

Electronically Filed
Dec 18 2019 06:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

TITLEMAX OF NEVADA, INC. A
DELAWARE CORPORATION,

Respondent.

Supreme Court Case No.: 79224

District Court Case No.: A-18-786784-C

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT

APPELLANT'S OPENING BRIEF

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TITLEMAX

JURISDICTIONAL STATEMENT

This appeal arises from the final order of the Eighth Judicial District Court. Both the Order and Judgment and the Notice of Entry of Order and Judgment were filed on June 20, 2019. The notice of appeal was timely filed on July 17, 2019.

Jurisdiction is proper with this Court based on NRAP3A(b)(1) as an appeal from the final judgment entered in an action or proceeding

ROUTING STATEMENT

This case should be retained by the Nevada Supreme Court. Although Administrative agency cases, except those involving tax, water, or public utilities commission determinations, are generally referred to the Court of Appeals, the principal issue here is a question of statewide public importance as well as a question of first impression pursuant to NRAP 17(a)(11) & (12).

This Court has already interpreted NRS 604A and ruled that TitleMax's Grace Period Payment Deferment Agreement ("GPPDA") is an illegal extension of a 210-day title loan. *Financial Institutions Div. v. TitleMax*, 135 Nev. ___, 449 P.3d 835, 840 (2019) (*TitleMax I*). It should make the same ruling here. The decision by the District Court below, which is the subject of this appeal, re-opens floodgates closed in 2005 when Chapter 604A was enacted and closed again in *TitleMax I*.

Yet, as a result of the district court decision, TitleMax continues to extend loans past 210 days, while collecting additional unamortized interest payments. In doing so, TitleMax has effectively turned a 210-day title loan into a loan of infinite duration.

ISSUES PRESENTED

1. Whether Chapter 604A of the NRS allows the indefinite extension of a 210-day title loan issued pursuant to NRS 604A.5074(3).
2. Whether a harmonious reading of NRS 604A.5076(1) and NRS 604A.5067(2)(c) requires the fair market value of the vehicle to be greater than the total of the payments, including any interest, charges and fees.

STATEMENT OF THE CASE

On December 31, 2018, TitleMax filed a Complaint naming the Department of Business and Industry, Financial Institutions Division (“FID”) as Defendant asking for declaratory judgment. FID00001-FID00115. The two issues that the Court reviewed included; (1) whether refinancing a loan is allowed pursuant to NRS 604A.5074 or NRS 604A.065; and, (2) whether the requirement that the title loan cannot exceed the fair market value of the vehicle, referred to in NRS 604A.5076(1), means that the principle, interest and fees cannot exceed the fair market value. FID00014.

On February 19, 2019, the FID filed a Motion for Summary Judgment (FID00116-FID00262), and on March 22, 2019, TitleMax responded with an Opposition and Counter Motion for Summary Judgment. FID00263-FID00413. FID's reply was filed on April 19, 2019 (FID00414-FID00639), and TitleMax's reply was filed on April 26, 2019. FID00640-FID661. Oral argument was heard on May 1, 2019. FID00680-FID00710. On June 20, 2019 the Court issued an Order finding for TitleMax on both issues. FID00662-FID00679.

FACTS

TitleMax is licensed to engage in lending pursuant to NRS Chapter 604A. FID00008:4-5. As of its last examination, TitleMax was operating thirty (30) locations in the State of Nevada. FID00048-FID00049. Its corporate offices are in Savanna, Georgia. FID00048.

In *TitleMax I*, this Court determined that TitleMax was improperly extending 210-day title loans in violation of NRS 604A.5074(3) (formerly cited as NRS 604A.445(3)). *TitleMax I*, 449 P.3d at 840. TitleMax is now offering its Nevada customers its “refinance” product, which similarly charges interest on a static principle and extends a 210-day title loan.

TitleMax enters into a 210-day loan agreement that complies with NRS 604A.5074(3). Shortly thereafter, TitleMax offers its customers a “refinance.” The customers make an interest only payment and the principle is rolled-over into what

is referred to as a new 210-day title loan. FID00125:16-28, FID00126:1-26, FID146-FID176. In this way, TitleMax can collect interest only payments on the static principal – which, coincidentally, is the same practice that this Court recently determined to be in violation of the statutes. *TitleMax I*, 449 P.3d at 840. In addition, TitleMax encourages its customers to borrow additional principal.

The product is not a true refinance because the original loan is not paid in full. Indeed, TitleMax does not return the title pursuant to NRS 604A.508(2)(a), TitleMax does not underwrite the “refinanced” loan pursuant to NRS 604A.5065, and TitleMax does not re-determine the fair market value of the vehicle at the time of the refinance pursuant to NRS 604A.5076. TitleMax simply collects an interest only payment, applying no funds to reduce the principal, and then rolls the principal into a new 210-day payment structure. TitleMax extends the time for repayment beyond the date on which the loan was required to be paid in full and is simply extending the original term of the loan. NRS 604A.065(1). In addition, TitleMax is collecting interest only payments that do not ratably and fully amortize the entire principal and interest. FID00153, FID00161, FID00169. Therefore, TitleMax is again violating NRS 604A.5074(3).

SUMMARY OF THE ARGUMENT

The Nevada Legislature enacted NRS Chapter 604A¹ to protect vulnerable Nevada consumers from ending up in a cycle of debt—as occurs when a desperate consumer borrows money at a high interest rate to pay off an outstanding loan, and then borrows more money to pay off the loan that paid the loan before that, and so on. Prior to the enactment of NRS 604A in 2005, unscrupulous lenders charged interest rates exceeding 500% per annum and preyed on Nevadans who utilized such loans.

In order to protect these vulnerable consumers, Chapter 604A specifically and strictly limits title loans in scope and duration.² Because title loans—the type of loan at issue here—have exceedingly high interest rates and the borrower risks losing their vehicle for non-payment of the loan, legislative protection is necessary. This Court should thus construe the provisions of NRS 604A in a manner that protects these consumers. Both the plain language of the statute and legislative intent support a remedial interpretation.

¹ A.B. 384, 2005 Leg., 73rd Sess., effective July 1, 2005.

² A title loan is a loan that uses the title of a vehicle that is owned by the borrower as collateral for the loan. NRS 604A.105.

TitleMax's New Loan Product Continues to Violate NRS 604A

Through its new product, misleadingly called a “refinance,” TitleMax continues to pursuing the collection of interest in excess of the amount permissible under NRS 604A. NRS 604A.5074(3)(b); *TitleMax I*, 449 P.3d at 841.

This product violates the rules governing a 210-day title loan. While Chapter 604A strictly limits title loans in scope and duration, TitleMax's product extends the loan beyond the date on which the loan is required to be paid in full. In addition, the interest-only payment - collected before each refinance - does not ratably and fully amortize the entire amount of principal and interest payable on the loan. NRS 604A.5074(3)(b).

TitleMax is collecting additional amounts of interest by encouraging its customers to make unamortized interest only payments leaving the principal static. *See e.g.* FID00146-FID00176. TitleMax then restarts the 210-day clock by “refinancing” the static principal into a new 210-day payment structure. Customers refinance their title loans in this manner every month, allowing TitleMax to again collect unamortized interest only payments on a static principal and more than 210 days of ratably and fully amortized interest. NRS 604A.5074(3).

This product harms consumers even more egregiously than the GPPDA that was determined to be in violation of NRS 604A.5074(3). *TitleMax I*, 449 P.3d at 842. While the GPPDA illegally extended the 210-day title loan to 420 days by

collecting an interest only payment for 7 months on a static principal, TitleMax's refinance allows for collection of interest on a static principal for a potentially unlimited amount of time by repeatedly rolling the static principal into a new 210-day payment structure.

