BEFORE THE NEVADA FINANCIAL INSTITUTIONS DIVISION

* * *

IN THE MATTER OF:  

TITLEMAX OF NEVADA, INC. and  
TITLEBUCKS d/b/a TITLEMAX  

ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING

ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION

GEORGE E. BURNS, Commissioner of the NEVADA FINANCIAL INSTITUTIONS DIVISION of the DEPARTMENT OF BUSINESS AND INDUSTRY, STATE OF NEVADA (the "Division"), complains for disciplinary action against TITLEMAX OF NEVADA, INC. and TITLEBUCKS d/b/a TITLEMAX (hereinafter "TITLEMAX") as follows:

JURISDICTION

1. Pursuant to Nevada Revised Statutes (NRS) Chapter 604A, the Division is vested with the exclusive and original jurisdiction over the regulation, business practices, licensing, examinations, and disciplinary action related to deferred deposit lending, high-interest lending, title lending, and check cashing services in Nevada.

2. TITLEMAX is now, and was at all pertinent times alleged herein, licensed in Nevada by the Division as a deferred deposit lender, and / or a high-interest lender, and / or a title lender, and / or a check cashing service, pursuant to NRS Chapter 604A.

3. As the holder of a Chapter 604A license, TITLEMAX is subject to the provisions of NRS Chapter 604A and Nevada Administrative Code (NAC) Chapter 604A.
4. The Division files this Complaint pursuant to NRS 604A.820 based upon the matters asserted herein and seeks the relief set forth below.

FACTUAL ALLEGATIONS

GENERAL FACTS

5. TITLEMAX is incorporated as a domestic corporation under the laws of Nevada and its resident agent is The Corporation Trust Company of Nevada, located at 701 S. Carson Street, Suite 200, Carson City, Nevada 89701.

6. TITLEMAX is licensed by the Division to conduct the business of lending at 42 locations in Nevada and the corporate office is located at 15 Bull Street, Suite 200, Savannah, Georgia 31401.

7. On or about May 4, 2015, through on or about June 17, 2015, the Division conducted its annual examination of TITLEMAX to ensure compliance with NRS Chapter 604A and NAC Chapter 604A (the “2015 Examination”).

8. The 2015 Examination involved a review of two to five percent of TITLEMAX’S loans at each of TITLEMAX’S 42 locations in Nevada.

9. The Division issued a Report of Examination (ROE) to TITLEMAX based upon the results of the 2015 Examination.

10. The Division rates licensees as follows, in descending order of compliance: Satisfactory, Needs Improvement, or Unsatisfactory.


13. Thus, in the 2015 ROE, the Division rated TITLEMAX “Unsatisfactory” due to the repeated violations.

14. The repeated violations cited in the 2015 Examination are:

a. Charging interest in violation of NRS 604A.210 and / or NRS 604A.445; and
b. Requiring or accepting co-borrowers on title loans in which the co-borrower has no ownership in the vehicle used for the title loan, in violation of NAC 604A.230 in accordance with NRS 604A.105 and NRS 604A.115.

15. The Commissioner has reasonable cause to believe that TITLEMAX is violating or is threatening to or intends to violate provisions of NRS Chapter 604A and NAC Chapter 604A.

FACTS REGARDING TITLEMAX’S UNLAWFUL GRACE PERIOD AMENDMENT

16. Pursuant to the TITLEMAX’S original Title Loan Agreement (Loan), the customer makes seven fully amortized installment payments within 210 days to pay the loan off without a balloon payment at the end of the loan.

17. The Division has concluded that the Loan complies with NRS 604A.445(3)(a)-(d).

18. During the 2014 and 2015 Examinations, the Division’s examiners observed TITLEMAX employees routinely offer customers an amendment to the Loan called the “Grace Period Payments Deferment Agreement” (Grace Period Amendment).

