

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Respondent(s),  
v.

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

Appellant(s).

Electronically Filed  
Apr 19 2018 08:03 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 74335

District Court No. A-16-743134-J

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APPELLANT'S APPENDIX

VOLUME 1 of 75

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<b>DOCUMENT</b>	<b>VOL.</b>	<b>BATES NO.</b>
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Notice of Intent to Participate, September 19, 2016	1	000024 - 000026
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Errata to TitleMax's Memorandum in Support of Motion for Partial Stay, October 18, 2016	4	000791 - 000793
Petitioner's Notice of Transmittal of Record of Proceedings, October 18, 2016	4 - 8	000794 - 001588

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Errata to Opposition to Motion for Partial Stay, November 3, 2016	73	017099 - 017104
Order Granting Motion for Partial Stay of Administrative Order, November 22, 2016	73	017105 - 017108
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Errata to Transmittal of Record on Appeal, January 27, 2017	73	017184 - 017187
Respondent's Answering Brief, February 6, 2017	73	017188 - 017214
Reply in Support of Memorandum of Points and Authorities in Support of Petition for Judicial Review, March 6, 2017	73	017215 - 017243
Request for Hearing, March 17, 2017	73	017244 - 017246
Supplemental Authorities, March 24, 2017	73	017247 - 017260
Errata to Opposition to Motion to Extend Partial Stay, April 4, 2017	73	017261 - 017264

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Declaration of Stephen Michael Paris Regarding Information Fields, May 31, 2017	74	017362 - 017365
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<b>DOCUMENT</b>	<b>VOL.</b>	<b>BATES NO.</b>
Order Granting in Part and Denying in Part Motion for Supplemental Relief, January 10, 2018	75	017588 - 017591
Notice of Entry of Order Granting in Part and Denying in Part Motion for Supplemental Relief, January 11, 2018	75	017582 - 07599

## DISTRICT COURT CIVIL COVER SHEET

A - 1 6 - 7 4 3 1 3 4 - J

County, Nevada

X V

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): TITLEMAX OF NEVADA, INC. and TITLEBUCKS d/b/a TITLEMAX a Nevada corporation	Defendant(s) (name/address/phone): STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION,
Attorney (name/address/phone): Patrick J. Reilly Esq., Holland & Hart LLP 9555 Hillwood Drive, Second Floor, Las Vegas, NV 89134 Tel: (702) 669-4600; Fax: (702) 669-4650 Email: preilly@hollandhart.com	Attorney (name/address/phone): David J. Pope/ Sr. Deputy Attorney General 555 E. Washington Ave., Suite 3900 Las Vegas, NV 89101 Tel: (702) 486-3420; Fax: (702) 486-3416

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input checked="" type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

September 8, 2016

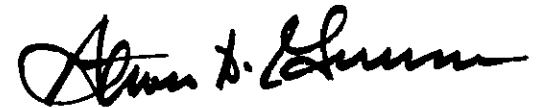
Date

/s/ Patrick J. Reilly

Signature of initiating party or representative

See other side for family-related case filings.

APP 000001



CLERK OF THE COURT

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9 *Attorneys for Petitioners*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 TITLEMAX OF NEVADA, INC. and  
13 TITLEBUCKS d/b/a TITLEMAX, a Nevada  
corporation,

14 Petitioner,

15 vs.

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

18 Respondent.

Case No. : A - 1 6 - 7 4 3 1 3 4 - J

Dept. No.: XV

**PETITION FOR JUDICIAL REVIEW**

20 **PETITION FOR JUDICIAL REVIEW**

21 Petitioner TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax"), by  
22 and through its attorneys of record, the law firm of Holland & Hart LLP, and pursuant to NRS  
23 233B.130, hereby requests judicial review of the Findings of Fact, Conclusions of Law, and  
24 Order (the "Decision") by the Honorable Administrative Law Judge Denise S. McKay of the  
25 Department of Business & Industry, which was filed on August 12, 2016. A copy of the  
26 Decision is attached hereto as **Exhibit "1"**.

27 Jurisdiction with this Court is proper pursuant to NRS 233B.130, as the Decision is final  
28 and not reviewable by any other administrative body. Venue is proper under NRS



1 233B.130(2)(b) (“Petitions for judicial review must . . . [b]e instituted by filing a petition in the  
2 district court . . . in and for the county where the agency proceeding occurred.”).

3 TitleMax appeals the Findings of Fact, Conclusions of Law, and Order in the Decision,  
4 and any and all interlocutory orders giving rise to the Decision. While the Department of  
5 Business & Industry is required to transmit the record of proceedings to this Court and there is  
6 no requirement for TitleMax to designate portions of the record, TitleMax requests that a  
7 complete copy of the transcript of the proceedings, together with copies of all documents  
8 provided by Petitioner to the Board in this matter, as well as copies of legal briefings and  
9 correspondence with the Administrative Law Judge, be included in the record for review by this  
10 Court.

11 Finally, TitleMax will be filing a memorandum of points and authorities pursuant to NRS  
12 233B.133 within the time required by that statute following notice to the undersigned of  
13 transmission of the record of the proceedings to this Court. This “Petition” is the appellate  
14 notification required to commence the appeal and judicial review, and should not be construed as  
15 TitleMax’s memorandum of points and authorities under NRS 233B.133.

16 The undersigned affirms that the foregoing does not contain the social security number of  
17 any person.

18 DATED this 8th day of September, 2016.

19  
20  
21 /s/ Patrick J. Reilly  
Patrick J. Reilly, Esq.  
Joseph G. Went, Esq.  
Nicole E. Lovelock, Esq.  
HOLLAND & HART LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134

22  
23  
24 *Attorneys for Petitioner*

# **EXHIBIT “1”**

1                                   **BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY**  
2   **LAS VEGAS, NEVADA**  
3

4   IN THE MATTER OF:

5   FINANCIAL INSTITUTIONS DIVISION,

6                                   Claimants,

7                                   v.

8   TITLEMAX OF NEVADA, INC. AND  
9   TITLEBUCKS D/B/A TITLEMAX,

10                                  Respondents.  
11

**FINDINGS OF FACT, CONCLUSIONS**  
                                  **OF LAW, AND ORDER**

12                   This is a contested case between Claimant, the Financial Institutions Division of  
13   the Nevada Department of Business & Industry (FID), and Respondent, TitleMax of  
14   Nevada, Inc. and TitleBucks d/b/a TitleMax (TitleMax).

15   **I.       PROCEDURAL BACKGROUND**

16                   FID commenced this administrative action under NRS 233B.121 with the  
17   issuance of an Administrative Complaint for Disciplinary Action and Notice of Hearing  
18   ("Complaint") against TitleMax on October 6, 2015. FID alleged that TitleMax was in  
19   violation of several provisions of NRS Chapter 604A and sought the imposition of fines,  
20   the issuance of a cease and desist order as to the violative practices, the return to  
21   customers of certain funds derived as a result of the violative practices, and the  
22   imposition of all administrative costs incurred as a result of bringing this action. The  
23   Complaint scheduled a hearing date of October 27, 2015.

24                   On October 8, 2015, this matter was assigned to an Administrative Law Judge  
25   following FID Commissioner George Burns's disqualification pursuant to NRS  
26   233B.122.

27                   On October 20, 2015, FID issued an Amended Notice of Hearing on  
28   Administrative Complaint for Disciplinary Action, rescheduling the hearing date to

1 November 5, 2015.

2 On October 26, 2015, TitleMax filed its Answer to Administrative Complaint.

3 On October 27, 2015, a status check was held, which counsel for both parties  
4 attended.

5 On October 29, 2015, a Procedural Order was issued vacating the November 5,  
6 2015, hearing date and directing the parties to exchange lists of proposed exhibits and  
7 witnesses and FID to disclose the type and amount of penalties it sought. The  
8 Procedural Order also directed the parties to submit a joint evidentiary packet and  
9 permitted the filing of briefs by December 18, 2015.

10 On December 9, 2015, TitleMax filed a request for a motion in limine precluding  
11 FID from admitting into evidence any documents not disclosed by November 13, 2015.  
12 FID filed an opposition to TitleMax's motion on February 11, 2016. TitleMax filed its  
13 reply in support on March 10, 2016.

14 Also on December 9, 2015, FID requested a 30-day extension to the deadline  
15 for the parties' submission of the joint evidentiary packet and briefing.

16 On December 11, 2015, an order was issued granting the requested extension,  
17 setting January 18, 2016, as the deadline for the parties' submission of the joint  
18 evidentiary packet and briefing.

19 On January 14, 2016, the parties jointly requested an extension to the deadline  
20 for their submission of the joint evidentiary packet and briefing to February 12, 2016.

21 On January 15, 2016, an order was issued granting the requested extension,  
22 setting February 12, 2016, as the deadline for the parties' submission of the joint  
23 evidentiary packet and briefing.

24 On February 12, 2016, both parties submitted their prehearing briefs. Also on  
25 February 12, 2016, the parties jointly requested an extension to the deadline for their  
26 submission of the joint evidentiary packet to February 24, 2016.

27 Also on February 12, 2016, TitleMax filed a Motion for Declaration Regarding  
28 Interpretation of Nevada Law and a Motion for Declaratory Ruling and to Stay

1 Deadlines. FID filed its opposition to the latter motion on February 24, 2016. TitleMax  
2 filed its replies in support on March 10, 2016.

3 On February 16, 2016, an order was issued granting the requested extension,  
4 setting February 24, 2016, as the deadline for the parties' submission of the joint  
5 evidentiary packet.

6 On February 24, 2016, the parties requested an extension to the deadline for  
7 their submission of the joint evidentiary packet.

8 On February 26, 2016, an order was issued granting the requested extension,  
9 setting March 30, 2016, as the deadline for the parties' submission of the joint  
10 evidentiary packet.

11 On March 18, 2016, an Order Denying TitleMax's Motion for Declaratory Ruling  
12 and to Stay Deadlines was issued.

13 On March 29, 2016, TitleMax filed a Motion for Clarification of the March 18,  
14 2016, order. On April 4, 2016, FID filed its opposition to the Motion for Clarification. On  
15 April 18, 2016, TitleMax filed its reply in support of its Motion for Clarification.

16 On March 30, 2016, the parties submitted their joint evidentiary packet.

17 On April 4, 2016, an Order Setting PreHearing Conference was issued,  
18 scheduling a prehearing conference with all parties for April 27, 2016.

19 On May 13, 2016, a Procedural Order was issued following the prehearing  
20 conference. This Order resolved all pending motions as follows: 1) TitleMax's Motion  
21 for Clarification was denied; and 2) TitleMax's Motion for Order in Limine was granted  
22 in part, holding that FID was permitted to use as exhibits at the hearing only those  
23 documents it disclosed to TitleMax by November 16, 2015. The Procedural Order also  
24 scheduled the matter to proceed to hearing beginning July 18, 2016.

25 On June 14, 2016, FID filed a Motion to Admit Division's Exhibit A and  
26 Summaries of Exhibit A pursuant to NRS 52.275. On June 20, 2016, TitleMax indicated  
27 that it had no opposition to FID's Motion. On June 24, 2016, an Order Deeming  
28

1 Documents Admitted was issued.<sup>1</sup>

2 On July 18, 2016, this matter proceeded to hearing. At hearing, the following  
3 witnesses were called and questioned under oath: Harveen Sekhon, Andrea Bruce,  
4 Ma. Theresa Dihianson, George Burns, and Theodore ("Ted") Helgesen. The parties  
5 stipulated to the admission into evidence of all marked exhibits, amounting to more than  
6 10,000 documents. The hearing concluded on July 20, 2016.

## 7 **II. FINDINGS OF FACT**

8 TitleMax is licensed under NRS Chapter 604A. As a licensee, TitleMax is subject  
9 to the provisions of NRS Chapter 604A and Nevada Administrative Code (NAC) 604A.

10 FID conducts annual examinations of each of its licensees. Each licensee  
11 receives one of three ratings at the conclusion of each examination: Satisfactory, Needs  
12 Improvement, or Unsatisfactory. If a licensee receives a Satisfactory rating, FID will  
13 usually examine it again after one year. If a licensee receives a Needs Improvement  
14 rating, FID asks the licensee to respond in writing within 30 days with the steps it intends  
15 to take to remedy the problems identified, and then FID will usually re-examine it six  
16 months later. If a licensee receives an Unsatisfactory rating, FID asks the licensee to  
17 respond in writing within 30 days with the steps it intends to take to remedy the problems  
18 identified, and then FID will usually re-examine it three to six months later.

19 FID commenced an annual examination of TitleMax on August 6, 2014, which  
20 concluded on December 18, 2014 ("2014 Examination").<sup>2</sup> As a result of this examination,  
21 FID assigned TitleMax a "Needs Improvement" rating, noting several alleged violations  
22 of Nevada law.<sup>3</sup> Specifically, FID noted that TitleMax allowed people who were not on  
23 vehicle titles to become co-borrowers on title loans in contravention of NAC 604A.230,  
24 NRS 604A.105, and NRS 604A.115 and TitleMax offered an agreement titled "Grace

25 <sup>1</sup> At the hearing, TitleMax moved for the admission of proposed Exhibit 104, a summary of errors contained  
26 in FID's Summaries of Exhibit A document. FID opposed the admission of TitleMax's proposed Exhibit  
27 104, contending that it was filed untimely and did not contain any relevant or material information. FID  
28 stated that it would prepare and file an errata to its Summaries of Exhibit A, correcting any typographical  
errors contained therein. FID did not file such an errata. Given that the conclusions reached in this Order  
did not require reliance on FID's Summaries of Exhibit A document, TitleMax's motion to admit proposed  
Exhibit 104 is denied as unnecessary.

<sup>2</sup> FID Ex. B (00008565-00008581).

<sup>3</sup> FID Ex. B (00008577).

1 Period Payments Deferment Agreement" ("GPPDA") in contravention of NRS  
2 604A.445.<sup>4</sup> Examiners from FID and representatives from TitleMax attended a meeting  
3 to discuss the examination before its completion on October 7, 2014.<sup>5</sup> Examiners from  
4 FID and representatives from TitleMax also took part in a telephonic exit interview at the  
5 conclusion of the examination on December 18, 2014.<sup>6</sup>

6 On February 9, 2015, TitleMax, through its counsel, authored a letter addressed  
7 to Ma. Theresa Dihiansan, an Examiner III with the FID.<sup>7</sup> This 10-page letter set forth  
8 the bases for TitleMax's disagreement with the violations of Nevada law FID cited in its  
9 2014 Examination. On March 2, 2015, FID responded through its counsel.<sup>8</sup> FID's letter  
10 in response did not substantively address TitleMax's dispute of the alleged violations of  
11 NAC 604A.230, NRS 604A.105, NRS 604A.115, and NRS 604A.445.<sup>9</sup> FID summarily  
12 stated that it "st[ood] by its position" with regard to those issues.<sup>10</sup>

13 FID commenced a follow-up examination of TitleMax on May 22, 2015, which  
14 concluded on June 17, 2015 ("2015 Examination").<sup>11</sup> FID assigned TitleMax an  
15 "Unsatisfactory" rating, noting several repeat violations of Nevada law.<sup>12</sup> Specifically,  
16 FID noted that TitleMax was still offering the GPPDA to customers in contravention of  
17 NRS 604A.445.<sup>13</sup> FID noted that it found no instances in which TitleMax allowed  
18 individuals who were not on a vehicle's title to become co-borrowers on the title loan  
19 using the vehicle as collateral, and therefore the Report of Examination for the 2015  
20 Examination deemed that violation rectified.<sup>14</sup> Examiners from FID and representatives  
21 from TitleMax participated in a telephonic exit interview on June 17, 2015.<sup>15</sup>

22 On June 1, 2015, TitleMax commenced an action for declaratory relief in  
23 Nevada's Eighth Judicial District Court. (Case No. A-15-719176). In the lawsuit, TitleMax

24 <sup>4</sup> FID Ex. B (00008574-00008577).

25 <sup>5</sup> FID Ex. B (00008580).

26 <sup>6</sup> FID Ex. B (00008573).

27 <sup>7</sup> TitleMax Ex. 85 (TMX 85-00001-00012).

28 <sup>8</sup> TitleMax Ex. 86 (TMX 86-00001-00003).

<sup>9</sup> TitleMax Ex. 86 (TMX 86-00003).

<sup>10</sup> TitleMax Ex. 86 (TMX 86-00003).

<sup>11</sup> FID Ex. C (00008582-00008594).

<sup>12</sup> FID Ex. C (00008591).

<sup>13</sup> FID Ex. C (00008588).

<sup>14</sup> FID Ex. C (00008588).

<sup>15</sup> FID Ex. C (00008588).

1 requested a declaration 1) that an individual may be a co-borrower on a title loan without  
2 violating NAC 604A.230 when said individual is not listed on the title of the vehicle  
3 associated with the loan; and 2) interpreting NRS 604A.210 and NRS 604A.445.

4 On July 13, 2015, counsel for FID authored an email to counsel for TitleMax to  
5 ask if TitleMax would agree to convert its action for declaratory relief to an action  
6 pursuant to NRS Chapter 29 in which the parties stipulate to having a good faith  
7 controversy about their rights and seek a judicial declaration.<sup>16</sup> At some point after July  
8 23, 2015, TitleMax declined to agree to convert its declaratory relief action to a Chapter  
9 29 action.<sup>17</sup>

10 On October 6, 2015, FID commenced this administrative action against TitleMax  
11 with the issuance of its Complaint.

12 TitleMax stopped offering the GPPDA on new loans in December of 2015.

13 TitleMax stopped allowing non-legal owners to become parties to title loans in the  
14 summer of 2015 because, as testified to by Ted Helgesen, the Department of Motor  
15 Vehicles stopped allowing TitleMax to perfect its liens unless all parties to the title loan  
16 contract were also on the vehicle title.

17 **A. Findings of Fact Particular to the Issues Presented by the GPPDA**

18 Under NRS 604A.445, title lenders may offer two types of title loans to customers:  
19 (1) a 30-day loan that may be extended for up to six additional 30-day periods (NRS  
20 604A.445(1)-(2)); and (2) a 210-day loan that may not be extended. (NRS 604A.445(3)).  
21 TitleMax offers its customers the 210-day loan only.

22 When a customer desires to enter into a 210-day title loan with TitleMax, the  
23 customer signs an agreement titled "Title Loan Agreement."<sup>18</sup> This agreement provides  
24 that the customer will make payments on the loan in seven installments scheduled 30  
25 days apart, with each payment ratably and fully amortized such that the principal and  
26 interest will be paid in full on the date of the seventh payment.<sup>19</sup> The agreement informs  
27 the customer that the principal amount of the loan will be subject to simple interest

28 <sup>16</sup> TitleMax Ex. 98 (TMX 98-00001-00004).

<sup>17</sup> TitleMax Ex. 98 (TMX 98-00001-00004).

<sup>18</sup> TitleMax Ex. 91 (TMX 91-001-003).

<sup>19</sup> TitleMax Ex. 91 (TMX 91-001-003).



1 calculated daily.<sup>20</sup> A Truth-In-Lending Act (TILA) disclosure accompanies the  
2 agreement.<sup>21</sup> The TILA disclosure sets forth the annual percentage rate applicable to  
3 the loan, the projected finance charge, the amount financed, and the projected total of  
4 payments.<sup>22</sup> The TILA disclosure contains a projection of the total amount the customer  
5 will pay in finance charges assuming the customer makes each payment on its due  
6 date.<sup>23</sup>

7 FID admits that the Title Loan Agreement complies with Nevada law.<sup>24</sup>

8 At the time the customer enters into the Title Loan Agreement, TitleMax staff  
9 informs the customer of the option to enter into a GPPDA. Under the GPPDA, TitleMax  
10 "amend[s], modif[ies], and defer[s]" the customer's payment schedule to provide for  
11 fourteen installments scheduled 30 days apart, with the first seven payments going  
12 toward interest only and the second seven payments going toward principal only.<sup>25</sup> The  
13 due dates for the first seven payments remain the same as under the Title Loan  
14 Agreement, with seven additional payment due dates scheduled every 30 days  
15 thereafter.<sup>26</sup> Under the GPPDA, the customer's payments are no longer fully and ratably  
16 amortized. Under the GPPDA, the loan remains subject to the same annual percentage  
17 rate as agreed upon in the Title Loan Agreement. TitleMax customarily allows customers  
18 whose accounts are in current status to enter into the GPPDA anytime at least 24 hours  
19 after entering into the Title Loan Agreement.

20 A customer who enters into the GPPDA is entitled to make lower monthly  
21 payments than he or she would be entitled to make under the Title Loan Agreement.  
22 However, a customer who makes payments according to the payments schedule set  
23 forth in the GPPDA will ultimately pay more money in interest to TitleMax than he or she  
24 would have paid had he or she made payments according to the payments schedule set  
25 forth in the Title Loan Agreement. Under both the Title Loan Agreement and the GPPDA,  
26 the customer is entitled to make payments early without a penalty.

27 <sup>20</sup> TitleMax Ex. 91 (TMX 91-001-003).

28 <sup>21</sup> See, for example, FID Ex. A-1 (000003).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> TitleMax Ex. 102, p. 3 ¶ 17.

<sup>25</sup> See, for example, FID Ex. A-1 (000016-000017).

<sup>26</sup> *Id.*

1 For example, on January 17, 2015, Customer Esguerra entered into a Title Loan  
2 Agreement with TitleMax in which he borrowed a principal amount of \$5,800.00 at an  
3 annual percentage rate of 133.7129% for 210 days.<sup>27</sup> Under these terms, Customer  
4 Esguerra was projected to pay \$2,813.16 in interest over the life of the loan, for a total  
5 amount paid of \$8,613.16.<sup>28</sup> Customer Esguerra was required to make payments every  
6 30 days for 210 days in the amount of \$1,230.45 each, with the last payment coming  
7 due on August 15, 2015.<sup>29</sup> On March 21, 2015, Customer Esguerra entered into a  
8 GPPDA with TitleMax.<sup>30</sup> Under the GPPDA, Customer Esguerra was required to make  
9 payments every 30 days for 420 days, with the first seven payments being in the amount  
10 of \$637.42 each (the seventh payment was still due on August 15, 2015) and the second  
11 seven payments being in the amount of \$828.57 each.<sup>31</sup> Under the GPPDA, Customer  
12 Esguerra was projected to pay \$4,461.94 in interest over the life of the loan, for a total  
13 amount paid of \$10,261.94.<sup>32</sup> Under the GPPDA, Customer Esguerra was projected to  
14 pay \$1,648.78 more in interest than he was projected to pay under the Title Loan  
Agreement.<sup>33</sup>

15 **B. Findings of Fact Particular to the Issues Presented by the Allowance of**  
16 **Co-Borrowers on Title Loans**

17 TitleMax allows individuals who are not legal owners of the vehicle that is the  
18 collateral for the title loan to become parties to the loan. TitleMax terms these parties  
19 "co-borrowers." In the event of a default on the loan, TitleMax does not pursue either the  
20 vehicle's legal owner or the co-borrower personally. No evidence was presented that  
21 TitleMax has ever sought to recover funds on a defaulted loan from the vehicle's legal  
22 owner or a co-borrower. TitleMax's exclusive remedy upon default is repossession of  
the vehicle that is the collateral for the title loan.

23 **III. CONCLUSIONS OF LAW**

24 **A. Conclusions of Law Particular to the Issues Presented by the GPPDA**

26 <sup>27</sup> FID Ex. A-4 (000083-000087).

<sup>28</sup> FID Ex. A-4 (000084).

27 <sup>29</sup> FID Ex. A-4 (000084).

<sup>30</sup> FID Ex. A-4 (000090-000093).

28 <sup>31</sup> FID Ex. A-4 (000091).

<sup>32</sup> FID Ex. A-4 (000091).

<sup>33</sup> FID Ex. A-4 (000083-000093).

1 FID asserts that TitleMax violates NRS 604A.445, NRS 604A.070, and NRS  
2 604A.210 when it enters into the GPPDA with customers. FID contends that by entering  
3 into the GPPDA, TitleMax unlawfully extends the term of the loan, does not ratably and  
4 fully amortize installment payments, and charges additional interest. TitleMax argues in  
5 response that the GPPDA constitutes an amendment to the original loan, so none of the  
6 requirements imposed on the original term of the loan apply to the GPPDA and no  
7 additional interest is charged during the grace period.

8 As set forth above, TitleMax offers only 210-day loans pursuant to NRS  
9 604A.445(3). The original term of a title loan may be 210 days if the loan complies with  
10 four conditions: 1) the loan must provide for payment in installments; 2) the installments  
11 must be ratably and fully amortized; 3) the loan must not be subject to any extension;  
12 and 4) the loan must not require a balloon payment of any kind. NRS 604A.445(3)(a)-  
13 (d).<sup>34</sup> TitleMax contends that none of these four requirements apply to the GPPDA  
14 because they only apply to the original term of the loan, and the GPPDA is an  
15 amendment to the original term of the loan. TitleMax's argument is creative, but would  
16 lead to an absurd result. *See Sheriff, Clark County v. Burcham*, 198 P.3d 326, 329, 124  
17 Nev. 1247, 1253 (2008) ("[S]tatutory construction should always avoid an absurd  
18 result.") (internal quotations omitted). If TitleMax were correct, it and all other title lenders  
19 could simply amend every loan agreement they enter into and thereby escape not only

20 <sup>34</sup> **NRS 604A.445 Title loans: Restrictions on duration of loan and periods of extension.**  
21 Notwithstanding any other provision of this chapter to the contrary:

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

1 the requirements of NRS 604A.445(3) but even the requirement in NRS 604A.105(b)  
2 that a title loan be secured by a vehicle title.<sup>35</sup> TitleMax may not opt out from NRS  
3 604A.445(3) by creating a new, non-original agreement.

4 Having concluded that the GPPDA is not an amendment to the original loan  
5 agreement that is exempt from the requirements of NRS 604A.445(3), the question  
6 becomes whether the GPPDA is in compliance with those requirements. Neither party  
7 disputes that under the GPPDA, payments are still in installments and no balloon  
8 payment is required. Therefore, whether the GPPDA is a lawful product depends on its  
9 compliance with the second and third requirements as set forth in NRS 604A.445(3)(b)  
10 and (c).

11 ***a. The GPPDA is an unlawful extension of the loan.***

12 NRS 604A.445(3)(c) prohibits a licensee from granting an extension to a title loan  
13 with an original term of 210 days. NRS 604A.065(1) defines an extension as “any  
14 extension or rollover of a loan beyond the date on which the loan is required to be paid  
15 in full under the original terms of the loan agreement, regardless of the name given to  
16 the extension or rollover.” The definition of extension provides one critical exception:  
17 “The term does not include a grace period.” NRS 604A.065(2). A grace period is defined  
18 as “any period of deferment offered gratuitously by a licensee to a customer if the  
19 licensee complies with the provisions of NRS 604A.210.” NRS 604A.070.<sup>36</sup> Licensees  
20 offering grace periods are precluded from charging any fees for granting the grace period  
21 and from charging any additional fees or additional interest on the outstanding loan  
22

23 <sup>35</sup> **NRS 604A.105 “Title loan” defined.**

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

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

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

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

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

2. The term does not include a loan which creates a purchase-money security interest in a vehicle  
or the refinancing of any such loan.

<sup>36</sup> **NRS 604A.070 “Grace period” defined.** “Grace period” means any period of deferment offered  
gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210.

1 during such a grace period. NRS 604A.210.<sup>37</sup> NRS 604A.210 and NRS 604A.270 are  
2 the only provisions in Chapter 604A that address grace periods. The critical question is  
3 what distinguishes a grace period from an extension, and does the GPPDA  
4 impermissibly extend the loan or permissibly grant a grace period?

5 The GPPDA is an illegal extension of the loan in violation of NRS 604A.445(3)(c).  
6 Under the GPPDA, customers receive an additional 210 days to pay off their title loan.  
7 This arrangement explicitly satisfies the definition of an extension: the date on which the  
8 loan is required to be paid in full is extended 210 days. The terms of the GPPDA do not  
9 constitute a grace period because TitleMax does not offer the additional 210 days  
10 gratuitously. Payments are due from customers every 30 days during the additional 210-  
11 day period, and TitleMax derives a benefit in the form of being entitled to more interest  
12 over the term of the loan under the GPPDA than it would be entitled to receive under the  
13 Title Loan Agreement. Under the example set forth above, Customer Esguerra was  
14 projected to pay \$1,648.78 more in interest under the terms of the GPPDA than he was  
15 projected to pay under the Title Loan Agreement.

16 ***b. The GPPDA results in the charging of additional interest.***

17 The conclusion that the GPPDA is an unlawful extension of the loan rather than  
18 a grace period renders null TitleMax's argument that it does not charge additional  
19 interest during a grace period in violation of NRS 604A.210(2) because it collects all the  
20 additional interest up front, during the first 210 days, rather than during the grace period,  
21 or the last 210 days. Since the GPPDA does not constitute a true grace period,  
22 TitleMax's imposition of seven interest-only payments is simply the impermissible  
23 charging of additional interest in excess of the amount that can lawfully be charged.  
24 TitleMax obtains the excess interest by ceasing to ratably and fully amortize the  
25 installment payments, which is unlawful under NRS 604A.445(2).

26 <sup>37</sup> **NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period.** The  
27 provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the  
28 repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:

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

1 When directly comparing the payments a customer must make under the Title  
2 Loan Agreement to the payments a customer must make under the GPPDA, it is  
3 undisputed that TitleMax stands to earn more money in interest charges under the  
4 GPPDA because it charges simple interest on the entire outstanding principal amount  
5 for seven months<sup>38</sup> rather than charging interest on a steadily-reducing amount of  
6 principal as under the Title Loan Agreement.<sup>39</sup>

7 According to TitleMax, though it stands to earn a greater amount of money in  
8 interest charges under the GPPDA than it did under the Title Loan Agreement, that does  
9 not constitute the collection of “additional interest on the outstanding balance during the  
10 grace period” in violation of NRS 604A.210(2) because it charges and collects all of the  
11 interest on the outstanding principal during the first seven payments—which it contends  
12 are not part of the grace period. However, if the first seven payments are not part of the  
13 grace period added by amendment, then they must be terms from the original Title Loan  
14 Agreement, in which case those payments must be ratably and fully amortized, and after  
the customer signs the GPPDA, those payments are not fully and ratably amortized.

15 **C. Conclusions of Law Particular to the Issues Presented by the**  
16 **Allowance of Co-Borrowers on Title Loans**

17 FID asserts that TitleMax violates NAC 604A.230 when it allows individuals who  
18 are not legal owners of the vehicle that is the collateral for the title loan to become co-  
19 borrowers on the loan. FID contends that by allowing non-legal owners to become  
20 parties to title loans, TitleMax is effectively allowing guarantors on title loans, which is  
21 expressly prohibited by NAC 604A.230. FID further argues that TitleMax’s conduct is

22  
23 <sup>38</sup> The number and amount of payments that the customer has already made at the time the parties enter  
24 into the GPPDA is highly relevant to this calculation. If the customer has made payments under the original  
25 Title Loan Agreement, the principal amount owed will be lower than if the customer has not, and thus the  
amount of interest charged against the outstanding principal during payments 1-7 will inevitably be lower  
as well. Whether the customer ends up paying more money in interest charges under the GPPDA than he  
or she would have under the original loan agreement is situation-specific to every loan agreement.

26 <sup>39</sup> It is true that a customer may pre-pay on the loan under either the original Title Loan Agreement or the  
27 GPPDA, which would result in the customer paying less interest over the life of the loan than if the  
customer made each payment on the due date. It is also true that a customer may pay late under either  
28 the original Title Loan Agreement or the GPPDA, which could result in the customer paying more in interest  
under the original agreement or the GPPDA than if the customer made each payment on the due date.  
And it is also true that a customer may pay late under the original Title Loan Agreement even if that  
customer did not sign the GPPDA and that customer could end up paying more in interest than the  
customer would have paid had the customer made payments on time under the GPPDA.

1 violative of NRS Chapter 604A.450 because TitleMax allows co-borrowers as a means  
2 of circumventing the ability-to-repay requirements set forth in that section.

3 NRS 604A.105 provides the definition of a title loan. It specifies that a customer  
4 may secure a title loan in one of two ways: by giving the licensee possession of the title  
5 to a vehicle the customer legally owns, or by noting the licensee's name on the title as a  
6 lienholder. Necessarily, the customer obtaining the title loan must be the legal owner of  
7 the vehicle as reflected on the vehicle's title. However, nothing in the language of NRS  
8 604A.105 precludes the inclusion of an additional, non-legal owner as a party to the title  
9 loan. NRS 604A.105 requires that a vehicle's legal owner procure the loan, but it does  
10 not say that the legal owner must be the only party to the loan. If a vehicle's legal owner  
11 wishes to include a third party on his or her loan and that third party consents to his or  
12 her inclusion, nothing in Chapter 604A precludes it.

13 FID argues that by allowing a non-legal owner to be a party to the loan, TitleMax  
14 is effectively allowing a guarantor to the loan, and the use of guarantors is expressly  
15 prohibited by NAC 604A.230. However, FID did not present any evidence that TitleMax  
16 attempts to pursue or ever has pursued the non-legal owner in the event of a default by  
17 the legal owner.<sup>40</sup> In fact, TitleMax has repeatedly acknowledged, in both its written  
18 briefing and the testimony of its corporate representative, Ted Helgesen, that title loans  
19 are non-recourse loans in which seizure of the vehicle used as collateral is the lender's  
20 only remedy in the event of a default.<sup>41</sup> FID also did not present any evidence that  
21 TitleMax received payment from the non-legal owner in any instance. Since TitleMax  
22 does not attempt to recover a debt from these non-legal owners, it is not treating them  
23 as guarantors nor are they acting as guarantors. TitleMax's practice of allowing a non-  
24 legal owner to be a party to the loan does not violate NAC 604A.230's prohibition on the  
25 allowance of a guarantor.

26  
27 <sup>40</sup> The term "guaranty" is defined as "[a] promise to answer for the payment of some debt, or the  
28 performance of some duty, in case of the failure of another who is liable in the first instance; a collateral  
undertaking by one person to be answerable for the payment of some debt or performance of some duty  
or contract for another person who stands first bound to pay or perform." Black's Law Dictionary (10th ed.  
2014).

<sup>41</sup> NRS 604A.455(2).

1           **D. Ability-to-Repay Requirements as Set Forth in NRS 604A.450**

2           FID argued at the hearing that TitleMax allows non-legal owners to be parties to  
3 loans to circumvent the ability-to-repay requirements found in NRS 604A.450.<sup>42</sup>  
4 Specifically, FID alleges that when a legal owner cannot meet the ability-to-repay  
5 requirements by him or herself, TitleMax will consider the non-legal owner's net income  
6 in calculating the loan that it can issue. The fatal flaw to this argument is that FID has  
7 not alleged a violation of NRS 604A.450 in this action. Whether TitleMax is allowing non-  
8 legal owners to become parties to title loans as a method of circumventing the ability-to-  
9 repay requirements is not at issue in this case. Therefore, I will not reach any conclusions  
10 of law concerning this question.

11           **IV. DISCIPLINE AND PENALTIES**

12           Having concluded that the GPPDA is an unlawful extension of the original Title  
13 Loan Agreement that results in the charging of additional interest, pursuant to NRS  
14 604A.810, TitleMax is ordered to cease and desist offering the GPPDA to all customers.

15           FID requests an order requiring TitleMax to conduct a full accounting of and return  
16 all principal and interest it has collected under every GPPDA it has ever entered into.  
17 NRS 604A.900(1)(c) states, "[I]f a licensee willfully: [ . . . ] [c]ommits any other act or  
18 omission that violates the provisions of this chapter or any regulation adopted pursuant  
19 thereto, the loan is void and the licensee is not entitled to collect, receive or retain any  
20 principal, interest or other charges or fees with respect to the loan."<sup>43</sup> FID contends that

21  
22           <sup>42</sup> NRS 604A.450(2) prohibits licensees from making title loans "without regard to the ability of the  
23 customer seeking the title loan to repay the loan, including the customer's current and expected income,  
24 obligations and employment" and requires licensees to obtain from each customer an affidavit stating that  
he or she has provided the licensee with true and correct information concerning his or her income,  
obligations, employment, ownership of the vehicle, and that he or she has the ability to repay the loan.

25           <sup>43</sup> **NRS 604A.900 Remedies for certain willful violations.**

26           1. Except as otherwise provided in this section, if a licensee willfully:  
27           (a) Enters into a loan agreement for an amount of interest or any other charge or fee that violates the  
28 provisions of this chapter or any regulation adopted pursuant thereto;  
29           (b) Demands, collects or receives an amount of interest or any other charge or fee that violates the  
30 provisions of this chapter or any regulation adopted pursuant thereto; or  
31           (c) Commits any other act or omission that violates the provisions of this chapter or any regulation  
32 adopted pursuant thereto, [ ] the loan is void and the licensee is not entitled to collect, receive or retain  
any principal, interest or other charges or fees with respect to the loan.  
33           2. The provisions of this section do not apply if:



1 TitleMax willfully violated NRS 604A.445 by deliberately choosing to continue to offer  
2 the GPPDA to customers after being informed by FID during the 2014 Examination and  
3 the 2015 Examination that the GPPDA was an unlawful product. TitleMax argues that it  
4 had a good faith disagreement with FID over the legal requirements of NRS 604A.445  
5 and that a showing of willfulness requires proof that TitleMax "knew or showed reckless  
6 disregard for the matter of whether its conduct was prohibited." *McLaughlin v. Richland*  
7 *Shoe Co.*, 486 U.S. 128, 131 (1988).

8 While TitleMax maintains that its actions in providing GPPDAs was nothing more  
9 than a disagreement with the interpretation of an existing statutory provision and should  
10 not give rise to sanctions that can be imposed only for a "willful" violation, this position  
11 rings hollow once TitleMax was placed on notice by FID that such loan modifications  
12 violated the law. As a result, there can be no doubt that TitleMax entered into GPPDAs  
13 after December 18, 2014, willfully, warranting the imposition of the civil penalty set forth  
14 in NRS 604A.900(1)(c). Accordingly, every GPPDA entered into after December 18,  
15 2014, is void, and TitleMax is not entitled to collect, receive or retain any principal,  
16 interest or other charges or fees with respect to those loans.

17 Pursuant to NRS 604A.820(1)(b), TitleMax shall pay an administrative fine of  
18 \$307,000.00, with \$257,000.00 of that fine held in abeyance provided that TitleMax is  
19 and remains compliant with NRS 604A.445.

20 Pursuant to 604A.820(1)(c), TitleMax must compensate FID for any costs  
21 expended on the court reporter and for transcripts of the hearing.  
22  
23  
24  
25

26 (a) A licensee shows by a preponderance of the evidence that the violation was not intentional and  
27 resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably  
28 adapted to avoid that error; and

(b) Within 60 days after discovering the error, the licensee notifies the customer of the error and  
makes whatever adjustments in the account are necessary to correct the error.

