IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION Appellant(s), v. DOLLAR LOAN CENTER, LLC, a DOMESTIC LIMITED-LIABILITY COMPANY, Respondent(s).	Case No. 70002 District Court No. A720959

APPELLANTS' REPLY BRIEF

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INTRODUCTION

The FID's interpretation and application of NRS 604A.480 has been uniform and consistent. If a borrower is unable to repay an original loan, then the statute provides two options: Subsection 1 allows a lender to "extend" the repayment period of the original loan through the proceeds of a new high-interest loan—but limited to an additional 60 days beyond the original term (and without any unpaid interest or accrued charges added to the principal), or Subsection 2 allows a lender to offer to refinance an original loan for a much longer term - a ***minimum*** of 150 days beyond the term of the original loan - and at an interest rate of ***up to*** 199 percent. NRS 604A.480(1). This latter option is subject to the consumer-protection restrictions in paragraphs (a) through (f). This includes the civil remedies bar in paragraph (f), which requires a lender to forgo the ability to sue on an original, defaulted loan, as well as on a new Subsection 2 loan. This is clear from the plain text of NRS 604A.480, and consistent with the Legislature's policy objective to kill predatory "back-end" lending practices that exacerbated the debt treadmill.

In contrast, Dollar Loan has advanced inconsistent or conflicting interpretations—seemingly based on its own shifting objectives, as opposed to the statute's plain language and legislative history. In appearances before the Nevada Legislature, Dollar Loan articulated the very interpretation advanced by FID in

this case. Indeed, on multiple occasions Dollar Loan testified that paragraph (f) ***categorically*** applies to ***all*** loans issued under Subsection 2.[1] Subsequently, Dollar Loan backtracked, alleging that paragraph (f) applies only to ***some*** Subsection 2 loans (if the loan is used to refinance an existing loan), but ***not*** others (if not used to refinance an existing loan).[2] Now, Dollar Loan makes a U-turn in an attempt to profit from the district court's blanket ruling that "NRS 604A.480 . . . contains no prohibition against a [lender] from initiating civil suits or alternative dispute resolution proceedings against a debtor that is in default."[3] Echoing that ruling, Dollar Loan now claims that paragraph (f) does not apply to ***any*** loan issued under Subsection 2.

Dollar Loan's reinvention of NRS 604A.480 rests on three false premises. First, Dollar Loan advances the false premise that Subsection 2 governs the

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[1] Aplt. App. DLC00392-DLC00393 (Hearing on A.B. 514 Before the Assembly Commerce Comm. 76th Leg. (Nev., April 6, 2011) (Dollar Loan describing its proposed legislation that would have "delete[d] paragraph (f) of subsection 2 of NRS 604A.480" to amend the "[c]urrent statute [which] prohibits any lender who operates by the guidelines of NRS 604A.480 from accessing civil remedy."); Aplt. App. DLC00392-DLC00393 (Hearing on A.B. 541 Before the Assembly Commerce Comm., 76th Leg. (Nev., April 6, 2011)) (Mr. Ferrari, representing Dollar Loan Center testifying that Dollar Loan was "barred by [Subsection 2] from accessing the courts for civil remedy which may be required in an instance of breach of contract or default on a loan).

[2] Aplt. App. DLC00003-DLC00004 (Complaint at ¶¶ 10-11).

[3] Aplt. App. DLC00455-DLC00456 (District Court Order).

issuance of short-term loans similar to those described in Subsection 1. To this end, Dollar Loan misquotes the statute's plain language, falsely representing that Subsection 2 applies to a loan with a term of "not ***longer*** than 150 days," where the language says just the opposite—requiring that the loan be "not ***less*** than 150 days." NRS 604A.480(2)(a)(3). Subsection 2 excepts long-term, high-interest loans—as opposed to short-term, high-interest loans—from the lending restrictions imposed by Subsection 1. This is an important distinction because it provides context for the Legislature's decision to enact the civil remedies bar at paragraph (f).

