commissioner of Financial Institutions pursuant to subsection 4:

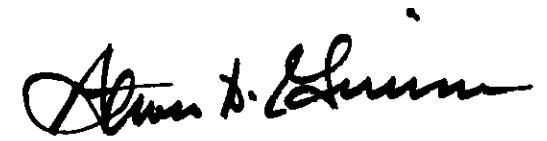
- (a) Any provision requiring the use of the Spanish language; and
- (b) Any provision requiring changes to or replacement of existing computer software or major modifications to existing business processes, as determined by the Commissioner.

4. If the person is unable to comply with any provision described in paragraph (a) or (b) of subsection 3 by October 1, 2005, the person may request an extension from the Commissioner. The Commissioner may grant such an extension, to a date not later than January 1, 2006, if the person establishes that compliance by October 1, 2005:

- (a) Is not economically feasible;
- (b) Is prevented by factors beyond the control of the person; or
- (c) Is prevented by any other factors that the Commissioner deems to be an appropriate justification for an extension.”.

Amend the title of the bill to read as follows:

“AN ACT relating to financial services; revising the standards and procedures for the licensing and regulation of check-cashing services, deferred deposit loan services, certain short-term loan services and title loan services; repealing provisions governing check-cashing services and deferred deposit loans to conform with the revised standards and procedures; revising provisions relating to certain unfair lending practices; providing remedies and administrative penalties; and providing other matters properly relating thereto.”.


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

TITLEMAX OF NEVADA, INC., a Nevada
corporation,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION,

Defendant.

Case No.: A-15-719176-C

Dept. No.: XXI

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES**

Hearing Date: November 18, 2015

Hearing Time: 9:30 a.m.

Plaintiff TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax"), by and through its attorneys of record, the law firm of Holland & Hart LLP, hereby opposes the Motion to Dismiss for Failure to Exhaust Administrative Remedies ("Motion") filed by the State of Nevada, Department of Business and Industry, Financial Institutions Division (the "Division").

///

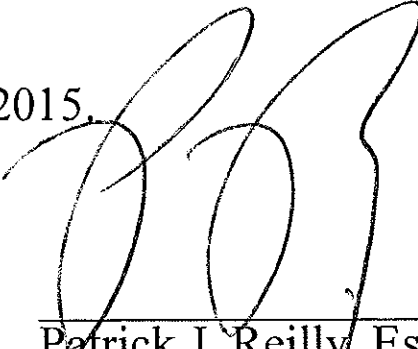
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1 This Opposition is based on the attached Memorandum of Points and Authorities and
2 supporting documentation, the papers and pleadings on file in this action, and any oral argument
3 this Court may allow.

4 DATED this 26th day of October, 2015.

5
6 
7 Patrick J. Reilly, Esq.
8 Joseph G. Went, Esq.
9 HOLLAND & HART LLP
10 9555 Hillwood Drive, Second Floor
11 Las Vegas, Nevada 89134

12 *Attorneys for Plaintiff*

13
14 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR
15 FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**

16 **I.**

17 **INTRODUCTION**

18 The Division contends that this Court has no authority to interpret NRS 604A.210, NRS
19 604A.445, and NAC 604A.230. Yet, this Court plainly does possess such authority, and the
20 Nevada Supreme Court has said so to the Division on two prior occasions. Seeking the
21 perceived favorable forum of its own administrative hearing, the Division is engaged in forum
22 shopping, and this Court should refrain from imposing the double standard that Division urges it
23 to impose.

24 TitleMax is not forum shopping. It is entitled to an interpretation of NRS 604A.210,
25 NRS 604A.445, and NAC 604A.230 from a court of law. And, TitleMax is not seeking to
26 circumvent the Division. Should this Court issue a ruling adverse to TitleMax as to the
27 interpretation of any of the foregoing rules, TitleMax will voluntarily modify its lending
28 practices accordingly, pending a *de novo* review of this Court's decision by the Nevada Supreme
Court. It is that simple. And, it would be reversible error to ignore Malecon Tobacco, NAS, and
Check City, each of which mandate that TitleMax is entitled to an interpretation of these rules.

Accordingly, the Motion to Dismiss must be denied.

II.

CLAIMS FOR RELIEF

As set forth in the Amended Complaint, TitleMax seeks declaratory relief on the interpretation and application of NRS 604A.210, NRS 604A.445, and NAC 604A.230. Attached hereto as **Exhibit “1”** is a true and correct copy of the Amended Complaint. **The Amended Complaint specifically requests the interpretation of NRS 604A.210, NRS 604A.445, and NAC 604A.230.** Amended Complaint at ¶¶ 23-25. Very simply, this matter turns not on questions of fact, but entirely on the interpretation of law.

As evidenced by the Motion, the parties are in *total* agreement as to the facts, which *solely* relate to two specific business practices of TitleMax.¹ The undisputed facts that should be applied to the applicable rules are:

- (i) TitleMax allows a co-borrower to be on a title loan when the co-borrower is not on the title to the vehicle; and
- (ii) TitleMax provides a grace period on 210-day installment loans that allows for simple interest to accrue.

Thus, the only issues before this court involve questions of law. Indeed, **the application of undisputed facts to the interpretation of a rule is a question of law.** See, e.g., *Stanford Ranch, Inc. v. Maryland Cas. Co.*, 89 F.3d 618, 624 (9th Cir. 1996) (The interpretation of an insurance policy, as applied to undisputed facts, is a question of law.); *Estate of Delmue v. Allstate Ins. Co.*, 113 Nev. 414, 936 P.2d 326, 328 (1997); *Washoe County v. Transcontinental Ins. Co.*, 110 Nev. 798 (1994); *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 (1992); *Nationwide Mut. Ins. Co. v. Moya*, 108 Nev. 578 (1992). Accordingly, it is improper to suggest that this matter involves “mixed” questions of fact and law.

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¹ In the Motion, the Division in a single paragraph contends that the actions of TitleMax and its customers require a factual determination. This is meritless. Both parties agree upon the type of product offered by TitleMax and the terms of its loan agreement. Opposition at 9:16-27. The only question is how NRS 604A.210, NRS 604A.445, and NAC 604A.230 should be interpreted. This is not a case where the Division is claiming that TitleMax is operating in a certain fashion when it is really operating in another.

III.

LEGAL ARGUMENT

A. **Standard of Review.**

The Division asks this Court to dismiss the action based upon Rule 12(b)(5) of the Nevada Rules of Civil Procedure (the “NRCP”). However, its Motion does not involve the merits of this dispute and thus does not involve the question of whether TitleMax has failed to state a claim upon which relief may be granted. Rather, the Division seeks to dismiss based upon the ripeness doctrine and the so-called “failure” to exhaust administrative remedies. This is in reality a motion to dismiss for lack of jurisdiction over the subject matter, which would be reviewable only under Rule 12(b)(1). Accordingly, the Division’s Motion is not properly before this Court, as it does not seek dismissal pursuant to NRCP 12(b)(1).

That being said, Rule 12(b)(5) specifically provides that the defense of the “failure to state a claim upon which relief can be granted” may be made by motion. *Gull v. Hoalst*, 77 Nev. 54, 359 P.2d 383 (1961). Nevada is a notice-pleading state; therefore, the courts generously construe pleadings to “place into issue matters which are fairly noticed to the adverse party.” *Western States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (citing *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984)). The standard of review for a dismissal under NRCP 12(b)(5) is rigorous, as this court must construe the pleading liberally. *Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) quoting *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)). The challenged pleading may be dismissed only “if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle it to relief.” *Buzz Stew, LLC v. City of North Las Vegas*, --- Nev. ---, 181 P.3d 670, 672 (2008).

Here, the Division has attached documents outside the Complaint. If a party files a motion to dismiss for failure to state a claim upon which relief can be granted and “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in [NRCP] 56.” NRCP 12(b). Summary judgment may be granted only “if the pleadings, depositions, answers to

1 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
2 genuine issue as to any material fact and that the moving party is entitled to judgment as a
3 matter of law.” NRCp 56(c). If the moving party demonstrates that no genuine issue of
4 material fact exists, the nonmoving party must show the existence of a genuine issue of material
5 fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 172 P.3d 131, 134 (2007).

6 Still, under either standard, NRCp 12(b)(5) or NRCp 56, the Division has wholly failed
7 to establish that any of TitleMax’s causes of actions are not viable.

8 **B. TitleMax Seeks and Is Entitled to an Interpretation of Law.**

9 Nevada law is clear. A party is not required to exhaust administrative remedies when it is
10 seeking the interpretation of a law. See *Malecon Tobacco, LLC v. State ex rel. Dept. of Taxation*,
11 118 Nev. 837, 839, 59 P.3d 474 (2002) citing *State, Dep’t of Taxation v. Scotsman Mfg. Co.*, 109
12 Nev. 252, 254, 849 P.2d 317, 319 (1993). In the Amended Complaint, TitleMax asserts only one
13 claim for relief—for Declaratory Relief under NRS Chapter 30. Nevada law provides as follows:

14 **NRS 30.030 Scope.** Courts of record within their respective jurisdictions
15 shall have power to declare rights, status and other legal relations whether or not
16 further relief is or could be claimed. No action or proceeding shall be open to
17 objection on the ground that a declaratory judgment or decree is prayed for. The
18 declaration may be either affirmative or negative in form and effect; and such
19 declarations shall have the force and effect of a final judgment or decree.

20 **NRS 30.040 Questions of construction or validity of instruments, contracts
21 and statutes.**

- 22 1. **Any person** interested under a deed, written contract or other writings
23 constituting a contract, or whose rights, status or other legal relations are
24 affected by a statute, municipal ordinance, contract or franchise, **may**
25 **have determined any question of construction** or validity arising under
26 the instrument, statute, ordinance, contract or franchise and obtain a
27 declaration of rights, status or other legal relations thereunder.
- 28 2. A maker or legal representative of a maker of a will, trust or other writings
constituting a testamentary instrument may have determined any question
of construction or validity arising under the instrument and obtain a
declaration of rights, status or other legal relations thereunder. Any action
for declaratory relief under this subsection may only be made in a
proceeding commenced pursuant to the provisions of title 12 or 13 of
NRS, as appropriate.

NRS 30.030 and NRS 30.040 (emphasis added).

1 TitleMax is unquestionably seeking an interpretation of NRS 604A.210, NRS 604A.445,
2 and NAC 604A.230 from this Court. That is the heart of this declaratory relief action. TitleMax
3 is not seeking money damages, trying to set aside an agency decision, or even recover attorney's
4 fees and costs. And, TitleMax's Amended Complaint seeks only an interpretation of law—it
5 does **not** seek to overturn the Division's findings in its 2014 and 2015 Reports of Examination.
6 See Amended Complaint at ¶¶ 23-25 and Prayer for Relief.

7 And, this is not a case where the parties disagree about facts—it is solely about the proper
8 interpretation of NRS 604A.210, NRS 604A.445, and NAC 604A.230. The Division and
9 TitleMax agree that: (i) TitleMax currently allows a co-borrower to be on a title loan when the
10 co-borrower is not on the title; and (ii) TitleMax provides a grace period on 210-day installment
11 loans that allows for simple interest to accrue without charging additional fees or interest. Thus,
12 the only issues before this court are questions of law. See, e.g., *Stanford Ranch, Inc. v. Maryland*
13 *Cas. Co.*, 89 F.3d 618, 624 (9th Cir. 1996) (the interpretation of an insurance policy, as applied
14 to undisputed facts, constitutes a question of law); *Estate of Delmue v. Allstate Ins. Co.*, 113 Nev.
15 414, 936 P.2d 326, 328 (1997); *Washoe County v. Transcontinental Ins. Co.*, 110 Nev. 798
16 (1994); *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 (1992); *Nationwide*
17 *Mut. Ins. Co. v. Moya*, 108 Nev. 578 (1992).

18 Perhaps most glaring is the Division's failure to reconcile two recent, binding, and
19 published Nevada Supreme Court cases that are directly on point **and in which the Division was**
20 **a party litigant**. In both *Department of Bus. & Indus., Fin. Inst. Div. v. Check City Partnership,*
21 *LLC*, 130 Nev. —, 337 P.3d 755, 758 n.5 (Nev. 2015), and *Department of Bus. & Indus., Fin.*
22 *Inst. Div. v. Nevada Ass'n Servs., Inc.*, 128 Nev. —, —, 294 P.3d 1223, 1228 (2012), the
23 Division argued that the administrative exhaustion doctrine barred attempts by a licensee to seek
24 court action involving the interpretation of a Nevada law. The Division lost both of these cases
25 on these points. Specifically, in *Check City*, a licensee of the Division filed a complaint for
26 declaratory relief seeking an interpretation of NRS 604A.425. The Division filed a motion to
27 dismiss, arguing that Check City had not exhausted its administrative remedies. The district court
28 rejected these arguments, and the Nevada Supreme Court specifically upheld this portion of the

1 district court's decision. The Court stated unanimously as follows:

2 The FID argues that Check City has not exhausted its
3 administrative remedies and that this matter does not present a
4 justiciable case or controversy. We disagree. Exhaustion is not
5 required where, as here, the only issue is the interpretation of a
6 statute. *Malecon Tobacco, LLC v. Dep't of Taxation*, 118 Nev. 837,
7 839, 59 P.3d 474, 475–76 (2002). Additionally, the possibility of a
8 license suspension—a consequence Check City might have faced if
9 it failed to comply with the FID's interpretation of NRS
604A.425—may constitute irreparable harm for the purpose of
granting a preliminary injunction, *see Dep't of Bus. & Indus., Fin.*
Insts. Div. v. Nev. Ass'n Servs., Inc., 128 Nev. —, —, 294
P.3d 1223, 1228 (2012), which would be sufficient to form a
justiciable case or controversy, *see Doe v. Bryan*, 102 Nev. 523,
525, 728 P.2d 443, 444 (1986).

10 337 P.3d at 758 n.5. This precedent is binding against the Division and is dispositive of the
11 instant Motion to Dismiss.

12 And, yet, the Division inexplicably failed to alert this Court to the two cases—*NAS* and
13 *Check City*—that were binding, published, and in which it was a party and lost on the issue of
14 administrative exhaustion. Yet, it continues to take the same frivolous position before this Court,
15 even though it is now frivolous based upon those two published and binding decisions. Worse
16 yet, **the FID failed to alert this Court to those binding cases in its Motion.** The Division still
17 has not offered a tenable explanation as to why it failed to bring to this Court's attention that
18 binding precedent. It certainly cannot claim ignorance, as it has participated in and lost both
19 times as to that issue. No matter, the Nevada Supreme Court has twice stated that a Division
20 licensee may seek an interpretation of Nevada law in the form of a declaratory relief action under
21 NRS Chapter 30.

22 **C. TitleMax Has No Administrative Remedy to Object to a Report of Examination.**

23 Of course, the Division's position presumes that there is actually an administrative remedy
24 to object to a Report of Examination. Yet, there is none. NRS 604A.700 *et seq.* contains specific
25 provisions for the Division's ability to investigate and conduct examinations of licensees. The
26 Division thereafter provides a written report of each examination to the licensee. **However, there**
27 **is no Nevada statute or regulation that allows for an administrative review of a written**
28 **Report of Examination.** TitleMax therefore has no ability to appeal such a determination. And,

1 while the Division has suggested that TitleMax may request an administrative hearing to object to
2 a Report of Examination, there is simply nothing in NRS Chapter 604A or NAC Chapter 604A
3 that authorizes such a proceeding, or articulates what the standards for such a proceeding would
4 be. As the Division is an administrative agency of legislative creation, it may not act outside of
5 the scope of its specific duties—it “acts without authority when it promulgates a rule or regulation
6 in contravention of the will of the legislature as expressed in the statute, or a rule or regulation
7 that exceeds the scope of the statutory grant of authority. *Scott v. Angelone*, 771 F. Supp. 1064,
8 1066-67 (D. Nev. 1991). And, as a basic matter of due process, the Division may not simply
9 fabricate a procedure without any standards for review. Thus, while the Division would like to
10 pretend that a licensee may seek administrative review of a Report of Examination, there is no
11 ability to do so under the Nevada Revised Statutes or Nevada Administrative Code.

12 Thus, TitleMax was presented with two options. One, seek a judicial interpretation of
13 these laws, as it did. Or, two, place its license at risk by waiting for the Division to seek
14 administrative discipline. The Nevada Supreme Court specifically stated in *Check City* that a
15 district court may not decline to interpret the law and foist the latter option upon a licensee against
16 its will. 337 P3d at 758 n.5.

17 The Division contends that TitleMax must first participate in an administrative hearing,
18 risk administrative discipline, and only then can it obtain an interpretation of law by petitioning
19 the district court for judicial review pursuant to NRS 233B.130. Opp. at 6. Tellingly, **after** the
20 commencement of this declaratory relief action, the Division commenced its own administrative
21 complaint against TitleMax, and now seeks to rush such a procedure before this Court can even
22 rule on the merits of this case. See Administrative Complaint attached hereto (without
23 attachments) as **Exhibit “2”**. The Division apparently seeks the very relief warned against by the
24 Nevada Supreme Court in the *Check City* case—suspension of the license to operate under NRS
25 604A.820. This overreaching and hubris by the Division is shocking, given the recent statements
26 by the Nevada Supreme Court concerning the right to seek declaratory relief interpreting Nevada
27 law.

28 ///

1 **D. Seeking Administrative Review Would Be Futile.**

2 The other exception to the administrative exhaustion doctrine arises “**when a resort to**
3 **administrative remedies would be futile.**” *Malecon Tobacco*, 118 Nev. at 839, citing *Karches*
4 *v. City of Cincinnati*, 526 N.E.2d 1350, 1355-56 (Ohio 1988) (where pursuit of administrative
5 remedies would be futile or unusually onerous, it was unnecessary to exhaust administrative
6 remedies in order to challenge the constitutionality of a zoning ordinance as applied to a specific
7 parcel of property) and *Memorial Hosp. v. Dept. of Rev. & Tax.*, 770 P.2d 223, 226 (Wyo. 1989);
8 *see also State v. Scotsman Mfg. Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993) (“Neither will
9 the exhaustion doctrine deprive the court of jurisdiction where initiation of administrative
10 proceedings would be futile.”); *see also Engelmann v. Westergard*, 98 Nev. 348, 353, 647 P.2d
11 385, 389 (1982). Resorting to administrative remedies is “futile” if there is certainty of an
12 adverse decision or the agency has “evidenced a strong position on the issue together with an
13 unwillingness to reconsider.” *James v. United States*, 824 F.2d 1132, 1139 (D.C. Cir. 1987);
14 *Randolph-Sheppard Vendors v. Weinberger*, 795 F.2d 90, 105 (D.C. Cir. 1986).

15 It would be futile for TitleMax to pursue an administrative remedy from the Division.
16 There is no dispute concerning the material facts of the pending proceeding. Rather, it is merely a
17 dispute as to how Nevada law should be interpreted. Yet, the Division claims TitleMax must
18 literally place its license at risk to obtain an interpretation of law from the **exact agency** that
19 TitleMax believes is misinterpreting that law. This is futile logic, and the Division’s position has
20 been rejected repeatedly by the Nevada Supreme Court.

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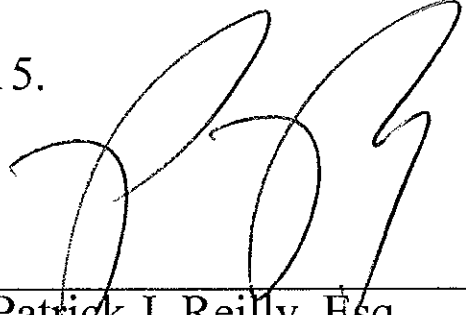
28

IV.

CONCLUSION

Accordingly, and based on the foregoing, TitleMax respectfully requests that this Court deny the Division's Motion to Dismiss.

DATED this 26th day of October, 2015.



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Las Vegas, Nevada 89134

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of October, 2015, a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Adam Paul Laxalt
Attorney General
Christopher A. Eccles
Deputy Attorney General
David J. Pope
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Attorneys for Defendant

☒ Email: by electronically delivering a copy via email to the following e-mail address:

Denise S. McKay, Esq.
Administrative Law Judge
Nevada Division of Business & Industry
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Las Vegas, Nevada 89101
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An Employee of Holland & Hart LLP

EXHIBIT “1”


CLERK OF THE COURT

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8
9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 TITLEMAX OF NEVADA, INC., a Nevada
corporation,

13
14 Plaintiff,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION,

17 Defendant.
18

Case No.: A-15-719176-C

Dept. No.: XXI

AMENDED COMPLAINT

**Arbitration Exemption Claimed—
Declaratory Relief and Action Seeking
Extraordinary Relief**

19 Plaintiff TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax"), by and
20 through its attorneys of record, the law firm of Holland & Hart LLP, for its Amended Complaint
21 against State of Nevada, Department of Business and Industry, Financial Institutions Division
22 (the "FID"), hereby states and alleges as follows:

23 **PARTIES, JURISDICTION, AND VENUE**

24 1. TitleMax is an entity created pursuant to the laws of the State of Nevada and is
25 authorized to do business in Clark County, Nevada.

26 2. The FID is an agency of the State of Nevada.

27 3. This Court has subject matter jurisdiction pursuant to Article VI of the Nevada
28 Constitution, and personal jurisdiction over the FID in accordance with NRS 14.065, on the

1 grounds that such jurisdiction is not inconsistent with the Nevada Constitution or the United
2 States Constitution, and in accordance with NRS 41.031, under which the State of Nevada
3 waives its sovereign immunity.

4 4. Venue is proper in the Eighth Judicial District Court in accordance NRS 41.031.

5 **GENERAL ALLEGATIONS**

6 5. TitleMax is a lender licensed pursuant to NRS Chapter 604A and is a "licensee"
7 within the meaning of NRS 604A.075.

8 6. TitleMax offers title loans to its borrowers.

9 7. Title loans are governed by NRS Chapter 604A and are regulated by the FID and
10 its Commissioner.

11 8. In 2014, the FID conducted an examination of TitleMax.

