Case No. 79224

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

TITLEMAX OF NEVADA, INC. A DELAWARE CORPORATION,

Respondent.

On Appeal from the Eighth Judicial
District Court of the State of Nevada
Case No. A-18-786784-C

APPELLANT'S REPLY BRIEF

AARON D. FORD
Attorney General
Nevada Bar No. 7704
HEIDI PARRY STERN
Solicitor General
Nevada Bar No. 8873
DAVID J. POPE
Chief Deputy Attorney General
Nevada Bar No. 8617
VIVIENNE RAKOWSKY
Deputy Attorney General
Nevada Bar No. 9160
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3594
hstern@ag.nv.gov

Attorneys for Appellant State of Nevada Department of Business and Industry, Financial Institutions Division

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INTRODUCTION

The district court, interpreting a statute intended by the Nevada Legislature to protect Nevada consumers, managed instead to interpret the statute in a manner that actively disadvantages them. It did so by acceding to TitleMax's encouragement to look well beyond the plain language and intent of the title-loan statute at issue, and by refusing to acknowledge the actual, real-world effects TitleMax's deceptively titled "refinancing" program has on Nevada consumers. Indeed, the district court's order reveals a method of statutory analysis seemingly designed to entirely miss the forest for the trees. This Court, as the ultimate arbiter of statutory interpretation in Nevada, must correct the error.

This Court has definitively rejected the view—consistently promoted by TitleMax—that Nevada's title-loan statutes permit creatively designed loan products that circumvent the statutes' firm requirements of (1) amortization of interest and principal; and (2) a 210-day limit on title loans. This Court's law is clear: under the 210-day title loan agreement envisioned by NRS 604A.445(3)(b), each monthly payment must reduce both the principal and accruing interest according to an amortization schedule. *Financial Institutions Division v. TitleMax of Nevada, Inc.*, 135 Nev. 336, 342, 449 P.3d 835 (2019) (*TitleMax I*). At the end of the 210-day period, the loan is paid in full, and the title to the car is returned to the owner. *Id.*; NRS 604A.508(2). TitleMax is not free to disregard or circumvent these two

fundamental limits on its title-loan products. The loan extension product it promotes and defends in this case does so—indisputably—and must end.

ARGUMENT

I. NRS 604A Does Not Permit TitleMax's "Refinancing" Program.

NRS 604A's plain language already prohibits any expansion of the original 210-day loan term, and thus need not include an express prohibition against "refinancing." Unlike the portions of NRS 604A dealing with deferred-deposit and high-interest loans, those governing title loans limit the original loan term to 210 days; no extensions of that limit, of any kind, under any name, are permitted. NRS 604A.5074(3). This limit protects consumers from paying any more than 210 days of amortized interest on a title loan, under any circumstances. NRS 604A thus prohibits TitleMax from charging more than 210 days of amortized interest by any means—including by rolling the principal into a new 210-day loan each month.

A. TitleMax's "refinancing" program directly violates NRS 604A.

The reality of how TitleMax's current loan-extension program operates—not its misleading name—is decisive. Calling the program a "refinancing" distracts from the reality that it achieves what NRS 604A explicitly prohibits: the collection of more than 210 days of amortized interest from its customers on a title loan. The Legislature anticipated attempts like that of TitleMax and thus included language in

NRS 604A stating that the name of a loan extension is irrelevant to determining whether it is prohibited.

TitleMax's loan-extension program violates NRS 604A's limits rather blatantly. Beginning as early as the first month after entering into a 210-day title loan, TitleMax offers customers an extension of the 210-day title loan to a loan of potentially indefinite duration, and does so in such a manner that TitleMax can continue to collect additional amounts of interest indefinitely.[1] The loan principal, meanwhile, is not reduced.[2] The consumer instead makes an interest-only payment to TitleMax, and TitleMax rolls the full, unreduced principal balance into another 210-day title loan. Opening Brief (OB) 21-24, 27-37; Appellant's Appendix (FID) 146-262, 436-609. TitleMax continues to offer and implement this product multiple times on the same original loan, seemingly without limit, collecting interest well beyond the 210-day limit of the original loan term.

Even if this Court were to focus on the semantics urged by TitleMax rather than on factual reality for consumers, TitleMax's loan agreements do not even use the word "refinance." The agreements are simply another 210-day title loan under

[1] In practice, the "refinance" is far more egregious and detrimental than the GPPDA rejected by this Court in *TitleMax I* because the interest-only payments on the static principal go on for a potentially unlimited amount of time, as opposed to the seven months of additional interest collected under the GPPDA.