1 **V. ORDER**

2 TitleMax is ordered to immediately cease and desist offering the GPPDA to all  
3 customers.

4 TitleMax is ordered to conduct a full accounting of and return all principal and  
5 interest it has collected under every GPPDA entered into after December 18, 2014.  
6 TitleMax shall conduct this process under the supervision and direction of FID and shall  
7 complete the return of all monies on or before 120 days from the date of this Order.

8 TitleMax is ordered to pay an administrative fine of \$307,000.00 with  
9 \$257,000.00 of that amount held in abeyance provided that TitleMax is and remains  
10 compliant with NRS 604A.445. TitleMax shall pay the portion of the fine not held in  
11 abeyance within 30 days of the date of this Order.

12 TitleMax is ordered to compensate FID for its costs expended on the court  
13 reporter and transcripts within 30 days of the date of this Order.

14 Dated this 12<sup>th</sup> day of August, 2016.

15  
16  
17 /s/ Denise S. McKay  
18 Denise S. McKay  
19 Administrative Law Judge  
20 State of Nevada  
21  
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**CERTIFICATE OF MAILING**

I, Michelle Metivier, do hereby certify that I deposited in the U.S. mail, postage prepaid, via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order to the following:

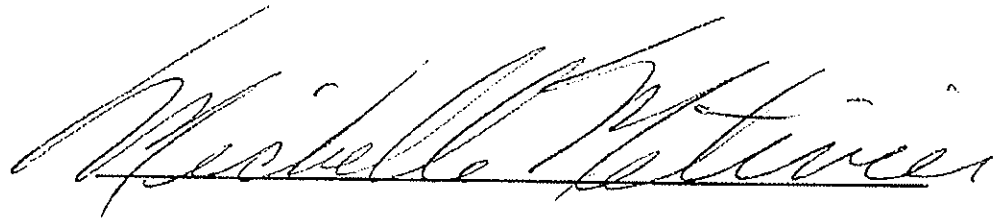
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Dated this 12<sup>th</sup> day of August, 2016.



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*Attorneys for Petitioners*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

Case No. :  
Dept. No.:

INITIAL	APPEARANCE	FEE
DISCLOSURE		

**NRS CHAPTER 19**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for  
parties appearing in the above-entitled action as indicated below:

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Las Vegas, Nevada 89134

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TITLEMAX OF NEVADA, INC.	\$270.00
TITLEBUCKS d/b/a TITLEMAX	30.00
TOTAL REMITTED	\$300.00

DATED this 8th day of September, 2016.

/s/ Patrick J. Reilly  
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21 CLARK COUNTY, NEVADA

22 TITLEMAX OF NEVADA, INC. and

23 TITLEBUCKS d/b/a TITLEMAX, a

24 Nevada corporation,

25 Petitioner,

26 vs.

27 STATE OF NEVADA, DEPARTMENT OF

28 BUSINESS AND INDUSTRY

FINANCIAL INSTITUTIONS DIVISION,

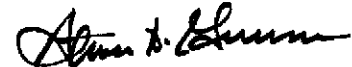
Respondent.

Case No. A-16-743134-J

Dept. No. XV

Electronically Filed

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CLERK OF THE COURT

NOTICE OF INTENT TO PARTICIPATE

STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL

INSTITUTIONS DIVISION, by and through its counsel, ADAM PAUL LAXALT, Attorney General,

DAVID J. POPE, Senior Deputy Attorney General, VIVIENNE RAKOWSKY, Deputy Attorney

...

...

...

1 General, and RICKISHA HIGHTOWER-SINGLETERY, Deputy Attorney General, hereby files its  
2 Notice of Intent to Participate in Petition for Judicial Review, pursuant to NRS 233B.130(3).  
3 Respondent reserves the right to file a Motion to Dismiss in this matter.

4 Dated this 19th day of September, 2016.

5 ADAM PAUL LAXALT  
6 Attorney General

7 By: /s/ RICKISHA HIGHTOWER-SINGLETERY  
8 Rickisha Hightower-Singleton (Bar No. 14019C)  
9 Deputy Attorney General  
10  
11  
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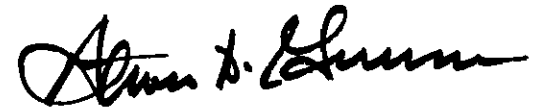
**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on September 19, 2016 I filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

/s/ MICHELE CARO

Michele Caro, an employee of  
the office of the Nevada Attorney General





CLERK OF THE COURT

**SUMM**

Patrick J. Reilly, Esq.  
Nevada Bar No. 6103  
Joseph G. Went, Esq.  
Nevada Bar No. 9220  
Nicole E. Lovelock, Esq.  
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[nelovelock@hollandhart.com](mailto:nelovelock@hollandhart.com)

*Attorneys for Petitioners*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

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

**SUMMONS, CIVIL**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW.**

**TO THE DEFENDANT, STATE OF NEVADA, DEPARTMENT OF BUSINESS AND  
INDUSTRY FINANCIAL INSTITUTIONS DIVISION:**

A civil complaint has been filed by the Plaintiff against you. Plaintiff is seeking to recover the relief requested in the complaint, which could include a money judgment against you or some other form of relief.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

(a) File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

(b) Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

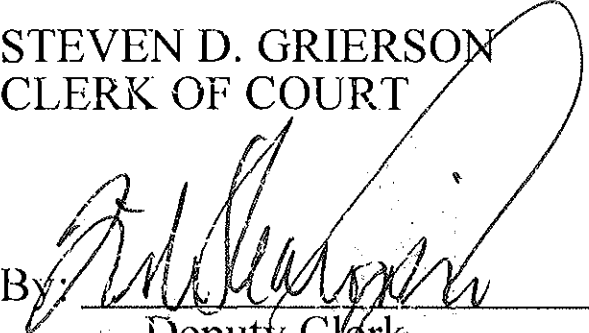
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleadings to the Complaint.

Submitted by:

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

*Attorneys for Petitioner*

STEVEN D. GRIERSON  
CLERK OF COURT

By:   
Deputy Clerk  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

SEP 13 2016

Date

IRISH LAPIRA

**NOTE:** When service is by publication, add a brief statement of the object of the action. See Rules of Civil Procedure, Rule 4(b).

**.EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY**

1 TILEMAX OF NEVADA INC. AND  
2 TITLEBUCKS d/b/a TITLEMAX, a  
Nevada corporation

3 Plaintiff,

Case No:A-16-743134-J

4 vs.

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

7 Defendant

8 **DECLARATION OF SERVICE**

9  
10 STATE OF NEVADA  
11 COUNTY OF WASHOE ss.:



12 **DARRELL MORLAN**, being duly sworn says: That at all times herein affiant was and is a  
13 citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in  
which this affidavit is made.

14 The affiant received copy(ies) of the **SUMMONS CIVIL; PETITION FOR JUDICIAL**  
15 **REVIEW**, on **09/14/2016** and served the same on **09/14/2016** at **2:27 PM** by delivering and  
leaving a copy with:

16 **JULIETTA LULU GONZALEZ, OF THE OFFICE OF THE ATTORNEY GENERAL** who  
17 stated he/she is authorized to accept service on behalf of **STATE OF NEVADA,**  
**DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS**  
**DIVISION.**

18 Service address:100 NORTH CARSON ST THE OFFICE OF THE ATTORNEY GENERAL  
19 Carson City, NV 89701

20 A description of **JULIETTA LULU GONZALEZ** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Hispanic	Black	27	5ft 7in	100-130lbs
Other Features: Glasses					

21  
22  
23 Pursuant to NRS 239B.030 this document does not contain the social security number of any  
24 person.


25 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true  
and correct.

Executed on: 09/14/2016  
by DARRELL MORLAN

No Notary is Required per NRS 53.045



\*81519\*

X   
DARRELL MORLAN  
Registration#: R-067681  
Reno/Carson Messenger Service(Lic# 322)  
185 Martin Street  
Reno, NV 89509  
775.322.2424  
Atty File#: 71516-0034

APP 000029

## **AFFIDAVIT OF SERVICE**

**State of Nevada**

**County of Clark**

**District Court**

Case Number: A-16-743134-J

Plaintiff:

**Titlemax of Nevada, Inc. and Titlebucks dba Titlemax**

vs.

Defendant:

**State of Nevada, Department of Business and Industry Financial Institutions  
Division**

Received by AM:PM Legal Solutions on the 14th day of September, 2016 at 11:48 am to be served on **State of Nevada,  
Department of Business and Industry Financial Institutions Division, 2785 E. Desert Inn Rd., Ste. 180, Las Vegas, NV  
89121.**

I, Stan McGrue, being duly sworn, depose and say that on the 14th day of September, 2016 at 3:28 pm, I:

at all times herein, pursuant to NRCP 4(c), was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made and **served** the within named individual or entity by delivering a true and correct copy of the **Summons, Civil Action and Petition for Judicial Review** on the date and hour of service endorsed thereon by me, at the aforementioned address, to: George E. Burns (Commissioner), as a **competent individual/agent of suitable age authorized to accept service of process** for, and on behalf of, the within named individual(s) or entity(ies), in compliance with Nevada Statutes and informing said person of the contents thereof.

**Description of Person Served:** Age: 50+, Sex: M, Race/Skin Color: Caucasian, Height: 6'1, Weight: 200, Hair: Blonde, Glasses: Y

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.



Stan McGrue  
NV License 1190

**AM:PM Legal Solutions  
520 S. 7th St., Ste. B  
Las Vegas, NV 89101  
(702) 385-2676**

Our Job Serial Number: AMP-2016003551

  
CLERK OF THE COURT

1 **APEN**  
Patrick J. Reilly, Esq.  
2 Nevada Bar No. 6103  
Erica C. Smit, Esq.  
3 Nevada Bar No. 13959  
HOLLAND & HART LLP  
4 9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134  
5 Tel: (702) 669-4600  
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6 Email: [preilly@hollandhart.com](mailto:preilly@hollandhart.com)  
[ecsmiit@hollandhart.com](mailto:ecsmiit@hollandhart.com)

7 *Attorneys for Petitioner*

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

11 **TITLEMAX OF NEVADA, INC. and**  
12 **TITLEBUCKS d/b/a TITLEMAX, a Nevada**  
corporation,

13 **Petitioner,**

14 **vs.**

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

17 **Respondent.**

Case No. : A-16-743134-J

Dept. No.: XV

**APPENDIX OF EXHIBITS TO MOTION  
FOR PARTIAL STAY OF  
ADMINISTRATIVE ORDER AND EX  
PARTE APPLICATION FOR ORDER  
SHORTENING TIME**

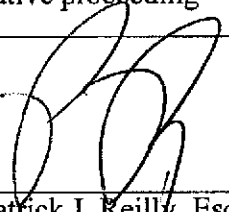
18  
19 **TABLE OF CONTENTS**

20 **Exhibit No. Document Page Nos.**

21 <b>1</b>	Nevada Legislature Assembly Daily Journal dated April 25, 2005	<b>1 - 3</b>
22 <b>2</b>	2005 Nev. Stat., chapter 414	<b>4 - 6</b>
23 <b>3</b>	Minutes of the Senate Committee on Commerce and Labor dated May 6, 2005	<b>7 - 11</b>
24 <b>4</b>	Nevada Department of Business and Industry Financial Institutions Division (the "FID") Notice of Workshop dated September 21, 2012	<b>12 - 23</b>
25 <b>5</b>	NRS Chapter 604A workshop conducted by the FID on October 10, 2012	<b>24 - 37</b>

6	undated Report of Examination issued to TitleMax by the FID	38 - 48
7	Letter dated February 9, 2015	49 - 61
8	Response letter from the FID to TitleMax dated March 2, 2015	62 - 65
9	Complaint filed in <i>TitleMax of Nevada, Inc. v. State of Nevada</i> , Eighth Judicial District Court Case No. A-15-719176-C (the "Declaratory Relief Action")	66 - 70
10	Email chain between counsel for TitleMax and the FID	71 - 75
11	Amended Complaint filed in the Declaratory Relief Action	76 - 80
12	FID's Motion to Dismiss filed in the Declaratory Relief Action on October 6, 2015	81 - 102
13	Administrative Complaint for Disciplinary Action and Notice of Hearing (the "Administrative Complaint") filed by the FID against TitleMax on October 6, 2015	103 - 117
14	Order of dismissal in the Declaratory Relief Action	118 - 120
15	Findings of Fact, Conclusions of Law, and Order	121 - 138
16	Declaration of Victoria H. Newman, Esq.	139 - 142
17	Exhibit 101 from the administrative proceeding	143 - 150

Dated this ~~23<sup>rd</sup>~~ day of September, 2016.

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

*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of September, 2016, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO MOTION FOR PARTIAL STAY OF ADMINISTRATIVE ORDER AND EX PARTE APPLICATION FOR ORDER SHORTENING TIME** was served by the following method(s):

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

Adam Paul Laxalt  
Attorney General  
David J. Pope  
Sr. Deputy Attorney General  
Vivienne Rakowsky  
Deputy Attorney General  
Rickisha Hightower-Singletary  
Deputy Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
Email: [dpope@ag.nv.gov](mailto:dpope@ag.nv.gov)  
[vrakowsky@ag.nv.gov](mailto:vrakowsky@ag.nv.gov)  
[rsingletary@ag.nv.gov](mailto:rsingletary@ag.nv.gov)

*Attorneys for Respondent*

  
An Employee of Holland & Hart LLP

# **EXHIBIT “1”**



# NEVADA LEGISLATURE

Seventy-Third Session, 2005

## ASSEMBLY DAILY JOURNAL

### THE SEVENTY-EIGHTH DAY

CARSON CITY (Monday), April 25, 2005

Assembly called to order at 11:28 a.m.

Mr. Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Stan Pesis.

Almighty God, by Your life-giving and life-renewing spirit bring life to this new day at the beginning of this new week. Freshen our spirits that we may live and act in life-giving ways for all Your people.

AMEN.

Pledge of Allegiance to the Flag.

Assemblywoman Buckley moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

### REPORTS OF COMMITTEES

*Mr. Speaker:*

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 66, 69, 183, 236, 249, 250, 260, 278, 338, 360, 364, 384, 501, 540, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BARBARA BUCKLEY, *Chairman*

*Mr. Speaker:*

Your Committee on Education, to which was referred Assembly Bill No. 202, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BONNIE PARNELL, *Chairman*

(a) Charges fees or a rate of interest, or any combination thereof, that when calculated as an annualized percentage rate is more than 40 percent; and

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

2. The term does not include:

(a) A deferred deposit loan; or

(b) A title loan.

Sec. 18. "Short-term loan service" means any person engaged in the business of providing short-term loans for a fee, service charge or other consideration.

Sec. 19. 1. "Title loan" means a loan made to a customer who secures the loan with the title to a motor vehicle and who gives possession of the title to the person making the loan or to any agent, affiliate or subsidiary of the person.

2. The term does not include a loan which is secured by a lien or other security interest that attaches to a motor vehicle or appears on its title, including, without limitation, a loan to finance the purchase of the motor vehicle, if the person making the loan, or any agent, affiliate or subsidiary of the person, does not take possession of the title.

Sec. 20. "Title loan service" means any person engaged in the business of providing title loans for a fee, service charge or other consideration.

Sec. 21. "Title to a motor vehicle" or "title" means a certificate of title issued by the Department of Motor Vehicles that identifies the legal owner of a motor vehicle or any similar document issued pursuant to the laws of another jurisdiction.

Sec. 22. The provisions of this chapter apply to any person who seeks to evade its application by any device, subterfuge or pretense, including, without limitation, calling a loan by any other name or using any agents, affiliates or subsidiaries in an attempt to avoid the application of the provisions of this chapter.

Sec. 23. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan, except that the licensee shall not charge the customer:

1. Any fees for granting such a grace period; or

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

Sec. 24. 1. The provisions of this chapter must be interpreted so as to effectuate their general purpose to provide for, to the extent practicable, uniform regulation of the loans and transactions that are subject to the provisions of this chapter.

2. If there is a conflict between the provisions of this chapter and the provisions of any other general law regulating loans and similar transactions, the provisions of this chapter control.

Sec. 25. This chapter or any part thereof may be modified, amended or repealed by the Legislature so as to effect a cancellation or alteration of any

# **EXHIBIT “2”**

*(b) The provision of false information caused the court not to incorporate the agreement that provides for postadoptive contact in the order or decree of adoption pursuant to section 5 of this act.*

*2. If a person is liable to a natural parent of an adopted child pursuant to subsection 1, the natural parent may recover his actual damages, costs, reasonable attorney's fees and any punitive damages that the facts may warrant.*

*3. The liability imposed by this section is in addition to any other liability imposed by law.*

Assembly Bill No. 384—Assemblymen Buckley,  
Giunchigliani, Ocegüera, Parks and Arberry Jr.

Joint Sponsors: Senators Care and Horsford

#### CHAPTER 414

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

[Approved: June 14, 2005]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Title 52 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 74, inclusive, of this act.

**Sec. 2.** As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 2.5 to 21.5, inclusive, of this act have the meanings ascribed to them in those sections.

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

(a) Is automated;

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

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

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

Sec. 20. "Title loan service" means any person engaged in the business of providing title loans for a fee, service charge or other consideration.

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

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

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

2. The term includes, without limitation:

- (a) Passenger vehicles;
- (b) Recreational vehicles; and
- (c) House trailers and travel trailers.

3. The term does not include:

- (a) Farm vehicles;
- (b) Vehicles of a common or contract carrier;
- (c) Commercial vehicles;
- (d) Construction vehicles;
- (e) Military vehicles;
- (f) Vehicles used exclusively upon stationary rails or tracks; or
- (g) Any other vehicles which are similar in nature to the vehicles listed in paragraphs (a) to (f), inclusive, and which the Commissioner, by regulation, excludes from the definition of "vehicle."

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

- (a) "Amount financed."
- (b) "Annual percentage rate."
- (c) "Finance charge."
- (d) "Payment schedule."
- (e) "Total of payments."

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

Sec. 22. The provisions of this chapter apply to any person who seeks to evade its application by any device, subterfuge or pretense, including, without limitation, calling a loan by any other name or using any agents, affiliates or subsidiaries in an attempt to avoid the application of the provisions of this chapter.

Sec. 23. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:

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

Sec. 24. 1. The provisions of this chapter must be interpreted so as to effectuate their general purpose to provide for, to the extent practicable, uniform regulation of the loans and transactions that are subject to the provisions of this chapter.

# **EXHIBIT “3”**

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session  
May 6, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:03 a.m. on Friday, May 6, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Randolph J. Townsend, Chair  
Senator Warren B. Hardy II, Vice Chair  
Senator Sandra J. Tiffany  
Senator Joe Heck  
Senator Michael Schneider  
Senator Maggie Carlton  
Senator John Lee

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Barbara E. Buckley, Assembly District No. 8  
Assemblywoman Chris Giunchigliani, Assembly District No. 9  
Assemblywoman Peggy Pierce, Assembly District No. 3

**STAFF MEMBERS PRESENT:**

Shirley Parks, Committee Secretary  
Kevin Powers, Committee Counsel  
Scott Young, Committee Policy Analyst  
Donna Winter, Committee Secretary

**OTHERS PRESENT:**

Jon L. Sasser, Washoe County Senior Law Project  
William R. Uffelman, Nevada Bankers Association  
Thelma Clark, Nevada Silver Haired Legislative Forum

Senate Committee on Commerce and Labor  
May 6, 2005  
Page 9

amendment (Exhibit F) have provisions that are currently in law but we are combining them all in one place. Sections 24, 35, 36, 43, 44, 45 and 82 are all existing provisions that are reprinted in the mock-up amendment.

In the new provisions, section 17 defines short-term loans charging more than 40 percent for less than 18 months in Exhibit F. There are three types of lenders that are captured in the bill. The first defines the deferred-deposit loan where a check is exchanged for the money. The second defines short-term lenders who may loan you money for 2 weeks or 30 days, but they do not take a check. The third defines title loans. This area of the bill defines exactly a short-term loan, because there are many installment loans and other loans governed under chapter 675 of the NRS. This just pulls out the high-cost, shorter-term loans. The other redefined provisions are in sections 23, 31, 33, 34, 35, 37, 39, 40, 42, 43, 44, 64 and 75 of the bill and are defined in Exhibit F. Section 44 sets forth the amounts the licensee may collect. This is the heart of the bill and along with the remedy section, licensees can collect principal minus payments made, pre-default finance charge, prime plus 10-percent interest after default and a returned-check fee of \$25. With auto title loans, some of the provisions in the bill recognize the differences in this industry so the terms are different.

ASSEMBLYWOMAN BUCKLEY:

My last comment is that I have worked for weeks with many in the industry who are just as anxious to clean up this industry as I am, because they see their industry name being smeared by the tactics of those who are bringing a bad name to all. I have worked with lenders, some of who do not sue people at all, have never threatened criminal prosecution and have never assessed these kinds of damages. These tactics are creating an un-level playing field for them. It is hurting their competitive position and it is hurting their efforts to try to clean up this industry. I have been working with these industry groups for about a year. In the past 3 weeks, I have spent about 50 hours with them. We have worked on words and meanings; we have drafted, we have redrafted and I have tried to accommodate every good-faith business concern with this bill. Some provisions and changes that I have made I did not like, but we were trying to get you a consensus product with the limited amount of time by working with those who are just as appalled by these abuses as I am. I have submitted a summary (Exhibit G) of the sections amended in the mock-up of A.B. 384.



**ASSEMBLY BILL 384  
PROPOSED AMENDMENTS  
Assemblywoman Barbara E. Buckley**

**Senate Committee on Commerce and Labor  
May 6, 2005**

Following is a summary of the sections amended in the mock-up of Assembly Bill 384 (first reprint):

**1. Sections on Definitions**

- **Section 8** - Clarifies definition of "default" to eliminate a reference to "repayment plan."
- **Section 17** - Clarifies definition of a "short-term loan."
- **Section 19** - Clarifies definition of a "title loan," and in particular, what is not included in that term.
- **New Section** - Clarifies certain terms have the meanings given to them under federal law. (Inserted for purposes of the mock-up after Section 21.)

2. **Section 23 (Grace Periods)** - Clarifies that a licensee cannot charge additional fees or interest on the outstanding loan during the grace period.
3. **Section 31 (Written Agreements)** - Adds an additional disclosure requirement regarding the opportunity to enter into a repayment plan before a civil action or alternative dispute resolution may be commenced.
4. **Section 33 (Protections for Customers Called to Active Duty in Military)** - Includes threats to garnish wages or to contact the military in the acts that are specifically prohibited.
5. **Section 34 (Prohibitions on Certain Types of Loans)** - Limits the section to deferred deposit or short term loans (not title loans), and provides that the monthly payment (rather than the loan amount) cannot exceed 25 percent of the borrower's expected gross monthly income when the loan is taken out.
6. **Section 35 (Prohibitions on Certain Acts by Licensees)** - Clarifies language with regard to the prohibition on taking a note or promise to pay which does not make certain disclosures. Also adds language prohibiting a licensee from charging a pre-default late fee that is void as a penalty under common law.
7. **New Section** - Adds language regarding the terms of a title loan and the authorization to renew the loan under certain conditions. (Inserted for the purposes of the mock-up between Sections 36 & 37)
8. **Section 37 (Prohibitions on Certain Acts by Licensees)** - Adds "vehicle ownership" to the list of items concerning which the customer must sign an affidavit stating he has provided true and correct information.

9. **Section 38 (Application of the Uniform Commercial Code and Remedies on Default of Title Loan):**

- Provides that the sole remedy upon default on a title loan or an extension or repayment plan is to seek repossession and sale of the motor vehicle. Language requiring the commencement of a legal action to seek the repossession and sale is deleted.
- Deletes language specifying that making necessary repairs to the motor vehicle is not "deemed waste."
- Revises procedures for making available to the customer his personal property contained in a repossessed motor vehicle.
- Allows a civil action for fraud also to be brought against a customer who wrongfully transfers any interest in the motor vehicle to a third party before the loan is repaid.

10. **Section 40 (Authorization to Pay Loan in Full without Additional Fees) -** Adds language to clarify the charges and fees that may be negotiated and agreed to by the parties.

11. **Section 42 (Repayment Plans) -** Revises the language regarding repayment plans the licensee must offer prior to commencing a civil action or any alternative dispute resolution.

12. **Section 43 (Limitation on Period for Repayment) -** Limits the section to deferred deposit or short-term loans; specifies a 2-month limitation on the period for repayment (instead of 8 weeks); and provides an exemption to this section for certain licensees.

13. **Section 44 (Amounts that May be Collected on Default of Loan)**

- Clarifies the licensee may collect the principal amount of the loan less all payments made before and after default.
- Deletes a reference to "repayment plan" and adds a reference to section 43 (as amended) under subsection 1(b), which relates to the interest the licensee may collect if there is an extension relating to the loan.

14. **Section 64 (Annual Examination of Licensee's Business by Commissioner) -** Provides that if Commissioner concludes, after auditing one of more branches of a licensee, that the specified documents are identical at each location, the Commissioner has the authority to review only those branches that are deemed necessary.

# **EXHIBIT “4”**

STATE OF NEVADA



BRIAN SANDOVAL  
*Governor*

DEPARTMENT OF BUSINESS AND INDUSTRY  
**FINANCIAL INSTITUTIONS DIVISION**

TERRY JOHNSON  
*Director*

GEORGE E. BURNS  
*Commissioner*

**NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON PROPOSED  
REGULATIONS**

**COMMISSIONER OF THE FINANCIAL INSTITUTIONS DIVISION  
NAC CHAPTER 604A  
(LCB File No. R130-08 dated August 10, 2010)**

September 21, 2012

The State of Nevada, Financial Institutions Division ("Division"), 2785 E. Desert Inn Road, Suite 180, Las Vegas, Nevada 89121, (702) 486-4120 is proposing the adoption of regulations to Chapter 604A of the Nevada Administrative Code (NAC). A workshop to solicit comments from interested persons on the proposed regulations will be held at the following locations through simultaneous videoconference:

Date: Wednesday, October 10, 2012

Time: 10:00 am.

In Las Vegas: Grant Sawyer Building  
555 E. Washington Avenue  
Room 4412  
Las Vegas, NV 89101

In Carson City: The Legislative Building  
401 S. Carson Street  
Room 2135  
Carson City, NV 89701

LAS VEGAS  
Office of the Commissioner  
2785 E. Desert Inn Road, Suite 180  
Las Vegas, NV 89121  
(702) 486-4120 Fax (702) 486-4563

CARSON CITY  
Examination & CPA Office  
1179 Fairview Drive, Suite 201  
Carson City, NV 89701  
(775) 687-5522 Fax (775) 687-5523  
Web Address: <http://fid.state.nv.us>

CARSON CITY  
Licensing Office  
1830 E. College Parkway, Suite 100  
Carson City, NV 89706  
P.O. Box 3239, Carson City, NV 89702  
(775) 684-2970 Fax (775) 684-2977

**STACKED AGENDA:** Below is an agenda of all items scheduled to be considered. Unless otherwise stated, items may be taken out of the order presented on the agenda by the discretion of the Commissioner. Items may also be combined for consideration or pulled or removed from the agenda at any time. Persons who have business before the Commissioner are solely responsible to see that they are present when their business is conducted. Public Comment may be limited to three minutes per person at the discretion of the Commissioner. The Commissioner may only take action on those items denoted as potential action items.

**NOTICE:** Reasonable efforts will be made to assist and accommodate physically handicapped persons desiring to attend the meeting. Members of the public who are disabled and require special accommodations or assistance at the workshop must notify Carla Kolebuck, Deputy Commissioner, at the Division in writing at 2785 E. Desert Inn Road, Suite 180, Las Vegas, Nevada 89121, no later than 5 working days prior to the workshop. Any questions should be directed to Carla Kolebuck, Deputy Commissioner, at (702) 486-4120.

**1. PUBLIC COMMENTS**

MEMBERS OF THE PUBLIC ARE ENCOURAGED TO ADDRESS THE COMMISSIONER REGARDING ANY MATTER. HOWEVER, NO ACTION MAY BE TAKEN ON A MATTER. NO COMMENTS MAY BE MADE REGARDING A MATTER THAT IS OR MAY BE THE SUBJECT OF A FORMAL COMPLAINT BEFORE THE COMMISSIONER. COMMENT MAY NOT BE LIMITED BASED ON VIEWPOINT. PERSONS WHO DESIRE TO SUBMIT WRITTEN TESTIMONY SHOULD SUBMIT TEN (10) COPIES TO THE DEPUTY COMMISSIONER. PUBLIC COMMENT MAY BE LIMITED TO THREE MINUTES PER PERSON AT THE DISCRETION OF THE COMMISSIONER.

**2. POSSIBLE ACTION REGARDING the Proposed Regulations LCB File No. R130-08 dated August 10, 2010 a copy of which is attached to this Notice:**

The Commissioner will hear comments and take possible action regarding the proposed regulations contained in NAC Chapter 604A (LCB File No. R130-08) The Commissioner will also solicit comments regarding the following matters.

- Whether proposed sections 5, 21, 22, and portions of proposed sections 16, and 20 of the proposed regulations should be removed. Specifically:
  - a. Section 5 clarifying certain requirements for deferred deposit and high interest loans made pursuant to NRS 604A.480;
  - b. Section 16, subsections 1 through 5 increasing fees for examinations, license applications, renewals and license reinstatement;
  - c. Section 20, subsection 4 clarifying the amounts to be included in the calculation of a deferred deposit loan for purposes of the limitation imposed under NRS 604A.425;
  - d. Section 21 clarifying the prohibition of accepting a check as security for a high-interest loan;
  - e. Section 22 restricting loans made to repeat borrowers, internet lending and the imposition of additional collection fees.

- Whether NAC 604A.220 should be deleted in its entirety since it is unnecessary and duplicative of NRS 604A.435.
3. POSSIBLE ACTION regarding whether the proposed regulations should be amended to add a regulation which defines the "ability to repay" in NRS 604A.450.
    - (i) Attached Exhibit A contains a proposal to define "ability to repay" to include any renewal and repayment periods submitted by interested members of the industry for comment and consideration.
    - (ii) Attached as Exhibit B is proposed regulatory language to define "ability to repay" submitted by the Division for comment and consideration.
  4. POSSIBLE ACTION regarding whether the proposed regulations should be amended to add a regulation to address accrual of contract interest during a grace period.
    - (i) Attached as Exhibit C is proposed regulatory language submitted by interested members of the industry for comment and consideration.
    - (ii) Attached Exhibit D contains proposed regulatory language submitted by the Division for comment and consideration.
  5. POSSIBLE ACTION regarding whether the proposed regulations should be amended to add a regulation to define the amount of interest that may be collected during a repayment plan under NRS 604A.475.
    - (i) Attached Exhibit E contains a proposal submitted by interested members of the industry for comment and consideration.
    - (ii) Attached Exhibit F contains proposed regulatory language submitted by the Division for comment and consideration.
  6. PUBLIC COMMENTS

MEMBERS OF THE PUBLIC ARE ENCOURAGED TO ADDRESS THE COMMISSIONER REGARDING ANY MATTER. HOWEVER, NO ACTION MAY BE TAKEN ON A MATTER. NO COMMENTS MAY BE MADE REGARDING A MATTER THAT IS OR MAY BE THE SUBJECT OF A FORMAL COMPLAINT BEFORE THE COMMISSIONER. COMMENT MAY NOT BE LIMITED BASED ON VIEWPOINT. PERSONS WHO DESIRE TO SUBMIT WRITTEN TESTIMONY SHOULD SUBMIT TEN (10) COPIES TO THE DEPUTY COMMISSIONER. PUBLIC COMMENT MAY BE LIMITED TO THREE MINUTES PER PERSON AT THE DISCRETION OF THE COMMISSIONER.

#### 7. ADJOURNMENT

A copy of the proposed regulations to be considered for amendment and adoption are attached to this Notice and will also be available prior to the hearing on the Internet at: <http://www.fid.state.nv.us>. Copies of this Notice and/or the proposed regulations will be mailed to

members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

This Notice has been sent to all persons on the Division's mailing list for notice of proposed rulemaking, posted on the Division's web site at <http://www.fid.state.nv.us>, and posted at the following public locations for inspection by members of the public:

Attn: Public Posting  
Churchill County Library  
553 S. Maine Street  
Fallon, NV 89406

Attn: Public Posting  
Tonopah Public Library  
P.O. Box 449  
Tonopah, NV 89049  
(167 Central Street)

Attn: Public Posting  
Las Vegas -- Clark County Library  
833 Las Vegas Blvd. N.  
Las Vegas, NV 89101

Attn: Public Posting  
Pershing County Library  
P.O. Box 781; (1125 Central Avenue)  
Lovelock, NV 89419

Attn: Public Posting  
Elko County Library  
720 Court Street  
Elko, NV 89801

Attn: Public Posting  
Storey County Library  
P.O. Box 14; (95 South R Street)  
Virginia City, NV 89440

Attn: Public Posting  
Goldfield Public Library  
P.O. Box 430; (Fourth & Crook Sts.)  
Goldfield, NV 89013

Attn: Public Posting  
Washoe County Library  
P.O. Box 2151; (301 S. Center)  
Reno, NV 89501

Attn: Public Posting  
Eureka Branch Library  
P.O. Box 293 (80 South Monroe)  
Eureka, NV 89316

Attn: Public Posting  
White Pine County Library  
950 Campton St.  
Ely, NV 89301

Attn: Public Posting  
Humboldt County Library  
85 East 5<sup>th</sup> St.  
Winnemucca, NV 89445

Attn: Public Posting  
Battle Mountain Branch Library (Lander  
County)  
625 South Broad Street  
P.O. Box 141  
Battle Mountain, NV 89820

Attn: Public Posting  
Lincoln County Library  
63 Main St.  
P.O. Box 330  
Pioche, NV 89043

Attn: Public Posting  
Lyon County Library  
20 Nevin Way  
Yerington, NV 89447

Financial Institutions Division  
2785 E. Desert Inn Road, Ste. 180  
Las Vegas, NV 89121

Attn: Lobby Public Posting  
Grant Sawyer Building  
555 E. Washington Ave.  
Las Vegas, NV 89101

Attn: Public Posting  
Nevada Department of Business and  
Industry, Director's Office  
1830 E. College Parkway, Suite 100  
Carson City, NV 89706

Attn: Public Posting  
Carson City Library  
900 N. Roop Street  
Carson City, NV 89701

Attn: Public Posting  
Douglas County Library (1625 Library Lane)  
P.O. Box 337  
Minden, NV 89423

Financial Institutions Division  
1179 Fairview Drive, Ste. 201  
Carson City, NV 89701

Grant Sawyer Building  
Nevada Department of Business and  
Industry, Director's Office  
555 E. Washington Ave.  
Las Vegas, NV 89101



## **EXHIBIT A**

**Submitted by interested members of the industry for comment and consideration.**

### **Ability to Pay**

#### **Issue:**

- NRS 604A.450 provides that "a licensee ... shall not make a title loan without regard to the ability of the customer ... to repay the title loan, including the customer's current and expected income, obligations and employment."
- Whether NRS 604A.450 requires that the borrower must have the ability to repay the full loan within 30 days even though NRS 604A.475 requires that borrowers have at least 90 days to repay the loan.

#### **Proposed Resolution:**

- a. A new regulation that provides that NRS 604A.450 requires that a lender consider the ability of the customer to repay the loan during the original term of the loan plus any renewal periods and repayment periods, to the extent such periods are offered by the lender.
- b. A new Regulation that provides the affidavit signed by borrower as required by 604A.450(3)b, is safe harbor for compliance with requirement.

**EXHIBIT B**

**Submitted by the Financial Institutions Division for comment and consideration**

**Ability to Repay**

"Ability to repay" is defined as:

A borrower's capacity to repay the full amount of a loan when due from net disposable income.

"Full amount of loan" is defined as any and all principal, interest and fees subject to all statutory requirements and legal contractual stipulations.

"When due" is defined as the repayment schedule subject to all statutory requirements and legal contractual stipulations that when completed pays the full amount of loan and extinguishes the debt.

"Net disposable income" is defined as verifiable Gross Income minus any and all Deductions from income (=Net Income), minus all verifiable/stated Expense obligations including but not limited to premise/housing, utilities, groceries, transportation, fuel, and any other debt payments.

**EXHIBIT C**

**Submitted by interested members of the industry for comment and consideration.**

**NAC 604A.240 -- Grace Periods on Title Loans**

- (a) Pursuant to NRS 604A.210, 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.
- (b) A licensee shall not offer a grace period greater than thirty (30) days if the licensee continues to accrue its contract rate of interest during such grace period.

**EXHIBIT D**

**Submitted by the Financial Institutions Division for comment and consideration**

**Grace Period Limitation**

Pursuant to NRS 604A.210, a licensee may collect interest and fees 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.

**EXHIBIT E**

**Submitted by interested members of the industry for comment and consideration.**

**Interest Upon Default**

**Issue:**

- NRS 604A.475(4)(a)(1) requires that there be a repayment plan and during the repayment period, the lender cannot charge "any interest, regardless of the name given to the interest, other than the interest charged pursuant to the original loan agreement at a rate which does not exceed the annual percentage rate charged during the term of the original loan agreement;"

**Proposed Resolution:**

- a. Upon default, through any repayment period, the lender may continue charging interest at the same rate set forth in the original loan agreement.

**EXHIBIT F**

**Submitted by the Financial Institutions Division for comment and consideration**

**Interest That May Be Collected During Repayment Plan**

During any repayment plan on any loan made pursuant to this chapter, a licensee may only collect the following:

- (a) the amount of unpaid principal of the outstanding obligation; and
- (b) (1) where the customer defaults upon a loan which only requires a single payment, the amount of unpaid interest that it could have collected during the term of the loan agreement or any lawful extension at a rate not exceeding the annual percentage rate disclosed in the original loan agreement; or  
(2) where the customer defaults upon a loan requiring multiple payments, the amount of unpaid interest that it could have collected during the original term of the loan agreement at a rate not exceeding the annual percentage rate disclosed in the original loan agreement.

# **EXHIBIT “5”**

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

**NAC 604A WORKSHOP**

**October 10, 2012**

**Minutes**

A public hearing set forth by the Commissioner of the Financial Institutions Division regarding the proposed changes to regulations for Chapter 604A of the Nevada Administrative Code (NAC) in conjunction with Nevada Revised Statutes (NRS) 604A was held on October 10, 2012 at the Grant Sawyer Building 555 E. Washington Ave., Room 4412, Las Vegas, NV 89101 with video conference at Legislative Counsel Bureau 401 S. Carson St., Room 2135, Carson City, NV 89701.

