

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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Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 74335

District Court No. A-16-743134-J

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APPELLANT'S APPENDIX

VOLUME 74 of 75

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1 retroactively to justify significant penalties on TitleMax for willfully violating a law  
2 that was ambiguous at best.

3 **CONCLUSION**

4 The introduction of Assembly Bill 163 indicates that the Nevada legislature  
5 and the FID feel a need to change NRS 604A.210 from how it is currently written.  
6 Whatever weight the Court chooses to give A.B. 163,<sup>4</sup> at the very least the bill  
7 confirms that the current statute is ambiguous and that TitleMax cannot have willfully  
8 violated it.

9 Dated this 11th day of May, 2017.

10 LEWIS ROCA ROTHGERBER CHRISTIE LLP

11  
12 By /s/ Daniel F. Polsenberg

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26 *Attorneys for Petitioners*

27 <sup>4</sup> The FID suggests that A.B. 163 is “additional evidence” that should be considered  
28 by the hearing officer before this Court considers it. (Opp’n at 4-5.) But A.B. 163  
(1) was not in existence at the time of the administrative hearing and (2) is not the  
type of disputed factual evidence subject to a credibility determination that must be  
weighed by the trier of fact. Even if A.B. 163 is deemed a matter “of fact” rather  
than a matter of law, courts may take judicial notice of facts “[c]apable of accurate  
and ready determination by resort to sources whose accuracy cannot reasonably be  
questioned, . . . so that the fact is not subject to reasonable dispute.” NRS 47.130.  
Here, the existence of A.B. 163 is not subject to reasonable dispute; its text can be  
accurately and readily determined by resort to the Nevada legislature’s bill tracking  
website. See <https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Bill/4911/Text>.  
TitleMax brought the bill to the Court’s attention so it would have more, rather than  
less, information available to it when it makes a decision on the merits. But  
obviously, the Court can determine what weight, if any, it gives to A.B. 163.

# EXHIBIT 1

# EXHIBIT 1

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## Tennille Pereira

Consumer Litigation Attorney at Legal Aid Center of Southern Nevada

Legal Aid Center of Southern Nevada • Nova Southeastern University—Shepard Broad Law Center  
Las Vegas, Nevada • 172

Connect

Accomplished attorney complemented with 5 years of consumer law experience, in particular bankruptcy and general litigation. A proven, experienced manager and effective team member, able to respond quickly and accurately to evolving bankruptcy laws and regulations. Thorough knowledge of bankruptcy adversarial proceedings, landlord-tenant law, debt negotiations, and varying foreclosure proceedings. Ability to draft and negotiate contracts and settlement agreements for varying business and personal transactions. Experienced litigator of individual and commercial cases from pleading stages, through discovery and trial phase. [See less](#)

### Experience

**Consumer Litigation Attorney**  
Legal Aid Center of Southern Nevada  
Jun 2016 – Present • 1 yr  
Las Vegas, Nevada Area

**Associate Attorney**  
David J. Winterton & Assoc., Ltd.  
Aug 2011 – Jun 2016 • 4 yrs 11 mos  
Las Vegas, Nevada Area  
[See description](#)

**Law Clerk**

Messaging

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**Piet & Wright**

Jun 2010 – Aug 2010 • 3 mos

Las Vegas, Nevada Area

[See description](#) ▼**Leads Production Team Leader**

US Navy

Dec 2003 – Jan 2008 • 4 yrs 2 mos

Sunrise, FL

[See description](#) ▼**Assistant Division Leader**

US Navy

May 2003 – Dec 2003 • 8 mos

Naval Air Station North Island, San Diego, CA

[See description](#) ▼[See more positions](#) ▼

---

**Education****Nova Southeastern University—Shepard Broad Law Center**

Doctor of Law (J.D.), Law

2008 – 2011

Graduated Magna Cum Laude.

Larry Kalevitch Award for "outstanding promise in business and bankruptcy practice.

Dean's List: Winter 2009, Fall 2009, Winter 2010, Fall 2011, Winter 2011.

Call High Grade Awards: Secured Transactions, Law and Literature, Environmental Law

[See less](#) ▲**Barry University**

Bachelor's degree, Legal Studies

2006 – 2008

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**US Navy Training Command**

Electronic Theory and Shipboard Weapon Systems

1998 – 1999

[See description](#) ▼

---

**Volunteer Experience**[Messaging](#)**APP 017341**

**Court Appointed Special Advocate**

CASA of Clark County

May 2014 – Present • 3 yrs 1 mo

Children

Support foster children throughout court proceedings by learning about the dependency court system; attending each hearing and helping "interpret" court proceedings.

Identify and explore potential resources that will facilitate family preservation, early family reunification, or alternative permanency planning.

Interview all parties involved with the children regarding circumstances and needs, as determined by the CASA plan developed with the CASA Advocate Supervisor.

Communicate and coordinate efforts with the child's social worker, probation officer, and attorney.

[See less](#) ↙
**Featured Skills & Endorsements****Legal Writing** • 8

Alessandro Giordano and 7 connections have given endorsements for this skill

**Trials** • 8

Alessandro Giordano and 7 connections have given endorsements for this skill

**Bankruptcy** • 7

Mark Meshulam and 6 connections have given endorsements for this skill

[View 15 more](#) ↘
**Accomplishments****2 Honors & Awards** ↘

Letter of Commendation, 14th Gold Wreath • Navy and Marines Corps Achievement Medal

**2 Organizations** ↘

State Bar of Nevada, Bankruptcy Section • United States District Court, District of Nevada

**1 Language** ↘

English

Messaging

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## Interests



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# EXHIBIT 2

# EXHIBIT 2

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ASSEMBLY BILL NO. 163—ASSEMBLYMAN FLORES

PREFILED FEBRUARY 13, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing certain short-term loans. (BDR 52-737)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to financial services; requiring a person who is licensed to operate certain loan services to verify a customer's ability to repay the loan before making certain short-term loans to the customer; requiring a person who makes a deferred deposit loan to offer an extended payment plan under certain circumstances; revising provisions governing defaults, lengths of term and grace periods relating to certain short-term loans; requiring certain notices to be posted by a person who is licensed to operate certain loan services; revising the requirements for making a title loan; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

- 1 Existing law establishes standards and procedures governing the making of
- 2 certain short-term loans, commonly referred to as "payday loans," "high-interest
- 3 loans" and "title loans." (Chapter 604A of NRS) **Section 1.3** of this bill: (1)
- 4 prohibits a person from making such a loan unless the person has determined that
- 5 the customer has the ability to repay the loan; and (2) establishes the factors that the
- 6 person making the loan must consider when determining whether a customer has
- 7 the ability to repay the loan. **Section 1.3** also requires that the loan comply with the
- 8 statutory requirements applicable to the type of loan involved. **Section 1.7** of this
- 9 bill requires a person who makes a deferred deposit loan to offer an extended
- 10 payment plan to the customer under certain circumstances.
- 11 Existing law allows for a person making a payday loan, high-interest loan or
- 12 title loan to offer the customer a grace period concerning repayment of the loan.
- 13 (NRS 604A.210) **Section 3** of this bill distinguishes a grace period from an
- 14 extension of a loan that complies with certain statutory requirements. **Section 4** of
- 15 this bill prohibits a person making the loan from granting a grace period for the
- 16 purpose of artificially increasing the amount a customer qualifies to borrow, or,



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with certain exceptions, from conditioning the grace period on the customer's agreement to a new loan or a modification of the terms of the existing loan or the charging of interest at a rate in excess of that provided by the existing loan agreement.

Existing law requires a person making a payday loan, high-interest loan or title loan to post certain notices in a conspicuous place in every location at which the person conducts business. (NRS 604A.405) **Section 5** of this bill provides that the person must post a notice of the existing requirement that the person must offer a repayment plan to a customer who defaults on a loan before the person commences specified collection actions. **Section 5** also provides that the person must post a notice that states the process for customers to file a complaint with the Office of the Commissioner of Financial Institutions.

Existing law sets forth certain restrictions on the actions of a person licensed to operate certain loan services. (NRS 604A.440) **Section 6** of this bill adds to those restrictions a limitation on the reinitiation of electronic debit transactions.

Existing law provides restrictions on the making of title loans. (NRS 604A.450) **Section 7** of this bill adds to those restrictions by specifying that the customer must legally own the vehicle which secures the loan and that the person making the loan cannot consider the income, except for the customer's community income, of anyone who is not a legal owner of the vehicle who enters into a loan agreement with the licensee when determining whether the customer has the ability to repay the loan.

**Section 8** of this bill makes conforming changes.

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

**Section 1.** Chapter 604A of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 and 1.7 of this act.

**Sec. 1.3. 1.** *A licensee shall not make a loan pursuant to this chapter unless the licensee determines pursuant to subsection 2 that the customer has the ability to repay the loan and that the loan complies with the provisions of NRS 604A.425, 604A.450 or subsection 2 of NRS 604A.480, as applicable.*

**2.** *For the purposes of subsection 1, a customer has the ability to repay a loan if the customer has a reasonable ability to repay the loan, as determined by the licensee after considering the following underwriting factors:*

*(a) The current or reasonably expected income of the customer;*

*(b) The current employment status of the customer based on evidence including, without limitation, a pay stub or bank deposit;*

*(c) The credit history of the customer;*

*(d) The amount due under the original term of the loan, the monthly payment on the loan, if the loan is an installment loan, or the potential repayment plan if the customer defaults on the loan; and*



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1       (e) Other evidence, including, without limitation, bank  
2 statements, electronic bank statements and written representations  
3 to the licensee.

4       3. For the purposes of subsection 1, a licensee shall not  
5 consider the ability of any person other than the customer to repay  
6 the loan.

7       Sec. 1.7. 1. A licensee shall allow a customer with an  
8 outstanding deferred deposit loan to enter into an extended  
9 payment plan if the customer:

10       (a) Has not entered into an extended payment plan for the  
11 deferred deposit loan during the immediately preceding 12-month  
12 period; and

13       (b) Requests an extended repayment plan before the time the  
14 deferred deposit loan is due.

15       2. An extended payment plan entered into pursuant to  
16 subsection 1 must:

17       (a) Be in writing and be signed by the licensee and customer;  
18 and

19       (b) Provide a payment schedule of at least four payments over  
20 a period of at least 60 days.

21       3. An extended payment plan entered into pursuant to  
22 subsection 1 must not:

23       (a) Increase or decrease the amount owed under the deferred  
24 deposit loan.

25       (b) Include any interest or fees in addition to those charged  
26 under the terms of the deferred deposit loan.

27       4. If a customer defaults under an extended payment plan  
28 entered into pursuant to this section, the licensee may terminate  
29 the extended payment plan and accelerate the requirement to pay  
30 the amount owed.

31       Sec. 2. NRS 604A.045 is hereby amended to read as follows:

32       604A.045 1. "Default" means the failure of a customer to:

33       (a) Make a scheduled payment on a loan on or before the due  
34 date for the payment under the terms of a lawful loan agreement  
35 that complies with the provisions of NRS 604A.408, 604A.445 or  
36 subsection 2 of NRS 604A.480, as applicable, and any grace period  
37 that complies with the provisions of NRS 604A.210 ; ~~for under the~~  
38 ~~terms of any lawful extension or repayment plan relating to the loan~~  
39 ~~and any grace period that complies with the provisions of~~  
40 ~~NRS 604A.210;~~ or

41       (b) Pay a loan in full on or before ~~the~~  
42 ~~(1) The~~ the expiration of the ~~{initial}~~ loan period as set forth  
43 in a lawful loan agreement that complies with the provisions of  
44 NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as



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1 *applicable*, and any grace period that complies with the provisions  
2 of NRS 604A.210. ~~}-or~~

3 ~~----- (2) The due date of any lawful extension or repayment plan~~  
4 ~~relating to the loan and any grace period that complies with the~~  
5 ~~provisions of NRS 604A.210, provided that the due date of the~~  
6 ~~extension or repayment plan does not violate the provisions of this~~  
7 ~~chapter.}~~

8 2. A default occurs on the day immediately following the date  
9 of the customer's failure to perform as described in subsection 1.

10 **Sec. 3.** NRS 604A.070 is hereby amended to read as follows:

11 604A.070 1. "Grace period" means any period of deferment  
12 offered gratuitously by a licensee to a customer if the licensee  
13 complies with the provisions of NRS 604A.210.

14 2. *The term does not include an extension of a loan that*  
15 *complies with the provisions of NRS 604A.408, 604A.445 or*  
16 *subsection 2 of NRS 604A.480, as applicable.*

17 **Sec. 3.5.** NRS 604A.0703 is hereby amended to read as  
18 follows:

19 604A.0703 1. "High-interest loan" means a loan made to a  
20 customer pursuant to a loan agreement which, under its original  
21 terms, charges an annual percentage rate of more than 40 percent.

22 2. The term includes, without limitation, any single-payment  
23 loan, installment loan, ~~}-or}~~ open-ended loan *or contract for the*  
24 *lease of an animal for a purpose other than a business,*  
25 *commercial or agricultural purpose* which, under ~~its}~~ *the* original  
26 terms ~~}}~~ *of the loan or contract*, charges an annual percentage rate  
27 of more than 40 percent.

28 3. The term does not include:

- 29 (a) A deferred deposit loan;  
30 (b) A refund anticipation loan; or  
31 (c) A title loan.

32 **Sec. 4.** NRS 604A.210 is hereby amended to read as follows:

33 604A.210 The provisions of this chapter do not prohibit a  
34 licensee from offering a customer a grace period on the repayment  
35 of a loan or an extension of a loan, except that the licensee shall not  
36 ~~charge the customer:~~

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

38 ~~2. Any additional fees or additional interest on the outstanding~~  
39 ~~loan during such a grace period.} :~~

40 1. *Except for a loan agreement governed by NRS 604A.408,*  
41 *604A.445 or subsection 2 of NRS 604A.480:*

42 (a) *Condition the granting of the grace period on the customer*  
43 *making any new loan agreement or adding any addendum or term*  
44 *to an existing loan agreement; or*



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1       ***(b) Charge the customer interest at a rate in excess of that***  
2       ***described in the existing loan agreement; or***

3       ***2. Grant a grace period for the purpose of artificially***  
4       ***increasing the amount which a customer would otherwise qualify***  
5       ***to borrow.***

6       **Sec. 5.** NRS 604A.405 is hereby amended to read as follows:

7       604A.405   1. A licensee shall post in a conspicuous place in  
8       every location at which the licensee conducts business under his or  
9       her license:

10      (a) A notice that states the fees the licensee charges for  
11      providing check-cashing services, deferred deposit loan services,  
12      high-interest loan services or title loan services.

13      (b) *A notice that states that if the customer defaults on a loan,*  
14      *the licensee must offer a repayment plan to the customer before*  
15      *the licensee commences any civil action or process of alternative*  
16      *dispute resolution or repossesses a vehicle.*

17      (c) A notice that states a toll-free telephone number to the Office  
18      of the Commissioner to handle concerns or complaints of customers.

19      (d) *A notice that states the process for filing a complaint with*  
20      *the Commissioner.*

21      ➡ The Commissioner shall adopt regulations prescribing the form  
22      and size of the notices required by this subsection.

23      2. If a licensee offers loans to customers at a kiosk, through the  
24      Internet, through any telephone, facsimile machine or other  
25      telecommunication device or through any other machine, network,  
26      system, device or means, except for an automated loan machine  
27      prohibited by NRS 604A.400, the licensee shall, as appropriate to  
28      the location or method for making the loan, post in a conspicuous  
29      place where customers will see it before they enter into a loan, or  
30      disclose in an open and obvious manner to customers before they  
31      enter into a loan, a notice that states:

32      (a) The types of loans the licensee offers and the fees he or she  
33      charges for making each type of loan; and

34      (b) A list of the states where the licensee is licensed or  
35      authorized to conduct business from outside this State with  
36      customers located in this State.

37      3. A licensee who provides check-cashing services shall give  
38      written notice to each customer of the fees he or she charges for  
39      cashing checks. The customer must sign the notice before the  
40      licensee provides the check-cashing service.

41      **Sec. 5.5.** NRS 604A.408 is hereby amended to read as  
42      follows:

43      604A.408   1. Except as otherwise provided in this chapter, the  
44      original term of a deferred deposit loan or high-interest loan must  
45      not exceed 35 days.



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2. The original term of a high-interest loan may be up to 90 days if:

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

*and*

*(e) The loan is not a deferred deposit loan.*

3. Notwithstanding the provisions of NRS 604A.480, a licensee shall not agree to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding deferred deposit loan or high-interest loan for a period that exceeds 90 days after the date of origination of the loan.

**Sec. 6.** NRS 604A.440 is hereby amended to read as follows:

604A.440 A licensee shall not:

1. Use or threaten to use the criminal process in this State or any other state, or any civil process not available to creditors generally, to collect on a loan made to a customer.

2. Commence a civil action or any process of alternative dispute resolution or repossess a vehicle before the customer defaults under the original term of a loan agreement or before the customer defaults under any repayment plan ~~{}~~ or extension ~~{or grace-period}~~ negotiated and agreed to by the licensee and customer, unless otherwise authorized pursuant to this chapter.

3. Take any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for the customer in a judicial proceeding.

4. Include in any written agreement:

- (a) A promise by the customer to hold the licensee harmless;
- (b) A confession of judgment by the customer;
- (c) An assignment or order for the payment of wages or other compensation due the customer; or

- (d) A waiver of any claim or defense arising out of the loan agreement or a waiver of any provision of this chapter. The provisions of this paragraph do not apply to the extent preempted by federal law.

5. Engage in any deceptive trade practice, as defined in chapter 598 of NRS, including, without limitation, making a false representation.

6. Advertise or permit to be advertised in any manner any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for loans.

7. *Reinitiate an electronic debit transaction that has been returned by a customer's bank except in accordance with the rules*



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1 *prescribed by the National Automated Clearing House Association*  
2 *or its successor organization.*

3 8. Use or attempt to use any agent, affiliate or subsidiary to  
4 avoid the requirements or prohibitions of this chapter.

5 **Sec. 6.5.** NRS 604A.445 is hereby amended to read as  
6 follows:

7 604A.445 Notwithstanding any other provision of this chapter  
8 to the contrary:

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

10 2. The title loan may be extended for not more than six  
11 additional periods of extension, with each such period not to exceed  
12 30 days, if:

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

17 (b) The annual percentage rate charged on the title loan during  
18 any period of extension is not more than the annual percentage rate  
19 charged on the title loan during the original term; and

20 (c) No additional origination fees, set-up fees, collection fees,  
21 transaction fees, negotiation fees, handling fees, processing fees,  
22 late fees, default fees or any other fees, regardless of the name given  
23 to the fees, are charged in connection with any extension of the title  
24 loan.

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

26 (a) The loan provides for payments in installments;

27 (b) The payments are calculated to ratably and fully amortize the  
28 entire amount of principal and interest payable on the loan;

29 (c) The loan is not subject to any extension; ~~and~~

30 (d) The loan does not require a balloon payment of any kind ~~or~~ ;  
31 *and*

32 *(e) The loan is not a deferred deposit loan.*

33 **Sec. 7.** NRS 604A.450 is hereby amended to read as follows:

34 604A.450 A licensee who makes title loans shall not:

35 1. Make a title loan that exceeds the fair market value of the  
36 vehicle securing the title loan.

37 2. *Make a title loan to a customer secured by a vehicle which*  
38 *is not legally owned by the customer.*

39 3. Make a title loan without ~~regard to the ability of the~~  
40 ~~customer seeking the title loan to repay the title loan, including the~~  
41 ~~customer's current and expected income, obligations and~~  
42 ~~employment.~~

43 ~~3.1~~ *determining that the customer has the ability to repay the*  
44 *title loan, as required by section 1.3 of this act. In complying with*  
45 *this subsection, the licensee shall not consider the income of any*



\* A B 1 6 3 R 2 \*  
APP 017351

1 *person who is not a legal owner of the vehicle securing the title*  
2 *loan but may consider a customer's community income and the*  
3 *income of any other customers who consent to the loan pursuant*  
4 *to subsection 5 and enter into a loan agreement with the licensee.*

5 4. Make a title loan without requiring the customer to sign an  
6 affidavit which states that:

7 (a) The customer has provided the licensee with true and correct  
8 information concerning the customer's income, obligations,  
9 employment and ownership of the vehicle; and

10 (b) The customer has the ability to repay the title loan.

11 5. *Make a title loan secured by a vehicle with multiple legal*  
12 *owners without the consent of each owner.*

13 **Sec. 8.** NRS 604A.930 is hereby amended to read as follows:

14 604A.930 1. Subject to the affirmative defense set forth in  
15 subsection 3, in addition to any other remedy or penalty, if a person  
16 violates any provision of NRS 604A.400, 604A.410 to 604A.500,  
17 inclusive, *and sections 1.3 and 1.7 of this act*, 604A.610, 604A.615,  
18 604A.650 or 604A.655 or any regulation adopted pursuant thereto,  
19 the customer may bring a civil action against the person for:

20 (a) Actual and consequential damages;

21 (b) Punitive damages, which are subject to the provisions of  
22 NRS 42.005;

23 (c) Reasonable attorney's fees and costs; and

24 (d) Any other legal or equitable relief that the court deems  
25 appropriate.

26 2. Subject to the affirmative defense set forth in subsection 3,  
27 in addition to any other remedy or penalty, the customer may bring a  
28 civil action against a person pursuant to subsection 1 to recover an  
29 additional amount, as statutory damages, which is equal to \$1,000  
30 for each violation if the person knowingly:

31 (a) Operates a check-cashing service, deferred deposit loan  
32 service, high-interest loan service or title loan service without a  
33 license, in violation of NRS 604A.400;

34 (b) Fails to include in a loan agreement a disclosure of the right  
35 of the customer to rescind the loan, in violation of NRS 604A.410;

36 (c) Violates any provision of NRS 604A.420;

37 (d) Accepts collateral or security for a deferred deposit loan, in  
38 violation of NRS 604A.435, except that a check or written  
39 authorization for an electronic transfer of money shall not be  
40 deemed to be collateral or security for a deferred deposit loan;

41 (e) Uses or threatens to use the criminal process in this State or  
42 any other state to collect on a loan made to the customer, in  
43 violation of NRS 604A.440;

44 (f) Includes in any written agreement a promise by the customer  
45 to hold the person harmless, a confession of judgment by the



\* A B 1 6 3 R 2 \*  
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1 customer or an assignment or order for the payment of wages  
2 or other compensation due the customer, in violation of  
3 NRS 604A.440;

4 (g) Violates any provision of NRS 604A.485;

5 (h) Violates any provision of NRS 604A.490; or

6 (i) Violates any provision of NRS 604A.442.

7 3. A person may not be held liable in any civil action brought  
8 pursuant to this section if the person proves, by a preponderance of  
9 evidence, that the violation:

10 (a) Was not intentional;

11 (b) Was technical in nature; and

12 (c) Resulted from a bona fide error, notwithstanding the  
13 maintenance of procedures reasonably adapted to avoid any such  
14 error.

15 4. For the purposes of subsection 3, a bona fide error includes,  
16 without limitation, clerical errors, calculation errors, computer  
17 malfunction and programming errors and printing errors, except that  
18 an error of legal judgment with respect to the person's obligations  
19 under this chapter is not a bona fide error.

20 **Sec. 9.** Any contract or agreement entered into pursuant to  
21 chapter 604A of NRS before July 1, 2017, remains in effect in  
22 accordance with the provisions of the contract or agreement.

23 **Sec. 10.** This act becomes effective on July 1, 2017.



1 CERTIFICATE OF SERVICE

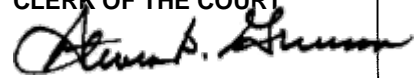
2 I hereby certify that on the 11th day of May, 2017, I served the foregoing  
3 “Reply to ‘Opposition to Supplemental Authorities’” on counsel by the Court’s  
4 electronic filing system and by courtesy email to the persons and addresses listed  
5 below:

6 Adam Paul Laxalt  
7 Attorney General  
8 David J. Pope  
9 Sr. Deputy Attorney General  
10 Vivienne Rakowsky  
11 Deputy Attorney General  
12 Rickisha Hightower-Singletary  
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18 RSingletary@AG.NV.gov

19 /s/ Jessie M. Helm  
20 An Employee of Lewis Roca Rothgerber Christie LLP  
21  
22  
23  
24  
25  
26  
27  
28

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**ORDG**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

*vs.*

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

Respondent.

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

**ORDER REGARDING HEARING  
AND BRIEFING SCHEDULE**

On April 6, 2017, this Court held a status check regarding TitleMax's request to extend the partial stay of the administrative order. Having consulted with the parties and good cause appearing, the Court orders as follows:

**APP 017355**

MAY 24 2017



1. TitleMax and the State of Nevada Department of Business and Industry Financial Institutions Division (the "FID") shall meet and confer on or before April 17, 2017 to see if they can come to a resolution regarding (1) TitleMax's production of the accounting, possibly under a negotiated protective order and (2) the bond amount.

2. If the parties cannot reach an amicable solution, TitleMax shall have until April 21, 2017 to file a renewed motion to extend the current stay.

3. The FID's response will be due on May 5, 2017.

4. TitleMax's reply will be due on May 12, 2017.

5. The Court will hold a hearing on May 18, 2017 at 9:00 a.m. to hear argument on the renewed motion to stay, as well as any arguments the parties wish to raise regarding TitleMax's supplemental authorities filed on March 24, 2017.

6. The current stay will remain in effect until the hearing on May 18, 2017.

7. The Court will hold a hearing on August 3, 2017<sup>1</sup> at 9:00 a.m. to hear argument on TitleMax's petition for judicial review.

IT IS SO ORDERED.

DATED this 25<sup>th</sup> day of May, 2017.

John Hardy  
DISTRICT COURT JUDGE

<sup>1</sup> At the April 6, 2017 status hearing, and in its subsequent minute entry, the Court set the hearing date on TitleMax's petition for judicial review for June 15, 2017 at 9:00 a.m. However, because of scheduling conflicts, the parties have agreed and obtained the Court's permission to change the hearing date to August 3, 2017.

Submitted by:

*Malani Dale Kotchka-Alanes*

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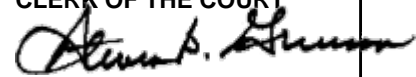
*Attorneys for Petitioners*

Approved as to form and content by:

/s/ David J. Pope (e-signed with permission)

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## DISTRICT COURT

## CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondent.

Case No. A-16-743134-J  
Dept. No. XVORDER GRANTING MOTION TO  
EXTEND PARTIAL STAY OF  
ADMINISTRATIVE ORDER AND  
ALLOWING SUPPLEMENTAL  
AUTHORITIES

On May 18, 2017, this Court heard argument regarding whether it should consider the supplemental authorities filed by TitleMax on March 24, 2017. The Court also heard argument on TitleMax's renewed motion to extend the partial stay of the administrative order. Having considered the briefing and

arguments by both TitleMax and the Financial Institutions Division of the Department of Business and Industry (the "FID"), the Court finds and orders as follows:

***Supplemental Authorities***

1. In its supplemental authorities, TitleMax brought to the Court's attention a proposed bill, A.B. 163. This is not factual evidence. Rather, it is akin to legislative history.
2. Leave to file the supplemental authorities and leave to respond to the same are granted retroactively. The Court will consider the supplemental authorities like any other legal authorities at the time the Court considers the petition for judicial review on the merits.

***Renewed Motion to Extend Partial Stay of Administrative Order***

3. This Court previously stayed that portion of the administrative order requiring TitleMax "to conduct a full accounting of and return all principal and interest it has collected under every [Grace Period Payments Deferment Agreement] entered into after December 18, 2014," until March 10, 2017.
4. The Court ordered TitleMax to post \$550,000 in security, which the Court found was an adequate amount of security under NRS 233B.140, NRCP 65(c), and the totality of the circumstances.
5. The partial stay was extended through the hearing on May 18, 2017.
6. The Court now extends the partial stay until the Court renders a decision on the merits of TitleMax's petition for judicial review.
7. For the avoidance of any doubt, the Court also explicitly stays that portion of the administrative order stating that "TitleMax shall conduct this process under the supervision and direction of FID . . .]" Both TitleMax's and the FID's obligations in this regard are stayed.

1 8. TitleMax shall post additional security in the amount of \$200,000 no later  
2 than June 1, 2017. The Court finds that under the relevant factors, the  
3 original security amount of \$550,000 was appropriate. However, since the  
4 time period in which the Court will render a decision on the merits has  
5 increased and is greater than the time period the Court originally  
6 anticipated, the additional \$200,000 in security is appropriate.

7 9. No later than June 1, 2017, TitleMax shall also:

- 8 a. Submit to the Court for in camera review the total amount of  
9 principal and the total amount of interest collected under loans in  
10 which a Grace Period Payments Deferment Agreement was  
11 executed after December 18, 2014, so that this court can determine  
12 whether to increase the bond.
- 13 b. File a declaration under oath describing the fields of information in  
14 the accounting that TitleMax has compiled.
- 15 c. File a declaration under oath describing the procedures TitleMax  
16 has implemented to safeguard the accounting and the loan  
17 documents that were consulted to compile the accounting.

18 IT IS SO ORDERED.

19 DATED this 30<sup>th</sup> day of May, 2017.

20  
21   
22 DISTRICT COURT JUDGE

23 Submitted by:

24   
25 DANIEL F. POLSENBERG (SBN 2376)  
26 JOEL D. HENRIOD (SBN 8492)  
27 MALANI DALE KOTCHKA-ALANES (SBN 13,168)  
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APP 017360

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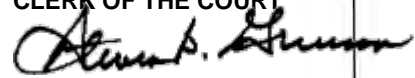
*Attorneys for Petitioners*

Approved as to form and content by:

/s/ Rickisha Hightower-Singletary (e-signed with permission)

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*TITLEBUCKS d/b/a TITLEMAX*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

*vs.*

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

Respondent.

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

**DECLARATION OF STEPHEN MICHAEL PARIS**  
**REGARDING THE INFORMATION FIELDS IN TITLEMAX'S ACCOUNTING**

**DECLARATION OF STEPHEN MICHAEL PARIS**  
**REGARDING THE INFORMATION FIELDS IN TITLEMAX'S ACCOUNTING**

STATE OF GEORGIA       )  
  ) ss.  
COUNTY OF CHATHAM    )

I, Stephen Michael Paris, being first duly sworn, hereby declare, under penalty of perjury of the laws of the State of Nevada and the United States, the following is true and correct:

1. I am the Director of Regulatory Compliance at TMX Finance Family of Companies.

2. I was personally involved in assembling and aggregating the accounting information compiled by TitleMax regarding loan files in which a Grace Period Payment Deferment Agreement was executed after December 18, 2014.

3. Where available, TitleMax included the following fields of information regarding loan files in which a Grace Period Payment Deferment Agreement was executed after December 18, 2014:

ILOAN_CODE	Account Number
ST_CODE	Store Number
LOAN_DATE	Origination Date
LOAN_AMT	Loan Amount
TOTAL_PRINCIPAL_PAID	Total Principal Paid
TOTAL_INTEREST_PAID	Total Interest Paid
FIRST_NAME	Borrower First Name
LAST_NAME	Borrower Last Name
MIDDLE_NAME	Borrower Middle Name
ADDRESS_LN	Borrower Address
APTMT_NUM	Borrower Apartment Number
CITY	Borrower City
POSTAL_ID	Borrower Zip
EMAIL_ID	Borrower Email
PHONE_NUM	Borrower Phone Number



1           4.     Not every loan file reviewed contained each field of information.  
2     For example, some loan files did not contain an email address for the customer.  
3     However, where the information was available, TitleMax included in its  
4     accounting the above fields of information.

5           Dated this 25 day of May, 2017.



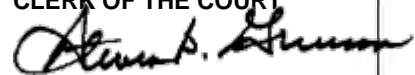
STEPHEN MICHAEL PARIS

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 31st day of May, 2017, I served the foregoing  
3 “Declaration of Stephen Michael Paris Regarding the Information Fields in  
4 TitleMax’s Accounting” on counsel by the Court’s electronic filing system and by  
5 courtesy email to the persons and addresses listed below:

6 Adam Paul Laxalt  
7 Attorney General  
8 David J. Pope  
9 Sr. Deputy Attorney General  
10 Vivienne Rakowsky  
11 Deputy Attorney General  
12 Rickisha Hightower-Singletary  
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18 [RSingletary@AG.NV.gov](mailto:RSingletary@AG.NV.gov)

19 /s/ Jessie M. Helm  
20 An Employee of Lewis Roca Rothgerber Christie LLP  
21  
22  
23  
24  
25  
26  
27  
28



1 **DECL**

2 DANIEL F. POLSENBERG (SBN 2376)

3 JOEL D. HENRIOD (SBN 8492)

4 MALANI DALE KOTCHKA-ALANES (SBN 13,168)

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15 *Attorneys for Petitioner*

16 *TITLEMAX OF NEVADA, INC., d/b/a*

17 *TITLEBUCKS d/b/a TITLEMAX*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 TITLEMAX OF NEVADA, INC., d/b/a  
21 TITLEBUCKS and TITLEMAX, a Delaware  
22 corporation,

23 **Petitioner,**

24 *vs.*

25 STATE OF NEVADA, DEPARTMENT OF  
26 BUSINESS AND INDUSTRY FINANCIAL  
27 INSTITUTIONS DIVISION,

28 **Respondent.**

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

25 **DECLARATION OF STEPHEN MICHAEL PARIS**  
26 **REGARDING THE PROCEDURES TITLEMAX**  
27 **HAS UTILIZED TO SAFEGUARD THE ACCOUNTING**  
28 **AND LOAN DOCUMENTS REVIEWED TO COMPILE THE ACCOUNTING**

1 STATE OF GEORGIA       )  
2                               ) ss.  
3 COUNTY OF CHATHAM    )

4       I, Stephen Michael Paris, being first duly sworn, hereby declare, under  
5 penalty of perjury of the laws of the State of Nevada and the United States, the  
6 following is true and correct:

7       1.     I am the Director of Regulatory Compliance at TMX Finance Family  
8 of Companies.

9       2.     I was personally involved in assembling the accounting information  
10 compiled by TitleMax regarding loan files in which a Grace Period Payment  
11 Deferment Agreement ("GPDA") was executed after December 18, 2014.

12       3.     I also have personal knowledge of, and am familiar with, TitleMax's  
13 point of sale systems and the information those systems store and create.

14       4.     From May 1, 2011 to May 10, 2015, TitleMax used a point of sale  
15 system called Cashwise. Cashwise did not electronically record as a data point  
16 in its system whether a customer entered into a Grace Period Payment  
17 Deferment Agreement. Thus, TitleMax conducted a manual review of loan files  
18 in Nevada covering December 19, 2014 through May 10, 2015 to determine  
19 which files had an executed GPDA.

20       5.     During its manual review of the Cashwise files, TitleMax scanned  
21 any loan agreements and GPDAs for customers where TitleMax found an  
22 executed GPDA. TitleMax is maintaining a secure copy of the completed  
23 accounting and the supporting scanned files.

24       6.     TitleMax also sent thumb drives of the accounting, the scanned loan  
25 agreements, and the scanned GPDAs saved during the manual review of the  
26 Cashwise files to Holland & Hart and Lewis Roca Rothgerber Christie LLP for  
27 storage.  
28

1           7.     The hard copy files of the Cashwise loan files are maintained at the  
2 TitleMax location where the loan file originated or was last serviced.

3           8.     From May 11, 2015 until the present, TitleMax used its current  
4 point of sale system, TLX. TLX electronically stores whether a customer  
5 executed a GPDA.

6           9.     TLX also electronically stores documentation either scanned into  
7 the system or electronically saved at the time of the transaction. Thus, TLX  
8 electronically stores documents such as loan agreements and GPDAs.

9           10.    The information contained within TLX is housed on a secure  
10 production server in a data center. The information is backed up to another  
11 data center in a different city, and that data center is also replicated.

12           11.    TitleMax utilized the above-described procedures to store the  
13 accounting and the loan documents reviewed to compile the accounting.

14           Dated this 31 day of May, 2017.

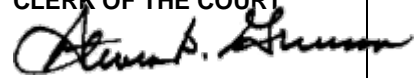


STEPHEN MICHAEL PARIS

## CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of May, 2017, I served the foregoing “Declaration of Stephen Michael Paris Regarding the Procedures TitleMax has Utilized to Safeguard the Accounting and Loan Documents Reviewed to Compile the Accounting” on counsel by the Court’s electronic filing system and by courtesy email to the persons and addresses listed below:

/s/ Jessie M. Helm  
An Employee of Lewis Roca Rothgerber Christie LLP



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

*vs.*

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

Respondent.

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

**NOTICE OF ENTRY OF  
“ORDER REGARDING HEARING  
AND BRIEFING SCHEDULE”**

1 Please take notice that on the 30th day of May, 2017, an “Order  
2 Regarding Hearing and Briefing Schedule” was entered in this case. A copy of  
3 the order is attached.

4 Dated this 1st day of June, 2017.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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7 By /s/ Malani Dale Kotchka-Alanes

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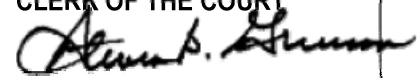
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TITLEMAX OF NEVADA, INC., d/b/a  
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*vs.*

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

Respondent.

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

**ORDER REGARDING HEARING  
AND BRIEFING SCHEDULE**

On April 6, 2017, this Court held a status check regarding TitleMax's request to extend the partial stay of the administrative order. Having consulted with the parties and good cause appearing, the Court orders as follows:

**APP 017373**

MAY 24 2017

1. TitleMax and the State of Nevada Department of Business and Industry Financial Institutions Division (the "FID") shall meet and confer on or before April 17, 2017 to see if they can come to a resolution regarding (1) TitleMax's production of the accounting, possibly under a negotiated protective order and (2) the bond amount.

2. If the parties cannot reach an amicable solution, TitleMax shall have until April 21, 2017 to file a renewed motion to extend the current stay.

3. The FID's response will be due on May 5, 2017.

4. TitleMax's reply will be due on May 12, 2017.

5. The Court will hold a hearing on May 18, 2017 at 9:00 a.m. to hear argument on the renewed motion to stay, as well as any arguments the parties wish to raise regarding TitleMax's supplemental authorities filed on March 24, 2017.

6. The current stay will remain in effect until the hearing on May 18, 2017.

7. The Court will hold a hearing on August 3, 2017<sup>1</sup> at 9:00 a.m. to hear argument on TitleMax's petition for judicial review.

IT IS SO ORDERED.

DATED this 25th day of May, 2017.

  
DISTRICT COURT JUDGE

<sup>1</sup> At the April 6, 2017 status hearing, and in its subsequent minute entry, the Court set the hearing date on TitleMax's petition for judicial review for June 15, 2017 at 9:00 a.m. However, because of scheduling conflicts, the parties have agreed and obtained the Court's permission to change the hearing date to August 3, 2017.

