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

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

IV. DISCIPLINE AND PENALTIES

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

FID requests an order requiring TitleMax to conduct a full accounting of and return all principal and interest it has collected under every GPPDA it has ever entered into. NRS 604A.900(1)(c) states, "[I]f a licensee willfully: [. . .] [c]ommits 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."[43] FID contends that

---

[42] NRS 604A.450(2) prohibits licensees from making title loans "without regard to the ability of the customer seeking the title loan to repay the loan, including the customer's current and expected income, 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.

[43] **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:

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

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

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

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

(a) A licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably 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.

V. ORDER

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

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

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

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

Dated this 12th day of August, 2016.

/s/ Denise S. McKay
Denise S. McKay
Administrative Law Judge
State of Nevada

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, 2nd 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 12th day of August, 2016.

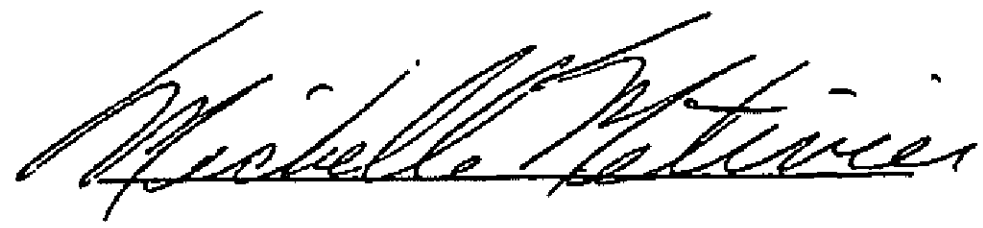

EXHIBIT “D”

EXHIBIT “D”

HOLLAND&HART

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

August 23, 2016

VIA EMAIL (dsmckay@business.nv.gov) AND U.S. MAIL

Denise McKay, Esq.
Administrative Law Judge
555 East Washington Avenue, Suite 4900
Las Vegas, Nevada 89101

Re: In re TitleMax of Nevada, Inc. and TitleBucks d/b/a TitleMax State of Nevada Administrative Complaint

Administrative Law Judge McKay:

I am writing on behalf of Respondent TitleMax of Nevada, Inc. and TitleBucks d/b/a TitleMax ("TitleMax") in connection with the Findings of Fact, Conclusions of Law, and Order (the "Order") issued on August 12, 2016, in the above-referenced proceeding. TitleMax intends to seek judicial review of the Order, but seeks clarification and reconsideration of the following issues:

1. Although the Order appears to be a "final decision" within the meaning of NRS 233B.130, the Order does not state so. It is also unclear whether you have retained jurisdiction regarding the compliance issues directed on page 16 of the Order.

2. The Order requires "return of all principal and interest it has collected under every GPPDA entered into after December 18, 2014." Order at p. 16 (emphasis added). The FID admitted in its Administrative Complaint and during testimony that, in each instance, the original loan complied with Nevada law. TitleMax's understanding of this Order is that only the GPPDA, as an alleged "illegal extension," has been voided, not the underlying loan. In addition, the FID argued that the true measure of harm was the difference between the total of payments amount in the TILA box on the loan agreement and the total of payments amount listed on the GPPDA: the difference a customer paid between the original loan agreement and the GPPDA. Therefore, TitleMax seeks clarification that the Order only reflects what the FID requested several times at the hearing, and as stated above.

3. In addition, the Order voids "every" GPPDA entered into by TitleMax after December 18, 2014. Order at 16:5. The FID presented evidence relating to approximately 305 transactions. Earlier in this proceeding, you specifically

barred the introduction of evidence relating to files that were not timely disclosed. *See* Procedural Order (Oct. 29, 2015). To the extent the Order voids transactions that were never presented, TitleMax received no due process and had no ability to present a defense, and would additionally exceed the jurisdiction granted pursuant to NRS 604A.900. Because the text of NRS 604A.900 limits the determination to the evidence and transactions that were actually presented to you, TitleMax respectfully requests that the Order be limited to only these transactions.

4. Finally, TitleMax respectfully requests that the portion of the Order entitled "Discipline and Penalties" be stayed pending judicial review. Of course, TitleMax will compile all of the information requested and provide it to the FID in accordance with the Order so that once the stay is lifted, the parties can follow the decision of the courts. Nevada law directs that a stay should be issued (1) when the object of the appeal will be defeated if the stay is denied; (2) the appellant will suffer irreparable or serious injury if the stay is denied; (3) the respondent will suffer irreparable or serious injury if the stay is granted; and (4) when appellant is likely to prevail on the merits in the appeal. *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 89 P.3d 36 (2004). If "one or two factors are especially strong, they may counterbalance other weak factors." *Fritz Hansen A/S v. District Ct.*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000).). The object of the appeal will be defeated if TitleMax is forced to comply with the "Discipline and Penalties" portion of the Order pending appeal, the FID will suffer no harm with the issuance of a stay, and TitleMax will suffer irreparable and serious injury if the stay is denied.

Thank you in advance for your time and attention to this matter.

Respectfully,

Patrick J. Reilly

cc: David Pope, Esq. (via email)
Vivienne Rakowsky, Esq. (via email)

9053330_2

STATE OF NEVADA

BRIAN SANDOVAL
Governor

BRUCE H. BRESLOW
Director

DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR

August 26, 2016

Patrick Reilly, Esq.
Nicole Lovelock, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Dear Mr. Reilly,

Thank you for your letter dated August 23, 2016. I do not interpret your letter as a formal petition for reconsideration pursuant to NRS 233B.130(4) because it is not in the form of a petition, nor does it cite to that authority as its basis. Therefore, I am responding to the issues you raised in this letter format, and not in the form of an order. My response follows:

1) The Order dated August 12, 2016, is a final decision, and I have not retained jurisdiction in any respect.

2) You seek clarification whether the Order requires TitleMax to return only the difference between the projected total amount of interest a customer would have paid under the Original Loan Agreement and the amount the customer actually paid after entering into the GPPDA. TitleMax contends that because only the GPPDA was deemed unlawful and voided, the underlying loan agreements remain valid, and TitleMax should not be ordered to return the entirety of the principal loaned and interest charged under the original loans.

   The Order requires TitleMax to return all principal and interest it has collected under every GPPDA it has entered into as of December 18, 2014, not just the difference between the projected interest under the Original Loan Agreement and the interest charged under the GPPDA. First, the Order declared the GPPDA an unlawful extension of the original loan, not an unlawful product separate and apart from the original loan. The GPPDA unlawfully extended the original loan, thereby rendering the original loan invalid. While it is true that the FID has admitted that the original loan complied with Nevada law, that compliance ended once the parties entered into the GPPDA.

Second, the statute that controls the penalty in this instance, NRS 604A.900(1)(c), does not authorize the penalty for which TitleMax advocates. Rather, NRS 604A.900(1)(c) provides that if a licensee willfully commits any of the three types of acts described, the licensee must return "any principal [or] interest [ ] with respect to the loan." For example, even if the licensee is only found to have charged excess interest under NRS 604A.900(1)(b), the entire loan is declared void and the licensee must return the principal amount of that voided loan plus all interest and any fees charged, not just the excess interest.

3) You request the Order be limited to the 307 GPPDA agreements that were presented as exhibits at the hearing, and you argue that by voiding GPPDAs regarding which no evidence was presented, the Order is in violation of TitleMax's right to due process.

The GPPDA provides for a loan term exceeding 210 days in every instance. This is evidenced by TitleMax's Exhibit 91, a blank copy of the GPPDA, which sets forth a "Grace Period Payments Deferment Schedule" that provides for 14 payments scheduled 30 days apart. The simple fact that all the GPPDAs provide for a loan term exceeding 210 days renders them unlawful under Nevada law.

4) Pursuant to NRS 233B.140, I believe you must apply to the district court for a stay at the time you file your petition for judicial review.

Sincerely,

/s/ Denise S. McKay

cc: David Pope, Esq.
Vivienne Rakowsky, Esq.
Rickisha Hightower-Singletary, Esq.

EXHIBIT “E”

EXHIBIT “E”

GPDA Conference Call

Daniel Piatkowski

Wed 12/23/2015 9:23 AM

To:Allen Leach <allen.leach@titlemax.com>; Anthony Valdivia <Anthony.Valdivia@titlemax.com>; Daniel Piatkowski <daniel.piatkowski@titlemax.com>; James Placek <James.Placek@titlemax.com>; Ron Munz <Ron.Munz@titlemax.com>; TB-LasVegas-NV1 12169 <TB-LasVegas-NV1@titlemax.com>; TB-LASVEGAS-NV2 10269 <TB-LASVEGAS-NV2@titlemax.com>; TB-LasVegas-NV3 70369 <TB-LasVegas-NV3@titlemax.com>; TB-LasVegas-NV4 70469 <TB-LasVegas-NV4@titlemax.com>; Timothy Henry <Timothy.Henry@titlemax.biz>; TM-CarsonCity-NV1 14069 <TM-CarsonCity-NV1@titlemax.com>; TM-CedarCity-UT1 12148 <TM-CedarCity-UT1@titlemax.biz>; TM-Fallon-NV1 14269 <TM-Fallon-NV1@titlemax.biz>; TM-Henderson-NV1 11669 <TM-Henderson-NV1@titlemax.com>; TM-Henderson-NV2 11769 <TM-Henderson-NV2@titlemax.com>; TM-Henderson-NV3 14369 <TM-Henderson-NV3@titlemax.biz>; TM-Las Vegas-NV29 13169 <TM-LasVegas-NV29@titlemax.com>; TM-LasVegas-NV1 10069 <TM-LasVegas-NV1@titlemax.com>; TM-LasVegas-NV10 10969 <TM-LasVegas-NV10@titlemax.com>; TM-LasVegas-NV11 11069 <TM-LasVegas-NV11@titlemax.com>; TM-LasVegas-NV12 <TM-LasVegas-NV12@titlemax.com>; TM-LasVegas-NV13 11269 <TM-LasVegas-NV13@titlemax.com>; TM-LasVegas-NV14 11369 <TM-LasVegas-NV14@titlemax.com>; TM-LasVegas-NV15 11469 <TM-LasVegas-NV15@titlemax.com>; TM-LasVegas-NV16 11569 <TM-LasVegas-NV16@titlemax.com>; TM-LasVegas-NV18 11969 <TM-LasVegas-NV18@titlemax.com>; TM-LasVegas-NV19 12069 <TM-LasVegas-NV19@titlemax.com>; TM-LasVegas-NV2 10169 <TM-LasVegas-NV2@titlemax.com>; TM-LasVegas-NV21 12269 <TM-LasVegas-NV21@titlemax.com>; TM-LasVegas-NV22 12369 <TM-LasVegas-NV22@titlemax.com>; TM-LasVegas-NV23 12469 <tm-lasvegas-nv23@titlemax.com>; TM-Lasvegas-NV24 12569 <TM-Lasvegas-NV24@titlemax.com>; TM-LasVegas-NV25 12669 <tm-lasvegas-nv25@titlemax.com>; TM-LasVegas-NV27 12869 <TM-LasVegas-NV27@titlemax.com>; TM-LasVegas-NV28 12969 <TM-LasVegas-NV28@titlemax.com>; TM-LasVegas-NV3 <TM-LasVegas-NV3@titlemax.com>; TM-LasVegas-NV31 <TM-LasVegas-NV31@titlemax.com>; TM-LasVegas-NV32 13469 <TM-LasVegas-NV32@titlemax.com>; TM-LasVegas-NV33 13669 <TM-LasVegas-NV33@titlemax.com>; TM-LasVegas-NV34 13769 <TM-LasVegas-NV34@titlemax.com>; TM-LasVegas-NV35 13869 <TM-LasVegas-NV35@titlemax.com>; TM-LasVegas-NV36 13969 <TM-LasVegas-NV36@titlemax.com>; TM-LasVegas-NV37 10137 <TM-LasVegas-NV37@titlemax.biz>; TM-LasVegas-NV38 14569 <TM-LasVegas-NV38@titlemax.biz>; TM-LasVegas-NV39 14669 <TM-LasVegas-NV39@titlemax.biz>; TM-LasVegas-NV4 10369 <TM-LasVegas-NV4@titlemax.com>; TM-LasVegas-NV5 10469 <TM-LasVegas-NV5@titlemax.com>; TM-LasVegas-NV6 10569 <TM-LasVegas-NV6@titlemax.com>; TM-LasVegas-NV7 10669 <TM-LasVegas-NV7@titlemax.com>; TM-LasVegas-NV8 10769 <TM-LasVegas-NV8@titlemax.com>; TM-LasVegas-NV9 10869 <TM-LasVegas-NV9@titlemax.com>; TM-RenoNV1 <TM-RenoNV1@titlemax.biz>; TM-Reno-NV1 13069 <TM-Reno-NV1@titlemax.com>; TM-Reno-NV2 14469 <TM-Reno-NV2@titlemax.biz>;

Team R-20,

To recap todays call:

No customer with a loan date of 12/14 or beyond can sign a GPDA as this is in violation of the state ruling.

Any customer with a contract date of 12/12 or prior can sign a GPDA so long as their loan is current and paid to date.

James is certain all of us are now clear on the GPDA process and we are all aware of the consequences if we violate the GPDA process.

Team R-20 you Rock and you will bring success to this business!!

Dan Piatkowski
District Manager District 71, Region 20

EXHIBIT “F”

EXHIBIT “F”

BEFORE THE

NEVADA FINANCIAL INSTITUTIONS DIVISION

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

TRANSCRIPT OF PROCEEDINGS

BEFORE ADMINISTRATIVE LAW JUDGE DENISE S. McKAY

VOLUME II

PAGES 332 - 628

LAS VEGAS, NEVADA

JULY 19, 2016

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

JOB NO. 324322

that the dispute between the parties was a good faith dispute; correct?

A. That is correct, and Mr. Eccles would have had to have my agreement to doing so.

Q. Well, he proposed it on July 13th, 2015, as your representative; correct?

A. Correct. But there is nothing in this email trail that I can see in which I was copied on this conversation or these emails or that I was asked whether or not. He may have just been exploring this as an option that he then wanted to propose to me.

Q. He proposed it to -- he proposed it. He didn't say, I need to talk to my client first. He proposed it; right?

A. Well, it doesn't say that he has talked to his client either.

Q. Let's go to the first page of this document. July 23rd at 12:15, what does Mr. Eccles say to me?

A. It says, "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."

Q. So I presume from that that he did have

privilege. Right.

MR. REILLY: I don't want to hear about communications.

BY MR. REILLY:

Q. I just want to know what you did after TitleMax declined this offer in Exhibit 98?

A. We proceeded to file a complaint in order to bring the matter before an administrative law hearing.

Q. And you simultaneously moved to dismiss the pending lawsuit with TitleMax; correct?

A. That is correct, because we felt that this particular venue was the proper first venue in the due process procedure for establishing issues of fact.

Q. That's not what Mr. Eccles says on page 3 in his email at 9:41 though; correct?

JUDGE McKAY: Mr. Reilly, all due respect, I don't think that this is really very relevant. I feel that I understand his position with regard to his -- he doesn't agree with what Mr. Eccles wrote here.

MR. REILLY: It goes to the willfulness issue though. It really matters about the willfulness issue because what we've been told over

willful TitleMax was in violating these issues. I don't need to hear any more on that point. I understand. I get it. The point has been adequately made.

MR. REILLY: I'll offer, so the state is satisfied, if they want us to submit a document or affidavit or something along those lines confirming that the GPDA was no longer offered in December 2015, we can do that. I mean, if you want that for peace of mind separate and apart from this proceeding, I'll provide that to you.

MR. POPE: I'm sorry. Can you say that again, please.

MR. REILLY: Separate and apart from this proceeding, if you want the peace of mind to know that TitleMax is no longer offering the grace period payment deferment agreement, I can provide written confirmation of that to you. I'd be glad to do that.

MR. BURNS: That will not be necessary. We'll verify that in the follow-up examination. And if that is not the case, it will be cited.

MR. POPE: So there's testimony on the record, and I don't know where we're at with this.

JUDGE McKAY: I don't think it's going to

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

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

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

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

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

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

Kimberly A. Farkas

Kimberly A. Farkas, CCR 741

BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION

* * * * * *

In The Matter of:

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

TRANSCRIPT OF PROCEEDINGS

Before Administrative Law Judge Denise S. McKay

Volume I

Las Vegas, Nevada

July 18, 2016

9:05 a.m.

Reported by: Heidi K. Konsten, RPR, CCR
Nevada CCR No. 845 - NCRA RPR No. 816435
JOB NO. 324200

TitleMax an unsatisfactory rating.

The record also shows that there's no misunderstanding about it. TitleMax has disregarded the FID and intentionally continued to offer the grace period deferment agreement, although they knew the FID told them that the agreement violates the statute. TitleMax's failure to comply with the statute was done knowingly and intentionally and was therefore willful.

The FID is hereby requesting the following findings: First, that the FID has proven the violations of statute. Second, that this tribunal impose a $10,000 fine for each of the violations for a total of $3,070,000 in fines. That TitleMax return the principal and interest collected on -- from all of its customers that entered into a grace period deferment agreement. That TitleMax cease and desist the practice of entering grace period payment deferment agreements or any similar noncompliant agreement. That TitleMax provide a full accounting of all of the grace period payment deferment agreements and the amount of the principal and interest that's been returned to each customer. And, lastly, that

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss
County of Clark)

I, Heidi K. Konsten, Certified Court Reporter, do hereby certify:

That I reported in shorthand (Stenotype) the proceedings had in the above-entitled matter at the place and date indicated.

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

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 2nd day of August, 2016.

Heidi K. Konsten, RPR, NV CCR #845

BEFORE THE

NEVADA FINANCIAL INSTITUTIONS DIVISION

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

TRANSCRIPT OF PROCEEDINGS

BEFORE ADMINISTRATIVE LAW JUDGE DENISE S. McKAY

VOLUME III

PAGES 629 - 710

LAS VEGAS, NEVADA

JULY 20, 2016

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

JOB NO. 324323

of the loan, they will pay no more than what is disclosed on the truth in lending statement. That did not happen for more than 10,000 Nevada residents. The truth is that TitleMax made many millions of dollars by charging additional and undisclosed interest, and they should not be allowed to reap the benefits of their illegal behavior.

So we're asking that this tribunal impose a $10,000 fine for each of the 307 violations for a total of $3,070,000 in fines. We're also requesting that TitleMax return the principal and interest collected by all of its the customers that entered a grace period deferment payment agreement, so those loans be completely returned to the borrower. That TitleMax cease and desist the practice of entering into this loan product or any similar noncompliant agreements. That TitleMax do a full accounting of all grace period deferment agreements, and that the amount of principal and interest be returned to each customer, and that TitleMax cease and desist entering into title loan agreements with anyone other than the legal owner of the vehicle.

Thank you very much for your time.

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

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

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 15th day of August, 2016.

Kimberly A. Farkas, CCR 741

EXHIBIT “G”

EXHIBIT “G”

Mail To: Licensing Office
Nevada Financial Institutions Division
1830 E. College Pkwy., Suite 100
Carson City, NV 89706

RECEIVED-DATE STAMP

RECEIVED
MAR 0 9 2016
F.I.D.
CARSON CITY

TMX FINANCE

Lynda Long
Tax & Compliance Manager
15 Bull Street, Suite 200
Savannah, GA 31401
ofc: 912.629.~~5846~~ 1543
fax: 912.525.2680
lynda.long@titlemax.biz

Date: April 15, 2016 For The Year Ended: December 31, 2015

ANNUAL REPORT INSTALLMENT LOANS

(Answer every question or write "None or N/A" – Please TYPE or PRINT legibly)

Name of Licensee: TitleMax of Nevada, Inc

Business Conducted Under the Name of: (dba:) TitleMax

Nevada License Number: See attached listing

Location Address: See attached listing

Mailing Address (if different): 15 Bull St Suite 200
Savannah, Ga. 31401

6 Date Licensee Began Business: See attached listing

7 Describe business form: corporation, partnership, association, sole proprietor, etc.:

Corporation

If a corporation, provide which state and date of incorporation:

State: Delaware Date: 10/8/2010

8 Provide the name of any business other than an Installment Loan business conducted at the same office:

none

9 Provide names of principal officers at the close of year covered by this Annual Report:

a ~~President~~ CEO: Tracy Young

b Secretary: Tracy Young

c Treasurer:

d ~~Owner~~/Manager: See attached ownership Schedule

10 Submit audited, reviewed, or compiled financial statements for the current Annual Report year, which should include the auditor's opinion or accountant's report and notes to the financial statements. If a CPA is not engaged for an audit, review, or compilation of financial statements, then submit at a minimum 1) a Statement of Assets, Liabilities, & Owners' Equity [balance sheet], and 2) a Statement of Operations [revenue & expenses or profit & loss]. A complete business tax return (less any K-1s) that includes a completed balance sheet may be submitted in lieu of internally prepared financial statements. A Form 1040 with a Schedule C is NOT acceptable.

See attached schedules

Revised, December 1, 2015

6380

EXHIBIT “H”

EXHIBIT “H”

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2016-CFPB-0022

In the Matter of:

TMX Finance LLC

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed the lending and debt-collection practices of TMX Finance LLC (Respondent, as defined below) and has identified unfair and abusive practices in Respondent's lending and debt-collection practices in violation of §§ 1031 and 1036(a)(1)(B) of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531 and 5536(a)(1)(B). Under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I
Jurisdiction

1. The Bureau has jurisdiction over this matter under §§ 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565.

II
Stipulation

2. Respondent has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated September 23, 2016 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under §§ 1053 and 1055 of the

CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau's jurisdiction over Respondent and the subject matter of this action.

III
Definitions

3. The following definitions apply to this Consent Order:

a. "Board" means Respondent's duly elected and acting Board of Managers.

b. "Effective Date" means the date on which the Consent Order is issued.

c. "Enforcement Director" means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegate.

d. "Related Consumer Action" means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.

e. "Relevant Period" means the period from July 21, 2011, to the Effective Date.

f. "Respondent" means TMX Finance LLC, its TitleMax, TitleBucks, and InstaLoan operating subsidiaries, parents, and their respective successors and assigns.

IV
Bureau Findings and Conclusions

The Bureau finds the following:

4. Respondent is headquartered in Savannah, Georgia.

5. Respondent is a specialty-finance company that originates and services automobile-title loans through its affiliates operating out of approximately 1300 brick-and-mortar storefronts located in 18 states.

6. Respondent is a "covered person" as that term is defined in 12 U.S.C. § 5481(6)(A).

7. Throughout the Relevant Period, Respondent marketed and sold automobile-title-secured pawns, pledges, and loans to consumers across the country.

Findings and Conclusions as to Abusive Practices in Alabama, Georgia, and Tennessee

8. Respondent offers 30-day title pawns in Alabama and Georgia and title pledges in Tennessee under the brands TitleMax and TitleBucks.

9. The 30-day pawns and pledges are made under each state's unique statutory framework.

10. In all three states, a consumer pawns or pledges the title to his or her car in exchange for a 30-day loan, pawn, or pledge. Consumers pay a pawnshop charge, the equivalent of interest, or, for Tennessee, a customary fee for the use of proceeds over the transaction term.

11. In all three states, the finance charge is based on declining tiers according to the amount financed.

12. In Alabama and Georgia, consumers can borrow as little as $100 and up to $10,000, depending on the appraised value of the vehicle used as collateral.

13. Respondent requires consumers in Alabama and Georgia to pay a monthly pawnshop charge equal to 9.99% to 24.99% of the principal at origination and every month for which the pawn transaction is renewed or extended.

14. Consumers can borrow up to $2,500 in Tennessee and are required to pay a finance charge comprised of interest of 2% per month and a monthly customary fee of 10.99% to 21.99% of the amount financed.

15. All three states provide consumers with the right to renew or extend their transaction by paying the finance charge at the end of each 30-day term.

16. In Georgia and Alabama, state law allows a consumer to pay the pawnshop charge only, the pawnshop charge plus a portion of the principal, or the pawnshop charge plus the entire principal balance at the end of each 30-day transaction period.

17. In Tennessee, state law allows a consumer to pay the accrued finance charge only, the finance charge plus a portion of the principal, or the finance charge plus the entire principal balance at the end of each 30-day transaction period.

18. In Tennessee, state law requires a portion of the principal to be repaid on all renewals beginning with the third renewal.

19. If a consumer does not repay at least the accrued finance charge by the deadline set forth in the contract, Respondent may repossess the consumer's car in accordance with state law requirements for repossession.

20. Consumers in all three states apply for a 30-day pawn or pledge in person at a TitleMax or TitleBucks storefront.

21. To qualify for the pawn or pledge, the consumer must bring in a lien-free vehicle that the consumer wishes to use as collateral and the title to that vehicle.

22. A store employee appraises the vehicle while the consumer fills out a credit application.

23. For most of the Relevant Period, the credit application required that the consumer provide contact information for the consumer's employer, if applicable, and a number of personal references.

24. After conducting the vehicle appraisal, the store employee informs the consumer how much the vehicle is worth and how much money the consumer is eligible to borrow.

25. After informing the consumer how much he or she is eligible to borrow for the 30-day transaction, the store employee, as part of the sales pitch, asks the consumer over how many months he or she would like to repay the transaction (the requested payback period) or how much the consumer would like to pay each month (the target monthly payment). This "monthly option" requires consumers to renew or extend the transaction each month and to pay more than the required minimum payment to reduce the principal over time.

26. After the consumer identifies his or her requested payback period or target monthly payment, the store employee shows the consumer a multi-month Voluntary Payback Guide (the "Payback Guide") and adjusts the length based on the consumer's requested payback period or target monthly payment.

27. The Payback Guide is similar to an installment-loan amortization schedule, showing multi-month payments that reduce the principal balance to $0 at the end of the period.

28. The system default term for the Payback Guide is 12 months, but it can be adjusted to as short as 2 months or as long as 24 months, depending on how much the

consumer wants to pay each month and how quickly the consumer wants to pay off the transaction.