[2] The principal is rarely ever paid down, except by a few odd pennies. FID 126, 146-176.

the same conditions as the original 210-day title loan. FID 146-262, 436-609. If the agreements did use the word "refinance," that itself would be misleading. TitleMax does not perform any new underwriting for each new contract as required for any new title loan. NRS 604A.5065. TitleMax does not reappraise the vehicle used as collateral for the original 210-day title loan. And TitleMax does not return the title or mark the customer's payment receipt "paid in full" as required pursuant to NRS 604A.508(2).

TitleMax's exemplar transaction history of a 210-day amortized $400 loan contrasts sharply with its "refinance" product. Answering Brief (AB) 44. The transaction history shows that each month the $105 scheduled amortized payment proportionally reduces the amount of interest and proportionally increases the payoff of the principal. As a result, at the end of no more than 210 days (7 monthly payments), the loan is paid in full and the consumer gets her title back.

In contrast, when a consumer "refinances" the 210-day loan after 30 days, she makes an interest-only payment and signs a loan agreement on the original principal for another 210 days. Using TitleMax's table as an example, with an interest-only payment of $76.75 on the $400 principal (not the amortized payment of $105 as required), the consumer still owes the original principal of $400. Every thirty days thereafter, TitleMax rolls the same $400 into a new contract for another 210 days, showing the same original principal of $400 that TitleMax financed 30-days earlier.

TitleMax then repeats the procedure every 30 days—indefinitely. *See, e.g.*, FID 146-262, 436-609.

At the end of the first 210 days (the legislatively intended limit of the loan), the consumer has made 7 interest-only payments totaling $537.25, and she still owes the full $400 principal. If she had made the $105 payments per the original terms of the title loan, total interest on the loan would have been approximately $360,[3] and she would have paid in full and have title to her vehicle back. At the end of 210 days, as a result of "refinancing," TitleMax has collected additional interest of $177 over the $360 (at most) that would have been paid pursuant to the requirements of NRS 604A. And, perhaps most devastating for the consumer, she still owes $400 in principal with little hope of regaining title to her vehicle.

Collecting an interest-only payment and extending a principal debt past the statutory 210 days enhances TitleMax's bottom line. The interest collected far exceeds the 210 days of interest envisioned by the Legislature when it enacted NRS

[3] The total interest is approximate because TitleMax left off the last two months of payments on their table and did not include the TILA box or the interest rate. Using a loan of $400 with an interest rate of 230.26% so that the first monthly interest payment of $76.75 fits in with TitleMax's table, the interest would total $357.57, but the monthly payment would be $108.51 (not $105). Using a monthly payment of $105 per month on a $400 loan amortized over 210-days with an interest rate of 216.14%, the first monthly interest payment would only be $72.08 (not $76.75), and the total interest payments for the 210-day loan would be $335.03. Because TitleMax's first 5 payments do not fit into any amortization schedule, the interest for a 210-day loan of $400 can only be estimated to be somewhere between $335 and $360.

604A.5074(3) (formerly NRS 604A.445(3)). *TitleMax I*, 449 P.3d at 835 (defining "the contractual amount of interest" as "capped at 210-days' worth of amortized interest"); *see also* Respondent's Rule 28(f) Pamphlet (Pamp.) Vol. 3 at 731, Testimony by Wil Keane, Committee Counsel ("[T]he final date to repay the title loan cannot be later than 210-days after the original loan date.").

Extending the original term of a title loan for more than 210 days violates NRS 604A.5074(3). Accepting unamortized interest-only payments violates NRS 604A.5074(3)(b). And, as soon as a Nevada consumer falls into the trap of making interest-only payments to TitleMax under its "refinance" program, she steps onto the debt treadmill that NRS 604A was specifically enacted to prevent. FID 178-187, 479-599.

B. This Court should defer to the FID's reasonable interpretation of NRS 604A.

The FID recognized the statutory violations and consumer disadvantages inherent in TitleMax's "refinance" plan and moved to end it. This Court should grant that decision deference. "[T]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." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 122 Nev. 132,

157, 127 P.3d 1088, 1106 (2006). [4] The FID's interpretation of Chapter 604A tracks the language of the NRS 604A, and this Court should defer to its interpretation. *TitleMax*, 135 Nev. at 340.