Second, Dollar Loan misstates the legislative history. It contends, for example, that the "consumer friendly" statutory terms of Subsection 2 loans were intended to "prevent the debt treadmill from ever starting." To the contrary, the Legislature recognized that the civil remedies bar in paragraph (f) is needed to ensure that a Subsection 2 loan does not exacerbate and perpetuate the debt treadmill. This is especially important where a lender—such as Dollar Loan—has used such loans to extend and refinance existing loans.[4]

Third, and finally, Dollar Loan promotes the false notion that the FID's interpretation conflicts with the statutory language, such that it is not entitled to deference. Assuming that NRS 604A.480 requires interpretation; the FID's

[4] *See* Section II, *infra*.

interpretation is consistent with its plain language and is therefore entitled to deference.

ARGUMENT

I. Paragraph (f)'s plain language applies to an outstanding and new loan.

It bears repeating that because Subsection 2 is an exception to Subsection 1, it does not operate independently of Subsection 1. In the pertinent portions, the two provisions read as follows:

> 1. ***Except as otherwise provided in subsection 2***, if a customer agrees in writing to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new . . . loan to pay the balance of the outstanding loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period . . ..
>
> 2. ***This section does not apply to a new . . . loan if the licensee***:
>
> (a) Makes the new . . . loan to a customer pursuant to a loan agreement which, under its original terms:
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> * * *
>
> (3) Requires the loan to be paid in full in not less than 150 days;
>
> * * *
>
> (f) ***Does not commence any civil action*** or process of alternative dispute resolution ***on a defaulted loan*** or ***any extension or repayment plan*** thereof.

NRS 604A.480 (emphases added). Insofar as Subsection 1 governs refinancing, it is clear that when a ***new loan*** is excepted by Subsection 2 from the refinancing conditions of Subsection 1, it must necessarily be an "extension or repayment

plan" of an outstanding or "defaulted" loan within the meaning of Subsection 1. Under the plain language of Subsection 1, a borrower and lender may agree to "extend" an outstanding loan for a single 60-day period "***by*** using the proceeds of a new . . . loan" to "pay the balance of the outstanding loan." NRS 604A.480(1) (emphasis added). Thus, contrary to Dollar Loan's argument, NRS 604A.480 expressly characterizes a "new . . . loan" to repay an "outstanding loan" as an "exten[sion]" of the original loan. *Id.*

Subsection 2 provides a circumscribed exception to the single 60-day extension rule—allowing a lender to offer a loan at a much longer term (at least 150 days beyond the original loan's term), but subject to the prescribed consumer-protection restrictions. It could not be more apparent that the Legislature considered a "new loan" to be the "extension or repayment" of an outstanding or "defaulted" loan. The civil remedies bar thus applies to both the outstanding or defaulted loan, as well as the new Subsection 2 loan (used to "extend" the "repayment" of an outstanding or defaulted loan).[5]

Dollar Loan now contends there are "four grounds" to support its most recent interpretation that paragraph (f) does not apply to either an "original loan or

[5] It bears noting that if a Subsection 1 Loan is used, a lender is not subject to the paragraph (f) civil remedies bar—undermining Dollar Loan's claim that the FID's interpretation would amount to a "blanket prohibition" against ***any*** "civil action" on a loan "under NRS 604A.480." Ans. Br. 13.

a new Subsection 2 loan."[6] First, Dollar Loan asserts that to avoid rendering paragraph (f)'s reference to an "extension or repayment plan" meaningless, Subsection 2(a)(3) must be read as requiring a new loan be "not ***longer*** than 150 days." Ans. Br. 15-16. This is a curious position for Dollar Loan to advance now, given the nature of its past lending practices (as documented in the legislative history discussed in Section II below). More importantly, it directly contradicts the text of Subsection 2, which requires that the loan be "not ***less*** than 150 days." NRS 604A.480(2)(a)(3). It is precisely for this reason that the specified consumer-protection restrictions exist in the first place. Absent the civil remedies bar, a lender could extend a defaulted payday loan by issuing a new long-term, high-interest Subsection 2 loan, and simultaneously reserve the ability to sue upon a future default—even if a borrower had paid on the new loan for years (at an interest rate of up to 199 percent). For this reason, paragraph (f)'s reference to an "extension or repayment plan" is critically important. It is Dollar Loan, not the FID, who renders it meaningless by suggesting that it excludes a "new loan" described in Subsection 2. If Dollar Loan can sue on any Subsection 2 loan (or the

[6] An original loan must be issued in conformity with NRS 604A.408. Since there are no restrictions within NRS 604A.408 prohibiting pursuit of a civil action on the original terms, one may reasonably infer that Dollar Loan is afforded the opportunity to initiate such proceedings under NRS 604A.415 to collect on defaults of the original terms as governed by NRS 604A.408, as long as Dollar Loan has not "extended" the original loan under Subsection 2 of NRS 604A.408.

original loan after a default on a Subsection 2 loan), then paragraph (f) does nothing to stop the debt treadmill. To have meaning, paragraph (f)'s litigation bar applies to both the original loan (referred to as the "defaulted loan") and the Subsection 2 refinance (referred to as the "extension or repayment plan thereof).

