IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION Appellant(s), v. TITLEMAX OF NEVADA, INC. and TITLEBUCKS d/b/a TITLEMAX, a Nevada corporation, Respondent(s).	Case No. 74335 District Court Case No. A-16-743134-J

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

This case is about a Nevada licensed lender breaking rules that are as plain as a speed limit sign. NRS 604A.445(3), the controlling statute, serves as a "posted speed limit" for title loans. It allows the original term of a title loan to be up to 210 days, provided the loan is structured to have "installment payments" that are calculated to "ratably and fully amortize the entire amount of principal and interest" and the loan is "not subject to any extension" or "balloon payment." Giving meaning to all of the statutory language, NRS 604A.445(3) limits the amount of interest to 210 days of ratably and fully amortized interest to prevent excess interest from being charged.

Though the lender and customer agree to an applicable interest rate, the contract rate of interest is 210 days of ratably and fully amortized interest at the agreed rate. By allowing TitleMax to charge interest during what the District Court deemed a "grace period", the District Court has rendered the "ratably and fully amortize the entire amount of principle and interest" language meaningless and has allowed TitleMax to charge "additional interest" contrary to the prohibitions in NRS 604A.445(3), as well as the prohibitions in NRS 604A.210. In other words, more interest is charged than the Legislature intended.

Table Number 1 is an example of a compliant 210-day title loan based on figures from a TitleMax loan for $2,820.00 at 194.55% annual percentage rate

("APR"). APP 001788-001792.

Table No. 1

Legal Title Loan for $2,820 at 194.55%

Month	Payment Amount		Principal Balance
	Principal	Interest	
1	$233.98	$464.08	$2,586.02
2	$313.67	$384.39	$2,272.35
3	$324.10	$373.96	$1,948.25
4	$387.78	$310.28	$1,560.47
5	$441.26	$256.80	$1,119.21
6	$519.81	$178.25	$599.40
7	$599.40	$98.69	00.00

TOTAL FINANCE CHARGE $2,066.45

Table No. 2

Unlawful "GPPDA" Loan $2,820.00 at 194.55%

Month	Payment Amount		Balance
	Principal	Interest	
1	00.00	$450.92	$2,820.00
2	00.00	$450.92	$2,820.00
3	00.00	$450.92	$2,820.00
4	00.00	$450.92	$2,820.00
5	00.00	$450.92	$2,820.00
6	00.00	$450.92	$2,820.00
7	00.00	$450.92	$2,820.00
8	00.00	$450.92	$2,820.00
7	00.00	$450.92	$2,820.00
8	$402.86	00.00	$2,417.14
9	$402.86	00.00	$2,014.28
10	$402.86	00.00	$1,611.42
11	$402.86	00.00	$1,208.56
12	$402.86	00.00	$805.70
13	$402.86	00.00	$402.84
14	$402.84	00.00	00.00

TOTAL FINANCE CHARGE $3,156.44

The loan in Table 1 is statutorily compliant because it is limited to 210 days, with seven monthly ratably and fully amortized installment payments. The total interest (or finance charge) paid by the consumer borrower is $2,066.45. This amount of interest is calculated using the 194.55% APR agreed upon by the parties, disclosed to the borrower in accordance with the Truth in Lending Act ("TILA"), and based

on installment payments that ratably and fully amortize the entire principal and interest within 210 days.[1] A loan term longer than 210 days, *i.e.* any additional days subject to interest - such as an extension or an extension called a grace period, exceeds the statutory "posted speed limit."

Table Number 2, in contrast, is one of the non-compliant Grace Period Payment Deferment Agreements ("GPPDAs") offered by TitleMax.[2] APP 001793-001796. The duration of this loan is approximately 420 days - double the statutorily-allowed period. APP 001794. During the life of the loan, the borrower makes monthly payments in different amounts, not equal installment payments - first with seven (7) interest only payments in the amount of $450.92, and later with seven (7) principle payments in the amount of $402.86 - resulting in a static principle balance during the first 210 days of the loan.[3] The structure, therefore, violates the plain

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[1] With regard to an NRS 604A.445(3) loan, the agreed upon interest rate is limited by the "ratably and fully amortize the entire amount of principle and interest" language. Stated differently, this language does not have meaning unless the lender is limited to 210 days of ratably and fully amortized interest.

[2] *See* Assembly Bill 163 (2017) (prohibiting the granting of a grace period that requires the signing of a new agreement or the adding of an addendum or new term).

[3] Reducing the principle with each payment was one of the evils that the legislation was correcting. *See Minutes of the Meeting of the Assembly Committee on Commerce and Labor*, April 11, 2007, p. 39 ("It clarifies provisions on title loans to ensure that the principal is being paid down during extension periods. There are some other technical changes. I worked with the people who support reasonable regulation of the industry. The high-interest lenders who were in opposition still oppose this bill with the amendments. In my opinion, they will not be satisfied unless they are allowed to charge anywhere from 300 to 900 percent interest for a

letter of NRS 604A.445(3).

The damage to the borrower is noteworthy. At the rate of 194.55% per annum, the borrower makes a monthly interest-only payment for seven (7) months – each of which is calculated by multiplying the entire principle (rather than a reducing principle) by the agreed upon interest rate. Upon satisfying the interest obligation during this timeframe, the customer finally makes a monthly payment toward principal and does so for a total of seven (7) months. If the borrower completely satisfies the interest obligation during the first seven (7) months, TitleMax unlawfully collects $1,089.099 in "additional interest" charges ($3,156.44 interest paid under GPPDA minus $2,066.45 interest disclosed to the borrower). It is "additional interest" because the principle does not reduce with each payment and the customer keeps paying unamortized interest on the entire principle, which is substantially more than disclosed to the customer in the TILA. Moreover, if the borrower defaults during the last seven (7) payments, the borrower will have paid all of the interest, including the additional interest, and will still owe the entire principle.