29. Employees are trained to use the Payback Guide to focus consumers' attention on the amount of the potential monthly payment, and the sales pitch does not include any discussion of the total cost of the transaction if the consumer were to extend it over a set period.

30. The Payback Guide does not disclose the total cost of the transaction — or total amount in finance charges — that the consumer would pay if he or she chose to renew or extend it multiple times, but it does show the finance charge and principal paid at each 30-day period in order to have the transaction amortize over the consumer's selected term. The transaction agreement the consumer receives is only for a 30-day transaction and sets forth the finance charges and cost of only the 30-day transaction.

31. The Payback Guide and sales pitch materially interfere with the consumer's ability to understand that the consumer is receiving a 30-day transaction, that the Payback Guide is not an actual repayment plan, that the terms of the 30-day transaction are not affected by the Payback Guide, and that renewing the transaction over an extended period would substantially affect the overall cost of the transaction.

32. The Payback Guide and sales pitch also materially interfere with a consumer's ability to understand that the longer the consumer takes to pay off the transaction, the more expensive the transaction will be, or to understand how much more expensive the transaction will be if paid off over a longer period, and they materially interfere with the consumer's ability to make an informed judgment about whether to pay off the transaction over a longer period.

33. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B).

34. As described in Paragraphs 25-32, in connection with the making of title pawns and pledges, Respondent's sales pitch and use of the Payback Guide has materially interfered with consumers' understanding of the terms and cost of its credit products.

35. Respondent's sales pitch and use of the Payback Guide, as described in Paragraphs 25-32, constitute an abusive act or practice that violates §§ 1031(d)(1) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(d)(1), 5536(a)(1)(B).

Findings and Conclusions as to Unfair Debt-Collection Practices

36. From at least 2011 until December 2015, if a consumer failed to make a timely payment and did not respond to communications from store employees, Respondent's policies allowed employees to conduct "in-person visits" to the consumer's home and to the consumer's references, and employees did conduct such visits.

37. From at least 2011 until August 2015, if a consumer failed to make a timely payment and did not respond to communications from store employees, Respondent's policies also allowed employees to conduct "in-person visits" to the consumer's place of employment, and employees did conduct such visits.

38. Respondent's employees conducted in-person visits to consumers' homes, to consumers' references, and to consumers' places of employment in all states in which it operates.

39. Respondent's written policies authorized employees to conduct in-person visits to a consumer's home to locate a consumer and communicate with the consumer about his or her debt if a consumer's payment was at least three days late and the

consumer had not committed to making a payment. Respondent's policies also authorized employees to conduct in-person visits to a consumer's place of employment if a consumer's payment was at least 11 days late and the consumer could not be reached by telephone and was not present during the in-person visit to this consumer's home.

40. Employees were also authorized to conduct in-person visits to a consumer's references as a last resort before repossession if a consumer could not be reached by telephone, did not respond to communications from store employees, and the consumer's payment was at least 11 days late.

41. During in-person visits, Respondent's employees disclosed the existence of consumers' past-due debts to third parties, including neighbors, roommates, family members, supervisors, and co-workers.

42. Contrary to Respondent's written policies, Respondent's employees conducted in-person visits to consumers' places of employment, even after being informed by a consumer or a consumer's supervisor that the consumer was not permitted to have visitors and that Respondent should cease such visits.

43. In-person visits to a place of employment put consumers at risk of losing their employment or of being disciplined by their employers.

44. As a result of in-person visits, consumers suffered or were likely to suffer substantial injury.

45. Section 1036(a)(1)(B) of the CFPA prohibits "unfair, deceptive, or abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and if the substantial injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c).

46. Respondent's disclosure of the existence of consumers' debts to third parties caused or was likely to cause substantial injury to consumers that was not reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition. Respondent's in-person visits to consumers' places of employment when employees knew or should have known that personal visitors were not permitted caused or were likely to have caused substantial injury to consumers that was not reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition.

47. Respondent's practice of making in-person visits to collect debts constitutes an unfair act or practice that violates §§ 1036(a)(1)(B) and 1031(c)(1) of the CFPA. 12 U.S.C. §§ 5536(a)(1)(B), 5531(c)(1).

ORDER

V
Conduct Provisions

IT IS ORDERED, under §§ 1053 and 1055 of the CFPA, that:

48. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, is permanently restrained from:

a. Making in-person visits to a consumer's home or place of employment in connection with collecting or attempting to collect debt, except for:

i. in-person visits to a consumer's home or place of employment solely for the purpose of locating and repossessing vehicles; and

ii. in-person visits for which the consumer, after default, provides his or her voluntary, affirmative, and specific written permission on an opt-in basis;

b. contacting or communicating with any person or entity in relation to the consumer's account, other than the consumer, except for:

i. communications to acquire location information for the consumer in compliance with 15 U.S.C. § 1692c and any regulations promulgated under 15 U.S.C. § 1692l(d);

ii. communications that comply with 15 U.S.C. § 1692c(b) and any regulations promulgated under 15 U.S.C. § 1692l(d); and

iii. communications made with the prior express consent of the consumer;

c. disclosing the existence of the consumer's debt to any person other than the consumer, including references, landlords, or supervisors, in connection with collecting or attempting to collect a debt, except with the prior express consent of the consumer;

d. using a Payback Guide or other substantially similar document;

e. in connection with the sale, origination, renewal, or extension of any consumer-financial product or service, expressly or impliedly:

i. misrepresenting the terms, length, or cost of the product; or

ii. encouraging consumers to take longer to pay than the term of the original loan, pledge, or pawn.

Nothing in this Paragraph 48(e) shall prohibit or restrict Respondent from providing (orally or in writing) accurate information to consumers about

their rights of renewal, extension, or refinancing under state law or policy, provided that Respondent does so in a manner that is consistent with this Order.

49. Respondent must take reasonable measures to ensure that its service providers, affiliates, and other agents comply with this Section.

VI
Compliance Plan

IT IS FURTHER ORDERED that:

50. Within 60 days of the Effective Date, Respondent must submit to the Enforcement Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's sales practices and Respondent's debt-collection practices comply with all applicable Federal consumer financial laws and the terms of this Consent Order (Compliance Plan). The Compliance Plan must, at a minimum:

a. Detail steps for addressing each action required by this Consent Order;

b. Ensure scripts and training materials do not encourage consumers to take longer to pay than the term of the original loan, pledge, or pawn;

c. Ensure scripts and training materials do not refer to a Payback Guide and do not permit store employees to initiate conversations with consumers about (i) how much the consumer would like to pay each month or (ii) over how many months he or she would like to repay the transaction;

d. Require ongoing education and training in applicable federal and state consumer-protection laws regarding the terms of this Consent Order for all appropriate employees. Respondent shall document its training program and review and update its training program at least annually to ensure that it provides appropriate individuals with the most relevant information;

e. Require a consumer-complaint-monitoring process, including the maintenance of adequate records of all written, oral, or electronic complaints or inquiries, formal or informal, received by Respondent and the resolution of the complaints and inquiries; and

f. Include specific timeframes and deadlines for implementation of the steps described above.

51. The Enforcement Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct Respondent to revise it. If the Enforcement Director directs Respondent to revise the Compliance Plan, Respondent must make the revisions and resubmit the Compliance Plan to the Enforcement Director within 30 days.

52. After receiving notice that the Enforcement Director has made a determination of non-objection to the Compliance Plan, Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

VII
Role of the Board

IT IS FURTHER ORDERED that:

53. The Board must review all submissions (including plans, reports, programs, policies, and procedures) required by this Consent Order before submission to the Bureau.

54. Although this Consent Order requires Respondent to submit certain documents for the review or non-objection by the Enforcement Director, the Board will have the ultimate responsibility for proper and sound management of Respondent and for ensuring that Respondent complies with Federal consumer-financial law and this Consent Order.

55. In each instance that this Consent Order requires the Board to ensure adherence to or perform certain obligations of Respondent, the Board must:

a. authorize whatever actions are necessary for Respondent to fully comply with the Consent Order;

b. require timely reporting by management to the Board on the status of compliance obligations; and

c. require timely and appropriate corrective action to remedy any material non-compliance with Board directives related to this Section.

VIII
Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

56. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of $9 million to the Bureau.

57. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.

58. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by § 1017(d) of the CFPA, 12 U.S.C. § 5497(d).

59. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:

a. claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or

b. seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.

60. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit from, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset, Respondent must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money

penalty and will not change the amount of the civil money penalty imposed in this action.

61. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment and will immediately become due and payable.

62. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law, and no part of the funds may be returned to Respondent.

63. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

64. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

IX
Reporting Requirements

IT IS FURTHER ORDERED that:

65. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence

of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.

66. Within 90 days of the non-objection of the Compliance Plan, and again one year after the Effective Date, Respondent must submit to the Enforcement Director an accurate written compliance progress report (Compliance Report) that has been approved by the Board, which, at a minimum:

a. describes in detail the manner and form in which Respondent has complied with this Consent Order; and

b. attaches a copy of each Order Acknowledgment obtained under Section X, unless previously submitted to the Bureau.

X
Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that:

67. Within 60 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its Board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.

68. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section IX, any future Board members and executive officers, as well as to any

managers, employees, service providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.

69. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 45 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

XI
Recordkeeping

IT IS FURTHER ORDERED that:

70. Respondent must create or, if already created, must retain for at least 5 years from the Effective Date the following business records:

a. all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau and relevant sales scripts and training materials (including training materials used by a third party on behalf of Respondent); and

b. all consumer complaints (whether received directly or indirectly, such as through a third party) related to the Payback Guide, in-person visits, or this Consent Order, and any responses to those complaints.

71. Respondent must retain the documents identified in Paragraph 70 for the duration of the Consent Order.

72. Respondent must make the documents identified in Paragraph 70 available to the Bureau upon the Bureau's request.

XII
Notices

IT IS FURTHER ORDERED that:

73. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re* TMX Finance LLC, File No. 2016-CFPB-0022," and send them either:

a. By overnight courier (not the U.S. Postal Service), as follows:

Anthony Alexis
Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1625 Eye Street, N.W.
Washington D.C. 20006; or

b. By first-class mail to and contemporaneously by email to:

Anthony Alexis
Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552
Enforcement_Compliance@cfpb.gov

XIII
Compliance Monitoring

IT IS FURTHER ORDERED that:

74. Within 30 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.

75. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.

76. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XIV
Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

77. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.

78. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XV
Administrative Provisions

79. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent, except as described in Paragraph 80.

80. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The

Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.

81. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under § 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.

82. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

83. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.

84. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain

the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.

85. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

86. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

87. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 26th day of September, 2016.

Richard Cordray
Director
Consumer Financial Protection Bureau

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Apr 19 2018 08:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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).

Case No. 74335

District Court No. A-16-743134-J

APPELLANT'S APPENDIX

VOLUME 2 of 75

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DOCUMENT	VOL.	BATES NO.
Petition for Judicial Review, September 8, 2016	1	000001 - 000023
Notice of Intent to Participate, September 19, 2016	1	000024 - 000026
Summons, September 20, 2016	1	000027 - 000030
Appendix to Exhibits to Motion for Partial Stay, September 29, 2016	1	000031 - 000183
Declaration of Patrick Reilly In Support of Motion, September 29, 2016	1	000184 - 000187
Motion for Partial Stay of Administrative Order, September 29, 2016	1	000188 - 000218
Declaration of Rickisha Hightower-Singletary, October 3, 2016	1	000219 - 000222
Motion to Vacate Order Shortening Time, October 3, 2016	2	000223 - 000295
Opposition to Motion for Partial Stay, October 5, 2016	2 - 4	000296 - 000704
Reply Memorandum in Support of Motion for Partial Stay, October 10, 2016	4	000705 - 000790
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

DOCUMENT	VOL.	BATES NO.
Transmittal of Record on Appeal, October 26, 2016	8 - 72	001589 - 017090
Notice of Filing Administrative Record, October 31, 2016	73	017090 - 017098
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
Notice of Entry of Order Granting Motion for Partial Stay of Administrative Order, November 23, 2016	73	017109 - 017115
Memorandum of Points and Authorities in Support of Petition for Judicial Review, December 15, 2016	73	017116 - 017175
Notice of Entry of Stipulation and Order to Extend Time for Filing Answering Brief, December 20, 2016	73	017176 - 017183
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

DOCUMENT	VOL.	BATES NO.
Errata to Opposition to Motion to Extend Partial Stay, April 4, 2017	73	017261 - 017264
Reply in Support of Motion to Extend Partial Stay, April 5, 2017	73	017265 - 017276
Opposition to Supplemental Authorities, April 5, 2017	73	017277 - 017287
Renewed Motion to Extend Partial Stay, April 21, 2017	73	017288 - 017300
Opposition to Renewed Motion to Extend Partial Stay, May 5, 2017	73	017301 - 017321
Reply in Support of Renewed Motion to Extend Partial Stay, May 11, 2017	73	017322 - 017332
Reply to Opposition to Supplemental Authorities, May 11, 2017	73, 74	017333 - 017354
Order Regarding Hearing and Briefing Schedule, May 30, 2017	74	017355 - 017357
Order Granting Motion to Extend Partial Stay and Allowing Supplemental Authorities, May 31, 2017	74	017358 - 017361
Declaration of Stephen Michael Paris Regarding Information Fields, May 31, 2017	74	017362 - 017365
Declaration of Stephen Michael Paris Regarding Procedures to Safeguard Accounting and Loan Docs, May 31, 2017	74	017366 - 017369

DOCUMENT	VOL.	BATES NO.
Notice of Entry of Order Regarding Hearing and Briefing Schedule, June 1, 2017	74	017370 - 017375
Notice of Entry of Order Granting Motion to Extend Partial Stay, June 1, 2017	74	017373 - 017382
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Reply in Support of Motion for Supplemental Relief, November 7, 2017	74	017507 - 017522

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Recorder's Transcript of August 3, 2017 Proceedings, December 11, 2017	74, 75	017523 – 017587
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

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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

MOTION TO VACATE ORDER SHORTENING TIME[1]

Respondent, State of Nevada, ex rel. it's Department of Business and Industry, Financial Institutions FID (hereinafter "FID"), by and through its counsel Adam Paul Laxalt, Attorney General, David Pope, Senior Deputy Attorney General, Vivienne Rakowsky, Deputy Attorney General, and Rickisha Hightower-Singletary, Deputy Attorney General, and hereby submits its Motion to Vacate Order Shortening Time.

[1] The Opposition to Partial Motion to Stay will follow separately.

This Motion is filed and based on all pleadings and papers on file herein, the pleadings and papers incorporated by reference, and any additional evidence and oral argument that this Court may allow at the time of the hearing in this matter.

1. The Administrative Law Judge's Findings of Fact, Conclusions of Law, and Order in this matter was issued on August 12, 2016. Said Order provides TitleMax (120) days from the date of the Order to "conduct a full accounting of and return all principal and interest it has collected under every GPPDA entered into after December 18, 2014." A copy of the ALJ's Order is attached hereto as Exhibit "A."

2. One month after being served with the ALJ's Order, TitleMax complained that it must manually review 11,651 files in efforts to determine if certain loans have a GPPDA. However, TitleMax fails to provide any statements as to the efforts that it has made as well as any good faith attempts to comply with the August 12, 2016 Order. TitleMax also fails to provide any indication as to how many files, if any, have already been reviewed in efforts to comply with the Order in good faith. Even more, TitleMax created its current exigency by failing to notify either the ALJ or the FID about the alleged manual review until over a month after the ALJ's Order and despite having ample notice throughout the course of the proceeding that the FID would seek a full accounting of all loans with the illegal GPPDA product[2].

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[2] The FID's complaint requested among other things that the "willful violations [of offering the GPPDA] result in a finding that the loans are VOID pursuant to NRS 604A.900. *See* page 13 of the Complaint, attached hereto as Exhibit "B," excluding exhibits. The FID's Pre-Hearing Brief requested a "full accounting of each Grace Period Payment Deferment Agreement and the amount of principal and interest returned to each borrower relative to each such agreement." See page 16 of the Pre-Hearing Brief, excluding exhibits, attached hereto as Exhibit "C." In both the FID's opening and closing statements, the FID requested that TitleMax provide a full accounting of all of the illegal GPPDA products that were offered to customers and that the amount of principal and interest be returned to customers. *See* page 23, lines 11-25 of the transcript of proceedings on July 18, 2016, and page 666, lines 9-24 of the transcript of proceedings on July 20, 2016, attached hereto as Exhibit "D." Therefore, TitleMax was well aware of the potential of having to provide a full accounting of all loans with the illegal GPPDA.

3. On September 28, 2016, TitleMax filed an Ex Parte Application for Order Shortening Time pursuant to EDCR 2.26. However, TitleMax failed to demonstrate "circumstances claimed to constitute good cause and justify shortening of time" as required by the Rule.[3]

4. TitleMax only alleges that it must manually review 11,651 files. TitleMax further infers that it will cost additional time, labor, and possibly expense to complete the manual review. However, the expense and time to review the files is not a legally sufficient reason to grant a stay. *Hansen v. Eight Judicial District Court ex rel. County of Clark,* 116 Nev. 650, 658, 6 P.3d 982, 987 (2000) (holding that even time consuming matters and substantial litigation expenses are neither irreparable or serious, and are therefore, insufficient reasons to justify a stay).

5. The mere fact that TitleMax has (120) days to comply with the Order is sufficient evidence that there is more than ample time for TitleMax to begin its manual review. TitleMax has failed to present any justification that it cannot comply with the Order, it only assumes that it cannot do so.

6. The FID even attempted to assist TitleMax and facilitate compliance with the ALJ's Order by requesting specific information for all of the applicable files and loans which are subject to the Order as evidenced by the FID's August 18, 2016, correspondence to TitleMax, which is attached hereto as Exhibit "E." The FID provided the correspondence because TitleMax was ordered to provide the accounting under the direction of the FID, and because the FID will also need ample time to verify the accounting information before the (120) days expires. It is important to note that TitleMax did not seek an extension from the FID until the week before the information was due.

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[3] Good cause includes a legally sufficient reason why the action requested should be granted or excused. See generally Black's Law Dictionary, 7th ed. abridged, p. 174.

7. TitleMax attempts to mislead the Court by stating that the FID refused any extension to provide the requested information, when in fact, the FID provided *two* extensions to provide the information. Specifically, the FID extended the deadline to provide the loan information for the loans which were opened in the new TLX system until the close of business on September 30, 2016 (which was the extension date requested by TitleMax during a telephone conference on September 8, 2016). The FID displayed additional good faith and reasonableness to TitleMax by further extending the deadline to provide loan information for the loans that were in the old system until the close of business on October 31, 2016. TitleMax intentionally fails to notify the Court of these extensions. A copy of the FID's correspondence providing said extensions is attached hereto (excluding attachments) as Exhibit "F."

8. TitleMax also agreed to provide the undersigned with a list of all of the information that could be obtained within the deadline via email. However, to date, no such information has been provided. (See Exhibit "F")

9. TitleMax alleges that it has complied with all other portions of the ALJ's Order, however, TitleMax did not timely pay the fine as ordered by the ALJ. The fine payment was received after the deadline imposed by the ALJ. The delay and untimeliness for such a simple matter demonstrates TitleMax's complete disregard for the ALJ's order, and its delay should not be rewarded with additional time.

10. Furthermore, TitleMax failed to provide the FID with a courtesy copy of the Ex Parte Application for Order Shortening Time at the time that it was submitted to the Court. The application is dated September 28, 2016. However, the FID did not receive notice of the application until *Friday, September 30, 2016,* through the court's notification system. At minimum, TitleMax should have extended a professional courtesy to the FID to provide ample and adequate notice of the application. Even worse, the Order Shortening Time requires the FID to file its written opposition brief by October 5, 2016, which only provides the FID (3)

business days to respond to TitleMax's (31) page motion. TitleMax's failure to comply with the jurisdictional requirement of NRS 233B.140(1) by not moving for a stay at the time that the petition for judicial review is filed should not be used to create an exigency for the FID. Such short notice is prejudicial to the FID because it deprives the FID of the opportunity to properly and adequately respond to the motion.

11. On September 30, 2016, TitleMax forwarded documents for the FID to review in efforts to comply with the September 30, 2016, extension agreed to by the parties. However, FID's counsel was not able to access the documents and did not receive the documents in another format until Monday, October 3, 2016. Upon opening the documents for an initial review, it is clear that TitleMax has once again failed to comply with the ALJ's Order and the agreed upon extension because the spreadsheet provided fails to state whether or not the loans have a GPPDA. As such, the spreadsheet of information is absolutely meaningless and appears to be nothing more than a bad faith effort and delay tactic by TitleMax.

12. At this time there is no emergency to warrant an Order Shortening Time. With more than two months until the refund is due, there is no reason to hear TitleMax's Motion to Stay on an Order Shortening Time or that TitleMax cannot comply with the ALJ's Order.

For the foregoing reasons, the FID requests that this Court vacate the Order Shortening Time, cancel the October 12, 2016, hearing, and require TitleMax to comply with the ALJ's Order, or in the alternative, to continue the deadline for filing an opposition brief to the Motion for Partial Stay and continue the October 12, 2016, hearing to allow the FID sufficient time to properly and adequately respond to the motion.

ADAM PAUL LAXALT
Attorney General

By: */s/ Rickisha Hightower-Singletary*
Signing Attorney's Name (Bar. No. 14019C)
Deputy Attorney General

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

EXHIBIT "A"

EXHIBIT "A"

BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY

LAS VEGAS, NEVADA

IN THE MATTER OF: FINANCIAL INSTITUTIONS DIVISION, Claimants, v. TITLEMAX OF NEVADA, INC. AND TITLEBUCKS D/B/A TITLEMAX, Respondents.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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

I. PROCEDURAL BACKGROUND

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

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

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

November 5, 2015.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Documents Admitted was issued.[1]

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

II. FINDINGS OF FACT

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

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

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

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[1] At the hearing, TitleMax moved for the admission of proposed Exhibit 104, a summary of errors contained in FID's Summaries of Exhibit A document. FID opposed the admission of TitleMax's proposed Exhibit 104, contending that it was filed untimely and did not contain any relevant or material information. FID 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.

[2] FID Ex. B (00008565-00008581).

[3] FID Ex. B (00008577).

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

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

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

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

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[4] FID Ex. B (00008574-00008577).
[5] FID Ex. B (00008580).
[6] FID Ex. B (00008573).
[7] TitleMax Ex. 85 (TMX 85-00001-00012).
[8] TitleMax Ex. 86 (TMX 86-00001-00003).
[9] TitleMax Ex. 86 (TMX 86-00003).
[10] TitleMax Ex. 86 (TMX 86-00003).
[11] FID Ex. C (00008582-00008594).
[12] FID Ex. C (00008591).
[13] FID Ex. C (00008588).
[14] FID Ex. C (00008588).
[15] FID Ex. C (00008588).

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

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

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

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

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

A. <u>Findings of Fact Particular to the Issues Presented by the GPPDA</u>

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

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

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[16] TitleMax Ex. 98 (TMX 98-00001-00004).
[17] TitleMax Ex. 98 (TMX 98-00001-00004).
[18] TitleMax Ex. 91 (TMX 91-001-003).
[19] TitleMax Ex. 91 (TMX 91-001-003).

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

FID admits that the Title Loan Agreement complies with Nevada law.[24]

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

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

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[20] TitleMax Ex. 91 (TMX 91-001-003).
[21] *See, for example,* FID Ex. A-1 (000003).
[22] *Id.*
[23] *Id.*
[24] TitleMax Ex. 102, p. 3 ¶ 17.
[25] *See, for example,* FID Ex. A-1 (000016-000017).
[26] *Id.*

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

B. <u>Findings of Fact Particular to the Issues Presented by the Allowance of Co-Borrowers on Title Loans</u>

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

III. CONCLUSIONS OF LAW

A. <u>Conclusions of Law Particular to the Issues Presented by the GPPDA</u>

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[27] FID Ex. A-4 (000083-000087).
[28] FID Ex. A-4 (000084).
[29] FID Ex. A-4 000084).
[30] FID Ex. A-4 (000090-000093).
[31] FID Ex. A-4 (000091).
[32] FID Ex. A-4 (000091).
[33] FID Ex. A-4 (000083-000093).

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

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

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[34] **NRS 604A.445 Title loans: Restrictions on duration of loan and periods of extension.** Notwithstanding any other provision of this chapter to the contrary:

1. The original term of a title loan must not exceed 30 days.

2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:

(a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

(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.

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

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

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

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

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[35] **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.
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.

[36] **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.

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

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

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

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

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[37] **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.

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

According to TitleMax, though it stands to earn a greater amount of money in interest charges under the GPPDA than it did under the Title Loan Agreement, that does not constitute the collection of "additional interest on the outstanding balance during the grace period" in violation of NRS 604A.210(2) because it charges and collects all of the interest on the outstanding principal during the first seven payments—which it contends are not part of the grace period. However, if the first seven payments are not part of the grace period added by amendment, then they must be terms from the original Title Loan 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.

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

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

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[38] The number and amount of payments that the customer has already made at the time the parties enter into the GPPDA is highly relevant to this calculation. If the customer has made payments under the original 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.

[39] 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.

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

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

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

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[40] The term "guaranty" is defined as "[a] promise to answer for the payment of some debt, or the 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).

[41] NRS 604A.455(2).

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

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

IV. DISCIPLINE AND PENALTIES

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

FID requests an order requiring TitleMax to conduct a full accounting of and return all principal and interest it has collected under every GPPDA it has ever entered into. NRS 604A.900(1)(c) states, "[I]f a licensee willfully: [. . .] [c]ommits 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."[43] FID contends that

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[42] NRS 604A.450(2) prohibits licensees from making title loans "without regard to the ability of the customer seeking the title loan to repay the loan, including the customer's current and expected income, 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.

[43] **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:

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

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

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

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

(a) A licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably 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.

V. ORDER

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

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

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

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

Dated this 12th day of August, 2016.

/s/ Denise S. McKay
Denise S. McKay
Administrative Law Judge
State of Nevada

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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Nicole Lovelock, Esq.
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Dated this 12th day of August, 2016.

