

1 **BEFORE THE DEPARTMENT OF BUSINESS & INDUSTRY**

2 **LAS VEGAS, NEVADA**

3
4 IN THE MATTER OF:)

5 FINANCIAL INSTITUTIONS DIVISION,)

6 Claimants,)

7 v.)

8 TITLEMAX OF NEVADA, INC. AND)
9 TITLEBUCKS D/B/A TITLEMAX,)

10 Respondents.)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER**

11
12 This is a contested case between Claimant, the Financial Institutions Division of
13 the Nevada Department of Business & Industry (FID), and Respondent, TitleMax of
14 Nevada, Inc. and TitleBucks d/b/a TitleMax (TitleMax).

15 **I. PROCEDURAL BACKGROUND**

16 FID commenced this administrative action under NRS 233B.121 with the
17 issuance of an Administrative Complaint for Disciplinary Action and Notice of Hearing
18 (“Complaint”) against TitleMax on October 6, 2015. FID alleged that TitleMax was in
19 violation of several provisions of NRS Chapter 604A and sought the imposition of fines,
20 the issuance of a cease and desist order as to the violative practices, the return to
21 customers of certain funds derived as a result of the violative practices, and the
22 imposition of all administrative costs incurred as a result of bringing this action. The
23 Complaint scheduled a hearing date of October 27, 2015.

24 On October 8, 2015, this matter was assigned to an Administrative Law Judge
25 following FID Commissioner George Burns’s disqualification pursuant to NRS
26 233B.122.

27 On October 20, 2015, FID issued an Amended Notice of Hearing on
28 Administrative Complaint for Disciplinary Action, rescheduling the hearing date to

1 November 5, 2015.

2 On October 26, 2015, TitleMax filed its Answer to Administrative Complaint.

3 On October 27, 2015, a status check was held, which counsel for both parties
4 attended.

5 On October 29, 2015, a Procedural Order was issued vacating the November 5,
6 2015, hearing date and directing the parties to exchange lists of proposed exhibits and
7 witnesses and FID to disclose the type and amount of penalties it sought. The
8 Procedural Order also directed the parties to submit a joint evidentiary packet and
9 permitted the filing of briefs by December 18, 2015.

10 On December 9, 2015, TitleMax filed a request for a motion in limine precluding
11 FID from admitting into evidence any documents not disclosed by November 13, 2015.
12 FID filed an opposition to TitleMax's motion on February 11, 2016. TitleMax filed its
13 reply in support on March 10, 2016.

14 Also on December 9, 2015, FID requested a 30-day extension to the deadline
15 for the parties' submission of the joint evidentiary packet and briefing.

16 On December 11, 2015, an order was issued granting the requested extension,
17 setting January 18, 2016, as the deadline for the parties' submission of the joint
18 evidentiary packet and briefing.

19 On January 14, 2016, the parties jointly requested an extension to the deadline
20 for their submission of the joint evidentiary packet and briefing to February 12, 2016.

21 On January 15, 2016, an order was issued granting the requested extension,
22 setting February 12, 2016, as the deadline for the parties' submission of the joint
23 evidentiary packet and briefing.

24 On February 12, 2016, both parties submitted their prehearing briefs. Also on
25 February 12, 2016, the parties jointly requested an extension to the deadline for their
26 submission of the joint evidentiary packet to February 24, 2016.

27 Also on February 12, 2016, TitleMax filed a Motion for Declaration Regarding
28 Interpretation of Nevada Law and a Motion for Declaratory Ruling and to Stay

1 Deadlines. FID filed its opposition to the latter motion on February 24, 2016. TitleMax
2 filed its replies in support on March 10, 2016.

3 On February 16, 2016, an order was issued granting the requested extension,
4 setting February 24, 2016, as the deadline for the parties' submission of the joint
5 evidentiary packet.

6 On February 24, 2016, the parties requested an extension to the deadline for
7 their submission of the joint evidentiary packet.

8 On February 26, 2016, an order was issued granting the requested extension,
9 setting March 30, 2016, as the deadline for the parties' submission of the joint
10 evidentiary packet.

11 On March 18, 2016, an Order Denying TitleMax's Motion for Declaratory Ruling
12 and to Stay Deadlines was issued.

13 On March 29, 2016, TitleMax filed a Motion for Clarification of the March 18,
14 2016, order. On April 4, 2016, FID filed its opposition to the Motion for Clarification. On
15 April 18, 2016, TitleMax filed its reply in support of its Motion for Clarification.