Submitted by:

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Approved as to form and content by:

/s/ David J. Pope (e-signed with permission)

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 TITLEMAX OF NEVADA, INC., d/b/a  
17 TITLEBUCKS and TITLEMAX, a Delaware  
18 corporation,

19 **Petitioner,**

20 *vs.*

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

24 **Respondent.**

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

**NOTICE OF ENTRY OF  
"ORDER GRANTING MOTION TO  
EXTEND PARTIAL STAY OF  
ADMINISTRATIVE ORDER AND  
ALLOWING SUPPLEMENTAL  
AUTHORITIES"**

1 Please take notice that on the 31st day of May, 2017, an "Order Granting  
2 Motion to Extend Partial Stay of Administrative Order and Allowing  
3 Supplemental Authorities" was entered in this case. A copy of the order is  
4 attached.

5 Dated this 1st day of June, 2017.

6 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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8 By /s/ Malani Dale Kotchka-Alanes

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondent.

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

ORDER GRANTING MOTION TO  
EXTEND PARTIAL STAY OF  
ADMINISTRATIVE ORDER AND  
ALLOWING SUPPLEMENTAL  
AUTHORITIES

On May 18, 2017, this Court heard argument regarding whether it should consider the supplemental authorities filed by TitleMax on March 24, 2017. The Court also heard argument on TitleMax's renewed motion to extend the partial stay of the administrative order. Having considered the briefing and



1 arguments by both TitleMax and the Financial Institutions Division of the  
2 Department of Business and Industry (the "FID"), the Court finds and orders as  
3 follows:

4 ***Supplemental Authorities***

5 1. In its supplemental authorities, TitleMax brought to the Court's attention  
6 a proposed bill, A.B. 163. This is not factual evidence. Rather, it is akin  
7 to legislative history.

8 2. Leave to file the supplemental authorities and leave to respond to the  
9 same are granted retroactively. The Court will consider the supplemental  
10 authorities like any other legal authorities at the time the Court  
11 considers the petition for judicial review on the merits.

12 ***Renewed Motion to Extend Partial Stay of Administrative Order***

13 3. This Court previously stayed that portion of the administrative order  
14 requiring TitleMax "to conduct a full accounting of and return all  
15 principal and interest it has collected under every [Grace Period  
16 Payments Deferment Agreement] entered into after December 18, 2014,"  
17 until March 10, 2017.

18 4. The Court ordered TitleMax to post \$550,000 in security, which the Court  
19 found was an adequate amount of security under NRS 233B.140, NRCP  
20 65(c), and the totality of the circumstances.

21 5. The partial stay was extended through the hearing on May 18, 2017.

22 6. The Court now extends the partial stay until the Court renders a decision  
23 on the merits of TitleMax's petition for judicial review.

24 7. For the avoidance of any doubt, the Court also explicitly stays that  
25 portion of the administrative order stating that "TitleMax shall conduct  
26 this process under the supervision and direction of FID . . .]" Both  
27 TitleMax's and the FID's obligations in this regard are stayed.  
28

1 8. TitleMax shall post additional security in the amount of \$200,000 no later  
2 than June 1, 2017. The Court finds that under the relevant factors, the  
3 original security amount of \$550,000 was appropriate. However, since the  
4 time period in which the Court will render a decision on the merits has  
5 increased and is greater than the time period the Court originally  
6 anticipated, the additional \$200,000 in security is appropriate.

7 9. No later than June 1, 2017, TitleMax shall also:


- 8 a. Submit to the Court for in camera review the total amount of  
9 principal and the total amount of interest collected under loans in  
10 which a Grace Period Payments Deferment Agreement was  
11 executed after December 18, 2014, so that this court can determine  
12 whether to increase the bond.  
13 b. File a declaration under oath describing the fields of information in  
14 the accounting that TitleMax has compiled.  
15 c. File a declaration under oath describing the procedures TitleMax  
16 has implemented to safeguard the accounting and the loan  
17 documents that were consulted to compile the accounting.

18 IT IS SO ORDERED.

19 DATED this 30<sup>th</sup> day of May, 2017.

20   
21 DISTRICT COURT JUDGE  
22

23 Submitted by:

24   
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APP 017381

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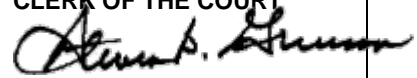
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INSTITUTIONS DIVISION,

Respondent.

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

**SUPPLEMENT TO SUPPLEMENTAL  
AUTHORITIES**

**APP 017383**

1 TitleMax draws the Court's attention to two additional legal authorities.  
2 NRAP 31(e).

3 **I. A.B. 163 IS NOW LAW, AND IT SUBSTANTIVELY CHANGES NRS 604A.210**

4 TitleMax previously brought a bill being considered by the Nevada legislature  
5 to the Court's attention. To complete its disclosure, TitleMax informs the Court that  
6 Assembly Bill 163 ("A.B. 163") was approved by the Governor on June 1, 2017. A  
7 color copy of the bill as enrolled is attached as Exhibit A and is available at  
8 [https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB163\\_EN.pdf](https://www.leg.state.nv.us/Session/79th2017/Bills/AB/AB163_EN.pdf).

9 Section 4, amending NRS 604A.210, will become effective on July 1, 2017.  
10 (See A.B. 163, Section 10.1.) Importantly, the changes to the law are *not* retroactive:

11 Any contract or agreement that is entered into pursuant to chapter  
12 604A of NRS before July 1, 2017 and that does not comply with  
13 sections 1, 1.3, 2, 3, 4, 5.5 to 6.5, inclusive, 8 and 9 of this act remains  
14 in effect in accordance with the provisions of the contract or  
agreement.

15 (A.B. 163, Section 9.1.)

16 This is important because the legislature's election against retroactivity  
17 indicates that A.B. 163 is a substantive change in the law, rather than a mere  
18 "clarification." See *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1187 (9th Cir. 2016)  
19 ("Although the title notes that this is a clarification, the lapse between the enactment  
20 of the bill and the bill's effective date (180 days), coupled with the bill's silence on  
21 the issue of retroactivity, suggests that this was actually a change in the law."); cf.  
22 *Beaver v. Tarsadia Hotels*, 29 F. Supp. 3d 1323, 1328 (S.D. Cal. 2014) ("When an  
23 amendment is deemed clarifying rather than substantive, it is applied retroactively."  
24 (internal quotation marks and citation omitted); *Pub. Employees' Benefits Program v.*  
25 *Las Vegas Metro. Police Dep't*, 124 Nev. 138, 158, 179 P.3d 542, 555 (2008) ("And  
26 the Legislature expressly made the 'participate in' language retroactive to October 1,  
27 2003. Therefore, in amending NRS 287.023(4), the Legislature meant to clarify its  
28 original intent . . . .") (footnote omitted).

1 Here, the Nevada legislature has not been silent on the issue of retroactivity,  
2 but has expressly declared that the changes to NRS 604A.210 enacted by A.B. 163 do  
3 not become effective until July 1, 2017, and do not apply to contracts signed before  
4 July 1, 2017. (A.B. 163, Sections 9.1 and 10.1.)

5 **II. POLICY CONSIDERATIONS CANNOT TRUMP STATUTORY LANGUAGE**

6 In further support of TitleMax’s argument that the plain language of the statute  
7 controls (*see* TitleMax’s 12/05/16 Mem. of P & A in Supp. of Pet. for J. Review at  
8 26-31), TitleMax points the Court’s attention to an opinion issued by the United  
9 States Supreme Court on June 12, 2017.

10 Writing for a unanimous Court, Justice Gorsuch reiterated that policy  
11 considerations cannot trump statutory language, as the actual language used in  
12 statutes is often the result of compromise (as was the case with NRS 604A.210<sup>1</sup>):

13 Indeed, it is quite mistaken to assume, as petitioners would have us,  
14 that “whatever” might appear to “further[ ] the statute’s primary  
15 objective must be the law.” *Rodriguez v. United States*, 480 U. S. 522,  
16 526 (1987) (*per curiam*)(emphasis deleted). Legislation is, after all,  
17 the art of compromise, the limitations expressed in statutory terms  
18 often the price of passage, and no statute yet known “pursues its  
19 [stated] purpose[ ] at all costs.” *Id.*, at 525–526. For these reasons and  
20 more besides we will not presume with petitioners that any result  
21 consistent with their account of the statute’s overarching goal must be  
22 the law but will presume more modestly instead “that [the] legislature  
23 says . . . what it means and means . . . what it says.” *Dodd v. United*  
24 *States*, 545 U. S. 353, 357 (2005) (internal quotation marks omitted;  
25 brackets in original).

26 *Henson v. Santander Consumer USA Inc.*, No. 16-349, 582 U.S. \_\_\_, 2017 WL  
27 2507342, at \*6 (June 12, 2017). Whatever the consumer protectionist intent behind  
28 NRS 604A might have been, this cannot trump the actual statutory language used. *Id.*

29 ///

30 ///

---

31 <sup>1</sup> (*See* TitleMax’s 12/05/16 Mem. of P & A in Supp. of Pet. for J. Review at 8-11.)

1 **III. DISAGREEMENT WITH REGULATORS – AND A SUBSEQUENT CHANGE**  
2 **TO THE STATUTE – DO NOT EVIDENCE WILLFULNESS**

3 In further support of TitleMax’s argument that disagreement with the regulator  
4 does not constitute willfulness or nefarious conduct (*see* TitleMax’s 12/05/16 Mem.  
5 of P & A in Supp. of Pet. for J. Review at 37-39), TitleMax again points to the United  
6 States Supreme Court’s recent opinion:

7 After all, it’s hardly unknown for new business models to emerge in  
8 response to regulation, and for regulation in turn to address new  
9 business models. Constant competition between constable and quarry,  
10 regulator and regulated, can come as no surprise in our changing  
11 world. But neither should the proper role of the judiciary in that  
12 process—to apply, not amend, the work of the People’s  
13 representatives.

14 *Henson*, 582 U.S. \_\_\_, 2017 WL 2507342, at \*7.

15 Dated this 16th day of June, 2017.

16 LEWIS ROCA ROTHGERBER CHRISTIE LLP

17 By /s/ Malani Dale Kotchka-Alanes

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# EXHIBIT A

# EXHIBIT A

APP 017388

CHAPTER.....

AN ACT relating to financial services; requiring a person who is licensed to operate certain loan services to verify a customer's ability to repay the loan before making certain short-term loans to the customer; requiring a person who makes a deferred deposit loan to offer an extended payment plan under certain circumstances; providing that certain contracts for the lease of an animal are subject to certain requirements imposed on high-interest loans; revising provisions governing defaults, lengths of term and grace periods relating to certain short-term loans; requiring certain notices to be posted by a person who is licensed to operate certain loan services; revising the requirements for making a title loan; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law establishes standards and procedures governing the making of certain short-term loans, commonly referred to as "payday loans," "high-interest loans" and "title loans." (Chapter 604A of NRS) **Section 1.3** of this bill: (1) prohibits a person from making such a loan unless the person has determined that the customer has the ability to repay the loan; and (2) establishes the factors that the person making the loan must consider when determining whether a customer has the ability to repay the loan. **Section 1.3** also requires that the loan comply with the statutory requirements applicable to the type of loan involved. **Section 1.7** of this bill requires a person who makes a deferred deposit loan to offer an extended payment plan to the customer under certain circumstances.

**Section 3.5** of this bill includes in the definition of "high-interest loan" a contract for the lease of an animal for a purpose other than a business, commercial or agricultural purpose which charges an annual percentage rate of more than 40 percent. Thus, under **section 3.5**, such lease contracts would be subject to the requirements of existing law for high-interest loans.

Existing law allows for a person making a payday loan, high-interest loan or title loan to offer the customer a grace period concerning repayment of the loan. (NRS 604A.210) **Section 3** of this bill distinguishes a grace period from an extension of a loan that complies with certain statutory requirements. **Section 4** of this bill prohibits a person making the loan from granting a grace period for the purpose of artificially increasing the amount a customer qualifies to borrow, or, with certain exceptions, from conditioning the grace period on the customer's agreement to a new loan or a modification of the terms of the existing loan or the charging of interest at a rate in excess of that provided by the existing loan agreement.

Existing law requires a person making a payday loan, high-interest loan or title loan to post certain notices in a conspicuous place in every location at which the person conducts business. (NRS 604A.405) **Section 5** of this bill provides that the person must post a notice of the existing requirement that the person must offer a repayment plan to a customer who defaults on a loan before the person commences specified collection actions. **Section 5** also provides that the person must post a



notice that states the process for customers to file a complaint with the Office of the Commissioner of Financial Institutions.

Existing law sets forth certain restrictions on the actions of a person licensed to operate certain loan services. (NRS 604A.440) **Section 6** of this bill adds to those restrictions a limitation on the reinitiation of electronic debit transactions.

Existing law provides restrictions on the making of title loans. (NRS 604A.450) **Section 7** of this bill adds to those restrictions by specifying that the customer must legally own the vehicle which secures the loan and that the person making the loan cannot consider the income, except for the customer's community property, of anyone who is not a legal owner of the vehicle who enters into a loan agreement with the licensee when determining whether the customer has the ability to repay the loan.

**Section 8** of this bill makes conforming changes.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

**Section 1.** Chapter 604A of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 and 1.7 of this act.

**Sec. 1.3. 1.** *A licensee shall not make a loan pursuant to this chapter unless the licensee determines pursuant to subsection 2 that the customer has the ability to repay the loan and that the loan complies with the provisions of NRS 604A.425, 604A.450 or subsection 2 of NRS 604A.480, as applicable.*

*2. For the purposes of subsection 1, a customer has the ability to repay a loan if the customer has a reasonable ability to repay the loan, as determined by the licensee after considering, to the extent available, the following underwriting factors:*

*(a) The current or reasonably expected income of the customer;*

*(b) The current employment status of the customer based on evidence including, without limitation, a pay stub or bank deposit;*

*(c) The credit history of the customer;*

*(d) The amount due under the original term of the loan, the monthly payment on the loan, if the loan is an installment loan, or the potential repayment plan if the customer defaults on the loan; and*

*(e) Other evidence, including, without limitation, bank statements, electronic bank statements and written representations to the licensee.*



3. *For the purposes of subsection 1, a licensee shall not consider the ability of any person other than the customer to repay the loan.*

**Sec. 1.7.** *1. A licensee shall allow a customer with an outstanding deferred deposit loan to enter into an extended payment plan if the customer:*

*(a) Has not entered into an extended payment plan for the deferred deposit loan during the immediately preceding 12-month period; and*

*(b) Requests an extended repayment plan before the time the deferred deposit loan is due.*

*2. An extended payment plan entered into pursuant to subsection 1 must:*

*(a) Be in writing and be signed by the licensee and customer; and*

*(b) Provide a payment schedule of at least four payments over a period of at least 60 days.*

*3. An extended payment plan entered into pursuant to subsection 1 must not:*

*(a) Increase or decrease the amount owed under the deferred deposit loan.*

*(b) Include any interest or fees in addition to those charged under the terms of the deferred deposit loan.*

*4. If a customer defaults under an extended payment plan entered into pursuant to this section, the licensee may terminate the extended payment plan and accelerate the requirement to pay the amount owed.*

**Sec. 2.** NRS 604A.045 is hereby amended to read as follows:

604A.045 1. "Default" means the failure of a customer to:

*(a) Make a scheduled payment on a loan on or before the due date for the payment under the terms of a lawful loan agreement that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable, and any grace period that complies with the provisions of NRS 604A.210 ; ~~for under the terms of any lawful extension or repayment plan relating to the loan, and any grace period that complies with the provisions of NRS 604A.210;~~ or*

*(b) Pay a loan in full on or before ~~the~~*

~~the~~ *(1) The* ~~the~~ expiration of the ~~initial~~ loan period as set forth in a lawful loan agreement *that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable,* and any grace period that complies with the provisions of NRS 604A.210 . ~~the~~



~~—— (2) The due date of any lawful extension or repayment plan relating to the loan and any grace period that complies with the provisions of NRS 604A.210, provided that the due date of the extension or repayment plan does not violate the provisions of this chapter.]~~

2. A default occurs on the day immediately following the date of the customer's failure to perform as described in subsection 1.

**Sec. 3.** NRS 604A.070 is hereby amended to read as follows:

604A.070 **1.** "Grace period" means any period of deferment offered gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210.

**2. The term does not include an extension of a loan that complies with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, as applicable.**

**Sec. 3.5.** NRS 604A.0703 is hereby amended to read as follows:

604A.0703 **1.** "High-interest loan" means a loan made to a customer pursuant to a loan agreement which, under its original terms, charges an annual percentage rate of more than 40 percent.

**2. The term includes, without limitation, any single-payment loan, installment loan, ~~or~~ open-ended loan or contract for the lease of an animal for a purpose other than a business, commercial or agricultural purpose** which, under ~~[its]~~ **the** original terms ~~[ ] of the loan or contract,~~ charges an annual percentage rate of more than 40 percent.

**3. The term does not include:**

- (a) A deferred deposit loan;
- (b) A refund anticipation loan; or
- (c) A title loan.

**Sec. 4.** NRS 604A.210 is hereby amended to read as follows:

604A.210 **1.** The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not ~~[charge the customer:~~

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

~~—— 2. Any additional fees or additional interest on the outstanding loan during such a grace period.] grant a grace period for the purpose of artificially increasing the amount which a customer would otherwise qualify to borrow.~~

**2. Except in compliance with the provisions of NRS 604A.408, 604A.445 or subsection 2 of NRS 604A.480, where they apply, a licensee shall not:**



*(a) Condition the granting of the grace period on the customer making any new loan agreement or adding any addendum or term to an existing loan agreement; or*

*(b) Charge the customer interest at a rate in excess of that described in the existing loan agreement.*

**Sec. 5.** NRS 604A.405 is hereby amended to read as follows:

604A.405 1. A licensee shall post in a conspicuous place in every location at which the licensee conducts business under his or her license:

(a) A notice that states the fees the licensee charges for providing check-cashing services, deferred deposit loan services, high-interest loan services or title loan services.

*(b) A notice that states that if the customer defaults on a loan, the licensee must offer a repayment plan to the customer before the licensee commences any civil action or process of alternative dispute resolution or repossesses a vehicle.*

(c) A notice that states a toll-free telephone number to the Office of the Commissioner to handle concerns or complaints of customers.

*(d) A notice that states the process for filing a complaint with the Commissioner.*

➔ The Commissioner shall adopt regulations prescribing the form and size of the notices required by this subsection.

2. If a licensee offers loans to customers at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means, except for an automated loan machine prohibited by NRS 604A.400, the licensee shall, as appropriate to the location or method for making the loan, post in a conspicuous place where customers will see it before they enter into a loan, or disclose in an open and obvious manner to customers before they enter into a loan, a notice that states:

(a) The types of loans the licensee offers and the fees he or she charges for making each type of loan; and

(b) A list of the states where the licensee is licensed or authorized to conduct business from outside this State with customers located in this State.

3. A licensee who provides check-cashing services shall give written notice to each customer of the fees he or she charges for cashing checks. The customer must sign the notice before the licensee provides the check-cashing service.



**Sec. 5.5.** NRS 604A.408 is hereby amended to read as follows:

604A.408 1. Except as otherwise provided in this chapter, the original term of a deferred deposit loan or high-interest loan must not exceed 35 days.

2. The original term of a high-interest loan may be up to 90 days if:

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

*and*

*(e) The loan is not a deferred deposit loan.*

3. Notwithstanding the provisions of NRS 604A.480, a licensee shall not agree to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding deferred deposit loan or high-interest loan for a period that exceeds 90 days after the date of origination of the loan.

**Sec. 6.** NRS 604A.440 is hereby amended to read as follows:

604A.440 A licensee shall not:

1. Use or threaten to use the criminal process in this State or any other state, or any civil process not available to creditors generally, to collect on a loan made to a customer.

2. Commence a civil action or any process of alternative dispute resolution or repossess a vehicle before the customer defaults under the original term of a loan agreement or before the customer defaults under any repayment plan ~~and~~ *or* extension ~~for~~ *grace period* negotiated and agreed to by the licensee and customer, unless otherwise authorized pursuant to this chapter.

3. Take any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for the customer in a judicial proceeding.

4. Include in any written agreement:

- (a) A promise by the customer to hold the licensee harmless;
- (b) A confession of judgment by the customer;
- (c) An assignment or order for the payment of wages or other compensation due the customer; or
- (d) A waiver of any claim or defense arising out of the loan agreement or a waiver of any provision of this chapter. The provisions of this paragraph do not apply to the extent preempted by federal law.



5. Engage in any deceptive trade practice, as defined in chapter 598 of NRS, including, without limitation, making a false representation.

6. Advertise or permit to be advertised in any manner any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for loans.

7. *Reinitiate an electronic debit transaction that has been returned by a customer's bank except in accordance with the rules prescribed by the National Automated Clearing House Association or its successor organization.*

8. Use or attempt to use any agent, affiliate or subsidiary to avoid the requirements or prohibitions of this chapter.

**Sec. 6.5.** NRS 604A.445 is hereby amended to read as follows:

604A.445 Notwithstanding any other provision of this chapter to the contrary:

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

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

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

(b) The annual percentage rate charged on the title loan during any period of extension is not more than the annual percentage rate charged on the title loan during the original term; and

(c) No additional origination fees, set-up fees, collection fees, transaction fees, negotiation fees, handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to the fees, are charged in connection with any extension of the title loan.

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

(a) The loan provides for payments in installments;

(b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan;

(c) The loan is not subject to any extension; ~~and~~

(d) The loan does not require a balloon payment of any kind ~~and~~;  
*and*

*(e) The loan is not a deferred deposit loan.*

**Sec. 7.** NRS 604A.450 is hereby amended to read as follows:

604A.450 A licensee who makes title loans shall not:





1. Make a title loan that exceeds the fair market value of the vehicle securing the title loan.

2. *Make a title loan to a customer secured by a vehicle which is not legally owned by the customer.*

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

~~3.1~~ *determining that the customer has the ability to repay the title loan, as required by section 1.3 of this act. In complying with this subsection, the licensee shall not consider the income of any person who is not a legal owner of the vehicle securing the title loan but may consider a customer's community property and the income of any other customers who consent to the loan pursuant to subsection 5 and enter into a loan agreement with the licensee.*

4. Make a title loan without requiring the customer to sign an affidavit which states that:

(a) The customer has provided the licensee with true and correct information concerning the customer's income, obligations, employment and ownership of the vehicle; and

(b) The customer has the ability to repay the title loan.

5. *Make a title loan secured by a vehicle with multiple legal owners without the consent of each owner.*

**Sec. 8.** NRS 604A.930 is hereby amended to read as follows:

604A.930 1. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, if a person violates any provision of NRS 604A.400, 604A.410 to 604A.500, inclusive, *and sections 1.3 and 1.7 of this act*, 604A.610, 604A.615, 604A.650 or 604A.655 or any regulation adopted pursuant thereto, the customer may bring a civil action against the person for:

(a) Actual and consequential damages;

(b) Punitive damages, which are subject to the provisions of NRS 42.005;

(c) Reasonable attorney's fees and costs; and

(d) Any other legal or equitable relief that the court deems appropriate.

2. Subject to the affirmative defense set forth in subsection 3, in addition to any other remedy or penalty, the customer may bring a civil action against a person pursuant to subsection 1 to recover an additional amount, as statutory damages, which is equal to \$1,000 for each violation if the person knowingly:



(a) Operates a check-cashing service, deferred deposit loan service, high-interest loan service or title loan service without a license, in violation of NRS 604A.400;

(b) Fails to include in a loan agreement a disclosure of the right of the customer to rescind the loan, in violation of NRS 604A.410;

(c) Violates any provision of NRS 604A.420;

(d) Accepts collateral or security for a deferred deposit loan, in violation of NRS 604A.435, except that a check or written authorization for an electronic transfer of money shall not be deemed to be collateral or security for a deferred deposit loan;

(e) Uses or threatens to use the criminal process in this State or any other state to collect on a loan made to the customer, in violation of NRS 604A.440;

(f) Includes in any written agreement a promise by the customer to hold the person harmless, a confession of judgment by the customer or an assignment or order for the payment of wages or other compensation due the customer, in violation of NRS 604A.440;

(g) Violates any provision of NRS 604A.485;

(h) Violates any provision of NRS 604A.490; or

(i) Violates any provision of NRS 604A.442.

3. A person may not be held liable in any civil action brought pursuant to this section if the person proves, by a preponderance of evidence, that the violation:

(a) Was not intentional;

(b) Was technical in nature; and

(c) Resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

4. For the purposes of subsection 3, a bona fide error includes, without limitation, clerical errors, calculation errors, computer malfunction and programming errors and printing errors, except that an error of legal judgment with respect to the person's obligations under this chapter is not a bona fide error.

**Sec. 9.** 1. Any contract or agreement that is entered into pursuant to chapter 604A of NRS before July 1, 2017 and that does not comply with sections 1, 1.3, 2, 3, 4, 5.5 to 6.5, inclusive, 8 and 9 of this act remains in effect in accordance with the provisions of the contract or agreement.

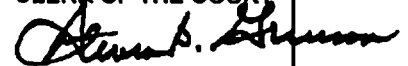
2. Any contract or agreement that is entered into pursuant to chapter 604A of NRS before October 1, 2017, and that does not comply with sections 1.7, 3.5, 5 and 7 of this act remains in effect in accordance with the provisions of the contract or agreement.



- Sec. 10.** 1. This section and sections 1, 1.3, 2, 3, 4, 5.5, 6, 6.5, 8 and 9 of this act become effective on July 1, 2017.
2. Sections 1.7, 3.5, 5 and 7 of this act become effective on October 1, 2017.

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

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

**Response to Petitioner's Supplement to its Supplemental Authorities**

TitleMax of Nevada, Inc. ("TitleMax") continues to obfuscate the issue by focusing on NRS 604A.210. TitleMax did not grant a grace period simply by naming the lending product a Grace Period Payment Deferment Agreement. As argued by the Financial Institution's Division ("FID"), NRS 604A.210 doesn't even need to be considered. The loans at issue are governed by NRS 604A.445(3).

1 I. The change to NRS 604A.445(3), brought about by Assembly Bill 163, does  
2 not render the ALJ's interpretation and application of the statute erroneous.

3 Assembly Bill 163 added subsection (3)(e) to NRS 604A.445. The new language  
4 states, "The loan is not a deferred deposit loan." *Assembly Bill 163, Section 6.5., attached*  
5 *to TitleMax's supplement as Exhibit A.* This new language simply says that NRS  
6 604A.445(3) is not applicable to deferred deposit loans. *Id.* Because this case does not  
7 involve deferred deposit loans, the change to the statute does not affect this case.

8 II. NRS 604A.210 was not ambiguous.

9 NRS 604A.210 prohibited the charging and collecting of any additional fees or  
10 interest for the granting of a grace period or during a grace period. The statutory  
11 language was plain and considered in context could have no meaning other than that  
12 asserted by the FID.

13 TitleMax has consistently ignored the language prohibiting the charging and  
14 collecting of any additional fees, as well as additional interest. Focusing only on the  
15 language prohibiting the charging and collecting of any additional interest, TitleMax  
16 deceptively argues that it did nothing wrong by charging and collecting the contractual  
17 rate of interest in contradiction with the plain language of NRS 604A.445(3).

18 As argued by FID, NRS 604A.445(3) plainly and unambiguously authorizes a 210  
19 day original term if certain requirements are met. Indeed, it simply requires installment  
20 payments calculated to ratably and fully amortize the entire amount of principle and  
21 interest with no balloon payment and no extensions. *Id.* Provided these conditions are  
22 met, the statute authorizes an original term of 210 days. *Id.* The "original term"  
23 language ties back to subsection (1) which limits an original term to 30 days, it doesn't  
24 imply that there will be a subsequent term as asserted by TitleMax. *Id.* The statute  
25 further prohibits such loans being subject to "any extension." NRS 604A.445(3)(c).  
26 Assembly Bill 163 has not changed this one bit.

27 TitleMax is simply using NRS 604A.210 as a distraction while, at the same time,  
28 asking this court to disregard the restrictions set forth in the controlling statute.

1 Specifically, the "ratably and fully amortized" restriction applicable to principle and  
2 interest which limits the amount of the interest that can be charged and collected. This  
3 language requires the principle to be paid back in 210 days. At the same time, it limits  
4 the interest to the 210 days of interest calculated to be paid back in each amortized  
5 payment. If a grace period is granted, the 210 day clock stops for the duration of the  
6 grace period. As in the first example in the FID's Answering Brief, NRS 604A.445(3)  
7 limits the interest to \$2,066.45, as compared to the \$3,156.44 charged by TitleMax  
8 through the extension, *i.e.* Grace Period Payment Deferment Agreement. Respondent's  
9 *Answering Brief*, p. 1. Assembly Bill 163 has not changed this application of NRS  
10 604A.445(3) in any way, as there is no way to ratably and fully amortize the payment of  
11 principle and interest if unexpected interest can be charged during an unexpected grace  
12 period.

13 If the changes to NRS 604A.210 brought about by Assembly Bill 163 allow a  
14 licensee to charge interest during a grace period, then those changes simply cannot apply  
15 to the 210 day loans because NRS 604A.445(3), the controlling statute, prohibits any  
16 extensions of the term. In addition, if the change brought about by Assembly Bill 163  
17 amends NRS 604A.210 to allow the collection of interest during a grace period, *i.e.*  
18 additional interest, then clearly TitleMax was not allowed to charge and collect interest  
19 during a grace period prior to the change to the statute. *Camino v. Lewis*, 52 Nev. 202,  
20 284 P. 766, 768 (1930) ("a substantial change in the language of a statute indicates a  
21 change in legislative intent." (citation omitted)). Such a substantial substantive change  
22 would mandate the conclusion that interest could not be charged during a grace period  
23 prior to the change. *Id.*

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1  
2 NRS 604A.445(3) clearly stated, and still states, that the amount of interest is  
3 limited to 210 days of "ratably and fully amortized" interest. Consequently, TitleMax  
4 charged and collected amounts of money in excess of the clear limitations of NRS  
5 604A.445(3) and therefore is subject to NRS 604A.900.

6 DATED this 20<sup>th</sup> day of July, 2017

7 ADAM PAUL LAXALT  
8 Attorney General

9  
10 By: /s/ DAVID J. POPE  
11 David J. Pope (Bar No. 8617)  
12 Senior Deputy Attorney General  
13 Vivienne Rakowsky (Bar No. 9160)  
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16 Deputy Attorney General  
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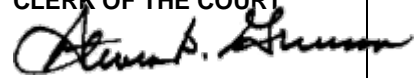
**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on July 20, 2017, filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

/s/ Debra Turman

An employee of the office of the Nevada Attorney General





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TitleBucks and TitleMax*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

*vs.*

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

Respondent.

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

**NOTICE OF ENTRY OF ORDER**

1 Please take notice that on the 21st day of September, 2017, an "Order  
2 Reversing and Vacating Administrative Law Judge's Order" was entered in this  
3 case. A copy of the order is attached.

4 Dated this 22nd day of September, 2017.

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

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

**ORDER REVERSING AND  
VACATING ADMINISTRATIVE LAW  
JUDGE'S ORDER**

Hearing Date: August 3, 2017  
Hearing Time: 9:00 a.m.

<input type="checkbox"/> Jury Disposed After Trial Start	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Non-Jury Judgment Reached
<input type="checkbox"/> Non-Jury Judgment Reached	<input checked="" type="checkbox"/> Transferred before Trial

APP 017406

I.

**BACKGROUND, FINDINGS, AND SUMMARY OF RULING**

1. On August 3, 2017, this Court heard oral argument on TitleMax's Petition for Judicial Review. Daniel F. Polsenberg and Dale Kotchka-Alanes of Lewis Roca Rothgerber Christie LLP, as well as Patrick J. Reilly of Holland & Hart LLP, appeared on behalf of TitleMax. Deputy Attorneys General David J. Pope, William J. McKean, Vivienne Rakowsky, and Rickisha Hightower-Singletary appeared on behalf of the State of Nevada Department of Business and Industry Financial Institutions Division (the "FID").

2. The Court reviewed all the briefing by the parties, as well as pertinent parts of the administrative record ("ROA") and the transcript of the hearing before the Administrative Law Judge ("Hr'g Tr."). The Court also considered the arguments of the parties, all of which lead the Court to its holding set forth herein.

**A. TitleMax's Offering of the GPDA**

3. Under NRS 604A.445, the original term of a title loan can be 30 days or up to 210 days if certain conditions are met.

4. TitleMax originally offered a 30-day product in Nevada and allowed customers to refinance up to six times. TitleMax offered a repayment plan that incorporated a grace period under which the customer had to make minimum interest payments, but could then take an additional seven or eight months to repay principal only. (Hr'g Tr. 477:11-478:3.)

5. The FID took issue with TitleMax's 30-day product, arguing only that TitleMax did not adequately take into account customers' ability to repay the loan in 30 days. (Hr'g Tr. 478:9-15; 479:6-9.)

6. TitleMax disagreed with the FID's interpretation that its 30-day loan product did not adequately take into account borrowers' ability to repay due to the ability of customers to extend the loan up to six times, but nevertheless stopped offering the 30-day product in a good faith attempt to please the FID. (Hr'g Tr. 478:16-23.)

1 7. As an alternative to the 30-day product, TitleMax began offering a 210-day  
2 loan in 2014. (Hr'g Tr. 478:19-479:13.)

3 8. To offer customers flexibility in repayment, TitleMax, in reliance on counsel,  
4 also began offering a Grace Period Payments Deferment Agreement ("GPDA").  
5 (Hr'g Tr. 480:9-22, 496:10-24.)

6 9. The GPDA contained a payment schedule comprised of fourteen 30-day  
7 payment periods. (Hr'g Tr. 483:10-11; ROA 010646-010648.)

8 10. Under the GPDA, the customer was charged only 210 days of interest, and the  
9 interest rate under the loan agreement remained unchanged. (ROA 010646-010648.)

10 11. The first seven payments could be interest-only payments, and then the  
11 customer had an additional 210 days to repay the principal without any interest or  
12 fees included. (ROA 010646-010647; Hr'g Tr. 482:1-12, 488:17-21, 490:12-16.)

13 12. The payment schedule under the GPDA was as follows:

Payment Number	Amount of Payment	Deferred Periodic Due Date
1	<Interest Only Pymt on New Principal Bal.>	<Fist 30 Day Due Date>
2	^same as above	^Plus 30 Days
3	^same as above	^Plus 30 Days
4	^same as above	^Plus 30 Days
5	^same as above	^Plus 30 Days
6	^same as above	^Plus 30 Days
7	^same as above	^Plus 30 Days
8	<New Principal bal. divided by 7>	^Plus 30 Days
9	<New Principal bal. divided by 7>	^Plus 30 Days
10	<New Principal bal. divided by 7>	^Plus 30 Days
11	<New Principal bal. divided by 7>	^Plus 30 Days
12	<New Principal bal. divided by 7>	^Plus 30 Days
13	<New Principal bal. divided by 7>	^Plus 30 Days

14	<New Principal bal. divided by 7> **If odd amt list odd amt here	^Plus 30 Days
The total amount paid after making all payments under the terms of the Grace Period Payments Deferment Agreement:	Total of above columns	

(ROA 010646-10647.)

13. There was no customer deception in the GPDA. When voluntarily signing the GPDA, customers acknowledged that their obligation to pay simple interest under the loan agreement remained unchanged and that interest would be charged at the original contractual interest rate. (ROA 010646-10648.)

14. TitleMax gratuitously offered the GPDA and did not charge any fees for entering the GPDA. (Hr'g Tr. 74:25-75:12; 192:20-25; 398:12-17.)

15. While the GPDA allowed for interest-only payments for the first 210 days, customers could make payments on the principal before the end of the first 210 days. In fact, TitleMax had several customers who repaid their loan in full within the first 210 days, even though they had signed a GPDA.<sup>1</sup>

16. Before TitleMax offered the GPDA, it consulted with its own legal department and outside counsel, both of whom advised that the GPDA complied with Nevada law. (Hr'g Tr. 488:23-489:3, 496:10-24, 509:13-17.)

#### **B. Relevant Chronology**

17. December 18, 2014, was the date that the FID's 2014 examination of

<sup>1</sup> (See ROA 001840-001858, 007211-007233, 003905-003927, 008395-008421, 006568-006591, 000467-000491, 006651-006675, 002451-002473, 002475-002500, 000793-000815, 005309-005331, 002957-002980, 007152-007173, 002786-002805, 002192-002212, 001118-001137, 004799-004819, 001474-001492, 003399-003420, 001432-001451, 003644-003662, 008821-008840, 000167-000191, 000229-000254, 006288-006308.)

1 TitleMax closed. (ROA 008918.) The FID issued a Report of Examination with a  
2 “Needs Improvement” rating and stated that TitleMax’s GPDA “violates NRS  
3 604A.445(3) and NRS 604A.210.” (ROA 008918-008934.)

4 18. Shortly after the conclusion of the FID’s examination in December 2014,  
5 TitleMax – through counsel – wrote a detailed letter to the FID, responding to the  
6 alleged statutory violations. (ROA 009991-010000.) In this February 9, 2015, letter,  
7 TitleMax spent several pages setting forth its position why the GPDA did not violate  
8 NRS 604A.210 and 604A.445. (ROA 009995-0100000.) TitleMax informed the  
9 FID, “As an alternative to the 210-day single-pay loan, the Companies are willing to  
10 revert back to their prior approach with 30-day single pay loans, which the  
11 Companies believe are in full compliance with applicable law.” (ROA 009999.)

12 19. TitleMax explained that it considered the GPDA to be in full compliance with  
13 Nevada law and requested that the FID “change its ‘Needs Improvement’ rating to  
14 ‘Satisfactory’ for each of the 2014 audits. *If the Division believes that our analysis is*  
15 *incorrect or that our procedures will result in further negative regulatory findings;*  
16 *however, please respond to us in writing.*” (ROA 009999-010000 (emphasis added).)

17 20. In a letter dated March 2, 2015, the FID addressed a different statutory issue  
18 and then stated in a single sentence: “With regard to your other matters raised in your  
19 February 9 Letter, the FID stands by its position.” (ROA 010004-010006.)

20 21. The FID did not respond to TitleMax’s offer to revert back to the 30-day loan  
21 product, nor did the FID offer any reasoning, explanation, or legal authority for the  
22 proposition that the GPDA allegedly violated NRS 604A.210 and 604A.445.

23 22. The FID commenced another examination of TitleMax beginning in May  
24 2015, which closed on June 17, 2015. (ROA 008936.) In its 2015 Report of  
25 Examination, the FID issued an “Unsatisfactory” rating to TitleMax, citing  
26 TitleMax’s offering of the GPDA as “a repeat violation.” (ROA 008936-008948.)

27 23. On June 1, 2015, TitleMax filed a declaratory relief action in state court,  
28 sixteen days before the 2015 examination was completed. (Hr’g Tr. 438:14-21,

1 517:2-4; ROA 010697-010700.) TitleMax sought declaratory relief as to whether the  
2 GPDA violated NRS 604A.210 and 604A.445. (ROA 010697-010700.)

