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DISTRICT COURT

CLARK COUNTY, NEVADA

TITLEMAX OF NEVADA, INC., a Delaware corporation, Plaintiff, vs. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, Defendant.	Case No. A-18-786784-C Dept. No. XXX

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendant, STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, hereby appeals to the Nevada Supreme Court the "Order" filed in this matter on June 20, 2019 and entered on June 20, 2019, as evidenced by the Notice of Entry of Order attached hereto as Exhibit "A".

Dated this 17th day of July, 2019.

AARON D. FORD
Attorney General

By: /s/ VIVIENNE RAKOWSKY
VIVIENNE RAKOWSKY
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on July 17, 2019 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

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

TITLEMAX OF NEVADA, INC., a Delaware Corporation, Plaintiff, vs. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, Defendant.	)	**CASE NO: A-18-786784-C** **DEPT. NO.: XXX** **NOTICE OF ENTRY OF ORDER:** **ORDER**

You are hereby notified that this Court entered **Order**, a copy of which is attached hereto.

DATED this 20th day of June 2019.

JERRY A WIESE
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder:

Party: Nevada Department of Business and Industry Financial Institutions I

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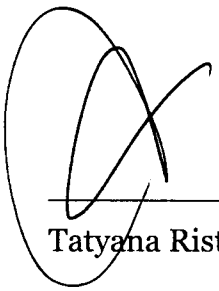

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DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

TITLEMAX OF NEVADA, INC., a Delaware Corporation, Plaintiff, vs. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, Defendant.	)	**CASE NO: A-8-786784-C** **DEPT. NO.: XXX** **ORDER**

The above-referenced matter came on for hearing before Judge Jerry A. Wiese II, on Wednesday, May 1, 2019, with regard to Defendant's Motion for Summary Judgment, and Plaintiff's Counter-Motion for Summary Judgment. Both parties were represented by counsel, and offered oral argument. The Court, having heard oral argument, having reviewed all of the papers and pleadings on file, and good cause appearing, now enters the following Order.

The FID conducts examinations of its licensees, to verify compliance with Chapter 604A of the NRS and NAC. (NRS 604A.730[1]). On or about February 8, 2018, FID commenced its annual examination of TitleMax, which resulted in the alleged discovery of various violations. The FID provided recommendations to TitleMax, and gave TitleMax a "Needs Improvement" rating. A meeting occurred on or about June 8, 2018, between FID and representatives of TitleMax, to discuss the Report of Examination (ROE), and thereafter TitleMax submitted a written response contesting the violations. TitleMax thereafter filed a declaratory relief action (A-15-719176-C). The District Court granted FID's Motion to Dismiss, because of a failure to exhaust administrative remedies. The Nevada Supreme Court reversed the dismissal, indicating that exhaustion of administrative remedies was unnecessary where the only issues were those of statutory interpretation. While the appeal was proceeding, the FID instituted administrative proceedings against TitleMax, and the administrative law

judge found in favor of FID. TitleMax appealed, and Judge Hardy of the District Court reversed and vacated the decision of the administrative law judge. FID appealed Judge Hardy's ruling to the Nevada Supreme Court, and the appeal is still pending.

The instant case is somewhat related to the prior case, but addresses a different issue and a subsequent examination period. In the 2018 Report of Examination, FID took issue with TitleMax allowing customers to refinance title loans, claiming that TitleMax's refinancing is really an "extension" in violation of NRS 604A.065 and NRS 604A.445(3)(c), (which is now NRS 604A.5074[3][c]). Additionally, FID has taken the position that the total amount the borrower must pay back includes the principal, interest, and fees, not just the principal amount borrowed, and that this total amount of principal, interest, and fees, cannot exceed the fair market value of the vehicle. (See NRS 604A.5076 [previously NRS 604A.450]). In this litigation, TitleMax seeks declaratory relief as follows:

1) That refinancing a title loan does not violate NRS 604A.5074 or NRS 604A.065; and

2) That NRS 604A.5076(1) means that only the amount of the title loan, excluding any fees and interest, cannot exceed the fair market value of the vehicle securing the loan.

TitleMax seeks no money damages, but only a narrow injunction, prohibiting the enforcement of what it believes to be an invalid interpretation of the statute at issue.

NRS 604A deals specifically with "deferred deposit loan services," "high-interest loan services," and "title loan services." There appears to be no dispute that TitleMax deals only with "title loan services," which would be addressed by NRS 604A.5065 through 604A.6094.

The specific statutes at issue read as follows:

> **NRS 604A.5074 Restrictions on duration of loan and periods of extension.** Notwithstanding any other provision of this chapter to the contrary:
>
> 1. The original term of a title loan must not exceed 30 days.
>
> 2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:
>
> (a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

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

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

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

(a) The loan provides for payments in installments;

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

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

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

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

(Added to NRS by 2005, 1692; A 2007, 937; 2017, 1441) — (Substituted in revision for NRS 604A.445)

NRS 604A.065 "Extension" defined.

1. "Extension" means 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.

2. The term does not include a grace period.

(Added to NRS by 2005, 1685)

NRS 604A.5076 Prohibited acts by licensee regarding amount of loan, ownership of vehicle and customer's ability to repay loan. 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 determining that the customer has the ability to repay the title loan, as required by NRS 604A.5065. 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.

(Added to NRS by 2005, 1692; A 2017, 1442) — (Substituted in revision for NRS 604A.450)

Summary Judgment is appropriate when, after reviewing the record in the light most favorable to the non-moving party, no genuine issue of material fact remains, that the moving party is entitled to judgment as a matter of law. *Fire Ins. Exchange v. Cornell*, 20 Nev. 303, 306, 90 P.3d 978, 979 (Nev. 2004). The non-moving party is not entitled to guild a case on the "gossamer threads of whimsy, speculation, and conjecture." *Bulbman v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

FID argues that TitleMax is asking for more than a mere interpretation of a statute, and is asking for a determination that it did not act willfully as set forth in NRS 604A.900. The Court reads footnote 3 of TitleMax's Opposition and Counter-Motion for Summary Judgment, to indicate that it does not believe a determination of willfulness to be a legal issue subject to summary judgment, and TitleMax specifically indicates that "if" FID is seeking a determination that TitleMax willfully violated the statutes, such a determination would be a "fact question," or a "genuine issue of material fact," which would preclude summary judgment. This Court does not believe that a determination of willfulness on either party is actually sought in the moving papers, and consequently, the Court will not address that issue.

FID argues that "If a term is not in the statute, the court should not speculate and fill in alleged 'legislative omissions based on conjecture as to what the legislature would or should have done.'" Motion at pg. 7, citing Diamond v. Swick, 117 Nev. 671, 677, 28 P.3d 1087, 1090 (2001). Interestingly, FID acknowledges that the title loan statutes do not include the term "refinance," but FID wants the Court to rule that the legislature intended to prohibit refinancing. FID argues that "the Legislature prohibited refinancing of title loans by prohibiting extensions." Motion at pg. 8, citing NRS 604A.5074(3)(c).

FID argues that Chapter 604A was enacted by the legislature in 2005 to protect consumers from predatory lenders. FID suggests that the policy behind the statutes is to prohibit lenders from making unaffordable loans which result in customers ending up in a cycle of debt, commonly referred to as the "debt treadmill." They suggest that the "debt treadmill" occurs when a borrower is unable to repay a loan and then takes out a larger loan to cover the principal, interest and fees from the unpaid original loan. (See fn. 2, FID's Motion at pg. 5, citing *Dept. of Business and Industry, FID v. Dollar Loan Center, LLC.*, 134 Nev.Adv.Op. 15, 412 P.3d 30, 33 (2018).

FID argues that although TitleMax claims it is "refinancing" one title loan and replacing it with a new loan, it is actually extending the term of the original loan beyond the statutory limit of 210 days, so it can charge interest for an indefinite period of time rather than the 210 days allowed by statute. FID argues that this practice allows borrowers to "refinance" multiple times, and the terms of these loans can be extended for years, which is contrary to the remedial legislative purpose of Chapter 604A. They argue that this is the "debt treadmill" that Chapter 604A was enacted to prevent.

FID argues that TitleMax offers "refinancing" instead of allowing its customers to enter into a "repayment plan" allowed by the statutes, because under the "refinancing" plan, the customer's entire amount due is rolled into a new loan with new installment payments. The "repayment plan" is much more restrictive and limits the licensee to collecting only the unpaid principal and interest accrued before default with limited exceptions. Further, the length of a title loan is restricted to 210 days, and extensions are not allowed.

Finally, FID argues that it is illegal to make a title loan that exceeds the fair market value of the vehicle securing the title loan. (NRS 604A.5076[1]). FID contends that the full value of the title loan includes principal and interest, as well as the title fee, and if that total amount exceeds the fair market value of the vehicle, then TitleMax is in violation of the statute.

TitleMax argues that because Chapter 604A does not prohibit refinancing with regard to title loans, they must be allowed. TitleMax suggests that because the Legislature discussed "refinancing" with regard to "deferred deposit loans" and "high interest loans," but did not comment on "refinancing" with regard to "title loans," the legislature must have intentionally not wanted to limit refinancing with regard to "title loans." There are limitations on refinancing "deferred deposit loans" as follows:

> **NRS 604A.501 Limitations on original term.**
>
> 1. Except as otherwise provided in this chapter, the original term of a deferred deposit loan must not exceed 35 days.
>
> 2. Notwithstanding the provisions of NRS 604A.5029, a licensee who operates a deferred deposit loan service shall not agree to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding deferred deposit loan for a period that exceeds 90 days after the date of origination of the loan.

(Added to NRS by 2007, 931; A 2017, 1440) — (Substituted in revision for part of NRS 604A.408)

NRS 604A.5029 Limitations on using proceeds of new deferred deposit loan or high-interest loan to pay balance of outstanding deferred deposit loan; exceptions.

1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding deferred deposit loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding deferred deposit loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the original term of the outstanding deferred deposit loan or any extension of the outstanding deferred deposit loan to the principal amount of the new deferred deposit loan or high-interest loan.

. . . .

NRS 604A.574 Limitations on extended term of loans. A licensee who has been issued a license to operate a deferred deposit loan service pursuant to this chapter shall not allow a customer to extend, rollover, renew, ***refinance*** or consolidate any deferred deposit loan for a period longer than the period set forth in subsection 2 of NRS 604A.501.

(Added to NRS by 2015, 1145) — (Substituted in revision for part of NRS 604A.540)

There are limitations on refinancing "high interest loans" as follows:

NRS 604A.5037 Limitations on original term.

. . . .

3. Notwithstanding the provisions of NRS 604A.5057, a licensee who operates a high-interest loan service shall not agree to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding high-interest loan for a period that exceeds 90 days after the date of origination of the loan.

(Added to NRS by 2007, 931; A 2017, 1440) — (Substituted in revision for part of NRS 604A.408)

NRS 604A.5057 Limitations on using proceeds of new deferred deposit loan or high-interest loan to pay balance of outstanding high-interest loan; exceptions.

1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding high-interest loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding high-interest loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the

original term of the outstanding high-interest loan or any extension of the outstanding high-interest loan to the principal amount of the new deferred deposit loan or high-interest loan.

NRS 604A.584 Limitations on extended term of loans. A licensee who has been issued a license to operate a high-interest loan service pursuant to this chapter shall not allow a customer to extend, rollover, renew, ***refinance*** or consolidate any high-interest loan for a period longer than the period set forth in subsection 3 of NRS 604A.5037.

