Case No. 69807

In the Supreme Court of Nevada

TITLEMAX OF NEVADA, INC., a Nevada Corporation,

Appellant,

vs.

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

Respondent,

MOTION TO PUBLISH ORDER AS OPINION

Appellant TitleMax of Nevada, Inc. moves the Court to reissue its October 4, 2017 order as a published opinion. NRAP 36(f). This Court's previous published opinions were not enough to discourage the FID from moving to dismiss TitleMax's complaint for declaratory relief based on a purported lack of administrative exhaustion, or to properly direct Judge Adair, who erroneously granted the motion.

TitleMax petitioned for declaratory relief over two years ago when it became apparent that the FID disagreed with TitleMax's opinion as to the interpretation of certain statutes and a regulation. (1 App. 1-8.) Only after the request for declaratory relief was before the district court did the FID institute administrative proceedings against TitleMax and

try to shut down the district-court action. (1 App. 50-61; 1 App. at 96-109.)

The administrative action alleged that TitleMax's failure to capitulate to the FID's statutory interpretation meant that TitleMax was willfully violating provisions of NRS 604A. (1 App. 104-108.) No court had approved of the FID's interpretation, but TitleMax ceased the disputed practice to avoid further administrative sanctions. (Ex. B attached hereto, Administrative Hr'g Tr. 494:25-495:2, 509:18-510:6, 632:16-18.)

After lengthy administrative proceedings and an appeal from the administrative law judge's order, District Judge Hardy eventually vindicated TitleMax's legal position, ruling that TitleMax could legally do what the FID had tried to prohibit. (*See* Ex. A attached hereto, 9/21/17 Order Reversing and Vacating Administrative Law Judge's Order.) But in the meantime, the declaratory-relief action that could have resolved the legal question in the first instance had been erroneously dismissed for failure to exhaust administrative remedies, the decision that was reversed in this appeal.

Both Judge Hardy's ruling and this Court's ruling highlight the

absurdity of the FID's position that TitleMax could not obtain a declaratory ruling when it initially asked for one. These decisions come too late, however. Because TitleMax could not obtain legal clarity on the statutes and was being threatened with severe administrative sanctions, TitleMax changed its business practices. (Ex. B attached hereto, Administrative Hr'g Tr. 494:25-495:2, 509:18-510:6, 632:16-18.) TitleMax gave up doing something Judge Hardy now confirmed TitleMax was legally entitled to do all along. In short, TitleMax's lawful conduct was chilled for years because of the FID's threats to TitleMax's license and the FID's success in blocking TitleMax's attempt to obtain declaratory relief.

Publishing the order in this case will give agencies and regulated entities guidance on the scope of the exhaustion requirement to avoid further sagas like this case. It must be made crystal clear that administrative exhaustion is not required where a party disagrees with an agency's interpretation of statutes and regulations the agency is trying to enforce, and that an agency cannot block a private party's right to declaratory relief by commencing administrative proceedings and then arguing for dismissal based upon the doctrine of

administrative exhaustion. A clear precedent would have allowed TitleMax to continue its lawful business practices pending its initial request for declaratory relief.

I.

PUBLICATION IS WARRANTED

This Court "will decide a case by published opinion if it:"

> (A) Presents an issue of first impression;
>
> (B) Alters, modifies, or significantly clarifies a rule of law previously announced by the court; or
>
> (C) Involves an issue of public importance that has application beyond the parties.

NRAP 36(c). Here, all three criteria are met, though any one of them alone is sufficient for publication. Furthermore, publication is convenient because the text of the October 4, 2017 Order need not be revised. NRAP 36(f)(4).

A. By Squarely Ruling that Administrative Exhaustion Does Not Apply to the Interpretation of an Agency Regulation, the Court's Order Addresses an Issue of First Impression and Significantly Clarifies a Rule of Law Previously Announced

This case presented an issue of first impression. This Court had previously ruled that "[e]xhaustion is not required where . . . the only

issue is the interpretation of a statute." *State, Dep't of Bus. & Indus. v. Check City*, 130 Nev. Adv. Op. 90, 337 P.3d 755, 758 n.5 (2014). But until now, the Court had not squarely addressed whether the same rule applies to the interpretation of a regulation. (*See* October 4, 2017 Order of Reversal & Remand at 5 n.2 ("Even though NAC 604A.230 is an administrative regulation and not a statute, the distinction is irrelevant for this inquiry.").)

While TitleMax agrees with the Court that its previous opinions logically compelled this result, the absence of published precedent led the FID and the district court to believe otherwise. The publication of this Court's October 4, 2017 Order would clarify that administrative exhaustion is not required where the interpretation of a statute *or a regulation* is at issue. This clarification is significant in light of the oft-invoked argument that agencies have special "expertise" to interpret and apply their own regulations. (*See, e.g.*, 1 App. 63, 78; 1 App. 76 (the FID arguing below that "[t]he administrative agency is the one who has the expertise, knowledge and ability to enforce its governing statutes and regulations").)

The publication of this Court's October 4, 2017 Order would

significantly clarify that administrative exhaustion is not required where the interpretation of a statute or a regulation is at issue, and that seeking a declaratory judgment is the proper mechanism to challenge an agency's statutory or regulatory interpretation.

B. The Ability to Challenge an Agency Interpretation without Exhaustion is an Issue of Public Importance that Applies Beyond the Parties to this Case

Nevada has a plethora of administrative agencies that regulate the business affairs of private parties and companies. As this case exemplifies, regulatory agencies and those they regulate often disagree about the application and interpretation of statutes and regulations. *See also, e.g.*, Edwin Borchard, *Challenging "Penal" Statutes by Declaratory Action*, 52 Yale L.J. 445, 445 (1943) ("Possibly in no branch of litigation is the declaration more useful than in the relations between the citizen and the administration."). That administrative exhaustion is not required when challenging an agency interpretation is an issue of public importance applying beyond TitleMax's dispute with the FID in this case.