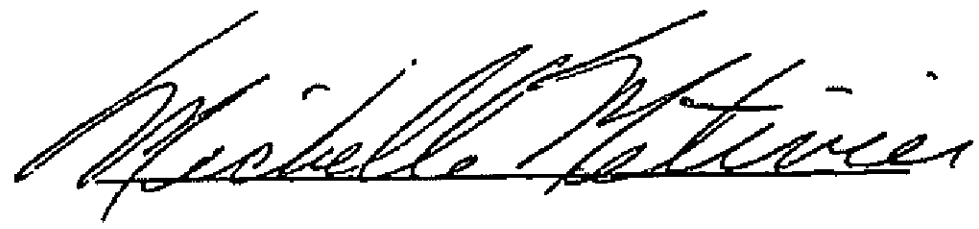

EXHIBIT "B"

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BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION

* * *

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

ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION

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

JURISDICTION

1. Pursuant to Nevada Revised Statutes (NRS) Chapter 604A, the Division is vested with the exclusive and original jurisdiction over the regulation, business practices, licensing, examinations, and disciplinary action related to deferred deposit lending, high-interest lending, title lending, and check cashing services in Nevada.

2. TITLEMAX is now, and was at all pertinent times alleged herein, licensed in Nevada by the Division as a deferred deposit lender, and / or a high-interest lender, and / or a title lender, and / or a check cashing service, pursuant to NRS Chapter 604A.

3. As the holder of a Chapter 604A license, TITLEMAX is subject to the provisions of NRS Chapter 604A and Nevada Administrative Code (NAC) Chapter 604A.

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

FACTUAL ALLEGATIONS

GENERAL FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

FACTS REGARDING TITLEMAX'S UNLAWFUL GRACE PERIOD AMENDMENT

16. Pursuant to the TITLEMAX'S original Title Loan Agreement (Loan), the customer makes seven fully amortized installment payments within 210 days to pay the loan off without a balloon payment at the end of the loan.

17. The Division has concluded that the Loan complies with NRS 604A.445(3)(a)-(d).

18. During the 2014 and 2015 Examinations, the Division's examiners observed TITLEMAX employees routinely offer customers an amendment to the Loan called the "Grace Period Payments Deferment Agreement" (Grace Period Amendment).

19. The text of the Grace Period Amendment provides in pertinent part:

> "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 train and arbitration provision remain in full force and effect."

20. As a business pattern and practice, TITLEMAX employees offer the Grace Period Amendment prior to the customer's default on the Loan.

21. Customers are lured into the Grace Period Amendment because it typically decreases their initial payments.

22. Payments are not fully amortized under Grace Period Amendment.

23. TITLEMAX charges customers more money under the Grace Period Amendment than it does under the Loan.

24. The Grace Period Amendment schedules 14 monthly payments within 390 days.

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25. Documents from the 2015 Examination show that TITLEMAX charges customers more money under the Grace Period Amendment than under the Loan.[1, 2]

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 TITLMAX 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.

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[1] This Table summarizes four of TITLEMAX'S loans examined during the 2015 Examination whereby each customer has already paid the unlawful overage amount.

[2] **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 the exhibits.

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31. Further, assuming that the average overage amount charged by TITLEMAX under each Grace Period Amendment is $1,288.09 (determined by averaging the unlawful charges from paragraph 25), then TITLEMAX unlawfully charged Nevada customers approximately $7,908,872.60 during the period covered by the 2015 Examination.

32. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX charged customers more money under the Grace Period Amendment.

33. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX charged customers more money under the Grace Periods Amendment, after the Division rated TITLEMAX "Needs Improvement" in the 2014 examination.

34. NRS 604A.070 provides in full as follows:

> **NRS 604A.070 "Grace period" defined.**
> 1. "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.

35. NRS 604A.210 provides in full as follows:

> **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**:
> **2. Any fees for granting such a grace period; or**
> **Any additional fees or additional interest on the outstanding loan during such a grace period.**
> (Emphasis added.)

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36. NRS 604A.445(3) provides in full 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.
>
> (Emphasis added.)

37. TITLEMAX, through its Grace Period Amendment, charges additional fees and / or additional interest during grace periods.

38. TITLEMAX, through its Grace Period Amendment, makes title loans that last up to *390 days*, which exceeds the maximum original term of *210 days* allowed pursuant to NRS 604A.445(3).

39. TITLEMAX, through its Grace Period Amendment, makes title loans whereby payments are not fully amortized.

40. TITLEMAX, through its Grace Period Amendment, makes title loans that require one or more balloon payments.

41. TITLEMAX'S repeated violations were without any attempt to correct the deficiencies, and thus the repeated violations were willful, and / or intentional, and / or without any 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.

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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.

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49. The term "guarantor" is not defined in NRS Chapter 604A or NAC 604A.

50. A guarantor is "One who makes a guaranty or gives security for a debt." BLACK'S LAW DICTIONARY 711 (7th ed. 1999).

51. A guaranty is "A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another who is liable in the first instance." BLACK'S LAW DICTIONARY 712 (7th ed. 1999).

52. A title loan requires the *customer* to secure the loan. NRS 604A.105(1)(b).

53. A title loan requires that the *customer* give possession of the *title to a vehicle legally owned by the customer* to the licensee. NRS 604A.105(1)(b)(1).

54. Regardless of whether guarantor is called a co-borrower or a co-signor, the licensee is prohibited from requiring or accepting security or a promise to answer for payment from anyone other than the customer whose name is on the title.

55. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX required or accepted a guarantor to a loan with a customer.

56. An evidentiary hearing is necessary to determine why TITLEMAX required or accepted a guarantor to a loan with a customer.

57. An evidentiary hearing is necessary to determine what, if any, effect the relationship between the customer and the guarantor would have on the Division's analysis.

58. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX required or accepted a guarantor to a loan with a customer, after the Division rated TITLEMAX "Needs Improvement" in the 2014 examination.

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ALLEGED VIOLATIONS

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.

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66. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX **willfully** 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.

67. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that one or more of TITLEMAX'S repeat violations are **willful, and / or intentional, and / or without any exercise of due care** to prevent the repeat violations.

DISCIPLINE AUTHORIZED

68. NRS 604A.810 provides in full as follows:

> **NRS 604A.810 Order to desist and refrain; action to enjoin violation; appointment of receiver.**
>
> 1. **Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, the 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.**
>
> 2. The Attorney General or the Commissioner may bring an action to enjoin a person from engaging in or continuing a violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper.
>
> 3. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which an action is brought may impound, and appoint a receiver for, the property and business of the defendant, including books, papers, documents and records pertaining thereto, or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the 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

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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 of computation, notwithstanding the maintenance of procedures reasonably 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.
   (Emphasis added.)

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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

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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

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EXHIBIT “C”

EXHIBIT “C”

BEFORE THE

DEPARTMENT OF BUSINESS AND INDUSTRY

In Re: TITLEMAX OF NEVADA, INC., a Nevada corporation, Respondent.	Case No. A-15-719176-C Dept No. XXI **NEVADA FINANCIAL INSTITUTIONS DIVISION'S PREHEARING BRIEF** Date of Hearing _____, 2016 Time of Hearing _____

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COMES NOW, State of Nevada, ex rel. it's Department of Business and Industry, Financial Institutions Division, by and through its attorneys, Adam Paul Laxalt, Attorney General, and David J. Pope, Senior Deputy Attorney General and Vivienne Rakowsky, Deputy Attorney General, and hereby files its PreHearing Brief.

Respectfully submitted this 11th day of February, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ David J. Pope
David J. Pope
Sr. Deputy Attorney General
Nevada State Bar #8617
Vivienne Rakowsky
Deputy Attorney General
Nevada State Bar #9160
555 E. Washington Ave., #3900
Las Vegas, NV 89101
Attorneys for Defendant

POINTS AND AUTHORITIES

I. FACTS AND PROCEDURAL HISTORY

TitleMax of Nevada, Inc. and TitleBucks dba TitleMax (hereinafter "TitleMax") hold a Chapter 604A license issued by the Financial Institutions Division (hereinafter "FID"). Pursuant to NRS 604A.730, FID examines each Chapter 604A licensee at least once a year.

Following its 2014 examination of TitleMax, FID noted two main violations. *Exh. B (8565-8581).* The first type of violation involved title loan files including "co-borrowers" who were individuals not listed on the vehicle titles. *Id. (8574-8575).* In some such instances, the "co-borrower" had a different address and different last name than the legal owner. These situations were cited as violations of NAC 604A.230.

The second type of violation involves the Grace Period Payments Deferment Agreements. *Exh. B (8575-8576).* With these agreements, TitleMax extends the duration beyond the 210 day limit. *Id. (8576).* In addition, the first seven payments are interest only and the last seven payments are principal only payments. *Id. (8576).* The customers end up paying more with the Grace Period Payments Deferment Agreements. *Id. (8576).* Each use of a Grace Period Payments Deferment Agreement discovered in the sample population was cited as a violation of NRS 604A.445(3) and NRS 604A.210. *Id. (8577).*

FID began one of the 2015 examinations of a TitleMax location on or about May 22, 2015. *Exh. C (8582).* In the 2015 examination report, FID noted the same violations as discussed above. *Exh. C (8594).*

The first issue, again, relates to TitleMax including an additional person on the lending agreement. FID requested an explanation from TitleMax. TitleMax's conclusory response was that the additional person is a "co-borrower." *Exh. B (8574-8575).* Yet, Chapter 604A does not expressly define or allow co-borrowers. In fact, given the definitions set forth in NRS 604A.105 and NRS 604A.115, only the legal owner of a vehicle can use the vehicle to

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obtain a title loan. Given the lack of information provided by TitleMax, FID concluded that the additional persons were guarantors and that the agreements violated NAC 604A.230.[1] *Exh. E (8626-8627).* FID's examiner applied NAC 604A.230 to the facts as they were seen by the examiner and determined that TitleMax either "required" or "accepted" a guarantor. Regardless of whether TitleMax has violated NAC 604A.230, pursuant to NRS 604A.105 and NRS 604A.115 only the legal owner of a vehicle can borrow money against the vehicle via a title loan. TitleMax has provided no proof that the additional persons are legal owners.

The second issue has to do with the Grace Period Payments Deferment Agreements. The examiner noted that TitleMax was still utilizing the Grace Period Payments Deferment Agreements. *Exh. C (8588-8590).* "Grace Period Payment Deferment Agreement," as used by TitleMax, is not a statutory term. *Exh. A (0091).* Again, it was noted that the total amount paid under a Grace Period Payments Deferment Agreement is more than the total amount paid pursuant to the terms of the original 210 day loan. *Exh. C. (8590).* According to the exam report, the Grace Period Payments Deferment Agreements violate NRS 604A.445 and NRS 604A.210 and therefore are not statutorily authorized lending products. *Exh. C (8589).* TitleMax disagrees and asserts that the Grace Period Payments Deferment Agreements are in full compliance with Chapter 604A of the NRS and Chapter 604A of the NAC.

Looking at an example agreement in Exhibit A, the amount financed in the 210 day loan is $5,800.00, the finance charge is $2,813.16, the total of payments is $8,613.16 and the original payment amount is $1,230.45. *Id.* (0084). When the original 210 day loan is converted to the Grace Period Payments Deferment Agreement, the total amount paid increases to $10,261.94 and the monthly payments decrease. *Id.* (0091). There are fourteen monthly payments, whereas there were originally seven payments that included

[1] The term "guarantor" is defined as "[o]ne who promises to answer for a debt, default or miscarriage of another." Black's Law Dictionary, 705 (6th Ed. 1990). NRS 604A.455(5) defines "fraud" to include "without limitation, giving to a licensee as security for a title loan the title to a vehicle which does not belong to the customer." In addition, NRS 604A.455(4) states that when a customer fraudulently secures a title loan the licensee can bring a civil action against the customer for the remaining debt related to the unpaid loan. Considering these statutes, the logical conclusion made by the examiner was that the additional person was needed for purposes of meeting the ability to repay requirements set forth in NRS 604A.450 and was acting as a guarantor.

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principal and interest. *Id.* (0091). The first seven payments are interest only payments in the amount of $637.42 and the last seven payments are principal only payments in the amount of $828.57. *Id.* (0091). The amount of the loan is no longer ratably and fully amortized. Because the amount financed remains $5,800.00, the finance charge increases to $4,461.94.

Pursuant to TitleMax's documents, it collects more interest via a Grace Period Payments Deferment Agreement than it would collect via the 210 day original loan. *Exhibit A* (0084, 0091) (the total amount paid increases from $8,613.16 to $10,261.94 though the principle remains the same amount of $5,800.00). Yet, TitleMax asserts that no additional interest or fees are collected.

The FID examiner looked at the facts and determined that TitleMax had not complied with NRS 604A.210 and NRS 604A.445. NRS 604A.210 and NRS 604A.445 prohibit the collection of interest or fees during a grace period, require installment payments that ratably and fully amortize the amount of the loan and prohibit extensions. Contrary to the statutes, the Grace Period Payments Deferment Agreements nearly double the length of the statutorily allowed 210 day loan, they do not ratably and fully amortize the amount of the loan and charge additional fees or interest for additional periods and therefore there is no grace period. *Exhibit A* (0084, 0091). In addition, though it has been represented that the first seven payments are interest only and the last seven payments are principle only, the Grace Period Payment Deferment Agreement states: "You acknowledge that simple interest is charged on the unpaid principal balance of this Loan Agreement at the daily rate of 0.3663% from the date of this Loan Agreement until the earlier of: (i) the date of your last payment as set forth in the original Payment Schedule; or (ii) payment in full." *Exh. A* (0092). The agreement also says, "Now that the Payment Schedule has changed . . .." *Id.* The Payment Schedule changes but the Federal Truth-In-Lending Disclosures doesn't change to inform the customer of the increased finance charge. *Exh. A.* (0084). This increase in the finance

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charge is either a fee, additional interest or additional fees, any of which are prohibited by NRS 604A.210.

II. ARGUMENT

TitleMax is asserting that its business practices of allowing additional persons, who are not legal owners, on title loans and its use of the Grace Period Payments Deferment Agreements are in compliance with Chapter 604A of the NRS and Chapter 604A of the NAC. The findings of the FID examiners, related to the violations, are supported by substantial evidence and therefore are afforded deference. NRS 233B.135; *United Exposition Services, Co. v. State Industrial Insurance System*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993) ("It is well recognized that this court, in reviewing an administrative agency decision, will not substitute its judgment of the evidence for that of the administrative agency." (citation omitted)). Because the statutes are plain and unambiguous, the FIDs interpretation of its statutes must be upheld. *City of North Las Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("'When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning.'").

A. THE EXAM FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE FID IS PROPERLY INTERPRETTING THE STATUTES.

TitleMax is misinterpreting the relevant statutes and making conclusory factual statements.

1. Title Loans Are Only Made To Legal Owners Of Vehicles.

Pursuant to the relevant statutes, only legal owners of vehicles can be customers, or borrowers, on title loans. NRS 604A.105 restricts title loan borrowers to those who legally own the vehicle. The statute states that the customer[2] must 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] "Customer" is defined as "any person who receives or attempts to receive . . . title loan services from another person." NRS 604A.040.

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> (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.

NRS 604A.105 (emphasis added). Subsection 1 requires the customer to secure the loan by giving possession of the title to TitleMax. *Id.* It also requires the customer to be the legal owner of the vehicle. *Id.* The legal owner of the vehicle is listed on the title. NRS 604A.115 (defining "title" to mean "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."). The language of these statutes is plain and unambiguous and therefore we cannot look beyond the language for another meaning. *City of North Las Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("'When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning.'"); *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004) ("If the plain meaning of a statute is clear on its face, then [this court] will not go beyond the language of the statute to determine its meaning." (citation omitted)); *Cleghorn v. Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993) ("When the language of a statute is clear on its face, its intention must be deduced from such language." (citation omitted)). Consequently, the customer/borrower is limited to the person who is the legal owner as evidenced by the title. *Id.*

If the additional person on the loan, *i.e.* TitleMax's alleged co-borrower, is not listed on the title, the person cannot be a borrower and therefore cannot be a co-borrower. TitleMax asserts that the additional persons are co-borrowers, but such a finding has yet to be determined.

TitleMax has not explained why they require and/or allow an additional person to be a party to the title loan.[3] The explanation has been nothing more than a conclusory

[3] TitleMax has provided no explanation other than asserting the additional persons are co-borrowers. No evidence has been provided to show that the additional persons are also legal owners. "Guarantor" is defined as a "[p]erson who becomes secondarily liable for another's debt or performance in contrast to a strict surety who is primarily liable with the principal debtor. One who promises to answer for the debt, default or miscarriage of another. . . . A guarantor is usually also an accommodation party." Black's Law Dictionary, 705

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assertion that the additional party is a co-borrower. As stated, title loans can only be made to the person, or persons, named on the title. NRS 604A.105; NRS 604A.115. FID has not been provided with information showing that the additional persons are legal owners and therefore asserts that they are not legal owners. To avoid losing on this argument, TitleMax cannot admit that the additional persons are not legal owners. Yet, TitleMax cannot avoid this issue, and essentially remain silent, by giving a conclusory statement that the additional persons are "co-borrowers." If the additional party is not a legal owner as shown by the title, then they are not a statutorily approved borrower.

Consequently, with regard to each such loan, TitleMax is violating NRS 604A.105 and NRS 604A.115 by loaning money to a non-legal owner of the vehicle and violating NAC 604A.230 by allowing or requiring a guarantor.

2. The Grace Period Payments Deferment Agreement Is Not A Statutorily Compliant Product

The Grace Period Payments Deferment Agreements do not comply with Chapter 604A and are not an authorized lending product. *See Exhibit A.* NRS 604A.445 provides:

> Notwithstanding any other provision of this chapter to the contrary:
>
> 1. The original term of a title loan must not exceed 30 days.
>
> 2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:
>
> (a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;
>
> (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,

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(6th Ed. 1990) (citation omitted). If the facts end up showing that the additional persons meet the definition of a guarantor, then they are guarantors in violation of NAC 604A.230.

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> 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.

(emphasis added).

Pursuant to NRS 604A.445(3), a loan can be for a term of 210 days if it provides for payments in installments, the payments are calculated to ratably and fully amortize the entire amount of principle and interest payable on the loan, and the loan is not subject to any extension. This language is plain and unambiguous and therefore we cannot go beyond it to look for a different meaning. *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004).

TitleMax represents that it first enters into the original loan agreements with its customers.[4] Assuming that the original loan agreements comply with NRS 604A.445(3), they are no more than 210 days in duration, provide for installment payments, the payments are calculated to ratably and fully amortize the entire amount of principle and interest payable at the end of the 210 days and are not subject to any extension. NRS 604A.445(3). When TitleMax converts the original loan to a Grace Period Payments Deferment Agreement, TitleMax goes beyond the limits of NRS 604A.445(3).

First, the maximum 210 days is extended to a term approximately twice as long. *See Exhibit A (0091)* (showing 14 periods, or approximately 420 days, instead of 7 periods or 210 days); NRS 604A.445(3). The term "extension" is defined as "any extension or rollover

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[4] *Exhibit A (0017)* (stating, "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. (underlining contained in original).

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of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, regardless of the name given to the extension or rollover."[5] NRS 604A.065(1). The facts show that the date on which the loan was required to be paid is extended.

Second, the payments do not "ratably and fully" amortize the entire amount of the original loan because the interest is applied to the entire principle for the first seven periods and no principle is paid until the eighth period.[6] *See Exhibit A (0091)* (The last seven payments are in the amount of $828.57. Multiplying $828.57 x 7 = $5,799.99 or $5,800.00, which is the amount financed. The first seven payments are in the amount of $637.42, which is approximately the product of $5,800.00 x .1099 (which is the product of .003663 (daily rate) x 30.00224 days)); Black's Law Dictionary, 83 (7th Ed. 1999) (defining "amortization" as "the act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due."); NRS 604A.445(3).

Third, the payments do not constitute installment payments because they are not equal.[7] Black's Law Dictionary, 799 (6th Ed. 1990) (defining "installment loan" as "[a] loan made to be repaid in specified, usually equal, amounts over a certain number of months."(emphasis added)); NRS 604A.445(3).

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[5] The term "extension" is defined as "[a]n agreement between a debtor and his creditors, by which they allow him further time for the payment of his liabilities." Black's Law Dictionary, 583 (6th Ed. 1990). An extension "[t]akes place when parties agree upon valuable consideration for maturity of debt on day subsequent to that provided in original contract." Black's Law Dictionary, 583 (6th Ed. 1990) (citation omitted). "Rolling over" is defined as, "Banking term for extension or renewal of short term loan from one loan period (*e.g.* 90 day) to another." Black's Law Dictionary, 1330 (6th Ed. 1990).

[6] In the Grace Period Payments Deferment Agreements, TitleMax admits that the loans are not fully amortized because the first seven payments are interest only and are less than the last seven payments. *Exhibit A (0037-0043)*. In addition, the first seven payments are the product of the daily rate of interest multiplied by the entire principle. *Id.* In a typical loan, the portion of the payment that goes towards principle increases each month as the portion that goes towards interest decreases each month. Therefore, unlike the typical loan, the first seven payments of the Grace Period Payments Deferment Agreement include additional interest because the interest is consistently calculated on the entire outstanding principle. Black's Law Dictionary, 83 (7th Ed. 1999) (defining "amortization" as "the act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due.").

[7] As previously explained, the first seven payments are less than the last seven payments.

Therefore, the Grace Period Payments Deferment Agreements do not comply with NRS 604A.445 and are not a statutorily authorized loan.

In addition, the Grace Period Payments Deferment Agreements do not comply with NRS 604A.210 or NRS 604A.070. NRS 604A.070 defines "grace period" as "any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210." (emphasis added). "Deferment" is defined as "A postponement or extension to a later time . . .." Black's Law Dictionary, 421 (6th Ed. 1990). "Defer" is defined as "[d]elay; put off; . . . postpone to a future time." *Id.* "Deferred payment" is defined as "[p]ayments of principal or interest postponed to a future time . . .." *Id.* 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.

(emphasis added). TitleMax cannot charge any fees for granting a grace period or any additional fees or additional interest on the outstanding loan during a grace period. *Id.* In this case, the outstanding loan would be the original loan, a closed ended loan limited in duration to 210 days, and any interest above and beyond that which could have been charged and collected during the 210 days of the original loan would constitute the prohibited additional interest or any fees or any additional fees. *Id.* This language is plain and unambiguous and therefore we cannot go beyond the plain language to search for another meaning. *See City of North Las Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("'When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning.'"); *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004); *Cleghorn v. Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). Because TitleMax is charging more interest than that

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which could have been collected during the 210 day loan, it is charging additional interest or additional fees in violation of 604A.210(1-2). *See Exhibit A (0084, 0091).*

The plain meaning of the statutes is that no fee can be charged for granting a grace period and no interest in addition to that which can be charged during the 210 day loan can be charged. Legislative history should not be used to create an ambiguity, it should be used to resolve an ambiguity.

> Legislative history has never been permitted to override the plain meaning of a statute. As the Supreme Court has made clear, "Congress' 'authoritative statement is the statutory text, not the legislative history.' " *Chamber of Commerce v. Whiting*, —— U.S. ——, 131 S.Ct. 1968, 1980, 179 L.Ed.2d 1031 (2011) (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005)). Legislative history may not be used to alter the plain meaning of a statute. "The law is what Congress enacts, not what its members say on the floor." *Szehinskyj v. Att'y Gen.*, 432 F.3d 253, 256 (3d Cir.2005).
>
> Moreover, "legislative history may be referenced only if the statutory language is written without a plain meaning, i.e., if the statutory language is ambiguous." *Byrd v. Shannon*, 715 F.3d 117, 123 (3d Cir.2013). "Legislative history ... is meant to clear up ambiguity, not create it." *Milner v. Dep't of Navy*, —— U.S. ——, 131 S.Ct. 1259, 1267, 179 L.Ed.2d 268 (2011); see also *Velis v. Kardanis*, 949 F.2d 78, 81 (3d Cir.1991) ("There is no need to resort to legislative history unless the statutory language is ambiguous."). We must "not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language." *Milner*, 131 S.Ct. at 1266; see also *Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283 (4th Cir.1998) ("This plain meaning cannot be circumvented unless we have the rare instance when there is a clearly expressed congressional intent to the contrary or when a literal application of the plain language would frustrate the statute's purpose or lead to an absurd result.").

S.H. ex rel. Durrell v. Lower Merion School Dist., 729 F.3d 248, 259 (3rd Cir. 2013); *See Hearn v. Western Conference of Teamsters Pension Trust Fund*, 68 F.3d 301, 304 (9th Cir. 1995) ("But legislative history—no matter how clear—can't override statutory text. Where the statute's language "can be construed in a consistent and workable fashion," . . . we must put aside contrary legislative history." (citation omitted); *See Clark County v. Southern*

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Nevada Health Dist., 289 P.3d 212, 219, 128 Nev. Adv. Op. 58 (2013) (dissenting and citing *Hearn*, 68 F.3d. 248, 259 (9th Cir. 1995)). "In construing a statute, the Court has ruled that legislative materials, if 'without probative value, or contradictory, or ambiguous,' should not be permitted to control the customary meaning of words. *United States v. Dickerson*, 310 U.S. 554, 562, (60 S.Ct. 1034, 1038, 84 L.Ed. 1356) (1940)." *NLRB v. Plasterers' Union*, 404 U.S. 116, 129 n. 24, 92 S.Ct. 360, 368 n. 24, 30 L.Ed.2d 312 (1971). Therefore, TitleMax's arguments regarding the legislative history (that it asserts is contrary to FIDs interpretation) are without merit.[8]

TitleMax represents in a conclusory fashion that it offers each borrower under the installment loan a grace period of deferment gratuitously. "Gratuitously" is defined as, "Given or received without cost or obligation: FREE." Webster's II New College Dictionary, 487 (1999). Contrary to NRS 604A.210's prohibition against charging additional interest or fees, TitleMax's own documents show that it charges additional interest or fees during the first seven months as explained above. In addition, the Grace Period Payments Deferment Agreements state that interest is charged on any outstanding portion of the principle until the principal is paid. *Exhibit A (0044)*. Therefore, according to the agreement, interest can also be charged during the last seven months as the principle is being paid down, as well as the first seven months. *Id.* Either way, this is not a gratuitous deferment and does not comply with NRS 604A.070.