C. This Court must consider the remedial purpose of NRS 604A when establishing its proper interpretation.

NRS Chapter 604A is a remedial statute and must be interpreted in a way that enacts the protections intended by the Legislature. "Statutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained." *Colello v. Administrator of Real Estate Div. of State of Nev*., 100 Nev. 344, 347, 683 P.2d 15, 17 (1984); *see also Turner v. E-Z Check Cashing of Cookeville TN, Inc*. 35 F. Supp. 2d. 1042, 1047 (M.D. Tenn. 1999) ("Because TILA is a remedial act designed to protect consumers, courts construe it liberally in favor of consumers."). Statutes must also be interpreted to promote the legislative intent behind the statute and conform to reason and public policy. *In re City Center Constr. & Lien Master Litig.*, 129 Nev. 669,675-677, 310 P.3d 574 (2013).

The Nevada Legislature enacted NRS 604A in 2005 to protect consumers from predatory loans. A.B. 384, 2005 Leg., 73rd Sess., effective July 1, 2005. The Legislature

[4] Contrary to *Oliver v. Spitz*, 76 Nev. 5, 348 P.2d 158 (1960), cited by TitleMax, (AB 5), this case concerns the FID's interpretation of statutes enacted by the legislature and not regulations adopted by the agency.

intended to prohibit lenders from making unaffordable loans whereby consumers were likely to end up in a cycle of debt—commonly referred to in the legislative history as the "debt treadmill." Consumers are trapped on a debt treadmill when they are "unable to repay a loan and often take[] 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 112,114, 412 P.3d 30, 33-34 (2018).

Here, the Court should interpret NRS 604A to effectuate the intended benefit to the consumer—protection from the debt treadmill. *See Dollar Loan*, 412 P.3d at 34. Because TitleMax's "refinance" program involves collecting an interest-only payment and entering into a new 210-day contract for the same amount of outstanding principal, it virtually ensures that vulnerable consumers end up on the debt treadmill.

D. TitleMax wrongly looks to NRS 604A's high-interest and deferred-deposit loan provisions to interpret NRS 604A's requirements for title loans.

TitleMax incorrectly relies on NRS 604A.5037's 35-day or 90-day uncollateralized high-interest loan to interpret a 210-day title loan collateralized by the borrower's personal car. The loans are different products and discussed separately in the statute. Notably, refinancing is not permitted for 90-day high-interest loan because refinancing is not allowed for any period that exceeds 90 days after the date of origination of the loan. NRS 604A.5037(3). Accordingly, refinancing only applies to the section 1 thirty-five-day loan and cannot be used with

the section 3 ninety-day loan when refinancing extends the original loan past 90 days. NRS 604A.5037.

In contrast to its language regarding high-interest loans, NRS 604A is silent on refinancing 210-day title loans because refinancing such loans is not allowed under any circumstances. Indeed, the statute provides for a repayment plan when a customer defaults. NRS 604A.5083.

Nevada case law does not support TitleMax's argument that "if it is not forbidden it is allowed."[5] When a distinct policy is enacted, an express prohibition is not necessary. *Ex Parte Arascada*, 44 Nev. 30, 189 P. 619 (1920) (discussing constitutional provisions).

> [I]n seeking for limitations and restrictions, we must not confine ourselves to express prohibitions. Negative words are not indispensable in the creation of limitations to legislative power, and, if the Constitution prescribes one method of filling an office, the Legislature cannot adopt another.

Id. (internal quotations omitted).

In any case, NRS 604A.5074(3) is clear as to what is allowed and not allowed. TitleMax has fair notice in the statute itself of what is prohibited. As this Court stated

[5] Chapter 604A is a civil statute and is not persuasively governed by the criminal statutory interpretation principles of other states. *See* AB 11 (citing an Alaska Court criminal matter).

in *TitleMax I*: the contractual amount of interest is capped at 210 days, and each monthly payment must reduce the principal and accruing interest according to an amortization schedule. *TitleMax* 135 Nev. at 342. Ignoring this Court's findings, TitleMax continues to accept interest-only payments on a static principal and roll the unreduced principal into another 210-day title loan, to collect additional amounts of interest, and to extend the loan date past the 210-day limit of the original loan.