16 On March 30, 2016, the parties submitted their joint evidentiary packet.

17 On April 4, 2016, an Order Setting PreHearing Conference was issued,
18 scheduling a prehearing conference with all parties for April 27, 2016.

19 On May 13, 2016, a Procedural Order was issued following the prehearing
20 conference. This Order resolved all pending motions as follows: 1) TitleMax's Motion
21 for Clarification was denied; and 2) TitleMax's Motion for Order in Limine was granted
22 in part, holding that FID was permitted to use as exhibits at the hearing only those
23 documents it disclosed to TitleMax by November 16, 2015. The Procedural Order also
24 scheduled the matter to proceed to hearing beginning July 18, 2016.

25 On June 14, 2016, FID filed a Motion to Admit Division's Exhibit A and
26 Summaries of Exhibit A pursuant to NRS 52.275. On June 20, 2016, TitleMax indicated
27 that it had no opposition to FID's Motion. On June 24, 2016, an Order Deeming
28

1 Documents Admitted was issued.¹

2 On July 18, 2016, this matter proceeded to hearing. At hearing, the following
3 witnesses were called and questioned under oath: Harveen Sekhon, Andrea Bruce,
4 Ma. Theresa Dihanson, George Burns, and Theodore (“Ted”) Helgesen. The parties
5 stipulated to the admission into evidence of all marked exhibits, amounting to more than
6 10,000 documents. The hearing concluded on July 20, 2016.

7 **II. FINDINGS OF FACT**

8 TitleMax is licensed under NRS Chapter 604A. As a licensee, TitleMax is subject
9 to the provisions of NRS Chapter 604A and Nevada Administrative Code (NAC) 604A.

10 FID conducts annual examinations of each of its licensees. Each licensee
11 receives one of three ratings at the conclusion of each examination: Satisfactory, Needs
12 Improvement, or Unsatisfactory. If a licensee receives a Satisfactory rating, FID will
13 usually examine it again after one year. If a licensee receives a Needs Improvement
14 rating, FID asks the licensee to respond in writing within 30 days with the steps it intends
15 to take to remedy the problems identified, and then FID will usually re-examine it six
16 months later. If a licensee receives an Unsatisfactory rating, FID asks the licensee to
17 respond in writing within 30 days with the steps it intends to take to remedy the problems
18 identified, and then FID will usually re-examine it three to six months later.

19 FID commenced an annual examination of TitleMax on August 6, 2014, which
20 concluded on December 18, 2014 (“2014 Examination”).² As a result of this examination,
21 FID assigned TitleMax a “Needs Improvement” rating, noting several alleged violations
22 of Nevada law.³ Specifically, FID noted that TitleMax allowed people who were not on
23 vehicle titles to become co-borrowers on title loans in contravention of NAC 604A.230,
24 NRS 604A.105, and NRS 604A.115 and TitleMax offered an agreement titled “Grace

25 ¹ At the hearing, TitleMax moved for the admission of proposed Exhibit 104, a summary of errors contained
26 in FID’s Summaries of Exhibit A document. FID opposed the admission of TitleMax’s proposed Exhibit
27 104, contending that it was filed untimely and did not contain any relevant or material information. FID
28 stated that it would prepare and file an errata to its Summaries of Exhibit A, correcting any typographical
errors contained therein. FID did not file such an errata. Given that the conclusions reached in this Order
did not require reliance on FID’s Summaries of Exhibit A document, TitleMax’s motion to admit proposed
Exhibit 104 is denied as unnecessary.

² FID Ex. B (00008565-00008581).

³ FID Ex. B (00008577).

1 Period Payments Deferment Agreement” (“GPPDA”) in contravention of NRS
2 604A.445.⁴ Examiners from FID and representatives from TitleMax attended a meeting
3 to discuss the examination before its completion on October 7, 2014.⁵ Examiners from
4 FID and representatives from TitleMax also took part in a telephonic exit interview at the
5 conclusion of the examination on December 18, 2014.⁶

6 On February 9, 2015, TitleMax, through its counsel, authored a letter addressed
7 to Ma. Theresa Dihiansan, an Examiner III with the FID.⁷ This 10-page letter set forth
8 the bases for TitleMax’s disagreement with the violations of Nevada law FID cited in its
9 2014 Examination. On March 2, 2015, FID responded through its counsel.⁸ FID’s letter
10 in response did not substantively address TitleMax’s dispute of the alleged violations of
11 NAC 604A.230, NRS 604A.105, NRS 604A.115, and NRS 604A.445.⁹ FID summarily
12 stated that it “st[ood] by its position” with regard to those issues.¹⁰