12 9. After the completion of the examination, the FID issued reports of examination
13 (collectively "ROEs") covering statutory and regulatory compliance at TitleMax's various retail
14 stores located in the State of Nevada.

15 **INCORRECT CONCLUSIONS OF LAW IN ROES RELATED TO NAC 604A.230**

16 10. The ROEs provided that TitleMax violated NAC 604A.230 whenever TitleMax
17 allowed a co-borrower to be associated with said loan when that co-borrower not on the title of
18 the vehicle.

19 11. The FID examiner concluded erroneously that the co-borrower was a "guarantor"
20 and that TitleMax was violating NAC 604A.230.

21 12. When there is a co-borrower not listed on the title of the vehicle associated with
22 said loan, the co-borrower becomes contractually bound as a principal obligor, and not as a
23 guarantor.

24 13. Based on the examiner's incorrect interpretation of NAC 604A.230, the FID
25 issued a "Needs Improvement" rating, thereby indicating that TitleMax had demonstrated less
26 than satisfactory compliance in the examination.

27 14. NAC 604A.230 does not prohibit the underwriting of a title loan with a co-
28 borrower as a principal obligor.

1 15. In 2015, the FID conducted another examination of TitleMax. The FID has
2 advised that it intends forthwith to issue an “Unsatisfactory” rating in this year’s ROE based
3 upon the exact same legal issue.

4 16. The FID has further advised that, after the issuance of an “Unsatisfactory” rating,
5 the FID intends to refer TitleMax to the Attorney General for enforcement.

6 **INCORRECT CONCLUSIONS OF LAW IN ROEs RELATED TO**
7 **NRS 604A.210 AND NRS 604A.445**

8 17. The ROEs provided that TitleMax violated NRS 604A.210 and NRS 604A.445
9 whenever a customer executed a grace period payment deferment agreement (the “Deferment
10 Agreement”) on a 210-day installment loan.

11 18. The FID examiner’s legal conclusion was incorrect in determining that the
12 foregoing constituted a violation of NRS 604A.210 and NRS 604A.445, based upon an incorrect
13 reading of these statutes.

14 19. Based on the examiner’s incorrect interpretation of the foregoing statutes, the FID
15 issued a “Needs Improvement” rating thereby indicating that TitleMax had demonstrated less
16 than satisfactory compliance in the examination.

17 20. In 2015, the FID conducted another examination of TitleMax. The FID has
18 advised that it intends to issue forthwith an “Unsatisfactory” rating in this year’s ROE based
19 upon the exact same legal interpretation.

20 21. The FID has further advised that, after the issuance of an “Unsatisfactory” rating,
21 the FID intends to refer TitleMax to the Attorney General for enforcement.

22 **FIRST CLAIM FOR RELIEF**

23 **(Declaratory Relief)**

24 22. TitleMax hereby repeats, realleges, and incorporates all of the allegations
25 contained in the preceding paragraphs as though fully set forth herein.

26 23. A true and ripe controversy exists between TitleMax and the FID as to the
27 interpretation of NRS 604A.210, NRS 604A.445, and NAC 604A.230, which led to the FID’s
28 conclusion that TitleMax “violated” said statutes and regulation.

1 24. TitleMax seeks a declaration that an individual may be a co-borrower on a title
2 loan without violating NAC 604A.230 when said individual is not listed on title of the vehicle
3 associated with said loan.

4 25. TitleMax seeks a declaration interpreting NRS 604A.210 and NRS 604A.445, as
5 referenced herein.

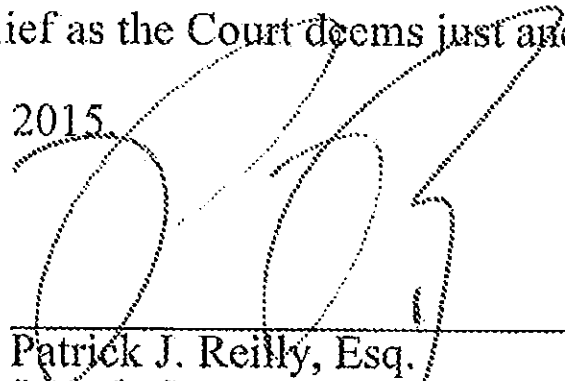
6 26. Declaratory relief is necessary to determine the foregoing rights, status, or other
7 legal relations thereunder.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, TitleMax demands judgment against Defendant as follows:

- 10 1. For declaratory relief as described herein;
- 11 2. For preliminary and permanent injunctive relief enjoining the FID from
12 imposing or seeking to impose discipline based upon alleged violations of NRS 604A.210,
13 NRS 604A.445, and NAC 604A.230, in particular as to whether TitleMax "violated" said
14 statutes and regulation; and
- 15 3. For such other and further relief as the Court deems just and proper.

16 DATED this 17th day of September, 2015.

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19 
20 Patrick J. Reilly, Esq.
21 Joseph G. Went, Esq.
22 HOLLAND & HART LLP
23 9555 Hillwood Drive, Second Floor
24 Las Vegas, Nevada 89134

25 *Attorneys for Plaintiff*
26
27
28

EXHIBIT “2”

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BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION

* * *

| | | |
|------------------------------|---|-------------------------------------|
| IN THE MATTER OF: |) | <u>ADMINISTRATIVE COMPLAINT FOR</u> |
| |) | <u>DISCIPLINARY ACTION AND</u> |
| TITLEMAX OF NEVADA, INC. and |) | <u>NOTICE OF HEARING</u> |
| TITLEBUCKS d/b/a TITLEMAX |) | |

ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION

GEORGE E. BURNS, Commissioner of the NEVADA FINANCIAL INSTITUTIONS DIVISION of the DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA (the "Division"), complains for disciplinary action against TITLEMAX OF NEVADA, INC. and TITLEBUCKS d/b/a TITLEMAX (hereinafter "TITLEMAX") as follows:

JURISDICTION

1. Pursuant to Nevada Revised Statutes (NRS) Chapter 604A, the Division is vested with the exclusive and original jurisdiction over the regulation, business practices, licensing, examinations, and disciplinary action related to deferred deposit lending, high-interest lending, title lending, and check cashing services in Nevada.
2. TITLEMAX is now, and was at all pertinent times alleged herein, licensed in Nevada by the Division as a deferred deposit lender, and / or a high-interest lender, and / or a title lender, and / or a check cashing service, pursuant to NRS Chapter 604A.
3. As the holder of a Chapter 604A license, TITLEMAX is subject to the provisions of NRS Chapter 604A and Nevada Administrative Code (NAC) Chapter 604A.

- 1 4. The Division files this Complaint pursuant to NRS 604A.820 based upon the matters
2 asserted herein and seeks the relief set forth below.

3 **FACTUAL ALLEGATIONS**

4 **GENERAL FACTS**

- 5 5. TITLEMAX is incorporated as a domestic corporation under the laws of Nevada and its
6 resident agent is The Corporation Trust Company of Nevada, located at 701 S. Carson
7 Street, Suite 200, Carson City, Nevada 89701.
- 8 6. TITLEMAX is licensed by the Division to conduct the business of lending at 42 locations
9 in Nevada and the corporate office is located at 15 Bull Street, Suite 200, Savannah,
10 Georgia 31401.
- 11 7. On or about May 4, 2015, through on or about June 17, 2015, the Division conducted its
12 annual examination of TITLEMAX to ensure compliance with NRS Chapter 604A and
13 NAC Chapter 604A (the "2015 Examination").
- 14 8. The 2015 Examination involved a review of two to five percent of TITLEMAX'S loans at
15 each of TITLEMAX'S 42 locations in Nevada.
- 16 9. The Division issued a Report of Examination (ROE) to TITLEMAX based upon the
17 results of the 2015 Examination.
- 18 10. The Division rates licensees as follows, in descending order of compliance:
19 Satisfactory, Needs Improvement, or Unsatisfactory.
- 20 11. The Division rated TITLEMAX "Needs Improvement" in its 2014 ROE due to
21 TITLEMAX'S violations of NRS 604A.210, NRS 604A.445, and NAC 604A.230.
- 22 12. During the 2015 Examination, the Division cited TITLEMAX for repeatedly violating NRS
23 604A.210, NRS 604A.445, and NAC 604A.230.
- 24 13. Thus, in the 2015 ROE, the Division rated TITLEMAX "Unsatisfactory" due to the
25 repeated violations.
- 26 14. The repeated violations cited in the 2015 Examination are:
- 27 a. Charging interest in violation of NRS 604A.210 and / or NRS 604A.445; and
28

- b. Requiring or accepting co-borrowers on title loans in which the co-borrower has no ownership in the vehicle used for the title loan, in violation of NAC 604A.230 in accordance with NRS 604A.105 and NRS 604A.115.

15. The Commissioner has reasonable cause to believe that TITLEMAX is violating or is threatening to or intends to violate provisions of NRS Chapter 604A and NAC Chapter 604A.

FACTS REGARDING TITLEMAX'S UNLAWFUL GRACE PERIOD AMENDMENT

16. Pursuant to the TITLEMAX'S original Title Loan Agreement (Loan), the customer makes seven fully amortized installment payments within 210 days to pay the loan off without a balloon payment at the end of the loan.

17. The Division has concluded that the Loan complies with NRS 604A.445(3)(a)-(d).

18. During the 2014 and 2015 Examinations, the Division's examiners observed TITLEMAX employees routinely offer customers an amendment to the Loan called the "Grace Period Payments Deferment Agreement" (Grace Period Amendment).

19. The text of the Grace Period Amendment provides in pertinent part:

"Because this is only an amendment and modification of the loan agreement in which we are only modifying and deferring your payments under the Title Loan Agreement, you acknowledge and agree that all of the terms and conditions of the Title Loan Agreement, including the charging of simple interest and waiver of jury trial and arbitration provision remain in full force and effect."

20. As a business pattern and practice, TITLEMAX employees offer the Grace Period Amendment prior to the customer's default on the Loan.

21. Customers are lured into the Grace Period Amendment because it typically decreases their initial payments.

22. Payments are not fully amortized under Grace Period Amendment.

23. TITLEMAX charges customers more money under the Grace Period Amendment than it does under the Loan.

24. The Grace Period Amendment schedules 14 monthly payments within 390 days.

25. Documents from the 2015 Examination show that TITLEMAX charges customers more money under the Grace Period Amendment than under the Loan.^{1, 2}

| Loan No. | Customer Name | Amount due under the Loan | Amount paid by the customer under the Grace Period Amendment | Unlawful overage amount charged and received by TITLEMAX |
|---------------|---------------|---------------------------|--|--|
| 10169-0121672 | J.V. | \$5,079.66 | \$5,826.74 | \$747.08 |
| 11669-0112962 | G.T. | \$3,500.21 | \$4,219.84 | \$719.63 |
| 11169-0129196 | B.P. | \$7,212.73 | \$8,645.45 | \$1,432.72 |
| 10069-0120952 | M.A. | \$11,880.22 | \$14,133.17 | \$2,252.95 |

26. Documents from the 2015 Examination show 307 examples of TITLEMAX charging customers more money under the Grace Period Amendment than under the Loan.

27. The 307 examples only reflect the two to five percent sampling of loans examined by the Division.

28. Of those 307 examples, TITLEMAX charged and received unlawful overage amounts from 24 customers totaling \$8,863.21.

29. Of those 307 examples, 283 remain in "open" status whereby TITLEMAX charged and will potentially receive unlawful overage amounts totaling \$370,090.74.

30. Assuming that the 307 examples of TITLEMAX charging customers more money under the Grace Period Amendment reflects a five percent sample size, then by mathematical extrapolation, TITLEMAX may have unlawfully charged customers a total of approximately 6,140 times during the period covered by the 2015 Examination.

¹ This Table summarizes four of TITLEMAX'S loans examined during the 2015 Examination whereby each customer has already paid the unlawful overage amount.

² Exhibits 1-4, attached hereto, include the Loan, Grace Period Amendment, and Customer Receipts for each of the four loans summarized by the Table. The fact that payments are not amortized under the Grace Period Amendment is evidenced by Bates Stamped page 007 in each of the exhibits.

- 1 31. Further, assuming that the average overage amount charged by TITLEMAX under each
2 Grace Period Amendment is \$1,288.09 (determined by averaging the unlawful charges
3 from paragraph 25), then TITLEMAX unlawfully charged Nevada customers
4 approximately \$7,908,872.60 during the period covered by the 2015 Examination.
- 5 32. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX
6 charged customers more money under the Grace Period Amendment.
- 7 33. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX
8 charged customers more money under the Grace Periods Amendment, after the
9 Division rated TITLEMAX "Needs Improvement" in the 2014 examination.
- 10 34. NRS 604A.070 provides in full as follows:

11 **NRS 604A.070 "Grace period" defined.**

12 1. "Grace period" means any period of deferment offered
13 gratuitously by a licensee to a customer if the licensee complies
with the provisions of NRS 604A.210.

- 14 35. NRS 604A.210 provides in full as follows:

15 **NRS 604A.210 Chapter does not prohibit licensee from**
16 **offering customer grace period.**

17 The provisions of this chapter do not prohibit a licensee from
18 offering a customer a grace period on the repayment of a loan or an
extension of a loan, except that **the licensee shall not charge the**
customer:

19 2. **Any fees for granting such a grace period; or**
20 **Any additional fees or additional interest on the**
outstanding loan during such a grace period.
(Emphasis added.)

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1 36. NRS 604A.445(3) provides in full as follows:

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3 **NRS 604A.445 Title loans: Restrictions on duration of loan
and periods of extension.**

4 **Notwithstanding any other provision of this chapter to the**
5 **contrary:**

6 **3. The original term of a title loan may be up to 210 days if:**

- 7 (a) The loan provides for payments in installments;
8 (b) **The payments are calculated to ratably and fully**
9 **amortize the entire amount of principal and**
10 **interest payable on the loan;**
11 (c) The loan is not subject to any extension; and
12 (d) The loan does not require a balloon payment of any
13 kind.

14 (Emphasis added.)

15 37. TITLEMAX, through its Grace Period Amendment, charges additional fees and / or
16 additional interest during grace periods.

17 38. TITLEMAX, through its Grace Period Amendment, makes title loans that last up to 390
18 days, which exceeds the maximum original term of 210 days allowed pursuant to NRS
19 604A.445(3).

20 39. TITLEMAX, through its Grace Period Amendment, makes title loans whereby payments
21 are not fully amortized.

22 40. TITLEMAX, through its Grace Period Amendment, makes title loans that require one or
23 more balloon payments.

24 41. TITLEMAX'S repeated violations were without any attempt to correct the deficiencies
25 and thus the repeated violations were willful, and / or intentional, and / or without any
26 exercise of due care.

27 42. TITLEMAX'S systematic business practice of amending the Loan via the Grace Period
28 Amendment is predatory and shows a *willful* intent to evade NRS and NAC 604A in
order to *unlawfully* charge Nevada customers what may amount to *millions* of dollars.

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FACTS REGARDING TITLEMAX'S UNLAWFUL GUARANTORS

43. Onsite visits to TITLEMAX locations and conversations between the Division's examiners and TITLEMAX's employees show that TITLEMAX requires and / or accepts a guarantor to a transaction entered into with a customer.

44. Examination papers from the 2015 Examination show that TITLEMAX requires and / or accepts a co-signor on a title loan to a customer where the co-signor's name is not on the title to the vehicle.

45. TITLEMAX's loan agreements require and / or accept a co-signor on a title loan to a customer where the co-signor's name is not on the title to the vehicle.

46. NRS 604A.105(1)(a)(1)-(2) provides in full as follows:

NRS 604A.105 "Title loan" defined.

1. "Title loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms:

(a) Charges an annual percentage rate of more than 35 percent; and

(b) Requires the customer to secure the loan by either:

(1) Giving possession of the title to a vehicle legally owned by the customer to the licensee or any agent, affiliate or subsidiary of the licensee; or

(2) Perfecting a security interest in the vehicle by having the name of the licensee or any agent, affiliate or subsidiary of the licensee noted on the title as a lienholder.

(Emphasis added.)

47. NRS 604A.115 provides in full as follows:

NRS 604A.115 "Title to a vehicle" or "title" defined.

"Title to a vehicle" or "title" means a certificate of title or ownership issued pursuant to the laws of this State that identifies the legal owner of a vehicle or any similar document issued pursuant to the laws of another jurisdiction.

48. NAC 604A.230(1)(a) provides in full as follows:

NAC 604A.230(1) Prohibited acts: Miscellaneous acts.

1. A licensee shall not:

(a) Require or accept a guarantor to a transaction entered into with a customer.

- 1 49. The term "guarantor" is not defined in NRS Chapter 604A or NAC 604A.
- 2 50. A guarantor is "One who makes a guaranty or gives security for a debt." BLACK'S LAW
- 3 DICTIONARY 711 (7th ed. 1999).
- 4 51. A guaranty is "A promise to answer for the payment of some debt, or the performance of
- 5 some duty, in case of the failure of another who is liable in the first instance." BLACK'S LAW
- 6 DICTIONARY 712 (7th ed. 1999).
- 7 52. A title loan requires the *customer* to secure the loan. NRS 604A.105(1)(b).
- 8 53. A title loan requires that the *customer* give possession of the *title to a vehicle legally*
- 9 *owned by the customer* to the licensee. NRS 604A.105(1)(b)(1).
- 10 54. Regardless of whether guarantor is called a co-borrower or a co-signor, the licensee is
- 11 prohibited from requiring or accepting security or a promise to answer for payment from
- 12 anyone other than the customer whose name is on the title.
- 13 55. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX
- 14 required or accepted a guarantor to a loan with a customer.
- 15 56. An evidentiary hearing is necessary to determine why TITLEMAX required or accepted
- 16 a guarantor to a loan with a customer.
- 17 57. An evidentiary hearing is necessary to determine what, if any, effect the relationship
- 18 between the customer and the guarantor would have on the Division's analysis.
- 19 58. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX
- 20 required or accepted a guarantor to a loan with a customer, after the Division rated
- 21 TITLEMAX "Needs Improvement" in the 2014 examination.
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ALLEGED VIOLATIONS

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- 2 59. Based upon and incorporating by reference the foregoing Factual Allegations, the
- 3 Commissioner alleges that TITLEMAX violated NRS 604A.210(1) and / or (2), one o
- 4 more times, by charging the customer additional fees and / or interest during a grace
- 5 period.
- 6 60. Based upon and incorporating by reference the foregoing Factual Allegations, the
- 7 Commissioner alleges that TITLEMAX willfully violated NRS 604A.210(1) and / or (2)
- 8 one or more times, by charging the customer additional fees and / or interest during a
- 9 grace period.
- 10 61. Based upon and incorporating by reference the foregoing Factual Allegations, the
- 11 Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(b), one or more
- 12 times, by calculating payments on loans to customers that do not ratably and fully
- 13 amortize the entire amount of principal and interest payable on the loan.
- 14 62. Based upon and incorporating by reference the foregoing Factual Allegations, the
- 15 Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(b), one o
- 16 more times, by calculating payments on loans to customers that do not ratably and fully
- 17 amortize the entire amount of principal and interest payable on the loan.
- 18 63. Based upon and incorporating by reference the foregoing Factual Allegations, the
- 19 Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(c), one or more times
- 20 by extending loans to customers for a term of up to 390 days.
- 21 64. Based upon and incorporating by reference the foregoing Factual Allegations, the
- 22 Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(c), one o
- 23 more times, by extending loans to customers for a term of up to 390 days.
- 24 65. Based upon and incorporating by reference the foregoing Factual Allegations, the
- 25 Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(d), one or more
- 26 times, by separating interest and principal which results in the customer paying one o
- 27 more balloon payments.
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1 66. Based upon and incorporating by reference the foregoing Factual Allegations, the
2 Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(d), one or
3 more times, by separating interest and principal which results in the customer paying
4 one or more balloon payments.

5 67. Based upon and incorporating by reference the foregoing Factual Allegations, the
6 Commissioner alleges that one or more of TITLEMAX'S repeat violations are **willful,**
7 **and / or intentional, and / or without any exercise of due care** to prevent the repeat
8 violations.

9 **DISCIPLINE AUTHORIZED**

10 68. NRS 604A.810 provides in full as follows:

11 **NRS 604A.810 Order to desist and refrain; action to enjoin**
12 **violation; appointment of receiver.**

- 13 1. Whenever the Commissioner has reasonable cause to
14 believe that any person is violating or is threatening to or
15 intends to violate any provision of this chapter, the
16 Commissioner may, in addition to all actions provided for
17 in this chapter and without prejudice thereto, enter an
18 order requiring the person to desist or to refrain from such
19 violation.
- 20 2. The Attorney General or the Commissioner may bring an action
21 to enjoin a person from engaging in or continuing a violation or
22 from doing any act or acts in furtherance thereof. In any such
23 action, an order or judgment may be entered awarding a
24 preliminary or final injunction as may be deemed proper.
- 25 3. In addition to all other means provided by law for the
26 enforcement of a restraining order or injunction, the court in
27 which an action is brought may impound, and appoint a receiver
28 for, the property and business of the defendant, including
books, papers, documents and records pertaining thereto, or so
much thereof as the court may deem reasonably necessary to
prevent violations of this chapter through or by means of the
use of property and business, whether such books, papers,
documents and records are in the possession of the defendant,
a registered agent acting on behalf of the defendant or any
other person. A receiver, when appointed and qualified, has
such powers and duties as to custody, collection,
administration, winding up and liquidation of such property and

business as may from time to time be conferred upon the
receiver by the court.
(Emphasis added.)