E. TitleMax's "refinancing" program is a prohibited extension – no matter what TitleMax calls it.

NRS 604A.5074(3) does not allow the original title loan term to be extended beyond 210 days. The definition of "extension" found at NRS 604A.065 applies to any increase in the duration of a loan beyond its original term, no matter what creative name the lender gives to the increase in duration.[6] NRS 604A.065 ("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.") (emphasis added). Any other definition of the term "extension," including the one now offered by TitleMax, (AB 29), does not apply. NRS 604A.010.

No matter the name that TitleMax gives to its program, TitleMax is extending the date to repay the loan beyond the date that the loan is to be paid in full under the

[6] The only stated exception to the term "extension" is a grace period. NRS 604A.065.

original 210-day term by taking an unamortized interest-only payment and rolling the principal into another 210-day title loan. TitleMax's extension to more than 210 days is a violation of NRS 604A.5074(3), by any name.

1. TitleMax's "refinancing" program is an illegal extension because the original loan principal is not satisfied.

TitleMax's claim that the refinanced loan supplants the original obligation is not accurate and does not change what is really taking place. TitleMax fails to comply with procedures in NRS 604A.508 for a loan paid in full or NRS 604A.5081 for partial payments. Replacing the original loan with a new loan, to extend the original term of the loan, violates NRS 604A.5074.

In re Lucas is analogous. 2006 WL 6810959. Although unreported, the Ninth Circuit's reasoning is sound. In the context of TILA, the court looked at the substance of the transaction, not the name assigned to it. *Id.* at *5; *see also Pease v. Taylor*, 88 Nev. 287, 290, 496 P.2d 757 (1972). The Ninth Circuit found that the substance of the transaction, including subsequent loan agreements after an interest-only payment, was "clearly a deferral of principal by acceptance of interest to date." *Lucas*, 2006 WL 6810959, at *8. The court found the lender was actually extending the loans rather than refinancing. *Id.* This is identical to what TitleMax is doing in this case. NRS 604A does not provide for a deferral of principal by making an interest-only payment and entering into a new 210-day title loan agreement.

2. TitleMax's "refinancing" program is an illegal extension because the loan is not paid in full.

TitleMax's "refinancing" program does not supplant the original loan as it claims. TitleMax does not give the consumer a new obligation under new terms. Instead, TitleMax takes the existing obligation and gives it a new loan number with the same interest rate and the same principal and a new due date which exceeds the date of when the original 210-day loan was due. The interest-only payment made by the consumer is not a partial payment applied to both principal and interest pursuant to NRS 604A.5074(3)(b).

TitleMax extends the due date of the original loan by rolling the principal into a new loan, by which the original 210-day loan is extended indefinitely. NRS 604A.065. The majority of the loan agreements are not marked paid in full.[7] TitleMax also does not follow the procedure mandated in NRS 604A.508 when a title loan is paid in full. TitleMax does not return the title required under NRS

[7] *See, e.g.,* FID 178-184, 188-194, 208-214 (Fredrik-three out of the 4 agreements were not marked paid in full); FID 154-160, 170-176 (Marlon-two of the four agreements were not marked paid in full); FID 232-236, 238-242, 246-254, 256-262 (Sally-none of the four agreements were marked paid in full); FID 436-440, 449-453, 461-467, 468-474 (Kelly-four out of the five agreements were not marked paid in full).

604A.508(2)(a). TitleMax does not mark the customer's receipt paid in full as required by NRS 604A.508(2)(b)(6).[8]

3. TitleMax's "refinancing" program violates NRS 604A.5074 because the interest-only payments are not amortized.

NRS 604A prohibits the interest-only payments collected by TitleMax here. AB 37-38. NRS 604A.5074(3)(b) states "the payments are calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan." The statute does not state that TitleMax can credit a payment solely to interest. The statute says payments; it does not say only the schedule of payments. NRS 604A.5074(3)(b). If there is any doubt, this Court affirmed the FID's statutory interpretation when it stated, "each monthly payment reduces both the principal and accruing interest according to an amortization schedule." *TitleMax I*, 135 Nev. at 343.