3 24. On October 6, 2015, the FID moved to dismiss TitleMax's pending  
4 declaratory relief action for alleged "failure to exhaust administrative remedies."  
5 (ROA 011010-011021).

6 25. On the same day, the FID filed the administrative complaint against TitleMax  
7 that forms the basis of TitleMax's appeal to this Court. (ROA 000001-000017.)

8 **C. The Administrative Proceedings Against TitleMax**

9 26. On October 6, 2015, the FID filed an administrative complaint against  
10 TitleMax, alleging that TitleMax violated NAC 604A.230 and willfully violated NRS  
11 604A.210 and NRS 604A.445. (ROA 000001-000017.)

12 27. The parties called witnesses and conducted administrative proceedings before  
13 Administrative Law Judge ("ALJ") Denise S. McKay on July 18, July 19, and July  
14 20, 2017. (*See* 10/18/2016 Petitioner's Notice of Transmittal of Record of  
15 Proceedings and accompanying hearing transcript ("Hr'g Tr.").)

16 28. On August 12, 2016, the ALJ issued Findings of Fact, Conclusions of Law,  
17 and Order ("Order"). (ROA 0122279-012295.)

18 29. In her Order, the ALJ found that TitleMax did not violate NAC 604A.230's  
19 prohibition against guarantors by allowing individuals who were not legal owners of  
20 the vehicle to be co-borrowers on the title loan; she pointed out that there was no  
21 evidence that TitleMax received payment from the non-legal owner in any instance  
22 and that the non-legal owners were not acting as guarantors. (ROA 012290-012291.)

23 30. The FID did not challenge or appeal the ALJ's ruling that TitleMax did not  
24 violate NAC 604A.230, so it is not before this Court.

25 31. However, the ALJ concluded that TitleMax's practice of offering the GPDA  
26 violated NRS 604A.210 and NRS 604A.445. (ROA 012287-012290.) The ALJ  
27 further concluded that TitleMax willfully violated NRS 604A.210 and NRS  
28 604A.445 because it continued to offer the GPDA even after TitleMax was advised



1 by FID lay examiners that they believed the GPDA violated the statutes. (ROA  
2 012292-012294.) The ALJ ordered:

- 3 a. That TitleMax immediately cease and desist offering the GPDA to  
4 customers;
- 5 b. That TitleMax conduct a full accounting and return of all principal and  
6 interest it collected under every GPDA entered into after December 18,  
7 2014;
- 8 c. That TitleMax pay an administrative fine of \$307,000 with \$257,000  
9 held in abeyance provided TitleMax was, and remained, compliant with  
10 NRS 604A.445; and
- 11 d. That TitleMax compensate the FID for the costs expended on the court  
12 reporter and transcripts in the administrative proceedings. (ROA  
13 012294.)

14 32. These determinations by the ALJ are before this Court, as they are the subject  
15 of TitleMax's Petition for Judicial Review.

16 **D. Relevant Statutes**

17 33. At issue in these proceedings are various provisions of NRS 604A.<sup>2</sup>

18 34. NRS 604A.070 defines grace period to mean "any period of deferment  
19 offered gratuitously by a licensee to a customer if the licensee complies with the  
20 provisions of NRS 604A.210."

21 35. NRS 604A.210, in turn, provides:

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

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

26 \_\_\_\_\_  
27 <sup>2</sup> Chapter NRS 604A was recently amended, with changes to take effect July 1 and  
28 October 1, 2017. In this Order, unless otherwise indicated, the Court cites to the  
versions of the statutes in effect at the time TitleMax offered the GPDA and does not  
include the 2017 amendments.

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

3           36. The definition of “extension” in NRS 604A.065 provides:

4           1. “Extension” means any extension or rollover of a loan beyond  
5           the date on which the loan is required to be paid in full under the  
6           original terms of the loan agreement, regardless of the name given  
7           to the extension or rollover.

8           2. The term does not include a grace period.

9           37. NRS 604A.445(3) provides:

10           Notwithstanding any other provision of this chapter to the  
11           contrary:

12           . . . .

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

14           (a) The loan provides for payments in installments;

15           (b) The payments are calculated to ratably and fully amortize  
16           the entire amount of principal and interest payable on the  
17           loan;

18           (c) The loan is not subject to any extension; and

19           (d) The loan does not require a balloon payment of any kind.

20           **E. The ALJ’s Decision**

21           38. The ALJ stated that “NRS 604A.210 and NRS 604A.[0]70 are the only  
22           provisions in Chapter 604A that address grace periods,” but nevertheless concluded  
23           that the GPDA had to comply with NRS 604A.445(3). (ROA 012287-012290.)

24           39. The ALJ found that the GPDA did not comply with NRS 604A.445(3)  
25           because it “is an illegal extension of the loan in violation of NRS 604A.445(3)(c)”  
26           and the payments are not ratably and fully amortized. (ROA 012289-012290.)

27           40. The ALJ concluded that the GPDA “does not constitute a true grace period”  
28           and that the “imposition of seven interest-only payments is simply the impermissible  
            charging of additional interest,” as “TitleMax stands to earn more money in interest  
            charges under the [GPDA].” (ROA 012289-012290.)

1 41. The ALJ also found that TitleMax willfully violated NRS 604A.445(3) by  
2 continuing to offer the GPDA after being told by the FID during 2014 and 2015  
3 examinations that the GPDA was unlawful. (ROA 012292-012293.)

4 42. Since “TitleMax was placed on notice by [the] FID that” the GPDA “violated  
5 the law” no later than December 18, 2014, the ALJ ruled that “every [GPDA] entered  
6 into after December 18, 2014, is void, and TitleMax is not entitled to collect, receive  
7 or retain any principal, interest or other charges or fees with respect to those loans.”  
8 (ROA 012293.) Only 307 loans, however, were in evidence in the administrative  
9 proceedings.

10 **F. Ruling**

11 43. The Court hereby reverses and vacates the ALJ’s order. The Court disagrees  
12 with and reverses the ALJ’s conclusions regarding TitleMax’s interpretation of NRS  
13 604A.070, NRS 604A.210, and NRS 604A.445. The Court also finds that TitleMax  
14 did not willfully violate any of these provisions.

15 44. The GPDA as written does not violate NRS 604A.070, NRS 604A.210, or  
16 NRS 604A.445.

17 45. The plain language of NRS 604A.445(3) indicates that this statute applies to  
18 the “original term” of the loan, and does not govern grace periods. NRS 604A.445(3)  
19 does not set a maximum time period on the loan, and amortization is not a  
20 requirement for grace periods.

21 46. Moreover, the word “additional” as used in NRS 604A.210 means something  
22 more than the original contractual rate of interest. The legislative history of NRS  
23 604A.210 supports TitleMax’s statutory interpretation.

24 47. At a minimum, TitleMax’s statutory interpretation, if not correct, is  
25 reasonable and thus precludes a finding of willfulness. That the FID attempted to  
26 pass a regulation in 2012 that would have prohibited charging any interest during a  
27 grace period, but did not do so, demonstrates that TitleMax reasonably interpreted  
28 NRS 604A.210 and did not act willfully. TitleMax’s reliance on counsel, although

1 not dispositive, is another indication that TitleMax acted in good faith and did not  
2 willfully violate any provision of NRS 604A. The FID's failure to respond to  
3 TitleMax's request for an explanation of the FID's position also leads to the  
4 conclusion that TitleMax did not act willfully.

5 48. The ALJ's conclusion that TitleMax acted willfully because it failed to  
6 immediately change its way of doing business the moment lay FID examiners opined  
7 it should, is illogical and clearly erroneous.

8 49. In sum, the ALJ's ruling is clearly erroneous, arbitrary and capricious, and is  
9 hereby reversed and vacated.

## 10 II.

### 11 **TITLEMAX DID NOT VIOLATE NRS 604A.070, NRS 604A.210, OR NRS 604A.445**

#### 12 **A. This Court Owes No Deference to the FID** 13 **or the ALJ in Interpreting Plain Statutory Language**

14 50. The Court finds NRS 604A.070, NRS 604A.210, and NRS 604A.445 to be  
15 unambiguous and thus this Court need not defer to the FID's interpretation of the  
16 statutes. The FID is not entitled to deference by this Court in determining the  
17 meaning of the statutes' plain language.

18 51. Moreover, the question here is whether the structure of the GPDA complies  
19 with NRS 604A.445(3) and NRS 604A.210. That is a purely legal determination  
20 upon which the Court owes no deference to the FID or to the ALJ. *Elizondo v. Hood*  
21 *Mach., Inc.*, 129 Nev. Adv. Op. 84, 312 P.3d 479, 482 (2013) (courts decide "pure  
22 legal questions without deference to an agency determination") (internal quotation  
23 marks and citation omitted); *Manke Truck Lines, Inc. v. Pub. Serv. Comm'n of Nev.*,  
24 109 Nev. 1034, 1036–37, 862 P.2d 1201, 1203 (1993) (questions of statutory  
25 construction are "purely legal issue[s] . . . reviewed without any deference  
26 whatsoever to the conclusions of the agency").  
27  
28

1 52. To the extent deference is owed to either the ALJ or the FID, the Court finds,  
2 in the alternative, that the FID's and the ALJ's statutory interpretations are clearly  
3 erroneous.

4 **B. The Requirements of NRS 604A.445(3)**  
5 **Do Not Apply to Grace Periods**

6 53. NRS 604A.445 does not govern grace periods and thus does not apply to the  
7 GPDA.

8 54. Under the plain language of NRS 604A.445(3), the 210-day limit applies only  
9 to the original term of the loan; that subsection refers to and governs the original term  
10 of the loan, not grace periods.

11 55. NRS 604A.445(3) does not set a maximum time period on a loan. It does not  
12 say that a title loan can never be longer than 210 days.

13 56. Rather, by providing that the "original term" of a title loan can be up to 210  
14 days, the statute contemplates that a title loan can be of longer duration if a grace  
15 period is included. While NRS 604A.445(3) prohibits extensions of a 210-day title  
16 loan, the definition of "extension" specifically excludes grace periods. NRS  
17 604A.065(2).

18 57. TitleMax's GPDA complied with the statutory provisions regarding grace  
19 periods (NRS 604A.070 and NRS 604A.210), and thus there was no basis for the ALJ  
20 to conclude that the GPDA was an illegal extension.

21 58. Moreover, the FID conceded that a grace period could be of unlimited  
22 duration and that the mere length of the repayment period under the GPDA was not a  
23 violation of any law. (Hr'g Tr. 219:10-11; 279:11-280:10; 396:24-397:2; 398:8-11;  
24 663:10-11.)

25 59. Under the plain language of the statutes, amortization is not a requirement for  
26 grace periods. The amortization requirement in NRS 604A.445(3)(b) again applies to  
27 the "original term" of the loan.  
28

1       60. The FID also acknowledged that there was no amortization requirement for  
2 grace periods. (Hr’g Tr. 84:17-19; 185:7-10; 298:24-299:1; 419:15-21.)

3       61. Indeed, as a grace period is by definition a period of deferment, it makes no  
4 sense to require amortization during a grace period.

5       62. In light of the entire harmonized statutory scheme, TitleMax’s statutory  
6 interpretation is the better-reasoned approach.

7       63. The requirements of NRS 604A.445(3) do not apply to grace periods, and  
8 TitleMax did not violate NRS 604A.445(3) by offering the GPDA to its customers.

9           **C.     Both the Plain Language and the Legislative History of NRS**  
10           **604A.210 Establish That TitleMax Did Not Violate NRS 604A.210**

11       64. Under NRS 604A.070, a grace period is “any period of deferment offered  
12 gratuitously by a licensee to a customer if the licensee complies with the provisions  
13 of NRS 604A.210.”

14       65. The GPDA was comprised of a lawful grace period because it offered a  
15 period of deferment on payments, was offered voluntarily and without charge (i.e.  
16 gratuitously), and complied with NRS 604A.210.

17       66. Under NRS 604A.210, grace periods are permitted as long as the licensee  
18 does not charge the customer “1. Any fees for granting such a grace period; or 2. Any  
19 additional fees or additional interest on the outstanding loan during such a grace  
20 period.”

21       67. It is undisputed that TitleMax did not charge any fees for customers entering  
22 the GPDA. (ROA 010646-010648; Hr’g Tr. 74:25-75:12; 192:20-25; 398:12-17.)

23       68. Under the plain language of NRS 604A.210, which the Court finds  
24 unambiguous, the word “additional” preceding “interest” means something more than  
25 the original contract rate of interest provided for in the loan agreement.

26       69. Words in statutes must have meaning. *S. Nevada Homebuilders Ass’n v.*  
27 *Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (courts must interpret  
28 statutes “in a way that would not render words or phrases superfluous or make a

1 provision nugatory”) (internal quotation marks and citation omitted); *Coast Hotels &*  
2 *Casinos, Inc. v. Nevada State Labor Comm’n*, 117 Nev. 835, 841, 34 P.3d 546, 550  
3 (2001) (“[T]his court will read each sentence, phrase, and word to render it  
4 meaningful within the context of the purpose of the legislation.”).

5 70. The ALJ’s determination ignores the rule that each word must have meaning  
6 and ignores the word “additional.” NRS 604A.210 must be interpreted to mean that  
7 the licensee can charge interest at the original contract rate during the grace period.

8 71. If the legislature had intended that the total amount of interest charged in  
9 conjunction with a grace period could not exceed the total amount of interest set forth  
10 in the Truth-in-Lending Act Disclosures accompanying the original loan, it would  
11 have said so. *See* NRS 604A.435(1)(e) (prohibiting a deferred deposit lender from  
12 accepting a “check or written authorization for an electronic transfer of money for  
13 any deferred deposit loan *in an amount which exceeds the total of payments set forth*  
14 *in the disclosure statement required by the Truth in Lending Act* and Regulation Z  
15 that is provided to the customer”) (emphasis added); *Dep’t of Taxation v.*  
16 *DaimlerChrysler Servs. N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005)  
17 (“Here, the Legislature could have clearly provided [the contended result], but it did  
18 not do so.”); *see also Jama v. Immigration & Customs Enf’t*, 543 U.S. 335, 341  
19 (2005) (“We do not lightly assume that [the legislature] has omitted from its adopted  
20 text requirements that it nonetheless intends to apply, and our reluctance is even  
21 greater when [the legislature] has shown elsewhere in the same statute that it knows  
22 how to make such a requirement manifest.”); *Russello v. U.S.*, 464 U.S. 16, 23 (1983)  
23 (“Had Congress intended [the contended result], it presumably would have done so  
24 expressly as it did in the immediately following subsection”).

25 72. The Court finds NRS 604A.210 to be unambiguous; the prohibition on  
26 “additional interest” means a licensee cannot charge interest at a *rate* of interest  
27 higher than that specified in the loan agreement.

28 73. However, even if NRS 604A.210 were ambiguous, the legislative history

1 supports TitleMax's interpretation. The word "additional" was specifically added to  
2 the original proposed statute as a clarification of what interest could be charged  
3 during the grace period. (ROA 010261; ROA 010292.) This indicates that the  
4 legislature chose not to prohibit "any interest" being charged during a grace period.  
5 *In re Town & Country Home Nursing Servs., Inc.*, 963 F.2d 1146, 1151 (9th Cir.  
6 1991) ("As a general canon of statutory construction, where the final version of a  
7 statute [changes] language contained in an earlier draft, a court may presume that the  
8 earlier draft is inconsistent with ultimate congressional intentions.").

9 74. Moreover, at a public workshop in 2012, the FID solicited comments in  
10 relation to "POSSIBLE ACTION regarding whether the proposed regulations should  
11 be amended to add a regulation to address accrual of contract interest during a grace  
12 period." (ROA 012394.)

13 75. Members of the lending industry proposed a regulation providing "a licensee  
14 is permitted to continue to accrue interest at its contract rate during the term of any  
15 grace period offered within the terms and conditions of its title loan agreement  
16 provided the licensee does not charge any fees or any additional interest, such as a  
17 penalty or higher rate of interest, during such grace period." *See*  
18 [http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed\\_Regulations/20](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf)  
19 [12-09-21\\_NoticeOfWorkshop604A.pdf](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf), Ex. C.

20 76. In contrast, the FID submitted proposed regulatory language stating that a  
21 licensee could *collect* interest on the outstanding loan during a grace period "not to  
22 exceed the amount of accrued interest and fees as disclosed in the loan agreement.  
23 During a grace period, no interest shall accrue and no fees shall be charged after  
24 expiration of the loan period." (ROA 012397);  
25 [http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed\\_Regulations/20](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf)  
26 [12-09-21\\_NoticeOfWorkshop604A.pdf](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf), Ex. D.

27 77. At the public hearing on the conflicting proposed regulations, the FID  
28 acknowledged that NRS 604A.210 was at least ambiguous and that the industry



1 interpretation was plausible: “It was stated that the Division acknowledges some  
2 ambiguity exists in the statutes, and that a possible interpretation would permit the  
3 contract rate of interest to be charged during a grace period so long as it is not  
4 considered ‘additional interest or fees’ on the loan.” (ROA 012402.)

5 78. In the end, neither the industry’s nor the FID’s proposed regulation was ever  
6 adopted. (Hr’g Tr. 371:5-16.)

7 79. To the extent NRS 604A.210 is ambiguous, the FID engaged in proposed  
8 rulemaking that would have clarified NRS 604A.210 to support the FID’s position in  
9 this case, but the proposed regulation was not enacted. This too supports the  
10 interpretation that NRS 604A.210 does not prohibit charging any interest during a  
11 grace period. *See Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op. 35,  
12 373 P.3d 66, 71 (2016) (considering an introduced bill attempting to add “language  
13 allowing the collection costs permitted under NRS 116.310313 to become part of the  
14 HOA’s lien and the superpriority lien,” but pointing out this bill never passed and  
15 concluding “we must presume the Legislature did not intend for such costs to be  
16 included as part of an HOA’s superpriority lien”).

17 80. Under NRS 604A.210, licensees are allowed to charge simple interest at the  
18 original contractual rate during a grace period, and TitleMax did not violate NRS  
19 604A.210.

### 20 III.

#### 21 TITLEMAX ACTED REASONABLY, PRECLUDING A FINDING OF WILLFULNESS

22 81. Alternatively, and at a minimum, the Court concludes that the ALJ’s  
23 willfulness finding is clearly erroneous. Even assuming TitleMax’s statutory  
24 interpretation were incorrect – which the Court does not believe it is – TitleMax’s  
25 statutory interpretation was reasonable. There was no willful violation that could  
26 possibly lead to the penalties the ALJ imposed.  
27  
28

1           **A.     The Legislative History of NRS 604A.210 Confirms**  
2           **TitleMax Acted on a Reasonable Interpretation of That Statute**

3           82. TitleMax cannot be found to have willfully violated NRS 604A.210 when the  
4 FID's interpretation of the statute was never codified or enacted. As described in  
5 paragraphs 74-78 above, in its 2012 workshop, the FID acknowledged ambiguity in  
6 NRS 604A.210 and recognized that TitleMax's interpretation of the statute was  
7 plausible. The rule the FID proposed to address the issue did not pass. Thus, there  
8 can be no willfulness here.

9           83. The FID's proposed, but never-passed regulation supports the Court's  
10 determination that the ALJ's ruling was clearly erroneous and arbitrary and  
11 capricious.

12          84. TitleMax's statutory interpretation was not objectively unreasonable. That  
13 TitleMax acted in accord with a reasonable and plausible interpretation means that  
14 TitleMax did not engage in any willful violation. *See Safeco Ins. Co. of Am. v. Burr*,  
15 551 U.S. 47, 70 (2007) (there was no willful violation where party's reading of the  
16 statute "was not objectively unreasonable").

17           **B.     TitleMax Acted Reasonably in Determining Its Legal Obligations,**  
18           **Including by Relying on Counsel**

19          85. The Supreme Court has ruled that if a party "acts reasonably in determining  
20 its legal obligation, its action cannot be deemed willful." *McLaughlin v. Richland*  
21 *Shoe Co.*, 486 U.S. 128, 135 n.13 (1988). Here, at the very least, TitleMax acted  
22 reasonably in determining its legal obligations. Its actions cannot therefore be  
23 deemed willful.

24          86. While consulting with counsel is not dispositive, it is certainly a relevant  
25 factor and indicates here that TitleMax acted reasonably in determining its legal  
26 obligations. *McLaughlin*, 486 U.S. at 135 n.13; *Trans World Airlines, Inc. v.*  
27 *Thurston*, 469 U.S. 111, 129-30 (1985) (a violation is not willful where "officials  
28 act[] reasonably and in good faith in attempting to determine whether their plan

1 would violate” the statutory requirements) (determining that employer did not  
2 willfully violate statute where it “sought legal advice”); *Baker v. Delta Air Lines,*  
3 *Inc.*, 6 F.3d 632, 645 (9th Cir. 1993) (analogizing reliance on previous opinion to  
4 relying on legal advice and finding such reliance “constituted good faith as a matter  
5 of law”); *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 894,  
6 784 P.2d 974, 979 (1989) (finding no willful violation of the district court’s  
7 preliminary injunction where city council members followed the advice of the city  
8 attorney)

9 87. TitleMax’s consultation with counsel further supports the Court’s  
10 determination that the ALJ’s ruling was clearly erroneous and arbitrary and  
11 capricious.

12 **C. Disagreement with an Agency Does Not Constitute Willfulness**

13 88. Penalties for willful violations cannot be premised on TitleMax not changing  
14 its business practices the moment a lay FID examiner levied a decision that it should.  
15 Essentially the FID’s and the ALJ’s position is that the very moment a FID examiner  
16 said that TitleMax should not offer the GPDA, everything subsequent to that was a  
17 willful violation. That position is unfounded, and the Court rejects it.

18 89. As an initial matter, the lay FID examiners opined that TitleMax also violated  
19 NAC 604A.230, but the ALJ rejected that position. (ROA 012290-012291.) The  
20 ALJ never explained how refusing to follow the advice of lay FID examiners  
21 constitutes a willful statutory violation when she herself found that the FID examiners  
22 were sometimes wrong in their interpretation of the law.

23 90. The Court does not use the term “lay” in a pejorative way, but simply that lay  
24 examiners at the FID were not attorneys and did not rely on an Attorney General  
25 opinion or any similar legal authority. (Hr’g Tr. 391:18-392:5; 393:16-18, 396:20-  
26 23.)

27 91. When TitleMax laid out its legal position in its February 9, 2015, letter and  
28 explained why, in its analysis, the GPDA did not violate any part of NRS 604A

1 (ROA 009991-010000), the FID responded with a letter stating merely that “the FID  
2 stands by its position.” (ROA 0100006.) TitleMax’s attempt to explain its position  
3 to the FID and the FID’s lack of explanation or any meaningful response are yet  
4 further indications that TitleMax did not willfully violate any statutory provision  
5 here.

6 92. TitleMax’s failure to change its entire way of doing business immediately  
7 when lay FID examiners stated it should, simply cannot equate to willfulness. The  
8 ALJ necessarily concluded that TitleMax’s failure to cease offering the GPDA  
9 immediately constituted willfulness, as evidenced by the penalty given and the way it  
10 was given.

11 93. Using the closing date of the FID’s 2014 Report of Examination, the first  
12 examination during which the FID took issue with the GPDA, the ALJ concluded that  
13 every GPDA entered into after December 18, 2014, constituted a willful statutory  
14 violation, “warranting the imposition of the civil penalty set forth in NRS  
15 604A.900(1)(c). Accordingly, every [GPDA] entered into after December 18, 2014,  
16 is void, and TitleMax is not entitled to collect, receive or retain any principal, interest  
17 or other charges or fees with respect to those loans.” (ROA 012293.)

18 94. The ALJ found that the moment the FID’s lay examiners gave their opinion  
19 that the GPDA violated NRS 604A.445(3) and NRS 604A.210, the penalty started  
20 from then. But TitleMax’s failure to defer immediately to the FID’s lay examiners is  
21 not evidence of willfulness.

22 95. Disagreement with an agency by itself without more, as is the case here, is not  
23 willfulness. *See Baystate Alternative Staffing, Inc. v. Herman*, 163 F.3d 668, 680 (1st  
24 Cir. 1998) (rejecting standard of willfulness that would “preclude[] legitimate  
25 disagreement between a party and” an agency and place the private party in the  
26 “untenable position” of either accepting the agency’s position “or risk a finding of a  
27 willful violation of the Act”); *Brock v. Claridge Hotel & Casino*, 846 F.2d 180, 188  
28 & n.9 (3d Cir. 1988) (rejecting Secretary of Labor’s reliance “on the fact that the

1 casino did not change its pay practices even after the Secretary declared them  
2 improper,” noting that “*private parties must retain a right to disagree* with the  
3 Secretary’s interpretation of the regulations . . . . *Such disagreement is not*  
4 *willfulness.*”) (emphases added).

5       **D.     The Civil Penalty the ALJ Imposed Should Be**  
6       **Vacated Because TitleMax Had a Good Faith**  
7       **and Reasonable Belief in the Legality of Its Actions**

8       96. Moreover, this is a case dealing with a civil penalty, and the case law supports  
9 that “courts refuse to impose civil penalties against a party who acted with a good  
10 faith and reasonable belief in the legality of his or her actions.” *Lusardi Constr. Co.*  
11 *v. Aubry*, 824 P.2d 643, 655–56 (Cal. 1992); *see also State v. Harmon*, 35 Nev. 189,  
12 127 P. 221, 223 (1912) (“Penalties and forfeitures are not favored, unless plainly  
13 expressed.”).

14       97. That a severe penalty is at stake – requiring the forfeiture of not only interest,  
15 but all *principal* collected under every GPDA – only confirms that the appropriate  
16 course of action is to reverse and vacate the penalties issued by the ALJ.

17       98. “The law does not favor forfeitures and statutes imposing them must be  
18 strictly construed.” *Wilshire Ins. Co. v. State*, 94 Nev. 546, 550, 582 P.2d 372, 375  
19 (1978).

20       99. Given the punitive nature of the penalty at issue, it should “be construed as  
21 calling for a substantial element of culpability.” *See No Oil, Inc. v. Occidental*  
22 *Petroleum Corp.*, 50 Cal. App. 3d 8, 30-31, 123 Cal. Rptr. 589 (Cal. Ct. App. 1975).

23       100. As detailed above, TitleMax did not violate any statute, let alone do so  
24 willfully. At a minimum, TitleMax acted on a reasonable interpretation of the  
25 statutory provisions at issue.

26       101. As an alternative finding, the Court agrees with TitleMax that  
27 TitleMax’s offering of statutorily compliant products (such as the original loan  
28 agreement) is not proof that other products (such as the GPDA) were willfully non-

1 compliant. The evidence suggests that TitleMax always strove to be in compliance  
2 with the law and that TitleMax believed the GPDA was statutorily compliant. (*See*,  
3 *e.g.*, Hr’g Tr. 181:2-5 (FID witness agreeing that “whenever TitleMax has agreed  
4 with the FID’s interpretation and application of the law, they fix – they fix the  
5 issue”); 472:10-473:8; 488:23-489:3, 496:10-24, 509:13-17; 577:20-23.)

6 102. There is no evidence of any willful violation by TitleMax.

7 IV.

8 RULING ON SUPPLEMENTS

9 103. TitleMax submitted supplemental authorities comprised of Assembly  
10 Bill 163 (amending NRS 604A) and *Henson v. Santander Consumer USA Inc.*, 137 S.  
11 Ct. 1718 (2017). The parties submitted briefing on the import of Assembly Bill 163,  
12 which was approved by the Governor on June 1, 2017.

13 104. The Court finds that it does not need any of the supplemental authorities  
14 to reach its decision.

15 105. To the extent the Court should or does consider the supplements, *Henson*  
16 is new case law, the recent revisions to NRS 604A are akin to new case law, and, to  
17 the extent appropriate to consider, both support the Court’s ruling.

18 106. The FID submitted testimony indicating that some of the recent  
19 proposed statutory changes were an attempt to close “loopholes.” Such testimony  
20 supports the Court’s ruling here and indicates that the previous statutory language  
21 was unambiguous and allowed “loopholes.” Whether or not one characterizes the  
22 pre-2017 version of NRS 604A.210 as a “loophole,” the language prohibited only the  
23 charging of “additional interest” during a grace period. TitleMax followed the plain  
24 language of the statute.

25 107. Moreover, the 2017 bill as actually enacted varies from the original  
26 proposal. The 2017 bill as enacted modifies NRS 604A.210 to provide in connection  
27 with grace periods that a licensee shall not “[c]harge the customer interest at a rate in  
28 excess of that described in the existing loan agreement.” NRS 604A.210(2)(b)

1 (2017). This conforms to TitleMax’s arguments and interpretation as to what  
2 “additional interest” meant all along.

3 108. The United States Supreme Court’s recent decision in *Henson v.*  
4 *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725–26 (2017) also supports the  
5 Court’s ruling.

6 109. In *Henson*, the Supreme Court warned that courts “will not presume . .  
7 that any result consistent with [party’s] account of the statute’s overarching goal must  
8 be the law but will presume more modestly instead that the legislature says what it  
9 means and means what it says.” 137 S. Ct. at 1725 (internal quotation marks and  
10 citation omitted; alterations incorporated). *Henson* supports that the plain language  
11 of the statutes controls.

12 110. Moreover, *Henson* supports the Court’s conclusion that disagreement  
13 with the regulator does not constitute willfulness or culpable conduct:

14 After all, it’s hardly unknown for new business models to emerge in  
15 response to regulation, and for regulation in turn to address new  
16 business models. Constant competition between constable and quarry,  
17 regulator and regulated, can come as no surprise in our changing  
18 world. But neither should the proper role of the judiciary in that  
19 process—to apply, not amend, the work of the People’s  
20 representatives.

21 *Henson*, 137 S. Ct. at 1725-26.

22 111. Again, the Court finds that it does not need to reach or consider the  
23 supplements, but to the extent it can or should, they support reversing and vacating  
24 the ALJ’s order.

## 25 V.

### 26 ORDER

#### 27 **IT IS THEREFORE ORDERED:**

28 A. That the ALJ’s Order is reversed and vacated;

1 B. That the FID must return to TitleMax the \$50,000 administrative fine already  
2 paid by TitleMax. The FID shall refund the amount of the administrative fine  
3 in accordance with standard agency process;

4 ~~C. That the FID, within 30 days of Notice of Entry of this Order, must return to~~  
5 ~~TitleMax the costs for the court reporter and transcripts in the administrative~~  
6 ~~proceedings paid by TitleMax; and~~ *SH*

7 ~~D. That the FID must issue reissue its Reports of Examination for TitleMax for~~  
8 ~~2014 and 2015 and provide TitleMax with "Satisfactory" ratings, given that~~  
9 ~~this Court has found that TitleMax did not violate NRS 604A.070, NRS~~  
10 ~~604A.210, or NRS 604A.445 and the ALJ found that TitleMax did not violate~~  
11 ~~NAC 604A.230 (a finding not challenged by the FID). The FID shall provide~~  
12 ~~electronic and revised copies of the amended Reports of Examination to~~  
13 ~~TitleMax within 30 days of Notice of Entry of this Order.~~ *SH*

14 *See minute order for details.*

15 IT IS SO ORDERED.

16 Dated this *20th* day of ~~August~~ <sup>September</sup>, 2017.

17 *[Signature]*  
18 DISTRICT COURT JUDGE

19 Submitted by:  
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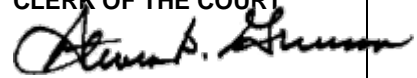
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

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

**TITLEMAX'S MOTION FOR  
SUPPLEMENTAL RELIEF**

1 Pursuant to NRC 59(e), TitleMax moves the Court to alter or amend the judgment entered  
2 on September 21, 2017. TitleMax requests three provisions of supplemental relief that are natural  
3 consequences of reversing the Administrative Law Judge's (ALJ's) order. TitleMax requests that  
4 this Court order the State of Nevada, Department of Business and Industry Financial Institutions  
5 Division (FID) to:

- 6 1) Return to TitleMax the costs for the court reporter and transcripts in the administrative  
7 proceedings paid by TitleMax;
- 8 2) Reissue the FID's Reports of Examination for TitleMax for 2014 and 2015 and provide  
9 TitleMax with "Satisfactory" ratings, as it has now been determined that TitleMax did not  
10 violate any statutory or regulatory provision; and
- 11 3) Either (a) remove from the FID's website ([http://fid.nv.gov/Opinion/Enforcement\\_Actions/](http://fid.nv.gov/Opinion/Enforcement_Actions/))  
12 the ALJ's order of August 12, 2016 (which this Court has now reversed) and accompanying  
13 letters, notices of hearing, and administrative complaints and documents, or (b) also post on  
14 the FID's website this Court's order of September 21, 2017 reversing and vacating the  
15 ALJ's order so that the public is not misled.

16  
17 **NOTICE OF MOTION**

18 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the  
20 foregoing "TitleMax's Motion for Supplemental Relief" for hearing on 11/2/17, \_\_\_\_, at  
21 9:00A \_\_: \_\_.m., or as soon thereafter as counsel may be heard, in Department 28 of the Eighth  
22 Judicial District Court, 200 Lewis Avenue, Las Vegas, Nevada 89155.

23  
24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 This Court has inherent authority to order supplemental relief to give effect to its orders.  
26 The three items of supplemental relief requested by TitleMax are natural corollaries of this Court's  
27 order reversing the decision of the ALJ and finding that TitleMax did not violate any provision of  
28

1 NRS 604A. As such, they should be granted to give effect to this Court’s order and provide  
2 meaningful relief to TitleMax.

### 3 **BACKGROUND**

4 In August 2014, the FID commenced an examination of TitleMax, visiting several different  
5 TitleMax locations in Nevada. (ROA 008918-34.) Upon the close of the examination in December  
6 2014, the major violations the FID noted were purported repeat violations of NAC 604A.230, NRS  
7 604A.445(3), and NRS 604A.210. (ROA 008927-30.) The FID gave TitleMax a “Needs  
8 Improvement” rating, indicating that TitleMax and its management “have demonstrated less than  
9 satisfactory compliance, or instances and situations involving a lack of compliance with applicable  
10 state and federal laws and regulations.” (ROA 008930.)

11 The FID commenced another examination of TitleMax in May 2015, with the examination  
12 closing June 17, 2015. (ROA 008936-48.) The FID again focused on purported violations of NRS  
13 604A.445(3) and NRS 604A.210. (ROA 008942-44.) This time the FID gave TitleMax an  
14 “Unsatisfactory” rating, indicating that TitleMax and its management “have demonstrated  
15 substantial lack of compliance with applicable laws and regulations.” (ROA 008945.)

16 The FID commenced administrative proceedings against TitleMax, and on August 12, 2016,  
17 the ALJ issued her findings and order. (ROA 012279-012295.) The ALJ found that TitleMax had  
18 not violated of NAC 604A.230, a finding the FID did not challenge or appeal. (ROA 012290-91.)

19 However, the ALJ determined that TitleMax had willfully violated NRS 604A.445(3) and  
20 NRS 604A.210. (ROA 012297-90, ROA0012292-94.) Among other sanctions, the ALJ ordered  
21 that TitleMax pay an administrative fine and that “[p]ursuant to 604A.820(1)(c), TitleMax must  
22 compensate [the] FID for any costs expended on the court reporter and for transcripts of the  
23 hearing.” (ROA 0012293-94.)

24 On September 21, 2017, this Court entered an order reversing and vacating the ALJ’s order,  
25 finding that TitleMax did not violate NRS 604A.210 or NRS 604A.445. (9/21/2017 Order  
26 Reversing and Vacation ALJ’s Order ¶¶ 43-44, 63, 80.) The Court ordered that “the FID must  
27 return to TitleMax the \$50,000 administrative fine already paid by TitleMax.” (*Id.* at 22.)  
28

1 LEGAL STANDARD

2 “[E]very court, with few exceptions, has inherent power to enforce its decrees and to make  
3 such orders as may be necessary to render them effective.” *Horn & Hardart Co. v. Nat’l Rail*  
4 *Passenger Corp.*, 843 F.2d 546, 548 (D.C. Cir. 1988) (internal quotation marks and citation  
5 omitted); *see also Rincon Band of Mission Indians v. Harris*, 618 F.2d 569, 575 (9th Cir. 1980) (“If  
6 further relief becomes necessary at a later point, however, . . . the inherent power of the court to  
7 give effect to its own judgment . . . would empower the district court to grant supplemental relief,  
8 including injunctive relief.”) (citations omitted).

9 ARGUMENT

10 **I. BECAUSE TITLEMAX DID NOT ENGAGE IN ANY STATUTORY OR REGULATORY**  
11 **VIOLATION, THE FID MUST RETURN THE ADMINISTRATIVE COSTS PAID BY TITLEMAX**

12 The ALJ ordered TitleMax to pay the costs for the court reporter and transcripts of the  
13 administrative hearing pursuant to NRS 604A.820. (ROA 0012293.) NRS 604A.820 provides in  
14 relevant part:

15 1. If the Commissioner has reason to believe that grounds for revocation or  
16 suspension of a license exist, the Commissioner shall give 20 days’ written notice  
17 to the licensee stating the contemplated action and, in general, the grounds  
therefor and set a date for a hearing.

18 2. At the conclusion of a hearing, the Commissioner shall:

19 (a) Enter a written order either dismissing the charges, revoking the license or  
20 suspending the license for a period of not more than 60 days, which period must  
21 include any prior temporary suspension. The Commissioner shall send a copy of  
the order to the licensee by registered or certified mail.

22 (b) Impose upon the licensee an administrative fine of not more than \$10,000  
23 for each violation by the licensee of any provision of this chapter or any  
regulation adopted pursuant thereto.

24 (c) *If a fine is imposed pursuant to this section, enter such order as is*  
25 *necessary to recover the costs of the proceeding, including investigative costs*  
26 *and attorney’s fees of the Commissioner.*

27 3. The grounds for revocation or suspension of a license are that:

28 . . . .

(b) The licensee, either knowingly or without any exercise of due care to  
prevent it, has violated any provision of this chapter or any lawful regulation  
adopted pursuant thereto . . . .

NRS 604A.820 (emphasis added).

1 Pursuant to NRS 604A.820(2)(c), the ALJ had authority to order TitleMax to pay certain  
2 costs of the administrative proceeding only if there were grounds for revoking or suspending  
3 TitleMax's license and only if an administrative fine was imposed against TitleMax. However, this  
4 Court has now determined that TitleMax did not violate any statutory provision and that an  
5 administrative fine should not have been imposed on TitleMax. ((9/21/2017 Order Reversing and  
6 Vacation ALJ's Order ¶¶ 43-44, 63, 80, Order at 22.) Thus, there are no grounds (and no statutory  
7 authority) for TitleMax to remain responsible for the costs of the administrative hearing.

8 Because this Court has reversed the ALJ's determination and ordered the FID to return to  
9 TitleMax the administrative fine TitleMax paid, the FID must also return to TitleMax the  
10 administrative costs it paid. *See* NRS 604A.820(2)(c).

