

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Respondent(s),
v.

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

Appellant(s).

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APPELLANT'S APPENDIX

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1 statute?

2 MR. REILLY: Objection. Calls for
3 attorney/client. I would ask that you not answer
4 that question.

5 JUDGE McKAY: Sustained.

6 BY MS. RAKOWSKY:

7 Q. You testified that the title loan is an
8 immediate short-term loan for cash; is that
9 correct?

10 A. I don't think I used the word
11 "immediate."

12 Q. You did. But okay.
13 You testified it is a short-term loan for
14 cash?

15 A. Yes.

16 Q. Is 420 days, in your opinion, short term?

17 A. I don't know. I don't have an opinion.

18 Q. You said it was a short-term loan?

19 A. Yeah.

20 Q. So you offer 420 days?

21 A. It's a 210-day loan.

22 Q. But you extend it to 420; are we agreed
23 on that?

24 A. No. We offer a grace period. We don't
25 extend the loan.

1 Q. The final payment to complete payment on
2 the title loan is not due under that agreement for
3 420 days.

4 MR. REILLY: Objection. Vague.

5 JUDGE McKAY: Can you repeat the
6 question.

7 MS. RAKOWSKY: Can you repeat that.

8 (Record read as requested.)

9 JUDGE McKAY: Can you repeat it again.
10 (Record read as requested.)

11 THE WITNESS: The final payment in the
12 GPDA is not due for 420 days, correct.

13 BY MS. RAKOWSKY:

14 Q. Is that short term?

15 A. I don't know. I don't know how to define
16 it.

17 Q. But you said it was a short-term loan?

18 A. It could be considered as short term,
19 sure.

20 Q. You testified that you lose about 50
21 percent on the vehicles; is that correct?

22 A. Correct.

23 Q. Do you lose money on the vehicle if you
24 collect all of the interest for 210 days up front
25 and then sell the vehicle?

1 A. No.

2 Q. Do you loan money on the full fair market
3 value of the vehicle?

4 A. We loan money -- we have an underwriting
5 department. We loan money -- we use an
6 underwriting department to determine how much we
7 loan.

8 Q. What percentage do you loan on the fair
9 market value of the vehicle?

10 A. What are you using to determine fair
11 market value?

12 Q. Black Book.

13 A. We don't do a percentage to Black Book.

14 Q. Blue Book?

15 A. We don't use any of those. We use our
16 own internal mechanism.

17 Q. What percentage of your own internal
18 mechanism that determines fair market value do you
19 loan money?

20 A. Anywhere from 50 percent up to 90 percent
21 of the value we assign the vehicle.

22 Q. And you inspect the vehicles per the
23 statute to make sure they're not paying over the
24 market value? And by you I mean TitleMax.

25 A. Are you asking if we inspect the

1 vehicles? Yes.

2 Q. And you said you lose 50 percent -- after
3 loaning 50 percent you said you lose 50 percent
4 because you give them to auction; is that correct?

5 MR. REILLY: Objection. Misstates the
6 testimony. But it sounds like you understand, so
7 go ahead.

8 JUDGE McKAY: You testified that if it
9 comes to that and you have to repossess the vehicle
10 and you have to sell it at auction, that you will,
11 generally speaking, lose.

12 THE WITNESS: About half. Statistically,
13 let's than 50 percent return.

14 BY MS. RAKOWSKY:

15 Q. And you said you have to fix them up for
16 auction?

17 A. Not always, but we do.

18 Q. Aren't auction sales as is?

19 A. No.

20 Q. Auction sales aren't as is?

21 A. We don't do nothing to a car and run it
22 through an auction. Is that what you're asking?

23 Q. You run the car through an auction.
24 Aren't auction sales as is?

25 A. Before we run it through the auction we

1 might need to get a key for it. Because a car that
2 is a run and drive car will sell for a higher price
3 than a car that is not running. If the car needs a
4 battery, jump start, if it needs something done to
5 it to make sure it can run through the auction,
6 we'll do it.

7 Q. But you don't have to do a major expense
8 on these vehicles?

9 A. It would depend on the situation.

10 Q. How familiar are you with, as we stated
11 before, NRS 604A.445(3)?

12 A. How familiar? What kind of gauge are you
13 looking for?

14 Q. Do you understand what's required under
15 that statute?

16 A. I think I do.

17 Q. Because that's the only product that
18 TitleMax offers in this state; right?

19 A. Correct.

20 Q. And you're in charge of this state, along
21 with the other ones?

22 A. Yes.

23 Q. You have a 210-day loan. When you modify
24 the loan with your grace period deferment
25 agreement, do you change the amount of days of the

1 **210-day loan?**

2 A. We don't modify the loan.

3 Q. **I'd like to draw your attention to**
4 **document no. 17. Can you read the large print?**

5 A. Is it in the one I have here?

6 Q. **The first sentence of the large print.**

7 A. On page 17? "Because this is only an
8 amendment and modification of the loan agreement in
9 which we are only modifying deferring your
10 payments."

11 Q. **So, now, I'll go back again.**

12 **Are you modifying anything in the**
13 **original loan? That's a yes or no.**

14 A. I understand. It says "we're only
15 modifying in deferring your payments."

16 Q. **I said yes or no, are you modifying the**
17 **original agreement?**

18 A. If you're asking me in that context, my
19 answer is going to be no.

20 Q. **Because the sentence says, "because this**
21 **is only an amendment and modification of the loan**
22 **agreement," you're saying this is now not a**
23 **modification of the loan agreement?**

24 A. Because the rest of the sentence says,
25 "in which we're only modifying deferring your

1 payments under the" --

2 Q. Are you modifying something in the
3 original title loan agreement?

4 A. We're modifying in deferring your
5 payments.

6 Q. Is that a modification?

7 A. To what?

8 Q. Do you understand what a modification is?

9 A. Depends on what you're applying it to.
10 We're not modifying the loan. The loan is a
11 210-day loan.

12 Q. What is your definition of modification?

13 A. In what context?

14 Q. In any context, simple Webster's
15 dictionary.

16 A. Do you have one? I don't know. I'm not
17 going to define modification for you.

18 Q. So you don't know what the word
19 "modification" means?

20 A. I understand what it means, but apply it
21 to what you're asking me.

22 Q. How do you apply it here?

23 A. To the payments, just as it reads.
24 "Modifying and deferring your payments under the
25 title loan agreement."

1 Q. So the original title loan agreement is
2 being modified, yes or no?

3 A. No. Modifying in deferring the payments.

4 Q. Is something under this loan, yes or no,
5 being modified?

6 A. The payments.

7 Q. That doesn't sound like a yes or no.

8 A. So what are you asking me?

9 Q. I want a yes or no answer.

10 A. To what?

11 Q. Is the original --

12 A. No.

13 Q. Is there a modification of the original
14 loan agreement?

15 A. No.

16 Q. Nothing in this original loan agreement
17 is being modified?

18 A. The payments.

19 JUDGE McKAY: His testimony is clear to
20 me. He is saying that the loan is not being
21 modified and neither is the agreement being
22 modified; however, the payments are being modified.
23 BY MS. RAKOWSKY:

24 Q. So where it says "because this is only an
25 amendment and modification of the loan agreement,"

1 **there is no modification, is what you're saying, of**
2 **the loan agreement? That's your testimony?**

3 A. Those are your words.

4 JUDGE McKAY: Did I characterize what you
5 are saying accurately?

6 THE WITNESS: You did. Perfectly.

7 JUDGE McKAY: Do you want to proceed with
8 that?

9 MS. RAKOWSKY: I'm done with that.

10 BY MS. RAKOWSKY:

11 Q. **Does this modification of the loan**
12 **agreement change the time of the 210-day loan?**

13 A. No.

14 Q. **So does it change the amortization of the**
15 **210-day loan?**

16 A. It could.

17 Q. **Do you know what amortization is?**

18 A. Yes.

19 Q. **Explain it to me in your words.**

20 A. The way that I understand it is that it
21 would be spread out evenly, principal and interest,
22 over a period of time, fully amortized.

23 Q. **And does each payment contain an element**
24 **of interest and an element of principal?**

25 A. To my understanding, yes.

1 Q. Under the original agreement, under the
2 original seven payment agreement, is it fully
3 amortized to include interest and principal at each
4 payment?

5 A. Under the original loan agreement, yes.

6 Q. Under the grace period deferment schedule
7 on page 17, is each payment set up so it's
8 calculated to ratably and fully amortize a
9 principal and interest payment on each payment?

10 A. That is not how the grace period
11 agreement works.

12 Q. So it's not calculated to ratably and
13 fully amortize the entire loan?

14 A. The loan is.

15 Q. Under the payment schedule on page 17?

16 A. The payment allows for a grace period.

17 Q. That's not my question. You're being
18 nonresponsive.

19 A. I'm responding to everything.

20 Q. I'm asking you if these payments, these
21 14 payments, include an element, each payment,
22 include an element of principal and an element of
23 interest so that it can be calculated to ratably
24 and fully amortize the entire principal and
25 interest payable on the loan? And that can be a

1 **yes or no.**

2 A. Could be. If I understand the question
3 perfectly, it could be. This allows for a grace
4 period. The original loan contract is fully
5 amortized. We do not change the original loan
6 contract. There is no change.

7 **Q. Except for modification.**

8 MR. REILLY: Let him finish, please.

9 THE WITNESS: There is no change. It's a
10 210-day loan. Interest is fully amortized on the
11 original loan contract. We are not modifying the
12 loan contract.

13 BY MS. RAKOWSKY:

14 **Q. I want you to take a look at 3B behind**
15 **you. Does it say the loan or does it say the**
16 **payments are calculated to ratably amortize the**
17 **entire amount? Does each payment have to be**
18 **calculated to ratably and fully amortize the entire**
19 **amount of the principal and interest? Not the**
20 **loan, the payments?**

21 MR. REILLY: Object to the form.

22 JUDGE McKAY: Please elaborate.

23 MR. REILLY: Okay. The big disagreement
24 we have over this legally is that this subsection
25 only applies to the original term of the loan. It

1 doesn't apply to a grace period. So we're going
2 back and forth on this.

3 JUDGE McKAY: I understand. I think both
4 sides have done this. I'm letting everybody make
5 their record and ask all of their questions. I
6 want everybody to feel that they've gotten a chance
7 to ask all of the questions they want asked. I do
8 feel like we've already covered this ground.
9 Continue with that in mind. I want to let you ask
10 the questions that you have.

11 BY MS. RAKOWSKY:

12 Q. Are the payments -- will you agree
13 there's 14 payments in this deferment agreement?

14 A. Okay.

15 Q. Do we agree that the -- are you
16 testifying here that each of the payments are
17 calculated to ratably and fully amortize the entire
18 amount of principal and interest?

19 A. In the loan contract, yes.

20 Q. In the grace period deferment schedule?

21 A. We are not changing --

22 Q. That's not what I asked you. Now, we can
23 get through this quickly if you just respond to my
24 question.

25 A. Okay.

1 Q. In each of the 14 payments, is each of
2 those payments calculated to ratably and fully
3 amortize the entire amount of principal and
4 interest?

5 A. Does this grace period fully amortize?

6 JUDGE McKAY: Yes.

7 THE WITNESS: No.

8 BY MS. RAKOWSKY:

9 Q. Now, you said they can make a principal
10 payment. And you said the principal payment is
11 credited to the principal. I want you to turn to
12 page 3. I want you to look at the first paragraph,
13 the third line up, page 003, the TILA page, third
14 line up. Payments will be applied.

15 A. Third paragraph up from the bottom?

16 Q. First paragraph the third line up from
17 the bottom.

18 A. Payments are calculated to ratably
19 amortize --

20 Q. No. Go to the calculation of interest,
21 that paragraph, the top.

22 MS. RAKOWSKY: Can I go over there and
23 point?

24 MR. REILLY: Of course.

25 MS. RAKOWSKY: What I'm looking for is

1 this sentence right here. "Payments will be
2 applied."

3 THE WITNESS: "Payments will be applied
4 first to accrued interest, second to outstanding
5 charges, if any, and third to principal."

6 BY MS. RAKOWSKY:

7 Q. So can somebody just come in and make a
8 principal payment under that agreement?

9 A. No.

10 Q. Thank you.

11 Your employees, I understand as soon as
12 somebody pays off one of these title loans, your
13 employees will attempt to sell another loan as soon
14 as the customer pays off the first loan and
15 encourage them to take out more money?

16 A. Are you asking me?

17 Q. I'm asking if that's a common practice?

18 A. Do we want repeat customers, yes.

19 Q. So when a person pays off the last
20 payment of their title loan, do they willingly give
21 back the title immediately?

22 A. Of course.

23 Q. Or do they try to sell them another loan?

24 A. We give them back their title.

25 Q. And you don't try to sell them another

1 loan first?

2 A. If the customer has a need. If the
3 customer asks us.

4 Q. Only if they ask you?

5 A. If a customer comes in to pay off their
6 loan and they want their title back, we have it in
7 the store and we give it to them. Unless it's a
8 very recent one and it might be at the DMV, we give
9 them their title back the same day.

10 Q. So you never attempt to say to the
11 customer, Hey, you're a good customer, maybe you
12 need some more money? That's not part of
13 TitleMax's normal practice?

14 MR. REILLY: Objection. Relevance.

15 MS. RAKOWSKY: It's the cycle of
16 borrowing and borrowing and borrowing and interest.

17 JUDGE McKAY: It's not one of the
18 allegations.

19 MS. RAKOWSKY: You're right, and I'm
20 sorry.

21 BY MS. RAKOWSKY:

22 Q. And you're not aware of any issues right
23 now in Texas about your compliance? I'm asking you
24 any issues with respect to your title loans in
25 Texas. Because you testified you have no --

1 A. Are we compliant in Texas? I believe we
2 are.

3 Q. Do the Texas regulators feel the same
4 way?

5 A. To the best of my knowledge, yes.

6 Q. Well, you're in charge of Texas.

7 A. To the best of my knowledge, we get
8 audited, we comply, and we make the changes
9 necessary.

10 Q. So Texas hasn't made any legal changes or
11 any things in respect to trying to control your
12 business?

13 MR. REILLY: Objection. Vague.

14 MS. RAKOWSKY: Leave it.

15 JUDGE McKAY: You're going to move on?

16 MS. RAKOWSKY: Yeah.

17 BY MS. RAKOWSKY:

18 Q. You testified that you like to correct
19 your compliance issues very quickly?

20 A. Yes.

21 Q. You were first made aware in 2014 that
22 your grace period payment deferment agreement does
23 not comply with Nevada state law?

24 A. Correct.

25 Q. It took you until December, allegedly,

1 December of 2015, to make the change?

2 A. Okay.

3 Q. That's a year and a half. Is that good
4 compliance on your part?

5 A. We don't agree with the FID's
6 interpretation. We don't agree we're not in
7 compliance.

8 Q. And you continued to offer the product
9 although you were told that it does not comply?

10 A. We don't agree with the FID's ruling. We
11 couldn't get past the examiner level to get a
12 ruling. We've tried very, very -- we have put
13 forth a great effort to be compliant with FID who
14 have been unresponsive.

15 Q. Let's follow-up on that.

16 A. Okay.

17 Q. After the 2014 examination when these
18 loans were first discovered, did TitleMax ask for a
19 meeting with the FID?

20 A. Yes.

21 Q. Did they get it?

22 A. Yes.

23 Q. Okay. So you asked for a meeting and you
24 got it. Was that prior to the exit meeting?

25 A. I don't know. I wasn't there.

1 Q. Okay. But you know TitleMax did get a
2 meeting when they asked for it?

3 A. Yes.

4 Q. Other than that meeting, how many other
5 meetings have you asked for?

6 A. Oh, I don't know off the top of my head.

7 Q. Have you asked for any?

8 A. I believe we have.

9 Q. You believe, but you don't know for sure?

10 A. Have we asked for other meetings with the
11 FID?

12 Q. Right.

13 A. I don't know.

14 Q. Have you asked for any advisory opinions?

15 A. Yes.

16 Q. You've written for an advisory opinion?

17 A. Oh, I don't know.

18 Q. So you really don't know if they've ever
19 written for an advisory opinion?

20 A. I'm not the legal team.

21 Q. So your statement here during direct
22 examination that you have tried and tried and tried
23 to get cooperation with FID and meet with FID and
24 FID has been nonresponsive, you really don't have
25 any firsthand knowledge of that; do you?