TitleMax tries to justify its action by claiming that each time it refinances a loan, the original loan is paid in full, but it is not. First, the customer's title is not returned pursuant to NRS 604A.508(2)(a). Second, the payment receipt for the interest only payment given to the customers is not marked paid in full pursuant to NRS 604A.508(b)(6). Third, TitleMax does not underwrite the refinanced loan pursuant to NRS 604A.5065, and does not determine the fair market value of the vehicle at the time of the refinance pursuant to NRS 604A.5076. Instead, TitleMax keeps the customer's title encouraging them to borrow additional principal and offering an interest only payment for that month if they refinance.

Total Payments Cannot Exceed the Fair Market Value of the Vehicle.

NRS 604A requires TitleMax to consider a customer's ability to repay before extending a loan, including examining whether the payment amounts exceed the fair market value of the vehicle. The language of the statute does not support comparing only the principal amount of the loan to the fair market value of the vehicle when making this determination. Logically, a customer's ability to repay must include consideration of the *total* amount of the payments, including all

interest, charges and fees. The total of these amounts, not principle alone, cannot exceed the fair market value of the vehicle.

Pursuant to NRS 604A, TitleMax “cannot make a loan that exceeds the fair market value of the vehicle that secures the loan.” NRS 604A.5076(1). TitleMax must compare the loan payments to the customer’s income, employment status, credit history, and other evidence, including bank statements. NRS 604A.5065. Because the borrower does not actually repay the loan—and get the title back—until “all interest, charges and fees” are paid, those amounts must also be considered by TitleMax in considering ability to pay.

The court below misinterpreted NRS 604A by not considering its remedial purpose, and by not considering the real-life effects on consumers when TitleMax subjects them to its new loan product. In addition, it did not consider how unamortized interest only payments violate NRS 604A.5074(3)(b) or how TitleMax violated NRS 604A.5074(3) by collecting more than 210 days of amortized interest. The court also erred by not applying the findings in *Department of Business and Industry, Financial Institutions Division v. Check City Partnership*. 130 Nev. 909, 337 P.3d 755, (2014) to the facts in this case. These errors and others as argued below require reversal of the District Court Order.

STANDARD OF REVIEW

The Construction of a statute is a question of law which is reviewed de novo. *County of Clark, ex rel. University Medical Center v. Upchurch*, 114 Nev. 749, 753, 961 P.2d 754, 757(1998). If the agency's interpretation of the statute is within the language of the statute, the court will defer to that interpretation. *Taylor v. Dep't. Health and Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013); *See also Dutchess Business Services, Inc. v. Nevada State Bd. of Pharmacy*, 124 Nev. 702, 709, 191 P.3d 1159, 1164 (2008). "The court has repeatedly recognized the authority of agencies... to interpret the language of a statute that they are charged with administering; as long as that interpretation is reasonably consistent with the language of the statute it is entitled to deference in the courts." *International Game Technology, Inc. v. Second Judicial Dist. Court of Nevada*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006).

If a statute is susceptible to more than one interpretation, it should be construed 'in line with what reason and public policy would indicate the legislature intended.'" *State Dept. of Motor Vehicles and Public Safety v. Lovett*, 110 Nev. 473, 477, 874 P.2d 1247, 1249–50 (quoting *State, Dep't Mtr. Vehicles v. Vezzeris*, 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986)); *County of Clark, ex rel. University Medical Center v. Upchurch*, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998).

ARGUMENT

A 210-day title loan entitles the lender to no more than 210 days of amortized interest.

Chapter 604A was enacted to protect consumers.

Logically, it must take a desperate situation to cause a consumer to risk losing their vehicle by entering into a high interest title loan. When the emergency need for money arises, the customer generally does not look at the interest rate, nor do they shop around for the best deal.³

The Nevada Legislature instituted many consumer protections, one of which was to limit title loans to 210 days. Another was limiting interest to 210 days of amortized interest. By collecting an unamortized interest payment and then rolling the full, unreduced static principal into a new title loan, TitleMax has found another way to charge additional interest beyond the statutory limits.

The title loan statute does not provide for refinancing.

Nevada follows the maxim “expressio unius est exclusio alterius,” which means the expression of one thing is the exclusion of another. *Galloway v. Truesdell*, 83 Nev. 13, 27, 422 P.2d 237, 246 (1967). Chapter 604A governs three types of loans, deferred deposit, high interest and title loans. Chapter 604A

³ Hearing on A.B. 384 Before the Assembly Committee on Commerce and Labor, 2005 Leg., 73rd Sess. 13 (May 6, 2005).

expressly allows limited refinancing with respect to high interest loans⁴ and deferred deposit loans.⁵ Chapter 604A intentionally does not provide for refinancing a title loan.⁶ Because Chapter 604A puts restrictions on refinancing direct deposit and high interest loans, TitleMax argues that refinancing must be unrestricted with respect to title loans. It is undisputed that Chapter 604A serves to protect consumers from long-term loans at a high interest rate. Therefore, TitleMax claims that a title loan is subject to an unlimited number of refinances is illogical, and goes against the consumer protection spirit and policy behind Chapter 604A. FID00011: 8-10, 23-25.

⁴ Under certain circumstances not in conflict with NRS 604A.5057, pursuant to NRS 604A.5037, 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.

⁵ Under certain circumstances not in conflict with NRS 604A.5029, pursuant to NRS 604A.501, 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.

⁶ Chapter 604A requires a specific remedy if a title loan goes into default. NRS 604A.5083. Under Chapter 604A, notice must be provided to the customer informing of “the opportunity to enter into a repayment plan with a term of at least 90 days after the date of default.” NRS 604A.5083(2)(e). A customer has 30 days after default to choose to enter into repayment plan. NRS 604A.5083(1). However, a customer can agree to repay the loan in less time. NRS 604A.5083(3)(b). The purpose of the remedy is to protect a consumer from loan products that will put the customer on the debt treadmill.

The Legislature could have treated title loans the same way as deferred deposit loans in NRS 604A.574, but really did not have to. Given the language in NRS 604A.5074(3), there was no need. Section I title loans are 30-day loans that can be extended six times to be 210-day loans or they can have an original term of 210 days – that’s it. NRS 604A.5074.

The title of a statute typically describes or summarizes the contents of the statute. *Coast Hotels and Casinos Inc. v. Nevada State Labor Com’s*, 34 P.3d 546, 550, 34 P.3d 835, 836 (2001). If the title of a statute is “restricted to certain purposes, the purview or body of the act must also be restricted to that subject expressed in the title.” *State v. Payne*, 53 Nev. 193, 295 P. 770 (1931). NRS 604A.5074 is titled “[r]estrictions on duration of loan and periods of extension.” The plain language of NRS 604A.5074(3) provides that the original term of the loan can be *up to* 210 days if the lender complies with (a) through (e). And, this Court has already confirmed that a title loan issued under NRS 604A.5074(3) is limited to 210 days of amortized interest. *TitleMax I*, 449 P.3d at 840.

In short, a section 3 title loan cannot exceed 210 days and cannot be extended. NRS 604A.5074(3)

Pursuant to NRS 604A.065, TitleMax is not refinancing loans, it is extending loans. The term “refinance” is not defined in Chapter 604A, and did not need to be because of the statutory definition of “extension.”

There are various definitions for the term “refinance”, but the generally accepted definition refers to an “exchange of old debt for a new debt, as by negotiating a different interest rate or term or by repaying the existing loan with money acquired from a new loan.” *See In re Harter*, 2018 WL 550578 at *8 citing *Refinancing*, Black's Law Dict. (10th ed. 2014). Courts have also looked at the substance of the refinance (rather than the form) and found that the “dispositive characteristic is instead whether the terms of the debt are so substantively different as to constitute a new obligation...” *In re Biondo*, 180 F.3d 126, 133 (4th Cir. 1999) cited by *In re Levertton*, 2014 WL 3724162 (D. Ariz.2014) (unreported).