19. The text of the Grace Period Amendment provides in pertinent part:

“Because this is only an amendment and modification of the loan agreement in which we are only modifying and deferring your payments under the Title Loan Agreement, you acknowledge and agree that all of the terms and conditions of the Title Loan Agreement, including the charging of simple interest and waiver of jury trial and arbitration provision remain in full force and effect.”

20. As a business pattern and practice, TITLEMAX employees offer the Grace Period Amendment prior to the customer’s default on the Loan.

21. Customers are lured into the Grace Period Amendment because it typically decreases their initial payments.

22. Payments are not fully amortized under Grace Period Amendment.

23. TITLEMAX charges customers more money under the Grace Period Amendment than it does under the Loan.

24. The Grace Period Amendment schedules 14 monthly payments within 390 days.
25. Documents from the 2015 Examination show that TITLEMAX charges customers more money under the Grace Period Amendment than under the Loan.¹ ²

<table>
<thead>
<tr>
<th>Loan No.</th>
<th>Customer Name</th>
<th>Amount due under the Loan</th>
<th>Amount paid by the customer under the Grace Period Amendment</th>
<th>Unlawful overage amount charged and received by TITLEMAX</th>
</tr>
</thead>
<tbody>
<tr>
<td>10169-0121672</td>
<td>J.V.</td>
<td>$5,079.66</td>
<td>$5,826.74</td>
<td>$747.08</td>
</tr>
<tr>
<td>11669-0112962</td>
<td>G.T.</td>
<td>$3,500.21</td>
<td>$4,219.84</td>
<td>$719.63</td>
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<tr>
<td>11169-0129196</td>
<td>B.P.</td>
<td>$7,212.73</td>
<td>$8,645.45</td>
<td>$1,432.72</td>
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<tr>
<td>10069-0120952</td>
<td>M.A.</td>
<td>$11,880.22</td>
<td>$14,133.17</td>
<td>$2,252.95</td>
</tr>
</tbody>
</table>

26. Documents from the 2015 Examination show 307 examples of TITLEMAX charging customers more money under the Grace Period Amendment than under the Loan.

27. The 307 examples only reflect the two to five percent sampling of loans examined by the Division.

28. Of those 307 examples, TITLEMAX charged and received unlawful overage amounts from 24 customers totaling $8,863.21.

29. Of those 307 examples, 283 remain in “open” status whereby TITLEMAX charged and will potentially receive unlawful overage amounts totaling $370,090.74.

30. Assuming that the 307 examples of TITLEMAX charging customers more money under the Grace Period Amendment reflects a five percent sample size, then by mathematical extrapolation, TITLEMAX may have unlawfully charged customers a total of approximately 6,140 times during the period covered by the 2015 Examination.

¹ This Table summarizes four of TITLEMAX’S loans examined during the 2015 Examination whereby each customer has already paid the unlawful overage amount.

² Exhibits 1-4, attached hereto, include the Loan, Grace Period Amendment, and Customer Receipts for each of the four loans summarized by the Table. The fact that payments are not amortized under the Grace Period Amendment is evidenced by Bates Stamped page 007 in each the exhibits.
31. Further, assuming that the average overage amount charged by TITLEMAX under each Grace Period Amendment is $1,288.09 (determined by averaging the unlawful charges from paragraph 25), then TITLEMAX unlawfully charged Nevada customers approximately $7,908,872.60 during the period covered by the 2015 Examination.

32. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX charged customers more money under the Grace Period Amendment.

33. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX charged customers more money under the Grace Periods Amendment, after the Division rated TITLEMAX “Needs Improvement” in the 2014 examination.

34. NRS 604A.070 provides in full as follows:

NRS 604A.070 “Grace period” defined.
1. “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.