In addition, according to NRS 604A.045[9] a grace period should not occur unless a borrower is having difficulty repaying the loan. *See* Black's Law Dictionary, 697 (6th Ed. 1990) (defining "grace period" as a "period of time provided for in a loan agreement during

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[8] Charging interest during a grace period is contrary to the plain language of NRS 604A.070 and NRS 604A.210 and the intent of allowing a borrower additional time to make a payment without incurring any additional interest or fees. Thus, TitleMax's interpretation leads to an unreasonable or absurd result that is contrary to legislative intent. *Hunt v. Warden, Nevada State Prinson*, 111 Nev. 1284, 1285 (1995) ("When interpreting a statute, this court resolves any doubt as to the legislative intent in favor of what is reasonable, and against what is unreasonable. (citation omitted). A statute should be construed in light of the policy and the spirit of the law, and the interpretation should avoid absurd results.").

[9] "'Default' means the failure of a customer to . . . (a) Make a scheduled payment on a loan on or before the due date for the payment under the terms of a lawful loan agreement and any grace period that complies with the provisions of NRS 604A.210 . . .." NRS 604A.045.

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which default will not occur even though payment is overdue."). Yet, TitleMax cannot make a loan unless TitleMax determines that the borrower has the ability to repay it. NRS 604A.450. Therefore, granting a grace period before a borrower begins repaying the loan is contrary to legislative intent and contrary to the normal course of such affairs. *See* Black's Law Dictionary, 705 (7th Ed. 1999) (defining a "grace period" as "[a] period of extra time allowed for taking some required action (such as making payment) without incurring the usual penalty for being late."). In this case, "Grace Period Payments Deferment Agreement" contains a misnomer, *i.e.* there really is no grace period because money is due in every period and these agreements do not comply with NRS 604A.210 or NRS 604A.070.[10]

The Grace Period Payments Deferment Agreements are longer than 210 days and extend the term of the loan beyond the statutory limitation and do not provide for installment payments and do not ratably and fully amortize[11] the amount of the original loan. The amount of the loan increases and the amount of interest charged increases. *Exhibit A (0084, 0091).* In addition, money is owed in every period and therefore three is no grace period. *Id.* Though TitleMax agrees that more interest is charged via the Grace Period Payments Deferment Agreement than would be charged via the 210 day loan, TitleMax does not agree that the amount of the loan is not ratably and fully amortized, does not agree that the loan is extended and does not agree that there is no grace period or that there is no gratuitous deferment. Applying the facts to the statutes, FIDs interpretations are correct and the violations noted in the exam reports should be upheld. NRS 604A.445; NRS 604A.210; NRS 604A.070.

Because the loan is intended to be closed ended with a maximum term of 210 days (seven months), TitleMax can only offer a 210 day (seven month) loan that is ratably and

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[10] "Grace period" is "[t]he amount of time after a payment due date when no interest is charged." https://www.lendingtree.com/glossary/what-is-grace-period. Also defined as "[t]he number of days between a consumer's credit card statement date and payment due date when interest does not accrue." http://www.investopedia.com/terms/g/grace-period-credit.asp.

[11] "An 'amortization plan' for the payment of an indebtedness is one where there are partial payments of the principal, and accrued interest, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished." Black's Law Dictionary, 83 (6th Ed. 1990).

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fully amortized. By collecting 210 days (seven months) of interest on the entire principle before any principle payments are made, and then collecting principle (and, according to the agreement, possibly more interest) for seven more months, TitleMax is collecting fees or additional interest in violation of NRS 604A.210, has nearly doubled the duration of the loan and extended the loan in violation of NRS 604A.445(3), is not ratably and fully amortizing the amount of the loan in violation of NRS 604A.445(3) and is not offering a grace period, *i.e.* gratuitous deferment, in violation of NRS 604A.210 and NRS 604A.070.

B. PURSUANT TO NRS 604A.900, TITLEMAX'S WILLFUL VIOLATIONS RESULT IN LOANS BEING VOID.

Due to its willful violations, TitleMax is not entitled to collect, receive or retain any principal, interest or other charges. NRS 604A.900 states:

> 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 of computation, notwithstanding the maintenance of procedures reasonably 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.

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TitleMax willfully entered into the Grace Period Payments Deferment Agreements for an amount of interest or fees that violates Chapter 604A and willfully demanded, collected or received an amount of interest or fees that violates the provisions of Chapter 604A. "Willful" is defined as "[i]ntending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary." Black's Law Dictionary, 1599 (6th Ed. 1990); *See generally, Reingold v. Wet "N Wild Nevada, Inc.*, 113 Nev. 967, 973, 944 P.2d 800 (1997)(dissent)(Overruled on other grounds) (willfully means purposefully, deliberately; knowingly and intentionally); *see Van Cleave v. Kientz-Mill Minit Mart*, 97 Nev. 414, , 633 P.2d 1220, (1981) (Willful is described as an act "that the actor knows, or should know, will very probably cause harm."). TitleMax has at least 307 violations, which is enough to show that this is a common and sustained practice and not something that "resulted from a bona fide error of computation . . .." NRS 604A.900(2)(a). The number of violations show that TitleMax willfully entered into the Grace Period Payments Deferment Agreements and that the actions were not accidental but rather purposeful and deliberate especially after the 2014 examination.

The 2014 examination was commenced in August 2014 and advised TitlteMax that the Grace Period Payments Deferment Agreements violate NRS 604A.445 and NRS 604A.210. Therefore, at least as of 2014, TitleMax had knowledge of the FID's position that the Grace Period Payments Deferment Agreements did not comply with NRS Chapter 604A. Nevertheless, although TitleMax had been told that the agreements violated the relevant statutes, they willfully continued to offer the Grace Period Payments Deferment Agreements to customers.

During the next examination, which began on May 4, 2015 and was completed on June 17, 2015, the examiner found that TitleMax was still offering the improper loans. Thus, TitleMax willfully continued to offer the Grace Period Payments Deferment Agreements after being made aware that the loans were improper and did not comply with Chapter 604A. The results of the second examination show that, although TitleMax knew or should have

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known that that the Grace Period Payments Deferment Agreements did not comply with Chapter 604A, TitleMax willfully kept selling that product anyway.

Additionally, to date, TitleMax has not notified its customers of any qualifying errors of computation. NRS 604A.900(2)(b). According to the statute, TitleMax only had 60 days to notify customers of any such errors. *Id.*

Consequently, pursuant to NRS 604A.900(1), TitleMax must return any principle and interest that it is prohibited from keeping.

III. CONCLUSION

Based on the foregoing, the FID respectfully requests an order:

1. Imposing a $10,000 fine for each of the 307 violations for a total of $3.07 million in fines;
2. Requiring the return, to the customers, of any principle and interest paid to TitleMax relative to the Grace Period Payments Deferment Agreements;
3. Requiring TitleMax to cease and desist from the practice of entering into the Grace Period Payments Deferment Agreements;
4. Prohibiting the making of title loans to anyone, in any capacity, other than the legal owner(s) of the vehicle;
5. Requiring TitleMax to provide a full accounting of each Grace Period Payment Deferment Agreement and the amount of principal and interest returned to each borrower relative to each such agreement; and,

. . .

. . .

. . .

. . .

. . .

. . .

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6. Any other relief this court deems just.

Respectfully submitted this 11th day of February, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ David J. Pope
David J. Pope
Sr. Deputy Attorney General
Nevada Bar #8617
Vivienne Rakowsky
Deputy Attorney General
Nevada Bar #9160
555 E. Washington Ave., #3900
Las Vegas, NV 89101
(702) 486-3420
Attorneys for State of Nevada

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CERTIFICATE OF SERVICE

I, hereby certify that on the 12th day of February, 2016, I served the **NEVADA FINANCIAL INSTITUTIONS DIVISION'S PREHEARING BRIEF**, by causing it to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

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

And via Legal Wings to:

Denise McKay, Esq.
Administrative Law Judge
Nevada Division of Real Estate
2501 E. Sahara Ave., 2nd Floor
Las Vegas, NV 89104

/s/ Debra Turman
An employee of Office of Attorney General

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

EXHIBIT “D”

EXHIBIT “D”

BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION

* * * * * *

In The Matter of:

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

TRANSCRIPT OF PROCEEDINGS

Before Administrative Law Judge Denise S. McKay

Volume I

Las Vegas, Nevada

July 18, 2016

9:05 a.m.

Reported by: Heidi K. Konsten, RPR, CCR
Nevada CCR No. 845 - NCRA RPR No. 816435
JOB NO. 324200

TitleMax an unsatisfactory rating.

The record also shows that there's no misunderstanding about it. TitleMax has disregarded the FID and intentionally continued to offer the grace period deferment agreement, although they knew the FID told them that the agreement violates the statute. TitleMax's failure to comply with the statute was done knowingly and intentionally and was therefore willful.

The FID is hereby requesting the following findings: First, that the FID has proven the violations of statute. Second, that this tribunal impose a $10,000 fine for each of the violations for a total of $3,070,000 in fines. That TitleMax return the principal and interest collected on -- from all of its customers that entered into a grace period deferment agreement. That TitleMax cease and desist the practice of entering grace period payment deferment agreements or any similar noncompliant agreement. That TitleMax provide a full accounting of all of the grace period payment deferment agreements and the amount of the principal and interest that's been returned to each customer. And, lastly, that

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss
County of Clark)

I, Heidi K. Konsten, Certified Court Reporter, do hereby certify:

That I reported in shorthand (Stenotype) the proceedings had in the above-entitled matter at the place and date indicated.

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

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 2nd day of August, 2016.

Heidi K. Konsten, RPR, NV CCR #845

BEFORE THE

NEVADA FINANCIAL INSTITUTIONS DIVISION

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

TRANSCRIPT OF PROCEEDINGS

BEFORE ADMINISTRATIVE LAW JUDGE DENISE S. McKAY

VOLUME III

PAGES 629 - 710

LAS VEGAS, NEVADA

JULY 20, 2016

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

JOB NO. 324323

of the loan, they will pay no more than what is disclosed on the truth in lending statement. That did not happen for more than 10,000 Nevada residents. The truth is that TitleMax made many millions of dollars by charging additional and undisclosed interest, and they should not be allowed to reap the benefits of their illegal behavior.

So we're asking that this tribunal impose a $10,000 fine for each of the 307 violations for a total of $3,070,000 in fines. We're also requesting that TitleMax return the principal and interest collected by all of its the customers that entered a grace period deferment payment agreement, so those loans be completely returned to the borrower. That TitleMax cease and desist the practice of entering into this loan product or any similar noncompliant agreements. That TitleMax do a full accounting of all grace period deferment agreements, and that the amount of principal and interest be returned to each customer, and that TitleMax cease and desist entering into title loan agreements with anyone other than the legal owner of the vehicle.

Thank you very much for your time.

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

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

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

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

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

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

Kimberly A. Farkas, CCR 741

EXHIBIT “E”

EXHIBIT “E”

STATE OF NEVADA

BRIAN SANDOVAL
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

FINANCIAL INSTITUTIONS DIVISION

BRUCE BRESLOW
Director

GEORGE E. BURNS
Commissioner

August 18, 2016

Certified Mail

TITLEMAX of Nevada, Inc.
15 Bull Street, Suite 200
Savannah, Georgia 31401

Patrick J. Reilly, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Enclosed is a copy of the Administrative Law Judge's ("ALJ") "Findings of Fact, Conclusions of Law and Order" ("Decision") in the matter of "Financial Institutions Division v. TitleMax of Nevada, Inc. and Titlebucks dba TitleMax", which you should have already received. The Financial Institutions Division (FID) considers the ALJ's Decision to be a final decision for purposes of NRS 233B.130.

The ALJ's Decision states, "TitleMax is ordered to conduct a full accounting of and return all principal and interest it has collected under every GPPDA entered into after December 18, 2014." TitleMax was further ordered to "...complete the return of all monies [to the customers] on or before 120 days from the date of this [the ALJ's] Order." In addition, TitleMax was ordered to "...conduct this process under the supervision and direction of FID..." Pursuant to, and in accordance with, the ALJ's Decision, you are directed to provide the following information to the FID within 30 days:

1. To effectively supervise the full accounting and verify that every loan with a Grace Period Payment Deferment Agreement (GPPDA) is identified, provide a complete listing of all loans made from 12/18/2014 to the present that, if the information is available in any respect, includes:
   - Loan #
   - Date of loan
   - Borrower name(s)
   - Borrower address(s),
   - Borrower telephone number(s)
   - Borrower email address(s)
   - Amount borrowed
   - Due date of last payment or final deferred periodic due date
   - Principal and interest paid to date
   - Full payment history record
   - If the vehicle collateral was repossessed

2. Provide a complete listing of all loans and information detailed in number 1 above that TitleMax identifies had or has a Grace Period Payment Deferment Agreement (GPPDA) entered into after 12/18/2014.

3. Provide an accounting of all principal and interest paid to date of all loans that TitleMax identifies had or has a GPPDA entered into after 12/18/2014.

4. Any other information that will be necessary to ensure that all affected consumers are reimbursed in accordance with the ALJ's Decision.

The above information is to be sent to the Office of the Commissioner at the Las Vegas address indicated on this letter. Your timely cooperation with this request is essential. If you should have any questions regarding this matter, you may contact the FID's legal counsel cc'd below.

Sincerely,

Financial Institutions Division
Department of Business & Industry
State of Nevada

cc: Nevada Deputy Attorney Generals:
David Pope, Esq.
Vivienne Rakowsky, Esq.
Rickisha Hightower-Singletary, Esq.
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

EXHIBIT “F”

EXHIBIT “F”

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
First Assistant
Attorney General

NICHOLAS A. TRUTANICH
First Assistant
Attorney General

September 14, 2016

Patrick J. Reilly, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Re: Financial Institutions Division v. TitleMax of Nevada, Inc., and TitleBucks d/b/a TitleMax

Dear Mr. Reilly:

Administrative Law Judge McKay issued the Findings of Fact, Conclusions of Law, and Order in the above referenced matter on August 12, 2016.[1] The Order requires TitleMax to perform specific actions, including "conduct a full accounting of and return all principal and interest it has collected under every GPPDA entered into after December 18, 2014," and to complete the process "under the supervision and direction of FID [... and to] return all monies on or before 120 days from the date of [the] Order." On August 18, 2016, the Financial Institutions Division (FID) mailed to your attention a detailed correspondence requesting specific information in efforts to expeditiously and efficiently comply with Judge McKay's Order. On or about September 1, 2016, the FID ("Division") received your correspondence requesting a conference call to discuss in further detail the information that was requested in the Division's August 18th letter. The requested conference call was held on September 8, 2016. Those present during the telephone conference representing the Division included, Commissioner George Burns, and Deputy Attorney Generals Vivienne Rakowsky and Rickisha Hightower-Singletary, and those present representing TitleMax included Eric Hawn, Chris Harrison, Vice President of Business Intelligence Rick Gomon, Jessica Starbucks, Chief Legal Officer Carrie Carbone, and yourself. The Division's understanding of the matters discussed are as follows:

[1] Judge McKay further explained TitleMax's duties and responsibilities in her response in writing to your questions posed in your correspondence dated August 23, 2016, regarding the Findings of Fact, Conclusions of Law, and Order on August 25, 2016. *See* TitleMax Letter dated August 23, 2016, ALJ response dated August 26, 2016, collectively attached as Exhibit "A."

TitleMax's ability to comply with the ALJ's Order and retrieve data per Division Request for a full accounting

According to the information that you conveyed to the Division, until May 2015, TitleMax used the point of sale software known as Cashwise, which contained limited data points. As a result, on or about May 5, 2015[2], TitleMax transitioned into the TLX System. Although the customers' loan information was originally entered into the Cashwise system and transferred to the TLX system, TitleMax is unable to gather certain loan information which, according to TitleMax, was not originally contained in the Cashwise system.

You stated that you are able to gather the following information on the Nevada loans between December 18, 2014 and May 5, 2015: (1) the loan number; (2) the date of the loan; (3) the borrower name(s); (4) borrower address(s); (5) the borrower telephone number(s); and (6) the amount borrowed. However, TitleMax contends that it specifically is not able to gather or determine through its computer system: (1) email addresses; (2) the payment records, including due date of last payment or final deferred periodic due date; (3) principal and interest paid to date; (4) full payment history record; (5) whether the loan included a GPPDA or not, and (6) if the vehicle collateral was repossessed. According to the information that you provided, this specific information can only be gathered through a manual review of each file that is subject to Judge McKay's Order. It was also noted that although TitleMax has the ability to gather the required information for loans after May 5, 2016, through its TLX system, TitleMax may not have email addresses for all customers in the new TLX system. TitleMax requested an extension until the end of September to provide all of the information available in the TLX system, and a greater extension to provide all of the information from the Cashwise system, in response to the Division's August 18th correspondence.

TitleMax also advised that it was uncertain what information was needed to satisfy the Division's request for "[a]ny other information that will be necessary to ensure that all affected consumers are reimbursed in accordance with the ALJ's Decision."

During the call, TitleMax also requested a stay of the portion of Judge McKay's Order directing it to "conduct a full accounting of and return 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 this Order." TitleMax advised that additional time will also be needed, not only to manually gather and review the required information on loans originally entered into the Cashwise system, but also to manually review the TLX files to ensure accuracy.

Per our conversation, you agreed to provide an email with a complete listing of the information that can be timely provided and the information that could only be gathered through manual methods. The Division's understanding from the telephone conference is that there are more than 11,000 Nevada loan files that were originally on the Cashwise system between December 18, 2014, and May 5, 2015. To date, we have not received an email with this information.

[2] May 15, 2015 was also referenced during the phone conversation as the transition date.

If the above does not encompass your recollection of the September 8, 2016, telephone conference, please advise the undersigned as soon as possible, otherwise the above will be deemed correct.

Division's response

The Division has no ability to alter or amend Judge McKay's order. Again, Judge McKay's Order simply directs TitleMax to conduct the accounting process "*under the supervision and direction of FID*." As such, the Division has requested certain basic and reasonable information that it believes necessary in terms of supervising and directing the accounting process. To comply with the Order, TitleMax must return all customer money within 120 days, and the Division has simply been tasked with supervising and directing the accounting process. Therefore, if TitleMax fails to comply with the order, it will be by TitleMax's own doing.

In regards to the alleged inability to produce the requested information in the Division's August 18th correspondence, the Division cannot ascertain why such information is not easily accessible to TitleMax. The information requested is more than reasonable information and records that any lender should have readily available. As TitleMax should be aware, NRS 604A.700 requires all Chapter 604A licensees to maintain certain books and accounting records, and failure to do so is a violation of the Chapter. Nonetheless, should the requested information not be readily available, whether due to the transition to the new TLX system or otherwise, the Division demands a sworn affidavit from Director Tracy Young and/or President Otto Bielss attesting to, at minimum, (1) what information can and cannot be provided; (2) a detailed statement as to why any requested information cannot be provided; (3) the means and methodology being used to gather the information that is available; and (4) the anticipated date which the information can be provided. Please note that the Division understands that TitleMax may not have collected email addresses for all borrowers, however, all other information is expected and should be provided.

It is also important to note that the Division provided (30) days for TitleMax to provide the requested information, and TitleMax waited until a week before the deadline to request additional time to gather the information and records. Despite this delay and in the interest of good faith, the Division is willing to extend the deadline for providing the requested information, as requested by TitleMax. TitleMax shall have until the close of business on Friday, September 30, 2016, to provide the requested information for loans and/or GPPDA's that originated after the May 2015 transition to the TLX system and until the close of business on Monday, October 31, 2016, to provide the requested information for those loans that transitioned from the Cashwise system in May 2015. While the Division understands TitleMax's contentions that a manual review may be required for all of the files, especially those from the old Cashwise system, such a review should have already been initiated, and TitleMax is expected to comply with the extended September 30, 2016, and October 31, 2016, deadlines and to provide all required information to the Division as directed by Judge McKay's Order. It is TitleMax's responsibility to otherwise comply with Judge McKay's order.

Regarding the request to stay payment of the principle and interest and to provide an accounting, please be advised that the Division considers Judge McKay's Finding of Fact, Conclusions of Law, and Order to be a final decision in this matter. Pursuant to NRS 233B.135(2), the Order is "deemed reasonable and lawful until reversed or set aside in whole or in part by the court." Accordingly, the Division is not authorized to, nor will it consent to, staying these matters. NRS 233B.140 provides that a motion for stay can be filed and served *at the time that a petition for judicial review is filed.* Provided this time has not passed, a request for a stay should be presented to the appropriate district court judge. *Id.* In any event, TitleMax must comply with Judge McKay's Order unless and until the District Court determines otherwise. *See* NRS 233B.135(2). Provided TitleMax has filed a petition for judicial review, the District Court now has jurisdiction over the matter, and TitleMax should seek relief from the District Court, to the extent that any is available under law.

With respect to your statement that TitleMax plans to pay the $50,000 fine to the Division, please be advised that the (30) day deadline has expired, and TitleMax is currently in violation of that portion of Judge McKay's Order. As stated herein, the Division believes and accepts Judge McKay's Findings of Fact, Conclusions of Law, and Order as a final order, and it is considered valid and enforceable until otherwise modified by the District Court.

Lastly, the Division's request to provide "[a]ny other information that will be necessary to ensure that all affected consumers are reimbursed in accordance with the ALJ's Decision," simply seeks any relevant and applicable information or records that TitleMax possesses which are beneficial in providing an accurate accounting and which have not been specifically requested by the Division.

Please feel free to contact our office should you have any questions or concerns regarding any of the matters contained herein or regarding any other matter involving this case.

Sincerely,

Rickisha Hightower-Singletary, Esq.

Cc: Financial Institutions Division
Department of Business & Industry
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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

OPPOSITION TO MOTION FOR PARTIAL STAY OF ADMINISTRATIVE ORDER

Respondent, State of Nevada, ex rel. it's Department of Business and Industry, Financial Institutions FID (hereinafter "FID"), by and through its counsel Adam Paul Laxalt, Attorney General, David Pope, Senior Deputy Attorney General, Vivienne Rakowsky, Deputy Attorney General, and Rickisha Hightower-Singletary, Deputy Attorney General, and hereby submits its Opposition to Motion for Partial Stay of Administrative Order.

TitleMax filed the instant Motion for Partial Stay of Administrative Order ("Motion for Partial Stay") along with an Ex Parte Application for an Order Shortening Time ("OST") which was signed on September 28, 2016, and electronically filed on September 29, 2016. The FID did not receive notification of the filing until September 30, 2016, since counsel for TitleMax did not send a courtesy copy to counsel for the FID. As a result, the FID is severely prejudiced having to respond to a thirty-one (31) page motion in three (3) working days. Accordingly, the FID respectfully requests that at the time of the hearing, if necessary, the FID may bring in additional arguments and exhibits to oppose TitleMax's Motion for a Partial Stay. The FID filed a Motion to Vacate the OST on October 3, 2016 because TitleMax was given one hundred-twenty (120) days to comply with the Administrative Law Judge's ("ALJ") Order. Thus, there was no exigency requiring an order shortening time. Accordingly, it becomes obvious that the only reason that TitleMax filed an ex parte Motion for an OST was to severely limit the FID's opportunity to respond. FID's Motion to Vacate is attached hereto as Exhibit "A." Because the Court has not ruled on the Motion to Vacate the OST, in an abundance of caution, the FID timely files the following Memorandum of Points and Authorities in Support of its opposition to TitleMax's Motion for a Partial Stay.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION OF MOTION FOR PARTIAL STAY OF ADMINISTRATIVE ORDER

This Honorable Court should not grant TitleMax a stay of the ALJ's final decision. In its attempt to sway this Court, TitleMax grossly misstates the ALJ's basis for the Findings of Fact, Conclusions of Law and Order.[1] ("ALJ's Decision"). Furthermore, staying the ALJ's Decision will result in continuing danger to the public because TitleMax is currently providing misinformation to its customers regarding the

[1] As will be explained below, as a result of the illegal agreements to extend the 210 day title loans, TitleMax increased its profit at the expense of its customers by charging additional undisclosed interest to its customers.

ALJ's Order by telling them that they cannot file for a refund of the loan until the customer pays the loan in full. *See* exemplar email dated 9/15/16 to Deputy Attorney General from customer of TitleMax, attached hereto as Exhibit "B." Like asking a fox to guard the henhouse, TitleMax is asking this Court to allow them to hold onto money that does not belong to TitleMax. The money that is the subject of the refund resulted from illegal title loan extensions which have been determined to be void per NRS 604A.900. As will be illustrated below, TitleMax illegally collected undisclosed additional interest from unsuspecting borrowers and is not entitled to hold this money. Accordingly, The Financial Institution's Division opposes TitleMax's Motion to stay the ALJ's Decision.

INTRODUCTION

This matter stems from TitleMax's deliberate and flagrant disregard of Chapter 604A which governs title loans in this State. Chapter 604A was enacted by the Nevada Legislature to protect consumers from predatory lending practices.[2] As an entity licensed by the FID, TitleMax has the obligation to comply with the statutes and regulations governing its license. TitleMax disingenuously argues its interpretation of the statutes under the guise of a statement of facts, claiming that this matter is simply a good faith disagreement about statutory interpretation. It is not. In fact, it is not possible, even for TitleMax, to interpret NRS 604A.445(3)'s requirement of full amortization as allowing TitleMax to charge seven (7) months of interest only and seven

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[2] The policy behind the NRS 604A is to prohibit lenders from making unaffordable loans whereby the customers were more likely to end up in a cycle of debt, commonly referred to during the Legislative history as the debt treadmill. "This bill establishes uniform standards and procedures for the licensing and regulation of check-cashing services, deferred deposit services, payday loan services, and title loan services. The bill provides consumer protections including regulating customer repayment and default of these loans and requiring the loan establishments comply with the federal Fair Debt Collection Practices Act. The measure also provides remedies and administrative penalties." Hearing on A.B. 384 Before the Assembly Committee on Commerce and Labor, 2005 Leg., 73rd Sess. 14 (April 13, 2005).