1 A. No, that's not true. I didn't say that.

2 I have what my legal team has told me. I've been
3 briefed on all of the efforts. I spent time this
4 week listening to everything that we've done.

5 Q. So tell me about TitleMax's efforts.

6 A. We wrote a letter in response to the
7 2014. We met. We tried to get clarification
8 almost immediately proactively. We requested to
9 meet when the FID first cited us for the two
10 issues.

11 Q. Have you --

12 A. So we proactively --

13 MR. REILLY: Hold on. Please let the
14 witness answer.

15 THE WITNESS: We sought clarification
16 immediately. Then we sent a letter in response.
17 The FID has continued to just say, it's that way
18 because. That's what our examiners say. And we
19 say no. We've got a second attorney's opinion.
20 We've asked for clarification from you. We've
21 asked for outside counsel. We've done everything
22 to know. I want to be able to go back to my
23 operators and say, this is how title loans work in
24 Nevada and here's how we're going to go forward and
25 we're going to compete with everybody. That's what

1 we want from the FID. We want the same thing. We
2 want to know what the regulations are so we can go
3 out and execute our business. That's what we want.

4 BY MS. RAKOWSKY:

5 Q. Let's go back again. You asked for a
6 meeting in 2014, and that was prior to the exit
7 meeting to discuss this loan?

8 A. Correct.

9 Q. At the meeting was the loan discussed?

10 A. I wasn't at the meeting.

11 Q. So you don't know whether the loan was
12 discussed or not?

13 A. I assume it was.

14 Q. But you're saying here that we haven't
15 assisted you.

16 A. Sending a legal team from Savannah to
17 Nevada proactively to get in front of this issue,
18 yes, I consider that --

19 Q. And, apparently, they did discuss it, and
20 the FID explained to your legal team why this loan
21 does not comply?

22 A. The examiners did.

23 Q. And legal office from the attorney
24 general's office was there?

25 A. They gave us a legal ruling of the law?

1 Q. They never -- how do you know that?

2 A. No, I'm asking you. You just made that
3 statement.

4 Q. Did TitleMax ever ask for an advisory
5 opinion?

6 A. I don't know. I'm not even sure of the
7 term.

8 Q. But you testified that they haven't done
9 a lot of things, but you don't have any firsthand
10 information of what has gone on and why?

11 A. Of course I do. I have a legal team.
12 That's who I use. I don't personally do these. I
13 run the stores. My legal team and my compliance
14 department does.

15 Q. But your testimony is that they have not
16 explained anything?

17 A. Correct.

18 Q. But how do you know that?

19 A. Because we don't have clarification.
20 Because we had to wait until today to even discuss
21 these things. We're using this crazy forum to just
22 even get this discussion.

23 Q. At the exit meeting -- I'll draw your
24 attention to 8573.

25 JUDGE McKAY: What exhibit is that?

1 MS. RAKOWSKY: It's the report of
2 examination from 2014.

3 JUDGE McKAY: That's Exhibit B.

4 BY MS. RAKOWSKY:

5 Q. You personally have never asked for an
6 advisory opinion; is that correct?

7 A. I personally never asked.

8 Q. Is a repayment plan a grace period?

9 A. No.

10 Q. What's the difference?

11 A. Can you give me the context? There's two
12 different ones in my head.

13 Q. What's a repayment plan under Nevada law?

14 A. The way I understand the repayment plan
15 is that if a customer --

16 Q. That's all I'm asking.

17 A. If a customer goes into default, we offer
18 them the opportunity to enter into a replacement
19 plan. In our situation we require 20 percent down
20 and we break the difference up over three months.
21 We charge no interest, no fees, during that time.

22 Q. So you can't offer a repayment plan until
23 the person is in default?

24 A. We don't offer a repayment plan until
25 they're in default.

1 Q. Going back to 8573, the exit meeting on
2 December 18th of 2014, was there anybody, any legal
3 knowledge from the FID, present according to this
4 document?

5 A. Can I see the document?

6 Q. I thought they gave it to you. I'm
7 sorry.

8 A. I don't know which one it is.
9 So what am I reading?

10 Q. There was a meeting. And present, you
11 said that there was nobody from the FID. I don't
12 want to misquote this late in the day, but there
13 was nobody from the FID who could offer any
14 explanation.

15 A. The FID was there.

16 Q. So does it appear that somebody was there
17 to explain things?

18 A. The FID was there. I mean, of course
19 they were there. It was a meeting with the FID.

20 Q. And do you have any reason to believe
21 that they didn't explain why the product does not
22 comply with law?

23 A. I think that they explained their
24 position.

25 Q. So your position is that we understand

1 your position, but we can still do what we want?

2 A. No. That we disagree with your
3 interpretation of the law.

4 Q. And we'll continue offering something
5 that we don't believe -- that you don't believe we
6 should offer?

7 A. Is that a question? What was the
8 question?

9 Q. It's a yes or no question.

10 A. Okay. What was it?

11 Q. Even after an explanation from the FID as
12 to why this product doesn't comply, because
13 TitleMax believes that they can do it, they
14 continued to do it, although the regulating
15 authority told them they should not?

16 A. I don't know if they told them they
17 should not. I wasn't at the meeting.

18 Q. That's fair enough.

19 You testified that you offered that
20 product because the borrowers are having a hard
21 time?

22 A. Okay. I don't remember saying those
23 exact words.

24 Q. Why do you offer that product to your
25 customers?

1 A. For flexibility.

2 Q. You said that some of them -- that some
3 of them have a hard time making the payments?

4 A. I have a hard time making payments
5 sometimes.

6 Q. But how do you know when you offer the
7 payment within a day or two or the same time that
8 they're going to have trouble making the payments?

9 A. We don't.

10 Q. Then why do you offer that?

11 A. We offer it to everybody.

12 Q. Why?

13 A. Why do we offer it to everybody? Because
14 we want to give every customer the exact same
15 flexibility. I don't pick and choose. I gave it
16 to everybody.

17 Q. And the fact that TitleMax makes more
18 money from this product doesn't enter into it at
19 all?

20 A. No.

21 Q. But you have no way to know whether
22 they're having a hard time or not a day after they
23 enter into that loan, do you?

24 A. I would not want my team to determine who
25 should or should not get offered a GPDA. I would

1 expect them to consistently apply it.

2 Q. 604A.445(3) does not provide for a
3 210-day loan with interest, with just interest
4 payments, does it?

5 A. Can you repeat the question?

6 Q. It was poorly stated. Sorry.

7 NRS 604A.445(3) does not provide for a
8 loan where you only make interest payments; is that
9 correct?

10 A. That is correct. Well, wait a minute.
11 30-day loan.

12 Q. I'm talking about sub 3.

13 A. Okay.

14 Q. You looked at the violations. Are a lot
15 of the deferment agreements in the violations not
16 signed?

17 A. I didn't look for that, I'm sorry.

18 Q. So you never looked to see whether the
19 majority of the agreements in the 300 and some
20 violations did not have signatures or dates?

21 A. My expectation is if the customer wants
22 to be in a GPDA, we have a signed agreement.

23 Q. Are they dated?

24 A. I would say yes.

25 Q. If I were to say 50 percent of them were

1 not dated, is there any way to track what date
2 these people signed those agreements?

3 A. No. If the GPDA agreement is not signed?

4 Q. Signed and not dated?

5 A. I don't think we would have a way to know
6 for sure when it was signed. I don't know of a
7 way.

8 Q. I guess you could figure it out by the
9 amount of principal payments that are due in the
10 last seven payments?

11 A. I'm not sure.

12 Q. Because if all seven payments are the
13 same as the principal on the copy of the original
14 loan, that means that no principal payment has been
15 made at all; is that correct?

16 A. I don't understand the question, I'm
17 sorry.

18 Q. Let me see if I can rephrase it because
19 it's 4:30 time.

20 The last seven payments on the deferment
21 agreement are principal only; correct?

22 A. The grace period. Are you talking about
23 the grace period?

24 Q. The deferment agreement, yes.

25 A. Okay.

1 Q. So if the last seven payments added up
2 are equal to the amount of the loan on the first
3 page of the original agreement, that would mean
4 that there's been no principal payment made on that
5 loan at the time they enter into that deferment
6 agreement?

7 A. I believe that what you're saying sounds
8 right. I'd have to put it to math. If you add up
9 all the payments in the grace period and it added
10 up to the amount financed, you could assume they
11 made no payments through the last seven months.

12 Q. The last period?

13 A. The grace period.

14 Q. You can call it whatever you want, but
15 the last seven payments?

16 A. There's only seven payments.

17 JUDGE McKAY: You guys are speaking the
18 same language, but you're disagreeing about the
19 terms that you want to use. I believe he's already
20 stated that, yes, that seems to be a viable
21 mechanism for trying to sort of backdate the
22 contract.

23 BY MS. RAKOWSKY:

24 Q. And if they had made one of the original
25 payments on this loan, then the amount of the last

1 **seven payments would have been less than the amount**
2 **financed on the original loan?**

3 A. So if they had made a payment and reduced
4 principal or they had made two payments and reduced
5 principal, we could back into that by adding in the
6 total amount that was in the grace period to see
7 when they signed it?

8 Q. **Yes.**

9 A. Sounds like we could do that, yes.

10 Q. **You didn't rely on this particular letter**
11 **from Chris Eccles, did you?**

12 A. Yes.

13 Q. **Okay. And when was --**

14 A. I did rely. You said I didn't. The
15 answer is yes.

16 Q. **You did rely on this letter?**

17 A. We did. It was a response from the FID.
18 Of course we did.

19 Q. **When was the 2014 report of examination**
20 **provided?**

21 A. I'd have to look at the exact date.

22 Q. **8565.**

23 A. It was closed on December 18th, 2014.

24 Q. **And the -- and you relied on a March 2nd**
25 **letter the following year. So what did TitleMax**

1 **rely on for the four months that they continued to**
2 **offer the agreement?**

3 MR. REILLY: Objection. Vague.

4 JUDGE McKAY: Do you want to restate and
5 be a little more clear.

6 MS. RAKOWSKY: I'm trying.

7 BY MS. RAKOWSKY:

8 **Q. You testified that you relied on Chris**
9 **Eccles' March 2nd, 2015 letter where he said the**
10 **FID stands by its Nevada needs improvement -- "the**
11 **FID stands by the Nevada needs improvement rating**
12 **for the companies in the 2014 ROE."**

13 And you said that was too vague to let
14 you know that the deferment agreement was
15 noncompliant?

16 A. I don't think that's what I said, and
17 that's not what I think.

18 **Q. What did you rely on this letter for?**

19 A. If I can articulate it. We got this. We
20 wrote a letter in response to this. That letter
21 was in response to our letter. So what that told
22 us was the primary concerns for the needs
23 improvement audit were not the ones that are
24 outlined here, but, rather, the ability to repay,
25 which we had already rectified. So in our

1 findings, we felt that a response like that that's
2 absent and didn't address the six or seven pages
3 that our outside attorney wrote was a pretty good
4 indication that, okay, you've explained it. We
5 understand.

6 Q. Do you know if there were any other
7 communications between Mr. Eccles and Mr. Reilly
8 that would have addressed any of the other issues?

9 A. I don't know.

10 Q. But you didn't rely on this until after
11 March of 2015? You didn't rely on this letter
12 between December and March?

13 A. What do you mean rely on?

14 Q. You said you relied on it to say that we
15 had no problems with your grace period deferment
16 agreement even though at the exit meeting they said
17 you did?

18 A. We were following the process. We were
19 cited with a needs improvement. We responded.
20 That's the response back. It was a step in the
21 process. We disagreed with the FID's
22 interpretation of the regulations.

23 Q. So it's because you disagreed, you just
24 decided to continue offering the product?

25 A. Yes. Because we were looking for a

1 ruling. We were looking for clarity.

2 Q. But you didn't think you should stop
3 offering it until you got clarity?

4 A. We don't agree, no.

5 Q. So if somebody tells you something is
6 illegal and you shouldn't offer it, you just
7 continue?

8 A. If somebody told me that I should stop
9 loving my wife and it was illegal, I would still
10 love my wife.

11 Q. If somebody tells you you shouldn't drive
12 through a yellow light, until you got a ticket, it
13 would be okay?

14 A. I know about red lights and yellow
15 lights. I don't need clarity, okay. So somebody
16 tells me that something is the law, just because
17 they say it doesn't make it so.

18 Q. Do you believe that the FID is the
19 regulator?

20 A. Yes.

21 Q. Do you believe that the legislature of
22 the State of Nevada has vested them with the power
23 to enforce the statutes and regulations towards the
24 licensees?

25 A. Of course.

1 Q. But you believe that you don't have to
2 listen to them?

3 A. No.

4 Q. And, to your knowledge, there was never
5 any refusal to meet with your company from the FID?

6 A. To my knowledge, the FID has never said,
7 We're not going to meet with you.

8 Q. Do you understand that a title loan is a
9 closed-end loan as defined under Regulation Z?

10 A. Can I see the regulation?

11 Q. Are you familiar at all with Regulation
12 Z?

13 A. I'm not a lawyer. I need to look at it.

14 MS. RAKOWSKY: I can pull it up.

15 MR. REILLY: I'm going to object to this.

16 JUDGE McKAY: What is the relevance?

17 MS. RAKOWSKY: It's very relevant.

18 MR. REILLY: To what?

19 MS. RAKOWSKY: About the terms of this
20 loan and what they're doing. This definitely
21 reflects on it, and I'm going to be done shortly.

22 JUDGE McKAY: The terms of this loan?

23 MS. RAKOWSKY: It has to do with
24 Regulation Z. It has to do with truth in lending.

25 BY MS. RAKOWSKY:

1 Q. Do you know the difference between a
2 closed-end and an open-ended loan?

3 MR. REILLY: I'm going to object. This
4 is not relevant. There's no allegation that my
5 client violated Regulation Z or federal law in the
6 administrative complaint.

7 JUDGE McKAY: What violation does this go
8 to?

9 MS. RAKOWSKY: This violation goes to
10 offering a grace period to catch up on a loan and
11 not complying with Nevada law, offering a longer
12 period on a loan than legally allowed.

13 MS. LOVELOCK: That's the general concept
14 we've been here for two days for.

15 JUDGE McKAY: Go ahead briefly, please.

16 MS. RAKOWSKY: Let me finish and then you
17 can make a ruling on it, okay.

18 JUDGE McKAY: I mean, you can ask about
19 this, but please make it brief.

20 MS. RAKOWSKY: I will.

21 BY MS. RAKOWSKY:

22 Q. Do you know what the difference between a
23 closed-ended loan and open-ended loan?

24 A. I couldn't define it accurately.

25 Q. Do you know the difference? I mean,

1 **you're in the lending business. Do you know if a**
2 **title loan is a closed-ended or an open-ended loan?**

3 A. No. Explain it. I'd like to see
4 whatever regulation you're talking about before I
5 answer your question.

6 **Q. Are you aware that a closed-ended loan is**
7 **--**

8 A. Can I see the regulation? You said I
9 could see it. Let me see it. I'll read it
10 thoroughly and I'll give you what my opinion is,
11 but I'm not an attorney so I can't give you a legal
12 opinion.

13 **Q. You can say what you don't know then?**

14 A. Do you have the regulation? Can I see it
15 or not?

16 **Q. It's long.**

17 A. Then we're going to take the time to read
18 it. I'm not going to answer a question out of
19 context. I'll give you my best answer, but I'm
20 going to read it.