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prolonged period of time. I believe that practice is abusive, and I would never agree to support such a provision."). Here, the GPPDAs allow the principle to remain the same amount for seven months, with no reduction, which is clearly contrary to the legislative intent and leads to the absurd result of allowing TitleMax to do exactly what the Legislature prohibited by including the amortization requirement along with prohibiting extensions and balloon payments.

This is not a case of an operator asserting they didn't see the posted limit. Rather, it is a case where the limit was plainly posted, read, and exceeded. There is simply no ambiguity in the relevant statutes requiring clarification through the promulgation of a regulation. As discussed in greater detail below, TitleMax has to ignore the "ratably and fully amortize" language, as well as the prohibition of extensions and balloon payments, in order to purposefully misconstrue the term "grace period" as defined in NRS 604A.210.[4] In disregard of the most fundamental rules of statutory construction, TitleMax manufactures an ambiguity where none exists. Surprisingly, the District Court erroneously ratified TitleMax's actions.

Contrary to TitleMax's assertions and the District Court's order, this case is about a licensee who willfully charged interest in excess of the posted speed limit by converting legal title loans to unlawful GPPDAs which did not amortize the entire amount of principal and interest within 210 days.

II. JURISDICTIONAL STATEMENT

This court has jurisdiction pursuant to NRS 233B.150. The District Court's order being appealed was entered on September 21, 2017 and notice of the entry of the order was filed on September 22, 2017. The notice of appeal was timely filed on October 19, 2017. NRAP 4(a)(1).

[4] NRS 604A.445(3).

III. ROUTING STATEMENT

This appeal is brought pursuant to NRS 233B.150 and is presumptively assigned to the Court of Appeals as the agency decision does not involve a "tax, water or public utilities commission determination[]." NRAP 17(b)(4); NRAP 17(a)(9). This court could consider retaining this matter pursuant to NRAP 17(a)(14) on the basis that there is "a question of statewide public importance."

IV. ISSUES PRESENTED

A. Whether the District Court's order is contrary to the plain language of NRS 604A.445(3), clearly contrary to the expressed legislative intent and spirit of the legislation, leads to absurd results, renders statutory language meaningless and must be reversed.

B. Whether TitleMax "willfully" exceeded the plain limits of NRS 604A.445(3) and NRS 604A.210, subjecting itself to NRS 604A.900.

V. STATEMENT OF THE CASE

This is an appeal of the Eighth Judicial District Court's order granting TitleMax's petition for judicial review brought pursuant to Chapter 233B of the NRS. TitleMax sought judicial review of the Administrative Law Judge's Findings of Fact, Conclusions of Law and Decision (ALJ's Decision") finding that TitleMax had charged additional interest and extended the loans through the use of the GPPDAs. The District Court reversed and vacated the ALJ's Decision, determining that NRS 604A.210 allows a licensee to charge interest in excess of the amortized interest contained in each calculated installment payment contrary to the plain

language of NRS 604A.445(3). Because the District Court's decision is contrary to the plain statutory language and spirit of the legislation, leads to absurd results and renders statutory language meaningless, it is clearly erroneous and must be reversed.

VI. STATEMENT OF FACTS

The relevant facts are supported by substantial evidence and not subject to any legitimate dispute. The Administrative Law Judge ("ALJ") found that TitleMax, in its initial offering to a customer, enters into a statutorily-compliant 210-day loan. APP 016961-016962. In so doing, TitleMax clearly understands the statutory lending limit, or posted speed limit. In this regard, the ALJ describes a representative loan transaction involving Customer Esguerra on January 17, 2015. APP 016963 (describing the transaction at APP 001715-001735). The principal amount of that loan was $5,800 with an APR of 133.7129 percent. *Id.;* APP 001716. The following table depicts how the payments would be ratably and fully amortized within 210 days.

Legal Title Loan for $5,800 at 133.7129%

Month	Payment	Interest	Principal
1	$ 1,230.45	$ 705.82	$ 524.63
2	$ 1,230.45	$ 564.65	$ 665.80
3	$ 1,230.45	$ 520.96	$ 709.49
4	$ 1,230.45	$ 403.32	$ 827.13
5	$ 1,230.45	$ 312.57	$ 917.88
6	$ 1,230.45	$ 201.65	$ 1,028.80
7	$ 1,230.46	$ 104.19	$ 1,126.27
Totals	$ 8,613.16	$ 2,813.16	$ 5,800.00

APP 001716.

The forgoing installment payments are calculated to "ratably and fully amortize" the entire amount of principal and interest within the limit of 210 days as required by NRS 604A.445(3). As the outstanding principle decreases a lesser amount of each monthly payment is applied to interest and a greater amount is applied toward the principle. Consistent with this calculation, TitleMax informed Customer Esguerra, in the requisite TILA disclosures,[5] that the total finance charge (interest and fees) he would be responsible for was $2,813.16, for a total amount to be paid of $8,613.16 through seven (7) monthly payments of principal and interest. APP 016963:3-5; APP 001716.

For a very obvious reason (*i.e.,* more interest profit), however, TitleMax is not satisfied with operating within the "posted speed limit." Instead, as the ALJ found, where a customer is approved for the 210 day loan, TitleMax also offers the noncompliant GPPDAs. APP 016962. Again, the transaction involving Customer Esguerra is representative.[6] APP 016963 (describing the transaction at APP 001715-001735).

TitleMax "converted" Customer Esguerra's statutorily-compliant loan (dated

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[5] TILA disclosures are required by both state and federal law. NRS 604A.090; NRS 604A.120; NRS 604A.410(2)(c) and (g).

[6] During the administrative hearing, TitleMax asserted that this type of loan, along with the conversion to the GPPDA, is all they do – they don't do other types of loans. APP 001328:7-10 (Hr'g Tr. 477:7-10).