(7) months of principal only.[3]

NRS Chapter 233B governs administrative contested cases as well as appeals from such cases in the State of Nevada. In determining whether to grant a stay, NRS 233B.140 governs.

TitleMax failed to comply with the requirement of NRS 233B.140(1) when applying for a stay. Pursuant to NRS 233B.140, an application for the stay of the final decision in a contested case must be "filed and served . . . at the same time as the petition for judicial review." TitleMax filed the Motion for Stay on September 29, 2016, while TitleMax's Petition for Judicial Review was filed on September 8, 2016. The law does not provide for three weeks flexibility on that requirement.[4] Thus, on the first factor alone, TitleMax's application for a stay must fail.

Furthermore, although the Court must consider the same factors as it would consider when granting an injunction per NRCP 65, NRS 233B.140(2-3) provides for deference to the decision of the ALJ as well as consideration of the risk to the public if the administrative decision is stayed. Here, the ALJ's Decision was clear. *See* ALJ's Decision dated August 12, 2016, attached hereto as Exhibit "C." TitleMax asked for clarification of the ALJ's Decision, and the ALJ responded further reinforcing the order. *See* Letter for Clarification and ALJ response, collectively attached hereto as Exhibit "D." Most relevant to the reason to deny the stay is that there is significant risk to the public due to TitleMax's continued illegal practices.

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[3] Amortization is defined as "the act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due." BLACK'S LAW DICTIONARY, 83 (7th Ed. 1999).

[4] In fact, when Chapter 233B was amended in 1989, the testimony at the hearing with regard to the changes to Chapter 233B clearly provides that the purpose crafting the changes was to tell people what needs to be done, and how and when to do it. Hearing on A.B. 884 Committee on Government Affairs, 1989 Leg., 65th Sess. 13 (June 6, 1989). The testimony on the changes to NRS 233B.140 regarding a stay provides that Section 6 of AB 884 deals with acquiring a stay and what requirements must be met." Hearing on A.B. 884 Committee on Government Affairs, 1989 Leg., 65th Sess. 34 (June 21, 1989) (emphasis added).

For example, although TitleMax claims that it has stopped offering the illegal extension agreement, that statement is not accurate.[5] Per the attached email dated December 23, 2015, TitleMax confirmed that it continues to offer the illegal product. The email instructs its Nevada locations clearly that although it may not offer a GPDA to those with a loan date after December 14, 2015, they may continue to offer the product to those who entered into loans prior to December 12, 201. *See e*mail dated December 23, 2015, attached hereto as Exhibit "E." The ALJ did not make this e-mail part of the record because it was not submitted until after the documentation production deadline. Consequently, the ALJ found that TitleMax stopped offering the GPDA as of December 2015. *See* Exhibit "C." Nonetheless, TitleMax may not be as credible as it asserts. Transcript 7/19/16, p. 567, attached hereto as Exhibit "F."

Furthermore, TitleMax continues to enforce the existing loans that are subject to the illegal agreement. Following the issuance of the ALJ's Decision, borrowers approached TitleMax and were told that they still have to pay on the illegal loans. See Exhibit "B."

To further illustrate TitleMax's motives, the attached financial statement dated March 9, 2016 shows that TitleMax is systematically moving its money out of the Nevada corporation and out of Nevada. *See* Financial Statement, attached hereto as Exhibit "G."[6] Thus, there is a significant danger that TitleMax will make significant attempts not to repay the loans as ordered by the ALJ.

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[5] Counsel for TitleMax stated during the hearing that "I'll offer, so that the state is satisfied, if they want us to submit a document or affidavit or something along those lines confirming that the GPDA was no longer offered in December 2015, we can do that.... Separate and apart from this proceeding, if you want the peach of mind to know that TitleMax is no longer offering the grace period payment deferment agreement I can provide written confirmation of that to you. I'd be glad to do that." Trans, 7/19/16, p.567:5-19, attached hereto as Exhibit "F".

[6] TitleMax's financial statement may contain some confidential information and therefore, it will be provided in Court during the hearing on this matter for the Court's in camera review. Due to the shortage in response time, the FID did not have adequate time to file TitleMax's financial Statment under seal. *See generally* L.R. 8.09.

Finally, it is also noteworthy that TitleMax has a history of violations, not only in Nevada, but in other jurisdictions as well. To name just one example, the federal government has recently imposed a $9,000,000.00 fine to protect the public from TitleMax's history of predatory lending practices in Alabama, Georgia and Tennessee. *See* Consent Order, attached hereto as Exhibit "H."

Thus by allowing TitleMax to continue to reap the profits from illegal loans, systematically move money out of Nevada, mislead the public as to the true nature of the ALJ's decision, and not comply with the ALJ's Order, this Court is allowing TitleMax to continue its deceptive practices and continue to cause injury to the public.

As a result, this Court should not stay the ALJ's Order. As will be shown below, the FID has a very good likelihood of success on the merits. The Legislature has given the FID the responsibility and authority to protect the public by enforcing Chapter 604A. Specifically 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." NRS 604A.900(1). TitleMax admitted that it offered the agreements and continued to offer the agreements, knowing that the FID informed them on a number of occasions that the agreement violated Chapter 604A. In continuing their practice of offering the illegal extension over a period of years, TitleMax collected millions of dollars in interest over and above the amounts disclosed to their borrowers on the loan agreements. Accordingly, TitleMax is not likely to succeed on the merits because TitleMax violated NRS 604A.445's requirement of full amortization, and illegally extended the loan for more than two

hundred-ten (210) days.[7]

STATEMENT OF FACTS

The FID performed a routine annual examination of TitleMax on or about August 6, 2014. Examiner Dihansan found that TitleMax had implemented an amendment and modification to its 210 day title loan agreement that illegally extended the loan by an additional seven (7) months in violation of the 210 day limit in NRS 604A.445. In addition, the loan was no longer fully amortized, which is also required by NRS 604A.445. NRS 604A.445 specifically does not allow an "extension" of a title loan.[8] Moreover, the amount of the interest collected on the extended loans significantly exceeded the amount of interest disclosed in the loan agreement. *See* Report of Examinations 2014 and 2015, attached hereto as Exhibits "I" and "J."

TitleMax requested a meeting regarding the examination findings. During the October 7, 2014 meeting attended by corporate TitleMax as well as their Nevada counsel, the violation was explained to TitleMax. The same information about the violation was again explained to TitleMax at the exit meeting which took place soon after the 2014 Report of Examination ("ROE") was issued.

As a result of the 2014 "needs improvement" rating, the FID commenced its 2015 follow up examination[9] of TitleMax on May 22, 2015, and found that TitleMax continued to offer the illegal product. As a result, TitleMax was issued an unsatisfactory rating. *See* Exhibit "J."

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[7] The agreement did not offer a grace period gratuitously. Just because TitleMax titled the extension a grace period, it was not, and the agreement was actually an illegal extension of the original loan. Exhibit "C".

[8] Extension" is defined as any extension or rollover of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, regardless of the name given to the extension or rollover, but the term does not include a grace period. NRS 604A.065. A grace period is refers to any period of deferment offered gratuitously by a licensee to a customer. NRS 604A.070.

[9] The FID will customarily preform a follow up examination approximately 6 months after issuing a needs improvement rating, and a follow up examination approximately 3 months after issuing an unsatisfactory rating.

Instead of stopping the practice of issuing the illegal extensions, TitleMax continued to offer the product and attempted an end run around the FID by filing a Complaint with the District Court. The TitleMax sales representatives would pitch the extension following a script which included:

> Your contract states that you have 7 payments of <Amortized Loan Payments> which are for every 30 days starting on <Due Date>. By making this payment on time, your loan will be paid in full whey you make the final payment. However, for your convenience, you can also make a minimum payment <Minimum Payment to Extend> during this time. Any principal left at the end of the term will be placed on a 0% payment plan for an additional seven months. Do you have any questions?"

See TitleMax script, attached hereto as Exhibit "K."

In reality, this extension did not benefit the consumer, but did benefit TitleMax by allowing them to collect far more interest than disclosed to the customer in the Truth in Lending Statement on the loan documents. Just as an example:

Loan number	**Name**	**Total amount to be paid under original loan agreement**	**Total amount under amended loan**	**Overage**
14569-0155085	Scanlan	$1,819.80	$2,233.10	$413.30
14569-0155120	Cronin	$5,079.66	$6,188.83	$1,109.17
14569-0160496	Jackson	$1,819.80	$2,233.10	$413.30
14569-0164135	Morris	$3,465.55	$4,238.60	$773.05
14569-0149622	Lopez-Verdin	$3,500.21	$4,281.00	$780.79
14569-0153006	Richmond	$2,176.60	$2,670.96	$494.36

See Exhibit "J"

The above examples detail the overcharges on only six (6) loans. TitleMax issued more than eleven thousand (11,000) loans during the time period, and each one with a

GPDA overcharged the interest. This amounts to many millions of dollars in illegal interest charged and collected by TitleMax.

TitleMax filed a complaint seeking declaratory relief on June 1, 2015 and amended its complaint on September 17, 2015, prior to the completion of the follow up examination. *See* Complaint and Amended Complaint, attached hereto as Exhibit "L." The examination of TitleMax was completed on June 17, 2015, and upon finding three hundred-seven (307) violations of Chapter 604A in the limited sample examined by the FID, the FID commenced administrative proceedings.

Pursuant to a motion filed by the FID and after a hearing on the matter, the District Court dismissed the Amended Complaint for failure to exhaust. *See* Motion to Dismiss, Register of Actions and Order, collectively attached hereto as Exhibit "M." In addition the District Court found that there were questions of fact with regards to the agreements and whether the amount of interest charged during the loan with the agreement exceeds the amount of interest charged during the original term. Register of Actions Case #15-19176 December 14, 2015, Exhibit "M."

The Administrative Complaint and Notice of Hearing were served by mail on October 7, 2015. Administrative Complaint, attached hereto as Exhibit "N." TitleMax filed a Motion for a Declaratory Ruling arguing that the issues in this case involved statutory interpretation and facts were not at issue. *See* Motion for Declaratory Ruling, attached hereto as Exhibit "O." TitleMax's request completely ignored the District Court's findings that this matter involves questions of fact and is not simply a disagreement about the interpretation of the law. *See* FID Response Exhibit "P".

The ALJ ruled that "to determine whether TitleMax has committed the violations FID has alleged, I must consider the applicable statues and regulations in the context of the contract terms imposed by TitleMax." *See* ALJ Procedural Order dated May 16, 2016, attached hereto as Exhibit "Q."

Nevertheless, TitleMax is still attempting to disingenuously argue to this Honorable Court that this matter only concerns interpretation of the law, although it

has already been determined by both the District Court and the ALJ that this matter concerns the facts as they are applied to the law.

As a preliminary matter, it is necessary to clear up a number of factual inaccuracies in the TitleMax brief. For example:

- Contrary to TitleMax's assertion, it has not complied with other portions of the ALJ's Decision;
- Contrary to TitleMax's assertion, on September 8, 2016, the FID gave TitleMax two extensions to provide the information;
- Contrary to TitleMax's assertion, the record does not show that FID suggested additional discipline if TitleMax did not comply;
- Contrary to TitleMax's assertion, this matter concerns facts and is not just based on a legal interpretation of NRS 604A.210 and NRS 604A.445;
- Contrary to TitleMax's assertion, the FID did not engage in forum shopping; NRS 233B requires exhaustion of administrative remedies;
- Contrary to TitleMax's assertion, TitleMax was cited for violating NRS Chapter 604A.445 and was not cited solely for violating a proposed draft of AB 384 or a proposed regulation- neither of which were ever adopted;
- Contrary to TitleMax's assertion, the ROE does contain legal analysis;
- Contrary to TitleMax's assertion, this is not just a simple good faith dispute over the meaning of the law, and the facts must be applied to the existing law as determined by the District Court and ALJ ;
- Contrary to TitleMax's assertion, *State of Nevada v Check City Partnership*, 337 P.3d 755 (2014) does not apply here because there are facts in dispute; and
- Contrary to TitleMax's assertion, TitleMax was made aware that the FID was asking for a full accounting and for all the illegal loans to be voided.

The attached table gives examples of just some of the misinformation in TitleMax's Motion for Partial Stay and includes references to exhibits proving the FID's position. *See* Table of Inaccuracies, attached hereto as Exhibit "R."

Accordingly, this Court should not stay the ALJ's order because TitleMax did not timely request the stay, is not likely to succeed on the merits and will not suffer irreparable harm.

STANDARD OF REVIEW

As a preliminary matter, TitleMax is barred from seeking a stay of the ALJ's Order because it failed to timely file its Motion for Partial Stay of Administrative Order. NRS 233B.140 explicitly states that a petitioner who "seeks a stay of the final decision in a contested case shall file and serve a written motion for the stay [. . .] *at the time of filing the petition for judicial review*." The rules do not grant this court any discretion to alter the timing requirement for filing the request for stay, but instead serves as a timing and notice guideline for all parties. TitleMax filed its Petition for Judicial Review on or about September 8, 2016, and served the same upon the FID on or about September 13, 2016. However, the Motion for Partial Stay of Administrative Order was not filed until on or about September 28, 2016—twenty days *after* the PJR was filed. Therefore, the motion should be denied because TitleMax failed to comply with the strict requirements of NRS 233B.140.

In the event that the court contemplates staying the order, the court must consider the factors used when considering a preliminary injunction. NRS 233B.140. "A preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate and that the moving party has a reasonable likelihood of success on the merits." *Boulder Oaks Community Association v. B&J Andrews Enterprises*, LLC, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009). Courts should also weigh the potential hardships to the parties as well as the public interest.

University and Community College System of Nevada v. Nevadans for Sound Government, 120 Nev. 712, 721,100 P.3d 179, 187 (2004).

LEGAL ARGUMENT

I. The Motion for Partial Stay should be denied because there is not a likelihood that TitleMax will succeed on the merits.

NRS 233B.140 directs this court to give deference to the ALJ's Decision and to consider the risk and impact that a stay would have on the public. NRS 233B.140(3)(a)-(b). The ALJ's Decision "shall be deemed reasonable and lawful until reversed or set aside, [and] this court is not allowed to "substitute its judgment for that of the agency." NRS 233B.135(2) and (3). This court must also accept the ALJ's factual determinations unless they are proven to be "clearly erroneous or not supported by substantial evidence." *University and Community College System of Nevada*, at 721 and 187. Furthermore, TitleMax has the burden of proof to demonstrate that the final decision is invalid. NRS 233B.135(2).

This court must give deference to the ALJ's determination that the Grace Period Payment Deferment Agreement ("GPDA") offered by TitleMax "is an illegal extension of the loan in violation of NRS 604A.445(3)(c). TitleMax has failed to demonstrate that the ALJ's decision was clearly erroneous or not supported by substantial evidence. The record alone shows that there has been extensive pleadings and motions filed in this matter, all of which have been reviewed and addressed by the ALJ. Furthermore, the ALJ presided over the final hearing for this matter, which consisted of two and a half days of testimony and factual presentations. In fact, one of the FID's exhibit alone consisted of nearly 10,000 pages of factual evidence of the illegal GPDA offered by TitleMax. The FID provided experienced fact witnesses to testify as to both the factual findings and the application of the illegal GPDA. The ALJ not only considered all of the factual evidence presented by both sides, but also inquired of both sides as to its application.

a. The GPDA violates multiple sections of Chapter 604A and is an illegal lending product under the Chapter.

Pursuant to NRS 604A.445(3), a loan can be for a term of 210 days if it provides for payments in installments, the payments are calculated to ratably and fully amortize the entire amount of principle and interest payable on the loan, and the loan is not subject to any extension. This language is plain and unambiguous, and therefore, we cannot go beyond it to look for a different meaning. *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004).

TitleMax represents that it first enters into the original loan agreements with its customers.[10] Assuming that the original loan agreements comply with NRS 604A.445(3), they are no more than 210 days in duration, provide for installment payments, the payments are calculated to ratably and fully amortize the entire amount of principle and interest payable at the end of the 210 days and are not subject to any extension. NRS 604A.445(3). When TitleMax converts the original loan to a Grace Period Payments Deferment Agreement, TitleMax goes beyond the limits of NRS 604A.445(3).

First, the maximum 210 days is extended to a term approximately twice as long. *See* Exhibit "V" (showing 14 periods, or approximately 420 days, instead of 7 periods or 210 days); NRS 604A.445(3). The term "extension" is defined as "any extension or rollover of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, regardless of the name given to the extension

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[10] "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. *See* Exemplar Loan Agreement, attached hereto as Exhibit "V" (original in all capital letters).

or rollover."[11] NRS 604A.065(1). The facts show that the date on which the loan was required to be paid is extended.

Second, the payments do not "ratably and fully" amortize the entire amount of the original loan because the interest is applied to the entire principle for the first seven periods, and no principle is paid until the eighth period.[12] *See* Exhibit "V" (The last seven payments are in the amount of $828.57. Multiplying $828.57 x 7 = $5,799.99 or $5,800.00, which is the amount financed. The first seven payments are in the amount of $637.42, which is approximately the product of $5,800.00 x .1099 (which is the product of .003663 (daily rate) x 30.00224 days)); Black's Law Dictionary, 83 (7th Ed. 1999) (defining "amortization" as "the act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due."); NRS 604A.445(3).

Third, the payments do not constitute installment payments because they are not equal.[13] Black's Law Dictionary, 799 (6th Ed. 1990) (defining "installment loan" as "[a]

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[11] The term "extension" is defined as "[a]n agreement between a debtor and his creditors, by which they allow him further time for the payment of his liabilities." Black's Law Dictionary, 583 (6th Ed. 1990). An extension "[t]akes place when parties agree upon valuable consideration for maturity of debt on day subsequent to that provided in original contract." Black's Law Dictionary, 583 (6th Ed. 1990) (citation omitted). "Rolling over" is defined as, "Banking term for extension or renewal of short term loan from one loan period (*e.g.* 90 day) to another." Black's Law Dictionary, 1330 (6th Ed. 1990).

[12] In the Grace Period Payments Deferment Agreements, TitleMax admits that the loans are not fully amortized because the first seven payments are interest only and are less than the last seven payments. (*Exhibit V*). In addition, the first seven payments are the product of the daily rate of interest multiplied by the entire principle. *Id.* In a typical loan, the portion of the payment that goes towards principle increases each month as the portion that goes towards interest decreases each month. Therefore, unlike the typical loan, the first seven payments of the Grace Period Payments Deferment Agreement include additional interest because the interest is consistently calculated on the entire outstanding principle. Black's Law Dictionary, 83 (7th Ed. 1999) (defining "amortization" as "the act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due.").

[13] As previously explained, the first seven payments are less than the last seven payments.

loan made to be repaid in specified, usually equal, amounts over a certain number of months."(emphasis added)); NRS 604A.445(3).

Therefore, the GPDA's do not comply with NRS 604A.445 and are not a statutorily authorized loan product.

In addition, the GPDAs do not comply with NRS 604A.210 or NRS 604A.070. NRS 604A.070 defines "grace period" as "any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210." (emphasis added). "Deferment" is defined as "A postponement or extension to a later time . . .." Black's Law Dictionary, 421 (6th Ed. 1990). "Defer" is defined as "[d]elay; put off; . . . postpone to a future time." *Id.* "Deferred payment" is defined as "[p]ayments of principal or interest postponed to a future time . . .." *Id.* 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.

(emphasis added). TitleMax cannot charge any fees for granting a grace period or any additional fees or additional interest on the outstanding loan during a grace period. *Id.* In this case, the outstanding loan would be the original loan, a closed ended loan limited in duration to 210 days, and any interest above and beyond that which could have been charged and collected during the 210 days of the original loan would constitute the prohibited additional interest or any fees or any additional fees. *Id.* This language is plain and unambiguous, and therefore we cannot go beyond the plain language to search for another meaning. *See City of North Las Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("'When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning.'"); *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004); *Cleghorn v. Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). Because TitleMax is

charging more interest than that which could have been collected during the 210 day loan, it is charging additional interest or additional fees in violation of 604A.210(1-2). *See* Exhibit "V."

The plain meaning of the statutes is that no fee can be charged for granting a grace period and no interest in addition to that which can be charged during the 210 day loan can be charged. Legislative history should not be used to create an ambiguity, as TitleMax attempts to do, but rather it should be used to resolve an ambiguity.[14]

TitleMax represents in a conclusory fashion that it offers each borrower under the installment loan a grace period of deferment gratuitously. "Gratuitously" is defined as, "Given or received without cost or obligation: FREE." Webster's II New College Dictionary, 487 (1999). Contrary to NRS 604A.210's prohibition against charging additional interest or fees, TitleMax's own documents show that it charges additional interest or fees during the first seven months as explained above. In addition, the Grace Period Payments Deferment Agreements state that interest is charged on any outstanding portion of the principle until the principal is paid. *See* Exhibit "V". Therefore, according to the agreement, interest can also be charged during the last seven months as the principle is being paid down, as well as the first seven months. *Id.* Either way, this is not a gratuitous deferment and does not comply with NRS 604A.070.

The GPDAs are longer than 210 days and extend the term of the loan beyond the statutory limitation and do not provide for installment payments and do not ratably and fully amortize[15] the amount of the original loan. The amount of the loan increases and the amount of interest charged increases. *See* Exhibit "V." In addition, money is owed in every period, and therefore there is no grace period. *Id.* Though TitleMax agrees that more interest is charged under the GPDA than would be charged under the 210

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[14] "Legislative history ... is meant to clear up ambiguity, not create it." *Milner v. Dep't of Navy*, —— U.S. ——, 131 S.Ct. 1259, 1267, 179 L.Ed.2d 268 (2011).

[15] "An 'amortization plan' for the payment of an indebtedness is one where there are partial payments of the principal, and accrued interest, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished." Black's Law Dictionary, 83 (6th Ed. 1990).

day loan, TitleMax does not agree that the amount of the loan is not ratably and fully amortized, does not agree that the loan is extended and does not agree that there is no grace period or that there is no gratuitous deferment. Applying the facts to the statutes, FIDs interpretations are correct and the violations noted in the exam reports should be upheld. NRS 604A.445; NRS 604A.210; NRS 604A.070.

Because the loan is intended to be closed ended with a maximum term of 210 days (seven months), TitleMax can only offer a 210 day (seven month) loan that is ratably and fully amortized. By collecting 210 days (seven months) of interest on the entire principle before any principle payments are made, and then collecting principle for seven (7) more months, TitleMax is collecting fees or additional interest in violation of NRS 604A.210, has nearly doubled the duration of the loan and extended the loan in violation of NRS 604A.445(3), is not ratably and fully amortizing the amount of the loan in violation of NRS 604A.445(3), and is not offering a grace period, *i.e.* gratuitous deferment, in violation of NRS 604A.210 and NRS 604A.070.

b. <u>The ALJ's finding of willfulness is supported by substantial evidence.</u>

After hearing extensive testimony from both parties for two and a half days, and after considering the complete record, the ALJ rightfully determined that the GPDA product as offered by TitleMax was not only a violation of NRS 604A.445 and NRS 604A.210, but also a *willful* violation as defined in NRS 604A.900. "A willfulness determination is a fact-sensitive inquiry, [and] an administrative fact-based determination is entitled to a deferential standard of review." *Century Steel v. State, Division of Industrial Relations*, 122 Nev. 584, 589, 137 P.3d 1155, 1159 (2006). An agency's findings in cases involving both law and fact are entitled to deference and should not be disturbed by the court if supported by substantial evidence. *State Industrial Insurance System v. Khweiss*, 108 Nev. 123, 126, 825 P.2d 218, 220 (1992). If the agency's finding of willfulness is based on substantial evidence, the court's review should go no further. *Garman v. State Employment*, 102 Nev. 563, 565, 729 P.2d 1335, 1336 (1986). Repeated violations is the most common way to prove willfulness, and

agencies can prove willfulness by demonstrating that a "licensee repeatedly violated regulations despite knowledge of them and repeated warnings." *Borgelt v. Bureau of Alcohol, Tobacco and Firearms*, 2009 WL 3149436 at 4. A licensee commits a willful violation when it acts with "either intentional disregard of or plain indifference" to statutes and requirements. *Century Steel,* at 593 and 1161(upholding a finding of willfulness for violations cited during an examination of an employer for failing to correct the same, non-compliant issues). Plain indifference may also be demonstrated through repeat violations, and a licensee that has knowledge of statutory requirements coupled with repeat violations "permit a court to infer that the licensee was plainly indifferent, and thus acted willfully." *Champion Arms, LLC v. Van Haelst,* 2012 WL 4511393 at 5.

The FID provided countless factual testimony and substantial evidence that TitleMax was repeatedly notified that the illegal GPDA was in violation of NRS 604A.445 and NRS 604A.210. Despite having notice and knowledge of the FID's determination that the product was illegal, TitleMax proceeded with blatant and reckless disregard of the Division's determination and continued offering the illegal product to customers. It is also important to note that while TitleMax argues that there is no direction or advisory opinion regarding the matter, TitleMax never once requested an advisory opinion from the FID, and it intentionally disregarded all guidance the FID provided to it regarding the illegal GPDA. In fact, during informal meetings and conferences with TitleMax and prior to filing the instant action, the FID notified TitleMax that the GPDA violated Chapter 604A. Nonetheless, TitleMax deliberately and willfully disregarded the FID's direction, and continued to offer the illegal product.