TitleMax's attempt to conflate the TILA disclosures required under Regulation Z and TitleMax's violation of NRS 604A.5074(3)(b)'s requirement to amortize each payment is a misleading diversion. While the purpose of both Regulation Z and NRS 604A.5074(3) is consumer protection, the two requirements

[8] *See, e.g.*, FID 492, 494, 511, 530, 533, 552, 553, 557, 577, 579, 580 (Jason); FID 441, 444, 447 (Kelly); FID 245, 255 (Sally); FID 233 (Kay); FID 204, 205, 207 (Fredrik); FID 153, 161, 169 (Marlon).

are different. The TILA box is a disclosure required by federal law to disclose specific information about the loan. The purpose of the amortization requirement in NRS 604A.5074(3)(b) is to make sure that the loan is paid in full at the end of 210-day amortized schedule, and not one day more. By making each payment go towards both interest and principal, the amount necessary to redeem a car's title is reduced proportionally with each payment. If a customer defaults during the term of the loan, she will owe less principal under the repayment plan or less short fall in a repossession. This provision also prevents a lender from collecting additional interest on the full principal over the course of the loan.

NRS 604A provides the exclusive remedies that a lender can use if a payment is not made on time. The borrower is in default when she fails to make a payment the day it is due and requires the lender to offer a repayment plan. NRS 604A.045; NRS 604A.5083. NRS 604A contains no other remedies for a 210-day title loan — including refinancing.

Even if a customer does not adhere to a payment schedule, each payment must still be amortized.[9] NRS 604A.5074(3)(b). TitleMax's claim that it is

[9] The terms of the loan agreement cannot violate the statute. Accordingly, TitleMax's claim, (AB 39), that the loan agreement provides for payments to interest first does not change the fact that an interest-only payment violates NRS 604A.5074(3)(b).

"protecting customers" by taking interest only payments is belied by its own example of the $400 loan discussed *supra*.

4. Rolling the entire amount of principal into a new 210-day loan violates the spirit and intent of NRS 604A.

TitleMax incorrectly claims, (AB 15), that title loans prevent the debt treadmill because they have a built-in end. While preventing the debt treadmill is the intent of NRS 604A.5074(3), it is not the intent of TitleMax when they sell their customers on extending a 210-day title loan into a series of subsequent 210-day loans. The record contains an exemplar loan that was extended for more than a year, and the only built-in end was the customer's final voluntary surrender of the vehicle. FID 598 (Jason). This was followed a week later with a Notice of an Opportunity to Enter into a Repayment Plan. FID 599. Other loans go on for months, and the ends could not be determined because the examination period ended before the string of "refinances" did.

Any intent to keep a person off the debt treadmill is defeated through TitleMax's "refinancings."[10] Although title loans are closed-end loans, continuous

[10] The debt treadmill is of utmost concern to the FID in this case because the interest-only payment to TitleMax never reduces the principal amount, even though NRS 604A requires that "the payments must ratibly and fully amortize the entire amount payable on the loan" within 210 days. *TitleMax I*, 135 Nev. at 343. Interest only payments are not ratably and fully amortized.

extensions (including TitleMax's "refinancings") result in a loan without the built-in end anticipated in NRS 604A.5074(3). Each month, when TitleMax has its customer make an interest-only payment on the static principal and enter into a new 210-day agreement, TitleMax squeezes more interest out of the customer and the principal is not reduced. *See*, *e.g.*, FID 146, 154, 162, 170.

Repossessing a customer's sole mode of transportation to get to work or take their children to school is far worse that taking a defaulting customer to court. A person that goes to court may get a judgment to pay the defaulted loan, but they do not lose their vehicle or their job. When TitleMax repossesses a car, there is no remedy for the consumer. She loses her car and could lose her job because she cannot get to work. And she cannot drive her children to school. Vulnerable Nevada consumers certainly have a better chance of paying a 210-day loan with fixed amortized payments than unamortized interest-only payments since, with the latter, the principal never goes down.

F. If this court looks to legislative history for guidance, the history of Nevada's 2005 legislative session supports the FID's interpretation of NRS 604A

TitleMax tells only a partial, and misleading, version of the legislative history behind the passage of NRS 604A. In 2005, the Nevada Legislature recognized the differences between title loans, deferred-deposit, and high-interest loans when it removed title loans from the restrictions on refinancing in Section 43 of the first draft

of AB 384. The change "revise[d] Section 43 to limit [refinancing] to deferred deposit or short-term loans." 2 Pamp. 317 (emphasis added). The use of the word "limit" cannot be considered an expansion of unlimited refinances to title loans, as alleged by TitleMax. To the contrary, the deliberate removal shows that the Legislature made a conscious decision not to allow refinancing of title loans, and not to allow a new title loan to pay off an existing title loan. 2 Pamp. 317.