Financial Institutions Division staff in attendance:

**Las Vegas:**

Commissioner: George E. Burns  
Deputy Commissioner: Carla C. Kolebuck  
Acting Supervisory Examiner: Matt O'Brien  
Division Counsel: Sr. Deputy A.G.: David Pope  
Division Counsel: Deputy A.G.: Daniel Edihara  
Associate Examiner: Christopher Hui  
Associate Examiner: Felix Luna  
Associate Examiner: Harveen Sekhon

**Carson City:**

Certified Public Accountant: Christopher Schneider  
Supervisory Examiner: Doug Liveringhouse  
Supervisory Examiner: Monica Villines

**1) Call to Order**

Deputy Commissioner Carla Kolebuck commenced the workshop of Chapter 604A of the Nevada Administration Code (NAC) on October 10, 2012 at 10:03 am referencing the agenda and proposed regulations for consideration at the hearing.

**2) Public Comment**

No public comment was received.

**3) Possible Action Regarding Ability to Repay**



3-A-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit A which defines the "ability to repay" under NRS 604A.450 to include any renewal and repayment periods submitted by interested members of the industry.

3-A-2

Acting Supervisory Examiner Matt O'Brien read the proposed regulation Exhibit A.

3-A-3

No public comment was received.

3-B-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit B defining "ability to repay" submitted by the Division.

3-B-2

Acting Supervisory Examiner Matt O'Brien read the proposed regulation Exhibit B.

3-B-3

Deputy Commissioner Carla Kolebuck introduced examples prepared by the Division to illustrate the proposed definition of "ability to repay" in the context of a 30-day loan and a 210-day loan to be shown on the projector screen, with hard copies distributed to Workshop attendees.

3-B-3

Commissioner George Burns discussed the language being introduced in the proposed regulation defining ability to repay as standard underwriting concepts to ensure that the customer can afford to repay the loan that they are taking out from the lender; to ensure responsible lending; and to eliminate predatory lending as much as possible. The Commissioner then went over the examples illustrating application of the proposed definition shown on the projector screen and the handouts.

3-B-4

Public comment was given by Dan Wulz from Legal Aid Center of Southern Nevada. Mr. Wulz stated that they fully support the Division's proposal in Exhibit B and its definition of ability to repay. He stated that a consumer must be judged on the ability to repay based on the original term of the loan, and not a longer period that includes renewal periods and repayment periods. Mr. Wulz stated that if the industry had requested the ability to repay to be considered over a 7 month period on a 30-day loan, then he would have no doubt that there would have been more negotiation as to whether permitting 6 additional periods of extension would be good policy. He

further stated that repayment plan periods should never be included in the ability to repay since that plans for a default which is not appropriate. It is difficult to believe that the legislature had any such intention regarding ability to repay in a title loan.

3-B-5

Former Assembly Speaker Barbara Buckley, author of the payday loan legislation and currently Executive Director of Legal Aid Center of Southern Nevada stated she is in support of Financial Institution Division's proposed regulation governing ability to repay. She indicated that the intent and policy of the legislation was to permit a short term high interest loan, but upon default, there would be a change in interest rate to prevent the "debt treadmill." Ms. Buckley further stated that allowing interest to accrue during a repayment plan as part of ability to repay would be contrary to legislative intent.

3-B-6

Robert Frimet from Advantage Check Cashing stated that as a lending industry, they should be able to collect interest upon default as permitted in mortgage lending. Mr. Frimet stated that the industry is there to serve as a viable business and serve the public. He further stated concerns about how to determine and satisfy requirements for "verifiable/stated expenses."

3-B-7

Commissioner George Burns stated the intent for the language is to allow as much flexibility as possible for the industry to conduct their business. As far as verifiable/stated expenses, the language is verifiable and/or stated since it is understood that not all expenses are verifiable. However, reasonable and prudent business practices should be followed, along with the customer's affidavit. The Commissioner further stated that the proposed language is not intended to overburden the licensee, but it is to ensure the customer can afford to pay back the loan and to promote good public policy and good business practices. He noted that it is anticipated that another workshop will be held before having a final product on these regulatory proposals.

3-B-8

Brian Schmidt with TMX Finance stated they do not support the Division's Exhibit B indicating that they had submitted a compromise proposal the previous week and wanted to ensure that the Division received it.

Deputy Commissioner Carla Kolebuck stated that the Division had received the proposal but not in time to incorporate it into the agenda.

Brian Schmidt then stated that they would like the Division to consider the extension and repayment periods within the ability to repay; he believes their practices are in full compliance with the statutes. He also stated that the detail concerning verified/stated expenses may not be a practical solution since many folks do not keep track of all expenses and are not verifiable. In addition, debts owed by customers may be paid by another individual. Mr. Schmidt stated that his "modified gross income" proposal incorporates a more practical approach to expenses that

could be deducted. He had an additional comment regarding the interpretation of NRS 604A.045 defining "default." Mr. Schmidt stated that several things must occur for a default, requiring repayment plan periods, extensions and grace periods to be taken into consideration.

#### **4) Possible Action Regarding Grace Periods**

##### **4-A-1**

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit C submitted by interested members of the industry regarding accrual of contract interest during a grace period.

##### **4-A-2**

Acting Supervisory Examiner Matt O'Brien read the proposed regulation Exhibit C.

##### **4-A-3**

No public comment was received.

##### **4-B-1**

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation Exhibit D regarding accrual of contract interest during a grace period submitted by the Division.

##### **4-B-2**

Acting Supervisory Examiner Matt O'Brien read the proposed regulation Exhibit D.

##### **4-B-3**

Deputy Commissioner Carla Kolebuck stated the proposed regulatory language submitted in Exhibit D was due to concerns raised by members of the title loan industry regarding an installment loan scenario where late paying borrowers end up paying less interest over time than on time borrowers due to contract rate of interest ceasing to accrue after a default. 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. The Division drafted this proposal in an attempt to address this concern and to expand its coverage to include other 604A lenders, not just title lenders.

##### **4-B-4**

John McCloskey from Select Management Resources had questions on how the proposed regulation Exhibit D would affect a 30-day loan or a 210-day loan and when interest would still accrue.

Deputy Commissioner Carla Kolebuck stated that the proposed language does not affect single payment loans; it would only affect loans that involve multiple payments provided that a grace period during the loan term is incorporated in the loan agreement.

4-B-5

Dan Wulz of Legal Aid Center of Southern Nevada stated that they fully support the Division's submission of Exhibit D and that it is in accordance with 604A.210 and 604A.070 concerning what can be charged during a grace period. He further stated "grace period" means any period of deferment offered gratuitously by a licensee to a customer, and that gratuitously means without charge and there can be no accrual of the contract rate during any grace period.

4-B-6

Former Assembly Speaker Barbara Buckley, author of the payday loan legislation currently Executive Director of Legal Aid Center of Southern Nevada stated she agrees with Mr. Wulz's statement of the legislative intent on grace period. She indicated that some lenders wanted to work with customers to ensure that payments were received upon a default and to work something out in the contracts. The idea of grace period was intended as a period of grace, not as an opportunity to charge more fees. With that, she supports the Division's proposed regulation.

**5) Possible Action Regarding Interest that May be Collected During a Repayment Plan.**

5-A-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit E submitted by interested members of the industry concerning accrual of interest during a repayment plan.

5-A-2

Acting Supervisory Examiner Matt O'Brien read the proposed regulation Exhibit E.

5-A-3

No public comment was received.

5-B-1

Deputy Commissioner Carla Kolebuck stated the agenda and the proposed regulation referenced as Exhibit F defining the amount of interest that may be collected during a repayment plan.

5-B-2

Acting Supervisory Examiner Matt O'Brien read the proposed regulation Exhibit F.

5-C-1

Deputy Commissioner Carla Kolebuck stated the proposed regulatory language is intended to clarify and incorporate into regulation the Division's Declaratory Order and Advisory Opinion regarding interest that can be collected during a repayment plan period. Then she gave a synopsis of the examples that would be illustrated involving a 30-day loan and a 210-day loan.

5-C-2

Acting Supervisory Examiner Matt O'Brien went over the examples on the projector screen and in handouts to Workshop attendees illustrating the Division's proposal of what can or cannot be collected during a repayment plan.

5-C-3

Deputy Commissioner Carla Kolebuck added that under the proposed regulation, a lender may recover the total amount of unpaid interest under the repayment plan, provided that the plan is structured to not exceed the APR of the original agreement.

5-C-4

Dan Wulz of Legal Aid Center of Southern Nevada stated that they fully support the Division's submission of Exhibit F, concerning what can be collected during a repayment plan. He understands that it is in accordance with the Division's 2009 advisory opinion and that fully explains the Division's rationale which is fully supported by the law. Mr. Wulz further stated that the principle matter as evidenced by the statutory scheme is getting someone off the "debt treadmill" and allowing accrual of contract interest during a repayment plan does not accomplish this.

5-C-5

Former Assembly Speaker Barbara Buckley, author of the payday loan legislation and currently Executive Director of Legal Aid Center of Southern Nevada stated the whole idea behind the repayment plan was to get the customer off the "debt treadmill", to take the principal and the interest that accrued over a short period of time and come up with a way to allow them to repay the funds. Allowing interest to accrue at the original loan rate during a repayment plan means that the consumer would not be able to make the terms of the repayment plan. Accrual of contract interest during a repayment plan vitiates the rationale for a repayment plan, since after a default, interest drops to prime plus 10%. Ms. Buckley further stated that she fully supports the Division's proposed regulation which meets and serves the legislative intent.

5-C-6

Jonathan Patterson of Cash Plus had questions on the examples given concerning NSF fees and if such fees could be recovered on repayment plan without lengthening the term.

Acting Supervisory Examiner Matt O'Brien stated that the fee can be collected in a repayment plan under the condition that APR does not exceed the original contract rate.

**6) Possible Action Regarding the Proposed Regulations LCB File No. R130-08**

**6-A-1**

Deputy Commissioner Carla Kolebuck introduces the next agenda item regarding LCB File No. R130-08.

**6-A-2**

Acting Supervisory Examiner Matt O'Brien read section 1.

**6-A-3**

No public comment was received.

**6-B-1**

Acting Supervisory Examiner Matt O'Brien read section 2.

**6-B-2**

Jacqueline Bryant Rombardo with Holland and Hart representing Dollar Loan Center LLC asked the Division to consider providing the licensee with notice and the opportunity to demonstrate that the interest of the public does not outweigh that of the licensee if the Commissioner determines to disclose confidential information.

Deputy Commissioner Carla Kolebuck stated an example would be if the information requested is the subject of a subpoena, the Division would be required to provide the information, or if there was a purchaser of the business, it might be outweigh the licensee's interest in non-disclosure.

Ms. Rombardo questioned whether the applicant or licensee may be able to demonstrate that their interest might outweigh the public's interest in disclosure.

Commissioner George Burns made a statement regarding Chapter 604A, indicating that currently 604A licensees have absolutely no confidentiality of their information. The Division is seeking to bring to 604A licensees similar provisions concerning confidentiality that are provided to other types of licensees and to bring uniformity in those regulations for all licensees so all are treated in an equitable manner.

Ms. Rombardo stated she also has written comments that she is submitting.

**6-B-3**

Former Assembly Speaker Barbara Buckley questioned why the Division would keep reports of examination confidential.

Commissioner George Burns stated that maintaining the confidentiality of the report, also maintains the integrity of the examination process. It is far more productive that the licensee understands that the findings remain confidential for their diligent correction. When that confidentiality cannot be ensured, every finding the Division finds may bring litigation and it also brings resistance instead of cooperation. It is a much more conducive process if the licensee understands that confidentiality exists for them to rectify those matters that the Division has found. If the findings or conclusions involve an egregious violation of law, then the Division may issue disciplinary action such as a Cease and Desist Order, issue fines or 233B hearings. Licensees would not be able to get away with violations that are severe.

Former Assembly Speaker Barbara Buckley stated she would like the Commissioner to consider that when there are findings that might not bring disciplinary action but are also not corrected by the licensee, to allow such information to be given to the public in order to allow consumers to research and make resourceful decisions.

6-C-1

Acting Supervisory Examiner Matt O'Brien read section 3.

6-C-2

No public comment was received.

6-D-1

Acting Supervisory Examiner Matt O'Brien read section 4.

6-D-2

No public comment was received.

6-E-1

Acting Supervisory Examiner Matt O'Brien stated that the Division is hereby withdrawing the proposed language of section 5.

6-E-2

Commissioner George Burns stated the Division proposes deletion of this section clarifying certain requirements for deferred deposit and high interest loans made pursuant to NRS 604A.480 since these matters are the subject of a pending Attorney General's Opinion.

6-E-3

No public comment was received.

6-F-1

Acting Supervisory Examiner Matt O'Brien read section 6.

6-F-2

No public comment was received.

6-G-1

Acting Supervisory Examiner Matt O'Brien read section 7.

6-G-2

No public comment was received.

6-H-1

Acting Supervisory Examiner Matt O'Brien read section 8.

6-H-2

No public comment was received.

6-I-1

Acting Supervisory Examiner Matt O'Brien read section 9.

6-I-2

No public comment was received.

6-J-1

Acting Supervisory Examiner Matt O'Brien read section 10.

6-J-2

No public comment was received.

6-K-1

Acting Supervisory Examiner Matt O'Brien read section 11.

6-K-2

No public comment was received.



6-L-1

Acting Supervisory Examiner Matt O'Brien read section 12.

6-L-2

No public comment was received.

6-M-1

Acting Supervisory Examiner Matt O'Brien read section 13.

6-M-2

No public comment was received.

6-N-1

Acting Supervisory Examiner Matt O'Brien read section 14.

6-N-2

No public comment was received.

6-O-1

Acting Supervisory Examiner Matt O'Brien read section 15.

6-O-2

No public comment was received.

6-P-1

Acting Supervisory Examiner Matt O'Brien stated that the Division is withdrawing the proposed changes to Subsections 1 through 5 of Section 16 relating to NAC 604A.090. He then read Section 16.

6-P-2

Commissioner George Burns stated that the Division proposes the deletion of amendments to Subsections 1-5 of Section 16 that proposed increasing fees for examinations, license applications, renewals and license reinstatement due to current economic conditions.

6-P-3

Robert Frimet from Advantage Check Cashing stated he would like the Division to consider performing examinations after notice to the licensee rather than surprise examinations without notice due to overburdening the licensee.

6-P-4

Jacqueline Bryant Rombardo with Holland and Hart representing Dollar Loan Center LLC had questions with subsections 7 and 8. She asked how the CPA assessment is applied, on a per licensee or per branch basis.

Commissioner George Burns stated that the statute providing for the CPA assessment allows the Division to charge \$300 per licensee; however the Division has only been charging the main branch of the office the amount needed to fund the operations of the CPA and that the assessment has been far below the \$300 amount allowed.

Jacqueline Bryant Rombardo with Holland and Hart questioned section 8, regarding attorney general assessment asking how that assessment is determined.

Commissioner George Burns stated that the AG assessment is charged per location in order to spread out the cost over a greater number. He indicated that the most recent AG assessment was a 38 percent reduction from the previous year, and was also due in part to the increase of licensees the Division currently regulates. Licensees each paid 1/1000<sup>th</sup> of the total assessment, or .001%.

Jacqueline Bryant Rombardo with Holland and Hart questioned if the AG fee is once a year and fluctuated based on the costs associated with the assessment.

Commissioner George Burns stated that is correct.

6-Q-1

Acting Supervisory Examiner Matt O'Brien read section 17.

6-Q-2

No public comment was received.

6-R-1

Acting Supervisory Examiner Matt O'Brien read section 18.

6-R-2

No public comment was received.

6-S-1

Acting Supervisory Examiner Matt O'Brien read section 18.

6-S-2

No public comment was received.

6-T-1

Acting Supervisory Examiner Matt O'Brien read section 19.

6-T-2

No public comment was received.

6-U-1

Acting Supervisory Examiner Matt O'Brien read section 20 subsections 1-3, then he stated subsection 4 relating to NRS 604A.425 is being withdrawn.

6-U-2

Commissioner George Burns stated the Division proposes deletion of subsection 4 clarifying the amounts to be included in the calculation of a deferred deposit loan for purposes of the limitation imposed under NRS 604A.425 because the 1<sup>st</sup> Judicial Court of Nevada has ruled on the matter, and it is currently on appeal to the Nevada Supreme Court.

6-U-3

No public comment was received.

6-V-1

Acting Supervisory Examiner Matt O'Brien stated the proposed changes set forth in section 21 relating to NAC 604A.220 is being withdrawn by the Division.

6-V-2

Commissioner George Burns stated the Division proposes the deletion of section 21 clarifying the prohibition of accepting a check as security for a high-interest loan since it is unnecessary and duplicative.

6-V-3

No public comment was received.

6-W-1

Acting Supervisory Examiner Matt O'Brien stated the Division is withdrawing the proposed changes to NAC 604A.230 listed in Section 22.

6-W-2

Commissioner George Burns stated the Division proposes the deletion of Section 22 restricting loans made to repeat borrowers, internet lending and the imposition of additional collection fees since it appears that these matters appear to have been rectified in the industry in a way that is acceptable to the Division.

6-W-3

No public comment was received.

6-X-1

Deputy Commissioner Carla Kobleuck stated that the Commissioner will hear comments and take possible action regarding whether NAC 604A.220 should be deleted in its entirety. The Division proposes the deletion in its entirety of NAC 604A.220 since it is unnecessary and duplicative of NRS 604A.435.

6-X-2

Acting Supervisory Examiner Matt O'Brien read NAC 604A.220.

6-X-3

No public comment was received.

#### **7) Additional Public Comment**

Alfredo Alonso with Lewis and Roca stated they plan to submit comments on behalf of CFSA and others in the next few days and look forward to working on the proposed regulations.

#### **8) Adjournment**

Meeting adjourned on October 10, 2012 at 11:45 am.

# **EXHIBIT “6”**



BRIAN SANDOVAL  
Governor

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION

BRUCE BRESLOW  
Director

GEORGE E. BURNS  
Commissioner

CHAPTER 604A  
REPORT OF EXAMINATION

TITLEMAX OF NEVADA INC.  
DBA: TITLEMAX  
5871 E. LAKE MEAD BLVD.,  
LAS VEGAS, NV 89156  
WWW.TITLEMAX.COM

Examiner In Charge:	Ma. Theresa Dihiansan	Examined as of:	May 4, 2015
Examination Started:	May 22, 2015	Examination Closed:	June 17, 2015
Total Exam Hours:	12.0	Examination Number:	66958

**THIS REPORT IS STRICTLY CONFIDENTIAL**

The information contained in this report is based on the books and records of the licensee as licensed under NRS 604A, on statements made to the examiner by the directors, officers, and employees, and on information obtained from other sources believed to be reliable and presumed by the examiner to be correct. It is emphasized that this report is a report of examination, and not an audit of the licensee, and should not be construed as such. This report of examination does not replace nor relieve the principals of their responsibility for performing or providing for adequate audits of the business.

This copy of the report is the property of the Department of Business and Industry of the State of Nevada, and is furnished to the licensee for its confidential use. Under no circumstances shall the licensee, or any of its directors, officers, or employees disclose in any manner the report or any portion thereof to any person or organization not officially connected with the licensee as officer, director, attorney, or auditor unless otherwise directed. Should any legal process document be served calling for the surrender of this report or any portion thereof, the Commissioner of the Financial Institutions Division shall be notified immediately.

Each principal has the responsibility to review the contents of this report.

State of Nevada  
Department of Business and Industry, Financial Institutions Division

Ma. Theresa Dihiansan, CAMLS  
Examiner In Charge

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## EXAMINATION COMMENTS AND CONCLUSIONS

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### INTRODUCTION

The follow-up examination of TitleMax of Nevada Inc. DBA: TitleMax located at 5871 E. Lake Mead Blvd., Las Vegas, NV 89156 commenced on May 4, 2015. This business location currently holds a Nevada Revised Statutes (NRS) Chapter 604A license issued by the State of Nevada Financial Institutions Division (FID). The licensee has been granted the approval to underwrite Title Loans in accordance with applicable statutes and regulations.

The licensee's website [www.titlemax.com](http://www.titlemax.com) is used to advertise the various products and services it currently offers. Customers can start the application process online but must visit the branch location to process the loan.

As of the examination date, TitleMax currently has 42 licensed locations in the State of Nevada and all the locations were visited during the process of this examination. The corporate office located at 15 Bull St., Suite 200, Savannah Georgia 31401 is also licensed under NRS 604A. This location does not underwrite loans and is used for administrative purposes only. All licensed locations are listed in the table below:

Store	Address	City	State	Zip
TitleBucks	7150 S. DURANGO DRIVE, #190	LAS VEGAS	NV	89113
TitleMax	6820 W. FLAMINGO RD, SUITE F & G	LAS VEGAS	NV	89103
TitleMax	6525 S. FORT APACHE ROAD, STE 110	LAS VEGAS	NV	89148
TitleMax	3525 S. FORT APACHE ROAD, SUITE 160	LAS VEGAS	NV	89147
TitleMax	4700 SPRING MOUNTAIN ROAD	LAS VEGAS	NV	89102
TitleMax	3575 W. TROPICANA AVENUE	LAS VEGAS	NV	89103
TitleMax	5060 S. FORT APACHE ROAD, SUITE 140	LAS VEGAS	NV	89148
TitleMax	6795 W. TROPICANA AVENUE, SUITE 140	LAS VEGAS	NV	89103
TitleMax	7615 S. RAINBOW BLVD, STE 100	LAS VEGAS	NV	89139
TitleMax	7380 S. EASTERN AVENUE, SUITE 126	LAS VEGAS	NV	89123
TitleMax	3810 BLUE DIAMOND ROAD #150	LAS VEGAS	NV	89139
TitleMax	6530 S. DECATUR BLVD, #100	LAS VEGAS	NV	89118
TitleMax	9555 S. EASTERN AVE, SUITE 105	LAS VEGAS	NV	89123
TitleMax	3391 E. TROPICANA AVENUE, STE 1	LAS VEGAS	NV	89121
TitleMax	3547 S. MARYLAND PKWY	LAS VEGAS	NV	89169
TitleMax	3365 E. FLAMINGO ROAD, SUITE 1	LAS VEGAS	NV	89121
TitleMax	4749 S. MARYLAND PKWY	LAS VEGAS	NV	89119
TitleMax	4650 E. SUNSET ROAD, SUITE C	HENDERSON	NV	89014
TitleMax	16 W. HORIZON RIDGE PKWY #160	HENDERSON	NV	89012
TitleMax	4944 BOULDER HIGHWAY	LAS VEGAS	NV	89121
TitleMax	4000 BOULDER HWY, SUITE 5	LAS VEGAS	NV	89121
TitleMax	1210 N. BOULDER HWY, SUITE C	HENDERSON	NV	89011



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Store	Address	City	State	Zip
TitleBucks	4150 BOULDER HIGHWAY, SUITE 105	LAS VEGAS	NV	89121
TitleMax	2400 N. BUFFALO DRIVE #140	LAS VEGAS	NV	89128
TitleMax	2550 S. EASTERN AVENUE	LAS VEGAS	NV	89169
TitleMax	6450 W. LAKE MEAD BLVD, STE 150	LAS VEGAS	NV	89108
TitleMax	3900 W. SAHARA AVENUE	LAS VEGAS	NV	89102
TitleMax	4811 WEST CRAIG ROAD	LAS VEGAS	NV	89130
TitleMax	6436 N. DECATUR BLVD., #115	LAS VEGAS	NV	89131
TitleMax	4077 W. CHARLESTON BLVD.	LAS VEGAS	NV	89102
TitleBucks	4750 W. LAKE MEAD, #102	LAS VEGAS	NV	89108
TitleMax	8414 W. FARM ROAD, SUITE 130	LAS VEGAS	NV	89131
TitleMax	4001 N. LAS VEGAS BLVD.	LAS VEGAS	NV	89115
TitleMax	3220 S. VIRGINIA STREET	RENO	NV	89502
TitleMax	2020 E. WILLIAMS STREET	CARSON CITY	NV	89701
TitleMax	1995 W. WILLIAMS AVENUE	FALLON	NV	89406
TitleMax	900 W. FIFTH STREET	RENO	NV	89503
TitleMax	1600 N. NELLIS BLVD, SUITE 102	LAS VEGAS	NV	89115
TitleMax	1225 E. CHARLESTON BLVD.	LAS VEGAS	NV	89104
TitleMax	4741 E. CHARLESTON BLVD.	LAS VEGAS	NV	89104
TitleMax	6060 BOULDER HWY.	LAS VEGAS	NV	89122
TitleMax	5871 E. LAKE MEAD BLVD.	LAS VEGAS	NV	89156
TitleMax	15 BULL ST.	SAVANNAH	GA	31401

As of the examination date, the store located at 6060 Boulder Hwy., Suite 5 and 6, Las Vegas, NV 89122 was just opened for business and has not started underwriting title loans yet. As such, loan review was not part of the scope of the examination for this location.

### SCOPE OF EXAMINATION

The primary purpose of the examination was to determine compliance with NRS Chapter 604A and Nevada Administrative Code (NAC) Chapter 604A. The examination consisted of a review of active, paid, delinquent and declined loans, a review of surety bond terms, completion of the manager's and statutory compliance questionnaires, and a review of the company's policies and procedures and forms used in the operation of the business. Appropriate licenses and fee-related postings were also examined. Emphasis was placed on compliance with State regulations as well as the Truth in Lending Act (Regulation Z).

The current examination mainly focused on the prior violations that were cited which resulted in a less than satisfactory rating.



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### Annual Report

The Annual Report of Operations was received by the FID on March 24, 2015. The licensee is in compliance with NRS 604A.750.

### Surety Bond

The Surety Bond is sufficient. It is currently posted at \$265,000.00, with Capitol Indemnity Corporation under Surety Bond number 60088894 and is due for renewal on February 15, 2016. The licensee is in compliance with NRS 604A.610.

### Internal / External Review

Aside from the Nevada State examination, there was no written documentation provided for internal or external reviews at the time of the examination.

### Financial Audit / CPA

The CPA of the Financial Institutions Division reviewed the key financial figures submitted along with the licensee's Annual Report of Operations. There are no weaknesses identified in the business operations.

### Internal Routine and Control

During the previous examination, the licensee was utilizing CashWise Financial Services Software for its loan operations. However, at the start of the examination process, the licensee was in the process of converting its Software Program from CashWise Financial Services to TLX Software Program.

The Title loan underwriting process includes:

- Loan application form
- Income and obligations
- Government issued photo identification
- Valid phone number
- Title of the vehicle
- Proof of insurance
- Current registration
- Affidavit stating the customer's ability to repay the loan

As of the examination date, the licensee offers title loans with the original term of 210 days which parallel NRS 604A.445 (3):

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;



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- (c) The loan is not subject to any extension; and
- (d) The loan does not require a balloon payment of any kind.

The licensee is still in the process of collecting on old loans that were underwritten with an original term of 30 days which were underwritten prior to the last examination date.

As observed during the prior examination, the licensee is still utilizing the "Grace Period Payments Deferment Agreement." Some of the branch locations visited had pre-printed copies of the grace period payments deferment agreement in the customer files. The employees are also encouraging the customers to enter into this grace period payment deferment agreement.

This grace period payments deferment agreement consists of separating the interest and principal from the original amortized schedule payments and prolonging the payment of principal until the full interest is paid. This agreement has a schedule of 14 payments, which for the first seven payments the customer pays only interest. For the remaining seven payments, the customer pays the principal. The total amount paid under this agreement is higher from the original amortized payments scheduled under the original loan agreement.

The "Grace Period Payments Deferment Agreement" offered by TitleMax clearly contradicts with NRS 604A.445 (3). Please refer to the State violation section of the report for additional details.

### **Training**

TitleMax provides periodic training to all employees. New employees are trained upon hire and annually thereafter. All employees are required to complete refresher courses on-line and as needed. The Compliance Department has the responsibility of overseeing that all training materials are up to date with any industry changes and demands.

### **Display of License, Notices, and Disclosures**

The State of Nevada, Financial Institutions Division NRS 604A license is displayed conspicuously by the licensee which is in compliance with NRS 604A.635 and NAC 604A.060.

The contact number of the office of the Commissioner, notice of fees charged and business hours are posted conspicuously in the location where the licensee conducts business, which is in compliance with, NRS 604A.405, NAC 604A.130, NAC 604A.140, and NAC 604A.150.

### **Record Retention**

As stated in the managers questionnaire, it is the licensee's policy to maintain all records for five years, which is in compliance with NRS 604A.700 and NAC 604A.200.



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### Collection Agency Utilized by the Licensee

As of examination date, the licensee does not utilize a collection agency for accounts in default. The licensee's internal collections department currently handles these accounts.

### FDCPA

TitleMax employees are required to be certified on an annual basis. All collection employees are required a minimum score of 80 percent to obtain the FDCPA certification. The store managers monitor all contact with debtors to ensure that policies and procedures are followed by all employees.

### FinCen Registration

TitleMax is not considered a Money Services Business in accordance with 31 CFR Chapter X § 1022.380; as such, the licensee is not registered with FinCEN as a Money Service Business.

### Complaints Filed Since the Previous Examination

The FID complaint database was verified and it indicates that there were three (3) complaints filed against the licensee since the last examination. Out of the three, one complaint was still open as of the close date of the examination. The complaint of Esther Vasquez under complaint number 68670 was still open.

### Total Sample Size

As of Exam Date	May 4, 2015
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	Population	Sample Size	Penetration
<b>LOAN TYPES:</b>			
Active Loans	70	5	7.14%
Delinquent Loans	17	5	29.41%
Closed Loans	No Inventory	5	0.00%
Declined Loans	0	0	0.00%
<b>Total Loans =</b>	<b>87</b>	<b>15</b>	<b>17.24%</b>

During this follow-up examination, declined loans were not reviewed.

## PREVIOUS VIOLATIONS OF STATUTES AND REGULATIONS

### REPEAT VIOLATION

**NRS 604A.450 Title loans:** Prohibited acts by licensee regarding amount of loan and customer's ability to repay loan. A licensee who makes title loans shall not:

2. Make a title loan without regard to the ability of the customer seeking the title loan to repay the title loan, including the customer's current and expected income, obligations and employment.



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## EXAMINATION COMMENTS AND CONCLUSIONS

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The licensee was previously cited for underwriting loans without regard to the customer's ability to repay the title loan. This is no longer apparent since the licensee started underwriting loans with an original term of 210 days; therefore, this violation is deemed rectified.

**NAC 604A.230 Prohibited acts: Miscellaneous acts.**

**NRS 604A.105 "Title loan" defined.**

**NRS 604A.115 "Title to a vehicle" or "title" defined. "Title to a vehicle" or "title" means a certificate of title or ownership issued pursuant to the laws of this State that identifies the legal owner of a vehicle or any similar document issued pursuant to the laws of another jurisdiction.**

During the previous examination, the licensee was cited for allowing co-borrowers to be co-signors on the title loan where the co-borrower's name was not in the vehicle title. No such instance was found at this location. As such, this is deemed rectified.

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

**NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:**

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

Since the previous examination, Titlemax implemented a 210 day title loan product that mirrors NRS 604A.445 (3). The current examination showed that Titlemax's original loan agreement complies with NRS 604A.445 (3). The examination also showed that Titlemax markets and offers an amendment to the original loan agreement that violates NRS 604A.445 (3) and NRS 604A.210. This is still apparent during the current examination and is cited as a repeat violation.

### EXIT MEETING

The exit meeting was held telephonically on June 17, 2015. TitleMax was represented by the following:

Carrie E. Carbone, SVP of Compliance and Product General Counsel  
Victoria Newman, Compliance and Corporate Counsel  
Stephen Paris, Senior Regulatory Compliance Manager  
Ted Helgeson, Divisional Vice President of Operations  
Coleman Gaines, Senior Vice President of Operations-West  
Melissa Ardis, Director of Compliance  
Nicole Lovelock, Outside Counsel from Holland and Hart

The Financial Institutions Division was represented by the following:

Harveen Sekhon, Supervisory Examiner



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DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION

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## EXAMINATION COMMENTS AND CONCLUSIONS

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Christopher Eccles, Attorney  
Ma. Theresa Dihiansan, Examiner-In-Charge  
Dean Ventura, Examiner  
Kelvin Lam, Examiner

### CURRENT VIOLATIONS OF APPLICABLE STATUTES AND REGULATIONS

#### STATE

##### REPEAT VIOLATION

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

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

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

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

**NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period. The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:**

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

During the current examination, TitleMax underwrites title loans with an original term of 210 days which mirrors NRS 604A.445 (3). It was also apparent during the examination that Titlemax continued to offer the amendment to the original loan agreement that violates NRS 604A.445 (3) and NRS 604A.210.

Onsite visits to Titlemax locations and conversations with store employees showed that Titlemax currently offers the customers an amendment to the original loan agreement called the "Grace Period Payments Deferment Agreement" (hereinafter, the "Amended Agreement") during the term of the loan. The customer may enter into the grace period payments deferment agreement prior to default if the customer chooses to make lower monthly payments although the total amount owed by the customer in the amended agreement will be higher than the total amount owed under the original loan agreement.



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## EXAMINATION COMMENTS AND CONCLUSIONS

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The text of the Amended Agreement provides:

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

This statement shows an intent to avoid compliance with NRS 604A.445 (3). Under the original loan agreement the customer makes seven fully amortized payments (210 days) to pay the loan off without a balloon payment at the end, thereby complying with all provisions of NRS 604A.445(3). But, under the Amended Agreement, the customer makes 14 payments (390 days), the first seven payments are interest payments only and last seven payments are principal payments. Thus, the Amended Agreement separates interest and principal from the original amortized schedule of payments, and thereby prolongs the payment of principal until the full interest is paid.

For an example of how customers owe more under the Amended Agreement compared to the original agreement, please see below:

### OPEN ACCOUNTS

Loan Number	Customer Name	Total Amount to be Paid Under the Original Loan Agreement	Total Amount to be Paid under the "Amended Loan Agreement"	Overage
14569-0155085	M. Scanlan	\$1,819.80	\$2,233.10	\$413.30
14569-0155120	J. Cronin	\$5,079.66	\$6,188.83	\$1,109.17
14569-0160496	Q. Jackson	\$1,819.80	\$2,233.10	\$413.30
14569-0164135	O. Morris	\$3,465.55	\$4,238.60	\$773.05
14569-0149622	L. Lopez-Verdin	\$3,500.21	\$4,281.00	\$780.79
14569-0153006	N. Richmond	\$2,176.60	\$2,670.96	\$494.36

*Management Response: Victoria Newman, Compliance and Corporate Counsel stated that the licensee would respond in writing upon receipt of the written report of examination for all locations.*



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DEPARTMENT OF BUSINESS AND INDUSTRY  
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## EXAMINATION COMMENTS AND CONCLUSIONS

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### FEDERAL

No violations of Federal laws were noted during the examination. However, this examination should not be considered a full compliance examination relative to Federal statutes.

### SUMMARY

Each licensee, upon completion of an examination, is rated "Satisfactory," "Needs Improvement," or "Unsatisfactory," based primarily on compliance with applicable statutes and regulations and the perceived capability of management to achieve and maintain such compliance. The rating of the licensee at this examination is "Unsatisfactory."

A rating of "Unsatisfactory" indicates that the licensee and the management of the licensee have demonstrated substantial lack of compliance with applicable laws and regulations and that immediate remedial action is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to NRS and NAC. A rating of "Unsatisfactory" may be given if there were minor violations or deficiencies from a previous examination that were not corrected. Be advised that you may be subject to disciplinary action due to the nature of the violations. You may request an administrative hearing regarding the Division's findings of deficiencies and violations. If you do wish to request an administrative hearing, please state so in your response letter. A written response to the examination is required within 30 days outlining the actions that will be taken to correct all deficiencies and violations noted in the report. The Financial Institutions Division may conduct a follow up examination within three (3) months to ensure corrective actions have been implemented.

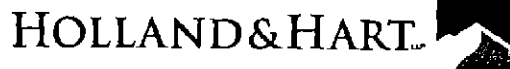


STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION

REPORT OF EXAMINATION

# **EXHIBIT “7”**





Patrick J. Reilly  
Phone (702) 222-2542  
Fax (702) 669-4650  
preilly@hollandhart.com

February 9, 2015

VIA FACSIMILE (702-486-4563) AND U.S. MAIL

Ms. Theresa Dihiansan, CAMLS  
Examiner III  
State of Nevada  
Department of Business and Industry  
Financial Institutions Division  
2785 East Desert Inn Road, Suite 180  
Las Vegas, Nevada 89121

**RE: Reports of Examination for TitleMax of Nevada, Inc., d/b/a/ TitleMax ("TitleMax") and d/b/a TitleBucks ("TitleBucks") (TitleMax and TitleBucks may be collectively referred to herein as the "Companies")**

Dear Ms. Dihiansan:

Thank you for this opportunity to respond to the recent Reports of Examination ("ROEs") conducted by the State of Nevada Department of Business and Industry Financial Institutions Division (the "Division") of thirty-eight (38) TitleMax licensed store locations and three (3) TitleBucks licensed store locations. The Companies always seek to work closely with their regulators in an effort to attain the highest levels of compliance with applicable federal and state laws and regulations. To that end, we greatly appreciate the Division communicating with the Companies regarding their policies and procedures.

My understanding of the ROEs is that they concern three overriding legal issues: (1) alleged violations of NRS 604A.450; (2) alleged violations of NAC 604A.230; and (3) alleged violations of NRS 604A.210 and 604A.445.

**ALLEGED VIOLATIONS OF NRS 604A.450**

**A. The Division Misinterprets the Term "Without Regard" in NRS 604A.450(2).**

Nevada law provides as follows:

A licensee who makes title loans shall not:

2. Make a title loan **without regard** to the ability of the customer seeking the title loan to repay the title loan, including the customer's current and expected income, obligations, and employment.



NRS 604A.450(2) (emphasis added). The examiner noted that "[t]he title loans ... were underwritten in excess of the customer's disclosed income and obligations, therefore, there was no regard given to the customer's ability to repay the loan. This exception was cited by the examiner in all but one (1) examination (namely Examination Number 65329).

Please note there have been ongoing discussions concerning the Division's interpretation of NRS 604A.450 dating back to October 2012. The Companies have met several times with the Division concerning this issue and the Companies contend that, in making title loans to their customers, it fully complies with NRS 604A.450 in that it considers a customer's ability to repay the loan.

Neither the Nevada Revised Statutes nor the Nevada Administrative Code define the term "without regard" as it pertains to NRS 604A.450. Nor is there any published court decision interpreting this language. Absent an ambiguity, Nevada statutes must be read to "give effect to the plain and ordinary meaning of the words." *St. Mary v. Damon*, 129 Nev. —, 309 P.3d 1027, 1031 (2013), quoting *Cromer v. Wilson*, 126 Nev. —, 225 P.3d 788, 790 (2010).

The Nevada Revised Statutes provide countless examples in which the term "without regard" is invoked as a prohibition against any consideration of some matter. See, e.g., NRS 2.065 (pension for a retiring justice is based upon years of service "without regard to his or her age"); NRS 18.010 (awarding fees for frivolous claims "[w]ithout regard to the recovery sought"); NRS 62B.200 (boards of county commissioners of two or more counties may provide a combined facility for the detention of children "without regard to the population of the counties"). In the federal context, there are numerous rules that guarantee basic civil rights "without regard" to a person's race, gender, religion, or national origin. See, e.g., *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 293 (1978) (the guarantees of Equal Protection "are universal in their application . . . without regard to any differences of race, or color, or of nationality. . . ."), quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). These various statutory and court applications make it clear that the term "without regard" equates to "giving no consideration whatsoever."