69. The procedures for taking disciplinary action are as follows:

**NRS 604A.820 Procedure for taking disciplinary action;
authorized disciplinary action; grounds.**

1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, he shall give 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefore and set a date for a hearing.
2. At the conclusion of a hearing, the Commissioner shall:
 - (a) Enter a written order dismissing the charges, revoking the license or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. The Commissioner shall send a copy of the order to the licensee by registered or certified mail.
 - (b) **Impose upon the licensee an administrative fine of not more than \$10,000 for each violation** by the licensee of any provision of this chapter or any regulation adopted pursuant thereto.
 - (c) If a fine is imposed pursuant to this section, enter such order as is necessary to **recover the costs of the proceeding, including his investigative costs and attorney's fees.**
(Emphasis added.)
3. The grounds for revocation or suspension of a license are that:
 - (a) The licensee has failed to pay the annual license fee;
 - (b) **The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any lawful regulation adopted pursuant thereto;**
 - (c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;
 - (d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license pursuant to the provisions of this chapter; or
 - (e) The licensee:
 - (1) Failed to open an office for the conduct of the business authorized by his license within 180 days after the date his license was issued; or

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- (2) Has failed to remain open for the conduct of the business for a period of 180 days without good cause therefore.
4. Any revocation or suspension applies only to the license granted to a person for the particular office for which grounds for revocation or suspension exist.
5. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.
70. NRS 604A.900 provides in full as follows:
- NRS 604A.900 Remedies for certain willful violations.**
1. Except as otherwise provided in this section, if a licensee willfully:
- (a) Enters into a loan agreement for an amount of interest or any other charge or fee that violates the provisions of this chapter or any regulation adopted pursuant thereto;
- (b) Demands, collects or receives an amount of interest or any other charge or fee that violates the provisions of this chapter or any regulation adopted pursuant thereto; or
- (c) Commits any other act or omission that violates the provisions of this chapter or any regulation adopted pursuant thereto,
- the loan is void and the licensee is not entitled to collect receive or retain any principal, interest or other charges or fees with respect to the loan.
2. The provisions of this section do not apply if:
- (a) A licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error or computation, notwithstanding the maintenance of procedures reasonably adapted to avoid that error; and
- (b) Within 60 days after discovering the error, the licensee notifies the customer of the error and makes whatever adjustments in the account are necessary to correct the error.
(Emphasis added.)

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RELIEF SOUGHT

71. Based upon the allegations contained herein which constitute sufficient cause for disciplinary action against the licensee pursuant to the provisions of NRS Chapter 604A and NAC Chapter 604A, the Commissioner prays for relief as follows:

- A. That TITLEMAX be fined a monetary sum pursuant to the parameters defined at NRS 604A.820(2);
- B. That action be taken against TITLEMAX's license pursuant to the parameters defined at NRS 604A.820(2);
- C. That TITLEMAX pay the costs of the proceeding, including investigative costs, and attorney's fees pursuant to the parameters defined at NRS 604A.820(2);
- D. That TITLEMAX be ordered to desist and refrain from violating NRS 604A.210 and / or NRS 604A.445, and / or NAC 604A.230;
- E. That TITLEMAX'S willful violations result in a finding that the loans are VOID pursuant to NRS 604A.900; and
- F. For such other and further relief as the Administrative Law Judge may deem just and proper.

DATED this 6th day of October, 2015.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

By: _____

GEORGE E. BURNS
Commissioner

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

NOTICE OF HEARING

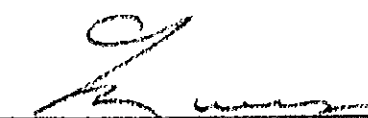
THEREFORE, TITLEMAX is directed to answer in writing the Administrative Complaint for Disciplinary Action within 10 days from service and to serve the same upon the undersigned Deputy Attorney General. A hearing into this matter will be held at:

The Nevada Financial Institutions Division, 2785 E. Desert Inn Rd., Suite 180, Las Vegas, Nevada 89121, beginning on October 27, 2015, through October 28, 2015, beginning each day at 10:00 a.m. until 5:00 p.m. or until the matter is concluded.

The Administrative Law Judge will, at that time, take such action as may be just and proper pursuant to the proof and pertinent laws. TITLEMAX is entitled to be represented by counsel at the hearing, and to cross-examine witnesses, present evidence, and argue on its own behalf before a decision is made by the Commission. Should TITLEMAX fail to appear at the hearing, a decision may be reached in its absence.

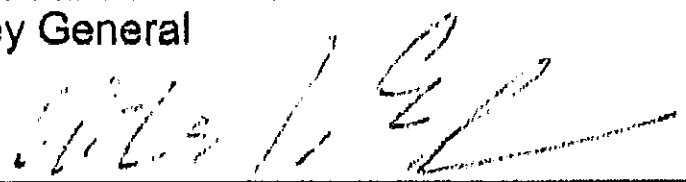
DATED this 6th day of October, 2015.

FOR THE NEVADA ATHLETIC COMMISSION,
DEPARTMENT OF BUSINESS AND INDUSTRY,
STATE OF NEVADA

By: 
GEORGE E. BURNS
Commissioner

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: 
CHRISTOPHER ECCLES
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, ^{Office of Attorney General} ~~Department of Business and~~
~~Industry, Financial Institutions Division,~~ and that on the 7th day of October, 2015, I
deposited in the U.S. mail, postage prepaid, via First Class Mail and Certified Return Receipt
Requested, a true and correct copy of the foregoing **ADMINISTRATIVE COMPLAINT FOR**
DISCIPLINARY ACTION AND NOTICE OF HEARING, addressed as follows:

Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Respondent TITLEMAX

Certified Mail No. 7012 1010 0000 1177 1041

And to:

Corporation Trust Company of Nevada
701 S. Carson Street, Suite 200
Carson City, Nevada 89701

Resident agent in Nevada for TITLEMAX of Nevada, Inc. d/b/a TITLEMAX

Certified Mail No. 7012 1010 0000 1177 1034

And to:

Victoria Newman, Esq.
Compliance and Corporate Counsel for TITLEMAX of Nevada, Inc.
15 Bull Street, Suite 200
Savannah, Georgia 31401.

Certified Mail No. 7012 1010 0000 1177 1027

Victoria Newman
An Employee of the Nevada Attorney General's Office

Susann Thompson

From: Susann Thompson
Sent: Tuesday, October 27, 2015 2:26 PM
To: 'dsmckay@business.nv.gov'
Cc: Patrick Reilly
Subject: TitleMax of Nevada/State of Nevada - Opposition To Motion to Dismiss
Attachments: Opposition to Motion to Dismiss

Please see attached Plaintiff's Opposition to Defendant's Motion To Dismiss For Failure To exhaust Administrative Remedies.

Thank you.

Susann Thompson

Legal Assistant for Patrick J. Reilly, Constance L. Akridge and David J. Freeman
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, NV 89134
Phone (702) 222-2527
Fax (702) 669-4650
E-mail: sthompson@hollandhart.com



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CLERK OF THE COURT

ORDD
Patrick J. Reilly, Esq.
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Joseph G. Went, Esq.
Nevada Bar No. 9220
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Email: preilly@hollandhart.com
jgwent@hollandhart.com

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

TITLEMAX OF NEVADA, INC., a Nevada
corporation,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION,

Defendant.

Case No.: A-15-719176-C

Dept. No.: XXI

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**


On September 23, 2015, Plaintiff TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax") moved for a preliminary injunction against the State of Nevada, Department of Business and Industry Financial Institutions Division (the "Division"). In the Motion, TitleMax sought an injunction barring the Division "from pursuing disciplinary action against TitleMax based upon alleged violations of statutes and/or regulations that are the subject of this litigation." Motion at 1:21-23. The Division opposed the Motion on October 6, 2015, and TitleMax replied on October 9, 2015. In the interim, on or about October 6, 2015, the Division filed against TitleMax an Administrative Complaint for Disciplinary Action and Notice of Hearing before the Nevada Financial Institutions Division. At oral argument on October 19, 2015, Patrick J. Reilly, Esq. of Holland & Hart LLP appeared on behalf of TitleMax, and David

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

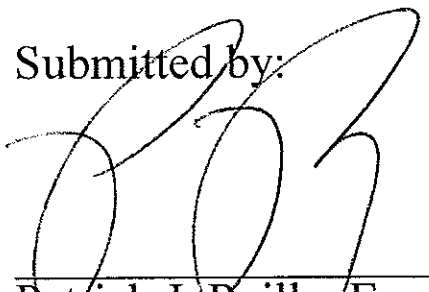
1 J. Pope and Christopher Eccles of the Office of the Attorney General appeared on behalf of the
2 Division.

3 After considering the papers and pleadings on file in this action, the arguments of
4 counsel, and good cause appearing, this Court hereby DENIES TitleMax's Motion for
5 Preliminary Injunction.

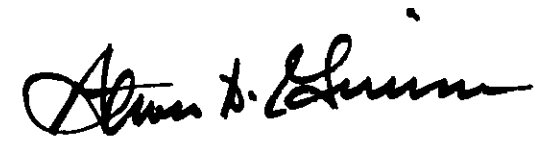
6 DATED this 29 day of October, 2015.

7
8 
9 DISTRICT COURT JUDGE *sr*

10 Submitted by:

11 
12 _____
13 Patrick J. Reilly, Esq.
14 Joseph G. Went, Esq.
15 HOLLAND & HART LLP
16 9555 Hillwood Drive, Second Floor
17 Las Vegas, Nevada 89134

18 *Attorneys for Plaintiff*
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CLERK OF THE COURT

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Patrick J. Reilly, Esq.
Nevada Bar No. 6103
Joseph G. Went, Esq.
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HOLLAND & HART LLP
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jgwent@hollandhart.com

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

TITLEMAX OF NEVADA, INC., a Nevada
corporation,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION,

Defendant.

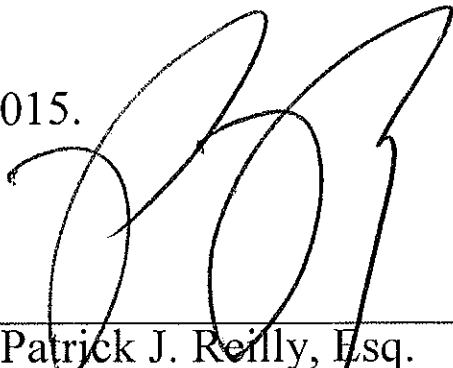
Case No.: A-15-719176-C

Dept. No.: XXI

**NOTICE OF ENTRY OF ORDER
DENYING MOTION FOR
PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE that an Order Denying Motion For Preliminary Injunction was entered in the above-captioned matter on November 2, 2015. A copy of said Order is attached hereto.

DATED this 3rd day of November, 2015.



Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2015, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Adam Paul Laxalt
Attorney General
Christopher A. Eccles
Deputy Attorney General
David J. Pope
Sr. Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
Email: ceccles@ag.nv.gov
dpope@ag.nv.gov
Attorneys for Defendant

☒ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Denise S. McKay, Esq.
Administrative Law Judge
Nevada Division of Business & Industry
555 E. Washington Avenue, Suite 4900
Las Vegas, Nevada 89101

☒ Email: by electronically delivering a copy via email to the following e-mail address:

Denise S. McKay, Esq.
Email: dsmckay@business.nv.gov

☐ Facsimile: by faxing a copy to the following numbers referenced below:


An Employee of Holland & Hart LLP

Susann Thompson

From: Susann Thompson
Sent: Tuesday, November 03, 2015 12:16 PM
To: 'dsmckay@business.nv.gov'
Subject: TitleMax of Nevada/State of Nevada - Notice of Entry of Order
Attachments: Notice of Entry of Order

Please see attached Notice of Entry of Order Denying Motion for Preliminary Injunction.

Thank you.

Susann Thompson

Legal Assistant for Patrick J. Reilly, Constance L. Akridge and David J. Freeman

Holland & Hart LLP

9555 Hillwood Drive, Second Floor

Las Vegas, NV 89134

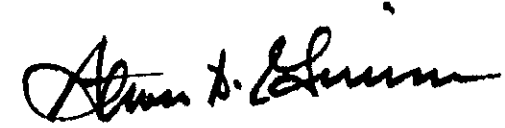
Phone (702) 222-2527

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CLERK OF THE COURT

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jgwent@hollandhart.com

Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TITLEMAX OF NEVADA, INC., a Nevada
corporation,

Plaintiff,

vs.

STATE OF NEVADA, DEPARTMENT OF
BUSINESS AND INDUSTRY FINANCIAL
INSTITUTIONS DIVISION,

Defendant.

Case No.: A-15-719176-C

Dept. No.: XXI

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

On September 23, 2015, Plaintiff TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax") moved for a preliminary injunction against the State of Nevada, Department of Business and Industry Financial Institutions Division (the "Division"). In the Motion, TitleMax sought an injunction barring the Division "from pursuing disciplinary action against TitleMax based upon alleged violations of statutes and/or regulations that are the subject of this litigation." Motion at 1:21-23. The Division opposed the Motion on October 6, 2015, and TitleMax replied on October 9, 2015. In the interim, on or about October 6, 2015, the Division filed against TitleMax an Administrative Complaint for Disciplinary Action and Notice of Hearing before the Nevada Financial Institutions Division. At oral argument on October 19, 2015, Patrick J. Reilly, Esq. of Holland & Hart LLP appeared on behalf of TitleMax, and David

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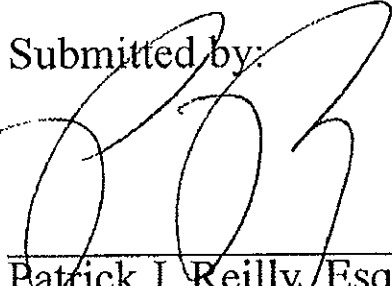
1 J. Pope and Christopher Eccles of the Office of the Attorney General appeared on behalf of the
2 Division.

3 After considering the papers and pleadings on file in this action, the arguments of
4 counsel, and good cause appearing, this Court hereby DENIES TitleMax's Motion for
5 Preliminary Injunction.

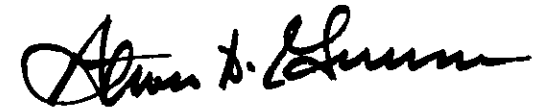
6 DATED this 29 day of October, 2015.

7
8 
9 DISTRICT COURT JUDGE *sr*

10 Submitted by:

11 
12 _____
13 Patrick J. Reilly, Esq.
14 Joseph G. Went, Esq.
15 HOLLAND & HART LLP
16 9555 Hillwood Drive, Second Floor
17 Las Vegas, Nevada 89134

18 *Attorneys for Plaintiff*
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CLERK OF THE COURT

OMSJ
ADAM PAUL LAXALT
Attorney General
David J. Pope, #8617
Senior Deputy Attorney General
Christopher Eccles, #9798
Deputy Attorney General
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Ph. (702) 486-3420
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dpope@ag.nv.gov
ceccles@ag.nv.gov
Attorneys for Nevada Department of Taxation

DISTRICT COURT
CLARK COUNTY, NEVADA

TITLEMAX OF NEVADA, INC., a Nevada
corporation,

Plaintiffs,

vs.

STATE OF NEVADA, ex rel. it's
DEPARTMENT OF BUSINESS AND
INDUSTRY, FINANCIAL INSTITUTIONS
DIVISION,

Defendants.

)
) Case No. A-15-719176-C
) Dept No. XXI
)
)
)

**NEVADA FINANCIAL
INSTITUTIONS DIVISION'S
OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

) Date of Hearing: December 9, 2015
)
)

) Time of Hearing: 9:30 A.M.
)
)
)

COMES NOW, Defendant State of Nevada, ex rel. it's Department of Business and Industry, Financial Institutions Division, by and through its attorneys, Adam Paul Laxalt, Attorney General, and David J. Pope, Senior Deputy Attorney General and Christopher Eccles, Deputy Attorney General, and hereby files its OPPOSITION TO MOTION FOR SUMMARY JUDGMENT¹ and moves this Court for an order denying summary judgment.

.....

.....

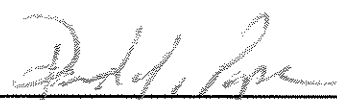
¹ FID's Motion to Dismiss is pending and FID is not waiving its right to assert, and is still asserting, that this case should be dismissed for failure to exhaust administrative remedies.

1 This OPPOSITION TO MOTION FOR SUMMARY JUDGMENT is based on all pleadings
2 and papers on file herein, the attached Memorandum of Points and Authorities and any
3 oral argument the Court may allow at the time of the hearing on this matter.

4 Respectfully submitted this 10th day of November, 2015.

5 ADAM PAUL LAXALT
6 Attorney General

7 By:



8 David J. Pope
9 Sr. Deputy Attorney General
10 Nevada State Bar #8617
11 Christopher Eccles
12 Deputy Attorney General
13 Nevada State Bar #9798
14 555 E. Washington Ave., #3900
15 Las Vegas, NV 89101
16 Attorneys for Defendant
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POINTS AND AUTHORITIES

I. FACTS AND PROCEDURAL HISTORY

On June 1, 2015, Plaintiff, Titlemax of Nevada, Inc. (hereinafter "TitleMax"), filed its Complaint commencing this action against the State of Nevada, ex rel. its Department of Business and Industry, Financial Institutions Division (hereinafter "FID"). FID had already started the 2015 examination of TitleMax on May 22, 2015. *Exhibit A*. On September 17, 2015, TitleMax filed an Amended Complaint. TitleMax seeks declaratory relief regarding the FID's application of several statutes in Chapter 604A of the NRS to business activities of Titlemax. *See Amended Complaint on file with the court.*

Titlemax ran to this court to get ahead of the administrative proceedings that were coming. Though TitleMax asserted that the administrative remedies were not adequate, TitleMax's motion for preliminary injunction was denied.

Though an administrative hearing had been scheduled for November 5, 2015, the hearing date has been vacated and will be rescheduled. *See Exhibit B*, p. 2, ln. 19. TitleMax and FID are both subject to the administrative scheduling order and pursuant to the order the briefing will be completed by December 18, 2015. *Id.* The scheduling order sets various other dates, the first of which is the November 13, 2015 production date applicable to FID. *Id.* As can be noted from reviewing the scheduling order, TitleMax is being afforded plenty of due process.

Though this court has not yet decided the motion to dismiss, this case should be dismissed as TitleMax has not met the requirements of either of the exceptions to the exhaustion requirement. The issues to be decided are not solely about statutory interpretation or the constitutionality of a statute. *Glusman v. Glusman*, 98 Nev. 412, 419 (1982). The issues are mixed questions of law and fact. In addition, exhausting administrative remedies is not futile in this case. *Benson v. State Engineer*, 2015 WL 5657106, 131 Nev.Adv.Op. 78, 4 (2015) (explaining that this exception does not apply when the time for initiating administrative proceedings has not already expired). Therefore, the

1 case is not yet ripe or justiciable and/or this court does not have subject matter jurisdiction.
2 *Allstate Insurance Company v. Thorpe, M.D.*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007).

3 In Averment #13 in the Amended Complaint, Titlemax states, "Based on the
4 examiner's incorrect application of NAC 604A.230, the FID issued a "Needs Improvement"
5 rating, thereby indicating that Titlemax had demonstrated less than satisfactory compliance
6 in the examination." NAC 604A.230 prohibits TitleMax from "requiring" or "accepting" a
7 guarantor to a transaction. Averment #12 states, "When there is a co-borrower not listed on
8 the title of the vehicle associated with said loan, the co-borrower becomes contractually
9 bound as a principal obligor, and not as a guarantor." Averment #11 states, "The FID
10 examiner concluded erroneously that the co-borrower was a 'guarantor' and that TitleMax
11 was violating NAC 604A.230." FID's examiner applied NAC 604A.230 to the facts as they
12 were seen by the examiner and determined that TitleMax either "required" or "accepted" a
13 guarantor. TitleMax's only explanation is that the additional parties to the loans are co-
14 borrowers. See *Motion for Summary Judgement*, p. 9-10. Yet, TitleMax has never stated
15 why a non-owner of the vehicle is included as a party to the loan. As will be explained
16 below, these missing facts create issues of material fact. The Nevada Supreme Court has
17 determined that state agencies are the experts that are supposed to decide issues of fact
18 related to questions regarding application of the agencies statutes. *Malecon Tobacco, LLC*
19 *v. Dept. of Taxation*, 118 Nev. 837, 840-841 (2002).

20 In Averment #19 of the Amended Complaint, Titlemax states, "Based on the
21 examiner's incorrect interpretation of the foregoing statutes, the FID issued a 'Needs
22 Improvement' rating thereby indicating that TitleMax had demonstrated less than satisfactory
23 compliance in the examination." The changes made in the Amended Complaint do not
24 change the outcome of this matter. Averment #17 states, "The ROEs [(Reports of
25 Examination)] provided that TitleMax violated NRS 604A.210 and NRS 604A.445 whenever
26 a customer executed a grace period payment deferment agreement" NRS 604A.210
27 and NRS 604A.445 prohibit the collection of interest or fees during a grace period and
28

1 require that such a loan be ratably and fully amortized. In addition, "Grace Period Payment
2 Deferment Agreement," as used by TitleMax, is not a statutory term. *Motion for Summary*
3 *Judgement*, p. 4, ln. 24-25; NRS 604A.010, *et seq.* Pursuant to TitleMax's documents, it
4 collects more interest via a Grace Period Payments Deferment Agreement than it would
5 collect via the 210 day original loan. See *Exhibit C*, p. 1 and 6 (the total amount paid
6 increases from \$7,212.73 to \$8,748.52 though the principle remains the same amount of
7 \$4,420.00). Yet, TitleMax asserts that no additional interest or fees are collected. *Motion for*
8 *Summary Judgment*, p. 11-13.

9 The FID examiner looked at the facts and determined that TitleMax had not complied
10 with NRS 604A.210 and NRS 604A.445. The Grace Period Payments Deferment
11 Agreement is not allowed by statute because it nearly doubles the length of the statutorily
12 allowed 210 day loan, it does not ratably and fully amortize the amount of the loan and it
13 charges additional fees or interest for additional periods therefore there is no grace period.
14 *Exhibit C*, p. 6. Though it has been represented that the first seven payments are interest
15 only and the last seven payments are principle only, the Grace Period Payment Deferment
16 Agreement states: "You acknowledge that simple interest is charged on the unpaid principal
17 balance of this Loan Agreement at the daily rate of 0.4663% from the date of this Loan
18 Agreement until the earlier of: (i) the date of your last payment as set forth in the original
19 Payment Schedule; or (ii) payment in full. *Exhibit C*, p. 7. The agreement also says, "Now
20 that the Payment Schedule has changed" *Id.* The Payment Schedule changes but the
21 Federal Truth-In-Lending Disclosures doesn't change to inform the customer of the
22 increased finance charge. *Id.* at p. 1. The stated finance charge is \$2,792.73 and the
23 amount financed is \$4,420.00, for a total to be paid in the amount of \$7,212.73. *Id.* When
24 the loan converts to a Grace Period Payments Deferment Agreement, the amount financed,
25 or borrowed, doesn't change but the total of all payments increases to \$8,748.52. *Id.* at p. 6.
26 Because interest is charged on the entire principle for each of the first seven months, the
27 finance charge increases by \$1,535.79. This increase in the finance charge, whether it's
28

1 additional interest or additional fees, is not clearly set forth in the documents and is contrary
2 to NRS 604A.210. *Id.* at p. 1-8. Again, the Nevada Supreme Court has determined that
3 factual issues related to the application of an agency's statutes are to be determined by that
4 agency. *Malecon*, 118 Nev. 840-841.

