Case No. 79224

In the Supreme Court of Nevada

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

Appellant,

vs.

TITLEMAX OF NEVADA, INC., a Delaware corporation,

Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable JERRY A. WIESE II, District Judge
District Court Case No. A-18-786784-C

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. TitleMax of Nevada, Inc. is a Nevada corporation. It is solely owned by its parent, privately held TMX Finance LLC. No publicly traded company owns more than 10% of the stock in any of these entities. No publicly traded company has an interest in this appeal.

2. Daniel F. Polsenberg, Joel D. Henriod, and Dale Kotchka-Alanes at Lewis Roca Rothgerber Christie, LLP have appeared for TitleMax in the district court and in this Court.

Dated this 20th day of May, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: *\/s/Dale Kotchka-Alanes*
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Routing Statement

TitleMax agrees that this Court should retain the appeal as a case addressing a question of statewide public importance and first impression. NRAP 17(a)(11)–(12).

Issues Presented

1. Whether refinancing title loans violates NRS 604A.5074 (setting forth requirements for the "original term of a title loan") or NRS 604A.065 (defining "extension") even though neither of those statutes prohibit refinancing.

2. Whether "title loan" refers only to the amount actually loaned (i.e. the principal) as opposed to including interest and fees for purposes of NRS 604A.5076(1)'s prohibition on making "a title loan that exceeds the fair market value of the vehicle."

STATEMENT OF THE CASE

This is an appeal from an order granting TitleMax summary judgment in an action for declaratory relief against the State of Nevada, Department of Business and Industry, Financial Institutions Division ("FID"). The parties cross-moved for summary judgment, and the district court ruled in favor of TitleMax, concluding that

(1) TitleMax's practice of refinancing does not violate NRS 604A.5074 or NRS 604A.065, and

(2) for purposes of comparing a "title loan" with the "fair market value of the vehicle" under NRS 604A.5076(1), "title loan" refers only to principal, and does not include interest, fees, or other expenses or recoverable amounts. (A.App. 678.)

Statement of Facts and Proceedings

The FID does not really include a statement of the facts. That section is a reiteration of their legal argument.

Nevertheless, the actual background facts are simple. The underlying declaratory judgment action arose out of a disagreement between the parties about whether "refinancing" is permitted by NRS Chapter 604A for automobile title loans. That Chapter expressly forbids refinancing beyond 90 days only for deferred deposit and high interest loans, not title loans. The dispute arose when the FID examined TitleMax in 2018. The agency asserted that TitleMax's refinances violate NRS 604A.065 (defining extensions) and NRS 604A.5074(3)(c) (barring extensions of 210-day title loans). (A.App. 304, ¶ 82; A.App. 352.) TitleMax responded, explaining that refinances are not extensions because refinances eliminate "the 'original terms of the loan agreement' as discussed in 604A.065." (A.App. 360.)

Not until the FID's reply did it articulate its second issue, the novel contention that NRS 604A.5076(1), which prohibits "a title loan that exceeds the fair market value of the vehicle securing the title loan," includes not just principal in the definition of loan, but also all future unaccrued interest and fees. (A.App. 307, ¶ 104; 411.) TitleMax had been operating under that statute for years, and never once had the FID articulated that interpretation or issued any official guidance interpreting the statute in that manner. (A.App. 307, ¶¶ 107-108.)

TitleMax filed a complaint for declaratory relief. (A.App. 7-15.) After the parties filed cross-motions for summary judgment, the district court granted summary judgement for TitleMax on both issues. (A.App. 678.) The district court noted 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.'" (A.App. 670.)

The district court also concluded that the limitation of the loan to the "fair market value" of the vehicle is not intended to include amounts for interest, bad check fees, costs, and attorney's fees, reasoning that "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." (A.App. 677.)

This appeal followed.

Summary of the Argument

While the Nevada Legislature in NRS Chapter 604A expressly restricted "refinancing" for deferred-deposit and high-interest loans, it chose not to limit refinancing for title loans, even rejecting bills that would have prohibited title-loan refinancing. The lack of any prohibition on title loan refinancing leads to only one reasonable conclusion: refinancing title loans is not forbidden.

While a "title loan" cannot exceed the fair market value of the vehicle securing the title loan under NRS 604A.5076(1), "title loan" refers to the loan itself, i.e. the principal. Interpreting "title loan" to include all unaccrued interest and fees is contrary to the statutory language and would make it impossible to comply with the statute, as the future amount of interest and fees is unknown when the loan is made.

Standard of Review

Whether title loan refinancing is permitted under NRS Chapter 604A is a purely legal determination upon which the Court owes no deference to the FID. Questions of statutory construction are "purely legal issue[s] . . . reviewed without any deference whatsoever to the conclusions of the agency." *Manke Truck Lines, Inc. v. Pub. Serv. Comm'n of*

Nev., 109 Nev. 1034, 1036–37, 862 P.2d 1201, 1203 (1993); *see also Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013).

This Court should not defer to an agency's interpretation unless the agency has express authority to adopt rules implementing statutes, and even then, it is only the administrative construction *articulated in the agency's rules* that will be given deference and only if it "is within the language of [the] statute." *See Oliver v. Spitz*, 76 Nev. 5, 10, 348 P.2d 158, 161 (1960) (determining whether rules promulgated by the state department of personnel had the force of law); *Collins Disc. Liquors & Vending v. State*, 106 Nev. 766, 768, 802 P.2d 4, 5 (1990) (the rule that "deference should be given to the agency's interpretation when it is within the language of the statute" is "premised on the fact that the agency, and not the judicial system, is given the job of creating *regulations* that serve to carry out legislative policy").[1]

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[1] As federal courts have put it, "[n]ot all agency statutory interpretations are entitled to *Chevron* deference. Rather, *Chevron* deference is appropriate where the agency can demonstrate that it has the general power to make rules carrying the force of law and that the challenged action was taken in the exercise of that authority." *Bahr v. U.S. Envtl. Prot. Agency*, 836 F.3d 1218, 1230 (9th Cir. 2016) (quotations and citations omitted).

<u>ARGUMENT</u>

PART ONE: REFINANCING

I.

THE PLAIN LANGUAGE OF NRS 604A <u>DOES NOT PROHIBIT TITLE LOAN REFINANCING</u>

In interpreting a statute, "[w]e begin with the statute's text. 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." *Cabrera v. State*, 135 Nev. Adv. Op. 65, 454 P.3d 722, 724 (2019) (citation and quotations omitted).

Here, the text of NRS Chapter 604A is clear on its face: it does not prohibit or restrict title loan refinancing.

A. The Legislature Expressly Placed Limits on Refinancing for Other Types <u>of Loans, but Not Title Loans</u>

According to the FID, what NRS Chapter 604A really means is that a title lender cannot extend *or refinance* a title loan for a period that exceeds 210 days after the date of origination of the loan.

The problem with the FID's argument is that the Nevada Legislature expressly put such time limitations on refinancing high-interest and deferred deposit loans – but did *not* do so for title loans. A side-by-side comparison makes the difference stark:

Title Loans	High-Interest Loans	Deferred Deposit Loans
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 . . . . 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.	**NRS 604A.5037 Limitations on original term.** 1. Except as otherwise provided in this chapter, the original term of a high-interest loan must not exceed 35 days. 2. The original term of a high-interest loan may be up to 90 days if: (a) The loan provides for payments in installments; (b) The payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan; (c) The loan is not subject to any extension; (d) The loan does not require a balloon payment of any kind; and (e) The loan is not a deferred deposit loan. 3. Notwithstanding the provisions of NRS 604A.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**.	**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**.

"We must presume that the variation in language indicates a variation in meaning." *Williams v. State Dep't of Corr.*, 133 Nev. 594, 598, 402 P.3d 1260, 1264 (2017) (rejecting interpretation that would treat statutory provisions with different wording equally even though proffered interpretation "has some appeal"); *see also, e.g.*, *Loughrin v. United States*, 573 U.S. 351, 358 (2014) ("[W]hen [the Legislature] includes particular language in one section of a statute but omits it in another . . . this Court presumes that [the Legislature] intended a difference in meaning.") (quotations omitted; alteration incorporated).

The FID contends that the Legislature meant to prohibit title loan refinancing, yet the Legislature did not use the word "refinancing" in the statutory provisions imposing limitations on title loans. "[O]missions of subject matters from statutory provisions are presumed to have been intentional." *Dep't of Taxation v. DaimlerChrysler Servs. N. Am., LLC*, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005); *Allen v. United Servs. Auto. Ass'n*, 907 F.3d 1230, 1237 (10th Cir. 2018) (refusing to "infer from the statute's silence a prohibition," as "we are not at liberty to supply the missing statutory language that a party believes should have been included in a statute, but must respect the legislature's choice of language") (quotations omitted; alteration incorporated); *Pit River Tribe v. Bureau of Land Mgmt.*, 939 F.3d 962, 970 (9th Cir. 2019) ("[i]t is not our practice to read words into statutory provisions").

A comparison among the statutory provisions governing high-interest, deferred deposit, and title loans demonstrates that the Legislature did not inadvertently fail to prohibit title loan refinancing. But even where "a statute's words might be inadvertent," this Court will apply "their literal meaning … 'The legislature must be intended to mean what they have expressed in plain terms.'" *State v. Webster*, 88 Nev. 690, 696, 504 P.2d 1316, 1320 (1972) (quoting *State v. McNamara*, 3 Nev. 70, 74 (1867)); *see also Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) ("we will not presume with petitioners that any result consistent with their account of the statute's overarching goal must be the law but will presume more modestly instead 'that [the] legislature says ... what it means and means ... what it says'" (quoting *Dodd v. United States*, 545 U.S. 353, 357 (2005))).