35. NRS 604A.210 provides in full as follows:

NRS 604A.210 Chapter does not prohibit licensee from offering customer grace period.
The provisions of this chapter do not prohibit a licensee from offering a customer a grace period on the repayment of a loan or an extension of a loan, except that the licensee shall not charge the customer:
2. Any fees for granting such a grace period; or
   Any additional fees or additional interest on the outstanding loan during such a grace period.
(Emphasis added.)
36. NRS 604A.445(3) provides in full as follows:

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

... 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.

(Emphasis added.)

37. TITLEMAX, through its Grace Period Amendment, charges additional fees and / or additional interest during grace periods.

38. TITLEMAX, through its Grace Period Amendment, makes title loans that last up to 390 days, which exceeds the maximum original term of 210 days allowed pursuant to NRS 604A.445(3).

39. TITLEMAX, through its Grace Period Amendment, makes title loans whereby payments are not fully amortized.

40. TITLEMAX, through its Grace Period Amendment, makes title loans that require one or more balloon payments.

41. TITLEMAX'S repeated violations were without any attempt to correct the deficiencies, and thus the repeated violations were willful, and / or intentional, and / or without any exercise of due care.

42. TITLEMAX'S systematic business practice of amending the Loan via the Grace Period Amendment is predatory and shows a willful intent to evade NRS and NAC 604A in order to unlawfully charge Nevada customers what may amount to millions of dollars.

...
FACTS REGARDING TITLEMAX’S UNLAWFUL GUARANTORS

43. Onsite visits to TITLEMAX locations and conversations between the Division’s examiners and TITLEMAX’s employees show that TITLEMAX requires and / or accepts a guarantor to a transaction entered into with a customer.

44. Examination papers from the 2015 Examination show that TITLEMAX requires and / or accepts a co-signor on a title loan to a customer where the co-signor's name is not on the title to the vehicle.

45. TITLEMAX’s loan agreements require and / or accept a co-signor on a title loan to a customer where the co-signor’s name is not on the title to the vehicle.

46. NRS 604A.105(1)(a)(1)-(2) provides in full as follows:

NRS 604A.105 “Title loan” defined.
1. “Title loan” means 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.

47. NRS 604A.115 provides in full as follows:

NRS 604A.115 “Title to a vehicle” or “title” defined.
“Title to a vehicle” or “title” means a certificate of title or ownership issued pursuant to the laws of this State that identifies the legal owner of a vehicle or any similar document issued pursuant to the laws of another jurisdiction.

48. NAC 604A.230(1)(a) provides in full as follows:

1. A licensee shall not:
   (a) Require or accept a guarantor to a transaction entered into with a customer.
49. The term “guarantor” is not defined in NRS Chapter 604A or NAC 604A.

50. A guarantor is “One who makes a guaranty or gives security for a debt.” BLACK’S LAW DICTIONARY 711 (7th ed. 1999).

51. A guaranty is “A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another who is liable in the first instance.” BLACK’S LAW DICTIONARY 712 (7th ed. 1999).

52. A title loan requires the customer to secure the loan. NRS 604A.105(1)(b).

53. A title loan requires that the customer give possession of the title to a vehicle legally owned by the customer to the licensee. NRS 604A.105(1)(b)(1).

54. Regardless of whether guarantor is called a co-borrower or a co-signor, the licensee is prohibited from requiring or accepting security or a promise to answer for payment from anyone other than the customer whose name is on the title.

55. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX required or accepted a guarantor to a loan with a customer.

56. An evidentiary hearing is necessary to determine why TITLEMAX required or accepted a guarantor to a loan with a customer.

57. An evidentiary hearing is necessary to determine what, if any, effect the relationship between the customer and the guarantor would have on the Division’s analysis.

58. An evidentiary hearing is necessary to determine exactly how many times TITLEMAX required or accepted a guarantor to a loan with a customer, after the Division rated TITLEMAX “Needs Improvement” in the 2014 examination.
ALLEGED VIOLATIONS

59. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.210(1) and / or (2), one or more times, by charging the customer additional fees and / or interest during a grace period.

60. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.210(1) and / or (2), one or more times, by charging the customer additional fees and / or interest during a grace period.

61. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(b), one or more times, by calculating payments on loans to customers that do not ratably and fully amortize the entire amount of principal and interest payable on the loan.

62. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(b), one or more times, by calculating payments on loans to customers that do not ratably and fully amortize the entire amount of principal and interest payable on the loan.

63. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(c), one or more times, by extending loans to customers for a term of up to 390 days.

64. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(c), one or more times, by extending loans to customers for a term of up to 390 days.

65. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX violated NRS 604A.445(3)(d), one or more times, by separating interest and principal which results in the customer paying one or more balloon payments.
66. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that TITLEMAX willfully violated NRS 604A.445(3)(d), one or more times, by separating interest and principal which results in the customer paying one or more balloon payments.

67. Based upon and incorporating by reference the foregoing Factual Allegations, the Commissioner alleges that one or more of TITLEMAX'S repeat violations are willful, and/or intentional, and/or without any exercise of due care to prevent the repeat violations.

DISCIPLINE AUTHORIZED

68. NRS 604A.810 provides in full as follows:

NRS 604A.810 Order to desist and refrain; action to enjoin violation; appointment of receiver.

1. Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, the Commissioner may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring the person to desist or to refrain from such violation.

2. The Attorney General or the Commissioner may bring an action to enjoin a person from engaging in or continuing a violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper.

3. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which an action is brought may impound, and appoint a receiver for, the property and business of the defendant, including books, papers, documents and records pertaining thereto, or so much thereof as the court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of property and business, whether such books, papers, documents and records are in the possession of the defendant, a registered agent acting on behalf of the defendant or any other person. A receiver, when appointed and qualified, has such powers and duties as to custody, collection, administration, winding up and liquidation of such property and
business as may from time to time be conferred upon the receiver by the court.
(Emphasis added.)

69. The procedures for taking disciplinary action are as follows:

NRS 604A.820 Procedure for taking disciplinary action; authorized disciplinary action; grounds.

1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, he shall give 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefore and set a date for a hearing.

2. At the conclusion of a hearing, the Commissioner shall:
   (a) Enter a written order dismissing the charges, revoking the license or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. The Commissioner shall send a copy of the order to the licensee by registered or certified mail.
   (b) Impose upon the licensee an administrative fine of not more than $10,000 for each violation by the licensee of any provision of this chapter or any regulation adopted pursuant thereto.
   (c) If a fine is imposed pursuant to this section, enter such order as is necessary to recover the costs of the proceeding, including his investigative costs and attorney's fees.
   (Emphasis added.)

3. The grounds for revocation or suspension of a license are that:
   (a) The licensee has failed to pay the annual license fee;
   (b) The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any lawful regulation adopted pursuant thereto;
   (c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;
   (d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license pursuant to the provisions of this chapter; or
   (e) The licensee:
      (1) Failed to open an office for the conduct of the business authorized by his license within 180 days after the date his license was issued; or
(2) Has failed to remain open for the conduct of the business for a period of 180 days without good cause therefore.

4. Any revocation or suspension applies only to the license granted to a person for the particular office for which grounds for revocation or suspension exist.

5. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

70. NRS 604A.900 provides in full as follows:

NRS 604A.900 Remedies for certain willful violations.

1. Except as otherwise provided in this section, if a licensee willfully:
   (a) Enters into a loan agreement for an amount of interest or any other charge or fee that violates the 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:
   (a) A licensee shows by a preponderance of the evidence that the violation was not intentional and 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.