TitleMax's reference to the 2017 Legislative history is likewise not accurate. AB 23 (referencing AB 222 and making an argument that the Legislature had the opportunity to enact a bill to limit refinancing but chose not to). The purpose of AB 222 was to limit both title loans and deferred-deposit loans to a maximum of 36% interest and establish the database. The bill eliminated high-interest loans from the requirement because existing statutes required a high interest loan to have interest of more than 40%. The Legislative Counsel's Digest description of Section 32 provides that this bill "prohibit[s] extension or rollover of a deferred deposit loan or title loan." The description also provides that because Sections 15 and 32 prohibit extensions or rollovers of deferred deposit loans and title loans, "Sections 8, 11,18-21, 23, 24 and 26 of this bill remove references to the extension of such loans." Legislative Counsel Digest, AB 222, https://www.leg.state.nv.us/App/NELIS/REL/79th2017/Bill/5052/Text.

The sponsor of AB 222 testified that payday loans

> are meant for helping people through emergencies or when they need to get their car fixed and they cannot quite afford it. Payday loans are for short-term needs and not for utilities, groceries, and things that are part of individuals' ongoing expenses. For me, this bill is about making sure that we have people taking out these loans for things that they were originally intended for.

4 Pamp. 770. The stated purpose of the bill was to establish a rate cap. 4 Pamp. 773. AB 222 also sought to tighten the restrictions on the ability to repay and would prohibit a payday loan that exceeds 5% of the customer's gross monthly income. 4 Pamp. 773. The number of loans would be limited to 6 per year. 4 Pamp. 774. AB 222 included a database, which was opposed by the industry and would prohibit conjunction businesses—such as paying utilities at the same location to prevent loans for utility bills. 4 Pamp. 774. The bill died due to the 36% rate cap, which would impose a usury cap, as well as certain issues concerning limitations on the number of loans per year and the imposition of a database. The bill did not die based on "refinancing." 4 Pamp. 780-794. Instead, the Legislature enacted a different bill concerning NRS 604A, primarily regarding the ability to repay. 4 Pamp. 740-741.

II. A Title Loan Includes the Full Cost of the Loan.

A. Fair market value and ability to repay are related.

It would be nonsensical to separate fair market value from the ability to repay. AB 55. Fair market value must work along with the ability to repay. For

example, if the fair market value of a vehicle is $40,000, and, considering the factors in NRS 604A.5065, a customer only has the ability to repay a loan in the amount of $5,000, TitleMax cannot issue a loan for $10,000. The customer cannot possibly repay that loan.

Likewise, if a customer only has the ability to repay a loan of $5,000, and TitleMax loans them $5,000 in principal but then adds interest and the title fee to the monthly payment,[11] the customer does not have the ability to repay the loan. The result would provide TitleMax with a repossessed $40,000 vehicle for a $5,000 investment. Thus, TitleMax has an incentive to solely consider the principal and not the cost of the loan transaction when determining fair market value. A loan is not just the principal amount; otherwise, when a loan is repaid, it would only be necessary to repay the principal.

The definition of a title loan includes the title loan agreement, which includes under its original terms annual interest of more than 35%, and requires the borrower to secure the loan with the title to a vehicle legally owned by the borrower (or by a perfected security interest in the vehicle). NRS 604A.105. NRS 604A.5067(2)(c) requires the loan documents to include the "total of payments," which include

[11] Contrary to TitleMax's assertion, the original loan agreements in the record (not the refinanced agreements) include a $21 fee at page 2 of the agreement which is included in the amount loaned to cover the title fee. *See, e.g.*, FID 146-147, 178-179, 216-217, 232-233, 479-480.

principal and interest. NRS 604A.5074(3) requires the installment payments to be "calculated to ratably and fully amortize the entire amount of principal and interest payable on the loan." As a result, the definition of a title loan includes the principal and interest. Because it costs $21 to add the lender to the title, the term loan also incorporates the title fee.