The FID also argues that the Nevada Legislature did not need to prohibit refinancing title loans because NRS 604A.5074(3) provides that 210-day title loans cannot be "subject to any extension" and this implicitly forbids refinancing. However, refinancing is not an extension of the original loan –it is an entirely new loan that supplants the original obligation. (*See infra* Part III.) Moreover, NRS 605A.5037(2) also provides that 90-day high-interest loans may not be "subject to any extension," yet the Nevada Legislature went on to provide that any "refinancing or consolidation of an outstanding high-interest loan" cannot exceed "90 days after the date of origination of the loan." NRS 605A.5037(3).

Thus, for high-interest loans, the Nevada Legislature prohibited both extensions *and* refinancing beyond 90 days. For 210-day title loans, the Nevada Legislature prohibited only extensions. The different language used indicates a different result. *Russello v. U.S.*, 464 U.S. 16, 23 (1983) ("We refrain from concluding here that the differing language in the two subsections has the same meaning in each."); *Averett v. United States Dep't of Health & Human Servs.*, 943 F.3d 313, 318 (6th Cir. 2019) ("Omitting a phrase from one statute that Congress has used in another statute with a similar purpose 'virtually commands the inference' that the two have different meanings.") (citation omitted).

If the Legislature wanted to prohibit or limit title loan refinancing, it would have done so expressly.

B. What is Not Prohibited is Allowed

The FID flips the law's normal presumption on its head when it argues that because refinancing title loans is not expressly allowed, it must be prohibited. (AOB at 10-11, 13, 40.) That is contrary to the Anglo-American system of law – and to the specific language in NRS Chapter 604A, which is full of restrictions, limitations, and "shall nots" (not a detailed delineation of everything lenders are *allowed* to do).

"[J]ust because something is not expressly allowed does not mean it is forbidden." *People ex rel. Becerra v. Superior Court*, 240 Cal. Rptr. 3d 250, 265 (Cal. Ct. App. 2018) ("What is absent is any general rule *against* [practice at issue]"). Indeed, "one of the cardinal principles of our law is *nullum crimen sine lege, nulla poena sine lege* [Literally, 'no crime without a law, no punishment without a law']." *Nunley v. State*, 26 P.3d 1113, 1116 & n.5 (Alaska Ct. App. 2001). The FID cannot impose penalties on licensees for violating statutory prohibitions that do not exist.

1. NRS 604A Delineates Restrictions, Not Allowances

The FID is unfaithful to the statutory text when it argues that NRS 604A "expressly allows limited refinancing with respect to high interest loans and deferred deposit loans," but not title loans. (AOB at 11.) NRS 604A does not state "refinancing is allowed" for high-interest and deferred deposit loans. Rather, in line with the other restrictions, limitations, and prohibitions in the chapter, NRS 604A limits the length of any refinancing period for high-interest and deferred deposit loans and assumes that the practice is otherwise allowed. *See* NRS 604A.5029(1) ("*if* a customer agrees in writing to" refinance "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"); NRS 604A.5057(1); NRS 604A.574; NRS 604A.584; NRS 604A.501(2); NRS 604A.5037(3).

The FID points to the principle of "expressio unius est exclusio alterius"[2] – the expression of one thing is the exclusion of another – but misapplies it. The Legislature did not *allow* refinancing for deferred deposit and high-interest loans, and thereby impliedly forbid title loan refinancing. Rather, the Legislature *restricted* high-interest and deferred deposit loan refinancing, but did not do so for title loans. This was intentional. *See Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. 362, 369, 373 P.3d 66, 71 (2016) ("The maxim *expressio unius est exclusio alterius* ... instructs that, where a statute designates a form of conduct, the manner of its performance and operation, and the persons and things to which it refers, courts should infer that all omissions were intentional exclusions.") (quotations omitted); *Sonia F. v. Eighth Judicial Dist.*

[2] (AOB at 10.)

Court, 125 Nev. 495, 500, 215 P.3d 705, 708 & n.2 (2009) (concluding that through the use of terms such as "accused" and "prosecution," "the Legislature specifically phrased" Nevada's rape shield law "to apply to criminal prosecutions to the exclusion of civil proceedings" despite recognizing that "the policy underlying the criminal rape shield law" might have "similar import in civil cases").

The plain language of NRS Chapter 604A must be respected – the Legislature restricted refinancing for high interest and deferred deposit loans, but did not do so for title loans.

2. The Law Must Put Lenders on Notice of What is Prohibited

The absence of any prohibition on title loan refinancing is more than just semantics. "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Due process requires "that regulated parties should know what is required of them so they may act accordingly." *Id.*; *see also Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) ("[B]ecause we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly."); *Rabe v. Washington*, 405 U.S. 313, 315 (1972) ("it is necessary, at a minimum, that a statute give fair notice that certain conduct is proscribed").

TitleMax and other regulated lenders must be able to read the laws on the books and structure their business practices accordingly. With no statutory provision prohibiting or limiting title loan refinancing, there is only one logical conclusion: refinancing title loans is not prohibited.

C. The FID's Purported Policy Concerns Cannot Overrule Statutory Language

The FID parrots again and again that the "consumer protection spirit and policy behind Chapter 604A" is to stop the alleged "debt treadmill." (*E.g*. AOB at 11, 19, 21, 25-26, 29-30, 33, 37, 48.) However, the FID ignores (1) that there are good policy reasons to allow title loan refinancing, and (2) that regardless of debates over public policy, the purpose of a statute cannot supersede the actual language the Legislature used. The plain language of NRS 604A does not prohibit or limit title loan refinancing, and this Court cannot read absent words into the statute just because the FID thinks that would be good policy.

1. Title Loans Have a Built-In End to the Alleged "Debt Treadmill"

As compared to deferred deposit and high-interest loans, there are good reasons to differentiate title loans and permit title loan refinancing. First, absent fraud or waste, title lenders cannot sue to collect on a loan. NRS 604A.5078(2). This Court held that NRS 604A.480(2)(f),[3] a statutory provision applicable only to deferred deposit and high-interest loans, "bars a licensee from bringing any type of enforcement action on a refinancing loan." *State Dep't of Bus. & Indus., Fin. Institutions Div. v. Dollar Loan Ctr., LLC*, 134 Nev. 112, 112, 412 P.3d 30, 32 (2018). This was important because the "bar against future civil action on loans made under subsection 2(f) puts an end to the debt treadmill." *Id.*, 134 Nev. at 116, 412 P.3d at 34–35.

In title loans, there is already an end to any alleged debt treadmill – there is a bar against future civil action on title loans; repossession is generally the lender's only remedy. NRS 604A.5078(2). Title lenders'

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[3] Now NRS 604A.5029(2)(f) and NRS 604A.5057(2)(f).

own self-interest incentivizes them to loan no more than a customer can repay – and no more than the vehicle is worth – because title lenders will not be able to recover more than this. *Cf.* Nev. Op. Att'y Gen. No. 06 (Oct. 30, 2012) ("Removing the ability to pursue civil action and alternative dispute resolution methods is reasonably related to the legitimate purpose of ensuring that licensees make loans in amounts and under terms the customer can repay.").

Moreover, if customers cannot refinance, they will have an incentive to borrow the maximum amount possible at the time of the original loan, rather than taking out a smaller loan and borrowing more principal later *if* needed. (4 Pamp. 781.)[4] Title loan refinancing gives customers the flexibility they desire without sacrificing consumer protection. Any title loan already has built-in protections:

- It cannot exceed the customer's ability to repay (NRS 604A.5076(3); NRS 604A.5065);
- It cannot exceed the fair market value of the vehicle (NRS 604A.5076(1)); and

[4] Citations to "Pamp." refer to the volume and page number of Respondent's 5-volume NRAP 28(f) Pamphlet with legislative history materials.

- A lender's remedy is limited to repossession –there can be no civil action against the borrower personally (NRS 604A.5078(2)).[5]

Given these built-in protections, title loan refinancing will not lead to a never-ending debt treadmill, as the FID claims.

2. *The FID's Purported Public Policy Cannot Overrule the Actual Language Used by the Legislature*

Even if there were good policy reasons to prohibit title loan refinancing, "this Court has no license to disregard clear language based on an intuition that [the Legislature] must have intended something broader." *Cyan, Inc. v. Beaver Cty. Employees Ret. Fund*, 138 S. Ct. 1061, 1078 (2018) (quotations omitted); *see also, e.g.*, *Harris v. Harris*, 935 F.3d 670, 674 (9th Cir. 2019) ("But even if the policy concerns are warranted, we must still strictly construe the plain language of the statute."); *Fourstar v. Garden City Grp., Inc.*, 875 F.3d 1147, 1152 (D.C. Cir. 2017) ("It is not a judge's job to add to or otherwise re-mold statutory

[5] One of the primary purposes of enacting NRS Chapter 604A was to curb excessive litigation by payday lenders resulting in thousands of wage garnishments each month, having to wait hours in justice court for a payday loan lawyer to have default after default rubberstamped, and customers ending up with judgments against them up to six times the amount of the original loan. (1 Pamp. 42, 49, 51, 240, 250.) None of these potential evils are even possible with non-recourse title loans.

text to try to meet a statute's perceived policy objectives. Instead, we must apply the statute as written."). This is because "[c]ourts exist solely to declare and enforce the law, and are without authority as to matters of mere governmental policy." *N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs*, 129 Nev. 682, 691, 310 P.3d 583, 590 (2013) (quotations omitted).