21 **Q. And your first testimony is that you**
22 **don't know what a closed-end loan is?**

23 A. Are you going to show me the regulation?

24 JUDGE McKAY: Answer that question.

25 THE WITNESS: I don't know what you're

1 referring to, an open and a closed-ended. I don't
2 know the reference. I don't understand the
3 difference between the two. Is it under Nevada law
4 or federal law that we're talking?

5 MS. LOVELOCK: Perhaps you can ask him do
6 you know and he can say yes or no.

7 BY MS. RAKOWSKY:

8 Q. Are you familiar with Regulation Z?

9 A. No.

10 Q. Are you familiar with truth in lending?

11 A. Yes. Okay. What am I reading? What
12 would you like me to look at?

13 Q. Regulation Z. That's what you asked to
14 see.

15 MR. REILLY: 12 CFR 226, to be official.
16 I think it's a pretty long regulation.

17 MS. LOVELOCK: I think those are pages
18 and pages and pages.

19 BY MS. RAKOWSKY:

20 Q. Do you understand that Regulation Z is
21 the one that requires the truth in lending
22 statement on these loans?

23 MR. REILLY: Objection. Calls for a
24 legal conclusion. Lacks foundation.

25 JUDGE McKAY: Stop reading that for now.

1 So simply ask him about what he
2 knows.

3 BY MS. RAKOWSKY:

4 Q. Do you understand that Regulation Z is
5 the regulation that requires this truth in lending
6 statement?

7 A. I'm not familiar with Regulation Z.

8 Q. Are you familiar with the truth in
9 lending statement?

10 A. Yes, limited.

11 Q. Do you know the difference between -- do
12 you know what a closed-end loan is?

13 JUDGE McKAY: He already answered that.

14 MR. REILLY: Objection. Asked and
15 answered.

16 BY MS. RAKOWSKY:

17 Q. Do you know what an open-ended loan is?

18 MR. REILLY: Objection. Asked and
19 answered.

20 JUDGE McKAY: Sustained.

21 BY MS. RAKOWSKY:

22 Q. Do you know what an open-ended loan is?

23 MR. REILLY: Objection. Asked and
24 answered. She sustained it.

25 BY MS. RAKOWSKY:

1 Q. Do you know the difference between a
2 title loan and, let's say, a loan on your credit
3 card?

4 A. I think I could take a good shot on it.

5 Q. Go for it.

6 A. A credit card, I have an open line of
7 credit so I can use it. It's open. If I have a
8 \$20,000 line of credit and I use a thousand, I pay
9 off a thousand, I still have a \$20,000 line of
10 credit.

11 A title loan, we're always going to look
12 at the value of the vehicle at the date of
13 origination. It's always going to be based on the
14 value of the asset at the time of origination.
15 It's not going to be a static number.

16 Q. Is this truth in lending statement
17 supposed to change on this loan?

18 MR. REILLY: Objection. Vague.

19 JUDGE McKAY: That is vague. Please
20 rephrase.

21 BY MS. RAKOWSKY:

22 Q. This truth in lending statement is
23 required by law; yes?

24 A. I understand that it is, yes.

25 Q. And it has to be accurate; is that true?

1 A. Yes.

2 Q. And if something in here were to change,
3 this would have to change; correct?

4 A. What's changing?

5 Q. If any terms of the loan change, if
6 anything is modified, if the amount of time, if the
7 amount of the loan --

8 A. If we modify the loan, yes. If we modify
9 the loan contract, we would have to change that,
10 yes.

11 Q. But if you don't modify the loan, this is
12 finite; this is what it is; this is the payments?

13 A. This is the payments, assuming it happens
14 exactly. Very seldom in the real world does this
15 happen with or without GPDAs or any other time.
16 Customer goes one day late, it changes.

17 Q. Are you supposed to charge additional
18 interest on a closed-end loan?

19 A. I don't know.

20 Q. Under Nevada law if you're one day late,
21 are you in default?

22 A. I don't know. With us, you are.

23 Q. So if you're one day late, you're in
24 default?

25 A. By our definition of default, if you're

1 one day late, we consider your account in default.

2 Q. If somebody is in default, can they
3 charge additional interest under Nevada law?

4 A. If a customer is in default, we have to
5 send them an opportunity to enter into a payment
6 plan. I believe under Nevada law, not 100 percent
7 sure, it's after 10 days.

8 Q. I asked you under Nevada law, if you're
9 in default, can you charge additional interest?

10 A. I don't know Nevada law. I'm not a
11 lawyer. You keep asking me Nevada law. I can't
12 quote it. That's why I have lawyers. I know what
13 I have to do as an operator. As an operator, if
14 it's over 10 days late, I have to send an
15 opportunity to enter into a repayment plan.

16 Q. That wasn't my question.

17 A. That's how I can answer it.

18 Q. Can you offer a grace period to catch up
19 -- do you offer grace periods to people who are in
20 default?

21 A. No.

22 Q. So if you would be offering a grace
23 period to catch up, you'd be violating your own
24 policy; is that correct?

25 A. If I was offering a grace period with the

1 sole intention to catch up. So if somebody in my
2 organization --

3 Q. Can you answer yes or no?

4 A. I'm going to. If somebody in my
5 organization offered an OERP to somebody who was in
6 default, that would be in violation of our
7 direction, yes.

8 Q. So if you offer a grace period to catch
9 up on a closed-end loan, you're violating Nevada
10 law; is that correct?

11 A. I have no idea. I am not an attorney.

12 RE-CROSS EXAMINATION OF THEODORE HELGESEN
13 BY MR. POPE:

14 Q. Sir, you've testified that you just
15 wanted to know how title loans operate in Nevada.
16 Do you remember saying that?

17 A. Yes.

18 Q. Didn't the exam reports explain that to
19 TitleMax?

20 A. No.

21 Q. No? Didn't you previous testify that
22 there wasn't anything in the exam report that was
23 unclear?

24 A. There was nothing that you cited us that
25 we were unclear with your position. That was the

1 context of it. Were we unclear with what you were
2 saying? NO. We were unclear on the interpretation
3 of the regulations. We had already made a good
4 faith change with the 30-day product. And when you
5 came with the 210 and cited us, we sought clarity
6 beyond the examiner level. That's why we're here
7 today.

8 JUDGE McKAY: You're totally finished
9 with this witness?

10 MR. POPE: Yes, Your Honor.

11 MS. LOVELOCK: Can we have a two-minute
12 break?

13 MR. REILLY: Actually, I don't want to
14 take a break. Why don't we have the witness stay
15 here and I'll go outside and talk with counsel.

16 JUDGE McKAY: Okay. Two minutes.

17 MR. REILLY: Let's go off the record.

18 (Discussion off the record)

19 MR. REILLY: I just have a few questions
20 and we will get done very quickly hopefully.

21 REDIRECT EXAMINATION OF THEODORE HELGESEN
22 BY MR. REILLY:

23 Q. During my direct examination and during
24 the cross you used the term "clarity" a number of
25 times. I just want to make sure that you're clear.

1 When you're talking about seeking
2 clarity, you're looking for someone to decide these
3 legal issues, like a judge or a hearing officer;
4 correct?

5 A. Correct.

6 Q. Now, you can enter into the grace period
7 deferment agreement at any time after one day;
8 correct?

9 A. Correct.

10 Q. So this can be month four, month five or
11 month six; correct?

12 A. Yes.

13 Q. And I want to make it clear that you
14 don't agree and TitleMax does not agree with the
15 methodology of the Financial Institutions Division
16 in simply comparing the amount financed box in the
17 TILA disclosure with the amount scheduled in the
18 grace period deferment agreement as a way to
19 determine whether, quote/unquote, additional
20 interest has been charged; right?

21 A. Correct.

22 Q. On the application there is a co-borrower
23 section that we talked about; correct?

24 A. Yes.

25 Q. Many times the co-borrower is also on

1 title; correct?

2 A. Yes.

3 Q. So there's nothing untoward about having
4 a co-borrower box on the application; right?

5 A. Correct.

6 Q. Who requests or who suggests that there
7 be a co-borrower? Is it TitleMax or is it the
8 customer that usually does that?

9 A. I would say the customer.

10 Q. It's not something that TitleMax actively
11 markets?

12 A. Well, unless they are on the title. So
13 if it's an "and" title and if it's a husband and
14 wife, then they have to. In that situation we
15 would dictate it because it's a requirement.

16 Q. Makes sense.

17 What happened to the default rate for
18 TitleMax title loans in Nevada after TitleMax
19 stopped offering the grace period deferment
20 agreement in December 2015?

21 A. It went up.

22 MS. RAKOWSKY: Objection. There's
23 nothing in evidence about that.

24 BY MR. REILLY:

25 Q. How much did it go up?

1 A. Nearly double.

2 JUDGE McKAY: It's overruled.

3 MS. RAKOWSKY: I'm objecting because
4 there's nothing in evidence.

5 MR. REILLY: He just testified.

6 JUDGE McKAY: This is the evidence. This
7 is what they're presenting on this point. This is
8 it.

9 BY MR. REILLY:

10 Q. If TitleMax wanted to collect more in
11 interest, wouldn't it just be a whole lot easier to
12 raise the interest rate than go through this
13 elaborate alleged scheme?

14 A. Absolutely. If all we were interested in
15 doing was making more money, we would just raise
16 the interest rates. That's it. We have no cap on
17 interest rates.

18 Q. TitleMax is a very successful business;
19 correct?

20 A. Yes.

21 Q. TitleMax doesn't get to be successful by
22 duping its customers; would you agree with me?

23 A. Absolutely.

24 Q. And that's not what's going on here?
25 That's not the purpose of the grace period payment

1 **deferment agreement; right?**

2 A. No. Customers are smart. They would
3 figure that out. We would lose our customers.

4 MR. REILLY: Pass the witness.

5 JUDGE McKAY: There's no more re-cross,
6 right? Okay. So we're done with this witness.

7 Did you have a chance to share with FID
8 your spreadsheet?

9 MR. REILLY: I did not because I forgot
10 to print it out this morning. I can email it to
11 them tonight.

12 JUDGE McKAY: Can you please do that.

13 MR. REILLY: Yes.

14 JUDGE McKAY: Every other marked exhibit
15 has been stipulated to be admitted; correct?

16 MR. REILLY: Yes.

17 JUDGE McKAY: So I will deem all
18 documents that are marked at this point admitted.

19 Are there any other housekeeping matters
20 we need to go over?

21 MR. REILLY: With regard to closing
22 arguments.

23 MS. LOVELOCK: Can we do it later in the
24 day?

25 JUDGE McKAY: What time would you prefer?

1 MR. REILLY: We were talking about 10
2 o'clock. I was actually, after all this, thinking
3 about one o'clock.

4 MS. RAKOWSKY: One o'clock works.

5 MR. REILLY: You also said you were going
6 to have some pointed questions for the parties for
7 the briefing.

8 MR. POPE: Wait until after closings.

9 JUDGE McKAY: I was also thinking maybe
10 I'll email the parties tonight and say, please
11 address these in your closing.

12 MS. LOVELOCK: That would be helpful,
13 Your Honor.

14 MR. REILLY: We've covered a lot of
15 ground over and over and over again. I think that
16 would be very helpful.

17 JUDGE McKAY: It's me under the gun.

18 MS. LOVELOCK: If you want to push it
19 back to three o'clock, we can push it back further
20 in the day. This has been fully briefed on both
21 sides. We know our positions. I'm sure our
22 closings will already have those points in there.

23 JUDGE McKAY: Let's just do 2:00. Two
24 o'clock tomorrow here.

25 MR. POPE: Any certain amount of time?

1 JUDGE McKAY: I should impose a time
2 limit.

3 MS. RAKOWSKY: I want to go about four
4 hours.

5 MR. REILLY: There's no danger of that.
6 I can't imagine me going over an hour or opposing
7 counsel going over an hour.

8 JUDGE McKAY: Would you each like an
9 hour?

10 MR. REILLY: That's why I don't think we
11 need a time limit.

12 MS. RAKOWSKY: I think we've heard
13 enough.

14 JUDGE McKAY: So there's just going to be
15 one attorney each. There's not going to be
16 rebuttal or anything like that?

17 MR. REILLY: No. Just closing argument,
18 response.

19 JUDGE McKAY: Why don't we set a loose
20 timeline of an hour each.

21 MS. RAKOWSKY: So I couldn't take, like,
22 10 minutes out of mine to rebut what he's going to
23 say, and I'll ask for that at the time because I
24 don't know what he's going to say after me.

25 JUDGE McKAY: Let's say an hour each, and

1 you can divide your time in that way. Only you
2 can. We're not going to do more.

3 MR. REILLY: No, no, no. They get the
4 final word.

5 JUDGE McKAY: So an hour each. We'll
6 start at 2:00. And I'll email all three counsel
7 and you two counsel tonight with the questions.
8 I'll try to do it tonight. When should I have to
9 email you?

10 MR. REILLY: I'm not going to force you
11 to do it.

12 JUDGE McKAY: You guys need adequate time
13 to prepare.

14 MR. REILLY: What I'm trying to avoid is
15 the awkward circumstance where we're in the middle
16 of our closing arguments and you kind of ask a
17 question and we're not really ready for it because
18 we haven't seen it before.

19 JUDGE McKAY: I'm going to aim to email
20 you before 10:00 a.m. tomorrow. And I don't think
21 you're going to be surprised by anything that I'm
22 going to say. So I'm going to write that down for
23 myself. Aim to email you all by 10:00 a.m.
24 tomorrow.

25 MR. POPE: Actually, if we could jump

1 back to exhibits. The scripts there was an email
2 that was attached to the script that said where it
3 came from and I'm not sure if that's attached to
4 our script.

5 MR. REILLY: I think she has it.

6 JUDGE McKAY: This is Exhibit F. It has
7 your email attached to the email was the actual
8 script and then theirs that they gave.

9 MR. POPE: Thank you.

10 JUDGE McKAY: Nothing else? Okay. Thank
11 you.

12 (Proceedings adjourned at 5:01 p.m.)
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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
) SS:
3 COUNTY OF CLARK)

4 I, Kimberly A. Farkas, a duly certified Court
5 Reporter, State of Nevada, do hereby certify: That
6 I reported the taking of the PROCEEDINGS IN THE
7 MATTER OF TITLEMAX, commencing on Tuesday, July 19,
8 2016.

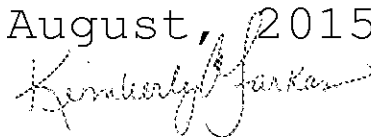
9 That prior to being examined, the witnesses
10 were duly sworn to testify to the truth.

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

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

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

23



24

Kimberly A. Farkas, CCR 741

25

3

In the Matter Of:

In Re: Title Max/FID Disciplinary Action

TRANSCRIPT OF PROCEEDINGS, VOLUME III

July 20, 2016

Job Number: 324323

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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

1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 20, 2016;

2 2:04 P.M.

3 -o0o-

4 JUDGE McKAY: We're back on the record.
5 It's Wednesday. It's 2:04 p.m.

6 Before we start with closing arguments,
7 did TitleMax give FID a copy of that summary?

8 MR. REILLY: I did not. I apologize.
9 I'm sorry. I believe I can do that right now.

10 MS. RAKOWSKY: We won't have time to
11 review it.

12 MR. REILLY: They won't have time to
13 review it.

14 JUDGE McKAY: Do you want it in the
15 record or is it something we can just move on
16 without?

17 MR. REILLY: I would like it in the
18 record. It's something we can probably do
19 afterwards. I have taken out the work product
20 descriptions from my paralegal who prepared it.
21 Most of the comments were minor. I can submit it
22 to opposing counsel after we're done.