Indeed, one of the reasons TitleMax pursued this appeal was to establish – both for itself and others similarly situated – that an agency

cannot circumvent a private party's right to declaratory relief by subsequently commencing administrative proceedings and then arguing for dismissal based on administrative exhaustion. Litigants should be able to cite to this Court's October 4, 2017 Order as binding precedent on that question.

C. The Text of the October 4, 2017 Order Need Not be Revised

The Court's October 4, 2017 Order can be published without revision. The Court laid out the relevant facts and procedural history and included a thoughtful and well-sourced analysis in its discussion. (October 4, 2017 Order at 2-6.) There are no "additional issues not included in the original decision" that need to be discussed. NRAP 36(f)(4). This factor, too, points in favor of publication.

II.

CONCLUSION

This Court's October 4, 2017 Order should be published. It meets the criteria for publication, and publication will reduce errors in applying the exhaustion requirement. TitleMax should have been able to obtain a judicial declaration on the statutory and regulatory provisions the FID sought to enforce against TitleMax.

The FID's success in chilling TitleMax's legal rights indicates the need for more clarity on when administrative exhaustion is required. Regulated parties should not be forced to endure years of administrative proceedings and appeals when they are merely seeking to obtain a declaration as to the meaning of statutory and regulatory provisions. This Court's decision clarifies that and should accordingly be published.

DATED this 19th day of October, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2017, I submitted the foregoing "Motion to Publish Order as Opinion" for filing *via* the Court's eFlex electronic filing system. Electronic notification and e-mail will be sent to the following:

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EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

TITLEMAX OF NEVADA, INC., d/b/a TITLEBUCKS and TITLEMAX, a Delaware corporation, Petitioner, *vs.* STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, Respondent.	Case No. A-16-743134-J Dept. No. XV **NOTICE OF ENTRY OF ORDER**

Lewis Roca
ROTHGERBER CHRISTIE

Please take notice that on the 21st day of September, 2017, an "Order Reversing and Vacating Administrative Law Judge's Order" was entered in this case. A copy of the order is attached.

Dated this 22nd day of September, 2017.

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DISTRICT COURT

CLARK COUNTY, NEVADA

TITLEMAX OF NEVADA, INC., d/b/a TITLEBUCKS and TITLEMAX, a Delaware corporation,

Petitioner,

vs.

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

Respondent.

Case No. A-16-743134-J
Dept. No. XV

ORDER REVERSING AND VACATING ADMINISTRATIVE LAW JUDGE'S ORDER

Hearing Date: August 3, 2017
Hearing Time: 9:00 a.m.

☐ Jury Disposed After Trial Start ☐ Jury Verdict Reached ☐ Other - _____
☐ Non-Jury Disposed After Trial Start ☐ Non-Jury Judgment Reached ☒ Transferred before Trial

I.

BACKGROUND, FINDINGS, AND SUMMARY OF RULING

1. On August 3, 2017, this Court heard oral argument on TitleMax's Petition for Judicial Review. Daniel F. Polsenberg and Dale Kotchka-Alanes of Lewis Roca Rothgerber Christie LLP, as well as Patrick J. Reilly of Holland & Hart LLP, appeared on behalf of TitleMax. Deputy Attorneys General David J. Pope, William J. McKean, Vivienne Rakowsky, and Rickisha Hightower-Singletary appeared on behalf of the State of Nevada Department of Business and Industry Financial Institutions Division (the "FID").

2. The Court reviewed all the briefing by the parties, as well as pertinent parts of the administrative record ("ROA") and the transcript of the hearing before the Administrative Law Judge ("Hr'g Tr."). The Court also considered the arguments of the parties, all of which lead the Court to its holding set forth herein.

A. TitleMax's Offering of the GPDA

3. Under NRS 604A.445, the original term of a title loan can be 30 days or up to 210 days if certain conditions are met.

4. TitleMax originally offered a 30-day product in Nevada and allowed customers to refinance up to six times. TitleMax offered a repayment plan that incorporated a grace period under which the customer had to make minimum interest payments, but could then take an additional seven or eight months to repay principal only. (Hr'g Tr. 477:11-478:3.)

5. The FID took issue with TitleMax's 30-day product, arguing only that TitleMax did not adequately take into account customers' ability to repay the loan in 30 days. (Hr'g Tr. 478:9-15; 479:6-9.)

6. TitleMax disagreed with the FID's interpretation that its 30-day loan product did not adequately take into account borrowers' ability to repay due to the ability of customers to extend the loan up to six times, but nevertheless stopped offering the 30-day product in a good faith attempt to please the FID. (Hr'g Tr. 478:16-23.)

7. As an alternative to the 30-day product, TitleMax began offering a 210-day loan in 2014. (Hr'g Tr. 478:19-479:13.)

8. To offer customers flexibility in repayment, TitleMax, in reliance on counsel, also began offering a Grace Period Payments Deferment Agreement ("GPDA"). (Hr'g Tr. 480:9-22, 496:10-24.)

9. The GPDA contained a payment schedule comprised of fourteen 30-day payment periods. (Hr'g Tr. 483:10-11; ROA 010646-010648.)

10. Under the GPDA, the customer was charged only 210 days of interest, and the interest rate under the loan agreement remained unchanged. (ROA 010646-010648.)

11. The first seven payments could be interest-only payments, and then the customer had an additional 210 days to repay the principal without any interest or fees included. (ROA 010646-010647; Hr'g Tr. 482:1-12, 488:17-21, 490:12-16.)

12. The payment schedule under the GPDA was as follows:

Payment Number	**Amount of Payment**	**Deferred Periodic Due Date**
1	<Interest Only Pymt on New Principal Bal.>	<Fist 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
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	

(ROA 010646-10647.)

13. There was no customer deception in the GPDA. When voluntarily signing the GPDA, customers acknowledged that their obligation to pay simple interest under the loan agreement remained unchanged and that interest would be charged at the original contractual interest rate. (ROA 010646-10648.)