Unlawful GPPDA for
$5,800 at 133.7129%

Month	Payment	Interest	Principal
1	$ 637.42	$ 637.42	$ 00.00
2	$ 637.42	$ 637.42	$ 00,00
3	$ 637.42	$ 637.42	$ 00.00
4	$ 637.42	$ 637.42	$ 00.00
5	$ 637.42	$ 637.42	$ 00.00
6	$ 637.42	$ 637.42	$ 00.00
7	$ 637.42	$ 637.42	$ 00.00
8	$ 828.57	$ 00.00	$ 828.57
9	$ 828.57	$ 00.00	$ 828.57
10	$ 828.57	$ 00.00	$ 828.57
11	$ 828.57	$ 00.00	$ 828,57
12	$ 828.57	$ 00.00	$ 828.57
13	$ 828.57	$ 00.00	$ 828.57
14	$ 828.58	$ 00.00	$ 828.58
Totals	$ 10,261.94	$ 4,461.94	$ 5,800.00

January 17, 2015), into a GPPDA on March 21, 2015. The following table depicts how TitleMax recalculated the payments under the GPPDA.

As shown, the total amount of principal and interest is no longer calculated to be "ratably and fully amortize[d]" within 210 days. APP 016963 and 016966:20-24; APP 001722-001723. Contrary to the plain language of the statute and the legislative history, the first seven (7) payments are interest only payments, *i.e.* the principle is not reduced, and the last seven (7) payments are principal only payments. *Id.* As a result, converting the loan into a so-called GPPDA increased the total interest charge to Customer Esguerra by $1,648.78 ($4,461.94- $2,813.16).

After reviewing all of the other similar transactions in the record, the ALJ concluded that the GPPDAs are loan extensions in violation of NRS 604A.445(3).

APP 016965-016966. The ALJ also concluded that TitleMax unlawfully charged and collected "additional" interest through the GPPDAs. APP 016966-016967.

TitleMax plainly charged additional interest. At the same time, TitleMax argues that it grants a grace period for the principal portion of each payment. Yet, the amortized principal portion of the original seven payments are replaced with the unamortized principle payments in Payments #8 through #14 of the GPPDAs. Because the principal is not reduced until after the interest is paid with Payments #1 through #7, TitleMax is charging interest on the entire principal, or unamortized interest, month after month. Indeed, relative to Payment #2, TitleMax charged interest in the amount of $637.42, rather than the amortized amount of $564.65. With regard to Payment #7 TitleMax charged $637.42 rather than the amortized amount of $104.19.[7]

Though TitleMax wants this Court to believe (as the District Court seems to have believed) that it is only fair for TitleMax to be able to charge more interest when it extends the repayment of the principle, the Legislature reasonably expressed that loans originated with a 210-day term are limited to 210 days of ratably and fully amortized interest. Simply put, the Legislature capped the exposure of customers to high interest with a posted speed limit and the District Court's decision ignores the plain statutory language setting forth the limitations.

[7] Payment #1 is the only payment where the customer pays more interest with the statutorily compliant product.

VII. BACKGROUND

TitleMax has gone to great lengths to obfuscate the central issue in this case, *i.e.*, whether TitleMax willfully charged interest in excess of the posted speed limit. To its credit, FID diligently and consistently informed TitleMax that the GPPDA exceeds the posted speed limit.

In August of 2014, the FID commenced an annual examination of TitleMax. APP 016959. FID notified TitleMax that the GPPDAs exceeded the limits of NRS 604A.445(3). APP 016959-016960. Before the exam was completed, FID examiners and representatives from TitleMax attended a meeting to discuss this issue, and FID again notified TitleMax that the GPPDAs exceeded the limits of NRS 604A.445(3). Similar discussions took place at the conclusion of the examination in December of 2014. APP 016960.

There is nothing unclear about NRS 604A.445(3). The plain language of that statute puts TitleMax on notice that its GPPDAs exceed the posted speed limit. The only reason for TitleMax to submit a ten-page letter expressing its displeasure with being called out for violating NRS 604A.445(3) in the 2014 examination[8] was to lay the foundation for the fallacy it was about to construct. Based solely on the statutory language, TitleMax knew it was limited to 210 days of ratably and fully amortized interest. NRS 604A.445(3). Because 210 days is an exception to the otherwise 30-day term set forth in

[8] APP 016960:6-9.

NRS 604A.445(1), and an alternative to the option of extending the 30-day term six (6) times (210 days) set forth in NRS 604A.445(2)[9], TitleMax simply could reach no other *reasonable* conclusion.

In May of 2015, the FID commenced a follow-up examination. APP 016960. TitleMax was still offering the GPPDAs to its customers. APP 016960. At the conclusion of the examination, FID examiners and representatives from TitleMax discussed the results of the examination, putting TitleMax once again on notice that the GPPDAs exceeded the limits of NRS 604A.445(3). APP 016960.

TitleMax sought declaratory relief from the Eighth Judicial District Court. APP 016960. TitleMax presented the court with a blank original loan contract and blank GPPDA and argued that there were no factual issues. The court disagreed and noted issues of fact in the order dismissing the case for failure to exhaust administrative

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[9] This option allows a lender to extend the 30-day term six (6) times and each extension generates 30 days of unamortized interest for a possible total of 210 days of unamortized interest. NRS 604A.445(2). What TitleMax did not like about this option is that the loan is underwritten based on what the customer is able to repay within 30 days. TitleMax originally tried to use this option but based its underwriting on what the customer could repay within 210 days. APP 000863-000864; APP 000868:18-21; APP 010455. When FID advised that the ability to repay could not be based on the ability to repay within 210 days, TitleMax then argued that they fit within the limits of NRS 604A.445(3) which allows for the ability to repay to be based on 210 days. However, NRS 604A.445(3) prohibits 210 days of unamortized interest by requiring "ratably and fully amortized" interest. The statutes simply do not allow TitleMax to do what they want to do and both statutes cannot mean the same thing.

remedies.[10] APP 000643; APP 000645-000646.