23 JUDGE McKAY: And then you guys can email
24 it to me once you've agreed that it can be
25 admitted.

1 MR. REILLY: And if they have any
2 objections to it, they can email you and copy me on
3 it, and that would be fine.

4 JUDGE McKAY: If it is admitted, it will
5 be Exhibit what?

6 MR. REILLY: 104.

7 JUDGE McKAY: Okay.

8 MS. RAKOWSKY: Your Honor, we would like
9 to admit that email from yesterday, the email from
10 December of 2015, and I believe that the door was
11 opened that TitleMax testified that they stopped
12 using the product December 2015, and I think that
13 that email is important.

14 MR. REILLY: You already ruled on that.
15 You declined to admit it into the record and then
16 they finished their examination of the witness. I
17 would add that that document was apparently
18 obtained during the late 2015 examination of
19 TitleMax. And you'll recall that I filed a motion
20 in limine specifically because I thought they were
21 trying to gen up additional exhibits for this
22 proceeding by using their investigative powers, and
23 I objected. And you were very specific by saying,
24 No, there are no more.

25 And I think this is a very loose -- I

1 didn't open the door. I did not open the door.

2 JUDGE McKAY: I did rule on that. If
3 your client obtained that in any kind of exam or
4 follow-up exam that happened in December, that's
5 not admissible.

6 MS. RAKOWSKY: I understand that, but
7 they opened the door on their own introducing
8 testimony that they stopped using the product in
9 December of 2015. We were not going to discuss
10 anything after November of 2015, and we did not.
11 And their side actually said they stopped using it.
12 So now it is in the record that they stopped using
13 it at a date. And that email is relevant because
14 it shows that they did not stop using it on that
15 date.

16 MR. REILLY: I want to clarify something.
17 TitleMax stopped offering GPDA on new loans in
18 December of 2015.

19 MS. RAKOWSKY: You said they stopped
20 using it. And, in fact, they were still using it.
21 So we believe this is very important.

22 JUDGE McKAY: Is that how your client
23 obtained it, it was through a follow-up exam?

24 MS. RAKOWSKY: They asked from one of the
25 licensees and it was given to them.

1 JUDGE McKAY: One of those letters that
2 they were asking for additional documents, and that
3 was specifically the subject of my order where I
4 said nothing that was obtained after that November
5 date -- I don't have it memorized right now -- is
6 going to be admitted. Right? And number two, he
7 just conceded this is new loans. I am the fact
8 finder. This isn't like a situation where the jury
9 is only seeing or hearing one witness. So you can
10 rest assured that I've heard all of it and I've
11 heard his concession now and I've heard the
12 qualificationS. So all of this is in the record.
13 I'm not going to admit that document, but rest
14 assured I heard everything.

15 MS. RAKOWSKY: Then that's fine.

16 MR. POPE: Thank you, Your Honor.

17 JUDGE McKAY: Sure. So that summary,
18 you're going to submit that just in a private
19 email. I'm not going to be on that email?

20 MR. REILLY: Right.

21 JUDGE McKAY: And then you're going to
22 either stipulate or you're going to email me with
23 your objections; is that right?

24 MS. RAKOWSKY: Absolutely.

25 JUDGE McKAY: And then I'll, in my final

1 order, comment whether I deem it admitted.

2 MR. REILLY: And I apologize again.

3 JUDGE McKAY: Sure.

4 MR. POPE: The record is open only for
5 that purpose after today. And do you want to put a
6 deadline on it in case we don't receive it, please.

7 JUDGE McKAY: Yes. Please submit it to
8 them by the end of the day today.

9 MR. REILLY: Yes.

10 MS. RAKOWSKY: Can we have until next
11 Tuesday to comment on it, please?

12 JUDGE McKAY: So summary chart to be
13 submitted to FID by midnight today. FID to have
14 until Tuesday. What is Tuesday's date?

15 MS. LOVELOCK: 26.

16 JUDGE McKAY: Tuesday, July 26 to
17 respond. And that response should tell me either
18 whether you simply stipulate to its admissibility
19 or whether you have objections.

20 MS. RAKOWSKY: Thank you.

21 JUDGE McKAY: And when I see that email,
22 I'll respond and let you know if they do object how
23 long you have to respond.

24 MR. REILLY: Thank you.

25 MS. RAKOWSKY: And I'll copy you on

1 sending it.

2 MR. REILLY: Of course.

3 JUDGE McKAY: Anything else? Okay.

4 Everybody got my email or fax this morning?

5 MR. REILLY: Yes.

6 JUDGE McKAY: All right. Are we ready to
7 do closings?

8 MS. RAKOWSKY: The closing is not
9 restricted to this. We can do a general closing
10 and include this?

11 JUDGE McKAY: Oh, yes. And as I said
12 yesterday, 60 minutes, 65 if you need it. I don't
13 want to go much more than that. Okay.

14 MS. RAKOWSKY: I want to do less and then
15 reserve.

16 JUDGE McKAY: So you'll go 50 minutes
17 now?

18 MS. RAKOWSKY: Or 45 to respond.

19 MR. POPE: So you want to reserve 10 or
20 15?

21 MS. RAKOWSKY: I'll reserve 15.

22 JUDGE McKAY: Go ahead, whenever you're
23 ready.

24 MS. RAKOWSKY: Thank you, Your Honor.
25 After two full days of hearing, the FID has proven

1 that TitleMax is and has been fully aware of Nevada
2 law regulating title loans. During this hearing,
3 TitleMax testified that it has a legal team that
4 makes legal decisions. TitleMax testified it uses
5 Nevada counsel to assist in the decisions.
6 Nevertheless, TitleMax believes that it can do as
7 it pleases, disregard Nevada law, disregard its
8 regulators, and collect millions of dollars in
9 illegal interest under the guise that it's okay not
10 to listen to the regulators and allege that there's
11 a bonafide dispute as to the interpretation of the
12 statute.

13 Nothing can be clearer than NRS
14 604A.445(3). The commissioner testified that there
15 are approximately 125 title lenders in Nevada. He
16 went on to state that 124 of them did not have any
17 difficulty understanding the requirements for a
18 title loan. There are also only two title loan
19 products allowed in Nevada, and TitleMax only
20 offers one of those products. It's a 604A.445(3)
21 loan which simply provides that the original term
22 of the loan may be up to 210 days if the loan
23 provides for payments in installments, the payments
24 are calculated to ratably and fully amortize the
25 entire amount of principal and interest payable on

1 the loan, the loan is not subject to any extension,
2 and the loan does not require a balloon payment of
3 any kind. There is no ambiguity in that language.
4 Yet, TitleMax tries to muddy the waters by making
5 terms so complicated that its own district manager
6 who oversees 177, approximately, locations does not
7 understand the product offered in Nevada or at
8 least alleges that he does not understand the
9 terms.

10 So there will be no doubt in the process.
11 I will walk you through it. I just explained that
12 the requirements for a 210-day title loan, and I
13 will get back to that in a minute. In addition,
14 the title loan may only be offered to the legal
15 owner of the vehicle. That's the law and that law
16 is also unambiguous.

17 604A.105 defines a title loan. A title
18 loan means a loan to a customer pursuant to a loan
19 agreement which under the original terms charges an
20 annual percentage rate of more than 35 percent and
21 requires a customer secure the loan either of two
22 ways, giving possession of the title to a vehicle
23 which is legally owned by the customer to a
24 licensee or any agent or subsidiary of the licensee
25 or perfecting a security interest in the vehicle by

1 having the name of the licensee or their agent,
2 affiliate or subsidiary noted on the title as a
3 lienholder.

4 Nevada law goes on and defines a title to
5 a vehicle as the certificate of title or ownership
6 issued pursuant to the laws of the State of Nevada
7 that identifies the legal owner of the vehicle or
8 any similar document which is issued pursuant to
9 the laws of the State of Nevada. Accordingly, a
10 title loan cannot be given to a non-owner under any
11 circumstances because a non-owner is not on a title
12 regardless of degree or relationship to the actual
13 owner, they cannot be on the title loan.

14 The evidence has shown that TitleMax
15 allowed co-borrowers in order to meet the ability
16 to repay requirement. Even TitleMax admitted
17 during its testimony that they are changing their
18 rules now, and that's because the DMV is pushing
19 back on establishing liens when there's more than
20 one owner on the loan documents. -- more than the
21 owner, I'm sorry -- on the title documents.

22 It becomes obvious that TitleMax will
23 listen to DMV because it affects their bottom line,
24 but will not listen to the regulators who have the
25 duty to enforce the statute that governs their

1 business.

2 During this hearing, we have discussed
3 the requirement that the payments be made in
4 installments. Installment indicates that there
5 should be equal payments made. And in the case of
6 a the 210-day title loan there should be seven
7 monthly payments made, just as indicated on the
8 front page of the original loan documents.

9 We've also discussed that the statute
10 requires the payments be calculated to ratably and
11 fully amortize the total amount of interest and
12 principal. The statute does not say the loan is to
13 be amortized. It says the payments must be
14 calculated to ratably and fully amortize the total
15 amount. Therefore, each payment made toward the
16 210-day loan must, by law, contain both principal
17 and interest. It is clear and unambiguous, but I
18 will repeat it. The law does not allow an only
19 interest or an only principal payment on a title
20 loan. In direct contravention to the law, TitleMax
21 did not comply with this requirement in its
22 deferment agreement.

23 When you review the exhibits, you'll
24 plainly see a payment record attached to each loan.
25 The payment receipts, which are required by law,

1 clearly showed the first seven payments were only
2 applied to interest and not a single payment on the
3 first seven payments, not one single dime, went
4 towards the principal.

5 This is a direct and undisputed violation
6 of 604A. And without even considering any other
7 issue, this violation is sufficient to invoke
8 disciplinary action provided for in Chapter 604A.

9 In addition, Chapter 604A.445(3)
10 prohibits any extension of the loan. The question
11 then arises what is an extension and what is the
12 difference between an extension and a grace period.
13 Before I go there, it's important to consider the
14 lender's recourse in case of a default.

15 Default is defined under Nevada law. And
16 a default is when a customer fails to make a
17 required payment on a loan before the due date or
18 on the due date. A default occurs on the day
19 immediately following the date of the customer's
20 failure to perform. It does not occur a week
21 later. It does not occur two weeks later. A
22 default is immediate in the State of Nevada.

23 If a customer defaults, the title lender
24 has specific statutory recourse. They can grant a
25 grace period. And under a grace period the payment

1 will be deferred and it is deferred gratuitously.
2 In other words, there is no interest and no fees
3 during a grace period. Or the lender can offer a
4 repayment plan pursuant to 604A.560. In fact, a
5 title lender shall provide a customer who is unable
6 to pay a repayment plan. It's not done out of the
7 goodness of their heart. And they're required to
8 follow the law in 604A.475 as to the terms of the
9 repayment plan.

10 Thus, TitleMax does not offer a repayment
11 plan because they're nice, consumer-friendly guys.
12 They offer a repayment plan because the law
13 requires it. The third and only other alternative
14 is to repossess the vehicle. That's the only three
15 alternatives to a 210-day title loan.

16 Although TitleMax claimed they lose money
17 on the vehicle when they repossess it, under
18 deferment agreement scheme that's unlikely. First
19 TitleMax admitted that they only loan 50 percent of
20 the value of the vehicle. In addition, because
21 TitleMax has already collected solely interest for
22 up to seven months, TitleMax has already recouped
23 its cost of money, plus additional cost of money,
24 and they still have the car and the borrower has no
25 equity because they haven't received any credit

1 towards what they've been paying.

2 Here again, the customer gets hurt if the
3 car gets repossessed because TitleMax did not
4 amortize the payments that were made prior to the
5 default as required by the law.

6 Going back to the extension and the grace
7 period issue. Chapter 604A defines both the grace
8 period and an extension. As has been discussed ad
9 nauseam in this particular, the last two days, a
10 grace period is defined in 604A.070 and 604A.210.
11 It's a payment deferment given gratuitously where
12 the client is not charged any fees or interest for
13 the duration of the grace period. An extension, on
14 the other hand, is defined as any extension or
15 rollover loan beyond the date which a loan is
16 required to be paid in full under the original
17 terms of the loan agreement. And the legislature
18 went on to say, and that is regardless of the name
19 given to the extension or the rollover. The term
20 does not include a grace period. So as a result, a
21 grace period and an extension are mutually
22 exclusive.

23 Going back to title loans. There are
24 only two title loans allowed in Nevada, a 30-day
25 with six extensions, which is a total of 210 days,

1 and that's under sub 1 and 2, or a 210-day loan
2 with no extensions, which is under sub 3. Thus,
3 any title loan in Nevada the maximum time is 210
4 days under any circumstances. So if you have a
5 30-day with six extensions, it's 210 days. If you
6 have a 210-day one with no extension, it's 210
7 days. That's all there is.

8 The determination of whether to give the
9 customer a grace period where they cannot charge
10 any interest or an extension where interest
11 continues to accrue is determined by statute.

12 All statutes have to be read together.
13 In this case the legislature got it right. They
14 determined through a grace period there cannot be
15 any additional interest. The legislature even had
16 the foresight to realize that certain lenders may
17 try to skirt the law and try to use the term grace
18 period as an offer but still attempt to charge
19 interest when they are really giving an extension.

20 The agreement at issue here is really a
21 legal extension of the 210-day title loan and it is
22 not a grace period. TitleMax charges and collects
23 interest. TitleMax tried to diffuse the issue by
24 stating in the agreement that it's not an extension
25 because TitleMax knows that under a 210-day title

1 loan, they cannot legally provide an extension when
2 they charge interest and do not fully amortize.
3 But in this case, the Nevada legislature was
4 smarter than TitleMax and included the language
5 providing that an extension or rollover of a loan
6 beyond the date where the loan is required to be
7 paid in full under the original terms of the loan
8 agreement, regardless of the name given to it, is
9 an extension.

10 As the FID has shown, the grace period
11 deferment agreement does not offer a grace period.
12 The agreement extends the loan for 14 months and is
13 truly an extension. The reason that TitleMax
14 offers this product is not to lower the payments
15 and help consumers. It's because they care more
16 about their bottom line than how they deceive their
17 customers. No only does TitleMax collect more
18 interest than they disclose to their customers, but
19 they also gain a competitive advantage by offering
20 a longer term for the loan for less monthly
21 payments than the other title lenders, the ones
22 that follow the law.

23 As the commissioner testified, he has
24 received complaints from other title lenders about
25 TitleMax's illegal practices.

1 During the 2015 examination, TitleMax had
2 more than 20,000 open loan files in Nevada. If
3 only half of these people who had open title loans
4 entered into the grace period deferment agreement,
5 that would mean 10,000 customers that had open
6 loans during that period paid an average, and I'm
7 just approximating, of approximately \$1,000 more
8 per loan in interest. Some were less, many were
9 more. But that would mean that TitleMax collected
10 during that 2015 time more than \$10 million in
11 illegally collected interest.

12 TitleMax offered a single corporate
13 witness who seemed extremely knowledgeable about
14 Nevada law when questioned by his attorney, but
15 could not even explain what the lay definition of
16 the term modification is when questioned by the
17 FID. The representative testified that TitleMax
18 has a legal department that review and determine
19 that the grace period deferment agreement was
20 compliant with Nevada law. And, in fact, the
21 agreement was shown to his Nevada lawyers to
22 confirm the agreement complies with Nevada law.

23 As has been proven in this case here, the
24 agreement does not comply, and TitleMax's issue is
25 not with the FID. It is with the Nevada lawyers

1 who opine that the grace period deferment agreement
2 is compliant with the law.

3 The document is not only illegal but
4 deceptive. The customers are led to believe that
5 they will not pay additional interest when it is
6 clear that just by looking at the truth in lending
7 statement that was provided to the customer and the
8 amount of interest on the deferment agreement, that
9 the customer ends up paying a lot more interest
10 than disclosed in the TILA box.

11 The purpose of the TILA statement is to
12 simplify the information so one can look and see
13 how much they were borrowing. They look to see
14 their interest rate. They look to see how much
15 interest they're actually paying and how much they
16 will pay in total. As a side note, the TILA
17 statement was not put on that loan because TitleMax
18 wants to be open and honest. It is there because
19 it is required by both federal and state law. And
20 Chapter 604A incorporates the federal law into the
21 state.