The Nevada Legislature did not chose to allow a 210-day title loan to be extended through the use of a refinance. If it had, it would have included a statute in the title loan section of Chapter 604A, similar to the statutes specifically related to high interest loans and direct deposit loans in Chapter 604A; but it did not. The title loan statute does not provide for refinancing under any conditions, and a court should not read language into a statute that is not there. Thus, applying “*expressio unius est exclusio alterius*,” a title loan cannot be refinanced.

The definition of “extension” states that the term extension “applies 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.” NRS 604A.065. The definition expressly

provides that “[t]he term [extension] does not include a grace period.” NRS 604A.065(2). It does not say that the term “extension” does not include refinancing. Therefore, refinancing is an extension of the date that the loan was to be paid in full under its original terms.

The Nevada Legislature intentionally selected the activities that are and are not considered an extension, and expressly excluded only a grace period from the definition of an extension. NRS 604A.065. Thus, with the exception of a grace period, anything that lengthens the date on which the loan is required to be repaid under the original terms of the loan agreement is an extension, and it does not matter what the lender calls the extension.

In addition, NRS 604A.220(2) provides that “if there is a conflict between the provisions of Chapter 604A and any general law regulating loans, the provisions of Chapter 604A prevail.” Therefore, regardless of TitleMax’s argument concerning what a refinance is or is not, TitleMax is extending the loans because it extends the date on which the loan is required to be paid in full under the original terms of the loan agreement.

The amortization requirement shows that the Legislature did not intend to allow a 210-day title loan to be refinanced.

While the original title loan agreement issued by TitleMax conforms to NRS 604A.5074(3), soon after issuing the loan, TitleMax violates Chapter 604A by collecting an unamortized interest only payment. TitleMax then issues a “new” 210-

day title loan contract rolling over the static principal from the original loan. If TitleMax adhered to NRS 604A.5074(3)(b) by amortizing each payment, the principal would be reduced with each payment. TitleMax could collect the interest portion of the first amortized installment payment and grant a non-interest bearing grace period for the payment of the principal portion. But TitleMax cannot collect an interest only payment on the entire principle over and over. Thus, the amortization requirement shows that the Legislature did not intend for an interest only payment followed by a new 210-day term, *i.e.* a refinancing contract.

Nevada allows only two types of title loans. NRS 604A.5074(1-2) & (3). Both Sections 2 and 3 of NRS 604A.5074 express the intent to limit the duration of title loans to 210 days, though they do it differently. The different methods of limiting the term are not meant to be mixed and matched at the whim of the lender. Section 3 prohibits extensions and limits interest to that which is ratably and fully amortized within 210 days. NRS 604A.5074(3). Section 2 allows up to six extensions - it does not require amortization because each extension is for a single period up to 30 days. NRS 604A.5074(2). Pursuant to Sect. 2, TitleMax can collect unamortized interest on the entire static principal – but, it can only do so for 6 months.

The only reasonable interpretation of NRS 604A.5074 is that Section 3 limits lenders to charging no more than 210 days of ratably and fully amortized interest.

NRS 604A.445(3). Coincidentally, this Court has already upheld this interpretation. *TitleMax I*, 449 P.3d at 840. Contrary to its assertions, TitleMax really extends the loans.

TitleMax's refinance improperly renders section (3)(b) of NRS 604A.5074 meaningless.

TitleMax's refinance program eviscerates the amortization requirement in NRS 604A.5074(3)(b). TitleMax's attempt to render the amortization requirement meaningless is contrary to statutory construction principles and would lead to absurd results. *See Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) ("statutory interpretation should not render any part of the statute meaningless); *See Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (explaining that absurd results are to be avoided when interpreting statutes). In addition, Sections 2 and 3 of NRS 604A.5074 cannot be the same, as statutory construction principles dictate that redundancies are to be avoided. *See Bd. of County Commissioners of Clark County v. CMC of Nevada, Inc.*, 99 Nev. 739, 670 P.2d 102 (1983) ("A reading of legislation which would render any part thereof redundant or meaningless, where that part may be given a separate substantive interpretation, should be avoided."). Thus, a 210-day loan must have amortized payments.

NRS 604A.5074(3) clearly expresses an intent to limit the duration of a title loan to 210 days through seven (7) monthly ratably amortized payments. Each payment reduces the principal which limits the amount of interest being paid.

While the percentage rate of interest does not change with each “refinance”, TitleMax collects additional interest each month by collecting unamortized interest on a static principal balance.

TitleMax’s interpretation – that it can charge unamortized interest for an unlimited duration – is unreasonable and leads to the absurd result that a loan expressly limited to 210 days can have a potentially infinite duration.

TitleMax’s “refinancing” is form over substance.

Courts consider the substance of a transaction over its form. See e.g. *Pease v. Taylor*, 88 Nev. 287, 289, 496 P.2d 757, 759-60 (1972); *Turner v. E –Z Check Cashing of Cookeville, Tn.*, 35 F. Supp. 2d 1042, 1047 (M.D. Tenn. 1999) (“[TILA] focuses on the substance, not the form, of credit-extending transactions.”). Though TitleMax claims they are simply refinancing the original title loan, Compl. P. 5:16-18, in substance, TitleMax is extending the original 210-day title loan in violation of NRS 604A.5074(3)(c).

In an on-point, but unpublished, Ninth Circuit case, the Court found that for a true refinancing to occur the obligation must be satisfied and replaced, and that the terms satisfied and replaced must be met absolutely. *In re Lucas*, 2006 WL 6810959 (9th Cir. 2006) (unpublished). While the case is not being cited for precedent, the Ninth Circuit’s reasoning and analysis of the transaction, as well as

the similarity to the substance of TitleMax's loans, makes *In re Lucas* worth mentioning.

The *Lucas* Court found that the payday lender used one type of form for both the initial loan and the subsequent contracts. The form contained the new effective date and finance charge disclosures. *Lucas*, 2006 WL 6810959 *6. The Court stated that in the subsequent contracts, the original loan was not satisfied because the borrower made an interest only payment and still had the principal in his pocket. *Lucas*, 2006 WL 6810959 *6. The Court specifically found that by acceptance of a check for the interest to date, the substance of the transaction was simply a deferral of the principal and not a refinance. As a result, the Court determined that the subsequent contracts were extensions of the original loan and not a true refinance. *Lucas*, 2006 WL 6810959.

Similarly, TitleMax uses the same contract for its original and subsequent contracts. The subsequent contracts contain the TILA disclosures and start the clock on another 210-day payment structure – to pay the same principal. The borrower never satisfies the original loan because the borrower still has the principal in their pocket. Analogous to the Ninth Circuit's findings in *Lucas*, the interest only payment collected by TitleMax defers payment of the principal. *Lucas*, 2006 WL

6810959 *6. Thus, the District Court erred when it determined that the title loan was paid in full prior to the refinance.⁷

It is undisputed that it is a violation of NRS 604A.5074(3) to offer any extension of a 210 title loan. NRS 604A.5074(3)(c), *TitleMax I*, 449 P.3d at 840. TitleMax’s refinance product provides an infinite number of extensions, referring to them as refinances. After making monthly payments of interest only for as long as TitleMax can drag it out, the borrower still owes virtually the same principal and interest that it owed at the inception of the original loan and TitleMax still holds the title to the customer’s vehicle. *See e.g.* FID00146-FID00176.

In *Dollar Loan*, the Court found that an interpretation of a statute which is contrary to the legislative purpose of the statute would create absurd results as it would incentivize licensees to perpetuate the debt treadmill. *Department of Business and Industry, Financial Institutions Division v. Dollar Loan Center, LLC*, 134 Nev. ___, 412 P.3d 30, 34 (2019). By offering unlimited “refinances” and encouraging customers to take out additional principal, TitleMax’s “refinance” option perpetuates the debt treadmill and allows TitleMax to collect interest in excess of that allowed by NRS 604A.5074(3).

...