14. TitleMax gratuitously offered the GPDA and did not charge any fees for entering the GPDA. (Hr'g Tr. 74:25-75:12; 192:20-25; 398:12-17.)

15. While the GPDA allowed for interest-only payments for the first 210 days, customers could make payments on the principal before the end of the first 210 days. In fact, TitleMax had several customers who repaid their loan in full within the first 210 days, even though they had signed a GPDA.[1]

16. Before TitleMax offered the GPDA, it consulted with its own legal department and outside counsel, both of whom advised that the GPDA complied with Nevada law. (Hr'g Tr. 488:23-489:3, 496:10-24, 509:13-17.)

B. Relevant Chronology

17. December 18, 2014, was the date that the FID's 2014 examination of

[1] (*See* ROA 001840-001858, 007211-007233, 003905-003927, 008395-008421, 006568-006591, 000467-000491, 006651-006675, 002451-002473, 002475-002500, 000793-000815, 005309-005331, 002957-002980, 007152-007173, 002786-002805, 002192-002212, 001118-001137, 004799-004819, 001474-001492, 003399-003420, 001432-001451, 003644-003662, 008821-008840, 000167-000191, 000229-000254, 006288-006308.)

TitleMax closed. (ROA 008918.) The FID issued a Report of Examination with a "Needs Improvement" rating and stated that TitleMax's GPDA "violates NRS 604A.445(3) and NRS 604A.210." (ROA 008918-008934.)

18. Shortly after the conclusion of the FID's examination in December 2014, TitleMax – through counsel – wrote a detailed letter to the FID, responding to the alleged statutory violations. (ROA 009991-010000.) In this February 9, 2015, letter, TitleMax spent several pages setting forth its position why the GPDA did not violate NRS 604A.210 and 604A.445. (ROA 009995-0100000.) TitleMax informed the FID, "As an alternative to the 210-day single-pay loan, the Companies are willing to revert back to their prior approach with 30-day single pay loans, which the Companies believe are in full compliance with applicable law." (ROA 009999.)

19. TitleMax explained that it considered the GPDA to be in full compliance with Nevada law and requested that the FID "change its 'Needs Improvement' rating to 'Satisfactory' for each of the 2014 audits. *If the Division believes that our analysis is incorrect or that our procedures will result in further negative regulatory findings; however, please respond to us in writing.*" (ROA 009999-010000 (emphasis added).)

20. In a letter dated March 2, 2015, the FID addressed a different statutory issue and then stated in a single sentence: "With regard to your other matters raised in your February 9 Letter, the FID stands by its position." (ROA 010004-010006.)

21. The FID did not respond to TitleMax's offer to revert back to the 30-day loan product, nor did the FID offer any reasoning, explanation, or legal authority for the proposition that the GPDA allegedly violated NRS 604A.210 and 604A.445.

22. The FID commenced another examination of TitleMax beginning in May 2015, which closed on June 17, 2015. (ROA 008936.) In its 2015 Report of Examination, the FID issued an "Unsatisfactory" rating to TitleMax, citing TitleMax's offering of the GPDA as "a repeat violation." (ROA 008936-008948.)

23. On June 1, 2015, TitleMax filed a declaratory relief action in state court, sixteen days before the 2015 examination was completed. (Hr'g Tr. 438:14-21,

517:2-4; ROA 010697-010700.) TitleMax sought declaratory relief as to whether the GPDA violated NRS 604A.210 and 604A.445. (ROA 010697-010700.)

24. On October 6, 2015, the FID moved to dismiss TitleMax's pending declaratory relief action for alleged "failure to exhaust administrative remedies." (ROA 011010-011021).

25. On the same day, the FID filed the administrative complaint against TitleMax that forms the basis of TitleMax's appeal to this Court. (ROA 000001-000017.)

C. The Administrative Proceedings Against TitleMax

26. On October 6, 2015, the FID filed an administrative complaint against TitleMax, alleging that TitleMax violated NAC 604A.230 and willfully violated NRS 604A.210 and NRS 604A.445. (ROA 000001-000017.)

27. The parties called witnesses and conducted administrative proceedings before Administrative Law Judge ("ALJ") Denise S. McKay on July 18, July 19, and July 20, 2017. (*See* 10/18/2016 Petitioner's Notice of Transmittal of Record of Proceedings and accompanying hearing transcript ("Hr'g Tr.").)

28. On August 12, 2016, the ALJ issued Findings of Fact, Conclusions of Law, and Order ("Order"). (ROA 0122279-012295.)

29. In her Order, the ALJ found that TitleMax did not violate NAC 604A.230's prohibition against guarantors by allowing individuals who were not legal owners of the vehicle to be co-borrowers on the title loan; she pointed out that there was no evidence that TitleMax received payment from the non-legal owner in any instance and that the non-legal owners were not acting as guarantors. (ROA 012290-012291.)

30. The FID did not challenge or appeal the ALJ's ruling that TitleMax did not violate NAC 604A.230, so it is not before this Court.

31. However, the ALJ concluded that TitleMax's practice of offering the GPDA violated NRS 604A.210 and NRS 604A.445. (ROA 012287-012290.) The ALJ further concluded that TitleMax willfully violated NRS 604A.210 and NRS 604A.445 because it continued to offer the GPDA even after TitleMax was advised

by FID lay examiners that they believed the GPDA violated the statutes. (ROA 012292-012294.) The ALJ ordered:

a. That TitleMax immediately cease and desist offering the GPDA to customers;

b. That TitleMax conduct a full accounting and return of all principal and interest it collected under every GPDA entered into after December 18, 2014;

c. That TitleMax pay an administrative fine of $307,000 with $257,000 held in abeyance provided TitleMax was, and remained, complaint with NRS 604A.445; and

d. That TitleMax compensate the FID for the costs expended on the court reporter and transcripts in the administrative proceedings. (ROA 012294.)

32. These determinations by the ALJ are before this Court, as they are the subject of TitleMax's Petition for Judicial Review.