In this context, NRS 604A.450 merely prohibits a licensee from giving no consideration whatsoever to a borrower's ability to repay a loan. The Companies plainly comply with this requirement, as they require potential borrowers to disclose current and expected income, employment, and obligations, and then consider that information when deciding to underwrite a title loan. The Division therefore exceeds its limited statutory authority when, in this case, it dictates to the Companies its own unwritten loan underwriting methodology that is not required by statute or regulation. *State v. Nevada Ass'n Servs., Inc.*, 128 Nev. —, 294 P.3d 1223 (2012).

///



**B. The Division Has Created a Rule Limiting Licensees to Consider Only 30 Days of Current Income, Obligation, and Employment.**

The Division has also crafted a blanket unwritten rule that the "ability to repay" analysis must be limited to "30 days of current income, obligation, and employment." As set forth *supra*, the Division's unilateral loan underwriting criteria is not part of any statute or regulation. Setting that aside, the Division has inappropriately rewritten NRS 604A.450 by adding the words "within 30 days" to subsection 2. Nowhere in the statute or in the "published regulations" does the Division's "30 day limitation" for "current income, obligation, and employment" appear. In fact, the Division's "30 day limitation" is not found anywhere in the statute or the regulations and is simply forced upon licensees by the Division.

The Division appears to base its position on the contention that a "title loan" must be repaid within 30 days. This is a misapplication of Nevada law. Under NRS 604A.105, a "title loan" is merely a "loan" made under certain terms and conditions. The term "loan" is specifically defined to include a "title loan, or any extension or repayment plan relating to such loan..." NRS 604A.080 (emphasis added). Based upon this plain definition, a licensee is not limited to consider the borrower's ability to repay the loan during its "original term" under NRS 604A.445(1), and the Companies note that the term "original term of the loan" is conspicuously missing from NRS 604A.450. Thus, the Companies may consider the borrower's ability to repay the entirety of the loan, not merely the "original term" of the loan.

The absence of the "original term" language from NRS 604A.450(2) is significant. NRS 604A.445(2) provides that the "original term of a title loan must not exceed 30 days" but specifically allows that "the title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days." NRS 604A.445(1,2) (emphasis added). Because both NRS 604A.080 and 604A.445 provide that a "title loan" includes both the original term and its extensions, the Companies may take into account expected income and obligations likely to occur over the entire course of the title loan.

For those customers that take advantage of the six (6) extensions, the Companies allow a grace period of 210 days. Under the Companies grace period allowance, customers receive a total of at least 420 days to repay their title loan, not counting the repayment period. Therefore, the Companies do in fact consider their customers' ability to repay the title loan by taking into consideration the time frame for extensions permitted by the statute, the time period for requesting a repayment plan, and the time period allowed under the Companies' generous 210-day grace period.

This is also consistent with NRS 604A.475, which governs repayment plans. The rule mandates licensees to offer to customers "an opportunity to enter into a repayment plan" that is "available to the customer for a period of at least 30 days after the date of default." A "repayment plan" is not a new "loan" but merely "relat[es] to" the existing loan. See NRS 604A.080. Significantly, the Companies provide their customers the opportunity to enter into a



repayment plan that is available to them for a period of at least 30 days after the date of default. The Companies include this additional 30-day period in analyzing their customers' ability to repay. Additionally, NRS 604A.475 mandates a "period for repayment to extend at least 90 days after the date of default" (emphasis added). The Companies also include this 90-day period in analyzing their customers' ability to repay. Accordingly, every customer in Nevada has at least 150 days (30-day original term, 30 days to request a repayment plan, and a 90-day repayment plan) within which to repay a title loan.

The Division's position also appears to contradict its position in *State v. Check City Partnership, LLC*, 130 Nev. —, 337 P.3d 755 (2014). In that case, Check City contended that the prohibition of NRS 604A.425 against making a deferred deposit loan in excess of 25 per cent of the customer's expected gross income was limited to the principal amount lent. The Division disagreed, arguing that the term "loan" should be interpreted broadly to include the entire "transaction" to include the interest and fees that are repaid over the course of the "loan." The Supreme Court agreed with the Division. Respectfully, the Division cannot have it both ways, arguing in one case for a broad interpretation of the term "loan" and a narrow interpretation in another.

To summarize, the Companies do analyze their customers' ability to repay as required by the statute by analyzing the customer's current and expected income, obligations, and employment. In addition, the Companies also require each customer to sign an affidavit verifying that the customer has the ability to repay the title loan as required by the statute.

Despite our disagreement with the Division's interpretation of NRS 604A.450, the Companies changed their loan products offered in Nevada to a 210-day installment loan rather than a single-pay loan as of July 2014. As discussed in the exit review between the Companies and the Division, the change from the 30 day product to the 210 day product has alleviated the Division's concerns about the ability to repay.

#### ALLEGED VIOLATIONS OF NAC 604A.230

In all but one ROE (namely Examination Number 65329), the Division contends that the Companies violated NAC 604A.230 in certain instances where "the co-borrower was not on the vehicle title." NAC 604A.230 provides, in pertinent part, as follows:

1. A licensee shall not:
  - (a) Require or accept a guarantor to a transaction entered into with a customer.

Without any legal basis, the Division seems to have equated a "co-borrower" with a "guarantor."

The Companies do not require or permit a guarantor on any of their loans. If requested by the prospective borrower, the Companies will accept on an account a co-borrower who is not



listed on the Certificate of Title. When a co-borrower is added to an account who is not listed on the Certificate of Title, **the co-borrower becomes contractually bound as a principal obligor**, not as a guarantor. Significantly, after the co-borrowers execute the loan agreement, the loan proceeds check is made payable according to the instructions **of both borrowers**. It is also important to note that the Companies' loans are non-recourse as to both borrowers—in other words, neither borrower can be held liable for any deficiency balance in the event the full amount of the debt is ultimately deemed uncollectible. As a result, the co-borrower is never treated as a "guarantor."

Accordingly, because the Companies do not require or permit a guarantor on any of their loans, the Companies respectfully request that the Division revise its audit report to remove all references to this alleged violation.

**ALLEGED VIOLATIONS OF NRS 604A.210 and 604A.445**

In all but six (6) ROEs (namely Examination Numbers 65302, 65329, 65294, 65297, 65313, and 65325), the Division contends that the Companies market and offer "an amendment to the original loan agreement that violates NRS 604A.445(3) and NRS 604A.210, which provide as follows:

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

Notwithstanding any other provision of this chapter to the contrary:

3. The original term of a title loan may be up to 210 days if:
  - (a) The loan provides for payments in installments;
  - (b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;
  - (c) The loan is not subject to any extension; and
  - (d) The loan does not require a balloon payment of any kind.

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

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

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



The Companies offer a 210-day installment loan product and charge interest at an APR that exceeds 35%, which the Division agrees is in compliance with NRS 604A.445(3). The Companies require the customer to secure the loan by perfecting a security interest in the vehicle by the Company noting its lien on the title. Additionally, the Companies offer each borrower under the installment loan a grace period of deferment gratuitously (without additional charge) in compliance with NRS 604A.210, pursuant to the terms of a Grace Period Payments Deferment Agreement (the "Deferment Agreement").

The Companies have a policy of working with borrowers and giving them every opportunity to fulfill their contractual obligations and thus avoid defaults. The Companies believe it is in the best interest of both the borrower and the Companies to limit defaults because NRS 604A.455 in general prohibits title lenders from pursuing the borrower personally for payment of the loan. Therefore, the Companies use repossession of the vehicle, generally as a last resort, as the remedy if the customer defaults. The Companies' goal for each customer is to pay, not for the Company to repossess any motor vehicle.

As such, the Companies have adopted customer friendly policies to allow borrowers the grace period contemplated by the statute without additional charge, in full compliance with NRS 604A.210. Please note the following provision of the Deferment Agreement (emphasis added):

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

Each borrower that selects the Deferment Agreement has the right to prepay under the Deferment Agreement. The Companies not only remind each borrower of the simple interest charge, but also obtains each borrower's written acknowledgement and agreement that simple interest continues to accrue as set forth in the Loan Agreement.

Acknowledgment of Simple Interest Accrual. You acknowledge that we use the simple interest method to calculate and accrue the



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

Even though the law does not require a grace period, the Companies have adopted a customer friendly grace period. The Companies' "grace period" policy allows borrowers the opportunity to reduce their monthly obligations. Our borrowers make informed decisions about their cash flow throughout the loan process. One of the benefits a borrower may receive in entering into a Deferment Agreement is that the monthly payment for the borrower is lower than

originally scheduled under the Loan Agreement. While paying down debt has its benefits, it is equally important for many of our borrowers to reduce monthly payment obligations. Thus, many of our borrowers view the reduction in the monthly payment and resulting "cash flow cushion or margin" created thereby, as not only a valuable option, but also a benefit not afforded by others in the market. The Companies have realized that good business practices recognize that even though the Nevada Legislature did not require lenders to provide "grace periods," it specifically authorized lenders to offer such "grace periods" to borrowers because it makes good business sense and provides borrowers a much needed benefit—the ability to create monthly cash flow cushion or margin. The Companies only make available its "grace period" program for those borrowers not currently in default and who want such option. The Companies operate its "grace period" program in full compliance with Nevada law.

Borrowers certainly may also make their payments as originally scheduled, even though they have entered into a Grace Period Payments Deferment Agreement. The Companies charge no type of prepayment penalty for borrowers desiring to pay off early and save interest. Likewise, borrowers always maintain a right to make payments under a Repayment Plan under NRS 604A.475. The Companies fully comply with NRS 604A.475 for those customers requesting a repayment plan after default.

The Companies do not charge "any fees for granting such a grace period" nor do the Companies charge "any additional fees or additional interest on the outstanding loan during such a grace period." It appears that the Division may be ignoring the word "additional" and construing NRS 604A.210(2) to prohibit "any interest on the outstanding loan during such a grace period." If the Legislature had intended to ban the contract rate of interest during the grace period, it would not have inserted the word "additional" before "interest" in NRS 604A.210. Alternatively, the Division may be taking the position that the prohibition of "additional fees" or "additional interest" means that the total interest on the loan for the entire period the loan is unpaid cannot exceed the total interest that would have been paid had the loan been fully repaid within 210 days. This view would again render the word "additional" meaningless and superfluous, which is contrary to well-settled maxims of statutory construction. *In re Steven Daniel P.*, 129 Nev. \_\_\_, 309 P.3d 1041, 1043-44 (2013).

If there is a grace period, by definition, the borrower has not repaid the interest during the original term of a loan. As a result, the total interest for the original term plus the grace period would always be higher than interest only for the original term assuming the loan had been repaid pursuant to its original terms. Therefore, under the Division's possible interpretation, the word "additional" is again rendered meaningless and superfluous, as the Legislature could have just omitted that word and prohibited all interest during the grace period and reached the same conclusion.

The legislative history involving NRS 604A.210 supports the Companies' position. In April 2005, Sections 13 and 23 of Assembly Bill ("AB") 384, were re-written and added to what



would ultimately become NRS 604A.210. Section 23 originally prohibited a licensee from charging the following during a grace period:

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

The word "additional" was not yet part of the proposed legislation. In a PowerPoint presentation, Barbara Buckley described the original Section 23 as stating that "no fee or interest may be charged during a grace period." However, Ms. Buckley, in her presentation, commented how changes had to be made to the wording to reach a consensus. She stated:

*We have worked on words and meanings; we have drafted, we have redrafted and I have tried to accommodate every good-faith business concern with this bill. Some provisions and changes that I have made I did not like, but we were trying to get you a consensus product with the limited amount of time by working with those who are just as appalled by these abuses as I am. I have submitted a summary (Exhibit G) of the sections amended in the mock-up of AB 384.*

In Exhibit G, the word "additional" was inserted into Section 23 such that a licensee **"cannot charge additional fees or interest on the outstanding loan during the grace period."** (Emphasis added.) This shows that the word "additional" was specifically added after the original bill was drafted and that the later addition of this one word must be given meaning. As a result, the Nevada Legislature specifically intended that interest at the contract rate could continue during the grace period.

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. Prior to rolling out the 210-day loan, the Companies offered a 30-day single-pay loan and allowed for six extensions as permitted by Nevada law. The issue raised by the Division was its interpretation that NRS 604A.450 obligates a lender to ensure that a borrower has the ability to fully repay a 30-day loan within 30-days without considering any extensions, the statutory repayment plan or any grace periods. As stated herein, the Companies have long disagreed with the Division's interpretation since NRS 604A.450 only prohibits a lender from making a title loan **"without regard to the ability of the customer...to repay the title loan, including the customer's current and expected income, obligations and employment."**

In conclusion, the Companies believe they are in full compliance with Nevada law with respect to their 210-day loan plus Deferment Agreement, as evidenced by the legislative history of NRS 604A.210. The Companies appreciate the opportunity to respond and we strive to comply with all federal and State of Nevada laws and regulations, and we assert that our policies and procedures comply with both federal and Nevada law.



February 9, 2015

Page 10

We take pride in our diligent compliance efforts and strive for a "Satisfactory" rating. We respectfully request that the Division 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. Finally, we reserve the right to raise additional arguments, facts, and issues in future correspondence as necessary.

Sincerely,

Patrick J. Reilly  
of Holland & Hart LLP

PJR

cc: Christopher Eccles, Esq. (via U.S. Mail)  
Carrie E. Carbone, SVP of Compliance and Product General Counsel  
Victoria H. Newman, Compliance and Corporate Counsel  
Stephen Paris, Sr. Regulatory Compliance Manager

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**FROM:** Patrick J. Reilly, Esq.

**DATE:** February 9, 2015

**FILE NO.:** 86413-0001

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**RE:** TitleMax of Nevada, Inc./FID

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Holland & Hart LLP Attorneys at Law

Phone (702) 669-4600 Fax (702) 669-4650 [www.hollandhart.com](http://www.hollandhart.com)

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# **EXHIBIT “8”**



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
555 East Washington Avenue, Suite 3900  
Las Vegas, Nevada 89101

ADAM PAUL LAXALT  
*Attorney General*

WESLEY K. DUNCAN  
*Assistant Attorney General*

NICK TRUTANICH  
*Chief of Staff*

March 2, 2015

Patrick J. Reilly, Esq.  
Holland & Heart  
Via E-Mail to: [preilly@hollandhart.com](mailto:preilly@hollandhart.com)

**Re: Reports of Examination for TitleMax, Inc., d/b/a TitleMax  
("TitleMax") and d/b/a TitleBucks ("TitleBucks") (collectively  
referred to as the "Companies")**

Dear Mr. Reilly,

Thank you for your letter dated February 9, 2015 (hereinafter "February 9 Letter"). Please consider this letter the Nevada Financial Institutions Division's (hereinafter "FID") response. For the below reasons, the FID stands by its "Needs Improvement" rating in the 2014 Reports of Examination (hereinafter "ROE") for the Companies.

This matter relates to statutory construction and interpretation. Statutes should be "construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory."<sup>1</sup> Moreover, the Nevada Supreme Court has "repeatedly recognized the authority of agencies...to interpret the language of a statute that they are charged with administering; as long as that

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<sup>1</sup> *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 366-67, 184 P.3d 378, 386-87 (2008).

interpretation is reasonably consistent with the language of the statute, it is entitled to deference in the courts.<sup>2</sup>

Here, Nevada Revised Statute (hereinafter "NRS") 604A.450, by its plain language, is a prohibitory rule. The plain language and intent of the rule protects the public from unscrupulous lenders who, in the absence of such a rule, would make unaffordable title loans to customers. While your analysis of the statute focuses on the phrase "without regard," FID's analysis involves reading the statute as a whole and analyzing the words in context.

In context, the lender is required to gather information including the customer's current and expected income, obligations and employment.<sup>3</sup> But simply gathering the information that the lender is required to gather by law does not mean that the lender is then permitted to make an unaffordable loan to the customer. In fact, the statute requires the lender to use, at the very least, the information that it is required to gather, and then determine whether to make a loan to the customer that the customer can repay.<sup>4</sup>

The FID's interpretation of the statute is reasonable based upon the plain language of the whole statute. But even if the matter is litigated and the court finds an ambiguity, the court will interpret the statute to conform to reason and public policy.<sup>5</sup> Moreover, the court would avoid interpretations that lead to absurd results.<sup>6</sup> Your interpretation does not conform to public policy and would lead to absurd results.

For example, under your interpretation, a lender could loan \$10,000 to a customer even if the customer discloses that he or she has no current or expected income, no job, and monthly obligations of \$10,000. This is an absurd result. Here, the customer clearly has no ability to repay the loan. Merely collecting the

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<sup>2</sup> *International Game Tech., Inc., v. Second Jud. Dist. Ct.*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006).

<sup>3</sup> NRS 604A.450(2).

<sup>4</sup> We note that NRS 604A.450 uses the phrase "customer's ability to repay loan" or a variation thereof three times: in the title, in subsection 2, and in subsection (3)(b).

<sup>5</sup> *Great Basin Water Network v. State Eng'r*, 126 Nev. Adv. Op. 20, 234 P.3d 912, 918 (2010).

<sup>6</sup> *In re CityCenter Constr. & Lien Master Litig.*, 129 Nev. Adv. Op. 70, 310 P.3d 574, 580 (2013).

information that the lender is required to collect by law does not satisfy the rule's requirement that the customer must have the ability to repay the loan.

Thus, it is clear to the FID that the reason and policy for such a prohibitory rule is to protect the public from lenders making unaffordable loans to customers. This is especially true here because if the customer defaults, the lender may seek repossession and sale of the vehicle used to secure the loan.<sup>7</sup> Obviously, repossession of a vehicle may be devastating to the customer and his or her family if the vehicle is used for transportation to work, school, etc.

Isolating a word or phrase in a statute, importing its meaning from out-of-context sources, and failing to construe the statute as a whole is not a reasonable method of statutory construction.<sup>8</sup> Your interpretation of the phrase "without regard" to mean "giving no consideration whatsoever" in the context of this statute is unreasonable.<sup>9</sup> And for the above reasons, the FID stands by its "Needs Improvement" rating of the Companies in the 2014 ROE.

With regard to your other matters raised in your February 9 Letter, the FID stands by its position. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By: 

CHRISTOPHER ECCLES  
Deputy Attorney General  
(702) 486-3105

Cc: Harveen Sekhon  
Supervisory Examiner  
Nevada Financial Institutions Division  
Via E-Mail: [HSekhon@fid.state.nv.us](mailto:HSekhon@fid.state.nv.us)

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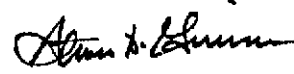
<sup>7</sup> NRS 604A.455(2).

<sup>8</sup> *State, Dept. of Bus. & Indus. v. Check City*, 130 Nev. Adv. Op. 90, 337 P.3d 755 (2014).

<sup>9</sup> February 9 Letter, p. 2.



# **EXHIBIT “9”**

  
CLERK OF THE COURT

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12 *Attorneys for Plaintiff*

13  
14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**  
16

17 TITLEMAX OF NEVADA, INC., a Nevada  
18 corporation,

19 Plaintiff,

20 vs.

21 STATE OF NEVADA, DEPARTMENT OF  
22 BUSINESS AND INDUSTRY FINANCIAL  
23 INSTITUTIONS DIVISION,

24 Defendant.

Case No.: A-15-719176-C

Dept. No.: XXI

**COMPLAINT**

**Exempt from Arbitration—NAR 3(A)**  
**Action Seeking Declaratory Relief**

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

**PARTIES, JURISDICTION, AND VENUE**

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

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

3. This Court has subject matter jurisdiction pursuant to Article VI of the Nevada  
Constitution, and personal jurisdiction over the FID in accordance with NRS 14.065, on the  
grounds that such jurisdiction is not inconsistent with the Nevada Constitution or the United

1 States Constitution, and in accordance with NRS 41.031, under which the State of Nevada  
2 waives its sovereign immunity.

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

4 **GENERAL ALLEGATIONS**

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

7 6. TitleMax offers title loans to its borrowers.

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

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

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

14 **INCORRECT CONCLUSIONS IN ROES RELATED TO NAC 604A.230**

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

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

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

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

26 14. TitleMax has no administrative remedy available to challenge the incorrect  
27 findings of fact or conclusions of law contained in the ROE, and no other opportunity to contest  
28 such findings or conclusions.

1 15. NAC 604A.230 does not prohibit the underwriting of a title loan with a co-  
2 borrower as a principal obligor.

3 **INCORRECT CONCLUSIONS IN ROES RELATED TO**

4 **NRS 604A.210 AND NRS 604A.445**

5 16. The ROEs provided that TitleMax violated NRS 604A.210 and NRS 604A.445  
6 whenever a customer executed a grace period payment deferment agreement (the "Deferment  
7 Agreement") on a 210-day installment loan.

8 17. The FID examiner's conclusion was incorrect in determining that the foregoing  
9 constituted a violation of NRS 604A.210 and NRS 604A.445.

10 18. Based on the examiner's incorrect understanding of the Deferment Agreement,  
11 the FID issued a "Needs Improvement" rating thereby indicating that TitleMax had demonstrated  
12 less than satisfactory compliance in the examination.

13 19. TitleMax has no administrative remedy available to challenge the incorrect  
14 findings of fact or conclusions of law contained in the ROE, and no other opportunity to contest  
15 such findings or conclusions.

16 **FIRST CLAIM FOR RELIEF**

17 **(Declaratory Relief)**

18 20. TitleMax hereby repeats, realleges, and incorporates all of the allegations  
19 contained in the preceding paragraphs as though fully set forth herein.

20 21. A true and ripe controversy exists between TitleMax and the FID as to the  
21 interpretation and application of NRS 604A.210, NRS 604A.445, and NAC 604A.230, in  
22 particular as to whether TitleMax "violated" said statutes and regulation.

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

26 23. TitleMax seeks a declaration that the Deferment Agreement does not violate NRS  
27 604A.210 or NRS 604A.445.

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

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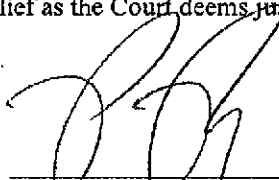
24. Declaratory relief is necessary to determine the foregoing rights, status, or other legal relations thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, TitleMax demands judgment against Defendant as follows:

1. For declaratory relief as described herein; and
2. For such other and further relief as the Court deems just and proper.

DATED this 29th day of May, 2015.



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

*Attorneys for Plaintiff*

# **EXHIBIT “10”**

**Patrick Reilly**

---

**From:** Christopher A. Eccles <CEccles@ag.nv.gov>  
**Sent:** Thursday, July 23, 2015 12:15 PM  
**To:** Patrick Reilly  
**Cc:** David J. Pope  
**Subject:** RE: Joint Declaratory Relief

Harveen said the report is going out today or tomorrow. FID will not bring an administrative complaint if we agree to a Chapter 29. Please let me know and thanks.

Chris Eccles  
Deputy Attorney General

This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov) and delete the message and attachments from your computer and network. Thank you.

**From:** Patrick Reilly [mailto:PREilly@hollandhart.com]  
**Sent:** Thursday, July 23, 2015 10:39 AM  
**To:** Christopher A. Eccles  
**Cc:** David J. Pope  
**Subject:** RE: Joint Declaratory Relief

Chris,

I never heard back as to whether the Division would actually commit to refrain from commencing an administrative proceeding in the event that the parties agree to convert the matter to a Chapter 29 proceeding. Can you please let me know?

Also, has an Unsatisfactory actually been issued yet?

Thanks.

*Patrick J. Reilly, Esq.  
Holland & Hart LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
[www.hollandhart.com](http://www.hollandhart.com)  
Telephone (702) 222-2542  
Cell Phone (702) 882-0112  
Facsimile (702) 669-4650*

**CONFIDENTIALITY NOTICE:** This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

**From:** Christopher A. Eccles [<mailto:CEccles@ag.nv.gov>]  
**Sent:** Wednesday, July 15, 2015 11:12 AM  
**To:** Patrick Reilly  
**Cc:** David J. Pope  
**Subject:** RE: Joint Declaratory Relief

Yes, you heard wrong. TitleMax did receive a "Needs Improvement" rating last year. My understanding is that if the examiners found substantially the same issues this year, then TitleMax may be rated "Unsatisfactory." The latter rating is typically when the Divisions refers the matter to the AG for possible action such as an administrative complaint.

I think that if we agree to a Chapter 29, it is unlikely that the Division would proceed with an administrative complaint even if TitleMax receives an Unsatisfactory rating, until we receive a ruling from the judge. I will talk to the client today to confirm this.

Thanks,

Chris Eccles  
Deputy Attorney General

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**From:** Patrick Reilly [<mailto:PREilly@hollandhart.com>]  
**Sent:** Wednesday, July 15, 2015 8:52 AM  
**To:** Christopher A. Eccles  
**Cc:** David J. Pope  
**Subject:** RE: Joint Declaratory Relief

Thanks Chris. Just as a follow up, I understood from our conversation that TitleMax had received an Unsatisfactory last year and was about to get another one this year. I went back to the Complaint, however, and saw that last year was merely a "Needs Improvement." Did I just hear you wrong? And what does that mean in terms of possible administrative proceedings if TitleMax does not agree to convert the action to a Chapter 29 proceeding?

Pat

**From:** Christopher A. Eccles [<mailto:CEccles@ag.nv.gov>]  
**Sent:** Tuesday, July 14, 2015 6:50 PM  
**To:** Patrick Reilly  
**Cc:** David J. Pope  
**Subject:** RE: Joint Declaratory Relief

Thanks, Pat. Yes, I agree that if we convert to a Chapter 29 we should set our briefing schedule by stipulation. Please let me know when you have an answer from your client.

Thanks,

Chris Eccles  
Deputy Attorney General

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**From:** Patrick Reilly [mailto:PREilly@hollandhart.com]  
**Sent:** Monday, July 13, 2015 11:29 AM  
**To:** Christopher A. Eccles  
**Cc:** David J. Pope  
**Subject:** RE: Joint Declaratory Relief

I'm checking with the client. The initial response to your suggestion to covert the action to a Chapter 29 proceeding was favorable and I should have a formal response shortly. Assuming TitleMax is agreeable to converting the action to a Chapter 29 dispute, we could simply set a briefing schedule by stipulation.

Thanks.

**From:** Christopher A. Eccles [mailto:CEccles@ag.nv.gov]  
**Sent:** Monday, July 13, 2015 10:10 AM  
**To:** Patrick Reilly  
**Cc:** David J. Pope  
**Subject:** RE: Joint Declaratory Relief

Are you agreeable to an extension the 31<sup>st</sup>?

Thanks,

Chris Eccles  
Deputy Attorney General

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**From:** Patrick Reilly [mailto:PREilly@hollandhart.com]  
**Sent:** Monday, July 13, 2015 10:03 AM  
**To:** Christopher A. Eccles  
**Cc:** David J. Pope  
**Subject:** RE: Joint Declaratory Relief

I have not had a chance to talk with the client but hope to today. If you need an extension on anything, please let me know.

Thanks.

**From:** Christopher A. Eccles [mailto:CEccles@ag.nv.gov]  
**Sent:** Monday, July 13, 2015 9:41 AM  
**To:** Patrick Reilly  
**Cc:** David J. Pope  
**Subject:** Joint Declaratory Relief

Hi Pat,

Is there any headway on the possibility of TitleMax converting to a Chapter 29? It's an awesome (and short) chapter! The whole chapter is copied below. We think that this is the quickest way to a judge's interpretation.

Please let us know and thanks.

## CHAPTER 29 - SUBMITTING A CONTROVERSY WITHOUT ACTION

<u>NRS 29.010</u>	Submission of a controversy without action.
<u>NRS 29.020</u>	Entry of judgment; judgment roll.
<u>NRS 29.030</u>	Enforcement and appeal of judgment.

**NRS 29.010 Submission of a controversy without action.** Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which should have jurisdiction if an action had been brought. But it must appear, by affidavit, that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were pending.

[1911 CPA § 310; RL § 5252; NCL § 8808]

**NRS 29.020 Entry of judgment; judgment roll.** Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission and a copy of the judgment shall constitute the judgment roll.

[1911 CPA § 311; RL § 5253; NCL § 8809]

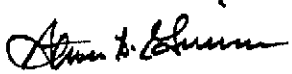
**NRS 29.030 Enforcement and appeal of judgment.** The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

[1911 CPA § 312; RL § 5254; NCL § 8810]

Chris Eccles  
Deputy Attorney General

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# **EXHIBIT “11”**

  
CLERK OF THE COURT

1 **ACOM**  
2 Patrick J. Reilly, Esq.  
3 Nevada Bar No. 6103  
4 Joseph G. Went, Esq.  
5 Nevada Bar No. 9220  
6 HOLLAND & HART LLP  
7 9555 Hillwood Drive, Second Floor  
8 Las Vegas, Nevada 89134  
9 Tel: (702) 669-4600  
10 Fax: (702) 669-4650  
11 Email: [preilly@hollandhart.com](mailto:preilly@hollandhart.com)  
12 [jgwent@hollandhart.com](mailto:jgwent@hollandhart.com)

13 *Attorneys for Plaintiff*

14  
15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**  
17

18 TITLEMAX OF NEVADA, INC., a Nevada  
19 corporation,

20 Plaintiff,

21 vs.

22 STATE OF NEVADA, DEPARTMENT OF  
23 BUSINESS AND INDUSTRY FINANCIAL  
24 INSTITUTIONS DIVISION,

25 Defendant.

Case No.: A-15-719176-C

Dept. No.: XXI

**AMENDED COMPLAINT**

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

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

**PARTIES, JURISDICTION, AND VENUE**

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

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

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

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

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

5 **GENERAL ALLEGATIONS**

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

8 6. TitleMax offers title loans to its borrowers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22                   **FIRST CLAIM FOR RELIEF**  
23                   **(Declaratory Relief)**

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

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

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

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

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

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

8                           **PRAYER FOR RELIEF**

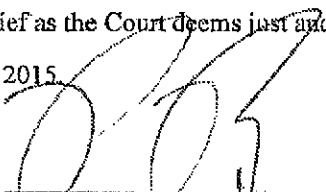
9           WHEREFORE, TitleMax demands judgment against Defendant as follows:

10          1.     For declaratory relief as described herein;

11          2.     For preliminary and permanent injunctive relief enjoining the FID from  
12 imposing or seeking to impose discipline based upon alleged violations of NRS 604A.210,  
13 NRS 604A.445, and NAC 604A.230, in particular as to whether TitleMax "violated" said  
14 statutes and regulation; and

15          3.     For such other and further relief as the Court deems just and proper.

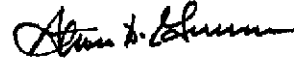
16          DATED this 17th day of September, 2015.

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

24 *Attorneys for Plaintiff*  
25  
26  
27  
28

# **EXHIBIT “12”**





CLERK OF THE COURT

1 **MDSM**  
2 **ADAM PAUL LAXALT**  
3 **Attorney General**  
4 **Christopher Eccles, #9798**  
5 **Deputy Attorney General**  
6 **David J. Pope, #8617**  
7 **Senior Deputy Attorney General**  
8 **555 E. Washington Avenue, Suite 3900**  
9 **Las Vegas, Nevada 89101**  
10 **Ph. (702) 486-3420**  
11 **Fax: (702) 486-3416**  
12 **ceccles@ag.nv.gov**  
13 **Attorneys for Nevada Department of Taxation**

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10  
11 **TITLEMAX OF NEVADA, INC., a Nevada**  
12 **corporation,**

13 **Plaintiffs,**

14 **vs.**

15 **STATE OF NEVADA, ex rel. it's**  
16 **DEPARTMENT OF BUSINESS AND**  
17 **INDUSTRY, FINANCIAL INSTITUTIONS**  
18 **DIVISION,**

19 **Defendants.**

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

**NEVADA FINANCIAL**  
**INSTITUTIONS DIVISION'S**  
**MOTION TO DISMISS FOR**  
**FAILURE TO EXHAUST**  
**ADMINISTRATIVE REMEDIES**

**Date of Hearing \_\_\_\_\_, 2015**

**Time of Hearing \_\_\_\_\_**

20 **COMES NOW, Defendant State of Nevada, ex rel. it's Department of Business and**  
21 **Industry, Financial Institutions Division, by and through its attorneys, Adam Paul Laxalt,**  
22 **Attorney General, and David J. Pope, Senior Deputy Attorney General and Christopher**  
23 **Eccles, Deputy Attorney General, and hereby moves this Court for an order granting this**  
24 **MOTION TO DISMISS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.**

25 **.....**

26 **.....**

27 **.....**

28 **.....**

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

1 This Motion is filed pursuant to NRCP Rule 12(b)(5) and is also based on all  
2 pleadings and papers on file herein, the attached Memorandum of Points and Authorities  
3 and any oral arguments the Court may allow at the time of the hearing on this matter.

4 Respectfully submitted this 6<sup>th</sup> day of October, 2015.

5 ADAM PAUL LAXALT  
6 Attorney General

7 By:

/s/ DAVID J. POPE

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

17 NOTICE OF MOTION

18 PLEASE TAKE NOTICE that the foregoing Motion to Dismiss for Failure to Exhaust  
19 Administrative Remedies will be heard before the above-entitled Court on the 18  
20 day of NOVEMBER, 2015 at 9:30A, in Department XXI, or as soon thereafter as  
21 counsel may be heard.

22 Dated October 6<sup>th</sup>, 2015

23 ADAM PAUL LAXALT  
24 Attorney General

25 By

/s/ DAVID J. POPE

26 David J. Pope  
27 Sr. Deputy Attorney General  
28 Nevada State Bar #8617  
Christopher Eccles  
Deputy Attorney General  
Nevada State Bar #9798  
555 E. Washington Ave., #3900  
Las Vegas, NV 89101  
Attorneys for Defendant

1                                    **I. FACTS AND PROCEDURAL HISTORY**

2            On June 1, 2015, Plaintiff, Titlemax of Nevada, Inc. (hereinafter "TitleMax"), filed its  
3 Complaint commencing the current action against the State of Nevada, ex rel. it's  
4 Department of Business and Industry, Financial Institutions Division (hereinafter "FID").  
5 Through the Complaint, TitleMax seeks declaratory relief regarding the FID's application of  
6 several statutes in Chapter 604A of the NRS to business activities of Titlemax. See  
7 *Complaint*.

8            Titlemax ran to this court to get ahead of the administrative proceedings that were  
9 coming. Subsequent to the commencement of this case, Titlemax has been examined by  
10 the FID and given the opportunity to request a hearing with regard to the matters at issue in  
11 this case. See *Cover Page to Examination Report attached hereto as Exhibit A*. Titlemax  
12 was given 30 days to request an administrative hearing. *Id.* While the parties have been  
13 discussing how to proceed with this litigation, the 30 day period was extended, by agreement  
14 of the parties, for two weeks. See *Exhibit B*.<sup>1</sup> In addition, TitleMax will eventually receive a  
15 hearing regarding suspension unless it comes into compliance. NRS 604A.820.

16            In Averment #13 in the Complaint, Titlemax states, "Based on the examiner's  
17 incorrect application of NAC 604A.230, the FID issued a "Needs Improvement" rating,  
18 thereby indicating that Titlemax had demonstrated less than satisfactory compliance in the  
19 examination." NAC 604A.230 prohibits TitleMax from "requiring" or "accepting" a guarantor  
20 to a transaction. Averment #12 states, "When there is a co-borrower not listed on the title of  
21 the vehicle associated with said loan, the co-borrower becomes contractually bound as a  
22 principal obligor, and not as a guarantor." FID's examiner applied NAC 604A.230 to the  
23 facts as they were seen by the examiner and determined that TitleMax either "required" or  
24 "accepted" a guarantor. The Nevada Supreme Court has determined that state agencies are  
25 the experts that are supposed to decide issues of fact related to questions regarding  
26

27            <sup>1</sup> This deadline was extended again, through September 21, 2015, via separate stipulation.  
28

1 application of the agencies statutes. *Malecon Tobacco, LLC v. Dept. of Taxation*, 118 Nev.  
2 837, 840-841, 59 p.3d 474 (2002).

3 In Averment #18 of the Complaint, Titlemax states, "Based on the examiner's  
4 incorrect understanding of the Deferment Agreement, the FID issued a 'Needs Improvement'  
5 rating thereby indicating that Titlemax had demonstrated less than satisfactory compliance in  
6 the examination." Averment #17 states, "The FID examiner's conclusion was incorrect in  
7 determining that the foregoing constituted a violation of NRS 604A.210 and NRS 604A.445."  
8 NRS 604A.210 and NRS 604A.445 prohibit the collection of interest during a grace period  
9 and require that such a loan be fully amortized. "Grace period payment deferment  
10 agreement," as used by TitleMax, is not a statutory term. *Complaint, para. 16*. The  
11 examiner looked at the facts and determined that TitleMax had not complied with NRS  
12 604A.210 and NRS 604A.445. Again, the Nevada Supreme Court has determined that  
13 factual issues related to the application of an agency's statutes are to be determined by that  
14 agency. *Malecon*, 118 Nev. 840-841. By avoiding an administrative hearing, TitleMax  
15 avoids the facts as determined by the examiner.

16 From the time of the examination referenced in the Complaint to the more recent  
17 examination, TitleMax did not change its business practice and, as a result, it received  
18 unsatisfactory ratings rather than the needs improvement ratings referenced in the  
19 Complaint. *Exhibit A*. The unsatisfactory ratings afforded TitleMax the option of complying  
20 with the FID's interpretation of the statutes or requesting a hearing. *See Affidavit of Harveen*  
21 *Sekhon* attached hereto as *Exhibit C*. TitleMax could also receive a cease and desist order  
22 with an opportunity for a hearing or a pre-suspension hearing. *Id.*; NRS 604A.810; NRS  
23 604A.820.

24 Pursuant to NRS 604A.810, FID can issue an order to "desist or to refrain" from a  
25 violation. If such an order is disregarded, the FID can also notice a hearing regarding  
26 suspension of the license. NRS 604A.820. Pursuant to NRS 604A.820, a hearing can be  
27 noticed with regard to any violation of Chapter 604A of the NRS. Following such a hearing,  
28

1 an order will be entered "either dismissing the charges, revoking the license or suspending  
2 the license for a period of not more than 60 days, which period must include any prior  
3 temporary suspension." Such a hearing can occur before a cease and desist order is  
4 issued.

## 5 II. ARGUMENT

### 6 A. STANDARD OF REVIEW

7 TitleMax has failed to state a claim upon which relief can be granted. NRCP 12(b)(5).  
8 NRCP Rule 12(b), states, in relevant part:

9 [E]very defense . . . to a claim for relief in any pleading . . . shall  
10 be asserted in the responsive pleading thereto if one is required,  
11 except that the following defenses may at the option of the  
pleader be made by motion . . . (5) failure to state a claim upon  
which relief can be granted . . .