13 FID commenced a follow-up examination of TitleMax on May 22, 2015, which
14 concluded on June 17, 2015 (“2015 Examination”).¹¹ FID assigned TitleMax an
15 “Unsatisfactory” rating, noting several repeat violations of Nevada law.¹² Specifically,
16 FID noted that TitleMax was still offering the GPPDA to customers in contravention of
17 NRS 604A.445.¹³ FID noted that it found no instances in which TitleMax allowed
18 individuals who were not on a vehicle’s title to become co-borrowers on the title loan
19 using the vehicle as collateral, and therefore the Report of Examination for the 2015
20 Examination deemed that violation rectified.¹⁴ Examiners from FID and representatives
21 from TitleMax participated in a telephonic exit interview on June 17, 2015.¹⁵

22 On June 1, 2015, TitleMax commenced an action for declaratory relief in
23 Nevada’s Eighth Judicial District Court. (Case No. A-15-719176). In the lawsuit, TitleMax

24 ⁴ FID Ex. B (00008574-00008577).

25 ⁵ FID Ex. B (00008580).

26 ⁶ FID Ex. B (00008573).

27 ⁷ TitleMax Ex. 85 (TMX 85-00001-00012).

28 ⁸ TitleMax Ex. 86 (TMX 86-00001-00003).

⁹ TitleMax Ex. 86 (TMX 86-00003).

¹⁰ TitleMax Ex. 86 (TMX 86-00003).

¹¹ FID Ex. C (00008582-00008594).

¹² FID Ex. C (00008591).

¹³ FID Ex. C (00008588).

¹⁴ FID Ex. C (00008588).

¹⁵ FID Ex. C (00008588).

1 requested a declaration 1) that an individual may be a co-borrower on a title loan without
2 violating NAC 604A.230 when said individual is not listed on the title of the vehicle
3 associated with the loan; and 2) interpreting NRS 604A.210 and NRS 604A.445.

4 On July 13, 2015, counsel for FID authored an email to counsel for TitleMax to
5 ask if TitleMax would agree to convert its action for declaratory relief to an action
6 pursuant to NRS Chapter 29 in which the parties stipulate to having a good faith
7 controversy about their rights and seek a judicial declaration.¹⁶ At some point after July
8 23, 2015, TitleMax declined to agree to convert its declaratory relief action to a Chapter
9 29 action.¹⁷

10 On October 6, 2015, FID commenced this administrative action against TitleMax
11 with the issuance of its Complaint.

12 TitleMax stopped offering the GPPDA on new loans in December of 2015.

13 TitleMax stopped allowing non-legal owners to become parties to title loans in the
14 summer of 2015 because, as testified to by Ted Helgesen, the Department of Motor
15 Vehicles stopped allowing TitleMax to perfect its liens unless all parties to the title loan
16 contract were also on the vehicle title.

17 **A. Findings of Fact Particular to the Issues Presented by the GPPDA**

18 Under NRS 604A.445, title lenders may offer two types of title loans to customers:
19 (1) a 30-day loan that may be extended for up to six additional 30-day periods (NRS
20 604A.445(1)-(2)); and (2) a 210-day loan that may not be extended. (NRS 604A.445(3)).
21 TitleMax offers its customers the 210-day loan only.

22 When a customer desires to enter into a 210-day title loan with TitleMax, the
23 customer signs an agreement titled "Title Loan Agreement."¹⁸ This agreement provides
24 that the customer will make payments on the loan in seven installments scheduled 30
25 days apart, with each payment ratably and fully amortized such that the principal and
26 interest will be paid in full on the date of the seventh payment.¹⁹ The agreement informs
27 the customer that the principal amount of the loan will be subject to simple interest

28 ¹⁶ TitleMax Ex. 98 (TMX 98-00001-00004).

¹⁷ TitleMax Ex. 98 (TMX 98-00001-00004).

¹⁸ TitleMax Ex. 91 (TMX 91-001-003).

¹⁹ TitleMax Ex. 91 (TMX 91-001-003).