The Legislature contemplated placing limits on refinancing when enacting NRS 604A, yet imposed no such limitations on title loans. "This court has declared that its business does not include filling in alleged legislative omissions based on conjecture as to what the legislature would or should have done." *Diamond v. Swick*, 117 Nev. 671, 677, 28 P.3d 1087, 1090 (2001) (quotations omitted; alteration incorporated). Thus, where terms were "explicitly referred to in separate sections of the same statutory chapter," this Court reasoned those notions "were apparently within the Legislature's ready contemplation when [statute] was authored, discussed and enacted. The omission of th[ose] terms … was intentional on the part of the legislators, and we will not substitute our judgment for theirs." *Id.*

Here, too, refinancing was within the Legislature's ready contemplation when NRS 604A was enacted, and this Court should not substitute the FID's opinion of what the Legislature must have meant for what the Legislature actually said. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1358–59 (2018) ("The Director may (today) think his approach makes for better policy, but policy considerations cannot create an ambiguity when the words on the page are clear… Our duty is to give effect to the text that 535 *actual* legislators (plus one President) enacted into law."); *Averett*, 943 F.3d at 319 ("[W]here a statute's language carries a plain meaning, the duty of an administrative agency is to follow its commands as written, not to supplant those commands with others it may prefer.") (quotations omitted).

II.

THE NEVADA LEGISLATURE PURPOSEFULLY CHOSE NOT TO RESTRICT REFINANCING TITLE LOANS

The plain language of NRS 604A.5074 and NRS 604A.065 is unambiguous – neither statute limits or prohibits title loan refinancing. But even if this Court were to consider the statutes ambiguous and turn to legislative history for guidance, that history only further confirms that the Legislature chose not to restrict title loan refinancing.

A. In 2005, the Legislature Deleted Proposed Language that Would Have Restricted Title Loan Refinancing

Before enacting NRS 604A, the Legislature considered a bill provision restricting title loan refinancing to a defined period measured from the date of default on the original loan:

> **Sec. 85.** ***If a customer agrees to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding title loan by using the proceeds of a new loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond 8 weeks after the date of default on the original loan.***

(AB 384, as introduced (link at 1 Pamp. 1).) But that provision was deleted and never enacted. As Assemblywoman Barbara Buckley explained, "With auto title loans, some of the provisions in the bill recognize the differences in this industry so the terms are different." (1 Pamp. 242.)

The mark-ups to the bill emphasized that the restrictions on using a new loan to pay off an outstanding loan now applied only to deferred deposit and high-interest loans, not title loans:

Sec. 43. *If a customer agrees to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new deferred deposit or short-term loan to pay the balance of the outstanding loan, the licensee shall not establish or extend such a period beyond ~~8 weeks~~ 2 months after the expiration of the initial loan period. This section does not apply to a licensee who lends according to all of the following criteria:*

1. The licensee makes a loan with an annual percentage rate of less than 200 percent, to be repaid on a monthly basis in not less than 5 months, and interest does not continue to accrue at the contract rate after the date of maturity if not paid in full;

3. A credit check is performed with a major consumer reporting agency prior to initiating the loan;

4. Loan experience information is reported to a major consumer reporting agency;

5. The customer is provided a 5-day right to rescind a loan without charge;

6. The licensee participates in good faith with a counseling agency that is accredited by the Council on Accreditation for Services for Families and Children, Inc.;

7. The licensee is a member of the National Foundation for Credit Counseling; and

8. The licensee does not initiate litigation or an alternative dispute resolution process on a defaulted loan, extension, or repayment plan.

Revises Section 43 to limit its application to deferred deposit or short-term loans, specify a period of 2 months (instead of 8 weeks), and provide an exemption for certain licensees.

(2 Pamp. 317.)

Restrictions on making multiple loans before the initial loan was paid off were also limited to just deferred deposit and high-interest loans:

Sec. 34. *A licensee shall not:*

1. Make a deferred deposit or short term loan in which the terms of repayment require a payment or payments that ~~exceeds~~ exceed 25 percent of the expected gross monthly income of the customer when the loan is made. ~~during the term of the loan unless justified by particular circumstances.~~ A licensee is not in violation of the provisions of this subsection if the customer presents evidence of his gross monthly income to the licensee and represents to the licensee in writing that the repayment terms do ~~loan does~~ not exceed 25 percent of the expected gross monthly income of the customer ~~during the term of the loan~~.

2. Make more than one deferred deposit or short term loan to the same customer at one time or before any outstanding balance is paid in full on an existing loan made by that licensee to the customer unless:

(a) The customer is seeking multiple loans in which repayment terms together ~~that~~ do not exceed the limit set forth in subsection 1;

(b) The licensee charges the same rate or a lower annual percentage rate of interest for any additional loans as he charged for the initial loan;

(c) Except for the interest charged pursuant to paragraph (b), the licensee does not impose any other charge or fee to initiate any additional loans; and

(d) If the additional loans are deferred deposit loans and the customer provides one or more additional checks that are not paid upon presentment, the licensee does not charge any fees to the customer pursuant to section 45 of this act, except for the fees allowed pursuant to that section for the first check that is not paid upon presentment.

Revises Section 34 to limit its application to deferred deposit or short term loans (not title loans), and to provide that the monthly payment, rather than the loan amount, cannot exceed 25 percent of the borrower's expected gross monthly income when the loan is taken out.

(2 Pamp. 310.)

In short, the Nevada Legislature chose *not* to restrict title loan refinancing or taking out multiple title loans.

In arguing that title loan refinancing must be limited to a defined period of 210 days after the original loan origination, the FID attempts to enforce a statutory model the Legislature specifically discarded. "Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 442–43 (1987) (internal quotation marks and citation omitted). Thus, "[w]here [the Legislature] includes [certain] language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the [omitted text] was not intended." *Russello*, 464 U.S. at 23-24.

The Nevada Legislature's deletion of a proposed time limit on title loan refinancing demonstrates the Legislature's intent *not* to restrict title loan refinancing. "As a general canon of statutory construction, where the final version of a statute [changes] language contained in an earlier draft, a court may presume that the earlier draft is inconsistent with ultimate congressional intentions." *In re Town & Country Home Nursing Servs., Inc.*, 963 F.2d 1146, 1151 (9th Cir. 1991); *see also Horizons at Seven Hills*, 132 Nev. Adv. Op. 35, 373 P.3d at 71 (considering an introduced bill attempting to add "language allowing the collection costs . . . to become part of the HOA's lien and the superpriority lien," but pointing out this bill never passed and concluding "we must presume the Legislature did not intend for such costs to be included as part of an HOA's superpriority lien").

B. In 2017, the Legislature Again Declined to Enact a Bill that Would Have Prohibited Title Loan Refinancing

If the Legislature had wanted to restrict title loan refinancing, it had another opportunity to do so in 2017. The Legislature heard testimony about refinancing,[6] and had before it a bill that would prohibit title loan refinancing:

> **Sec. 32.** NRS 604A.540 is hereby amended to read as follows:
> 604A.540 A licensee who has been issued one or more licenses to operate a deferred deposit loan service ~~[, high-interest loan service]~~ or title loan service pursuant to this chapter shall not allow a customer to extend, rollover, renew, refinance or consolidate any deferred deposit loan or ~~[high-interest loan for a period longer than the period set forth in subsection 3 of NRS 604A.408.]~~ ***title loan.***

(A.B. 222 (link at 3 Pamp. 691).)

[6] (3 Pamp. 745, 747; 4 Pamp. 774, 776.)

The Legislature's consideration and rejection of A.B. 222 demonstrates two points: (1) title loan refinancing was not already prohibited (or there would have been no need for A.B. 222's express prohibition); and (2) the Legislature chose not to prohibit title loan refinancing. *Horizons at Seven Hills*, 132 Nev. Adv. Op. 35, 373 P.3d at 71 (where proposed bill was not enacted, "we must presume the Legislature did not intend" the result the failed bill would have accomplished).

III.

A REFINANCE IS NOT AN EXTENSION

Unable to overcome the lack of any prohibition on title loan refinancing, the FID argues that the Nevada Legislature did not need to prohibit title loan refinancing because it already prohibited extensions. (*E.g.*, AOB at 12.) There are two fundamental flaws with the FID's argument.

First, NRS 605A.5037(2) prohibits extensions of 90-day high-interest loans, yet the Legislature went on to forbid "refinancing or consolidation of an outstanding high-interest loan" beyond 90 days. NRS 605A.5037(3). If the prohibition on extensions already prohibited refinancing, NRS 605A.5037(3) would be entirely superfluous. But courts cannot interpret statutory provisions in a way that would "render words or phrases superfluous or make a provision nugatory." *N. Lake Tahoe Fire Prot. Dist. v. Bd. of Admin. of Subsequent Injury Account for Associations of Self-Insured Pub. or Private Employers*, 134 Nev. 763, 768, 431 P.3d 39, 43 (2018) (quotations omitted); *see also Gustafson v. Alloyd Co.*, 513 U.S. 561, 574 (1995) ("the Court will avoid a reading which renders some words altogether redundant").