12 TitleMax's sole remedy is a Chapter 233B petition for judicial review. NRS 233B.130(6).  
13 Because TitleMax has not obtained an administrative decision and filed a petition for judicial  
14 review, this court does not have jurisdiction to hear these issues at this time and therefore  
15 TitleMax has failed to state a claim upon which relief can be granted.

16 When reviewing an order granting a motion to dismiss, the court considers whether  
17 the challenged pleading sets forth allegations sufficient to establish the elements of a right to  
18 relief. *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 278, 21 P.3d 16, 19 (2001). Dismissal is  
19 appropriate where it appears beyond a doubt that the plaintiff could prove no set of facts  
20 which, if accepted by the trier of fact, would entitle him or her to relief. *Simpson v. Mars*, 113  
21 Nev. 188, 190, 929 P.2d 966, 967 (1997); *Buzz Stew, LLC v. City of N. Las Vegas*, \_\_ Nev.  
22 \_\_, 181 P.3d 670, 672 (Adv. Op. 21, April 17, 2008). The pleadings must be liberally  
23 construed, and all factual allegations in the complaint accepted as true. *Blackjack Bonding*  
24 *v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000).  
25 Because this court does not have jurisdiction, Plaintiff can prove no set of facts entitling it to  
26 relief.

27 . . .

28

**B. THIS CASE MUST BE DISMISSED BECAUSE TITLEMAX FAILED TO EXHAUST ADMINISTRATIVE REMEDIES**

In their Complaint, TitleMax admits that FID has jurisdiction over the issues raised in this case. In fact, FID has original jurisdiction<sup>2</sup> and this court does not obtain jurisdiction until TitleMax files a petition for judicial review, pursuant to Chapter 233B of the NRS, seeking review of a final administrative decision. NRS 233B.130(6); *Kame v. Employment Sec. Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 67 (1989); *See Nevada Power Co. v. Eighth Judicial District Court*, 120 Nev. 948, 959, 102 P.3d 578 (2004) (concluding that "the district court could have deferred action under the primary jurisdiction doctrine for the PUC to address one issue implicated in the amended complaint . . .")<sup>3</sup>; *See Allstate Insurance Co. v. Thorpe, M.D.*, 123 Nev. 565, 571, 170 P.3d 989 (2007) (stating, "whether couched in terms of subject-matter jurisdiction or ripeness, a person generally must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable. The exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement").

Exhaustion of administrative remedies is the rule. With the adoption of the Administrative Procedures Act in 1965, aka Chapter 233B of the NRS, the Legislature has stated its intention that the provisions in such chapter "are the exclusive means of judicial

<sup>2</sup> FID receives applications for licenses, investigates the applicants and grants and denies licenses. NRS 604A.600; NRS 604A.625; NRS 604A.630; NRS 604A.635; NRS 604A. "For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter," FID may investigate any licensee and any person that FID has reasonable cause to believe is violating or about to violate any provision of Chapter 604A of the NRS. NRS 604A.710. FID conducts annual examinations. NRS 604A.730. FID can issue cease and desist orders, notice hearings and even immediately suspend a license. NRS 604A.810; NRS 604A.820; NRS 604A.800. Since the Legislature has bestowed all facets of regulation upon the FID, to the extent that FID can summarily suspend a license pending a hearing, it is clear that FID has original jurisdiction and that the Legislature wants the FID to hold administrative hearings before such matters proceed to District Court.

<sup>3</sup> The primary jurisdiction doctrine "is premised on two policies: "(1) the desire for uniformity of regulation and, (2) the need for an initial consideration by a tribunal with specialized knowledge."" *Nevada Power Co. v. Eighth Judicial District Court*, 120 Nev. 948, 959 (2004) (citation omitted). Both of these policies are rendered meaningless if TitleMax is not required to exhaust administrative remedies.

1 review of, or judicial action concerning, a final decision in a contested case involving an  
2 agency to which this chapter applies." NRS 233B.130(6) (emphasis added).

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

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

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

11 Mr. McGaughey referred to page 2, line 28, 'The court shall not  
12 substitute its judgment for that of the agency as to the weight of  
13 evidence on a question of fact.' He asked Mr. Campbell to  
14 explain that statement. Mr. Campbell replied the Administrative  
15 Law Committee does not want the courts to substitute their  
expertise for the expertise of the administrative agency. Mr.  
Sourwine mentioned that this language exists in present law.

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

22 *Minutes of the Nevada State Legislature, Assembly Committee on*  
23 *Government Affairs, page 8, June 6, 1989.*

24 This court will not have jurisdiction over these issues until a Chapter 233B petition for  
25 judicial review, seeking review of a final administrative decision, is filed. NRS 233B.130  
26 states in pertinent part:  
27  
28

1. Any party who is:

(a) Identified as a party of record by an agency in an administrative proceeding; and

(b) Aggrieved by a final decision in a contested case, is entitled to judicial review of the decision. Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute. Any preliminary, procedural or intermediate act or ruling by an agency in a contested case is reviewable if review of the final decision of the agency would not provide an adequate remedy

2. Petitions for judicial review must:

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

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

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

...

The filing of a petition for judicial review in a timely manner is jurisdictional. *Kame v. Employment Sec. Dep't.*, 105 Nev. 22, 25, 769 P.2d 66, 67 (1989). The Nevada Supreme Court in *Kame* wrote:

When a party seeks judicial review of an administrative decision, strict compliance with the statutory requirements for such review is a precondition to jurisdiction by the court of judicial review. . . . Noncompliance with the requirements is grounds for dismissal of the appeal...Thus, the time period for filing a petition for judicial review of an administrative decision is mandatory and jurisdictional...In the past, this court has upheld the dismissal of appeals for failure to timely commence them.

*Id.* at 25, 68 (citations omitted). The sole means of this court taking action regarding the issues presented in this case will be by reviewing a final agency decision by way of a petition for judicial review. NRS 233B.130(6).

TitleMax should not be allowed to bypass the administrative proceedings. "The exhaustion doctrine is concerned with the timing of judicial review of administrative action." *Nevada Power Co. v. Eighth Judicial District Court*, 120 Nev. 948, 959 (2004) (citation omitted). Because TitleMax is jumping ahead of the procedures set forth in NRS 604A.810 and NRS 604A.820, TitleMax has prematurely brought this matter before this court.



1        There are very few exceptions to the exhaustion requirement. In *Glusman v.*  
2 *Glusman*, 98 Nev. 412, 419 (1982), the Nevada Supreme Court stated that it had the  
3 discretion to not apply the exhaustion doctrine "where the issues relate solely to the  
4 interpretation or constitutionality of a statute." (emphasis added). In *Dept. of Taxation v.*  
5 *Scottsman Mfg. Co., Inc.*, 109 Nev. 252, 255 (1993), the Nevada Supreme Court cited to  
6 *Glusman* and stated, "The exhaustion doctrine will not deprive the court of jurisdiction  
7 'where the issues relate solely to the interpretation or constitutionality of a statute.'" (emphasis added). Thereafter, in *Malecon Tobacco, LLC v. Dept. of Taxation*, 118 Nev.  
8 837, 839 (2002), the Nevada Supreme Court set forth two exceptions: (1) "when the issues  
9 'relate solely to the interpretation or constitutionality of a statute'; and, (2) "when resort to  
10 administrative remedies would be futile." The *Malecon* court also differentiated between  
11 "facial" and "as applied" constitutional challenges and clarified that "as applied"  
12 constitutional challenges are to be heard by the agency because the facts need to be  
13 decided by the agency. *Id.* at 840-841. These exceptions were reaffirmed in *Déjà vu*  
14 *Showgirls of Las Vegas, LLC v. Department of Taxation*, 334 P.3d 392, 397 (Nev. 2014).

15  
16        In Averments #13 and #18 in the Complaint, TitleMax has pled the basis of factual  
17 disputes. Though the interpretation of a contract is usually a question of law, the actions of  
18 TitleMax and the customers in relation to the need for a "guarantor" and the signing of an  
19 agreement by a "guarantor," as those terms are used in the Complaint, create facts that are  
20 best determined by the agency experts and through administrative proceedings. *Malecon*,  
21 118 Nev. 837, 840-841. Again, though the interpretation of a contract is a question of law,  
22 the actions of TitleMax and its customers in relation to the "Deferment Agreement"  
23 referenced in the Complaint create facts that were reviewed by the examiner and are best  
24 determined through administrative proceedings. *Malecon*, 118 Nev. 837, 840-841.  
25 Nonetheless, TitleMax seems to have based the filing of their Complaint on the exception  
26 for issues "related solely to interpretation . . . of a statute." *Malecon*, 118 Nev. 837, 839  
27 (2002) (emphasis added).

28

1 To the extent TitleMax disagrees with FID's application of regulatory statutes to  
2 TitleMax's business activity, the remedy is an administrative hearing followed by a Chapter  
3 233B petition for judicial review. TitleMax has been afforded the opportunity to request a  
4 hearing challenging FID's application of the statutes. *Exhibit A*. In addition, TitleMax will  
5 have an opportunity for a NRS 604A.820 hearing should they continue to disagree with  
6 FID's Interpretation. *Exhibit C; NRS 604A.810(1); NRS 604A.820*. Though an NRS  
7 604A.820 hearing is held when it is believed that there is reasonable grounds for seeking  
8 suspension of a license, no suspension will occur, if at all, until after the hearing.  
9 Consequently, TitleMax should have exhausted administrative remedies but rather chose to  
10 file this action to get ahead of the completion of the recent examination and availability of  
11 the administrative remedy and avoid the administrative hearing.

12 TitleMax did have, and still has, an administrative remedy. The failure to exhaust  
13 administrative remedies does not give this court jurisdiction; it deprives this court of  
14 jurisdiction. This court should not review an agency's application of its own statute before  
15 the agency has a chance to obtain a final administrative decision regarding its own  
16 interpretation through an administrative proceeding.<sup>4</sup> If this court provides TitleMax with  
17 declaratory relief, this court will render NRS 604A.810 and NRS 604A.820 meaningless and  
18 statutory construction principles dictate that such an outcome is to be avoided. *Harris*  
19 *Associates v. Clark County School District*, 119 Nev. 638, 642 (2003); *See Allstate*  
20 *Insurance Co. v. Thorpe, M.D.*, 123 Nev. 565, 571 (2007) (noting, "We have previously  
21 stressed the importance of state agencies' exclusive original jurisdiction over legislatively  
22 created administrative and regulatory schemes." (citation omitted). Further providing, "[i]t is  
23 not conceivable that the legislature would give its extensive time and attention to study,  
24 draft, meet, hear, discuss and pass this important piece of legislation were it not to serve a  
25 useful purpose." (citation omitted)).

26  
27 <sup>4</sup> In this case, a "hearing officer" from the Department of Business and Industry will render the final decision.  
28 NRS 233B.122(2).

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**III. CONCLUSION**

Based on the foregoing, the FID respectfully requests that this Honorable Court issue an order granting FID's Motion to Dismiss because allowing TitleMax to by-pass the administrative remedies is contrary to Chapter 233B of the NRS and contrary to Nevada Supreme Court precedent and renders portions of Chapter 604A of the NRS meaningless.

Respectfully submitted this 6<sup>th</sup> day of October, 2015.

ADAM PAUL LAXALT  
Attorney General

By: /s/ DAVID J. POPE  
David J. Pope  
Nevada Bar #8617  
Sr. Deputy Attorney General  
Christopher Eccles  
Deputy Attorney General  
Nevada Bar #9798  
555 E. Washington Ave., #3900  
Las Vegas, NV 89101  
(702) 486-3426  
Attorneys for State of Nevada

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

CERTIFICATE OF SERVICE

I, hereby certify that on the 6<sup>th</sup> day of October, 2015, I served the NEVADA FINANCIAL INSTITUTIONS DIVISION'S MOTION TO DISMISS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES, by causing to be delivered to the Department of General Services for mailing at Las Vegas, Nevada and via hand delivery, a true copy thereof, addressed to:

Pat Reilly, Esq.  
Holland & Hart  
9555 Hillwood Dr.  
Las Vegas, Nevada 89134  
Attorneys for Plaintiff

/s/ Debra Turman  
An Employee of the Office of Attorney General

# **Exhibit A**

STATE OF NEVADA



BRIAN SANDOVAL  
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

BRUCE BRESLOW  
Director

FINANCIAL INSTITUTIONS DIVISION

GEORGE E. BURNS  
Commissioner

July 30, 2015

TitleMax of Nevada, Inc.  
DBA: TitleMax  
Attn: Victoria Newman, Compliance and Corporate Counsel  
15 Bull St., Suite 200  
Savannah, GA 31401  
Victoria.Newman@titlemax.com

Dear Ms. Newman,

Enclosed for your review are the recent reports of examination for the 42 TitleMax of Nevada Inc licensed locations in Nevada, and one TitleMax of Nevada, Inc licensed location in Savannah, Georgia.

Please refer to the attached list for the locations details. You are reminded that all information contained in the reports and this cover letter is subject to the confidentiality restrictions described on the blue cover of the reports. Please ensure that all appropriate parties review the reports of examination in their entirety.

The examination resulted in two locations with "Satisfactory" ratings and forty-one locations with "Unsatisfactory" ratings. The satisfactory rating indicates that management has demonstrated sufficient compliance with applicable statutes and regulations, and any deficiencies noted in the reports can be corrected with minimum regulatory supervision.

The "Unsatisfactory" rating means that the licensee and its management have demonstrated substantial lack of compliance with applicable statutes and regulations. Immediate remedial action to correct the noted deficiencies is required. Be advised that you may be subject to disciplinary action due to the nature of the violations. You may request an administrative hearing regarding the Division's findings of deficiencies and violations. If you do wish to request an administrative hearing, please state so in your response letter.

A written response to the examination is required within 30 days outlining the actions that will be taken to correct all deficiencies and violations noted in the report. Please send your response to the Las Vegas location at the address listed below. The Financial Institutions Division may conduct a follow up examination within three (3) months to ensure corrective actions have been implemented. Should you have any questions or concerns, please do not hesitate to call me at 702-486-4120.

LAS VEGAS  
Office of the Commissioner  
2785 E. Desert Inn Road, Suite 180  
Las Vegas, NV 89121  
(702) 486-4120 Fax (702) 486-4563

NORTHERN NEVADA  
Examination & CPA Office  
1755 East Plumb Lane, Ste 243  
Reno, NV 89502  
(775) 688-1730 Fax (775) 688-1735  
Web Address: <http://fid.state.nv.us>

CARSON CITY  
Licensing Office  
1830 College Parkway, Suite 100  
Carson City, NV 89706  
(775) 684-2970 Fax (775) 684-2977

Should you have any questions or concerns, please do not hesitate to call me at 702-486-4120. Thank you for your cooperation during the examination process.

Sincerely,

*Harveen Sekhon*  
 Harveen Sekhon  
 Supervisory Examiner

Enclosure(s) – 43 Reports of Examination

The following forty-three licensed locations were examined:

Store	Address	City	State	Zip
TitleBucks	7150 S. DURANGO DRIVE, #190	LAS VEGAS	NV	89113
TitleMax	6820 W. FLAMINGO RD, SUITE F & G	LAS VEGAS	NV	89103
TitleMax	6525 S. FORT APACHE ROAD, STE 110	LAS VEGAS	NV	89148
TitleMax	3525 S. FORT APACHE ROAD, SUITE 160	LAS VEGAS	NV	89147
TitleMax	4700 SPRING MOUNTAIN ROAD	LAS VEGAS	NV	89102
TitleMax	3575 W. TROPICANA AVENUE	LAS VEGAS	NV	89103
TitleMax	5060 S. FORT APACHE ROAD, SUITE 140	LAS VEGAS	NV	89148
TitleMax	6795 W. TROPICANA AVENUE, SUITE 140	LAS VEGAS	NV	89103
TitleMax	7615 S. RAINBOW BLVD, STE 100	LAS VEGAS	NV	89139
TitleMax	7380 S. EASTERN AVENUE, SUITE 126	LAS VEGAS	NV	89123
TitleMax	3810 BLUE DIAMOND ROAD #150	LAS VEGAS	NV	89139
TitleMax	6530 S. DECATUR BLVD, #100	LAS VEGAS	NV	89118
TitleMax	9555 S. EASTERN AVE, SUITE 105	LAS VEGAS	NV	89123
TitleMax	3391 E. TROPICANA AVENUE, STE 1	LAS VEGAS	NV	89121
TitleMax	3547 S. MARYLAND PKWY	LAS VEGAS	NV	89169
TitleMax	3365 E. FLAMINGO ROAD, SUITE I	LAS VEGAS	NV	89121
TitleMax	4749 S. MARYLAND PKWY	LAS VEGAS	NV	89119
TitleMax	4650 E. SUNSET ROAD, SUITE C	HENDERSON	NV	89014
TitleMax	16 W. HORIZON RIDGE PKWY #160	HENDERSON	NV	89012
TitleMax	4944 BOULDER HIGHWAY	LAS VEGAS	NV	89121
TitleMax	4000 BOULDER HWY, SUITE 5	LAS VEGAS	NV	89121
TitleMax	1210 N. BOULDER HWY, SUITE C	HENDERSON	NV	89011
TitleBucks	4150 BOULDER HIGHWAY, SUITE 105	LAS VEGAS	NV	89121
TitleMax	2400 N. BUFFALO DRIVE #140	LAS VEGAS	NV	89128
TitleMax	2550 S. EASTERN AVENUE	LAS VEGAS	NV	89169
TitleMax	6450 W. LAKE MEAD BLVD, STE 150	LAS VEGAS	NV	89108
TitleMax	3900 W. SAHARA AVENUE	LAS VEGAS	NV	89102
TitleMax	4811 WEST CRAIG ROAD	LAS VEGAS	NV	89130
TitleMax	6436 N. DECATUR BLVD., #115	LAS VEGAS	NV	89131
TitleMax	4077 W. CHARLESTON BLVD.	LAS VEGAS	NV	89102
TitleBucks	4750 W. LAKE MEAD, #102	LAS VEGAS	NV	89108
TitleMax	8414 W. FARM ROAD, SUITE 130	LAS VEGAS	NV	89131

TitleMax	4001 N. LAS VEGAS BLVD.	LAS VEGAS	NV	89115
TitleMax	3220 S. VIRGINIA STREET	RENO	NV	89502
TitleMax	2020 E. WILLIAMS STREET	CARSON CITY	NV	89701
TitleMax	1995 W. WILLIAMS AVENUE	FALLON	NV	89406
TitleMax	900 W. FIFTH STREET	RENO	NV	89503
TitleMax	1600 N. NELLIS BLVD, SUITE 102	LAS VEGAS	NV	89115
TitleMax	1225 E. CHARLESTON BLVD.	LAS VEGAS	NV	89104
TitleMax	4741 E. CHARLESTON BLVD.	LAS VEGAS	NV	89104
TitleMax	15 BULL ST., SUITE 200	SAVANNAH	GA	31401
TitleBucks	6060 BOULDER HWY, SUITE 5 & 6	LAS VEGAS	NV	89122
TitleMax	5871 E LAKE MEAD BLVD	LAS VEGAS	NV	89156



# **Exhibit B**

STATE OF NEVADA



BRIAN SANDOVAL  
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION

BRUCE BRESLOW  
Director

GEORGE E. BURNS  
Commissioner

September 9, 2015

TitleMax of Nevada, Inc.  
DBA: TitleMax  
15 Bull St., Suite 200  
Savannah, GA 31401

Dear Ms. Newman,

Enclosed please find a copy of the cover letter sent to your attention along with the reports of examination relative to TitleMax of Nevada, Inc. The letter states that TitleMax of Nevada, Inc. had 30 days to submit a plan of compliance or request a hearing.

Recently, the Financial Institution's Division, through its lawyers, agreed with your lawyers, that this 30 day deadline would be extended for two weeks. The original deadline was 30 days from July 30, 2015, or August 29, 2015. Because August 29, 2015 was a Saturday, the original deadline was actually August 31, 2015. Consequently, the new deadline, adjusted for the two-week extension, is September 14, 2015. This letter shall serve as a reminder of the extended deadline. Please either submit a plan of compliance or request an administrative hearing on or before September 14, 2015.

Sincerely,

*Harveen Sekhon*  
Harveen Sekhon

LAS VEGAS  
Office of the Commissioner  
2785 E. Desert Inn Road, Suite 180  
Las Vegas, NV 89121  
(702) 466-4120 Fax (702) 466-4563

NORTHERN NEVADA  
Examination & CPA Office  
1755 East Plumb Lane, Ste 243  
Reno, NV 89502  
(775) 688-1730 Fax (775) 688-1735  
Web Address: <http://fid.state.nv.us>

CARSON CITY  
Licensing Office  
1830 E. College Parkway, Suite 100  
Carson City, NV 89708  
(775) 684-2970 Fax (775) 684-2977

# **Exhibit C**

AFFIDAVIT OF HARVEEN SEKHON

STATE OF NEVADA

COUNTY OF CLARK

)  
)  
:ss.

I, HARVEEN SEKHON, being first duly sworn, depose and say:

1. That I am employed by the State of Nevada Department of Business and Industry, Financial Institutions Division ("FID") as an Examiner IV (Supervisory Examiner), that, pursuant to said employment, I have personal knowledge of the facts set forth hereunder, and that I am competent to testify to the same;

2. I have been employed with the FID for approximately 5 years;

3. That my responsibilities as an Examiner IV include reviewing examination reports before they are finalized and determining whether there will be a "satisfactory", "needs improvement" or "unsatisfactory" rating;

4. That, in the event a licensee receives an unsatisfactory rating, the licensee will be given 30 days to submit a plan of compliance or indicate that they do not plan to comply and request a hearing;

5. That, the FID may also conduct a follow-up exam within 3 months of the issuance of the exam for the purpose of determining whether the licensee has come into compliance;

6. That the FID can wait until after the follow-up exam before issuing a cease and desist order resulting in an opportunity for a hearing;

7. That the FID has begun offering the opportunity for a hearing earlier in the process and the licensees are afforded the opportunity to request a hearing within the 30 day period following the issuance of the "unsatisfactory" exam results and, should a hearing be requested, a notice of hearing will be issued;

8. That, with regard to "unsatisfactory" ratings, the administrative procedure has included (during the time that I have been employed with the FID), the issuance of "unsatisfactory" exam results followed by a period in which to come into compliance, which is followed by a cease and desist order and opportunity for a hearing provided the licensee does not come into compliance;

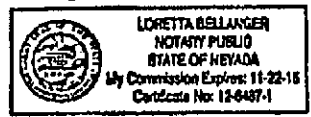
1           9.     The difference now is that the licensee receives an additional opportunity for a hearing  
2 before a cease and desist order is issued;

3           10.    Therefore, contrary to TitleMax's assertions, they do have an administrative remedy;  
4 FURTHER AFFIANT SAYETH NAUGHT.

5  
6 Harveen Sekhon  
Harveen Sekhon, Examiner IV

7 SIGNED AND SWORN to before me by on  
8 this 17 day of September, 2015.

9 Loretta Bellanger  
10 NOTARY PUBLIC



Attorney General's Office  
455 E. Washington, Suite 1800  
Las Vegas, NV 89101

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# **EXHIBIT “13”**

1 ADAM PAUL LAXALT  
Attorney General  
2 DAVID POPE  
Senior Deputy Attorney General  
3 CHRISTOPHER ECCLES  
Deputy Attorney General  
4 555 East Washington Avenue, Suite 3900  
5 Las Vegas, Nevada 89101  
Telephone: (702) 486-3105  
6 Facsimile: (702) 486-3416  
E-Mail: [ceccles@ag.nv.gov](mailto:ceccles@ag.nv.gov)  
7

8 **BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION**

9 \* \* \*

10 IN THE MATTER OF: ) ADMINISTRATIVE COMPLAINT FOR  
11 TITLEMAX OF NEVADA, INC. and ) DISCIPLINARY ACTION AND  
12 TITLEBUCKS d/b/a TITLEMAX ) NOTICE OF HEARING

13  
14 **ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION**

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

19 **JURISDICTION**

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

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

3 **FACTUAL ALLEGATIONS**

4 **GENERAL FACTS**

5 5. TITLEMAX is incorporated as a domestic corporation under the laws of Nevada and its  
6 resident agent is The Corporation Trust Company of Nevada, located at 701 S. Carson  
7 Street, Suite 200, Carson City, Nevada 89701.

8 6. TITLEMAX is licensed by the Division to conduct the business of lending at 42 locations  
9 in Nevada and the corporate office is located at 15 Bull Street, Suite 200, Savannah,  
10 Georgia 31401.

11 7. On or about May 4, 2015, through on or about June 17, 2015, the Division conducted its  
12 annual examination of TITLEMAX to ensure compliance with NRS Chapter 604A and  
13 NAC Chapter 604A (the "2015 Examination").

14 8. The 2015 Examination involved a review of two to five percent of TITLEMAX'S loans at  
15 each of TITLEMAX'S 42 locations in Nevada.

16 9. The Division issued a Report of Examination (ROE) to TITLEMAX based upon the  
17 results of the 2015 Examination.

18 10. The Division rates licensees as follows, in descending order of compliance:  
19 Satisfactory, Needs Improvement, or Unsatisfactory.

20 11. The Division rated TITLEMAX "Needs Improvement" in its 2014 ROE due to  
21 TITLEMAX'S violations of NRS 604A.210, NRS 604A.445, and NAC 604A.230.

22 12. During the 2015 Examination, the Division cited TITLEMAX for repeatedly violating NRS  
23 604A.210, NRS 604A.445, and NAC 604A.230.

24 13. Thus, in the 2015 ROE, the Division rated TITLEMAX "Unsatisfactory" due to the  
25 repeated violations.

26 14. The repeated violations cited in the 2015 Examination are:

27 a. Charging interest in violation of NRS 604A.210 and / or NRS 604A.445; and  
28



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

- 4   15.    The Commissioner has reasonable cause to believe that TITLEMAX is violating or is  
5           threatening to or intends to violate provisions of NRS Chapter 604A and NAC Chapter  
6           604A.

7   **FACTS REGARDING TITLEMAX'S UNLAWFUL GRACE PERIOD AMENDMENT**

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

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

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

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

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

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

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

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

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

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

25. Documents from the 2015 Examination show that TITLEMAX charges customers more money under the Grace Period Amendment than under the Loan.<sup>1,2</sup>

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

26. Documents from the 2015 Examination show 307 examples of TITLEMAX charging customers more money under the Grace Period Amendment than under the Loan.
27. The 307 examples only reflect the two to five percent sampling of loans examined by the Division.
28. Of those 307 examples, TITLEMAX charged and received unlawful overage amounts from 24 customers totaling \$8,863.21.
29. Of those 307 examples, 283 remain in "open" status whereby TITLEMAX charged and will potentially receive unlawful overage amounts totaling \$370,090.74.
30. Assuming that the 307 examples of TITLEMAX charging customers more money under the Grace Period Amendment reflects a five percent sample size, then by mathematical extrapolation, TITLEMAX may have unlawfully charged customers a total of approximately 6,140 times during the period covered by the 2015 Examination.

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

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

- 1 31. Further, assuming that the average overage amount charged by TITLEMAX under each  
2 Grace Period Amendment is \$1,288.09 (determined by averaging the unlawful charges  
3 from paragraph 25), then TITLEMAX unlawfully charged Nevada customers  
4 approximately \$7,908,872.60 during the period covered by the 2015 Examination.
- 5 32. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX  
6 charged customers more money under the Grace Period Amendment.
- 7 33. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX  
8 charged customers more money under the Grace Periods Amendment, after the  
9 Division rated TITLEMAX "Needs Improvement" in the 2014 examination.
- 10 34. NRS 604A.070 provides in full as follows:
- 11       **NRS 604A.070 "Grace period" defined.**  
12       1. "Grace period" means any period of deferment offered  
13       gratuitously by a licensee to a customer if the licensee complies  
14       with the provisions of NRS 604A.210.
- 15 35. NRS 604A.210 provides in full as follows:
- 16       **NRS 604A.210 Chapter does not prohibit licensee from**  
17       **offering customer grace period.**  
18       The provisions of this chapter do not prohibit a licensee from  
19       offering a customer a grace period on the repayment of a loan or an  
20       extension of a loan, except that the licensee shall not charge the  
21       customer:  
22       2. Any fees for granting such a grace period; or  
23       Any additional fees or additional interest on the  
24       outstanding loan during such a grace period.  
25       (Emphasis added.)  
26  
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1 36. NRS 604A.445(3) provides in full as follows:

2  
3 **NRS 604A.445 Title loans: Restrictions on duration of loan**  
4 **and periods of extension.**  
5 **Notwithstanding any other provision of this chapter to the**  
6 **contrary:**

- 7  
8 3. The original term of a title loan may be up to 210 days if:  
9 (a) The loan provides for payments in installments;  
10 (b) The payments are calculated to ratably and fully  
11 amortize the entire amount of principal and  
12 interest payable on the loan;  
13 (c) The loan is not subject to any extension; and  
14 (d) The loan does not require a balloon payment of any  
15 kind.

16 (Emphasis added.)

- 17 37. TITLEMAX, through its Grace Period Amendment, charges additional fees and / or  
18 additional interest during grace periods.  
19 38. TITLEMAX, through its Grace Period Amendment, makes title loans that last up to 390  
20 days, which exceeds the maximum original term of 210 days allowed pursuant to NRS  
21 604A.445(3).  
22 39. TITLEMAX, through its Grace Period Amendment, makes title loans whereby payments  
23 are not fully amortized.  
24 40. TITLEMAX, through its Grace Period Amendment, makes title loans that require one or  
25 more balloon payments.  
26 41. TITLEMAX'S repeated violations were without any attempt to correct the deficiencies  
27 and thus the repeated violations were willful, and / or intentional, and / or without any  
28 exercise of due care.  
42. TITLEMAX'S systematic business practice of amending the Loan via the Grace Period  
Amendment is predatory and shows a *willful* intent to evade NRS and NAC 604A in  
order to *unlawfully* charge Nevada customers what may amount to *millions* of dollars.  
...

**FACTS REGARDING TITLEMAX'S UNLAWFUL GUARANTORS**

43. Onsite visits to TITLEMAX locations and conversations between the Division's examiners and TITLEMAX's employees show that TITLEMAX requires and / or accepts a guarantor to a transaction entered into with a customer.
44. Examination papers from the 2015 Examination show that TITLEMAX requires and / or accepts a co-signor on a title loan to a customer where the co-signor's name is not on the title to the vehicle.
45. TITLEMAX's loan agreements require and / or accept a co-signor on a title loan to a customer where the co-signor's name is not on the title to the vehicle.
46. NRS 604A.105(1)(a)(1)-(2) provides in full as follows:

**NRS 604A.105 "Title loan" defined.**

1. "Title loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms:
- (a) Charges an annual percentage rate of more than 35 percent; and
  - (b) Requires the customer to secure the loan by either:
    - (1) Giving possession of the title to a vehicle legally owned by the customer to the licensee or any agent, affiliate or subsidiary of the licensee; or
    - (2) Perfecting a security interest in the vehicle by having the name of the licensee or any agent, affiliate or subsidiary of the licensee noted on the title as a lienholder.  
(Emphasis added.)

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

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

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

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

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

1. A licensee shall not:
- (a) Require or accept a guarantor to a transaction entered into with a customer.

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

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59. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.210(1) and / or (2), one or more times, by charging the customer additional fees and / or interest during a grace period.
60. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.210(1) and / or (2) one or more times, by charging the customer additional fees and / or interest during a grace period.
61. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(b), one or more times, by calculating payments on loans to customers that do not ratably and fully amortize the entire amount of principal and interest payable on the loan.
62. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(b), one or more times, by calculating payments on loans to customers that do not ratably and fully amortize the entire amount of principal and interest payable on the loan.
63. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(c), one or more times by extending loans to customers for a term of up to 390 days.
64. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(c), one or more times, by extending loans to customers for a term of up to 390 days.
65. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(d), one or more times, by separating interest and principal which results in the customer paying one or more balloon payments.

1 66. Based upon and incorporating by reference the foregoing Factual Allegations, the  
2 Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(d), one or  
3 more times, by separating interest and principal which results in the customer paying  
4 one or more balloon payments.

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

9 DISCIPLINE AUTHORIZED

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

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

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



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

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

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

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

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(2) Has failed to remain open for the conduct of the business for a period of 180 days without good cause therefore.

4. Any revocation or suspension applies only to the license granted to a person for the particular office for which grounds for revocation or suspension exist.

5. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

70. NRS 604A.900 provides in full as follows:

**NRS 604A.900 Remedies for certain willful violations.**

1. Except as otherwise provided in this section, if a licensee willfully:
  - (a) Enters into a loan agreement for an amount of interest or any other charge or fee that violates the provisions of this chapter or any regulation adopted pursuant thereto;
  - (b) Demands, collects or receives an amount of interest or any other charge or fee that violates the provisions of this chapter or any regulation adopted pursuant thereto; or
  - (c) Commits any other act or omission that violates the provisions of this chapter or any regulation adopted pursuant thereto,  
→ the loan is void and the licensee is not entitled to collect receive or retain any principal, interest or other charges or fees with respect to the loan.
2. The provisions of this section do not apply if:
  - (a) A licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error or computation, notwithstanding the maintenance of procedures reasonably adapted to avoid that error; and
  - (b) Within 80 days after discovering the error, the licensee notifies the customer of the error and makes whatever adjustments in the account are necessary to correct the error.  
(Emphasis added.)

RELIEF SOUGHT

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

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

DATED this 6th day of October, 2015.

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION

By: \_\_\_\_\_

GEORGE E. BURNS  
Commissioner

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

**NOTICE OF HEARING**

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

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

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

DATED this 6th day of October, 2015.

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

By: \_\_\_\_\_

GEORGE E. BURNS  
Commissioner

SUBMITTED BY:

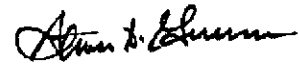
ADAM PAUL LAXALT  
Attorney General

By: \_\_\_\_\_

CHRISTOPHER ECCLES  
Deputy Attorney General

# **EXHIBIT “14”**

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

  
CLERK OF THE COURT

1 **ORDER**  
Patrick J. Reilly, Esq.  
2 Nevada Bar No. 6103  
Joseph G. Went, Esq.  
3 Nevada Bar No. 9220  
HOLLAND & HART LLP  
4 9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134  
5 Tel: (702) 669-4600  
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6 Email: [preilly@hollandhart.com](mailto:preilly@hollandhart.com)  
[jwent@hollandhart.com](mailto:jwent@hollandhart.com)

7 *Attorneys for Plaintiff*

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

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

14 **Plaintiff,**

15 **vs.**

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

19 **Defendant.**

Case No.: A-15-719176-C

Dept. No.: XXI

**ORDER GRANTING DEFENDANT'S**  
**MOTION TO DISMISS FOR FAILURE**  
**TO EXHAUST ADMINISTRATIVE**  
**REMEDIES**

**AND**

**ORDER DENYING TITLEMAX'S**  
**MOTION FOR SUMMARY JUDGMENT**

20 Defendant's Motion to Dismiss for Failure to Exhaust Administrative Remedies and  
21 TitleMax's Motion for Summary Judgment came on for hearing before this Court on December  
22 9, 2015.

23 David J. Pope, Senior Deputy Attorney General appeared on behalf of the Defendant;  
24 Patrick J. Reilly, Esq., of Holland & Hart LLP, appeared on behalf of the Plaintiff.

25 The Court, having considered the papers and pleadings regarding the motion, as well as  
26 the oral argument presented by the parties, hereby orders as follows:

27 ///

28 ///

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

1 Defendant's Motion to Dismiss for Failure to Exhaust Administrative Remedies is hereby  
2 granted.

3 As to the first question of whether Plaintiff has violated NAC 604A.230(1)(a) anytime a  
4 co-borrower (as the term is used by Plaintiff) is not listed on the title of a vehicle, the Court finds  
5 that there are questions of fact as to what the differences are between a co-borrower and a  
6 guarantor.

7 As to the second question of whether Plaintiff is in violation of NRS 604A.210 by  
8 charging interest during a grace period, the Court finds that there is a question of fact as to the  
9 implementation of these grace periods and whether the total interest charged during the grace  
10 period plus the interest charged during the term of the loan (with extensions) exceeds the amount  
11 of allowable interest under NRS 604A.445.

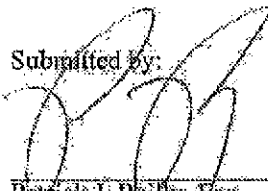
12 Consequently, this case is dismissed and Plaintiff must exhaust its administrative  
13 remedies and, thereafter, seek judicial review by a district court pursuant to Chapter 233B of the  
14 NRS. Given the foregoing, TitleMax's Motion for Summary Judgment is hereby denied as  
15 moot.

16 IT IS SO ORDERED.

17 DATED this 0 day of February, 2016.

18  
19  
20   
DISTRICT COURT JUDGE

21 Submitted by:

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

27 Attorneys for Plaintiff  
28

# **EXHIBIT “15”**



1                   **BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY**  
2                                   **LAS VEGAS, NEVADA**

3  
4   IN THE MATTER OF:

5   FINANCIAL INSTITUTIONS DIVISION,

6                   Claimants,

7                   v.

8   TITLEMAX OF NEVADA, INC. AND  
9   TITLEBUCKS D/B/A TITLEMAX,

10                  Respondents.

**FINDINGS OF FACT, CONCLUSIONS**  
**OF LAW, AND ORDER**

11  
12           This is a contested case between Claimant, the Financial Institutions Division of  
13   the Nevada Department of Business & Industry (FID), and Respondent, TitleMax of  
14   Nevada, Inc. and TitleBucks d/b/a TitleMax (TitleMax).

15   **I.   PROCEDURAL BACKGROUND**

16           FID commenced this administrative action under NRS 233B.121 with the  
17   issuance of an Administrative Complaint for Disciplinary Action and Notice of Hearing  
18   ("Complaint") against TitleMax on October 6, 2015. FID alleged that TitleMax was in  
19   violation of several provisions of NRS Chapter 604A and sought the imposition of fines,  
20   the issuance of a cease and desist order as to the violative practices, the return to  
21   customers of certain funds derived as a result of the violative practices, and the  
22   imposition of all administrative costs incurred as a result of bringing this action. The  
23   Complaint scheduled a hearing date of October 27, 2015.

24           On October 8, 2015, this matter was assigned to an Administrative Law Judge  
25   following FID Commissioner George Burns's disqualification pursuant to NRS  
26   233B.122.