(Added to NRS by 2015, 1145) – (Substituted in revision for part of NRS 604A.540)

It is interesting that the Legislature has identified limitations with regard to "refinancing" as it relates to "deferred deposit loans" and "high interest loans," but that there is no limitation or even a reference to refinancing as it relates to "title loans."

TitleMax explains that when a customer wants to refinance, they are provided with a completely new loan, with a new loan number. The customer signs a new loan agreement with a new schedule of payments, etc. The same form loan agreement is used for initial loans and refinances, because both are new 210-day loans. When a title loan is refinanced, the original loan obligation is completely satisfied and extinguished, and the old agreement is marked "paid in full." Additionally, before a customer can refinance, they must pay any accrued interest on the outstanding loan, so no accrued interest is "rolled over" or included in the principal of the second loan. (See Opposition and Counter-motion at pg. 10.)

Initially, the Court acknowledges that administrative exhaustion is not necessary when the issue is a statute's interpretation. *TitleMax 1*, 217 WL 4464351 at *2; *State, Dept. of Bus. & Indus. V. Check City*, 130 Nev. 909, 914, 337 P.3d 755, 758 n.5 (Nev. 2014); *Déjà vu Showgirls v. State, Dept. of Tax.*, 130 Nev. 719, 725, 334 P.3d 392 (2014); *State v. Scotsman Mtg. Co., Inc.*, 109 Nev. 252, 254, 849 P.2d 317, 319 (1993).

"When interpreting a statute, legislative intent 'is the controlling factor.'" *State v. Lucero*, 127 Nev. 92, 249 P.3d 1226 (2011), citing to *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). "The starting point for determining legislative intent is the statute's plain meaning, when a statute 'is clear on its face, a court can not go beyond the statute in determining legislative intent.'" *Id.*, "But when 'the statutory language lends itself to two or more reasonable interpretations, 'the statute is ambiguous, and we may then look beyond the statute in determining

legislative intent.'" *Id.*, citing *State v. Catanio*, 120 Nev. 1030, 102 P.3d 588 (2004). The Supreme Court has indicated that "When interpreting a statute, we 'give effect to the statute's plain meaning' and when its language 'is plain and unambiguous, such that it is capable of only one meaning [we do] not construe that statute otherwise. . . .' But an ambiguous statute that 'is susceptible to differing reasonable interpretations, ...should be construed consistently with what reason and public policy would indicate the Legislature intended.'" *Valdez v. Aguilar*, 132 Nev.Adv.Op. 37, 373 P.3d 84, 85 (2016), citing to *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 228-29, 209 P.3d 766, 769 (2009), and *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006).

In the present case, TitleMax argues that there is no prohibition in NRS Chapter 604A to Title Loan companies refinancing, and consequently, it must be allowed. On the other hand, FID argues that because there is nothing in NRS Chapter 604A which allows Title Loan companies to refinance, it must not be allowed. So the Court is not really being asked to "interpret" a statute, but the Court is being asked to interpret the fact that the statutes do not include any language about "refinancing," and decide whether the lack of language means that it is allowed or prohibited.

In *Sheriff, Pershing County v. Andrews*, 128 Nev. 544, 286 P.3d 262 (2012), the Court concluded that because the legislature had not specifically included "cell phone" as a prohibited device in NRS 212.093(1), it would not be considered a prohibited device. The Court noted that "the Legislature clearly knows how to prohibit inmates from possessing cell phones but did not do so with respect to county jail inmates." The Court inferred that the Legislature's omission was intentional. *Id.* Justice Gibbons concurred in part and dissented in part, noting the "well-established rule of construction that the inclusion of one thing indicates that the omission of another was intentional." *Id.* See also *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967).

When dealing with "statutory construction," in *Dezzani v. Kern & Associates, Ltd.*, 134 Nev.Adv.Op.9, 412 P.3d 56 (2018), the Nevada Supreme Court indicated that "The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute." Citing *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 650, 730 P.2d 438, 443 (1986). "To determine legislative intent, we first consider and

give effect to the statute's plain meaning because that is the best indicator of the Legislature's intent." *Id.*, citing *Pub. Emps.' Benefits Program*, 124 Nev. at 147, 179 P.3d at 548. "[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." *Id.*, citing *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) (internal quotation marks omitted).

If the Court finds that the language of the statute is ambiguous, then the Court looks to the legislative intent. In *McKay v. Board of Sup'rs of Carson City*, 102 Nev. 644, 730 P.2d 438 (1986), the Nevada Supreme Court stated, "The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute." Citing to *City of Las Vegas v. Macchiaverna*, 99 Nev. 256, 257, 661 P.2d 879, 880 (1983). "This intent will prevail over the literal sense of the words." *Id.* at 257–258. "The meaning of the words used may be determined by examining the context and the spirit of the law or the causes which induced the legislature to enact it." *Id.* "The entire subject matter and policy may be involved as an interpretive aid." *Id.*

The Supreme Court has also held that "an administrative agency charged with the duty of administering an act is impliedly clothed with the power to construe the relevant laws ... and the construction placed on a statute by the agency charged with the duty of administering it is entitled to deference." *State, Dept. of Bus. And Industry, Office of Labor Com'r v. Granite Const. Co.*, 118 Nev. 83, 40 P.3d 423 (2002), citing *Elliot v. Resnick*, 114 Nev. 25, 32 n.1, 952 P.2d 961 966 n.1 (1998).

The Nevada Supreme Court has recently addressed another case dealing with NRS 604A, and noted that "Statutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained." *State Dept. of Bus. And Industry, Fin. Institutions Div. v. Dollar Loan Center*, 134 Nev.Adv.Op. 15, 412 P.3d 30 (2018), citing *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008). Further, "statutory interpretation must 'not render any part of the statute meaningless,' or 'produce absurd or unreasonable results.'" *Id.*, citing *Orion Portfolio Servs. 2, LLC v. Cty. Of Clark ex rel. Univ. Med. Ctr. Of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010). The Court noted that "The policy purpose of NRS Chapter 604A was to stop the 'debt treadmill' where a borrower is unable to repay a

loan and often takes out a larger loan to cover the principal, interest, and fees from the unpaid original loan." *Id.*, citing Hearing on A.B. 384 Before the Senate Comm. On Commerce & Labor, 73d Leg. (Nev., May 6, 2005). The Court therefore indicated that it viewed "the refinancing provisions of NRS 604A.480 as having a protective purpose requiring a liberal construction to effectuate its intended benefits." *Id.*, citing *Cote H.*, 124 Nev. at 40, 175 P.3d at 908.

In the recent Dollar Loan Center case, the majority of the Nevada Supreme Court bent over backward to try to interpret the statute at issue in a way that prevented consumers from being on the "debt treadmill." In fact, Justice Pickering in her Dissent, noted that in the majority's view, "the purpose of NRS Chapter 604A is to prevent the consumer debt treadmill." *State Dept. of Bus. And Industry, Fin. Institutions Div. v. Dollar Loan Center*, 134 Nev.Adv.Op. 15, 412 P.3d 30, 36 (2018). As Justice Pickering pointed out, the majority opinion could not be squared with the text of the statute and the verb tenses it employed, it could not be squared with NRS 604A.415, which authorized the exact civil actions that the majority opinion said were precluded, nor did the majority opinion make common sense. *Id.* As she pointed out, "What lender will make a new loan to pay off an existing loan knowing that, in doing so, the loan being made cannot be collected upon default?" *Id.* Justice Pickering further cited from Justice Kennedy of the U.S. Supreme Court, when he stated, "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *Id.*, at pgs. 36-37, citing *Kmart Corp v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988).

While this Court may agree more with Justice Pickering's Dissenting opinion, this Court would be obligated to follow the majority opinion, which is the law of the State of Nevada. The Dollar Loan Center case, however, dealt with a different statute, within Chapter 604A of the NRS, and consequently, that decision is not controlling. It is clear that the intent of the Legislature was to protect consumers and to help them stay off of the "debt treadmill." The practice of TitleMax, of "refinancing" could be interpreted as providing a means whereby a consumer would forever be on the "debt treadmill," if they continued to "refinance" their title loans, and consequently, this practice could be interpreted as violating the Legislature's intent. On the other hand, however, TitleMax apparently has a policy of requiring consumers to pay off all accrued

interest before entering into a refinance of a loan, it prepares and executes all new loan documentation, and when a loan is refinanced, the original loan obligation is completely satisfied and extinguished. While the Court can understand FID's concern, and its claim that TitleMax's refinancing is really an "extension," TitleMax is not "extending" the original loan, but is creating a "new loan," which it calls a "refinancing." The Legislature could have precluded this practice, or limited it, if it so desired, but it did not.

Although the Court has considered the legislative intent, in trying to preclude consumers being stuck on a "debt treadmill," the Court cannot conclude as a matter of law that the language of the statutes at issue is not clear and unambiguous. NRS 604A.5074 indicates that "The original term of a title loan must not exceed 30 days." Subsection 2 indicates, however, that it may be extended "for not more than six additional periods of extension, with each such period not to exceed 30 days" if certain requirements are met. The statute thereafter indicates that "The original term of a title loan may be up to 210 days," if certain other requirements are met. FID in the instant case argues that TitleMax is, or at least can, impermissibly extend the title loans, indefinitely, by using the term "refinancing."

It is interesting to note the differences, when comparing the statutes dealing with Deferred Deposit Loans and High Interest Loans, with the statutes dealing with Title Loans. In the statutes dealing with "deferred deposit loans," and "high interest loans," the licensee is prohibited from providing multiple loans to the same customer, with certain exceptions. NRS 604A.5018, and NRS 604A.5046. When dealing with "deferred deposit loans," there is a statutory provision allowing an "extended payment plan," which allows a customer with an outstanding deferred deposit loan to enter into an extended payment plan if the customer meets certain eligibility requirements. NRS 604A.5026. There is no such equivalent when dealing with high-interest loans or title loans. The statutes dealing with "deferred deposit loans," and "high-interest loans," limit the ability to use the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of an outstanding deferred deposit loan or high-interest loan. NRS 604A.5029 and NRS 604A.5057. With regard to "title loans," there is no statutory provision that prohibits certain acts by licensee regarding "multiple loans to same

customer." Additionally, there is no statutory provision that limits the ability of a customer to "use proceeds of a new title loan to pay balance of outstanding title loan."

In evaluating the statutory chapter as a whole, it becomes clear to this Court that there were certain limitations placed on licensees of deferred deposit loans and high-interest loans that were not placed upon the licensees of title loans. Clearly, if the Legislature had wanted to prohibit the licensee of a title loan from making more than one loan to the same customer, it could have done so. (See NRS 604A.5018, and NRS 604A.5046). If the Legislature had wanted to limit the ability to use the proceeds of a new title loan to pay the balance of an outstanding title loan, it could have done so. (See NRS 604A.5029 and NRS 604A.5057). Further, with regard to the statutory sections in Chapter 604A which reference "refinancing," they do not "allow" or "provide for" refinancing, but they provide limitations for licensees who are providing loans and attempting to collect on those loans, whether it be "repayment, renewal, refinancing, or consolidation" of a debt. This analysis leads this Court to believe that although Chapter 604A does not provide for or specifically allow "refinancing" as it relates to "title loans," nor does it prohibit such refinancing, or provide any limitations in that regard. It is possible that the Legislature did not specifically address "refinancing" as it relates to "title loans," because they did not see that as an option, or as a possibility, but the Legislature specifically included provisions which limit a licensee's ability to make more than one loan to a customer, and which specifically limit the ability to use one loan to pay off another loan, as it relates to "deferred deposit loans," and "high interest loans," in the same Chapter, and did not include such limitations as it relates to "title loans." Consequently, this Court must find that Chapter 604A does not preclude TitleMax's ability to "refinance" loans, as long as such refinancing does not otherwise violate the other provisions of Chapter 604A.