Second, extensions and refinances are distinct. An extension is prolonging the due date for repayment "beyond the date on which the loan is required to be paid in full under the original terms of the loan agreement." NRS 604A.065(1). A refinance, in contrast, is "using the proceeds of a new . . . loan to pay the balance of the outstanding . . . loan." NRS 604A.5029(1); NRS 604A.5057(1). The terms "extension" and "refinance" are separate terms, both in common parlance and as used throughout NRS 604A. The Court cannot equate the two terms when the Legislature has not done so. *See Peck v. Zipf*, 133 Nev. 890, 894, 407 P.3d 775, 779 (2017) (holding "the word 'surgery' in NRS 41A.100(1)(a) does not include the insertion of an IV needle").

A. <u>A Refinance is Not an "Extension"</u>

"'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." NRS 604A.065(1). That is, an extension prolongs or pushes back the due date for payment, but otherwise leaves intact "the original terms of the loan agreement." NRS 604A.065's statutory definition is in accord with the ordinary understanding of "extension" as a continuation of the original contract terms. *See* Black's Law Dictionary (11th ed. 2019) (defining "extension" as "[t]he continuation of the same contract for a specified period").

A refinance, in contrast, is not a continuation of the same contract. Nor is it the deferral of a payment deadline. It is a totally new loan with new terms governed by a new contract – the amount of the loan may be different, the interest rate may be different, and there will be a new schedule of payments with new due dates. The terms of the original loan agreement do *not* remain intact – the original loan is completely satisfied and extinguished. TitleMax cannot collect on the original loan any longer; it is marked "paid in full." (A.App. 302-03, ¶¶ 60-62.)

This Court recognized the difference between extensions (pushing back the due date) and refinancing, which this Court properly described as issuing a new loan "to pay the balance of an outstanding loan." *Dollar Loan*, 134 Nev. at 116, 412 P.3d at 34. That same distinction is apparent in the language of NRS Chapter 604A, Truth-in-Lending-Act ("TILA") regulations, and court decisions across the country.[7]

1. TitleMax's Refinances Use the Proceeds of a New Loan to Pay the Balance of an Outstanding Loan

The FID argues that the "term 'refinance' is not defined in Chapter 604A, and did not need to be because of the statutory definition of 'extension.'" (AOB at 12.) It is true that the Legislature did not define "refinance" in the "Definitions" section of NRS Chapter 604A. But the Legislature impliedly defined refinancing when it described it throughout NRS Chapter 604A. The Legislature described "refinancing" as "using the proceeds of a new . . . loan to pay the balance of the outstanding . . .

[7] The FID argues that "if there is a conflict between the provisions of Chapter 604A and any general law regulating loans, the provisions of Chapter 604A prevail." (AOB at 14 (citing NRS 604A.220(2).) However, the FID fails to articulate any conflict. The Nevada Legislature's use of the terms "extension" and "refinance" is in accord with general laws regulating loans.

loan." NRS 604A.5029; NRS 604A.5057; NRS 604A.5987(1).[8] This is in accord with the common understanding of refinancing. *See* Black's Law Dictionary (11th ed. 2019) (defining "refinancing" as "[a]n exchange of an 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"). "When a term goes undefined in a statute, we give the term its ordinary meaning." *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012); *In re Resort at Summerlin Litig.*, 122 Nev. 177, 182, 127 P.3d 1076, 1079 (2006) (same).

The FID actually uses this same definition of refinancing, conceding that refinancing means "'repaying the existing loan with money acquired from a new loan.'" (AOB at 13 (quoting *In re Hartner*, No. AP 17-3112-TMB, 2018 WL 550578, at *8 (Bankr. D. Or. Jan. 23, 2018)).) A

[8] In 2019, the Legislature adopted portions of the federal Military Lending Act as a matter of state law, prohibiting refinancing any consumer credit loan for covered service members or dependents. The statute prohibits refinancing "any consumer credit extended to the customer by the same licensee with the proceeds of the other consumer credit extended to the same covered service member or dependent[.]" NRS 604A.5987(1). Using the proceeds of one loan to pay off another is the consistent characteristic of refinancing.

loan used to "pay[] off the existing indebtedness" is a refinance. *In re Hartner*, 2018 WL 550578, at *8.

It is undisputed that in TitleMax's refinances, the proceeds of a new loan are used to repay an outstanding loan. TitleMax is transparent in its practices. It calls its refinances what they are, and it shows on its loan agreement what portion of the new loan is given to the borrower directly and what portion is used to pay off the borrower's prior loan. (A.App. 334.)

The FID argues that the statutory definition of "extension" excludes grace periods, but does not exclude refinancing and thus refinancing is an "extension." (AOB at 14.) That argument goes too far – whatever is an extension must still meet the definition of "extension." NRS 604A.065 encompasses anything (regardless of what it is called) that extends the time for "<u>a loan</u>" to be repaid "beyond the date on which <u>the loan</u> is required to be paid under the original terms of <u>the loan agreement</u>." In an extension, there is only one loan. Lengthening the due date for repayment of that loan is an extension.

In refinancing, there is more than one loan. The first loan is not extended – it is extinguished. There is a "new loan." *Dollar Loan*, 134

Nev. at 116, 412 P.3d at 34. A "new loan" cannot be the same thing as the old loan. TitleMax does not give customers more time to pay the old loan (an extension). It gives customers a new loan, and customers use part or all of that loan to pay off the prior loan, often on a *timely* basis. (A.App. 302-03, ¶¶ 54, 62; A.App. 154, 188, 197, 224 (refinances paying off earlier loan before any delinquency).)

Upon refinancing, the old contract is extinguished, and the new contract contains different material terms. For example, sometimes the monthly payment is made lower. (*See, e.g.*, A.App. 538, 562 (Jason's monthly payment going from $291.72 to $254.11 upon refinancing).) Or sometimes the customer is given additional cash. (*E.g.*, A.App. 188, 224, 461.) TitleMax's refinances always establish a new payment schedule. (A.App. 303, ¶ 61.) These material changes constitute a new legal arrangement, not simply more time to pay an existing obligation. *See In re Biondo*, 180 F.3d 126, 133 (4th Cir. 1999) (concluding that settlement "did more than simply allow the Biondos to pay at a later date. The terms of the Settlement Agreement also temporarily reduced the amount due, added interest," and constituted a "a separate, identifiable refinancing transaction"); *In re Leverton*, No. 13-BK-00908-DPC, 2014 WL

3724162, at *4 (Bankr. D. Ariz. July 25, 2014) ("A refinance may also arrange for a new payment schedule.") (quotations omitted).[9]

In short, TitleMax does not give customers more time to pay an existing loan (an extension). TitleMax gives customers more money (via a new loan) to pay off the first loan. Using the proceeds of a new loan to pay off an outstanding loan is a refinance, not an extension.

2. TILA Regulations Articulate the Difference Between Extensions and Refinances the Same Way the Nevada Legislature Used the Terms

Under TILA, refinances trigger new disclosure obligations but extensions do not. TILA Regulation Z makes it clear that a "refinancing occurs when an existing obligation . . . is satisfied and replaced by a new obligation undertaken by the same consumer." 12 C.F.R. § 226.20(a). In contrast, a "renewal of a single payment obligation with no change in the original terms" is not a refinance. 12 C.F.R. § 226.20(a)(1). The "deferral of individual installments" is not a refinancing unless the entire obligation is cancelled and substituted by a new obligation. 12 C.F.R. § Pt.

[9] The FID acts as if refinancing punishes TitleMax's customers, particularly if the monthly payment amount increases. But the FID ignores that customers gain significant benefits, such as additional cash in pocket. In any event, "a refinance does not have to be beneficial or valuable." *In re Leverton*, 2014 WL 3724162, at *5.

226, Supp. I.

This is the same way that NRS 604A uses the terms "extension" and "refinance."

An extension does not cancel the original obligation or allow customers to borrow additional principal, but merely defers the due date for payment. *See Jackson v. Am. Loan Co.*, 202 F.3d 911, 912–13 (7th Cir. 2000) (concluding that lender extended, rather than refinanced, loan where it did not "'cancel' the old loan and note, or substitute a new one," but rather agreed "to defer repayment until another payday"); *see also, e.g.*, *In re Gunn*, 317 F. App'x 883, 886–87 (11th Cir. 2008) (extending the original maturity date was an extension "of the original loan" rather than a refinance where there "was no satisfaction and replacement nor cancellation" of the original obligation); *Thompson v. Illinois Title Loans, Inc.*, No. 99 C 3952, 2000 WL 45493, at *1–2 (N.D. Ill. Jan. 11, 2000) ("Illinois Title's extension of the due dates did not constitute new and distinct loan agreements.").