⁷ To further dispute the Court’s finding that the prior loan is paid in full, TitleMax never complied with NRS 604A.508 by returning the title to the vehicle and never detailing on the receipt given to the customer the itemization of interest, charges and fees and a statement that the loan is “paid in full.”

The court erred when it did not consider the requirements of NRS 604A.5074(3) which impose restrictions on the duration of a title loan to 210 days of amortized interest.

In 2005, prior to enacting Chapter 604A, Assemblywoman Barbara Buckley, the bill's sponsor, testified that one important goal of the legislation was to implement uniform standards:

This bill establishes uniform standards and procedures for the licensing and regulation of check-cashing services, deferred deposit services, payday loan services, and title loan services. The bill provides consumer protections including regulating customer repayment and default of these loans and requiring the loan establishments comply with the federal Fair Debt Collection Practices Act. The measure also provides remedies and administrative penalties.⁸

Thus, the Legislature wanted to establish standards that would apply uniformly to all Chapter 604A lenders and would prohibit individual lenders from creatively bending the rules.

A ratably and fully amortized loan results in the entire loan being paid in full by the last payment. Thus, the amortization requirement limits the “duration” of the title loan to 210 days because “the entire amount of principle and interest payable on the loan” must be paid within 210 days. NRS 604A.5074(3). TitleMax’s “refinance” is just like the GPPDA which also “circumvented the statutory requirement that 210-day loans ratably and fully amortize the entire amount of

⁸ Hearing on A.B. 384 Before the Assembly Committee on Commerce and Labor, 2005 Leg., 73rd Sess. 14 (April 13, 2005) (Emphasis added).

principal and interest payable on the loan.” *TitleMax I*, 449 P.3d at 842. (internal quotations omitted). As this Court previously found, payments never ratably amortize when they are used to prevent the accrual of interest. *TitleMax I*, 449 P.3d at 841. As if experiencing déjà vu, TitleMax has created another way to not comply with the statute.

TitleMax’s interpretation is contrary to the remedial legislative purpose of Chapter 604A because it incentivizes licensees to roll over outstanding loans beyond the limited 210-day term. *See e.g. Dollar Loan*, 412 P.3d at 34 (expressing that additional loans perpetuate the debt treadmill).

Because the monthly payment of interest only is lower than the amortized payment from the original loan (there is no principal payment included in the interest only payment), TitleMax encourages its customers to borrow more principal each time they refinance the title loan. In this way, TitleMax increases the principal and collects additional interest. This perpetuates more refinances and places the customer on the debt treadmill and eventually they cannot get off.

The Reports of Examination for the different TitleMax locations include examples of the refinances. The table below provides examples of loans from one TitleMax location:

| Installment Title Loans (NRS 604A.445) with Multiple Extensions/Refinances (NRS 604A.065) | | | | | | |
|--|-----------------|------------------------------------|--------------------------------------|---|---|-----------------------------------|
| Store | Borrower | Date of Initial Contract(s) | Date of Most Recent Refinance | Total Amount Due Under Initial Contract(s) | Total Amount Due Under Most Recent Refinance | Total Number of Refinances |
| 10869 | K.P. | 7/7/17 & 7/27/17 | 12/4/17 | \$9,056.70 | \$13,612.39 | 2 |
| 10869 | T.S. | 9/20/17 | 12/15/17 | \$1,821.57 | \$2,675.55 | 2 |
| 10869 | L.P. | 9/14/17 | 1/30/18 | \$2,160.55 | \$3,695.21 | 1 |
| 10869 | F.K. | 11/9/17 | 1/31/18 | \$1,372.38 | \$5,573.50 | 3 |
| 10869 | E.S. | 9/20/17 | 11/20/17 | \$10,395.13 | \$13,787.31 | 1 |

As indicated in the table above, customer K.P. initially received two title loans with an initial total amount due of \$9,056.70. FID00436-FID00453. The loan required seven equal monthly payments of \$1,293.82. After two refinances, the total amount due was increased to \$13,612.39, and each monthly payment was increased to \$1,944.61. The original 210-day loans had a final payment due date of February 2, 2018. The refinanced loan extended the final payment due date five additional months to July 2018. This extension of a 210-day title loan for another 150 days violates the 210-day limitation in NRS 604A.5074(3). It also allows TitleMax to receive interest only payments and a higher payment amount and additional interest for five additional months. FID 00441, FID00444, FID 00447. It is important to note that the only actual Notice of Opportunity to Enter into a Repayment Plan in the customer's file was provided on February 15, 2018 *after* the customer refinanced the loan. FID 00476-00477. *See* NRS 604A.5083 (requiring a payment plan to be offered upon default).

The loans to T.S., L.P., F.K., and E.S. are similar to the loan extended to K.P., and the samples in the table above are only a small sample of loans (in one location over a four-month period) where a refinance has allowed TitleMax to collect significant amounts of additional interest.

Jason – 245 days of additional interest over and above the 210-day limit for a title loan.

In a more egregious example, customer Jason took out a 210-day title loan in July 2017 for \$671.00 at 218% interest. The following narrative shows how TitleMax collected 455 days of additional interest on a 210-day title loan and how, in the end, Jason was forced to surrender his car. FID00479-599.

The total payments on the original title loan including principal, interest and fees was \$1,231.95. FID 00479. Jason took out another 210-day title loan on the same vehicle on August 22, 2017 for \$618.00 at 218% interest. The total payments for that loan was \$1,248.47. FID 00499. On October 30, 2017, Jason made an amortized payment on the first loan of \$615.18. FID 00570. Jason also made an interest only payment of \$151.25 on the second loan. FID 00571. October 31, 2017, TitleMax put both loans together into one loan with a principal amount of \$1,184.78 with 7 fully amortized payments of \$310.76 per month for a total of \$2,175.28. FID 00516. Jason made an interest only payment of \$100 on November 28, 2017, he paid \$270.76 (\$198.40 was interest), on December 11, 2017, Jason made a payment of \$270.00, of which \$198.40 was interest. FID 00532. On

January 8, 2018 Jason made an interest only payment of \$186.78. FID00530, FID 00533.

Jason then entered into another 210-day refinance of the prior loan for \$1,112.20 in principal, and \$929.80 in interest for a total loan of \$2,042.00. FID 00181. On February 19, 2018 he made an interest only payment of \$200.00. FID 00552. On March 6, 2018 he made an additional interest only payment of \$92.00 (which increased the principal balance to \$1,200.36). FID 00553. On March 14, 2018, Jason made a payment of \$160.00 with \$141.52 going to interest. FID 00554. On April 2, 2018 he made a payment of \$131.44 with \$124.62 going to interest. FID 00555. On April 30, 2018 Jason made a payment of \$300.00 with \$182.50 going to interest. FID00556.

On May 30, 2018 Jason made an interest only payment of \$174.40. FID 00557. At the same time, Jason refinanced the loan again for another 7 month period for the principal balance of \$968.80 interest of 218% for a finance charge of \$809.93 for a total of \$1778.73 due. FID 00562. On June 27, 2018, Jason made an interest only payment of \$140.00 which increased the principal to \$991.47. FID 00577. On July 11, 2018, he made a payment of \$115 with \$104 going to interest and \$9 towards the principal. FID 00578. On August 7, 2018 Jason paid a partial interest payment of \$112.00 increasing the principal to \$1000.88. FID00579.

On August 20, 2018, he made an interest only payment of \$117.75 (FID 00580) and entered into another 210-day refinance for \$957.55 in principal, interest rate of 218% and a finance charge of \$800.48 for a total amount of \$1758.03. FID00585.

On October 25, 2018, 455 days after Jason took out a 210-day title loan, Jason voluntarily surrendered his 2002 Hyundai Sonata. FID00598. On November 2, 2018, a week *after* his vehicle was surrendered, TitleMax sent Jason a Notice of Opportunity to Enter into a Repayment Plan. FID00599-600. In the end, Jason lost his car, and TitleMax received 245 days of additional interest.

