IN THE SUPREME COURT OF THE

STATE OF NEVADA

THE STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION, Appellant, vs. DOLLAR LOAN CENTER, LLC, a DOMESTIC LIMITED-LIABILITY COMPANY, Respondent.	**Supreme Court No. 70002** District Court Case No.: A720959

RESPONSE TO APPELLANT'S NOTICE OF CLARIFICATION

Patrick J. Reilly, Esq.
Nevada Bar No. 6103
Erica C. Smit, Esq.
Nevada Bar No. 13959
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
Email: preilly@hollandhart.com
ecsmit@hollandhart.com

Attorneys for Respondent

Respondent Dollar Loan Center ("DLC") objects to appellant State of Nevada, Department of Business and Industry, Financial Institutions Division's (the "FID") Notice of Clarification ("Notice"). The FID's Notice requests that this Court make clear that NRS 604A.480(2)(f) precludes "a lender from commencing any civil action or process of alternative dispute resolution against a consumer who defaults on *any* sub 2 loan—whether issued as a *new* loan or a *refinance* loan." The FID's request, which was made after all briefing and oral argument has been completed, seeks to broaden the scope of any potential holding of this Court and is improper.

The FID argues that its Notice is necessary because "at certain times during oral argument, the parties and member of the Court referred to sub 2 loans as simply refinance loans." But this is not the only time Subsection 2 loans have been referred to as "refinance" loans. Rather, in the FID's opening brief, it identified the question posed to this Court as: "whether subsection 2(f) of NRS 604A.480 means what it says when it denies payday lenders the right to sue consumers who default on a *refinancing* loan." AOB 1 (emphasis added). Throughout its brief, the FID referred to Subsection 2 loans only as refinance loans.[1]

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[1] *See also* AOB 3; AOB 9 ("In short, lenders understood that if they refinanced loans under Subsection 2, they were foregoing civil action in favor of charging interest up to 199 percent for a longer time period."); AOB 16 ("Dollar Loan appears to have conceded that the civil remedies bar was deliberately designed to prohibit a legal remedy if the lender elects to use the *refinance* option

The FID's Notice—and its arguments before this Court—were extremely troubling. For at least ten (10) years, the FID has regulated "Subsection 2 loans" regardless of whether they were "refinance" loans or loans being offered to a customer for the first time. Moreover, the FID has been well aware for the last decade that DLC has offered both kinds of loans under Subsection 2, and has blessed that approach in its examinations of DLC over the years; yet, at oral argument, the FID suddenly seems to take a different approach. More frustrating is that the FID cast numerous aspersions in its briefing and at oral argument suggesting that DLC somehow misled or "confused" District Court Judge Denton (during a voluntary good-faith Chapter 29 proceeding no less) after DLC was told by the LCB and the Legislature that NRS 604A.480 did not prohibit the commencement of a civil action on the kinds of loans DLC underwrites.

By its plain language, there are distinctions in Subsection 2 for loans offered as an original loan and a refinance loan. In its opening brief, the FID offers the following interpretation of a Subsection 2 loan: "A Subsection 2 loan must be considered an 'extension or repayment plan' of a 'defaulted' payday loan if Subsection 2 of NRS 604A.480 is to be read consistently with Subsection 1." AOB 22. Now, however, in its Notice, the FID says that original loans and refinance loans should be treated the same. But, how can an original loan be considered an

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in Subsection 2." (emphasis added)); AOB 21 ("[U]nder Subsection 2, a lender is permitted to offer to refinance an original loan . . . .").

"extension or repayment plan" when it is being offered for the first time to a consumer? Accordingly, the FID's interpretation cannot be easily reconciled with its request in its Notice.

DLC's principal objection to the FID's Notice is related to the lack of briefing on this issue. As briefly mentioned, the statutory interpretation of subparagraph 2(f) may change depending on the loan being offered. Because the parties' briefing below and on appeal do not adequately address the distinctions between "refinance" loans and loans being offered for the first time under Subsection 2, the FID's requested expansion of this appeal's issue presented[2] should be rejected. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). Alternatively, if this Court is inclined to address this issue, DLC respectfully requests that this Court order supplemental briefing so DLC has an adequate opportunity to address the FID's argument that new loans and refinance loans should be treated the same.

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[2] The fact the FID is attempting to broaden the issue presented in its Notice is even more troubling in light of the fact the issue presented is not clear to this Court, as demonstrated by Justice Hardesty's question of counsel, "What question are we answering here?"

DLC thanks this Court for its time and attention to this matter.

DATED this 19th day of June 2017.

Patrick J. Reilly, Esq.
Erica C. Smit, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I electronically filed the forgoing **RESPONSE TO APPELLANT'S NOTICE OF CLARIFICATION** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on June 19, 2017.

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

Adam Paul Laxalt
William J. McKean
David Pope
Vivienne Rakowsky
Rickisha Hightower-Singletary
Lawrence VanDyke
STATE OF NEVADA,
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
Email: wmckean@ag.nv.gov
dpope@agn.nv.gov
vrakowsky@ag.nv.gov
rsingletary@ag.nv.gov
lvandyke@ag.nv.gov

Attorney for Appellant

Dan L. Wulz, Esq.
Tennille K. Pereira, Esq.
Barbara E. Buckley, Esq.
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd.
Las Vegas, Nevada 89104
Email: dwulz@lacsn.org

Attorneys for Legal Aid Center of Southern Nevada, Inc.

Susan Thompson
An Employee of Holland & Hart LLP

9934842_1