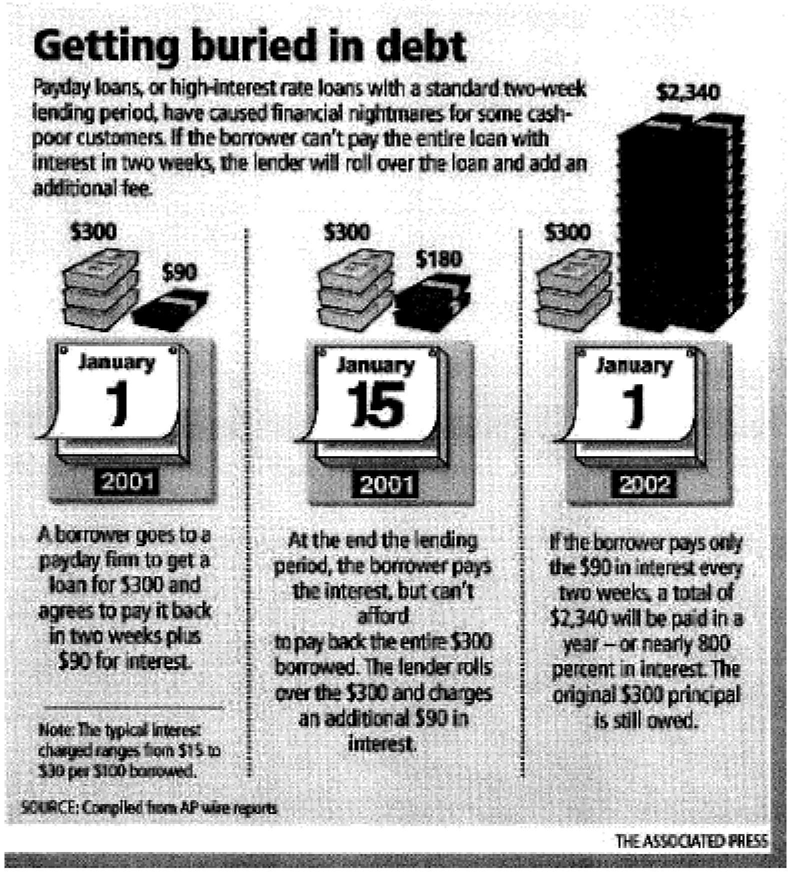
In contrast, TitleMax's refinances result in new loan agreements that both satisfy and replace the original loan agreement. The first loan is paid off and the loan agreement is marked "paid in full" – the loan is satisfied, and TitleMax can no longer collect on it. The original loan agreement is replaced by a new loan agreement. (A.App. 302-303, ¶¶ 60-62.) "[T]he satisfaction and replacement of the old obligation by the new obligation defines 'refinancing.'" *In re Lucas*, No. ADV. 03-01148-BAM, 2006 WL 6810959, at *6 (B.A.P. 9th Cir. Oct. 23, 2006).

TitleMax offers refinances, not extensions of due dates.

B. A Refinance is Not a "Rollover"

The FID repeatedly refers to TitleMax's refinances as a "rollover," or "rolling over" the principal into a new loan. (AOB at 3-4, 7, 10, 15, 21, 26, 35, 39.) But labeling TitleMax's refinances as a "rollover" does not make it so. While "rollover" is not specifically defined in NRS Chapter 604A, the context in which "rollover" is used and the legislative history indicate that "rollover" means paying a fee to extend the deadline for a single payment.

In presenting A.B. 384 (the bill that became NRS 604A) to the Nevada Legislature, Assemblywoman Barbara Buckley explained "rollover" as paying a fee to delay paying back a single-payment loan:



(2 Pamp. 271.) This is how a newspaper article attached as an exhibit used the term as well. (1 Pamp. 144, 149.)

To the Nevada Legislature, "rollover" meant paying a fee or finance charge to extend the deadline for a single payment. (1 Pamp. 39, 49 (A.B. 384 sponsor Barbara Buckley describing how borrowers "receive a cash loan of $300 and agree to pay back $390 in two weeks … they have two options to keep the loan current: they can pay it all off or roll it over for two more weeks for another $90 interest payment"), 94 ("you roll-over the check by paying a fee to extend the loan for another two weeks”), 97, 105 (defining “rollovers” as “the extension of an outstanding advance by payment of only a fee”), 191 (“The second issue we’re concerned with is rollovers. The term ‘rollover’ refers to paying just the interest or finance charge on a short-term loan to extend it for another term – usually 2 weeks.”).)

“Rollover” means paying a fee or finance charge to extend the deadline for a single payment. That is why the Nevada Legislature used the term “rollover” synonymously with “extension.” NRS 604A.065(1).

Title loans do not fit the mold of single-payment payday loans that are simply rolled over for another two weeks by paying a set fee. TitleMax’s title loans result in a schedule of payments spanning 7 months, and interest is not a set fee, but accrues on a daily basis. The amount of interest depends on when a customer makes payments and how much those payments are. While customers have to pay accrued interest before refinancing (A.App. 302, ¶¶ 55-59), that is not a fee for refinancing. It is to ensure that interest is not being charged on interest – a goal that, while not required for title loans, is in line with the purposes of NRS 604A generally.

The enacting Legislature used the term "rollover" to signal something different from refinancing. If rollovers encompassed refinancing, there would be no reason to restrict refinancing of high-interest loans to a period of 90 days because rollovers of 90-day high-interest loans are already prohibited. NRS 604A.5037(2)(c); NRS 604A.065(1). Rollovers and refinances are distinct.

The FID purportedly relies on *In re Lucas* (AOB at 17-19), but in that case there was a single-payment two-week loan of $140, repayment of which was continually pushed back upon the payment of a flat $25 fee every two weeks. *In re Lucas*, No. ADV. 03-01148-BAM, 2006 WL 6810959, at *1 (B.A.P. 9th Cir. Oct. 23, 2006). This is the classic example of "rollover," similar to the example Barbara Buckley used in her presentation to the Nevada Legislature. The Ninth Circuit pointed to the TILA regulation that "[a] renewal of a single payment obligation with no change in the original terms" is not a refinance. *Id.*, 2006 WL 6810959, at *5 (citing 12 C.F.R. § 226.20(a)(1)).

TitleMax's refinances do not constitute the renewal of a single payment obligation with no change in the original terms. Unlike the loan in *In re Lucas*, which was never satisfied or replaced, TitleMax's refinances literally pay off the initial loan. Proceeds from the new loan are credited to the initial loan account, and the first loan is extinguished, satisfied, and replaced by the new loan.

TitleMax does not charge a fee to extend the deadline for single-payment loans (a rollover). Rather, it creates an entirely new loan obligation that satisfies and replaces the old obligation (a refinance).

IV.

NRS CHAPTER 604A DOES NOT PROHIBIT INTEREST-ONLY PAYMENTS

Unable to show any actual prohibition on title loan refinancing, the FID attacks the paying off of accrued interest prior to refinancing. The FID argues repeatedly that "unamortized interest only payments violate NRS 604A.5074(3)" and that title loans are limited to 210 days of amortized interest. (AOB at 8; *see also, e.g.*, *id.* at 4, 6, 10, 14-17, 20, 43.) The FID is wrong on both counts.

A. NRS 604A.5074(3) Does Not Prohibit Interest-Only Payments

NRS 604A.5074(3)(b) provides that the "original term of a title loan may be up to 210 days" if the "payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan." That is, the payment schedule for the original loan must be "calculated to ratably and fully amortize" principal and interest. It is undisputed that TitleMax's loan agreements always have a schedule of payments *calculated* to ratably and full amortize the principal and interest. (A.App. 301, ¶¶ 40-41.)[10] However, customers do not always pay in accord with that schedule. Customers sometimes pay late. Because interest accrues on a daily basis and because payments are applied first to interest and then to principal, customers can end up making interest-only payments as a result of their own tardy payments. Such activity does not violate NRS 604A.

1. Payments are Calculated to Amortize

Under the loan agreement for either original loans or refinances, payments are always *calculated* to ratably and full amortize the principal and interest. However, customers rarely adhere to the schedule of payments exactly. Sometimes they pay late, sometimes early, and sometimes they make partial payments. This impacts the amount and sequence of interest ultimately collected. (A.App. 307-08, ¶¶ 109-113.)

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[10] The FID admits that TitleMax's "210-day loan agreement … complies with NRS 604A.5074(3)." (AOB at 3.) The same loan agreement is used for refinances. (A.App. 301, ¶ 41.)

The FID has known for years that TitleMax offers simple interest loans. (A.App. 394 (2015 form loan agreement declaring, "We use the simple interest method to calculate the interest").) TitleMax explains front and center in its loan agreement that "[i]nterest will accrue daily on the outstanding principal." (A.App. 335.) The FID has never cited this as a statutory violation because nothing in NRS 604A prevents simple-interest loans. TitleMax also explains in its loan agreement that it "applies payments first to unpaid interest, then to fees, and then to unpaid principal." (A.App. 335.)

The higher the unpaid principal balance, the more interest accrues. As principal is paid down, less interest accrues. If payments are made early, the customer will owe less interest than what is projected in the TILA disclosures and original payment schedule. (A.App 335, 308, ¶ 113.) If payments are made late, the customer will owe more interest. A customer with enough tardy payments may make interest-only payments until principal starts being reduced again. There is no prohibition on this in NRS 604A.

By using the word "calculated" in requiring payments to be "calculated to ratably and fully amortize" principal and interest, the Legislature recognized that not all customers make their payments in accord with the original schedule of payments and that lenders like TitleMax cannot force them to. NRS 604A.5074(3) does not state that every payment must be applied to both principal and interest – the division, if any, depends on when and how much the customer pays. A customer could repay her title loan after two days, in which case nearly the entire payment would go toward principal because interest has accrued for only two days.

The original schedule of payments and the numbers in the TILA disclosures are only a projection. The projection holds true only if a customer makes each payment in the precise amount listed on the exact due date.

Both NRS 604A and TILA recognize that the schedule of payments in the loan agreement is a projection and that subsequent events, such as late payments, cannot serve as the basis of a statutory violation – even if the subsequent events mean the customer pays something different than what is in the original projection. *See* NRS 604A.5074(3)(b) (payments must be "calculated" to amortize); 12 C.F.R. § 226.17(e) ("If a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of this regulation"). While the original payment schedule is calculated to ratably and fully amortize principal and interest, it is ultimately the customer who controls whether his or her payments will be amortized, pay off the loan early, or result in interest-only payments due to late payments.