(Emphasis added.)
RELIEF SOUGHT

71. Based upon the allegations contained herein which constitute sufficient cause for disciplinary action against the licensee pursuant to the provisions of NRS Chapter 604A and NAC Chapter 604A, the Commissioner prays for relief as follows:

A. That TITLEMAX be fined a monetary sum pursuant to the parameters defined at NRS 604A.820(2);

B. That action be taken against TITLEMAX's license pursuant to the parameters defined at NRS 604A.820(2);

C. That TITLEMAX pay the costs of the proceeding, including investigative costs, and attorney's fees pursuant to the parameters defined at NRS 604A.820(2);

D. That TITLEMAX be ordered to desist and refrain from violating NRS 604A.210 and / or NRS 604A.445, and / or NAC 604A.230;

E. That TITLEMAX'S willful violations result in a finding that the loans are VOID pursuant to NRS 604A.900; and

F. For such other and further relief as the Administrative Law Judge may deem just and proper.

DATED this [ ] day of [October], 2015.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

By: [Signature]
GEORGE E. BURNS
Commissioner
NOTICE OF HEARING

THEREFORE, TITLEMAX is directed to answer in writing the Administrative Complaint for Disciplinary Action within 10 days from service and to serve the same upon the undersigned Deputy Attorney General. A hearing into this matter will be held at:

The Nevada Financial Institutions Division, 2785 E. Desert Inn Rd., Suite 180, Las Vegas, Nevada 89121, beginning on October 27, 2015, through October 28, 2015, beginning each day at 10:00 a.m. until 5:00 p.m. or until the matter is concluded.

The Administrative Law Judge will, at that time, take such action as may be just and proper pursuant to the proof and pertinent laws. TITLEMAX is entitled to be represented by counsel at the hearing, and to cross-examine witnesses, present evidence, and argue on its own behalf before a decision is made by the Commission. Should TITLEMAX fail to appear at the hearing, a decision may be reached in its absence.

DATED this 24th day of October, 2015.

FOR THE NEVADA ATHLETIC COMMISSION,
DEPARTMENT OF BUSINESS AND INDUSTRY,
STATE OF NEVADA

By: ________________________________
   GEORGE E. BURNS
   Commissioner

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: ________________________________
   CHRISTOPHER ECCLES
   Deputy Attorney General
NOTICE OF HEARING

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DATED this Cal day of October, 2015.

FOR THE NEVADA ATHLETIC COMMISSION,
DEPARTMENT OF BUSINESS AND INDUSTRY,
STATE OF NEVADA

By: George E. Burns
Commissioner

SUBMITTED BY:

Adam Paul Laxalt
Attorney General

By: Christopher Eccles
Deputy Attorney General
CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the ____ day of ____________, 2015, 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 ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING, addressed as follows:

Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Respondent TITLEMAX

Certified Mail No. ________________________________

And to:

Corporation Trust Company of Nevada
701 S. Carson Street, Suite 200
Carson City, Nevada 89701

Resident agent in Nevada for TITLEMAX of Nevada, Inc. d/b/a TITLEMAX

Certified Mail No. ________________________________

And to:

Victoria Newman, Esq.
Compliance and Corporate Counsel for TITLEMAX of Nevada, Inc.
15 Bull Street, Suite 200
Savannah, Georgia 31401.

Certified Mail No. ________________________________

An Employee of the Nevada Attorney General’s Office
CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Financial Institutions Division, and that on the 7th day of October, 2015, 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 ADMINISTRATIVE COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING, addressed as follows:

Patrick J. Reilly, Esq.
Joseph G. Went, Esq.
Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Attorneys for Respondent TITLEMAX

Certified Mail No. 7012 1010 0000 11771041

And to:

Corporation Trust Company of Nevada
701 S. Carson Street, Suite 200
Carson City, Nevada 89701
Resident agent in Nevada for TITLEMAX of Nevada, Inc. d/b/a TITLEMAX

Certified Mail No. 7012 1010 0000 11771034

And to:

Victoria Newman, Esq.
Compliance and Corporate Counsel for TITLEMAX of Nevada, Inc.
15 Bull Street, Suite 200
Savannah, Georgia 31401.

Certified Mail No. 7012 1010 0000 11771027

An Employee of the Nevada Attorney General's Office