27           On October 20, 2015, FID issued an Amended Notice of Hearing on  
28   Administrative Complaint for Disciplinary Action, rescheduling the hearing date to

1 November 5, 2015.

2 On October 26, 2015, TitleMax filed its Answer to Administrative Complaint.

3 On October 27, 2015, a status check was held, which counsel for both parties  
4 attended.

5 On October 29, 2015, a Procedural Order was issued vacating the November 5,  
6 2015, hearing date and directing the parties to exchange lists of proposed exhibits and  
7 witnesses and FID to disclose the type and amount of penalties it sought. The  
8 Procedural Order also directed the parties to submit a joint evidentiary packet and  
9 permitted the filing of briefs by December 18, 2015.

10 On December 9, 2015, TitleMax filed a request for a motion in limine precluding  
11 FID from admitting into evidence any documents not disclosed by November 13, 2015.  
12 FID filed an opposition to TitleMax's motion on February 11, 2016. TitleMax filed its  
13 reply in support on March 10, 2016.

14 Also on December 9, 2015, FID requested a 30-day extension to the deadline  
15 for the parties' submission of the joint evidentiary packet and briefing.

16 On December 11, 2015, an order was issued granting the requested extension,  
17 setting January 18, 2016, as the deadline for the parties' submission of the joint  
18 evidentiary packet and briefing.

19 On January 14, 2016, the parties jointly requested an extension to the deadline  
20 for their submission of the joint evidentiary packet and briefing to February 12, 2016.

21 On January 15, 2016, an order was issued granting the requested extension,  
22 setting February 12, 2016, as the deadline for the parties' submission of the joint  
23 evidentiary packet and briefing.

24 On February 12, 2016, both parties submitted their prehearing briefs. Also on  
25 February 12, 2016, the parties jointly requested an extension to the deadline for their  
26 submission of the joint evidentiary packet to February 24, 2016.

27 Also on February 12, 2016, TitleMax filed a Motion for Declaration Regarding  
28 Interpretation of Nevada Law and a Motion for Declaratory Ruling and to Stay

1 Deadlines. FID filed its opposition to the latter motion on February 24, 2016. TitleMax  
2 filed its replies in support on March 10, 2016.

3 On February 16, 2016, an order was issued granting the requested extension,  
4 setting February 24, 2016, as the deadline for the parties' submission of the joint  
5 evidentiary packet.

6 On February 24, 2016, the parties requested an extension to the deadline for  
7 their submission of the joint evidentiary packet.

8 On February 26, 2016, an order was issued granting the requested extension,  
9 setting March 30, 2016, as the deadline for the parties' submission of the joint  
10 evidentiary packet.

11 On March 18, 2016, an Order Denying TitleMax's Motion for Declaratory Ruling  
12 and to Stay Deadlines was issued.

13 On March 29, 2016, TitleMax filed a Motion for Clarification of the March 18,  
14 2016, order. On April 4, 2016, FID filed its opposition to the Motion for Clarification. On  
15 April 18, 2016, TitleMax filed its reply in support of its Motion for Clarification.

16 On March 30, 2016, the parties submitted their joint evidentiary packet.

17 On April 4, 2016, an Order Setting PreHearing Conference was issued,  
18 scheduling a prehearing conference with all parties for April 27, 2016.

19 On May 13, 2016, a Procedural Order was issued following the prehearing  
20 conference. This Order resolved all pending motions as follows: 1) TitleMax's Motion  
21 for Clarification was denied; and 2) TitleMax's Motion for Order in Limine was granted  
22 in part, holding that FID was permitted to use as exhibits at the hearing only those  
23 documents it disclosed to TitleMax by November 16, 2015. The Procedural Order also  
24 scheduled the matter to proceed to hearing beginning July 18, 2016.

25 On June 14, 2016, FID filed a Motion to Admit Division's Exhibit A and  
26 Summaries of Exhibit A pursuant to NRS 52.275. On June 20, 2016, TitleMax indicated  
27 that it had no opposition to FID's Motion. On June 24, 2016, an Order Deeming  
28

1 Documents Admitted was issued.<sup>1</sup>

2 On July 18, 2016, this matter proceeded to hearing. At hearing, the following  
3 witnesses were called and questioned under oath: Harveen Sekhon, Andrea Bruce,  
4 Ma. Theresa Dihlanson, George Burns, and Theodore ("Ted") Helgesen. The parties  
5 stipulated to the admission into evidence of all marked exhibits, amounting to more than  
6 10,000 documents. The hearing concluded on July 20, 2016.

7 **II. FINDINGS OF FACT**

8 TitleMax is licensed under NRS Chapter 604A. As a licensee, TitleMax is subject  
9 to the provisions of NRS Chapter 604A and Nevada Administrative Code (NAC) 604A.

10 FID conducts annual examinations of each of its licensees. Each licensee  
11 receives one of three ratings at the conclusion of each examination: Satisfactory, Needs  
12 Improvement, or Unsatisfactory. If a licensee receives a Satisfactory rating, FID will  
13 usually examine it again after one year. If a licensee receives a Needs Improvement  
14 rating, FID asks the licensee to respond in writing within 30 days with the steps it intends  
15 to take to remedy the problems identified, and then FID will usually re-examine it six  
16 months later. If a licensee receives an Unsatisfactory rating, FID asks the licensee to  
17 respond in writing within 30 days with the steps it intends to take to remedy the problems  
18 identified, and then FID will usually re-examine it three to six months later.

19 FID commenced an annual examination of TitleMax on August 6, 2014, which  
20 concluded on December 18, 2014 ("2014 Examination").<sup>2</sup> As a result of this examination,  
21 FID assigned TitleMax a "Needs Improvement" rating, noting several alleged violations  
22 of Nevada law.<sup>3</sup> Specifically, FID noted that TitleMax allowed people who were not on  
23 vehicle titles to become co-borrowers on title loans in contravention of NAC 604A.230,  
24 NRS 604A.105, and NRS 604A.115 and TitleMax offered an agreement titled "Grace

25 <sup>1</sup> At the hearing, TitleMax moved for the admission of proposed Exhibit 104, a summary of errors contained  
26 in FID's Summaries of Exhibit A document. FID opposed the admission of TitleMax's proposed Exhibit  
27 104, contending that it was filed untimely and did not contain any relevant or material information. FID  
28 stated that it would prepare and file an errata to its Summaries of Exhibit A, correcting any typographical  
errors contained therein. FID did not file such an errata. Given that the conclusions reached in this Order  
did not require reliance on FID's Summaries of Exhibit A document, TitleMax's motion to admit proposed  
Exhibit 104 is denied as unnecessary.

<sup>2</sup> FID Ex. B (00008565-00008581).

<sup>3</sup> FID Ex. B (00008577).

1 Period Payments Deferment Agreement" ("GPPDA") in contravention of NRS  
2 604A.445.<sup>4</sup> Examiners from FID and representatives from TitleMax attended a meeting  
3 to discuss the examination before its completion on October 7, 2014.<sup>5</sup> Examiners from  
4 FID and representatives from TitleMax also took part in a telephonic exit interview at the  
5 conclusion of the examination on December 18, 2014.<sup>6</sup>

6 On February 9, 2015, TitleMax, through its counsel, authored a letter addressed  
7 to Ma. Theresa Dihiansan, an Examiner III with the FID.<sup>7</sup> This 10-page letter set forth  
8 the bases for TitleMax's disagreement with the violations of Nevada law FID cited in its  
9 2014 Examination. On March 2, 2015, FID responded through its counsel.<sup>8</sup> FID's letter  
10 in response did not substantively address TitleMax's dispute of the alleged violations of  
11 NAC 604A.230, NRS 604A.105, NRS 604A.115, and NRS 604A.445.<sup>9</sup> FID summarily  
12 stated that it "st[ood] by its position" with regard to those issues.<sup>10</sup>

13 FID commenced a follow-up examination of TitleMax on May 22, 2015, which  
14 concluded on June 17, 2015 ("2015 Examination").<sup>11</sup> FID assigned TitleMax an  
15 "Unsatisfactory" rating, noting several repeat violations of Nevada law.<sup>12</sup> Specifically,  
16 FID noted that TitleMax was still offering the GPPDA to customers in contravention of  
17 NRS 604A.445.<sup>13</sup> FID noted that it found no instances in which TitleMax allowed  
18 individuals who were not on a vehicle's title to become co-borrowers on the title loan  
19 using the vehicle as collateral, and therefore the Report of Examination for the 2015  
20 Examination deemed that violation rectified.<sup>14</sup> Examiners from FID and representatives  
21 from TitleMax participated in a telephonic exit interview on June 17, 2015.<sup>15</sup>

22 On June 1, 2015, TitleMax commenced an action for declaratory relief in  
23 Nevada's Eighth Judicial District Court. (Case No. A-15-719176). In the lawsuit, TitleMax

24 <sup>4</sup> FID Ex. B (00008574-00008577).

25 <sup>5</sup> FID Ex. B (00008580).

26 <sup>6</sup> FID Ex. B (00008573).

27 <sup>7</sup> TitleMax Ex. 85 (TMX 85-00001-00012).

28 <sup>8</sup> TitleMax Ex. 86 (TMX 86-00001-00003).

<sup>9</sup> TitleMax Ex. 86 (TMX 86-00003).

<sup>10</sup> TitleMax Ex. 86 (TMX 86-00003).

<sup>11</sup> FID Ex. C (00008582-00008594).

<sup>12</sup> FID Ex. C (00008591).

<sup>13</sup> FID Ex. C (00008588).

<sup>14</sup> FID Ex. C (00008588).

<sup>15</sup> FID Ex. C (00008588).

1 requested a declaration 1) that an individual may be a co-borrower on a title loan without  
2 violating NAC 604A.230 when said individual is not listed on the title of the vehicle  
3 associated with the loan; and 2) interpreting NRS 604A.210 and NRS 604A.445.

4 On July 13, 2015, counsel for FID authored an email to counsel for TitleMax to  
5 ask if TitleMax would agree to convert its action for declaratory relief to an action  
6 pursuant to NRS Chapter 29 in which the parties stipulate to having a good faith  
7 controversy about their rights and seek a judicial declaration.<sup>16</sup> At some point after July  
8 23, 2015, TitleMax declined to agree to convert its declaratory relief action to a Chapter  
9 29 action.<sup>17</sup>

10 On October 6, 2015, FID commenced this administrative action against TitleMax  
11 with the issuance of its Complaint.

12 TitleMax stopped offering the GPPDA on new loans in December of 2015.

13 TitleMax stopped allowing non-legal owners to become parties to title loans in the  
14 summer of 2015 because, as testified to by Ted Helgesen, the Department of Motor  
15 Vehicles stopped allowing TitleMax to perfect its liens unless all parties to the title loan  
16 contract were also on the vehicle title.

17 **A. Findings of Fact Particular to the Issues Presented by the GPPDA**

18 Under NRS 604A.445, title lenders may offer two types of title loans to customers:  
19 (1) a 30-day loan that may be extended for up to six additional 30-day periods (NRS  
20 604A.445(1)-(2)); and (2) a 210-day loan that may not be extended. (NRS 604A.445(3)).  
21 TitleMax offers its customers the 210-day loan only.

22 When a customer desires to enter into a 210-day title loan with TitleMax, the  
23 customer signs an agreement titled "Title Loan Agreement."<sup>18</sup> This agreement provides  
24 that the customer will make payments on the loan in seven installments scheduled 30  
25 days apart, with each payment ratably and fully amortized such that the principal and  
26 interest will be paid in full on the date of the seventh payment.<sup>19</sup> The agreement informs  
27 the customer that the principal amount of the loan will be subject to simple interest

28 <sup>16</sup> TitleMax Ex. 98 (TMX 98-00001-00004).

<sup>17</sup> TitleMax Ex. 98 (TMX 98-00001-00004).

<sup>18</sup> TitleMax Ex. 91 (TMX 91-001-003).

<sup>19</sup> TitleMax Ex. 91 (TMX 91-001-003).

1 calculated daily.<sup>20</sup> A Truth-In-Lending Act (TILA) disclosure accompanies the  
2 agreement.<sup>21</sup> The TILA disclosure sets forth the annual percentage rate applicable to  
3 the loan, the projected finance charge, the amount financed, and the projected total of  
4 payments.<sup>22</sup> The TILA disclosure contains a projection of the total amount the customer  
5 will pay in finance charges assuming the customer makes each payment on its due  
6 date.<sup>23</sup>

7 FID admits that the Title Loan Agreement complies with Nevada law.<sup>24</sup>

8 At the time the customer enters into the Title Loan Agreement, TitleMax staff  
9 informs the customer of the option to enter into a GPPDA. Under the GPPDA, TitleMax  
10 "amend[s], modif[ies], and defer[s]" the customer's payment schedule to provide for  
11 fourteen installments scheduled 30 days apart, with the first seven payments going  
12 toward interest only and the second seven payments going toward principal only.<sup>25</sup> The  
13 due dates for the first seven payments remain the same as under the Title Loan  
14 Agreement, with seven additional payment due dates scheduled every 30 days  
15 thereafter.<sup>26</sup> Under the GPPDA, the customer's payments are no longer fully and ratably  
16 amortized. Under the GPPDA, the loan remains subject to the same annual percentage  
17 rate as agreed upon in the Title Loan Agreement. TitleMax customarily allows customers  
18 whose accounts are in current status to enter into the GPPDA anytime at least 24 hours  
19 after entering into the Title Loan Agreement.

20 A customer who enters into the GPPDA is entitled to make lower monthly  
21 payments than he or she would be entitled to make under the Title Loan Agreement.  
22 However, a customer who makes payments according to the payments schedule set  
23 forth in the GPPDA will ultimately pay more money in interest to TitleMax than he or she  
24 would have paid had he or she made payments according to the payments schedule set  
25 forth in the Title Loan Agreement. Under both the Title Loan Agreement and the GPPDA,  
26 the customer is entitled to make payments early without a penalty.

26 <sup>20</sup> TitleMax Ex. 91 (TMX 91-001-003).

27 <sup>21</sup> See, for example, FID Ex. A-1 (000003).

28 <sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> TitleMax Ex. 102, p. 3 ¶ 17.

<sup>25</sup> See, for example, FID Ex. A-1 (000016-000017).

<sup>26</sup> *Id.*

1 For example, on January 17, 2015, Customer Esguerra entered into a Title Loan  
2 Agreement with TitleMax in which he borrowed a principal amount of \$5,800.00 at an  
3 annual percentage rate of 133.7129% for 210 days.<sup>27</sup> Under these terms, Customer  
4 Esguerra was projected to pay \$2,813.16 in interest over the life of the loan, for a total  
5 amount paid of \$8,613.16.<sup>28</sup> Customer Esguerra was required to make payments every  
6 30 days for 210 days in the amount of \$1,230.45 each, with the last payment coming  
7 due on August 15, 2015.<sup>29</sup> On March 21, 2015, Customer Esguerra entered into a  
8 GPPDA with TitleMax.<sup>30</sup> Under the GPPDA, Customer Esguerra was required to make  
9 payments every 30 days for 420 days, with the first seven payments being in the amount  
10 of \$637.42 each (the seventh payment was still due on August 15, 2015) and the second  
11 seven payments being in the amount of \$828.57 each.<sup>31</sup> Under the GPPDA, Customer  
12 Esguerra was projected to pay \$4,461.94 in interest over the life of the loan, for a total  
13 amount paid of \$10,261.94.<sup>32</sup> Under the GPPDA, Customer Esguerra was projected to  
14 pay \$1,648.78 more in interest than he was projected to pay under the Title Loan  
15 Agreement.<sup>33</sup>

16 **B. Findings of Fact Particular to the Issues Presented by the Allowance of**  
17 **Co-Borrowers on Title Loans**

18 TitleMax allows individuals who are not legal owners of the vehicle that is the  
19 collateral for the title loan to become parties to the loan. TitleMax terms these parties  
20 "co-borrowers." In the event of a default on the loan, TitleMax does not pursue either the  
21 vehicle's legal owner or the co-borrower personally. No evidence was presented that  
22 TitleMax has ever sought to recover funds on a defaulted loan from the vehicle's legal  
23 owner or a co-borrower. TitleMax's exclusive remedy upon default is repossession of  
24 the vehicle that is the collateral for the title loan.

25 **III. CONCLUSIONS OF LAW**

26 **A. Conclusions of Law Particular to the Issues Presented by the GPPDA**

27 <sup>27</sup> FID Ex. A-4 (000083-000087).

28 <sup>28</sup> FID Ex. A-4 (000084).

29 <sup>29</sup> FID Ex. A-4 (000084).

30 <sup>30</sup> FID Ex. A-4 (000090-000093).

31 <sup>31</sup> FID Ex. A-4 (000091).

32 <sup>32</sup> FID Ex. A-4 (000091).

33 <sup>33</sup> FID Ex. A-4 (000083-000093).



1 FID asserts that TitleMax violates NRS 604A.445, NRS 604A.070, and NRS  
2 604A.210 when it enters into the GPPDA with customers. FID contends that by entering  
3 into the GPPDA, TitleMax unlawfully extends the term of the loan, does not ratably and  
4 fully amortize installment payments, and charges additional interest. TitleMax argues in  
5 response that the GPPDA constitutes an amendment to the original loan, so none of the  
6 requirements imposed on the original term of the loan apply to the GPPDA and no  
7 additional interest is charged during the grace period.

8 As set forth above, TitleMax offers only 210-day loans pursuant to NRS  
9 604A.445(3). The original term of a title loan may be 210 days if the loan complies with  
10 four conditions: 1) the loan must provide for payment in installments; 2) the installments  
11 must be ratably and fully amortized; 3) the loan must not be subject to any extension;  
12 and 4) the loan must not require a balloon payment of any kind. NRS 604A.445(3)(a)-  
13 (d).<sup>34</sup> TitleMax contends that none of these four requirements apply to the GPPDA  
14 because they only apply to the original term of the loan, and the GPPDA is an  
15 amendment to the original term of the loan. TitleMax's argument is creative, but would  
16 lead to an absurd result. See *Sheriff, Clark County v. Burcham*, 198 P.3d 326, 329, 124  
17 Nev. 1247, 1253 (2008) ("[S]tatutory construction should always avoid an absurd  
18 result.") (internal quotations omitted). If TitleMax were correct, it and all other title lenders  
19 could simply amend every loan agreement they enter into and thereby escape not only

20 <sup>34</sup> NRS 604A.445 Title loans: Restrictions on duration of loan and periods of extension.  
Notwithstanding any other provision of this chapter to the contrary:

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

1 the requirements of NRS 604A.445(3) but even the requirement in NRS 604A.105(b)  
2 that a title loan be secured by a vehicle title.<sup>35</sup> TitleMax may not opt out from NRS  
3 604A.445(3) by creating a new, non-original agreement.

4 Having concluded that the GPPDA is not an amendment to the original loan  
5 agreement that is exempt from the requirements of NRS 604A.445(3), the question  
6 becomes whether the GPPDA is in compliance with those requirements. Neither party  
7 disputes that under the GPPDA, payments are still in installments and no balloon  
8 payment is required. Therefore, whether the GPPDA is a lawful product depends on its  
9 compliance with the second and third requirements as set forth in NRS 604A.445(3)(b)  
10 and (c).

11 *a. The GPPDA is an unlawful extension of the loan.*

12 NRS 604A.445(3)(c) prohibits a licensee from granting an extension to a title loan  
13 with an original term of 210 days. NRS 604A.065(1) defines an extension as "any  
14 extension or rollover of a loan beyond the date on which the loan is required to be paid  
15 in full under the original terms of the loan agreement, regardless of the name given to  
16 the extension or rollover." The definition of extension provides one critical exception:  
17 "The term does not include a grace period." NRS 604A.065(2). A grace period is defined  
18 as "any period of deferment offered gratuitously by a licensee to a customer if the  
19 licensee complies with the provisions of NRS 604A.210." NRS 604A.070.<sup>36</sup> Licensees  
20 offering grace periods are precluded from charging any fees for granting the grace period  
21 and from charging any additional fees or additional interest on the outstanding loan  
22

23 <sup>35</sup> NRS 604A.105 "Title loan" defined.

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

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

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

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

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

2. The term does not include a loan which creates a purchase-money security interest in a vehicle  
or the refinancing of any such loan.

<sup>36</sup> NRS 604A.070 "Grace period" defined. "Grace period" means any period of deferment offered  
gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210.

1 during such a grace period. NRS 604A.210.<sup>37</sup> NRS 604A.210 and NRS 604A.270 are  
2 the only provisions in Chapter 604A that address grace periods. The critical question is  
3 what distinguishes a grace period from an extension, and does the GPPDA  
4 impermissibly extend the loan or permissibly grant a grace period?

5 The GPPDA is an illegal extension of the loan in violation of NRS 604A.445(3)(c).  
6 Under the GPPDA, customers receive an additional 210 days to pay off their title loan.  
7 This arrangement explicitly satisfies the definition of an extension: the date on which the  
8 loan is required to be paid in full is extended 210 days. The terms of the GPPDA do not  
9 constitute a grace period because TitleMax does not offer the additional 210 days  
10 gratuitously. Payments are due from customers every 30 days during the additional 210-  
11 day period, and TitleMax derives a benefit in the form of being entitled to more interest  
12 over the term of the loan under the GPPDA than it would be entitled to receive under the  
13 Title Loan Agreement. Under the example set forth above, Customer Esguerra was  
14 projected to pay \$1,648.78 more in interest under the terms of the GPPDA than he was  
15 projected to pay under the Title Loan Agreement.

16 ***b. The GPPDA results in the charging of additional interest.***

17 The conclusion that the GPPDA is an unlawful extension of the loan rather than  
18 a grace period renders null TitleMax's argument that it does not charge additional  
19 interest during a grace period in violation of NRS 604A.210(2) because it collects all the  
20 additional interest up front, during the first 210 days, rather than during the grace period,  
21 or the last 210 days. Since the GPPDA does not constitute a true grace period,  
22 TitleMax's imposition of seven interest-only payments is simply the impermissible  
23 charging of additional interest in excess of the amount that can lawfully be charged.  
24 TitleMax obtains the excess interest by ceasing to ratably and fully amortize the  
25 installment payments, which is unlawful under NRS 604A.445(2).

26 <sup>37</sup> NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period. The  
27 provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the  
28 repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:

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

1 When directly comparing the payments a customer must make under the Title  
2 Loan Agreement to the payments a customer must make under the GPPDA, it is  
3 undisputed that TitleMax stands to earn more money in interest charges under the  
4 GPPDA because it charges simple interest on the entire outstanding principal amount  
5 for seven months<sup>38</sup> rather than charging interest on a steadily-reducing amount of  
6 principal as under the Title Loan Agreement.<sup>39</sup>

7 According to TitleMax, though it stands to earn a greater amount of money in  
8 interest charges under the GPPDA than it did under the Title Loan Agreement, that does  
9 not constitute the collection of "additional interest on the outstanding balance during the  
10 grace period" in violation of NRS 604A.210(2) because it charges and collects all of the  
11 interest on the outstanding principal during the first seven payments—which it contends  
12 are not part of the grace period. However, if the first seven payments are not part of the  
13 grace period added by amendment, then they must be terms from the original Title Loan  
14 Agreement, in which case those payments must be ratably and fully amortized, and after  
15 the customer signs the GPPDA, those payments are not fully and ratably amortized.

16 **C. Conclusions of Law Particular to the Issues Presented by the**  
17 **Allowance of Co-Borrowers on Title Loans**

18 FID asserts that TitleMax violates NAC 604A.230 when it allows individuals who  
19 are not legal owners of the vehicle that is the collateral for the title loan to become co-  
20 borrowers on the loan. FID contends that by allowing non-legal owners to become  
21 parties to title loans, TitleMax is effectively allowing guarantors on title loans, which is  
22 expressly prohibited by NAC 604A.230. FID further argues that TitleMax's conduct is

23 <sup>38</sup> The number and amount of payments that the customer has already made at the time the parties enter  
24 into the GPPDA is highly relevant to this calculation. If the customer has made payments under the original  
25 Title Loan Agreement, the principal amount owed will be lower than if the customer has not, and thus the  
26 amount of interest charged against the outstanding principal during payments 1-7 will inevitably be lower  
27 as well. Whether the customer ends up paying more money in interest charges under the GPPDA than he  
28 or she would have under the original loan agreement is situation-specific to every loan agreement.

<sup>39</sup> It is true that a customer may pre-pay on the loan under either the original Title Loan Agreement or the  
GPPDA, which would result in the customer paying less interest over the life of the loan than if the  
customer made each payment on the due date. It is also true that a customer may pay late under either  
the original Title Loan Agreement or the GPPDA, which could result in the customer paying more in interest  
under the original agreement or the GPPDA than if the customer made each payment on the due date.  
And it is also true that a customer may pay late under the original Title Loan Agreement even if that  
customer did not sign the GPPDA and that customer could end up paying more in interest than the  
customer would have paid had the customer made payments on time under the GPPDA.

1 violative of NRS Chapter 604A.450 because TitleMax allows co-borrowers as a means  
2 of circumventing the ability-to-repay requirements set forth in that section.

3 NRS 604A.105 provides the definition of a title loan. It specifies that a customer  
4 may secure a title loan in one of two ways: by giving the licensee possession of the title  
5 to a vehicle the customer legally owns, or by noting the licensee's name on the title as a  
6 lienholder. Necessarily, the customer obtaining the title loan must be the legal owner of  
7 the vehicle as reflected on the vehicle's title. However, nothing in the language of NRS  
8 604A.105 precludes the inclusion of an additional, non-legal owner as a party to the title  
9 loan. NRS 604A.105 requires that a vehicle's legal owner procure the loan, but it does  
10 not say that the legal owner must be the only party to the loan. If a vehicle's legal owner  
11 wishes to include a third party on his or her loan and that third party consents to his or  
12 her inclusion, nothing in Chapter 604A precludes it.

13 FID argues that by allowing a non-legal owner to be a party to the loan, TitleMax  
14 is effectively allowing a guarantor to the loan, and the use of guarantors is expressly  
15 prohibited by NAC 604A.230. However, FID did not present any evidence that TitleMax  
16 attempts to pursue or ever has pursued the non-legal owner in the event of a default by  
17 the legal owner.<sup>40</sup> In fact, TitleMax has repeatedly acknowledged, in both its written  
18 briefing and the testimony of its corporate representative, Ted Helgesen, that title loans  
19 are non-recourse loans in which seizure of the vehicle used as collateral is the lender's  
20 only remedy in the event of a default.<sup>41</sup> FID also did not present any evidence that  
21 TitleMax received payment from the non-legal owner in any instance. Since TitleMax  
22 does not attempt to recover a debt from these non-legal owners, it is not treating them  
23 as guarantors nor are they acting as guarantors. TitleMax's practice of allowing a non-  
24 legal owner to be a party to the loan does not violate NAC 604A.230's prohibition on the  
25 allowance of a guarantor.

26  
27 <sup>40</sup> The term "guaranty" is defined as "[a] promise to answer for the payment of some debt, or the  
28 performance of some duty, in case of the failure of another who is liable in the first instance; a collateral  
undertaking by one person to be answerable for the payment of some debt or performance of some duty  
or contract for another person who stands first bound to pay or perform." Black's Law Dictionary (10th ed.  
2014).

<sup>41</sup> NRS 604A.455(2).

1           **D. Ability-to-Repay Requirements as Set Forth in NRS 604A.450**

2           FID argued at the hearing that TitleMax allows non-legal owners to be parties to  
3 loans to circumvent the ability-to-repay requirements found in NRS 604A.450.<sup>42</sup>  
4 Specifically, FID alleges that when a legal owner cannot meet the ability-to-repay  
5 requirements by him or herself, TitleMax will consider the non-legal owner's net income  
6 in calculating the loan that it can issue. The fatal flaw to this argument is that FID has  
7 not alleged a violation of NRS 604A.450 in this action. Whether TitleMax is allowing non-  
8 legal owners to become parties to title loans as a method of circumventing the ability-to-  
9 repay requirements is not at issue in this case. Therefore, I will not reach any conclusions  
10 of law concerning this question.

11           **IV. DISCIPLINE AND PENALTIES**

12           Having concluded that the GPPDA is an unlawful extension of the original Title  
13 Loan Agreement that results in the charging of additional interest, pursuant to NRS  
14 604A.810, TitleMax is ordered to cease and desist offering the GPPDA to all customers.

15           FID requests an order requiring TitleMax to conduct a full accounting of and return  
16 all principal and interest it has collected under every GPPDA it has ever entered into.  
17 NRS 604A.900(1)(c) states, "[I]f a licensee willfully: [ . . . ] [c]ommits any other act or  
18 omission that violates the provisions of this chapter or any regulation adopted pursuant  
19 thereto, the loan is void and the licensee is not entitled to collect, receive or retain any  
20 principal, interest or other charges or fees with respect to the loan."<sup>43</sup> FID contends that  
21

22           <sup>42</sup> NRS 604A.450(2) prohibits licensees from making title loans "without regard to the ability of the  
23 customer seeking the title loan to repay the loan, including the customer's current and expected income,  
24 obligations and employment" and requires licensees to obtain from each customer an affidavit stating that  
he or she has provided the licensee with true and correct information concerning his or her income,  
obligations, employment, ownership of the vehicle, and that he or she has the ability to repay the loan.

25           <sup>43</sup> NRS 604A.900 Remedies for certain willful violations.

26           1. Except as otherwise provided in this section, if a licensee willfully:

27           (a) Enters into a loan agreement for an amount of interest or any other charge or fee that violates the  
28 provisions of this chapter or any regulation adopted pursuant thereto;

          (b) Demands, collects or receives an amount of interest or any other charge or fee that violates the  
provisions of this chapter or any regulation adopted pursuant thereto; or

          (c) Commits any other act or omission that violates the provisions of this chapter or any regulation  
adopted pursuant thereto, [ ] the loan is void and the licensee is not entitled to collect, receive or retain  
any principal, interest or other charges or fees with respect to the loan.

2. The provisions of this section do not apply if:

1 TitleMax willfully violated NRS 604A.445 by deliberately choosing to continue to offer  
2 the GPPDA to customers after being informed by FID during the 2014 Examination and  
3 the 2015 Examination that the GPPDA was an unlawful product. TitleMax argues that it  
4 had a good faith disagreement with FID over the legal requirements of NRS 604A.445  
5 and that a showing of willfulness requires proof that TitleMax "knew or showed reckless  
6 disregard for the matter of whether its conduct was prohibited." *McLaughlin v. Richland*  
7 *Shoe Co.*, 486 U.S. 128, 131 (1988).

8 While TitleMax maintains that its actions in providing GPPDAs was nothing more  
9 than a disagreement with the interpretation of an existing statutory provision and should  
10 not give rise to sanctions that can be imposed only for a "willful" violation, this position  
11 rings hollow once TitleMax was placed on notice by FID that such loan modifications  
12 violated the law. As a result, there can be no doubt that TitleMax entered into GPPDAs  
13 after December 18, 2014, willfully, warranting the imposition of the civil penalty set forth  
14 in NRS 604A.900(1)(c). Accordingly, every GPPDA entered into after December 18,  
15 2014, is void, and TitleMax is not entitled to collect, receive or retain any principal,  
16 interest or other charges or fees with respect to those loans.

17 Pursuant to NRS 604A.820(1)(b), TitleMax shall pay an administrative fine of  
18 \$307,000.00, with \$257,000.00 of that fine held in abeyance provided that TitleMax is  
19 and remains compliant with NRS 604A.445.

20 Pursuant to 604A.820(1)(c), TitleMax must compensate FID for any costs  
21 expended on the court reporter and for transcripts of the hearing.  
22  
23  
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25

26 (a) A licensee shows by a preponderance of the evidence that the violation was not intentional and  
27 resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably  
28 adapted to avoid that error; and

(b) Within 60 days after discovering the error, the licensee notifies the customer of the error and  
makes whatever adjustments in the account are necessary to correct the error.

1 **V. ORDER**

2 TitleMax is ordered to immediately cease and desist offering the GPPDA to all  
3 customers.

4 TitleMax is ordered to conduct a full accounting of and return all principal and  
5 interest it has collected under every GPPDA entered into after December 18, 2014.  
6 TitleMax shall conduct this process under the supervision and direction of FID and shall  
7 complete the return of all monies on or before 120 days from the date of this Order.

8 TitleMax is ordered to pay an administrative fine of \$307,000.00 with  
9 \$257,000.00 of that amount held in abeyance provided that TitleMax is and remains  
10 compliant with NRS 604A.445. TitleMax shall pay the portion of the fine not held in  
11 abeyance within 30 days of the date of this Order.

12 TitleMax is ordered to compensate FID for its costs expended on the court  
13 reporter and transcripts within 30 days of the date of this Order.

14 Dated this 12<sup>th</sup> day of August, 2016.

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17 /s/ Denise S. McKay  
18 Denise S. McKay  
19 Administrative Law Judge  
20 State of Nevada  
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**CERTIFICATE OF MAILING**

I, Michelle Metivier, do hereby certify that I deposited in the U.S. mail, postage prepaid, via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order to the following:

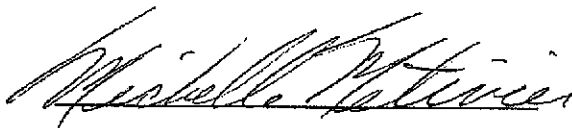
Patrick J. Reilly, Esq.  
Nicole Lovelock, Esq.  
Holland & Hart LLP  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, NV 89134

certified#7012 1010 0000 1182 0923  
email: PReilly@hollandhart.com  
NELovelock@hollandhart.com

David Pope, Esq.  
Vivienne Rakowsky, Esq.  
Rickisha Hightower-Singletary, Esq.  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101

certified#7012 1010 0000 1182 0930  
email: DPope@ag.nv.gov  
VRakowsky@ag.nv.gov  
RSingletary@ag.nv.gov

Dated this 12<sup>th</sup> day of August, 2016.



# **EXHIBIT “16”**

1 **DECL**

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](mailto:preilly@hollandhart.com)  
[jgwent@hollandhart.com](mailto:jgwent@hollandhart.com)

7 *Attorneys for Petitioners*

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

11 **TITLEMAX OF NEVADA, INC. d/b/a**  
12 **TITLEMAX and TITLEBUCKS, a Nevada**  
13 **corporation,**

13 **Petitioner,**

14 **vs.**

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

17 **Respondent.**

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

**DECLARATION OF VICTORIA H.  
NEWMAN, ESQ. IN SUPPORT OF  
MOTION FOR PARTIAL STAY OF  
ADMINISTRATIVE ORDER**

19 I, Victoria H. Newman, hereby declare under penalty of perjury of the laws of the State of  
20 Nevada that the following is true and correct:

21 1. I am Senior Compliance and Corporate Counsel for TMX Finance LLC, which is  
22 the parent entity for TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax"),  
23 petitioner in the above-entitled matter. I am an attorney, licensed to practice law in the State of  
24 Florida and the State of Georgia. I have personal knowledge of all matters stated herein and would  
25 be competent to testify to them if called upon to do so.

26 2. In an administrative proceeding before the State of Nevada, Department of  
27 Business and Industry, Financial Institutions Division (the "FID"), a hearing officer issued  
28 Findings of Fact, Conclusions of Law, and Order (the "Administrative Order") ordering TitleMax

1 to conduct "a full accounting of and return of all principal and interest it has collected under every  
2 [Grace Period Deferment Agreement] entered into after December 18, 2014." The deadline for  
3 TitleMax to comply—including the return of funds to all customers—is 120 days, which is  
4 Saturday, December 10, 2016.

5 3. Subject to its appellate rights, TitleMax has complied with all other portions of the  
6 Administrative Order, including the payment of a fine and costs.

7 4. Compliance with the foregoing portion of the Administrative Order requires a  
8 manual review of approximately 11,651 loan files created by TitleMax from December 18, 2014,  
9 to May 10, 2015. This is because the point-of-sale software used by TitleMax during that period,  
10 Cashwise, did not electronically record as a data point in its system whether a customer entered  
11 into a Grace Period Deferment Agreement. As a result, a manual review of every file during that  
12 period is required simply to determine whether a customer entered into a Grace Period Deferment  
13 Agreement in the first place.

14 5. TitleMax is able to determine electronically if a customer entered into a Grace  
15 Period Deferment Agreement on or after May 11, 2015, because those loans were originated in  
16 TitleMax's current point-of-sale-system, TLX, and TLX electronically tracks as a data point  
17 whether a customer voluntarily entered into the Grace Period Deferment Agreement. TitleMax is  
18 in the process of gathering TLX data for delivery to the FID.

19 6. TitleMax explained to the FID the foregoing limitations and challenges, and has  
20 requested an extension of time to retrieve this information. The FID refused any extension.

21 7. With regard to the payment requirement of the Administrative Order, TitleMax also  
22 requested that the FID agree to stay the payment requirement of the Administrative Order pending  
23 any appeal. The FID refused this request as well, and suggested that it will take further  
24 administrative action (*i.e.*, license suspension or revocation proceedings) if TitleMax does not  
25 comply with this deadline.

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3 8. Attached hereto is a true and correct portion of the transcript from the  
4 administrative hearing, in which testimony was presented (and undisputed) that TitleMax's Grace  
5 Period Deferment Agreement was created in reliance upon the advice of counsel from multiple  
6 law firms.

7 EXECUTED this 28th day of September, 2016.

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9   
10 VICTORIA H. NEWMAN, ESQ.  
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# **EXHIBIT “17”**

**COMPROMISE, RELEASE, AND SETTLEMENT AGREEMENT**

This COMPROMISE, RELEASE, AND SETTLEMENT AGREEMENT made this 24<sup>th</sup> day of November, 2015, by and between DEVON WHITAKER and GLORIA WHITAKER (hereinafter "WHITAKERS") and TITLEMAX of Nevada, Inc. (hereinafter "TitleMax"), who collectively shall be referred to hereinafter as the "Parties".

WHEREAS, the Parties, and each of them, without admitting any liability, desire to fully and finally settle any and all claims which one may have against the other which have been asserted or which could have been asserted in litigation concerning the 2002 Ford F150 VIN 1FTRW07632KA21562 (hereinafter, "the Subject Vehicle") and any and all outstanding unsecured loans;

WHEREAS, the Parties, and each of them, without admitting any liability, further desire to mutually release the other from any and all claims, demands, and causes of action which one may have against the other (and all their past, present and future heirs, predecessors, successors, assigns, subsidiaries, associated companies, parent companies, partnerships, affiliates and other business entities, and each and all of their respective past, present and future associates, owners, partners, stockholders, officers, directors, administrators, employees, contractors, independent contractors, managers, executors, agents, accountants, consultants, insurers, representatives and attorneys, except as otherwise expressly provided herein) on all matters which were or could have been raised in litigation;

Now, therefore, based upon the mutual promises and covenants contained herein, the Parties agree as follows:

**Recitals Incorporated.** The recitals set forth above are incorporated herein by reference and are explicitly made a part of this Compromise, Release, and Settlement Agreement.