To Dollar Loan's second point, that NRS 604A.480 must be read as a whole, that is precisely what the reading presented by FID's opening brief does.[7] When read as a whole, the statute confirms the FID's interpretation. To further advance its strained argument that Subsection 2 imposes no continuing duty on a lender to temper its collection activities in connection with a long-term, high-interest loan, Dollar Loan misconstrues a partial excerpt from *Jordan v. N.Y. Mercantile Exch.*[8] There, the court's identification of an "active verb" ***negated*** the proposition that an

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[7] *See, e.g., Arguello v. Sunset Station, Inc.,* 127 Nev. __, __, 252 P.3d 206, 209 (2011).

[8] The court's actual reasoning is made clear by the complete quote:

> The use of "permit" rather than "propose" or a similarly active verb suggests a deliberate effort to avoid placing an affirmative duty on exchanges concerning the terms of their futures contracts.

571 F. Supp. 1530, 1536 (S.D.N.Y. 1983). At issue was whether a private damages remedy was available against the New York Mercantile Exchange for failing to amend the terms of its future contracts. The court held that it did not, in part because the ***absence*** of an "active verb" in the statute meant the exchange did ***not*** have an affirmative duty to maintain continuous observation of and take corrective action concerning its contracts.

affirmative duty was imposed. In that case, the drafter had used the word "permit" (instead of "'propose' or a similarly active verb"). Had the drafter used an "active verb" (such as "propose)," the drafter's choice of words ***would have*** suggested an affirmative obligation on the part of the licensee. Holding Dollar Loan to its assertion that "paragraphs (a) through (f)" also use "active verbs," it follows that the Nevada Legislature intended to impose continuing "future obligations" upon lenders who refinance short-term, high-interest loans with long-term, high-interest loans.

Dollar Loan's contention that the Legislature's "verb choice" dictates a purely "present obligation" is likewise misplaced. Here, as a matter of law, the present tense—"does not"—must be interpreted as including the future tense. NRS 0.030(1)(b). Moreover, paragraph (f) broadly bans "***any*** civil action" on "***any*** extension or repayment plan" for a defaulted loan. The district court's flawed reading effectively imposes a temporal restriction on paragraph (f) not found in the text. Dollar Loan compounds the district court's mistake by failing to heed its own advice to read the statute "as a whole." Ans. Br. 17. Subsection 1 makes clear that a lender may "extend the period for the repayment" of an "outstanding loan by using the proceeds of a new . . . loan to pay the balance of the outstanding

loan." Properly construed as a whole,[9] NRS 604A.480 clearly states that the "new loan" is an "extension or repayment plan" of the original "defaulted loan."[10]

Third, the 2007 amendments did not modify paragraph (f). Dollar Loan posits that adding the word "new" in other provisions "clarified which provisions ***relate solely*** to the 'new' [loan]." Ans. Br. 20. Of course, paragraph (f) does not "relate solely" to a new Subsection 2 loan - instead the bar applies both to an original or "defaulted" loan, as well as to a new loan. Had the intent been to limit the bar to an "outstanding loan," as Dollar Loan speculates, then the drafter could have used the same terminology in Subsection 1 to limit paragraph (f) to an "outstanding loan." That the drafter declined to use parallel terminology, adopting instead the term "new loan" in other parts of Subsection 2 but not paragraph (f),

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[9] *State Tax Commission ex rel. Nevada Department of Taxation v. American Home Shield of Nevada, Inc.*, 127 Nev. 382, 386, 254 P.3d 601, 604 (2011) (internal citations omitted).