As the examples show, the extension of the duration of the loan along with the increased monthly payments, which the consumer may not be able to maintain, creates the continued need to refinance until the borrower reaches the point that they must pay the loan in full or lose their vehicle. Jason stepped on to the prima facie “debt treadmill” that Chapter 604A was designed to prevent. To avoid looking at the real life effects of TitleMax’s unlimited “refinances” would exalt form over substance and disregard reality.

The Court erred when it did not consider the actual effects on consumers from TitleMax’s refinance, although there is substantial evidence in the record of disastrous effects

The policy behind Chapter 604A is to keep customers off the “debt treadmill” which occurs when 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”
Dept of Business and Industry, Financial Institutions Division v. Dollar Loan Center, LLC, 134 Nev. ___, 412 P.3d 30, 33 (2018).

The District Court should have looked at the protective purposes of Chapter 604A to effectuate the intended benefits of the Chapter and keep borrowers off the treadmill of debt. *See Dollar Loan*, 412 P.3d at 34. The District Court mentioned the protective purpose of Chapter 604A, but ignored the effects on the consumer when TitleMax extend a 210-day title loan into a long term series of loans. In doing so, the Court solely protected TitleMax’s additional interest payments instead of enforcing Chapter 604A to protect consumers.

TitleMax promises a lower monthly payment at the same interest rate, but fails to explain that through its refinance, the customer ends up paying more than the statutory allowance of 210 days of interest for a much longer period of time. As the examples below prove, TitleMax hurts their consumers by extending a loan beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement.

Generally at the time that the first payment is due, TitleMax collects an unamortized interest only payment on the original principal, and then rolls the unreduced principal into another 210-day title loan and with the same interest rate as the original loan.

Each subsequent month, the customer makes another unamortized interest only payment on the static principal and enters into another 210-day title loan. In doing so, TitleMax collects unamortized interest on the static principal every month. In this way, TitleMax collects additional amounts of interest over and above the 210 days of amortized interest allowed under NRS 604A.5074(3).

Marlon – three monthly payments total \$457.06 in interest and only \$2.60 towards the principal

Marlon's 210-day title loan was originated on October 28, 2017. The principal amount of \$971.00 was financed at an interest rate of 179.88%. The original loan provided for 7 ratably amortized payments of \$231.89 for a total of payments in the amount of \$1,623.16. According to the payment schedule on the contract, on May 29, 2018, at end of the 7 payments, the loan was to be paid in full and the title to Marlon's vehicle was to be returned to him. FID00146-153

Instead, on November 27, 2017, at the end of the first 30 days, TitleMax collected an interest only payment of \$144.00 (\$143.56) and Marlon refinanced the principal of \$970.55 for another 210 days. Under the new loan agreement dated November 27, 2017, Marlon signed up for another 7 amortized payments in the amount of \$231.78 at the same interest rate of 179.88%, for a total of \$1,622.44. FID00154-161.

On December 29, 2017, TitleMax collected another interest only payment of \$153.06 and Marlon entered into another contract for \$970.55 in principal, with

interest at the rate of 179.88% for another 210 days. Just like the previous contract, the new contract provided for 7 monthly amortized payments of \$231.78. FID00162-169.

On January 31, 2018, the customer made a payment of \$160.00 with \$157.84 going towards interest and entered into another 210-day title loan with a principal amount of \$968.40 and an interest rate of 179.88%. Under the agreement, the customer signed up for 7 more monthly payments of \$231.17. FID00170-176. It is unknown how many more refinances Marlon entered into because the examination period ended after the fourth loan and before the loan was paid in full.

The table below details the terms and payments on this loan.

| NAME | DATE | INTEREST PERCENT | FINANCE CHARGE Interest charged | AMOUNT FINANCED Principal balance | TOTAL PAYMENT FOR 7 MONTHS | PAYMENT DATE | PAYMENT AMOUNT |
|----------|----------|------------------|------------------------------------|--------------------------------------|----------------------------|--------------|----------------|
| "Marlon" | 10/28/17 | 179.88% | \$652.16 | \$971.00 | 7 x \$231.89 \$1,623.16 | | |
| | 11/27/17 | | | | | 11/27/17 | \$144.00 |
| . #2 | 11/27/17 | 179.88% | \$651.88 | \$970.56 | 7 x \$231.78 \$1,622.44 | | |
| . | 12/29/17 | | | | | 12/29/17 | \$153.06 |
| . #3 | 12/29/17 | 179.88% | \$651.88 | \$970.56 | 7 x \$231.78 \$1,622.44 | | |
| . | 01/31/18 | | | | | 01/31/18 | \$160.00 |
| . #4 | 01/31/18 | 179.88% | \$650.41 | \$968.40 | 7 x \$231.27 \$1,618.81 | | |

As the table above shows, the rate of interest remains the same. During the period between October 28, 2017 and January 29, 2017, Marlon made three

monthly payments totaling \$457.06 (nearly half of the principal), which were credited only to interest – the principal was only reduced by \$2.40. The loan has essentially been extended for 120 days past the 210-day limit for NRS 604A.5074(3) title loans and Marlon has paid \$457.06 in addition to the \$650.41 he'll pay if he doesn't refinance again. The payments were not ratably amortized payments, and Marlon still owes essentially the same principal as he did at the beginning of the original loan.

The obvious potential here is that TitleMax will continue to refinance the same loan for an unlimited number of times by collecting unamortized interest only payments without ever reducing the principal.

This product not only violates NRS 604A.5074(3), it violates the spirit and policy behind Chapter 604A. An essential element of the 210-day title loan is that when a person gives a title lender a vehicle title, the duration of the loan cannot exceed 210 days and at the end of 210 days, the loan is paid in full and the borrower gets their title back. NRS 604A.5074(3).

**Kay – unamortized interest only payment and additional principal
Borrowed**

Kay took out a 210-day title loan on January 20, 2018. The principal was \$2,521.00 at an interest rate of 167.86% and the total payments were to equal \$4,089.80. Kay was to make 7 monthly payments of \$584.27. At the end of the

seven months, the balance was to be paid in full and TitleMax was to return the title to Kay's 2011 Ford Fusion. FID00216-222.

On January 31, 2018, TitleMax collected from Kay an interest only payment of \$127.55. FID00223. The receipt shows that the entire payment was credited to interest. FID00223. After Kay made the interest only payment of \$127.55, TitleMax issued her another 210-day title loan agreement and provided Kay with an additional \$600.00 in principal. This increased the next seven amortized monthly payments from \$584.27 to \$723.32. FID0224-230.

It is unknown how many more times Kay made an interest only payment and signed up for another 210-day loan, or when or if Kay's loan was ever repaid because the examination period ended before the loan was paid in full.

The table below details Kay's 210-day title loan.

| NAME | DATE | PERCENT INTEREST | FINANCE CHARGE Interest charged | AMOUNT FINANCED Principal balance | TOTAL PAYMENTS FOR MONTHS | PAYMENT DATE | PAYMENT AMOUNT |
|-------|----------|------------------|------------------------------------|--------------------------------------|---------------------------|--------------|----------------|
| "Kay" | 01/20/18 | 167.86% | \$1,568.00 | \$2,521.00 | 7 x \$584 =\$4,089.8 | | \$127.55 |
| #2 | 01/31/18 | 167.86% | \$1,942.20 | \$3,121.00 | 7 x \$723 =\$5,063.20 | | |

The unamortized interest only payment made on January 31, 2018 is the first step onto the treadmill of debt, and as each refinance occurs, the borrower has less chance of ever paying the loan in full and recouping their vehicle title.

Sally – interest only payments, additional principal, failure to timely provide notice of opportunity to enter into a payment plan in order for TitleMax to collect additional interest.