1

TMX 101 - 00001

1. **Payment:** The Parties have agreed that the WHITAKERS will pay TitleMax the amount of FIVE HUNDRED EIGHTY DOLLARS AND SIXTY CENTS (\$580.60), inclusive of attorney's fees and costs, pursuant to the following terms and conditions:
  - a. WHITAKERS agree to pay TitleMax one payment of Five Hundred Eighty Dollars and Sixty cents (\$580.60) by December 15, 2015 for a total of \$580.60.
  - b. WHITAKERS will tender the payment to TitleMax via the TITLEBUCKS branch located at 4750 W. Lake Mead Blvd, Suite #102, Las Vegas, NV 89108.
2. **Title to Subject Vehicle:** Upon completion of Payment as provided for in this Compromise, Release, and Settlement Agreement, TitleMax shall deliver to WHITAKERS the title to the Subject Vehicle, with any lien released, if TitleMax has placed a lien on the title.
3. **Forgiveness of Balance:** Upon completion of Payment as provided for in this Compromise, Release, and Settlement Agreement, TitleMax will write-off any balance which WHITAKERS may have for any and all loans obtained to date.
4. **Credit Reporting:** Within 30 days of receiving the executed Settlement Agreement, TitleMax agrees to take all necessary and reasonable steps to request that the credit reporting agencies to which it reports delete the trade line for the Account, if it so reports. WHITAKERS acknowledges that TitleMax does not control the actions of the credit reporting agencies, and thus, TitleMax may only request that the credit reporting agencies delete the Account trade line.

If at any time following 60 days after the execution of this Settlement Agreement by the Parties, WHITAKERS determines that one or more of the credit reporting agencies have not complied with TitleMax's request as set forth above, WHITAKERS shall provide



prompt written notice to TitleMax and provide copies of any credit reports for which the WHITAKERS contend the trade line for the Account was not deleted. In that event, TitleMax will, within 30 days following receipt of such notice and reports, re-contact the credit reporting agencies that have not deleted the Account trade line and again request that the Account trade line be deleted. Furthermore, should the WHITAKERS ever dispute the trade line with any credit reporting agency, and the credit reporting agency notifies Plaintiff of the dispute, TitleMax will either not verify the trade line or will confirm that such trade line should be deleted. No cause of action can or will be stated by the WHITAKERS against TitleMax relating to, or arising out of, any credit reporting conduct of TitleMax so long as TitleMax complies with its obligations as set forth in this paragraph.

5. **Event of Default:** In the event that the WHITAKERS fail to fulfill the payment obligation as set forth in the "Payment" clause of this Compromise, Release, and Settlement Agreement, then TitleMax retains all rights to enforce its lien against the Subject Vehicle (including but not limited to repossession), and to pursue any available legal action to recovery and all amounts due hereunder, to which the WHITAKERS can raise any and all applicable defenses and counterclaims.
6. **Mutual Release:** Each of the Parties hereto do hereby release, acquit and forever discharge the other (and all their past, present and future heirs, predecessors, successors, assigns, subsidiaries, associated companies, parent companies, partnerships, affiliates and other business entities, and each and all of their respective past, present and future associates, owners, partners, stockholders, officers, directors, administrators, employees, contractors, independent contractors, managers, executors, agents, accountants, consultants, insurers, representatives and attorneys, except as otherwise expressly

provided herein) of and from all known and unknown claims, actions, causes of action and suits for damages, at law and in equity, that were brought or could have been brought in litigation, including loss of compensation, profits, interest, use, attorney fees, and costs, which each may have upon the payment of funds and delivery of title.

7. **No Admission of Liability:** The Parties acknowledge, understand, and agree that no party admits any liability of any sort or to any extent by entering into this Settlement Agreement and Mutual Release or by providing any consideration to any other party; but rather the Parties acknowledge, understand and agree that this Settlement Agreement and Mutual Release and the consideration furnished are made to compromise and satisfy all disputed and presently existing claims.
8. **Finality:** The Parties agree to forego making any claim against the other which concern or in any way relate to the agreement, and any claim which was or could have been made in litigation.
9. **Complete Agreement:** This Settlement Agreement and Mutual Release is the entire, complete, sole and only understanding and agreement of, by and between the undersigned pertaining to the subject matter expressed herein, and there are no independent, collateral, different, additional or other understandings or agreements, oral or written, or obligations to be performed, things to be done, or payments to be made, other than those set forth in writing herein.
10. **Implementation:** Each of the Parties agrees to perform all acts and to execute all documents necessary to implement all the terms of this Settlement Agreement and Mutual Release.

11. **Time of the Essence:** Time is of the essence to this Settlement Agreement and Mutual Release. The Parties anticipate a mutual exchange of all property, money, and completion of documents necessary to effectuate this Settlement Agreement and Mutual Release forthwith following execution and as set forth above herein.
12. **Agreement Understood; Voluntarily Executed:** By signing this Settlement Agreement and Mutual Release each of the undersigned does thereby acknowledge and warrant that this document was first carefully read in its entirety by the undersigned and was and is understood and known to be a full and final compromise, settlement, release, accord and satisfaction and discharge of all claims, actions, and causes of action and suits, as above stated, involving the Parties; that this document is signed and executed voluntarily and without reliance upon any statement or representation of or by any of the undersigned, or any representative or agent of same, concerning the nature, degree and extent of said damages, loss or injuries, or legal liability therefore; that each of the undersigned has enjoyed and in fact has taken the opportunity to consult their own independent legal counsel prior to signing this document and that such legal counsel has fully explained the nature, extent and scope of the Releases and other Agreements herein set forth.
13. **Binding Effect:** This Settlement Agreement and Mutual Release shall be binding upon the heirs, executors, administrators and assigns of the signators.
14. **Choice of Law:** This Settlement Agreement and Mutual Release shall be governed by the laws of the State of Nevada. Jurisdiction will be held by the Eighth Judicial District Court, Clark County Nevada or the Las Vegas Justice Court, whichever is applicable under the Nevada Constitution and Nevada Revised Statutes.

15. **Severability:** In the event that any provision contained in this Agreement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and the remaining provisions of this Agreement shall not, at the election of the Party for whose benefit the provision exists, be in any way impaired.
16. **Interpretation:** This Agreement shall be considered to have been jointly prepared by the Parties, and shall not be construed against any Party in case of any uncertainty or any ambiguity.
17. **Execution in Counterparts:** This Settlement Agreement and Mutual Release may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, with the same effect as if each Party had executed all counterparts.
18. **No Assignments:** The WHITAKERS hereby represent and warrant that there has been no assignment or transfer whatsoever of any of the claims released herein. The WHITAKERS AGREE TO DEFEND AND INDEMNIFY TITLEMAX AND OTHER PERSONS AND ENTITIES RELEASED HEREIN AGAINST ANY CLAIM BASED UPON, ARISING OUT OF, OR IN CONNECTION WITH ANY SUCH ASSIGNMENT OR TRANSFER.
19. **Notices:** All notices and other communications hereunder shall be in writing to:

Devon Whitaker  
Gloria Whitaker  
c/o Venicia G. Considine, Esq.  
Legal Aid Center of Southern Nevada, Inc.  
725 East Charleston Boulevard  
Las Vegas, Nevada 89104

TitleMax of Nevada, Inc.  
TitleMax of Georgia, Inc.  
15 Bull Street, Suite 200  
Savannah, GA 31401

Attn: Maria Danello

ATTN: Legal Department

I have read and fully understand the foregoing Compromise, Settlement and Release Agreement this the 21 day of November, 2015, and have had full opportunity to discuss the same with my attorney.

Devon Whitaker

DEVON WHITAKER

Date: 11/24/15

Gloria Whitaker

GLORIA WHITAKER

Date: 11/24/15

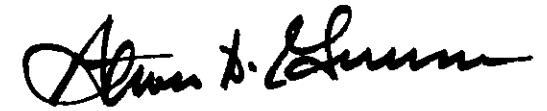
BY TITLEMAX OF NEVADA, INC.: I have read and fully understand the foregoing Compromise, Settlement and Release Agreement this the 25 day of November, 2015.

Maria Danello

Authorized Representative of  
TITLEMAX

Date: 11/25/15

Maria Danello, Litigation Counsel  
Printed Name of Authorized Representative



CLERK OF THE COURT

**DECL**  
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](mailto:preilly@hollandhart.com)  
[ecsmit@hollandhart.com](mailto:ecsmit@hollandhart.com)

*Attorneys for Petitioner*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

Case No. : A-16-743134-J

Dept. No.: XV

**DECLARATION OF PATRICK J.  
REILLY, ESQ. IN SUPPORT OF  
MOTION FOR PARTIAL STAY OF  
ADMINISTRATIVE ORDER**

I, Patrick J. Reilly, being first duly sworn, deposes and states as follows:

1. I am a partner at the law firm of Holland & Hart, LLP, counsel for TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax") in the above-entitled action. I make this Declaration in support of TitleMax's Motion for Partial Stay of Administrative Order in the above-entitled action. I have personal knowledge of all matters stated herein and would be competent to testify to them if called upon to do so.

2. Attached as **Exhibit "1"** to the Appendix of Exhibits in support of TitleMax's Motion for Partial Stay of Administrative Order (the "Appendix") is a true and correct copy of relevant portions of the Nevada Legislature Assembly Daily Journal dated April 25, 2005.

3. Attached to the Appendix as **Exhibit “2”** is a true and correct copy of relevant portions of the 2005 Nev. Stat., chapter 414.

4. Attached to the Appendix as **Exhibit “3”** is a true and correct copy of relevant portions of Minutes of the Senate Committee on Commerce and Labor dated May 6, 2005, which includes therein a document identified as Exhibit G that outlines changes to Assembly Bill 384.

5. Attached to the Appendix as **Exhibit “4”** is a true and correct copy of a State of Nevada Department of Business and Industry Financial Institutions Division (the “FID”) Notice of Workshop dated September 21, 2012, which includes therein a document identified as Exhibit D that outlines an interpretive regulation to NRS 604A.210 proposed by the FID.

6. Attached to the Appendix as **Exhibit “5”** is a true and correct copy of the minutes from an NRS Chapter 604A workshop conducted by the FID on October 10, 2012.

7. Attached to the Appendix as **Exhibit “6”** is a true and correct copy of an undated Report of Examination issued to TitleMax by the FID.

8. Attached to the Appendix as **Exhibit “7”** is a true and correct copy of a letter dated February 9, 2015, from Title to the FID, responding to the FID’s Reports of Examination.

9. Attached to the Appendix as **Exhibit “8”** is a true and correct copy of a response letter from the FID to TitleMax dated March 2, 2015.

10. Attached to the Appendix as **Exhibit “9”** is a true and correct copy of the Complaint filed in *TitleMax of Nevada, Inc. v. State of Nevada*, Eighth Judicial District Court Case No. A-15-719176-C (the “Declaratory Relief Action”).

11. Attached to the Appendix as **Exhibit “10”** is a true and correct copy of an email chain between counsel for TitleMax and the FID in which the FID proposed converting the Declaratory Relief Action into a proceeding under NRS Chapter 29.

12. Attached to the Appendix as **Exhibit “11”** is a true and correct copy of the Amended Complaint filed in the Declaratory Relief Action.

13. Attached to the Appendix as **Exhibit “12”** is a true and correct copy of the FID’s Motion to Dismiss filed in the Declaratory Relief Action on October 6, 2015.

14. Attached to the Appendix as **Exhibit “13”** is a true and correct copy of the

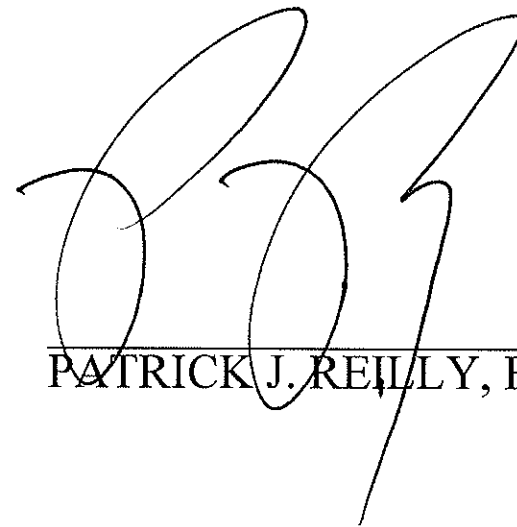
1 Administrative Complaint for Disciplinary Action and Notice of Hearing (the “Administrative  
2 Complaint”) filed by the FID against TitleMax on October 6, 2015.

3 15. Attached to the Appendix as **Exhibit “14”** is a true and correct copy of the order  
4 of dismissal in the Declaratory Relief Action.

5 16. Attached to the Appendix as **Exhibit “15”** is a true and correct copy of the  
6 Findings of Fact, Conclusions of Law, and Order issued by the FID that is the subject of the  
7 underlying Petition for Judicial Review in this matter.

8 17. Attached to the Appendix as **Exhibit “17”** is a true and correct copy of Exhibit  
9 101 from the administrative proceeding that is the subject of the underlying Petition for Judicial  
10 Review in this matter.

11 DATED this 28th day of September, 2016.



PATRICK J. REILLY, ESQ.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of September, 2016, a true and correct copy of the foregoing **DECLARATION OF PATRICK J. REILLY, ESQ. IN SUPPORT OF MOTION FOR PARTIAL STAY OF ADMINISTRATIVE ORDER** was served by the following method(s):

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

Adam Paul Laxalt  
Attorney General  
David J. Pope  
Sr. Deputy Attorney General  
Vivienne Rakowsky  
Deputy Attorney General  
Rickisha Hightower-Singletary  
Deputy Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
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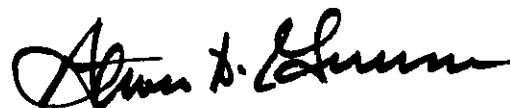
*Attorneys for Respondent*

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

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

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An Employee of Holland & Hart LLP



CLERK OF THE COURT

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*Attorneys for Petitioner*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

Case No. : A-16-743134-J

Dept. No.: XV

**MOTION FOR PARTIAL STAY OF  
ADMINISTRATIVE ORDER**

**EX PARTE APPLICATION FOR ORDER  
SHORTENING TIME**

Hearing Date:

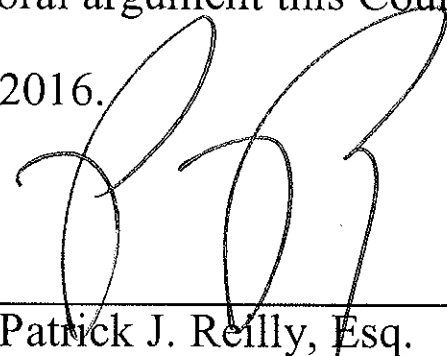
Hearing Time:

Petitioner TitleMax of Nevada, Inc. dba TitleMax and TitleBucks ("TitleMax") hereby moves this Court for a partial stay of the Findings of Fact, Conclusions of Law, and Order (the "Administrative Order") entered by the State of Nevada, Department of Business and Industry, Financial Institutions Division (the "FID") in the above-entitled action. Specifically, TitleMax asks this Court to stay pending this judicial review proceeding and any appeal thereon the portion of the Administrative Order requiring that TitleMax conduct "a full accounting of and return of all principal and interest it has collected under every [Grace Period Deferment Agreement] entered into after December 18, 2014."

///

1 In addition, TitleMax seeks an Order Shortening Time on the hearing of this Motion.  
2 This Motion is made and based on the following Memorandum of Points and Authorities, the  
3 pleadings and papers on file herein, and any oral argument this Court may allow.

4 DATED this 28th day of September, 2016.



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

*Attorneys for Petitioner*

**EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

Pursuant to EDCR 2.26, TitleMax respectfully requests that the instant Motion for Partial Stay of Administrative Order be heard on an Order Shortening Time. Good cause supports TitleMax's request for a hearing on shortened time. At present, TitleMax has been ordered to conduct "a full accounting of and return of all principal and interest it has collected under every [Grace Period Deferment Agreement] entered into after December 18, 2014." The deadline for TitleMax to comply—including the return of funds to all customers—is 120 days, which is Saturday, December 10, 2016. Subject to its appellate rights, TitleMax has complied with all other portions of the Administrative Order, including the payment of a fine and costs.

The FID's Hearing Officer imposed the 120-day deadline without warning, discussion, or input from the parties. Had she done so, TitleMax would have advised that compliance with the deadline would involve a manual review of approximately 11,651 loan files created by TitleMax from December 18, 2014, to May 10, 2015. This is because the point-of-sale software used by TitleMax during that period, Cashwise, did not electronically record as a data point in its system whether a customer entered into a Grace Period Deferment Agreement. As a result, a manual review of every file during that period is required simply to determine whether a customer entered into a Grace Period Deferment Agreement in the first place. TitleMax is able to determine electronically if a customer entered into a Grace Period Deferment Agreement on or after May 11, 2015, because those loans were originated in TitleMax's current point-of-sale-system, TLX, and TLX electronically tracks as a data point whether a customer voluntarily entered into the Grace Period Deferment Agreement. TitleMax is in the process of gathering TLX data for delivery to the FID.

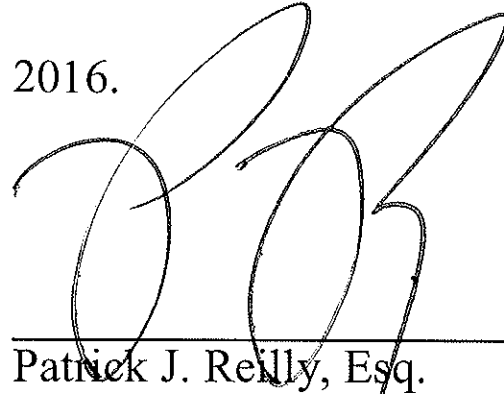
Although TitleMax explained these practical limitations to the FID and requested an extension of time to retrieve this information, the FID refused any extension. With regard to payment, TitleMax also requested that the FID agree to stay the payment requirement of the Administrative Order pending any appeal. The FID refused this request as well.

TitleMax seeks an Order Shortening Time because it will seek appropriate appellate review and an emergency stay from the Nevada Supreme Court to the extent the instant motion is

1 denied. The FID suggested that it will seek additional discipline from TitleMax in the event the  
2 120-day deadline is not met. Thus, an Order Shortening Time is merited.

3 Accordingly, TitleMax respectfully requests that the instant motion be heard on shortened  
4 time in order to expedite the process for adjudication prior to the expiration of the 120-day  
5 deadline to comply with the Administrative Order, and to give TitleMax adequate time to seek  
6 appellate review, if necessary, prior to that deadline.

7 DATED this 28th day of September, 2016.



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

*Attorneys for Petitioner*

15 **AFFIDAVIT OF PATRICK J. REILLY, ESQ.**

16 STATE OF NEVADA     )  
17 COUNTY OF CLARK    ) ss.

18 I, Patrick J. Reilly, being first duly sworn, deposes and states as follows:

19 1. I am a partner at the law firm of Holland & Hart, LLP, counsel for TitleMax of  
20 Nevada, Inc. dba TitleMax and/or TitleBucks ("TitleMax") in the above-entitled action.

21 2. I have personal knowledge of all matters stated herein and would be competent  
22 to testify to them if called upon to do so.

23 3. Good cause supports TitleMax's request for a hearing on shortened time. At  
24 present, TitleMax has been ordered to conduct "a full accounting of and return of all principal and  
25 interest it has collected under every [Grace Period Deferment Agreement] entered into after  
26 December 18, 2014."

27 4. The deadline for TitleMax to comply—including the return of funds to all  
28 customers—is 120 days, which is Saturday, December 10, 2016.

1           5.           Subject to its appellate rights, TitleMax has complied with all other portions of  
2 the Administrative Order, including the payment of a fine and costs.

3           6.           The FID's Hearing Officer imposed the 120-day deadline without warning,  
4 discussion, or input from the parties. Had she done so, TitleMax would have advised that  
5 compliance with the deadline would involve a manual review of approximately 11,651 loan files  
6 created by TitleMax from December 18, 2014, to May 10, 2015. This is because the point-of-sale  
7 software used by TitleMax during that period, Cashwise, did not electronically record as a data  
8 point in its system whether a customer entered into a Grace Period Deferment Agreement. As a  
9 result, a manual review of every file during that period is required simply to determine whether a  
10 customer entered into a Grace Period Deferment Agreement in the first place. TitleMax is able to  
11 determine electronically if a customer entered into a Grace Period Deferment Agreement on or  
12 after May 11, 2015, because those loans were originated in TitleMax's current point-of-sale-  
13 system, TLX, and TLX electronically tracks as a data point whether a customer voluntarily  
14 entered into the Grace Period Deferment Agreement. TitleMax is in the process of gathering  
15 TLX data for delivery to the FID.

16           7.           TitleMax explained to the FID the foregoing limitations and challenges, and has  
17 requested an extension of time to retrieve this information. The FID refused any extension. With  
18 regard to payment, TitleMax also requested that the FID agree to stay the payment requirement of  
19 the Administrative Order pending any appeal. The FID refused this request as well.

20           8.           TitleMax seeks an Order Shortening Time because it will seek appropriate  
21 appellate review and an emergency stay from the Nevada Supreme Court to the extent the instant  
22 motion is denied. The FID suggested that it will seek additional discipline from TitleMax in the  
23 event the 120-day deadline is not met. Thus, an Order Shortening Time is merited.

24           9.           Accordingly, TitleMax respectfully requests that the instant motion be heard on  
25 shortened time in order to expedite the process for adjudication prior to the expiration of the 120-

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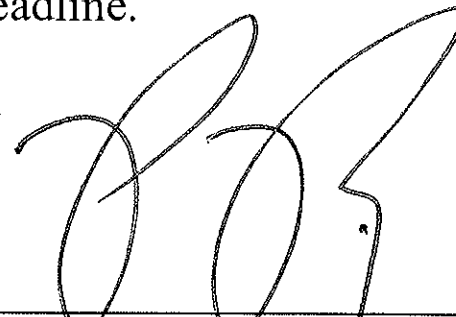
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Holland & Hart LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134


1 day deadline to comply with the Administrative Order, and to give TitleMax adequate time to  
2 seek appellate review, if necessary, prior to that deadline.

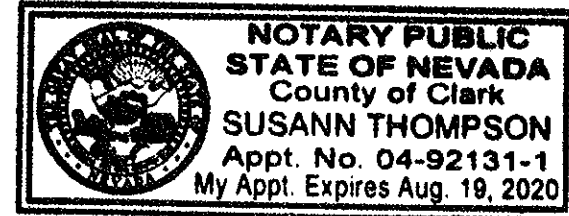
3 DATED this 28th day of September, 2016.

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PATRICK J. REILLY

SUBSCRIBED AND SWORN to before  
me this 28th day of September, 2016.

  
NOTARY PUBLIC



**ORDER SHORTENING TIME**

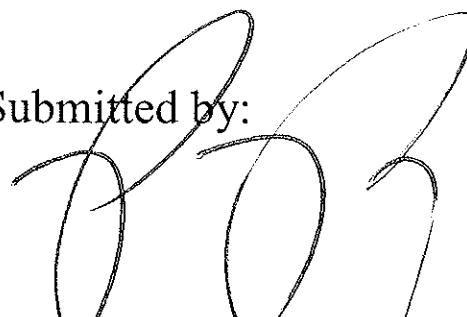
Upon the application of TitleMax of Nevada, Inc. dba TitleMax and/or TitleBucks  
("TitleMax") to hear its Motion for Partial Stay of Administrative Order (the "Motion"), and  
good cause appearing therefore, IT IS HEREBY ORDERED that the request for an Order  
Shortening Time to hear the Motion is GRANTED, and the same shall be heard on the 12<sup>th</sup> day  
of October, 2016, at the hour of 9:00 a.m./p.m.

Any written opposition brief shall be filed and served no later than  
October 5, 2016. TitleMax's written reply brief shall be filed and served no  
later than October 10, 2016.

DATED this 29th day of September, 2016.

  
DISTRICT COURT JUDGE

Submitted by:

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

Attorneys for Petitioner

1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                   **MOTION FOR PARTIAL STAY OF ADMINISTRATIVE ORDER**

3                   **I.**

4                   **INTRODUCTION**

5                   This is a petition for judicial review of an Administrative Order issued by the FID against  
6 TitleMax for offering a Grace Period Payment Deferment Agreement (the “GPDA”) to  
7 customers in 2014 and 2015. The underlying facts were never in dispute—rather, the FID and  
8 TitleMax disagreed over whether its form agreement complied with NRS 604A.210 and NRS  
9 604A.445. As a result, this matter turned entirely on an interpretation of these two laws.

10                  There is an age old idiom that “*You can’t fight city hall.*” In Nevada, however, the FID  
11 has taken its *ad hoc* rulemaking and retaliatory enforcement to such degrees that one is not even  
12 allowed to *disagree* with its government. Though these two statutes should have been presented  
13 to a judge for a simple statutory interpretation more than one year ago, the FID has used its  
14 enforcement powers to rewrite laws unilaterally, engage in forum shopping, obtain over the top  
15 punitive remedies, all because TitleMax dared to disagree with the FID. The FID’s zeal to  
16 enforce does not justify abandoning the separation of powers between the legislative, executive,  
17 and judicial branches of government. Its retaliatory conduct against TitleMax, its brazen forum  
18 shopping, and its refusal to acknowledge three binding Nevada Supreme Court cases in an  
19 attempt to further that forum shopping is offensive to notions of fair play and responsible  
20 government.

21                  Ultimately, the FID’s obstreperous conduct and its flawed reading of NRS 604A.210 and  
22 NRS 604A.445 will be addressed by this Court when it considers TitleMax’s Petition for Judicial  
23 Review on the merits. This Motion, however, seeks limited relief. TitleMax requests that this  
24 Court stay pending this judicial review proceeding (and any appeal thereon) the portion of the  
25 Administrative Order requiring that TitleMax conduct within 120 days “a full accounting of and  
26 return of all principal and interest it has collected under every [Grace Period Deferment  
27 Agreement] entered into after December 18, 2014.” As a practical matter, TitleMax cannot  
28 comply with the 120-day deadline (a random deadline entered without any discussion or input



1 from TitleMax in violation of its due process rights), as compliance involves the **manual review**  
2 **of 11,651 loan files** to determine whether a GPDA was even entered with the customer. In  
3 addition, forcing TitleMax to refund monies to customers while TitleMax is still seeking  
4 appellate review would obviously defeat the purpose of any appeal. This is particularly true,  
5 given that the Hearing Officer completely misapplied the standard for willfulness under NRS  
6 604A.900.

7 Accordingly, TitleMax respectfully requests that this Court grant its Motion to Stay.

8 **II.**

9 **STATEMENT OF FACTS**

10 **A. Enactment of A.B. 384 and its Legislative History.**

11 1. In 2005, the Nevada Legislature adopted a comprehensive overhaul to payday and  
12 title lending. Assembly Bill (“A.B.”) 384 resulted in the creation of NRS Chapter 604A,  
13 including the two statutes at issue in this appeal, NRS 604A.210 and NRS 604A.445.

14 2. NRS 604A.210 specifically authorizes a lender to offer a grace period on the  
15 repayment of a loan if the lender does not charge **any** (a) fees for the granting of such a grace  
16 period; or (b) **additional** interest on the outstanding loan during the grace period (referred to as  
17 the “Any Additional Interest Statute”). NRS 604A.210 places no other limitations on the  
18 offering of a grace period.

19 3. Unlike an “extension” on a loan, which is defined to include “any extension or  
20 rollover of a loan beyond the date on which the loan is required to be paid in full under the  
21 original terms of the loan agreement,” NRS 604A.065, a “grace period” means “any period of  
22 deferment offered gratuitously by a licensee to a customer if the licensee complies with  
23 provisions of NRS 604A.210.” NRS 604A.070.

24 4. For the purposes of a “grace period” under NRS 604A.210, NRS Chapter 604A  
25 does not define the terms: “any . . . additional interest” or “any . . . additional interest . . . on the  
26 outstanding loan during the grace period.” Of note, NRS Chapter 604A does not cap the amount  
27 of interest a lender may charge on the loan.

28 ///

1           5.       The initial draft of what would eventually become NRS 604A.210 prohibited the  
2 recovery of any interest whatsoever as a result of a grace period. Section 23 of A.B. 384, as  
3 originally written, would have prohibited a lender from continuing to charge even the originally  
4 contracted rate of interest on unpaid principal during the grace period:

- 5           a.       Any fees for granting such a grace period; or  
6           b.       Any fees or interest on the outstanding loan during  
7                    such a grace period.

8           Assemb. Daily Journal, 73d Leg., at 84 (Nev., April 25, 2005) (emphasis added) (referred to as  
9 the “Any Interest Proposal”), relevant portions of which are attached to the Appendix of Exhibits  
10 (the “Appendix”) as **Exhibit “1.”**

11           6.       In May 2005, the Legislature specifically added the word “additional” to A.B.  
12 384, and this version ultimately became NRS 604A.210—the Any Additional Interest Statute.  
13 Assemb. Daily Journal, 73d Leg., at 63 (Nev., May 26, 2005); *see also* 2005 Nev. Stat., ch. 414,  
14 § 23, at 1686, relevant portions of which are attached to the Appendix as **Exhibit “2.”**

15           7.       This change (which is specifically underlined in Exhibit G to the May 6, 2005,  
16 minutes for the Senate Committee on Commerce and Labor) was made at the request of Barbara  
17 Buckley, the author and sponsor of A.B. 384, after lengthy consultation, negotiation, and  
18 agreement with the lending industry:

19                   I have been working with these industry groups for about a  
20 year. In the past 3 weeks, I have spent about 50 hours with  
21 them. We have worked on words and meanings; we have  
22 drafted, we have redrafted and I have tried to accommodate  
23 every good-faith business concern with this bill. Some  
24 provisions and changes that I have made I did not like, but  
we were trying to get you a consensus product with the  
limited amount of time by working with those who are just  
as appalled by these abuses as I am. I have submitted a  
summary (Exhibit G) of the sections amended in the mock-  
up of A.B. 384.

25           Hearing on A.B. 384 Before the Senate Comm. on Commerce & Labor, 73d Leg. (Nev., May 6,  
26 2005), relevant portions of which are attached to the Appendix as **Exhibit “3.”** The insertion of  
27 the word “additional” in Section 23 of A.B. 384 plainly directed that a lender could continue to  
28 charge the originally contracted rate of interest during a grace period, but was simply barred

1 from imposing “additional” interest charges or fees during the grace period.

2 **B. The FID Acknowledges Ambiguity in NRS 604A.210 and Drafts a Proposed**  
3 **Interpretive Regulation.**

4 8. In 2012, the FID conducted a public workshop to consider proposed regulations in  
5 conjunction with NRS Chapter 604A. Grace periods under NRS 604A.210 were among the  
6 topics covered by the regulations proposed. *See Nev. Dep’t of Bus. & Indus., Fin. Insts. Div.,*  
7 *Notice of Workshop to Solicit Comments on Proposed Regulations* (Sept. 21, 2012), available at  
8 [http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed\\_Regulations/2012-09-](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf)  
9 [21\\_NoticeOfWorkshop604A.pdf](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf), a copy of which is attached to the Appendix as **Exhibit “4.”**

10 9. At that workshop, the FID introduced the following proposed regulation:

11 Grace Period Limitation

12 Pursuant to NRS 604A.210, a licensee may collect interest  
13 and fees on the outstanding loan during a grace period not  
14 to exceed the amount of accrued interest and fees as  
15 disclosed in the loan agreement. During a grace period, no  
16 interest shall accrue and no fees shall be charged after  
17 expiration of the loan period.

18 *Id.* at Exhibit D (referred to as the “Any Interest Proposed Regulation”).

19 10. FID Deputy Commissioner Carla Kolebuck explained that the regulation (Exhibit  
20 D to the minutes) was being proposed “due to concerns raised by members of the title loan  
21 industry regarding an installment loan scenario where late paying borrowers end up paying less  
22 interest over time than on time borrowers due to contract rate of interest ceasing to accrue after a  
23 default.”<sup>1</sup> Nev. Dep’t of Bus. & Indus., Fin. Insts. Div., *NAC 604A Workshop Minutes*, at para.  
24 4-B-3 (Oct. 10, 2012), available at [http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Proposed_Regulations/NAC604A_2012-10-10.pdf)  
25 [Proposed\\_Regulations/NAC604A\\_2012-10-10.pdf](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Proposed_Regulations/NAC604A_2012-10-10.pdf), a copy of which is attached to the Appendix  
26 as **Exhibit “5.”** This explanation related to the first sentence of the proposed regulation.

27 <sup>1</sup> Ms. Kolebuck’s comments reference “repayment plans” under NRS 604A.475. Under that statute, when a  
28 borrower defaults, a repayment plan must be offered, and all accrual of interest ceases. As a result, the FID’s  
interpretation of NRS Chapter 604A created the absurd result of on-time borrowers being required to pay more in  
interest than defaulted borrowers.

1           11.     Ms. Kolebuck further acknowledged that “some ambiguity exists in the statutes,  
2     and that a possible interpretation would permit the contract rate of interest to be charged  
3     during a grace period so long as it is not considered ‘additional interest or fees’ on the  
4     loan.” *Id.* (emphasis added). This acknowledgment related to the second sentence of the  
5     proposed regulation.

6           12.     Given the ambiguity the FID admitted existed in NRS 604A.210, the FID  
7     proposed a regulation that addressed that “possible interpretation” by prohibiting the collection  
8     of any interest in excess of the amount disclosed in the original loan agreement. *See* Exhibit 5.  
9     The Any Interest Proposed Regulation attempted to revert to the Any Interest Proposal, which  
10    was never enacted by the Legislature. *See id.* The Any Interest Proposed Regulation, likewise,  
11    was never adopted.

12    **C.     TitleMax and the FID Disagree Over the Meaning of NRS 604A.210 and NRS**  
13    **604A.445.**

14           13.     After conducting examinations of TitleMax in 2014 and 2015, the FID issued  
15     written Reports of Examination in which it cited TitleMax for violating NRS 604A.210 and NRS  
16     604A.445 as a result of TitleMax’s Grace Period Deferment Agreement (the “GPDA”), which it  
17     had been offering to customers during the prior year. *See, e.g.,* Appendix at **Exhibit “6.”**

18           14.     In the Reports of Examination, the FID concluded that a violation had occurred  
19     because the grace period offered by TitleMax resulted in a loan obligation “higher than the total  
20     amount owed under the original loan agreement.” *Id.* at 8.

21           15.     In effect, the FID cited TitleMax for violating the “Any Interest Proposal” in A.B.  
22     384, and for violating the “Any Interest Proposed Regulation,” neither of which was ever  
23     adopted.

24           16.     In the Reports of Examination, the FID offered no legal analysis for its  
25     conclusion. *See id.* at 4-6. At that time, there had been no formal advisory opinion by the  
26     Attorney General, the FID, or the Legislative Counsel Bureau interpreting NRS 604A.210 and  
27     NRS 604A.445 upon which the FID could rely. Also, there had been no court decision upon  
28     which the FID could rely to support its conclusion.

1           17.     In TitleMax’s response to the Reports of Examination, it provided the legislative  
2 history of NRS 604A.210 and a detailed analysis of the reasons why the FID’s citation of  
3 TitleMax—based solely upon a differing interpretation on NRS 604A.210—was incorrect. *See*  
4 Appendix at **Exhibit “7.”**

5           18.     The FID responded in writing on March 2, 2015. *See* Appendix at **Exhibit “8.”**  
6 Again, the FID offered no analysis justifying its response. Further, the FID’s March 2 letter  
7 completely ignored TitleMax’s legal analysis regarding NRS 604A.210 and NRS 604A.445,  
8 stating only that it “stands by its position.” *Id.*

9     **D.     TitleMax Commences a Declaratory Relief Action; the FID Concedes a “Good**  
10     **Faith” Dispute.**

11           19.     Whether TitleMax’s offering a GPDA to customers constituted a violation of law  
12 was premised solely upon the parties’ differing interpretations of NRS 604A.210 and NRS  
13 604A.445, specifically “any interest” versus “any additional interest” theories. Because the  
14 dispute between the FID and TitleMax (i) was solely legal and turned on the interpretation of the  
15 applicable law, and (ii) did not involve rate making and licensing (therefore having no  
16 administrative procedure available for challenging an FID Report of Examination under NRS  
17 Chapter 604A and NRS Chapter 233B existed), TitleMax filed a declaratory relief action (the  
18 “Declaratory Relief Action”) seeking interpretation of the statutes in question. *See TitleMax of*  
19 *Nevada, Inc. v. State of Nevada*, Eighth Judicial District Court Case No. A-15-719176-C. A  
20 copy of the Complaint is attached to the Appendix as **Exhibit “9.”**

21           20.     In the Declaratory Relief Action, TitleMax sought *inter alia* declaratory relief in  
22 the form of an interpretation of NRS 604.210 and NRS 604.445.<sup>2</sup> TitleMax sought no damages,  
23 no attorney fees, and no costs—only an interpretation of the foregoing statutes. *Id.* at 3-4.

24           21.     In the weeks that followed, the FID proposed converting the matter into a special  
25 proceeding under NRS Chapter 29, in which the parties would jointly seek an interpretation of  
26 the law. On July 23, 2015, counsel for the FID advised that if TitleMax were to agree to convert  
27

28           <sup>2</sup> TitleMax additionally sought an interpretation of NAC 604A.230, which is not at issue in these proceedings.

1 the matter under Chapter 29, the FID would refrain from proceeding to an administrative  
2 hearing. *See* Appendix at **Exhibit “10.”** NRS Chapter 29 specifically requires that the parties  
3 file an affidavit with the court swearing under penalty of perjury that the dispute is “in good  
4 faith.” NRS 29.010. Therefore, counsel for the FID’s proposal for a special proceeding under  
5 NRS Chapter 29 effectively conceded that the legal dispute between the parties was a “good  
6 faith” dispute over the meaning of the law.<sup>3</sup>

7 22. In the Complaint, TitleMax specifically sought “a declaration that the [Grace  
8 Period] Deferment Agreement does not violate NRS 604A.210 or NRS 604A.445.” Exhibit 9, at  
9 ¶ 23.

10 23. On September 17, 2015, following an “Unsatisfactory” rating in yet a second set  
11 of Reports of Examination in 2015 on the exact same issue as the first and threats of disciplinary  
12 action by the FID against TitleMax, TitleMax filed its Amended Complaint including a request  
13 for “injunctive relief enjoining the FID from imposing or seeking to impose discipline based  
14 upon alleged violations of NRS 604A.210, NRS 604A.445, and NAC 604A.230.” A copy of the  
15 Amended Complaint is attached to the Appendix as **Exhibit “11.”** *See* Exhibit 11, at 4.

16 24. Twice before, the Nevada Supreme Court has expressly rejected the FID’s  
17 position that administrative remedies must be exhausted before one seeks an interpretation of a  
18 statute or before one takes action to prevent against threats of regulatory discipline. *See State v.*  
19 *Check City P’ship, LLC*, 130 Nev., Adv. Op. 90, 337 P.3d 755, 758 n.5 (2014) (stating that  
20 administrative remedies need not be exhausted when the interpretation of a statute is the sole  
21 issue in proceeding or when a licensee faces threat of loss of license or suspension); *State v. Nev.*  
22 *Ass’n Servs., Inc. (NAS)*, 128 Nev., Adv. Op. 34, 294 P.3d 1223, 1228 (2012) (threat of  
23 discipline precluded need to exhaust administrative remedies). Both cases specifically involved  
24 the FID.