D. Relevant Statutes

33. At issue in these proceedings are various provisions of NRS 604A.[2]

34. NRS 604A.070 defines grace period to mean "any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210."

35. NRS 604A.210, in turn, provides:

> 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] Chapter NRS 604A was recently amended, with changes to take effect July 1 and October 1, 2017. In this Order, unless otherwise indicated, the Court cites to the versions of the statutes in effect at the time TitleMax offered the GPDA and does not include the 2017 amendments.

2. Any additional fees or additional interest on the outstanding loan during such a grace period.

36. The definition of "extension" in NRS 604A.065 provides:

> 1. "Extension" means any extension or rollover 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.
> 2. The term does not include a grace period.

37. NRS 604A.445(3) provides:

> 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.

E. <u>The ALJ's Decision</u>

38. The ALJ stated that "NRS 604A.210 and NRS 604A.[0]70 are the only provisions in Chapter 604A that address grace periods," but nevertheless concluded that the GPDA had to comply with NRS 604A.445(3). (ROA 012287-012290.)

39. The ALJ found that the GPDA did not comply with NRS 604A.445(3) because it "is an illegal extension of the loan in violation of NRS 604A.445(3)(c)" and the payments are not ratably and fully amortized. (ROA 012289-012290.)

40. The ALJ concluded that the GPDA "does not constitute a true grace period" and that the "imposition of seven interest-only payments is simply the impermissible charging of additional interest," as "TitleMax stands to earn more money in interest charges under the [GPDA]." (ROA 012289-012290.)

41. The ALJ also found that TitleMax willfully violated NRS 604A.445(3) by continuing to offer the GPDA after being told by the FID during 2014 and 2015 examinations that the GPDA was unlawful. (ROA 012292-012293.)

42. Since "TitleMax was placed on notice by [the] FID that" the GPDA "violated the law" no later than December 18, 2014, the ALJ ruled that "every [GPDA] entered into after December 18, 2014, is void, and TitleMax is not entitled to collect, receive or retain any principal, interest or other charges or fees with respect to those loans." (ROA 012293.) Only 307 loans, however, were in evidence in the administrative proceedings.

F. Ruling

43. The Court hereby reverses and vacates the ALJ's order. The Court disagrees with and reverses the ALJ's conclusions regarding TitleMax's interpretation of NRS 604A.070, NRS 604A.210, and NRS 604A.445. The Court also finds that TitleMax did not willfully violate any of these provisions.

44. The GPDA as written does not violate NRS 604A.070, NRS 604A.210, or NRS 604A.445.

45. The plain language of NRS 604A.445(3) indicates that this statute applies to the "original term" of the loan, and does not govern grace periods. NRS 604A.445(3) does not set a maximum time period on the loan, and amortization is not a requirement for grace periods.

46. Moreover, the word "additional" as used in NRS 604A.210 means something more than the original contractual rate of interest. The legislative history of NRS 604A.210 supports TitleMax's statutory interpretation.

47. At a minimum, TitleMax's statutory interpretation, if not correct, is reasonable and thus precludes a finding of willfulness. That the FID attempted to pass a regulation in 2012 that would have prohibited charging any interest during a grace period, but did not do so, demonstrates that TitleMax reasonably interpreted NRS 604A.210 and did not act willfully. TitleMax's reliance on counsel, although

not dispositive, is another indication that TitleMax acted in good faith and did not willfully violate any provision of NRS 604A. The FID's failure to respond to TitleMax's request for an explanation of the FID's position also leads to the conclusion that TitleMax did not act willfully.

48. The ALJ's conclusion that TitleMax acted willfully because it failed to immediately change its way of doing business the moment lay FID examiners opined it should, is illogical and clearly erroneous.

49. In sum, the ALJ's ruling is clearly erroneous, arbitrary and capricious, and is hereby reversed and vacated.

II.

TITLEMAX DID NOT VIOLATE NRS 604A.070, NRS 604A.210, OR NRS 604A.445

A. This Court Owes No Deference to the FID or the ALJ in Interpreting Plain Statutory Language

50. The Court finds NRS 604A.070, NRS 604A.210, and NRS 604A.445 to be unambiguous and thus this Court need not defer to the FID's interpretation of the statutes. The FID is not entitled to deference by this Court in determining the meaning of the statutes' plain language.

51. Moreover, the question here is whether the structure of the GPDA complies with NRS 604A.445(3) and NRS 604A.210. That is a purely legal determination upon which the Court owes no deference to the FID or to the ALJ. *Elizondo v. Hood Mach., Inc.*, 129 Nev. Adv. Op. 84, 312 P.3d 479, 482 (2013) (courts decide "pure legal questions without deference to an agency determination") (internal quotation marks and citation omitted); *Manke Truck Lines, Inc. v. Pub. Serv. Comm'n of Nev.*, 109 Nev. 1034, 1036–37, 862 P.2d 1201, 1203 (1993) (questions of statutory construction are "purely legal issue[s] . . . reviewed without any deference whatsoever to the conclusions of the agency").

52. To the extent deference is owed to either the ALJ or the FID, the Court finds, in the alternative, that the FID's and the ALJ's statutory interpretations are clearly erroneous.

B. The Requirements of NRS 604A.445(3) Do Not Apply to Grace Periods

53. NRS 604A.445 does not govern grace periods and thus does not apply to the GPDA.

54. Under the plain language of NRS 604A.445(3), the 210-day limit applies only to the original term of the loan; that subsection refers to and governs the original term of the loan, not grace periods.

55. NRS 604A.445(3) does not set a maximum time period on a loan. It does not say that a title loan can never be longer than 210 days.

56. Rather, by providing that the "original term" of a title loan can be up to 210 days, the statute contemplates that a title loan can be of longer duration if a grace period is included. While NRS 604A.445(3) prohibits extensions of a 210-day title loan, the definition of "extension" specifically excludes grace periods. NRS 604A.065(2).