5 If allowed to avoid an administrative hearing, TitleMax avoids the facts as determined
6 by the examiner and any deference they may be given in accordance with NRS 233B.135
7 and related case law. *United Exposition Services, Co. v. State Industrial Insurance System*,
8 109 Nev. 421, 423, 851 P.2d 423, 424 (1993) ("It is well recognized that this court, in
9 reviewing an administrative agency decision, will not substitute its judgment of the evidence
10 for that of the administrative agency." (citation omitted)).

11 **II. ARGUMENT**

12 **A. STANDARD OF REVIEW.**

13 TitleMax's motion for summary judgment must be denied.

14 Summary judgment is appropriate under NRCP 56 when the
15 pleadings, depositions, answers to interrogatories, admissions,
16 and affidavits, if any, that are properly before the court
17 demonstrate that no genuine issue of material fact exists, and
18 the moving party is entitled to judgment as a matter of law. The
19 substantive law controls which factual disputes are material and
20 will preclude summary judgment; other factual disputes are
21 irrelevant. A factual dispute is genuine when the evidence is
22 such that a rational trier of fact could return a verdict for the
23 nonmoving party.

24 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). Moreover, "the
25 pleadings and other proof must be construed in a light most favorable to the nonmoving
26 party" *Id.* at 732. In this case, there are genuine issues of material fact because a trier
27 of fact could return a verdict only for the FID and therefore summary judgment must be
28 denied.²

² Again, FID is concurrently arguing that TitleMax must exhaust administrative remedies and therefore this issue must be decided through the administrative proceeding over which the Administrative Law Judge is currently presiding. FID's motion to dismiss will be heard the same day as this motion for summary judgment and FID is not waiving its right to assert that this matter must be dismissed because TitleMax is still working on exhausting administrative remedies.

1 **B. TITLEMAX CANNOT OBTAIN RELIEF FROM THIS COURT AT THIS TIME**
2 **AND THEREFORE SUMMARY JUDGMENT CANNOT BE GRANTED**
3 **UNLESS TITLEMAX CAN SHOW THAT IT FITS WITHIN AN EXCEPTION TO**
4 **THE REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES AND/OR**
5 **THIS COURT DECLINES TO APPLY THE PRIMARY JURISDCITION**
6 **DOCTRINE AND DOES NOT ALLOW THE ISSUES TO BE DECIDED**
7 **THROUGH THE ADMINISTRATIVE HEARING.**

8 In their Amended Complaint, TitleMax admits that FID has jurisdiction over the issues
9 raised in this case. In fact, FID has original jurisdiction and this court does not obtain
10 jurisdiction until TitleMax files a petition for judicial review, pursuant to Chapter 233B of the
11 NRS, seeking review of a final administrative decision. NRS 233B.130(6); *Kame v.*
12 *Employment Sec. Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 67 (1989); *See Nevada Power Co.*
13 *v. Eighth Judicial District Court*, 120 Nev. 948, 959 (2004) (concluding that “the district court
14 could have deferred action under the primary jurisdiction doctrine for the PUC to address
15 one issue implicated in the amended complaint . . .”); *See Allstate Insurance Co. v. Thorpe,*
16 *M.D.*, 123 Nev. 565, 571 (2007) (stating, “whether couched in terms of subject-matter
17 jurisdiction or ripeness, a person generally must exhaust all available administrative
18 remedies before initiating a lawsuit, and failure to do so renders the controversy
19 nonjusticiable. The exhaustion doctrine gives administrative agencies an opportunity to
20 correct mistakes and conserves judicial resources, so its purpose is valuable; requiring
21 exhaustion of administrative remedies often resolves disputes without the need for judicial
22 involvement”).

23 Exhaustion of administrative remedies is the rule. With the adoption of the
24 Administrative Procedures Act in 1965, aka Chapter 233B of the NRS, the Legislature has
25 stated its intention that the provisions in such chapter “are the exclusive means of judicial
26 review of, or judicial action concerning, a final decision in a contested case involving an
27 agency to which this chapter applies.” NRS 233B.130(6) (emphasis added).

28 A July 1990 publication for the State Bar of Nevada sets forth the basis for applying
judicial review to final administrative decisions. It states:

Judicial review is designed to expedite the passage of an administrative case through the judicial system. It is also meant to minimize the intrusion of courts into administrative functions, such as fact-finding, while relieving district courts of the burden and expense of trying an administrative case as if the case had been filed as an original matter in district court.

INTER ALIA, July 1990, The Basics of Nevada Administrative Law, p. 8. Relevant legislative history provides:

Mr. Campbell replied the Administrative Law Committee does not want the courts to substitute their expertise for the expertise of the administrative agency. Mr. Sourwine mentioned that this language exists in present law.

Mr. Campbell explained the court is not required to affirm the decision of an agency. Mr. Sourwine said AB 884 allows the court to modify or reverse an agency decision if it is clearly erroneous in view of reliable evidence on the whole record. Since the court does not hear the testimony of witnesses, the court is not in a position to judge credibility. Therefore, in reviewing records of an administrative agency, the court merely looks for evidence in the record that supports the agency's decision. At that point, the court defers to the agency's expertise in the particular area.

Minutes of the Nevada State Legislature, Assembly Committee on Government Affairs, page 8, June 6, 1989; *See Galloway v. Truesdell*, 83 Nev. 13, 29, 422 P.2d 237 (1967) ("It is well settled that under the division of powers, these ministerial fact-finding duties may not be delegated to courts . . .").

This court will not have jurisdiction over these issues until a Chapter 233B petition for judicial review, seeking review of a final administrative decision, is filed. NRS 233B.130 states in pertinent part:

1. Any party who is:
 - (a) Identified as a party of record by an agency in an administrative proceeding; and
 - (b) Aggrieved by a final decision in a contested case, is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is

reviewable if review of the final decision of the agency would not provide an adequate remedy

2. Petitions for judicial review must:

(a) Name as respondents the agency and all parties of record to the administrative proceeding;

(b) Be instituted by filing a petition in the district court in and for Carson City, in and for the county where the agency proceeding occurred; and

(c) Be filed within 30 days after service of the final decision of the agency.

...

(emphasis added). In addition, an administrative decision is forthcoming as the administrative hearing procedures are underway. *Exhibit B*. Thereafter, the filing of a petition for judicial review in a timely manner will be jurisdictional. *Kame v. Employment Sec. Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 67 (1989). The sole means of this court taking action regarding the issues presented in this case will be by reviewing a final agency decision by way of a petition for judicial review. NRS 233B.130(6).

TitleMax should not be allowed to strip the administrative process of its fact finding duties. "The exhaustion doctrine is concerned with the timing of judicial review of administrative action." *Nevada Power Co. v. Eighth Judicial District Court*, 120 Nev. 948, 959 (2004) (citation omitted). Judicial review of agency actions should not occur until after there is a final agency decision in a contested case. NRS 233B.130. Contrary to TitleMax's assertions that the administrative hearing is some sort of a reaction to TitleMax commencing this case, Titlemax simply jumped ahead of the administrative proceedings and is seeking declaratory relief and summary judgement to avoid the administrative proceeding and potential administrative fines and voiding of contracts. NRS 604A.820(2)(b); NRS 604A.900; *Exhibit D*. TitleMax is also trying to avoid agency fact finding which will be given deference in a Chapter 233B petition for judicial review proceeding.

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1 Exhaustion of administrative remedies is not required when it can be shown that
2 initiation of administrative proceedings would be futile.³ In this case, TitleMax cannot show
3 that exhaustion would be futile because an administrative hearing process is underway and
4 documents are currently being submitted to the Administrative Law Judge and it cannot be
5 said that FID is precluded by statute from providing “any relief at all.” *Exhibit B; Benson v.*
6 *State Engineer*, 2015 WL 5657106, 131 Nev.Adv.Op. 78, 4 (2015) (explaining that this
7 exception applies when the facts “prove that the agency is statutorily precluded from granting
8 a party any relief at all . . .” because the statute of limitations within which to initiate such
9 proceedings has passed. (emphasis added)). In addition, these issues have never been
10 heard and FID has not obtained a hearing decision regarding the issues. Moreover, the
11 Administrative Law Judge is an objective individual and TitleMax cannot show that the
12 Administrative Law Judge’s mind is already made up. In *Benson*, the Nevada Supreme
13 Court concluded, “we do not consider administrative proceedings to be futile solely because
14 the statute prevents the petitioner from receiving his or her ideal remedy through
15 administrative proceedings.” 131 Nev.Adv.Op. 78, 5 (2015).

16 Another exception to the exhaustion requirement is applicable when the issues relate
17 solely to the interpretation of the words in a statute or the constitutionality of the statute.
18 *Glusman v. Glusman*, 98 Nev. 412, 419 (1982) (explaining that the Nevada Supreme Court
19 stated that it had the discretion to not apply the exhaustion doctrine “where the issues relate
20 solely to the interpretation or constitutionality of a statute.” (emphasis added)); *State of*
21 *Nevada, Dept. of Business and Industry, Financial Inst. Div. v. Check City Partnership, LLC*,
22 337 P.3d 755, 758, n. 5, 130 Nev. Adv. Op. 90 (Nev. 2014) (“Exhaustion is not required
23 where, as here, the only issue is the interpretation of a statute.”). TitleMax has not asserted

24 ³ In *Malecon Tobacco, LLC v. Dept. of Taxation*, 118 Nev. 837, 839, 59 P.3d 474 (2002), the Nevada Supreme
25 Court set forth two exceptions: (1) “when the issues ‘relate solely to the interpretation or constitutionality of a
26 statute’”; and, (2) “when resort to administrative remedies would be futile.” More recently, in *Benson v. State*
27 *Engineer*, 2015 WL 5657106, 131 Nev.Adv.Op. 78, 4 (2015), the Nevada Supreme Court stated that the
28 exhaustion doctrine is excused “where initiation of administrative proceedings would be futile.” Discussing the
Scotsman Manufacturing case, the Benson Court noted that, because the three-year statute of limitations had
passed, “[t]he statutory procedure offer[ed] Scotsman no relief at all.” *Id.* “Thus, when the facts of a particular
case prove that the agency is statutorily precluded from granting a party any relief at all, administrative
proceedings are futile.” *Id.* (citation omitted). That is not the case here.

1 any constitutional issues. Though TitleMax asserts that the issues are related only to
2 statutory interpretation, TitleMax is seeking a determination that its business practices fit
3 within the statutory limitations which is a mixed question of law and fact. Consequently, this
4 exception is not applicable and this court should allow the facts to be decided through the
5 administrative proceedings. *Malecon*, 118 Nev. 837, 840-841 (2002).

6 The failure to exhaust administrative remedies does not give this court jurisdiction; it
7 deprives this court of jurisdiction. This court should not review an agency's application of its
8 own statutes before the agency has a chance to obtain a final administrative decision
9 regarding its own interpretation and actions through an administrative proceeding. See
10 *Allstate Insurance Co. v. Thorpe, M.D.*, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007)
11 (stating, "whether couched in terms of subject-matter jurisdiction or ripeness, a person
12 generally must exhaust all available administrative remedies before initiating a lawsuit, and
13 failure to do so renders the controversy nonjusticiable."); See *City of Henderson v. Kilgore*,
14 122 Nev. 331, 336-37, 131 P.3d 11 (2006) (the Court found that because Kilgore had failed
15 to exhaust his administrative remedies, the matter was not ripe for district court review.); See
16 *Malecon*, 118 Nev. 837, 840-841 (2002) (explaining that fact finding should be done by the
17 agency); See *Galloway v. Truesddell*, 83 Nev. 13, 29, 422 P.2d 237 (1967) ("It is well settled
18 that under the division of powers, these ministerial fact-finding duties may not be delegated
19 to courts . . .").

20 If this court provides TitleMax with declaratory relief in this case, this court will render
21 NRS 604A.820 and the FID's original jurisdiction meaningless. Statutory construction
22 principles dictate that such an outcome is to be avoided. *Harris Associates v. Clark County*
23 *School District*, 119 Nev. 638, 642 (2003); See *Allstate Insurance Co. v. Thorpe, M.D.*, 123
24 Nev. 565, 571 (2007) (noting, "We have previously stressed the importance of state
25 agencies' exclusive original jurisdiction over legislatively created administrative and
26 regulatory schemes." (citation omitted). Further providing, "[i]t is not conceivable that the
27 legislature would give its extensive time and attention to study, draft, meet, hear, discuss and
28

1 pass this important piece of legislation were it not to serve a useful purpose.” (citation
2 omitted)). The issues regarding who the additional persons are and why they are included
3 as parties to the loans and whether the Grace Period Payment Deferment Agreements
4 violate the statutes include genuine issues of material fact and the issues fall within the
5 original jurisdiction of FID.

6 **C. CONSTRUING THE PLEADINGS AND OTHER PROOF IN A LIGHT MOST**
7 **FAVORABLE TO THE FID, THERE ARE GENUINE ISSUES OF MATERIAL**
8 **FACT, TITLEMAX HAS ERRONEOUSLY INTERPRETED THE STATUTES**
9 **AND SUMMARY JUDGMENT MUST BE DENIED.**

10 Should this court determine that TitleMax has met its burden and shown that an
11 exception to the exhaustion requirement is applicable or otherwise decline to apply the
12 primary jurisdiction doctrine, the motion for summary judgment must be denied because
13 TitleMax is misinterpreting the law and genuine issues of material fact exist.

14 1. Title Loans Are Only Made To Legal Owners.

15 Pursuant to the relevant statutes, only legal owners of vehicles can be customers, or
16 borrowers, on title loans. NRS 604A.105 restricts title loan borrowers to those who legally
17 own the vehicle. The statute states that the customer⁴ must secure the loan by either:

18 (1) Giving possession of the title to a vehicle legally
19 owned by the customer to the licensee or any agent, affiliate or
20 subsidiary of the licensee; or

21 (2) Perfecting a security interest in the vehicle by having
22 the name of the licensee or any agent, affiliate or subsidiary of
23 the licensee noted on the title as a lienholder.

24 NRS 604A.105 (emphasis added). Subsection 1 requires the customer to secure the loan
25 by giving possession of the title to TitleMax. *Id.* It also requires the customer to be the legal
26 owner of the vehicle. *Id.* The legal owner of the vehicle is listed on the title. NRS 604A.115
27 (defining “title” to mean “a certificate of title or ownership issued pursuant to the laws of this
28 State that identifies the legal owner of a vehicle or any similar document issued pursuant to

⁴ “Customer” is defined as “any person who receives or attempts to receive . . . title loan services from another person.” NRS 604A.040.

1 the laws of another jurisdiction.”). The language of these statutes is plain and unambiguous
2 and therefore we cannot look beyond the language for another meaning. *City of North Las*
3 *Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) (“When the text of a
4 statute is plain and unambiguous, [we] should ... not go beyond that meaning.”); *Beazer*
5 *Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d
6 1132, 1135 (2004) (“If the plain meaning of a statute is clear on its face, then [this court] will
7 not go beyond the language of the statute to determine its meaning.” (citation omitted));
8 *Cleghorn v. Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993) (“When the language of
9 a statute is clear on its face, its intention must be deduced from such language.” (citation
10 omitted)). Consequently, the customer/borrower is limited to the person whose name is on
11 the title. *Id.*

12 If the additional person on the loan, *i.e.* TitleMax’s alleged co-borrower, is not listed
13 on the title, the person cannot be a borrower and therefore cannot be a co-borrower. If the
14 additional persons are not co-borrowers, what are they?

15 TitleMax has not explained why they require and/or allow an additional person to be
16 a party to the title loan.⁵ The explanation has been nothing more than an assertion that the
17 additional party is a co-borrower. *Motion for Summary Judgment*, p. 1-14. Though the
18 answer to this question will likely be flushed out through the pending administrative hearing
19 process, title loans can only be made to the person, or persons, named on the title. NRS
20 604A.105; NRS 604A.115. FID has not been provided with information showing that the
21 additional persons are legal owners and therefore asserts that they are not legal owners.
22 *Exhibit E*. To avoid losing on this argument, TitleMax cannot admit that the additional
23 persons are not legal owners. Yet, TitleMax cannot avoid a genuine issue of material fact
24

25 ⁵ TitleMax has provided no explanation other than asserting the additional persons are co-borrowers. No
26 evidence has been provided to show that the additional persons are also legal owners. TitleMax’s argument
27 regarding primary obligors and guarantors is misplaced. “Guarantor” is defined as a “[p]erson who becomes
28 secondarily liable for another’s debt or performance in contrast to a strict surety who is primarily liable with the
principal debtor. One who promises to answer for the debt, default or miscarriage of another. . . . A guarantor
is usually also an accommodation party.” Black’s Law Dictionary, 705 (6th Ed. 1990) (citation omitted). If the
facts end up showing that the additional persons meet the definition of a guarantor, then they are guarantors in
violation of NAC 604A.230.

1 by remaining silent on the issue. Therefore, there is a genuine issue of material fact with
2 regard to whether the additional party to the loan is listed on the title. If the additional party
3 is listed on the title, then they are a statutorily approved borrower. These missing facts
4 require a decision in favor of FID and therefore there are genuine issues of material fact.

5 Consequently, with regard to each loan, TitleMax is either violating NRS 604A.105
6 and NRS 604A.115, or it must be violating NAC 604A.230, and additional facts showing why
7 the additional persons are included as parties to the loans are needed to make the
8 determination.

9 2. The Grace Period Payments Deferment Agreement Is Not A Statutorily
10 Authorized Product

11 The Grace Period Payments Deferment Agreements do not comply with Chapter
12 604A and are not an authorized lending product. See *Exhibit E*. NRS 604A.445 provides:

13 Notwithstanding any other provision of this chapter to the
14 contrary:

15 1. The original term of a title loan must not exceed 30
16 days.

17 2. The title loan may be extended for not more than six
18 additional periods of extension, with each such period not to
19 exceed 30 days, if:

20 (a) Any interest or charges accrued during the original
21 term of the title loan or any period of extension of the title loan
22 are not capitalized or added to the principal amount of the title
23 loan during any subsequent period of extension;

24 (b) The annual percentage rate charged on the title
25 loan during any period of extension is not more than the annual
26 percentage rate charged on the title loan during the original term;
27 and

28 (c) No additional origination fees, set-up fees,
collection fees, transaction fees, negotiation fees, handling fees,
processing fees, late fees, default fees or any other fees,
regardless of the name given to the fees, are charged in
connection with any extension of the title loan.

3. The original term of a title loan may be up to 210
days if:

(a) The loan provides for payments in installments;

(b) The payments are calculated to ratably and fully
amortize the entire amount of principal and interest payable on
the loan;

(c) The loan is not subject to any extension; and

(d) The loan does not require a balloon payment of any kind.

(emphasis added). The term "extension" is defined as "any extension⁶ or rollover⁷ of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, regardless of the name given to the extension or rollover." NRS 604A.065(1).

Pursuant to the above statutes, a loan can be for a term of 210 days if it provides for payments in installments, the payments are calculated to ratably and fully amortize the entire amount of principle and interest payable on the loan, and the loan is not subject to any extension. NRS 604A.445. This language is plain and unambiguous and therefore we cannot go beyond it to look for a different meaning. *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004).

TitleMax represents that it first enters into the original loan agreements with its customers.⁸ Assuming that the original loan agreements comply with NRS 604A.445, they are no more than 210 days in duration, provide for installment payments, the payments are calculated to ratably and fully amortize the entire amount of principle and interest payable at the end of the 210 days and are not subject to any extension. NRS 604A.445(3).

When TitleMax converts the original loan to a Grace Period Payments Deferment Agreement, provided it does, TitleMax goes beyond the limits of NRS 604A.445(3). First, the maximum 210 days is extended to a term approximately twice as long. See *Exhibit C*, p. 6 (showing 14 periods, or approximately 420 days, instead of 7 periods or 210 days); NRS 604A.445(3). Second, the payments do not "ratably and fully" amortize the entire amount of the original loan because the interest is applied to the entire principle for the first seven

⁶ An "extension" "[t]akes place when parties agree upon valuable consideration for maturity of debt on day subsequent to that provided in original contract." Black's Law Dictionary, 583 (6th Ed. 1990).

⁷ "Rolling over" is defined as, "Banking term for extension or renewal of short term loan from one loan period (e.g. 90 day) to another." Black's Law Dictionary, 1330 (6th Ed. 1990).

⁸ *Exhibit C*, p. 6 (stating, "BECAUSE THIS IS ONLY AN AMENDMENT AND MODIFICATION OF THE LOAN AGREEMENT IN WHICH WE ARE ONLY MODIFYING AND DEFERRING YOUR PAYMENTS UNDER THE TITLE LOAN AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT ALL OF THE TERMS AND CONDITIONS OF THE TITLE LOAN AGREEMENT, INCLUDING THE CHARGING OF SIMPLE INTEREST AND WAIVER OF JURY TRIAL AND ARBITRATION PROVISION REMAIN IN FULL FORCE AND EFFECT. (underlining contained in original).