25 25. On October 6, 2015, even though the FID was well aware of these prior adverse  
26 holdings on the same issue, the FID moved to dismiss the Declaratory Relief Action for failure to

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27 <sup>3</sup> TitleMax declined the FID’s offer because it had already commenced the lower court action and sought  
28 the same remedy as the NRS Chapter 29 proposal. Moreover, the FID had not, at that point, specified that it  
intended to seek administrative penalties against TitleMax.

1 exhaust administrative remedies. *See* Appendix at **Exhibit “12.”** Notably, that same day, the  
2 FID filed its own Administrative Complaint for Disciplinary Action and Notice of Hearing (the  
3 “Administrative Complaint”). *See* Appendix at **Exhibit “13.”** In the Administrative Complaint,  
4 the FID sought numerous remedies, including revocation or suspension of TitleMax’s license.  
5 *Id.* at 13. The FID also sought maximum fines and a finding of “willful violations”—remedies  
6 sought in retaliation for the filing of the declaratory relief action.

7 26. In contravention of *NAS*, 128 Nev., Adv. Op. 34, 294 P.3d at 1228, *Check City*,  
8 130 Nev., Adv. Op. 90, 337 P.3d at 758 n.5, and *Malecon Tobacco, LLC v. State*, 118 Nev. 837,  
9 839, 59 P.3d 474, 475-76 (2002), the Hon. Valerie Adair dismissed TitleMax’s declaratory relief  
10 action without explanation. *See* Appendix at **Exhibit “14.”** In its order of dismissal, the lower  
11 court ignored the futility doctrine under *Malecon Tobacco*, 118 Nev. at 839, 59 P.3d at 475-76  
12 (excepting from the requirement of exhausting administrative remedies situations where “resort  
13 to administrative remedies would be futile”), even though the FID’s position regarding NRS  
14 604A.210 and NRS 604A.445 was unmovable. *Id.*

15 27. In dismissing the Declaratory Relief Action, Judge Adair also failed to recognize  
16 that TitleMax had no administrative remedy to challenge the FID’s legal conclusions contained  
17 in the 2014 Reports of Examination in the first place. *See id.* In addition, Judge Adair ignored  
18 the binding precedent of *NAS*, 128 Nev., Adv. Op. 34, 294 P.3d at 1228, and *Check City*, 130  
19 Nev., Adv. Op. 90, 337 P.3d at 758 n.5, and in doing so failed to take into account that the FID  
20 filed an administrative complaint against TitleMax seeking the suspension or revocation of  
21 TitleMax’s license under NRS 604A820(2) after commencement of the Declaratory Relief  
22 Action. *See* Exhibit 13. Finally, Judge Adair also made no mention of *Malecon Tobacco*, 118  
23 Nev. at 839, 59 P.3d at 475-76 (recognizing that generally, “before availing oneself of district  
24 court relief from an agency decision, one must first exhaust available administrative remedies,”  
25 but noting that an exhaustion of administrative remedies is not necessary “when the issues ‘relate  
26 solely to the interpretation or constitutionality of a statute’”), even though the parties’ dispute  
27 turned solely on their differing interpretations of the law.

1           28.     TitleMax has appealed Judge Adair’s decision, and it has filed its opening brief in  
2     that matter. *See* Nevada Supreme Court Case No. 69807.

3     **E.     The Underlying Administrative Hearing and Aftermath.**

4           29.     Though the FID had repeatedly attempted to characterize its administrative  
5     complaint as fact-based to Judge Adair, the actual administrative hearing (which was conducted  
6     in July 2016) was comprised of two days of testimony, which involved the witnesses providing  
7     their respective “legal” interpretations of NRS 604A.210 and 604A.445. Indeed, there was, and  
8     is, no factual dispute that TitleMax offered a grace period, and no factual dispute over the terms  
9     of the grace period offered. The order that was ultimately issued by the hearing officer  
10    amounted to little more than a rubberstamp of the FID’s “any interest” interpretation of NRS  
11    604A.210 and NRS 604A.445. Indeed, the administrative hearing was revealed for what it  
12    was—an attempt by the FID to obtain an opinion affirming the FID’s “any interest”  
13    interpretation in a friendly administrative forum.

14          30.     In fact, the FID got the “home cooking” it sought in the administrative hearing,  
15    and more. The hearing officer refused to stay the proceedings pending the outcome of  
16    TitleMax’s Nevada Supreme Court appeal (which is currently pending), scheduled an  
17    administrative hearing, and ruled against TitleMax on the “any interest” versus “any additional  
18    interest” legal issue. Worse yet, the hearing officer found that TitleMax had acted willfully, even  
19    though (a) the FID previously admitted that the underlying statutes were ambiguous; (b) the FID  
20    previously requested to convert the matter to a Chapter 29 proceeding which conceded a good  
21    faith dispute; and (c) TitleMax previously sought to obtain a judicial interpretation of the law in  
22    the declaratory relief proceeding.

23          31.     In the Administrative Order, the hearing officer concluded that TitleMax’s GPDA  
24    did not comply with Nevada law, based upon her reading of NRS 604A.210 and NRS 604A.445,  
25    and ordered:

- 26           a.     That TitleMax cease offering the GPDA to its clients, even though  
27                 TitleMax had already ceased offering the GPDA on new loans back in  
28                 December 2015;



- b. That TitleMax pay a \$50,000 fine; and
- c. That TitleMax, among other things, must “conduct a full accounting of and return of all principal and interest it has collected under every GPPDA entered into after December 18, 2014 . . . on or before 120 days from the date of” the Administrative Decision.

Administrative Order, Appendix at **Exhibit “15,”** at p. 16. TitleMax has petitioned for judicial review in this proceeding.

32. As evidenced by the Declaration of Victoria H. Newman, Esq. (Appendix at **Exhibit “16”**), the deadline for TitleMax to comply with the Administrative Order—including the return of funds to all customers—is Saturday, December 10, 2016. Subject to its appellate rights, TitleMax has complied with all other portions of the Administrative Order, including the payment of a fine and costs. *Id.*

33. However, the FID’s hearing officer imposed the 120-day deadline without warning, discussion, or input from the parties. Had she done so, TitleMax would have advised that compliance with the deadline would involve a manual review of approximately 11,651 loan files created by TitleMax from December 18, 2014, to May 10, 2015. *See* Exhibit 16. This is because the point-of-sale software used by TitleMax during that period, Cashwise, did not electronically record as a data point in its system whether a customer entered into a Grace Period Deferment Agreement. *Id.* As a result, a manual review of every file during that period is required simply to determine whether a customer entered into a Grace Period Deferment Agreement in the first place. *Id.* TitleMax is able to determine electronically if a customer entered into a Grace Period Deferment Agreement on or after May 11, 2015, because those loans were originated in TitleMax’s current point-of-sale-system, TLX, and TLX electronically tracks as a data point whether a customer voluntarily entered into the Grace Period Deferment Agreement. TitleMax is in the process of gathering TLX data for delivery to the FID. *Id.*

34. TitleMax explained to the FID the foregoing limitations and challenges, and requested an extension of time to retrieve this information. Exhibit 16. The FID refused any extension. *Id.* With regard to payment, TitleMax also requested that the FID agree to stay the

1 payment requirement of the Administrative Order pending any appeal. *Id.* The FID refused this  
2 request as well, and suggested that it will take further administrative action (*i.e.*, license  
3 suspension or revocation proceedings) if TitleMax does not comply with this deadline. *Id.*

### 4 III.

#### 5 STANDARD OF REVIEW

6 NRS 233B.140 governs stays of a final decision of an administrative agency. The rule  
7 provides:

- 8 1. A petitioner who applies for a stay of the final decision in a contested case  
9 shall file and serve a written motion for the stay on the agency and all  
10 parties of record to the proceeding at the time of filing the petition for  
11 judicial review.
- 12 2. In determining whether to grant a stay, the court shall consider the same  
13 factors as are considered for a preliminary injunction under Rule 65 of the  
14 Nevada Rules of Civil Procedure.
- 15 3. In making a ruling, the court shall:
  - 16 (a) Give deference to the trier of fact; and
  - 17 (b) Consider the risk to the public, if any, of staying the administrative  
18 decision.

19 The petitioner must provide security before the court may issue a stay.

20 NRS 233B.140. Therefore, the movant must establish that (1) there is a reasonable likelihood of  
21 success on the merits; (2) there is a reasonable probability that irreparable harm will arise; and  
22 (3) the moving party's potential hardships outweigh any hardships to the nonmoving party  
23 caused by implementing the injunction. *See, e.g., Boulder Oaks Cmty. Ass'n v. B&J Andrews*  
24 *Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009); *see also* NRCP 65. A stay should be  
25 granted when the object of the appeal will be defeated if a stay is denied. *Mikohn Gaming Corp.*  
26 *v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 40 (2004).

### 27 IV.

#### 28 LEGAL ARGUMENT

This matter has become a procedural morass. TitleMax originally commenced the  
Declaratory Relief Action solely to obtain an interpretation of NRS 604A.210 and NRS  
604A.445. The FID proposed converting the Declaratory Relief Action into an NRS Chapter 29

1 proceeding, thereby acknowledging the “good faith” dispute between the parties, and further  
2 acknowledging that the parties’ sole dispute concerned interpretation of the foregoing statutes.

3 When TitleMax declined because it had already filed the action and was not seeking any  
4 fees, costs, or damages, the FID reversed course, raised the stakes, and retaliated. The FID  
5 moved to dismiss the Declaratory Relief Action suddenly (and for the first time) contending that  
6 TitleMax’s Declaratory Relief Action required “factual” determinations. The FID raised the  
7 stakes by seeking penalties it had never before threatened. It also sought suspension or  
8 revocation of TitleMax’s license. In doing so, the FID ignored three published and binding  
9 Nevada Supreme Court opinions (*NAS*, *Check City*, and *Malecon Tobacco*), two of which it had  
10 personally litigated and lost.

11 Matters got worse in the administrative hearing. The hearing officer refused to stay the  
12 proceedings pending TitleMax’s appeal of the dismissal of the Declaratory Relief Action, even  
13 though TitleMax had already stopped offering the GPDA to new customers. And, although the  
14 FID had already obtained dismissal of the Declaratory Relief Action by claiming that there were  
15 “factual issues” necessary to the determination of the proceeding, the actual proceeding turned  
16 into two days of glorified oral argument, with FID witnesses freely offering their various  
17 personal “legal” interpretations of NRS 604A.210 and NRS 604A.445, despite no one offering  
18 such an opinion had a law degree or any legal training whatsoever. And, at the conclusion of the  
19 hearing (but before rendering her decision), the hearing officer approached counsel for TitleMax  
20 and asked for free legal advice on an unrelated matter.

21 Yet, despite two days of discussion over the meaning of NRS 604A.210 and NRS  
22 604A.445, the hearing officer’s Administrative Order contained no discussion of statutory  
23 construction, no discussion of the legislative history of A.B. 385 (and the insertion of the word  
24 “additional” into what became NRS 604A.210), no discussion of the FID’s acknowledgement  
25 that the statutes were ambiguous, no discussion of the FID’s proposed regulation that was never  
26 implemented and its attempt to enforce it that way anyway, and no discussion of TitleMax’s  
27 attempt in 2015 to obtain an interpretation of the statute (and the FID’s successful attempt at  
28 blocking it). Rather, the hearing officer ruled against TitleMax, and then inexplicably found that

1 TitleMax's conduct warranted a finding of a willful violation under NRS 604A.900.

2 No casino, real estate developer, automobile manufacturer, or bank would ever be treated  
3 in such a way by the State of Nevada. Political expedience does not justify such a sorry record.

4 TitleMax will, for the moment, set aside the foregoing procedural infirmities. In short,  
5 TitleMax is entitled to a stay because it is likely to succeed on the merits of its Petition, the FID  
6 and the public will not be harmed by a stay, and the hearing officer's arbitrary 120-day deadline  
7 to refund principal and interest on every single loan made for a period of approximately one year  
8 was made without any due process.

9 **A. The Hearing Officer Voided Loans She Never Reviewed and Were Not Part of the**  
10 **Record and Her Order Exceeded the Scope of the Administrative Complaint.**

11 In the Administrative Complaint, the FID sought several remedies, including an order  
12 voiding "the loans." Exhibit 13, at 13. The FID did not define "the loans" for the purposes of its  
13 Administrative Complaint, but identified 307 instances of "loans" that it alleged violated NRS  
14 604A.210 and 604A.445. The FID further demanded an evidentiary hearing "to determine  
15 exactly how many times TITLEMAX charged customers more money under the Grace Period  
16 Amendment." *Id.* ¶ 32.

17 At the hearing, the FID presented evidence of the 307 loans identified in its  
18 Administrative Complaint in which a TitleMax customer entered into a GPDA. And, despite the  
19 FID's demand in Paragraph 32 of its Administrative Complaint, no other evidence was presented  
20 "to determine exactly how many times TITLEMAX charged customers more money under the  
21 Grace Period Amendment." *Id.*

22 Yet, the hearing officer went far beyond the scope of the Administrative Complaint and  
23 the evidence that was presented. In making her ruling, the hearing officer entered a finding of a  
24 willful violation and, under NRS 604A.900, voided **each and every loan** entered into by  
25 TitleMax after December 18, 2014, in which a GPDA was entered into with a customer. The  
26 obvious defects with this ruling are: (1) the order exceeds the FID's demand in its Administrative  
27 Complaint; (2) there is no evidence to support an order voiding loans that were never presented  
28 to the hearing officer. In one specific instance, the hearing officer voided a loan, even though the

1 customer had filed her own complaint **and had settled that complaint** with TitleMax. *See*  
2 Appendix at **Exhibit “17.”** This sweeping, overbroad ruling was made without any evidence or  
3 due process, and went far beyond the scope of the Administrative Complaint, which identified  
4 only 307 “loans” that it sought to void. *See* Exhibit 13. at 13.

5 **B. The FID and Its Hearing Officer Engaged In Unlawful Rulemaking.**

6 It is undisputed that the FID’s interpretation of NRS 604A.210 mirrors the Any Interest  
7 Proposal that was not enacted by the Nevada Legislature. It is also undisputed that the Any  
8 Interest Proposed Regulation which likewise was never adopted. Yet, the FID sought to enforce  
9 NRS 604A.210 as though the Any Interest Proposal of A.B. 385 had been enacted and the Any  
10 Interest Proposed Regulation had been adopted. As a result, the FID’s attempt to rewrite NRS  
11 604A.210 via its enforcement powers constitutes illegal *ad hoc* rulemaking, mandating that the  
12 Administrative Order be reversed.

13 Nevada’s administrative agencies (including the FID) are governed and limited by the  
14 Administrative Procedure Act (the “APA”), which is contained in NRS Chapter 233B. Under  
15 NRS 233B.038(1)(a), a “regulation” is defined as an “agency rule, standard, directive or  
16 statement of general applicability which effectuates or interprets law or policy . . . .” A  
17 regulation may not be implemented and enforced against a licensee without first satisfying the  
18 numerous notice requirements of NRS Chapter 233B. An administrative proceeding that is  
19 based upon *ad hoc* rulemaking violates the APA and must be set aside as a matter of law. *S.*  
20 *Nev. Operating Eng’rs Contract Compliance Tr. v. Johnson*, 121 Nev. 523, 531, 119 P.3d 720,  
21 726 (2005) (*ad hoc* rulemaking improper in a contested case); *State Farm Mut. Auto Ins. Co. v.*  
22 *Commissioner*, 114 Nev. 535, 958 P.2d 733 (1998) (agency proceeding based upon statutory  
23 construction set aside for violating the APA); *Coury v. Whittlesea-Bell Luxury Limousine*, 102  
24 Nev. 302, 306, 721 P.2d 375, 377-78 (1986) (administrative proceedings based upon agency’s  
25 interpretation of “stretch limousine” set aside). **Indeed, the hearing officer imposed upon**  
26 **TitleMax the very regulation that the FID had proposed in 2012 but did not adopt.** That  
27 she voided **all loans** by TitleMax in which a GPDA was signed—as opposed to the 307 loans  
28 that were presented into evidence—is itself indicative of broad *ad hoc* rulemaking, as the hearing

1 officer did not merely limit herself to the evidence before her, but rather proclaimed in blanket  
2 fashion that all such TitleMax loans were void *ab initio*.

3 Worse yet, the FID's Any Interest Proposed Regulation in 2012—and its failure to adopt  
4 it—requires that the Administrative Order be reversed. *Horizons at Seven Hills Ass'n v. Ikon*  
5 *Holdings, LLC*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 71 n.7 (2016). In *Horizons*, the Nevada  
6 Supreme Court reviewed the legislative history of NRS 116.3116 and noted that several attempts  
7 had been made to amend the statute without success to include “costs of collection” as part of  
8 Nevada's super-priority lien statute. That proposed amendments had been made to include  
9 “costs of collection” in the super-priority lien directed a conclusion that “costs of collection”  
10 were not already part of the NRS 116.3116 lien. The same principle applies here. The FID's  
11 Any Interest Proposed Regulation prohibiting the collection of any interest as a result of a grace  
12 period—and its failure to adopt that regulation—directs a conclusion that “any” interest was not  
13 already part of NRS 604A.210.

14 **C. The Hearing Officer Ignored the Standard for Willfulness In Violation of Nevada**  
15 **Law.**

16 NRS 604A.900 provides for certain penalties in the event of a “willful” violation of NRS  
17 Chapter 604A. However, NRS Chapter 604A does not define what a “willful” violation is, and  
18 TitleMax is unaware of any case law specifically interpreting NRS 604A.900. The Nevada  
19 Supreme Court has previously stated that “[w]illful” is a word “of many meanings, its  
20 construction often being influenced by its context.” *In re Fine*, 116 Nev. 1001, 1021, 13 P.3d  
21 400, 413 (2000) (quoting *Screws v. United States*, 325 U.S. 91, 101 (1945)).

22 In the civil context, the United States Supreme Court has held that an act is not “willful”  
23 unless the party “knew or showed reckless disregard for the matter of whether its conduct was  
24 prohibited . . . .” *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988). In *McLaughlin*,  
25 an employer was fined for failing to pay overtime compensation to its employees as required by  
26 the Fair Labor Standards Act (the “FLSA”). *Id.* at 129. The government contended that a willful  
27 violation had occurred because the employer “knew or suspected that his actions might violate  
28 the FLSA.” *Id.* at 130 (emphasis added). The Supreme Court rejected the “knew or suspected”

1 standard, concluding that such a standard would “virtually obliterate[] any distinction between  
2 willful and nonwillful violations.” *Id.* at 132-33. Specifically, an employer would be liable for a  
3 “willful” violation merely by being negligent in its reading of the law and would, thus, punish “a  
4 completely good faith but incorrect” reading of the law. *Id.* at 135.

5 The United States Supreme Court has also concluded that a “willful” violation of a statute  
6 does not occur if a party’s interpretation of the law, “albeit erroneous, [i]s not objectively  
7 unreasonable.” *Safeco Ins. Co. of Am. v. Geico*, 551 U.S. 47, 69 (2007). In such an instance, it  
8 is particularly instructive if there is an absence of binding court authority, or “authoritative  
9 guidance” from the applicable regulatory agency. *Id.* In this case, there is no court case  
10 interpreting NRS 604A.210 or NRS 604A.445 to provide guidance to TitleMax. The FID has  
11 never provided authoritative guidance on its position in the form of an advisory opinion. And, its  
12 March 2, 2015, letter response to TitleMax did not even attempt to discuss or justify the FID’s  
13 position.<sup>4</sup> In July 2015, the FID offered to submit the parties’ dispute to a court in the form of an  
14 NRS Chapter 29 proceeding, effectively admitting that the parties had a “good faith” dispute  
15 over the interpretation of the very rules that are at issue in this proceeding. *See* Exhibit 10.

16 Similar results occur when a statute or regulation is ambiguous, as it is impossible to  
17 “willfully” violate an ambiguous rule. *See United States v. Prabhu*, 442 F. Supp. 2d 1008, 1029  
18 (D. Nev. 2006) (finding an intentional violation of False Claims Act was precluded by “a  
19 reasonable interpretation of ambiguous regulations that he, and his staff, believed in good faith  
20 were proper”); *United States v. Napco Int’l, Inc.*, 835 F. Supp. 493 (D. Minn. 1993) (holding  
21 that, because underlying regulation was ambiguous, court would not apply “an interpretative  
22 afterthought” in False Claims Act lawsuit); *Dixon v. Green Tree Servicing, LLC*, No. 2:13-cv-  
23 227-PPS, 2015 WL 2227741 (N.D. Ind. May 11, 2015) (citing *Redman v. Radioshack Corp.*, 768  
24 F.2d 622, 639-40 (7th Cir. 2014)); *Long v. Tommy Hilfiger USA, Inc.*, No. 09-1701, 2011 WL

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<sup>4</sup> The FID’s position that TitleMax engaged in willful behavior rings particularly hollow when juxtaposed against the FID’s failure to act during this entire period. If TitleMax’s alleged violations were so egregious—as the FID now maintains—it could have issued a cease and desist order or sought an injunction under NRS 604A.810. Yet, the FID took no such act, and failed to even attempt to defend its legal position in its letter of March 3, 2015 to TitleMax (see Exhibit 8).

1 635271, at \*6-7 (W.D. Penn. Feb. 11, 2011) (“objectively reasonable” reading of statute  
2 precludes finding of willfulness).

3 Finally, reliance upon the advice of counsel is also treated as “good faith as a matter of  
4 law” in determining whether a party has attempted to comply with a statute, precluding a finding  
5 of willfulness. *Baker v. Delta Air Lines, Inc.*, 6 F.3d 632, 645 (9th Cir. 1993), *called into doubt*  
6 *on other grounds by Obrey v. Johnson*, 400 F.3d 691, 699-700 (9th Cir. 2005).

7 Amazingly, the hearing officer concluded that TitleMax violated NRS 604A.210 willfully  
8 without citing to any legal authority in her Administrative Order. The hearing officer turned a  
9 blind eye to the foregoing legal authorities and simply concluded that TitleMax engaged in  
10 “willful” conduct because it had been placed on “notice” when the FID had objected to the  
11 GPDA. This conclusion completely ignored that:

- 12 • The FID never offered any legal authority, any case, any advisory opinion, etc.,  
13 supporting its “eyeball” interpretation of the statute;
- 14 • The FID’s Deputy Commissioner admitted in 2012 that the statute was  
15 ambiguous;
- 16 • The FID’s Deputy Commissioner admitted in 2012 that TitleMax’s interpretation  
17 of NRS 604A.210 was a “possible interpretation” of the statute;
- 18 • The FID had previously proposed a regulation mirroring its interpretation of the  
19 statute, but then did not adopt it;
- 20 • The FID’s legal position was so wanting that in its March 2 Letter (Exhibit 8), it  
21 did not even attempt to justify its legal position to TitleMax;
- 22 • TitleMax affirmatively filed the Declaratory Relief Action before the  
23 commencement of the administrative proceeding specifically so it could obtain an  
24 interpretation of these statutes;
- 25 • The FID proposed converting the Declaratory Relief Action into an NRS Chapter  
26 29 proceeding (Exhibit 10), conceding that the parties’ dispute was in good faith  
27 (as required by Chapter 29); and  
28



- It was undisputed that TitleMax's GPDA was created in reliance upon the advice of counsel from multiple law firms. *See* Exhibit 16.

Given the foregoing, the hearing officer's conclusion that TitleMax acted "willfully" cannot stand as a matter of law. In fact, the hearing officer's conclusion ignored well-settled law regarding the imposition of "willfulness" findings in administrative proceedings.

**D. The Grace Period Agreement Does Not Violate NRS 604A.210 or NRS 604A.445.**

TitleMax does not charge any fees to grant a grace period, and does not charge any additional fees or "additional" interest on an outstanding loan during such a grace period, in accordance with the statute. The customer elects at his or her option to enter into the grace period. Yet, the FID contends that TitleMax violated NRS 604A.210 and 604A.445 by allowing its customers to enter into the grace period. The FID's interpretation of the statutes is incorrect.

**1. The FID's Interpretation of NRS 604A.210 Is Wrong**

The FID takes the position that a licensee is prohibited from charging any interest whatsoever during a grace period. The FID's position is not supported by law. NRS 604A.210, 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. Any additional fees or additional interest on the outstanding loan during such a grace period.

NRS 604A.210 (emphasis added). To support its interpretation that NRS 604A.210(2) prohibits the accrual of any interest on the outstanding loan during a grace period, the FID completely strikes the word "additional" from the statute. Yet, the FID does not have the power to rewrite a statute unilaterally.

If the Legislature had intended to ban the accrual of "any" interest during the grace period, it would not have inserted the word "additional" before "interest" in NRS 604A.210. Yet, the statute clearly reads "additional interest." Nevada law requires that a statute's

provisions must be construed “in a way that would not render words or phrases superfluous or make provisions nugatory.” *S. Nev. Homebuilders*, 121 Nev. at 449, 117 P.3d at 173 (internal quotation omitted). If, as the FID posits, the prohibition of “additional fees” or “additional interest” means that the total interest on the loan, for the entire period the loan is unpaid, cannot exceed the total interest contracted to be paid within 210 days, it is also wrong. This view would again render the word “additional” meaningless and superfluous, which is contrary to well-settled maxims of statutory construction. *In re Steven Daniel P.*, 129 Nev., Adv. Op. 73, 309 P.3d 1041, 1043-44 (2013). Without question, the plain reading of the statute allows the original contractual interest on a title loan to accrue during a grace period and only prevents interest that is “additional” to the contractual simple interest.

In addition, Nevada law compels the use of common sense when interpreting statutes. *S. Nev. Homebuilders*, 121 Nev. at 449, 117 P.3d at 173; *In re Petition of Phillip A.C.*, 122 Nev. 1284, 1293, 149 P.3d 51, 57 (2006). Here, if there is a grace period, by definition, the borrower has not repaid the full contractual interest of a loan. As a result, the total interest for the original term *plus* the grace period would always be “higher” than the interest accrued only for the original term. Therefore, under the FID’s interpretation, the word “additional” is again rendered meaningless and superfluous because the Legislature could have just omitted “additional” and prohibited all interest during the grace period and reached the same conclusion.

The legislative history involving NRS 604A.210 fully supports TitleMax’s position. In April 2005, Sections 13 and 23 of A.B. 384, were re-written and added to what would ultimately become NRS 604A.210. Section 23 originally prohibited a licensee from charging the following during a grace period:

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

Exhibit 1. The word “additional” was not yet part of the proposed legislation. **Yet, the word “additional” was specifically added to a later draft of AB 384 and ultimately enacted into law.** See Exhibit 2. This legislative change is not only significant, it is dispositive because it

1 evidences that the Legislature specifically rejected the notion that no interest could be charged  
2 whatsoever during a grace period. Rather, the statute, as enacted, merely prohibited the charging  
3 of **additional** interest. *See Coast Hotels & Casinos, Inc. v. Nev. State Labor Comm'n*, 117 Nev.  
4 835, 841, 34 P.3d 546, 550 (2001). According to the United States Supreme Court, “[f]ew  
5 principles of statutory construction are more compelling than the proposition that Congress does  
6 not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other  
7 language.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 442 (1987). Thus, “[w]here Congress  
8 includes [certain] language in an earlier version of a bill but deletes it prior to enactment, it may  
9 be presumed that the [omitted text] was not intended.” *Russello v. United States*, 464 U.S. 16,  
10 23-24 (1983); *see also United States v. NEC Corp.*, 931 F.2d 1493, 1502 (11th Cir. 1991)  
11 (changes in statutory language “generally indicate[ ] an intent to change the meaning of the  
12 statute”); *S. Pac. Transp. Co. v. User*, 539 F.2d 386, 390-91 (5th Cir. 1976); *Bonner v. City of*  
13 *Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*en banc*). Here, by adding the word  
14 “additional,” the Nevada Legislature specifically intended that interest at the original contract  
15 rate could continue during the grace period.

## 16 2. The FID’s Interpretation of NRS 604A.445 Is Wrong

17 The FID claims that the GPDA violates 604A.445(3)(b)-(d). Again, the FID’s  
18 interpretation and application is wrong. NRS 604A.445 provides:

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

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

- 21 (a) The loan provides for payments in installments;
- 22 (b) The payments are calculated to ratably and fully amortize  
23 the entire amount of principal and interest payable on the  
24 loan;
- 24 (c) The loan is not subject to any extension; and
- 25 (d) The loan does not require a balloon payment of any kind.

26 NRS 604A.445 (emphasis added). By its very terms, NRS 604A.445(3) only governs the  
27 “original term” of a title loan; it is silent about grace periods. As stated, the loan duration for the  
28 original term is “[n]otwithstanding any other provision of this chapter to the contrary.” *Id.*

(emphasis added). In other words, NRS 604A.445 is a statute of general application, subject to “any other provision of this chapter to the contrary.” *See, e.g., State v. Eighth Judicial Dist. Court (Logan D.)*, 129 Nev., Adv. Op. 52, 306 P.3d 369, 381 (2013) (“[W]hen a [statutory] scheme contains a general prohibition contradicted by a specific permission, ‘the specific provision is construed as an exception to the general one.’”); *In re Resort at Summerlin Litig.*, 122 Nev. 177, 185, 127 P.3d 1076, 1081 (2006) (“[W]here a general statutory provision and a specific one cover the same subject matter the specific provision controls.”) NRS 604A.210 allows for additional time for grace periods,. Thus, NRS 604A.210 controls the duration of the grace period, not NRS 604A.455—and there is no need to analyze the subsections of NRS 604A.455(3)(a)-(d).<sup>5</sup>

The FID contends that, because interest is charged during the grace period, it effectively converts the 210 day loan to a 390 day loan. Yet, the FID ignores that the Nevada Legislature: (1) expressly allowed for grace periods by statute; (2) put no temporal limitation on a grace period; and (3) specifically rejected the proposition that no interest of any kind could be charged during a grace period. The FID has no authority to rewrite a statute unilaterally. Nor is this the proper forum to rewrite these statutes. Given that TitleMax followed these rules to the letter, the FID’s appropriate remedy is to seek an amendment of these statutes before the Nevada Legislature. Yet, despite TitleMax’s urging that it do so, the FID instead elected to engage in rulemaking by enforcement in this proceeding. *See* Exhibit 16. As such, this matter undermines and displaces the careful separation of powers between the executive, legislative, and judiciary branches of government

For the foregoing reasons, TitleMax is reasonably likely to succeed on the merits of its petition for judicial review. Indeed, it is very much likely to succeed on the merits, given the record below.

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<sup>5</sup> The FID attempts to use this statute as a sword to claim that no loan could ever extend past 210 days, Yet, NRS 604A.445 has no application because NRS 604A.210 controls the duration of a loan that involves a grace period.

**E. TitleMax Will Be Irreparably Harmed In The Absence of a Stay and The Purpose of the Appeal Will Be Defeated.**

There is a substantial probability that TitleMax will be irreparably harmed if it is forced to return the principal and interest collected under the original loans and GPDAs before all appeals are exhausted. If TitleMax returns those funds to borrowers and judicial review or further appeals are later determined in TitleMax's favor, TitleMax will never be able to recover the monies paid to the customers. Simply put, TitleMax would be required to sue each and every borrower to recover those amounts. Setting aside the obvious unlikelihood of being able to *locate* many of these customers two years after payment (much less actually recover monies from those customers), NRS 604A.455(2) specifically bars title lenders from suing to recover on an unpaid loan, as the "sole remedy" for a title lender "is to seek repossession and sale of the vehicle which the customer used to secure the title loan." If TitleMax were forced to return principal and interest on every loan, and then some or all of the hearing officer's decision were reversed, TitleMax might be precluded from recovering those remitted funds. In the absence of a stay, TitleMax will have suffered irreparable harm, and the very object of its appeal would be thwarted. Under Nevada law, a stay should be granted when the object of the appeal will be defeated if a stay is denied. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 40 (2004).

In stark contrast, the FID and the public suffer no harm if a partial stay is granted. TitleMax stopped offering the GPDA on new loans in December 2015, long before the hearing officer issued the evidentiary hearing and the Administrative Order. TitleMax has already paid, under protest, a \$50,000 fine to the FID and all court reporter costs of the proceeding (even though these costs were necessitated by the FID's demand to conduct the hearing on its "home turf").

**F. The 120-Day Deadline of the Administrative Order Should Be Stayed and/or Modified.**

In the Administrative Order, the hearing officer imposed a deadline of 120 days to (1) locate all loans in which TitleMax had entered into a GPDA with a customer; and (2) refund all

principal and interest to each borrower. Exhibit 15. The hearing officer imposed this deadline arbitrarily, without giving TitleMax any notice or opportunity to be heard. Yet, the point-of-sale software used by TitleMax prior to May 10, 2015, Cashwise, did not electronically record as a data point in its system whether a customer chose the GPDA option. *See* Exhibit 16. As a result, the only way to comply with the Administrative Order is to conduct a manual review of 11,651 loan files to determine which customers elected to enter into the GPDA.<sup>6</sup> A stay would provide TitleMax with adequate time to retrieve all the records needed in order to accurately determine exactly which clients are entitled to repayment under the Administrative Decision, should it be enforced.

**G. TitleMax's Bond Should Be Minimal.**

NRS 233B.140 requires security in conjunction with a stay pending review of an administrative decision. The rule, however, provides no parameters or guidance as to what that security should be. In the context of obtaining injunctive relief, "[t]he purpose of a supersedeas bond is to protect the prevailing party from loss resulting from a stay of execution of the judgment." *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983), *holding modified by Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005). Yet, a district court has discretion to set the security at any amount.

Given the procedural and substantive flaws of the hearing officer's decision, nominal security should be required for a partial stay of the Administrative Order. At most, TitleMax should be required to post the amounts that would be due on the 307 loans that were actually placed into evidence in the administrative proceeding.

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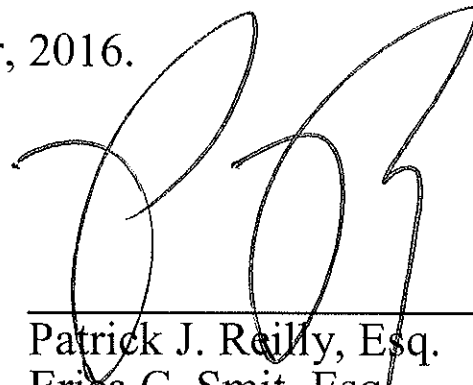
<sup>6</sup> TitleMax can electronically search loan files after May 11, 2015, as its current software, TLX, has the capability to electronically track as a data point whether a customer voluntarily entered into the Grace Period Deferment Agreement. Exhibit 16. TitleMax is currently in the process of gathering TLX data for delivery to the FID. *Id.*

V.

**CONCLUSION**

Accordingly, TitleMax respectfully requests that this Court issue a partial stay of the administrative order pending this judicial review proceeding and any appeal thereon to the extent that it requires within 120 days of its issuance that TitleMax conduct “a full accounting of and return of all principal and interest it has collected under every [Grace Period Deferment Agreement] entered into after December 18, 2014.”

DATED this 28th day of September, 2016.



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*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of September, 2016, a true and correct copy of the foregoing **MOTION FOR PARTIAL STAY OF ADMINISTRATIVE ORDER** and **EX PARTE APPLICATION FOR ORDER SHORTENING TIME** was served by the following method(s):

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

Adam Paul Laxalt  
Attorney General  
David J. Pope  
Sr. Deputy Attorney General  
Vivienne Rakowsky  
Deputy Attorney General  
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*Attorneys for Respondent*

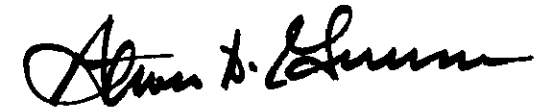
☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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

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

  
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondent.

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

**DECLARATION OF RICKISHA HIGHTOWER-SINGLETARY**

1. I, Rickisha Hightower-Singletary, present this Declaration in support of the Motion to Vacate Order Shortening Time in the above referenced case.
2. I have personal knowledge of, and am competent to testify, regarding the matters stated in this Motion to Vacate Order Shortening Time.
3. I am an attorney licensed to practice in the State of Nevada and State of Florida.

...

- 1 4. I am currently employed as a Deputy Attorney General at the Nevada Office of the Attorney  
2 General in Las Vegas, Nevada and represent the State of Nevada, ex rel. its Department of  
3 Business and Industry, Financial Institutions Division (hereinafter, "FID").
- 4 5. The FID provided TitleMax with ample time and sufficient notice that it was requesting a full  
5 accounting of all loans with the illegal Grace Period Payment Deferment Agreement  
6 ("GPPDA") and return of all principal and interest to customers who entered into loans with the  
7 illegal product.
- 8 6. The FID provided two (2) extensions of time for TitleMax to provide the full accounting of all  
9 loans with the illegal GPPDA from December 18, 2014, to present, as directed by the  
10 Administrative Law Judge ("ALJ").
- 11 7. TitleMax alleged multiple times that it has complied with all other portions of the ALJ's Order,  
12 excluding providing the accounting and payments. However, TitleMax did not timely pay the  
13 fine as directed by the ALJ, and the documents that have been provided do not indicate whether  
14 the loans included an illegal GPPDA.
- 15 8. Attached as Exhibit "A" in support of the FID's Motion to Vacate Order Shortening Time is a  
16 true and correct copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law,  
17 and Order.
- 18 9. Attached as Exhibit "B" in support of the FID's Motion to Vacate Order Shortening Time is a  
19 true and correct copy of the FID's Administrative Complaint.
- 20 10. Attached as Exhibit "C" in support of the FID's Motion to Vacate Order Shortening Time is a  
21 true and correct copy of the FID's Pre-Hearing Brief.
- 22 11. Attached as Composite Exhibit "D" in support of the FID's Motion to Vacate Order Shortening  
23 Time is a true and correct copy of relevant portions of the transcript proceedings of the FID's  
24 opening and closing statements.
- 25 12. Attached as Exhibit "E" in support of the FID's Motion to Vacate Order Shortening Time is a  
26 true and correct copy of the FID's August 18, 2016, correspondence to TitleMax.

27 ...

28 ...

1 13. Attached as Exhibit "F" in support of the FID's Motion to Vacate Order Shortening Time is a  
2 true and correct copy of the FID's September 14, 2016, correspondence to TitleMax (excluding  
3 exhibits).

4  
5 Dated this 3<sup>rd</sup> day of October, 2016.

6 ADAM PAUL LAXALT  
7 Attorney General

8 By: /s/ Rickisha Hightower-Singletary  
9 Signing Attorney's Name (Bar No. 14019C)  
10 Deputy Attorney General  
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## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on October 3, 2016, I filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

/s/ Michele Caro  
Michele Caro, an employee of  
the office of the Nevada Attorney General