2. Refinances are Distinct from the GPPDA

The FID repeatedly compares refinancing to TitleMax's former Grace Period Payment Deferment Agreement ("GPPDA") – a contract which TitleMax stopped offering over 4 years ago. (AOB at 1-2, 6-7, 20-21 ("TitleMax's 'refinance' is just like the GPPDA").) Refinancing is not the same as the GPPDA.

The problem with the GPPDA is that the *schedule* of payments "*never ratably amortize[d].*" *Dep't of Bus. & Indus., Fin. Institutions Div. v. TitleMax of Nevada, Inc.*, 135 Nev. Adv. Op. 44, 449 P.3d 835, 841 (2019) ("*TitleMax I*"). The GPPDA set up a 420-day payment schedule, with interest-only payments occurring during the first 210 days and principal-only payments occurring during the second 210 days. It was the schedule of payments that was problematic, as the schedule "*required* borrowers to make unamortized payments." *Id.*, 449 P.3d at 836 (emphasis added).

Refinances are new loans. Any refinance has a schedule of payments "calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan" within 210 days. NRS 604A.5074(3)(b). That is all 604A.5074(3)(b) requires.

3. Requiring Accrued Interest to be Paid Before Refinancing Protects Customers

The FID faults TitleMax for requiring customers to pay accrued interest before refinancing, arguing without any evidentiary support that TitleMax "encourage[es] its customers to make unamortized interest only payments." (AOB at 6.) The FID misunderstands amortization.

TitleMax requires customers to pay any accrued interest on an outstanding loan before refinancing in order to protect against customers being charged interest on interest. (A.App. 302 ¶¶ 55-59.)

The FID labels paying off accrued interest prior to refinancing as "unamortized" because it is an "interest-only payment." But the FID ignores the reality of what occurs upon refinancing. The customer pays accrued interest prior to refinancing, but then, by refinancing, the customer pays the entire remaining principal on the first loan. The customer takes proceeds from the second loan and uses those to pay the entire principal on the first loan. Thus, both interest and principal are being paid.

But even if paying off accrued interest were truly an "interest-only payment" (which it is not), that is not because TitleMax charges "unamortized" interest.

Under TitleMax's 210-day title loans, simple interest accrues on the unpaid principal every day. The interest itself is neither "amortized" nor "unamortized." If the customer makes timely payments as scheduled, the payments will ratably and fully amortize the principal and interest over the life of the loan. Below is a sample transaction history so the Court can see how interest accrues and how timely payments ratably reduce interest and principal:

Transaction History							[Transaction Detail]
Date	**Type**	**Prin**	**Fee**	**Discount**	**Change**	**Total**	**Balance**
12/02/2016	New Loan	$400.00	$0.00	$0.00	$0.00	$400.00	$400.00
12/02/2016	Disburse to Customer - Check	$0.00	$0.00	$0.00	$0.00	$400.00	$400.00
01/03/2017	Interest - Interest	$0.00	$76.75	$0.00	$0.00	$76.75	$476.75
01/03/2017	Payment - Cash	($28.24)	($76.76)	$0.00	$15.00	$105.00	$371.75
02/03/2017	Interest - Interest	$0.00	$69.10	$0.00	$0.00	$69.10	$440.85
02/03/2017	Payment - Bank Card	($35.89)	($69.11)	$0.00	$0.00	$105.00	$335.85
03/03/2017	Interest - Interest	$0.00	$56.39	$0.00	$0.00	$56.39	$392.24
03/03/2017	Payment - Bank Card	($48.60)	($56.40)	$0.00	$0.00	$105.00	$287.24
04/03/2017	Interest - Interest	$0.00	$53.40	$0.00	$0.00	$53.40	$340.64
04/03/2017	Payment - Bank Card	($51.60)	($53.40)	$0.00	$0.00	$105.00	$235.64
05/03/2017	Interest - Interest	$0.00	$42.39	$0.00	$0.00	$42.39	$278.03
05/03/2017	Payment - Bank Card	($62.20)	($42.40)	$0.00	$0.00	$104.60	$173.43
06/02/2017	Interest - Interest	$0.00	$31.24	$0.00	$0.00	$31.24	$204.67
06/02/2017	Pay Off - Bank Card	($173.47)	($31.21)	$0.00	$0.00	$204.68	($0.01)

More interest accrues at the beginning of the loan because the unpaid principal is larger. As the principal is paid down, the amount of interest that accrues each day decreases. Thus, while customers are scheduled to make the same payment each month, more of the first payment will go toward paying down interest than the last payment (if the customer makes all payments as scheduled).

When a customer refinances, TitleMax requires the customer to pay interest that has accrued to date – that is, any outstanding interest. But then the first loan is paid off via the refinance, and no further interest accrues on the first loan. If the customer refinances after 30 days, the customer pays only 30 days of interest on the first loan. That interest would have accrued with or without a refinance. It is the interest that accrued on a loan with payments scheduled to fully and ratably amortize principal and interest – i.e. it is part of the allowed "amortized interest."[11]

In short, requiring customers to pay accrued interest before refinancing protects customers from paying interest on interest. It does not result in "unamortized" interest.

B. NRS 604A.5074(3) Does Not Limit Interest to 210 Days of "Amortized Interest"

In arguing that NRS 604A.5074(3) limits title loans to 210 days of "amortized interest," the FID is really saying that title loans can charge only the interest disclosed in the TILA disclosures. That is the interest projected based on a payment schedule that fully and ratably amortizes principal and interest over 210 days.

But NRS 604A.5074(3) does not limit interest to the amount projected in the TILA disclosures. If the Legislature wanted to restrict the total interest on a title loan to the interest disclosed in the TILA disclosures (what the FID labels "210 days of amortized interest") – it would

[11] TitleMax maintains that interest itself is neither amortized nor unamortized – it is the sequence and amount of payments that determines whether repayment of the loan and interest will result in amortization.

have done so expressly. For example, the Legislature provides that deferred deposit lenders "shall not … [a]ccept … [a] check … in an amount which exceeds the total of payments set forth in the disclosure statement required by the Truth in Lending Act and Regulation Z that is provided to the customer." NRS 604A.502(1)(d). The Legislature could have similarly provided that title lenders could not charge interest in excess of the interest set forth in the TILA disclosures. But the Legislature did not do so. *See DaimlerChrysler*, 121 Nev. at 548, 119 P.3d at 139 ("Here, the Legislature could have clearly provided [the contended result], but it did not do so.").[12]

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[12] The Legislature also placed no prohibition on making multiple title loans. Even if the FID were correct that a single title loan could charge only 210 days of "amortized interest," nothing prevents a new title loan charging its own 210 days of "amortized interest."

PART TWO:

TITLE LOANS AND THE FAIR MARKET VALUE OF THE VEHICLE

V.

FOR PURPOSES OF THE STATUTORY PROVISION THAT A TITLE LOAN CANNOT EXCEED THE FAIR MARKET VALUE OF THE VEHICLE, "TITLE LOAN" REFERS TO THE PRINCIPAL LOANED

NRS 604A.5076(1) provides, "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." That is all it says. TitleMax sought declaratory relief that "title loan" as used in this provision refers to only the amount of the loan (i.e. principal) and "does not include all interest and fees incurred in repaying the loan, which necessarily varies depending on when and how the customer repays the loan." (A.App. 13, ¶ 43.) The district court agreed.

A. Principal is the Only Amount Loaned

The only amount loaned to a customer is the principal (the "Amount Financed" as stated in the TILA disclosures). TitleMax does not loan interest and fees; those comprise the "Finance Charge" in the TILA disclosures, i.e. the cost of receiving the loan. While a borrower must pay interest and fees pursuant to a loan agreement, they are not part of the loan itself.

"Title loan" is statutorily defined as:

> a loan made to a customer pursuant to a loan agreement which, under its original terms:
> (a) Charges an annual percentage rate of more than 35 percent; and
> (b) Requires the customer to secure the loan by either:
> (1) Giving possession of the title to a vehicle legally owned by the customer to the licensee or any agent, affiliate or subsidiary of the licensee; or
> (2) Perfecting a security interest in the vehicle by having the name of the licensee or any agent, affiliate or subsidiary of the licensee noted on the title as a lienholder.

NRS 604A.105(1). The definition itself demonstrates that the "loan" is distinct from the "loan agreement" pursuant to which the loan is made.[13] While the "loan agreement" sets forth the interest rate, the "loan" itself is not a loan of interest. It makes no sense to speak of interest on the loan if the word "loan" already includes interest. *See* NRS 604A.5074(3)(b) (requiring payments calculated to amortize principal and "interest payable on the loan").

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[13] The FID argues that a "title loan includes a loan agreement, which includes interest of more than 35%." (AOB at 45.) But that is not what the statute says. A title loan is a loan made "pursuant to a loan agreement," NRS 604A.105(1) – the loan does not *include* the agreement or everything stated in the agreement (such as arbitration provisions, reporting to credit bureaus, etc.).