11 **II. THE FID SHOULD REISSUE THE 2014 AND 2015 REPORTS**  
12 **OF EXAMINATION WITH "SATISFACTORY RATINGS"**

13 TitleMax takes its regulatory ratings very seriously. The ratings TitleMax receives from  
14 agencies like the FID impact TitleMax's reputation and standing with customers.

15 The 2014 "Needs Improvement" rating and the 2015 "Unsatisfactory" rating were based on  
16 regulatory and statutory violations that the ALJ and this Court have now determined were  
17 unfounded. The ALJ found that TitleMax did not violate NAC 604A.230 (a ruling the FID did not  
18 challenge), and this Court determined that TitleMax did not violate NRS 604A.210 or NRS  
19 604A.445. TitleMax should not have poor regulatory ratings remain on its record for statutory and  
20 regulatory violations it never committed.

21 For this Court's order to have effect and provide TitleMax with meaningful relief, the FID  
22 should be ordered to reissue its 2014 and 2015 Reports of Examination to TitleMax with  
23 "Satisfactory" ratings.

24 **III. THE FID SHOULD REMOVE THE ADMINISTRATIVE PROCEEDINGS**  
25 **AND ALJ'S ORDER FROM ITS ENFORCEMENT WEBSITE OR AT LEAST POST**  
26 **THIS COURT'S ORDER ALSO TO PROVIDE A FAIR AND ACCURATE PORTRAYAL**  
**OF THE FID'S PROCEEDINGS AGAINST TITLEMAX**

27 The FID's administrative proceedings against TitleMax in this case have been in large  
28 measure a public vendetta against TitleMax. The FID has had the press present at several hearings

1 and events; the FID has mentioned TitleMax by name in statements made to the Nevada legislature;  
2 and the FID has publicly posted on its website its administrative complaint against TitleMax and the  
3 ALJ's favorable ruling to the FID. (See [http://fid.nv.gov/Opinion/Enforcement\\_Actions/](http://fid.nv.gov/Opinion/Enforcement_Actions/).) While  
4 the FID has been quick to post favorable rulings to it (and even its own unsubstantiated allegations),  
5 the FID has not posted this Court's order reversing and vacating the ALJ's order or otherwise  
6 indicated that the ALJ's order is no longer valid authority.

7 While this Court has vindicated TitleMax in its statutory positions, the FID is still portraying  
8 TitleMax as an entity that willfully violated the law. For this Court's order to mean something and  
9 give TitleMax relief from the FID's inaccurate representations, TitleMax requests that this Court  
10 order the FID to either (a) remove from the FID's website the ALJ's Order and accompanying  
11 documents related to the administrative proceedings against TitleMax, or (b) post this Court's order  
12 reversing and vacating the ALJ's order. This is required to give a fair and accurate picture of the  
13 FID's proceedings against TitleMax, to give effect to this Court's order, and to provide the full  
14 picture so the public is not misled.

### 15 **CONCLUSION**

16 TitleMax requests three items of supplemental relief that are natural consequences and  
17 corollaries of this Court's order reversing and vacating the ALJ order and finding that TitleMax did  
18 not engage in any statutory violations. These provisions are necessary to give effect to this Court's  
19 order and provide TitleMax with meaningful relief. TitleMax accordingly requests that the order  
20 entered by this Court on September 21, 2017, be amended to provide that the FID must:

- 21 1) Return to TitleMax the costs for the court reporter and transcripts in the administrative  
22 proceedings paid by TitleMax;
- 23 2) Reissue the FID's Reports of Examination for TitleMax for 2014 and 2015, providing  
24 TitleMax with "Satisfactory" ratings; and
- 25 3) Either (a) remove from the FID's website ([http://fid.nv.gov/Opinion/Enforcement\\_Actions/](http://fid.nv.gov/Opinion/Enforcement_Actions/))  
26 the ALJ's order and accompanying administrative and enforcement documents, or (b) post  
27 this Court's order reversing and vacating the ALJ's order.  
28

1 Dated this 2nd day of October, 2017.

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3  
4 By /s/ Malani Kotchka-Alanes

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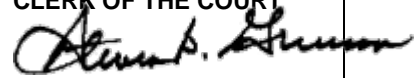
17 *Attorneys for Petitioner*  
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Attorneys for Respondent

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondent.

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

**OPPOSITION TO TITLEMAX'S MOTION FOR SUPPLEMENTAL RELIEF**

STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY,  
FINANCIAL INSTITUTIONS DIVISION ("FID"), by and through its counsel, ADAM  
PAUL LAXALT, Attorney General, DAVID J. POPE, Senior Deputy Attorney General,  
VIVIENNE RAKOWSKY, Deputy Attorney General, and RICKISHA HIGHTOWER-  
SINGLETARY, Deputy Attorney General, hereby files its Opposition to TitleMax of  
Nevada, Inc.'s and TitleBucks d/b/a TitleMax's ("TitleMax") Motion for Supplemental  
Relief.

## INTRODUCTION

Reliance on Nevada Rules of Civil Procedure 59(e) (“NRCP”) is inappropriate for the amendments and/or alterations to the September 21, 2017 Judgment that TitleMax requests. An NRCP 59(e) motion can be used to: (1) “correct[] manifest errors of law or fact”; (2) provide “newly discovered or previously unavailable evidence”; (3) “prevent manifest injustice”; or, (4) reflect a “change in controlling law.” *See generally AA Primo Builders, LLC v. Bertral Washington*, 126 Nev 578, 582, 245 P.3d 1190, 1193 (2010) (internal quotations, and citation, omitted). While NRCP 59(e) allows for the correction of an erroneous order or judgment and provides a remedy when the issues have been litigated and resolved, it will not offer additional relief to a movant on wholly collateral issues even if the relief is a “natural consequence” as asserted by TitleMax. *See Chiara v. Belaustegui*, 86 Nev. 856, 858, 477 P.2d 857, 859 (1971) (“Rule 59(e) provides the remedy that, where the issues have been *litigated and resolved*, a motion may be made to alter or amend a judgment.” (emphasis added); *AA Primo*, 126 Nev. at 582.

Costs for the court reporter, the reissuing of closed Reports of Examination and the contents of the FID’s Website were not litigated in this action. As a result, NRCP 59(e) is inapplicable, and TitleMax’s Motion should be denied. *See Minute Order*, September 22, 2017 (showing that none of the recently raised issues were litigated and resolved).

In the alternative, if this Court finds that TitleMax’s requests are not collateral and were previously litigated and resolved, TitleMax’s requests do not have merit because; (1) Prior to the administrative hearing, TitleMax offered to pay the entire cost of the court reporter; (2) the Reports of Examination for 2014 and 2015 have been closed for more than three and two years, respectively, and any Order to reopen an exam and issue a different rating would be a violation of separation of powers; and, 3) the FID intends to post this Court’s Order from September 21, 2017 on the FID website when it posts the Notice of Appeal, as the Order is attached to the Notice of Appeal.

///

1           **1. TitleMax offered to pay the entire costs of the court reporter**

2           The FID should not be Ordered to pay TitleMax for the court reporter because,  
3 pursuant to NRS 233B.121, the party that requests the court reporter for the  
4 administrative matter has to pay the bill. In addition, NRS 233B.131 requires the party  
5 that files the Petition for Judicial Review (“PJR”) to file the transcript of the  
6 administrative hearing – arguably requiring them to pay for it upon acquisition.  
7 Notwithstanding, TitleMax originally offered to pay the entire cost of the court reporter.  
8 *See* email dated July 13, 2016 from Patrick Reilly to the ALJ stating that “TitleMax will  
9 bear the cost of having the court reporter attend,” attached hereto as **Exhibit “A.”** In an  
10 effort to be fair, the FID responded to the email and offered to split costs of the court  
11 reporter. *See* email dated July 13, 2016, attached hereto as **Exhibit “B.”**

12           While TitleMax points to NRS 604A.820(2)(c) which allows for the recovery of costs  
13 of the proceeding including the investigative costs and attorney’s fees of the  
14 Commissioner, NRS 604A.820(2)(c) is inapplicable because the FID did not ask for  
15 recovery of any costs of the investigation or attorney fees, although they were entitled to  
16 do so.

17           The FID solely requested that TitleMax pay the court reporter, which TitleMax  
18 agreed to do. **Exhibit “C.”** The agreement did not include a carve-out requiring the  
19 FID to repay the court reporter costs if TitleMax were to prevail at the PJR level.  
20 TitleMax’s agreement to pay was simply an agreement between two consenting parties,  
21 and unrelated to NRS 604A.820.

22           Additionally, NRS 233B.121, which governed the administrative proceeding clearly  
23 provides that “[o]ral proceedings, or any part thereof, must be transcribed on request of  
24 any party. *The party making the request shall pay all the costs for the transcription.*”  
25 (emphasis added). Here, as shown in Exhibit “A” counsel for TitleMax first requested the  
26 court reporter, and therefore is responsible to pay all costs for the transcription.  
27 NRS 233B.121(8). Notwithstanding, NRS 233B.131(1)(a) required TitleMax to file the  
28 transcript with the court in order to pursue the PJR and, therefore, TitleMax would have

1 been required to obtain, and pay for, a transcript of a recording of the hearing if it had not  
2 requested a court reporter.

3 As stated above, NRCP 59(e) does not apply to this issue because it was not  
4 previously litigated or resolved by the Court in this action. While TitleMax could have  
5 raised the court reporter fees during the litigation, or mentioned it in the briefs or in open  
6 court, they did not. Instead, TitleMax waited and tried to include it in the Order which  
7 was rejected by this Court. See Minute Order dated September 22, 2017 and page 22 of  
8 Order, collectively attached hereto as **Exhibit “E.”**

9 Here, if this Court determines that the FID should pay any part of the court  
10 reporter’s bill it is important to consider that TitleMax ordered and immediately received  
11 expedited transcripts, which are considerably more expensive than the transcripts  
12 prepared in the normal course for, and received by, the FID. The FID did not receive an  
13 electronic copy of the transcript of the first day of hearing until August 18, 2016 (a month  
14 after the hearing) and the electronic copies of the two additional days (July 19<sup>th</sup> and 20<sup>th</sup>)  
15 were not received until five weeks after the hearing on August 24, 2016. **Exhibit “D.”**  
16 Accordingly, if this Court determines that the FID should pay any portion, it should be a  
17 very small portion of the court reporter fee.

18 Therefore, TitleMax should pay since TitleMax asked for the court reporter  
19 pursuant to NRS 233B.121. Additionally, TitleMax offered to bear the full costs a week  
20 before the hearing took place, and FID offered to pay half. NRS 604A.820 does not apply  
21 because no costs or fees were recovered based on NRS 604A.820(2)(c). NRS 233 B.131  
22 requires the party filing the PJR to provide a transcript. Finally, NRCP 59(e) does not  
23 apply because this matter was not previously litigated.

24 **2. This Honorable Court would violate Separation of Powers if it Orders**  
25 **the FID to Reissue Annual Examinations that have been Closed for Years.**

26 This Honorable Court should not usurp the powers of the FID when the agency has  
27 acted pursuant to its legislative mandate. To do so would be in violation of separation of  
28 powers.

1 Separating the power of the government between the executive, legislative and  
2 judicial branches ensures that each branch remains independent of each other. *Galloway*  
3 *v. Truesdell*, 83 Nev. 13, 18, 422 P.2d 237, 241-242 (1967), *see also generally*, NEVADA  
4 CONST, Art 3 § 1(“The powers of the Government of the State of Nevada shall be divided  
5 into three separate departments,--the Legislative,--the Executive and the Judicial; and no  
6 persons charged with the exercise of powers properly belonging to one of these  
7 departments shall exercise any functions, appertaining to either of the others, except in  
8 the cases expressly directed or permitted in this constitution.”). Separation of powers  
9 protects liberty by making sure that power does not accumulate in any one branch of  
10 government. *Berkson v. LePome*, 126 Nev. 492, 498, 245 P.3d 560, 565 (2010).

11 The FID is an agency of the Executive Branch. The Executive Branch enforces the  
12 laws written by the Legislative Branch, and the Judicial Branch hears and determines  
13 justiciable controversies (questions in controversy that are proper to be examined in a  
14 court of justice), and can enforce any valid judgment, decree or order. *Truesdell*, 83 Nev.  
15 at 21.

16 Each branch can exercise ministerial powers or functions where the power of a  
17 specific branch may overlap another branch, but the activities must be reasonably  
18 incidental to the performance of the duties of that specific branch. For example, the  
19 judicial branch exercises a proper legislative power when it formulates rules incidental to  
20 the fulfillment of judicial duties. *Truesdell*, 83 Nev. at 24.

21 Separation of powers allows each branch of government to exercise its power  
22 without intrusion from another branch. *Blackjack Bonding v. City of Las Vegas*  
23 *Municipal Court*, 116 Nev. 1213, 1219, 14 P.3d 1275,1280 (2000). The Supreme Court  
24 has looked at this issue and found that if the judiciary legislates from the bench, the life  
25 and liberty of the subject would be exposed to arbitrary control. *Berkson v. LePome*, 126  
26 Nev. 492, 498, 245 P.3d 560, 565 (2010). Moreover, if the judiciary were to join with the  
27 executive power, the judge could become an oppressor. *Berkson v. LePome*, 126 Nev. 492,  
28 498, 245 P.3d 560, 565 (2010). That is why separation of powers is so important.

1 In this case, the Nevada Legislature has set forth in the Nevada Revised Statutes  
2 strict laws requiring that the FID perform annual examinations of all NRS 604A  
3 licensees. NRS 604A.730(1); NRS 604A.710. There is no law on the books giving the FID  
4 the ability to “reissue” an examination that has already been closed.<sup>1</sup> Each examination  
5 covers a specific period of one year, and if there are changes to the laws, or to the  
6 interpretation of a law, any change in a licensee’s rating will be reflected in a subsequent  
7 or more current examination. Once an exam is closed, that period of examination is also  
8 closed.

9 The FID conducts the annual examinations pursuant to the statutes and  
10 regulations and uses its expertise and discretion to analyze the data using specific  
11 accounting principles. The data gathered from the licensee is analyzed on an annual  
12 basis and the FID issues a rating for the particular period of time that has been  
13 examined.

14 While this Court stated that TitleMax did not violate NRS 604A.210 or  
15 NRS 604A.445, there were additional violations found in the Reports of Examination for  
16 2014 and 2015 that would still result in a less than satisfactory rating for TitleMax for  
17 those examination periods. Some of the violations cited in 2014 and 2015 include; failure  
18 to properly determine a customer’s ability to repay a loan in violation of NRS 604A.450,  
19 making loans that exceed the fair market value of the vehicle in violation of  
20 NRS 604A.450, failure to keep and maintain required books and records in violation of  
21 NRS 604A.700 and NAC 604A.200, failure to properly offer a repayment plan in violation  
22 of NRS 604A.475 and NAC 604A.170, failure to properly account for partial payment of a  
23 loan in violation of NRS 604A.470, and failure to provide documents in Spanish when the  
24 transaction is conducted in Spanish in violation of NRS 604A.410 and NAC 604A.160.  
25 None of the aforementioned violations were challenged at the administrative level or  
26 during the PJR, and it would be inappropriate for this Court to rule on them at this time.

27 Pursuant to Chapter 604A, the examination process is strictly a power of the  
28

1 executive agency, and is unrelated to the Court's judicial powers. If this Court were to  
2 order closed examinations from two and three years back to be reissued with a court  
3 ordered outcome, the judiciary would actually assume the power of an executive agency,  
4 and be in violation of separation of powers. As a result, because the examination process  
5 is expressly reserved for FID and beyond the jurisdiction of this Court, this Court should  
6 not dictate the rating a licensee should be issued on a report prepared years ago.<sup>2</sup>

7 Moreover, Rule 59(e) does not apply because this issue was not litigated in this  
8 Court and when TitleMax attempted to slip this into the Order the Court properly crossed  
9 it out. Exhibit "E, p. 22."

10 Accordingly, this Court should deny TitleMax's Motion for an Order to re-issue  
11 closed examinations from two and three years in the past because this Court does not  
12 have the power to Order the FID to re-issue a closed examination, unless the Court can  
13 show that the Order is reasonably related to the court's judicial duties. *Truesdell*, 83  
14 Nev. at 23-24.

15 **3. The FID intends to post this Court's Order on its website when it posts**  
16 **the Notice of Appeal.**

17 TitleMax's inflammatory assertion that the FID has some sort of "public vendetta"  
18 against it is unfounded and uncalled for. Nevertheless, the FID plans to post this Court's  
19 Order along with the Notice of Appeal as soon as the Notice is filed.

20 **CONCLUSION**

21 Based on the foregoing, the FID respectfully requests that this Honorable Court  
22 deny TitleMax's Motion for the costs of the court reporter and transcripts and deny  
23 TitleMax's request to reissue two and three year old reports of examination for all the  
24 reasons argued in this opposition along with any oral argument presented if this  
25  
26

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27 <sup>2</sup> Even if TitleMax had filed a petition seeking a writ of mandate, the authority to  
28 complete examinations and exam reports has been expressly and specifically given to the  
FID. NRS 604A.730(1); NRS 604A.710.



1 Honorable Court holds a hearing on this matter. The FID will post the Court Order along  
2 with the Notice of Appeal as soon as the Notice of Appeal is filed.

3  
4 Respectfully submitted this 16th day of October, 2017.

5 ADAM PAUL LAXALT  
6 Attorney General

7 By: /s/ VIVIENNE RAKOWSKY  
8 VIVIENNE RAKOWSKY  
9 Deputy Attorney General  
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/s/ MICHELE CARO  
An employee of the office of the  
Nevada Attorney General

EXHIBIT “A”

EXHIBIT “A”

APP 017446

## Vivienne Rakowsky

---

**From:** Patrick Reilly <PREilly@hollandhart.com>  
**Sent:** Wednesday, July 13, 2016 4:48 PM  
**To:** Denise McKay  
**Cc:** Vivienne Rakowsky; David J. Pope; Nicole Lovelock  
**Subject:** RE: TitleMax/FID

Judge McKay,

Given the potential issues with recording of the hearing next week, and the difficulty of having a court reporter prepare a complete and accurate transcript after the fact, my client has asked that we have a court reporter attend and transcribe the hearing. Please let me know if this presents a problem. TitleMax will bear the cost of having the court reporter attend.

Thank you.

**Patrick J. Reilly**  
Holland & Hart LLP  
9555 Hillwood Drive, Second Floor  
Las Vegas, Nevada 89134  
Office Phone (702) 222-2542  
Cell Phone (702) 882-0112  
E-mail: preilly@hollandhart.com

**HOLLAND & HART**



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

EXHIBIT “B”

EXHIBIT “B”

APP 017448

## Vivienne Rakowsky

---

**From:** Vivienne Rakowsky  
**Sent:** Thursday, July 14, 2016 4:34 PM  
**To:** 'Denise McKay'; Patrick Reilly  
**Cc:** David J. Pope; Nicole Lovelock; Rickisha L. Hightower-Singletary  
**Subject:** RE: TitleMax/FID

The FID has arranged for a court reporter and will split the cost with TitleMax.

Sincerely,  
Vivienne

-----Original Message-----

From: Denise McKay [mailto:[dsmckay@business.nv.gov](mailto:dsmckay@business.nv.gov)]  
Sent: Wednesday, July 13, 2016 4:53 PM  
To: Patrick Reilly  
Cc: Vivienne Rakowsky; David J. Pope; Nicole Lovelock  
Subject: RE: TitleMax/FID

That does not present a problem.

Thank you.

---

From: Patrick Reilly [PREilly@hollandhart.com]  
Sent: Wednesday, July 13, 2016 4:48 PM  
To: Denise McKay  
Cc: Vivienne Rakowsky (VRakowsky@ag.nv.gov); David J. Pope; Nicole Lovelock  
Subject: RE: TitleMax/FID

Judge McKay,

Given the potential issues with recording of the hearing next week, and the difficulty of having a court reporter prepare a complete and accurate transcript after the fact, my client has asked that we have a court reporter attend and transcribe the hearing. Please let me know if this presents a problem. TitleMax will bear the cost of having the court reporter attend.

Thank you.  
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[cid:image001.png@01D1DD26.5A9428D0]<<http://www.hollandhart.com/>>

EXHIBIT “C”

EXHIBIT “C”

APP 017450

## Vivienne Rakowsky

---

**From:** Rickisha L. Hightower-Singletary  
**Sent:** Friday, July 29, 2016 4:52 PM  
**To:** 'dsmckay@business.nv.gov'  
**Cc:** 'preilly@hollandhart.com'; Vivienne Rakowsky; David J. Pope; Michele L. Caro  
**Subject:** RE: In re TitleMax

**Importance:** High

Also, please note that the Division is only seeking the costs of the court reporter and transcript used during the final hearing. The Division seeks half the cost of the court reporter and the full cost of the transcripts, including any additional charges that may have been incurred for any expedited or additional services requested by TitleMax.

Thanks.

Rickisha Hightower-Singletary, Esq.

**From:** Rickisha L. Hightower-Singletary  
**Sent:** Friday, July 29, 2016 4:43 PM  
**To:** 'dsmckay@business.nv.gov' <dsmckay@business.nv.gov>  
**Cc:** 'preilly@hollandhart.com' <preilly@hollandhart.com>; Vivienne Rakowsky <VRakowsky@ag.nv.gov>; David J. Pope <DPope@ag.nv.gov>; Michele L. Caro <MCaro@ag.nv.gov>  
**Subject:** In re TitleMax  
**Importance:** High

Good afternoon,

Please find attached the Division's Post-hearing brief on the questions posed at the conclusion of the final hearing. Please note, our mail room has closed for the day, so the letter will be postmarked for Monday, August 1, 2016.

***Rickisha Hightower-Singletary, Esq.***

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[rsingletary@ag.nv.gov](mailto:rsingletary@ag.nv.gov)



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EXHIBIT “D”

EXHIBIT “D”

APP 017452

**From:** Michele L. Caro [mailto:MCaro@ag.nv.gov]

**Sent:** Friday, September 02, 2016 10:36 AM

**To:** Alisa Badalov <abadalov@litigationervices.com>

**Subject:** RE: Transcript Order Delivery - In Re: Title Max/FID Disciplinary Action - Job No:324200 Job Date:07/18/2016  
Hearing

Hi Alisa,

Could you please have all invoices for the 3 TitleMax transcripts e-mailed to me?

If so, I can get them all to the proper party to line payment up ASAP.

Thank you,

Michele

702.486.3897

---

**From:** Michele L. Caro

**Sent:** Wednesday, August 24, 2016 12:35 PM

**To:** Alisa Badalov

**Subject:** FW: Transcript Order Delivery - In Re: Title Max/FID Disciplinary Action - Job No:324200 Job Date:07/18/2016  
Hearing

Hi Alisa,

Any word on the transcripts from the other days, 7/19 and 7/20?

Michele

702.486.3897

---

**From:** Litigation Services Transcripts [mailto:transcripts@litigationervices.com]

**Sent:** Monday, August 15, 2016 4:27 PM

**To:** Michele L. Caro

**Subject:** Transcript Order Delivery - In Re: Title Max/FID Disciplinary Action - Job No:324200 Job Date:07/18/2016  
Hearing

Thank you for choosing Litigation Services to provide deposition services for this matter.

The transcript ordered is now available for download.

Please click the 'Download' link to access the file.

Witness Name	FileType	FileName	Download Link
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Hearing	Condensed PDF	324200HK_cond_Z.pdf	<a href="#">Download</a>
Hearing	PDF Transcript	324200HK_full.pdf	<a href="#">Download</a>
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eTran. Order #134242

EXHIBIT “E”

EXHIBIT “E”

APP 017455

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## REGISTER OF ACTIONS

**CASE NO. A-16-743134-J**

Titlemax of Nevada Inc, Petitioner(s) vs. Nevada State of,  
Respondent(s)

§  
§  
§  
§  
§  
§

Case Type: **Other Nevada State  
Agency Appeal**  
Date Filed: **09/08/2016**  
Location: **Department 15**  
Cross-Reference Case Number: **A743134**

### PARTY INFORMATION

Petitioner	Titlebucks	Lead Attorneys Patrick J. Reilly <i>Retained</i> 702-669-4600(W)
Petitioner	Titlemax of Nevada Inc	Patrick J. Reilly <i>Retained</i> 702-669-4600(W)
Respondent	Nevada State of	David J. Pope <i>Retained</i> 7026568084(W)

### EVENTS & ORDERS OF THE COURT

09/22/2017 [Minute Order](#) (3:00 AM) (Judicial Officer Hardy, Joe)

#### Minutes

09/22/2017 3:00 AM

- COURT NOTES the relief set forth in the proposed order that the Court has stricken out does not appear to have been raised in the parties voluminous briefs, at oral argument, or in the Court's verbal ruling. To the extent TitleMax desires the Court to consider such relief, an unfiled letter request is not the proper method. CLERK'S NOTE: A copy of this minute order was e-mailed to: Daniel F. Polsenberg, Esq. [dpolsenberg@lrrc.com], Joel D. Henriod, Esq. [jhenriod@lrrc.com], Malani Dal Kotchka-Alanes, Esq. [mkotchkaalanes@lrrc.com], Patrick J. Reilly, Esq. [preilly@hollandhart.com], and Erica C. Smit, Esq. [ecsmi@hollandhart.com]. (KD 9/22/17)

[Return to Register of Actions](#)

**APP 017456**

1 B. That the FID must return to TitleMax the \$50,000 administrative fine already  
2 paid by TitleMax. The FID shall refund the amount of the administrative fine  
3 in accordance with standard agency process;

4 ~~C. That the FID, within 30 days of Notice of Entry of this Order, must return to~~  
5 ~~TitleMax the costs for the court reporter and transcripts in the administrative~~  
6 ~~proceedings paid by TitleMax; and~~ *SH*

7 ~~D. That the FID must issue reissue its Reports of Examination for TitleMax for~~  
8 ~~2014 and 2015 and provide TitleMax with "Satisfactory" ratings, given that~~  
9 ~~this Court has found that TitleMax did not violate NRS 604A.070, NRS~~  
10 ~~604A.210, or NRS 604A.445 and the ALJ found that TitleMax did not violate~~  
11 ~~NAC 604A.230 (a finding not challenged by the FID). The FID shall provide~~  
12 ~~electronic and revised copies of the amended Reports of Examination to~~  
13 ~~TitleMax within 30 days of Notice of Entry of this Order.~~ *SH*

14 *See minute order for details.*

15 IT IS SO ORDERED.

16 Dated this 20<sup>th</sup> day of ~~August~~ <sup>September</sup>, 2017.

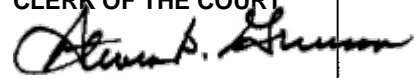
17 *Joe Hardy*  
DISTRICT COURT JUDGE

18  
19 Submitted by:  
LEWIS ROCA ROTHGERBER CHRISTIE LLP

20 By /s/ Daniel F. Polsenberg  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondent.

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

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Respondent, STATE OF NEVADA,  
DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS  
DIVISION, hereby appeals, to the Nevada Supreme Court, the Order Reversing and

...


...

...

1 Vacating Administrative Law Judge's Order issued on September 21, 2017 and attached  
2 hereto, with the accompanying Notice of Entry of Order, as Exhibit "A."

3 DATED this 19<sup>th</sup> day of October, 2017.

4 ADAM PAUL LAXALT  
5 Attorney General

6  
7 By:   
8 David J. Pope (Bar. No. 8617)  
9 Senior Deputy Attorney General  
10 Vivienne Rakowsky (Bar No. 9160)  
11 Deputy Attorney General  
12 Rickisha Hightower-Singletary (Bar No. 14019C)  
13 Deputy Attorney General  
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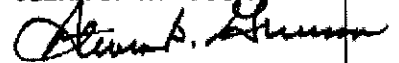


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/s/ Debra Turman  
An employee of the office of the  
Nevada Attorney General

# Exhibit A

APP 017461



1 NEOJ

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13 *TitleBucks and TitleMax*

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 TITLEMAX OF NEVADA, INC., d/b/a  
17 TITLEBUCKS and TITLEMAX, a Delaware  
18 corporation,

Petitioner,

19 vs.

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

23 Respondent.

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

NOTICE OF ENTRY OF ORDER

1 Please take notice that on the 21st day of September, 2017, an "Order  
2 Reversing and Vacating Administrative Law Judge's Order" was entered in this  
3 case. A copy of the order is attached.

4 Dated this 22nd day of September, 2017.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6  
7 By /s/ Daniel F. Polsenberg

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*Steven D. Grierson*

**ORDR**

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*TITLEBUCKS d/b/a TITLEMAX*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

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

**ORDER REVERSING AND  
VACATING ADMINISTRATIVE LAW  
JUDGE'S ORDER**

Hearing Date: August 3, 2017  
Hearing Time: 9:00 a.m.

<input type="checkbox"/> Jury	<input type="checkbox"/> Disposed After Trial Start
<input type="checkbox"/> Jury	<input type="checkbox"/> Verdict Reached
<input type="checkbox"/> Other	<input type="checkbox"/> Other
<input type="checkbox"/> Non-Jury	<input type="checkbox"/> Disposed After Trial Start
<input type="checkbox"/> Non-Jury	<input type="checkbox"/> Judgment Reached
<input checked="" type="checkbox"/> Transferred before Trial	

1 I.

2 **BACKGROUND, FINDINGS, AND SUMMARY OF RULING**

3 1. On August 3, 2017, this Court heard oral argument on TitleMax's Petition for  
4 Judicial Review. Daniel F. Polsenberg and Dale Kotchka-Alanes of Lewis Roca  
5 Rothgerber Christie LLP, as well as Patrick J. Reilly of Holland & Hart LLP,  
6 appeared on behalf of TitleMax. Deputy Attorneys General David J. Pope, William  
7 J. McKean, Vivienne Rakowsky, and Rickisha Hightower-Singletary appeared on  
8 behalf of the State of Nevada Department of Business and Industry Financial  
9 Institutions Division (the "FID").

10 2. The Court reviewed all the briefing by the parties, as well as pertinent parts of  
11 the administrative record ("ROA") and the transcript of the hearing before the  
12 Administrative Law Judge ("Hr'g Tr."). The Court also considered the arguments of  
13 the parties, all of which lead the Court to its holding set forth herein.

14 A. **TitleMax's Offering of the GPDA**

15 3. Under NRS 604A.445, the original term of a title loan can be 30 days or up to  
16 210 days if certain conditions are met.

17 4. TitleMax originally offered a 30-day product in Nevada and allowed  
18 customers to refinance up to six times. TitleMax offered a repayment plan that  
19 incorporated a grace period under which the customer had to make minimum interest  
20 payments, but could then take an additional seven or eight months to repay principal  
21 only. (Hr'g Tr. 477:11-478:3.)

22 5. The FID took issue with TitleMax's 30-day product, arguing only that  
23 TitleMax did not adequately take into account customers' ability to repay the loan in  
24 30 days. (Hr'g Tr. 478:9-15; 479:6-9.)

25 6. TitleMax disagreed with the FID's interpretation that its 30-day loan product  
26 did not adequately take into account borrowers' ability to repay due to the ability of  
27 customers to extend the loan up to six times, but nevertheless stopped offering the 30-  
28 day product in a good faith attempt to please the FID. (Hr'g Tr. 478:16-23.)

1 7. As an alternative to the 30-day product, TitleMax began offering a 210-day  
2 loan in 2014. (Hr'g Tr. 478:19-479:13.)

3 8. To offer customers flexibility in repayment, TitleMax, in reliance on counsel,  
4 also began offering a Grace Period Payments Deferment Agreement ("GPDA").  
5 (Hr'g Tr. 480:9-22, 496:10-24.)

6 9. The GPDA contained a payment schedule comprised of fourteen 30-day  
7 payment periods. (Hr'g Tr. 483:10-11; ROA 010646-010648.)

8 10. Under the GPDA, the customer was charged only 210 days of interest, and the  
9 interest rate under the loan agreement remained unchanged. (ROA 010646-010648.)

10 11. The first seven payments could be interest-only payments, and then the  
11 customer had an additional 210 days to repay the principal without any interest or  
12 fees included. (ROA 010646-010647; Hr'g Tr. 482:1-12, 488:17-21, 490:12-16.)

13 12. The payment schedule under the GPDA was as follows:

Payment Number	Amount of Payment	Deferred Periodic Due Date
1	<Interest Only Pymt on New Principal Bal.>	<Fist 30 Day Due Date>
2	^same as above	^Plus 30 Days
3	^same as above	^Plus 30 Days
4	^same as above	^Plus 30 Days
5	^same as above	^Plus 30 Days
6	^same as above	^Plus 30 Days
7	^same as above	^Plus 30 Days
8	<New Principal bal. divided by 7>	^Plus 30 Days
9	<New Principal bal. divided by 7>	^Plus 30 Days
10	<New Principal bal. divided by 7>	^Plus 30 Days
11	<New Principal bal. divided by 7>	^Plus 30 Days
12	<New Principal bal. divided by 7>	^Plus 30 Days
13	<New Principal bal. divided by 7>	^Plus 30 Days



14	<New Principal bal. divided by 7> **If odd amt list odd amt here	^Plus 30 Days
The total amount paid after making all payments under the terms of the Grace Period Payments Deferment Agreement:	Total of above columns	

(ROA 010646-10647.)

13. There was no customer deception in the GPDA. When voluntarily signing the GPDA, customers acknowledged that their obligation to pay simple interest under the loan agreement remained unchanged and that interest would be charged at the original contractual interest rate. (ROA 010646-10648.)

14. TitleMax gratuitously offered the GPDA and did not charge any fees for entering the GPDA. (Hr'g Tr. 74:25-75:12; 192:20-25; 398:12-17.)

15. While the GPDA allowed for interest-only payments for the first 210 days, customers could make payments on the principal before the end of the first 210 days. In fact, TitleMax had several customers who repaid their loan in full within the first 210 days, even though they had signed a GPDA.<sup>1</sup>

16. Before TitleMax offered the GPDA, it consulted with its own legal department and outside counsel, both of whom advised that the GPDA complied with Nevada law. (Hr'g Tr. 488:23-489:3, 496:10-24, 509:13-17.)

#### **B. Relevant Chronology**

17. December 18, 2014, was the date that the FID's 2014 examination of

<sup>1</sup> (See ROA 001840-001858, 007211-007233, 003905-003927, 008395-008421, 006568-006591, 000467-000491, 006651-006675, 002451-002473, 002475-002500, 000793-000815, 005309-005331, 002957-002980, 007152-007173, 002786-002805, 002192-002212, 001118-001137, 004799-004819, 001474-001492, 003399-003420, 001432-001451, 003644-003662, 008821-008840, 000167-000191, 000229-000254, 006288-006308.)

1 TitleMax closed. (ROA 008918.) The FID issued a Report of Examination with a  
2 “Needs Improvement” rating and stated that TitleMax’s GPDA “violates NRS  
3 604A.445(3) and NRS 604A.210.” (ROA 008918-008934.)

4 18. Shortly after the conclusion of the FID’s examination in December 2014,  
5 TitleMax – through counsel – wrote a detailed letter to the FID, responding to the  
6 alleged statutory violations. (ROA 009991-010000.) In this February 9, 2015, letter,  
7 TitleMax spent several pages setting forth its position why the GPDA did not violate  
8 NRS 604A.210 and 604A.445. (ROA 009995-0100000.) TitleMax informed the  
9 FID, “As an alternative to the 210-day single-pay loan, the Companies are willing to  
10 revert back to their prior approach with 30-day single pay loans, which the  
11 Companies believe are in full compliance with applicable law.” (ROA 009999.)

12 19. TitleMax explained that it considered the GPDA to be in full compliance with  
13 Nevada law and requested that the FID “change its ‘Needs Improvement’ rating to  
14 ‘Satisfactory’ for each of the 2014 audits. *If the Division believes that our analysis is*  
15 *incorrect or that our procedures will result in further negative regulatory findings;*  
16 *however, please respond to us in writing.*” (ROA 009999-010000 (emphasis added).)

17 20. In a letter dated March 2, 2015, the FID addressed a different statutory issue  
18 and then stated in a single sentence: “With regard to your other matters raised in your  
19 February 9 Letter, the FID stands by its position.” (ROA 010004-010006.)

20 21. The FID did not respond to TitleMax’s offer to revert back to the 30-day loan  
21 product, nor did the FID offer any reasoning, explanation, or legal authority for the  
22 proposition that the GPDA allegedly violated NRS 604A.210 and 604A.445.

23 22. The FID commenced another examination of TitleMax beginning in May  
24 2015, which closed on June 17, 2015. (ROA 008936.) In its 2015 Report of  
25 Examination, the FID issued an “Unsatisfactory” rating to TitleMax, citing  
26 TitleMax’s offering of the GPDA as “a repeat violation.” (ROA 008936-008948.)

27 23. On June 1, 2015, TitleMax filed a declaratory relief action in state court,  
28 sixteen days before the 2015 examination was completed. (Hr’g Tr. 438:14-21,

1 517:2-4; ROA 010697-010700.) TitleMax sought declaratory relief as to whether the  
2 GPDA violated NRS 604A.210 and 604A.445. (ROA 010697-010700.)

3 24. On October 6, 2015, the FID moved to dismiss TitleMax's pending  
4 declaratory relief action for alleged "failure to exhaust administrative remedies."  
5 (ROA 011010-011021).

6 25. On the same day, the FID filed the administrative complaint against TitleMax  
7 that forms the basis of TitleMax's appeal to this Court. (ROA 000001-000017.)

8 **C. The Administrative Proceedings Against TitleMax**

9 26. On October 6, 2015, the FID filed an administrative complaint against  
10 TitleMax, alleging that TitleMax violated NAC 604A.230 and willfully violated NRS  
11 604A.210 and NRS 604A.445. (ROA 000001-000017.)

12 27. The parties called witnesses and conducted administrative proceedings before  
13 Administrative Law Judge ("ALJ") Denise S. McKay on July 18, July 19, and July  
14 20, 2017. (*See* 10/18/2016 Petitioner's Notice of Transmittal of Record of  
15 Proceedings and accompanying hearing transcript ("Hr'g Tr.").)

16 28. On August 12, 2016, the ALJ issued Findings of Fact, Conclusions of Law,  
17 and Order ("Order"). (ROA 0122279-012295.)

18 29. In her Order, the ALJ found that TitleMax did not violate NAC 604A.230's  
19 prohibition against guarantors by allowing individuals who were not legal owners of  
20 the vehicle to be co-borrowers on the title loan; she pointed out that there was no  
21 evidence that TitleMax received payment from the non-legal owner in any instance  
22 and that the non-legal owners were not acting as guarantors. (ROA 012290-012291.)

23 30. The FID did not challenge or appeal the ALJ's ruling that TitleMax did not  
24 violate NAC 604A.230, so it is not before this Court.