1 periods and no principle is paid until the eighth period.⁹ See *Exhibit C*, p. 6 (The last seven
2 payments are in the amount of \$631.43. Multiplying \$631.43 x 7 = \$4,420.01, or the amount
3 financed. The first seven payments are in the amount of \$618.36, which is approximately
4 the product of \$4,420.00 x .1399 (which is the product of .004663 (daily rate) x 30.00224
5 days)); Black's Law Dictionary, 83 (7th Ed. 1999) (defining "amortization" as "the act or result
6 of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of
7 principal each time a periodic interest payment is due."); NRS 604A.445(3). Third, the
8 payments do not constitute installment payments because they are not equal.¹⁰ Black's
9 Law Dictionary, 799 (6th Ed. 1990) (defining "installment loan" as "[a] loan made to be repaid
10 in specified, usually equal, amounts over a certain number of months."(emphasis added));
11 NRS 604A.445(3). Therefore, the Grace Period Payments Deferment Agreements do not
12 comply with NRS 604A.445 and are not a statutorily authorized loan.

13 In addition, the Grace Period Payments Deferment Agreements do not comply with
14 NRS 604A.210 or NRS 604A.070. NRS 604A.070 defines "grace period" as "any period of
15 deferment offered gratuitously by a licensee to a customer if the licensee complies with the
16 provisions of NRS 604A.210." (emphasis added). "Deferment" is defined as "A
17 postponement or extension to a later time" Black's Law Dictionary, 421 (6th Ed. 1990).
18 "Defer" is defined as "[d]elay; put off; . . . postpone to a future time." *Id.* "Deferred payment"
19 is defined as "[p]ayments of principal or interest postponed to a future time" *Id.* NRS
20 604A.210 provides:

21 The provisions of this chapter do not prohibit a licensee from
22 offering a customer a grace period on the repayment of a loan or
23

24 ⁹ In the Grace Period Payments Deferment Agreements, TitleMax admits that the loans are not fully amortized
25 because the first seven payments are interest only and are less than the last seven payments. *Exhibit C*, p. 6.
26 In addition, the first seven payments are the product of the daily rate of interest multiplied by the entire
27 principle. *Id.* In a typical loan, the portion of the payment that goes towards principle increases each month as
28 the portion that goes towards interest decreases each month. Therefore, unlike the typical loan, the first seven
payments of the Grace Period Payments Deferment Agreement include additional interest because the
interest is consistently calculated on the entire outstanding principle. Black's Law Dictionary, 83 (7th Ed.
1999) (defining "amortization" as "the act or result of gradually extinguishing a debt, such as a mortgage, usu.
by contributing payments of principal each time a periodic interest payment is due.").

¹⁰ As previously explained, the first seven payments are less than the last seven payments.

an extension of a loan, except that the licensee shall not charge the customer:

1. Any fees for granting such a grace period; or
2. Any additional fees or additional interest on the outstanding loan during such a grace period.

(emphasis added). TitleMax cannot charge any fees for granting a grace period or any additional fees or additional interest on the outstanding loan during a grace period. *Id.* In this case, the outstanding loan would be the original loan, a closed ended loan limited in duration to 210 days, and any interest above and beyond that which could have been charged and collected during the 210 days of the original loan would constitute the prohibited additional interest or additional fees. *Id.* This language is plain and unambiguous and therefore we cannot go beyond the plain language to search for another meaning. See *City of North Las Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning."); *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004); *Cleghorn v. Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). Because TitleMax is charging more interest than that which could have been collected during the 210 day loan, it is charging additional interest or additional fees in violation of 604A.210. See *Exhibit E*.

The plain meaning of the statutes is that no interest in addition to that which can be charged during the 210 day loan can be charged. Legislative history should not be used to create an ambiguity; it should be used to resolve an ambiguity.

Legislative history has never been permitted to override the plain meaning of a statute. As the Supreme Court has made clear, "Congress' 'authoritative statement is the statutory text, not the legislative history.'" *Chamber of Commerce v. Whiting*, — U.S. —, 131 S.Ct. 1968, 1980, 179 L.Ed.2d 1031 (2011) (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005)). Legislative history may not be used to alter the plain meaning of a statute. "The law is what Congress enacts, not what its members say on the floor." *Szehinskyj v. Att'y Gen.*, 432 F.3d 253, 256 (3d Cir.2005).

Moreover, “legislative history may be referenced only if the statutory language is written without a plain meaning, i.e., if the statutory language is ambiguous.” *Byrd v. Shannon*, 715 F.3d 117, 123 (3d Cir.2013). “Legislative history ... is meant to clear up ambiguity, not create it.” *Milner v. Dep’t of Navy*, — U.S. —, 131 S.Ct. 1259, 1267, 179 L.Ed.2d 268 (2011); see also *Velis v. Kardanis*, 949 F.2d 78, 81 (3d Cir.1991) (“There is no need to resort to legislative history unless the statutory language is ambiguous.”). We must “not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language.” *Milner*, 131 S.Ct. at 1266; see also *Nat’l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283 (4th Cir.1998) (“This plain meaning cannot be circumvented unless we have the rare instance when there is a clearly expressed congressional intent to the contrary or when a literal application of the plain language would frustrate the statute’s purpose or lead to an absurd result.”).

S.H. ex rel. Durrell v. Lower Merion School Dist., 729 F.3d 248, 259 (3rd Cir. 2013); See *Hearn v. Western Conference of Teamsters Pension Trust Fund*, 68 F.3d 301, 304 (9th Cir. 1995) (“But legislative history—no matter how clear—can’t override statutory text. Where the statute’s language “can be construed in a consistent and workable fashion,” . . . we must put aside contrary legislative history.” (citation omitted); See *Clark County v. Southern Nevada Health Dist.*, 289 P.3d 212, 219, 128 Nev. Adv. Op. 58 (2013) (dissenting and citing *Hearn*, 68 F.3d. 248, 259 (9th Cir. 1995)). “In construing a statute, the Court has ruled that legislative materials, if ‘without probative value, or contradictory, or ambiguous,’ should not be permitted to control the customary meaning of words. *United States v. Dickerson*, 310 U.S. 554, 562, (60 S.Ct. 1034, 1038, 84 L.Ed. 1356) (1940).” *NLRB v. Plasterers’ Union*, 404 U.S. 116, 129 n. 24, 92 S.Ct. 360, 368 n. 24, 30 L.Ed.2d 312 (1971). Therefore,

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1 TitleMax's arguments regarding the legislative history (that it asserts is contrary to FIDs
2 interpretation) are without merit.¹¹

3 TitleMax states that it "unilaterally offers each borrower under the installment loan a
4 grace period of deferment gratuitously" *Motion for Summary Judgment*, p. 4, ln. 23-24.
5 "Gratuitously" is defined as, "Given or received without cost or obligation: FREE." Webster's
6 II New College Dictionary, 487 (1999). Contrary to NRS 604A.210's prohibition against
7 charging additional interest or fees, TitleMax admits and/or the documents show, that
8 TitleMax charges additional interest or fees during the first seven months as explained
9 above. In addition, the Grace Period Payments Deferment Agreements state that interest is
10 charged on any outstanding portion of the principle until the principal is paid. *Exhibit C*, p. 7.
11 Therefore, according to the agreement, interest can also be charged during the last seven
12 months as the principle is being paid down, as well as the first seven months. *Id.* Either
13 way, this is not a gratuitous deferment and does not comply with NRS 604A.070.

14 In addition, according to NRS 604A.045¹² and NRS 604A.450, a grace period should
15 not occur unless a borrower is having difficulty repaying the loan. See Black's Law
16 Dictionary, 697 (6th Ed. 1990) (defining "grace period" as a "period of time provided for in a
17 loan agreement during which default will not occur even though payment is overdue.")).
18 TitleMax cannot make a loan unless TitleMax determines that the borrower has the ability to
19 repay it. NRS 604A.450. Therefore, granting a grace period before a borrower begins
20 repaying the loan is contrary to legislative intent and contrary to the normal course of such
21

22 ¹¹ Chapter 604A of the NRS was adopted in 2005. Contrary to TitleMax's assertions, changes made to a draft
23 bill are not necessarily treated the same as changes made to an existing statute. TitleMax cites to *INS v.*
24 *Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct.1207 in support of its arguments. But, the *Cardoza-Fonseca* case
25 compares two existing statutes with different language. *Id.* At 425-433. TitleMax also cites to *Russello v.*
26 *United States*, 464 U.S. 16, 104 S.Ct. 296 (1983) to support its position that their interpretation is correct. In
27 *Russello*, the Court found that the legislative history and spirit of the act supported the broader interpretation.
28 464 U.S. 16, 26-29. Unlike the *Russello* case, the legislative history and spirit of the act do not support
TitleMax's interpretation that it can collect interest or fees during a grace period. Charging interest during a
grace period is contrary to the intent of allowing a borrower additional time to make a payment without
incurring any additional interest or fees. Thus, TitleMax's interpretation leads to an unreasonable or absurd
result.

¹² "'Default' means the failure of a customer to . . . (a) Make a scheduled payment on a loan on or before the
due date for the payment under the terms of a lawful loan agreement and any grace period that complies with
the provisions of NRS 604A.210" NRS 604A.045.

1 affairs. See Black's Law Dictionary, 705 (7th Ed. 1999) (defining a "grace period" as "[a]
2 period of extra time allowed for taking some required action (such as making payment)
3 without incurring the usual penalty for being late."). In this case, "Grace Period Payments
4 Deferment Agreement" contains a misnomer, *i.e.* there really is no grace period because
5 money is due in every period and these agreements do not comply with NRS 604A.210 or
6 NRS 604A.070.¹³

7 The relevant statutes indicate that there are genuine issues of material fact. The
8 Grace Period Payments Deferment Agreements are longer than 210 days and extend the
9 term of the loan beyond the statutory limitation and do not provide for installment payments
10 and do not ratably and fully amortize¹⁴ the amount of the original loan. The amount of the
11 loan increases and the amount of interest charged increases. *Exhibit C*. In addition, money
12 is owed in every period and therefore there is no grace period. *Id.* Though TitleMax agrees
13 that more interest is charged via the Grace Period Payments Deferment Agreement than
14 would be charged via the 210 loan, TitleMax does not agree that the amount of the loan is
15 not ratably and fully amortized, does not agree that the loan is extended and does not agree
16 that there is no grace period or that there is no gratuitous deferment. Therefore, there are
17 genuine issues of material fact. NRS 604A.445; NRS 604A.210; NRS 604A.070.

18 Because the FID has original jurisdiction, the facts considered by this court should be
19 the facts determined through the administrative process. *Allstate Insurance Co. v. Thorpe*,
20 *M.D.*, 123 Nev. 565, 571-573 (2007); *Malecon*, 118 Nev. 837, 840-841 (2002); See
21 *Galloway v. Truesdell*, 83 Nev. 13, 29, 422 P.2d 237 (1967) ("It is well settled that under
22 the division of powers, these ministerial fact-finding duties may not be delegated to courts . .
23 .."). Such facts should be presented to this court to determine whether they are supported
24 by substantial evidence pursuant to NRS 233B.135. Therefore, this court should dismiss

25 ¹³ "Grace period" is "[t]he amount of time after a payment due date when no interest is charged."
26 <https://www.lendingtree.com/glossary/what-is-grace-period>. Also defined as "[t] The number of days between a
consumer's credit card statement date and payment due date when interest does not accrue."

27 <http://www.investopedia.com/terms/g/grace-period-credit.asp>.

28 ¹⁴ "An 'amortization plan' for the payment of an indebtedness is one where there are partial payments of the
principal, and accrued interest, at stated periods for a definite time, at the expiration of which the entire
indebtedness will be extinguished." Black's Law Dictionary, 83 (6th Ed. 1990).

1 this case for lack of subject matter jurisdiction, lack of ripeness and/or non-justiciability, or
2 by application of the primary jurisdiction doctrine and allow these matters to be decided via
3 the administrative hearing. See *Nevada Power Co. v. Eighth Judicial District Court*, 120
4 Nev. 948, 959 (2004) (concluding that “the district court could have deferred action under
5 the primary jurisdiction doctrine for the PUC to address one issue implicated in the amended
6 complaint”); See *Allstate Insurance Co. v. Thorpe, M.D.*, 123 Nev. 565, 571 (2007)
7 (stating, “whether couched in terms of subject-matter jurisdiction or ripeness, a person
8 generally must exhaust all available administrative remedies before initiating a lawsuit, and
9 failure to do so renders the controversy nonjusticiable.).

10 Alternatively, this court should deny the motion for summary judgment for the
11 reasons that TitleMax is misinterpreting the law and genuine issues of material fact exist.
12 Because the loan is intended to be closed ended with a maximum term of 210 days (seven
13 months), TitleMax can only offer a 210 day (seven month) loan that is ratably and fully
14 amortized. By collecting 210 days (seven months) of interest on the entire principle before
15 any principle payments are made, and then collecting principle (and, according to the
16 agreement, possibly more interest) for seven more months, TitleMax is collecting additional
17 interest in violation of NRS 604A.210, has nearly doubled the duration of the loan and
18 extended the loan in violation of NRS 604A.445(3), is not ratably and fully amortizing the
19 amount of the loan in violation of NRS 604A.445(3) and is not offering a grace period, *i.e.*
20 gratuitous deferment, in violation of NRS 604A.210 and NRS 604A.070.

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Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

Based on the foregoing, the FID respectfully requests that this Honorable Court issue an order denying summary judgment.

Respectfully submitted this 10th day of November, 2015.

ADAM PAUL LAXALT
Attorney General

By:


David J. Pope
Sr. Deputy Attorney General
Nevada Bar #8617
Christopher Eccles
Deputy Attorney General
Nevada Bar #9798
555 E. Washington Ave., #3900
Las Vegas, NV 89101
(702) 486-3426
Attorneys for State of Nevada

CERTIFICATE OF SERVICE

(X) I hereby certify that I electronically filed the foregoing **NEVADA FINANCIAL INSTITUTIONS DIVISION'S OPPOSITION TO MOTION FOR SUMMARY JUDGEMENT**, along with Exhibits A – E, with the Clerk of the Court by using the electronic filing system on the 10th day of November, 2015.

The following participants in this case are registered electronic filing systems users and will be served electronically:

Patrick Reilly, Esq.
Nicole Lovelock, Esq.
Holland & Hart
9555 Hillwood Dr., 2nd Floor
Las Vegas, NV 89134

()

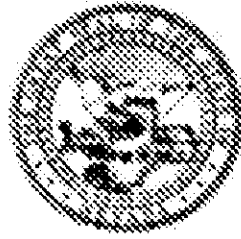
I certify that some of the participants in the case are not registered electronic filing system users and I have mailed the foregoing documents by First-Class Mail, postage prepaid to:

()

I certify that I have served the foregoing documents by First-Class Mail, postage prepaid and by e-mailing same to participant's personal e-mail address as follows:

/s/ Debra Turman
An employee of the Office of the Attorney General

Exhibit A



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

BRUCE BRESLOW
Director

GEORGE E. BURNS
Commissioner

CHAPTER 604A
REPORT OF EXAMINATION

TITLEMAX OF NEVADA INC.
DBA: TITLEMAX
5871 E. LAKE MEAD BLVD.,
LAS VEGAS, NV 89156
WWW.TITLEMAX.COM

| | | | |
|-----------------------------|-----------------------|----------------------------|---------------|
| Examiner In Charge: | Ma. Theresa Dihiansan | Examined as of: | May 4, 2015 |
| Examination Started: | May 22, 2015 | Examination Closed: | June 17, 2015 |
| Total Exam Hours: | 12.0 | Examination Number: | 66958 |

THIS REPORT IS STRICTLY CONFIDENTIAL

The information contained in this report is based on the books and records of the licensee as licensed under NRS 604A, on statements made to the examiner by the directors, officers, and employees, and on information obtained from other sources believed to be reliable and presumed by the examiner to be correct. It is emphasized that this report is a report of examination, and not an audit of the licensee, and should not be construed as such. This report of examination does not replace nor relieve the principals of their responsibility for performing or providing for adequate audits of the business.

This copy of the report is the property of the Department of Business and Industry of the State of Nevada, and is furnished to the licensee for its confidential use. Under no circumstances shall the licensee, or any of its directors, officers, or employees disclose in any manner the report or any portion thereof to any person or organization not officially connected with the licensee as officer, director, attorney, or auditor unless otherwise directed. Should any legal process document be served calling for the surrender of this report or any portion thereof, the Commissioner of the Financial Institutions Division shall be notified immediately.

Each principal has the responsibility to review the contents of this report.

State of Nevada
Department of Business and Industry, Financial Institutions Division

Ma. Theresa Dihiansan, CAMLS
Examiner In Charge

JA000346

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EXAMINATION COMMENTS AND CONCLUSIONS

INTRODUCTION

The follow-up examination of TitleMax of Nevada Inc. DBA: TitleMax located at 5871 E. Lake Mead Blvd., Las Vegas, NV 89156 commenced on May 4, 2015. This business location currently holds a Nevada Revised Statutes (NRS) Chapter 604A license issued by the State of Nevada Financial Institutions Division (FID). The licensee has been granted the approval to underwrite Title Loans in accordance with applicable statutes and regulations.

The licensee's website www.titlemax.com is used to advertise the various products and services it currently offers. Customers can start the application process online but must visit the branch location to process the loan.

As of the examination date, TitleMax currently has 42 licensed locations in the State of Nevada and all the locations were visited during the process of this examination. The corporate office located at 15 Bull St., Suite 200, Savannah Georgia 31401 is also licensed under NRS 604A. This location does not underwrite loans and is used for administrative purposes only. All licensed locations are listed in the table below:

| Store | Address | City | State | Zip |
|------------|-------------------------------------|-----------|-------|-------|
| TitleBucks | 7150 S. DURANGO DRIVE, #190 | LAS VEGAS | NV | 89113 |
| TitleMax | 6820 W. FLAMINGO RD, SUITE F & G | LAS VEGAS | NV | 89103 |
| TitleMax | 6525 S. FORT APACHE ROAD, STE 110 | LAS VEGAS | NV | 89148 |
| TitleMax | 3525 S. FORT APACHE ROAD, SUITE 160 | LAS VEGAS | NV | 89147 |
| TitleMax | 4700 SPRING MOUNTAIN ROAD | LAS VEGAS | NV | 89102 |
| TitleMax | 3575 W. TROPICANA AVENUE | LAS VEGAS | NV | 89103 |
| TitleMax | 5060 S. FORT APACHE ROAD, SUITE 140 | LAS VEGAS | NV | 89148 |
| TitleMax | 6795 W. TROPICANA AVENUE, SUITE 140 | LAS VEGAS | NV | 89103 |
| TitleMax | 7615 S. RAINBOW BLVD, STE 100 | LAS VEGAS | NV | 89139 |
| TitleMax | 7380 S. EASTERN AVENUE, SUITE 126 | LAS VEGAS | NV | 89123 |
| TitleMax | 3810 BLUE DIAMOND ROAD #150 | LAS VEGAS | NV | 89139 |
| TitleMax | 6530 S. DECATUR BLVD, #100 | LAS VEGAS | NV | 89118 |
| TitleMax | 9555 S. EASTERN AVE, SUITE 105 | LAS VEGAS | NV | 89123 |
| TitleMax | 3391 E. TROPICANA AVENUE, STE 1 | LAS VEGAS | NV | 89121 |
| TitleMax | 3547 S. MARYLAND PKWY | LAS VEGAS | NV | 89169 |
| TitleMax | 3365 E. FLAMINGO ROAD, SUITE 1 | LAS VEGAS | NV | 89121 |
| TitleMax | 4749 S. MARYLAND PKWY | LAS VEGAS | NV | 89119 |
| TitleMax | 4650 E. SUNSET ROAD, SUITE C | HENDERSON | NV | 89014 |
| TitleMax | 16 W. HORIZON RIDGE PKWY #160 | HENDERSON | NV | 89012 |
| TitleMax | 4944 BOULDER HIGHWAY | LAS VEGAS | NV | 89121 |
| TitleMax | 4000 BOULDER HWY, SUITE 5 | LAS VEGAS | NV | 89121 |
| TitleMax | 1210 N. BOULDER HWY, SUITE C | HENDERSON | NV | 89011 |



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

REPORT OF EXAMINATION

EXAMINATION COMMENTS AND CONCLUSIONS

| Store | Address | City | State | Zip |
|------------|---------------------------------|-------------|-------|-------|
| TitleBucks | 4150 BOULDER HIGHWAY, SUITE 105 | LAS VEGAS | NV | 89121 |
| TitleMax | 2400 N. BUFFALO DRIVE #140 | LAS VEGAS | NV | 89128 |
| TitleMax | 2550 S. EASTERN AVENUE | LAS VEGAS | NV | 89169 |
| TitleMax | 6450 W. LAKE MEAD BLVD, STE 150 | LAS VEGAS | NV | 89108 |
| TitleMax | 3900 W. SAHARA AVENUE | LAS VEGAS | NV | 89102 |
| TitleMax | 4811 WEST CRAIG ROAD | LAS VEGAS | NV | 89130 |
| TitleMax | 6436 N. DECATUR BLVD., #115 | LAS VEGAS | NV | 89131 |
| TitleMax | 4077 W. CHARLESTON BLVD. | LAS VEGAS | NV | 89102 |
| TitleBucks | 4750 W. LAKE MEAD, #102 | LAS VEGAS | NV | 89108 |
| TitleMax | 8414 W. FARM ROAD, SUITE 130 | LAS VEGAS | NV | 89131 |
| TitleMax | 4001 N. LAS VEGAS BLVD. | LAS VEGAS | NV | 89115 |
| TitleMax | 3220 S. VIRGINIA STREET | RENO | NV | 89502 |
| TitleMax | 2020 E. WILLIAMS STREET | CARSON CITY | NV | 89701 |
| TitleMax | 1995 W. WILLIAMS AVENUE | FALLON | NV | 89406 |
| TitleMax | 900 W. FIFTH STREET | RENO | NV | 89503 |
| TitleMax | 1600 N. NELLIS BLVD, SUITE 102 | LAS VEGAS | NV | 89115 |
| TitleMax | 1225 E. CHARLESTON BLVD. | LAS VEGAS | NV | 89104 |
| TitleMax | 4741 E. CHARLESTON BLVD. | LAS VEGAS | NV | 89104 |
| TitleMax | 6060 BOULDER HWY. | LAS VEGAS | NV | 89122 |
| TitleMax | 5871 E. LAKE MEAD BLVD. | LAS VEGAS | NV | 89156 |
| TitleMax | 15 BULL ST. | SAVANNAH | GA | 31401 |

As of the examination date, the store located at 6060 Boulder Hwy., Suite 5 and 6, Las Vegas, NV 89122 was just opened for business and has not started underwriting title loans yet. As such, loan review was not part of the scope of the examination for this location.

