

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

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SCOTT ABBOTT,  
Plaintiff,

vs.

CAPITAL CREDIT & COLLECTION  
SERVICE, INC.,  
Defendant.

MEMORANDUM DECISION AND  
ORDER CONVERTING  
DEFENDANT'S MOTION TO  
DISMISS TO MOTION FOR  
SUMMARY JUDGMENT, AND  
SETTING RESPONSE TIME

Case No. 2:09-CV-678 TS

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This case was removed from state court based on Plaintiff's claim under the Fair Debt Collections Practices Act (FDCPA). Plaintiff's second claim is under the Utah Consumer Sales Practices Act (UCSPA). Pursuant to Fed. R. Civ. P. 12(b), Defendant moves to dismiss the case because the FDCPA and the UCSPA do not apply to this case. Defendant argues that those Acts apply only to consumer debts and the debt at issue in this case is a commercial debt incurred for Plaintiff's business. In support, Defendant


relies on an exhibit consisting of a Loan Agreement.<sup>1</sup> Plaintiff has not responded.

Because the Motion attaches and relies on a matter outside of the pleadings, the Motion “must be treated as one for summary judgment under Rule 56” and Plaintiff given “a reasonable opportunity to present all the material that is pertinent to the motion.”<sup>2</sup> The Court finds that an additional 21 days will afford Plaintiff a reasonable opportunity to present material that is pertinent to the motion. It is therefore

ORDERED that Defendant’s Motion to Dismiss (Docket No. 7) is converted to one for summary judgment. Plaintiff shall file its response, if any, within 21 days from the entry of this order. Defendant may file an optional reply no later than 14 days following any response by Plaintiff.

DATED May 6, 2010.

BY THE COURT:



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TED STEWART  
United States District Judge

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<sup>1</sup>Docket No. 7, Ex. A.

<sup>2</sup>Fed. R. Civ. P. 12(d).