NRS 604A.065 defines "extension" as follows:

> 1. "Extension" means 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.
> 2. The term does not include a grace period.

(NRS 604A.065).

If we read NRS 604A.5074 in conjunction with NRS 604A.065, the state would essentially read, "The original term of a title loan may be up to 210 days if . . . the loan

is not subject to 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."

Again, this Court can see how the above-referenced analysis could be interpreted as prohibiting TitleMax's practice of "refinancing" at issue in the present case. But when we compare the above-referenced reading with NRS 604A.5037, dealing with "high interest loans," we would have the same result. (with the only difference being that "high interest loans" are limited to 90 days instead of 210). The section of the Chapter dealing with "high interest loans," however, also includes limitations on providing "multiple loans to the same customer." (NRS 604A.5046) Additionally, the section of the Chapter dealing with "high interest loans," includes limitations on using the proceeds of a new loan to pay off the balance of another outstanding loan. (NRS 604A.5057). The section of the Chapter dealing with "title loans" does not include these other limitations. Consequently, this Court hereby finds that TitleMax's practice of "refinancing" does not violate either NRS 604A.5074 or NRS 604A.065.

The next issue presented to the Court is whether the "fair market value" language of NRS 604A.5076(1) includes fees and interest? That statute reads in pertinent part as follows:

> **NRS 604A.5076 Prohibited acts by licensee regarding amount of loan, ownership of vehicle and customer's ability to repay loan.**
> 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.
> . . . .

Black's Law Dictionary defines "fair market value" as "The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. . ." *Black's Law Dictionary*, Sixth Edition, 1990, at pg. 597.

The Nevada Supreme Court has provided some guidance in *State, Dept. of Bus. & Indus. V. Check City*, 130 Nev. 909, 337 P.3d 755 (2014). In that case, the issue before the Court was whether the 25 percent cap in NRS 604A.425 included both principal and any interest or fees charged. That statute referred to a "deferred deposit loan," and only allowed the licensee to loan a customer an amount which did not exceed 25 percent of the borrower's expected gross monthly income. Apparently in

2008, the "FID began enforcing the 25-percent cap as including both the principal borrowed and interest charged." *Id.*, at 910-911. Check City filed a complaint for declaratory relief, seeking clarification of NRS 604A.425. The District Court concluded "that the 25-percent cap only applied to the principal borrowed." *Id* at 911. The Supreme Court referred to NRS 604A.050, which defined "deferred deposit loan," and concluded that "the principal amount borrowed is merely one aspect of the larger transaction." *Id.*, at 912. This same analysis can apply to any section of NRS Chapter 604A. If the Court considers NRS 604A.105, which defines "title loan," however, the vehicle is collateral for the loan, and the statute specifically indicates that interest of more than 35 percent will be charged annually. The interest is specifically set forth separate from the language referencing the vehicle.

In analyzing whether interest and fees are to be included in the "fair market value" language contained in NRS 604A.5076, common sense tells us that a licensee would not want to lend more money than it would be able to recover in the event of a default. TitleMax actually states in its Opposition and Counter-Motion that "TitleMax has no economic incentive to loan customers greater amounts than they can repay." (See Opposition at pg. 5, ¶9). Interestingly, if we consider NRS 604A.5085, if a customer defaults on a title loan, the licensee may collect not only the unpaid principal amount of the title loan, but unpaid interest accrued before the default (subject to limitations), and interest accrued after the expiration of the initial loan period (subject to limitations), and any fees allowed for presentment of a check that is not paid upon presentment. Additionally, pursuant to NRS 604A.5068, if a customer defaults on a title loan, the licensee may collect the debt owed in a professional and fair manner. If the licensee commences a civil action, the court may award court costs, costs for service of process, and reasonable attorney's fees. It seems clear from the statutes surrounding NRS 604A.5076, that the "fair market value" of the vehicle is not intended to include amounts for interest, bad check fees, costs, and attorney's fees. These are all amounts that would be recoverable, in addition to the principal amount of the loan.

Based upon the Court's analysis, this Court concludes that the language of NRS 604A.5076 which refers to the "fair market value" of a vehicle, refers only to the principal amount of the loan, and does not include interest, fees, or other expenses or other recoverable amounts.

Although there were other issues addressed by the parties in the pleadings, these two issues are the only issues that Plaintiff sought Declaratory Relief on in its Complaint, and consequently, these are the only two issues that the Court hereby addresses, as any other comments or rulings would effectively be "advisory opinions."

ORDER

Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED, that FID's Motion for Summary Judgment is hereby DENIED.

IT IS FURTHER ORDERED, that TitleMax's Counter-Motion for Summary Judgment is hereby GRANTED as follows:

This Court hereby finds, concludes, and declares, that TitleMax's practice of "refinancing" does not violate either NRS 604A.5074 or NRS 604A.065.

This Court further finds, concludes, and declares, that the language of NRS 604A.5076 which refers to the "fair market value" of a vehicle, refers only to the principal amount of the loan, and does not include interest, fees, or other expenses or other recoverable amounts.

Dated this 19th day of June, 2019.

JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XXX

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-18-786784-C

TitleMax of Nevada Inc, Plaintiff(s)	§	Location:	**Department 30**
vs.	§	Judicial Officer:	**Wiese, Jerry A.**
Nevada Department of Business and Industry Financial Institutions Division, Defendant(s)	§	Filed on:	**12/31/2018**
	§	Cross-Reference Case Number:	**A786784**
	§		

CASE INFORMATION

Case Type: **Other Civil Matters**

Case Status: **12/31/2018 Open**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-18-786784-C
Court	Department 30
Date Assigned	12/31/2018
Judicial Officer	Wiese, Jerry A.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**TitleMax of Nevada Inc**	**Polsenberg, Daniel F.** *Retained* 702-949-8200(W)
Defendant	**Nevada Department of Business and Industry Financial Institutions Division**	**RAKOWSKY, VIVIENNE, ESQ** *Retained* 702-486-3103(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

12/31/2018 Complaint
Filed By: Plaintiff TitleMax of Nevada Inc
Complaint

12/31/2018 Initial Appearance Fee Disclosure
Filed By: Plaintiff TitleMax of Nevada Inc
Initial Appearance Fee Disclosure

12/31/2018 Disclosure Statement
Party: Plaintiff TitleMax of Nevada Inc
Plaintiff's Disclosure Statement Pursuant to NRCP 7.1

12/31/2018 Summons Electronically Issued - Service Pending
Party: Plaintiff TitleMax of Nevada Inc
Summons

01/07/2019 Affidavit of Service
Affidavit of Service

01/08/2019 Affidavit of Service

Affidavit of Service

02/19/2019 Motion for Summary Judgment
Filed By: Defendant Nevada Department of Business and Industry Financial Institutions Division
Defendant's Motion for Summary Judgment

03/12/2019 Stipulation and Order to Appoint Special Master
Stipulation and Order to Extend Date for Opposition to Motion for Summary Judgment

03/22/2019 Countermotion For Summary Judgment
Filed By: Plaintiff TitleMax of Nevada Inc
Opposition to the FID's Motion for Summary Judgment and Counter-Motion for Summary Judgment

04/17/2019 Stipulation and Order
Filed by: Defendant Nevada Department of Business and Industry Financial Institutions Division
Stipulation and Order Re: Briefing Schedule

04/17/2019 Notice of Entry of Stipulation and Order
Filed By: Defendant Nevada Department of Business and Industry Financial Institutions Division
Notice of Entry of Stipulation and Order Re: Briefing Schedule

04/17/2019 Notice of Entry of Stipulation and Order
Filed By: Defendant Nevada Department of Business and Industry Financial Institutions Division
Notice of Entry of Stipulation and Order Re: Briefing Schedule

04/19/2019 Opposition to Motion For Summary Judgment
Filed By: Defendant Nevada Department of Business and Industry Financial Institutions Division
Defendant's Reply in Support of Motion for Summary Judgment and Opposition to Plaintiff's Counter-Motion for Summary Judgment

04/26/2019 Reply in Support
Filed By: Plaintiff TitleMax of Nevada Inc
Reply in Support of TitleMax's Counter-Motion for Summary Judgment

06/20/2019 Order
Order

06/20/2019 Notice of Entry of Order
Notice of Entry of Order: Order

07/17/2019 Notice of Appeal
Filed By: Defendant Nevada Department of Business and Industry Financial Institutions Division
Notice of Appeal

DISPOSITIONS

06/20/2019 **Summary Judgment** (Judicial Officer: Wiese, Jerry A.)
Debtors: Nevada Department of Business and Industry Financial Institutions Division (Defendant)
Creditors: TitleMax of Nevada Inc (Plaintiff)
Judgment: 06/20/2019, Docketed: 06/20/2019

HEARINGS

05/01/2019 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Motion for Summary Judgment
Motion Denied;

05/01/2019 **Opposition and Countermotion** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Opposition to the FID's Motion for Summary Judgment and Counter-Motion for Summary Judgment
Motion Granted;

05/01/2019 **All Pending Motions** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Matter Heard;
Journal Entry Details:
Vivienne Rakowsky, on behalf of Defendant, also present. Extensive arguments by Ms. Rakowsky and Mr. Polsenberg. COURT ORDERED, matter taken UNDER ADVISEMENT, a written decision will issue.;

DATE	FINANCIAL INFORMATION	
	Defendant Nevada Department of Business and Industry Financial Institutions Division	
	Total Charges	224.00
	Total Payments and Credits	224.00
	Balance Due as of 7/19/2019	**0.00**
	Plaintiff TitleMax of Nevada Inc	
	Total Charges	491.00
	Total Payments and Credits	491.00
	Balance Due as of 7/19/2019	**0.00**

A-18-786784-C

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada

Department 30

Case No. _____
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
TitleMax of Nevada, Inc.	State of Nevada, Department of Business and Industry
	Financial Institutions Division
Attorney (name/address/phone):	Attorney (name/address/phone):
Daniel F. Polsenberg, Joel D. Henriod, and Dale Kotchka-Alanes	
Lewis Roca Rothgerber Christie LLP	
3993 Howard Hughes Parkway, Suite 600	
Las Vegas, Nevada 89169, (702) 949-8200	

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

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Probate

Probate *(select case type and estate value)*
- ☐ Summary Administration
- ☐ General Administration
- ☐ Special Administration
- ☐ Set Aside
- ☐ Trust/Conservatorship
- ☐ Other Probate

Estate Value
- ☐ Over $200,000
- ☐ Between $100,000 and $200,000
- ☐ Under $100,000 or Unknown
- ☐ Under $2,500

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Judicial Review/Appeal

Judicial Review
- ☐ Foreclosure Mediation Case
- ☐ Petition to Seal Records
- ☐ Mental Competency

Nevada State Agency Appeal
- ☐ Department of Motor Vehicle
- ☐ Worker's Compensation
- ☐ Other Nevada State Agency

Appeal Other
- ☐ Appeal from Lower Court
- ☐ Other Judicial Review/Appeal

Civil Writ

Civil Writ
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Other Civil Filing

Other Civil Filing
- ☐ Compromise of Minor's Claim
- ☐ Foreign Judgment
- ■ Other Civil Matters

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

December 31, 2018
Date

/s/ Daniel F. Polsenberg
Signature of initiating party or representative

See other side for family-related case filings.