22 As I just stated, TitleMax's
23 representative was not credible. He was unable or
24 refused to testify about the one and only product
25 offered in Nevada. That was an insult to the

1 process. The thought that TitleMax's own
2 representative does not know anything about the
3 contract is absolutely ridiculous. Under oath the
4 representative adamantly denied that the deferment
5 agreement modifies the original loan agreement,
6 although the agreement states that it is a
7 modification and it states that in capitalized
8 letters in bold print on the document itself.

9 If the TitleMax representative actually
10 had no knowledge of Regulation Z, then he has no
11 business making loans in this state or any other
12 state. No one in the lending business can claim
13 they have no knowledge of Regulation Z and what's
14 required under the Truth In Lending Act.

15 It's difficult to believe that a district
16 manager who is in control of 177 stores does not
17 know the difference between a closed and an
18 open-ended loan. If TitleMax purposely offered a
19 witness that has no knowledge, they should be held
20 in contempt.

21 By definition, a title loan in Nevada is
22 closed end. Under Regulation Z a closed-end credit
23 is any consumer credit other than an open-ended
24 credit. A closed-end loan is a loan where all
25 funds are disbursed when a loan is originated and

1 must be paid back, including interest and
2 principal, by a specific date or by specific
3 installment dates, such as a car title loan. The
4 repayment includes all principal, interest and fees
5 agreed to at the time of signing the credit
6 agreement. The Nevada closed-end title loan does
7 not consider additional interest because any late
8 payment results in default under 604A.045.
9 Accordingly, the title loan is expected to perform
10 just as stated on the truth in lending statement
11 given at the time the loan was made.

12 In Nevada a title loan is considered in
13 default if a payment is one day late. Total
14 interest should not be one penny more than what's
15 stated in the truth in lending statement because in
16 Nevada the only recourse for a title loan in
17 default is a true grace period where, pursuant to
18 604A.070, which defers the payment gratuitously,
19 and 604A.210, where additional fees and no -- where
20 no additional fees and no additional interest can
21 be charged, the repayment plan per NRS 604A.475.
22 Or if the borrower declines the payment plan, they
23 repossess the vehicle.

24 Playing ignorant is not going to work for
25 TitleMax. TitleMax offers only one loan product in

1 Nevada, the 210-day title loan. The TitleMax
2 representative pretending he doesn't understand
3 contractual terms is an insult. TitleMax's
4 representative claiming there is no modification on
5 the original loan when the agreement states in bold
6 capital letters is disingenuous.

7 To add insult to injury, TitleMax's
8 representative has testified that TitleMax is aware
9 that they're regulated by the FID. TitleMax's
10 representative testified although they were
11 notified starting in 2014 that the deferment
12 agreement was contrary to the statute, they
13 continued to offer the product because they
14 disagreed with the FID's interpretation and would
15 basically do what they want until the court tells
16 them otherwise.

17 The TitleMax representative also alleged
18 that FID was nonresponsive to the many attempts to
19 meet with them, but could not cite to one, single
20 incident where TitleMax asked to meet with the FID
21 and the FID refused to meet with them. The
22 representative conceded that he was not aware
23 whether the FID ever met with TitleMax. In fact,
24 the record and other testimony in the record
25 clearly shows TitleMax reached out to the FID to

1 meet and confer regarding the allegations in 2014,
2 and a meeting was held where the FID and their
3 attorney explained their concerns about the illegal
4 product to TitleMax and its corporate
5 representative.

6 Later, an exit meeting was held regarding
7 the 2014 examination where it was explained again,
8 and they were told not to continue that product.
9 And TitleMax still did not change.

10 Finally, after the 2015 examamination and
11 the exit meeting, TitleMax faced fines and
12 suspension, they finally planned to stop offering
13 the product. But the email dated December 15th
14 does not actually confirm that. In fact, TitleMax
15 says they still offer the deferment to existing
16 loans, but they just don't offer it to new loans.

17 TitleMax claims that it asked for
18 regulations, but could not state when or where.
19 TitleMax also admits that it never asked if the
20 agreement was compliant with Nevada law prior to
21 offering the agreement to its clients. While
22 arguing there's no guidance or advisory opinion,
23 TitleMax, who operates in many states and has a
24 team of lawyers on its staff as well as Nevada
25 attorneys to advise them, finally admits that it

1 never even asked for an advisory opinion. But
2 TitleMax wants to blame the FID for not telling
3 them through a written advisory opinion that they
4 never asked for.

5 During this hearing, the FID has proven
6 that the loan payments from seven -- that extending
7 the loan payments from 7 monthly payments to 14
8 monthly payments is contrary to the statute. The
9 FID has shown that the loan is no longer calculated
10 to ratably and fully amortize the entire amount of
11 principal and interest payable on the loan pursuant
12 to the requirements of the law.

13 The script the salespeople use to sell
14 the product to its customer, the salesperson tells
15 the customer that entering into this agreement will
16 lower their monthly payments. That's how they suck
17 them in. The consumer is also told that if they
18 pay the minimum amount to extend stated on the
19 ability to repay for the entire 210 days, they'll
20 be placed on a zero percent grace period term for
21 another 210 days, where they will be able to pay
22 the remaining balance back in equal payments every
23 30 days. The 210-day loan has now been extended to
24 420 days. It is no longer a short-term loan.

25 Not only has FID shown that the length of

1 the loan is contrary to the law and that the
2 payments are not fully amortized, but the amount
3 collected by the customer to satisfy the loan is
4 more than the amount that TitleMax disclosed to its
5 customers pursuant to federal and state law.

6 The customer is told in the original
7 document that "other than the interest and fees
8 provided for in this loan agreement, we do not
9 charge you any additional fees or interest for
10 entering into a grace period payment deferment
11 agreement."

12 You have seen and been provided with many
13 examples showing that the total payment disclosed
14 on the truth in lending statement is much different
15 than the amount the customer pays when they enter
16 into the grace period payment deferment agreement.
17 The FID has proven by simply comparing the total
18 amount being paid on the original loan agreement
19 with the grace period agreement using the numbers
20 provided by TitleMax that there is no grace period
21 on this loan. In fact, the grace period agreement
22 deceives its customers by stating, quote, "you
23 acknowledge that the new payment schedule provided
24 for in this grace period payment deferment
25 agreement, if allowed, will ratably and fully

1 amortize the entire principal amount and interest
2 payable for a longer period of time than the
3 original payment schedule in a loan agreement."

4 You now realize that that statement is
5 totally false, because solely charging interest on
6 the entire principal for seven months and then
7 providing seven months of sole principal payments
8 is not calculated to ratably and fully amortize the
9 loan.

10 Every time TitleMax offers a grace period
11 deferment agreement TitleMax is violating NRS
12 6045.445(3). And the payment stubs that are
13 attached to each loan agreement prove that the
14 payments made by the customer show only interest
15 and nothing toward the principal for the first 210
16 days or the original term of the loan.

17 The FID has also proved that although
18 TitleMax has carefully chosen to use the term grace
19 period to describe the second agreement, no matter
20 what they call the agreement, there is no grace
21 period. It is truly an extension and it's an
22 illegal extension of the 210-day title loan in
23 violation of NRS 604A.445(3).

24 The FID has also proven that the
25 definition of a title loan specifically requires

1 the customer to be the legal owner of the vehicle.
2 This is important because only the legal owner can
3 give possession of the title or a security interest
4 to the title to the lender to acquire the loan. In
5 addition, pursuant to statute, if the customer
6 defaults, the lender's final recourse is to
7 repossess the vehicle. They cannot go after the
8 other -- despite how it was testified to, they
9 cannot go after the co-borrower.

10 A grace period is not a separate product.
11 It must be offered in connection with another title
12 loan product. The title of 604A.210 clearly shows
13 this. It says the Chapter does not prohibit a
14 licensee from offering a customer a grace period.
15 Can a grace period be offered by itself? Of course
16 not. There must be something for which you need a
17 grace period. This is exactly why you must turn to
18 the laws governing the product for which you need a
19 grace period, and here that's 604A.445(3). And
20 that's another reason that all the transactions and
21 regulations must be read together.

22 Let's examine the illegal grace period
23 deferment agreement for a minute. As I explained
24 to you, this is not a true grace period, and I will
25 show you why not. Is there any period of deferment

1 or postponement on the payment? Absolutely not.
2 Do you remember the grace period schedule? It
3 shows one payment due every month. Nothing is
4 being deferred. Is it being offered gratuitously?
5 Absolutely not. The customer is paying more money
6 during that grace period.

7 Now, the definition of grace period told
8 us that the licensee's grace period must also
9 comply with 604A.210. Let's look at that for a
10 minute. Are there any fees granting the grace
11 period? For argument's sake, we'll say no. We
12 will not label anything as a fee. However, there
13 are additional fees or additional interest on the
14 outstanding -- I'm sorry. Are there any additional
15 fees or additional interest on the outstanding loan
16 during the grace period? There absolutely is, and
17 this is a violation of Nevada law.

18 During these last two days we've
19 demonstrated to this tribunal that there is
20 additional interest being charged during TitleMax's
21 illegal alleged grace period. The state showed
22 that TitleMax provided their customers a TILA
23 disclosure, which disclosed the interest the
24 customer would pay on their loan; however, for that
25 very same loan TitleMax earned additional interest

1 as clearly demonstrated on the grace period
2 deferment agreement. This additional interest, an
3 illegal product, was found in 307 files that were
4 examined. And the overwhelming evidence of this
5 illegal activity is spread across this room
6 throughout 18 extra large, voluminous volumes. And
7 let's not forget, this is only a small sampling of
8 the blatant illegal activity based on reviewing
9 only 2 to 5 percent of the actual loans being
10 offered.

11 You also heard testimony from TitleMax
12 and the FID examiners that there is nothing in the
13 grace period agreement that indicates that only the
14 last seven payments are a grace period. Strictly
15 for hypothetical purposes, let's say the last seven
16 payments is the grace period. That would mean the
17 first seven payments is the actual loan. And let's
18 not forget TitleMax acknowledged that there is no
19 new loan. So what does that mean? It means the
20 product still must comply with 604A.445(3). Let's
21 take a look.

22 Is the original term of the loan up to
23 210 days? Yes, it is. Does the loan provide for
24 payments in installments? It does. Are the
25 payments calculated to ratably and fully amortize

1 the entire principal and interest payable on a
2 loan? Absolutely not. The payments are not
3 calculated to ratably and fully amortize the loan.

4 There's no need to go further. This
5 product violates the law. It's illegal. And
6 that's it.

7 As we said before, the statutes have to
8 be read together. For a start, ability to repay.
9 It doesn't just apply to title loans. It applies
10 to all 604 loans. That's considered in giving a
11 title loan. In order to give a title loan,
12 although the title loan statute does not say it,
13 604 includes it. And TitleMax is aware from
14 previous violations that they must comply with the
15 ability to repay.

16 Truth in lending and Regulation Z, it's
17 in the Nevada statute. TitleMax is aware that
18 although it doesn't say anything about TILA here,
19 TILA is in 604A, and TitleMax must comply. As I
20 said, they must show the breakdown in payments.

21 First of all, all the statutes have to be
22 read together. You can't take one line from
23 604A.210 without comparing it to 604A.070 and the
24 rest of the chapters to read it all together. As a
25 little background, 604A requires that the lender,

1 as I said, has the ability to repay the loan. That
2 means they have to look at the customer's current
3 and expected income, their obligations, their
4 employment, and they have to meet the seven monthly
5 payments.

6 The examiner found cases where the
7 customer received a title loan and they didn't have
8 income or sufficient income to meet the ability to
9 repay. And lo and behold, those were the loans
10 that had the co-borrower. And the co-borrower who
11 didn't own the vehicle, who had no right under the
12 law to go into the title loan, met the ability to
13 repay. So what TitleMax did is they took somebody
14 with a title and somebody with money, put them
15 together in order to grant the loan. That is not
16 compliant with the statute.

17 The FID has also proven that TitleMax
18 acted willfully. Blacks Law Dictionary defines
19 willfulness as a voluntary and intentional but not
20 necessarily malicious act. In 2000, the Nevada
21 Supreme Court examined willfulness conduct in the
22 case of In Re: Fine 116 Nevada 1001.

23 There the court found that willful has
24 many meanings, and its context and surrounding
25 facts dictates the construction and meaning of the

1 word. However, as a general rule, the court noted
2 that willful denotes an act which is intentional or
3 knowing or voluntary rather than accidental. The
4 inquiry is not about malice or ill will, but rather
5 the intentional nature of the conduct. The fact
6 that the person may have acted with the best of
7 intention does not relieve the act of liability.

8 It's important to know that the high
9 court supported a finding of willfulness based on
10 the context and the actions of the petitioner and
11 prior discipline against the petitioner for
12 engaging in the exact same type of behavior. The
13 court said it best by saying the petitioner should
14 have known better, and that's exactly what is going
15 on here. In 2014, TitleMax was told the grace
16 period deferment agreement does not comply, and
17 they continued to offer it. And they offered it
18 more than 20,000 times in over a year.

19 The Nevada Supreme Court also addressed
20 willfulness in 2006 in the matter of Century Steel
21 versus State of Nevada Division of Industrial
22 Relations 122 Nevada 584. Century Steel involved
23 willful violations of law that were observed and
24 cited during examination of the employer. In that
25 case willfulness was not defined in the applicable

1 statute, but the court noted again that a
2 willfulness determination is a fact-sensitive
3 inquiry. The court further noted that an
4 administrative fact-based determination is entitled
5 to a standard of review, and the court would not
6 substitute its judgment for that of the agency as
7 to the weight of evidence or the questions of fact.

8 The court reasoned that a willful
9 violation exists if one acts in an intentional,
10 deliberate, knowing and voluntary manner, and if
11 the action is taken with either intentional
12 disregard or plain indifference to the relevant
13 requirements, the action is willful. After
14 considering the facts of the employee, the court
15 affirmed the finding of willfulness.

16 Therefore, in this case the FID has shown
17 the act as intentional, an act that was knowing,
18 and an act that was knowing rather than accidental.
19 TitleMax was on notice from the regulator that this
20 grace period deferment agreement does not comply
21 with the law and they continued to offer it. And
22 they continued to offer it after a meeting in 2014
23 where it was explained, after a report of
24 examination showing that it was not acceptable,
25 after an exit meeting explaining in person

1 explaining it was not acceptable, after another
2 report of examination six months later, after an
3 exit meeting, and they still continued to offer it.
4 And not until the FID said they're going to start
5 taking disciplinary action and it's going to cost
6 TitleMax money out of their pocket did they finally
7 cut down or stop using that agreement.

8 So the record shows there's no
9 misunderstanding. TitleMax simply disregarded the
10 FID and intentionally continued to offer the grace
11 period deferment agreement although they knew and
12 were told on many occasions that the agreement
13 violates the statute, why the agreement violates
14 the statute, what they have to do to comply with
15 the statute, and their failure to comply was
16 knowingly, intentionally, voluntarily and was
17 therefore willing. And TitleMax lied to its
18 customers. It lied to its regulators. And
19 continues by attempting to deceive this court here.

20 As a result, we're asking for the
21 following relief: Before I get that, I just wanted
22 to get to that other issue about your question with
23 regard to Taylor. Taylor versus Health & Human
24 Services 314P3D949. In Taylor the Nevada Supreme
25 Court said that the court defers to an agency's

1 interpretation of its governing statutes and
2 regulations if the interpretation is within the
3 language of the statute.

4 In this case the FID's interpretation of
5 NRS 604A.210 is within the language in the statute.
6 In relevant part, NRS 604A.210 provides that they
7 did not prohibit a licensee from offering a
8 customer a grace period on a repayment plan of a
9 loan or an extension of a loan or on a loan, except
10 the licensee shall not charge the customer any fees
11 for granting the grace period or any additional
12 fees or additional interest on the outstanding loan
13 during the grace period. The FID applies the plain
14 language of this subsection and concludes that no
15 additional interest can be charged.