The ALJ properly found that substantial evidence was presented to warrant a finding of willfulness. A licensee commits a willful violation when it "understands the requirements of the law, but knowingly fails to follow them or was indifferent to them." *Perri v. Department of Treasure*, 637 F.2d 1332, 1336 (9th Cir. 1981) (concluding that the licensee understood the statutory requirements based on his testimony); *See also*

Cucchiara v. Secretary of Treasury, 652 F.2d 28, 30 (9th Cir. 1981) (finding an understanding of the requirements of the law for willfulness based on notification of hundreds of violations and warning that future violations may be considered willful). Similarly, on direct examination, TitleMax's representative read applicable portions of NRS 604A and testified that he understood what was required by the statutes. Despite admitting to understand the statutory requirements, TitleMax knowingly and intentionally failed to comply with Chapter 604A by continuing to offer the illegal GPDA. TitleMax's representative further testified that although he understood the statutory requirements, TitleMax intentionally disregarded the FID's interpretation of the statutes simply because it disagreed with the FID.

Even after hearing the factual testimony regarding the willfulness of the violation, the ALJ instructed both parties to brief the issue of willfulness. It was only after hearing the testimony of all parties and considering the briefs presented by both sides did the ALJ determine that there was substantial factual evidence to support a finding of willfulness. As such, the ALJ's finding of willfulness was based on factual, substantial evidence and was not erroneous, and it must be given deference.

Because the ALJ's findings of facts were based on substantial evidence, the final decision must be given deference, and therefore, there is not a likelihood that TitleMax will succeed on the merits. Accordingly, the Motion for Partial Stay of the Administrative Order must be denied.

c. The ALJ has the authority to void all loans with the illegal GPDA issued by TitleMax after December 18, 2014, because any such loans were in willful violation of NRS 604A.445 and NRS 604A.210.

Despite TitleMax's arguments to the contrary, the ALJ is authorized to void any loans that are found to be in willful violation of Chapter 604A. NRS 604A.900(1) provides:

. . .

. . .

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.

As discussed herein, substantial evidence supports the ALJ's finding of willful violations by TitleMax's calculated and intentional decision to offer the illegal GPDA despite the FID's direction and insistence for it to stop doing so. Additionally, the FID made all loans with the illegal GPDA at issue in the case and requested that the ALJ take the necessary and appropriate action to void the loans pursuant to NRS 604A.900. *See* footnote 1. The violations presented during the final hearing were those based on the small sample that were reviewed as a part of the FID's examination of TitleMax in May 2015. Regardless, the record is clear that TitleMax's own corporate representative testified during the final hearing that the *exact same* GPDA was offered for *all* of the loans, and the terms and application of the GPDA was the same on *all* of the loans. As such, if the ALJ determined that the illegal GPDA was an intentional violation of Chapter 604A, the same exact intentional violation would exist for any other loans for which a GPDA existed.

d. The FID did not engage in ad hoc rule making.

An agency engages in rulemaking when it "promulgates, amends, or repeals '[a]n agency rule, standard, directive[,] or statement of general applicability which effectuates or interprets law or policy.'" *Labor Comm'r v. Littlefield,* 123 Nev. 35, 39-40, 153 P.3d 26, 29 (2007). (alteration in original) (quoting NRS 233B.038(1)(a). The interpretation of an agency authorized to administer a statute must be given deference.

See. Pyramid Lake Paiute Tribe of Indians v. Washoe County, 112 Nev. 743, 747-748, 918 P.2d 697, 700 (1996). "An agency charged with the duty of administrating an act is impliedly clothed with power to construe it as a necessary precedent to administrative action." *State v. State Engineer,* 104 Nev. 709, 713, 766 P.2d 263, 266 (1988) (citations omitted). "Great deference should be given to the [administrative] agency's interpretation when it is within the language of the statute." *Id.* (citations omitted).

The FID is the agency authorized to regulate and administer NRS Chapter 604A and NAC 604A. As such, the FID did not engage in ad hoc rule making by determining that the GPDA was an illegal product in violation of Chapter 604A, but rather it simply enforced and regulated Chapter 604A. The findings of the FID examiners, related to the violations, are supported by substantial evidence and therefore are afforded deference. NRS 233B.135; *United Exposition Services, Co. v. State Industrial Insurance System,* 109 Nev. 421, 423, 851 P.2d 423, 424 (1993) ("It is well recognized that this court, in reviewing an administrative agency decision, will not substitute its judgment of the evidence for that of the administrative agency." (citation omitted)). Because the statutes are plain and unambiguous, the FIDs interpretation of its statutes must be upheld. *City of North Las Vegas v. Warburton,* 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("'When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning.'"); *Dept. of Taxation v. Chrysler Group LLC,* 300 P.3d 713, 717 (Nev. 2013) (expressing that formal rule making is not necessary when acting in accordance with the applicable statutes).

II. <u>TitleMax will not suffer an irreparable harm or serious injury to justify a stay.</u>

The court cannot grant a stay without a showing of irreparable harm, and the failure to demonstrate such harm is sufficient justification to deny a stay. *Granite Gaming Group I, LLC v. Fremont Street Experience,* 2016 WL 1461837 (unpublished); *Los Angeles Memorial Coliseum Commission v. National Football League,* 634 F.2d 1197, 1201(9th Cir. 1980). Additionally, "monetary injury is not normally considered

irreparable." *Los Angeles Memorial Coliseum Commission,* 634 F.2d 1202). The United States Supreme Court has held that,

> [T]he temporary loss of income, ultimately to be recovered, does not usually constitue irreparable injury [. . .] 'The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended [. . .] are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.'

Id. quoting Sampson v. Murray, 415 U.S. 61, 88, 94 S.Ct. 937, 951, 39 L.Ed.2d 166 (1974).

TitleMax has failed to present any justification that it cannot comply with the ALJ's Decision. The mere fact that TitleMax has (120) days to comply with the Order is sufficient evidence that there is more than ample time for TitleMax to begin its manual review, and as such, a stay of the accounting and review of the files is not necessary.

During discussions with the FID and in its motion, TitleMax alleged and inferred that the manual review of the applicable files will take longer than the time allowed by the ALJ's order and may cause TitleMax to incur additional expenses. Even substantial litigation expenses and time consuming litigation endeavors are neither irreparable nor serious, and are therefore, insufficient grounds for granting a stay. "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough' to demonstrate a showing of irreparable harm." *Hansen v. Eighth Judicial District Court,* 116 Nev. 650, 598, 6 P.3d 982 987 (2000) *(quoting Wisconsin Gas Co. v. FERC* 758 F.2d 669, 674 (D.C.Cir. 1985).

Furthermore, TitleMax must show that irreparable injury is likely to occur without a stay, and "not merely that it is possible." *Arc of California v. Douglas,* 757 F.3d 975, 990 (9th Cir. 2014). "Speculative injury does not constitute irreparable injury sufficient to warrant [issuance of a stay]. A person must do more than merely allege imminent harm, [. . . and] a plaintiff must demonstrate immediate threatened injury." *Boardman v. Pacific Seafood Group,* 822 F.3d 1011, 1022 (9th Cir. 2016) (*quoting*

Caribbean Marine Services Company, Inc. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988)(citations omitted). TitleMax failed to provide any statements as to the efforts that it has already made as well as any good faith attempts to begin the manual review process. TitleMax also failed to provide any indication as to how many files, if any, have already been reviewed in efforts to comply with the Order in good faith. Even more, TitleMax created its current exigency by failing to notify either the ALJ or the FID about the alleged manual review until over a month after the ALJ's Decision was issued and despite having ample notice throughout the course of the proceeding that the FID would seek a full accounting of all loans with the illegal GPDA product.[16]

Additionally, irreparable harm is such harm for which compensatory damages is an inadequate remedy. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029(1987) (finding irreparable harm in the loss of real property rights); *See also Leonard v. Stoebling*, 102 Nev. 543, 728 P.2d 1358 (1986). Here, TitleMax argues that it will suffer irreparable harm if it is required to return the principal and interest as ordered by the ALJ. However, TitleMax's interest is merely a financial loss and compensatory damages is an adequate and available remedy, and therefore, TitleMax cannot show an irreparable harm.

TitleMax is attempting to creat the alleged exigency by having failed to immediately disclose how much time would be needed in the event that it was required

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[16] The FID's complaint requested among other things that the "willful violations [of offering the GPPDA] result in a finding that the loans are VOID pursuant to NRS 604A.900. *See* page 13 of the Complaint, attached hereto as Exhibit "N," excluding exhibits. The FID's Pre-Hearing Brief requested a "full accounting of each Grace Period Payment Deferment Agreement and the amount of principal and interest returned to each borrower relative to each such agreement." See page 16 of the Pre-Hearing Brief, excluding exhibits, attached hereto as Exhibit "T." In both the FID's opening and closing statements, the FID requested that TitleMax provide a full accounting of all of the illegal GPPDA products that were offered to customers and that the amount of principal and interest be returned to customers. *See* page 23, lines 11-25 of the transcript of proceedings on July 18, 2016, and page 666, lines 9-24 of the transcript of proceedings on July 20, 2016, attached hereto as Exhibit "F." Therefore, TitleMax was well aware of the potential of having to provide a full accounting of all loans with the illegal GPDA.

to provide the full accounting for all of the loans with the illegal GPDA and to return the principal and interest to all customers affected by the illegal product.

III. If the court grants a partial stay, security is mandatory prior to the issuance of the stay.

Even if the court disagrees with the FID that a stay is not warranted, TitleMax "*must* provide security before the court may issue a stay." NRS 233B.140(3). Posting a bond helps to protect the prevailing party from the potential risks of uncollectable judgments. *N.L.R.B. v. Westphal,* 859 F.2d 818, 819 (9th Cir. 1988).

This court may order the posting of alternate security and allow other forms of judgment guarantees in lieu of a bond. *Townsend v. Holman Consulting Corporation,* 929 F.3d 1358, 1367 (9th Circ. 1991); *International Telemeter Corporation v. Hamlin International Corporation,* 754 F.2d 1492, 1495 (9th Cir. 1985). Although not binding upon this court, multiple courts in the Ninth Circuit have issued unpublished rulings awarding alternate forms of security. *See Sibia Neurosciences, Inc. v. Cadus Pharmaceutical Corporation,* 1999 WL 33554683 (ordering petitioner to deposit $18,500,000.00 into an escrow account to cover the full cost of the judgment during the pendency of the stay and appeal); *Nam Soon Jeon v. 445Seaside, Inc.,* 2014WL 769774 (considering, among other factors, evidence of bad faith and vexatious conduct when determining whether to require an alternate form of security); *FINOVA Capital Corporation v. Richard A. Arledge, Inc.,* 2008 WL 828504 (awarding alternate security when considering a stay of a monetary judgment and in efforts to preserve the status quo).

As stated herein, there is no justifiable reason why TitleMax cannot timely provide a full accounting of all of the loans which contain an illegal GPDA. However, in the event that a partial stay is granted and TitleMax is provided even more time to prepare the accounting, the FID requests that TitleMax place the full estimated amount of the principal and interest which is to be returned into an interest bearing escrow account. There is no risk to TitleMax if the funds are placed into an escrow account, and

TitleMax will even earn interest on the money in the unlikely event that it prevails. However, if the court or TitleMax opposes utilizing an escrow account, the funds can be deposited with the court pursuant to NRCP 67.

Nonetheless, this court must also consider the public interest which is at risk if a stay is granted. *Arc of California,* 757 F.3d 991. It is necessary that the court considers the public interest because the impact of the stay goes beyond the parties to this matter and carries significant public consequences. *Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1023 (9th Cir. 2016). There is a dire risk that the harmed consumers who entered into these illegal GPDA's will continue to suffer harm as they will not receive the money that is due to them according to the ALJ's Decision until the conclusion of the appeal. Additionally, if the total estimated amount is not deposited, the consumers could risk not receiving the returned principal and interest, or receiving less than the full amount to which they are entitled. As stated herein, the FID does not have reasonable assurance that TitleMax will satisfy payment of principal and interest to the consumers for various reasons, including the consent order entered into with the CFPB imposing a $9,000,000.00 fine, the fact that money from Nevada loans is transferred to its parent company showing undercapitalization and meager liquid assets, and TitleMax's repeated failure to act in good faith. All of these issues, coupled with the substantial amount of the principal and interest due create reasonable and justifiable concerns for the FID that TitleMax may not be able to satisfy the payments to the consumers.

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CONCLUSION

For the foregoing reasons, the Motion for Partial Stay of Administrative Order should be denied, or in the alternative, the full accounting of all loans with the illegal GPDA should be provided, and the estimated amount of the principal and interest due to consumers should be set aside as security either in an interest bearing escrow account or deposited with the court.

ADAM PAUL LAXALT
Attorney General

By: /s/ Vivienne Rakowsky
David J. Pope (Bar No. 8617)
Senior Deputy Attorney General
Vivienne Rakowsky (Bar No. 9160)
Deputy Attorney General
Rickisha Hightower-Singletary (Bar No. 14019C)
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on October 5, 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

EXHIBIT “A”

EXHIBIT “A”

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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

MOTION TO VACATE ORDER SHORTENING TIME[1]

Respondent, State of Nevada, ex rel. it's Department of Business and Industry, Financial Institutions FID (hereinafter "FID"), by and through its counsel Adam Paul Laxalt, Attorney General, David Pope, Senior Deputy Attorney General, Vivienne Rakowsky, Deputy Attorney General, and Rickisha Hightower-Singletary, Deputy Attorney General, and hereby submits its Motion to Vacate Order Shortening Time.

[1] The Opposition to Partial Motion to Stay will follow separately.

This Motion is filed and based on all pleadings and papers on file herein, the pleadings and papers incorporated by reference, and any additional evidence and oral argument that this Court may allow at the time of the hearing in this matter.

1. The Administrative Law Judge's Findings of Fact, Conclusions of Law, and Order in this matter was issued on August 12, 2016. Said Order provides TitleMax (120) days from the date of the Order to "conduct a full accounting of and return all principal and interest it has collected under every GPPDA entered into after December 18, 2014." A copy of the ALJ's Order is attached hereto as Exhibit "A."

2. One month after being served with the ALJ's Order, TitleMax complained that it must manually review 11,651 files in efforts to determine if certain loans have a GPPDA. However, TitleMax fails to provide any statements as to the efforts that it has made as well as any good faith attempts to comply with the August 12, 2016 Order. TitleMax also fails to provide any indication as to how many files, if any, have already been reviewed in efforts to comply with the Order in good faith. Even more, TitleMax created its current exigency by failing to notify either the ALJ or the FID about the alleged manual review until over a month after the ALJ's Order and despite having ample notice throughout the course of the proceeding that the FID would seek a full accounting of all loans with the illegal GPPDA product[2].

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[2] The FID's complaint requested among other things that the "willful violations [of offering the GPPDA] result in a finding that the loans are VOID pursuant to NRS 604A.900. *See* page 13 of the Complaint, attached hereto as Exhibit "B," excluding exhibits. The FID's Pre-Hearing Brief requested a "full accounting of each Grace Period Payment Deferment Agreement and the amount of principal and interest returned to each borrower relative to each such agreement." See page 16 of the Pre-Hearing Brief, excluding exhibits, attached hereto as Exhibit "C." In both the FID's opening and closing statements, the FID requested that TitleMax provide a full accounting of all of the illegal GPPDA products that were offered to customers and that the amount of principal and interest be returned to customers. *See* page 23, lines 11-25 of the transcript of proceedings on July 18, 2016, and page 666, lines 9-24 of the transcript of proceedings on July 20, 2016, attached hereto as Exhibit "D." Therefore, TitleMax was well aware of the potential of having to provide a full accounting of all loans with the illegal GPPDA.

3. On September 28, 2016, TitleMax filed an Ex Parte Application for Order Shortening Time pursuant to EDCR 2.26. However, TitleMax failed to demonstrate "circumstances claimed to constitute good cause and justify shortening of time" as required by the Rule.[3]

4. TitleMax only alleges that it must manually review 11,651 files. TitleMax further infers that it will cost additional time, labor, and possibly expense to complete the manual review. However, the expense and time to review the files is not a legally sufficient reason to grant a stay. *Hansen v. Eight Judicial District Court ex rel. County of Clark,* 116 Nev. 650, 658, 6 P.3d 982, 987 (2000) (holding that even time consuming matters and substantial litigation expenses are neither irreparable or serious, and are therefore, insufficient reasons to justify a stay).

5. The mere fact that TitleMax has (120) days to comply with the Order is sufficient evidence that there is more than ample time for TitleMax to begin its manual review. TitleMax has failed to present any justification that it cannot comply with the Order, it only assumes that it cannot do so.

6. The FID even attempted to assist TitleMax and facilitate compliance with the ALJ's Order by requesting specific information for all of the applicable files and loans which are subject to the Order as evidenced by the FID's August 18, 2016, correspondence to TitleMax, which is attached hereto as Exhibit "E." The FID provided the correspondence because TitleMax was ordered to provide the accounting under the direction of the FID, and because the FID will also need ample time to verify the accounting information before the (120) days expires. It is important to note that TitleMax did not seek an extension from the FID until the week before the information was due.

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[3] Good cause includes a legally sufficient reason why the action requested should be granted or excused. See generally Black's Law Dictionary, 7th ed. abridged, p. 174.

7. TitleMax attempts to mislead the Court by stating that the FID refused any extension to provide the requested information, when in fact, the FID provided *two* extensions to provide the information. Specifically, the FID extended the deadline to provide the loan information for the loans which were opened in the new TLX system until the close of business on September 30, 2016 (which was the extension date requested by TitleMax during a telephone conference on September 8, 2016). The FID displayed additional good faith and reasonableness to TitleMax by further extending the deadline to provide loan information for the loans that were in the old system until the close of business on October 31, 2016. TitleMax intentionally fails to notify the Court of these extensions. A copy of the FID's correspondence providing said extensions is attached hereto (excluding attachments) as Exhibit "F."

8. TitleMax also agreed to provide the undersigned with a list of all of the information that could be obtained within the deadline via email. However, to date, no such information has been provided. (See Exhibit "F")

9. TitleMax alleges that it has complied with all other portions of the ALJ's Order, however, TitleMax did not timely pay the fine as ordered by the ALJ. The fine payment was received after the deadline imposed by the ALJ. The delay and untimeliness for such a simple matter demonstrates TitleMax's complete disregard for the ALJ's order, and its delay should not be rewarded with additional time.

10. Furthermore, TitleMax failed to provide the FID with a courtesy copy of the Ex Parte Application for Order Shortening Time at the time that it was submitted to the Court. The application is dated September 28, 2016. However, the FID did not receive notice of the application until *Friday, September 30, 2016,* through the court's notification system. At minimum, TitleMax should have extended a professional courtesy to the FID to provide ample and adequate notice of the application. Even worse, the Order Shortening Time requires the FID to file its written opposition brief by October 5, 2016, which only provides the FID (3)

business days to respond to TitleMax's (31) page motion. TitleMax's failure to comply with the jurisdictional requirement of NRS 233B.140(1) by not moving for a stay at the time that the petition for judicial review is filed should not be used to create an exigency for the FID. Such short notice is prejudicial to the FID because it deprives the FID of the opportunity to properly and adequately respond to the motion.

11. On September 30, 2016, TitleMax forwarded documents for the FID to review in efforts to comply with the September 30, 2016, extension agreed to by the parties. However, FID's counsel was not able to access the documents and did not receive the documents in another format until Monday, October 3, 2016. Upon opening the documents for an initial review, it is clear that TitleMax has once again failed to comply with the ALJ's Order and the agreed upon extension because the spreadsheet provided fails to state whether or not the loans have a GPPDA. As such, the spreadsheet of information is absolutely meaningless and appears to be nothing more than a bad faith effort and delay tactic by TitleMax.

12. At this time there is no emergency to warrant an Order Shortening Time. With more than two months until the refund is due, there is no reason to hear TitleMax's Motion to Stay on an Order Shortening Time or that TitleMax cannot comply with the ALJ's Order.

For the foregoing reasons, the FID requests that this Court vacate the Order Shortening Time, cancel the October 12, 2016, hearing, and require TitleMax to comply with the ALJ's Order, or in the alternative, to continue the deadline for filing an opposition brief to the Motion for Partial Stay and continue the October 12, 2016, hearing to allow the FID sufficient time to properly and adequately respond to the motion.

ADAM PAUL LAXALT
Attorney General

By: */s/ Rickisha Hightower-Singletary*
Signing Attorney's Name (Bar. No. 14019C)
Deputy Attorney General

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

EXHIBIT "A"

EXHIBIT "A"

BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY

LAS VEGAS, NEVADA

IN THE MATTER OF: FINANCIAL INSTITUTIONS DIVISION, Claimants, v. TITLEMAX OF NEVADA, INC. AND TITLEBUCKS D/B/A TITLEMAX, Respondents.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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

I. PROCEDURAL BACKGROUND

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

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

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

November 5, 2015.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Documents Admitted was issued.[1]

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

II. FINDINGS OF FACT

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

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

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

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[1] At the hearing, TitleMax moved for the admission of proposed Exhibit 104, a summary of errors contained in FID's Summaries of Exhibit A document. FID opposed the admission of TitleMax's proposed Exhibit 104, contending that it was filed untimely and did not contain any relevant or material information. FID 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.

[2] FID Ex. B (00008565-00008581).

[3] FID Ex. B (00008577).

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

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

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

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

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[4] FID Ex. B (00008574-00008577).
[5] FID Ex. B (00008580).
[6] FID Ex. B (00008573).
[7] TitleMax Ex. 85 (TMX 85-00001-00012).
[8] TitleMax Ex. 86 (TMX 86-00001-00003).
[9] TitleMax Ex. 86 (TMX 86-00003).
[10] TitleMax Ex. 86 (TMX 86-00003).
[11] FID Ex. C (00008582-00008594).
[12] FID Ex. C (00008591).
[13] FID Ex. C (00008588).
[14] FID Ex. C (00008588).
[15] FID Ex. C (00008588).

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

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

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

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

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

A. <u>Findings of Fact Particular to the Issues Presented by the GPPDA</u>

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

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

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[16] TitleMax Ex. 98 (TMX 98-00001-00004).
[17] TitleMax Ex. 98 (TMX 98-00001-00004).
[18] TitleMax Ex. 91 (TMX 91-001-003).
[19] TitleMax Ex. 91 (TMX 91-001-003).

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

FID admits that the Title Loan Agreement complies with Nevada law.[24]

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

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

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[20] TitleMax Ex. 91 (TMX 91-001-003).
[21] *See, for example*, FID Ex. A-1 (000003).
[22] *Id.*
[23] *Id.*
[24] TitleMax Ex. 102, p. 3 ¶ 17.
[25] *See, for example*, FID Ex. A-1 (000016-000017).
[26] *Id.*

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

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

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

III. CONCLUSIONS OF LAW

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

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[27] FID Ex. A-4 (000083-000087).
[28] FID Ex. A-4 (000084).
[29] FID Ex. A-4 000084).
[30] FID Ex. A-4 (000090-000093).
[31] FID Ex. A-4 (000091).
[32] FID Ex. A-4 (000091).
[33] FID Ex. A-4 (000083-000093).

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

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

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[34] **NRS 604A.445 Title loans: Restrictions on duration of loan and periods of extension.** Notwithstanding any other provision of this chapter to the contrary:

1. The original term of a title loan must not exceed 30 days.
2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:

(a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

(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.

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

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

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

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

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[35] **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.
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.

[36] **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.

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

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

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

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

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[37] **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.

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

According to TitleMax, though it stands to earn a greater amount of money in interest charges under the GPPDA than it did under the Title Loan Agreement, that does not constitute the collection of "additional interest on the outstanding balance during the grace period" in violation of NRS 604A.210(2) because it charges and collects all of the interest on the outstanding principal during the first seven payments—which it contends are not part of the grace period. However, if the first seven payments are not part of the grace period added by amendment, then they must be terms from the original Title Loan 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.

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

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

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[38] The number and amount of payments that the customer has already made at the time the parties enter into the GPPDA is highly relevant to this calculation. If the customer has made payments under the original 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.

[39] 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.

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

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

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

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[40] The term "guaranty" is defined as "[a] promise to answer for the payment of some debt, or the 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).

[41] NRS 604A.455(2).

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

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

IV. DISCIPLINE AND PENALTIES

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

FID requests an order requiring TitleMax to conduct a full accounting of and return all principal and interest it has collected under every GPPDA it has ever entered into. NRS 604A.900(1)(c) states, "[I]f a licensee willfully: [. . .] [c]ommits 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."[43] FID contends that

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[42] NRS 604A.450(2) prohibits licensees from making title loans "without regard to the ability of the customer seeking the title loan to repay the loan, including the customer's current and expected income, 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.

[43] **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:

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

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

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

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

(a) A licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably 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.

V. ORDER

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

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

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

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

Dated this 12th day of August, 2016.

/s/ Denise S. McKay
Denise S. McKay
Administrative Law Judge
State of Nevada

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, 2nd Floor
Las Vegas, NV 89134

certified#7012 1010 0000 1182 0923
email: PReilly@hollandhart.com
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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 12th day of August, 2016.

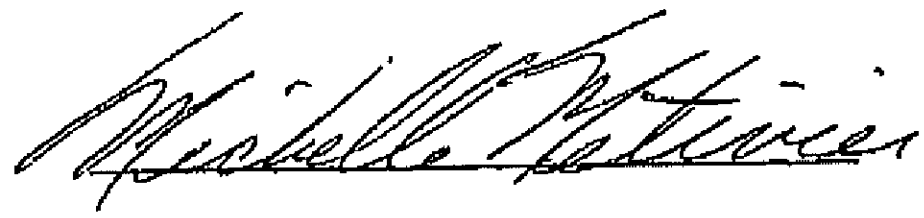

EXHIBIT "B"

EXHIBIT "B"

ADAM PAUL LAXALT
Attorney General
DAVID POPE
Senior Deputy Attorney General
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BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION

* * *

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

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

ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION

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

JURISDICTION

1. Pursuant to Nevada Revised Statutes (NRS) Chapter 604A, the Division is vested with the exclusive and original jurisdiction over the regulation, business practices, licensing, examinations, and disciplinary action related to deferred deposit lending, high-interest lending, title lending, and check cashing services in Nevada.