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

TITLEMAX OF NEVADA, INC., a Delaware Corporation, Plaintiff, vs. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, Defendant.	**CASE NO: A-8-786784-C** **DEPT. NO.: XXX** **ORDER**

The above-referenced matter came on for hearing before Judge Jerry A. Wiese II, on Wednesday, May 1, 2019, with regard to Defendant's Motion for Summary Judgment, and Plaintiff's Counter-Motion for Summary Judgment. Both parties were represented by counsel, and offered oral argument. The Court, having heard oral argument, having reviewed all of the papers and pleadings on file, and good cause appearing, now enters the following Order.

The FID conducts examinations of its licensees, to verify compliance with Chapter 604A of the NRS and NAC. (NRS 604A.730[1]). On or about February 8, 2018, FID commenced its annual examination of TitleMax, which resulted in the alleged discovery of various violations. The FID provided recommendations to TitleMax, and gave TitleMax a "Needs Improvement" rating. A meeting occurred on or about June 8, 2018, between FID and representatives of TitleMax, to discuss the Report of Examination (ROE), and thereafter TitleMax submitted a written response contesting the violations. TitleMax thereafter filed a declaratory relief action (A-15-719176-C). The District Court granted FID's Motion to Dismiss, because of a failure to exhaust administrative remedies. The Nevada Supreme Court reversed the dismissal, indicating that exhaustion of administrative remedies was unnecessary where the only issues were those of statutory interpretation. While the appeal was proceeding, the FID instituted administrative proceedings against TitleMax, and the administrative law

judge found in favor of FID. TitleMax appealed, and Judge Hardy of the District Court reversed and vacated the decision of the administrative law judge. FID appealed Judge Hardy's ruling to the Nevada Supreme Court, and the appeal is still pending.

The instant case is somewhat related to the prior case, but addresses a different issue and a subsequent examination period. In the 2018 Report of Examination, FID took issue with TitleMax allowing customers to refinance title loans, claiming that TitleMax's refinancing is really an "extension" in violation of NRS 604A.065 and NRS 604A.445(3)(c), (which is now NRS 604A.5074[3][c]). Additionally, FID has taken the position that the total amount the borrower must pay back includes the principal, interest, and fees, not just the principal amount borrowed, and that this total amount of principal, interest, and fees, cannot exceed the fair market value of the vehicle. (See NRS 604A.5076 [previously NRS 604A.450]). In this litigation, TitleMax seeks declaratory relief as follows:

1) That refinancing a title loan does not violate NRS 604A.5074 or NRS 604A.065; and

2) That NRS 604A.5076(1) means that only the amount of the title loan, excluding any fees and interest, cannot exceed the fair market value of the vehicle securing the loan.

TitleMax seeks no money damages, but only a narrow injunction, prohibiting the enforcement of what it believes to be an invalid interpretation of the statute at issue.

NRS 604A deals specifically with "deferred deposit loan services," "high-interest loan services," and "title loan services." There appears to be no dispute that TitleMax deals only with "title loan services," which would be addressed by NRS 604A.5065 through 604A.6094.

The specific statutes at issue read as follows:

> **NRS 604A.5074 Restrictions on duration of loan and periods of extension.** Notwithstanding any other provision of this chapter to the contrary:
>
> 1. The original term of a title loan must not exceed 30 days.
>
> 2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:
>
> (a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

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

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

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

(a) The loan provides for payments in installments;

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

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

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

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

(Added to NRS by 2005, 1692; A 2007, 937; 2017, 1441) — (Substituted in revision for NRS 604A.445)

NRS 604A.065 "Extension" defined.

1. "Extension" means 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.

2. The term does not include a grace period.

(Added to NRS by 2005, 1685)

NRS 604A.5076 Prohibited acts by licensee regarding amount of loan, ownership of vehicle and customer's ability to repay loan. 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 determining that the customer has the ability to repay the title loan, as required by NRS 604A.5065. 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.

(Added to NRS by 2005, 1692; A 2017, 1442) — (Substituted in revision for NRS 604A.450)

Summary Judgment is appropriate when, after reviewing the record in the light most favorable to the non-moving party, no genuine issue of material fact remains, that the moving party is entitled to judgment as a matter of law. *Fire Ins. Exchange v. Cornell*, 20 Nev. 303, 306, 90 P.3d 978, 979 (Nev. 2004). The non-moving party is not entitled to guild a case on the "gossamer threads of whimsy, speculation, and conjecture." *Bulbman v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

FID argues that TitleMax is asking for more than a mere interpretation of a statute, and is asking for a determination that it did not act willfully as set forth in NRS 604A.900. The Court reads footnote 3 of TitleMax's Opposition and Counter-Motion for Summary Judgment, to indicate that it does not believe a determination of willfulness to be a legal issue subject to summary judgment, and TitleMax specifically indicates that "if" FID is seeking a determination that TitleMax willfully violated the statutes, such a determination would be a "fact question," or a "genuine issue of material fact," which would preclude summary judgment. This Court does not believe that a determination of willfulness on either party is actually sought in the moving papers, and consequently, the Court will not address that issue.

FID argues that "If a term is not in the statute, the court should not speculate and fill in alleged 'legislative omissions based on conjecture as to what the legislature would or should have done.'" Motion at pg. 7, citing Diamond v. Swick, 117 Nev. 671, 677, 28 P.3d 1087, 1090 (2001). Interestingly, FID acknowledges that the title loan statutes do not include the term "refinance," but FID wants the Court to rule that the legislature intended to prohibit refinancing. FID argues that "the Legislature prohibited refinancing of title loans by prohibiting extensions." Motion at pg. 8, citing NRS 604A.5074(3)(c).

FID argues that Chapter 604A was enacted by the legislature in 2005 to protect consumers from predatory lenders. FID suggests that the policy behind the statutes is to prohibit lenders from making unaffordable loans which result in customers ending up in a cycle of debt, commonly referred to as the "debt treadmill." They suggest that the "debt treadmill" occurs when a borrower is unable to repay a loan and then takes out a larger loan to cover the principal, interest and fees from the unpaid original loan. (See fn. 2, FID's Motion at pg. 5, citing *Dept. of Business and Industry, FID v. Dollar Loan Center, LLC.*, 134 Nev.Adv.Op. 15, 412 P.3d 30, 33 (2018).

FID argues that although TitleMax claims it is "refinancing" one title loan and replacing it with a new loan, it is actually extending the term of the original loan beyond the statutory limit of 210 days, so it can charge interest for an indefinite period of time rather than the 210 days allowed by statute. FID argues that this practice allows borrowers to "refinance" multiple times, and the terms of these loans can be extended for years, which is contrary to the remedial legislative purpose of Chapter 604A. They argue that this is the "debt treadmill" that Chapter 604A was enacted to prevent.

FID argues that TitleMax offers "refinancing" instead of allowing its customers to enter into a "repayment plan" allowed by the statutes, because under the "refinancing" plan, the customer's entire amount due is rolled into a new loan with new installment payments. The "repayment plan" is much more restrictive and limits the licensee to collecting only the unpaid principal and interest accrued before default with limited exceptions. Further, the length of a title loan is restricted to 210 days, and extensions are not allowed.

Finally, FID argues that it is illegal to make a title loan that exceeds the fair market value of the vehicle securing the title loan. (NRS 604A.5076[1]). FID contends that the full value of the title loan includes principal and interest, as well as the title fee, and if that total amount exceeds the fair market value of the vehicle, then TitleMax is in violation of the statute.

TitleMax argues that because Chapter 604A does not prohibit refinancing with regard to title loans, they must be allowed. TitleMax suggests that because the Legislature discussed "refinancing" with regard to "deferred deposit loans" and "high interest loans," but did not comment on "refinancing" with regard to "title loans," the legislature must have intentionally not wanted to limit refinancing with regard to "title loans." There are limitations on refinancing "deferred deposit loans" as follows:

> **NRS 604A.501 Limitations on original term.**
> 1. Except as otherwise provided in this chapter, the original term of a deferred deposit loan must not exceed 35 days.
> 2. Notwithstanding the provisions of NRS 604A.5029, a licensee who operates a deferred deposit loan service shall not agree to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding deferred deposit loan for a period that exceeds 90 days after the date of origination of the loan.

(Added to NRS by 2007, 931; A 2017, 1440) — (Substituted in revision for part of NRS 604A.408)

NRS 604A.5029 Limitations on using proceeds of new deferred deposit loan or high-interest loan to pay balance of outstanding deferred deposit loan; exceptions.

1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding deferred deposit loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding deferred deposit loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the original term of the outstanding deferred deposit loan or any extension of the outstanding deferred deposit loan to the principal amount of the new deferred deposit loan or high-interest loan.

. . . .

NRS 604A.574 Limitations on extended term of loans. A licensee who has been issued a license to operate a deferred deposit loan service pursuant to this chapter shall not allow a customer to extend, rollover, renew, ***refinance*** or consolidate any deferred deposit loan for a period longer than the period set forth in subsection 2 of NRS 604A.501.

(Added to NRS by 2015, 1145) — (Substituted in revision for part of NRS 604A.540)

There are limitations on refinancing "high interest loans" as follows:

NRS 604A.5037 Limitations on original term.

. . . .

3. Notwithstanding the provisions of NRS 604A.5057, a licensee who operates a high-interest loan service shall not agree to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding high-interest loan for a period that exceeds 90 days after the date of origination of the loan.

(Added to NRS by 2007, 931; A 2017, 1440) — (Substituted in revision for part of NRS 604A.408)

NRS 604A.5057 Limitations on using proceeds of new deferred deposit loan or high-interest loan to pay balance of outstanding high-interest loan; exceptions.

1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding high-interest loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding high-interest loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the

original term of the outstanding high-interest loan or any extension of the outstanding high-interest loan to the principal amount of the new deferred deposit loan or high-interest loan.

NRS 604A.584 Limitations on extended term of loans. A licensee who has been issued a license to operate a high-interest loan service pursuant to this chapter shall not allow a customer to extend, rollover, renew, ***refinance*** or consolidate any high-interest loan for a period longer than the period set forth in subsection 3 of NRS 604A.5037.

(Added to NRS by 2015, 1145) — (Substituted in revision for part of NRS 604A.540)

It is interesting that the Legislature has identified limitations with regard to "refinancing" as it relates to "deferred deposit loans" and "high interest loans," but that there is no limitation or even a reference to refinancing as it relates to "title loans."

TitleMax explains that when a customer wants to refinance, they are provided with a completely new loan, with a new loan number. The customer signs a new loan agreement with a new schedule of payments, etc. The same form loan agreement is used for initial loans and refinances, because both are new 210-day loans. When a title loan is refinanced, the original loan obligation is completely satisfied and extinguished, and the old agreement is marked "paid in full." Additionally, before a customer can refinance, they must pay any accrued interest on the outstanding loan, so no accrued interest is "rolled over" or included in the principal of the second loan. (See Opposition and Counter-motion at pg. 10.)

Initially, the Court acknowledges that administrative exhaustion is not necessary when the issue is a statute's interpretation. *TitleMax 1*, 217 WL 4464351 at *2; *State, Dept. of Bus. & Indus. V. Check City*, 130 Nev. 909, 914, 337 P.3d 755, 758 n.5 (Nev. 2014); *Déjà vu Showgirls v. State, Dept. of Tax.*, 130 Nev. 719, 725, 334 P.3d 392 (2014); *State v. Scotsman Mtg. Co., Inc.*, 109 Nev. 252, 254, 849 P.2d 317, 319 (1993).