16 TitleMax extends the loan through an
17 extension and charges additional interest during
18 the grace period deferment agreement time during
19 those 14 months. There was extensive testimony
20 that TitleMax charges the clients more money with
21 the grace period deferment agreement than it does
22 with the original 210-day loan. The 210-day loan
23 is a closed-end loan. That means that TitleMax
24 should legally only collect the interest as stated
25 on the TILA agreement in the TILA box.

1 Providing a grace period would not change
2 this because as a result of a grace period, no
3 addition interest would be charged. And if you
4 gave them seven months additional time and didn't
5 charge interest during that seven months as a grace
6 period, as a true grace period, then it would not
7 be a violation.

8 The customer is given a grace period or a
9 even a couple of grace periods, it takes time to
10 repay the loan, make it longer, and a grace period
11 can be unlimited duration. It can be a year. It
12 doesn't matter, as long as there's no additional
13 fees and no additional interest. But the amount of
14 interest cannot increase on the TILA box because
15 it's a closed-end loan.

16 So if the customer makes the payments
17 when they're required and there's no interest, it's
18 a grace period. And the grace period is over when
19 the customer makes the payment. If the customer
20 misses a payment, then the loan is in default and
21 upon default, TitleMax has to offer a repayment
22 plan. And TitleMax does not want a loan to go into
23 default because less advantageous rules apply.

24 In this case, TitleMax should only
25 collect the interest as stated on the TILA sheet.

1 Additional interest is prohibited by NRS 604A.210
2 because the statute prohibits the charge of any
3 additional interest.

4 If this interpretation is well within the
5 language of the statute, and the Taylor case
6 supports Your Honor's affirmation of the FID's
7 interpretation. There's further support for this
8 interpretation. As TitleMax brought in in 2012,
9 there was testimony regarding a proposed
10 regulation. The minutes from the workshop were
11 read into the record. According to the minutes,
12 Mr. Dan Wulz from Legal Aid Center of Southern
13 Nevada testified about what can be charged during a
14 grace period. He testified that grace period means
15 any period of deferment offered gratuitously by a
16 licensee to a customer, and that gratuitously means
17 without charge and there can be no accrual of the
18 contract rate during a grace period. And Dan Wulz
19 was one of the people who helped to author Chapter
20 604A, so he is very well aware of the legislative
21 intent when they enacted the Chapter.

22 In addition, former Assembly Speaker
23 Barbara Buckley who is also an author involved in
24 the original legislation and she's the executive
25 director of the Legal Aid Center of Southern

1 Nevada, supported and agreed with Mr. Wulz'
2 testimony. Both Dan Wulz and Barbara Buckley were
3 responsible for Chapter 604A, and their
4 interpretation of the statute should be accepted
5 without question.

6 In addition, according to the FID,
7 TitleMax is the only title lender to do this sort
8 of loan product. Commissioner Burns testified that
9 all the other title loan lenders are complying with
10 the FID's interpretation and presumably, not having
11 any difficulty interpreting the Chapter.

12 As a result, the FID has proven the
13 violations of the statute as alleged in the
14 complaint. Second, TitleMax violated the law by
15 offering its grace period deferment agreement in
16 complete disregard of the fact that they were put
17 on notice by the regulating agency that the product
18 is illegal. What is worse is that TitleMax
19 deceived its customer by charging more interest
20 than was revealed on the truth in lending
21 disclosure in the loan documents that TitleMax
22 provided its customers.

23 A borrower has a right to believe the
24 information on the truth in lending box when they
25 enter into a loan. If this comply with the terms

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

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

25 Thank you very much for your time.

1 JUDGE McKAY: The counting of the costs,
2 FID seeks recovery of its costs?

3 MS. RAKOWSKY: Yes.

4 JUDGE McKAY: When did you want to go
5 over that?

6 MS. RAKOWSKY: We've asked the
7 commissioner to put that together for us.

8 JUDGE McKAY: So that will have to be
9 done after?

10 MS. RAKOWSKY: It will have to be done
11 subsequent to this because he's got to see what the
12 court reporter costs and --

13 JUDGE McKAY: So do you want to do it
14 like it's a typical kind of court case where you're
15 going to do a memorandum of costs?

16 MS. RAKOWSKY: Yes, that will be fine.

17 MR. REILLY: If necessary.

18 JUDGE McKAY: Of course.

19 MR. REILLY: I was concerned about that
20 request just because I just want to make sure this
21 isn't necessarily going to be done. You haven't
22 made your mind up about the case yet, have you?

23 JUDGE McKAY: Of course. I wanted to
24 give you an ability to respond. Ideally, you could
25 respond in person here. It's not going to be able

1 to happen so then you'll be able to respond in
2 writing.

3 MR. REILLY: I'd prefer to respond in
4 writing.

5 JUDGE McKAY: I was also trying to
6 expedite things because, correct me if I'm wrong,
7 but there's nothing in 604A or 233B that puts a
8 time limit on when I have to issue my order in this
9 case; correct?

10 MS. RAKOWSKY: I have to look.

11 JUDGE McKAY: I've held other hearings
12 for other agencies and there's sometimes a 20-day
13 limit. And in these I looked over 604A and 233B --
14 so Mr. Burns, maybe you know when you've presided
15 over other hearings. Is there a time limit when
16 you have to issue an order?

17 MR. BURNS: Normally the protocol we've
18 followed is within 20 days.

19 JUDGE McKAY: I didn't see a 20-day in
20 233B. I looked many times.

21 MS. RAKOWSKY: I'll take a look through.

22 JUDGE McKAY: The whole point is I was
23 trying to be quick in getting you all your order.
24 And if we have to do briefing, it's just going to
25 make everything take longer.

1 MR. REILLY: MY understanding is I think
2 from before when we've talked about partial
3 rulings, you want to do everything at once?

4 JUDGE McKAY: I want to do everything
5 together.

6 MR. REILLY: Okay. So now I understand.

7 MS. LOVELOCK: So her memorandum of costs
8 is going to come following this, and you're not
9 going to make a ruling until -- because usually the
10 memorandum of costs comes out in the evidence.

11 JUDGE McKAY: I don't want to do that. I
12 want to do it all at once. So I have to give you
13 guys a chance to respond.

14 MS. LOVELOCK: Understand.

15 JUDGE McKAY: It's just going to push
16 things back. I know it was a late question, but
17 that was the goal with that was to try to get it
18 solved today. Is there a 20-day in 233B?

19 MS. RAKOWSKY: I was going to look at it
20 now.

21 JUDGE McKAY: Please do. I want to take
22 a bathroom break before you proceed, so we'll get
23 back here at three o'clock on the dot.

24 JUDGE McKAY: We're back on the record.
25 During the break, it was confirmed 233B does not

1 have a timeline for the issuance of my order and
2 neither do NRS or NAC 604A. So that's a positive,
3 I suppose, in this action, because that will allow
4 the parties time to brief.

5 And so that's what we'll do. As soon as
6 FID can get their memorandum of costs, send it to
7 me and TitleMax. And, TitleMax, how about five
8 business days to respond?

9 MR. REILLY: I think that should be fine.

10 JUDGE McKAY: Whenever TitleMax is ready
11 for closing.

12 MR. REILLY: Thank you. Judge, welcome
13 to TitleMax's world. I think in the last two days
14 you've gotten a small taste of what my client has
15 had to endure for the last year and a half or so.
16 It's the FID with an unreasonable interpretation of
17 the statute, an unwillingness to listen to reason,
18 and unforgiving against TitleMax for daring to
19 disagree with it.

20 Thank you for your time in this. Thank
21 you for your patience in this. We really
22 appreciate it.

23 Several months ago after this
24 administrative complaint was filed and we went from
25 zero to 60 in 2.2 seconds in terms of what the

1 Financial Institutions Division was willing to
2 accept to what it was suddenly seeking with massive
3 fines, findings of willfulness, a cease and decist
4 order and at the time action against TitleMax's
5 license.

6 And after I put my jaw back up, I called
7 Chris Eccles and I said, What are you doing? This
8 is a dispute over the meaning of the law. This is
9 a good faith dispute over the meaning of the law.
10 And he disagreed with me. He said that, No; this
11 is like a failed drug test.

12 And he really liked that analogy because
13 he was also representing the Nevada Athletic
14 Commission and he had been supervising a lot of
15 drug tests, apparently, for boxers before boxing
16 matches. And he thought that was a very apt
17 analogy.

18 This is not a failed drug test. It isn't
19 anything like it. And the Financial Intitutions
20 Division has not met its burden in this case.

21 This case has never even been about the
22 facts. 98 percent of the testimony you heard over
23 the last two days was people testifying about their
24 interpretation of the law or their understanding of
25 the law. The other 2 percent was effectively

1 undisputed. This was a two-plus-day glorified oral
2 argument.

3 And the FID put up two examiners and a
4 supervisor. And it was so surreal because all we
5 were doing was talking about, well, how do you
6 interpret this rule? How do you interpret that
7 rule? These ladies don't have law degrees. They
8 don't have licenses to practice law. We're doing
9 complex statutory interpretation on a difficult
10 statute and we're going through maxims of statutory
11 construction with FID examiners. I mean, in most
12 states a regulator has in-house counsel to do that
13 sort of thing for it, but not at the FID.

14 And they have no legal training to do
15 this whatsoever. Oh, Mr. Burns said that they do
16 have legal training, which consists of some oral
17 instruction without the benefit of counsel, nothing
18 in writing, and it's based on the FID's practical
19 experience. Really? That's it?

20 I mean, it was astonishing at one point
21 during Mr. Burns' examination he said flippantly to
22 me, Well, you're the lawyer; why don't you explain
23 the statutory construction to me.

24 At every point in this proceeding also
25 everyone's interpretation of the law, myself's

1 included, counsel's included, and when you make
2 your decision you're included, is going to be
3 eyeballing the statute because we don't have any
4 case law in Nevada to help us with any of these
5 rules. We don't have any attorney general opinion.
6 We don't have any formal FID advisory opinion.

7 By the way, I want to clear something up.
8 I don't think my client has the ability to request
9 a formal advisory opinion once they become an
10 interested party. I think that's specifically
11 disallowed under Nevada law. That's been my
12 experience with it. And, by the way, I think we
13 know what the commissioner's interpretation is
14 going to be. It's been said loud and clear.

15 And then when we talked to the examiners,
16 we heard completely different things. One thought
17 that it was a problem that the grace period was too
18 long even though there's no requirement in the
19 statute. Another, Tess, thought that this was an
20 illegal extension of a loan. Mr. Burns thought it
21 was a brand new loan. I mean, they can't even get
22 their own interpretations straight, which has been
23 one of my problems with the Financial Institutions
24 Division from day one. Because one person tells
25 you one thing and another person tells you another

1 thing, and there's nothing formal in place that you
2 can challenge in a court or that you can sink your
3 teeth into. You're told in an exit exam that what
4 you're doing is wrong, and it's private and
5 confidential. And you don't know what they're
6 telling other licensees. You just don't.

7 It was uncomfortable. It was surreal. I
8 don't know if you felt that way. I felt
9 uncomfortable cross-examining these people. I
10 mean, I asked Harveen, Are we allowed to disagree
11 with the Financial Institutions Division? There
12 was a long pause. I think if you hadn't been here,
13 she would have said no.

14 With regard to Andrea Bruce, Andrea Bruce
15 was shaking she was so scared. Tess was almost in
16 tears. You think I enjoy doing that? But I get
17 put in that position because they put people who
18 are non-lawyers who don't understand the law to
19 testify about what the law is. It's incredibly
20 inappropriate. And, again, that's why this turned
21 into a two-day glorified oral argument.

22 They had deer in the headlights looks in
23 their eyes at certain points. By the end of the
24 cross-examination, by the way, I think they
25 realized at a minimum that we have a very good

1 argument. And Harveen was resigned by the end of
2 her cross-examination. She knew we were right.

3 So I want to go through these rules with
4 you, and I'm going to ask you to do a couple of
5 things because the Nevada law requires that we
6 interpret statutes to give every term effect. I'm
7 also going to ask you to do something that's not
8 required in the law but I think we all understand
9 is what should be done, and I ask that you take off
10 the political glasses that everybody seems to put
11 on when they read these things. The FID has
12 certainly not taken off its political glasses. I
13 want you to review this through the prism of pure
14 statutory construction.

15 For the Financial Institutions Division
16 to prevail, we need to make some changes to these
17 rules. First let's start with NRS 604A.210. The
18 Chapter does not prohibit a licensee from offering
19 a customer a grace period except, I'm quoting now,
20 "except that the licensee shall not charge the
21 customer," and in subsection 2 it says, "any
22 additional fees or additional interest in the
23 outstanding loan during such a grace period."

24 For the FID to prevail in this matter,
25 number one, you need to cross out the word

1 "additional" in front of "interest." You need to
2 completely take that out. Why do we need to do
3 that? Because the FID's contention is that if you
4 line up the total of payments in the original loan
5 in the TILA disclosure with the total payments in
6 the grace period deferment agreement, and if
7 they're different, you've got a violation.

8 So it needs to read "any additional fees
9 or interest," any interest at all. But we know
10 that's wrong because when this law was passed, we
11 had AB384 Section 23, in which this word
12 "additional" wasn't in the original draft of the
13 statute. And then at the very end before it was
14 enacted, the word "additional" was added.

15 So I think that while it's interesting
16 that counsel claims that Barbara Buckley who
17 drafted the bill, that her opinion needs to be
18 given the word of God, and Dan Wulz's opinion needs
19 to be given the word of God, this language was
20 added into her bill. So for you to agree with the
21 Financial Institutions Division, we also need to
22 disregard the legislative history, AB384.

23 What else do we need to do? We need to
24 change the word "outstanding" to "original." Why
25 do we need to do that? Well, because to allege

1 that TitleMax violated the law in 307 instances,
2 it's again taking the TILA disclosure in the
3 original agreement. It's not looking at the
4 outstanding loan. It's looking at the original
5 agreement and comparing with the total payments in
6 the grace period deferment agreement.

7 The statute says outstanding, not
8 original. Why is that important? Well, because in
9 the original loan agreement it says and it provides
10 that your interest is going to go up or down
11 depending on when your payments are made. The TILA
12 disclosure is just a disclosure. It's just a
13 projection of what happens if the customer makes
14 each and every payment on time. The unicorn, not
15 quite a unicorn, but the rare instance. And
16 customers can pay ahead of schedule and lower the
17 interest that's accrued. They can pay late and
18 increase the interest that's accrued.

19 And I know the problem that the FID has
20 with this because they think that once a customer
21 is one day late with their payment there's a
22 default, and, yes, there is. But, apparently,
23 they've never heard of a customer who can cure a
24 default. Anybody can cure a default. There's no
25 prohibition against that.

1 They're under this belief, and I don't
2 know where it comes from, that once there's a
3 default the only thing that can happen is a
4 repayment plan. And that's not true. NRS 604A.475
5 tells what a licensee can do and what a licensee
6 has to do in response to a default, but it doesn't
7 say anything about what a customer can do. There's
8 nothing, nothing, anywhere in here that prohibits a
9 customer from coming back in a store six days late
10 saying, You know what, I'm late. I'm sorry. I
11 want to get back on track. Here's a check, along
12 with the additional interest.

13 The result of this, and it's important,
14 because when you get rid of the word "outstanding,"
15 it means that the entire methodology of what the
16 FID examiners did, the entire methodology of the
17 FID's case, is academic. It doesn't mean anything.
18 And it's not connected to the reality of the loans
19 themselves. And they haven't done the analysis
20 they were required to under their burden and they
21 haven't met their burden.