1 calculated daily.²⁰ A Truth-In-Lending Act (TILA) disclosure accompanies the
2 agreement.²¹ The TILA disclosure sets forth the annual percentage rate applicable to
3 the loan, the projected finance charge, the amount financed, and the projected total of
4 payments.²² The TILA disclosure contains a projection of the total amount the customer
5 will pay in finance charges assuming the customer makes each payment on its due
6 date.²³

7 FID admits that the Title Loan Agreement complies with Nevada law.²⁴

8 At the time the customer enters into the Title Loan Agreement, TitleMax staff
9 informs the customer of the option to enter into a GPPDA. Under the GPPDA, TitleMax
10 "amend[s], modif[ies], and defer[s]" the customer's payment schedule to provide for
11 fourteen installments scheduled 30 days apart, with the first seven payments going
12 toward interest only and the second seven payments going toward principal only.²⁵ The
13 due dates for the first seven payments remain the same as under the Title Loan
14 Agreement, with seven additional payment due dates scheduled every 30 days
15 thereafter.²⁶ Under the GPPDA, the customer's payments are no longer fully and ratably
16 amortized. Under the GPPDA, the loan remains subject to the same annual percentage
17 rate as agreed upon in the Title Loan Agreement. TitleMax customarily allows customers
18 whose accounts are in current status to enter into the GPPDA anytime at least 24 hours
19 after entering into the Title Loan Agreement.

20 A customer who enters into the GPPDA is entitled to make lower monthly
21 payments than he or she would be entitled to make under the Title Loan Agreement.
22 However, a customer who makes payments according to the payments schedule set
23 forth in the GPPDA will ultimately pay more money in interest to TitleMax than he or she
24 would have paid had he or she made payments according to the payments schedule set
25 forth in the Title Loan Agreement. Under both the Title Loan Agreement and the GPPDA,
26 the customer is entitled to make payments early without a penalty.

26 ²⁰ TitleMax Ex. 91 (TMX 91-001-003).

27 ²¹ See, for example, FID Ex. A-1 (000003).

28 ²² *Id.*

²³ *Id.*

²⁴ TitleMax Ex. 102, p. 3 ¶ 17.

²⁵ See, for example, FID Ex. A-1 (000016-000017).

²⁶ *Id.*

1 For example, on January 17, 2015, Customer Esguerra entered into a Title Loan
2 Agreement with TitleMax in which he borrowed a principal amount of \$5,800.00 at an
3 annual percentage rate of 133.7129% for 210 days.²⁷ Under these terms, Customer
4 Esguerra was projected to pay \$2,813.16 in interest over the life of the loan, for a total
5 amount paid of \$8,613.16.²⁸ Customer Esguerra was required to make payments every
6 30 days for 210 days in the amount of \$1,230.45 each, with the last payment coming
7 due on August 15, 2015.²⁹ On March 21, 2015, Customer Esguerra entered into a
8 GPPDA with TitleMax.³⁰ Under the GPPDA, Customer Esguerra was required to make
9 payments every 30 days for 420 days, with the first seven payments being in the amount
10 of \$637.42 each (the seventh payment was still due on August 15, 2015) and the second
11 seven payments being in the amount of \$828.57 each.³¹ Under the GPPDA, Customer
12 Esguerra was projected to pay \$4,461.94 in interest over the life of the loan, for a total
13 amount paid of \$10,261.94.³² Under the GPPDA, Customer Esguerra was projected to
14 pay \$1,648.78 more in interest than he was projected to pay under the Title Loan
15 Agreement.³³

16 **B. Findings of Fact Particular to the Issues Presented by the Allowance of**
17 **Co-Borrowers on Title Loans**

18 TitleMax allows individuals who are not legal owners of the vehicle that is the
19 collateral for the title loan to become parties to the loan. TitleMax terms these parties
20 "co-borrowers." In the event of a default on the loan, TitleMax does not pursue either the
21 vehicle's legal owner or the co-borrower personally. No evidence was presented that
22 TitleMax has ever sought to recover funds on a defaulted loan from the vehicle's legal
23 owner or a co-borrower. TitleMax's exclusive remedy upon default is repossession of
24 the vehicle that is the collateral for the title loan.

25 **III. CONCLUSIONS OF LAW**

26 **A. Conclusions of Law Particular to the Issues Presented by the GPPDA**

27 ²⁷ FID Ex. A-4 (000083-000087).

28 ²⁸ FID Ex. A-4 (000084).

29 ²⁹ FID Ex. A-4 000084).

30 ³⁰ FID Ex. A-4 (000090-000093).

31 ³¹ FID Ex. A-4 (000091).

32 ³² FID Ex. A-4 (000091).

33 ³³ FID Ex. A-4 (000083-000093).