SCOPE OF EXAMINATION

The primary purpose of the examination was to determine compliance with NRS Chapter 604A and Nevada Administrative Code (NAC) Chapter 604A. The examination consisted of a review of active, paid, delinquent and declined loans, a review of surety bond terms, completion of the manager's and statutory compliance questionnaires, and a review of the company's policies and procedures and forms used in the operation of the business. Appropriate licenses and fee-related postings were also examined. Emphasis was placed on compliance with State regulations as well as the Truth in Lending Act (Regulation Z).

The current examination mainly focused on the prior violations that were cited which resulted in a less than satisfactory rating.



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

REPORT OF EXAMINATION

EXAMINATION COMMENTS AND CONCLUSIONS

The licensee was previously cited for underwriting loans without regard to the customer's ability to repay the title loan. This is no longer apparent since the licensee started underwriting loans with an original term of 210 days; therefore, this violation is deemed rectified.

NAC 604A.230 Prohibited acts: Miscellaneous acts.

NRS 604A.105 "Title loan" defined.

NRS 604A.115 "Title to a vehicle" or "title" defined. "Title to a vehicle" or "title" means a certificate of title or ownership issued pursuant to the laws of this State that identifies the legal owner of a vehicle or any similar document issued pursuant to the laws of another jurisdiction.

During the previous examination, the licensee was cited for allowing co-borrowers to be co-signors on the title loan where the co-borrower's name was not in the vehicle title. No such instance was found at this location. As such, this is deemed rectified.

NRS 604A.445 Title loans: Restrictions on duration of loan and periods of extension.

NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:

- 1. Any fees for granting such a grace period; or**
- 2. Any additional fees or additional interest on the outstanding loan during such a grace period.**

Since the previous examination, Titlemax implemented a 210 day title loan product that mirrors NRS 604A.445 (3). The current examination showed that Titlemax's original loan agreement complies with NRS 604A.445 (3). The examination also showed that Titlemax markets and offers an amendment to the original loan agreement that violates NRS 604A.445 (3) and NRS 604A.210. This is still apparent during the current examination and is cited as a repeat violation.

EXIT MEETING

The exit meeting was held telephonically on June 17, 2015. TitleMax was represented by the following:

Carrie E. Carbone, SVP of Compliance and Product General Counsel
Victoria Newman, Compliance and Corporate Counsel
Stephen Paris, Senior Regulatory Compliance Manager
Ted Helgeson, Divisional Vice President of Operations
Coleman Gaines, Senior Vice President of Operations-West
Melissa Ardis, Director of Compliance
Nicole Lovelock, Outside Counsel from Holland and Hart

The Financial Institutions Division was represented by the following:

Harveen Sekhon, Supervisory Examiner



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

REPORT OF EXAMINATION

EXAMINATION COMMENTS AND CONCLUSIONS

Christopher Eccles, Attorney
Ma. Theresa Dihiansan, Examiner-In-Charge
Dean Ventura, Examiner
Kelvin Lam, Examiner

CURRENT VIOLATIONS OF APPLICABLE STATUTES AND REGULATIONS

STATE

REPEAT VIOLATION

NRS 604A.445 Title loans: Restrictions on duration of loan and periods of extension.

Notwithstanding any other provision of this chapter to the contrary:

3. The original term of a title loan may be up to 210 days if:

- (a) The loan provides for payments in installments;**
- (b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;**
- (c) The loan is not subject to any extension; and**
- (d) The loan does not require a balloon payment of any kind.**

NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:

- 1. Any fees for granting such a grace period; or**
- 2. Any additional fees or additional interest on the outstanding loan during such a grace period.**

During the current examination, TitleMax underwrites title loans with an original term of 210 days which mirrors NRS 604A.445 (3). It was also apparent during the examination that Titlemax continued to offer the amendment to the original loan agreement that violates NRS 604A.445 (3) and NRS 604A.210.

Onsite visits to Titlemax locations and conversations with store employees showed that Titlemax currently offers the customers an amendment to the original loan agreement called the "Grace Period Payments Deferment Agreement" (hereinafter, the "Amended Agreement") during the term of the loan. The customer may enter into the grace period payments deferment agreement prior to default if the customer chooses to make lower monthly payments although the total amount owed by the customer in the amended agreement will be higher than the total amount owed under the original loan agreement.



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

REPORT OF EXAMINATION

EXAMINATION COMMENTS AND CONCLUSIONS

The text of the Amended Agreement provides:

“Because this is only an amendment and modification of the loan agreement in which we are only modifying and deferring your payments under the Title Loan Agreement, you acknowledge and agree that all of the terms and conditions of the Title Loan Agreement, including the charging of simple interest and waiver of jury trial and arbitration provision remain in full force and effect.”

This statement shows an intent to avoid compliance with NRS 604A.445 (3). Under the original loan agreement the customer makes seven fully amortized payments (210 days) to pay the loan off without a balloon payment at the end, thereby complying with all provisions of NRS 604A.445(3). But, under the Amended Agreement, the customer makes 14 payments (390 days), the first seven payments are interest payments only and last seven payments are principal payments. Thus, the Amended Agreement separates interest and principal from the original amortized schedule of payments, and thereby prolongs the payment of principal until the full interest is paid.

For an example of how customers owe more under the Amended Agreement compared to the original agreement, please see below:

OPEN ACCOUNTS

| Loan Number | Customer Name | Total Amount to be Paid Under the Original Loan Agreement | Total Amount to be Paid under the “Amended Loan Agreement” | Overage |
|-------------|---------------|---|--|------------|
| ██████████ | ██████████ | \$1,819.80 | \$2,233.10 | \$413.30 |
| ██████████ | ██████████ | \$5,079.66 | \$6,188.83 | \$1,109.17 |
| ██████████ | ██████████ | \$1,819.80 | \$2,233.10 | \$413.30 |
| ██████████ | ██████████ | \$3,465.55 | \$4,238.60 | \$773.05 |
| ██████████ | ██████████ | \$3,500.21 | \$4,281.00 | \$780.79 |
| ██████████ | ██████████ | \$2,176.60 | \$2,670.96 | \$494.36 |

Management Response: Victoria Newman, Compliance and Corporate Counsel stated that the licensee would respond in writing upon receipt of the written report of examination for all locations.



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

REPORT OF EXAMINATION

Exhibit B

BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY
LAS VEGAS, NEVADA

IN THE MATTER OF:

FINANCIAL INSTITUTIONS DIVISION,

Claimants,

v.

TITLEMAX OF NEVADA, INC. AND
TITLEBUCKS D/B/A TITLEMAX,

Respondents.

PROCEDURAL ORDER

This is a contested case between Claimant, the Financial Institutions Division of the Nevada Department of Business & Industry (FID), and Respondent, TitleMax of Nevada, Inc. and TitleBucks d/b/a TitleMax (TitleMax). FID commenced this administrative action under NRS 233B.121 with the issuance of an Administrative Complaint for Disciplinary Action and Notice of Hearing ("Complaint") on October 6, 2015. FID requests the imposition of administrative penalties against TitleMax under NRS 604A.820. This matter is properly before the undersigned Administrative Law Judge pursuant to NRS 233B.122, and it is set to proceed to a hearing on November 5, 2015. On October 27, 2015, this Court held a status check at which counsel for both parties appeared. This Order follows.

Under Nevada law, due process guarantees of fundamental fairness apply in administrative proceedings. Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy, 124 Nev. 701, 711, 191 P.3d 1159, 1166 (2008). While "the legal process due in an administrative forum is flexible," certain minimum requirements exist. Minton v. Bd. of Med. Examiners, 110 Nev. 1060, 1082, 881 P.2d 1339, 1354 (1994) (internal quotation omitted), overruled on other grounds by Nassiri v. Chiropractic Physicians' Bd., 130 Nev. Adv. Op. 27, 327 P.3d 487 (2014). Specifically, due process requires

1 the governmental agency taking action against the licensee to provide the licensee
2 notice of the nature of the proceedings, including both the charges alleged and the
3 factual predicates therefor, such that the licensee may prepare its defense. Dutchess,
4 124 Nev. at 711-12, 191 P.3d at 1166. The agency must also make available to the
5 licensee documentary evidence and the names of witnesses the agency intends to
6 rely on sufficient to allow the licensee to prepare its defense. Id. at 714-15, 191 P.3d
7 at 1167-68. While the mechanisms for this exchange need not take the form of formal
8 discovery, the agency and licensee must exchange proposed exhibits and witness
9 lists in advance of the hearing. Id.

10 FID provided TitleMax notice of the charges against it and the factual bases for
11 those charges in the Complaint. However, FID did not specify the penalty it seeks the
12 administrative tribunal to impose on TitleMax other than to cite NRS 604A.820, which
13 contains the full panoply of potential penalties ranging from fines of up to \$10,000 per
14 violation to license revocation. Furthermore, the parties have not yet exchanged
15 proposed exhibits or lists of witnesses. Minimum standards of due process require the
16 provision and exchange of this information to avoid unfair surprise and permit
17 TitleMax the opportunity to prepare its defense.

18 Accordingly, **IT IS HEREBY ORDERED:**

19 The hearing date of November 5, 2015, is vacated.

20 The Order for Briefing requiring submission of briefs from the parties by
21 October 29, 2015, is vacated.

22 FID must provide the following to TitleMax by **November 13, 2015:**
23 identification with specificity of the type and/or amount of penalties it seeks against
24 TitleMax, copies of all proposed exhibits, and a list of proposed witnesses including a
25 brief statement summarizing their expected testimony.

26 TitleMax must provide the following to FID by **November 30, 2015:** copies of
27 all proposed exhibits and a list of proposed witnesses including a brief statement
28 summarizing their expected testimony.

1 The parties shall submit a joint evidentiary packet to this Court by December
2 18, 2015, containing the following information:

- 3 1. A concise statement of the nature of the action and the contentions of the
4 parties;
- 5 2. A statement of all uncontested facts deemed material in the action;
- 6 3. A statement of the contested issues of fact in the case as agreed upon by
7 the parties;
- 8 4. A statement of the contested issues of law in the case as agreed upon by
9 the parties;
- 10 5. Plaintiff's statement of any other issues of fact or law deemed to be
11 material;
- 12 6. Defendant's statement of any other issues of fact or law deemed to be
13 material;
- 14 7. Lists or schedules of all exhibits that will be offered in evidence by the
15 parties at the trial. Such lists or schedules shall describe the exhibits
16 sufficiently for ready identification and:
17 (A) Identify the exhibits the parties agree can be admitted at trial; and,
18 (B) List those exhibits to which objection is made and state the grounds
19 therefor. Stipulations as to admissibility, authenticity and/or identification of
20 documents shall be made whenever possible.
- 21 8. Lists of the parties' proposed witnesses including a brief statement
22 summarizing their expected testimony.

23 The parties are also free to submit briefs summarizing their respective legal
24 positions by December 18, 2015. No page limit shall apply to these briefs.

25 This Court shall set a new hearing date upon receipt of the joint evidentiary
26 packet.

27 Dated this 29th day of October, 2015.

28

/s/ Denise S. McKay
Denise S. McKay
Administrative Law Judge
State of Nevada

CERTIFICATE OF MAILING

I, Michelle Metivier, do hereby certify that I deposited in the U.S. mail, postage prepaid, via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing Procedural Order to the following:

Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

certified#7012 1010 0000 1166 1687
email: preilly@hollandhart.com
jgwent@hollandhart.com

Corporation Trust Company of Nevada
701 S. Carson St. Ste. 200
Carson City, NV 89701

certified#7012 1010 0000 1166 1694

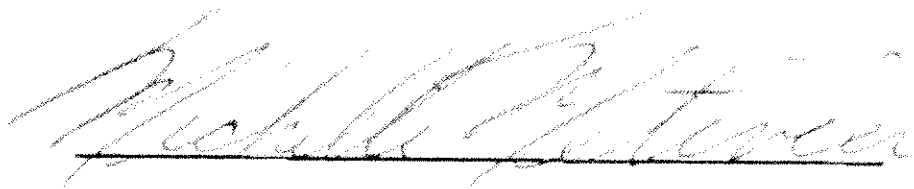
Victoria Newman, Esq.
15 Bull St., Ste. 200
Savannah, GA 31401

certified#7012 1010 0000 1166 1700

David Pope, Esq.
Christopher Eccles, Esq.
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

certified#7012 1010 0000 1166 1717
email: ceccles@ag.nv.gov

Dated this 29th day of October, 2015.



Michelle Metivier

Exhibit C

FEDERAL TRUTH-IN-LENDING DISCLOSURES

| ANNUAL PERCENTAGE RATE | FINANCE CHARGE | Amount Financed | Total of Payments |
|---|---|---|--|
| The cost of your credit as a yearly rate. | The dollar amount the credit will cost you. | The amount of credit provided to you or on your behalf. | The amount you will have paid after you have made all payments as scheduled. |
| 170.2117 % | \$2,792.73 | \$4,420.00 | \$7,212.73 |

Your payment schedule will be:

| Number of Payments | Amount of Payments | When Payments are Due |
|--------------------|--------------------|---------------------------------------|
| 6 | \$1,030.40 | 11/6/2014 and each 30 days thereafter |
| 1 | \$1,030.33 | 5/5/2015 |

Security: You are giving a security interest in the Title to the Motor Vehicle.

Filing Fee: \$20.00

Prepayment: If you pay off early, you will not have to pay a penalty, and you may be entitled to a refund of part of the finance charge.

See the terms below and on the other pages of this Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date and any prepayment refunds and penalties.

Itemization of Amount Financed of \$4,420.00

1. Amount given to you directly: \$4,400.00
2. Amount paid on your account: \$0.00
3. Amount paid to public officials: \$20.00
4. Amount paid to _____ on your behalf: \$0.00

Calculation of Interest, Application of Payments and Security Interest. We use the simple interest method to calculate the interest. We calculated the simple interest assuming you will pay on the scheduled Payment Dates. If you make your payments on the dates set forth in the Payment Schedule, the Finance Charge box above discloses the total amount of interest you will owe us under this Loan Agreement. Payments are calculated to ratably and fully amortize the entire Principal Amount and interest payable. Interest is not compounded. Early payments may decrease the amount of interest you owe. Late payments may increase the amount of interest you owe. The amount of this increase or decrease will be reflected in the final payment. If an early payment is less than the scheduled installment, then you must pay the difference on or before the upcoming installment due date. Payments will be applied first to accrued interest, second to outstanding charges, if any, and third to principal. We require you to give us possession of the Title, and you hereby give us possession of the Title. You grant us a security interest in the Motor Vehicle listed above. We will maintain possession of the Title during this Loan Agreement.

Right to Rescind and Prepayment. You may rescind this loan pursuant to Nevada law. You may rescind before we close on our next business day, at the location listed above. We will not charge you any amount for rescinding. To rescind, you must deliver funds equal to the face value of the loan, less any fees charged. If you rescind, then we will return the Title to you, and refund any amount paid. You have the right to make payments in any amount in advance at any time without incurring any charge, fee or penalty. If you prepay any amount at any time, then the final payment amounts will be adjusted as appropriate to reflect any prepayments we receive. If you prepay pursuant to this Loan Agreement, then we will return the Title to you.

Grace Period. For purposes of this Loan Agreement, the term "grace period" means the gratuitous period of payments deferment (i) which we offer to you after entering into this Agreement pursuant to the provisions of NRS 604A.70 and NRS 604A.210, (ii) you voluntarily accept such terms of the payments deferment after entering into the Loan Agreement, and (iii) you and we agree to such terms of payments deferment in a written and signed "Grace Period Payments Deferment Agreement." We allow customers that are in good standing during the term of this Loan Agreement to request and enter into a Grace Period Payments Deferment Agreement. You may request and enter into a Grace Period Payments Deferment Agreement by returning to our store not earlier than one business day following the date of this Loan Agreement. If you enter into a Grace Period Payments Deferment Agreement, your obligation to pay simple interest under this Loan Agreement remains unchanged. Other than the interest and fees originally provided for in this Loan Agreement, we do not charge you any additional fees or interest for entering into a Grace Period Payments Deferment Agreement.

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5569.

Page 2 of 5

TM, TB NV installment-loan-agreement 2 04 2014

5-2 000

JA000358

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Repayment Plan Disclosure: If you default on a loan, we must offer a Repayment Plan to you before we commence any civil action or process of alternative dispute resolution, or before we repossess the Motor Vehicle.

Repayment Plan. If you default and are entitled to enter into a Repayment Plan, we will offer you a "Repayment Plan." We will give you the opportunity to enter into a Repayment Plan for 30 days after such default. The minimum term of the "Repayment Plan" is 90 days. We may require you to make an initial payment of not more than 20 percent of the total amount due under the terms of the Repayment Plan. We shall not except as otherwise provided by this NRS 604A, charge any other amount to you, including, without limitation, any amount or charge payable directly or indirectly by you and imposed directly or indirectly by us as an incident to or as a condition of entering into a repayment plan. Such an amount includes, without limitation: (i) any interest, regardless of the name given to the interest, other than the interest charged pursuant to the original loan agreement at a rate which does not exceed the annual percentage rate charged during the term of the original loan agreement; or (ii) any origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee. We will not take additional security for entering into a Repayment Plan or attempt to collect an amount that is greater than the amount owed under the terms of the Repayment Plan. We will not sell you any insurance or require you to purchase insurance or any other goods or services to enter into the Repayment Plan. We will not make any other loan to you while you are in a Repayment Plan. Upon default of your obligations under the Repayment Plan, we may repossess the Motor Vehicle.

Default, Acceleration, Repossession, and Post-Default Interest. You will be in default and entitled to enter into a Repayment Plan on the day immediately following the date you fail to (i) make a scheduled payment on this loan; (ii) make a scheduled payment on or before the due date for the payment under the terms Grace Period Payments Deferral Agreement; (iii) pay this loan in full on or before the expiration of the initial loan period as set forth herein unless you have entered into a Grace Period Payments Deferral Agreement; (iv) pay this loan in full on or before the expiration of the period as set forth Grace Period Payments Deferral Agreement; or (v) pay any payment under any Grace Period we have extended under NRS 604A. 210. We may waive a default and reinstate your account to good status if you bring your account current or make satisfactory payment arrangements with us. However, we are not required to make an offer for you to enter into a Repayment Plan more than once for each loan. Provided that the due date of the repayment plan does not violate the provisions of Nevada Law, you will be in default and not entitled to enter into a Repayment Plan, if you fail (ii) to make a scheduled payment on this loan on or before the due date for the payment under the terms of any repayment plan relating to this loan or (ii) to pay a loan in full on or before the due date any repayment plan relating to the loan. If you are in default and entitled to enter into a Repayment Plan, we may accelerate the balance, but we cannot repossess the Motor Vehicle before offering you a Repayment Plan. If you are in default under the Loan Agreement and Grace Period Payments Deferral Agreement and not entitled to enter into a Repayment Plan or if you are in default under the Repayment Plan, we may seek repossession and sale of the Motor Vehicle as well as any other remedy allowed by Nevada law. If you use fraud to secure a title loan, or if you wrongfully transfer any interest in the Motor Vehicle to a third party, then we may bring a civil action against you for any or all of the following relief: (I) the amount of the loan obligation, including, without limitation, the aggregate amount of the interest, charges and fees negotiated and agreed to by us and you as permitted, less any prior payments made by you; (II) reasonable attorney's fees and costs; and (III) any other legal or equitable relief that the court or arbitrator deems appropriate. If we do not use one or more remedies following your default, we do not waive our right to the same or another remedy or remedies. Our rights herein are cumulative, not exclusive.

Governing Law and Assignment. Nevada law governs this Loan Agreement, except the Federal Arbitration Act ("FAA") governs the Waiver of Jury Trial and Arbitration Provision. We may assign or transfer this Loan Agreement or any of our rights.

Affidavit. You acknowledge and agree that you provided us with an affidavit stating: (a) The customer provided licensee with true and correct information concerning the customer's income, obligations, employment and ownership of the Motor Vehicle; and (b) The customer has the ability to repay the title loan.

WAIVER OF JURY TRIAL AND ARBITRATION PROVISION. Arbitration is a process in which persons with a dispute: (a) waive their rights to file a lawsuit and proceed in court and to have a jury trial to resolve their disputes; and (b) agree, instead, to submit their disputes to a neutral third person (an "arbitrator") for a decision. Each party to the dispute has an opportunity to present some evidence to the arbitrator. Pre-arbitration discovery may be limited. Arbitration proceedings are private and less formal than court trials. The arbitrator will issue a final and binding decision resolving the dispute, which may be enforced as a court judgment. A court rarely overturns an arbitrator's decision. **THEREFORE, YOU ACKNOWLEDGE AND AGREE AS FOLLOWS:**

1. For purposes of this Waiver of Jury Trial and Arbitration Provision (hereinafter the "Arbitration Provision"), the words "dispute" and "disputes" are given the broadest possible meaning and include, without limitation (a) all claims, disputes, or controversies arising from or relating directly or indirectly to the signing of this Arbitration Provision, the validity and scope of this Arbitration Provision and any claim or attempt to set aside this Arbitration Provision; (b) all federal or state law claims, disputes or controversies, arising from or relating directly or indirectly to this Loan Agreement (including the Arbitration Provision), the information you gave us before entering into this Loan Agreement, and/or any past agreement or agreements between you and us; (c) all counterclaims, cross-claims and third-party claims; (d) all common law claims, based upon contract, tort, fraud, or other intentional torts; (e) all claims based upon a violation of any state or federal constitution, statute or regulation; (f) all claims asserted by us against you, including claims for money damages to collect any sum we claim you owe us; (g) all claims asserted by you individually against us and/or any of our employees, agents, directors, officers, shareholders, governors, managers, members, parent company or affiliated entities (hereinafter collectively referred to as "related third parties"), including claims for money damages and/or equitable or injunctive relief; (h) all claims asserted on your behalf by another person; (i) all claims asserted by you as a private attorney general, as a representative and member of a class of persons, or in any other representative capacity, against us and/or related third parties (hereinafter referred to as "Representative Claims"); and/or (j) all claims arising from or relating directly or indirectly to the disclosure by us or related third parties of any non-public personal information about you.