On or about September 26, 2017, Sally entered into a 210-day title loan on a 2006 Chevy Silverado. The loan principal was \$7,571.00 at 133.71% interest. The total due was \$11,391.58 which was to be paid in full after 7 amortized monthly payments of \$1,627.37 per month. FID00232-236. On October 12, 2017, Sally took out a second title loan on the same vehicle. The principal of the second loan was \$2,300 at 133.71% interest. The second title loan also required 7 monthly payments of \$487.94. FID00238-242. On November 1, 2017, five days late, Sally made a payment of \$1,628.00 on the first title loan. FID00237. On November 11, 2017, Sally made a timely payment of \$488.00 on the second loan. On December 1, 2017, Sally made a payment of \$1,628 towards the first title loan. FID00244. On December 1, 2017, Sally made an interest only payment of \$152.00 on the second loan. FID00245.

On that same day, Sally entered into a new loan and took out an additional \$1,827.60 in principal. FID00246-252. On February 13, 2018, Sally made a payment of \$2,100 - which was credited to interest only. FID00255. Sally entered into a new agreement for 7 additional monthly amortized payments in the amount of \$2,121.46 per month. FID 00246-254.

Sally went into default on January 2, 2018, the day after the payment was due. On or about February 13, 2018, TitleMax sent Sally an incomplete document titled “Notice of Opportunity to Enter into a Repayment Plan” requiring an initial payment of \$2,439.59 leaving out additional essential terms of the repayment plan. FID00253-254. The balance on the loan was \$12,197.97.

It is noteworthy that the Certificate of Mailing for the Notice is on February 13, 2018, two weeks after the January 31, 2018 date of default on the notice, and that the repayment plan offer was to expire on March 2, 2018. That is a violation of statute. According to NRS 604A.5083(1)(a) a repayment plan offer is required to be available to the customer for 30 days, yet, the Notice was not mailed until 13 days after TitleMax defaulted the customer, giving the customer only 19 days to consider the repayment plan.

Worse, on the same day that TitleMax mailed the Notice to its customer, February 13, 2018, Sally made an interest only payment of \$2,100.00 and refinanced the loan for another 7 months showing a balance due on the receipt of \$10,097.97. FID 00255. This proves that Sally could not have possibly received the required Notice of the Opportunity to Enter into a Repayment Plain until after she made an interest only payment on the defaulted loan, and entered into another 7 month contract which required 7 payments of \$2,121.45 for a total due of \$14,850.15. This way TitleMax received substantial additional interest from a

defaulting loan instead of timely offering a repayment plan, which would have saved its customer thousands of dollars in interest.

The Table below details the payments on Sally's loans:

| NAME | DATE | PERCENT INTEREST | FINANCE CHARGE Interest Charged | AMOUNT FINANCED Principal balance | TOTAL PAYMENTS FOR 7 MONTHS | PMT. DATE | PAYMENT AMOUNT |
|-----------------|------------------|------------------|------------------------------------|--------------------------------------|-----------------------------|-----------|----------------|
| Sally #1 | 09/29/17 | 133.71% | \$3,720.58 | \$7,671.00 | 7 x \$1627 =\$11,391.58 | | |
| #2 | 10/12/17 | 133.17% | 1115.74 | \$2,300.00 | 7 x \$487 =\$3,415.54 | | |
| #1 | 11/01/17 | | | \$6,970.33 | | 11/01/ | \$1,628.00 |
| #2 | 11/11/17 | | | \$2,064.76 | | 11/11/ | \$488.00 |
| #1 | 12/01/17 | | | \$2,064.04 | | 12/01/ | \$152.00 |
| #2 | 12/01/17 | | | \$6,108.36 | | 12/01/ | \$1,628.00 |
| #3 | 12/01/17 | 133.71% | \$4,850.21 | \$10,000.00 | 7 x \$2,121 =\$14,850.21 | | |
| Re-payment plan | Offered 02/12/18 | | | | | | |
| | 2/13/18 | | | \$10,097.97 | | 2/13/1 | \$2100.00 |
| #4 | 2/13/18 | 133.71% | \$4,850.21 | \$9,999.97 | 7 x \$2,121 =\$14,850.21 | | |

It is unknown how many more times Sally made an interest only payment and signed up for another 210-day loan, or when or if Sally's loan was ever repaid because the examination period ended before the loan was paid in full.

Fredrik – ambitious start to repay the loan, then extended the loan with additional principal and interest only payments.

It is very easy for TitleMax to move a borrower onto the debt treadmill. Fredrik took out a 210-day title loan on November 9, 2017 for \$821.00 in principal on a 2017 Nissan Versa. FID00178-187. The total amount to be repaid over 7

monthly amortized payments of \$196.07, at an interest rate of 155.88%, was \$1,372.38. At the end of seven months, the loan would be paid in full and Fredrick would get the title to his vehicle returned. FID00178-187.

Fredrik started out trying to repay the loan in an ambitious manner. He made the first payment of \$100.00 four days after entering into the original loan. As a result, the four days interest totaled \$16.18 and the balance went towards the principal. FID00185. A week later, on November 20, 2017, Fredrik made another \$100.00 payment where \$25.43 went towards interest and the balance went towards the principal. FID 00186.

On December 1, 2017, Fredrik made another payment of \$35.92, which was interest only. At the same time, Fredrik entered into a new loan agreement borrowing an additional \$1,800 in principal on the 2017 Nissan. FID 00187-194. This resulted in 7 additional monthly payments of \$553.57 on the new 210-day title loan. FID00187-194.

On December 13, 2017, two weeks after entering into the second 210-day agreement, Fredrik made an \$800.00 payment of which \$126.20 went towards accrued interest and the balance went towards the principal. FID00195. On December 28, 2017, Fredrik paid an additional \$140.00 with \$127.40 going towards accrued interest. FID00196. At the same time, Fredrik entered into another refinance of the 210-day agreement and borrowed another \$1000 in principal.

FID00197- 203. The new payment schedule shows 7 monthly amortized payments of \$669.03 and that the balance would be paid in full at the end of another 210-day period. FID 197-203.

On January 17, 2018, Fredrik made an interest only payment of \$200. FID00204. On January 20, 2018, Fredrik made another \$200.00 payment which included \$92.34 in interest and the rest went to the principal. FID00205. On January 26, 2018, Fredrik made another payment of \$300.00 of which \$73.50 went towards interest, and the rest went towards principal. FID 00206. On January 29, 2017, Fredrik made an interest only payment of \$56.42, and at the same time, Fredrik refinanced the principal balance of \$2,642.05 and borrowed another \$900.00 in principal. FID 00207-00214.

Thus, within 2-1/2 months of entering into the original title loan, Fredrik entered into 3 additional refinances- extending the original term of the loan to ten (10) months. By January 31, 2018, Fredrik owed \$5,573.50.

Because Fredrik had a late model car with more equity, TitleMax successfully sold him on borrowing additional principal. Over a period of less than 3 months, Fredrik rolled the original principal into three (3) additional contracts increasing the principal each time so that his monthly payments went from \$196.07 to \$796.22 per month, and the original term of the loan was extended by three (3) months. It is unknown how many more refinances Fredrik entered into because of

the examination period ended before the loan was paid in full.