1 FID asserts that TitleMax violates NRS 604A.445, NRS 604A.070, and NRS
2 604A.210 when it enters into the GPPDA with customers. FID contends that by entering
3 into the GPPDA, TitleMax unlawfully extends the term of the loan, does not ratably and
4 fully amortize installment payments, and charges additional interest. TitleMax argues in
5 response that the GPPDA constitutes an amendment to the original loan, so none of the
6 requirements imposed on the original term of the loan apply to the GPPDA and no
7 additional interest is charged during the grace period.

8 As set forth above, TitleMax offers only 210-day loans pursuant to NRS
9 604A.445(3). The original term of a title loan may be 210 days if the loan complies with
10 four conditions: 1) the loan must provide for payment in installments; 2) the installments
11 must be ratably and fully amortized; 3) the loan must not be subject to any extension;
12 and 4) the loan must not require a balloon payment of any kind. NRS 604A.445(3)(a)-
13 (d).³⁴ TitleMax contends that none of these four requirements apply to the GPPDA
14 because they only apply to the original term of the loan, and the GPPDA is an
15 amendment to the original term of the loan. TitleMax's argument is creative, but would
16 lead to an absurd result. See *Sheriff, Clark County v. Burcham*, 198 P.3d 326, 329, 124
17 Nev. 1247, 1253 (2008) (“[S]tatutory construction should always avoid an absurd
18 result.”) (internal quotations omitted). If TitleMax were correct, it and all other title lenders
19 could simply amend every loan agreement they enter into and thereby escape not only

20 ³⁴ **NRS 604A.445 Title loans: Restrictions on duration of loan and periods of extension.**
21 Notwithstanding any other provision of this chapter to the contrary:

- 22 1. The original term of a title loan must not exceed 30 days.
- 23 2. The title loan may be extended for not more than six additional periods of extension, with each
24 such period not to exceed 30 days, if:
 - 25 (a) Any interest or charges accrued during the original term of the title loan or any period of extension
26 of the title loan are not capitalized or added to the principal amount of the title loan during any subsequent
27 period of extension;
 - 28 (b) The annual percentage rate charged on the title loan during any period of extension is not more
than the annual percentage rate charged on the title loan during the original term; and
 - (c) No additional origination fees, set-up fees, collection fees, transaction fees, negotiation fees,
handling fees, processing fees, late fees, default fees or any other fees, regardless of the name given to
the fees, are charged in connection with any extension of the title loan.
3. The original term of a title loan may be up to 210 days if:
 - (a) The loan provides for payments in installments;
 - (b) The payments are calculated to ratably and fully amortize the entire amount of principal and
interest payable on the loan;
 - (c) The loan is not subject to any extension; and
 - (d) The loan does not require a balloon payment of any kind.

1 the requirements of NRS 604A.445(3) but even the requirement in NRS 604A.105(b)
2 that a title loan be secured by a vehicle title.³⁵ TitleMax may not opt out from NRS
3 604A.445(3) by creating a new, non-original agreement.

4 Having concluded that the GPPDA is not an amendment to the original loan
5 agreement that is exempt from the requirements of NRS 604A.445(3), the question
6 becomes whether the GPPDA is in compliance with those requirements. Neither party
7 disputes that under the GPPDA, payments are still in installments and no balloon
8 payment is required. Therefore, whether the GPPDA is a lawful product depends on its
9 compliance with the second and third requirements as set forth in NRS 604A.445(3)(b)
10 and (c).

11 ***a. The GPPDA is an unlawful extension of the loan.***

12 NRS 604A.445(3)(c) prohibits a licensee from granting an extension to a title loan
13 with an original term of 210 days. NRS 604A.065(1) defines an extension as “any
14 extension or rollover of a loan beyond the date on which the loan is required to be paid
15 in full under the original terms of the loan agreement, regardless of the name given to
16 the extension or rollover.” The definition of extension provides one critical exception:
17 “The term does not include a grace period.” NRS 604A.065(2). A grace period is defined
18 as “any period of deferment offered gratuitously by a licensee to a customer if the
19 licensee complies with the provisions of NRS 604A.210.” NRS 604A.070.³⁶ Licensees
20 offering grace periods are precluded from charging any fees for granting the grace period
21 and from charging any additional fees or additional interest on the outstanding loan
22

23 ³⁵ **NRS 604A.105 “Title loan” defined.**

24 1. “Title loan” means a loan made to a customer pursuant to a loan agreement which, under its
25 original terms:

26 (a) Charges an annual percentage rate of more than 35 percent; and

27 (b) Requires the customer to secure the loan by either:

28 (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.