57. TitleMax's GPDA complied with the statutory provisions regarding grace periods (NRS 604A.070 and NRS 604A.210), and thus there was no basis for the ALJ to conclude that the GPDA was an illegal extension.

58. Moreover, the FID conceded that a grace period could be of unlimited duration and that the mere length of the repayment period under the GPDA was not a violation of any law. (Hr'g Tr. 219:10-11; 279:11-280:10; 396:24-397:2; 398:8-11; 663:10-11.)

59. Under the plain language of the statutes, amortization is not a requirement for grace periods. The amortization requirement in NRS 604A.445(3)(b) again applies to the "original term" of the loan.

60. The FID also acknowledged that there was no amortization requirement for grace periods. (Hr'g Tr. 84:17-19; 185:7-10; 298:24-299:1; 419:15-21.)

61. Indeed, as a grace period is by definition a period of deferment, it makes no sense to require amortization during a grace period.

62. In light of the entire harmonized statutory scheme, TitleMax's statutory interpretation is the better-reasoned approach.

63. The requirements of NRS 604A.445(3) do not apply to grace periods, and TitleMax did not violate NRS 604A.445(3) by offering the GPDA to its customers.

C. Both the Plain Language and the Legislative History of NRS 604A.210 Establish That TitleMax Did Not Violate NRS 604A.210

64. Under NRS 604A.070, a grace period is "any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210."

65. The GPDA was comprised of a lawful grace period because it offered a period of deferment on payments, was offered voluntarily and without charge (i.e. gratuitously), and complied with NRS 604A.210.

66. Under NRS 604A.210, grace periods are permitted as long as the licensee does 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."

67. It is undisputed that TitleMax did not charge any fees for customers entering the GPDA. (ROA 010646-010648; Hr'g Tr. 74:25-75:12; 192:20-25; 398:12-17.)

68. Under the plain language of NRS 604A.210, which the Court finds unambiguous, the word "additional" preceding "interest" means something more than the original contract rate of interest provided for in the loan agreement.

69. Words in statutes must have meaning. *S. Nevada Homebuilders Ass'n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (courts must interpret statutes "in a way that would not render words or phrases superfluous or make a

provision nugatory") (internal quotation marks and citation omitted); *Coast Hotels & Casinos, Inc. v. Nevada State Labor Comm'n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001) ("[T]his court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation.").

70. The ALJ's determination ignores the rule that each word must have meaning and ignores the word "additional." NRS 604A.210 must be interpreted to mean that the licensee can charge interest at the original contract rate during the grace period.

71. If the legislature had intended that the total amount of interest charged in conjunction with a grace period could not exceed the total amount of interest set forth in the Truth-in-Lending Act Disclosures accompanying the original loan, it would have said so. *See* NRS 604A.435(1)(e) (prohibiting a deferred deposit lender from accepting 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") (emphasis added); *Dep't of Taxation v. DaimlerChrysler Servs. N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005) ("Here, the Legislature could have clearly provided [the contended result], but it did not do so."); *see also Jama v. Immigration & Customs Enf't*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that [the legislature] has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when [the legislature] has shown elsewhere in the same statute that it knows how to make such a requirement manifest."); *Russello v. U.S.*, 464 U.S. 16, 23 (1983) ("Had Congress intended [the contended result], it presumably would have done so expressly as it did in the immediately following subsection").

72. The Court finds NRS 604A.210 to be unambiguous; the prohibition on "additional interest" means a licensee cannot charge interest at a *rate* of interest higher than that specified in the loan agreement.

73. However, even if NRS 604A.210 were ambiguous, the legislative history

supports TitleMax's interpretation. The word "additional" was specifically added to the original proposed statute as a clarification of what interest could be charged during the grace period. (ROA 010261; ROA 010292.) This indicates that the legislature chose not to prohibit "any interest" being charged during a grace period. *In re Town & Country Home Nursing Servs., Inc.*, 963 F.2d 1146, 1151 (9th Cir. 1991) ("As a general canon of statutory construction, where the final version of a statute [changes] language contained in an earlier draft, a court may presume that the earlier draft is inconsistent with ultimate congressional intentions.").

74. Moreover, at a public workshop in 2012, the FID solicited comments in relation to "POSSIBLE ACTION regarding whether the proposed regulations should be amended to add a regulation to address accrual of contract interest during a grace period." (ROA 012394.)

75. Members of the lending industry proposed a regulation providing "a licensee is permitted to continue to accrue interest at its contract rate during the term of any grace period offered within the terms and conditions of its title loan agreement provided the licensee does not charge any fees or any additional interest, such as a penalty or higher rate of interest, during such grace period." *See* http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf, Ex. C.

76. In contrast, the FID submitted proposed regulatory language stating that a licensee could *collect* interest on the outstanding loan during a grace period "not to exceed the amount of accrued interest and fees as disclosed in the loan agreement. During a grace period, no interest shall accrue and no fees shall be charged after expiration of the loan period." (ROA 012397); http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf, Ex. D.

77. At the public hearing on the conflicting proposed regulations, the FID acknowledged that NRS 604A.210 was at least ambiguous and that the industry

interpretation was plausible: "It was stated that the Division acknowledges some ambiguity exists in the statutes, and that a possible interpretation would permit the contract rate of interest to be charged during a grace period so long as it is not considered 'additional interest or fees' on the loan." (ROA 012402.)

78. In the end, neither the industry's nor the FID's proposed regulation was ever adopted. (Hr'g Tr. 371:5-16.)

79. To the extent NRS 604A.210 is ambiguous, the FID engaged in proposed rulemaking that would have clarified NRS 604A.210 to support the FID's position in this case, but the proposed regulation was not enacted. This too supports the interpretation that NRS 604A.210 does not prohibit charging any interest during a grace period. *See Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 71 (2016) (considering an introduced bill attempting to add "language allowing the collection costs permitted under NRS 116.310313 to become part of the HOA's lien and the superpriority lien," but pointing out this bill never passed and concluding "we must presume the Legislature did not intend for such costs to be included as part of an HOA's superpriority lien").