| NAME | DATE | INTEREST PERCENT | FINANCE CHARGE Interest charged | AMOUNT FINANCED Principal Balance | TOTAL PAYMENT FOR 7 MONTHS | PAYMENT DATE | PAYMENT AMOUNT |
|-----------|----------|---------------------|--|--|-------------------------------------|-----------------|-------------------|
| "Fredrik" | 11/09/17 | 179.88% | \$551.88 | \$821.00 | 7 x \$196. =\$1372.38 | | |
| | 11/13/17 | | | \$737.18 | | 11/13/17 | \$100.00 |
| . | 11/20/17 | | . | \$737.18 | . | 11/20/17 | \$100.00 |
| . | 12/01/17 | | . | \$662.61 | . | 12/02/17 | \$35.92 |
| . | 12/01/17 | | . | \$662.61 | . | | |
| . #2 | 12/01/17 | 155.88% | \$1,412.38 | \$2,462.61 | 7 x 553.57 = \$3,874.89 | | |
| . | 12/13/17 | | | \$1,988.81 | | 12/13/17 | \$600.00 |
| . | 12/28/17 | | | \$1,976.21 | | 12/28/17 | \$140.00 |
| . #3 | 12/28/17 | 155.88% | \$1706.90 | \$2,976.21 | 7 x \$669.03 \$4,683.11 | | |
| . | 01/17/18 | . | . | \$3,030.42 | . | 01/17/18 | \$200.00 |
| . | 01/20/18 | . | . | \$2,866.55 | . | 01/20/18 | \$200.00 |
| . | 01/26/18 | . | . | \$2,642.05 | . | 01/26/18 | \$300.00 |
| . | 01/31/18 | . | . | \$2,642.05 | . | 01/31/18 | \$56.42 |
| . #4 | 01/31/18 | 155.88% | \$2,031.45 | \$3,542.05 | 7 x \$796.22 = \$5,573.50 | . | . |

It is obvious from the payment history that the loans do not comply with NRS 604A.5074(3) which restricts the duration of a title loan to 210 days. The original November 9, 2017 title loan was refinanced on December 1, 2017, which was before any payment was due. In fact, the payment that would have been due on

December 9, 2017 was paid by November 20, 2017 showing that Fredrik was interested in repaying the loan as soon as possible. The payment record shows that in the beginning Fredrik was overpaying to try to pay off the loan, three months later he was making lower payments and sometimes interest only. Yet, TitleMax somehow convinced Fredrik to borrow more money and more money and more money with each refinance. Each new 210-day title loan includes the unpaid principal from the original loan. During the time examined, Fredrik added an additional \$1,800 in principal, and started a fresh 7 month payment cycle three times. The result is that TitleMax collects additional amounts of interest over period of time longer than 210 days.

This is another prima facia “debt treadmill” that Chapter 604A was designed to prevent. Encouraging customers to borrow additional funds on each new extension significantly makes it increasingly more difficult for the customer to repay the loan. The increased monthly payments, which the consumer may not be able to maintain, creates the continued need to refinance to extend the loan until the borrower reaches the point that they either pay the loan in full or lose their vehicle.

To avoid looking at the real life effects of TitleMax’s unlimited “refinances” would exalt form over substance and disregard reality.

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The court erroneously found that a refinance is not an extension

TitleMax uses the term “refinance” to extend the title loan beyond 210 days, but the refinance is nothing more than an extension of the original loan. NRS 604A.065 defines an extension as “any extension or rollover of a loan beyond the date on which the loan is required to be paid in full under the *original terms* of the loan agreement, *regardless of the name given to the extension or rollover.*” (emphasis added). The only term that is excluded from the definition of the term “extension” is a “grace period.” NRS 604A.065(2).

In drafting Chapter 604A, the Legislature specifically selected the activities that are and are not considered an extension. Pursuant to NRS 604A.220, if there is a conflict between the provisions of Chapter 604A and any other general law regulating loans and similar transactions, the provisions of Chapter 604A control. NRS 604A.220(2).

Here the Nevada Legislature expressly excluded the term grace period from the definition of an extension. NRS 604A.065. While excluding the term “grace period,” the legislature did not exclude the term “refinance” from the term extension. Thus, because the term extension applies to everything but a true grace

period, regardless of the name given to the extension or rollover, a refinance is an extension of a loan.⁹

By establishing a new seven month term with a due date beyond the original due date, the “refinances” effectively rollover or defer the principal portion of the loan past the original due date and therefore constitute extensions. *Id.*

TitleMax pushes its customers into an illegal refinance instead of a repayment plan which is required pursuant to statute.

Pursuant to Chapter 604A, a default occurs when a borrower fails to make a scheduled payment on or before the due date. The default occurs on the day immediately following the date of the customer’s failure to pay. NRS 604A.045. In the event of a default, NRS 604A.5085 clearly addresses the limitations on what a lender can collect after default. Chapter 604A expressly addresses a default on an extension, which solely applies to a 30-day title loan which allows extensions. NRS 604A.5074(1)&(2). The statute also addresses default on a repayment plan, which is the sole remedy for a default on a 210-day title loan. The statute does not

⁹ TitleMax argues that because NRS 604A.574 uses the both the terms extend and refinance in reference to limitations on direct deposit loans (and high interest loans at NRS 604A.584), that a refinance cannot be included in the definition of an extension. Pl. Opp. p. 23:16-22. TitleMax is incorrect. NRS 604A.574 (and NRS 604A.584) also include the term “rollover” which is contained in the definition of an extension. NRS 604A.065 (“Extension means any extension or *rollover* of a loan...”). Thus, the legislature did enumerate another term that is included in the definition of an extension.

address default of a refinance, because Chapter 604A does not provide for a title loan to be refinanced at any time.

Chapter 604A requires that “before a licensee who operates a title loan service attempts to collect the outstanding balance on a title loan in default by commencing any civil action or process of alternative dispute resolution or repossessing a vehicle, the licensee *shall* offer the customer an opportunity to enter into a repayment plan.” NRS 604A.5083(1) (emphasis added). Offering a repayment plan is not an option, it is mandatory.

Tellingly, a repayment plan is the only legal remedy permitted (prior to collection of any of the outstanding balance, whether through court action, ADR or repossession), when a person defaults on a title loan. The lender is protected because if a person does not timely enter into a repayment plan, the lender may then use other remedies such as repossession

A repayment plan does not provide the additional interest that TitleMax receives when it extends the original term of the title loan through a refinance. Thus, in order to collect additional interest, TitleMax encourages its customers, such as Sally (discussed above) and Kelly (discussed below) to refinance for another 210-day term. This is a violation of Chapter 604A.

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Kelly-refinanced and added \$2,500 additional principal on a defaulted loan instead of entering into a repayment plan

Kelly entered into a 210-day title loan on a 2015 Hyundai on July 7, 2017. Kelly borrowed \$4,500 in principal at an interest rate of 170.21% (Loan #1). Kelly was to make 7 ratably amortized payments of \$1049.04 so that at the end of 210 days the loan would be paid in full and Kelly would get the title to her vehicle returned. FID 436-444.

On July 27, 2017 Kelly took out another title loan for \$1000 (Loan #2). At 170.21% interest. Kelly was to make 7 monthly amortized payments of \$244.78. FID 00449-453.

On August 21, 2017, Kelly made a payment towards loan #1 of \$1050.04 which included interest in the amount of \$881.36 and \$168.68 was applied to principal. FID00445.

On September 18, 2017, Kelly made a payment of \$244.78 towards loan #2 which included interest in the amount of \$210.55 and \$34.23 was applied to principal. FID00442.

On September 25, 2017 Kelly made a payment towards loan #1 of \$1048.04 which included interest in the amount of \$706.94 and \$341.10 applied to principal. FID 00446.

On September 25, 2017, Kelly made a payment of \$244.78 towards loan #2 which included interest in the amount of \$80.53 and \$164.25 was applied to principal. FID00443.

On October 27, 2017 Kelly made a payment towards loan #1 of \$595.43 which was applied to interest. FID 00447.

On October 27, 2017, Kelly made a payment of \$127.08 towards loan #2 which was all applied to interest. FID00444.

Having paid the interest due, Kelly entered into a new 210-day title loan agreement which consolidated loan #1 and loan #2 and took out another \$1,000 in principal. The interest rate was 170.21% and there were 7 amortized monthly payments of \$1,361.83. FID00454-460. Kelly did not make her November 27, 2017 payment and was therefore in default. NRS 604A.045(2)(“A default occurs on the day immediately following the date of the customer’s failure to perform).