2. TITLEMAX is now, and was at all pertinent times alleged herein, licensed in Nevada by the Division as a deferred deposit lender, and / or a high-interest lender, and / or a title lender, and / or a check cashing service, pursuant to NRS Chapter 604A.

3. As the holder of a Chapter 604A license, TITLEMAX is subject to the provisions of NRS Chapter 604A and Nevada Administrative Code (NAC) Chapter 604A.

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

FACTUAL ALLEGATIONS

GENERAL FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

FACTS REGARDING TITLEMAX'S UNLAWFUL GRACE PERIOD AMENDMENT

16. Pursuant to the TITLEMAX'S original Title Loan Agreement (Loan), the customer makes seven fully amortized installment payments within 210 days to pay the loan off without a balloon payment at the end of the loan.

17. The Division has concluded that the Loan complies with NRS 604A.445(3)(a)-(d).

18. During the 2014 and 2015 Examinations, the Division's examiners observed TITLEMAX employees routinely offer customers an amendment to the Loan called the "Grace Period Payments Deferment Agreement" (Grace Period Amendment).

19. The text of the Grace Period Amendment provides in pertinent part:

> "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 train and arbitration provision remain in full force and effect."

20. As a business pattern and practice, TITLEMAX employees offer the Grace Period Amendment prior to the customer's default on the Loan.

21. Customers are lured into the Grace Period Amendment because it typically decreases their initial payments.

22. Payments are not fully amortized under Grace Period Amendment.

23. TITLEMAX charges customers more money under the Grace Period Amendment than it does under the Loan.

24. The Grace Period Amendment schedules 14 monthly payments within 390 days.

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25. Documents from the 2015 Examination show that TITLEMAX charges customers more money under the Grace Period Amendment than under the Loan.[1, 2]

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 TITLMAX 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.

---

[1] This Table summarizes four of TITLEMAX'S loans examined during the 2015 Examination whereby each customer has already paid the unlawful overage amount.

[2] **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 the exhibits.

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31. Further, assuming that the average overage amount charged by TITLEMAX under each Grace Period Amendment is $1,288.09 (determined by averaging the unlawful charges from paragraph 25), then TITLEMAX unlawfully charged Nevada customers approximately $7,908,872.60 during the period covered by the 2015 Examination.

32. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX charged customers more money under the Grace Period Amendment.

33. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX charged customers more money under the Grace Periods Amendment, after the Division rated TITLEMAX "Needs Improvement" in the 2014 examination.

34. NRS 604A.070 provides in full as follows:

> **NRS 604A.070 "Grace period" defined.**
> 1. "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.

35. NRS 604A.210 provides in full as follows:

> **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:**
> **2. Any fees for granting such a grace period; or**
> **Any additional fees or additional interest on the outstanding loan during such a grace period.**
> (Emphasis added.)

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36. NRS 604A.445(3) provides in full 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.
>
> (Emphasis added.)

37. TITLEMAX, through its Grace Period Amendment, charges additional fees and / or additional interest during grace periods.

38. TITLEMAX, through its Grace Period Amendment, makes title loans that last up to *390 days*, which exceeds the maximum original term of *210 days* allowed pursuant to NRS 604A.445(3).

39. TITLEMAX, through its Grace Period Amendment, makes title loans whereby payments are not fully amortized.

40. TITLEMAX, through its Grace Period Amendment, makes title loans that require one or more balloon payments.

41. TITLEMAX'S repeated violations were without any attempt to correct the deficiencies, and thus the repeated violations were willful, and / or intentional, and / or without any 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.

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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.

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49. The term "guarantor" is not defined in NRS Chapter 604A or NAC 604A.

50. A guarantor is "One who makes a guaranty or gives security for a debt." BLACK'S LAW DICTIONARY 711 (7th ed. 1999).

51. A guaranty is "A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another who is liable in the first instance." BLACK'S LAW DICTIONARY 712 (7th ed. 1999).

52. A title loan requires the *customer* to secure the loan. NRS 604A.105(1)(b).

53. A title loan requires that the *customer* give possession of the *title to a vehicle legally owned by the customer* to the licensee. NRS 604A.105(1)(b)(1).

54. Regardless of whether guarantor is called a co-borrower or a co-signor, the licensee is prohibited from requiring or accepting security or a promise to answer for payment from anyone other than the customer whose name is on the title.

55. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX required or accepted a guarantor to a loan with a customer.

56. An evidentiary hearing is necessary to determine why TITLEMAX required or accepted a guarantor to a loan with a customer.

57. An evidentiary hearing is necessary to determine what, if any, effect the relationship between the customer and the guarantor would have on the Division's analysis.

58. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX required or accepted a guarantor to a loan with a customer, after the Division rated TITLEMAX "Needs Improvement" in the 2014 examination.

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ALLEGED VIOLATIONS

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.

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66. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX **willfully** 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.

67. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that one or more of TITLEMAX'S repeat violations are **willful, and / or intentional, and / or without any exercise of due care** to prevent the repeat violations.

DISCIPLINE AUTHORIZED

68. NRS 604A.810 provides in full as follows:

> **NRS 604A.810 Order to desist and refrain; action to enjoin violation; appointment of receiver.**
>
> 1. **Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, the 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.**
>
> 2. The Attorney General or the Commissioner may bring an action to enjoin a person from engaging in or continuing a violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper.
>
> 3. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which an action is brought may impound, and appoint a receiver for, the property and business of the defendant, including books, papers, documents and records pertaining thereto, or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the 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

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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 of computation, notwithstanding the maintenance of procedures reasonably 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.
   (Emphasis added.)

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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

Attorney General's Office
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Las Vegas, NV 89101

EXHIBIT "C"

EXHIBIT "C"

BEFORE THE

DEPARTMENT OF BUSINESS AND INDUSTRY

In Re: TITLEMAX OF NEVADA, INC., a Nevada corporation, Respondent.	Case No. A-15-719176-C Dept No. XXI **NEVADA FINANCIAL INSTITUTIONS DIVISION'S PREHEARING BRIEF** Date of Hearing _____, 2016 Time of Hearing _____

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COMES NOW, State of Nevada, ex rel. It's Department of Business and Industry, Financial Institutions Division, by and through its attorneys, Adam Paul Laxalt, Attorney General, and David J. Pope, Senior Deputy Attorney General and Vivienne Rakowsky, Deputy Attorney General, and hereby files its PreHearing Brief.

Respectfully submitted this 11th day of February, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ David J. Pope
David J. Pope
Sr. Deputy Attorney General
Nevada State Bar #8617
Vivienne Rakowsky
Deputy Attorney General
Nevada State Bar #9160
555 E. Washington Ave., #3900
Las Vegas, NV 89101
Attorneys for Defendant

POINTS AND AUTHORITIES

I. FACTS AND PROCEDURAL HISTORY

TitleMax of Nevada, Inc. and TitleBucks dba TitleMax (hereinafter "TitleMax") hold a Chapter 604A license issued by the Financial Institutions Division (hereinafter "FID"). Pursuant to NRS 604A.730, FID examines each Chapter 604A licensee at least once a year.

Following its 2014 examination of TitleMax, FID noted two main violations. *Exh. B (8565-8581).* The first type of violation involved title loan files including "co-borrowers" who were individuals not listed on the vehicle titles. *Id. (8574-8575).* In some such instances, the "co-borrower" had a different address and different last name than the legal owner. These situations were cited as violations of NAC 604A.230.

The second type of violation involves the Grace Period Payments Deferment Agreements. *Exh. B (8575-8576).* With these agreements, TitleMax extends the duration beyond the 210 day limit. *Id. (8576).* In addition, the first seven payments are interest only and the last seven payments are principal only payments. *Id. (8576).* The customers end up paying more with the Grace Period Payments Deferment Agreements. *Id. (8576).* Each use of a Grace Period Payments Deferment Agreement discovered in the sample population was cited as a violation of NRS 604A.445(3) and NRS 604A.210. *Id. (8577).*

FID began one of the 2015 examinations of a TitleMax location on or about May 22, 2015. *Exh. C (8582).* In the 2015 examination report, FID noted the same violations as discussed above. *Exh. C (8594).*

The first issue, again, relates to TitleMax including an additional person on the lending agreement. FID requested an explanation from TitleMax. TitleMax's conclusory response was that the additional person is a "co-borrower." *Exh. B (8574-8575).* Yet, Chapter 604A does not expressly define or allow co-borrowers. In fact, given the definitions set forth in NRS 604A.105 and NRS 604A.115, only the legal owner of a vehicle can use the vehicle to

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obtain a title loan. Given the lack of information provided by TitleMax, FID concluded that the additional persons were guarantors and that the agreements violated NAC 604A.230.[1] *Exh. E (8626-8627).* FID's examiner applied NAC 604A.230 to the facts as they were seen by the examiner and determined that TitleMax either "required" or "accepted" a guarantor. Regardless of whether TitleMax has violated NAC 604A.230, pursuant to NRS 604A.105 and NRS 604A.115 only the legal owner of a vehicle can borrow money against the vehicle via a title loan. TitleMax has provided no proof that the additional persons are legal owners.

The second issue has to do with the Grace Period Payments Deferment Agreements. The examiner noted that TitleMax was still utilizing the Grace Period Payments Deferment Agreements. *Exh. C (8588-8590).* "Grace Period Payment Deferment Agreement," as used by TitleMax, is not a statutory term. *Exh. A (0091).* Again, it was noted that the total amount paid under a Grace Period Payments Deferment Agreement is more than the total amount paid pursuant to the terms of the original 210 day loan. *Exh. C. (8590).* According to the exam report, the Grace Period Payments Deferment Agreements violate NRS 604A.445 and NRS 604A.210 and therefore are not statutorily authorized lending products. *Exh. C (8589).* TitleMax disagrees and asserts that the Grace Period Payments Deferment Agreements are in full compliance with Chapter 604A of the NRS and Chapter 604A of the NAC.

Looking at an example agreement in Exhibit A, the amount financed in the 210 day loan is $5,800.00, the finance charge is $2,813.16, the total of payments is $8,613.16 and the original payment amount is $1,230.45. *Id.* (0084). When the original 210 day loan is converted to the Grace Period Payments Deferment Agreement, the total amount paid increases to $10,261.94 and the monthly payments decrease. *Id.* (0091). There are fourteen monthly payments, whereas there were originally seven payments that included

[1] The term "guarantor" is defined as "[o]ne who promises to answer for a debt, default or miscarriage of another." Black's Law Dictionary, 705 (6th Ed. 1990). NRS 604A.455(5) defines "fraud" to include "without limitation, giving to a licensee as security for a title loan the title to a vehicle which does not belong to the customer." In addition, NRS 604A.455(4) states that when a customer fraudulently secures a title loan the licensee can bring a civil action against the customer for the remaining debt related to the unpaid loan. Considering these statutes, the logical conclusion made by the examiner was that the additional person was needed for purposes of meeting the ability to repay requirements set forth in NRS 604A.450 and was acting as a guarantor.

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principal and interest. *Id.* (0091). The first seven payments are interest only payments in the amount of $637.42 and the last seven payments are principal only payments in the amount of $828.57. *Id.* (0091). The amount of the loan is no longer ratably and fully amortized. Because the amount financed remains $5,800.00, the finance charge increases to $4,461.94.

Pursuant to TitleMax's documents, it collects more interest via a Grace Period Payments Deferment Agreement than it would collect via the 210 day original loan. *Exhibit A* (0084, 0091) (the total amount paid increases from $8,613.16 to $10,261.94 though the principle remains the same amount of $5,800.00). Yet, TitleMax asserts that no additional interest or fees are collected.

The FID examiner looked at the facts and determined that TitleMax had not complied with NRS 604A.210 and NRS 604A.445. NRS 604A.210 and NRS 604A.445 prohibit the collection of interest or fees during a grace period, require installment payments that ratably and fully amortize the amount of the loan and prohibit extensions. Contrary to the statutes, the Grace Period Payments Deferment Agreements nearly double the length of the statutorily allowed 210 day loan, they do not ratably and fully amortize the amount of the loan and charge additional fees or interest for additional periods and therefore there is no grace period. *Exhibit A* (0084, 0091). In addition, though it has been represented that the first seven payments are interest only and the last seven payments are principle only, the Grace Period Payment Deferment Agreement states: "You acknowledge that simple interest is charged on the unpaid principal balance of this Loan Agreement at the daily rate of 0.3663% from the date of this Loan Agreement until the earlier of: (i) the date of your last payment as set forth in the original Payment Schedule; or (ii) payment in full." *Exh. A* (0092). The agreement also says, "Now that the Payment Schedule has changed . . .." *Id.* The Payment Schedule changes but the Federal Truth-In-Lending Disclosures doesn't change to inform the customer of the increased finance charge. *Exh. A.* (0084). This increase in the finance

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charge is either a fee, additional interest or additional fees, any of which are prohibited by NRS 604A.210.

II. ARGUMENT

TitleMax is asserting that its business practices of allowing additional persons, who are not legal owners, on title loans and its use of the Grace Period Payments Deferment Agreements are in compliance with Chapter 604A of the NRS and Chapter 604A of the NAC. The findings of the FID examiners, related to the violations, are supported by substantial evidence and therefore are afforded deference. NRS 233B.135; *United Exposition Services, Co. v. State Industrial Insurance System*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993) ("It is well recognized that this court, in reviewing an administrative agency decision, will not substitute its judgment of the evidence for that of the administrative agency." (citation omitted)). Because the statutes are plain and unambiguous, the FIDs interpretation of its statutes must be upheld. *City of North Las Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("'When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning.'").

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A. THE EXAM FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE FID IS PROPERLY INTERPRETTING THE STATUTES.

TitleMax is misinterpreting the relevant statutes and making conclusory factual statements.

1. Title Loans Are Only Made To Legal Owners Of Vehicles.

Pursuant to the relevant statutes, only legal owners of vehicles can be customers, or borrowers, on title loans. NRS 604A.105 restricts title loan borrowers to those who legally own the vehicle. The statute states that the customer[2] must 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] "Customer" is defined as "any person who receives or attempts to receive . . . title loan services from another person." NRS 604A.040.

> (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.

NRS 604A.105 (emphasis added). Subsection 1 requires the customer to secure the loan by giving possession of the title to TitleMax. *Id.* It also requires the customer to be the legal owner of the vehicle. *Id.* The legal owner of the vehicle is listed on the title. NRS 604A.115 (defining "title" to mean "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."). The language of these statutes is plain and unambiguous and therefore we cannot look beyond the language for another meaning. *City of North Las Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("'When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning.'"); *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004) ("If the plain meaning of a statute is clear on its face, then [this court] will not go beyond the language of the statute to determine its meaning." (citation omitted)); *Cleghorn v. Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993) ("When the language of a statute is clear on its face, its intention must be deduced from such language." (citation omitted)). Consequently, the customer/borrower is limited to the person who is the legal owner as evidenced by the title. *Id.*

If the additional person on the loan, *i.e.* TitleMax's alleged co-borrower, is not listed on the title, the person cannot be a borrower and therefore cannot be a co-borrower. TitleMax asserts that the additional persons are co-borrowers, but such a finding has yet to be determined.

TitleMax has not explained why they require and/or allow an additional person to be a party to the title loan.[3] The explanation has been nothing more than a conclusory

[3] TitleMax has provided no explanation other than asserting the additional persons are co-borrowers. No evidence has been provided to show that the additional persons are also legal owners. "Guarantor" is defined as a "[p]erson who becomes secondarily liable for another's debt or performance in contrast to a strict surety who is primarily liable with the principal debtor. One who promises to answer for the debt, default or miscarriage of another. . . . A guarantor is usually also an accommodation party." Black's Law Dictionary, 705

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assertion that the additional party is a co-borrower. As stated, title loans can only be made to the person, or persons, named on the title. NRS 604A.105; NRS 604A.115. FID has not been provided with information showing that the additional persons are legal owners and therefore asserts that they are not legal owners. To avoid losing on this argument, TitleMax cannot admit that the additional persons are not legal owners. Yet, TitleMax cannot avoid this issue, and essentially remain silent, by giving a conclusory statement that the additional persons are "co-borrowers." If the additional party is not a legal owner as shown by the title, then they are not a statutorily approved borrower.

Consequently, with regard to each such loan, TitleMax is violating NRS 604A.105 and NRS 604A.115 by loaning money to a non-legal owner of the vehicle and violating NAC 604A.230 by allowing or requiring a guarantor.

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2. The Grace Period Payments Deferment Agreement Is Not A Statutorily Compliant Product

The Grace Period Payments Deferment Agreements do not comply with Chapter 604A and are not an authorized lending product. *See Exhibit A.* NRS 604A.445 provides:

> Notwithstanding any other provision of this chapter to the contrary:
>
> 1. The original term of a title loan must not exceed 30 days.
>
> 2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:
>
> (a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;
>
> (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,

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(6th Ed. 1990) (citation omitted). If the facts end up showing that the additional persons meet the definition of a guarantor, then they are guarantors in violation of NAC 604A.230.

> 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.

(emphasis added).

Pursuant to NRS 604A.445(3), a loan can be for a term of 210 days if it provides for payments in installments, the payments are calculated to ratably and fully amortize the entire amount of principle and interest payable on the loan, and the loan is not subject to any extension. This language is plain and unambiguous and therefore we cannot go beyond it to look for a different meaning. *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004).

TitleMax represents that it first enters into the original loan agreements with its customers.[4] Assuming that the original loan agreements comply with NRS 604A.445(3), they are no more than 210 days in duration, provide for installment payments, the payments are calculated to ratably and fully amortize the entire amount of principle and interest payable at the end of the 210 days and are not subject to any extension. NRS 604A.445(3). When TitleMax converts the original loan to a Grace Period Payments Deferment Agreement, TitleMax goes beyond the limits of NRS 604A.445(3).

First, the maximum 210 days is extended to a term approximately twice as long. *See Exhibit A (0091)* (showing 14 periods, or approximately 420 days, instead of 7 periods or 210 days); NRS 604A.445(3). The term "extension" is defined as "any extension or rollover

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[4] *Exhibit A (0017)* (stating, "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. (underlining contained in original).

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of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, regardless of the name given to the extension or rollover."[5] NRS 604A.065(1). The facts show that the date on which the loan was required to be paid is extended.

Second, the payments do not "ratably and fully" amortize the entire amount of the original loan because the interest is applied to the entire principle for the first seven periods and no principle is paid until the eighth period.[6] *See Exhibit A (0091)* (The last seven payments are in the amount of $828.57. Multiplying $828.57 x 7 = $5,799.99 or $5,800.00, which is the amount financed. The first seven payments are in the amount of $637.42, which is approximately the product of $5,800.00 x .1099 (which is the product of .003663 (daily rate) x 30.00224 days)); Black's Law Dictionary, 83 (7th Ed. 1999) (defining "amortization" as "the act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due."); NRS 604A.445(3).

Third, the payments do not constitute installment payments because they are not equal.[7] Black's Law Dictionary, 799 (6th Ed. 1990) (defining "installment loan" as "[a] loan made to be repaid in specified, usually equal, amounts over a certain number of months."(emphasis added)); NRS 604A.445(3).

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[5] The term "extension" is defined as "[a]n agreement between a debtor and his creditors, by which they allow him further time for the payment of his liabilities." Black's Law Dictionary, 583 (6th Ed. 1990). An extension "[t]akes place when parties agree upon valuable consideration for maturity of debt on day subsequent to that provided in original contract." Black's Law Dictionary, 583 (6th Ed. 1990) (citation omitted). "Rolling over" is defined as, "Banking term for extension or renewal of short term loan from one loan period (*e.g.* 90 day) to another." Black's Law Dictionary, 1330 (6th Ed. 1990).

[6] In the Grace Period Payments Deferment Agreements, TitleMax admits that the loans are not fully amortized because the first seven payments are interest only and are less than the last seven payments. *Exhibit A (0037-0043).* In addition, the first seven payments are the product of the daily rate of interest multiplied by the entire principle. *Id.* In a typical loan, the portion of the payment that goes towards principle increases each month as the portion that goes towards interest decreases each month. Therefore, unlike the typical loan, the first seven payments of the Grace Period Payments Deferment Agreement include additional interest because the interest is consistently calculated on the entire outstanding principle. Black's Law Dictionary, 83 (7th Ed. 1999) (defining "amortization" as "the act or result of gradually extinguishing a debt, such as a mortgage, usu. by contributing payments of principal each time a periodic interest payment is due.").

[7] As previously explained, the first seven payments are less than the last seven payments.

Therefore, the Grace Period Payments Deferment Agreements do not comply with NRS 604A.445 and are not a statutorily authorized loan.

In addition, the Grace Period Payments Deferment Agreements do not comply with NRS 604A.210 or NRS 604A.070. NRS 604A.070 defines "grace period" as "any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210." (emphasis added). "Deferment" is defined as "A postponement or extension to a later time . . .." Black's Law Dictionary, 421 (6th Ed. 1990). "Defer" is defined as "[d]elay; put off; . . . postpone to a future time." *Id.* "Deferred payment" is defined as "[p]ayments of principal or interest postponed to a future time . . .." *Id.* 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.

(emphasis added). TitleMax cannot charge any fees for granting a grace period or any additional fees or additional interest on the outstanding loan during a grace period. *Id.* In this case, the outstanding loan would be the original loan, a closed ended loan limited in duration to 210 days, and any interest above and beyond that which could have been charged and collected during the 210 days of the original loan would constitute the prohibited additional interest or any fees or any additional fees. *Id.* This language is plain and unambiguous and therefore we cannot go beyond the plain language to search for another meaning. *See City of North Las Vegas v. Warburton*, 262 P.3d 715, 718, 127 Nev. Adv. Op. 62 (2011) ("'When the text of a statute is plain and unambiguous, [we] should ... not go beyond that meaning.'"); *Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Ct., et al.*, 120 Nev. 575, 579-580, 97 P.3d 1132, 1135 (2004); *Cleghorn v. Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). Because TitleMax is charging more interest than that

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which could have been collected during the 210 day loan, it is charging additional interest or additional fees in violation of 604A.210(1-2). *See Exhibit A (0084, 0091).*

The plain meaning of the statutes is that no fee can be charged for granting a grace period and no interest in addition to that which can be charged during the 210 day loan can be charged. Legislative history should not be used to create an ambiguity, it should be used to resolve an ambiguity.

> Legislative history has never been permitted to override the plain meaning of a statute. As the Supreme Court has made clear, "Congress' 'authoritative statement is the statutory text, not the legislative history.' " *Chamber of Commerce v. Whiting*, —— U.S. ——, 131 S.Ct. 1968, 1980, 179 L.Ed.2d 1031 (2011) (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005)). Legislative history may not be used to alter the plain meaning of a statute. "The law is what Congress enacts, not what its members say on the floor." *Szehinskyj v. Att'y Gen.*, 432 F.3d 253, 256 (3d Cir.2005).
>
> Moreover, "legislative history may be referenced only if the statutory language is written without a plain meaning, i.e., if the statutory language is ambiguous." *Byrd v. Shannon*, 715 F.3d 117, 123 (3d Cir.2013). "Legislative history ... is meant to clear up ambiguity, not create it." *Milner v. Dep't of Navy*, —— U.S. ——, 131 S.Ct. 1259, 1267, 179 L.Ed.2d 268 (2011); see also *Velis v. Kardanis*, 949 F.2d 78, 81 (3d Cir.1991) ("There is no need to resort to legislative history unless the statutory language is ambiguous."). We must "not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language." *Milner*, 131 S.Ct. at 1266; see also *Nat'l Coal. for Students with Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283 (4th Cir.1998) ("This plain meaning cannot be circumvented unless we have the rare instance when there is a clearly expressed congressional intent to the contrary or when a literal application of the plain language would frustrate the statute's purpose or lead to an absurd result.").

S.H. ex rel. Durrell v. Lower Merion School Dist., 729 F.3d 248, 259 (3rd Clr. 2013); *See Hearn v. Western Conference of Teamsters Pension Trust Fund*, 68 F.3d 301, 304 (9th Clr. 1995) ("But legislative history—no matter how clear—can't override statutory text. Where the statute's language "can be construed in a consistent and workable fashion," . . . we must put aside contrary legislative history." (citation omitted); *See Clark County v. Southern*

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Nevada Health Dist., 289 P.3d 212, 219, 128 Nev. Adv. Op. 58 (2013) (dissenting and citing *Hearn*, 68 F.3d. 248, 259 (9th Cir. 1995)). "In construing a statute, the Court has ruled that legislative materials, if 'without probative value, or contradictory, or ambiguous,' should not be permitted to control the customary meaning of words. *United States v. Dickerson*, 310 U.S. 554, 562, (60 S.Ct. 1034, 1038, 84 L.Ed. 1356) (1940)." *NLRB v. Plasterers' Union*, 404 U.S. 116, 129 n. 24, 92 S.Ct. 360, 368 n. 24, 30 L.Ed.2d 312 (1971). Therefore, TitleMax's arguments regarding the legislative history (that it asserts is contrary to FIDs interpretation) are without merit.[8]

TitleMax represents in a conclusory fashion that it offers each borrower under the installment loan a grace period of deferment gratuitously. "Gratuitously" is defined as, "Given or received without cost or obligation: FREE." Webster's II New College Dictionary, 487 (1999). Contrary to NRS 604A.210's prohibition against charging additional interest or fees, TitleMax's own documents show that it charges additional interest or fees during the first seven months as explained above. In addition, the Grace Period Payments Deferment Agreements state that interest is charged on any outstanding portion of the principle until the principal is paid. *Exhibit A (0044)*. Therefore, according to the agreement, interest can also be charged during the last seven months as the principle is being paid down, as well as the first seven months. *Id.* Either way, this is not a gratuitous deferment and does not comply with NRS 604A.070.