[10] Notably, the term "loan" itself includes "any [related] extension or repayment plan." NRS 604A.080.

further demonstrates the Legislature's intent under paragraph (f) to impose restrictions upon the collection of ***both*** the new Subsection (2) loan and the ***existing*** "defaulted" loan that it extends or refinances.[11]

Finally, the FID's interpretation does not lead to absurd results. Ans. Br. 21. Instead, it would be unreasonable to affirm the district court's erroneous reading of paragraph (f), which would render the civil action ban a mere "condition precedent" to be met ***before*** a Subsection 2 loan is issued. Such a reading is not even consistent with Dollar Loan's concession, in its original complaint, that paragraph (f) does bar the use of litigation as a collection remedy when a lender elects to use the refinance option in Subsection 2.[12] This does not, as Dollar Loan now argues, unreasonably eliminate a lender's "incentive to refinance an original loan." Ans. Br. 21. A lender that wants to retain its ability to sue for amounts due on an existing loan, or for additional amounts that may accrue in connection with a

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[11] *Lorton v. Jones*, 130 Nev. __, __, 322 P.3d 1051, 1056 (2014) (the drafter's choice of different and distinct terms in different places or sentences carries with it a presumption that the different terms denote different ideas); *S.E.C. v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003) (embracing the "well-established canon of statutory interpretation" that the use of different words or terms within the same statute demonstrates the intention by the legislature to convey different meanings for those words, and a "decision to use one word over another...is material").

[12] Aplt. App. DLC00003-DLC00004 (Complaint at ¶ 9) ("NRS 604A.480 bars a licensee from commencing a civil action . . . upon the default of a loan that has been renewed, refinanced, or consolidated under NRS 604A.480(2), and in which its proceeds are used to repay a prior loan underwritten by the licensee.").

future default on an extension or repayment plan, may offer to refinance the existing loan under Subsection 1 (subject to among other things, the 60-day limitation); a lender that wants to take advantage of an unlimited term Subsection 2 loan, at an interest rate of up to 199 percent, forgoes the right to commence a civil action but gains the ability to profit significantly from conscientious borrowers who are concerned about rebuilding a solid credit rating.[13] While Dollar Loan may not see Subsection 2 loans as an attractive financial product given the Legislature's bar on a judicial remedy, obviously other lenders did, which is why they asked for Subsection 2 to be added to NRS 604A.480. *See* Op. Br. at 7-8 (providing the legislative history). Dollar Loan does not and cannot explain why it would be reasonable (or consistent with the plain language) to upset the existing balance between Subsections 1 and 2, and instead incentivize lenders to extend a defaulted loan by issuing a new Subsection 2 loan while simultaneously reserving the ability to sue upon a future default—even if a borrower has paid on the new loan for years (at an interest rate of up to 199 percent).[14]

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[13] NRS 604A.480(2)(f).

[14] Relatedly, Dollar Loan's argument that the FID's interpretation renders part of paragraph (f) meaningless has no merit. Ans. Br. at 15-17. As noted above, reading NRS 604A.480 as a whole—that is, reading Subsection 2 consistently with Subsection 1—the term "defaulted loan" in paragraph (f) refers to the original "outstanding loan," while the term "any extension or repayment plan thereof" refers to the Subsection 2 loan that "extends" the original loan. Thus, paragraph (f) bans suits for default on ***both*** the Subsection 2 loan and the loan it refinanced.

II. Dollar Loan's interpretation flies in the face of the legislative history.

Dollar Loan's arguments regarding the statutory language are further undermined by the legislative history—both as to the meaning of paragraph (f), as well as the requirements under Subsection 2. Before addressing the former, however, the Court should not be misled by Dollar Loan's repeated claim that a Subsection 2 loan, by itself, will "prevent the debt treadmill from ever starting." Ans. Br. 25. In this regard, Dollar Loan cites legislative excerpts to support its inaccurate assertions that a Subsection 2 loan cannot be "longer than 150 days," and "cannot be extended." Ans. Br. 15-17. However, in citing the legislative history - including the Senate committee hearings on S.B. 123 in 2015—Dollar Loan neglects to mention a series of Subsection 2 loans it issued over several months in 2014.[15] Specifically, the following three loans were all issued to the same borrower:

- Loan #1—a 15-month Subsection 2 loan issued by Dollar Loan in March for $960, at 195 percent interest (monthly installments of $175 totaling $2,622 if all payments were made).