2. The term does not include a loan which creates a purchase-money security interest in a vehicle
or the refinancing of any such loan.

³⁶ **NRS 604A.070 “Grace period” defined.** “Grace period” means any period of deferment offered
gratuitously by a licensee to a customer if the licensee complies with the provisions of NRS 604A.210.

1 during such a grace period. NRS 604A.210.³⁷ NRS 604A.210 and NRS 604A.270 are
2 the only provisions in Chapter 604A that address grace periods. The critical question is
3 what distinguishes a grace period from an extension, and does the GPPDA
4 impermissibly extend the loan or permissibly grant a grace period?

5 The GPPDA is an illegal extension of the loan in violation of NRS 604A.445(3)(c).
6 Under the GPPDA, customers receive an additional 210 days to pay off their title loan.
7 This arrangement explicitly satisfies the definition of an extension: the date on which the
8 loan is required to be paid in full is extended 210 days. The terms of the GPPDA do not
9 constitute a grace period because TitleMax does not offer the additional 210 days
10 gratuitously. Payments are due from customers every 30 days during the additional 210-
11 day period, and TitleMax derives a benefit in the form of being entitled to more interest
12 over the term of the loan under the GPPDA than it would be entitled to receive under the
13 Title Loan Agreement. Under the example set forth above, Customer Esguerra was
14 projected to pay \$1,648.78 more in interest under the terms of the GPPDA than he was
15 projected to pay under the Title Loan Agreement.

15 ***b. The GPPDA results in the charging of additional interest.***

16 The conclusion that the GPPDA is an unlawful extension of the loan rather than
17 a grace period renders null TitleMax's argument that it does not charge additional
18 interest during a grace period in violation of NRS 604A.210(2) because it collects all the
19 additional interest up front, during the first 210 days, rather than during the grace period,
20 or the last 210 days. Since the GPPDA does not constitute a true grace period,
21 TitleMax's imposition of seven interest-only payments is simply the impermissible
22 charging of additional interest in excess of the amount that can lawfully be charged.
23 TitleMax obtains the excess interest by ceasing to ratably and fully amortize the
24 installment payments, which is unlawful under NRS 604A.445(2).

25
26 ³⁷ **NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period.** The
27 provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the
28 repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:

1. Any fees for granting such a grace period; or
2. Any additional fees or additional interest on the outstanding loan during such a grace period.

1 When directly comparing the payments a customer must make under the Title
2 Loan Agreement to the payments a customer must make under the GPPDA, it is
3 undisputed that TitleMax stands to earn more money in interest charges under the
4 GPPDA because it charges simple interest on the entire outstanding principal amount
5 for seven months³⁸ rather than charging interest on a steadily-reducing amount of
6 principal as under the Title Loan Agreement.³⁹

7 According to TitleMax, though it stands to earn a greater amount of money in
8 interest charges under the GPPDA than it did under the Title Loan Agreement, that does
9 not constitute the collection of “additional interest on the outstanding balance during the
10 grace period” in violation of NRS 604A.210(2) because it charges and collects all of the
11 interest on the outstanding principal during the first seven payments—which it contends
12 are not part of the grace period. However, if the first seven payments are not part of the
13 grace period added by amendment, then they must be terms from the original Title Loan
14 Agreement, in which case those payments must be ratably and fully amortized, and after
15 the customer signs the GPPDA, those payments are not fully and ratably amortized.

16 **C. Conclusions of Law Particular to the Issues Presented by the**
17 **Allowance of Co-Borrowers on Title Loans**

18 FID asserts that TitleMax violates NAC 604A.230 when it allows individuals who
19 are not legal owners of the vehicle that is the collateral for the title loan to become co-
20 borrowers on the loan. FID contends that by allowing non-legal owners to become
21 parties to title loans, TitleMax is effectively allowing guarantors on title loans, which is
22 expressly prohibited by NAC 604A.230. FID further argues that TitleMax’s conduct is

23 ³⁸ The number and amount of payments that the customer has already made at the time the parties enter
24 into the GPPDA is highly relevant to this calculation. If the customer has made payments under the original
25 Title Loan Agreement, the principal amount owed will be lower than if the customer has not, and thus the
26 amount of interest charged against the outstanding principal during payments 1-7 will inevitably be lower
27 as well. Whether the customer ends up paying more money in interest charges under the GPPDA than he
28 or she would have under the original loan agreement is situation-specific to every loan agreement.