"When interpreting a statute, legislative intent 'is the controlling factor.'" *State v. Lucero*, 127 Nev. 92, 249 P.3d 1226 (2011), citing to *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). "The starting point for determining legislative intent is the statute's plain meaning, when a statute 'is clear on its face, a court can not go beyond the statute in determining legislative intent.'" *Id.*, "But when 'the statutory language lends itself to two or more reasonable interpretations, 'the statute is ambiguous, and we may then look beyond the statute in determining

legislative intent.'" *Id.*, citing *State v. Catanio*, 120 Nev. 1030, 102 P.3d 588 (2004). The Supreme Court has indicated that "When interpreting a statute, we 'give effect to the statute's plain meaning' and when its language 'is plain and unambiguous, such that it is capable of only one meaning [we do] not construe that statute otherwise. . . .' But an ambiguous statute that 'is susceptible to differing reasonable interpretations, ...should be construed consistently with what reason and public policy would indicate the Legislature intended.'" *Valdez v. Aguilar*, 132 Nev.Adv.Op. 37, 373 P.3d 84, 85 (2016), citing to *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 228-29, 209 P.3d 766, 769 (2009), and *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006).

In the present case, TitleMax argues that there is no prohibition in NRS Chapter 604A to Title Loan companies refinancing, and consequently, it must be allowed. On the other hand, FID argues that because there is nothing in NRS Chapter 604A which allows Title Loan companies to refinance, it must not be allowed. So the Court is not really being asked to "interpret" a statute, but the Court is being asked to interpret the fact that the statutes do not include any language about "refinancing," and decide whether the lack of language means that it is allowed or prohibited.

In *Sheriff, Pershing County v. Andrews*, 128 Nev. 544, 286 P.3d 262 (2012), the Court concluded that because the legislature had not specifically included "cell phone" as a prohibited device in NRS 212.093(1), it would not be considered a prohibited device. The Court noted that "the Legislature clearly knows how to prohibit inmates from possessing cell phones but did not do so with respect to county jail inmates." The Court inferred that the Legislature's omission was intentional. *Id.* Justice Gibbons concurred in part and dissented in part, noting the "well-established rule of construction that the inclusion of one thing indicates that the omission of another was intentional." *Id.* See also *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967).

When dealing with "statutory construction," in *Dezzani v. Kern & Associates, Ltd.*, 134 Nev.Adv.Op.9, 412 P.3d 56 (2018), the Nevada Supreme Court indicated that "The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute." Citing *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 650, 730 P.2d 438, 443 (1986). "To determine legislative intent, we first consider and

give effect to the statute's plain meaning because that is the best indicator of the Legislature's intent." *Id.*, citing *Pub. Emps.' Benefits Program*, 124 Nev. at 147, 179 P.3d at 548. "[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." *Id.*, citing *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) (internal quotation marks omitted).

If the Court finds that the language of the statute is ambiguous, then the Court looks to the legislative intent. In *McKay v. Board of Sup'rs of Carson City*, 102 Nev. 644, 730 P.2d 438 (1986), the Nevada Supreme Court stated, "The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute." Citing to *City of Las Vegas v. Macchiaverna*, 99 Nev. 256, 257, 661 P.2d 879, 880 (1983). "This intent will prevail over the literal sense of the words." *Id.* at 257–258. "The meaning of the words used may be determined by examining the context and the spirit of the law or the causes which induced the legislature to enact it." *Id.* "The entire subject matter and policy may be involved as an interpretive aid." *Id.*

The Supreme Court has also held that "an administrative agency charged with the duty of administering an act is impliedly clothed with the power to construe the relevant laws ... and the construction placed on a statute by the agency charged with the duty of administering it is entitled to deference." *State, Dept. of Bus. And Industry, Office of Labor Com'r v. Granite Const. Co.*, 118 Nev. 83, 40 P.3d 423 (2002), citing *Elliot v. Resnick*, 114 Nev. 25, 32 n.1, 952 P.2d 961 966 n.1 (1998).

The Nevada Supreme Court has recently addressed another case dealing with NRS 604A, and noted that "Statutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained." *State Dept. of Bus. And Industry, Fin. Institutions Div. v. Dollar Loan Center*, 134 Nev.Adv.Op. 15, 412 P.3d 30 (2018), citing *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008). Further, "statutory interpretation must 'not render any part of the statute meaningless,' or 'produce absurd or unreasonable results.'" *Id.*, citing *Orion Portfolio Servs. 2, LLC v. Cty. Of Clark ex rel. Univ. Med. Ctr. Of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010). The Court noted that "The policy purpose of NRS Chapter 604A was to stop the 'debt treadmill' where a borrower is unable to repay a

loan and often takes out a larger loan to cover the principal, interest, and fees from the unpaid original loan." *Id.*, citing Hearing on A.B. 384 Before the Senate Comm. On Commerce & Labor, 73d Leg. (Nev., May 6, 2005). The Court therefore indicated that it viewed "the refinancing provisions of NRS 604A.480 as having a protective purpose requiring a liberal construction to effectuate its intended benefits." *Id.*, citing *Cote H.*, 124 Nev. at 40, 175 P.3d at 908.

In the recent Dollar Loan Center case, the majority of the Nevada Supreme Court bent over backward to try to interpret the statute at issue in a way that prevented consumers from being on the "debt treadmill." In fact, Justice Pickering in her Dissent, noted that in the majority's view, "the purpose of NRS Chapter 604A is to prevent the consumer debt treadmill." *State Dept. of Bus. And Industry, Fin. Institutions Div. v. Dollar Loan Center*, 134 Nev.Adv.Op. 15, 412 P.3d 30, 36 (2018). As Justice Pickering pointed out, the majority opinion could not be squared with the text of the statute and the verb tenses it employed, it could not be squared with NRS 604A.415, which authorized the exact civil actions that the majority opinion said were precluded, nor did the majority opinion make common sense. *Id.* As she pointed out, "What lender will make a new loan to pay off an existing loan knowing that, in doing so, the loan being made cannot be collected upon default?" *Id.* Justice Pickering further cited from Justice Kennedy of the U.S. Supreme Court, when he stated, "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *Id.*, at pgs. 36-37, citing *Kmart Corp v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988).

While this Court may agree more with Justice Pickering's Dissenting opinion, this Court would be obligated to follow the majority opinion, which is the law of the State of Nevada. The Dollar Loan Center case, however, dealt with a different statute, within Chapter 604A of the NRS, and consequently, that decision is not controlling. It is clear that the intent of the Legislature was to protect consumers and to help them stay off of the "debt treadmill." The practice of TitleMax, of "refinancing" could be interpreted as providing a means whereby a consumer would forever be on the "debt treadmill," if they continued to "refinance" their title loans, and consequently, this practice could be interpreted as violating the Legislature's intent. On the other hand, however, TitleMax apparently has a policy of requiring consumers to pay off all accrued

interest before entering into a refinance of a loan, it prepares and executes all new loan documentation, and when a loan is refinanced, the original loan obligation is completely satisfied and extinguished. While the Court can understand FID's concern, and its claim that TitleMax's refinancing is really an "extension," TitleMax is not "extending" the original loan, but is creating a "new loan," which it calls a "refinancing." The Legislature could have precluded this practice, or limited it, if it so desired, but it did not.

Although the Court has considered the legislative intent, in trying to preclude consumers being stuck on a "debt treadmill," the Court cannot conclude as a matter of law that the language of the statutes at issue is not clear and unambiguous. NRS 604A.5074 indicates that "The original term of a title loan must not exceed 30 days." Subsection 2 indicates, however, that it may be extended "for not more than six additional periods of extension, with each such period not to exceed 30 days" if certain requirements are met. The statute thereafter indicates that "The original term of a title loan may be up to 210 days," if certain other requirements are met. FID in the instant case argues that TitleMax is, or at least can, impermissibly extend the title loans, indefinitely, by using the term "refinancing."

It is interesting to note the differences, when comparing the statutes dealing with Deferred Deposit Loans and High Interest Loans, with the statutes dealing with Title Loans. In the statutes dealing with "deferred deposit loans," and "high interest loans," the licensee is prohibited from providing multiple loans to the same customer, with certain exceptions. NRS 604A.5018, and NRS 604A.5046. When dealing with "deferred deposit loans," there is a statutory provision allowing an "extended payment plan," which allows a customer with an outstanding deferred deposit loan to enter into an extended payment plan if the customer meets certain eligibility requirements. NRS 604A.5026. There is no such equivalent when dealing with high-interest loans or title loans. The statutes dealing with "deferred deposit loans," and "high-interest loans," limit the ability to use the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of an outstanding deferred deposit loan or high-interest loan. NRS 604A.5029 and NRS 604A.5057. With regard to "title loans," there is no statutory provision that prohibits certain acts by licensee regarding "multiple loans to same

customer." Additionally, there is no statutory provision that limits the ability of a customer to "use proceeds of a new title loan to pay balance of outstanding title loan."

In evaluating the statutory chapter as a whole, it becomes clear to this Court that there were certain limitations placed on licensees of deferred deposit loans and high-interest loans that were not placed upon the licensees of title loans. Clearly, if the Legislature had wanted to prohibit the licensee of a title loan from making more than one loan to the same customer, it could have done so. (See NRS 604A.5018, and NRS 604A.5046). If the Legislature had wanted to limit the ability to use the proceeds of a new title loan to pay the balance of an outstanding title loan, it could have done so. (See NRS 604A.5029 and NRS 604A.5057). Further, with regard to the statutory sections in Chapter 604A which reference "refinancing," they do not "allow" or "provide for" refinancing, but they provide limitations for licensees who are providing loans and attempting to collect on those loans, whether it be "repayment, renewal, refinancing, or consolidation" of a debt. This analysis leads this Court to believe that although Chapter 604A does not provide for or specifically allow "refinancing" as it relates to "title loans," nor does it prohibit such refinancing, or provide any limitations in that regard. It is possible that the Legislature did not specifically address "refinancing" as it relates to "title loans," because they did not see that as an option, or as a possibility, but the Legislature specifically included provisions which limit a licensee's ability to make more than one loan to a customer, and which specifically limit the ability to use one loan to pay off another loan, as it relates to "deferred deposit loans," and "high interest loans," in the same Chapter, and did not include such limitations as it relates to "title loans." Consequently, this Court must find that Chapter 604A does not preclude TitleMax's ability to "refinance" loans, as long as such refinancing does not otherwise violate the other provisions of Chapter 604A.

NRS 604A.065 defines "extension" as follows:

> 1. "Extension" means 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.
> 2. The term does not include a grace period.

(NRS 604A.065).

If we read NRS 604A.5074 in conjunction with NRS 604A.065, the state would essentially read, "The original term of a title loan may be up to 210 days if . . . the loan

is not subject to 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."

Again, this Court can see how the above-referenced analysis could be interpreted as prohibiting TitleMax's practice of "refinancing" at issue in the present case. But when we compare the above-referenced reading with NRS 604A.5037, dealing with "high interest loans," we would have the same result. (with the only difference being that "high interest loans" are limited to 90 days instead of 210). The section of the Chapter dealing with "high interest loans," however, also includes limitations on providing "multiple loans to the same customer." (NRS 604A.5046) Additionally, the section of the Chapter dealing with "high interest loans," includes limitations on using the proceeds of a new loan to pay off the balance of another outstanding loan. (NRS 604A.5057). The section of the Chapter dealing with "title loans" does not include these other limitations. Consequently, this Court hereby finds that TitleMax's practice of "refinancing" does not violate either NRS 604A.5074 or NRS 604A.065.