Thereafter, TitleMax moved the ALJ to issue a declaratory order in this case and the ALJ denied TitleMax's motion. APP 016957: 27-28; APP 016958: 11-12, 13-14, 19-21. The facts, as provided by actual loan documents and payment documents,[11] show that TitleMax charges additional interest by ignoring the amortization requirement and charging unamortized interest through interest only payments in violation of the statutory limits.

TitleMax erroneously argues, and the District Court erroneously concluded, that TitleMax can charge unamortized interest through interest only payments and through additional terms referred to as grace periods. Each interest only payment violates NRS 604A.445(3) because amortization requires each payment to contain principle and interest. The expressed intent is to reduce the principle with each payment so that the principle is fully paid, along with the interest, in 210 days.[12] Reasonably, the Legislature allowed an original term to be 210 days, rather than 30, provided repayment of the loan is limited to 210 days of ratably and fully amortized interest.

Had TitleMax granted gratuitous grace periods (no extra interest) and not charged more than 210 days of ratably and fully amortized interest, it could have complied with

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[10] TitleMax appealed the dismissal. This court reversed and remanded. *See* Nevada Supreme Court Case #69807, Docket Entry 17-33587.

[11] APP 001629-010210.

[12] NRS 604A.445(3).

NRS 604A.445(3) and NRS 604A.210. TitleMax plainly did not comply with the statutes but, unfortunately, the District Court erroneously agreed with TitleMax's statutory interpretation.

VIII. SUMMARY OF THE ARGUMENT

NRS 604A.445(3) plainly limits interest to 210 days of ratably and fully amortized interest, *i.e.* the posted speed limit. Pursuant to NRS 604A.900, charging interest in excess of this plain limitation results in TitleMax losing its right to retain any of the principle or interest. Thus, the ALJ's decision was correct and the District Court's decision is erroneous and must be reversed.

IX. ARGUMENT

A. Standard of Review

The standard of review is set forth in NRS 233B.135. While a "reviewing court may decide pure legal questions without deference to any agency determination," an "agency's conclusions of law which are closely related to the agency's view of the facts are entitled to deference and should not be disturbed if they are supported by substantial evidence."[13] Moreover, where a statute is clear and unambiguous, a court cannot go beyond the plain language to "create an

[13] *Clements v. Airport Authority of Washoe County*, 111 Nev. 717, 722, 896 P.2d 458, 461 (1995).

ambiguity when none exists."[14]

B. The District Court's order is contrary to the plain statutory language, clearly contrary to the expressed legislative intent and spirit of the legislation, leads to absurd results and renders statutory language meaningless.

The District Court reversed and vacated the ALJ's decision. In doing so, the District court stated, "the prohibition on 'additional interest' means a licensee cannot charge interest at a *rate* of interest higher than that specified in the loan agreement."[15] Because the plain language of NRS 604A.445(3) limits the charging of interest to 210 days of ratably and fully amortized interest, the "rate"[16] of interest "specified in the loan agreement" is really the agreed upon rate ratably and fully amortized over 210 days. Thus, allowing the agreed upon rate of interest to be charged during a grace period, without amortizing, allows extra or "additional interest" to be charged – each grace period effectively extends the term of the loan and allows unamortized interest to be charged. Consequently, the District Court's decision is erroneous and leads to the absurd result of allowing lenders to do exactly what the Legislature

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[14] *Miller v. Burke*, 124 Nev. 579, 590, 188 P.3d 1112, 1120 (2008). The long standing rule is that when "the language of a statute is plain and unambiguous, and it's meaning clear and unmistakable, there is no room for construction and the courts are not permitted to search for its meaning beyond the statute itself." *Attorney General v. Nevada Tax Commission*, 124 Nev. 232, 240, 181 P.3d 675, 680 (2008) (internal quotes omitted) (citation omitted).

[15] APP 017418: 25-27 (*District Court Order*) (emphasis in original).

[16] "Rate" is defined as "[a] charge or payment calculated by means of a particular ratio or formula." Webster's II New College Dictionary, 919 (1999).

intended to prohibit them from doing, *i.e.* charging unamortized interest, using interest only payments and extending loans by charging extra interest during grace periods. The District Court's order also renders the limitations of both NRS 604A.445(3) and NRS 604A.445(2) meaningless as it gives the same meaning to the statutory terms "grace period" and "extension."

1. The statutory language should be given its plain meaning

Pursuant to NRS 604A.445(1), "[t]he original term of a title loan must not exceed 30 days." (emphasis added). If certain statutory requirements are met, "[t]he title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days . . . ." NRS 604A.445(2). Thus, pursuant to NRS 604A.445(2), the original 30-day term can be extended up to six (6) times not to exceed 210 days. *Id.* (emphasis added). Similarly, pursuant to NRS 604A.445(3), "[t]he original term of a title loan may be up to 210 days" if the stated requirements are met.[17] (emphasis added). Coincidentally, both Sections 2 and 3 of the statute limit consumer exposure to the high interest to 210 days – or at least they did until the District Court erroneously determined that the agreed upon rate of interest (in the contract) can be charged during a grace period.

[17] *See Minutes of the Meeting of the Senate Committee on Commerce and Labor, May 15, 2007*, p. 23 (clarifying that "it may be up to, but you cannot go over . . ..").