22 What else do we have to do to NRS
23 604A.210? Well, you know this one. We need to cut
24 out the last phrase, "during such a grace period."
25 And you've heard it over and over again. The

1 examiners, every time they talked about this rule
2 they mysteriously stopped at this point after the
3 term "loan." "No additional fees or interest on
4 the loan." And they never mentioned "during such a
5 grace period." It was as if it had been erased
6 from their minds.

7 You heard counsel do it twice at least in
8 her closing argument. She did the exact same thing
9 when she was talking about this. She conveniently
10 left out this language at the end. And it's
11 important because TitleMax does not charge any
12 interest during such a grace period. And they may
13 not like it, but that's the statute. That's the
14 rule. And TitleMax went out of its way to comply
15 with it. TitleMax had counsel review this to make
16 sure it complied.

17 And you can't just cut off, lop off,
18 language in a statute because you don't like it.
19 If you don't like it, go back to the legislature.

20 The other thing that we need to note is
21 that there was some disagreement, apparently, about
22 what the grace period actually was, right? Well,
23 it doesn't say in the agreement what the grace
24 period is. But if you compare the original loan
25 agreement, the maturity date, to the payment date,

1 the scheduled payment date, for payment 7, they
2 always match up. And it's clear and obvious. And
3 TitleMax testified. Mr. Helgesen testified that
4 that was the intent that periods 8 through 14 would
5 be the grace period.

6 And they say, well, you front-loaded the
7 interest. Well, we complied with the statute.
8 That's what we did.

9 NRS 604A.445, we've got to do a lot with
10 this. Maybe the biggest one is a phrase that's
11 gotten missed quite a bit is that we need to take
12 this first line, "notwithstanding any other
13 provision of this Chapter to the contrary."
14 What does that tell us? It tells us that this is a
15 statute of general application; whereas, NRS
16 604A.210 is a statute of specific application.

17 604A.210 trumps 604A.445. So we have to
18 cross out this language if we're going to follow
19 the FID's interpretation of the statute. We have
20 to totally lop that off.

21 Then what else do we have to do?

22 Subsections 1 and 2 don't apply. We need
23 to go to Subsection 3, the original term of the
24 loan. This rule only applies to the original term
25 of the loan, yet, they keep applying it to the

1 grace period. And you heard counsel say, They're
2 two different things. I agree they're two
3 different things. They are two different statutes
4 for two different things. So we need to cross off
5 "original."

6 And then what we need to do is look at
7 Subsection B. Subsection 3B: "The payments are
8 calculated to ratably and fully amortize the entire
9 amount of principal and interest payable on the
10 loan." And we need to take that provision and we
11 need to cut and paste it back up into 604A.210 even
12 though it's not in 604A.210. There is no
13 amortization requirement in 604A.210, and they went
14 over and over and over it. And that is one of the
15 biggest problems they have with this grace period
16 loan agreement.

17 There is a maxim of statutory
18 construction. "Expressio unius est exclusio
19 alterius." That which is not stated is excluded.
20 The expression of one thing is to the exclusion of
21 the other. Do you think that the FID examiners
22 know that statutory maxim? I don't think so.

23 But to make it work, you've got to cut --
24 now you've got to cut and paste. You're not just
25 cutting off words. You're literally cutting and

1 pasting one statutory requirement and applying it
2 to another.

3 And then with regard to 230, we've done
4 this one over and over again. I'm not even going
5 to write it. You have to add the words "or a
6 co-borrower." And the witnesses acknowledged that
7 there is, yes, a difference between a guarantor and
8 a co-borrower.

9 You asked us about deference, deference
10 to the regulator. The regulator's interpretation
11 of the statute is entitled to deference only if its
12 interpretation stays within the words of the
13 statute. This is a hatchet job. This is cutting
14 and pasting. This is cutting out words when they
15 feel like it. It's adding other words when they
16 feel like it. And when you do that, you absolutely
17 cannot grant deference to the regulator's
18 interpretation.

19 Nevada Supreme Court over and over again
20 has refused to give deference in situations like
21 that. And the fact of the matter is, because this
22 entire case is an interpretation of the law, this
23 is going to get reviewed denovo at every stage. At
24 every stage it's going to get reviewed denovo.

25 By the way, that's just what we pulled up

1 in the last few hours. I'll ask you now, I'll give
2 you the best answers that I have now, but I'd like
3 to do briefing on the issues that you asked us
4 about so that you can get a full and complete
5 answer before you make any decisions.

6 How do I know I'm right? Well, there was
7 also in 2012, a workshop, Nevada Administrative
8 Code 604A. Where the Financial Institutions
9 Division had a workshop and proposed various
10 regulations to the Chapter. And in Exhibit 103
11 attachment D you have a proposed regulation from
12 the Financial Institutions Division. And if you
13 read it, it is exactly the standard that the
14 Financial Institutions Division is submitting is
15 here and is part of NRS 604A.210.

16 The problem with that, though, was it
17 wasn't promulgated. It wasn't finalized. It never
18 became law. That's extremely telling, the fact
19 that it was prepared, it was submitted, and it was
20 not enacted suggests that that is not the rule.

21 But, in addition to that, we also have
22 the minutes where the deputy commissioner of the
23 Financial Institutions Division, at the time Carla
24 Kolebuck, conceded on the record that this statute
25 was ambiguous, and that there were reasonable

1 interpretations by licensees or at least plausible
2 interpretations by licensees, and there was a
3 difference of opinion on this. So we've had a
4 difference of opinion on this going all the way
5 back to 2012.

6 And what's remarkable to me is that the
7 Financial Institutions Division didn't enact the
8 regulation, but then just said, you know what,
9 we'll enforce it that way anyways. That's what
10 they did.

11 So what we have is what I talked during
12 opening statement, legislation by enforcement, a
13 blending of the legislative branch, judicial branch
14 and executive branch of government, a complete
15 disregard for the separation of powers, based on
16 hubris, based on the belief that the Financial
17 Institutions Division is judge, jury and
18 executioner, that it can rewrite a statute with
19 cart blanche, and we have to take it no matter
20 what. We just have to abide by it. We're not
21 allowed to disagree with the Financial Institutions
22 Division.

23 What country are we in when you can't
24 disagree with your government over the meaning of
25 the law? What has happened?

1 Throughout this proceeding I feel like
2 there's an attempt, not by you, by the Financial
3 Institutions Division, to shift the burden of
4 proof, a presumption of guilt, and it's my job
5 somehow to prove my client's innocence. And that's
6 not the way it works. The Financial Institutions
7 Division bears the burden of proof in this matter,
8 and it hasn't met it. And you've seen it over and
9 over and over again with these kind of flippant
10 comments and these kind of issues that come up
11 where there's always a cloud of suspicion
12 underneath it.

13 This grace period deferment agreement,
14 they just presume that it was an attempt to
15 circumvent the 210-day limitation of NRS 604A.445.
16 It wasn't. There's no evidence of that. The only
17 evidence is Ted Helgesen's testimony where he said,
18 No, that's not what we were trying to do at all.
19 What we were trying to do was give flexibility to
20 our customers, the customers who wanted to lower
21 payments, who came back and wanted the option to do
22 something a little bit different, TitleMax wanting
23 to not force its customers into defaults the way
24 banks did in the real estate crisis when they say,
25 we're not going to talk to you about renegotiating

1 the payment terms of your loan. We're not even
2 going to talk about a short sale until you default,
3 so go out and default. That's what banks did.

4 TitleMax thinks that's not such a great
5 idea. I don't know what the Financial Institutions
6 Division thinks of that, but their conduct in this
7 case suggests that they don't care. And you heard
8 the testimony. Default rates have nearly doubled
9 since TitleMax stopped offering the grace period on
10 new loans in approximately -- in December 2015.

11 But these flippant comments, and there
12 are a number of them. The suggestion that it's
13 improper to have a box on the application for a
14 co-borrower, but then you cross-examine the witness
15 and you ask, well, what's illegal about that?
16 Well, nothing. What's wrong with that? Well,
17 nothing. Aren't there co-borrowers who are also on
18 the title to the loan? Well, yeah. So why are we
19 talking about it?

20 There was testimony about blank grace
21 period loan agreements put in the file. Oh, my
22 goodness; they're putting blank documents in the
23 file. But then you cross-examine the witnesses and
24 you say, Well, is there anything illegal about
25 that? No. Anything wrong about that? No.

1 Ted Helgesen then testifies that it was
2 part of a procedure because of the old computer
3 software they were using. They wanted to be able
4 to print it out and have it in the file. Then why
5 are we talking about it if it's not illegal?

6 Scripts. Oh, my gosh, they had a script.
7 Hardly a persuasive script, by the way. But what's
8 wrong with having a script? There's nothing
9 illegal about it. What's wrong about it? Oh,
10 there's nothing wrong with it. I have to go
11 through this with each witness to kind of play
12 whack-a-ball and defeat the suggestions that
13 something untoward or sleezy is going on.

14 We can't just disagree about the law? We
15 have to call each other liars. We can't just
16 disagree about the law? Somebody has got to be a
17 bad guy all the time? It's offensive to me.

18 I think I was just accused in closing
19 statement of basically lying to the court -- lying
20 to you and making frivolous arguments to you.
21 Really?

22 Tess, during her examination, she
23 couldn't help herself. She threw out that, Well,
24 TitleMax doesn't put a truth in lending disclosure
25 in its grace period deferment agreement, so,

1 therefore, TitleMax is violating federal law.

2 Slight problem. Every single report of
3 examination that's in the record says that TitleMax
4 did not violate federal law. And I have to push
5 back on that and push back on that, that kind of --
6 these kind of comments, these flippant comments
7 that are thrown out there, and I just don't
8 understand it.

9 And it happened in closing argument as
10 well. You heard argument -- you heard argument
11 based on the very document that you've precluded
12 from evidence twice. If we were in a court of law
13 in front of a jury, I would have moved for a
14 mistrial, and I would have gotten it.

15 Numerous comments that Ted Helgesen is
16 lying and should be in contempt of court. Contempt
17 of court? Don't you have to violate a court order
18 to be in contempt of court? That's the way I
19 understand it.

20 Comments yesterday about suspension of
21 license. I became alarmed suddenly. I thought we
22 were past that issue. Now I find out, okay, well,
23 I guess they're not seeking suspension of a license
24 anymore. Why did it come up yesterday?

25 Comments of extrapolating. Well, we only

1 looked at 3 percent of the loans, so, therefore, we
2 think TitleMax stole this much from its customers
3 if we extrapolate it and we multiply this dollar
4 amount out. There's a thing called evidence that
5 in these types of proceedings you're supposed to
6 put in. You can't just extrapolate and offer a
7 multiplication based on your 3 percent sample,
8 which isn't statistically significant.

9 There were statements twice in closing.
10 Counsel alleged that TitleMax lied to its
11 customers, that TitleMax deceived its customers.
12 Did you hear any testimony from a customer in this
13 proceeding? No. But that's the presumption.

14 That's another thing I want to get to,
15 actually, because there is this mindset that if
16 something is different, it must be wrong. If
17 something is different, it must be illegal. Andrea
18 Bruce touched on this when she was talking about
19 how she first saw the grace period deferment
20 agreement. She saw it. She'd never seen anything
21 like it before, and she didn't know what to do.
22 She didn't know what to do.

23 And that was the kind of thing that we
24 saw over and over again, this kind of blinders on
25 mentality of if it doesn't fit in the neat, little

1 box that we think is the box, it must be illegal.

2 They must be doing something bad.

3 My client shouldn't be punished for
4 trying to be -- trying to accommodate its
5 customers.

6 Mr. Burns' testimony, I'd like to talk
7 about Mr. Burns' testimony for a little bit. Boy,
8 he hates TitleMax, doesn't he? Just, he despises
9 TitleMax, probably me too. But he calls TitleMax a
10 bad actor, makes it sound like it's a serial
11 violator of the law, says that we abuse customers,
12 that we take advantage of customers.

13 And by the way, I didn't hear any of that
14 hostility from the examiners when they testified.
15 They're just doing their jobs. But Mr. Burns has
16 it out for TitleMax because we dared to disagree
17 with him. He has a personal stake in this matter.

18 And he takes it personally that we've
19 challenged his interpretation of the law. He takes
20 it personally that we filed a District Court
21 lawsuit to get an interpretation of the law. He's
22 probably taking it personally that I'm sitting here
23 talking right now.

24 You know, again, we can be grownups about
25 this. We can disagree. You laugh, but we can

1 disagree about the law without demonizing each
2 other. We don't need to do that. That's what
3 grownups do in a grownup world. At least it's what
4 they should.

5 There were a couple of things, specific
6 things, that we should talk about with Mr. Burns'
7 testimony. We talked about the 2012 workshop. And
8 he refused to acknowledge that the Division had
9 conceded that the statute was ambiguous, refused to
10 acknowledge that there were reasonable, good faith
11 differences, differences in interpretation of the
12 statute. And he said, well, you have to look at
13 the context of what it says.

14 You can context those minutes all you
15 want to. Carla Kolebuck said that the statutes are
16 ambiguous. She specifically referenced licensees
17 who had a different interpretation of the law.

18 And then he said over and over again, The
19 FID doesn't threaten people. You remember that?
20 About four or five times he said, The FID doesn't
21 threaten people, Mr. Reilly.

22 But then after his examination was done
23 when I offered in front of you to provide
24 documentation showing that TitleMax stopped
25 offering the grace period deferment agreement on

1 new loans in December 2015, here's what he said.

2 Quote, "That will not be necessary. We'll verify
3 that in the follow-up examination. And if that's
4 not the case, it will be cited," end quote.

5 That was a threat. You know that was a
6 threat. And he did it right in front of you after
7 testifying under oath that the FID doesn't threaten
8 people.

9 And you know that after this proceeding
10 is done, they're coming back. They're going to
11 retaliate against TitleMax for daring to disagree
12 with them.

13 I'm also very troubled about a couple of
14 other things. Mr. Burns testified under oath that
15 he never turned down a meeting with TitleMax.
16 Ms. Lovelock and I have repeatedly requested a
17 meeting with Mr. Burns about this matter where my
18 clients would fly out on their dime to talk with
19 Mr. Burns at his leisure, on his schedule, whenever
20 he wanted to do it. And they refused over and over
21 again. And I wasn't talking with Mr. Burns when we
22 were doing that, so something is amiss. Either
23 he's not being candid with you or he's not getting
24 all the information. And I have no idea what it
25 is.

1 He also testified that he didn't know
2 that TitleMax had stopped offering the grace period
3 deferment agreement on new loans in December of
4 2015. And we've told them about that over and over
5 again. I took a break, I was so upset. And
6 Ms. Lovelock took over for me afterwards. Because
7 either somebody wasn't being candid with you or
8 somebody is not getting the information.

9 There's no reason why you should be here.

10 I want to talk about Mr. Helgesen's
11 testimony. He is the one person in this proceeding
12 who doesn't fancy himself a lawyer, and he never
13 made any ultimate conclusions. He never said,
14 Based on my interpretation of these statutes,
15 TitleMax did not violate the law. I don't recall
16 that ever being said. I did ask him questions
17 about what TitleMax did in relation to these
18 statutes, but whenever counsel tried to get him to
19 go to the ultimate conclusion, he said, you know
20 what, I'm not a lawyer. I rely on my lawyers to do
21 this. That's the whole point of this.

22 TitleMax likes to innovate. TitleMax
23 prides itself on that. It likes to give
24 flexibility to its customers. Mr. Helgesen
25 testified, and this is undisputed testimony, that

1 TitleMax was not offering this in an attempt to
2 circumvent the 210-day limitation on the loan.
3 This is important. If it wanted to collect more
4 interest, boy, it sure would be easier just to
5 raise the interest rate.