The interest on a 210-day title loan hovers around 200%, which makes the interest a very large portion of the entire loan transaction. This interest must be considered a part of the loan when interpreting a statute requiring that the fair market value of the vehicle not exceed the full value of the loan. *See* Testimony of Wil Keane, Committee Counsel, at 3 Pamp. 731 ("As for the title loans, the amount of the title loan is limited to the fair market value of the vehicle securing the title loan, and the title loan services must not make the loan without regard to the customers' ability to repay the loan."). This Court should reject TitleMax's efforts to confuse this commonsense issue. AB 53 (disingenuously stating that TitleMax "does not know what interest and fees a customer will be charged at the time it makes the title loan" and that the amount of interest and fees are "speculative" and "yet to be determined amounts").

TitleMax violates both NRS Chapter 604A, as set forth above, and Regulation Z. Regulation Z is the federal rule which states "a licensee who operates a title loan service shall provide to the customer a written loan agreement which includes the

date and amount of the title loan, amount financed, annual percentage rate, finance charge, total of payments, payment schedule and a description and the amount of every fee charged, regardless of the name given to the fee and regardless of whether the fee is required to be included in the finance charge under the Truth in Lending Act and Regulation Z." NRS 604A.5067; NRS 604A.150. The TILA disclosure must be provided *prior* to making a title loan to a customer. NRS 604A.5067. Likewise, the fair market value is determined prior to the time that the loan is made. The payment schedule and interest must be placed conspicuously on the loan agreement. Thus, the total amount of the transaction is known prior to making the loan and the amount is neither speculative nor yet to be determined.

B. The fair market value of the vehicle should not exceed the full value of the loan.

This Court's finding regarding deferred-deposit loans in *Check City* is analogous to the issue here. In *Check City,* this Court stated that the term loan is not limited "to just the amount borrowed as it clearly contemplates that a deferred deposit loan is a transaction based on a loan agreement." 130 Nev. at 912. This Court reasoned that a loan agreement is made up of various terms including both the amount borrowed and any fees charged, therefore the loans are not just limited to just the amount borrowed. *Id.* at 912. This Court determined that the loan included the principal, interest and fees. *Id.* at 913. Likewise, a 210-day title loan is made of the principal amount borrowed plus the interest and fees that are charged over the

210 days. Both the borrower and the lender know the terms prior to entering into the loan because they must be contained on the face of the title loan agreement. NRS 604A.5067.

C. Chapter 604A provides that a title loan is a transaction.

Just as the deferred-deposit provisions in NRS Chapter 604A refer to a "transaction," (NRS 604A.5012(1), NRS 604A.502(4), NRS 604A.5021(7), NRS 604A.5027(2)(a)), the title-loan provisions 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"). Additionally, 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-interest loans, a title loan is a transaction that includes principal, interest and fees. The lender does not just hold the title until

an amount equal to the principal is paid; the lender holds the title until the principal, interest and title fee are repaid in full.

This Court in *Check City* made it clear that the amount of money borrowed is just one aspect of the larger transaction, which includes the interest and the fees. 130 Nev. at 912. A title loan is no different; the amount borrowed is also just one aspect of the larger transaction which includes principal, interest and the title fee. *Id.* Any other interpretation would hinder the remedial purpose of Chapter 604A and lead to an absurd result.

III. The FID Raises No Additional Facts or Arguments for the First Time on Appeal.

The FID argued to the district court that TitleMax did not comply with NRS 604A.508 – and showed that TitleMax's "refinance" could not be a new agreement. This was argued in rebuttal to TitleMax's allegation that the loan is paid in full before it is refinanced.

When a loan is paid in full, NRS 604A.508 requires that the receipt given to the customer include: the name and address of the licensee; the identification number assigned to the loan agreement, or other identifying information; the date of the payment; the amount paid; an itemization of interest, charges and fees; and a statement that the title loan is paid in full. NRS 604A.508(2). The law also requires the title to the vehicle be returned to the customer. NRS 604A.508(2)(a). TitleMax violates NRS 604A.508 because the title is not returned to the customer and none of

the payment receipts for the interest-only payments made prior to entering another loan agreement are marked "paid in full." In addition, many of the loan agreements are also not marked paid in full. The record speaks for itself.