B. **“Title Loan” is Not Defined** <u>**as the Entire “Transaction”**</u>

Trying to shoehorn the facts of this case into the holding of *Check City*,[14] the FID cites every statutory provision involving title loans that uses the word “transaction.” (AOB at 46.) In *Check City*, because the statutory definition at issue in that case defined “deferred deposit loan” as the entire “transaction” rather than just the “loan,” this Court rejected the common-sense understanding of “loan” as only the principal loaned. 130 Nev. at 912, 337 P.3d at 757. At issue was a statute limiting the amount of a deferred deposit loan to 25% of a borrower’s expected gross monthly income. In ruling that “the 25–percent cap includes both principal and any interest or fees charged,” the Court emphasized that “NRS 604A.050 unambiguously defines a deferred deposit loan as ‘a transaction.’” *Id.*, 130 Nev. at 910-13, 337 P.3d at 755-57. The Court rejected what the district court “considered a plain-language, commonsense meaning for the phrase ‘deferred deposit loan’” as encompassing only “the principal borrowed” because “that definition would conflict with the Legislature’s statutory definition.” *Id.*, 130 Nev. at 912-13, 337

[14] *State, Dep’t of Bus. & Indus. v. Check City*, 130 Nev. 909, 337 P.3d 755 (Nev. 2014).

P.3d at 757-58.

Here, in contrast, "title loan" is statutorily defined only as the loan itself, not the entire "transaction." NRS 604A.105. There is good reason for the difference in statutory definitions. As this Court explained, "a 'deferred deposit loan' is a transaction with … distinctive characteristics that ***separate it from other types of loan agreements***." *Check City*, 130 Nev. at 912, 337 P.3d at 757. In deferred deposit loans, the amount loaned is the amount of the customer's check that the customer gives the lender "less any fee charged for the transaction." NRS 604A.050. That is, the amount loaned is diminished by the fee charged. *Check City*, 130 Nev. at 912, 337 P.3d at 757 ("the lender finances an amount that is equal to the check the customer tendered, minus any fees due to the lender"). In title loans, the amount loaned is the principal the lender gives to the customer. The customer will need to pay interest on the amount loaned, but such interest does not impact the amount loaned.

Moreover, in a deferred deposit transaction the fee paid to the lender is set from the time of loan origination and is certain. That is not the case in a 210-day simple-interest installment title loan where interest accrues daily on the unpaid principal amount. While TitleMax can predict how much interest a borrower will pay if the borrower pays exactly as identified in the schedule of payments, the amount of interest the customer will actually pay is impossible to determine at the time of title loan origination.

None of the statutory provisions cited by the FID referring to "transactions" define "title loan" and thus avail the FID nothing. For example, NRS 604A.5067(1) states that a title lender shall provide a customer with a written loan agreement in "English, if the transaction is conducted in English" or in "Spanish, if the transaction is conducted in Spanish." The "transaction" refers to the oral exchange that occurred at the store, but this is not part of the definition of "title loan." Under certain circumstances, NRS 604A.5072(7) prohibits title lenders from reinitiating "an electronic debit transaction that has been returned by a customer's bank." The word "transaction," as used here, has nothing to do with the definition of a title loan.

The FID relies on NRS 604A.590, which (1) requires TILA disclosures, (2) states that a loan agreement "must fully disclose the terms of the transaction, including, without limitation, the amount of any fees charged," and (3) requires disclosure in the loan agreement of "all fees charged for providing title loan services to a customer before he or she enters into the transaction process." But this statute only serves to highlight that the loan agreement and "transaction process" are distinct from the loan itself. The "transaction process" includes granting TitleMax a lien on the vehicle title and paying a lien filing fee that is paid to the DMV to record the lien. (A.App. 335.) While that fee must be disclosed in the loan agreement and is part of the "transaction process," it is not part of the title loan itself. That fee is not part of what TitleMax loans to the customer, and it makes no sense to speak of the fees charged for making the loan if the "loan" already includes those fees. *See* NRS 604A.405(2)(a) (licensees shall post a notice stating "[t]he types of loans the licensee offers and the fees he or she charges for making each type of loan").

In short, the statutes cited by the FID only highlight that "title loan" is *not* defined as the entire transaction.

C. NRS 604A.5076(1) Must be Interpreted so it is Possible to Comply With at the Time of Making the Loan

To comply with NRS 604A.5076(1), TitleMax must compare the loan with the fair market value of the vehicle at the time the loan is made. At the time the loan is made, the principal is the only amount known for certain. The amount of interest that will ultimately be paid depends on when or *if* the customer makes the scheduled payments. A customer could pay off a title loan in full the next day and have virtually no interest accrue. Likewise, whether a customer will incur repossession fees is unknown at the time TitleMax makes the loan. (Certainly, if TitleMax could accurately predict whose vehicle would have to be repossessed, it would refrain from making loans to those individuals.)

TitleMax does not know what interest and fees a customer will be charged at the time it makes the title loan. Such speculative, yet-to-be-determined amounts cannot be compared with the fair market value of the vehicle. At the time the loan is made, only the principal loaned and the vehicle fair market value are known, and these are the amounts that must be compared for purposes of NRS 604A.5076(1).

The FID's position that "title loan" includes all "interest, charges and fees" (AOB at 2) has no limiting principle. As the district court pointed out, in certain circumstances, title lenders can recover bad check fees, court costs, and attorneys' fees (such as when the customer has committed fraud or waste). (A.App. 677); *see also* NRS 604A.5085(1)(d); NRS 604A.5068(2). Even though these amounts "would be recoverable, in addition to the principal" (A.App. 677), they are contingent on events in the future and were not meant to be included in the comparison between the "loan" and the vehicle fair market value.

The "loan" is not everything the borrower must ultimately pay the lender – the "loan" is what the lender gives the borrower.

D. <u>A Repayment Plan is a Means to Repay the Principal</u>

Unable to rely on the statutory definition of "title loan" itself, the FID appeals to the general definition of "loan" in NRS 604A.080 as including "any extension or repayment plan" and then cites NRS 604A.5085(1) to argue that "a repayment plan includes the principal and any interest and fees owed at the time of the default." (AOB at 46.) True to form, the FID takes great license with its statutory interpretation. NRS 604A.5085(1) does not define "repayment plan" as including interest and fees. It merely discusses the "amounts" a lender can collect if "a customer defaults on a title loan or on any extension or repayment plan relating to the title loan." NRS 604A.5085(1). The "amounts" collectible do not equal the amount loaned.

Moreover, a repayment plan is primarily a vehicle for repaying principal. The amount of interest a lender can collect post-default is statutorily limited. NRS 604A.5085(b)-(c). The limitations show first that interest on the loan is different than the loan itself. NRS 604A.5085(1)(c) (after prescribed period, "the licensee shall not charge or collect any interest on the title loan"). And second, the limitations demonstrate that the amount of collectible interest is variable and cannot be ascertained at the time of the loan. For example, if a customer defaults on the very first payment and does not cure the default, NRS 604A.5085 will limit the collectible interest – and the interest will not match the projected interest in the TILA disclosures.

Far from supporting the FID's arguments, NRS 604A.5085 demonstrates that interest on the loan is *not* the loan.

E. Ability to Repay is Not at Issue

The FID attempts to conflate fair market value and ability to repay. (AOB at 44.) But the concepts are distinct.

NRS 604A.5076(1) provides that a title lender shall not "[m]ake a title loan that exceeds the fair market value of the vehicle securing the title loan." A separate provision states that a lender shall not "[m]ake a title loan without determining that the customer has the ability to repay the title loan." NRS 604A.5076(3). The ability-to-repay prong is not at issue here; TitleMax sought declaratory relief solely regarding NRS 604A.5076(1).

The FID focuses on ability to repay (1) to make this case more like *Check City* (but there is no percentage-of-income cap for title loans like there is for deferred deposit loans) and (2) to argue that ability-to-repay factors include "the monthly payment," which necessarily includes both principal and interest. (AOB at 44-45.) The ability-to-repay statute actually demonstrates (again) that "the monthly payment on the title loan" is distinct from the title loan itself. NRS 604.5065(2)(d). Paying interest "on the title loan" shows that interest is not already part of the "title loan."

F. TitleMax Has No Economic Incentive to Loan More than the Vehicle is Worth

The FID argues that 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." (AOB at 47.) The FID again appeals to policy rather than facing the statutory language – and the FID ignores the reality that TitleMax has no economic incentive to loan customers more than the vehicle is worth because TitleMax's sole remedy for non-payment is repossession. (A.App.

297, ¶ 13.) If the total amount owed is more than the vehicle is worth, only TitleMax stands to lose.

NRS 604A.5078(2)(b) generally prevents title lenders from pursuing "the customer personally for … [a]ny deficiency after repossession and sale of the vehicle." If the FID's interpretation were correct that the fair market value of the vehicle must be greater than the total principal, interest, charges, and fees, there would never be any deficiency after repossession and sale because the value of the vehicle would be sufficient to cover all charges. But if that were the case, the language in NRS 604A.5078(2)(b) forbidding deficiency suits would be unnecessary and superfluous. Nevada "generally avoids statutory interpretation that renders language meaningless or superfluous." *Karcher Firestopping v. Meadow Valley Contractors, Inc.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009).

In sum, the FID's argument that "title loan" includes all principal, charges, interest, and fees is contrary to the statutory language, antithetical to common-sense understanding, and would make the statute impossible to comply with at the time of the loan.

PART THREE:

THE FID'S ALLEGED EXTRANEOUS VIOLATIONS ARE NOT BEFORE THIS COURT AND ARE MERITLESS

VI.

ONLY REFINANCING AND THE MEANING OF NRS 604A.5076(1) ARE BEFORE THIS COURT

TitleMax petitioned for declaratory relief on only two issues: (1) that refinancing does not violate NRS 604A.5074 or NRS 604A.065; and (2) that NRS 604A.5076(1) means only principal cannot exceed fair market value. (A.App. 14.) These are the only two issues the district court ruled on. (A.App. 678.) And these are the only two issues presented for review in the FID's appeal. (AOB at 2.)