Allowing an original 30-day term to be extended six times can result in the borrower paying 210 days of unamortized interest. NRS 604A.445(2). Before resorting to the GPPDAs, TitleMax first attempted to use a variation of this statutory language by extending the 30-day term six times—but violated the statute by calculating the ability to repay based on the 210 days rather than the 30 days. With the GPPDAs, TitleMax is properly calculating the ability to repay based on the 210 days – but is violating the statute by charging 210 days of unamortized interest. NRS 604A.445(3)(b). In both instances, pursuant to two different statutes, TitleMax loaned money based on what the customer could repay within 210 days and charged 210 days of unamortized interest. If both statutes really mean the same thing, then there is a redundancy and one is superfluous—which is contrary to statutory construction principles.[18]

Without limiting the number of extensions in NRS 604A.445(2), a 30-day title loan could be extended indefinitely which would allow the evil of long-term high interest title loans and the debt treadmill phenomenon. Similarly, without prohibiting extensions in NRS 604A.445(3), a 210-day loan could be extended and

[18] *Board of County Com'rs of Clark County v. CMC of Nevada, Inc.*, 99 Nev. 739, 744, 670 P.2d 102, 105 (1983) ("A reading of legislation which would render any part thereof redundant or meaningless, where that part may be given a separate substantive interpretation, should be avoided."); *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (stating, "statutory interpretation should not render any part of a statute meaningless, and a statute's language "'should not be read to produce absurd or unreasonable results.'" (citation omitted)).

the same evil would persist. By giving the term "grace period" the same meaning as the term "extension," *i.e.* additional days subject to interest, the District Court has rendered the 210-day limitations meaningless and has allowed loans written pursuant to NRS 604A.445(2) and NRS 604A.445(3) to have unlimited terms.

The Legislature recognized that "extension" and "grace period" could not have the same meaning and gave them different definitions. Indeed, the definition of "extension" states that the term does not include a "grace period." NRS 604A.065(2). TitleMax twisted the meaning of this language and essentially argued that their asserted grace period, *i.e.* the GPPDA, cannot be an extension because the statutory definition says that an extension does not include a grace period. *Id.* This argument is nonsensical and circular.[19] An extension is a continuation of the loan, subject to interest, beyond the original due date.[20] Giving a borrower additional time to repay a loan while keeping the interest clock ticking is the very essence of a loan extension. Because this coincidentally happens to be the statutory definition of an "extension" and the Legislature declared in the same statute that a "grace period"

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[19] This court has recently given the language in NRS604A.065, defining the term "extension," its plain meaning. *State Dept. of Business and Industry, Financial Inst. Div. v. Dollar Loan Center, LLC*, 134 Nev. __, 412 P.3d 30, 34 (Nev. 2018).

[20] *See* NRS 604A.065(1) (defining "extension" as "any extension or rollover of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, regardless of the name given to the extension or rollover").

cannot be the same thing as an "extension," the District Court erred as a matter of law.

The District Court has also rendered the "ratably and fully amortize" language of NRS 604A.445(3) meaningless. If Section 3 did not include the amortization requirement, Sections 2 and 3 would have essentially said the same thing. The District Court erroneously read the "ratably and fully amortized" language right out of the statute and did the same with the language prohibiting extensions.

2. NRS 604A.445(3) is the controlling statute

Because NRS 604A.445(3) is the specific statute relative to 210-day loans, it controls if there is a conflict with NRS 604A.210.[21] Here, even if NRS 604A.210 could be ambiguous when read in isolation,[22] it cannot be ambiguous when read in harmony with NRS 604A.445(3) because "additional interest" has to mean any interest in excess of the amount of amortized interest in each calculated payment.[23] If it didn't have this meaning, lenders would reasonably be confused and question

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[21] *State Tax Com'n v. American Home Shield of Nevada, Inc.*, 127 Nev. 382, 388, 254 P.3d 601, 605 (2011) ("A specific statute controls over a general statute." (citation omitted)).

[22] *See Dollar Loan Center, LLC*, 134 Nev. __, 412 P.3d 30, 34 (Nev. 2018) ("'[W]ords within a statute must not be read in isolation, and statutes must be construed to give meaning to all of their parts and language within the context of the purpose of the legislation.'" (citation omitted)).

[23] Coincidentally, defining "additional interest" to mean something more than the agreed upon rate of interest does not make sense with regard to NRS 604A.445(2) because charging the agreed upon rate of interest during a 30-day grace period is the same thing as charging the agreed upon rate of interest during a 30-day extension – the limitation of 30 days plus six extensions is rendered meaningless if the loan can be further extended by granting a grace period.

whether, as a result of granting a grace period, they couldn't collect the amortized interest portion of the payment and could only receive the principle portion. FID's interpretation allowed the amortized interest portion of the payment to be collected during a grace period – the District Court simply disregarded this interpretation. This court has stated that an agency's interpretation that is closely related to the facts must be given deference.[24] Given the facts as seen by FID and found by the ALJ, this interpretation is the most reasonable and is entitled to deference.[25] This interpretation, and supporting reasoning, also defeats TitleMax's argument relative to the Legislature adding the word "additional" to the statute for the purpose of allowing the agreed upon rate of interest to be collected.[26]

Given that the District Court's decision actually propagates the evil that Chapter 604A was meant to squelch, the ALJ's interpretation is not only more reasonable, it is the only reasonable interpretation of the two.[27]

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[24] "Although the district court may decide pure legal questions without deference to an agency determination, an agency's conclusions of law which are closely related to the agency's view of the facts are entitled to deference and should not be disturbed if they are supported by substantial evidence." *State Indus. Ins. System v. Khweiss*, 108 Nev. 123, 126, 825 P.2d 218 (1992) (citation omitted).

[25] *Id.*

[26] The proposed language initially prohibited the charging or collecting of "any interest." See Assembly Bill 384, Sect. 23 (2005) (First Reprint).

[27] *See Dollar Loan Center, LLC*, 134 Nev. __, 412 P.3d 30, 34 (Nev. 2018) ("Such an interpretation would be contrary to the legislative purpose of the statute and would create absurd results as it would incentivize licensees to perpetuate the 'debt treadmill'. . . ." (citation omitted)).

3. Legislative history is used to resolve an ambiguity, not create one.

TitleMax's argument regarding the meaning of the term "additional interest" is a red herring. Reading the statutes harmoniously, relative to NRS 604A.445(3) loans, additional interest means any interest in addition to the 210 days of ratably and fully amortized interest. Stated differently, the interest that can be collected during a grace period is the interest portion of the particular installment payment that will be paid during the grace period.

Without the legislative history referencing the change to prohibit "additional interest," TitleMax could not have made the argument that NRS 604A.210 was ambiguous. Resorting to legislative history for the purpose of creating an ambiguity is improper.[28] The District Court seemingly agreed, as it declared that NRS 604A.210 was not ambiguous – determining instead that the statute plainly allowed a lender to charge and collect the agreed upon rate of interest during a grace period. Yet, the statute itself is void of any language indicating that a lender can charge the agreed upon rate of interest during a grace period.[29] Thus, the court added language to the statute – legislating from the bench – and ignored the Legislature's own words. Requiring the full amount of the principle and interest to be ratably and fully amortized within 210 days plainly expresses that the cost of the loan to the customer

[28] *See* FN 44, *infra.*

[29] NRS 604A.210.

is capped at 210 days of ratably and fully amortized interest. This is the only reasonable interpretation of NRS 604A.445(3) and any interest in excess of this limitation is additional interest. Therefore, no such interest can be charged during a grace period.

Charging additional interest during a grace period effectively extends the loan. With the GPPDAs, the customer pays nothing but interest for seven months and the entire principal is still owed. Granting a grace period relative to any of the fourteen (14) payments and charging interest during the so called "grace period" allows the collection of additional unamortized interest and extends the loan. This exemplifies the debt treadmill that the Legislature identified as the evil to be avoided by Chapter 604A.[30] When the "installment payments" are calculated to "ratably and fully amortize" the "entire amount of principle and interest" within 210 days, customers know the total amount of interest that has to be paid and are protected from charges for additional interest.[31] Given its plain meaning, this language is not ambiguous and cannot be construed to mean something else.[32]

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[30] *See Testimony of Assemblywoman Barbara K Buckley, Regarding AB 384, Senate Committee on Commerce and Labor, May 6, 2005*, p. 7-9.

[31] NRS 604A.445(3).

[32] *State, Div. of Ins. V. State Farm Mut. Auto. Ins. Company,* 116 Nev. 290, 293-94, 995 P.2d 482, 485 (2000) ("'Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.'" (citation omitted)).

The ALJ concluded that the GPPDAs are extensions of the otherwise compliant 210-day loans.[33] If TitleMax had not charged interest in excess of what would have been collected under the posted speed limit, *i.e.* only the amortized interest, it may have successfully argued that it merely granted grace periods relative to the principal portion of each payment.[34] But, TitleMax charged additional interest by ignoring the amortization requirement and subjecting the entire principal to interest for seven (7) months.[35] Because TitleMax did not offer a period of deferment gratuitously,[36] there is no grace period[37] and the ALJ properly determined that the GPPDAs are extensions.[38] Substantial evidence supports the finding and conclusions that the GPPDAs extend the

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[33] APP 016966:5.

[34] "'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." NRS 604A.070.

[35] "We only have one product. So we only do one thing, and we just do it over and over again, and we do it consistently in every store." APP 001328:7-10 (Hr'g Tr. 477:7-10).

[36] Webster's II New College Dictionary, 487 (1999) (defining "gratuitous" as "[g]iven or received without cost or obligation: FREE."). The FID examiners similarly define "gratuitous" when applying the definition of a "grace period." APP 000966; APP 001199-001201.

[37] NRS 604A.070 (defining "grace period" as "any period of deferment offered gratuitously . . .").

[38] NRS 604A.065 (defining "extension" as "any extension or rollover of a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement, regardless of the name given to the extension or rollover.").

original 210-day loans beyond the date the loans were required to be paid in full.[39]

Extending the time to repay the principle portion of each payment allowed TitleMax to argue that it was simply granting a grace period. Yet, the only reasonable conclusion, relative to an NRS 604A.445(3) loan, is that no interest - in addition to the calculated amortized interest in each scheduled installment payment - can be collected during a grace period.

Construed in harmony with NRS 604A.445(3), the "grace period" defined in NRS 604A.070 is properly construed to refer to a period of time during which no interest can accrue. Stated differently, a grace period effectively gives the customer more time to make a calculated monthly installment payment so that the lender does not have to declare the loan in default.[40] If the borrower makes the payment before the

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[39] "Substantial evidence" is "that quantity and quality of evidence which a reasonable [person] could accept as adequate to support a conclusion." *Clements,* 111 Nev. 717, 722 (internal quotes omitted); NRS 233B.135(4).

[40] NRS 604A.045 (defining "default" as "the failure of a customer to . . . [m]ake a scheduled payment on a loan on or before the due date for the payment under the terms of a lawful loan agreement and any grace period that complies with the provisions of NRS 604A.210 or 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[.]" Also stating, "A default occurs on the day immediately following the date of the customer's failure to perform as described in subsection 1."). Because NRS 604A.445(3) prohibits extensions, a default would occur when a customer failed to make a payment before a due date with or without a grace period. Upon default, the lender must offer the customer a repayment plan. NRS 604A.560; NRS 604A.475; *See* 604A.410(2)(f) (stating that loan agreements must contain "[a] disclosure stating that, if the customer defaults on the 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, if appropriate for the

expiration of the grace period, the lender applies the payment to the outstanding balance as if no additional time was needed. The District Court's decision, allowing the agreed upon rate of interest to be charged during the grace period, is erroneous[41] in light of the legislative intent to limit such loans to short terms and to keep customers off the debt treadmill.[42] Thus, under NRS 604A.070, a "period of deferment offered gratuitously by a licensee" can only mean a period of deferment without any more interest—in the context of the 210-day loans at issue.

TitleMax, however, construes NRS 604A.210 as an affirmative authorization to contract around the requirements of NRS 604A.445(3) regarding the term of the

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loan, before the licensee repossesses a vehicle"). Collecting extra interest during a grace period is much more profitable (less costly) to TitleMax than offering a repayment plan and shortly thereafter resorting to collections. *See* NRS 604A.475 (discussing repayment plans generally); *See* NRS 604A.485 (limiting post-default interest to prime plus 10 percent for a maximum of 90 days); *See Minutes of the Meeting of the Assembly Committee on Commerce and Labor, April 6, 2005*, p. 47 ("The biggest thing this bill does is say you can't collect anything but the principal of the loan, the interest in the contract up until the date of default; after default, prime plus 10 . . .").