- Loan #2—a second 15-month Subsection 2 loan for $490 (a car title loan), which the borrower used to pay down the outstanding balance of Loan #1 (monthly installments of $85 totaling $1,283 if all payments were made).

[15] Hearing on S.B. 123 Before the Senate Commerce Comm., 78th Leg., Exhibit 1 (Nev., Feb. 13, 2015).

- Loan #3—a third 15-month Subsection 2 loan, this time for $700, which the borrower used to pay off the outstanding balance of Loan #2, while also receiving $269 in new funds (monthly installments of $130 totaling $1,810 if all payments were made).

The original terms of the loans were "longer than 150 days" despite Dollar Loan's position that Subsection 2 establishes an outside limit of 150 days. Moreover, as presented to the Legislature, Loans #2 and #3 were used to "extend the period for the repayment" of an "outstanding loan" by using the new loans to "pay the balance of the outstanding loan." Attempting to defend the district court's ruling, Dollar Loan now denies that paragraph (f)'s litigation bar applies to any of these Subsection 2 loans—neither Loans #2 and #3 that were used to refinance an existing loan, or Loan #1 that was not used to refinance an existing loan.[16] However, these loans resulted in the precise situation Dollar Loan describes as the debt treadmill—where, in its words, a "borrower takes out one loan to pay off another, then takes out a third loan to pay off the second and so on." Ans. Br. 25. It is telling that Dollar Loan is now forced to pretend otherwise.

It is against this backdrop that Dollar Loan's other claims regarding the legislative history should be evaluated—turning first to the claim that the legislative history from 2005 and 2007 "defeats the FID's argument." Ans. Br. 22. As originally introduced, NRS Chapter 604A contained only the single 60-day

[16] Aplt. App. DLC00455-DLC00456 (District Court Order).

refinancing rule now contained in Subsection 1.[17] However, Subsection 2 was ultimately included in order to accommodate a subset of payday lender who, in entering into longer-term refinancing arrangements, would contractually agree to forego any civil action against their customers in the event of a default.[18] In this regard, the explicit goal in adopting the statute was to "create a more level and legitimate playing field for lenders, curb unscrupulous and egregious practices, provide remedies for those who have fallen victim to both licensed and unlicensed lenders and protect consumers from being trapped on a debt treadmill."[19] This was made abundantly clear in 2007, when the Legislature adopted further limitations in Subsection 1, prohibiting a lender from adding to the principal amount of the new loan any unpaid interest or other charges that accrued during the original term of the loan or any extension of the outstanding loan.[20] Clearly, nothing in this legislative history "defeats the FID's argument" that consistent with its plain

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[17] Aplt. App. DLC00351-DLC00352 (Proposed Amendment to A.B. 385, May 6, 2005).

[18] Aplt. App. DLC00279 (Hearing on A.B. 384 Before the Assembly Commerce Comm., 73rd Leg. (Nev., May 6, 2005)) ("Moneytree is one of the companies that does not sue and it states in our loan agreement that we will not take civil action.").

[19] Aplt. App. DLC00266 (Hearing on A.B. 384 Before the Assembly Commerce Comm., 73rd Leg. (Nev., May 6, 2005)).

[20] A.B. 478, 74th Leg. (Nev., 2007).

language paragraph (f) broadly bans "***any*** civil action" to collect amounts owed under "***any*** extension or repayment plan" of a defaulted loan.

Next, Dollar Loan asserts that the 2013 legislative history reflects an intent to allow a Subsection 2 lender to collect a fee after a default through the use of a civil action. Ans. Br. 23. Nothing could be further from the truth. During the 2013 Legislature Dollar Loan offered the following amendment to paragraph (f):

> ***Where a prior loan has been refinanced using the proceeds of a new deferred deposit loan or high interest loan,*** ~~[Does]~~ does not commence any civil action or process of alternative dispute resolution on ~~[a defaulted]~~ ***the prior*** loan or any extension or repayment plan thereof."[21]

In explaining the reason for this proposal Dollar Loan's representative testified that Dollar Loan "is a lender under [NRS 604A.480] and is barred from access to civil

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[21] Proposed Conceptual Amendment to AB 430 Submitted by Chris Ferrari; Assembly Committee on Commerce & Labor (March 29, 1013). Previously, during the 2011 session, Dollar Loan's representative had testified as follows:

> Businesses which are licensed under Nevada Revised Statutes (NRS) 604A.480 are the only businesses in the state that are barred by statute from accessing the courts for civil remedy which may be required in an instance of breach of contract or default on a loan. We met with the Legislative Counsel Bureau's (LCB) Legal Division late last year, and our counsel interpreted that, based on the way the statute is written, we are not able to access civil remedies as any other business would.