Despite this, the FID raises a host of other alleged statutory violations throughout its brief. This improperly causes the parties and this Court to waste time and resources on issues that are not before this Court. This Court should reject the FID's foray into extraneous violations that are meritless in any event.

A. The Court Must Reject the FID's New Arguments Raised for the First Time on Appeal

The FID raises a number of new arguments in what appears to be a misguided attempt to argue that refinances are not really new loans.

The FID argues that (1) "TitleMax does not underwrite the 'refinanced' loan pursuant to NRS 604A.5065;" (2) "TitleMax does not re-determine the fair market value of the vehicle at the time of the refinance pursuant to NRS 604A.5076;" and (3) "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)." (AOB at 4, 7.)

As an initial matter, none of these issues were raised before the district court and thus cannot be raised now. "A party may not raise 'new issues, factual and legal, that were not presented to the district court ... that neither [the opposing party] nor the district court had the opportunity to address.'" *Einhorn v. BAC Home Loans Servicing, LP*, 128 Nev. 689, 693, 290 P.3d 249, 252 n.3 (2012) (quoting *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 545 (2010)); *Penrose v. O'Hara*, 92 Nev. 685, 686, 557 P.2d 276, 277 (1976) ("Appellant raises these contentions for the first time on appeal; thus, we will not consider them.").

Moreover, the FID makes these unsupported assertions without any citation to the record in contravention of NRAP 28(e)(1). That is because the FID's assertions are not supported by the record – they are false. TitleMax does consider ability to repay and the fair market value of the vehicle with each refinance. (*See, e.g.*, A.App. 569-575 (new income documentation and new fair market value evaluation for Jason's 5/30/18 refinance); 592-596 (new income documentation and new fair market value evaluation for Jason's 8/20/18 refinance); 373-374, 377-380 (vehicle evaluations with refinances); 382-382, 385-388, 399-403 (new income documentation with refinances, including Sally's 12/13/18 refinance).)[15]

It is also untrue that that TitleMax does not give customers a receipt indicating that the original loan is paid in full. When a title loan is refinanced, the original loan agreement is marked "paid in full." (A.App. 303, ¶ 62; *see also, e.g.*, A.App. 516, 538, 562, 146, 154, 162, 197, 216, 454 (numerous examples of the original loan marked "paid in full" upon refinancing).) Customers are given (either physically or electronically) a copy of the loan agreement marked "paid in full." A receipt is simply a

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[15] Even though the FID selectively chose which examples of refinancing to submit, it did not include complete loan files, often omitting the new income and fair market value documentation generated with each refinance. If the issue were pertinent to this appeal (which it is not) and if TitleMax were given the opportunity to supplement the record, TitleMax would produce additional evidence that it does collect new income documentation and reevaluate fair market value with each refinance.

"written acknowledgment that something has been received; esp., a piece of paper or an electronic notification that one has paid for something." Black's Law Dictionary (11th ed. 2019). Customers are given a written acknowledgment that the original loan obligation has been "paid in full." That is all that NRS 604A.508(6) requires.[16]

This Court should reject the FID's new arguments that are unsupported by the record. *Norwood v. State*, 112 Nev. 438, 440, 915 P.2d 277, 279 (1996) (ruling party's "contention is not properly before this court," particularly where it was "unsubstantiated" and lacked "supporting evidence").

B. Issues Regarding Repayment Plan Notices are Not Before This Court

"Before a licensee who operates a title loan service attempts to collect the outstanding balance on a title loan in default by commencing

[16] Often the receipt for the last payment made before refinancing is stamped "paid in full" as well. (A.App. 533, 557, 580.) The only reason TitleMax does not return the vehicle title to the customer when a loan is paid off via refinancing is that the customer would have to pay another lien filing fee – charged by the DMV, not TitleMax – for the new loan. (A.App. 303, ¶¶ 63-64.)

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" ("OERP"). NRS 604A.5083(1).

Despite OERPs having nothing to do with the two issues before this Court, the FID makes numerous allegations concerning OERPs. Nothing in TitleMax's complaint for declaratory relief asked for a ruling on OERPs, and the FID never asserted a counterclaim regarding OERPs. Any issues regarding (a) the interpretation of statutes governing OERPs or (b) alleged deficiencies in TitleMax's OERPs are not before this Court. *Home Furniture, Inc. v. Brunzell Const. Co.*, 84 Nev. 309, 317–18, 440 P.2d 398, 404 (1968) (refusing to consider issue "never raised by the pleadings"); *Coury v. Robison*, 115 Nev. 84, 89, 976 P.2d 518, 521 n.3 (1999) (issue not alleged as cause of action "is not properly before this court").

The FID's allegations concerning OERPs are meritless in any event.

1. Kelly

For Kelly, the FID faults TitleMax for sending an OERP "on February 15, 2018 *after* the customer refinanced the loan." (AOB at 22.)

But customers can refinance when their loans are current, delinquent,[17] or in default. (A.App. 272, ¶ 51.) There is no statutory requirement that an OERP be sent before refinancing. TitleMax is to "deliver to the customer, not later than 15 days after the date of default . . . written notice of the opportunity to enter into a repayment plan." NRS 604A.5083(2). Kelly did not default until February 3, 2018, and thus the OERP was properly sent out within 15 days, on February 15, 2018. (A.App. 476.)

The FID argues that Kelly was in default after not making her November 27, 2017 payment and that "[i]nstead of offering Kelly a repayment plan as required under NRS 604A.5055, TitleMax offered, and Kelly entered into, a new 210-day title loan" on December 4, 2017. (AOB at 42.) First, NRS 604A.5055 applies to high-interest loans, not title loans. Second, Kelly was not in default as of December 4, 2017. The FID ignores TitleMax's statutorily-compliant grace period of 30 days.[18]

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[17] If a customer does not make a payment on the due date, the account is delinquent. The account is not in default until the customer's 30-day grace period expires and the payment still has not been made. (A.App. 301-302, ¶¶ 45-47.)

[18] Despite the FID's attempts to persuade the Legislature to adopt an amendment allowing *no* interest to be charged during a grace period, the Legislature clarified in 2017 that a lender can charge interest during a

Kelly refinanced before she was in default, so NRS 604A.5083 (the statute governing repayment plans for title loans) was not implicated.

Once Kelly defaulted on her new loan obtained via a refinance, TitleMax sent her an OERP on February 15, 2018. (A.App. 476.) The FID alleges the OERP had an "incomplete payment schedule." (AOB at 43.) But NRS 604A.5083 does not require OERPs to have payment schedules – the OERP need only state the remaining balance, any payments already made, and the total amount due if the customer enters a repayment plan. NRS 604A.5083(2)(f). TitleMax's OERP notice included each of these amounts. (A.App. 476.)

2. Jason

The FID faults TitleMax for sending an OERP to Jason on "November 2, 2018, a week *after* his vehicle was surrendered." (AOB at 25.) But Jason was not in default until October 20, 2018. (A.App. 597.) He

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grace period as long as the lender does not "[c]harge the customer interest at a rate in excess of that described in the existing loan agreement." NRS 604A.210(2)(b). TitleMax's loan agreement – which the FID concedes "complies with NRS 604A.5074(3)" (AOB at 3) – expressly explains that TitleMax "offers a thirty (30) day grace period following each Payment Due Date, wherein I may pay the scheduled payment amount for such Payment Due Date without being considered in default." (A.App. 336.)

voluntarily surrendered his vehicle 5 days later, on October 25, 2018. (*Id.*) TitleMax sent out an OERP on November 2, 2018, again within the statutorily permitted time of 15 days of default. (A.App. 599.) This demonstrates that TitleMax has systems in place to ensure compliance with the statutory deadlines and requirements – hardly a reason to fault TitleMax.

3. Sally

The FID alleges that TitleMax sent Sally an incomplete OERP, "leaving out additional essential terms of the repayment plan." (AOB at 32.) But the FID never explains what essential terms are purportedly missing. TitleMax's OERP contained all statutorily required terms. (A.App. 253-54, 303, ¶¶ 67-70); NRS 604A.5083(2).

The FID alleges it "is a violation of statute" for Sally's OERP to be sent "two weeks after the January 31, 2018 date of default" with the "repayment plan offer … to expire on March 2, 2018" because a "repayment plan offer is required to be available to the customer for 30 days." (AOB at 32.) However, "written notice of the opportunity to enter into a repayment plan" is allowed to be sent up to "15 days after the date of default." NRS 604A.5083(2). While the offer to enter a repayment plan must be "available to the customer for a period of at least 30 days after the date of default," the OERP notice need not be delivered until "15 days after the date of default." NRS 604A.5083(1)(a), (2). Thus, the statute specifically contemplates that an OERP notice can be sent 15 days after the date of default, and that the customer will have only the remainder of the 30 days from the date of default to decide whether to enter the repayment plan (even though the option exists for 30 days from the date of default). NRS 604A.5083(1)(a), (2), (3)(a).

In short, the FID's allegations about OERPs have nothing to do with refinancing or the comparison between principal and fair market value (the issues in this appeal) – and the allegations are meritless in any event.

CONCLUSION

The Court should affirm the district court order granting TitleMax summary judgment.

Dated this 20th day of May, 2020.

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Certificate of Compliance

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2010 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 12,863 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 20th day of May, 2020.

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Certificate of Service

I certify that on May 20, 2020, I submitted the foregoing Respondent's Answering Brief for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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