25 31. However, the ALJ concluded that TitleMax's practice of offering the GPDA  
26 violated NRS 604A.210 and NRS 604A.445. (ROA 012287-012290.) The ALJ  
27 further concluded that TitleMax willfully violated NRS 604A.210 and NRS  
28 604A.445 because it continued to offer the GPDA even after TitleMax was advised

1 by FID lay examiners that they believed the GPDA violated the statutes. (ROA  
2 012292-012294.) The ALJ ordered:

- 3 a. That TitleMax immediately cease and desist offering the GPDA to  
4 customers;
- 5 b. That TitleMax conduct a full accounting and return of all principal and  
6 interest it collected under every GPDA entered into after December 18,  
7 2014;
- 8 c. That TitleMax pay an administrative fine of \$307,000 with \$257,000  
9 held in abeyance provided TitleMax was, and remained, compliant with  
10 NRS 604A.445; and
- 11 d. That TitleMax compensate the FID for the costs expended on the court  
12 reporter and transcripts in the administrative proceedings. (ROA  
13 012294.)

14 32. These determinations by the ALJ are before this Court, as they are the subject  
15 of TitleMax's Petition for Judicial Review.

16 **D. Relevant Statutes**

17 33. At issue in these proceedings are various provisions of NRS 604A.<sup>2</sup>

18 34. NRS 604A.070 defines grace period to mean "any period of deferment  
19 offered gratuitously by a licensee to a customer if the licensee complies with the  
20 provisions of NRS 604A.210."

21 35. NRS 604A.210, in turn, provides:

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

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

26 <sup>2</sup> Chapter NRS 604A was recently amended, with changes to take effect July 1 and  
27 October 1, 2017. In this Order, unless otherwise indicated, the Court cites to the  
28 versions of the statutes in effect at the time TitleMax offered the GPDA and does not  
include the 2017 amendments.

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

3           36. The definition of “extension” in NRS 604A.065 provides:

4           1. “Extension” means any extension or rollover of a loan beyond  
5           the date on which the loan is required to be paid in full under the  
6           original terms of the loan agreement, regardless of the name given  
7           to the extension or rollover.

8           2. The term does not include a grace period.

9           37. NRS 604A.445(3) provides:

10           Notwithstanding any other provision of this chapter to the  
11           contrary:

12           ....

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

14           (a) The loan provides for payments in installments;

15           (b) The payments are calculated to ratably and fully amortize  
16           the entire amount of principal and interest payable on the  
17           loan;

18           (c) The loan is not subject to any extension; and

19           (d) The loan does not require a balloon payment of any kind.

20           **E. The ALJ’s Decision**

21           38. The ALJ stated that “NRS 604A.210 and NRS 604A.[0]70 are the only  
22           provisions in Chapter 604A that address grace periods,” but nevertheless concluded  
23           that the GPDA had to comply with NRS 604A.445(3). (ROA 012287-012290.)

24           39. The ALJ found that the GPDA did not comply with NRS 604A.445(3)  
25           because it “is an illegal extension of the loan in violation of NRS 604A.445(3)(c)”  
26           and the payments are not ratably and fully amortized. (ROA 012289-012290.)

27           40. The ALJ concluded that the GPDA “does not constitute a true grace period”  
28           and that the “imposition of seven interest-only payments is simply the impermissible  
            charging of additional interest,” as “TitleMax stands to earn more money in interest  
            charges under the [GPDA].” (ROA 012289-012290.)

1       41. The ALJ also found that TitleMax willfully violated NRS 604A.445(3) by  
2 continuing to offer the GPDA after being told by the FID during 2014 and 2015  
3 examinations that the GPDA was unlawful. (ROA 012292-012293.)

4       42. Since “TitleMax was placed on notice by [the] FID that” the GPDA “violated  
5 the law” no later than December 18, 2014, the ALJ ruled that “every [GPDA] entered  
6 into after December 18, 2014, is void, and TitleMax is not entitled to collect, receive  
7 or retain any principal, interest or other charges or fees with respect to those loans.”  
8 (ROA 012293.) Only 307 loans, however, were in evidence in the administrative  
9 proceedings.

10       **F.    Ruling**

11       43. The Court hereby reverses and vacates the ALJ’s order. The Court disagrees  
12 with and reverses the ALJ’s conclusions regarding TitleMax’s interpretation of NRS  
13 604A.070, NRS 604A.210, and NRS 604A.445. The Court also finds that TitleMax  
14 did not willfully violate any of these provisions.

15       44. The GPDA as written does not violate NRS 604A.070, NRS 604A.210, or  
16 NRS 604A.445.

17       45. The plain language of NRS 604A.445(3) indicates that this statute applies to  
18 the “original term” of the loan, and does not govern grace periods. NRS 604A.445(3)  
19 does not set a maximum time period on the loan, and amortization is not a  
20 requirement for grace periods.

21       46. Moreover, the word “additional” as used in NRS 604A.210 means something  
22 more than the original contractual rate of interest. The legislative history of NRS  
23 604A.210 supports TitleMax’s statutory interpretation.

24       47. At a minimum, TitleMax’s statutory interpretation, if not correct, is  
25 reasonable and thus precludes a finding of willfulness. That the FID attempted to  
26 pass a regulation in 2012 that would have prohibited charging any interest during a  
27 grace period, but did not do so, demonstrates that TitleMax reasonably interpreted  
28 NRS 604A.210 and did not act willfully. TitleMax’s reliance on counsel, although

1 not dispositive, is another indication that TitleMax acted in good faith and did not  
2 willfully violate any provision of NRS 604A. The FID's failure to respond to  
3 TitleMax's request for an explanation of the FID's position also leads to the  
4 conclusion that TitleMax did not act willfully.

5 48. The ALJ's conclusion that TitleMax acted willfully because it failed to  
6 immediately change its way of doing business the moment lay FID examiners opined  
7 it should, is illogical and clearly erroneous.

8 49. In sum, the ALJ's ruling is clearly erroneous, arbitrary and capricious, and is  
9 hereby reversed and vacated.

## 10 II.

### 11 **TITLEMAX DID NOT VIOLATE NRS 604A.070, NRS 604A.210, OR NRS 604A.445**

#### 12 **A. This Court Owes No Deference to the FID** 13 **or the ALJ in Interpreting Plain Statutory Language**

14 50. The Court finds NRS 604A.070, NRS 604A.210, and NRS 604A.445 to be  
15 unambiguous and thus this Court need not defer to the FID's interpretation of the  
16 statutes. The FID is not entitled to deference by this Court in determining the  
17 meaning of the statutes' plain language.

18 51. Moreover, the question here is whether the structure of the GPDA complies  
19 with NRS 604A.445(3) and NRS 604A.210. That is a purely legal determination  
20 upon which the Court owes no deference to the FID or to the ALJ. *Elizondo v. Hood*  
21 *Mach., Inc.*, 129 Nev. Adv. Op. 84, 312 P.3d 479, 482 (2013) (courts decide "pure  
22 legal questions without deference to an agency determination") (internal quotation  
23 marks and citation omitted); *Manke Truck Lines, Inc. v. Pub. Serv. Comm'n of Nev.*,  
24 109 Nev. 1034, 1036-37, 862 P.2d 1201, 1203 (1993) (questions of statutory  
25 construction are "purely legal issue[s] . . . reviewed without any deference  
26 whatsoever to the conclusions of the agency").

1 52. To the extent deference is owed to either the ALJ or the FID, the Court finds,  
2 in the alternative, that the FID's and the ALJ's statutory interpretations are clearly  
3 erroneous.

4 **B. The Requirements of NRS 604A.445(3)**  
5 **Do Not Apply to Grace Periods**

6 53. NRS 604A.445 does not govern grace periods and thus does not apply to the  
7 GPDA.

8 54. Under the plain language of NRS 604A.445(3), the 210-day limit applies only  
9 to the original term of the loan; that subsection refers to and governs the original term  
10 of the loan, not grace periods.

11 55. NRS 604A.445(3) does not set a maximum time period on a loan. It does not  
12 say that a title loan can never be longer than 210 days.

13 56. Rather, by providing that the "original term" of a title loan can be up to 210  
14 days, the statute contemplates that a title loan can be of longer duration if a grace  
15 period is included. While NRS 604A.445(3) prohibits extensions of a 210-day title  
16 loan, the definition of "extension" specifically excludes grace periods. NRS  
17 604A.065(2).

18 57. TitleMax's GPDA complied with the statutory provisions regarding grace  
19 periods (NRS 604A.070 and NRS 604A.210), and thus there was no basis for the ALJ  
20 to conclude that the GPDA was an illegal extension.

21 58. Moreover, the FID conceded that a grace period could be of unlimited  
22 duration and that the mere length of the repayment period under the GPDA was not a  
23 violation of any law. (Hr'g Tr. 219:10-11; 279:11-280:10; 396:24-397:2; 398:8-11;  
24 663:10-11.)

25 59. Under the plain language of the statutes, amortization is not a requirement for  
26 grace periods. The amortization requirement in NRS 604A.445(3)(b) again applies to  
27 the "original term" of the loan.  
28



1       60. The FID also acknowledged that there was no amortization requirement for  
2 grace periods. (Hr’g Tr. 84:17-19; 185:7-10; 298:24-299:1; 419:15-21.)

3       61. Indeed, as a grace period is by definition a period of deferment, it makes no  
4 sense to require amortization during a grace period.

5       62. In light of the entire harmonized statutory scheme, TitleMax’s statutory  
6 interpretation is the better-reasoned approach.

7       63. The requirements of NRS 604A.445(3) do not apply to grace periods, and  
8 TitleMax did not violate NRS 604A.445(3) by offering the GPDA to its customers.

9           **C.     Both the Plain Language and the Legislative History of NRS**  
10           **604A.210 Establish That TitleMax Did Not Violate NRS 604A.210**

11       64. Under NRS 604A.070, a grace period is “any period of deferment offered  
12 gratuitously by a licensee to a customer if the licensee complies with the provisions  
13 of NRS 604A.210.”

14       65. The GPDA was comprised of a lawful grace period because it offered a  
15 period of deferment on payments, was offered voluntarily and without charge (i.e.  
16 gratuitously), and complied with NRS 604A.210.

17       66. Under NRS 604A.210, grace periods are permitted as long as the licensee  
18 does not charge the customer “1. Any fees for granting such a grace period; or 2. Any  
19 additional fees or additional interest on the outstanding loan during such a grace  
20 period.”

21       67. It is undisputed that TitleMax did not charge any fees for customers entering  
22 the GPDA. (ROA 010646-010648; Hr’g Tr. 74:25-75:12; 192:20-25; 398:12-17.)

23       68. Under the plain language of NRS 604A.210, which the Court finds  
24 unambiguous, the word “additional” preceding “interest” means something more than  
25 the original contract rate of interest provided for in the loan agreement.

26       69. Words in statutes must have meaning. *S. Nevada Homebuilders Ass’n v.*  
27 *Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (courts must interpret  
28 statutes “in a way that would not render words or phrases superfluous or make a

1 provision nugatory”) (internal quotation marks and citation omitted); *Coast Hotels &*  
2 *Casinos, Inc. v. Nevada State Labor Comm’n*, 117 Nev. 835, 841, 34 P.3d 546, 550  
3 (2001) (“[T]his court will read each sentence, phrase, and word to render it  
4 meaningful within the context of the purpose of the legislation.”).

5 70. The ALJ’s determination ignores the rule that each word must have meaning  
6 and ignores the word “additional.” NRS 604A.210 must be interpreted to mean that  
7 the licensee can charge interest at the original contract rate during the grace period.

8 71. If the legislature had intended that the total amount of interest charged in  
9 conjunction with a grace period could not exceed the total amount of interest set forth  
10 in the Truth-in-Lending Act Disclosures accompanying the original loan, it would  
11 have said so. *See* NRS 604A.435(1)(e) (prohibiting a deferred deposit lender from  
12 accepting a “check or written authorization for an electronic transfer of money for  
13 any deferred deposit loan *in an amount which exceeds the total of payments set forth*  
14 *in the disclosure statement required by the Truth in Lending Act* and Regulation Z  
15 that is provided to the customer”) (emphasis added); *Dep’t of Taxation v.*  
16 *DaimlerChrysler Servs. N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005)  
17 (“Here, the Legislature could have clearly provided [the contended result], but it did  
18 not do so.”); *see also Jama v. Immigration & Customs Enf’t*, 543 U.S. 335, 341  
19 (2005) (“We do not lightly assume that [the legislature] has omitted from its adopted  
20 text requirements that it nonetheless intends to apply, and our reluctance is even  
21 greater when [the legislature] has shown elsewhere in the same statute that it knows  
22 how to make such a requirement manifest.”); *Russello v. U.S.*, 464 U.S. 16, 23 (1983)  
23 (“Had Congress intended [the contended result], it presumably would have done so  
24 expressly as it did in the immediately following subsection”).

25 72. The Court finds NRS 604A.210 to be unambiguous; the prohibition on  
26 “additional interest” means a licensee cannot charge interest at a *rate* of interest  
27 higher than that specified in the loan agreement.

28 73. However, even if NRS 604A.210 were ambiguous, the legislative history

1 supports TitleMax's interpretation. The word "additional" was specifically added to  
2 the original proposed statute as a clarification of what interest could be charged  
3 during the grace period. (ROA 010261; ROA 010292.) This indicates that the  
4 legislature chose not to prohibit "any interest" being charged during a grace period.  
5 *In re Town & Country Home Nursing Servs., Inc.*, 963 F.2d 1146, 1151 (9th Cir.  
6 1991) ("As a general canon of statutory construction, where the final version of a  
7 statute [changes] language contained in an earlier draft, a court may presume that the  
8 earlier draft is inconsistent with ultimate congressional intentions.").

9 74. Moreover, at a public workshop in 2012, the FID solicited comments in  
10 relation to "POSSIBLE ACTION regarding whether the proposed regulations should  
11 be amended to add a regulation to address accrual of contract interest during a grace  
12 period." (ROA 012394.)

13 75. Members of the lending industry proposed a regulation providing "a licensee  
14 is permitted to continue to accrue interest at its contract rate during the term of any  
15 grace period offered within the terms and conditions of its title loan agreement  
16 provided the licensee does not charge any fees or any additional interest, such as a  
17 penalty or higher rate of interest, during such grace period." *See*  
18 [http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed\\_Regulations/20](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf)  
19 [12-09-21\\_NoticeOfWorkshop604A.pdf](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf), Ex. C.

20 76. In contrast, the FID submitted proposed regulatory language stating that a  
21 licensee could *collect* interest on the outstanding loan during a grace period "not to  
22 exceed the amount of accrued interest and fees as disclosed in the loan agreement.  
23 During a grace period, no interest shall accrue and no fees shall be charged after  
24 expiration of the loan period." (ROA 012397);  
25 [http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed\\_Regulations/20](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf)  
26 [12-09-21\\_NoticeOfWorkshop604A.pdf](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Opinion/Propoosed_Regulations/2012-09-21_NoticeOfWorkshop604A.pdf), Ex. D.

27 77. At the public hearing on the conflicting proposed regulations, the FID  
28 acknowledged that NRS 604A.210 was at least ambiguous and that the industry

1 interpretation was plausible: “It was stated that the Division acknowledges some  
2 ambiguity exists in the statutes, and that a possible interpretation would permit the  
3 contract rate of interest to be charged during a grace period so long as it is not  
4 considered ‘additional interest or fees’ on the loan.” (ROA 012402.)

5 78. In the end, neither the industry’s nor the FID’s proposed regulation was ever  
6 adopted. (Hr’g Tr. 371:5-16.)

7 79. To the extent NRS 604A.210 is ambiguous, the FID engaged in proposed  
8 rulemaking that would have clarified NRS 604A.210 to support the FID’s position in  
9 this case, but the proposed regulation was not enacted. This too supports the  
10 interpretation that NRS 604A.210 does not prohibit charging any interest during a  
11 grace period. *See Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op. 35,  
12 373 P.3d 66, 71 (2016) (considering an introduced bill attempting to add “language  
13 allowing the collection costs permitted under NRS 116.310313 to become part of the  
14 HOA’s lien and the superpriority lien,” but pointing out this bill never passed and  
15 concluding “we must presume the Legislature did not intend for such costs to be  
16 included as part of an HOA’s superpriority lien”).

17 80. Under NRS 604A.210, licensees are allowed to charge simple interest at the  
18 original contractual rate during a grace period, and TitleMax did not violate NRS  
19 604A.210.

### 20 III.

#### 21 TITLEMAX ACTED REASONABLY, PRECLUDING A FINDING OF WILLFULNESS

22  
23 81. Alternatively, and at a minimum, the Court concludes that the ALJ’s  
24 willfulness finding is clearly erroneous. Even assuming TitleMax’s statutory  
25 interpretation were incorrect – which the Court does not believe it is – TitleMax’s  
26 statutory interpretation was reasonable. There was no willful violation that could  
27 possibly lead to the penalties the ALJ imposed.  
28

1           **A.     The Legislative History of NRS 604A.210 Confirms**  
2           **TitleMax Acted on a Reasonable Interpretation of That Statute**

3           82. TitleMax cannot be found to have willfully violated NRS 604A.210 when the  
4 FID's interpretation of the statute was never codified or enacted. As described in  
5 paragraphs 74-78 above, in its 2012 workshop, the FID acknowledged ambiguity in  
6 NRS 604A.210 and recognized that TitleMax's interpretation of the statute was  
7 plausible. The rule the FID proposed to address the issue did not pass. Thus, there  
8 can be no willfulness here.

9           83. The FID's proposed, but never-passed regulation supports the Court's  
10 determination that the ALJ's ruling was clearly erroneous and arbitrary and  
11 capricious.

12           84. TitleMax's statutory interpretation was not objectively unreasonable. That  
13 TitleMax acted in accord with a reasonable and plausible interpretation means that  
14 TitleMax did not engage in any willful violation. *See Safeco Ins. Co. of Am. v. Burr*,  
15 551 U.S. 47, 70 (2007) (there was no willful violation where party's reading of the  
16 statute "was not objectively unreasonable").

17           **B.     TitleMax Acted Reasonably in Determining Its Legal Obligations,**  
18           **Including by Relying on Counsel**

19           85. The Supreme Court has ruled that if a party "acts reasonably in determining  
20 its legal obligation, its action cannot be deemed willful." *McLaughlin v. Richland*  
21 *Shoe Co.*, 486 U.S. 128, 135 n.13 (1988). Here, at the very least, TitleMax acted  
22 reasonably in determining its legal obligations. Its actions cannot therefore be  
23 deemed willful.

24           86. While consulting with counsel is not dispositive, it is certainly a relevant  
25 factor and indicates here that TitleMax acted reasonably in determining its legal  
26 obligations. *McLaughlin*, 486 U.S. at 135 n.13; *Trans World Airlines, Inc. v.*  
27 *Thurston*, 469 U.S. 111, 129-30 (1985) (a violation is not willful where "officials  
28 act[] reasonably and in good faith in attempting to determine whether their plan

1 would violate” the statutory requirements) (determining that employer did not  
2 willfully violate statute where it “sought legal advice”); *Baker v. Delta Air Lines,*  
3 *Inc.*, 6 F.3d 632, 645 (9th Cir. 1993) (analogizing reliance on previous opinion to  
4 relying on legal advice and finding such reliance “constituted good faith as a matter  
5 of law”); *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 894,  
6 784 P.2d 974, 979 (1989) (finding no willful violation of the district court’s  
7 preliminary injunction where city council members followed the advice of the city  
8 attorney)

9 87. TitleMax’s consultation with counsel further supports the Court’s  
10 determination that the ALJ’s ruling was clearly erroneous and arbitrary and  
11 capricious.

12 **C. Disagreement with an Agency Does Not Constitute Willfulness**

13 88. Penalties for willful violations cannot be premised on TitleMax not changing  
14 its business practices the moment a lay FID examiner levied a decision that it should.  
15 Essentially the FID’s and the ALJ’s position is that the very moment a FID examiner  
16 said that TitleMax should not offer the GPDA, everything subsequent to that was a  
17 willful violation. That position is unfounded, and the Court rejects it.

18 89. As an initial matter, the lay FID examiners opined that TitleMax also violated  
19 NAC 604A.230, but the ALJ rejected that position. (ROA 012290-012291.) The  
20 ALJ never explained how refusing to follow the advice of lay FID examiners  
21 constitutes a willful statutory violation when she herself found that the FID examiners  
22 were sometimes wrong in their interpretation of the law.

23 90. The Court does not use the term “lay” in a pejorative way, but simply that lay  
24 examiners at the FID were not attorneys and did not rely on an Attorney General  
25 opinion or any similar legal authority. (Hr’g Tr. 391:18-392:5; 393:16-18, 396:20-  
26 23.)

27 91. When TitleMax laid out its legal position in its February 9, 2015, letter and  
28 explained why, in its analysis, the GPDA did not violate any part of NRS 604A

1 (ROA 009991-010000), the FID responded with a letter stating merely that “the FID  
2 stands by its position.” (ROA 0100006.) TitleMax’s attempt to explain its position  
3 to the FID and the FID’s lack of explanation or any meaningful response are yet  
4 further indications that TitleMax did not willfully violate any statutory provision  
5 here.

6 92. TitleMax’s failure to change its entire way of doing business immediately  
7 when lay FID examiners stated it should, simply cannot equate to willfulness. The  
8 ALJ necessarily concluded that TitleMax’s failure to cease offering the GPDA  
9 immediately constituted willfulness, as evidenced by the penalty given and the way it  
10 was given.

11 93. Using the closing date of the FID’s 2014 Report of Examination, the first  
12 examination during which the FID took issue with the GPDA, the ALJ concluded that  
13 every GPDA entered into after December 18, 2014, constituted a willful statutory  
14 violation, “warranting the imposition of the civil penalty set forth in NRS  
15 604A.900(1)(c). Accordingly, every [GPDA] entered into after December 18, 2014,  
16 is void, and TitleMax is not entitled to collect, receive or retain any principal, interest  
17 or other charges or fees with respect to those loans.” (ROA 012293.)

18 94. The ALJ found that the moment the FID’s lay examiners gave their opinion  
19 that the GPDA violated NRS 604A.445(3) and NRS 604A.210, the penalty started  
20 from then. But TitleMax’s failure to defer immediately to the FID’s lay examiners is  
21 not evidence of willfulness.

22 95. Disagreement with an agency by itself without more, as is the case here, is not  
23 willfulness. *See Baystate Alternative Staffing, Inc. v. Herman*, 163 F.3d 668, 680 (1st  
24 Cir. 1998) (rejecting standard of willfulness that would “preclude[] legitimate  
25 disagreement between a party and” an agency and place the private party in the  
26 “untenable position” of either accepting the agency’s position “or risk a finding of a  
27 willful violation of the Act”); *Brock v. Claridge Hotel & Casino*, 846 F.2d 180, 188  
28 & n.9 (3d Cir. 1988) (rejecting Secretary of Labor’s reliance “on the fact that the

1 casino did not change its pay practices even after the Secretary declared them  
2 improper,” noting that “*private parties must retain a right to disagree* with the  
3 Secretary’s interpretation of the regulations . . . . *Such disagreement is not*  
4 *willfulness.*”) (emphases added).

5 **D. The Civil Penalty the ALJ Imposed Should Be**  
6 **Vacated Because TitleMax Had a Good Faith**  
7 **and Reasonable Belief in the Legality of Its Actions**

8 96. Moreover, this is a case dealing with a civil penalty, and the case law supports  
9 that “courts refuse to impose civil penalties against a party who acted with a good  
10 faith and reasonable belief in the legality of his or her actions.” *Lusardi Constr. Co.*  
11 *v. Aubry*, 824 P.2d 643, 655–56 (Cal. 1992); *see also State v. Harmon*, 35 Nev. 189,  
12 127 P. 221, 223 (1912) (“Penalties and forfeitures are not favored, unless plainly  
13 expressed.”).

14 97. That a severe penalty is at stake – requiring the forfeiture of not only interest,  
15 but all *principal* collected under every GPDA – only confirms that the appropriate  
16 course of action is to reverse and vacate the penalties issued by the ALJ.

17 98. “The law does not favor forfeitures and statutes imposing them must be  
18 strictly construed.” *Wilshire Ins. Co. v. State*, 94 Nev. 546, 550, 582 P.2d 372, 375  
19 (1978).

20 99. Given the punitive nature of the penalty at issue, it should “be construed as  
21 calling for a substantial element of culpability.” *See No Oil, Inc. v. Occidental*  
22 *Petroleum Corp.*, 50 Cal. App. 3d 8, 30-31, 123 Cal. Rptr. 589 (Cal. Ct. App. 1975).

23 100. As detailed above, TitleMax did not violate any statute, let alone do so  
24 willfully. At a minimum, TitleMax acted on a reasonable interpretation of the  
25 statutory provisions at issue.

26 101. As an alternative finding, the Court agrees with TitleMax that  
27 TitleMax’s offering of statutorily compliant products (such as the original loan  
28 agreement) is not proof that other products (such as the GPDA) were willfully non-



1 compliant. The evidence suggests that TitleMax always strove to be in compliance  
2 with the law and that TitleMax believed the GPDA was statutorily compliant. (*See*,  
3 *e.g.*, Hr’g Tr. 181:2-5 (FID witness agreeing that “whenever TitleMax has agreed  
4 with the FID’s interpretation and application of the law, they fix – they fix the  
5 issue”); 472:10-473:8; 488:23-489:3, 496:10-24, 509:13-17; 577:20-23.)

6 102. There is no evidence of any willful violation by TitleMax.

7 IV.

8 RULING ON SUPPLEMENTS

9 103. TitleMax submitted supplemental authorities comprised of Assembly  
10 Bill 163 (amending NRS 604A) and *Henson v. Santander Consumer USA Inc.*, 137 S.  
11 Ct. 1718 (2017). The parties submitted briefing on the import of Assembly Bill 163,  
12 which was approved by the Governor on June 1, 2017.

13 104. The Court finds that it does not need any of the supplemental authorities  
14 to reach its decision.

15 105. To the extent the Court should or does consider the supplements, *Henson*  
16 is new case law, the recent revisions to NRS 604A are akin to new case law, and, to  
17 the extent appropriate to consider, both support the Court’s ruling.

18 106. The FID submitted testimony indicating that some of the recent  
19 proposed statutory changes were an attempt to close “loopholes.” Such testimony  
20 supports the Court’s ruling here and indicates that the previous statutory language  
21 was unambiguous and allowed “loopholes.” Whether or not one characterizes the  
22 pre-2017 version of NRS 604A.210 as a “loophole,” the language prohibited only the  
23 charging of “additional interest” during a grace period. TitleMax followed the plain  
24 language of the statute.

25 107. Moreover, the 2017 bill as actually enacted varies from the original  
26 proposal. The 2017 bill as enacted modifies NRS 604A.210 to provide in connection  
27 with grace periods that a licensee shall not “[c]harge the customer interest at a rate in  
28 excess of that described in the existing loan agreement.” NRS 604A.210(2)(b)

1 (2017). This conforms to TitleMax’s arguments and interpretation as to what  
2 “additional interest” meant all along.

3 108. The United States Supreme Court’s recent decision in *Henson v.*  
4 *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725–26 (2017) also supports the  
5 Court’s ruling.

6 109. In *Henson*, the Supreme Court warned that courts “will not presume . .  
7 that any result consistent with [party’s] account of the statute’s overarching goal must  
8 be the law but will presume more modestly instead that the legislature says what it  
9 means and means what it says.” 137 S. Ct. at 1725 (internal quotation marks and  
10 citation omitted; alterations incorporated). *Henson* supports that the plain language  
11 of the statutes controls.

12 110. Moreover, *Henson* supports the Court’s conclusion that disagreement  
13 with the regulator does not constitute willfulness or culpable conduct:

14 After all, it’s hardly unknown for new business models to emerge in  
15 response to regulation, and for regulation in turn to address new  
16 business models. Constant competition between constable and quarry,  
17 regulator and regulated, can come as no surprise in our changing  
18 world. But neither should the proper role of the judiciary in that  
19 process—to apply, not amend, the work of the People’s  
20 representatives.

21 *Henson*, 137 S. Ct. at 1725-26.

22 111. Again, the Court finds that it does not need to reach or consider the  
23 supplements, but to the extent it can or should, they support reversing and vacating  
24 the ALJ’s order.

25 V.

26 **ORDER**

27 **IT IS THEREFORE ORDERED:**

28 A. That the ALJ’s Order is reversed and vacated;

1 B. That the FID must return to TitleMax the \$50,000 administrative fine already  
2 paid by TitleMax. The FID shall refund the amount of the administrative fine  
3 in accordance with standard agency process;

4 ~~C. That the FID, within 30 days of Notice of Entry of this Order, must return to~~  
5 ~~TitleMax the costs for the court reporter and transcripts in the administrative~~  
6 ~~proceedings paid by TitleMax; and~~ *SH*

7 ~~D. That the FID must issue reissue its Reports of Examination for TitleMax for~~  
8 ~~2014 and 2015 and provide TitleMax with "Satisfactory" ratings, given that~~  
9 ~~this Court has found that TitleMax did not violate NRS 604A.070, NRS~~  
10 ~~604A.210, or NRS 604A.445 and the ALJ found that TitleMax did not violate~~  
11 ~~NAC 604A.230 (a finding not challenged by the FID). The FID shall provide~~  
12 ~~electronic and revised copies of the amended Reports of Examination to~~  
13 ~~TitleMax within 30 days of Notice of Entry of this Order.~~ *SH*

14 *see minute order for details.*  
15 IT IS SO ORDERED.

16 Dated this *20th* day of ~~August~~ *September*, 2017.

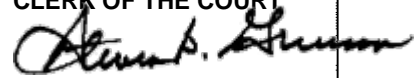
17 *[Signature]*  
18 DISTRICT COURT JUDGE *ET*

19 Submitted by:  
20 LEWIS ROCA ROTHGERBER CHRISTIE LLP

21 By /s/ Daniel F. Polsenberg  
22 DANIEL F. POLSENBERG (SBN 2376)  
23 JOEL D. HENRIOD (SBN 8492)  
24 MALANI DALE KOTCHKA-ALANES (SBN 13,168)  
25 3993 Howard Hughes Parkway, Suite 600  
26 Las Vegas, Nevada 89169  
27 (702) 949-8200

28 PATRICK J. REILLY (SBN 6103)  
ERICA C. SMIT (SBN 13,959)  
HOLLAND AND HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
(702) 669-4600

*Attorneys for Petitioners*



ASTA  
ADAM PAUL LAXALT  
Attorney General  
David J. Pope (Bar No. 8617)  
Senior Deputy Attorney General  
Vivienne Rakowsky (Bar No. 9160)  
Deputy Attorney General  
Rickisha Hightower-Singletary (Bar No. 14019C)  
Deputy Attorney General  
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VRakowsky@ag.nv.gov  
RSingletary@ag.nv.gov

Attorneys for Respondent

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondent.

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

CASE APPEAL STATEMENT

Pursuant to NRAP 3(f), STATE OF NEVADA, DEPARTMENT OF BUSINESS AND  
INDUSTRY, FINANCIAL INSTITUTIONS DIVISION hereby submits the following case  
appeal statement:

A. District court case number and caption, showing names of all parties to the  
proceedings (without using *et al.*):

The full case numbers and captions, showing names of all parties, are as  
follows: Case Number A-16-743134-J; TitleMax of Nevada, Inc., d/b/a TitleBucks and

1 TitleMax, a Delaware corporation v. State of Nevada, Department of Business and  
2 Industry, Financial Institutions Division.

3 B. Name of judge who entered order or judgment being appealed:

4 The Honorable Joe Hardy.

5 C. Name of each appellant, and name and address of counsel for each appellant:

6 State of Nevada, Department of Business and Industry, Financial Institutions  
7 Division ("FID") through its counsel:

8 Adam Paul Laxalt, Attorney General  
9 David J. Pope, Senior Deputy Attorney General  
10 Vivienne Rakowsky, Deputy Attorney General  
11 Rickisha Hightower-Singletary, Deputy Attorney General  
12 555 E. Washington Avenue, Suite #3900  
Las Vegas, NV 89101

13 D. Name of each respondent, and name and address of each respondent's  
14 appellate counsel, if known:

15 TitleMax of Nevada, Inc., d/b/a TitleBucks and TitleMax ("TitleMax"), a  
16 Delaware corporation, through its counsel:

17 Daniel F. Polsenberg, Esq.	Patrick J. Riley, Esq.
18 Joel D. Henriod, Esq.	Erica C. Smit
19 Malani Dale Kotchka-Alanes	Holland & Hart LLP
Lewis Roca Rothgerber Christie LLP	9555 Hillwood Dr., 2 <sup>nd</sup> Flr.
3993 Howard Hughes Parkway, Suite 600	Las Vegas, NV 89134
Las Vegas, NV 89169-5996	

21  
22 E. Whether attorneys identified in subparagraph D are not licensed to practice  
23 law in Nevada; and, if so, whether the district court granted permission to appear under  
24 SCR 42 (include copy of district court order granting permission):

25 N/A.

26 ...

27 ...

1 F. Whether appellant was represented by appointed counsel in the district court  
2 or on appeal:

3 No appointed counsel; retained counsel only.

4 G. Whether appellant was granted leave to proceed *in forma pauperis*:

5 No.

6 H. Date proceedings were commenced in district court:

7 Petition for Judicial Review filed on September 8, 2016.

8 I. Brief description of nature of the action and result in district court, including  
9 type of judgment or order being appealed and relief granted by district court:

10 TitleMax, a Nevada licensed title lender, was aggrieved by an Administrative  
11 Law Judge's ("ALJ") decision which, in part, ordered TitleMax to cease and desist from  
12 offering the lending product at issue, pay a fine and return principle and interest to  
13 customers in accordance with Chapter 604A of the NRS. TitleMax filed a petition for  
14 judicial review, pursuant to Chapter 233B of the NRS, seeking the Eighth Judicial District  
15 Court's review of the ALJ's decision. On September 21, 2017, the Eighth Judicial District  
16 Court issued its Order Reversing and Vacating Administrative Law Judge's Order  
17 ("Order"). The Notice of Entry of Order was filed on September 22, 2017. The FID is  
18 appealing the Order.

19 J. Whether case was previously the subject of appeal or writ proceeding in  
20 Nevada Supreme Court or Court of Appeals and, if so, caption and docket number of prior  
21 proceeding:

22 N/A.

23 K. Whether appeal involves child custody or visitation:

24 No.

25 ...

26 ...


27 ...

1 L. Whether appeal involves possibility of settlement:

2 Unknown at this time.

3 DATED this 19<sup>th</sup> day of October, 2017.

4  
5 ADAM PAUL LAXALT  
6 Attorney General

7 By:   
8 David J. Pope, Esq. (Bar No. 8617)

9 Senior Deputy Attorney General

10 Vivienne Rakowsky, Esq. (Bar No. 9109)

11 Deputy Attorney General

12 Rickisha Hightower-Singletary (Bar No. 14019C)

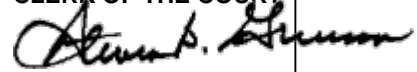
13 Deputy Attorney General  
14  
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8





SAO  
ADAM PAUL LAXALT  
Attorney General  
David J. Pope (Bar No. 8617)  
Senior Deputy Attorney General  
Vivienne Rakowsky (Bar No. 9160)  
Deputy Attorney General  
Rickisha Hightower-Singletary (Bar No. 14019C)  
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VRakowsky@ag.nv.gov  
RSingletary@ag.nv.gov

Attorneys for Respondent

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Petitioner,

vs.

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

Respondent.

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

**STIPULATION AND ORDER TO CHANGE HEARING DATE FOR TITLEMAX'S  
MOTION FOR SUPPLEMENTAL RELIEF**

IT IS HEREBY STIPULATED AND AGREED by and between Respondents State of Nevada, Department of Business and Industry, Financial Institutions Division, by and through counsel, Adam Paul Laxalt, Attorney General and Deputy Attorney General Vivienne Rakowsky, and TitleMax of Nevada, Inc., by and through counsel Malani Dale Kotchka-Alanes and/or Daniel Polsenberg, of Lewis Roca Rothgerber Christie LLP and

1 Patrick Reilly of Holland and Hart LLP hereby stipulate that the Motion for Supplemental  
2 Relief set to be heard on November 2, 2017 at 9:00 a.m. will now be heard on November 15,  
3 2017 at 9:00 a.m.

4  
5 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

6  
7 ADAM PAUL LAXALT  
8 Attorney General

LEWIS ROCA ROTHGERBER CHRISTIE LLP

9  
10 By: Vivienne Rakowsky  
11 VIVIENNE RAKOWSKY  
12 Deputy Attorney General  
13 555 E. Washington Ave., #3900  
Las Vegas, Nevada 89101

By: (next page)  
DANIEL POLSENBERG  
MALANI DALE KOTCHKA-ALANAS  
3993 Howard Hughes Pkwy., Suite 600  
Las Vegas, Nevada 89123

14 Dated: Oct. 24, 2017

15  
16 HOLLAND AND HART LLP

17  
18 By: Patrick Reilly  
19 PATRICK REILLY  
20 9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89134

21  
22 **ORDER**

23 Based upon the foregoing Stipulation, the Hearing on Motion for  
24 Supplemental Relief shall be heard November 15, 2017 at 9:00 a.m.

25 IT IS SO ORDERED.

26 DATED this \_\_\_\_ day of October, 2017

27  
28 \_\_\_\_\_  
DISTRICT COURT JUDGE

1 Patrick Reilly of Holland and Hart LLP hereby stipulate that the Motion for Supplemental  
2 Relief set to be heard on November 2, 2017 at 9:00 a.m. will now be heard on November 15,  
3 2017 at 9:00 a.m.

4  
5 Dated: \_\_\_\_\_

Dated: 10-24-17

6  
7 ADAM PAUL LAXALT  
8 Attorney General

LEWIS ROCA ROTHGERBER CHRISTIE LLP

9  
10 By: \_\_\_\_\_  
11 VIVienne RAKOWSKY  
12 Deputy Attorney General  
13 555 E. Washington Ave., #3900  
Las Vegas, Nevada 89101

By: Malani Dale Kotchka-Alanas  
DANIEL POLSENBERG  
MALANI DALE KOTCHKA-ALANAS  
3993 Howard Hughes Pkwy., Suite 600  
Las Vegas, Nevada 89123

14 Dated: \_\_\_\_\_

15  
16 HOLLAND AND HART LLP

17  
18 By: \_\_\_\_\_  
19 PATRICK REILLY  
20 9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

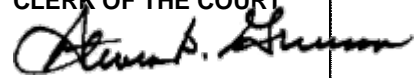
21  
22 **ORDER**

23 Based upon the foregoing Stipulation, the Hearing on Motion for  
24 Supplemental Relief shall be heard November 15, 2017 at 9:00 a.m.