On December 4, 2017, eight days later, Kelly made an interest only payment of \$1,035.19. FID00441. Instead of offering Kelly a repayment plan as required under NRS 604A.5055, TitleMax offered, and Kelly entered into, a new 210-day title loan. Despite being in default and making only partial payments of interest only since October, TitleMax signed Kelley into a new 210-day title loan and unconscionably added another \$2,500 in principal. The new payment schedule included 7 amortized payments of \$1,944.63. FID 00461-467.

Though no payments were made on the December 4, 2017 loan, on February 15, 2018 TitleMax sent Kelly a notice of an opportunity to enter into a repayment plan with an incomplete payment schedule. FID00476-477.

The question of why TitleMax would provide a defaulting borrower a “refinanced” 210-day title loan instead of the repayment plan as required by law, is not difficult to understand. As demonstrated above, offering to extend the term of the title loan and collecting additional interest is more profitable than allowing the customer to enter into a repayment plan. A repayment plan generally has a shorter term, and the interest that can be collected is limited. NRS 604A.5083. Whereas, according to TitleMax, a refinance can be done over and over again.

In the simplest terms, under a repayment plan, TitleMax is limited to collecting the unpaid principal and accrued interest. NRS 604A.5083(2)(f). By using the unlawful refinance product, TitleMax not only collects interest accrued before the default, it also continues to charge interest on the outstanding principal. Thus, in a refinance, TitleMax is collecting an amount that exceeds the unpaid principal and interest accrued as of the date of default.

It’s obvious that TitleMax’s refinance program violates NRS 604A.5074(3) by extending the due date of the original loan past 210 days and taking unamortized interest only payments.

To determine a customer's ability to repay a loan, the fair market value of the vehicle under NRS 604A.5076(1) must include interest and fees for purposes of determining how much money a title lender can lend a customer and the customers's ability to repay the loan.

The court erroneously failed to apply the findings in *Check City* when it erroneously determined that the fair market value should not include the interest and fees.

In Nevada, 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). With regard to this limitation, the amount of the loan is the amount of the principal, interest and fees. TitleMax argues that only the stated principal should be considered – that the interest and fees should not be considered as components of the loan. FID 00013: 16-20. TitleMax's argument leads to an absurd result. The interest rate, which hovers around 200%, is a very large component of the entire loan and must be considered when determining whether the fair market value of the vehicle is high enough to cover the total amount of the loan which includes interest and fees.

Title lenders also must determine that the customer has the ability to repay the loan pursuant to the standards set forth in NRS 604A.5065(2). The standards include factors such as the income, employment status, credit history, the amount due under the original term of the title loan, the *monthly payment*, the potential repayment plan if the customer defaults and other relevant factors such as bank statements and the written representations of the customer. NRS 604A.5065(2) (emphasis added). The monthly installment payments include the principal and

interest. NRS 604A.5074(3)(b). Thus, all components must be considered and the licensee must consider more than the principal when determining the customer's ability to repay and the amount of the loan.

This Court looked at a similar issue with respect to deferred deposit loans. *Department of Business and Industry, Financial Institutions Division v. Check City Partnership*, 130 Nev. 909, 337 P.3d 755, (2014). In *Check City*, this Court stated that the term deferred deposit loan “does not limit [the determination of the ability to repay] to just the amount borrowed as it clearly contemplates that a deferred deposit loan is a transaction based on a loan agreement.” *Check City*, 130 Nev. at 912. The Court further developed its reasoning by stating the loan agreement is made up of various terms including both the amount borrowed and any fees charged, therefore deferred deposit loans are not limited to just the stated principal. *Check City*, 130 Nev. at 912. In *Check City*, the Court determined that the term “deferred deposit loan” included the principal, interest and fees. *Check City*, 130 Nev. at 913. As a result, the Court held that the 25% cap on the amount of the loan applies to the principal, interest and fees.

Likewise, the statute defining a “title loan” does not limit the term loan to just the stated principal. A title loan includes a loan agreement, which includes interest of more than 35%. NRS 604A.105; NRS 604A.5067. Thus, the definition of a 210-day title loan includes the principal and interest, and because it costs \$21

to add the lender to the vehicle title, the term loan also incorporates the title fee¹⁰ along with any repayment plan relating to the 210-day title loan. NRS 604A.080.

A repayment plan includes the principal and any interest and fees owed at the time of the default. NRS 604A.5085(1). Since the definition of a “loan” includes a repayment plan, and a repayment plan includes principal, interest and fees, it would be nonsensical for the definition of “loan” to exclude the interest and fees associated with the title loan transaction. NRS 604A.080.

Moreover, just as the deferred deposit statutes refer to a “transaction,” (NRS 604A.5012(1), NRS 604A.502(4), NRS 604A.5021(7), and 604A.5027(2)(a)), the title loan statute counterparts in Chapter 604A also refer to a title loan agreement as a transaction. *See e.g.* NRS 604A.5067(1) (referring to the loan agreement as a transaction); NRS 604A.5071(4), 604A.5072(7), and 604A.5083(2) (referring to an original loan in default as a “transaction.”). In addition NRS 604A.590 requires a licensee who operates a title loan service to fully disclose all the “terms of the *transaction*,” and also requires a licensee to “prominently disclose in the loan agreement all fees charged for providing title loan services to a customer before he or she enters into the *transaction process*.” NRS 604A.590(2) (emphasis added). The transaction referred to in NRS 604A.590 includes the principal, interest and fees. Thus, similar to deferred deposit and high-

¹⁰ Every original loan agreement adds \$21 for the title fee.

interest loans, a title loan is a transaction that includes principal, interest and fees.

Check City made it clear that the stated principal is just one component of the transaction, which includes the interest and the fees. *See Check City*, 130 Nev. at 912. Similarly, with a title loan, the stated principal is also just one component of the amount to be paid - which includes interest and the title fee. *See Check City*, 130 Nev. at 912. Indeed, a title lender does not return the title when an amount equal to the principal is paid – the title is held until the principal, interest and title fee are paid in full.

Common sense dictates that the total of the payments to be paid cannot exceed the fair market value of the vehicle. Pursuant to NRS 604A.5065(2), lenders are required to determine the customers' ability to repay the loan to avoid repossession of the customer's vehicle. If a vehicle is repossessed, because the customer could not make the loan payments, policy dictates that the vehicle should have enough value to cover the remaining loan obligation.

Any other interpretation would hinder the remedial purpose of Chapter 604A and lead to an absurd result.

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CONCLUSION

TitleMax's refinance program perpetuates the debt treadmill. The program includes interest only payments on a static principal which can extend a 210-day title loan for *years*. See e.g., *Dollar Loan*, 412 P.3d at 34 (additional loans perpetuate the debt treadmill).

The Legislature enacted Chapter 604A to keep customers off the debt treadmill. *Dollar Loan*, 412 P.3d at 33. Arguably, any products that exceed any of the limitations of Chapter 604A enable customers to experience the debt treadmill in some fashion. TitleMax customers who refinance are subject to being charged more than 210 days of ratably and fully amortized interest.

To meet the remedial intent of the statute, and keep borrowers off the debt treadmill, this Court must continue to bar any extension of title loans beyond the expressed 210 days. See *Dollar Loan*, 412 P.3d at 35.

Based on the foregoing, the FID respectfully requests that this Honorable Court reverse the decision of the District Court and find that TitleMax's extension of a 210-day title loan through its refinance program violates Chapter 604A.

In addition, the FID respectfully requests that this Honorable Court reverse the District Court's findings that the fair market value is limited to the principal loaned,

and instead hold that an harmonious reading of NRS 604A.5076(1) and NRS 604A.5067(2)(c) requires the fair market value of the vehicle to be greater than the total of the payments, including the principal, any interest charges and fees.

Respectfully submitted this 18th day of December, 2019.

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CERTIFICATE OF COMPLIANCE

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

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 11,123 words.

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

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

DATED this 18th day of December, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on December 18, 2019.

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