The next issue presented to the Court is whether the "fair market value" language of NRS 604A.5076(1) includes fees and interest? That statute reads in pertinent part as follows:

> **NRS 604A.5076 Prohibited acts by licensee regarding amount of loan, ownership of vehicle and customer's ability to repay loan.**
> 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.
> . . . .

Black's Law Dictionary defines "fair market value" as "The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. . ." *Black's Law Dictionary*, Sixth Edition, 1990, at pg. 597.

The Nevada Supreme Court has provided some guidance in *State, Dept. of Bus. & Indus. V. Check City*, 130 Nev. 909, 337 P.3d 755 (2014). In that case, the issue before the Court was whether the 25 percent cap in NRS 604A.425 included both principal and any interest or fees charged. That statute referred to a "deferred deposit loan," and only allowed the licensee to loan a customer an amount which did not exceed 25 percent of the borrower's expected gross monthly income. Apparently in

2008, the "FID began enforcing the 25-percent cap as including both the principal borrowed and interest charged." *Id.*, at 910-911. Check City filed a complaint for declaratory relief, seeking clarification of NRS 604A.425. The District Court concluded "that the 25-percent cap only applied to the principal borrowed." *Id* at 911. The Supreme Court referred to NRS 604A.050, which defined "deferred deposit loan," and concluded that "the principal amount borrowed is merely one aspect of the larger transaction." *Id.*, at 912. This same analysis can apply to any section of NRS Chapter 604A. If the Court considers NRS 604A.105, which defines "title loan," however, the vehicle is collateral for the loan, and the statute specifically indicates that interest of more than 35 percent will be charged annually. The interest is specifically set forth separate from the language referencing the vehicle.

In analyzing whether interest and fees are to be included in the "fair market value" language contained in NRS 604A.5076, common sense tells us that a licensee would not want to lend more money than it would be able to recover in the event of a default. TitleMax actually states in its Opposition and Counter-Motion that "TitleMax has no economic incentive to loan customers greater amounts than they can repay." (See Opposition at pg. 5, ¶9). Interestingly, if we consider NRS 604A.5085, if a customer defaults on a title loan, the licensee may collect not only the unpaid principal amount of the title loan, but unpaid interest accrued before the default (subject to limitations), and interest accrued after the expiration of the initial loan period (subject to limitations), and any fees allowed for presentment of a check that is not paid upon presentment. Additionally, pursuant to NRS 604A.5068, if a customer defaults on a title loan, the licensee may collect the debt owed in a professional and fair manner. If the licensee commences a civil action, the court may award court costs, costs for service of process, and reasonable attorney's fees. It seems clear from the statutes surrounding NRS 604A.5076, that the "fair market value" of the vehicle is not intended to include amounts for interest, bad check fees, costs, and attorney's fees. These are all amounts that would be recoverable, in addition to the principal amount of the loan.

Based upon the Court's analysis, this Court concludes that the language of NRS 604A.5076 which refers to the "fair market value" of a vehicle, refers only to the principal amount of the loan, and does not include interest, fees, or other expenses or other recoverable amounts.

Although there were other issues addressed by the parties in the pleadings, these two issues are the only issues that Plaintiff sought Declaratory Relief on in its Complaint, and consequently, these are the only two issues that the Court hereby addresses, as any other comments or rulings would effectively be "advisory opinions."

ORDER

Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED, that FID's Motion for Summary Judgment is hereby DENIED.

IT IS FURTHER ORDERED, that TitleMax's Counter-Motion for Summary Judgment is hereby GRANTED as follows:

This Court hereby finds, concludes, and declares, that TitleMax's practice of "refinancing" does not violate either NRS 604A.5074 or NRS 604A.065.

This Court further finds, concludes, and declares, that the language of NRS 604A.5076 which refers to the "fair market value" of a vehicle, refers only to the principal amount of the loan, and does not include interest, fees, or other expenses or other recoverable amounts.

Dated this 19th day of June, 2019.

JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XXX

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Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
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TITLEMAX OF NEVADA, INC., a Delaware Corporation, Plaintiff, vs. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, Defendant.	)	**CASE NO: A-18-786784-C** **DEPT. NO.: XXX** **NOTICE OF ENTRY OF ORDER:** **ORDER**

You are hereby notified that this Court entered **Order**, a copy of which is attached hereto.

DATED this 20th day of June 2019.

JERRY A WIESE
DISTRICT COURT JUDGE

Case Number: A-18-786784-C

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder:

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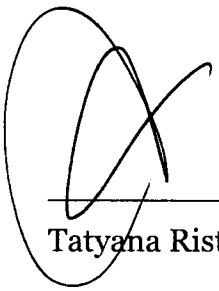

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Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

TITLEMAX OF NEVADA, INC., a Delaware Corporation, Plaintiff, vs. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION, Defendant.	)	**CASE NO: A-8-786784-C** **DEPT. NO.: XXX** **ORDER**

The above-referenced matter came on for hearing before Judge Jerry A. Wiese II, on Wednesday, May 1, 2019, with regard to Defendant's Motion for Summary Judgment, and Plaintiff's Counter-Motion for Summary Judgment. Both parties were represented by counsel, and offered oral argument. The Court, having heard oral argument, having reviewed all of the papers and pleadings on file, and good cause appearing, now enters the following Order.

The FID conducts examinations of its licensees, to verify compliance with Chapter 604A of the NRS and NAC. (NRS 604A.730[1]). On or about February 8, 2018, FID commenced its annual examination of TitleMax, which resulted in the alleged discovery of various violations. The FID provided recommendations to TitleMax, and gave TitleMax a "Needs Improvement" rating. A meeting occurred on or about June 8, 2018, between FID and representatives of TitleMax, to discuss the Report of Examination (ROE), and thereafter TitleMax submitted a written response contesting the violations. TitleMax thereafter filed a declaratory relief action (A-15-719176-C). The District Court granted FID's Motion to Dismiss, because of a failure to exhaust administrative remedies. The Nevada Supreme Court reversed the dismissal, indicating that exhaustion of administrative remedies was unnecessary where the only issues were those of statutory interpretation. While the appeal was proceeding, the FID instituted administrative proceedings against TitleMax, and the administrative law

judge found in favor of FID. TitleMax appealed, and Judge Hardy of the District Court reversed and vacated the decision of the administrative law judge. FID appealed Judge Hardy's ruling to the Nevada Supreme Court, and the appeal is still pending.

The instant case is somewhat related to the prior case, but addresses a different issue and a subsequent examination period. In the 2018 Report of Examination, FID took issue with TitleMax allowing customers to refinance title loans, claiming that TitleMax's refinancing is really an "extension" in violation of NRS 604A.065 and NRS 604A.445(3)(c), (which is now NRS 604A.5074[3][c]). Additionally, FID has taken the position that the total amount the borrower must pay back includes the principal, interest, and fees, not just the principal amount borrowed, and that this total amount of principal, interest, and fees, cannot exceed the fair market value of the vehicle. (See NRS 604A.5076 [previously NRS 604A.450]). In this litigation, TitleMax seeks declaratory relief as follows:

1) That refinancing a title loan does not violate NRS 604A.5074 or NRS 604A.065; and

2) That NRS 604A.5076(1) means that only the amount of the title loan, excluding any fees and interest, cannot exceed the fair market value of the vehicle securing the loan.

TitleMax seeks no money damages, but only a narrow injunction, prohibiting the enforcement of what it believes to be an invalid interpretation of the statute at issue.

NRS 604A deals specifically with "deferred deposit loan services," "high-interest loan services," and "title loan services." There appears to be no dispute that TitleMax deals only with "title loan services," which would be addressed by NRS 604A.5065 through 604A.6094.

The specific statutes at issue read as follows:

> **NRS 604A.5074 Restrictions on duration of loan and periods of extension.** Notwithstanding any other provision of this chapter to the contrary:
>
> 1. The original term of a title loan must not exceed 30 days.
>
> 2. The title loan may be extended for not more than six additional periods of extension, with each such period not to exceed 30 days, if:
>
> (a) Any interest or charges accrued during the original term of the title loan or any period of extension of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent period of extension;

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

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

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

(a) The loan provides for payments in installments;

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

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

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

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

(Added to NRS by 2005, 1692; A 2007, 937; 2017, 1441) — (Substituted in revision for NRS 604A.445)

NRS 604A.065 "Extension" defined.

1. "Extension" means 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.

2. The term does not include a grace period.

(Added to NRS by 2005, 1685)

NRS 604A.5076 Prohibited acts by licensee regarding amount of loan, ownership of vehicle and customer's ability to repay loan. 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 determining that the customer has the ability to repay the title loan, as required by NRS 604A.5065. 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.

(Added to NRS by 2005, 1692; A 2017, 1442) — (Substituted in revision for NRS 604A.450)

Summary Judgment is appropriate when, after reviewing the record in the light most favorable to the non-moving party, no genuine issue of material fact remains, that the moving party is entitled to judgment as a matter of law. *Fire Ins. Exchange v. Cornell*, 20 Nev. 303, 306, 90 P.3d 978, 979 (Nev. 2004). The non-moving party is not entitled to guild a case on the "gossamer threads of whimsy, speculation, and conjecture." *Bulbman v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

FID argues that TitleMax is asking for more than a mere interpretation of a statute, and is asking for a determination that it did not act willfully as set forth in NRS 604A.900. The Court reads footnote 3 of TitleMax's Opposition and Counter-Motion for Summary Judgment, to indicate that it does not believe a determination of willfulness to be a legal issue subject to summary judgment, and TitleMax specifically indicates that "if" FID is seeking a determination that TitleMax willfully violated the statutes, such a determination would be a "fact question," or a "genuine issue of material fact," which would preclude summary judgment. This Court does not believe that a determination of willfulness on either party is actually sought in the moving papers, and consequently, the Court will not address that issue.

FID argues that "If a term is not in the statute, the court should not speculate and fill in alleged 'legislative omissions based on conjecture as to what the legislature would or should have done.'" Motion at pg. 7, citing Diamond v. Swick, 117 Nev. 671, 677, 28 P.3d 1087, 1090 (2001). Interestingly, FID acknowledges that the title loan statutes do not include the term "refinance," but FID wants the Court to rule that the legislature intended to prohibit refinancing. FID argues that "the Legislature prohibited refinancing of title loans by prohibiting extensions." Motion at pg. 8, citing NRS 604A.5074(3)(c).

FID argues that Chapter 604A was enacted by the legislature in 2005 to protect consumers from predatory lenders. FID suggests that the policy behind the statutes is to prohibit lenders from making unaffordable loans which result in customers ending up in a cycle of debt, commonly referred to as the "debt treadmill." They suggest that the "debt treadmill" occurs when a borrower is unable to repay a loan and then takes out a larger loan to cover the principal, interest and fees from the unpaid original loan. (See fn. 2, FID's Motion at pg. 5, citing *Dept. of Business and Industry, FID v. Dollar Loan Center, LLC.*, 134 Nev.Adv.Op. 15, 412 P.3d 30, 33 (2018).

FID argues that although TitleMax claims it is "refinancing" one title loan and replacing it with a new loan, it is actually extending the term of the original loan beyond the statutory limit of 210 days, so it can charge interest for an indefinite period of time rather than the 210 days allowed by statute. FID argues that this practice allows borrowers to "refinance" multiple times, and the terms of these loans can be extended for years, which is contrary to the remedial legislative purpose of Chapter 604A. They argue that this is the "debt treadmill" that Chapter 604A was enacted to prevent.