³⁹ It is true that a customer may pre-pay on the loan under either the original Title Loan Agreement or the
GPPDA, which would result in the customer paying less interest over the life of the loan than if the
customer made each payment on the due date. It is also true that a customer may pay late under either
the original Title Loan Agreement or the GPPDA, which could result in the customer paying more in interest
under the original agreement or the GPPDA than if the customer made each payment on the due date.
And it is also true that a customer may pay late under the original Title Loan Agreement even if that
customer did not sign the GPPDA and that customer could end up paying more in interest than the
customer would have paid had the customer made payments on time under the GPPDA.

1 violative of NRS Chapter 604A.450 because TitleMax allows co-borrowers as a means
2 of circumventing the ability-to-repay requirements set forth in that section.

3 NRS 604A.105 provides the definition of a title loan. It specifies that a customer
4 may secure a title loan in one of two ways: by giving the licensee possession of the title
5 to a vehicle the customer legally owns, or by noting the licensee's name on the title as a
6 lienholder. Necessarily, the customer obtaining the title loan must be the legal owner of
7 the vehicle as reflected on the vehicle's title. However, nothing in the language of NRS
8 604A.105 precludes the inclusion of an additional, non-legal owner as a party to the title
9 loan. NRS 604A.105 requires that a vehicle's legal owner procure the loan, but it does
10 not say that the legal owner must be the only party to the loan. If a vehicle's legal owner
11 wishes to include a third party on his or her loan and that third party consents to his or
12 her inclusion, nothing in Chapter 604A precludes it.

13 FID argues that by allowing a non-legal owner to be a party to the loan, TitleMax
14 is effectively allowing a guarantor to the loan, and the use of guarantors is expressly
15 prohibited by NAC 604A.230. However, FID did not present any evidence that TitleMax
16 attempts to pursue or ever has pursued the non-legal owner in the event of a default by
17 the legal owner.⁴⁰ In fact, TitleMax has repeatedly acknowledged, in both its written
18 briefing and the testimony of its corporate representative, Ted Helgesen, that title loans
19 are non-recourse loans in which seizure of the vehicle used as collateral is the lender's
20 only remedy in the event of a default.⁴¹ FID also did not present any evidence that
21 TitleMax received payment from the non-legal owner in any instance. Since TitleMax
22 does not attempt to recover a debt from these non-legal owners, it is not treating them
23 as guarantors nor are they acting as guarantors. TitleMax's practice of allowing a non-
24 legal owner to be a party to the loan does not violate NAC 604A.230's prohibition on the
25 allowance of a guarantor.

26 _____
27 ⁴⁰ The term "guaranty" is defined as "[a] promise to answer for the payment of some debt, or the
28 performance of some duty, in case of the failure of another who is liable in the first instance; a collateral
undertaking by one person to be answerable for the payment of some debt or performance of some duty
or contract for another person who stands first bound to pay or perform." Black's Law Dictionary (10th ed.
2014).

⁴¹ NRS 604A.455(2).

1 **D. Ability-to-Repay Requirements as Set Forth in NRS 604A.450**

2 FID argued at the hearing that TitleMax allows non-legal owners to be parties to
3 loans to circumvent the ability-to-repay requirements found in NRS 604A.450.⁴²
4 Specifically, FID alleges that when a legal owner cannot meet the ability-to-repay
5 requirements by him or herself, TitleMax will consider the non-legal owner's net income
6 in calculating the loan that it can issue. The fatal flaw to this argument is that FID has
7 not alleged a violation of NRS 604A.450 in this action. Whether TitleMax is allowing non-
8 legal owners to become parties to title loans as a method of circumventing the ability-to-
9 repay requirements is not at issue in this case. Therefore, I will not reach any conclusions
10 of law concerning this question.

11 **IV. DISCIPLINE AND PENALTIES**

12 Having concluded that the GPPDA is an unlawful extension of the original Title
13 Loan Agreement that results in the charging of additional interest, pursuant to NRS
14 604A.810, TitleMax is ordered to cease and desist offering the GPPDA to all customers.