A. B. 541, Assembly Committee on Commerce and Labor (Ferraro testimony) (April 6, 2011) p. 8.

remedy." Accordingly, through the proposed amendment, Dollar Loan requested the "ability to pursue civil remedy."[22] The Legislature did not adopt Dollar Loan's proposed amendment.

Finally, Dollar Loan infers that the 2015 Legislature effectively adopted its prior proposal by rejecting its next attempt to change the law in its favor. In 2015, Dollar Loan proposed that the civil remedies bar in paragraph (f) be deleted completely. Again, Dollar Loan's representative conceded that paragraph (f) bars any lender who operates by the guidelines of NRS 604A.480(2) from "accessing the courts for civil remedy which may be required in an instance of breach of contract or default on a loan."[23] And again, the Legislature did not adopt Dollar Loan's proposed amendment.

III. The FID's prior determination is entitled to deference.

The FID, of course, concurs that this Court does "review questions of statutory construction *de novo*." It does, however, dispute Dollar Loan's contention that this Court's decision in *Dept. of Business and Indus. v. Granite*

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[22] Hearing on A.B. 430 Before the Assembly Commerce Comm., 77th Leg. (Nev., March 29, 2013)).

[23] *Id.* (Dollar Loan's representative testifying that its counsel had "interpreted the statute as written to say that it would violate the statute to take that [civil] action on a defaulted Subsection 2 loan]").

Const. Co.,[24] undercuts the deference that is owed to FID's prior interpretation of paragraph (f). Ans. Br. 28. The *Granite Const.* case involved an interpretation by an administrative agency (the labor commission) of the statutory term "at the site of the work," as it applied to the scope of Nevada's prevailing wage law. The commission interpreted the term broadly to include "all locations where workers perform work necessary to the execution of a public works contract," including "transporting materials to and from such locations." Under this interpretation, workers "transporting materials" qualified for the prevailing wage.[25] Ruling in favor of the commission, this Court held that the agency's determination was "supported by substantial evidence, did not violate [the statute], and is therefore entitled to deference."[26]

There is nothing in the holding of *Granite Const.* to suggest the FID's prior interpretation is not entitled to similar deference in this case. Indeed, the FID is an "administrative agency charged with the duty of administering an act," and thus "impliedly clothed with the power to construe the relevant laws." And, the FID has issued a prior interpretation concluding that the civil remedies bar in paragraph

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[24] 118 Nev. 83, 90, 40 P.3d 423, 428 (2002).

[25] *Id.* The regulated contractor, in contrast, interpreted the term narrowly to include only the "physical site of the public work being constructed," which would exclude workers "transporting materials to and from such locations." *Id.*

[26] *Id.*

(f) is generally applicable to loans made under Subsection 2. While that administrative determination did not involve factual findings, Dollar Loan has not shown that the FID's interpretation conflicts with the statutory language. Since it is entirely consistent with the plain language of NRS 604A.480, the FID's reasonable "administrative statutory construction" should not be "readily disturbed."[27]

CONCLUSION

The district court erred in ruling that NRS 604A.480 "contains no prohibition against a [lender] for initiating civil suits or alternative dispute resolution proceedings against a debtor that is in default," and should be reversed.

Respectfully submitted.

Dated: December 19, 2016

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[27] *Westergard v. Barnes*, 105 Nev. 830, 834, 784 P.2d 944, 947 (1989).

CERTIFICATE OF COMPLIANCE

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

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 pt. Times New Roman; or

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

. . . ..

. . . .

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted,

Dated: December 19, 2016.

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CERTIFICATE OF SERVICE

(X) I hereby certify that I electronically filed the foregoing APPELLANTS' REPLY BRIEF with the Clerk of the Court by using the electronic filing system on the 19TH day of December, 2016. The following participants in this case are registered electronic filing systems users and will be served electronically:

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