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.

2. You acknowledge and agree that by entering into this Arbitration Provision:

- (a) YOU ARE WAIVING YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;
- (b) YOU ARE WAIVING YOUR RIGHT TO HAVE A COURT, OTHER THAN A SMALL CLAIMS TRIBUNAL, RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and
- (c) YOU ARE WAIVING YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

3. Except as provided in Paragraph 6 below, all disputes including any Representative Claims against us and/or related third parties shall be resolved by binding arbitration only on an individual basis with you. THEREFORE, THE ARBITRATOR SHALL NOT CONDUCT CLASS ARBITRATION; THAT IS, THE ARBITRATOR SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION.

4. Any party to a dispute, including related third parties, may send the other party written notice by certified mail return receipt requested of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select either of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) <http://www.adr.org>, or JAMS (1-800-352-5267) <http://www.jamsadr.com>. However, the parties may agree to select a local arbitrator who is an attorney, retired judge, or arbitrator registered and in good standing with an arbitration association and arbitrate pursuant to such arbitrator's rules. If the arbitration associations listed above are not available and the parties cannot otherwise agree on a substitute, then any party may petition a court pursuant to section 5 of the Federal Arbitration Act, 9 U.S.C. sections 1-16 to select an arbitration organization, provided such arbitration organization shall enforce the terms of this Loan Agreement and the Arbitration Provision, including the prohibition on class arbitration. The party receiving notice of arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. If you demand arbitration, you must inform us in your demand of the arbitration organization you have selected or whether you desire to select a local arbitrator. If related third parties or we demand arbitration, you must notify us within twenty (20) days in writing by certified mail return receipt requested of your decision to select an arbitration organization or your desire to select a local arbitrator. If you fail to notify us, then we have the right to select an arbitration organization. The parties to such dispute will be governed by the rules and procedures of such arbitration organization applicable to consumer disputes, to the extent those rules and procedures do not contradict the express terms of this Loan Agreement or the Arbitration Provision, including the limitations on the arbitrator below. You may obtain a copy of the rules and procedures by contacting the arbitration organization listed above.

5. Regardless of who demands arbitration, we will advance your portion of the expenses associated with the arbitration, including the filing, administrative, hearing and arbitrator's fees ("Arbitration Fees"). Throughout the arbitration, each party shall bear his or her own attorneys' fees and expenses, such as witness and expert witness fees. The arbitrator shall apply applicable substantive law consistent with the FAA, and applicable statutes of limitation, and shall honor claims of privilege recognized at law. The arbitration hearing will be conducted in the county of your residence, or within 30 miles from such county, or in the county in which the transaction under this Loan Agreement occurred, or in such other place as shall be ordered by the arbitrator. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. In conducting the arbitration proceeding, the arbitrator shall not apply any federal or state rules of civil procedure or evidence. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. If the arbitrator renders a decision or an award in your favor resolving the dispute, then you will not be responsible for reimbursing us for your portion of the Arbitration Fees, and we will reimburse you for any Arbitration Fees you have previously paid. If the arbitrator does not render a decision or an award in your favor resolving the dispute, then the arbitrator shall require you to reimburse us for the Arbitration Fees we have advanced, not to exceed the amount which would have been assessed as court costs if the dispute had been resolved by a state court with jurisdiction, less any Arbitration Fees you have previously paid. At the timely request of any party, the arbitrator shall provide a written explanation for the award. The arbitrator's award may be filed with any court having jurisdiction.

6. All parties, including related third parties, shall retain the right to seek adjudication in a small claims tribunal for disputes within the scope of such tribunal's jurisdiction. Any dispute, which cannot be adjudicated within the jurisdiction of a small claims tribunal, shall be resolved by binding arbitration. Any appeal of a judgment from a small claims tribunal shall be resolved by binding arbitration. Furthermore, nothing in this Arbitration Provision shall limit the right of you or us (a) to foreclose against the Motor Vehicle by the exercise of any power under the Loan Agreement or under applicable law, (b) to exercise self-help remedies such as set off or repossession, or (c) to obtain provisional or ancillary remedies such as pre-judgment seizure of property, detinue, replevin, or injunctive relief, or to seek or obtain any other traditional equitable relief which does not claim money damages from a court having jurisdiction. The institution and maintenance by you or us of any action set forth in this Paragraph 6 shall not constitute a waiver of the right to submit any dispute to arbitration, including any counterclaim asserted.

7. This Arbitration Provision is made pursuant to a transaction involving interstate commerce and shall be governed by the FAA. If a final non-appealable judgment of a court having jurisdiction over this transaction finds, for any reason, that the FAA does not apply to this transaction, then our agreement to arbitrate shall be governed by the arbitration law of the State of Nevada.

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 304-5268.

8. This Arbitration Provision is binding upon and benefits you, your respective heirs, successors and assigns. The Arbitration Provision is binding upon and benefits us, our successors and assigns, and related third parties. The Arbitration Provision continues in full force and effect, even if your obligations have been prepaid, paid or discharged through bankruptcy. The Arbitration Provision survives any termination, amendment, expiration or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing.

9. **OPT-OUT PROCESS.** You may choose to opt-out of this Arbitration Provision but only by following the process set forth below. If you do not wish to be subject to this Arbitration Provision, then you must notify us in writing within sixty (60) calendar days of the loan date at the following address: TitleMax of Nevada, Inc. d/b/a TitleMax, Attn: Legal Dept, P.O. Box 8323, Savannah, GA 31412. Your written notice must include your name, address, Account number, the loan date, and a statement that you wish to opt out of the Arbitration Provision. If you choose to opt out, then your choice will apply only to this Loan Agreement.

Acknowledgments. This Loan Agreement contains a binding Waiver of Jury Trial and Arbitration Provision. By signing this Loan Agreement you acknowledge that it was filled in before you did so and that you received a completed copy of it. You agree that the information you provided before entering into this Loan Agreement is accurate. You warrant that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You agree that the amount of the loan does not exceed the fair market value of the Motor Vehicle. You agree that you have the ability to repay this Loan Agreement, based upon your current and expected income, obligations, and employment. You acknowledge that the loan does not require a balloon payment of any kind. You further acknowledge that you have read, understand, and agree to all of the terms of this Loan Agreement, including the Waiver of Jury Trial and Arbitration Provision.

THIS DOCUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF, AND PLEDGED AS COLLATERAL TO, WELLS FARGO BANK, NATIONAL ASSOCIATION, AS COLLATERAL AGENT.

TitleMax of Nevada, Inc. d/b/a TitleMax

Customer's Signature

Date

Its Authorized Agent

Date

Co-Customer's Signature

Date

Any comments or questions may be directed to Customer Service at the following toll-free number: (800) 804-5368.

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GRACE PERIOD PAYMENTS DEFERMENT AGREEMENT

Date:

Account Number: [REDACTED]

| | |
|--|--|
| Customer Name: [REDACTED] Address: [REDACTED] Henderson, NV 89074 Co-Borrower Name: Address: [REDACTED] | Licensee Name: TitleMax of Nevada, Inc. d/b/a TitleMax Address: 3810 Blue Diamond Rd. Suite 105 Las Vegas, NV 89139 Vehicle Information: 2004 Nissan Frontier 1N6ED29X74C463308 |
|--|--|

Definitions and Terms. In this Grace Period Payments Deferral Agreement, "customer," "you," and "your" mean the customer who signed it. "Licensee," "we," "us" and "our" mean TitleMax of Nevada, Inc. d/b/a TitleMax, a title loan services provider licensed and regulated by the Nevada Financial Institutions Division, 2785 E Desert Inn Road, Suite 180, Las Vegas, Nevada 89121, Phone: (702) 486-4120, Fax: (702) 486-4563, <http://www.fid.state.nv.us/>. The word "Motor Vehicle" means the vehicle identified above. The word "Title" means a certificate of title or ownership to the Motor Vehicle.

Consideration. You acknowledge and agree that you and we entered into a Title Loan Agreement on 10/07/2014 ("Loan Agreement.") Under the Title Loan Agreement, we agreed with you that we may subsequently offer you a "Grace Period" which is a gratuitous period of payments deferment. You agree that we are offering you a "Grace Period" and you are voluntarily accepting such offer after entering into a Loan Agreement pursuant to the provisions of NRS 604A.70 and NRS 604A.210. Please note that since this is a "Grace Period" it is not an "extension" as defined in NRS 604A.065. Under the Title Loan Agreement, your obligation to pay simple interest under the Loan Agreement remains unchanged. Other than the interest and fees originally provided for in the Title Loan Agreement, we do not charge you any additional fees or interest for entering into this Grace Period Payments Deferral Agreement.

NOW THEREFORE, in consideration of the mutual promises, herein you and we agree to the payments deferment in this written and signed Grace Period Payments Deferral Agreement.

Grace Period Payments Deferral. In the Title Loan Agreement, you agreed to make your scheduled payments in the amounts and on the dates set forth in the Payment Schedule listed in the Federal Truth In Lending Disclosures at the address indicated above, or at such other address as we direct you in writing. During this Grace Period, we have agreed to amend, modify, and defer your payments as set forth below in the Grace Period Payments Deferral Schedule. Therefore, you and we agree to the amended and deferred payments and periods set forth below in the Grace Period Payments Deferral Schedule. Therefore, you agree to pay us in cash the amount owing on the dates set forth in the Grace Period Payments Deferral Schedule set forth below. If any Deferred Due Date falls on a date we are not open for business, then you agree to pay us on the next business day, and we will credit such payment, as if we received it on the appropriate Deferred Due Date. The Grace Period Payments Deferral Agreement will be consummated upon the date you sign it. Time is of the essence in this Grace Period Payments Deferral Agreement. We will not attempt to collect an amount that is greater than the amount owed. We will not attempt to collect the outstanding balance during the term of the Grace Period by process of alternative dispute resolution, by repossessing the Motor Vehicle or by exercising any other right we have under Nevada law, unless you default on the Grace Period Payments Deferral Agreement.

Any comments or questions may be directed to Customer Service at the following number: (800) 804-6368.

Grace Periods Payments Deferment Schedule

| Payment Number | Amount of Payment | Deferred Periodic Due Date |
|--|-------------------|----------------------------|
| 1 | \$618.36 | 11/6/2014 |
| 2 | \$618.36 | 12/6/2014 |
| 3 | \$618.36 | 1/5/2015 |
| 4 | \$618.36 | 2/4/2015 |
| 5 | \$618.36 | 3/6/2015 |
| 6 | \$618.36 | 4/5/2015 |
| 7 | \$618.36 | 5/5/2015 |
| 8 | \$631.43 | 6/4/2015 |
| 9 | \$631.43 | 7/4/2015 |
| 10 | \$631.43 | 8/3/2015 |
| 11 | \$631.43 | 9/2/2015 |
| 12 | \$631.43 | 10/2/2015 |
| 13 | \$631.43 | 11/1/2015 |
| 14 | \$631.42 | 12/1/2015 |
| The total amount paid after making all payments under the under the terms of the Grace Period Payments Deferment Agreement | | \$8,748.52 |

BECAUSE THIS IS ONLY AN AMENDMENT AND MODIFICATION OF THE LOAN AGREEMENT IN WHICH WE ARE ONLY MODIFYING AND DEFERRING YOUR PAYMENTS UNDER THE TITLE LOAN AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT ALL OF THE TERMS AND CONDITIONS OF THE TITLE LOAN AGREEMENT, INCLUDING THE CHARGING OF SIMPLE INTEREST AND WAIVER OF JURY TRIAL AND ARBITRATION PROVISION REMAIN IN FULL FORCE AND EFFECT.

Right to Rescind. You have the right to rescind this Grace Period Payments Deferment Agreement. You may rescind on or before the close of business on the next day of business at the location where the Grace Period Payments Deferment Agreement was initiated. To rescind, you must come to the location where the Grace Period Payments Deferment Agreement was initiated and sign a Cancellation of the Grace Period Payments Deferment Agreement. If you rescind, then we will not charge you any amount for rescinding, and you will be required to make the payments as originally scheduled in the Title Loan Agreement.

Prepayment. You may also pay us in full or make prepayments at any time, without an additional charge or fee, before the final Deferred Periodic Due Date. If you pay the total amount due under the terms of the Title Loan Agreement in full, as deferred through negotiations and agreed to herein, then we shall return the Title to you. You may also make partial prepayments under this Grace Period Payments Deferment Agreement at any time without an additional charge or fee.

Repayment Plan Disclosure: If you default on the loan and this Grace Period Deferred Payments Agreement, we must offer a Repayment Plan to you before we commence any civil action or process of alternative dispute resolution, or before we repossesses the Motor Vehicle.

Any comments or questions may be directed to Customer Service at the following number: (800) 804-6368.

Default and Repayment Plan. You will be in default under Grace Period Payments Deferment Agreement if you fail to keep any promise made herein. Such default occurs on the day immediately following the date of your failure to perform as described herein. We may waive a default and reinstate your account to good status if you bring your account current or make satisfactory payment arrangements with us. You will have the opportunity to enter into a Repayment Plan with a term of at least 90 days after the Date of Default on the Grace Period Payments Deferment Agreement. Under the terms of any Repayment Plan and pursuant to Nevada law: (1) you must enter into the Repayment Plan not later than 30 days after the date of default, unless we allow a longer period; (2) we will allow the period for repayment to extend at least 90 days after the date of default, unless you agree to a shorter term; and (3) we may require you to make an initial payment of not more than 20 percent of the total amount due under the Repayment Plan. If you enter into a Repayment Plan, we will honor the terms and we will not charge any other amount as an incident to or as a condition of entering into a Repayment Plan. Such an amount includes, without limitation: (a) any interest, regardless of the name given to the interest, other than the interest charged pursuant to the original loan agreement at a rate which does not exceed the rate charged during the term of the original loan agreement; or (b) any origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fee. Additionally, if you enter into a Repayment Plan, we will honor the terms of the Repayment Plan, and unless otherwise authorized by Nevada law we will not (i) accept any additional security or collateral from you to enter into the Repayment Plan; (ii) sell to you any insurance (iii) require you to purchase insurance or any other goods or services to enter into the Repayment Plan; (iv) make any other loan to you, unless you are seeking multiple loans that do not exceed the limit set forth under Nevada law; (v) attempt to collect the outstanding balance during the term of the Repayment Plan by repossessing the Vehicle unless you default on the Repayment Plan or (vi) attempt to collect an amount that is greater than the amount owed under the terms of the Repayment Plan. Therefore, if you (I) default on Grace Period Payments Deferment Agreement and do not enter into a Repayment Plan and we do not waive the default, or (II) default on Grace Period Payments Deferment Agreement, enter into a Repayment Plan, and default on the terms of the Repayment Plan, then we may pursue any remedy Nevada law allows, including seeking repossession and sale of the Motor Vehicle.

Security Interest. You have given us possession of the Title to the vehicle, and granted us a security interest in the Title. We continue to maintain our security interest and possession of the Title during this Grace Period Payments Deferment Agreement.

Acknowledgment of Simple Interest Accrual. You acknowledge that we use the simple interest method to calculate and accrue the interest owing under the Loan Agreement. Interest is not compounded under the Loan Agreement. You acknowledge that simple interest is charged on the outstanding principal balance. Payments will be applied first to accrued interest, second to outstanding charges, if any, and third to principal. We calculated and estimated the simple interest under the Loan Agreement and disclosed in the "Finance Charge" disclosure assuming you would pay each scheduled payment in the amount scheduled and on the scheduled Payment Dates. The original Payment Schedule in the Loan Agreement provided for payments which would ratably and fully amortize the entire Principal Amount and interest payable. The interest rate under the Loan Agreement remains unchanged. You acknowledge that simple interest is charged on the unpaid principal balance of this Loan Agreement at the daily rate of 0.4663% from the date of this Loan Agreement until the earlier of: (i) the due date of your last payment as set forth in the original Payment Schedule; or (ii) payment in full. Now that the Payment Schedule has changed, you acknowledge that the new Payment Schedule provided for in this Grace Period Payments Deferment Agreement, if followed, will ratably and fully amortize the entire Principal Amount and interest payable over a longer period of time than the original Payment Schedule in the Loan Agreement. As such you acknowledge and agree you will continue to incur interest as provided in the Loan Agreement. You further agree that in setting the amount of the payments and dates of the payments, we have estimated the accrued interest owing to us assuming you make the payments in the amounts scheduled and on the exact dates set forth in the Grace Periods Payments Deferment Schedule above. Early payments may decrease the amount of interest you owe. Making a payment in an amount greater than scheduled above may decrease the amount of interest you owe. Late payments may increase the amount of interest you owe. The amount of this increase or decrease will be reflected in the final payment. If an early payment is less than the scheduled installment, then you must pay the difference on or before the upcoming installment due date. You may request a payoff at any time.


Governing Law and Assignment. Nevada law governs the Loan Agreement and this Grace Period Payments Deferment Agreement, except the Federal Arbitration Act ("FAA") governs the Waiver of Jury Trial and Arbitration Provision. We may assign or transfer the Loan Agreement and Grace Period Payments Deferment Agreement or any of our rights.

Any comments or questions may be directed to Customer Service at the following number: (800) 804-5368.

By signing this Grace Period Payments Deferment Agreement, you acknowledge that it was filled in before you did so and that you have received a completed copy of it. You agree that the information you provided to before entering into this Grace Period Payments Deferment Agreement is accurate. You represent that you are not a debtor under any proceeding in bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code. You acknowledge that you have read this Grace Period Payments Deferment Agreement, and agree to its terms. You further acknowledge that except as amended herein, all of the terms of the Title Loan Agreement remain enforceable including but not limited to the charging of simple interest and Waiver of Jury Trial and Arbitration Provision.

Acknowledgments. By signing below, you acknowledge that the payment information noted above is accurate. If the term of this loan is shorter than 210 days, you further represent that the information previously provided on the Covered Borrower Identification Statement is still accurate. You agree to inform the company and sign a new statement if your status as an active duty member of the Armed Forces (Army, Navy, Marine Corps, Air Force, or Coast Guard), or as a dependent or spouse of such member changes.

LICENSEE: TitleMax of Nevada, Inc. d/b/a TitleMax

 11/21/14
Customer's Signature Date

 11/21/14
Its Authorized Agent Date

Co-Borrower's Signature Date

Any comments or questions may be directed to Customer Service at the following number: (800) 804-5368.

Exhibit D

ADAM PAUL LAXALT
Attorney General
DAVID POPE
Senior Deputy Attorney General
CHRISTOPHER ECCLES
Deputy Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3105
Facsimile: (702) 486-3416
E-Mail: ceccles@ag.nv.gov

BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION

* * *

| | | |
|------------------------------|---|-------------------------------------|
| IN THE MATTER OF: |) | <u>ADMINISTRATIVE COMPLAINT FOR</u> |
| |) | <u>DISCIPLINARY ACTION AND</u> |
| TITLEMAX OF NEVADA, INC. and |) | <u>NOTICE OF HEARING</u> |
| TITLEBUCKS d/b/a TITLEMAX |) | |

ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION

GEORGE E. BURNS, Commissioner of the NEVADA FINANCIAL INSTITUTIONS DIVISION of the DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA (the "Division"), complains for disciplinary action against TITLEMAX OF NEVADA, INC. and TITLEBUCKS d/b/a TITLEMAX (hereinafter "TITLEMAX") as follows:

JURISDICTION

1. Pursuant to Nevada Revised Statutes (NRS) Chapter 604A, the Division is vested with the exclusive and original jurisdiction over the regulation, business practices, licensing, examinations, and disciplinary action related to deferred deposit lending, high-interest lending, title lending, and check cashing services in Nevada.
2. TITLEMAX is now, and was at all pertinent times alleged herein, licensed in Nevada by the Division as a deferred deposit lender, and / or a high-interest lender, and / or a title lender, and / or a check cashing service, pursuant to NRS Chapter 604A.
3. As the holder of a Chapter 604A license, TITLEMAX is subject to the provisions of NRS Chapter 604A and Nevada Administrative Code (NAC) Chapter 604A.

1 4. The Division files this Complaint pursuant to NRS 604A.820 based upon the matters
2 asserted herein and seeks the relief set forth below.

3 **FACTUAL ALLEGATIONS**

4 **GENERAL FACTS**

5 5. TITLMAX is incorporated as a domestic corporation under the laws of Nevada and its
6 resident agent is The Corporation Trust Company of Nevada, located at 701 S. Carson
7 Street, Suite 200, Carson City, Nevada 89701.

8 6. TITLMAX is licensed by the Division to conduct the business of lending at 42 locations
9 in Nevada and the corporate office is located at 15 Bull Street, Suite 200, Savannah,
10 Georgia 31401.

11 7. On or about May 4, 2015, through on or about June 17, 2015, the Division conducted its
12 annual examination of TITLMAX to ensure compliance with NRS Chapter 604A and
13 NAC Chapter 604A (the "2015 Examination").

14 8. The 2015 Examination involved a review of two to five percent of TITLMAX'S loans at
15 each of TITLMAX'S 42 locations in Nevada.

16 9. The Division issued a Report of Examination (ROE) to TITLMAX based upon the
17 results of the 2015 Examination.

18 10. The Division rates licensees as follows, in descending order of compliance:
19 Satisfactory, Needs Improvement, or Unsatisfactory.

20 11. The Division rated TITLMAX "Needs Improvement" in its 2014 ROE due to
21 TITLMAX'S violations of NRS 604A.210, NRS 604A.445, and NAC 604A.230.

22 12. During the 2015 Examination, the Division cited TITLMAX for repeatedly violating NRS
23 604A.210, NRS 604A.445, and NAC 604A.230.

24 13. Thus, in the 2015 ROE, the Division rated TITLMAX "Unsatisfactory" due to the
25 repeated violations.