15 FID requests an order requiring TitleMax to conduct a full accounting of and return
16 all principal and interest it has collected under every GPPDA it has ever entered into.
17 NRS 604A.900(1)(c) states, "[I]f a licensee willfully: [. . .] [c]ommits any other act or
18 omission that violates the provisions of this chapter or any regulation adopted pursuant
19 thereto, the loan is void and the licensee is not entitled to collect, receive or retain any
20 principal, interest or other charges or fees with respect to the loan."⁴³ FID contends that

21
22 ⁴² NRS 604A.450(2) prohibits licensees from making title loans "without regard to the ability of the
23 customer seeking the title loan to repay the loan, including the customer's current and expected income,
24 obligations and employment" and requires licensees to obtain from each customer an affidavit stating that
he or she has provided the licensee with true and correct information concerning his or her income,
obligations, employment, ownership of the vehicle, and that he or she has the ability to repay the loan.

25 ⁴³ **NRS 604A.900 Remedies for certain willful violations.**

- 26 1. Except as otherwise provided in this section, if a licensee willfully:
27 (a) Enters into a loan agreement for an amount of interest or any other charge or fee that violates the
28 provisions of this chapter or any regulation adopted pursuant thereto;
 (b) Demands, collects or receives an amount of interest or any other charge or fee that violates the
 provisions of this chapter or any regulation adopted pursuant thereto; or
 (c) Commits any other act or omission that violates the provisions of this chapter or any regulation
 adopted pursuant thereto, [] the loan is void and the licensee is not entitled to collect, receive or retain
any principal, interest or other charges or fees with respect to the loan.

2. The provisions of this section do not apply if:

1 TitleMax willfully violated NRS 604A.445 by deliberately choosing to continue to offer
2 the GPPDA to customers after being informed by FID during the 2014 Examination and
3 the 2015 Examination that the GPPDA was an unlawful product. TitleMax argues that it
4 had a good faith disagreement with FID over the legal requirements of NRS 604A.445
5 and that a showing of willfulness requires proof that TitleMax "knew or showed reckless
6 disregard for the matter of whether its conduct was prohibited." *McLaughlin v. Richland*
7 *Shoe Co.*, 486 U.S. 128, 131 (1988).

8 While TitleMax maintains that its actions in providing GPPDAs was nothing more
9 than a disagreement with the interpretation of an existing statutory provision and should
10 not give rise to sanctions that can be imposed only for a "willful" violation, this position
11 rings hollow once TitleMax was placed on notice by FID that such loan modifications
12 violated the law. As a result, there can be no doubt that TitleMax entered into GPPDAs
13 after December 18, 2014, willfully, warranting the imposition of the civil penalty set forth
14 in NRS 604A.900(1)(c). Accordingly, every GPPDA entered into after December 18,
15 2014, is void, and TitleMax is not entitled to collect, receive or retain any principal,
16 interest or other charges or fees with respect to those loans.

17 Pursuant to NRS 604A.820(1)(b), TitleMax shall pay an administrative fine of
18 \$307,000.00, with \$257,000.00 of that fine held in abeyance provided that TitleMax is
19 and remains compliant with NRS 604A.445.

20 Pursuant to 604A.820(1)(c), TitleMax must compensate FID for any costs
21 expended on the court reporter and for transcripts of the hearing.

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27 (a) A licensee shows by a preponderance of the evidence that the violation was not intentional and
28 resulted from a bona fide error of computation, notwithstanding the maintenance of procedures reasonably
adapted to avoid that error; and

(b) Within 60 days after discovering the error, the licensee notifies the customer of the error and
makes whatever adjustments in the account are necessary to correct the error.

1 **V. ORDER**

2 TitleMax is ordered to immediately cease and desist offering the GPPDA to all
3 customers.

4 TitleMax is ordered to conduct a full accounting of and return all principal and
5 interest it has collected under every GPPDA entered into after December 18, 2014.
6 TitleMax shall conduct this process under the supervision and direction of FID and shall
7 complete the return of all monies on or before 120 days from the date of this Order.

8 TitleMax is ordered to pay an administrative fine of \$307,000.00 with
9 \$257,000.00 of that amount held in abeyance provided that TitleMax is and remains
10 compliant with NRS 604A.445. TitleMax shall pay the portion of the fine not held in
11 abeyance within 30 days of the date of this Order.

12 TitleMax is ordered to compensate FID for its costs expended on the court
13 reporter and transcripts within 30 days of the date of this Order.

14 Dated this 12th day of August, 2016.

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16
17 /s/ Denise S. McKay
18 Denise S. McKay
19 Administrative Law Judge
20 State of Nevada
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CERTIFICATE OF MAILING

I, Michelle Metivier, do hereby certify that I deposited in the U.S. mail, postage prepaid, via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order to the following:

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Dated this 12th day of August, 2016.