FID argues that TitleMax offers "refinancing" instead of allowing its customers to enter into a "repayment plan" allowed by the statutes, because under the "refinancing" plan, the customer's entire amount due is rolled into a new loan with new installment payments. The "repayment plan" is much more restrictive and limits the licensee to collecting only the unpaid principal and interest accrued before default with limited exceptions. Further, the length of a title loan is restricted to 210 days, and extensions are not allowed.

Finally, FID argues that it is illegal to make a title loan that exceeds the fair market value of the vehicle securing the title loan. (NRS 604A.5076[1]). FID contends that the full value of the title loan includes principal and interest, as well as the title fee, and if that total amount exceeds the fair market value of the vehicle, then TitleMax is in violation of the statute.

TitleMax argues that because Chapter 604A does not prohibit refinancing with regard to title loans, they must be allowed. TitleMax suggests that because the Legislature discussed "refinancing" with regard to "deferred deposit loans" and "high interest loans," but did not comment on "refinancing" with regard to "title loans," the legislature must have intentionally not wanted to limit refinancing with regard to "title loans." There are limitations on refinancing "deferred deposit loans" as follows:

> **NRS 604A.501 Limitations on original term.**
>
> 1. Except as otherwise provided in this chapter, the original term of a deferred deposit loan must not exceed 35 days.
>
> 2. Notwithstanding the provisions of NRS 604A.5029, a licensee who operates a deferred deposit loan service shall not agree to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding deferred deposit loan for a period that exceeds 90 days after the date of origination of the loan.

(Added to NRS by 2007, 931; A 2017, 1440) — (Substituted in revision for part of NRS 604A.408)

NRS 604A.5029 Limitations on using proceeds of new deferred deposit loan or high-interest loan to pay balance of outstanding deferred deposit loan; exceptions.

1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding deferred deposit loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding deferred deposit loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the original term of the outstanding deferred deposit loan or any extension of the outstanding deferred deposit loan to the principal amount of the new deferred deposit loan or high-interest loan.

. . . .

NRS 604A.574 Limitations on extended term of loans. A licensee who has been issued a license to operate a deferred deposit loan service pursuant to this chapter shall not allow a customer to extend, rollover, renew, ***refinance*** or consolidate any deferred deposit loan for a period longer than the period set forth in subsection 2 of NRS 604A.501.

(Added to NRS by 2015, 1145) — (Substituted in revision for part of NRS 604A.540)

There are limitations on refinancing "high interest loans" as follows:

NRS 604A.5037 Limitations on original term.

. . . .

3. Notwithstanding the provisions of NRS 604A.5057, a licensee who operates a high-interest loan service shall not agree to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding high-interest loan for a period that exceeds 90 days after the date of origination of the loan.

(Added to NRS by 2007, 931; A 2017, 1440) — (Substituted in revision for part of NRS 604A.408)

NRS 604A.5057 Limitations on using proceeds of new deferred deposit loan or high-interest loan to pay balance of outstanding high-interest loan; exceptions.

1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, ***refinancing*** or consolidation of an outstanding high-interest loan by using the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of the outstanding high-interest loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the

original term of the outstanding high-interest loan or any extension of the outstanding high-interest loan to the principal amount of the new deferred deposit loan or high-interest loan.

NRS 604A.584 Limitations on extended term of loans. A licensee who has been issued a license to operate a high-interest loan service pursuant to this chapter shall not allow a customer to extend, rollover, renew, ***refinance*** or consolidate any high-interest loan for a period longer than the period set forth in subsection 3 of NRS 604A.5037.

(Added to NRS by 2015, 1145) – (Substituted in revision for part of NRS 604A.540)

It is interesting that the Legislature has identified limitations with regard to "refinancing" as it relates to "deferred deposit loans" and "high interest loans," but that there is no limitation or even a reference to refinancing as it relates to "title loans."

TitleMax explains that when a customer wants to refinance, they are provided with a completely new loan, with a new loan number. The customer signs a new loan agreement with a new schedule of payments, etc. The same form loan agreement is used for initial loans and refinances, because both are new 210-day loans. When a title loan is refinanced, the original loan obligation is completely satisfied and extinguished, and the old agreement is marked "paid in full." Additionally, before a customer can refinance, they must pay any accrued interest on the outstanding loan, so no accrued interest is "rolled over" or included in the principal of the second loan. (See Opposition and Counter-motion at pg. 10.)

Initially, the Court acknowledges that administrative exhaustion is not necessary when the issue is a statute's interpretation. *TitleMax 1*, 217 WL 4464351 at *2; *State, Dept. of Bus. & Indus. V. Check City*, 130 Nev. 909, 914, 337 P.3d 755, 758 n.5 (Nev. 2014); *Déjà vu Showgirls v. State, Dept. of Tax.*, 130 Nev. 719, 725, 334 P.3d 392 (2014); *State v. Scotsman Mtg. Co., Inc.*, 109 Nev. 252, 254, 849 P.2d 317, 319 (1993).

"When interpreting a statute, legislative intent 'is the controlling factor.'" *State v. Lucero*, 127 Nev. 92, 249 P.3d 1226 (2011), citing to *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). "The starting point for determining legislative intent is the statute's plain meaning, when a statute 'is clear on its face, a court can not go beyond the statute in determining legislative intent.'" *Id.*, "But when 'the statutory language lends itself to two or more reasonable interpretations, 'the statute is ambiguous, and we may then look beyond the statute in determining

legislative intent.'" *Id.*, citing *State v. Catanio*, 120 Nev. 1030, 102 P.3d 588 (2004). The Supreme Court has indicated that "When interpreting a statute, we 'give effect to the statute's plain meaning' and when its language 'is plain and unambiguous, such that it is capable of only one meaning [we do] not construe that statute otherwise. . . .' But an ambiguous statute that 'is susceptible to differing reasonable interpretations, ...should be construed consistently with what reason and public policy would indicate the Legislature intended.'" *Valdez v. Aguilar*, 132 Nev.Adv.Op. 37, 373 P.3d 84, 85 (2016), citing to *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 228-29, 209 P.3d 766, 769 (2009), and *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006).

In the present case, TitleMax argues that there is no prohibition in NRS Chapter 604A to Title Loan companies refinancing, and consequently, it must be allowed. On the other hand, FID argues that because there is nothing in NRS Chapter 604A which allows Title Loan companies to refinance, it must not be allowed. So the Court is not really being asked to "interpret" a statute, but the Court is being asked to interpret the fact that the statutes do not include any language about "refinancing," and decide whether the lack of language means that it is allowed or prohibited.

In *Sheriff, Pershing County v. Andrews*, 128 Nev. 544, 286 P.3d 262 (2012), the Court concluded that because the legislature had not specifically included "cell phone" as a prohibited device in NRS 212.093(1), it would not be considered a prohibited device. The Court noted that "the Legislature clearly knows how to prohibit inmates from possessing cell phones but did not do so with respect to county jail inmates." The Court inferred that the Legislature's omission was intentional. *Id.* Justice Gibbons concurred in part and dissented in part, noting the "well-established rule of construction that the inclusion of one thing indicates that the omission of another was intentional." *Id.* See also *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967).

When dealing with "statutory construction," in *Dezzani v. Kern & Associates, Ltd.*, 134 Nev.Adv.Op.9, 412 P.3d 56 (2018), the Nevada Supreme Court indicated that "The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute." Citing *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 650, 730 P.2d 438, 443 (1986). "To determine legislative intent, we first consider and

give effect to the statute's plain meaning because that is the best indicator of the Legislature's intent." *Id.*, citing *Pub. Emps.' Benefits Program*, 124 Nev. at 147, 179 P.3d at 548. "[I]t is the duty of this court, when possible, to interpret provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results, thereby giving effect to the Legislature's intent." *Id.*, citing *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P.3d 716, 721 (2008) (internal quotation marks omitted).

If the Court finds that the language of the statute is ambiguous, then the Court looks to the legislative intent. In *McKay v. Board of Sup'rs of Carson City*, 102 Nev. 644, 730 P.2d 438 (1986), the Nevada Supreme Court stated, "The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute." Citing to *City of Las Vegas v. Macchiaverna*, 99 Nev. 256, 257, 661 P.2d 879, 880 (1983). "This intent will prevail over the literal sense of the words." *Id.* at 257–258. "The meaning of the words used may be determined by examining the context and the spirit of the law or the causes which induced the legislature to enact it." *Id.* "The entire subject matter and policy may be involved as an interpretive aid." *Id.*

The Supreme Court has also held that "an administrative agency charged with the duty of administering an act is impliedly clothed with the power to construe the relevant laws ... and the construction placed on a statute by the agency charged with the duty of administering it is entitled to deference." *State, Dept. of Bus. And Industry, Office of Labor Com'r v. Granite Const. Co.*, 118 Nev. 83, 40 P.3d 423 (2002), citing *Elliot v. Resnick*, 114 Nev. 25, 32 n.1, 952 P.2d 961 966 n.1 (1998).

The Nevada Supreme Court has recently addressed another case dealing with NRS 604A, and noted that "Statutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained." *State Dept. of Bus. And Industry, Fin. Institutions Div. v. Dollar Loan Center*, 134 Nev.Adv.Op. 15, 412 P.3d 30 (2018), citing *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008). Further, "statutory interpretation must 'not render any part of the statute meaningless,' or 'produce absurd or unreasonable results.'" *Id.*, citing *Orion Portfolio Servs. 2, LLC v. Cty. Of Clark ex rel. Univ. Med. Ctr. Of S. Nev.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010). The Court noted that "The policy purpose of NRS Chapter 604A was to stop the 'debt treadmill' where a borrower is unable to repay a

loan and often takes out a larger loan to cover the principal, interest, and fees from the unpaid original loan." *Id.*, citing Hearing on A.B. 384 Before the Senate Comm. On Commerce & Labor, 73d Leg. (Nev., May 6, 2005). The Court therefore indicated that it viewed "the refinancing provisions of NRS 604A.480 as having a protective purpose requiring a liberal construction to effectuate its intended benefits." *Id.*, citing *Cote H.*, 124 Nev. at 40, 175 P.3d at 908.

In the recent Dollar Loan Center case, the majority of the Nevada Supreme Court bent over backward to try to interpret the statute at issue in a way that prevented consumers from being on the "debt treadmill." In fact, Justice Pickering in her Dissent, noted that in the majority's view, "the purpose of NRS Chapter 604A is to prevent the consumer debt treadmill." *State Dept. of Bus. And Industry, Fin. Institutions Div. v. Dollar Loan Center*, 134 Nev.Adv.Op. 15, 412 P.3d 30, 36 (2018). As Justice Pickering pointed out, the majority opinion could not be squared with the text of the statute and the verb tenses it employed, it could not be squared with NRS 604A.415, which authorized the exact civil actions that the majority opinion said were precluded, nor did the majority opinion make common sense. *Id.* As she pointed out, "What lender will make a new loan to pay off an existing loan knowing that, in doing so, the loan being made cannot be collected upon default?" *Id.* Justice Pickering further cited from Justice Kennedy of the U.S. Supreme Court, when he stated, "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *Id.*, at pgs. 36-37, citing *Kmart Corp v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988).