26 14. The repeated violations cited in the 2015 Examination are:

27 a. Charging interest in violation of NRS 604A.210 and / or NRS 604A.445; and
28

b. Requiring or accepting co-borrowers on title loans in which the co-borrower has no ownership in the vehicle used for the title loan, in violation of NAC 604A.230 in accordance with NRS 604A.105 and NRS 604A.115.

15. The Commissioner has reasonable cause to believe that TITLEMAX is violating or is threatening to or intends to violate provisions of NRS Chapter 604A and NAC Chapter 604A.

FACTS REGARDING TITLEMAX'S UNLAWFUL GRACE PERIOD AMENDMENT

16. Pursuant to the TITLEMAX'S original Title Loan Agreement (Loan), the customer makes seven fully amortized installment payments within 210 days to pay the loan off without a balloon payment at the end of the loan.

17. The Division has concluded that the Loan complies with NRS 604A.445(3)(a)-(d).

18. During the 2014 and 2015 Examinations, the Division's examiners observed TITLEMAX employees routinely offer customers an amendment to the Loan called the "Grace Period Payments Deferment Agreement" (Grace Period Amendment).

19. The text of the Grace Period Amendment provides in pertinent part:

"Because this is only an amendment and modification of the loan agreement in which we are only modifying and deferring your payments under the Title Loan Agreement, you acknowledge and agree that all of the terms and conditions of the Title Loan Agreement, including the charging of simple interest and waiver of jury trial and arbitration provision remain in full force and effect."

20. As a business pattern and practice, TITLEMAX employees offer the Grace Period Amendment prior to the customer's default on the Loan.

21. Customers are lured into the Grace Period Amendment because it typically decreases their initial payments.

22. Payments are not fully amortized under Grace Period Amendment.

23. TITLEMAX charges customers more money under the Grace Period Amendment than it does under the Loan.

24. The Grace Period Amendment schedules 14 monthly payments within 390 days.

25. Documents from the 2015 Examination show that TITLEMAX charges customers more money under the Grace Period Amendment than under the Loan.^{1, 2}

| Loan No. | Customer Name | Amount due under the Loan | Amount paid by the customer under the Grace Period Amendment | Unlawful overage amount charged and received by TITLEMAX |
|---------------|---------------|---------------------------|--|--|
| 10169-0121672 | J.V. | \$5,079.66 | \$5,826.74 | \$747.08 |
| 11669-0112962 | G.T. | \$3,500.21 | \$4,219.84 | \$719.63 |
| 11169-0129196 | B.P. | \$7,212.73 | \$8,645.45 | \$1,432.72 |
| 10069-0120952 | M.A. | \$11,880.22 | \$14,133.17 | \$2,252.95 |

26. Documents from the 2015 Examination show 307 examples of TITLEMAX charging customers more money under the Grace Period Amendment than under the Loan.

27. The 307 examples only reflect the two to five percent sampling of loans examined by the Division.

28. Of those 307 examples, TITLEMAX charged and received unlawful overage amounts from 24 customers totaling \$8,863.21.

29. Of those 307 examples, 283 remain in "open" status whereby TITLEMAX charged and will potentially receive unlawful overage amounts totaling \$370,090.74.

30. Assuming that the 307 examples of TITLEMAX charging customers more money under the Grace Period Amendment reflects a five percent sample size, then by mathematical extrapolation, TITLEMAX may have unlawfully charged customers a total of approximately 6,140 times during the period covered by the 2015 Examination.

¹ This Table summarizes four of TITLEMAX'S loans examined during the 2015 Examination whereby each customer has already paid the unlawful overage amount.

² Exhibits 1-4, attached hereto, include the Loan, Grace Period Amendment, and Customer Receipts for each of the four loans summarized by the Table. The fact that payments are not amortized under the Grace Period Amendment is evidenced by Bates Stamped page 007 in each the exhibits.

1 31. Further, assuming that the average overage amount charged by TITLEMAX under each
2 Grace Period Amendment is \$1,288.09 (determined by averaging the unlawful charges
3 from paragraph 25), then TITLEMAX unlawfully charged Nevada customers
4 approximately \$7,908,872.60 during the period covered by the 2015 Examination.

5 32. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX
6 charged customers more money under the Grace Period Amendment.

7 33. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX
8 charged customers more money under the Grace Periods Amendment, after the
9 Division rated TITLEMAX "Needs Improvement" in the 2014 examination.

10 34. NRS 604A.070 provides in full as follows:

11 **NRS 604A.070 "Grace period" defined.**

12 1. "Grace period" means any period of deferment offered
13 gratuitously by a licensee to a customer if the licensee complies
with the provisions of NRS 604A.210.

14 35. NRS 604A.210 provides in full as follows:

15 **NRS 604A.210 Chapter does not prohibit licensee from
16 offering customer grace period.**

17 The provisions of this chapter do not prohibit a licensee from
18 offering a customer a grace period on the repayment of a loan or an
extension of a loan, except that **the licensee shall not charge the
customer:**

19 2. **Any fees for granting such a grace period; or**
20 **Any additional fees or additional interest on the**
outstanding loan during such a grace period.
(Emphasis added.)

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1 36. NRS 604A.445(3) provides in full as follows:

2
3 **NRS 604A.445 Title loans: Restrictions on duration of loan
and periods of extension.**

4 **Notwithstanding any other provision of this chapter to the**
5 **contrary:**

6 3. The original term of a title loan may be up to 210 days if:

- 7 (a) The loan provides for payments in installments;
8 (b) **The payments are calculated to ratably and fully**
9 **amortize the entire amount of principal and**
10 **interest payable on the loan;**
11 (c) The loan is not subject to any extension; and
12 (d) The loan does not require a balloon payment of any
13 kind.

14 (Emphasis added.)

15 37. TITLEMAX, through its Grace Period Amendment, charges additional fees and / or
16 additional interest during grace periods.

17 38. TITLEMAX, through its Grace Period Amendment, makes title loans that last up to 390
18 days, which exceeds the maximum original term of 210 days allowed pursuant to NRS
19 604A.445(3).

20 39. TITLEMAX, through its Grace Period Amendment, makes title loans whereby payments
21 are not fully amortized.

22 40. TITLEMAX, through its Grace Period Amendment, makes title loans that require one or
23 more balloon payments.

24 41. TITLEMAX'S repeated violations were without any attempt to correct the deficiencies,
25 and thus the repeated violations were willful, and / or intentional, and / or without any
26 exercise of due care.

27 42. TITLEMAX'S systematic business practice of amending the Loan via the Grace Period
28 Amendment is predatory and shows a *willful* intent to evade NRS and NAC 604A in
order to *unlawfully* charge Nevada customers what may amount to *millions* of dollars.

...

FACTS REGARDING TITLEMAX'S UNLAWFUL GUARANTORS

43. Onsite visits to TITLEMAX locations and conversations between the Division's examiners and TITLEMAX's employees show that TITLEMAX requires and / or accepts a guarantor to a transaction entered into with a customer.

44. Examination papers from the 2015 Examination show that TITLEMAX requires and / or accepts a co-signor on a title loan to a customer where the co-signor's name is not on the title to the vehicle.

45. TITLEMAX's loan agreements require and / or accept a co-signor on a title loan to a customer where the co-signor's name is not on the title to the vehicle.

46. NRS 604A.105(1)(a)(1)-(2) provides in full as follows:

NRS 604A.105 "Title loan" defined.

1. "Title loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms:

(a) Charges an annual percentage rate of more than 35 percent; and

(b) Requires the customer to secure the loan by either:

(1) Giving possession of the title to a vehicle legally owned by the customer to the licensee or any agent, affiliate or subsidiary of the licensee; or

(2) Perfecting a security interest in the vehicle by having the name of the licensee or any agent, affiliate or subsidiary of the licensee noted on the title as a lienholder.

(Emphasis added.)

47. NRS 604A.115 provides in full as follows:

NRS 604A.115 "Title to a vehicle" or "title" defined.

"Title to a vehicle" or "title" means a certificate of title or ownership issued pursuant to the laws of this State that identifies the legal owner of a vehicle or any similar document issued pursuant to the laws of another jurisdiction.

48. NAC 604A.230(1)(a) provides in full as follows:

NAC 604A.230(1) Prohibited acts: Miscellaneous acts.

1. A licensee shall not:

(a) Require or accept a guarantor to a transaction entered into with a customer.

- 1 49. The term "guarantor" is not defined in NRS Chapter 604A or NAC 604A.
- 2 50. A guarantor is "One who makes a guaranty or gives security for a debt." BLACK'S LAW
- 3 DICTIONARY 711 (7th ed. 1999).
- 4 51. A guaranty is "A promise to answer for the payment of some debt, or the performance of
- 5 some duty, in case of the failure of another who is liable in the first instance." BLACK'S LAW
- 6 DICTIONARY 712 (7th ed. 1999).
- 7 52. A title loan requires the *customer* to secure the loan. NRS 604A.105(1)(b).
- 8 53. A title loan requires that the *customer* give possession of the *title to a vehicle legally*
- 9 *owned by the customer* to the licensee. NRS 604A.105(1)(b)(1).
- 10 54. Regardless of whether guarantor is called a co-borrower or a co-signor, the licensee is
- 11 prohibited from requiring or accepting security or a promise to answer for payment from
- 12 anyone other than the customer whose name is on the title.
- 13 55. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX
- 14 required or accepted a guarantor to a loan with a customer.
- 15 56. An evidentiary hearing is necessary to determine why TITLEMAX required or accepted
- 16 a guarantor to a loan with a customer.
- 17 57. An evidentiary hearing is necessary to determine what, if any, effect the relationship
- 18 between the customer and the guarantor would have on the Division's analysis.
- 19 58. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX
- 20 required or accepted a guarantor to a loan with a customer, after the Division rated
- 21 TITLEMAX "Needs Improvement" in the 2014 examination.
- 22 ...
- 23 ...
- 24 ...
- 25 ...
- 26 ...
- 27 ...
- 28 ...

ALLEGED VIOLATIONS

59. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.210(1) and / or (2), one or more times, by charging the customer additional fees and / or interest during a grace period.
60. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.210(1) and / or (2), one or more times, by charging the customer additional fees and / or interest during a grace period.
61. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(b), one or more times, by calculating payments on loans to customers that do not ratably and fully amortize the entire amount of principal and interest payable on the loan.
62. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(b), one or more times, by calculating payments on loans to customers that do not ratably and fully amortize the entire amount of principal and interest payable on the loan.
63. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(c), one or more times, by extending loans to customers for a term of up to 390 days.
64. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(c), one or more times, by extending loans to customers for a term of up to 390 days.
65. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(d), one or more times, by separating interest and principal which results in the customer paying one or more balloon payments.

1 66. Based upon and incorporating by reference the foregoing Factual Allegations, the
2 Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(d), one or
3 more times, by separating interest and principal which results in the customer paying
4 one or more balloon payments.

5 67. Based upon and incorporating by reference the foregoing Factual Allegations, the
6 Commissioner alleges that one or more of TITLEMAX'S repeat violations are **willful,**
7 **and / or intentional, and / or without any exercise of due care** to prevent the repeat
8 violations.

9 **DISCIPLINE AUTHORIZED**

10 68. NRS 604A.810 provides in full as follows:

11 **NRS 604A.810 Order to desist and refrain; action to enjoin**
12 **violation; appointment of receiver.**

13 1. **Whenever the Commissioner has reasonable cause to**
14 **believe that any person is violating or is threatening to or**
15 **intends to violate any provision of this chapter, the**
16 **Commissioner may, in addition to all actions provided for**
17 **in this chapter and without prejudice thereto, enter an**
18 **order requiring the person to desist or to refrain from such**
19 **violation.**

20 2. The Attorney General or the Commissioner may bring an action
21 to enjoin a person from engaging in or continuing a violation or
22 from doing any act or acts in furtherance thereof. In any such
23 action, an order or judgment may be entered awarding a
24 preliminary or final injunction as may be deemed proper.

25 3. In addition to all other means provided by law for the
26 enforcement of a restraining order or injunction, the court in
27 which an action is brought may impound, and appoint a receiver
28 for, the property and business of the defendant, including
books, papers, documents and records pertaining thereto, or so
much thereof as the court may deem reasonably necessary to
prevent violations of this chapter through or by means of the
use of property and business, whether such books, papers,
documents and records are in the possession of the defendant,
a registered agent acting on behalf of the defendant or any
other person. A receiver, when appointed and qualified, has
such powers and duties as to custody, collection,
administration, winding up and liquidation of such property and

business as may from time to time be conferred upon the receiver by the court.
(Emphasis added.)

69. The procedures for taking disciplinary action are as follows:

NRS 604A.820 Procedure for taking disciplinary action; authorized disciplinary action; grounds.

1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, he shall give 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefore and set a date for a hearing.
2. At the conclusion of a hearing, the Commissioner shall:
 - (a) Enter a written order dismissing the charges, revoking the license or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. The Commissioner shall send a copy of the order to the licensee by registered or certified mail.
 - (b) **Impose upon the licensee an administrative fine of not more than \$10,000 for each violation** by the licensee of any provision of this chapter or any regulation adopted pursuant thereto.
 - (c) If a fine is imposed pursuant to this section, enter such order as is necessary to **recover the costs of the proceeding, including his investigative costs and attorney's fees.**
(Emphasis added.)
3. **The grounds for revocation or suspension of a license are that:**
 - (a) The licensee has failed to pay the annual license fee;
 - (b) **The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any lawful regulation adopted pursuant thereto;**
 - (c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;
 - (d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license pursuant to the provisions of this chapter; or
 - (e) The licensee:
 - (1) Failed to open an office for the conduct of the business authorized by his license within 180 days after the date his license was issued; or

(2) Has failed to remain open for the conduct of the business for a period of 180 days without good cause therefore.

4. Any revocation or suspension applies only to the license granted to a person for the particular office for which grounds for revocation or suspension exist.

5. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

70. NRS 604A.900 provides in full as follows:

NRS 604A.900 Remedies for certain willful violations.

1. Except as otherwise provided in this section, if a licensee willfully:

- (a) Enters into a loan agreement for an amount of interest or any other charge or fee that violates the provisions of this chapter or any regulation adopted pursuant thereto;
- (b) Demands, collects or receives an amount of interest or any other charge or fee that violates the provisions of this chapter or any regulation adopted pursuant thereto; or
- (c) Commits any other act or omission that violates the provisions of this chapter or any regulation adopted pursuant thereto,
→ the loan is void and the licensee is not entitled to collect, receive or retain any principal, interest or other charges or fees with respect to the loan.

2. The provisions of this section do not apply if:

- (a) A licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably adapted to avoid that error; and
- (b) Within 60 days after discovering the error, the licensee notifies the customer of the error and makes whatever adjustments in the account are necessary to correct the error.
(Emphasis added.)

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RELIEF SOUGHT

71. Based upon the allegations contained herein which constitute sufficient cause for disciplinary action against the licensee pursuant to the provisions of NRS Chapter 604A and NAC Chapter 604A, the Commissioner prays for relief as follows:

- A. That TITLEMAX be fined a monetary sum pursuant to the parameters defined at NRS 604A.820(2);
- B. That action be taken against TITLEMAX's license pursuant to the parameters defined at NRS 604A.820(2);
- C. That TITLEMAX pay the costs of the proceeding, including investigative costs, and attorney's fees pursuant to the parameters defined at NRS 604A.820(2);
- D. That TITLEMAX be ordered to desist and refrain from violating NRS 604A.210 and / or NRS 604A.445, and / or NAC 604A.230;
- E. That TITLEMAX'S willful violations result in a finding that the loans are VOID pursuant to NRS 604A.900; and
- F. For such other and further relief as the Administrative Law Judge may deem just and proper.

DATED this 6th day of October, 2015.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

By: _____

GEORGE E. BURNS
Commissioner

NOTICE OF HEARING

THEREFORE, TITLEMAX is directed to answer in writing the Administrative Complaint for Disciplinary Action within 10 days from service and to serve the same upon the undersigned Deputy Attorney General. A hearing into this matter will be held at:

The Nevada Financial Institutions Division, 2785 E. Desert Inn Rd., Suite 180, Las Vegas, Nevada 89121, beginning on October 27, 2015, through October 28, 2015, beginning each day at 10:00 a.m. until 5:00 p.m. or until the matter is concluded.

The Administrative Law Judge will, at that time, take such action as may be just and proper pursuant to the proof and pertinent laws. TITLEMAX is entitled to be represented by counsel at the hearing, and to cross-examine witnesses, present evidence, and argue on its own behalf before a decision is made by the Commission. Should TITLEMAX fail to appear at the hearing, a decision may be reached in its absence.

DATED this 6th day of October, 2015.

FOR THE NEVADA ATHLETIC COMMISSION,
DEPARTMENT OF BUSINESS AND INDUSTRY,
STATE OF NEVADA

By: _____

GEORGE E. BURNS
Commissioner

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: _____

CHRISTOPHER ECCLES
Deputy Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

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DATED this 6th day of October, 2015.

FOR THE NEVADA ATHLETIC COMMISSION,
DEPARTMENT OF BUSINESS AND INDUSTRY,
STATE OF NEVADA

By: _____

GEORGE E. BURNS
Commissioner

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: _____

CHRISTOPHER ECCLES
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General,
and that on the ____ day of _____, 2015, I deposited in the U.S. mail, postage
prepaid, via First Class Mail and Certified Return Receipt Requested, a true and correct copy
of the foregoing **ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION AND
NOTICE OF HEARING**, addressed as follows:

Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Respondent TITLEMAX

Certified Mail No. _____

And to:

Corporation Trust Company of Nevada
701 S. Carson Street, Suite 200
Carson City, Nevada 89701

Resident agent in Nevada for TITLEMAX of Nevada, Inc. d/b/a TITLEMAX

Certified Mail No. _____

And to:

Victoria Newman, Esq.
Compliance and Corporate Counsel for TITLEMAX of Nevada, Inc.
15 Bull Street, Suite 200
Savannah, Georgia 31401.

Certified Mail No. _____

An Employee of the Nevada Attorney General's Office

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, ^{Office of Attorney General} ~~Department of Business and~~
~~Industry, Financial Institutions Division,~~ and that on the 7th day of October, 2015, I
deposited in the U.S. mail, postage prepaid, via First Class Mail and Certified Return Receipt
Requested, a true and correct copy of the foregoing **ADMINISTRATIVE COMPLAINT FOR**
DISCIPLINARY ACTION AND NOTICE OF HEARING, addressed as follows:

Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Respondent TITLEMAX

Certified Mail No. 7012 1010 0000 1177 1041

And to:

Corporation Trust Company of Nevada
701 S. Carson Street, Suite 200
Carson City, Nevada 89701

Resident agent in Nevada for TITLEMAX of Nevada, Inc. d/b/a TITLEMAX

Certified Mail No. 7012 1010 0000 1177 1034

And to:

Victoria Newman, Esq.
Compliance and Corporate Counsel for TITLEMAX of Nevada, Inc.
15 Bull Street, Suite 200
Savannah, Georgia 31401.

Certified Mail No. 7012 1010 0000 1177 1027

Debra Turman
An Employee of the Nevada Attorney General's Office

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

Exhibit E

AFFIDAVIT OF HARVEEN SEKHON

STATE OF NEVADA)
)
COUNTY OF CLARK) :ss.

I, HARVEEN SEKHON, being first duly sworn, depose and say:

1. That I am employed by the State of Nevada Department of Business and Industry, Financial Institutions Division ("FID") as an Examiner IV (Supervisory Examiner), that, pursuant to said employment, I have personal knowledge of the facts set forth hereunder, and that I am competent to testify to the same;

2. That I have been employed with the FID for approximately 5 years;

3. That my responsibilities as an Examiner IV include reviewing examination reports before they are finalized and determining whether there will be a "satisfactory", "needs improvement" or "unsatisfactory" rating;

4. That the attached copies of portions of the Report of Examination of one location of TitleMax of Nevada Inc. ("TitleMax") and the sample loan documents in Exhibit C are true and correct copies of records held by the FID, but for the redactions;

5. That, with regard to the issue involving additional persons on the loans, *i.e.* non-legal owners, TitleMax has not asserted that the additional persons are legal owners or provided any documentation asserting that they are legal owners. NRS 604A.105 and NRS 604A.115 allow only legal owners to be customers/borrowers. TitleMax has merely asserted that the additional persons are "co-borrowers";

6. That, with regard to the Grace Period Payments Deferment Agreements, such agreements do not comply with NRS 604A.445 because the amount of the loan is not ratably and fully amortized as a result of the first seven payments being applied to interest only and the last seven payments being applied to principle;

7. That the Grace Period Payments Deferment Agreements do not comply with NRS 604A.070 because they do not gratuitously offer any period of deferment;


8. That the Grace Period Payments Deferment Agreements do not actually offer a grace period, whether at the outset of the loan as asserted by TitleMax or at any other time during the fourteen

1 periods, because, as shown by Exhibit C, some form of payment is scheduled to be made for each
2 period of the fourteen periods;

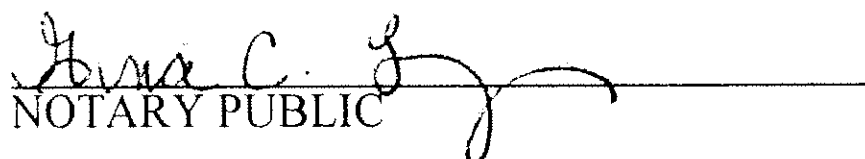
3 9. That, by charging interest on the entire principle for the first seven periods, TitleMax is
4 charging additional interest because it is charging more interest than could have been charged during the
5 210 day loan and therefore the agreements do not comply with NRS 604A.210;

6 10. That, to the best of my knowledge, no other Chapter 604A licensees are attempting to
7 offer a product similar to the Grace Period Payments Deferment Agreements;

8 FURTHER AFFIANT SAYETH NAUGHT.

9
10 
Harveen Sekhon, Examiner IV

11 SIGNED AND SWORN to before me by on
12 this 10th day of November, 2015.

13 
14 NOTARY PUBLIC