[41] The District Court's decision is based on an error of law because neither NRS 604A.445(3) or NRS 604A.210 use such language.

[42] A lawful grace period would merely defer the deadline for making the payment – without charging additional interest. When, as here, the lender supplants the original schedule of seven (7) monthly amortized installments with a revised schedule of 14 variable monthly payments, the lender effectively issues a new loan with a term of 14 months. Since the amount of unamortized interest that accrues during the first seven (7) months is directly attributable to the 14-month structure of variable payments, the loan itself is properly characterized as having a term of 14 months as opposed to a term of seven months.

loan, the rate of the interest and the schedule of payments. Pursuant to NRS 604A.445(3), the term of the loan must be limited to seven (7) months (210 days) and the schedule of payments must be calculated to completely satisfy both the principal and interest during that time frame. Thus, the statute limits the rate of interest by limiting the application of the agreed upon rate by requiring amortization. NRS 604A.445(3) is crystal clear in this regard. NRS 604A.210 in no way suggests that a lender may circumvent the specific requirements of NRS 604A.445(3)—the controlling statute. In short, NRS 604A.210 contains a prohibition against interest and fees, not an authorization to restructure the loan in a manner that increases the borrower's total interest obligation. According to the most fundamental principles of statutory construction, this is an improper (not to mention disingenuous) reading of the statute.[43]

When read in harmony with NRS 604A.445(3), there is no ambiguity in NRS 604A.210. Out of necessity, TitleMax points to legislative history attempting to

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[43] *See Savage v. Pierson,* 123 Nev. 86, 89, 157 P.3d 697, 699 (2007) ("When examining a statute, a purely legal inquiry, this court should ascribe to its words their plain meaning, unless this meaning was clearly not intended." (citation omitted)); *See We People Nevada ex rel, Angel v. Miller,* 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008) (providing, "when possible, the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results." (citation omitted)); *See Griffith v. Gonzales-Alpizar,* 132 Nev. _, 373 P.3d 86, 88 (2016) ("Finally, we consider the policy and spirit of the law and will seek to avoid an interpretation that leads to an absurd result.").

create an ambiguity relative to the meaning of "additional interest" as the term is used in NRS 604A.210.[44] At best, again, the argument is a red herring. When read harmoniously with NRS 604A.445(3), the Legislature intended "additional interest" to mean any interest in excess of the interest portion of each amortized installment payment.

C. The ALJ Properly Found that TitleMax "Willfully" exceeded the plain limits of NRS 604A.445(3).

TitleMax exceeded the plain limits of NRS 604A.445(3) by scheduling and collecting unamortized interest only payments for seven (7)months before scheduling and collecting any principle, thereby extending non-extendable 210 day title loans – for the intended purpose of charging additional interest, and then collecting the principle in a disguised balloon payment.

As demonstrated, NRS 604A.445(3) sets the "posted speed limit" by proscribing the maximum period over which the total interest amount is calculated using the interest rate agreed upon by the parties, based on installment payments that

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[44] *Clark County v. S. Nevada Health Dist.,* 128 Nev. 651, 658, 289 P.3d 212, 216 (2012) (resorting to legislative history to resolve the ambiguity). *Miller v. Burke,* 124 Nev. 579, 590, 188 P.3d 1112, 1120 (2008) (explaining that this Court will not go beyond clear language "to create an ambiguity when none exists."); *In re Boggs-Rice Co.,* 66 F.2d 855, 858 (4th Cir. 1933) ("The rules of interpretation are resorted to for the purpose of resolving ambiguity, not for the purpose of creating it." (citation omitted). "In other words, the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent." (citation omitted)).

ratably and fully amortize the principal and interest within 210 days. A loan longer than 210 days, or charging unamortized interest, exceeds the posted speed limit. TitleMax expressed its knowledge and understanding of this limit by entering into statutorily compliant 210-day loans. APP 001715-001719; APP 001788-001792. By entering into loans that complied with the requirement to "ratably and fully amortize the entire principal and interest," and by calculating the total amount of interest to be paid and expressly informing the customer of the same on the TILA disclosure, TitleMax demonstrated that it understood the posted speed limit. Again, the posted speed limit is the amount of interest that is calculated to accrue at the agreed upon rate when the entire principal and interest is amortized over a maximum of 210 days.

Though TitleMax understood the limit, TitleMax charged and collected additional interest through the use of the GPPDAs. The ALJ reached this same conclusion and her decision is based on substantial evidence. APP 016966-016967.

In assessing the appropriate penalty, the ALJ properly determined that TitleMax's use of the GPPDAs met the statutory "willful" standard in Chapter 604A. That standard is set forth in subsection 1 of NRS 604A.900, which provides in the pertinent provisions as follows:

> 1. Except as otherwise provided in this section, if a licensee *willfully:*
>
> (a) *Enters into a loan agreement for an amount of interest* or any other charge or fee that violates the provisions of this chapter . . . ;
>
> *(b) Demands, collects or receives an amount of*

> *interest* or any other charge or fee that violates the provisions of this chapter . . .; or
>
> *(c) Commits any other act or omission* that violates the provisions of this chapter. . . the loan is void and the licensee is not entitled to collect, receive or retain any principal, interest or other charges or fees with respect to the loan.