80. Under NRS 604A.210, licensees are allowed to charge simple interest at the original contractual rate during a grace period, and TitleMax did not violate NRS 604A.210.

III.

TITLEMAX ACTED REASONABLY, PRECLUDING A FINDING OF WILLFULNESS

81. Alternatively, and at a minimum, the Court concludes that the ALJ's willfulness finding is clearly erroneous. Even assuming TitleMax's statutory interpretation were incorrect – which the Court does not believe it is – TitleMax's statutory interpretation was reasonable. There was no willful violation that could possibly lead to the penalties the ALJ imposed.

A. The Legislative History of NRS 604A.210 Confirms TitleMax Acted on a Reasonable Interpretation of That Statute

82. TitleMax cannot be found to have willfully violated NRS 604A.210 when the FID's interpretation of the statute was never codified or enacted. As described in paragraphs 74-78 above, in its 2012 workshop, the FID acknowledged ambiguity in NRS 604A.210 and recognized that TitleMax's interpretation of the statute was plausible. The rule the FID proposed to address the issue did not pass. Thus, there can be no willfulness here.

83. The FID's proposed, but never-passed regulation supports the Court's determination that the ALJ's ruling was clearly erroneous and arbitrary and capricious.

84. TitleMax's statutory interpretation was not objectively unreasonable. That TitleMax acted in accord with a reasonable and plausible interpretation means that TitleMax did not engage in any willful violation. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 70 (2007) (there was no willful violation where party's reading of the statute "was not objectively unreasonable").

B. TitleMax Acted Reasonably in Determining Its Legal Obligations, Including by Relying on Counsel

85. The Supreme Court has ruled that if a party "acts reasonably in determining its legal obligation, its action cannot be deemed willful." *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 135 n.13 (1988). Here, at the very least, TitleMax acted reasonably in determining its legal obligations. Its actions cannot therefore be deemed willful.

86. While consulting with counsel is not dispositive, it is certainly a relevant factor and indicates here that TitleMax acted reasonably in determining its legal obligations. *McLaughlin*, 486 U.S. at 135 n.13; *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 129-30 (1985) (a violation is not willful where "officials act[] reasonably and in good faith in attempting to determine whether their plan

would violate" the statutory requirements) (determining that employer did not willfully violate statute where it "sought legal advice"); *Baker v. Delta Air Lines, Inc.*, 6 F.3d 632, 645 (9th Cir. 1993) (analogizing reliance on previous opinion to relying on legal advice and finding such reliance "constituted good faith as a matter of law"); *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 894, 784 P.2d 974, 979 (1989) (finding no willful violation of the district court's preliminary injunction where city council members followed the advice of the city attorney)

87. TitleMax's consultation with counsel further supports the Court's determination that the ALJ's ruling was clearly erroneous and arbitrary and capricious.

C. Disagreement with an Agency Does Not Constitute Willfulness

88. Penalties for willful violations cannot be premised on TitleMax not changing its business practices the moment a lay FID examiner levied a decision that it should. Essentially the FID's and the ALJ's position is that the very moment a FID examiner said that TitleMax should not offer the GPDA, everything subsequent to that was a willful violation. That position is unfounded, and the Court rejects it.

89. As an initial matter, the lay FID examiners opined that TitleMax also violated NAC 604A.230, but the ALJ rejected that position. (ROA 012290-012291.) The ALJ never explained how refusing to follow the advice of lay FID examiners constitutes a willful statutory violation when she herself found that the FID examiners were sometimes wrong in their interpretation of the law.

90. The Court does not use the term "lay" in a pejorative way, but simply that lay examiners at the FID were not attorneys and did not rely on an Attorney General opinion or any similar legal authority. (Hr'g Tr. 391:18-392:5; 393:16-18, 396:20-23.)

91. When TitleMax laid out its legal position in its February 9, 2015, letter and explained why, in its analysis, the GPDA did not violate any part of NRS 604A

(ROA 009991-010000), the FID responded with a letter stating merely that "the FID stands by its position." (ROA 0100006.) TitleMax's attempt to explain its position to the FID and the FID's lack of explanation or any meaningful response are yet further indications that TitleMax did not willfully violate any statutory provision here.

92. TitleMax's failure to change its entire way of doing business immediately when lay FID examiners stated it should, simply cannot equate to willfulness. The ALJ necessarily concluded that TitleMax's failure to cease offering the GPDA immediately constituted willfulness, as evidenced by the penalty given and the way it was given.

93. Using the closing date of the FID's 2014 Report of Examination, the first examination during which the FID took issue with the GPDA, the ALJ concluded that every GPDA entered into after December 18, 2014, constituted a willful statutory violation, "warranting the imposition of the civil penalty set forth in NRS 604A.900(1)(c). Accordingly, every [GPDA] entered into after December 18, 2014, is void, and TitleMax is not entitled to collect, receive or retain any principal, interest or other charges or fees with respect to those loans." (ROA 012293.)

94. The ALJ found that the moment the FID's lay examiners gave their opinion that the GPDA violated NRS 604A.445(3) and NRS 604A.210, the penalty started from then. But TitleMax's failure to defer immediately to the FID's lay examiners is not evidence of willfulness.

95. Disagreement with an agency by itself without more, as is the case here, is not willfulness. *See Baystate Alternative Staffing, Inc. v. Herman*, 163 F.3d 668, 680 (1st Cir. 1998) (rejecting standard of willfulness that would "preclude[] legitimate disagreement between a party and" an agency and place the private party in the "untenable position" of either accepting the agency's position "or risk a finding of a willful violation of the Act"); *Brock v. Claridge Hotel & Casino*, 846 F.2d 180, 188 & n.9 (3d Cir. 1988) (rejecting Secretary of Labor's reliance "on the fact that the

casino did not change its pay practices even after the Secretary declared them improper," noting that "*private parties must retain a right to disagree* with the Secretary's interpretation of the regulations . . . . *Such disagreement is not willfulness*.") (emphases added).