In addition, according to NRS 604A.045[9] a grace period should not occur unless a borrower is having difficulty repaying the loan. *See* Black's Law Dictionary, 697 (6th Ed. 1990) (defining "grace period" as a "period of time provided for in a loan agreement during

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[8] Charging interest during a grace period is contrary to the plain language of NRS 604A.070 and NRS 604A.210 and the intent of allowing a borrower additional time to make a payment without incurring any additional interest or fees. Thus, TitleMax's interpretation leads to an unreasonable or absurd result that is contrary to legislative intent. *Hunt v. Warden, Nevada State Prinson*, 111 Nev. 1284, 1285 (1995) ("When interpreting a statute, this court resolves any doubt as to the legislative intent in favor of what is reasonable, and against what is unreasonable. (citation omitted). A statute should be construed in light of the policy and the spirit of the law, and the interpretation should avoid absurd results.").

[9] "'Default' means the failure of a customer to . . . (a) Make a scheduled payment on a loan on or before the due date for the payment under the terms of a lawful loan agreement and any grace period that complies with the provisions of NRS 604A.210 . . .." NRS 604A.045.

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which default will not occur even though payment is overdue."). Yet, TitleMax cannot make a loan unless TitleMax determines that the borrower has the ability to repay it. NRS 604A.450. Therefore, granting a grace period before a borrower begins repaying the loan is contrary to legislative intent and contrary to the normal course of such affairs. *See* Black's Law Dictionary, 705 (7th Ed. 1999) (defining a "grace period" as "[a] period of extra time allowed for taking some required action (such as making payment) without incurring the usual penalty for being late."). In this case, "Grace Period Payments Deferment Agreement" contains a misnomer, *i.e.* there really is no grace period because money is due in every period and these agreements do not comply with NRS 604A.210 or NRS 604A.070.[10]

The Grace Period Payments Deferment Agreements are longer than 210 days and extend the term of the loan beyond the statutory limitation and do not provide for installment payments and do not ratably and fully amortize[11] the amount of the original loan. The amount of the loan increases and the amount of interest charged increases. *Exhibit A (0084, 0091).* In addition, money is owed in every period and therefore three is no grace period. *Id.* Though TitleMax agrees that more interest is charged via the Grace Period Payments Deferment Agreement than would be charged via the 210 day loan, TitleMax does not agree that the amount of the loan is not ratably and fully amortized, does not agree that the loan is extended and does not agree that there is no grace period or that there is no gratuitous deferment. Applying the facts to the statutes, FIDs interpretations are correct and the violations noted in the exam reports should be upheld. NRS 604A.445; NRS 604A.210; NRS 604A.070.

Because the loan is intended to be closed ended with a maximum term of 210 days (seven months), TitleMax can only offer a 210 day (seven month) loan that is ratably and

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[10] "Grace period" is "[t]he amount of time after a payment due date when no interest is charged." https://www.lendingtree.com/glossary/what-is-grace-period. Also defined as "[t]he number of days between a consumer's credit card statement date and payment due date when interest does not accrue." http://www.investopedia.com/terms/g/grace-period-credit.asp.

[11] "An 'amortization plan' for the payment of an indebtedness is one where there are partial payments of the principal, and accrued interest, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished." Black's Law Dictionary, 83 (6th Ed. 1990).

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fully amortized. By collecting 210 days (seven months) of interest on the entire principle before any principle payments are made, and then collecting principle (and, according to the agreement, possibly more interest) for seven more months, TitleMax is collecting fees or additional interest in violation of NRS 604A.210, has nearly doubled the duration of the loan and extended the loan in violation of NRS 604A.445(3), is not ratably and fully amortizing the amount of the loan in violation of NRS 604A.445(3) and is not offering a grace period, *i.e.* gratuitous deferment, in violation of NRS 604A.210 and NRS 604A.070.

B. PURSUANT TO NRS 604A.900, TITLEMAX'S WILLFUL VIOLATIONS RESULT IN LOANS BEING VOID.

Due to its willful violations, TitleMax is not entitled to collect, receive or retain any principal, interest or other charges. NRS 604A.900 states:

> 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 of computation, notwithstanding the maintenance of procedures reasonably 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.

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TitleMax willfully entered into the Grace Period Payments Deferment Agreements for an amount of interest or fees that violates Chapter 604A and willfully demanded, collected or received an amount of interest or fees that violates the provisions of Chapter 604A. "Willful" is defined as "[i]ntending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary." Black's Law Dictionary, 1599 (6th Ed. 1990); *See generally, Reingold v. Wet "N Wild Nevada, Inc.*, 113 Nev. 967, 973, 944 P.2d 800 (1997)(dissent)(Overruled on other grounds) (willfully means purposefully, deliberately; knowingly and intentionally); *see Van Cleave v. Klentz-Mill Minit Mart*, 97 Nev. 414, , 633 P.2d 1220, (1981) (Willful is described as an act "that the actor knows, or should know, will very probably cause harm."). TitleMax has at least 307 violations, which is enough to show that this is a common and sustained practice and not something that "resulted from a bona fide error of computation . . .." NRS 604A.900(2)(a). The number of violations show that TitleMax willfully entered into the Grace Period Payments Deferment Agreements and that the actions were not accidental but rather purposeful and deliberate especially after the 2014 examination.

The 2014 examination was commenced in August 2014 and advised TitlteMax that the Grace Period Payments Deferment Agreements violate NRS 604A.445 and NRS 604A.210. Therefore, at least as of 2014, TitleMax had knowledge of the FID's position that the Grace Period Payments Deferment Agreements did not comply with NRS Chapter 604A. Nevertheless, although TitleMax had been told that the agreements violated the relevant statutes, they willfully continued to offer the Grace Period Payments Deferment Agreements to customers.

During the next examination, which began on May 4, 2015 and was completed on June 17, 2015, the examiner found that TitleMax was still offering the improper loans. Thus, TitleMax willfully continued to offer the Grace Period Payments Deferment Agreements after being made aware that the loans were improper and did not comply with Chapter 604A. The results of the second examination show that, although TitleMax knew or should have

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known that that the Grace Period Payments Deferment Agreements did not comply with Chapter 604A, TitleMax willfully kept selling that product anyway.

Additionally, to date, TitleMax has not notified its customers of any qualifying errors of computation. NRS 604A.900(2)(b). According to the statute, TitleMax only had 60 days to notify customers of any such errors. *Id.*

Consequently, pursuant to NRS 604A.900(1), TitleMax must return any principle and interest that it is prohibited from keeping.

III. CONCLUSION

Based on the foregoing, the FID respectfully requests an order:

1. Imposing a $10,000 fine for each of the 307 violations for a total of $3.07 million in fines;
2. Requiring the return, to the customers, of any principle and interest paid to TitleMax relative to the Grace Period Payments Deferment Agreements;
3. Requiring TitleMax to cease and desist from the practice of entering into the Grace Period Payments Deferment Agreements;
4. Prohibiting the making of title loans to anyone, in any capacity, other than the legal owner(s) of the vehicle;
5. Requiring TitleMax to provide a full accounting of each Grace Period Payment Deferment Agreement and the amount of principal and interest returned to each borrower relative to each such agreement; and,

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6. Any other relief this court deems just.

Respectfully submitted this 11th day of February, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ David J. Pope
David J. Pope
Sr. Deputy Attorney General
Nevada Bar #8617
Vivienne Rakowsky
Deputy Attorney General
Nevada Bar #9160
555 E. Washington Ave., #3900
Las Vegas, NV 89101
(702) 486-3420
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 12th day of February, 2016, I served the **NEVADA FINANCIAL INSTITUTIONS DIVISION'S PREHEARING BRIEF**, by causing it to be delivered to the Department of General Services for mailing at Las Vegas, Nevada, a true copy thereof, addressed to:

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

And via Legal Wings to:

Denise McKay, Esq.
Administrative Law Judge
Nevada Division of Real Estate
2501 E. Sahara Ave., 2nd Floor
Las Vegas, NV 89104

/s/ Debra Turman
An employee of Office of Attorney General

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

EXHIBIT "D"

EXHIBIT "D"

BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION

* * * * * *

In The Matter of:

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

TRANSCRIPT OF PROCEEDINGS

Before Administrative Law Judge Denise S. McKay

Volume I

Las Vegas, Nevada

July 18, 2016

9:05 a.m.

Reported by: Heidi K. Konsten, RPR, CCR
Nevada CCR No. 845 - NCRA RPR No. 816435
JOB NO. 324200

TitleMax an unsatisfactory rating.

The record also shows that there's no misunderstanding about it. TitleMax has disregarded the FID and intentionally continued to offer the grace period deferment agreement, although they knew the FID told them that the agreement violates the statute. TitleMax's failure to comply with the statute was done knowingly and intentionally and was therefore willful.

The FID is hereby requesting the following findings: First, that the FID has proven the violations of statute. Second, that this tribunal impose a $10,000 fine for each of the violations for a total of $3,070,000 in fines. That TitleMax return the principal and interest collected on -- from all of its customers that entered into a grace period deferment agreement. That TitleMax cease and desist the practice of entering grace period payment deferment agreements or any similar noncompliant agreement. That TitleMax provide a full accounting of all of the grace period payment deferment agreements and the amount of the principal and interest that's been returned to each customer. And, lastly, that

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss
County of Clark)

I, Heidi K. Konsten, Certified Court Reporter, do hereby certify:

That I reported in shorthand (Stenotype) the proceedings had in the above-entitled matter at the place and date indicated.

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

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 2nd day of August, 2016.

Heidi K. Konsten, RPR, NV CCR #845

BEFORE THE

NEVADA FINANCIAL INSTITUTIONS DIVISION

In the Matter of:

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

TRANSCRIPT OF PROCEEDINGS

BEFORE ADMINISTRATIVE LAW JUDGE DENISE S. McKAY

VOLUME III

PAGES 629 - 710

LAS VEGAS, NEVADA

JULY 20, 2016

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

JOB NO. 324323

of the loan, they will pay no more than what is disclosed on the truth in lending statement. That did not happen for more than 10,000 Nevada residents. The truth is that TitleMax made many millions of dollars by charging additional and undisclosed interest, and they should not be allowed to reap the benefits of their illegal behavior.

So we're asking that this tribunal impose a $10,000 fine for each of the 307 violations for a total of $3,070,000 in fines. We're also requesting that TitleMax return the principal and interest collected by all of its the customers that entered a grace period deferment payment agreement, so those loans be completely returned to the borrower. That TitleMax cease and desist the practice of entering into this loan product or any similar noncompliant agreements. That TitleMax do a full accounting of all grace period deferment agreements, and that the amount of principal and interest be returned to each customer, and that TitleMax cease and desist entering into title loan agreements with anyone other than the legal owner of the vehicle.

Thank you very much for your time.

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

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

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

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

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

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

Kimberly A. Farkas, CCR 741

EXHIBIT "E"

EXHIBIT "E"

STATE OF NEVADA

BRIAN SANDOVAL
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

FINANCIAL INSTITUTIONS DIVISION

BRUCE BRESLOW
Director

GEORGE E. BURNS
Commissioner

August 18, 2016

Certified Mail

TITLEMAX of Nevada, Inc.
15 Bull Street, Suite 200
Savannah, Georgia 31401

Patrick J. Reilly, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Enclosed is a copy of the Administrative Law Judge's ("ALJ") "Findings of Fact, Conclusions of Law and Order" ("Decision") in the matter of "Financial Institutions Division v. TitleMax of Nevada, Inc. and Titlebucks dba TitleMax", which you should have already received. The Financial Institutions Division (FID) considers the ALJ's Decision to be a final decision for purposes of NRS 233B.130.

The ALJ's Decision states, "TitleMax is ordered to conduct a full accounting of and return all principal and interest it has collected under every GPPDA entered into after December 18, 2014." TitleMax was further ordered to "...complete the return of all monies [to the customers] on or before 120 days from the date of this [the ALJ's] Order." In addition, TitleMax was ordered to "...conduct this process under the supervision and direction of FID..." Pursuant to, and in accordance with, the ALJ's Decision, you are directed to provide the following information to the FID within 30 days:

1. To effectively supervise the full accounting and verify that every loan with a Grace Period Payment Deferment Agreement (GPPDA) is identified, provide a complete listing of all loans made from 12/18/2014 to the present that, if the information is available in any respect, includes:
   - Loan #
   - Date of loan
   - Borrower name(s)
   - Borrower address(s),
   - Borrower telephone number(s)
   - Borrower email address(s)
   - Amount borrowed
   - Due date of last payment or final deferred periodic due date
   - Principal and interest paid to date
   - Full payment history record
   - If the vehicle collateral was repossessed

2. Provide a complete listing of all loans and information detailed in number 1 above that TitleMax identifies had or has a Grace Period Payment Deferment Agreement (GPPDA) entered into after 12/18/2014.

3. Provide an accounting of all principal and interest paid to date of all loans that TitleMax identifies had or has a GPPDA entered into after 12/18/2014.

4. Any other information that will be necessary to ensure that all affected consumers are reimbursed in accordance with the ALJ's Decision.

The above information is to be sent to the Office of the Commissioner at the Las Vegas address indicated on this letter. Your timely cooperation with this request is essential. If you should have any questions regarding this matter, you may contact the FID's legal counsel cc'd below.

Sincerely,

Financial Institutions Division
Department of Business & Industry
State of Nevada

cc: Nevada Deputy Attorney Generals:
David Pope, Esq.
Vivienne Rakowsky, Esq.
Rickisha Hightower-Singletary, Esq.
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

EXHIBIT "F"

EXHIBIT "F"

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
First Assistant
Attorney General

NICHOLAS A. TRUTANICH
First Assistant
Attorney General

September 14, 2016

Patrick J. Reilly, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Re: Financial Institutions Division v. TitleMax of Nevada, Inc., and TitleBucks d/b/a TitleMax

Dear Mr. Reilly:

Administrative Law Judge McKay issued the Findings of Fact, Conclusions of Law, and Order in the above referenced matter on August 12, 2016.[1] The Order requires TitleMax to perform specific actions, including "conduct a full accounting of and return all principal and interest it has collected under every GPPDA entered into after December 18, 2014," and to complete the process "under the supervision and direction of FID [... and to] return all monies on or before 120 days from the date of [the] Order." On August 18, 2016, the Financial Institutions Division (FID) mailed to your attention a detailed correspondence requesting specific information in efforts to expeditiously and efficiently comply with Judge McKay's Order. On or about September 1, 2016, the FID ("Division") received your correspondence requesting a conference call to discuss in further detail the information that was requested in the Division's August 18th letter. The requested conference call was held on September 8, 2016. Those present during the telephone conference representing the Division included, Commissioner George Burns, and Deputy Attorney Generals Vivienne Rakowsky and Rickisha Hightower-Singletary, and those present representing TitleMax included Eric Hawn, Chris Harrison, Vice President of Business Intelligence Rick Gomon, Jessica Starbucks, Chief Legal Officer Carrie Carbone, and yourself. The Division's understanding of the matters discussed are as follows:

[1] Judge McKay further explained TitleMax's duties and responsibilities in her response in writing to your questions posed in your correspondence dated August 23, 2016, regarding the Findings of Fact, Conclusions of Law, and Order on August 25, 2016. *See* TitleMax Letter dated August 23, 2016, ALJ response dated August 26, 2016, collectively attached as Exhibit "A."

TitleMax's ability to comply with the ALJ's Order and retrieve data per Division Request for a full accounting

According to the information that you conveyed to the Division, until May 2015, TitleMax used the point of sale software known as Cashwise, which contained limited data points. As a result, on or about May 5, 2015[2], TitleMax transitioned into the TLX System. Although the customers' loan information was originally entered into the Cashwise system and transferred to the TLX system, TitleMax is unable to gather certain loan information which, according to TitleMax, was not originally contained in the Cashwise system.

You stated that you are able to gather the following information on the Nevada loans between December 18, 2014 and May 5, 2015: (1) the loan number; (2) the date of the loan; (3) the borrower name(s); (4) borrower address(s); (5) the borrower telephone number(s); and (6) the amount borrowed. However, TitleMax contends that it specifically is not able to gather or determine through its computer system: (1) email addresses; (2) the payment records, including due date of last payment or final deferred periodic due date; (3) principal and interest paid to date; (4) full payment history record; (5) whether the loan included a GPPDA or not, and (6) if the vehicle collateral was repossessed. According to the information that you provided, this specific information can only be gathered through a manual review of each file that is subject to Judge McKay's Order. It was also noted that although TitleMax has the ability to gather the required information for loans after May 5, 2016, through its TLX system, TitleMax may not have email addresses for all customers in the new TLX system. TitleMax requested an extension until the end of September to provide all of the information available in the TLX system, and a greater extension to provide all of the information from the Cashwise system, in response to the Division's August 18th correspondence.

TitleMax also advised that it was uncertain what information was needed to satisfy the Division's request for "[a]ny other information that will be necessary to ensure that all affected consumers are reimbursed in accordance with the ALJ's Decision."

During the call, TitleMax also requested a stay of the portion of Judge McKay's Order directing it to "conduct a full accounting of and return 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 this Order." TitleMax advised that additional time will also be needed, not only to manually gather and review the required information on loans originally entered into the Cashwise system, but also to manually review the TLX files to ensure accuracy.

Per our conversation, you agreed to provide an email with a complete listing of the information that can be timely provided and the information that could only be gathered through manual methods. The Division's understanding from the telephone conference is that there are more than 11,000 Nevada loan files that were originally on the Cashwise system between December 18, 2014, and May 5, 2015. To date, we have not received an email with this information.

[2] May 15, 2015 was also referenced during the phone conversation as the transition date.

If the above does not encompass your recollection of the September 8, 2016, telephone conference, please advise the undersigned as soon as possible, otherwise the above will be deemed correct.

Division's response

The Division has no ability to alter or amend Judge McKay's order. Again, Judge McKay's Order simply directs TitleMax to conduct the accounting process "*under the supervision and direction of FID.*" As such, the Division has requested certain basic and reasonable information that it believes necessary in terms of supervising and directing the accounting process. To comply with the Order, TitleMax must return all customer money within 120 days, and the Division has simply been tasked with supervising and directing the accounting process. Therefore, if TitleMax fails to comply with the order, it will be by TitleMax's own doing.

In regards to the alleged inability to produce the requested information in the Division's August 18th correspondence, the Division cannot ascertain why such information is not easily accessible to TitleMax. The information requested is more than reasonable information and records that any lender should have readily available. As TitleMax should be aware, NRS 604A.700 requires all Chapter 604A licensees to maintain certain books and accounting records, and failure to do so is a violation of the Chapter. Nonetheless, should the requested information not be readily available, whether due to the transition to the new TLX system or otherwise, the Division demands a sworn affidavit from Director Tracy Young and/or President Otto Bielss attesting to, at minimum, (1) what information can and cannot be provided; (2) a detailed statement as to why any requested information cannot be provided; (3) the means and methodology being used to gather the information that is available; and (4) the anticipated date which the information can be provided. Please note that the Division understands that TitleMax may not have collected email addresses for all borrowers, however, all other information is expected and should be provided.

It is also important to note that the Division provided (30) days for TitleMax to provide the requested information, and TitleMax waited until a week before the deadline to request additional time to gather the information and records. Despite this delay and in the interest of good faith, the Division is willing to extend the deadline for providing the requested information, as requested by TitleMax. TitleMax shall have until the close of business on Friday, September 30, 2016, to provide the requested information for loans and/or GPPDA's that originated after the May 2015 transition to the TLX system and until the close of business on Monday, October 31, 2016, to provide the requested information for those loans that transitioned from the Cashwise system in May 2015. While the Division understands TitleMax's contentions that a manual review may be required for all of the files, especially those from the old Cashwise system, such a review should have already been initiated, and TitleMax is expected to comply with the extended September 30, 2016, and October 31, 2016, deadlines and to provide all required information to the Division as directed by Judge McKay's Order. It is TitleMax's responsibility to otherwise comply with Judge McKay's order.

Regarding the request to stay payment of the principle and interest and to provide an accounting, please be advised that the Division considers Judge McKay's Finding of Fact, Conclusions of Law, and Order to be a final decision in this matter. Pursuant to NRS 233B.135(2), the Order is "deemed reasonable and lawful until reversed or set aside in whole or in part by the court." Accordingly, the Division is not authorized to, nor will it consent to, staying these matters. NRS 233B.140 provides that a motion for stay can be filed and served *at the time that a petition for judicial review is filed.* Provided this time has not passed, a request for a stay should be presented to the appropriate district court judge. *Id.* In any event, TitleMax must comply with Judge McKay's Order unless and until the District Court determines otherwise. *See* NRS 233B.135(2). Provided TitleMax has filed a petition for judicial review, the District Court now has jurisdiction over the matter, and TitleMax should seek relief from the District Court, to the extent that any is available under law.

With respect to your statement that TitleMax plans to pay the $50,000 fine to the Division, please be advised that the (30) day deadline has expired, and TitleMax is currently in violation of that portion of Judge McKay's Order. As stated herein, the Division believes and accepts Judge McKay's Findings of Fact, Conclusions of Law, and Order as a final order, and it is considered valid and enforceable until otherwise modified by the District Court.

Lastly, the Division's request to provide "[a]ny other information that will be necessary to ensure that all affected consumers are reimbursed in accordance with the ALJ's Decision," simply seeks any relevant and applicable information or records that TitleMax possesses which are beneficial in providing an accurate accounting and which have not been specifically requested by the Division.

Please feel free to contact our office should you have any questions or concerns regarding any of the matters contained herein or regarding any other matter involving this case.

Sincerely,

Rickisha Hightower-Singletary, Esq.

Cc: Financial Institutions Division
Department of Business & Industry
State of Nevada

EXHIBIT “B”

EXHIBIT “B”

Vivienne Rakowsky

From: Lauren [redacted] <[redacted]>
Sent: Thursday, September 15, 2016 7:12 PM
To: Vivienne Rakowsky
Subject: TitleMax GPPDA loans!

Dear Ms. Rakowsky,

I'm writing about the matter of: Financial Institution Division verses TitleMax of Nevada INC. that was filed by the courts on August 12, 2016.
We had three GPPDA loans after Dec.18, 2014 with TitleMax. According to the court documents it says the loan is void and they are not entitled to collect, receive or retain any principal, interest or other charges or fees. It also says that TitleMax is to return all principle and interest it has collected under ever GPPDA it has ever entered into. Why are we still being told we have to pay on these loans? Why have we not received any information on what is going to be done about these loans? I can't get any information from the customer service line or the store.

Thank You for your time,
Steven [redacted]

EXHIBIT “C”

EXHIBIT “C”

BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY

LAS VEGAS, NEVADA

IN THE MATTER OF: FINANCIAL INSTITUTIONS DIVISION, Claimants, v. TITLEMAX OF NEVADA, INC. AND TITLEBUCKS D/B/A TITLEMAX, Respondents.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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

I. PROCEDURAL BACKGROUND

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

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

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

November 5, 2015.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Documents Admitted was issued.[1]

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

II. FINDINGS OF FACT

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

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

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

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[1] At the hearing, TitleMax moved for the admission of proposed Exhibit 104, a summary of errors contained in FID's Summaries of Exhibit A document. FID opposed the admission of TitleMax's proposed Exhibit 104, contending that it was filed untimely and did not contain any relevant or material information. FID 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.

[2] FID Ex. B (00008565-00008581).

[3] *FID* Ex. B (00008577).

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

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

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

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

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[4] FID Ex. B (00008574-00008577).
[5] FID Ex. B (00008580).
[6] FID Ex. B (00008573).
[7] TitleMax Ex. 85 (TMX 85-00001-00012).
[8] TitleMax Ex. 86 (TMX 86-00001-00003).
[9] TitleMax Ex. 86 (TMX 86-00003).
[10] TitleMax Ex. 86 (TMX 86-00003).
[11] FID Ex. C (00008582-00008594).
[12] FID Ex. C (00008591).
[13] FID Ex. C (00008588).
[14] FID Ex. C (00008588).
[15] FID Ex. C (00008588).

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

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

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

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

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

A. <u>Findings of Fact Particular to the Issues Presented by the GPPDA</u>

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

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

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[16] TitleMax Ex. 98 (TMX 98-00001-00004).
[17] TitleMax Ex. 98 (TMX 98-00001-00004).
[18] TitleMax Ex. 91 (TMX 91-001-003).
[19] TitleMax Ex. 91 (TMX 91-001-003).

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

FID admits that the Title Loan Agreement complies with Nevada law.[24]

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

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

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[20] TitleMax Ex. 91 (TMX 91-001-003).
[21] *See, for example,* FID Ex. A-1 (000003).
[22] *Id.*
[23] *Id.*
[24] TitleMax Ex. 102, p. 3 ¶ 17.
[25] *See, for example,* FID Ex. A-1 (000016-000017).
[26] *Id.*

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

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

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

III. CONCLUSIONS OF LAW

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

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[27] FID Ex. A-4 (000083-000087).
[28] FID Ex. A-4 (000084).
[29] FID Ex. A-4 000084).
[30] FID Ex. A-4 (000090-000093).
[31] FID Ex. A-4 (000091).
[32] FID Ex. A-4 (000091).
[33] FID Ex. A-4 (000083-000093).

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

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

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[34] **NRS 604A.445 Title loans: Restrictions on duration of loan and periods of extension.** Notwithstanding any other provision of this chapter to the contrary:

1. The original term of a title loan must not exceed 30 days.

2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:

(a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

(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.

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

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

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

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

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[35] **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.
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.

[36] **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.

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

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

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

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

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[37] **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.

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

According to TitleMax, though it stands to earn a greater amount of money in interest charges under the GPPDA than it did under the Title Loan Agreement, that does not constitute the collection of "additional interest on the outstanding balance during the grace period" in violation of NRS 604A.210(2) because it charges and collects all of the interest on the outstanding principal during the first seven payments—which it contends are not part of the grace period. However, if the first seven payments are not part of the grace period added by amendment, then they must be terms from the original Title Loan 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.

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

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

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[38] The number and amount of payments that the customer has already made at the time the parties enter into the GPPDA is highly relevant to this calculation. If the customer has made payments under the original 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.

[39] 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.

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

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

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

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[40] The term "guaranty" is defined as "[a] promise to answer for the payment of some debt, or the 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).

[41] NRS 604A.455(2).