6 Because it's my understanding that
7 there's no usury law in the State of Nevada. Why
8 jump through all of these hoops if that's what the
9 scheme is? And why tie up capital for seven months
10 when it's not earning any interest? And I know
11 what they're going to say, well, they got the
12 interest up front. You're still tying up capital
13 on a depreciating asset, an automobile, for seven
14 months. Why would you do that -- why would you do
15 that instead of just raising the interest rate?
16 Much easier to do. Much simpler to do. TitleMax's
17 rates are already very competitive, a lot lower
18 than most other competitors. It just doesn't make
19 any sense to me.

20 The Financial Institutions Division
21 doesn't understand the product, doesn't understand
22 TitleMax, definitely doesn't understand these
23 rules. TitleMax is successful because it doesn't
24 take advantage of its customers, because it doesn't
25 overlend, because it only has a 2 percent

1 repossession rate in the State of Nevada.

2 I mean, if you stick it to your
3 customers, you lose their business for life. You
4 lose every referral that you might get. That's not
5 what TitleMax wants to do. But, yet, again, it
6 gets painted as the demon over and over and over
7 again.

8 I want to talk about remedies now.
9 There's a request for a cease and desist that
10 strikes me as moot, especially since with regard to
11 NAC 604A.230. The DMV has already changed its
12 rules so that it doesn't allow a security of a
13 vehicle through a co-borrower who is not on the
14 title. So it's moot. And also with regard to the
15 grace period deferment agreement, my client as a
16 measure of good faith, which apparently didn't get
17 passed onto Mr. Burns, that it was not offering the
18 grace period deferment agreement to new customers
19 as of December 2015, pardon me, new loans as of
20 December 2015.

21 So it strikes me that the cease and
22 desist is moot. It strikes me that the summary
23 suspension, which came up yesterday, is moot
24 because I didn't hear it mentioned a few minutes
25 ago.

1 With regard to the remaining remedies.
2 Fines, maximum fines, are being requested, \$10,000
3 per violation, \$3,070,000 over a disagreement over
4 the law. Findings of willfulness, in which the
5 Division seeks to void 307 loans over a
6 disagreement over the meaning of the law. That's
7 inequitable, and it's retroactive post hoc
8 punishment.

9 This product, this agreement, whatever
10 you want to call it, was vetted by in-house
11 counsel. It was vetted by outside counsel. It was
12 vetted by Nevada counsel looking at Nevada law.

13 I'll talk about the standards for
14 willfulness briefly. And based on what I've been
15 able -- what I -- what Nicole has been able to pull
16 up in the last few hours, a party cannot willfully
17 violate an ambiguous statute. That's number one.
18 And we know this is an ambiguous statute, NRS
19 604A.210, because the Financial Institutions
20 Division has admitted that it's ambiguous.

21 Willfulness. A willfulness finding must
22 also include a finding that the interpretation is
23 objectively unreasonable. That's essentially a
24 rule, not a standard. That's what we've found so
25 far.

1 McLaughlin v. Richland Shoe Company, 486
2 US 128. And it's my understanding that Nevada
3 follows federal law on this. And Safeco Insurance
4 Company of America v. Burr, 551 US 47. And then
5 matter of Fine, 116 Nevada 1001, which is a 2000
6 case.

7 So that's what we're talking about. And
8 given the admission that the statute is ambiguous,
9 given that we have a good faith dispute over the
10 meaning of the law, that precludes the finding of
11 willfulness. I believe it also precludes
12 effectively the imposition of fines because the
13 purpose of fines is to punish a party.

14 My client has been trying to get
15 clarification on this rule for more than a year
16 now. And there's a lot history here with regard to
17 the parties back and forth. When the report of
18 examination was issued, I prepared a written
19 response to the ROE, a lengthy response with a lot
20 of legal argument in it. And then Mr. Eccles, on
21 behalf of the Financial Institutions Division,
22 responded in March with essentially no argument at
23 all, a bare-bones statement that, well, we stand by
24 our report of examination, but no discussion at
25 all, no response at all.

1 We're all lawyers. We know that if I
2 file a motion and you don't oppose it, that's
3 effectively an admission that I'm right. And I
4 remember getting that letter, thinking, well, I
5 guess these issues are off the table. TitleMax
6 sure did. You heard that testimony. Well, I guess
7 these issues are off the table.

8 It wasn't until later, when the Financial
9 Institutions Division came back and started
10 requesting the same kinds of documents again, did
11 we think, okay, maybe we still have an issue
12 afterall. And my client filed a declaratory relief
13 action. My client filed a declaratory relief
14 action on June 1st, 2015, asking a district court
15 for an interpretation of the law.

16 Later on, after the filing of that
17 complaint, Mr. Eccles came to me in an email and
18 said, Why don't we convert this to a Chapter 29
19 proceeding. And you know now what Chapter 29
20 provides. It requires that the parties submit an
21 affidavit to the court saying that the controversy
22 between the parties is real and that the
23 controversy is in good faith. It's effectively an
24 admission by Mr. Eccles that the dispute between
25 the parties was in good faith.

1 And my client did mix up the offer.
2 Shame on my client. But that was still the
3 Financial Institutions Division's position. They
4 weren't even going to seek fines or a finding of
5 willfulness at that point.

6 So the contention that my client is
7 abusing customers and deceiving customers, to me,
8 really falls flat because if we were really
9 deceiving the public and treating the public so
10 badly, you know, the Division had the opportunity
11 to get a cease and desist order back in 2014. It
12 had the ability to go into court and ask for a
13 temporary restraining order saying, Judge, get them
14 to stop this. This is really important. People
15 are being taken advantage of.

16 No, nothing like that. And in June,
17 they're even telling us no administrative penalties
18 if you agree to it.

19 And when my client declined not to
20 because it had already filed the lawsuit, it wasn't
21 seeking attorneys' fees or costs, wasn't seeking
22 damages, to us it was the same thing. Well, then
23 global thermal nuclear war. It went from 0 to 60
24 in 2.2 seconds. And now, suddenly, the Division is
25 saying, Well, now we want maximum fines of \$10,000

1 and a willfulness finding, and we want to take away
2 your license.

3 I'm not going to use the word
4 disingenuous. I make a point not to use that word
5 anymore because you're telling someone that they
6 are lying. But I do think --

7 MS. RAKOWSKY: I think you can stop
8 shaking that pen.

9 MR. REILLY: I think it's phony. I think
10 it's posturing. Fine.

11 I think it's posturing. And I think it's
12 what in criminal law we call prosecutorial
13 overcharging. What happens there is you have a
14 criminal defendant, and the prosecutor throws up as
15 many charges as they possibly can to try to force
16 the defendant into a plea deal or suggest to the
17 finder of fact that, well, where there's smoke,
18 there's fire. They wouldn't have charged them with
19 such serious penalties unless they thought
20 something really bad was going on.

21 In July 2015, they didn't think something
22 so bad was going on. We had a disagreement over
23 the statute. But that all changed.

24 Ted Helgesen said, I just want some
25 clarity. I just want to know what to tell my

1 people so that they can tell their people about
2 what we need to do. My client has been waiting for
3 a year to get that kind of clarity. We hope to get
4 that clarity from you. And, in the meantime, my
5 client stopped offering a grace period deferment
6 agreement on new loans as a measure of good faith
7 that we don't get any credit for, again, because
8 there's always something allegedly deceptive or
9 wrong that's going on.

10 But the Financial Institutions Division
11 hasn't met its burden in this case. It hasn't even
12 come close. And what I'm going to ask you today is
13 to not punish my client over a good faith
14 disagreement over the meaning of the law. This is
15 something we've been asking for for more than a
16 year. This is something that the Financial
17 Institutions Division tried to avoid when it filed
18 a motion to dismiss in the state court proceedings
19 and then bragged about it. You heard Mr. Burns.
20 He was proud of himself that he stopped us from
21 getting an interpretation of the law.

22 We've been waiting for this for more than
23 a year. It shouldn't have taken this long, and it
24 didn't have to end this way. And, again, I want to
25 thank you for your time.

1 JUDGE McKAY: Do you want to do your
2 rebuttal now?

3 MS. RAKOWSKY: Yeah, I have a few
4 comments to make. And I also thank you for your
5 time.

6 First of all, there has never been an
7 admission by the FID as far as any ambiguity in the
8 statute. Mr. Reilly stood up there, accused the
9 FID of doing a hatchet job, but that, to me, looks
10 like a hatchet job. Our statutes are clear and
11 unambiguous. "The original term of a title loan
12 may be 210 days if and only if there are payments
13 in installments, the payments are calculated to
14 ratably and fully amortize the entire amount of
15 principal and interest payable on the loan."

16 Let's just take that one thing, the
17 payments. You said the first seven payments,
18 taking you at your word, the first seven payments
19 on that grace period, they're not ratably and
20 calculated to fully amortize the loan. They're
21 interest only. There's no principal at all. The
22 payments stub show that.

23 Let's say we take you at your word and
24 the second seven months is totally gratuitous.
25 Show me one place in that agreement that says that

1 seven months are a grace period. It doesn't. It
2 says the 14 months are the grace period. So that,
3 in and of itself, is a lie.

4 There is nothing that says seven months
5 are grace period and seven months are interest
6 only. It doesn't say that. And if it does, then
7 you know it's not fully -- it's not calculated to
8 ratably and fully amortize the loan. You know it
9 doesn't comply with the law. On that basis, and
10 that basis alone, these loans are noncompliant and
11 they are subject to fine and discipline.

12 We told you that in 2014. You didn't
13 want to listen. You said you want clarity. Well,
14 the reports of examination from 2014 are clear. At
15 the meeting in 2014, my client was clear. Don't do
16 it. It doesn't comply. And you go, no, we need a
17 court order. We're going to continue to do it.
18 We'll respond.

19 Then you take some negotiations between
20 you and Chris Eccles. Ms. Eccles is not here. We
21 don't know what was said. My client doesn't know
22 what was said. He testified that he was not
23 agreeing to the Chapter 29 in this particular case.
24 He testified to that yesterday.

25 So in 2014, the FID told you what was

1 expected of a title loan licensee. TitleMax made a
2 corporate decision that it's better to collect
3 millions and millions of dollars illegally from its
4 clients rather than comply with the requirements of
5 the statute.

6 Chapter 604A.210 has to be read with
7 604A.070. I like the way you put little pieces of
8 statutes. The statutes have to be read together in
9 the chapter. 070 defines a grace period. A grace
10 period has to be a period of deferment given
11 gratuitously. This doesn't say it has to be given
12 gratuitously, but 070 defines that. You don't talk
13 about that. You'd rather chop up additional
14 interest, additional this, AB384.

15 What you're trying to do is confuse the
16 issue. The language is plain. The language is
17 simple, and 124 other licensees understand the
18 language and comply with it. One licensee decided
19 to be creative and find a way to collect millions
20 and millions of dollars of undisclosed interest
21 from unsuspecting Nevada consumers, and that's the
22 bottom line.

23 And it is not a good faith dispute.
24 There is nothing good faith about it because
25 TitleMax will continue to do that for a year and a

1 half. You argued that I said -- and I only refer
2 to the part of that email that was allowed
3 yesterday and a part of the email. I didn't refer
4 to the rest of it. And you referred to it, too.
5 So you're the one who is opening up the door again
6 to 2015.

7 And you talk about the examiners. The
8 examiners are very well trained to apply the facts
9 of what they see in an examination to the law.
10 They don't have to be lawyers. They look at the
11 facts and they apply it to the law.

12 The FID would have been very happy to
13 review any new product, but TitleMax didn't come to
14 the FID and say, What do you think of this? They
15 ran it through their legal team. They ran it
16 through their Nevada lawyers, but they never asked
17 the FID what the FID thought whether it's
18 compliant. Because they knew what the answer was.
19 You can't take a 210-day loan and make it into a
20 420-day loan. Can't do it. You can't take a loan
21 that's supposed to be completely amortized and not
22 amortize it. Can't do it.

23 So why didn't TitleMax just raise the
24 interest rate and use a product that complies, it
25 would be so much easier. They didn't want to do it

1 because it's easier to compete if you're charging
2 your clients half the money for a longer period of
3 time, and you're telling your clients you're not
4 charging any interest, but you are.

5 And you never asked for an opinion. And
6 counsel has never asked to speak with -- and I'd
7 like to see emails. If you can produce emails
8 saying that you asked to meet with the FID and
9 emails back saying the FID will not meet with you,
10 that's fine.

11 And if you would have changed the
12 interest rate, you would have needed a new truth in
13 lending box. If you're saying it's a new loan,
14 they would have needed a new interest box or they
15 would have had to keep the interest the same.

16 The statutes, as you know, have to be
17 read together, as I said before. You can't just
18 take 210 without 070. You can't move the other
19 things around.

20 With respect to the reports that say that
21 TitleMax was not examined for compliance, that they
22 didn't violate federal law, you didn't read the
23 second sentence that says that TitleMax was not
24 examined for compliance with federal law. It said
25 they didn't find any violations, and that's because

1 they didn't examine for it.

2 And Mr. Burns did not threaten anybody.
3 What he said was the truth. When they get
4 examined, they'll check for compliance. That's not
5 a threat. That's just what the FID is charged by
6 the legislature to do.

7 And I'm not going to address
8 Mr. Helgesen's comments again, but the transcript
9 of this hearing will speak for itself. If he
10 doesn't understand Regulation Z or he doesn't know
11 what the word "modification" means, it will come
12 through on the transcript.

13 And we're asking the Board more than the
14 307 loans. We're asking the Board every single
15 loan that TitleMax entered into under the grace
16 period deferment agreement. There's no reason for
17 307 people to get the benefit back because they
18 overpaid and deceived without everybody else who
19 overpaid and was deceived being also have their
20 money returned.

21 And, as I said, the Financial
22 Institutions do not say that any part of that
23 statute is ambiguous.

24 And at no time has the FID ever attempted
25 to pass the burden. FID had a burden to show that

1 TitleMax committed the violations and that they
2 committed the violations willfully. And I believe
3 that was FID's burden, and FID has proven it
4 throughout this hearing.

5 And I'd like to thank you for your time,
6 and I appreciate it.

7 JUDGE McKAY: All right. Thank you.
8 Thank you, everyone.

9 MS. LOVELOCK: While we're on the record,
10 do we have time to brief? Can we have a week to
11 brief those issues?

12 MS. RAKOWSKY: We'd rather not at this
13 point. If you're asking our opinion, I think that
14 this has been kicked around enough.

15 MS. LOVELOCK: Just the two specific
16 issues on deference.

17 MR. REILLY: We're just talking about
18 what you gave us this morning, willfulness and
19 deference.

20 MR. POPE: I thought you asked
21 specifically yesterday that you prefer to handle it
22 here and not have additional briefing.

23 JUDGE McKAY: I would like briefing on
24 those two issues, not to exceed five pages total.

25 MR. REILLY: That's fair.

1 MS. RAKOWSKY: How long do we have?

2 MR. REILLY: No problem. We'll
3 accommodate you.

4 JUDGE McKAY: I would like them by next
5 Friday. Not this Friday, next Friday.

6 MS. RAKOWSKY: So that would be Friday
7 the what?

8 MS. LOVELOCK: 29th.

9 JUDGE McKAY: No more than five pages in
10 length total covering both issues.

11 MR. POPE: Just clarifying. And but for
12 the summary that Mr. Reilly is going to send to us,
13 the record is otherwise closed?

14 JUDGE McKAY: Yes. We're not going to
15 look at any emails. Record is completely closed
16 other than that one summary. These briefs are not
17 confidential, so make sure you give them to both
18 sides. Okay. Anything else?

19 MR. REILLY: Thank you.

20 JUDGE McKAY: Thank you, all.

21 (Proceedings concluded at 3:50 p.m.)
22
23
24
25

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
) SS:
3 COUNTY OF CLARK)

4 I, Kimberly A. Farkas, a duly certified Court
5 Reporter, State of Nevada, do hereby certify: That
6 I reported the taking of the PROCEEDINGS IN THE
7 MATTER OF TITLEMAX, commencing on Wednesday, July
8 20, 2016.

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

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

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

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

23 
24 Kimberly A. Farkas, CCR 741

25

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