Under the statute's plain language, the adverb "willfully" modifies the verbs "[e]nters," "[d]emands, collects or receives," and "[c]omits." In such context, courts have long held that "willful" connotes nothing more than "an act which is intentional, or knowing, or voluntary, as distinguished from accidental."[45]

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[45] *United States v. Murdock,* 290 U.S. 389, 394 (1933); *see also Hale v. Morgan,* 584 P.2d 512, 517, 149 Cal.Rptr. 375, 396 (Cal. 1978) (stating "it is well settled that the terms 'willful' or 'willfully' . . . require only that the illegal act or omission occur 'intentionally,' without regard to motive or ignorance of the act's prohibited character." (citation omitted)). "In civil cases, the word 'willful,' as ordinarily used in courts of law, does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent." *May v. New York M. Picture Corp.,* 187 P. 785, 788, 45 Cal.App. 396, 404 (Cal. 1920); *accord Wilson v. Security—First Nat. Bank, et al.,* 190 P.2d 975, 978, 84 Cal.App.2d 427, 431-432 (1948) ("willful as used in this section is to be understood in its ordinary sense of 'voluntary' or 'spontaneous' . . .[.] 'Moreover, the subletting was voluntary, intentional, and so deliberate as to be evidenced by a carefully drawn written instrument. In these circumstances it would be impossible to treat it as otherwise than 'willful.'" (citation omitted)); *See Pettinger v. Collection Agency Licensing Bureau,* 208 Cal.App.2d 585, 588, 25 Cal.Rptr. 324, 327 (1962) ("In statutory offenses 'willfully' implies only a willingness to commit the act, unless otherwise apparent from the context of the statute. . . . This definition of the term 'willfully' has been adopted in reference to prohibitions and regulations in other codes created under the state's police power." (citation omitted)).

"The word is also employed to characterize . . . conduct marked by careless disregard whether or not one has the right so to act."[46] Here, the facts show that TitleMax "willfully" enters into, and collects or charges interest under, the GPPDAs. Because GPPDAs charge "an amount of interest . . . that violates the provisions of [Chapter 604A] ...," TitleMax acted willfully pursuant to NRS 604A.900. There can be no dispute, for example, that TitleMax "willfully [e]nter[ed] into [the] loan agreement" that "converted" Customer Esguerra's statutorily-complaint loan (dated January 17, 2015), into a GPPDA on March 21, 2015. Similarly, it cannot be disputed that TitleMax willfully charged unamortized interest when the statute limits lenders to 210 days of ratably and fully amortized interest. The same is true with regard to the use of interest only payments and extensions. Thus, TitleMax willfully commits the "acts or omissions" that result in violations of Chapter 604A. Applying the statutory standard in NRS 604A.900(1), it is clear that TitleMax's actions were not "accidental" but systematic, intentional and "willful."

TitleMax posits a very different "willful" standard—inferring that its conduct is "willful" only if it "knows" that its activity violates Chapter 604A. APP 017160. As a threshold matter, the relevancy of this argument depends upon whether this court is convinced that TitleMax really didn't know that it couldn't charge unamortized

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[46] *Murdock*, 290 U.S. 389, 394-395.

interest. Objectively, it is unreasonable for TitleMax to make the argument and it was unreasonable for the District Court to ratify it. Moreover, nothing in the plain language of NRS 604A.900(1) immunizes a licensee with a "good-faith but incorrect" understanding of the law from discipline if it "willfully [e]nters into a loan agreement" that violates Chapter 604A.[47]

Assuming, *arguendo,* that an alleged "good-faith mistake of law" does somehow inoculate a licensee from the NRS 604A.900(1) "willfulness" standard, there can be no question that TitleMax's initial decision to offer, and its subsequent decision to continue offering, the illegal GPPDAs were indeed willful. Under the "willful violation" standard, a "willfulness determination is a fact-sensitive inquiry, [and] an administrative fact-based determination is entitled to a deferential standard of review."[48] In addition, a licensee's knowledge of legal requirements is "extremely probative to the determination of whether the licensee was plainly indifferent."[49]

By entering into the original statutorily compliant 210-day loans,

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[47] Indeed, the only exception is for a licensee who "shows . . . that the violation was not intentional and resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably adapted to avoid that error . . . ." NRS 604A.900(2)(a). Clearly, this case does not involve computation errors and there are no other exceptions listed in the statute.

[48] *Century Steel v. Division of Industrial Relations,* 122 Nev. 584, 589, 137 P.3d 1155, 1159 (2006) (citation omitted).

[49] *Champion Arms, LLC v. Van Haelst,* 2012 WL 4511393 at 5-7.

TitleMax demonstrated its correct understanding of the limits set forth in NRS 604A.445. APP 001715-001719. TitleMax specified rather deceptively in the GPPDAs that the second seven (7)-month term of the loan was not to be considered an extension but rather a grace period – though it generated additional interest by charging unamortized interest for the additional time. APP 001722. TitleMax compounded the deception when it asked customers to memorialize their understanding that the "interest rate under the Loan Agreement remains unchanged." APP 001724. By statute, the contractual rate of interest is the agreed upon rate set forth in the loan agreement capped at 210 days of amortized interest. By charging unamortized interest in the GPPDA, TitleMax actually changed the contractual rate of interest. TitleMax falsely informed its customers that "no additional fees or interest" would be charged. APP 001722. TitleMax's demonstrated knowledge of the legal requirements and its transparent attempt to avoid those requirements are "extremely probative to the determination of whether the licensee was plainly indifferent."[50]

Objectively, there simply was, and is, no good faith dispute regarding the statutory limits set forth in NRS 604A.445(3). TitleMax understood the statutory limits but disregarded them based on a feigned inability to comprehend

[50] *Champion Arms,* at 5-7.

them. TitleMax's actions were willful because they simply could not have had a good faith belief that they were allowed to charge unamortized interest or extend the loans.

X. CONCLUSION

Because the District Court's order renders the amortization requirement and the limitations of both NRS 604A.445(2) and NRS 604A.445(3) meaningless, gives the same meaning to the terms "extension" and "grace periods," clearly violates the spirit of the act and fails to give deference to the agency's interpretation that is closely related to the facts (that are supported by substantial evidence), the order is erroneous and must be reversed.

Dated this 18th day of April 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 12 points or more and contains 5,155 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

. . . .

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on April 19, 2018.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

/s/ Marilyn Millam
an employee of the Office of the Attorney General