25 IT IS SO ORDERED.

26 DATED this 26<sup>th</sup> day of October, 2017

27   
28 DISTRICT COURT JUDGE



1 **NTSO**  
2 **ADAM PAUL LAXALT**  
3 **Attorney General**  
4 **David J. Pope (Bar No. 8617)**  
5 **Senior Deputy Attorney General**  
6 **Vivienne Rakowsky (Bar No. 9160)**  
7 **Deputy Attorney General**  
8 **Rickisha Hightower-Singletary (Bar No. 14019C)**  
9 **Deputy Attorney General**  
10 **State of Nevada**  
11 **Office of the Attorney General**  
12 **555 E. Washington Blvd., Ste. 3900**  
13 **Las Vegas, NV 89101**  
14 **(702) 486-3420 (phone)**  
15 **(702) 486-3416 (fax)**  
16 **DPope@ag.nv.gov**  
17 **VRakowsky@ag.nv.gov**  
18 **RSingletary@ag.nv.gov**  
19 **Attorneys for Respondent**

11 **DISTRICT COURT**  
12  
13 **CLARK COUNTY, NEVADA**

14 **TITLEMAX OF NEVADA, INC. and**  
15 **TITLEBUCKS d/b/a TITLEMAX, a**  
16 **Nevada corporation,**

17 **Petitioner,**

18 **vs.**

19 **STATE OF NEVADA, DEPARTMENT OF**  
20 **BUSINESS AND INDUSTRY**  
21 **FINANCIAL INSTITUTIONS DIVISION,**

22 **Respondent.**

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

23 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO CHANGE HEARING**

24 **DATE FOR TITLEMAX'S MOTION FOR SUPPLEMENTAL RELIEF**

25 **PLEASE TAKE NOTICE** that a Stipulation and Order to Change Hearing Date for TitleMax's

26 ...

27 ...

28 ...

...

1 Motion for Supplemental Relief was entered in the above-entitled matter on October 31, 2017, a copy  
2 of which is attached hereto as Exhibit A.

3 Dated this 31st day of October, 2017.

4 ADAM PAUL LAXALT  
5 Attorney General

6  
7 By: /s/ VIVIENNE RAKOWSKY  
8 VIVIENNE RAKOWSKY  
9 Deputy Attorney General  
10  
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## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on October 31, 2017 I filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

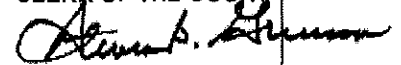
/s/ MICHELE CARO

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

EXHIBIT “A”

EXHIBIT “A”

APP 017498



1 SAO  
2 ADAM PAUL LAXALT  
3 Attorney General  
4 David J. Pope (Bar No. 8617)  
5 Senior Deputy Attorney General  
6 Vivienne Rakowsky (Bar No. 9160)  
7 Deputy Attorney General  
8 Rickisha Hightower-Singletary (Bar No. 14019C)  
9 Deputy Attorney General  
10 State of Nevada  
11 Office of the Attorney General  
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16 DPope@ag.nv.gov  
17 VRakowsky@ag.nv.gov  
18 RSingletary@ag.nv.gov

19 Attorneys for Respondent

20 DISTRICT COURT  
21 CLARK COUNTY, NEVADA

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

25 Petitioner,

26 vs.

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

Respondent.

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

STIPULATION AND ORDER TO CHANGE HEARING DATE FOR TITLEMAX'S  
MOTION FOR SUPPLEMENTAL RELIEF

IT IS HEREBY STIPULATED AND AGREED by and between Respondents State of Nevada, Department of Business and Industry, Financial Institutions Division, by and through counsel, Adam Paul Laxalt, Attorney General and Deputy Attorney General Vivienne Rakowsky, and TitleMax of Nevada, Inc., by and through counsel Malani Dale Kotchka-Alanes and/or Daniel Polsenberg, of Lewis Roca Rothgerber Christie LLP and



1 Patrick Reilly of Holland and Hart LLP hereby stipulate that the Motion for Supplemental  
2 Relief set to be heard on November 2, 2017 at 9:00 a.m. will now be heard on November 15,  
3 2017 at 9:00 a.m.

4  
5 Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

6  
7 ADAM PAUL LAXALT  
8 Attorney General

LEWIS ROCA ROTHGERBER CHRISTIE LLP

9  
10 By: Vivienne Rakowsky  
11 VIVienne RAKOWSKY  
12 Deputy Attorney General  
13 555 E. Washington Ave., #3900  
Las Vegas, Nevada 89101

By: (next page)  
DANIEL POLSENBERG  
MALANI DALE KOTCHKA-ALANAS  
3993 Howard Hughes Pkwy., Suite 600  
Las Vegas, Nevada 89123

14 Dated: Oct. 24, 2017

15  
16 HOLLAND AND HART LLP

17  
18 By: Patrick Reilly  
19 PATRICK REILLY  
20 9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

21  
22 **ORDER**

23 Based upon the foregoing Stipulation, the Hearing on Motion for  
24 Supplemental Relief shall be heard November 15, 2017 at 9:00 a.m.

25 IT IS SO ORDERED.

26 DATED this \_\_\_\_ day of October, 2017

27  
28 \_\_\_\_\_  
DISTRICT COURT JUDGE

1 Patrick Reilly of Holland and Hart LLP hereby stipulate that the Motion for Supplemental  
2 Relief set to be heard on November 2, 2017 at 9:00 a.m. will now be heard on November 15,  
3 2017 at 9:00 a.m.

4  
5 Dated: \_\_\_\_\_

Dated: 10-24-17

6  
7 ADAM PAUL LAXALT  
8 Attorney General

LEWIS ROCA ROTHGERBER CHRISTIE LLP

9  
10 By: \_\_\_\_\_

11 VIVIENNE RAKOWSKY  
12 Deputy Attorney General  
13 555 E. Washington Ave., #3900  
Las Vegas, Nevada 89101

By: \_\_\_\_\_

Malani Dale Kotchka-Alanas  
DANIEL POLSENBERG  
MALANI DALE KOTCHKA-ALANAS  
3993 Howard Hughes Pkwy., Suite 600  
Las Vegas, Nevada 89123

14 Dated: \_\_\_\_\_

15  
16 HOLLAND AND HART LLP

17  
18 By: \_\_\_\_\_

19 PATRICK REILLY  
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Las Vegas, Nevada 89134

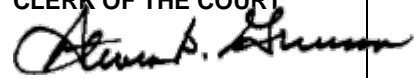
21  
22 **ORDER**

23 Based upon the foregoing Stipulation, the Hearing on Motion for  
24 Supplemental Relief shall be heard November 15, 2017 at 9:00 a.m.

25 IT IS SO ORDERED.

26 DATED this 26<sup>th</sup> day of October, 2017

27  
28 Joe Hardy  
DISTRICT COURT JUDGE



**RIS**  
DANIEL F. POLSENBERG (SBN 2376)  
JOEL D. HENRIOD (SBN 8492)  
MALANI DALE KOTCHKA-ALANES (SBN 13,168)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
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[DPolsenberg@LRRC.com](mailto:DPolsenberg@LRRC.com)  
[JHenriod@LRRC.com](mailto:JHenriod@LRRC.com)  
[MKotchkaAlanes@LRRC.com](mailto:MKotchkaAlanes@LRRC.com)

PATRICK J. REILLY (SBN 6103)  
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[PREilly@HollandHart.com](mailto:PREilly@HollandHart.com)

*Attorneys for Petitioner  
TitleMax of Nevada, Inc., d/b/a  
TitleBucks and TitleMax*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Petitioner,

vs.

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

Respondent.

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

**REPLY IN SUPPORT OF TITLEMAX'S  
MOTION FOR SUPPLEMENTAL RELIEF**

1 The FID argues that TitleMax's request for supplemental relief should be denied because  
2 TitleMax's request has not already been litigated and resolved; but if this were the test, there would  
3 never be any need for supplemental relief or any Rule 59(e) motion – all issues would necessarily  
4 already be resolved. TitleMax's requested relief arises directly from the matters litigated; the  
5 Court's ruling that TitleMax did not violate NRS 604A means that the ALJ erred in imposing costs  
6 on TitleMax for such non-existent violations and that the FID should be required to revise its  
7 erroneous Reports of Examination finding such statutory violations.

8 The FID next argues that TitleMax is not entitled to receive the court reporter and transcript  
9 costs it paid at the administrative level because TitleMax voluntarily offered to pay these costs.  
10 (10/16/2017 Opp'n to TitleMax's Mot. for Supplemental Relief ("Opp'n") at 3-4.) Parties often  
11 offer to pay for court reporters when they need one, only to be later reimbursed if they are the  
12 prevailing party. Contrary to the FID's assertion that TitleMax's payment of costs is "unrelated to  
13 NRS 604A.820" (Opp'n at 3), the ALJ expressly ordered, "Pursuant to NRS 604A.820([2])(c),  
14 TitleMax must compensate FID for any costs expended on the court reporter and for transcripts of  
15 the hearing." (ROA 012293.) Because the ALJ was wrong, this too should be reversed.

16 Finally, the FID argues that it should not be ordered to reissue its 2014 and 2015 Reports of  
17 Examinations because that would somehow violate the separation of powers. (Opp'n at 4-7.) Even  
18 the FID acknowledges that the Court has "the power to Order the FID to re-issue a closed  
19 examination" if "the Court can show that the Order is reasonably related to the court's judicial  
20 duties." (Opp'n at 7.) Such is the case here because a revision of the Reports of Examination is  
21 necessary to provide TitleMax with meaningful relief and give effect to this Court's ruling that  
22 TitleMax did not violate NRS 604A.445 or NRS 604A.210.<sup>1</sup>

23 **I. TITLEMAX'S REQUESTED SUPPLEMENTAL RELIEF**  
24 **IS THE PROPER SUBJECT OF A RULE 59(e) MOTION**

25 The FID takes selective quotes from inapposite cases and argues that TitleMax's requested  
26 supplemental relief cannot be the subject of a Rule 59(e) motion because the issues were not

27 \_\_\_\_\_  
28 <sup>1</sup> TitleMax also requested in its Motion for Supplemental Relief that the FID remove from its  
website the ALJ's order *or* post this Court's September 21, 2017 Order reversing and vacating the  
ALJ's order. The FID has now posted this Court's September 21, 2017 Order.

1 “litigated and resolved” in this action. (Opp’n at 2.)<sup>2</sup> As an initial matter, that TitleMax committed  
2 no statutory violations of NRS 604A *was* litigated and resolved– and it is that judicial finding that  
3 underlies the supplemental relief TitleMax requests.

4 Moreover, the Nevada Supreme Court has held that the “formal requirements” of a Rule  
5 59(e) motion “are minimal.” *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 581, 245 P.3d  
6 1190, 1192 (2010). A Rule 59(e) motion must be filed within 10 days of service of notice of entry  
7 of the judgment, and it must be in writing and state with particularity its grounds and the relief  
8 sought. *Id.* “But beyond this, NRCP 59(e) does not impose limits on its scope.” *Id.*, 126 Nev. at  
9 582, 245 P.3d at 1192.

10 While Rule 59(e) motions generally cannot be used to request mere ““correction of a clerical  
11 error, or relief of a type wholly collateral to the judgment,””<sup>3</sup> the relief TitleMax requests is not  
12 “wholly collateral” to the judgment. Rather, it is part and parcel of the ruling that TitleMax did not  
13 violate NRS 604A.445 or NRS 604A.210. Absent a statutory violation, TitleMax should have  
14 received satisfactory ratings for its 2014 and 2015 examinations and the ALJ should not have  
15 ordered TitleMax to “compensate [the] FID for any costs expended on the court reporter and for  
16 transcripts of the hearing” pursuant to NRS 604A.820. (ROA 012293.)

17 Unlike requests for attorneys’ fees, which are often considered “collateral” and thus  
18 “generally do not fall under Rule 59(e),”<sup>4</sup> even “a motion for discretionary prejudgment interest  
19 does not raise issues wholly collateral to the judgment” because the court must examine “matters  
20 encompassed within the merits of the underlying action,” such as “whether prejudgment interest is  
21 necessary to compensate the plaintiff fully for his injuries . . . and other fundamental considerations  
22 of fairness.” *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 175–76 (1989) (internal quotation marks  
23 and citation omitted; alteration incorporated). Here, the supplemental relief TitleMax requests is

---

24 <sup>2</sup> The “litigated and resolved” language comes from *Chiara v. Belaustegui*. That case ruled that a  
25 party could not use a Rule 59(e) motion “to vacate a default judgment;” “[t]o rule otherwise would  
26 emasculate Rule 60(b), for any party who had been defaulted could, within 10 days after notice of  
27 such default, file a 59(e) motion to alter or amend the judgment without asserting any reason why  
he should be relieved of the default.” *Chiara v. Belaustegui*, 86 Nev. 856, 857–59, 477 P.2d 857,  
857–58 (1970). The entirety of the opinion is 6 paragraphs and simply states that “where the issues  
have been litigated and resolved” – as opposed to being decided by default – “a motion may be  
made to alter or amend a judgment.” *Id.*, 86 Nev. at 859, 477 P.2d at 858.

28 <sup>3</sup> *Id.* (quoting 11 Wright, Miller, et al., *Federal Practice and Procedure* § 2810.1 (2d ed. 1995)).

<sup>4</sup> 11 Wright, Miller, et al., *Federal Practice and Procedure* § 2810.1 (3d ed. updated April 2017).

1 necessary to compensate TitleMax for the FID's and the ALJ's erroneous statutory interpretations,  
2 and fundamental considerations of fairness require the relief TitleMax is requesting. Therefore,  
3 TitleMax's request for supplemental relief under Rule 59(e) is entirely proper.<sup>5</sup>

4 **II. TITLEMAX SHOULD BE REIMBURSED**  
5 **FOR THE COURT REPORTER AND TRANSCRIPT COSTS IT PAID**

6 The ALJ erroneously ordered, "Pursuant to NRS 604A.820([2])(c), TitleMax must  
7 compensate [the] FID for any costs expended on the court reporter and for transcripts of the  
8 hearing." (ROA 012293.) As pointed out in TitleMax's motion for supplemental relief, the ALJ  
9 had authority to award costs against TitleMax pursuant to NRS 604A.820(2)(c) only if TitleMax  
10 violated a provision of NRS 604A and was assessed an administrative fine for such a violation. *See*  
11 NRS 604A.820; (10/02/2017 TitleMax's Mot. for Supp. Relief at 3-4.) But this Court ruled that  
12 TitleMax did not violate any statutory provision and vacated the administrative fine imposed against  
13 TitleMax. (*See* 9/21/2017 Order Reversing and Vacating ALJ's Order.)

14 Forced to concede that NRS 604A.820 is no longer a proper basis for the award of costs to  
15 stand, the FID argues (1) that TitleMax voluntarily agreed to pay the court reporter and transcript  
16 costs, "unrelated to NRS 604A.820" and (2) that NRS 233B.121(8) requires the requesting party to  
17 pay "all the costs for the transcription." (Opp'n at 3-4.)

18 TitleMax's offer to pay for the court reporter initially is not determinative of who must pay  
19 the costs now. Parties often agree to pay for, or split, the costs of court reporters without precluding  
20 the prevailing party from later recovering its costs. In fact, NRS 233B.121(8)<sup>6</sup> is nothing more than  
21 an initial allocation of who must bear the costs of transcription. It is similar to the initial cost  
22 allocation in NRCP 30(b)(2), specifying that "the party taking the deposition shall bear the cost of  
23 the recording." But this does not preclude the prevailing party from later recovering such costs.  
24 *See* NRS 18.005(2) & 18.020 (specifying that "costs" include "[r]eporters' fees for depositions,

25 \_\_\_\_\_  
26 <sup>5</sup> If TitleMax's requested relief truly were "collateral" to the judgment, this would simply mean that  
27 the ten-day filing deadline in Rule 59(e) does not apply. *See, e.g., White v. New Hampshire Dep't*  
28 *of Employment Sec.*, 455 U.S. 445, 447-51 (1982) (holding that "a request for attorney's fees under  
[civil rights statute] raises legal issues collateral to the main cause of action" and is not "subject to  
the 10-day timeliness standard of Rule 59(e)").

<sup>6</sup> ("Oral proceedings, or any part thereof, must be transcribed on request of any party. The party  
making the request shall pay all the costs for the transcription.").

1 including a reporter's fee for one copy of each deposition" and that such costs "must be allowed of  
2 course to the prevailing party"). Prevailing parties are routinely awarded court reporter and  
3 transcription costs, even if they initially agreed to pay for these. *See* NRS 18.005 & 18.020; *see*  
4 *also* NRAP 39(e) (providing that prevailing party on appeal is entitled to costs for "the reporter's  
5 transcript" in the district court if the transcript was needed to determine the appeal).

6 The FID's own exhibits belie any argument that the parties reached an agreement as to who  
7 would *permanently* bear the costs of the court reporter and transcript, without any opportunity to  
8 later recover such costs. The FID itself was requesting costs from the ALJ. (*See* Opp'n, Ex. C,  
9 Email from the FID to the ALJ ("[T]he Division is only seeking the costs of the court reporter and  
10 transcript used during the final hearing.").) And, after erroneously siding with the FID on the  
11 merits, the ALJ awarded the FID all "its costs expended on the court reporter and transcripts"  
12 "[p]ursuant to 604A.820([2])(c)." The ALJ's statutory interpretation, however, was erroneous and  
13 has been reversed; as such, there is no basis to award costs to the FID under NRS 604A.820 or  
14 otherwise.

15 Having engaged in no statutory violation and having prevailed in this Court, TitleMax is  
16 entitled to the costs it paid for the court reporter and transcripts at the administrative level. These  
17 costs amount to \$4,063.60. (*See* Ex. 1 attached hereto, Invoices.)<sup>7</sup>

18 **III. THE FID SHOULD BE REQUIRED TO REISSUE THE 2014 AND 2015 REPORTS**  
19 **OF EXAMINATION WITH "SATISFACTORY RATINGS"**

20 The FID feigns that there were other violations (besides the alleged violations of NAC  
21 604A.230, NRS 604A.210, and NRS 604A.445) that would justify a less than satisfactory rating for  
22 TitleMax for 2014 and 2015, and that it would violate the separation of powers doctrine for this  
23 Court to order the FID to reissue its 2014 and 2015 Reports of Examination with satisfactory  
24 ratings. (Opp'n at 4-7.) Both arguments are misplaced.

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27 <sup>7</sup> These invoices reflect the amounts TitleMax actually paid and, contrary to the FID's unsupported  
28 assertions, demonstrate that TitleMax did not request any expedited transcripts or additional  
services.

1           **A.       There Were No Other Statutory or Regulatory Violations**  
2                     **Justifying a Less Than Satisfactory Rating**

3           *Post-hoc*, the FID tries to rely on other minor alleged violations to justify its less than  
4 satisfactory ratings of TitleMax in 2014 and 2015, but the FID knows these other violations were  
5 either corrected or concerned so few customers (sometimes only one) that they would not have  
6 resulted in less than satisfactory ratings. For example, the FID points to purported failures to  
7 properly determine a customer's ability to repay a loan in violation of NRS 604A.450. (Opp'n at  
8 6.) But as TitleMax explained in its response to the FID's 2014 Reports of Examination:

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

13 (ROA 009994 (emphasis added).) The FID agreed. (See ROA 008942 (the FID stating in its 2015  
14 Report of Examination, "The licensee was previously cited for underwriting loans without regard to  
15 the customer's ability to repay the title loan. This is no longer apparent since the licensee started  
16 underwriting loans with an original term of 210 days; therefore, ***this violation is deemed rectified.***")  
17 (emphasis added).)

18           The FID also points to TitleMax allegedly "making loans that exceed the fair market value  
19 of the vehicle in violation of NRS 604A.450." (Opp'n at 6.) But as TitleMax pointed out in its  
20 response to the FID's 2015 Reports of Examination, this alleged violation was cited in only one  
21 examination and the examiner was wrong:

22           As you will see in the attached Title Loan Agreement, [customer] was loaned an  
23 amount of \$7,720.00 which is significantly lower than the fair market value of  
24 \$10,850.00. The examiner errantly noted the total of payments of \$11,464.42 as  
25 the title loan amount. Accordingly, because the Companies did not loan in excess  
26 of the fair market value of the vehicle, the Companies respectfully request that the  
27 Division revise its examination report to remove all references to this alleged  
28 violation.

(ROA 010008.)



1 The FID points to purported failures to provide documents in Spanish in violation of NRS  
2 604A.210 and NAC 604A.160 (Opp’n at 6), but as TitleMax pointed out in its response to the FID’s  
3 2015 Reports of Examination, these violations were cited in only six examinations;<sup>8</sup> customers have  
4 the option to select either the English or Spanish version of various documents; “NRS 604A.410  
5 does not require that the Company offer a Spanish version of the Loan Application or Customer  
6 Affidavit in addition to the Title Loan Agreement;” and in regard to the three examinations where  
7 employees failed to provide the Repayment Plan Agreement/Grace Period Deferment Agreement in  
8 the customers’ initial language, TitleMax “implemented a process in our new point of sale system  
9 that automatically prints all required documents in the customer’s primary language, thereby  
10 addressing the issue of the store employee errantly selecting the wrong version of these documents.”  
11 (ROA 010008.)

12 Regarding the alleged “failure to keep and maintain required books and records in violation  
13 of NRS 604A.700 and NAC 604A.200, failure to properly offer a repayment plan in violation of  
14 NRS 604A.475 and NAC 604A.170, [and] failure to properly account for partial payment of a loan  
15 in violation of NRS 604A.470” (Opp’n at 6), these purported violations either happened only once  
16 in regard to one customer – and TitleMax retrained its store employees on the applicable  
17 requirements – or these alleged violations were cited in error. (*See* ROA 010009-010010.)

18 Thus, all of the “additional violations” the FID points to were either corrected or cited in  
19 error by the FID in the first place. Only uncorrected violations or “substantial lack of compliance  
20 with applicable laws and regulations” should have resulted in the less than satisfactory ratings  
21 issued by the FID. (ROA 008930, 008945.) Indeed, none of the purported violations the FID points  
22 to could have possibly justified a “Needs Improvement” rating in 2014 or the extreme  
23 “Unsatisfactory” rating in 2015, other than the alleged regulatory and statutory violations on which  
24 this Court has now vindicated TitleMax’s position. TitleMax should not have to continue to suffer  
25 the consequences of prior less-than-satisfactory ratings when it has now been established by a court  
26 of law that TitleMax did nothing wrong.

27  
28 <sup>8</sup> The FID examined TitleMax’s 42 licensed locations in Nevada during the 2015 examination.  
(ROA 008937.)

1 TitleMax's past ratings are continually used by the FID to justify increased scrutiny and  
2 more frequent examinations of TitleMax. (*See, e.g.*, ROA 008945 (noting at end of 2015 Report of  
3 Examination that because TitleMax had received an "Unsatisfactory" rating, the FID "may conduct  
4 a follow up examination within three (3) months to ensure corrective actions have been  
5 implemented").) More frequent examinations are not merely inconvenient for TitleMax, but cost  
6 TitleMax a substantial amount of time and money. *See* NRS 604A.070(1) ("The Commissioner  
7 shall charge and collect from each licensee a fee of not more than \$80 per hour for any supervision,  
8 audit, examination, investigation or hearing conducted pursuant to this chapter or any regulations  
9 adopted pursuant thereto."); (*see also, e.g.*, Ex. 2 attached hereto (the FID's billing invoice for its  
10 examination of TitleMax commencing November 17, 2015, and closing April 5, 2016, charging  
11 TitleMax **\$34,425**).)<sup>9</sup>

12 TitleMax is effectively penalized by having to pay tens of thousands of dollars every few  
13 months for the FID's continual examinations based on past ratings that were not justified in the first  
14 place. The FID should be required to reissue its 2014 and 2015 Reports of Examination with  
15 satisfactory ratings.

16 **B. Ordering the FID to Reissue Its 2014 and 2015 Reports of Examination Gives**  
17 **Effect to this Court's Order and Does Not Violate the Separation of Powers**

18 "[E]very court, with few exceptions, has inherent power to enforce its decrees and to make  
19 such orders as may be necessary to render them effective." *Horn & Hardart Co. v. Nat'l Rail*  
20 *Passenger Corp.*, 843 F.2d 546, 548 (D.C. Cir. 1988) (internal quotation marks and citation  
21 omitted). The Court does not overstep its bounds by ordering the FID to correct its examination  
22 ratings based on the Court's finding that TitleMax did not violate the statutory provisions alleged.  
23 *See Rincon Band of Mission Indians v. Harris*, 618 F.2d 569, 575 (9th Cir. 1980) ("If further relief  
24 becomes necessary at a later point, however, . . . the inherent power of the court to give effect to its  
25

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26 <sup>9</sup> TitleMax is not seeking to get this money back. It understands that the FID examiners performed  
27 examinations and thus are entitled to payment. The issue, however, is that these examinations never  
28 should have occurred, and would not have occurred if TitleMax had accurate past examination  
ratings. TitleMax seeks only accurate examination ratings in accord with this Court's statutory  
interpretation.

own judgment . . . would empower the district court to grant supplemental relief, including injunctive relief.”) (citations omitted).

The FID again cites inapposite cases in its separation of powers argument. (Opp’n at 5.)<sup>10</sup> The issue here is not whether a statute is unconstitutional because it gives the judiciary too much or too little power. Rather, the question is whether this Court has power to order an executive agency to conform its examination ratings to the Court’s statutory interpretation – it undoubtedly does. *See Nat. Res. Def. Council, Inc., v. U.S. Food & Drug Admin.*, 884 F. Supp. 2d 108, 117 (S.D.N.Y. 2012) (imposing schedule for compliance with court order on agency and noting that “[e]ven in the area of administrative law, district courts have broad equitable powers to order any appropriate relief that is not prohibited by Congress”) (internal quotation marks and citation omitted); *see also Cobell v. Norton*, 240 F.3d 1081, 1109 (D.C. Cir. 2001) (“Because the agencies involved delayed performance of their legal obligations, the court was justified in fashioning equitable relief that would ensure the vindication of plaintiffs’ rights.”).

The Court’s Order agreeing with TitleMax’s statutory interpretation means little if the FID is permitted to continue to act as though TitleMax has a history of statutory and regulatory non-compliance. As explained above, the FID uses the results of past examinations to justify more frequent examinations of TitleMax and charge TitleMax fees for the FID’s continual examinations and investigations. TitleMax is still being punished for statutory violations that this Court agreed TitleMax never committed. An order requiring the FID to simply reissue its 2014 and 2015 Reports of Examination with satisfactory ratings does not excessively interfere with the FID’s administrative functions, and such an order is necessary to give effect to this Court’s September 21, 2017 Order finding that TitleMax did not violate NRS 604A. *See Cobell*, 240 F.3d at 1109

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<sup>10</sup> *See Berkson v. LePome*, 126 Nev. 492, 494–95, 245 P.3d 560, 562 (2010) (holding that statute providing “a plaintiff whose judgment is subsequently reversed on appeal with the right to file a new action within one year after the reversal . . . violates the separation of powers doctrine because it unconstitutionally interferes with the judiciary’s authority to manage the judicial process and this court’s ability to finally resolve matters on appeal”); *Galloway v. Truesdell*, 83 Nev. 13, 28, 422 P.2d 237, 247 (1967) (ruling that statute requiring “an ordained minister to make application to a District Judge for a certificate (license) to perform marriages” and requiring “the District Judge . . . to determine the qualifications of the minister” clearly imposed “unconstitutional non-judicial powers and functions upon District Judges”); *see also Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1218-22, 14 P.3d 1275, 1279-81 (2000) (holding that “municipal courts have the inherent power to charge and collect reasonable fees” under both “the separation of powers doctrine and the power inherent in a court by virtue of its sheer existence”).

1 (rejecting argument that “the ordered relief—the promulgation of regular reports and updates to the  
2 court while it retains jurisdiction—[w]as [an] excessive interference in the federal government’s  
3 administration” of trust). Even if reissuing the 2014 and 2015 Reports of Examination is  
4 burdensome to the FID – and the FID has not demonstrated how it would be – this would be  
5 insufficient to establish a violation of the separation of powers or exempt the FID from complying  
6 with this Court’s ruling. *See Clinton v. Jones*, 520 U.S. 681, 703 (1997) (“The fact that a federal  
7 court’s exercise of its traditional Article III jurisdiction may significantly burden the time and  
8 attention of the Chief Executive is not sufficient to establish a violation of the Constitution.”).

9 The FID has it backward when it argues that it somehow violates the separation of powers  
10 for this Court to declare what statutes means, and then enforce that ruling by requiring the executive  
11 branch to conform its statutory interpretation to the Court’s. “It is emphatically the province and  
12 duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177  
13 (1803). That the FID is “a part of the executive department” does not place it “beyond any control  
14 by the courts.” *State ex rel. Richardson v. Bd. of Regents of Univ. of Nev.*, 70 Nev. 144, 147, 261  
15 P.2d 515, 516 (1953).

16 Notably, regulated entities like TitleMax have no way of challenging the conclusions in the  
17 FID’s Reports of Examination other than seeking judicial review of subsequent administrative  
18 proceedings, as in this case. TitleMax should not be left without a remedy, have its regulatory  
19 record remain sullied, and continually be punished for past regulatory ratings that are contrary to  
20 this Court’s declaration of what the law is. For these reasons, the FID should be ordered to reissue  
21 its 2014 and 2015 Reports of Examination with satisfactory ratings.

## 22 CONCLUSION

23 TitleMax requests that the FID be ordered to:

- 24 1) Pay \$4,063.60 to reimburse TitleMax for the court reporter and transcript costs TitleMax  
25 paid; and
- 26 2) Reissue the FID’s Reports of Examination for TitleMax for 2014 and 2015, providing  
27 TitleMax with “Satisfactory” ratings.

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Dated this 7th day of November, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By /s/ Daniel F. Polsenberg

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*Attorneys for Petitioner*

# EXHIBIT 1

# EXHIBIT 1



**Litigation**  
SERVICES

Discovery | Depositions | Trial

3770 Howard Hughes Pkwy.  
Suite 300  
Las Vegas, NV 89169  
Phone: 800.330.1112  
LitigationServices.com

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

# INVOICE

Invoice No.	Invoice Date	Job No.
1084446	8/9/2016	324200
Job Date	Case No.	
7/18/2016		
Case Name		
In Re: Title Max/FID Disciplinary Action		
Payment Terms		
Due upon receipt		

½ the Cost of the Original & 1 Copy of the Transcript of:

Hearing	385.00	Pages	@	2.75	1,058.75
Appearance Fee - Full Day				150.00	150.00
Rough ASCII	329.00	Pages	@	0.88	289.52
Litigation Support Package				12.50	12.50
Shipping/Handling				12.50	12.50

**TOTAL DUE >>>** **\$1,523.27**

AFTER 9/8/2016 PAY **\$1,675.60**

Please note, disputes or refunds will not be honored or issued after 30 days

**(-) Payments/Credits:** 1,523.27

**(+) Finance Charges/Debits:** 152.33

**(=) New Balance:** **\$0.00**

**Tax ID:** 27-5114755

Phone: 702-222-2500 Fax: 702-669-4650

*Please detach bottom portion and return with payment.*

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

Invoice No. : 1084446  
Invoice Date : 8/9/2016  
**Total Due : \$0.00**

Remit To: **Litigation Services and Technologies of  
Nevada, LLC  
P.O. Box 98813  
Las Vegas, NV 89193-8813**

Job No. : 324200  
BU ID : LV-CR  
Case No. :  
Case Name

In Re: Title Max/FID Disciplinary Action  
**APP 017514**



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Holland & Hart, LLP  
9555 Hillwood Drive  
2nd Floor  
Las Vegas, NV 89134

# INVOICE

Invoice No.	Invoice Date	Job No.
1087227	8/17/2016	324322
Job Date	Case No.	
7/19/2016		
Case Name		
In Re: Title Max/FID Disciplinary Action		
Payment Terms		
Due upon receipt		

½ the Cost of the Original & 1 Copy of the Transcript of:

Hearing, Volume II	352.00	Pages	@	4.25	1,496.00
Attendance - Full Day				150.00	150.00
Rough Draft	291.00		@	0.88	256.08
Digital Litigation Package				25.00	25.00
Shipping/Handling				25.00	25.00

**TOTAL DUE >>>** **\$1,952.08**

AFTER 9/16/2016 PAY \$2,147.29

Please note, disputes or refunds will not be honored or issued after 30 days

**(-) Payments/Credits:** 1,952.08

**(+) Finance Charges/Debits:** 195.21

**(=) New Balance:** **\$0.00**

**Tax ID:** 27-5114755

Phone: 702-222-2500 Fax: 702-669-4650

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

Invoice No. : 1087227  
Invoice Date : 8/17/2016  
**Total Due : \$0.00**

Remit To: **Litigation Services and Technologies of  
Nevada, LLC  
P.O. Box 98813  
Las Vegas, NV 89193-8813**

Job No. : 324322  
BU ID : LV-CR  
Case No. :  
Case Name

In Re: Title Max/FID Disciplinary Action  
**APP 017515**





**Litigation**  
SERVICES

Discovery | Depositions | Trial

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Las Vegas, NV 89169  
Phone: 800.330.1112  
LitigationServices.com

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

# INVOICE

Invoice No.	Invoice Date	Job No.
1087236	8/17/2016	324323
Job Date	Case No.	
7/20/2016		
Case Name		
In Re: Title Max/FID Disciplinary Action		
Payment Terms		
Due upon receipt		

½ the Cost of the Original & 1 Copy of the Transcript of:

Hearing, Volume III	109.00	Pages	@	4.25	463.25
Attendance - Half Day				75.00	75.00
Digital Litigation Package				25.00	25.00
Shipping/Handling				25.00	25.00

**TOTAL DUE >>>** **\$588.25**

AFTER 9/16/2016 PAY \$647.08

Please note, disputes or refunds will not be honored or issued after 30 days

**(-) Payments/Credits:** 588.25

**(+) Finance Charges/Debits:** 58.83

**(=) New Balance:** **\$0.00**

**Tax ID:** 27-5114755

Phone: 702-222-2500 Fax: 702-669-4650

*Please detach bottom portion and return with payment.*

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

Invoice No. : 1087236  
Invoice Date : 8/17/2016  
**Total Due : \$0.00**

Remit To: **Litigation Services and Technologies of  
Nevada, LLC  
P.O. Box 98813  
Las Vegas, NV 89193-8813**

Job No. : 324323  
BU ID : LV-CR  
Case No. :  
Case Name

In Re: Title Max/FID Disciplinary Action  
**APP 017516**

**EXHIBIT 2**

**EXHIBIT 2**

APP 017517



**STATE OF NEVADA  
FINANCIAL INSTITUTIONS DIVISION  
EXAM BILLING INVOICE**

<b>Examination #:</b> 6386 - 69014	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlemax 5060 S Fort Apache Rd Ste 140; Las Vegas, NV 89148 License #: CDTHB11200	604A	13.50	\$60.00	\$810.00
<b>Examination #:</b> 6386 - 69016	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlemax 5871 E Lake Mead Blvd; Las Vegas, NV 89156 License #: CDTHB11213	604A	12.75	\$60.00	\$765.00
<b>Examination #:</b> 6386 - 69018	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlemax 6060 Boulder Hwy Ste 5 & 6; Las Vegas, NV 89122 License #: CDTHB11214	604A	13.25	\$60.00	\$795.00
<b>Examination #:</b> 6386 - 69021	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlemax 1210 N Boulder Hwy Bldg C; Henderson, NV 89011 License #: CDTHB11204	604A	16.25	\$60.00	\$975.00
<b>Examination #:</b> 6386 - 69024	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlemax 1995 E Williams Ave; Fallon, NV 89406 License #: CDTHB11205	604A	13.25	\$60.00	\$795.00
<b>Examination #:</b> 6386 - 69028	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlebucks 4150 Boulder Hwy; Las Vegas, NV 89121 License #: CDTHB11187	604A	10.50	\$60.00	\$630.00
<b>Examination #:</b> 6386 - 69030	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlemax 3220 S Virginia St; Reno, NV 89502 License #: CDTHB11197	604A	13.25	\$60.00	\$795.00
<b>Examination #:</b> 6386 - 69032	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlemax 6795 W Tropicana Ave Ste 140; Las Vegas, NV 89103 License #: CDTHB11198	604A	13.00	\$60.00	\$780.00
<b>Examination #:</b> 6386 - 69035	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Julio Mediatitlemax 3365 E Flamingo Rd Ste 1; Las Vegas, NV 89121 License #: CDTHB11124	604A	13.50	\$60.00	\$810.00
<b>Examination #:</b> 6386 - 69036	<u>License Type</u>	<u>Total Hours</u>	<u>\$/Hour</u>	<u>Total \$/Exam</u>
Titlemax 4944 Boulder Hwy; Las Vegas, NV 89121 License #: CDTHB11074	604A	13.25	\$60.00	\$795.00

<b>Examination #: 6386 - 69038</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 6525 S Fort Apache Rd Ste 110; Las Vegas, NV 89148 License #: CDTHB11062	604A	13.25	\$60.00	\$795.00
<b>Examination #: 6386 - 69042</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4811 W Craig Rd; Las Vegas, NV 89130 License #: CDTHB11048	604A	15.00	\$60.00	\$900.00
<b>Examination #: 6386 - 69043</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 7380 S Eastern Ave Ste 126; Las Vegas, NV 89123 License #: CDTHB11061	604A	14.50	\$60.00	\$870.00
<b>Examination #: 6386 - 69045</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 3391 E Tropicana Ave Ste 1; Las Vegas, NV 89121 License #: CDTHB11057	604A	15.25	\$60.00	\$915.00
<b>Examination #: 6386 - 69046</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 7615 S Rainbow Blvd Ste 100; Las Vegas, NV 89139 License #: CDTHB11056	604A	13.50	\$60.00	\$810.00
<b>Examination #: 6386 - 69048</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 7150 S Durango Dr Ste 190; Las Vegas, NV 89113 License #: CDTHB11055	604A	12.50	\$60.00	\$750.00
<b>Examination #: 6386 - 69050</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 2400 N Buffalo Dr Bldg 140; Las Vegas, NV 89128 License #: CDTHB11047	604A	15.50	\$60.00	\$930.00
<b>Examination #: 6386 - 69051</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4000 Boulder Hwy Ste 5; Las Vegas, NV 89121 License #: CDTHB11186	604A	13.25	\$60.00	\$795.00
<b>Examination #: 6386 - 69052</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 3575 W Tropicana Ave; Las Vegas, NV 89103 License #: CDTHB11193	604A	14.75	\$60.00	\$885.00
<b>Examination #: 6386 - 69053</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 6436 N Decatur Blvd Ste 115; Las Vegas, NV 89131 License #: CDTHB11050	604A	11.25	\$60.00	\$675.00
<b>Examination #: 6386 - 69054</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 6450 W Lake Mead Pkwy Ste 150; Las Vegas, NV 89108 License #: CDTHB11049	604A	14.50	\$60.00	\$870.00
<b>Examination #: 6386 - 69055</b>	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 3900 W Sahara Ave; Las Vegas, NV 89102 License #: CDTHB11132	604A	11.75	\$60.00	\$705.00

<b>Examination #:</b> 6386 - 69056	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 8414 W Farm Rd Ste 130; Las Vegas, NV 89131 License #: CDTHB11126	604A	13.00	\$60.00	\$780.00
<b>Examination #:</b> 6386 - 69057	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 1600 N Nellis Blvd Ste 102; Las Vegas, NV 89115 License #: CDTHB11075	604A	12.25	\$60.00	\$735.00
<b>Examination #:</b> 6386 - 69059	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 1225 E Charleston Blvd; Las Vegas, NV 89104 License #: CDTHB11071	604A	14.75	\$60.00	\$885.00
<b>Examination #:</b> 6386 - 69060	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 3810 Blue Diamond Rd Ste 150; Las Vegas, NV 89139 License #: CDTHB11064	604A	12.50	\$60.00	\$750.00
<b>Examination #:</b> 6386 - 69062	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 3525 S Fort Apache Rd Ste 160; Las Vegas, NV 89147 License #: CDTHB11063	604A	14.50	\$60.00	\$870.00
<b>Examination #:</b> 6386 - 69063	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 6530 S Decatur Blvd Ste 100; Las Vegas, NV 89118 License #: CDTHB11060	604A	14.25	\$60.00	\$855.00
<b>Examination #:</b> 6386 - 69064	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 6820 W Flamingo Rd Ste F & G; Las Vegas, NV 89103 License #: CDTHB11059	604A	13.00	\$60.00	\$780.00
<b>Examination #:</b> 6386 - 69065	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 2550 S Eastern Ave; Las Vegas, NV 89169 License #: CDTHB11058	604A	15.25	\$60.00	\$915.00
<b>Examination #:</b> 6386 - 69066	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 9555 S Eastern Ave Ste 105; Las Vegas, NV 89123 License #: CDTHB11054	604A	13.75	\$60.00	\$825.00
<b>Examination #:</b> 6386 - 69067	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4650 C E Sunset Rd Ste C; Henderson, NV 89014 License #: CDTHB11052	604A	13.50	\$60.00	\$810.00
<b>Examination #:</b> 6386 - 69068	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 16 W Horizon Ridge Pkwy Ste 160; Henderson, NV 89012 License #: CDTHB11051	604A	12.00	\$60.00	\$720.00
<b>Examination #:</b> 6386 - 69069	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4749 S Maryland Pkwy; Las Vegas, NV 89119 License #: CDTHB11175	604A	13.00	\$60.00	\$780.00

<b>Examination #:</b> 6386 - 69072	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4700 Spring Mountain Rd; Las Vegas, NV 89102 License #: CDTHB11188	604A	10.00	\$60.00	\$600.00
<b>Examination #:</b> 6386 - 69073	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4001 N Las Vegas Blvd; Las Vegas, NV 89115 License #: CDTHB11192	604A	11.25	\$60.00	\$675.00
<b>Examination #:</b> 6386 - 69075	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4741 E Charleston Blvd; Las Vegas, NV 89104 License #: CDTHB11191	604A	14.50	\$60.00	\$870.00
<b>Examination #:</b> 6386 - 69076	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4077 W Charleston Blvd; Las Vegas, NV 89102 License #: CDTHB11113	604A	18.50	\$60.00	\$1,110.00
<b>Examination #:</b> 6386 - 69077	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 4750 W Lake Mead Blvd Ste 102; Las Vegas, NV 89108 License #: CDTHB11072	604A	14.25	\$60.00	\$855.00
<b>Examination #:</b> 6386 - 69078	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 2020 E Williams St; Carson City, NV 89701 License #: CDTHB11207	604A	15.50	\$60.00	\$930.00
<b>Examination #:</b> 6386 - 69079	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 900 W 5Th St Bldg C; Reno, NV 89503 License #: CDTHB11209	604A	13.50	\$60.00	\$810.00
<b>Examination #:</b> 6386 - 69081	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 3547 S Maryland Pkwy; Las Vegas, NV 89169 License #: CDTHB11073	604A	14.00	\$60.00	\$840.00
<b>Examination #:</b> 6386 - 69083	<b><u>License Type</u></b>	<b><u>Total Hours</u></b>	<b><u>\$/Hour</u></b>	<b><u>Total \$/Exam</u></b>
Titlemax 15 Bull St Ste 200; Savannah, GA 31401 License #: CDTHB11053	604A	3.00	\$60.00	\$180.00

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**TOTAL AMOUNT DUE:**

**\$34,425.00**

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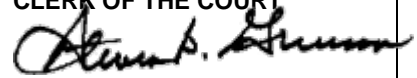


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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

TITLEMAX OF NEVADA, INC.,	)	
TITLEBUCKS,	)	CASE NO. A-16-743134
	)	
Petitioners,	)	
	)	DEPT. NO. XV
vs.	)	
	)	
STATE OF NEVADA,	)	<b>Transcript of Proceedings</b>
	)	
Respondent.	)	
	)	

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

**PETITION FOR JUDICIAL REVIEW**

THURSDAY, AUGUST 3, 2017

**APPEARANCES:**

For the Petitioners: PATRICK J. REILLY, ESQ.  
DANIEL F. POLSENBERG, ESQ.  
MALANI DALE KOTCHA-ALANES, ESQ.