While this Court may agree more with Justice Pickering's Dissenting opinion, this Court would be obligated to follow the majority opinion, which is the law of the State of Nevada. The Dollar Loan Center case, however, dealt with a different statute, within Chapter 604A of the NRS, and consequently, that decision is not controlling. It is clear that the intent of the Legislature was to protect consumers and to help them stay off of the "debt treadmill." The practice of TitleMax, of "refinancing" could be interpreted as providing a means whereby a consumer would forever be on the "debt treadmill," if they continued to "refinance" their title loans, and consequently, this practice could be interpreted as violating the Legislature's intent. On the other hand, however, TitleMax apparently has a policy of requiring consumers to pay off all accrued

interest before entering into a refinance of a loan, it prepares and executes all new loan documentation, and when a loan is refinanced, the original loan obligation is completely satisfied and extinguished. While the Court can understand FID's concern, and its claim that TitleMax's refinancing is really an "extension," TitleMax is not "extending" the original loan, but is creating a "new loan," which it calls a "refinancing." The Legislature could have precluded this practice, or limited it, if it so desired, but it did not.

Although the Court has considered the legislative intent, in trying to preclude consumers being stuck on a "debt treadmill," the Court cannot conclude as a matter of law that the language of the statutes at issue is not clear and unambiguous. NRS 604A.5074 indicates that "The original term of a title loan must not exceed 30 days." Subsection 2 indicates, however, that it may be extended "for not more than six additional periods of extension, with each such period not to exceed 30 days" if certain requirements are met. The statute thereafter indicates that "The original term of a title loan may be up to 210 days," if certain other requirements are met. FID in the instant case argues that TitleMax is, or at least can, impermissibly extend the title loans, indefinitely, by using the term "refinancing."

It is interesting to note the differences, when comparing the statutes dealing with Deferred Deposit Loans and High Interest Loans, with the statutes dealing with Title Loans. In the statutes dealing with "deferred deposit loans," and "high interest loans," the licensee is prohibited from providing multiple loans to the same customer, with certain exceptions. NRS 604A.5018, and NRS 604A.5046. When dealing with "deferred deposit loans," there is a statutory provision allowing an "extended payment plan," which allows a customer with an outstanding deferred deposit loan to enter into an extended payment plan if the customer meets certain eligibility requirements. NRS 604A.5026. There is no such equivalent when dealing with high-interest loans or title loans. The statutes dealing with "deferred deposit loans," and "high-interest loans," limit the ability to use the proceeds of a new deferred deposit loan or high-interest loan to pay the balance of an outstanding deferred deposit loan or high-interest loan. NRS 604A.5029 and NRS 604A.5057. With regard to "title loans," there is no statutory provision that prohibits certain acts by licensee regarding "multiple loans to same

customer." Additionally, there is no statutory provision that limits the ability of a customer to "use proceeds of a new title loan to pay balance of outstanding title loan."

In evaluating the statutory chapter as a whole, it becomes clear to this Court that there were certain limitations placed on licensees of deferred deposit loans and high-interest loans that were not placed upon the licensees of title loans. Clearly, if the Legislature had wanted to prohibit the licensee of a title loan from making more than one loan to the same customer, it could have done so. (See NRS 604A.5018, and NRS 604A.5046). If the Legislature had wanted to limit the ability to use the proceeds of a new title loan to pay the balance of an outstanding title loan, it could have done so. (See NRS 604A.5029 and NRS 604A.5057). Further, with regard to the statutory sections in Chapter 604A which reference "refinancing," they do not "allow" or "provide for" refinancing, but they provide limitations for licensees who are providing loans and attempting to collect on those loans, whether it be "repayment, renewal, refinancing, or consolidation" of a debt. This analysis leads this Court to believe that although Chapter 604A does not provide for or specifically allow "refinancing" as it relates to "title loans," nor does it prohibit such refinancing, or provide any limitations in that regard. It is possible that the Legislature did not specifically address "refinancing" as it relates to "title loans," because they did not see that as an option, or as a possibility, but the Legislature specifically included provisions which limit a licensee's ability to make more than one loan to a customer, and which specifically limit the ability to use one loan to pay off another loan, as it relates to "deferred deposit loans," and "high interest loans," in the same Chapter, and did not include such limitations as it relates to "title loans." Consequently, this Court must find that Chapter 604A does not preclude TitleMax's ability to "refinance" loans, as long as such refinancing does not otherwise violate the other provisions of Chapter 604A.

NRS 604A.065 defines "extension" as follows:

> 1. "Extension" means 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.
> 2. The term does not include a grace period.

(NRS 604A.065).

If we read NRS 604A.5074 in conjunction with NRS 604A.065, the state would essentially read, "The original term of a title loan may be up to 210 days if . . . the loan

is not subject to 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."

Again, this Court can see how the above-referenced analysis could be interpreted as prohibiting TitleMax's practice of "refinancing" at issue in the present case. But when we compare the above-referenced reading with NRS 604A.5037, dealing with "high interest loans," we would have the same result. (with the only difference being that "high interest loans" are limited to 90 days instead of 210). The section of the Chapter dealing with "high interest loans," however, also includes limitations on providing "multiple loans to the same customer." (NRS 604A.5046) Additionally, the section of the Chapter dealing with "high interest loans," includes limitations on using the proceeds of a new loan to pay off the balance of another outstanding loan. (NRS 604A.5057). The section of the Chapter dealing with "title loans" does not include these other limitations. Consequently, this Court hereby finds that TitleMax's practice of "refinancing" does not violate either NRS 604A.5074 or NRS 604A.065.

The next issue presented to the Court is whether the "fair market value" language of NRS 604A.5076(1) includes fees and interest? That statute reads in pertinent part as follows:

> **NRS 604A.5076 Prohibited acts by licensee regarding amount of loan, ownership of vehicle and customer's ability to repay loan.**
> 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.
> . . . .

Black's Law Dictionary defines "fair market value" as "The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. . ." *Black's Law Dictionary*, Sixth Edition, 1990, at pg. 597.

The Nevada Supreme Court has provided some guidance in *State, Dept. of Bus. & Indus. V. Check City*, 130 Nev. 909, 337 P.3d 755 (2014). In that case, the issue before the Court was whether the 25 percent cap in NRS 604A.425 included both principal and any interest or fees charged. That statute referred to a "deferred deposit loan," and only allowed the licensee to loan a customer an amount which did not exceed 25 percent of the borrower's expected gross monthly income. Apparently in

2008, the "FID began enforcing the 25-percent cap as including both the principal borrowed and interest charged." *Id.*, at 910-911. Check City filed a complaint for declaratory relief, seeking clarification of NRS 604A.425. The District Court concluded "that the 25-percent cap only applied to the principal borrowed." *Id* at 911. The Supreme Court referred to NRS 604A.050, which defined "deferred deposit loan," and concluded that "the principal amount borrowed is merely one aspect of the larger transaction." *Id.*, at 912. This same analysis can apply to any section of NRS Chapter 604A. If the Court considers NRS 604A.105, which defines "title loan," however, the vehicle is collateral for the loan, and the statute specifically indicates that interest of more than 35 percent will be charged annually. The interest is specifically set forth separate from the language referencing the vehicle.

In analyzing whether interest and fees are to be included in the "fair market value" language contained in NRS 604A.5076, common sense tells us that a licensee would not want to lend more money than it would be able to recover in the event of a default. TitleMax actually states in its Opposition and Counter-Motion that "TitleMax has no economic incentive to loan customers greater amounts than they can repay." (See Opposition at pg. 5, ¶9). Interestingly, if we consider NRS 604A.5085, if a customer defaults on a title loan, the licensee may collect not only the unpaid principal amount of the title loan, but unpaid interest accrued before the default (subject to limitations), and interest accrued after the expiration of the initial loan period (subject to limitations), and any fees allowed for presentment of a check that is not paid upon presentment. Additionally, pursuant to NRS 604A.5068, if a customer defaults on a title loan, the licensee may collect the debt owed in a professional and fair manner. If the licensee commences a civil action, the court may award court costs, costs for service of process, and reasonable attorney's fees. It seems clear from the statutes surrounding NRS 604A.5076, that the "fair market value" of the vehicle is not intended to include amounts for interest, bad check fees, costs, and attorney's fees. These are all amounts that would be recoverable, in addition to the principal amount of the loan.

Based upon the Court's analysis, this Court concludes that the language of NRS 604A.5076 which refers to the "fair market value" of a vehicle, refers only to the principal amount of the loan, and does not include interest, fees, or other expenses or other recoverable amounts.

Although there were other issues addressed by the parties in the pleadings, these two issues are the only issues that Plaintiff sought Declaratory Relief on in its Complaint, and consequently, these are the only two issues that the Court hereby addresses, as any other comments or rulings would effectively be "advisory opinions."

ORDER

Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED, that FID's Motion for Summary Judgment is hereby DENIED.

IT IS FURTHER ORDERED, that TitleMax's Counter-Motion for Summary Judgment is hereby GRANTED as follows:

This Court hereby finds, concludes, and declares, that TitleMax's practice of "refinancing" does not violate either NRS 604A.5074 or NRS 604A.065.

This Court further finds, concludes, and declares, that the language of NRS 604A.5076 which refers to the "fair market value" of a vehicle, refers only to the principal amount of the loan, and does not include interest, fees, or other expenses or other recoverable amounts.

Dated this 19th day of June, 2019.

JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XXX

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Matters **COURT MINUTES** **May 01, 2019**

A-18-786784-C TitleMax of Nevada Inc, Plaintiff(s)
vs.
Nevada Department of Business and Industry Financial Institutions Division, Defendant(s)

May 01, 2019 **9:00 AM** **All Pending Motions**

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Vanessa Medina

RECORDER:

REPORTER: Kimberly Farkas

PARTIES PRESENT: Polsenberg, Daniel F. Attorney

JOURNAL ENTRIES

- Vivienne Rakowsky, on behalf of Defendant, also present.

Extensive arguments by Ms. Rakowsky and Mr. Polsenberg. COURT ORDERED, matter taken UNDER ADVISEMENT, a written decision will issue.

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

AARON D. FORD
ATTORNEY GENERAL
555 E. WASHINGTON BLVD., STE 3900
LAS VEGAS, NV 89101

DATE: July 19, 2019
CASE: A-18-786784-C

RE CASE: TITLEMAX OF NEVADA, INC. vs. STATE OF NEVADA, DEPARTMENT OF BUSINESS AND INDUSTRY FINANCIAL INSTITUTIONS DIVISION

NOTICE OF APPEAL FILED: July 17, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☐ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☐ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☒ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER; NOTICE OF ENTRY OF ORDER: ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

TITLEMAX OF NEVADA, INC.,

Plaintiff(s),

vs.

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

Defendant(s),

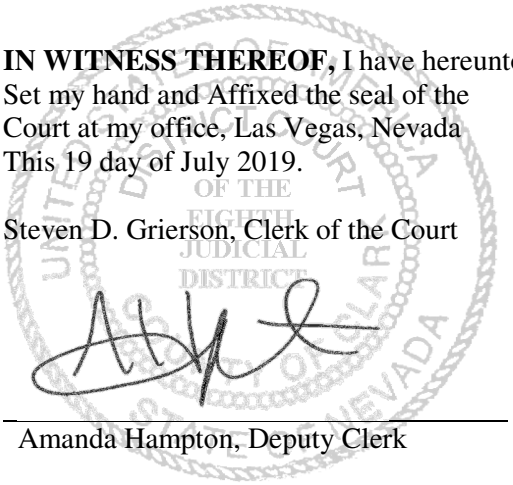
Case No: A-18-786784-C

Dept No: XXX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 19 day of July 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk