

1 on file with the Court, and the following Memorandum of Points and Authorities
2 offered in support of the Motion.

3
4 DATED this 16th Day of September, 2016.

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

7 BY: /s/ Dan L. Wulz

8 Tennille K. Pereira, Esq.

9 Nevada Bar No. 12467

10 Barbara E. Buckley, Esq.

11 Nevada Bar No. 03918

12 Dan L. Wulz, Esq.

13 Nevada Bar No. 05557

14 725 E. Charleston Blvd

15 Las Vegas, NV 89104

16 (702) 386-1475

17 *Attorneys for Proposed Brief of Amicus*
18 *Curiae In Support Of Appellant*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. The Legal Aid Center of Southern Nevada has an Interest in Upholding**
3 **NRS Chapter 604A’s Protections for Vulnerable Consumers**

4 In 2005, the Nevada legislature passed Assembly Bill 384 which was codified
5 as NRS Chapter 604A. Contained within NRS Chapter 604A is a provision intended
6 to protect consumers by limiting the term of high-interest loans. NRS 604A.480.
7 NRS 604A.480(2) is an exception to the limitation on the length of high-interest
8 loans which requires compliance with certain provisions in connection with that
9 loan, including the prohibition against any civil action or alternative dispute
10 resolution in order to collect on the loan in the case of default. NRS 604A.480(2)(f).
11 The lower court has issued a ruling that the provision does not prohibit licensees
12 from filing a civil suit or alternate dispute resolution against a borrower.
13

14 LACSN is concerned that the Court’s opinion in this case can severely
15 undermine consumer safeguards provided by NRS Chapter 604A and will have
16 unintended consequences on financially struggling Nevada citizens- a public policy
17 issue of great importance to LACSN and its clients.
18

19 **A. Legal Aid Center of Southern Nevada’s Interest**

20 LACSN has dedicated itself to providing quality legal counsel, advice, and
21 representation for individuals who cannot afford an attorney. LACSN staff attorneys
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1 have assisted thousands of distressed borrowers with disputes between various
2 lenders subject to and governed under NRS 604A.

3 LACSN is concerned that the lower court's opinion will have unintended
4 consequences and that the legislative intent and needed balance between responsible
5 lending and responsible borrowing will no longer exist. LACSN has an interest in
6 helping its clients avoid such unjust consequences. Thus, on behalf of Nevada's
7 vulnerable consumers, LACSN requests leave to submit an *amicus curiae* brief in
8 support of Appellant, FID.
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12 **B. The Legal Aid Center of Southern Nevada's Proposed Amicus Curiae**
13 **Will Assist the Court**

14 LACSN can offer the Court important insights about how the lower court's
15 ruling will affect Nevada consumers. Before NRS 604A, Nevada consumers were
16 exposed to unfair business practices with some lenders in the payday loan industry.
17 The Nevada Legislature has gone to great lengths to ensure consumers would get a
18 fairer bargain and took away the tools being utilized by unscrupulous lenders. Given
19 LACSN's role as a champion for vulnerable, low-income consumers, it is ideally
20 suited to brief the Court on the policy implications of the lower court's ruling.
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23 It is for this purpose that the Proposed Amicus respectfully requests that this
24 Court grant the Motion and consider the Proposed Brief of Amicus Curiae when
25 considering the issue presented in the underlying appeal.
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1 **II. Legal Aid Center of Southern Nevada's Motion Should be Granted**

2 For the reasons and on the basis set forth in this Motion, Legal Aid Center of
3 Southern Nevada, respectfully requests that this Court GRANT the Motion and
4 ORDER that the Proposed Brief of Amicus Curiae in Support of Respondents,
5 attached thereto, be placed on file with this Court.
6

7
8 DATED this 16th day of September, 2016.

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

11
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13 BY: /s/ Dan L. Wulz

14 Tennille K. Pereira, Esq.

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16 Barbara E. Buckley, Esq.

17 Nevada Bar No. 03918

18 Dan L. Wulz, Esq.

19 Nevada Bar No. 05557

20 725 E. Charleston Blvd

21 Las Vegas, NV 89104

22 (702) 386-1475

23 *Attorneys for Proposed Brief of Amicus*
24 *Curiae In Support Of Appellant*
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EXHIBIT A

EXHIBIT A

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Docket No.: 7002

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

v.

DOLLAR LOAN CENTER, LLC, a domestic liability company
Respondent.

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, DOCKET NO.: A-15-720959-C

**PROPOSED BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT
STATE OF NEVADA, DEPARTMENT OF BUISNESS AND INDUSTRY,
FINANCAIL INSITUTIONS DIVISION**

Tennille K. Pereira, Esq. Nevada Bar No. 12467
Barbara E. Buckley, Esq., Nevada Bar No. 03918
Dan L. Wulz, Esq., Nevada Bar No. 05557
725 E. Charleston Blvd.
Las Vegas, NV 89104
(702) 386-1408
*Attorneys for Proposed Brief of Amicus Curiae
In Support Of Appellant*

1 **NRAP 26.1 DISCLOSURE**

2 Pursuant to Rule 26.1 of Nevada Rules of Appellate Procedure, *Amici*
3 *Curiae*, the Legal Aid Center of Southern Nevada states that it has no parent
4 corporations and that no publicly held company owns 10% or more of the
5 organizations' stock.
6

7
8 The undersigned counsel of record certifies that the following are persons
9 and entities as described in NRAP 26.1(a), and must be disclosed. These
10 representations are made in order that the judges of this Court may evaluate
11 possible disqualification or recusal:
12

13
14
15 Barbara E. Buckley
16 Legal Aid Center of Southern Nevada
17 Counsel for Amici Curiae

Dan L. Wulz
Legal Aid Center of Southern Nevada
Counsel for Amici Curiae

18
19 Respectfully submitted,

20
21 _____
22 Barbara E. Buckley, Nevada Bar No. 03918
23 Attorney of Record for *Amici Curiae*
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Harris Associates v. Clark County School Dist., 119 Nev. 638, 642, 81 P.3d. 532, 534 (2003)12

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Smith v. Kisorin USA Inc., 127 Nev. 444, 448, 254 P.3d 636, 639 (2011)12

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 In 2005, the Nevada Legislature passed the most noteworthy consumer
4 protections in regards to the Nevada payday loan industry to date. Since then, Dollar
5 Loan Center, LLC, the Respondent (hereinafter, "DLC") has done everything in its
6 power to undue key, integral protections afforded consumers under the legislation.
7 Unfortunately, their latest attempt was successful and they obtained an order stating
8 they could file suit against certain borrowers *who took out long term loans* of
9 between 40% and 200% APR despite the clear statutory language to the contrary,
10 despite the two proposed bills to change the statute which failed, and despite the
11 Financial Institutions Division's contrary interpretation of the statute. If this order is
12 upheld, then the statutory protections and purpose of the consumer protections of
13 NRS 604A will not be met and consumers will be left vulnerable to predatory
14 lending practices.

15 Most industry leaders supported the passing of NRS 604A and have accepted
16 the balance the statutory scheme struck between the needs of the lenders and the
17 borrowers. However, DLC has repeatedly attempted to find a way around certain
18 provisions that do not allow a civil suit in the event of default for one voluntary type
19 of *long-term* loan regulated under NRS 604A. DLC has attempted to take the
20 litigation prohibition out of the statute for *long-term* loans twice through legislation
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1 and failed. Even after representing to the Nevada Legislature that existing law
2 prevented it from filing suit on these long-term loans, DLC persisted and filed suit
3 seeking a declaratory judgment that it was not prohibited from filing suit on these
4 long term loans.
5

6 If the lower court's decision is upheld, the entire fabric of NRS 604A will be
7 altered and will fail to protect consumers as intended by the Legislature. For all of
8 the reasons set forth herein, this Court should apply the plain language of NRS 604A
9 as written, which just so happens to result in provision of the intended consumer
10 protections, support the legislative intent and promote good public policy. In the
11 alternative, if NRS 604A.480 is capable of being read as the lower court interpreted
12 it, then it is ambiguous and the legislative history clearly shows that the lower court
13 erred.
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18 **II. LEGAL ARGUMENT**

19 **A. History and Purpose of NRS 604A.480 & Dollar Loan Center's Efforts** 20 **to Change it**

21 In the Seventy-third Session of the Nevada Legislature in 2005, then
22 Assemblywoman Barbara E. Buckley introduced Assembly Bill 384 which dealt
23 with short-term, high-interest loans. The central aim was two-fold: consumer
24 protection measures and to create a level playing field for all lenders.¹
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27 ¹ Aplt. App. FID0265- FID0352 (Hearing on A.B. 384 Before the Assembly
28 Commerce Comm. 73rd Leg. (Nev., May 6, 2005)).

1 Specifically, consumers needed protections to avoid the “debt treadmill” that
2 occurs when a borrower takes one loan to cover the immediate need, a second to pay
3 the first and so on.² Soon, the borrower is running at full-speed with no hope of
4 gaining any ground at paying the debts down.³ Eventually, they can’t even cover
5 the interest and fall off that “debt treadmill” into default, additional fees and charges
6 after default, and then litigation and wage garnishment, where it was discovered
7 there were a whole basket of other egregious abuses taking place through the use of
8 the court system.⁴

9 To curb against the “debt-treadmill” trend and the court system abuses outlined,
10 A.B. 384 had specific restrictions and balances written into to it.⁵ AB 384, as
11 introduced,⁶ narrowly dealt with short term loans of eight weeks (Section 67), and
12 limited any renewal or rollover to a term of eight weeks (Section 65). Eventually
13 amendments were adopted to provide that the original term of both a deferred deposit
14 loan and a high interest loan could not exceed 35 days [NRS 604A.408(1)]; but for
15 a high interest loan, the original term could be up to 90 days if it were amortized and
16 payments were level [NRS 604A.408(2)]. Period - that was it for an original loan.

17 ² *Id.* FID0266.

18 ³ *Id.*

19 ⁴ *Id.*

20 ⁵ Aplt. App. FID0265- FID0352 (Hearing on A.B. 384 Before the Assembly
21 Commerce Comm. 73rd Leg. (Nev., May 6, 2005)).

22 ⁶ <http://www.leg.state.nv.us/Session/73rd2005/bills/AB/AB384.pdf>

1 Rollover loans by whatever name (renewal, refinancing, consolidation, extension)
2 for both a deferred deposit loan and a high interest loan could not exceed 90 days
3 after the date of origination [NRS 604A.408(3)]. Period – that was it for all of those
4 rollover type scenarios. Yet the Legislature knew some lenders would seek to avoid
5 any boundary by engaging in evasive maneuvers, such as making a new loan to pay
6 an old loan. So the Legislature addressed that as well: for both a deferred deposit
7 loan and a high interest loan (bear in mind, these are short term loans), if the lender
8 made a new loan to pay off the original loan, then the limit, as originally drafted,
9 was eight weeks after the expiration of the initial loan period. (Reference footnote
10 #6, at Section 65). Section 65 of the original bill draft, with minor tweaks like
11 changing “eight weeks” to “60 days,” became what is now NRS 604A.480(1).

16 Then the sponsor of AB 384 was contacted by longer-term installment lenders
17 who would fall under the legislation because they loaned at more than 40% APR,
18 and AB 384 covered all such loans. They said Section 65 of the original bill draft
19 would put them out of business, and so a more consumer-friendly alternative to short
20 term payday loans would be eliminated. In 2011 when there was a bill heard to
21 change NRS 604A.480(2), Dan Wulz, Deputy Executive Director of the Legal Aid
22 Center of Southern Nevada, testified that he was directly involved in the negotiations
23 regarding AB 384 (2005); he testified before the Assembly Commerce Committee
24 on the negotiations regarding what became NRS 604A.480(2):
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2 An exception was put in subsection 2, which is the subject of this
3 bill. I was involved in the negotiations on this. The installment
4 loan lenders such as Household Finance came to us and said they
5 could not live with NRS 604A.480, but they had a different
6 business model. Their model consisted of the nine criteria that are
7 in subsection 2 of NRS 604A.480, the last of which is the subject
8 of this bill. It is important to keep in mind that this exception
9 allows for a loan period of 150 days, which is totally different from
10 the two-week payday loan model. The Legislature, in determining
11 to allow a loan period as an exception of 150 days, included the
12 criteria that such a lender would not sue to collect on that loan if
13 it went into default. While that situation may seem unfair, one
14 needs to look at the big picture and see that the Legislature
15 determined that it would not allow a lender to collect interest for
16 150 days and to sue the borrower if there was a default.⁷

17 Leaders of the payday loan industry also understood the provisions of NRS
18 604A.480(2) to be a fair compromise, properly targeted at decreasing the industry
19 abuses and in furtherance of the policies of the statute. Alfredo Alonso of the
20 Community Financial Services Association of America testified in regards to a
21 proposal to again delete NRS 604A.480(2)(f) in 2015. Here are several portions of
22 his testimony:

23 Significant hearings and discussions took place over a two-session
24 period. Many of the payday lenders and the NRS 604A.480
25 licensees were making most of their money on the back end. They
26 were suing under a bad check law, for treble damages and putting
27 people in a position of never repaying the loan. This was the
28 overall problem... The policy is to avoid litigation... The goal of

⁷ Aplt. App. FID0395 (Hearing on S.B. 541 Before Assembly Commerce Comm.,
76th Leg. (Nev., April 6, 2011)).

1 this legislation is to regulate the industry so the customer has more
2 opportunity to repay the loan. The court remedy was taken out if
3 the lender followed the lending provisions of NRS 604A.480. The
intent is to keep a fair agreement for all parties...⁸

4 NRS 604A.480(2) was a compromise created as an exemption to the stricter terms
5 of NRS 604A.480(1) to allow for a different type of *long term* loan, while still
6 providing consumer protection measures aimed directly at curbing previous abuses.
7

8 In 2011, Respondent, DLC lobbied in support of Assembly Bill 541 which
9 would have eliminated the prohibition of NRS 604A.480(2)(f). DLC acknowledged
10 that the plain meaning of the provision prohibited suit against borrowers in default.⁹
11 The Legislature did not pass the bill and AB 541 (2011) failed. DLC again lobbied
12 the Legislature to take the provision out in 2015.¹⁰ The Legislature heard testimony
13 from DLC's representative, Chris Ferrari on the implications of the provision as well
14 as from other industry lenders that did not support the measure and consumer
15 protection groups.¹¹ Again, the Legislature was not persuaded by DLC's arguments.
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23 ⁸ Aplt. App. FID0416 (Testimony of Alfredo Alonso (Community Financial
24 Services Association of America) at Hearing on S.B. 123 Before the Senate
Commerce Comm., Leg., 78th (Feb 13, 2015)).

25 ⁹ Aplt. App. FID0392- FID0401 (Hearing on A.B. 541 Before the Assembly
26 Comm., 76th Leg. (Nev., April 6, 2011)).

27 ¹⁰ Aplt. App. FID0403- FID0429 (Hearing on S.B. 123 Before the Senate
Commerce Comm., Leg., 78th (Feb 13, 2015)).

28 ¹¹ *Id.*

1 DLC's representative testified that NRS 604A.480(2)(f) prevented them from
2 filing suit for loans written pursuant to NRS 604A.480(2).¹² DLC's representative
3 testified that its own counsel believed they could not file suit on them.¹³ DLC had
4 an official advisory opinion issued by the Attorney General on the very same
5 interpretation issue that coincided with what the Legislature also decided.¹⁴ Despite
6 all this, DLC filed suit in the lower court in the hopes of having the statute read in a
7 way to accomplish what the Legislature had twice refused to change. Unfortunately,
8 the lower court was persuaded by DLC's arguments and did not fully understand the
9 purpose and intent behind the provision at issue and its integral part in meeting the
10 purpose and spirit of NRS 604A.

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15 **1. The clear statutory language of NRS 604A.480(2) provides a**
16 **limited exception to the term and extension provisions of NRS 604A**
17 **for a long term loan.**

18 The statutory language of NRS 604A.480(2) is clear. The Legislature crafted
19 NRS 604A to allow for unlimited amounts of interest, but for a limited time period.
20 To achieve this goal, they put general time limits in NRS 604A.408 and then limited
21 to 60 days the use of a new loan to pay the balance of an outstanding loan under
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25 ¹² Aplt. App. FID0411 (Hearing on S.B. 123 Before the Senate Commerce Comm.,
Leg., 78th (Feb 13, 2015)).

26 ¹³ Aplt. App. FID03923 & FID0394 (Hearing on A.B. 541 Before the Assembly
Comm., 76th Leg. (Nev., April 6, 2011)).

27 ¹⁴ Aplt. App. FID0157- FID0161 (Op. Nev. Att'y Gen. No. 2012-6 (Oct. 30,
28 2012)).

1 NRS 604A.480(1). The Legislature provided for one exemption to this rule under
2 NRS 604A.480(2). NRS 604A.480(2) allows for *long term* loans with unlimited
3 extensions, but with certain limitations in order to ensure the consumer protection
4 measures were still met as intended. The Legislature was well within its power and
5 authority to limit the terms, extensions and provisions of the exempted *long term*
6 loans.
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9 The statutory language of NRS 604A.480(2) provides a lender can loan under
10 the exemption given they meet the criteria of NRS 604A.480(2) which requires: the
11 interest rate must be less than 200%; there must be one payment at least every thirty
12 (30) days; the term must be for at least 150 days; interest cannot accrue after
13 maturity; the lender must perform a credit check and report the loan history to the
14 credit bureaus; the borrower has the right to rescind for five (5) days; the lender must
15 participate in an accredited credit counseling agency & cannot commence civil
16 action or process of alternative dispute resolution on a defaulted loan.¹⁵
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20 It is important to note that lenders do not have to make the long term loans
21 allowed by NRS 604A.480(2). A lender can make short-term loans and file suit after
22 default or they can offer title loans and have the remedy of repossession. The long-
23 term loans of NRS 604A.480(2) are strictly voluntary. The prepared written
24 testimony of Dan L. Wulz at the Hearing on Senate Bill 123 (2015) before the Senate
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28 ¹⁵ NRS 604A.480(2)

1 Committee on Commerce, Labor and Energy held February 13, 2015, explains in
2 detail the history behind Subsection 2, and why it was added.¹⁶ As a convenience
3 for the Court, it has been attached hereto as “Exhibit 1”.

4
5 **2. Allowing lenders to file suit on loans written under NRS**
6 **604A.480(2) leads to bad public policy.**

7 NRS 604A is a consumer protection statute and should be construed liberally.
8 This Court opined, “[s]tatutes with a protective purpose should be liberally construed
9 in order to effectuate the benefits intended to be obtained.”¹⁷ At the very inception
10 and introduction of the statute, Assemblywoman Barbara E. Buckley clearly outlined
11 the protective purpose of the proposed legislation:
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14 I hope the passage of A.B. 384 will create a more level and
15 legitimate playing field for lenders, curb unscrupulous and
16 egregious practices, provide remedies for those who have fallen
17 victim to both licensed and unlicensed lenders and protect
18 consumers from being trapped on a debt treadmill.¹⁸

19 In regards to the garnishment abuses NRS 604A.480(2) specifically targets,
20 Ms. Buckley testified:

21 The lenders that want to go to the garnishment mill do not care.
22 They see the borrower’s paycheck and they see that they are
23 working. Even if that person has three payday loans by the time
24 they get to them, they will have to stand fourth in line. The court

25 ¹⁶ <http://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/CL/Final/212.pdf>; written testimony is Exhibit
“1” to the Minutes.

26 ¹⁷ *Colello v. Administrator of the Real Estate Division*, 100 Nev. 344, 347, 683
27 P.2d. 15, 17 (1984).

28 ¹⁸ *Aplt. App. FID0266 (Hearing on A.B. 384 Before the Assembly Commerce
Comm. 73rd Leg. (Nev., May 6, 2005))*.

1 will put through whoever gets the garnishment first. If the person
2 is working, the lender knows they will get 25 percent of that
3 person's paycheck and they will definitely loan them the money.
4 The lender makes most of their profit from the abusive add-on
fees.¹⁹

5 The lower court's interpretation opens the door for the very consumer abuses
6 NRS 604A was intended to curb. If NRS 604A.480(2)(f) is interpreted out of the
7 statute and *long term* lenders are thereby permitted to use litigation as a weapon,
8 then borrowers will be placed on a long term debt treadmill and ultimately be
9 subjected to the garnishment machine. Any astute licensee would then simply write
10 loans only *long term* under NRS 604A.480(2) because they would have no limits to
11 the length of time they could collect 199.9% interest and could avoid the default
12 provision (when interest is dropped to prime plus 10%) by rolling the loan over again
13 and again and then filing suit to garnish the borrower in the end. They would be
14 incentivized to extend loans that could not be paid back because they would end up
15 with a windfall the longer the loan was outstanding.

16 The testimony of Dan Wulz, Executive Director of the Legal Aid Center of
17 Southern Nevada summed up the public policy issue best when he testified at the
18 hearing on Senate Bill 123 (2015), which proposed to delete NRS 604A.480A(2)(f):
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20 The current law states these installment loans cannot be sued upon.
21 This encourages responsible lending, because the lender will be
22 sure the borrower has the ability to repay the loan. Senate Bill 123
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27 ¹⁹ Aplt. App. FID0273 (Hearing on A.B. 384 Before the Assembly Commerce
28 Comm. 73rd Leg. (Nev., May 6, 2005)).

1 will change this, and the result will be to push borrowers into long-
2 term, high-interest loans and result in predatory lending with the
3 right to sue as a weapon. A lender will be incentivized to lend to
4 anyone with a job regardless of the ability to repay. Exhibit 1
5 demonstrates that the Dollar Loan Center practice can extend or
6 renew these loans indefinitely. If that is true, the loan can be
7 manipulated to avoid default for many months. That means the
8 protections in NRS 604.485, protecting borrowers from default,
9 do not kick in for months or years. This again changes the fabric
10 of the entire chapter... We should not want to encourage high-
11 interest, long-term loans by providing litigation as a weapon. This
12 opens a loophole that will be exploited on the backs of the working
13 poor.²⁰

14 The statute must be construed liberally to give it the protective properties it was
15 expressly written to have.

16 **3. The lower court’s interpretation of NRS 604A.480(2)(f) is not**
17 **in harmony with the other provisions of the statute.**

18 Even if the statute is ambiguous and thus deference not given to the
19 Financial Institutions Division’s (hereinafter, “FID”) interpretation of it, the
20 lower court’s ruling will still have to be set aside because it contradicts the
21 legislative intent of the statute.

22 The construction of a statute is a question of law that this Court reviews de
23 novo.²¹ “When the language of a statute is plain and unambiguous, such that it is

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26 ²⁰ Aplt. App. FID0421- FID0422 (Hearing on S.B. 123 Before the Senate
27 Commerce Comm., Leg., 78th (Feb 13, 2015).

28 ²¹ *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887,
890 (2002).

1 capable of only one meaning, this court should not construe that statute otherwise.”²²

2 In construing statutes, this Court seeks to give effect to the legislature’s intent, and
3 in so doing, the court first looks to the plain language of the statute while paying
4 deference to an administrative agency’s construction charged with the duty of
5 administering it.²³ However, if the statutory language is ambiguous or fails to
6 address the issue, this Court will construe the statute according to that which “reason
7 and public policy would indicate the legislature intended.”²⁴ If a statute is
8 ambiguous, then the Legislature’s intent “becomes the controlling factor in statutory
9 construction.”²⁵ This Court has specifically held that it “has a duty to construe
10 statutes as a whole, so that all provisions are considered together and, to the extent
11 practicable, reconciled and harmonized.”²⁶ Careful consideration of the “policy and
12 spirit of the law” is necessary to avoid an interpretation that leads to an absurd
13 result.²⁷

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20 ²² *MGM Mirage v. Nevada Ins. Guaranty Ass’n.*, 125 Nev. 223, 229, 209 P.3d 766,
769 (2009) (citation omitted).

21 ²³ *Dept. of Business and Indus. v. Granite Const. Co.*, 118 Nev. 83, 90, 40 P.3d 423,
22 428 (2002).

23 ²⁴ *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d at 877,
24 890 (2002) (quoting *State, Dep’t Mtr. Vehicles v. Vezeris*, 102 Nev. 232, 236, 720
P.2d 1208, 1211 (1986) (internal quotations and citation omitted)).

25 ²⁵ *Harris Associates v. Clark County School Dist.*, 119 Nev. 638, 642, 81 P.3d. 532,
534 (2003) (internal citation omitted).

26 ²⁶ *Smith v. Kisorin USA Inc.*, 127 Nev. 444, 448, 254 P.3d 636, 639 (2011) (quoting
27 *City Plan Dev. V. State, Labor Comm’r*, 121 Nev. 419, 435, 117 P.3d. 182, 192
(2005)).

28 ²⁷ *Id.*

1 A close examination of NRS 604A and the spirit and purpose for which it was
2 passed, leads to the conclusion that NRS 604A.480(2)(f) was a prohibition against a
3 civil suit or alternative dispute resolution for the longer-term loans. NRS 604A has
4 short, firm term limits (including roll-overs) for all high-interest loans except for the
5 type allowed under NRS 604A.480(2).²⁸ Otherwise, once a loan has reached the
6 term limits, is not eligible for further roll-overs and goes into default, when the
7 borrower is then entitled to a reduced interest rate of prime plus 10%, for ninety (90)
8 days.²⁹ After the ninety (90) days, the lender cannot charge further interest for that
9 loan.³⁰ From these other portions of the statute, it can be surmised that the
10 Legislature intended to limit the terms of the high-interest loans and the length of
11 time the high-interest rates could be charged even upon and after default. Depending
12 on the type of loan that a lender chooses to offer, the loan will have more drawbacks
13 and restrictions if it is extended or rolled-over which levels the playing field for all
14 lender types.

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20 The policy behind enacting the statute was to keep borrowers off of the “debt-
21 treadmill” and to level the playing field of the industry. Limiting the terms of the
22 loans, the allowable roll-overs and the time period for which the high-interest rates
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26 ²⁸ NRS 604A.408, NRS 604A.480(1) & NRS 604A.065(3). *See also* NRS
27 604A.065.

28 ²⁹ NRS 604A.485(1)(c).

³⁰ *Id.*

1 could be charged all contribute to the policy of keeping borrowers off of the “debt-
2 treadmill”. Requiring lenders that choose to roll-over loans or extend for longer
3 periods of time to give something up in exchange for collecting the high interest for
4 a longer time period, levels the playing field.

5
6 NRS 604A.480(2)(f) must also be read in order to contribute to the spirit and
7 purpose of NRS 604A. The lower court’s interpretation of the provision is not in
8 harmony with the spirit and purpose of the statute as a whole. NRS 604A.480(2)
9 allows for a type of loan that is completely contrary to the other loans allowed in the
10 Chapter. It allows for a long term loan that has to be **at least 150 days** in length and
11 with **no restrictions on the number of times it can be rolled-over**.³¹ The lender
12 can keep rolling the loan over and the borrower will never be in default triggering
13 the limited interest that would also cease accruing after ninety (90) days. Further, a
14 lender choosing to lend under this provision is at a clear advantage as they can collect
15 exorbitant amounts of interest for an indefinite period of time, unlike their
16 competitors choosing not to loan under that provision.
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22 NRS 604A.480(2)(f), and the other criteria in subsection (2), bring balance
23 back to the statute by encouraging responsible underwriting in the decision whether
24 to make a loan by ensuring a borrower’s ability to repay. If underwriting fell short
25 and a borrower does default, then rather than sue, the lender participates in good
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27
28 ³¹ NRS 604A.480(2).

1 faith with an accredited credit counseling agency that by the nature of its mission,
2 will work toward a solution. NRS 604A.480(2)(e).

3
4 The lower court's interpretation reading subsection (f) out of NRS
5 604A.480(2) guts NRS 604A because it is a work-around for all of the other
6 provisions designed to protect consumers. All of the protections written for short
7 term loans, i.e., their terms, a repayment plan on default, an interest limit after
8 default, etc., will be for naught because they will fall into disuse. Instead, lenders
9 will be encouraged to write *long term* loans without regard to an ability to repay
10 because there will always be the litigation weapon available to secure payment.
11 There will also be no level-playing field for the responsible lenders who choose not
12 to use litigation as a debt collection tool.
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16 **CONCLUSION**

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18 Based on the foregoing, this Court should overturn the district court's ruling
19 & find that NRS 604A.480(2)(f) is a prohibition against a borrower from initiating
20 civil suits or alternate dispute resolution proceedings for long term loans made under
21 NRS 604A.480(2) .
22

23
24 DATED this 16th day of September, 2016.

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

27 BY: Dan L. Wulz
28 Tennille K. Pereira, Esq.

1 Nevada Bar No. 12467
2 Barbara E. Buckley, Esq.
3 Nevada Bar No. 03918
4 Dan L. Wulz, Esq.
5 Nevada Bar No. 05557
6 725 E. Charleston Blvd
7 Las Vegas, NV 89104
8 (702) 386-1408
9 *Attorneys for Proposed Brief of Amicus
10 Curiae In Support Of Appellant*

11 **CERTIFICATE OF COMPLIANCE**

12 1. I hereby certify that this Amicus Brief complies with the formatting
13 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
14 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

15 This Amicus Brief has been prepared in a proportionally spaced
16 typeface using Microsoft Word 2010 in 14 point Times New Roman font; or
17 This Amicus Brief has been prepared in a monospaced typeface using
18 *[state name and version of word processing program]* with *[state number of*
19 *characters per inch and name of type style]*.

20 2. I further certify that this Amicus Brief complies with the page or type-
21 volume limitations of NRAP 32(a)(7) and NRAP 29(e) because,
22 excluding the parts of the Amicus Brief exempted by NRAP 32(a)(7)(c),
23 it is either:

24 Monospaced, has 10.5 fewer characters per inch, and contains ___
25 words or ___ lines of text; or

26 Does not exceed 15 pages.

27 3. Finally, I hereby certify that I have read this Amicus Brief, and to the
28 best of my knowledge, information, and belief, it is not frivolous or
interposed for any improper purpose. I further certify that this Amicus

1 Brief complies with all applicable Nevada Rules of Appellate Procedure,
2 in particular NRAP 28(e)(1), which requires every assertion in the brief
3 regarding matters in record to be supported by a reference to the page and
4 volume number, if any, of the transcript or appendix where the matter
5 relied on is to be found. I understand that I may be subject to sanctions
6 in the event that the accompanying brief is not in conformity with the
7 requirements of the Nevada Rules of Appellate Procedure.

8 Dated this 16th day of September, 2016.

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

11
12 BY: Dan L. Wulz
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14 Nevada Bar No. 12467
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17 Dan L. Wulz, Esq.
18 Nevada Bar No. 05557
19 725 E. Charleston Blvd
20 Las Vegas, NV 89104
21 (702) 386-1475

22
23
24
25
26
27 **CERTIFICATE OF SERVICE**
28

1 I hereby certify pursuant to NRAP 25(c), that on the 16th day of September,
2 2016, I caused service of a true and correct copy of the above and forgoing

3 **PROPOSED BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT**

4 **STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY,**

5 **FINANCIAL INSTITUTIONS DIVISION** pursuant to the Supreme Court

6 Electronic Filing System, and by first class United States mail, postage prepaid, Las

7 Vegas, to the following:

8
9
10 Patrick J. Reilly, Esq.
11 Joseph G. Went, Esq.
12 Nicole Lovelock, Esq.
13 Holland & Hart
14 9555 Hillwood Dr.
15 Las Vegas, NV 89134

16 Adam Paul Laxalt
17 Attorney General
18 Vivienne Rakowsky, Esq.
19 Deputy Attorney General
20 State of Nevada
21 555 East Washington Ave., suite 3900
22 Las Vegas, NV 89101

23 Rosie Najera
24 An employee of Legal Aid Center
25 of Southern Nevada, Inc.
26
27
28

EXHIBIT 1

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EXHIBIT 1

**HEARING ON SENATE BILL 123
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY
FEBRUARY 13, 2015**

**PREPARED TESTIMONY OF DAN L. WULZ
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
ON BEHALF OF LOW INCOME NEVADA CONSUMERS**

Good morning Chairman Settlemeyer and members of the Committee. I am Dan Wulz, an attorney with the Legal Aid Center of Southern Nevada, Inc. I am appearing today as a concerned citizen and an attorney who has represented customers of short term, high interest lenders. I also know the history of this law. I do appreciate the opportunity to speak.

What first needs to be made crystal clear is that short term, high interest lenders have the right under current law to sue borrowers who default on their loans. It is ONLY those lenders who choose to make a loan under the criteria stated in subsection (2) of NRS 604A.480 that forego the right to sue. To explain, I need to give you the history of and rationale for the law as it exists now.

But before I do that, I want to stress what is the real intent of those lenders who I presume have asked for this bill. They want to be freed of the limitation in subsection (1) of NRS 604A.480 that an extension or renewal of a loan shall not extend the period beyond 60 days after the expiration of the original loan period---which is one of the core principles of the entire Chapter---*and be free to sue a borrower who defaults*. This, as I will explain, eviscerates one of the principle consumer protections in existing law.

I attach as Exhibit Nos. 1, 2 and 3 examples of loan agreements written under subsection (2) of NRS 604A.480. Exhibit No. 1 provides for a finance charge of \$1,661.54 as to a loan of \$960.00 for a total of payments of \$2,621.54. A little over one month later, in Exhibit No. 2, the borrower paid the loan down, with a separate car title loan by the way, from the same lender. A little over three months later, in Exhibit No. 3 the lender wrote a new loan to pay the existing loan (Exhibit No. 2) with an amount financed of \$700.00 and only provided \$269.21 in new funds. This lender thus views itself as being able to renew or extend such loans and as not being subject to the 90-day limit after the date of origination on renewals or extensions provided in subsection (3) of NRS 604A.408. And, this is the type of loan that SB 123 will permit the lender to sue on.

RATIONALE FOR EXISTING LAW: I was present during almost all of the discussions and negotiations with the stakeholders in 2004 in preparation for the 2005 session and enactment AB 384, what became NRS Chapter 604A. One of the main purposes of the bill was to stop the "debt treadmill," i.e., repeatedly rolling over a loan with an interest only payment. Thus, the law was ultimately written to provide that a lender making a deferred deposit or high interest loan can only renew a loan up to 90 days from the origination date of the original loan [NRS 604A.408(3)] or 60 days from the due date of the original loan [NRS 604A.480(1)], whichever occurs first. Also, the lender can extend the due date of the loan by offering a grace period, but cannot charge any additional fee or interest during the grace period. These provisions, and

others in the Chapter, were designed to prohibit the then not uncommon practice of charging a daily interest rate and upon default, automatically renewing the loan over and over for a prolonged period, and then seeking a judgment for not only the principal but also the accrued interest, an amount that was often 4 or 5 times the amount the customer originally borrowed. Lenders engaging in that practice generated revenue from the back-end of the loan through multiple renewals and then after default and through the collection process, not through interest and fees clearly disclosed to the borrower up front.

HISTORY OF EXISTING LAW: The law as originally drafted did not contain subsection (2) of what is now NRS 604A.480, nor even Subsection (1). Instead, the original draft provided that an extension or renewal of a loan could not extend beyond 8 weeks after the date of default on the original loan (AB 384, 2005, Sections 65 and 76). All of NRS 604A.480 and particularly Subsection (2) was written because, after the bill was first drafted, other stakeholders of whom we were not aware came forward. These were long-established installment loan entities such as Security Finance represented by Joe Brown. I was asked to meet with them to see if we could address their concerns. I did and they advised that if the bill as written became law, they would be out of business. They said that as installment loan lenders, they were the more consumer-friendly alternative to payday lenders. They charged less than 200% APR interest (in contrast to payday lenders who charge much, much more); they responsibly underwrote the loan by checking the borrower's credit; they loaned funds at a longer term, generally for a few months; after the date of maturity of the loan, they did not charge interest at the contract rate; they provided a 5-day right to rescind; if a borrower defaulted, they participated in good faith with recognized credit counseling agencies to get the loan repaid rather than sue their borrowers, etc. In other words, all of the nine criteria you see listed in subsection (2) of NRS 604A.480 was and is what they do. So to accommodate them, the bill sponsor agreed to write the exception you see in subsection (2). Since they did not sue their customers, there was no danger that they were renewing a loan to generate revenue from the back-end of the loan and through the collection process. As a result of drafting the exception, those installment loan lenders supported the bill.

I would further point out that limiting a lender's right to sue---if it chooses to make a subsection (2) loan---is good policy because it encourages responsible underwriting of the loan before it is made. One is more likely to make such a loan by first making an analysis of the borrower's ability to repay, rather than looking to sue if and when there is a default.

It is self-evident that short term, high interest borrowers are in financial distress. By their actions, they are showing they have nowhere else to turn for money but to borrow it at triple digit interest rates. They typically have other debt, all or some of which may be in default. They live paycheck to paycheck and are the working poor. Their financial circumstances are fragile, at best. Allowing more lenders to avoid the 60-day limit on extensions or renewals of loans by giving them an ability to sue is the wrong direction to go and will have a ripple effect on other creditors. When sued, borrower's paychecks will be garnished. This will predictably and inevitably lead to an inability to cover the rent, adversely impacting landlords, causing evictions, and uprooting families and possibly school-age children. It also predictably leads to missed car payments, harming auto lenders, resulting in repossessions, which almost always lead to a deficiency and another lawsuit. The stress impacts not only borrower's families but also the

other creditors of the borrowers who go unpaid. It can all snowball and leave one feeling with no alternative but to file bankruptcy. And all of these predictable results further burden our court system.

Accordingly, I oppose efforts to eliminate or pick off any of the nine criteria for a NRS 604A.480(2) loan, which at least some lenders believe they can extend or renew at will and then be able to sue upon.

Again, I do appreciate the opportunity to speak and I would welcome any questions from the Committee.

EXHIBIT "1"

DOLLAR LOAN CENTER
INSTALLMENT LOAN AGREEMENT & DISCLOSURE STATEMENT

Loan Date: 03/13/2014	Loan #:	Loan Amount: \$960.00	Maturity Date: 06/10/2015
Borrower:		SSN:	
Address:			
Co-Borrower:		SSN:	
Address:			

This is our Agreement with you regarding your loan with us. **You should read it carefully before you sign it.**

Definitions. Certain words used in this Agreement have special meanings. The word "Agreement" means this Installment Loan Agreement & Disclosure Statement. The words "you" and "your" mean the person(s) signing this Agreement. The words "we", "us" and "our" mean Dollar Loan Center, 3051 N. Rainbow Blvd., Las Vegas, NV 89108, 702-656-6666. The word "loan" means the installment loan that is described and governed by this Agreement. The word "Card" means a prepaid debit card or other stored value card issued to you. The "Funding Date" is the anticipated date that your loan proceeds will be deposited to your bank account, funded to your Card or made available in cash at our store. The words "Business Day" mean Monday through Saturday, excluding holidays. The boxed-in disclosures below are part of the terms and conditions of your agreement with us.

Itemization of Amount Financed of	\$960.00
1. Amount given to you directly	<u>\$960.00</u>
2. Amount paid on your account with us	<u>\$0.00</u>
3. Total amount financed (1+2)	<u>\$960.00</u>

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have paid after you have made all payments as scheduled
195.38%	\$1,661.54	\$960.00	\$2,621.54

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are Due
1	\$174.76	04/09/2014
13	\$174.76	On the Second Wednesday of each month, beginning 05/14/2014
1	\$174.90	06/10/2015

Prepayment. If you pay off early, you will not have to pay a penalty.

See the terms and conditions below for additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Promise to Pay. You promise to pay us the "Loan Amount" amount shown above ("principal"), together with interest as provided in this Agreement.

Interest Rate. You agree that we will earn interest on the principal balance at a rate of 197.60 percent per annum (197.60%) (the "Interest Rate") from the Funding Date until paid in full. Interest is computed on an actual/365 simple interest basis. This means that interest is computed by dividing the annual Interest Rate by 365, multiplying that number by the outstanding principal balance, and multiplying that number by the number of days the principal balance is outstanding. Interest will not accrue after the maturity date.

Getting Your Loan Proceeds. You may elect to receive your loan proceeds by direct deposit into your bank account, by credit to your Card, or in cash.

EXHIBIT "2"

**DOLLAR LOAN CENTER
INSTALLMENT LOAN AGREEMENT & DISCLOSURE STATEMENT**

Loan Date: 04/22/2014	Loan #:	Loan Amount: \$490.70	Maturity Date: 07/08/2015
Borrower:		SSN:	
Address:			
Co-Borrower:		SSN:	
Address:			

This is our Agreement with you regarding your loan with us. **You should read it carefully before you sign it.**

Definitions. Certain words used in this Agreement have special meanings. The word "Agreement" means this Installment Loan Agreement & Disclosure Statement. The words "you" and "your" mean the person(s) signing this Agreement. The words "we", "us" and "our" mean Dollar Loan Center, 3051 N. Rainbow Blvd., Las Vegas, NV 89108, 702-656-6666. The word "loan" means the installment loan that is described and governed by this Agreement. The word "Card" means a prepaid debit card or other stored value card issued to you. The "Funding Date" is the anticipated date that your loan proceeds will be deposited to your bank account, funded to your Card or made available in cash at our store. The words "Business Day" mean Monday through Saturday, excluding holidays. The boxed-in disclosures below are part of the terms and conditions of your agreement with us.

Itemization of Amount Financed of	\$490.70
1. Amount given to you directly	\$0.00
2. Amount paid on your account with us	\$490.70
3. Total amount financed (1+2)	\$490.70

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
196.15%	\$791.97	\$490.70	\$1,282.67

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are Due
1	\$85.53	05/14/2014
13	\$85.53	On the Second Wednesday of each month, beginning 06/11/2014
1	\$85.25	07/08/2015

Prepayment. If you pay off early, you will not have to pay a penalty.

See the terms and conditions below for additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Promise to Pay. You promise to pay us the "Loan Amount" amount shown above ("principal"), together with interest as provided in this Agreement.

Interest Rate. You agree that we will earn interest on the principal balance at a rate of 197.60 percent per annum (197.60%) (the "Interest Rate") from the Funding Date until paid in full. Interest is computed on an actual/365 simple interest basis. This means that interest is computed by dividing the annual Interest Rate by 365, multiplying that number by the outstanding principal balance, and multiplying that number by the number of days the principal balance is outstanding. Interest will not accrue after the maturity date.

Getting Your Loan Proceeds. You may elect to receive your loan proceeds by direct deposit into your bank account, by credit to your Card, or in cash.

EXHIBIT "3"

**DOLLAR LOAN CENTER
INSTALLMENT LOAN AGREEMENT & DISCLOSURE STATEMENT**

Loan Date: 07/14/2014	Loan #:	Loan Amount: \$700.00	Maturity Date: 09/09/2015
Borrower:		SSN:	
Address:			
Co-Borrower:		SSN:	
Address:			

This is our Agreement with you regarding your loan with us. **You should read it carefully before you sign it.**

Definitions. Certain words used in this Agreement have special meanings. The word "Agreement" means this Installment Loan Agreement & Disclosure Statement. The words "you" and "your" mean the person(s) signing this Agreement. The words "we", "us" and "our" mean Dollar Loan Center, 3051 N. Rainbow Blvd., Las Vegas, NV 89108, 702-656-6666. The word "loan" means the installment loan that is described and governed by this Agreement. The word "Card" means a prepaid debit card or other stored value card issued to you. The "Funding Date" is the anticipated date that your loan proceeds will be deposited to your bank account, funded to your Card or made available in cash at our store. The words "Business Day" mean Monday through Saturday, excluding holidays. The boxed-in disclosures below are part of the terms and conditions of your agreement with us.

Itemization of Amount Financed of	\$700.00
1. Amount given to you directly	\$269.21
2. Amount paid on your account with us	\$430.79
3. Total amount financed (1+2)	\$700.00

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
195.55%	\$1,110.04	\$700.00	\$1,810.04

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are Due
1	\$129.29	08/13/2014
12	\$129.29	On the Second Wednesday of each month, beginning 09/10/2014
1	\$129.27	09/09/2015

Prepayment. If you pay off early, you will not have to pay a penalty.

See the terms and conditions below for additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Promise to Pay. You promise to pay us the "Loan Amount" amount shown above ("principal"), together with interest as provided in this Agreement.
Interest Rate. You agree that we will earn interest on the principal balance at a rate of 197.60 percent per annum (197.60%) (the "Interest Rate") from the Funding Date until paid in full. Interest is computed on an actual/365 simple interest basis. This means that interest is computed by dividing the annual Interest Rate by 365, multiplying that number by the outstanding principal balance, and multiplying that number by the number of days the principal balance is outstanding. Interest will not accrue after the maturity date.

Electing Your Loan Proceeds. You may elect to receive your loan proceeds by direct deposit into your bank account, by credit to your Card, or in cash.