For the Respondent: DAVID J. POPE, ESQ.  
VIVIENNE RAKOSWKY, ESQ.  
RICKISHA HIGHTOWER-SINGLETERY, ESQ.  
WILLIAM J. MCKEAN, ESQ.

RECORDED BY: MATTHEW YARBROUGH, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service



1 THURSDAY, AUGUST 3, 2017 AT 9:28 A.M.

2

3 THE CLERK: A743134, *Titlemax of Nevada, Inc.*  
4 *versus Nevada State of.*

5 MR. POLSENBERG: Your Honor, can I move the screen  
6 over to there?

7 THE COURT: You sure may.

8 MR. POLSENBERG: Thank you.

9 THE COURT: If you all in the jury box would like  
10 to sit over there so you can see this better, you're  
11 welcome to do that.

12 MR. POLSENBERG: Last time I used an Elmo in this  
13 time I didn't have a jury.

14 [Pause in proceedings]

15 MR. POLSENBERG: Is that on?

16 THE COURT RECORDER: I believe it is.

17 MR. POLSENBERG: Do you have to convert it over?  
18 There we go. Thank you, Your Honor.

19 THE COURT: So, once you -- you're welcome. Go  
20 ahead and state your appearances.

21 MR. POPE: Okay. Good morning, Your Honor. I'm  
22 David Pope with the Attorney General's Office on behalf of  
23 the FID and with me is Bill McKean, Chief Deputy, Vivienne  
24 Rakowsky, Deputy Attorney General, and Rickisha Singletary,  
25 Deputy Attorney General, and we're all here on behalf of

1 the FID.

2 THE COURT: All right.

3 MS. KOTCHA-ALANES: Dan Polsenberg and Dale  
4 Kotcha-Alanes on behalf of Titlemax.

5 MR. REILLY: Pat Reilly on behalf of Titlemax.  
6 Good morning, Your Honor.

7 THE COURT: Good morning. Bear with me a moment.  
8 [Pause in proceedings]

9 THE COURT: Okay. So, I have -- just for the  
10 counsels' edification, I suppose, quite a bit in  
11 preparation for the hearing today and clearly that includes  
12 briefs, but also pertinent parts of the administrative  
13 record that is literally behind me here. So, if reference  
14 needs to be made to that, I have it available if I need to  
15 take a look at certain pages in the record.

16 The good news, or the bad news, however you look  
17 at it, is we don't have trial today. So you have time to  
18 make your arguments as you deem appropriate with the caveat  
19 that we will need to end sometime in the A.M. which,  
20 hopefully, doesn't present an issue, but -- so, having said  
21 that -- oh, so, also, I reviewed the Request for Hearing,  
22 the Supplemental, the Declaration, the Opposition to the  
23 Supplement, the Supplement to the Supplement, case law,  
24 statutes, etcetera. So, welcome arguments of counsel  
25 beginning with the petitioner, I suppose.

1 MR. POLSENBERG: Thank you, Your Honor.

2 Scheme, the State uses that word a lot. They use  
3 it in front of you, they use it in the administrative  
4 record, they say that this is a scheme and they may have  
5 said it today, too, if I didn't say it first. But scheme,  
6 I think they're misusing the word. Scheme means a design  
7 or plan. They're using it to connote something devious and  
8 unworthy, but that's not what scheme really means. So  
9 let's look at what -- and we'll be doing this a lot today,  
10 looking at what words really mean.

11 THE COURT: When you say today, you mean this  
12 morning?

13 MR. POLSENBERG: Yes, Your Honor. I plan to be  
14 done before noon, Your Honor.

15 THE COURT: Good. Thank you.

16 MR. POLSENBERG: In fact, Joel was pointing out to  
17 me that we'll get 15 minutes per side up in front of the  
18 Supreme Court. So, --

19 THE COURT: That works for me.

20 MR. POLSENBERG: There you go. I can't keep it to  
21 15, but I'll keep it as short as I can.

22 So, let's look at scheme. What scheme -- we're  
23 going to look at two different types of schemes. We're  
24 going to look at what it was that Titlemax intended when  
25 coming up with the Grace Period Payment Deferment

1 Agreement.

2 But the more important scheme, and since this is  
3 an appeal, the -- and concentrating on legal issues, the  
4 scheme that we should be looking at is the statutory scheme  
5 and when we talk about statutory schemes, we don't mean  
6 anything conniving. We mean a design or plan. Here's how  
7 simple their argument is. They look at NRS 604A.445 and  
8 they say that our grace period violates the statute. Well,  
9 they're wrong and the reason they're wrong is because the  
10 grace period isn't governed by the statute. 445 talks  
11 about the original term of the title loan. It talks about  
12 it twice. It talks about the 30-day product, which we've  
13 briefed, and it talks about the 210-day title loan.

14 If it meant no title loan can ever be more than  
15 210 days, it would have said: No title loan can ever be  
16 more than 210 days. To qualify under 445, subsection 3,  
17 you have to do certain things, but they are not the things  
18 that you have to do to satisfy a grace period. These are  
19 the things you have to do to be able to have an original  
20 term of the loan be 210 days. And we'll get to those  
21 requirements in a second.

22 But what governs a grace period? The  
23 Administrative Law Judge, in her findings of fact and  
24 conclusions of law, I think was on the top of page 11, it  
25 says that the two statutes that govern a grace period are

1 NRS 604A.210 and 604A.270. That's disturbing because NRS  
2 604A.270 has nothing to do with grace periods. In fact,  
3 there is no NRS 604A.270. What governs grace periods --  
4 and this is indicative of the approach both by the  
5 Administrative Law Judge and by the State where they come  
6 in with a simplistic argument and say certain things are  
7 what they are because they say they are. And they ignore  
8 the statutes that control.

9           What is a grace period? A grace period under  
10 604A.070 -- this is the definition of a grace period.  
11 It's:

12           Any period of deferment.

13           And here's -- when we're talking about payments  
14 being deferred. In fact, it's no coincidence we called it  
15 Grace Period and Payment Deferment Agreement. Offered  
16 gratuitously if it complies with 604A.210.

17           So what is it we need to do to satisfy the grace  
18 period? We only need three things. There needs to be a  
19 deferment. It doesn't say a deferment of what, but,  
20 obviously, it's got to be a deferment of the payment. It  
21 can be a deferment of principal. It can be a deferment of  
22 interest. There's no limitation here. It's a very broad  
23 statutes that the State is tr5yuing to read very narrowly.  
24 It has to be offered gratuitously and everybody is coming  
25 up with meanings of what gratuitously means. I say that

1 gratuitously means that you are offering something that you  
2 don't have to offer or we are doing it without a specific  
3 charge to do it.

4           At some point in the record, the State is arguing  
5 that gratuitously means that you can't charge interest.  
6 Well, I don't see how you can read that word that way.  
7 But, more specifically, although it's put into the  
8 definitions, you can see what the Legislature is really  
9 doing. It's deferring, excuse the pun, the definition of  
10 grace period to 604A.210. Let's look at that.

11           So, it makes clear that the chapter, anything in  
12 the chapter, overall, 604A, does not prohibit grace  
13 periods. And it repeats it after the title: The  
14 provisions of this chapter do not prohibit a licensee from  
15 offering a customer a grace period on the repayment of a  
16 loan or an extension of the loan. So you can have a grace  
17 period on the repayment of a loan. Now we know what it's  
18 the deferment on, except that the licensee cannot charge  
19 the customer any fee for granting such a grace period.

20           Here, now, is the definition of gratuitously.  
21 It's a fee for granting the grace period. And, in  
22 addition, the licensee cannot charge any additionally fees  
23 or charge additional interest.

24           Now the Administrative Law Judge never got to this  
25 provision. The Administrative Law Judge never had to

1 figure out what 210 meant. The Administrative Law Judge  
2 stuck with 445. And that's their argument. That's their  
3 argument in their Opposition to our Supplement to a  
4 Supplement. Talk about a case about words.

5           We're there saying: Look, you don't have to look  
6 at NRS 604A.210. You don't have to look at NRS 604A.070.  
7 You only have to look at 445 and they claim that it is an  
8 extension. They claim it is an illegal extension and the  
9 Administrative Law Judge agreed. But you can't decide  
10 whether it's a grace period without looking at the statute  
11 that decides whether it is a grace period. In fact, the  
12 definition of an extension, the provision right before the  
13 definition of grace period, NRS 604A.065, defines  
14 extension. Another incredibly well-written statute. An  
15 extension means an extension.

16           It does clarify one thing. The term does not  
17 include a grace period. What's the definition? What is  
18 the difference between an extension and a grace period?  
19 The Administrative Law Judge didn't try to decide that.  
20 What she decided was: Well, it's an extension because it's  
21 an extension and 445 doesn't allow an extension, so it is  
22 moot. I don't even have to address what is a grace period.

23           That's wrong. This whole case turns on what the  
24 grace period is and a grace period is a deferment of a  
25 payment.

1           Now, what is the limitation on that? That you  
2 can't charge additional interest. The Administrative Law  
3 Judge said that she didn't have to address this provision  
4 because it's an extension, but, no, that's what this whole  
5 case is about. Not the whole case, because, remember  
6 during the 210-day -- the second 210-day period, the grace  
7 period, as the Administrative Law Judge found it to be. We  
8 didn't charge any interest at all.

9           So does interest mean any interest? Does  
10 additional interest mean any interest? No. Not only would  
11 that be an incorrect reading of the literal terms, even if  
12 that's ambiguous, the legislative history makes it clear  
13 that the 604A was all proposed at one time in 2005 and the  
14 original version of 210 said that -- subsection 2, that the  
15 licensee cannot charge any interest. And that was changed.  
16 That was changed from any interest to additional interest  
17 and the legislative history is clear that the reason for  
18 that is the [indiscernible], the issue that the legislature  
19 was concerned about is lenders charging for grace periods,  
20 charging late fees for getting into grace periods, charging  
21 additional fees, and charging additional amounts of  
22 interest. Not amounts of interest, additional rates of  
23 interest.

24           That's an important point because without 604A,  
25 when the statutes talk about interest, they're usually



1 talking about the interest rate. These govern -- this  
2 chapter governs high interest loans. Does it talk about  
3 high amounts of interest? No. It's talking about high  
4 interest rates. Additional interest means the -- an  
5 interest rate in addition to what was contractually agreed  
6 upon.

7           And you can see that at one point in the chapter  
8 when they're talking about the amount paid in interest, the  
9 dollar amount, the statute actually says the amount of  
10 interest, not just interest. When it talks about interest,  
11 like high interest, it's talking about interest rate and  
12 what they were trying to do, the clear intent of the  
13 Legislature, was that it was trying to prevent lenders from  
14 increasing the interest rate during the grace periods.

15           Now, years went on and the financial institutions  
16 division proposed a regulation. Seven years later. They  
17 proposed a regulation that would say that no interest could  
18 be charged during the grace period. Now, what the  
19 Legislature has meant -- let me go back to the use of clear  
20 language.

21           If the Legislature had meant you can't charge any  
22 interest, they could have said they can't charge any  
23 interest. And they actually changed that language. They  
24 could have said: You will charge no interest during a  
25 grace period. But they didn't say that. So, the Financial

1 Institutions Division, seven years later, proposed a  
2 regulation that would say that. They proposed the  
3 regulation and, in the history of that rule making, the  
4 Financial Institutions Division conceded that the current  
5 language was ambiguous. I don't think it's ambiguous. I  
6 think it means what we're saying. They conceded it could  
7 be read to say what I am saying it means, that there's no  
8 additional interest rate.

9           So, they proposed a regulation to change the  
10 result, but it failed. It didn't go forward. There was no  
11 regulation. And, then, this year, this year, they proposed  
12 a legislative change. Now, in proposing the legislative  
13 change, to me, makes it clear that the original version of  
14 the statute is at the very least ambiguous.

15           THE COURT: Didn't somebody say a proposal was to  
16 address loopholes contained within the statute.

17           MR. POLSENBERG: I'm sorry. I missed your words,  
18 Judge.

19           THE COURT: Didn't someone say the proposed  
20 amendment to the statute was to close loopholes to --

21           MR. POLSENBERG: Yeah, to -- they did. And, in  
22 fact, they specifically mentioned us. But look -- what  
23 closing a loophole means that the law provides -- allows  
24 people to do a certain thing and they wanted to change the  
25 law to keep people from doing that thing. That was the

1 proposal. They wanted to change NRS 604A.070. They say  
2 they wanted to clarify it, but that still means -- if they  
3 needed to clarify it, that still meant it was an ambiguous  
4 statute that can be read to be -- read the way I'm reading  
5 it.

6           Here's what their proposal was. Their proposal  
7 was to change that subsection 2 where it used to say  
8 additional interest and it -- they put in subsection 1, you  
9 cannot charge any interest during a grace period. That's  
10 what the current version says. They're changing it to say  
11 what -- how they're interpreting the current version of the  
12 statute.

13           But this was only the proposal and -- but the  
14 proposal is enough and the rulemaking is enough to say that  
15 we were reasonable in reading the statute in the way that  
16 we were reading it. I think we were right in reading it  
17 the way we were reading it, but when they come to the  
18 willfulness issue, they have to get over the fact -- they  
19 keep talking about speed limits and us violating speed  
20 limits. You have to realize that at the very least, this  
21 speed limit was written in a way that conveyed to us to do  
22 -- that we were allowed to do certain things that we did,  
23 but this is not that the Legislature enacted. What the  
24 Legislature enacted is exactly what we're saying.

25           Under 2B -- under the current version of NRS

1 604A.210, it says that:

2           A licensee shall not charge the customer interest  
3           at a rate in excess of that described in the existing  
4           loan agreement.

5           Just what the legislative history from 12 years  
6 ago said the purpose of the statute was. You can charge  
7 interest during a grace period, but you can't charge a  
8 higher rate of interest. That's what additional interest  
9 means. You cannot charge a higher rate of interest.

10           So, the Legislature has clarified the statute to  
11 mean what it was that we thought it meant all along. Now,  
12 FID came in and they wanted to change it, but the  
13 Legislature didn't go along with that. FID wanted to pass  
14 regulations, but they failed and those regulations would  
15 have been inconsistent with the statute, but that all goes  
16 to show that our reading was reasonable.

17           Let me go back to 445. And, again, I don't think  
18 we're governed by 445. 445 has to do with the original  
19 term, the 210 days. There is nothing in 445 that says you  
20 cannot have a grace period. The exception to 445 is found  
21 in 070 and 210, specifically 210. If this said you cannot  
22 have a title loan more than 210 days, that would be their  
23 argument. But that's not what it says. And you have to  
24 comply with certain things for the 210 days and they claim  
25 that we didn't do that. I disagree with that. I don't

1 think we have to comply with 445. Let me show you what it  
2 is that we did and then go back to see if it -- whether we  
3 qualified under that statute.

4 First page 1 of their brief, if I were they, I  
5 would blow this up on one of those boards. So, here's what  
6 we did. We had an original 210 days. Now, you know, if I  
7 were a good lawyer, I would have struck out that word  
8 unlawful because, in their statement of facts, they get  
9 very argumentative on what's legal and what isn't level.  
10 So, right there on page 1, they're starting with their  
11 conclusion that what we did was wrong.

12 THE COURT: Isn't that, I mean, what we're taught  
13 in law school, that in the introduction, give you argument  
14 and, then, in your conclusion, give your argument?

15 MR. POLSENBERG: Perhaps so, Your Honor. Although  
16 I was taught in practicing appellate law is when you state  
17 your facts, you don't get argumentative.

18 THE COURT: But they have a -- well, --

19 MR. POLSENBERG: I understand. I understand. I  
20 understand. I'm just saying if I were a good lawyer, I  
21 would have crossed out the word unlawful. Oh, wait. I  
22 have.

23 So, here's our original plan. We have seven  
24 payments and, over those seven payments, there's interest  
25 and principal that's paid. And, at the end, it's all paid

1 off. Under our grace period plan, the customer pays  
2 interest only for the first seven months and then for the  
3 next seven months they pay principal only. At the  
4 beginning of month eight, at the end of month seven, the  
5 entire principal amount is still due, but look at that.  
6 There's no interest at all charged for the second seven  
7 months. There's no interest at all charged. So, this  
8 argument about whether we charged interest during the grace  
9 period, whether we're allowed to charge interest during the  
10 grace period, I can see why the Administrative Law Judge  
11 skipped over the issue because we didn't charge any  
12 interest at all. But their argument is: Well, the  
13 customer paid more; paid the greater amount.

14           And throughout their brief, they say, amount of  
15 interest, or, total amount of interest. They have to  
16 change the statutory phrase from additional interest to  
17 amount of interest to be able to make the argument that  
18 they're making; to be able to say that we don't comply  
19 because there's no interest at all paid during the 210  
20 days. But their argument is: Look, here. Under the  
21 original plan, the customer would pay \$2,000 in finance  
22 charge and, under this grace period, they pay over \$3,000.  
23 So, they're actually paying more. They're actually paying  
24 a greater amount of interest but that's missing why we do  
25 that. Why do we do that? There are three factors that we

1 considered in coming up with the grace period plan. One of  
2 them was certainly defaults. This is -- using the Grace  
3 Period Payment Deferment Agreement, repossessions were down  
4 to 2 percent. When we stop -- voluntarily stopped doing  
5 this because of our dispute with the State, they went back  
6 up. Customers complained that we didn't offer this anymore  
7 because this is a real benefit to the customers. They  
8 scoff, though I imagined they would.

9 THE COURT: I think they may scoff because it's  
10 also a benefit to your client. Right?

11 MR. POLSENBERG: How is it a benefit to our  
12 client?

13 THE COURT: Well, if you can't answer that  
14 question, I don't know what to do.

15 MR. POLSENBERG: It's not a benefit and I'll get  
16 back to taking you through this.

17 If you look at -- if we had -- if the customer  
18 didn't take advantage of the grace period, they would pay  
19 off the entire amount in seven months. We would make  
20 \$2,000 in seven months. And, instead, over 14 -- we would  
21 have that money back. Remember, they haven't paid any of  
22 the principal. We can then use that money to lend to this  
23 customer or some other customer, would have the opportunity  
24 cost of the money, we would be out there earning, during  
25 the second seven months, another \$2,000. By offering the

1 grace period, we were actually -- we actually make \$1,000  
2 less.

3 THE COURT: Well I -- aren't there a few  
4 assumptions in what you just showed me?

5 MR. POLSENBERG: There are assumptions that we  
6 would be able to borrow the money -- I mean, we would be  
7 able to lend out the money.

8 THE COURT: And you were precluded from doing so  
9 because you lent at the grace period.

10 MR. POLSENBERG: Well, it's the opportunity cost  
11 of the money. We have the money. It would be out there  
12 working. Instead, it's working less hard. It is. I mean,  
13 it reminds me of the Parable of the Talents. We're  
14 essentially out there earning less money on this than we  
15 could have been earning.

16 So, you know, they're -- they want to come in and  
17 make it look like we are just out there trying to generate  
18 something and this is actually -- and, Judge, it was a  
19 benefit to the client because what they do is it gives them  
20 flexibility. They don't have to enter into the grace  
21 period if they don't want to enter into the grace period.  
22 They can enter into the grace period at any point they  
23 wanted to enter into it and look what they essentially get.  
24 They essentially get another 210 days of an interest-free  
25 loan. It cut down on defaults. Nobody wants to default.



1 Customers don't want to default. It puts them in a  
2 situation where they have to pay 20 percent right up front.  
3 They're going to have to pay the rest in as little as 90  
4 days.

5 To -- this gives them the flexibility to enter  
6 into an agreement of their choice, whenever they want to  
7 enter into the agreement, to help them on the payments. It  
8 also helps with ability to borrow, Judge, because if we  
9 simply had a grace period, if a borrower in month one  
10 couldn't make the payment and had to defer the payment into  
11 a future period, those -- and the additional interest would  
12 wind up being charged on that as well. Those payments  
13 would wind up being higher each time.

14 So, look. They're paying right now about 7,000 --  
15 \$700 a month. If you miss the first month and the second  
16 month and the third month, you've got to spread that \$2,100  
17 out over the other four months, which will make the  
18 payments higher, which will be more difficult for them to  
19 make the payments. So, instead, those payments are put out  
20 into a whole nother [sic] period, a whole nother [sic]  
21 seven months, during which no interest is charged.

22 And it -- a great deal of their argument is also  
23 that this loan -- they argue the subsections of 445  
24 subsection 3 and they say: Well, look. The payments are  
25 not ratably and fully amortized. But that term is not

1 defined anywhere in the statute. First of all, I don't  
2 think it applies if there's a grace period and they  
3 admitted during the Administrative Law Judge hearing that  
4 there isn't any provision on a grace period to ratably and  
5 fully amortize. But what is it to ratably and fully  
6 amortize? They say that it means that you have to pay off  
7 -- each payment has to have principal and interest, but  
8 they don't cite anything that says that. They don't cite  
9 anything that says that. It's just their idea, again, of  
10 what a statute means. But we do fully amortize this. This  
11 is -- we -- look. The interest is spread out over the  
12 original loan period. And why do you have to have it fully  
13 amortized? You have it fully amortized so there's no  
14 balloon payment.

15           If at the end of the seven months, because of  
16 grace periods, the entire \$2,800 of interest were due at  
17 the end of 210 days, that is exactly what creates the  
18 treadmill of debt. That's exactly what creates the cycle  
19 of debt. That's what the legislative history of the  
20 amendment -- this year's amendment is talking about: How  
21 do you avoid the cycle of debt? And here's how you avoid  
22 it, by not having it all due at month seven, by spreading  
23 out the principal over the next seven months in payments  
24 that the person can afford. No balloon payment. No need  
25 to go and refinance that principal. That's even in the

1 original legislative history from 2005, that what causes  
2 the cycle of debt is that somebody borrows and then can't  
3 repay it and has to take out another loan to pay that loan.  
4 And then another loan to pay that loan. How do we avoid  
5 that? Even though at the end of the original term the  
6 \$2,800 is still owed in its entirety, it's spread out over  
7 seven months. It's amortized over seven months. It's paid  
8 off completely at the end of those seven months and there's  
9 no interest. There's no interest at all. That fulfills  
10 the objective of having it amortized. It fulfills the  
11 objective of not having a balloon payment. It fulfills the  
12 idea that we're not creating a cycle of debt for customers  
13 when they won't be able to handle it.

14 Yes, Judge, we could make more money by not doing  
15 this. It's simple economics. But by doing this, people  
16 have less difficulty meeting their loans.

17 For all those reasons, that's why I think we  
18 complied with the statute. And certainly we comply with  
19 the new statute, except for the fact that it was a separate  
20 agreement. We could do this right now. We could have a  
21 grace period and we could charge interest during that grace  
22 period. And, in this case, we deferred payment on  
23 principal and there was no interest for the additional 210  
24 days.

25 Now, do you have to say that what we did was

1 correct? I think all you have to do is say that we  
2 willfully did not violate the statute. If you look at  
3 604A.900, it says that the necessity of returning the  
4 principal and interest comes up when there is a willful  
5 violation. I don't think there's a violation at all. I  
6 don't think there's a violation where you can impose an  
7 administrative fee.

8 Now, they're different questions presented. It's  
9 -- is -- I'm trying to figure out whether the issue is in  
10 front of you whether we can do this. I don't really think  
11 that it is. I think we brought that in declaratory relief  
12 action in front of Judge Adair and the State moved to  
13 dismiss it saying that we had refused to exhaust  
14 administrative remedies and then, ironically, they argued  
15 in front of the Administrative Law Judge that we're not  
16 entitled to respective declaratory relief. I have that in  
17 front of the Supreme Court right now. It's been briefed.  
18 The issue that you have is: Did we violate it? And did we  
19 willfully violate it?

20 Just to find a violation, just an ordinary  
21 violation, a violation that would come up with the  
22 administrative fine and, remember, here, they asked for  
23 3.07 million dollars in administrative fines. The  
24 Administrative Law Judge, instead of charging \$10,000 times  
25 307 charged 1,000 times 307 and then reduced that down to

1 50,000.

2           So, in the greater scheme of things, I don't think  
3 this is the biggest issue since we're talking about  
4 forfeitures of about -- what did we say? In the tens of  
5 millions of dollars. And this doesn't require the same  
6 rigid standard of willfulness, but to have a violation that  
7 would have a penal sanction to it, the statute has to be  
8 clear enough that it gives appropriate notice to a party,  
9 what it is they're supposed to do. I don't think we even  
10 reach the level here where we can have an administrative  
11 penalty against us, but we certainly don't fall under the  
12 willfulness standard of forfeiture of all the principal and  
13 interest and the principal of all these loans.

14           To do that, -- now, they've argued, as I've said  
15 before, they've argued that this is a speed limit sign,  
16 that it's the clear direction. Well, it's not a clear  
17 direction. In fact, I think it says something completely  
18 different from what they say it means. And the Legislature  
19 thinks it means something different. And they have  
20 conceded in the rulemaking function that it's ambiguous and  
21 it can be read exactly the way I say it means. But they  
22 say it's --

23           THE COURT: You're at over 33 minutes now, so --

24           MR. POLSENBERG: Thank you, Your Honor. I'll  
25 speed up.

1 But it -- you know, they compared to speed limit  
2 sign. My friend, Shaun McGinnis [phonetic] spends a lot of  
3 time in Ireland. And if you have a name like Shaun  
4 McGinnis, I suppose that's not surprising. But Shaun talks  
5 about the road signs in Ireland and they have numbers on  
6 the road signs but you never know if they're talking about  
7 miles or kilometers or Gaelic miles. And that's the lack  
8 of direction that we have here.

9 Lewis Carroll and Through the Looking-Glass,  
10 Humpty Dumpty says to Alice, in a scornful way, that - he  
11 says:

12 When I use the word, it means exactly what I  
13 intend it to mean, no more, no less.

14 There was no direction here that said that we were  
15 wrong in what it was that we were doing. The only reason  
16 that the Administrative Law Judge imposed the forfeiture  
17 from December 2014 to December 2015 was because, at the  
18 examinations in 2014, the State took the position that  
19 we're not allowed to do what we are doing. Soon after  
20 that, we sent them a detailed letter that explained why we  
21 think we are allowed to do what we do. Their respond -- in  
22 their responding letter of March of 2015, on this position,  
23 on this issue -- remember, there was another issue in the  
24 case. On this issue though, all they said was: We stand  
25 by our position.

1           You know, I'm a lot of time in discovery disputes  
2 saying to people: Well, here's my position unless you can  
3 talk me out of it. If they don't even try to talk us out  
4 of that position, if they take the position that it is  
5 because they say it is, -- ipse dixit, it is because they  
6 say it is, then you can't say that we have willfully  
7 disobeyed.

8           We have this interpretation -- somebody earlier  
9 today, I think, cited in another case NRS Chapter 18. We  
10 don't -- under Rule 11 and Chapter 18, your being  
11 susceptible to sanctions has to do with your good faith in  
12 entering into the position, not on your failure to back off  
13 the position when somebody says you're wrong. We, in good  
14 faith, entered into this position. They, in 2012, said that  
15 their statute was ambiguous. They tried to get a  
16 regulation and failed. They tried to change the statute in  
17 2017 to say what it is they said. And the Legislature says  
18 that the statute means what we say. Willfulness isn't just  
19 willfully doing an act.

20           And I find it fascinating that they use speed  
21 limits because that's a strict liability crime. State of  
22 mind is not an element of that crime. But for them to have  
23 to show willfulness, they would have to show a lot more  
24 than we disagreed and we didn't back off.

25           I'd like to save the balance of my time for

1 rebuttal, Judge.

2 THE COURT: Briefly, tell me what relief you want.

3 MR. POLSENBERG: I'd like you to vacate the two  
4 penalties imposed by the Administrative Law Judge, the  
5 administrative fine, and the forfeiture and accounting that  
6 she ordered. Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. POPE: Good morning. Thank you, Your Honor.  
9 We do have a couple of boards before I get started.

10 THE COURT: Sure.

11 MR. POPE: One of them is -- seems we were  
12 thinking alike and please let us know if you can see those,  
13 otherwise maybe we can use your blowup - okay. Very good.

14 THE COURT: That's why they pay you the big bucks.  
15 Right?

16 MR. POPE: That's right. Thank you for having me  
17 and your easel. Thank you, Your Honor. While Mr. McKean  
18 is setting that up, if you'd like, I can get started.

19 THE COURT: Sure.

20 MR. POPE: So, Titlemax's presentation was very  
21 elaborate and they're correct. FID's position is simple.  
22 Titlemax has asserted questions of law are actually  
23 nonissues. Take the argument regarding the meaning of the  
24 word additional in NRS 604A.210, that's -- the purpose of  
25 that argument is to distract us. It is a non-argument,



1 it's a distraction, because NRS 604A.445 sub 3 is plain.  
2 It plainly limits interest to the amortized interest and  
3 limits the interest in 210 days of amortized interest. Any  
4 interest charged in excess of that amortized interest,  
5 which is the total interest noted on the TILA statement, is  
6 additional interest for purposes of NRS 604A.210 with  
7 regard to these 210-day loans.

8           Ironically, Titlemax seems to have agreed with  
9 that interpretation of the word additional. In their Reply  
10 brief, at page 8, at line 18, -- I'll give Your Honor a  
11 second.

12           THE COURT: Thanks. Okay.

13           MR. POPE: He stated the word additional means  
14 something over and above the original amount. And when we  
15 go through the loans, I'll show you that, in fact, any  
16 interest charged in excess of the 210 days of amortized  
17 interest is over and above the original amount of interest  
18 that's allowed by 445 sub 3. So, it is additional  
19 interest.

20           This is so clear that objectively no one,  
21 including Titlemax, could have a good faith belief that  
22 they could disregard the amortization requirement and  
23 charge this additional interest. It's so clear that  
24 Commissioner Burns [phonetic] testified that no other  
25 licensee is having this issue. Because it's so clear, no

1 regulation was needed.

2 Now, I'd like to talk about the loans a little  
3 bit. First, I'd like to just run Your Honor -- just review  
4 the statute.

5 THE COURT: Sure.

6 MR. POPE: Just place it out in front here.

7 So, as we know from section 1, the title loan is  
8 usually limited to 30 days. Section 3 allows the original  
9 term --

10 THE COURT: Okay. Let me -- I'm sorry.

11 MR. POPE: Is there a glare?

12 THE COURT: Maybe --

13 MR. POPE: Out here?

14 THE COURT: Yeah. And I'm the one here, so you  
15 can aim that just to me if you want to.

16 MR. POPE: Okay.

17 THE COURT: Oh, that's perfect.

18 MR. POPE: So, the original term of the title loan  
19 is 30 days. We can go to 210 days if you comply with these  
20 three things. We've gone over them. Simply have to have  
21 installment payments, the payments have to be calculated to  
22 ratably and fully amortize the entire amount of principal  
23 and interest in 210 days and it's limited to 210 days of --  
24 it's limited to a 210-day term because there's no  
25 extensions.

1           So, -- can I stand on this side?

2           THE COURT: Yeah. That's fine. I --

3           MR. POPE: Thank you.

4           THE COURT: No problem.

5           MR. POPE: So, the people on my side here, the  
6 smaller table, is an example of how Titlemax's 210-day loan  
7 that they drafted would comply with NRS 604A.445 sub 3.

8           So, what do we need? We need installment  
9 payments. We have seven payments and if you add up the  
10 principal and interest in each payment, each payment is an  
11 equal amount. So, we have installment payments.

12           The next concern is whether the payments are  
13 calculated to ratably and fully amortize the entire amount  
14 of principal and interest. Ratably amortize means you have  
15 a portion of principal and a portion of interest in each  
16 payment. You have that in these payments. So, it's  
17 ratably amortized. Fully amortized means that a portion  
18 goes to principal -- every time a portion goes to principal  
19 in a payment -- or with every payment, a portion that goes  
20 to principal increases and, at the same time, the portion  
21 that's going to interest decreases. And, at the end of the  
22 210-day term, the loan is paid in full.

23           Now, we'll go to the table on the right side,  
24 which is the GPPDA, the Grace Period Payment Deferment  
25 Agreement. It will show how that doesn't comply with 445

1 sub 3. You'll note, first of all, they both have the same  
2 principal, \$2,820. And the finance charge down here is  
3 \$2,066 and down here it's \$3,156. So, it's about \$1,100  
4 higher. So, what was the first thing that we needed? We  
5 needed installment payments. We have 14 payments, 14  
6 monthly payments, but they're not equal amounts. The first  
7 seven is for \$450. The last seven or for \$402. So,  
8 they're not installment payments. We also -- quickly, we  
9 have 14 payments, which is not 210 days. It's 420 days.  
10 So, we've exceeded the limitation of this. It's in --  
11 we've violated the clear statutory prohibition of  
12 extensions. Nobody has argued that that's not clear.  
13 That's the plain -- you know, that's about as plain as it  
14 can be and it was violated. It was disregarded in order to  
15 extend this loan.

16           The next question is: Are the payments ratably  
17 and fully amortized to pay -- are they calculated to  
18 ratably and fully amortize the entire amount of principal  
19 and interest? Well, they're not ratable because we don't  
20 have principal. There's no money going towards the  
21 principal in the first seven payments. And there's no  
22 money going towards interest in the last seven payments.  
23 And it's not amortized to be paid off within 210 days.

24           So, it's not ratably and fully amortized. That's  
25 how it violates the statute. And let me head back to the

1 podium for a second.

2           Now, the Grace Period Payment Deferment Agreement  
3 or the GPPDA, it's not a -- it can't function separately.  
4 There would be no need to just issue the GPPDA on its own  
5 and if it was issued on its own, it would violate the  
6 statute. Here, it violates the statute, most importantly  
7 because, as I said earlier, the speed limit, as we're  
8 referring to it, in clear statutory limitation is 210 days  
9 of amortized interest. That's these numbers here. That's  
10 this interest column. But the GPPDA doesn't simply  
11 transfer this \$464 over to payment one and the \$384 over to  
12 payment two and so on. It subjects the entire principal to  
13 the interest rate for 210 days. That's unamortized  
14 interest. That's allowable in section 2 of the statute,  
15 which I don't have on the board. Section 2 allows a 30-day  
16 loan to be extended for six periods. So, it can be  
17 extended up to 210 days. The difference is that it's a 30-  
18 day loan and you collect 30 days of interest. You extend  
19 it, you get another 30 days of interest. Hopefully the  
20 customer is paying it off and you don't have to go up to  
21 the full 210. This is what Titlemax is doing before it  
22 came to the GPPDA, it was granting a 30-day loan, granting  
23 six extensions, collection 210 days of unamortized  
24 interest.