TitleMax's failure to comply with NRS 604A.508 was raised in the court below. TitleMax does not comply with NRS 604A.5065 because TitleMax does not redetermine the customer's ability to repay[12] with each subsequent loan agreement and does not consider the change in the fair market value of the vehicle. As the FID argued:

> And for a loan to be paid in full, according to 604 . . . they must return the title to the car. TitleMax does not return the title to the car when they do what they call a refinance. They also must . . . give the customer the title and they shall give a receipt with the following information. And the following information has to be a statement on that receipt given to the customer that says this title loan is paid in full. And that customer never gets that. They get a receipt for what they're paying . . . interest only, but they never get a receipt showing that loan is paid in full. Because it's not paid in full because the customer still has the principal in their pocket. It is not a refinance. It's an extension.

FID 692.

Additionally, the FID first raised TitleMax's failure to properly provide a timely and correct Notice of the Opportunity to Enter into a Repayment Plan

[12] Which must have changed if the consumer cannot make the whole amortized payment.

("Notice") to its defaulting customers, in violation of NRS 604A.5074, in its motion to dismiss. FID 130-133. The delay in the Notice gave TitleMax the opportunity to sell the defaulting client another new 210-day loan after taking an interest-only payment.

The untimely and uncompleted Notice to Sally was sent when she was one month and eleven days late. FID 253-254. The next day Sally made an interest-only payment in the amount of $2,100 and entered into another 210-day title loan. FID 255-262. Sally could have saved thousands of dollars in interest if the Notice were properly filled out, as required pursuant to NRS 604A.5083(2), and showed the payments.

Kelly made her last interest-only payment on December 4, 2018, and was not sent a Notice until February 1, 2019. In addition to being untimely, it was also not filled out, in violation of NRS 604A.5083(2). FID 258, 476-477.

The saddest story is Jason's. He entered into numerous new agreements, extending the title loan for 455 days before finally defaulting. FID 422:26-17 through 423:28. The Notice was not sent to Jason until a week after he voluntarily surrendered his car to TitleMax. FID 598-600.

Although TitleMax would rather not discuss its lack of compliance with the repayment plan requirement, the issue is relevant to the entire refinance issue and was raised in the in the Court below. FID 130-133. As argued by the FID from the

beginning of this case, when a consumer has the ability to enter into an agreement to repay and substantially save on interest pursuant to NRS 604A.5083, she would never refinance the principal for another 210 days, and TitleMax would lose its major source of additional interest.

The repayment plan thus has everything to do with TitleNax's "refinancing" program. A repayment plan is the exclusive remedy when a person defaults on a title loan. NRS 604A.5083. Refinancing is not an option for a default. A default occurs on the day that a payment is due and it is not paid. NRS 604A.045.

TitleMax generally offers a "refinancing" plan within the first month, but will even offer it upon default. It then offers an interest-only payment and another 210-day title loan for the unreduced principal so that TitleMax can continue to collect additional interest on the outstanding principal. This additional interest could not ordinarily be collected under the terms of the repayment plan.

The purpose of the repayment plan in NRS 604A, like the purpose of the entire statute, is to keep customers off the debt treadmill. Providing a defaulting customer with a new 210-day title loan puts the consumer onto the debt treadmill with no exit—until their vehicle is repossessed.

CONCLUSION

The FID respectfully requests that this Court reverse the district court and hold that: (1) NRS 604A does not permit the extension of a 210-day title loan issued

pursuant to NRS 604A.5074(3), through refinancing or any other method that gives a title lender more than 210-days of amortized interest; and, (2) NRS 604A.5076(1) and NRS 604A.5076(3) require the fair market value of the vehicle to be greater than the total of the payments, including any interest, charges and fees.

Dated this 26th day of August, 2020.

AARON D. FORD
Attorney General

By: /s/ Heidi Parry Stern
HEIDI PARRY STERN
Solicitor General
DAVID J. POPE
Chief Deputy Attorney General
VIVIENNE RAKOWSKY
Deputy Attorney General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3594
hstern@ag.nv.gov
Attorneys for Appellant
State of Nevada Department of Business and Industry, Financial Institutions Division

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada

Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 26th day of August, 2020.

AARON D. FORD
Attorney General

By: /s/ Heidi Parry Stern

Heidi Parry Stern
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3594
hstern@ag.nv.gov
Attorneys for Appellant
State of Nevada Department of Business and Industry, Financial Institutions Division

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on August 26, 2020.

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Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Dale Kotchka-Alanes, Esq.
LEWIS ROCA ROTHGERBER
CHRISTIE LLP
3993 Howard Hughes Pkwy
Suite 600
Las Vegas, NV 89169

s/ R. Carreau
An employee of the Office of the Attorney General