D. The Civil Penalty the ALJ Imposed Should Be Vacated Because TitleMax Had a Good Faith and Reasonable Belief in the Legality of Its Actions

96. Moreover, this is a case dealing with a civil penalty, and the case law supports that "courts refuse to impose civil penalties against a party who acted with a good faith and reasonable belief in the legality of his or her actions." *Lusardi Constr. Co. v. Aubry*, 824 P.2d 643, 655–56 (Cal. 1992); *see also State v. Harmon*, 35 Nev. 189, 127 P. 221, 223 (1912) ("Penalties and forfeitures are not favored, unless plainly expressed.").

97. That a severe penalty is at stake – requiring the forfeiture of not only interest, but all *principal* collected under every GPDA – only confirms that the appropriate course of action is to reverse and vacate the penalties issued by the ALJ.

98. "The law does not favor forfeitures and statutes imposing them must be strictly construed." *Wilshire Ins. Co. v. State*, 94 Nev. 546, 550, 582 P.2d 372, 375 (1978).

99. Given the punitive nature of the penalty at issue, it should "be construed as calling for a substantial element of culpability." *See No Oil, Inc. v. Occidental Petroleum Corp.*, 50 Cal. App. 3d 8, 30-31, 123 Cal. Rptr. 589 (Cal. Ct. App. 1975).

100. As detailed above, TitleMax did not violate any statute, let alone do so willfully. At a minimum, TitleMax acted on a reasonable interpretation of the statutory provisions at issue.

101. As an alternative finding, the Court agrees with TitleMax that TitleMax's offering of statutorily compliant products (such as the original loan agreement) is not proof that other products (such as the GPDA) were willfully non-

compliant. The evidence suggests that TitleMax always strove to be in compliance with the law and that TitleMax believed the GPDA was statutorily compliant. (*See, e.g.*, Hr'g Tr. 181:2-5 (FID witness agreeing that "whenever TitleMax has agreed with the FID's interpretation and application of the law, they fix – they fix the issue"); 472:10-473:8; 488:23-489:3, 496:10-24, 509:13-17; 577:20-23.)

102. There is no evidence of any willful violation by TitleMax.

IV.

RULING ON SUPPLEMENTS

103. TitleMax submitted supplemental authorities comprised of Assembly Bill 163 (amending NRS 604A) and *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017). The parties submitted briefing on the import of Assembly Bill 163, which was approved by the Governor on June 1, 2017.

104. The Court finds that it does not need any of the supplemental authorities to reach its decision.

105. To the extent the Court should or does consider the supplements, *Henson* is new case law, the recent revisions to NRS 604A are akin to new case law, and, to the extent appropriate to consider, both support the Court's ruling.

106. The FID submitted testimony indicating that some of the recent proposed statutory changes were an attempt to close "loopholes." Such testimony supports the Court's ruling here and indicates that the previous statutory language was unambiguous and allowed "loopholes." Whether or not one characterizes the pre-2017 version of NRS 604A.210 as a "loophole," the language prohibited only the charging of "additional interest" during a grace period. TitleMax followed the plain language of the statute.

107. Moreover, the 2017 bill as actually enacted varies from the original proposal. The 2017 bill as enacted modifies NRS 604A.210 to provide in connection with grace periods that a licensee shall not "[c]harge the customer interest at a rate in excess of that described in the existing loan agreement." NRS 604A.210(2)(b)

(2017). This conforms to TitleMax's arguments and interpretation as to what "additional interest" meant all along.

108. The United States Supreme Court's recent decision in *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725–26 (2017) also supports the Court's ruling.

109. In *Henson*, the Supreme Court warned that courts "will not presume . . that any result consistent with [party's] account of the statute's overarching goal must be the law but will presume more modestly instead that the legislature says what it means and means what it says." 137 S. Ct. at 1725 (internal quotation marks and citation omitted; alterations incorporated). *Henson* supports that the plain language of the statutes controls.

110. Moreover, *Henson* supports the Court's conclusion that disagreement with the regulator does not constitute willfulness or culpable conduct:

> After all, it's hardly unknown for new business models to emerge in response to regulation, and for regulation in turn to address new business models. Constant competition between constable and quarry, regulator and regulated, can come as no surprise in our changing world. But neither should the proper role of the judiciary in that process—to apply, not amend, the work of the People's representatives.

Henson, 137 S. Ct. at 1725-26.

111. Again, the Court finds that it does not need to reach or consider the supplements, but to the extent it can or should, they support reversing and vacating the ALJ's order.

V.

ORDER

IT IS THEREFORE ORDERED:

A. That the ALJ's Order is reversed and vacated;

B. That the FID must return to TitleMax the $50,000 administrative fine already paid by TitleMax. The FID shall refund the amount of the administrative fine in accordance with standard agency process;

~~C. That the FID, within 30 days of Notice of Entry of this Order, must return to TitleMax the costs for the court reporter and transcripts in the administrative proceedings paid by TitleMax; and~~ JH

~~D. That the FID must issue reissue its Reports of Examination for TitleMax for 2014 and 2015 and provide TitleMax with "Satisfactory" ratings, given that this Court has found that TitleMax did not violate NRS 604A.070, NRS 604A.210, or NRS 604A.445 and the ALJ found that TitleMax did not violate NAC 604A.230 (a finding not challenged by the FID). The FID shall provide electronic and revised copies of the amended Reports of Examination to TitleMax within 30 days of Notice of Entry of this Order.~~ JH

See minute order for details.

IT IS SO ORDERED.

Dated this 20th day of ~~August~~ September, 2017.