25           THE COURT: But don't they say that, yes, they

1 were doing that and they changed because -- I'll use the  
2 you, in the royal sense, I suppose, said you need to change  
3 that. Isn't that what led them to do the GPPDA loan?

4 MR. POPE: Yes, Your Honor. The reason is  
5 there's another statute that has to be read in conjunction  
6 with this and it says that the ability to -- the ability of  
7 the customer to repay the loan has to be taken into  
8 consideration. And, so, if you grant six extensions from  
9 the get-go, you're not -- you're -- by granting six  
10 extensions from the get-go, the -- arguably, you're not  
11 taking the customer's ability to repay into consideration.  
12 What you're doing is you're giving them a longer period of  
13 time to pay it back. Arguably, they couldn't have paid it  
14 in the original term because they needed more time and you  
15 gave them the extension up front, which is what this is  
16 doing.

17 This is not being done to -- I'll say that there  
18 was testimony -- Mr. [indiscernible] testified that  
19 Titlemax does what it can to avoid defaults and he further  
20 went onto testify that that's because defaults are not  
21 profitable. And, you know, what Titlemax uses this for is  
22 to seek more profits. They go after this additional  
23 interest. What happened when they went to the GPPDA, the  
24 finance charge went up \$1,100. That's not gratuitous. The  
25 customer's paying more interest because they're paying this

1 unamortized interest for seven periods. Unamortized  
2 interest, which is the opposite of the word in the statute,  
3 which is amortized. They have to read that word out of the  
4 statute in order for this GPPDA to work. They also have to  
5 read the word extension out of the statute in order for this  
6 GPPDA to work. So they're doing exactly what they accused  
7 the FID of doing, creating words out of statutes.

8           So, the purpose of this GPPDA really isn't as it's  
9 made out to be. The purpose is to pursue this unamortized  
10 interest that they were trying to obtain through the sub 2  
11 loan that they were told they couldn't do, found a new way  
12 to go up to 210 days, and then found a way to get  
13 unamortized interest when the statute says you can only  
14 charge amortized interest.

15           How could you limit this to amortized interest by  
16 granting a grace period where you charge interest? You  
17 couldn't amortize it because you wouldn't -- you couldn't  
18 amortize an unknown amount of interest that they're  
19 applying in the grace period to be readily and fully paid  
20 off within the time period. That doesn't make sense. Any  
21 interest charged, you know, in excess of the amortized, 210  
22 days of interest, is additional interest. That's the plain  
23 language of the statute. That's the plain meaning of the  
24 statutes.

25           And to -- you know, there's been some comments

1 about the speed limit sign. Well, this isn't just  
2 speeding, Your Honor. This is reckless driving. You can't  
3 look at a 55 mile an hour sign, go 100 miles an hour, and  
4 then come up with some argument that you have a reasonable  
5 belief that you could do 100 miles an hour. You just can't  
6 do it.

7           So, the benefit -- I think it's clear that the  
8 benefit that Titlemax received is the additional interest.

9           Another thing that I wanted to point out, Your  
10 Honor, is that -- if I may approach?

11           THE COURT: Sure.

12           MR. POPE: Titlemax goes back and forth. First  
13 the seven payments are the grace periods, then the last  
14 seven payments are the grace period. I'm just showing you  
15 how they're collected. They're charging additional  
16 interest in the first seven payments. So, they're charging  
17 additional interest, even if that is a grace period, which  
18 we submit it's not a grace period because it's not  
19 gratuitous. And if this is the grace period, well they're  
20 charging additional interest up front. They're just  
21 frontloading it. They're -- this is not gratuitous. They  
22 pay an extra \$1,100 to get it.

23           Your Honor, the ALJ saw the statute for what it  
24 was. She saw that it was plain, unambiguous. FID thought  
25 that the statute was plain and unambiguous and outside of -



1 - showing Titlemax the statute and saying that this plainly  
2 requires amortization, you cannot collect more interest  
3 than the 210 days of amortized interest and you cannot  
4 extend it, what other kind of response do they need?  
5 That's the plain language of the statute. The ALJ applied  
6 it.

7 I mean, the ALJ, in her Order, said that  
8 Titlemax's argument with regard to willfulness sort of -- I  
9 forget, rings hollow, lost its steam, when they got notice.  
10 And it's true. FID gave them notice. They had -- they  
11 were given notice of the statute and what FID thought it  
12 meant, the plain language of the statute through the 2014  
13 examination process, through the exam report. There was a  
14 meeting before the final exam report was issued and there  
15 was, I believe, a meeting after the exam report was issued.  
16 And, then, they were given notice of the plain language of  
17 the statute again in 2015, again through the examination  
18 process and through the examination report.

19 So they did get this information -- the did get  
20 this notice from FID. But, most importantly, before they  
21 ever got that notice from FID, they had the plain language  
22 of the statute. They read it. They read it before 20 --  
23 they read it before they switched from the 30-day loan to  
24 the 210-day loan. And, then, -- and, then, they said:  
25 Fine. Their response to the FID was: Fine, we'll go for

1 the 210-day loan. They drafted documents. They put the  
2 documents into play. They were making these loans and they  
3 were using the GPPDAs. They never asked for advice from  
4 the FID.

5 THE COURT: I'm going to pause you there. I mean,  
6 didn't they write a thorough -- I mean, I guess maybe  
7 you're saying advice before --

8 MR. POPE: Yes.

9 THE COURT: -- they instituted -- okay.

10 MR. POPE: I didn't finish that sentence. Before  
11 they put this business plan into operations, --

12 THE COURT: Okay. So, and this leads to a  
13 question I have a little earlier when we were talking about  
14 willfulness. They did -- I mean, my understanding, anyway,  
15 they did institute the GPPDA scheme, plan, whatever word  
16 you want to use. FID said you can't do that. Titlemax  
17 responds: Here's why we think we can according to our  
18 lawyers. Please, you know, respond to this and what does  
19 FID do in response to that?

20 MR. POPE: So, my timing might not be exactly on,  
21 Your Honor, but loose timing, if the -- if that 2014  
22 examination report was completed in early fall of 2014 and  
23 then the final examination report came out some time around  
24 the end of the year or the first of the year of 2015 and  
25 then FID's explanation is in the examination report and FID

1 says we stand by our findings and the findings in the  
2 examination report cite the statute and say that you're not  
3 amortizing and you're extending, you know, FID's a  
4 regulator. If you explained it to somebody once or twice  
5 and then they came back and gave you the same argument  
6 again, would you have to explain it a third time or can you  
7 say: You know, professionally, please see our prior  
8 argument.

9           So, Your Honor, focusing on the amortization  
10 requirement, the ALJ found that that was a clear  
11 amortization requirement. She applied it that way. I  
12 believe the ALJ said the amortization requirement and the  
13 prohibition against extensions was so clear that you should  
14 have known and, once FID confirmed that, you knew. So,  
15 why'd you keep doing it?

16           Like I said -- believe I said earlier, in order  
17 for this -- in order for the GPPDA to work, you really have  
18 to remove the language calculated to ratably and fully  
19 amortize the entire amount of principal and interest and  
20 you have to remove the extension prohibition.

21           Objectively, again, there's no way that Titlemax  
22 had a good faith belief that they could charge this  
23 additional interest, the unamortized interest, when the  
24 statute requires amortized interest. I've -- we've gone  
25 over some of their prior experience with the statute. You

1 know, so, what I'm saying is that the ALJ said they got  
2 notice from FID. They also got notice from the statute  
3 when they put this plan into place and then they had notice  
4 from the statute when they were doing the 30-day loan that  
5 we discussed, granting the six extensions.

6 But I would also like to pass around the loan  
7 documents that support our boards or the board. May I  
8 approach, Your Honor?

9 THE COURT: Show them what you're giving me.

10 MR. POLSENBERG: Thank you, Your Honor.

11 MR. POPE: We cited it on page 1 and 2 of the  
12 brief.

13 THE COURT: Thank you.

14 MR. POPE: Thank you, Your Honor. We'll put it on  
15 the record.

16 So, --

17 THE COURT: So, it's RA -- ROA193 through 202.

18 MR. POPE: Yes, Your Honor. And I can just  
19 clarify that we have that board up there so that the table  
20 on the left cites -- I think we have referenced up here --

21 THE COURT: Okay.

22 MR. POPE: -- only the first half of these  
23 documents are ROA193 to 198. Page 2 cites the rest of the  
24 documents for that table on the right.

25 So, these documents that I've handed you, Your

1 Honor, are the loan document, the 210-day loan documents,  
2 and the GPPDA and -- so, on ROA195, this is the information  
3 for the original loan document that we used on the board,  
4 there is six payments of equal amounts of their installment  
5 payments and it beats the other requirements. It's  
6 calculated ratably and fully amortizing the entire amount  
7 of the principal and interest of the 210 days. But with  
8 regard to willfulness now, Your Honor, if we could turn --  
9 if I could direct your attention, please, to ROA199, --

10 THE COURT: Okay.

11 MR. POPE: In the second paragraph, about the  
12 middle, it says:

13 Please note that since this is a grace period, it  
14 is not an extension as defined in NRS 604A.065.

15 Well, that's completely opposite of what it is.  
16 It's an extension because they're imposing interest and  
17 they're charging additional interest. So, it's not a grace  
18 period. They knew enough to get the statutory requirement  
19 in the document. They knew of the requirement. They put  
20 it right there.

21 Then the -- two sentences down, Your Honor, the  
22 last sentence in that same paragraph. It says:

23 Other than the interest and fees originally  
24 provided for in the title loan agreement, we do not  
25 charge you any additional fees or interest for entering

1           into this Grace Period Payment Deferment Agreement.

2           Well, that's not accurate because I've just  
3 demonstrated how they charged additional interest. They  
4 charged unamortized interest. They charged that extra  
5 \$1,100. Again, they knew enough to get it in there. They  
6 put the statutory limitation right in their own documents.

7           Then, if I could please direct Your Honor to  
8 ROA201.

9           THE COURT: Okay.

10          MR. POPE: And it's the second paragraph from the  
11 bottom that -- the title is: Acknowledgement of simple  
12 interest. And if you count down one, two, three, four,  
13 five, six, seven, eight, nine lines. It's the ninth line.  
14 It starts with: Now that.

15          THE COURT: It starts with what? I'm sorry.

16          MR. POPE: Now that.

17                               [Pause in proceedings]

18          THE COURT: Okay. I see it.

19          MR. POPE: So, now I'll just read that real slowly  
20 or slower than I've been speaking.

21               Now that the payment schedule has changed -- so  
22 they acknowledge that it's being changed -- you acknowledge  
23 -- and this is to the customer:

24               You acknowledge that the new payment schedule  
25 provided for in this Grace Period Payments Deferment

1 Agreement, if followed, will ratably and fully amortize  
2 the entire principal amount and interest payable over a  
3 longer period of time than the original payment  
4 schedule in the loan agreement.

5 Well, a customer can't agree to alter the  
6 statutory requirement of it being ratably and fully  
7 amortized within 210 days.

8 Up above that sentence, they explain that the  
9 original payment -- it says:

10 The original payment schedule and loan agreement  
11 provided for payments which would ratably and fully  
12 amortize.

13 So, they're acknowledging that the original  
14 schedule, the one on the left, ratably and fully amortized  
15 it. They're acknowledging the change and then they're  
16 putting the statutory requirements in these documents as if  
17 they're convincing the reader that they're complying, but  
18 they're not complying and I've demonstrated how.

19 This goes to the willfulness. This was planned  
20 because they intended to do it, at least as of the drafting  
21 of the documents. I believe their intention goes back  
22 farther. It goes back to when they first decided that they  
23 wanted to pursue 210 days of unamortized interest. It's  
24 purposeful because they want to get that extra interest.  
25 And it's voluntary. It wasn't accidental. They put this

1 together on their own. They do it thousands of times.

2 I've asserted, based on Mr. [Indiscernible]'s  
3 testimony, that they're pursuing the profits. That's their  
4 motivation. Pursuing profits isn't necessarily a bad  
5 thing, but we all know it sure pushes some people to do all  
6 kinds of things.

7 The difference between a grace period and an  
8 extension, Your Honor, is the collection of interest. And  
9 because additional interest is collected during the GPPDA,  
10 it's an extension. These statutes are clear. No  
11 regulations were needed.

12 Our position is that the new legislation is really  
13 irrelevant because all of these transactions occurred under  
14 the statute that we're talking about here today. But the -  
15 - you know, the new legislation, if -- the new legislation  
16 says -- it prohibits the granting of a grace period for  
17 artificially increasing the amount of which a customer  
18 would otherwise qualify to borrow.

19 If the customer was truly qualified to borrow this  
20 amount of money, it would have been paid off in seven  
21 periods. Taking it out and reducing the payment, if I just  
22 -- rough numbers, Your Honor. If you add up the principal  
23 and interest in this table, it adds up to about \$687. So,  
24 there's a significant decrease when you go down to \$450.  
25 Offering a customer this flexibility, well that's the



1 purpose of a grace period without interest. They come to  
2 you and say, I need another week to make my payment, will  
3 you give me a grace period? We don't want to put you in  
4 default, so we'll give you a grace period. But we're going  
5 to work with you that way so we can collect this \$2,000  
6 which is -- it almost is the equivalent of the principal.  
7 The need to collect additional interest seems egregious.

8 I believe this was mentioned in the briefing. The  
9 repayment of principal and interest, which has been  
10 referred to as the penalty, that doesn't go to FID. That  
11 goes back to the customers. It's restitution for those  
12 harmed individuals.

13 I addressed this a little bit, Your Honor, but I  
14 just wanted to clarify, FID didn't back off of its  
15 position. FID had a clear position. It's the statute that  
16 the Legislature drafted and as part of the executive  
17 branch, FID has a duty to enforce the statute as written,  
18 which is what they did. They said the plain language of  
19 the statute prohibits you from collecting this unamortized  
20 interest and it prohibits you extending this loan. No  
21 further explanation was needed.

22 Your Honor, may I just have a minute to consult  
23 with --

24 THE COURT: Of course.

25 [Pause in proceedings]

1           MR. POPE: Thank you, Your Honor. Just one other  
2 thing.

3           THE COURT: Sure.

4           MR. POPE: Grace periods can be any length. So,  
5 this chart on the left could take two years to pay off.  
6 However long they want to grant a grace period for a  
7 payment, if they want to keep working with that customer in  
8 order to get this finance charge -- what's really at stake  
9 with this statute and with the Chapter a a whole is to  
10 control not only the amount of money that a customer is  
11 able to borrow to keep them off the debt treadmill, but,  
12 more importantly, the length of time that they're subject  
13 to high rates of interest. This is 194.55 percent  
14 interest.

15           If Titlemax wants to grant -- I think a year was  
16 discussed in their briefing, a year grace period for each  
17 one to allow the customer to make the payment, they can do  
18 that. They can't charge additional interest in that grace  
19 period. That puts pressure on them to underwrite the loan  
20 appropriately, to underline it for the amount that the  
21 customer can repay because if they start granting grace  
22 periods, now the money is out there for a longer period of  
23 time. That's on them. That's not on the statute. It's  
24 not on FID's interpretation.

25           With that, Your Honor, do you have any questions?

1           THE COURT: Same type that I had for Mr.  
2 Polsenberg. Tell me what relief or what ruling you want.

3           MR. POPE: Well, the FID is still requesting the  
4 relief that it retained through the ALJ's Order. That was  
5 obtained through the ALJ's Order because there was relief  
6 for the customers as well.

7           THE COURT: Thank you very much.

8           MR. POPE: Thank you.

9           MR. POLSENBERG: If I can have the Elmo back?

10           I got two things out of that argument. One is  
11 they are insisting on the plain meaning of the statute and  
12 they are looking at NRS 604A.445. And, in doing that, they  
13 are reading 604.070 and .210 out of existence. They say I  
14 accuse them of reading words out of the statute. No.  
15 They're reading entire statutes out. They're saying to  
16 have a grace period, I have to comply with everything under  
17 subsection 3 of 445. That's not true. That is not true.  
18 There is nothing in there that talks about a grace period.  
19 And, yes, we all agree, as did the witnesses, a grace  
20 period can be any length of time. It doesn't have -- we  
21 don't have to repay everything within 210 days. They say  
22 we didn't comply with any of these. A, the loan provides  
23 for payments in installments. Well, gosh dang. Look. It  
24 does. Look. Those are installments.

25           They say they're not installments because they're

1 not equal. There is nothing in 604A that requires  
2 installments to be equal. They cite in front of the  
3 Administrative Law Judge a -- I think it was Webster  
4 Scholastic Dictionary for the authority on installments are  
5 usually equal. Well, first of all, that's just a lay  
6 dictionary. That's hardly legal authority and it only says  
7 usual. There's nothing in this statute that requires the  
8 installments to be equal.

9           So would they say we'd be okay if all these  
10 payments and all these payments were the same amount rather  
11 than being a little bit different? Would those be  
12 installments? I think they're reaching.

13           They say that these payments are not amortized and  
14 there's no other statute that I could find in the country  
15 that uses ratably and fully amortized. Most statutes --  
16 and there's a law review article with a 50-state analysis.  
17 So, NRS 604A doesn't define ratably and fully amortized.  
18 They've come in here in no authority to say what it is.

19           Again, ipse dixit. It is because I say it is,  
20 but, look, interest is paid off in the first seven months.  
21 If they enter -- if they choose to go into this agreement.  
22 Not everybody chose to go into this agreement. Some of them  
23 stayed on the original schedule and paid it off in seven  
24 months. Some people entered into it late in the time  
25 period. So all these numbers -- these are example numbers.

1 All the numbers for that particular person would have to be  
2 calculated under the circumstances. That's amortization.  
3 And all the principal is paid off if they follow the  
4 schedule on the seven-month period. That's amortization.  
5         There's no balloon payment of any kind. You bet.  
6 We -- even though after the first seven months there could  
7 be a lot of principal due or all the principal due or no  
8 principal due, it's still not a balloon payment because we  
9 don't make people pay the entire amount. That's their  
10 argument. Their argument is if you're going to comply with  
11 this statute, you can only do 210 days. So, if you give a  
12 grace period, that means that all the amount is going to be  
13 due, all the principal is going to be due at the end. What  
14 they're advocating is that the grace period is a balloon  
15 payment. We've come up with a program that doesn't do  
16 that; that extends it out. And I'm not trying, you know,  
17 trying to get brownie points for not charging any interest  
18 here, but this chart -- this has the person pay it out  
19 after the original 210 days without interest. That's  
20 amortization. And their argument today is what their  
21 argument was in front of the Administrative Law Judge and  
22 what the Administrative Law Judge said: This is an  
23 extension and because it is an extension, it can't be a  
24 grace period.

25         We don't have to comply with this type of grace

1 period because we're not trying to have it all paid off at  
2 the 210 days. That's the whole purpose of the grace period  
3 and we've made the grace period 210 days and we've deferred  
4 payments on the loan out 210 days. Great. No interest.  
5 Great.

6 But the second thing that I found out, besides  
7 them relying on 445, is that they're saying the fact that  
8 we charged interest on the principal during the grace  
9 period is their whole case. They finally now acknowledge -  
10 - the last brief that they filed, they wouldn't talk about  
11 grace period. They would only talk about 445. Now they  
12 say it is an extension because they, Titlemax, are charging  
13 interest.

14 And, at the end of their argument, counsel said  
15 the difference between an extension and a grace period is  
16 the collection of interest. Gosh dang. We're back to  
17 section 210 and what additional interest means. Finally.  
18 Finally we're talking about a grace period and they're  
19 saying the fact that we charged interest means it is an  
20 extension. No. We have to charge additional interest. It  
21 doesn't say we can't charge contract interest on the  
22 deferred principal. And the new version of 210 makes that  
23 excitedly clear that the licensee cannot charge the  
24 customer interest at a rate in excess of that described in  
25 the existing loan agreement.

1           We can charge interest. We can't charge it at an  
2 additional rate. That's what additional interest is. It  
3 doesn't mean that just because there's a grace period and  
4 the interest runs during the grace period that the dollar  
5 amount may be more, that it is not a grace period. This is  
6 what the amendment in -- the initial enactment of 210, back  
7 in 2005. The Legislature changed the word any interest to  
8 additional interest. This was what their rulemaking was.  
9 Says: They came in and said you can read the statute to  
10 say that you can charge interest during the grace period.  
11 Yes, you can read it that way.

12           And, then, they went to the Legislature and tried  
13 to get it changed to say that you can't charge any interest  
14 during the grace period and the Legislature changed it to  
15 say: Yes, you can.

16           So, we're not talking about whether you comply  
17 with 445. Honestly, we're not, because 445 has nothing to  
18 do with the grace period. They want it to be about this,  
19 but it isn't. It's about 210. Now they've admitted that  
20 the argument is simply that because we charged interest,  
21 it's an extension. I don't think that that is what 210  
22 said back then. It's certainly not what 210 says right  
23 now.

24           And, in light of all this, how can you say we  
25 willfully did anything? You know, you asked FID: Well,

1 what was your response when Titlemax gave you this  
2 explanation in the first order -- in February 9 of 2015  
3 about what our position was about what the statute means.  
4 And there was a little humming and hawing. Well, we had  
5 already explained so we didn't have to explain it again.  
6 No they didn't explain it. I mean, in their finding -- in  
7 their final report --

8 THE COURT: What page?

9 MR. POLSENBERG: This is 8928. They set out the  
10 statute. They set out 445. They set out 210 because, you  
11 know, we didn't have the high level drafting of briefs and  
12 arguments now. So, yeah. Back then, they admitted that  
13 210 was in play, but, you know what? I think they omitted  
14 it today. They set out the statutes and said -- they said  
15 what they said in their briefs: The statutes are clear.  
16 The statutes are clear.

17 You know what? People can't pay me to come up  
18 with a position. That's ridiculous just because I want to  
19 take a position. This is a well thought out -- I'm not  
20 going to say scheme. This is a well thought out plan.  
21 This was a good idea, Judge, to come up with this grace  
22 period plan. It was good for customers. It was -- was it  
23 good for Titlemax? They came in and said: Oh, well,  
24 Titlemax didn't want defaults because defaults are not  
25 profitable. Here's what the testimony was: Defaults are a



1 lose-lose. Everybody loses in a default. I've already  
2 explained how the customer loses. But, yes, Titlemax is  
3 not Fred Fayegi. This is not GMF Motors. We really don't  
4 want an inventory of cars.

5           So, the grace period allowed people to stretch out  
6 these payments. Were we allowed to charge interest --

7           THE COURT: So, to be clear, the answer to your  
8 rhetorical question, is it good for Titlemax, the answer  
9 is: Yes.

10           MR. POLSENBERG: It is because it avoids defaults.

11           THE COURT: Okay.

12           MR. POLSENBERG: It's good for customers because  
13 it avoids defaults. It's good for customers because it  
14 gives them flexibility and a way to defer some payments and  
15 not wind up with a huge amount because they can stretch out  
16 the principal over an additional seven months. Just the  
17 principal without interest. And, because of that, I think  
18 it's amortized.

19           So, all the public policies behind 445 we've met,  
20 but this isn't controlled by 445 because 445 exists only to  
21 say when you can have a 210 days.

22           And, yes, you started getting into it with the FID  
23 about what we originally did. We used to have 30-day title  
24 loans and you could get an extension of that for another 30  
25 days and then another 30 days and you'd wind up with the

1 same seven-month period at the end and somebody had to come  
2 up with all the money at the same time. That is what an  
3 extension is, not the fact that interest is charged. The  
4 fact that somebody is going to come up with -- have to come  
5 up with essentially a balloon payment at the end of six  
6 extensions.

7           Now, they've said in their brief that I admitted  
8 on page 8, at line 18, that additional means more. We were  
9 talking about -- that section of the brief is talking about  
10 the six additional periods during which a 30-day loan can  
11 be extended. Come on now. I'm not stupid enough to make  
12 that concession because we've been taking the same,  
13 consistent position throughout. We raised the issue to  
14 them, they say they stand by their ipse dixit. Read the  
15 Administrative Law Judge's decision, the same thing. It's  
16 an extension, so, therefore, it's not Apartments grace  
17 period. This can't be willful.

18           I think this was a good idea, this grace period.  
19 I also am of the legal opinion we can still do it under the  
20 current statute. But that's not the issue that you have to  
21 decide. The issue that you have to decide is: Did we  
22 willfully violate a statute? And there's no valid  
23 interpretation that can give you that conclusion.

24           Thank you, Your Honor.

25           THE COURT: Thank you.

1 [Pause in proceedings]

2 THE COURT: I am going to reverse and vacate the  
3 Administrative Law Judge's conclusion that Titlemax's  
4 interpretation of the law was incorrect and that Titlemax  
5 willfully violated NRS Chapter 604A. And I'll give you  
6 various reasons. Here, Mr. Polsenberg, you'll prepare the  
7 Order, submit it to Mr. Pope and company for review and  
8 approval.

9 MR. POLSENBERG: Certainly.

10 THE COURT: Like I said, I -- so, include this.  
11 The Court has reviewed all the briefing by the parties, as  
12 well as the pertinent parts of the administrative record  
13 and has now additionally considered arguments of the  
14 parties and all of that leads me to my conclusion.

15 In no particular order, the legislative history on  
16 604A.210, supports Titlemax's interpretation and the --  
17 this is the original legislative history, not this year's.  
18 But the word additional was added to the original proposed  
19 statute. I mean, and words in statutes have to have  
20 meaning. And, in order for that word to have meaning, I  
21 find that the Administrative Law Judge's determination  
22 ignores that rule; ignores the word.

23 You can charge interest at the original rate  
24 during the grace period is the way I think the statute must  
25 be interpreted. The alternative, of course, is that the

1 willfulness finding, you know, -- essentially Titlemax's  
2 interpretation, if not correct, is reasonable. And, so,  
3 even if not correct, it is reasonable. And, even if not  
4 correct, it is reasonable and, therefore, there's no  
5 willful violation that can be possibly lead to the  
6 penalties that the Administrative Law Judge found.

7           The 210-day limit only applies to the original  
8 term under the plain language of 604A.445 subsection 3.  
9 That subsection refers to the original -- governs the  
10 original term, not the grace period. And that's one of the  
11 reasons why I reverse and vacate the Administrative Law  
12 Judge's determination.

13           Additionally, you know, essentially, going through  
14 Titlemax's Reply brief, yes, Titlemax's statutory  
15 interpretation, especially in light of the entire  
16 harmonized statutory scheme is the better reasoned  
17 approach, and, like I said, at the very least, it's  
18 reasonable. Amortization is not a requirement for grace  
19 periods. 4453 does not set a maximum time period on a  
20 loan. The word additional means something more than the  
21 original rate of interest. That's true, at least according  
22 to how I read the statute.

23           I already said this, but, continuing on, Titlemax  
24 did not willfully violate the provision under 604A.

25           I think it is also relevant, and key even, that

1 the proposed regulation that FID -- well, that arguably  
2 would have clarified the statute. Now, let me be clear. I  
3 find the statute's unambiguous. To the extent it is  
4 ambiguous, FID engaged in proposed rulemaking and, for  
5 whatever reason, that rule did not take effect, which, to  
6 me, clearly supports a -- you can't find willfulness when  
7 FID or someone attempted to make a rule that clarified the  
8 statute which would have supported FID's position in this  
9 petition, and, again, for whatever reason the rule did not  
10 go through, which, again, supports my determination that  
11 the AL Judge -- AL -- yeah, AL Judge was clearly erroneous  
12 and arbitrary and capricious in ruling like she did.

13 I agree that this -- continuing on on the Reply at  
14 page 2. Titlemax's disagreement with FID's legal analysis  
15 does not constitute willfulness. Penalties for willful  
16 violations cannot be premised on Titlemax not changing its  
17 business practices the moment the lay FID examiner levied a  
18 decision that it could -- that it should. Essentially, FID  
19 and the ALJ position is that the moment -- the very moment  
20 that FID said you can't do that -- I mean, that doesn't  
21 make sense to me, that position. So, I agree with Titlemax  
22 there.

23 I'm not going to rule on FID being estopped from  
24 arguing willfulness. I don't think that's appropriately or  
25 necessarily in front of me, let's put it that way.

1           Yes, to me, the FID did acknowledge ambiguity in  
2 the law, said, you know, through the rulemaking process:  
3 Look, Titlemax's interpretation of the law may be  
4 plausible. I don't think you can really say did nothing  
5 about it, the rule, but the rule was going to address that  
6 in the past, which supports a finding of -- you can't have  
7 willfulness in this instance because of that.

8           Titlemax's reliance on counsel to determine that  
9 the GPDA was statutorily compliant, to me, does not  
10 necessarily preclude a finding of willfulness as a matter  
11 of law, but it is a consideration. And the FID's  
12 essentially, we stand by our position, in response to that,  
13 leads the Court to conclude, again, that there simply  
14 cannot be willfulness here.

15           The Court does not defer to FID's interpretation  
16 of statutes because, to me, the statutes are unambiguous  
17 and FID, to me, is not entitled to deference by this Court  
18 in determining the meaning of the plain language of the  
19 statutes.

20           As set forth on page 4 of the Reply, the question  
21 here is whether the structure the -- whether you call it  
22 GPDA or GPPDA, whether that complies with 4453 and 210 is  
23 purely a legal question that I do not have deference to  
24 either FID or the ALJ.

25           But, to be clear, to the extent deference is owed

1 to either, which to my read it's not, but, alternatively,  
2 to the extent it is owed, the interpretation is clearly  
3 erroneous.

4           We already went through subsection 1. But, yes,  
5 amortization -- I agree with A, B, C. The argument on page  
6 7, to me, is also very important and if the Legislature  
7 wanted to intend something, it could have explicitly said  
8 so, as set forth on page 7, but they said what they said  
9 and Titlemax's interpretation of it is, at the very least,  
10 reasonable, and, therefore, can't be willful violation.

11           Yeah, the word additional does mean something  
12 other than in the original period. I agree with subsection  
13 2 on page 8, 3 on page 9. Page 10, the *McLaughlin* court --  
14 the *McLaughlin versus Richland Shoe* [phonetic] quote, I  
15 agree, which is what happened here. At the very least,  
16 Titlemax acted reasonably in determining its legal  
17 obligations action, therefore, cannot be deemed willful.

18           We already talked about the administrative  
19 rulemaking process on pages 10 and 11. On 11, continuing  
20 on, on the sub issues, I already talked about reliance on  
21 counsel. Disagreement by itself without more with an  
22 agency, as is the case here, is not willfulness.

23           Estoppel I already said I'm not addressing.

24           But, continuing on, on that page, yeah, the  
25 outside counsel is not dispositive but it certainly is a

1 factor and relevant here and leads the Court to conclude  
2 that the ALJ determination was clearly erroneous and  
3 arbitrary and capricious.

4           And the top of page 12, I kind of already  
5 mentioned it. Titlemax's failure to change its entire way  
6 of doing business immediately can't -- simply can't equate  
7 to willfulness and that's necessarily found in the penalty  
8 that was given in the way it was given. Essentially, the  
9 very moment on forward, the very moment the lay -- and I --  
10 you know, I don't use the term lay in any pejorative  
11 meaning, but it's simply a fact, where these lay examiners,  
12 not attorneys, who don't have, you know, for example,  
13 something like an AG opinion or anything like that. So,  
14 it's not -- it's just a fact, the lay examiners, and the  
15 ALJ finding that the moment the lay examiner said, look,  
16 this is how it is, the penalty starts from then, the  
17 penalty that was given, and, again, it simply can't be  
18 willful.

19           Subsection B, yes, I agree with Titlemax's  
20 interpretation of the cases regarding willfulness and  
21 respectfully disagree with the way the State has  
22 interpreted those, including in footnote 11.

23           And this is certainly a civil penalty case and the  
24 case law on it and, to me, supports Titlemax's arguments,  
25 given that it is a penalty, which I think is also key in



1 determining that the appropriate course of action for me is  
2 to reverse and vacate the penalties issued by the ALJ.

3           Page 18, subsection C, again, that's more of an  
4 alternative argument and, therefore, an alternative  
5 finding, that being Titlemax's offering of the statutorily  
6 compliant product is not proof that other products will --  
7 willfully not compliant. It's an alternate argument that I  
8 agree with in the conclusion. It's the same one I reached.

9           Regarding the supplements, I don't think I need  
10 those. Well, I find, rule, that I don't need those to  
11 reach my decision. To the extent I should or do consider  
12 those, you know, the supplemental authorities are -- and I  
13 think I may have mentioned this before in a prior hearing,  
14 but, to be sure, the authorities provided I take as being  
15 akin -- well, some of them are new case law. The statute,  
16 to me, is akin to new case law that, to the extent  
17 appropriate to consider, does support my ruling here.

18           Bear with me a moment.

19           The -- you know, going to the legislative history  
20 for this year, the history given supports the -- you know,  
21 it wasn't an attempt to clarify. It was to close loopholes  
22 or an attempt to close loopholes, which, to me, supports my  
23 ruling here that: Look, the language was unambiguous  
24 whether you characterize the language as a loophole. It's  
25 -- that's how it read. Titlemax followed the plain

1 language of the statutes.

2           There's some --

3                           [Pause in proceedings]

4           THE COURT: Let's see. Yeah, the retroactivity in  
5 the newly amended statutes supports the position that the  
6 statutes we're dealing with here apply up until July 1<sup>st</sup>,  
7 2017. And, you know, the *Hanson* [phonetic] case, the  
8 United States Supreme Court case, the block quotations  
9 support the Court's ruling here as well. So, please  
10 include those.

11           Again, I don't think I -- well, I know -- I don't  
12 need to even reach the supplements, but, to the extent I  
13 can or should, they support reversal and vacation of the  
14 ALJ's Order.

15           So, prepare a detailed Order. Submit it to Mr.  
16 Pope and other counsel for review and approval.

17           MR. POLSENBERG: Very good, Your Honor. One other  
18 thing. Can I ask for an order exonerating the bond and  
19 returning the fine?

20           THE COURT: Any response?

21           MR. POPE: Your Honor, we'd be opposed to that. I  
22 mean, we haven't even seen the Order. We don't know if  
23 we're going to appeal. We're likely going to appeal, but -  
24 -

25           MR. POLSENBERG: Well, I --

1 MR. POPE: Is there a date by which time --

2 MR. POLSENBERG: I don't have to post a  
3 supersedeas bond for their appeal.

4 THE COURT: Do you want to have some time to  
5 consider --

6 MR. POPE: Opportunity to seek a stay --

7 THE COURT: Say that again.

8 MR. POPE: I mean, they're going to file appeal --

9 THE COURT: Well, I don't think they'll file an  
10 appeal.

11 MR. POPE: I mean, we file an appeal to seek a  
12 stay to -- the effectiveness of the Order.

13 MR. POLSENBERG: No. That wouldn't work. I -- if  
14 I lost, I would ask for a stay so that I don't have to pay  
15 them. They can't get a stay of your Court's Order so that  
16 you're ordering me to pay them even though they lost. But  
17 if you want to do it in writing, I'd be happy to do it in  
18 writing if you want to even give us a date now where we can  
19 come back.

20 THE COURT: Yeah. Let's come up with a schedule.  
21 I hadn't even thought of that issue myself before just now,  
22 so I think it's appropriate for the sides to have an  
23 opportunity to address it in writing and come back and see  
24 us.

25 I guess, my thinking is probably we'd do a brief

1 by the State first, and then Titelman, and then the State,  
2 but simultaneous briefs might save some time, but welcome  
3 counsel's thoughts on any of that.

4 MR. POLSENBURG: I'll go first or they can go  
5 first, but I think we probably need to respond to each  
6 other because there will be a disconnect on what Rule 62  
7 does.

8 MR. POPE: There's the issue of the fine as well,  
9 Your Honor.

10 MR. POLSENBURG: I raised the fine.

11 MR. POPE: You raised the fine? You paid the  
12 fine? And, so, sometimes it takes a while to get that back  
13 out of the State and I'm not sure how to deal with that.

14 THE COURT: You can talk and address it in the  
15 briefs, I guess.

16 MR. POLSENBURG: Good.

17 MR. POPE: Okay.

18 THE COURT: Yeah. Because I don't know.

19 MR. POLSENBURG: Do you want to go first?

20 MR. POPE: No, go ahead.

21 MR. POLSENBURG: You want me to file it first?

22 THE COURT: Or simul --

23 MR. POPE: I can do simultaneous, 30 days.

24 MR. POLSENBURG: Judge, you know me, if we do it  
25 simultaneously, I'm still going to respond to what they

1 file because I can tell that we're not talking -- we're  
2 just talking --

3 THE COURT: Okay. So, let's have the State, and  
4 then you, and then the State.

5 MR. POLSENBERG: That's fine with me.

6 THE COURT: And I -- scheduling wise, it doesn't  
7 matter to me. It's, you know, -- so, when does the State  
8 want to file their first post-ruling brief, I guess, we'll  
9 call it?

10 MR. POPE: Can we have some time after the Order,  
11 Your Honor? Like say we try to get the Order out within --

12 MR. POLSENBERG: But then, Judge, I'm going to  
13 move to exonerate the bond. I mean, that's a substantial  
14 bond. I'm going to move to exonerate the bond. And I  
15 don't mind --

16 MR. POPE: 30 days?

17 MR. POLSENBERG: 30 days for what?

18 MR. POPE: Brief.

19 THE COURT: For their first brief. And I'm going  
20 to assume that the Order will be in place well before then.

21 MR. POLSENBERG: All right, Your Honor.

22 THE COURT: So, 30 days from today is when?

23 THE CLERK: That is August 31<sup>st</sup> of 2017.

24 THE COURT: How much time does Titlemax want to  
25 respond?

1 MR. POLSENBERG: Yes.

2 THE COURT: Maybe I asked a poor question or maybe

3 you didn't hear me. How much time --

4 MR. POLSENBERG: Sorry, Judge. Seven days.

5 THE CLERK: Calendar days or --

6 THE COURT: Seven calendar days or --

7 MR. POLSENBERG: I can do seven calendar days.

8 THE COURT: Okay.

9 THE CLERK: So that would be September 7<sup>th</sup>, 2017.

10 THE COURT: Do you want seven days after -- well,

11 how much time after that do you want to file a brief in

12 response?

13 MR. POPE: Seven.

14 THE COURT: Okay.

15 MR. POPE: Seven days, Your Honor, please.

16 THE CLERK: September 14<sup>th</sup> of 2017.

17 MR. POPE: Thank you.

18 THE COURT: And put the hearing on September 21.

19 Am I available?

20 THE CLERK: [Indiscernible].

21 THE COURT: Does September 21<sup>st</sup> work for all of

22 you?

23 MR. POLSENBERG: It does.

24 MR. POPE: Can we pencil that in and respond --

25 THE COURT: Yeah. If --