DISTRICT COURT JUDGE

ET

Submitted by:
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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2017, I served the foregoing "Notice of Entry of Order" on counsel by the Court's electronic filing system and by courtesy email to the persons and addresses listed below:

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An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT B

EXHIBIT B

BEFORE THE

NEVADA FINANCIAL INSTITUTIONS DIVISION

In the Matter of:	)
TITLEMAX OF NEVADA, INC. and TITLEBUCKS, d/b/a TITLEMAX.	)

TRANSCRIPT OF PROCEEDINGS

BEFORE ADMINISTRATIVE LAW JUDGE DENISE S. McKAY

VOLUME II

PAGES 332 - 628

LAS VEGAS, NEVADA

JULY 19, 2016

REPORTED BY: KIMBERLY A. FARKAS, RPR, CCR #741

JOB NO. 324322

Q. Why not?

A. We have a policy. It has to be at least 24 hours after the origination, at least. The way that we've always designed it is we tell customers that before they make their first payment, but it cannot be on the same day.

The problem is that we had, and we've spent millions of dollars to rectify, a very old POS system here. It was very human reliant.

JUDGE McKAY: What's a POS?

THE WITNESS: Point of sale, so computer system. We were not able to program it to do some of the things that we needed it to do so we had very manual processes. It required us to go in and audit the stores twice a month. So district managers audit every file in the store twice a month. We had regional managers that audit every store once a year. We have external auditors, so the compliance department came out and did audits.

But we did have human error. Most of our stuff was in files; it was all in paper. Today we're probably 95 percent paperless and we've got a new POS system that prevents that from happening, so that cannot happen.

So we have a system today -- we don't

offer the GPDA at the moment. We on good faith have stopped since December. But we have a system in place where we can stop that from happening, whereas, before we did not.

Q. And that system was implemented sometime in 2015; correct?

A. Correct.

Q. There was some testimony about TitleMax pre-printing blank grace period deferment agreements and putting it in the customer files. Do you recall that testimony why?

A. I do.

Q. Do you know why that was occurring?

A. That was part of our process. We always explain the GPDA origination. Anytime a customer came in to make their payment, we would pull the customer file. That was always front and center right at the top so that we had it ready for the customer when they came in. We didn't want to rely on the possibility that a human wouldn't go in and print it. They would just take the payment without going through and making sure the customer had the opportunity to enter into a GPDA.

Q. There's nothing sneaky or untoward going on there?

of the law in this proceeding at an earlier date; correct?

A. It did, yes.

Q. All right. Was this a scheme to violate the law, the grace period deferment agreement?

A. No.

Q. That was not the intent at all?

A. Absolutely not.

Q. Fair to say we have a disagreement over the meaning of the law and how it applies to this grace period deferment agreement; correct?

A. Correct.

Q. And the last part of the sentence, "without any exercise or due care," again, you had counsel inside and outside of Nevada look at this; correct?

A. We did.

Q. Does TitleMax continue to offer the grace period deferment agreement?

A. No, we don't.

Q. When did it stop doing that?

A. Well, we ceased doing it until we get through this hearing, until we find out what's going on. We ceased doing it in December of 2015.

Q. Does TitleMax continue to disagree with

the FID's interpretation of the law?

A. Yes, we do.

Q. So why did it stop offering it?

A. It's a good faith effort. We want to get through this. We want clarity. We want to make sure that we're operating in good faith.

Q. Were you surprised at the testimony this morning when the commissioner said that he wasn't aware that TitleMax had discontinued the GPDA?

A. Very.

Q. Let's focus on the administrative regulation. NAC 604A.230, "A licensee shall not require or accept a guarantor to a transaction entered into with a customer."

Do you see that?

A. I do.

Q. Has TitleMax ever had a guarantor on its title loans in Nevada?

A. No.

Q. It has had co-borrowers?

A. Yes.

Q. We've heard a lot of speculation as to why that co-borrower might be offered. Why has TitleMax offered co-borrower on title loans in the past in Nevada?

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Kimberly A. Farkas, a duly certified Court Reporter, State of Nevada, do hereby certify: That I reported the taking of the PROCEEDINGS IN THE MATTER OF TITLEMAX, commencing on Tuesday, July 19, 2016.

That prior to being examined, the witnesses were duly sworn to testify to the truth.

That I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript of said hearing is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 15th day of August, 2015.

Kimberly A. Farkas, CCR 741

BEFORE THE

NEVADA FINANCIAL INSTITUTIONS DIVISION

In the Matter of:	)
TITLEMAX OF NEVADA, INC. and TITLEBUCKS, d/b/a TITLEMAX.	)

TRANSCRIPT OF PROCEEDINGS

BEFORE ADMINISTRATIVE LAW JUDGE DENISE S. McKAY

VOLUME III

PAGES 629 - 710

LAS VEGAS, NEVADA

JULY 20, 2016

REPORTED BY: KIMBERLY A. FARKAS, RPR, CCR #741

JOB NO. 324323

didn't open the door. I did not open the door.

JUDGE McKAY: I did rule on that. If your client obtained that in any kind of exam or follow-up exam that happened in December, that's not admissible.

MS. RAKOWSKY: I understand that, but they opened the door on their own introducing testimony that they stopped using the product in December of 2015. We were not going to discuss anything after November of 2015, and we did not. And their side actually said they stopped using it. So now it is in the record that they stopped using it at a date. And that email is relevant because it shows that they did not stop using it on that date.

MR. REILLY: I want to clarify something. TitleMax stopped offering GPDA on new loans in December of 2015.

MS. RAKOWSKY: You said they stopped using it. And, in fact, they were still using it. So we believe this is very important.

JUDGE McKAY: Is that how your client obtained it, it was through a follow-up exam?

MS. RAKOWSKY: They asked from one of the licensees and it was given to them.

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Kimberly A. Farkas, a duly certified Court Reporter, State of Nevada, do hereby certify: That I reported the taking of the PROCEEDINGS IN THE MATTER OF TITLEMAX, commencing on Wednesday, July 20, 2016.

That prior to being examined, the witnesses were duly sworn to testify to the truth.

That I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript of said hearing is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 15th day of August, 2015.

Kimberly A. Farkas, CCR 741