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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

DEBORAH CURTIS, an individual,)
)
 Plaintiff,)
)
 v.)
)
 OPTION ONE MORTGAGE CORP., a)
 suspended California corporation,)
 AMERICAN HOME MORTGAGE)
 SERVICING, INC., a Delaware)
 corporation, and DOES 1 through 50)
 inclusive,)
)
 Defendants.)
 _____)

1:09-cv-1608 AWI SMS
ORDER REQUIRING PLAINTIFF
TO DEFINE THE MEANING OF
THE WORD “PROPERTY” AS
USED IN THE SECOND
AMENDED COMPLAINT AND
OPPOSTIOIN BRIEF

BACKGROUND

On November 19, 2009, Plaintiff filed an amended complaint. On February 18, 2010, the court granted Defendants motions to dismiss and dismissed the complaint with leave to amend the complaint’s TILA rescission claim. The court found that to state a TILA rescission claim, Plaintiff needed to allege in the complaint that she is financially capable of tendering the loan proceeds.

On March 19, 2010, Plaintiff filed a second amended complaint (“complaint”). The complaint alleges a violation of TILA and seeks rescission. The complaint alleges that: “Plaintiff is fully able and willing to tender performance of her obligations by tendering the property as required under 15 U.S.C. § 1635(b).”

1 Defendants have filed motions to dismiss the complaint in which they contend the
2 complaint still does not allege Plaintiff is capable of tendering the loan proceeds. In Plaintiff's
3 opposition, Plaintiff contends that because the complaint states she is capable and willing to
4 tender "the property", nothing more is required under TILA. In their reply, Defendants contend
5 that Plaintiff must allege her financial ability to return the net loan proceeds received, and not the
6 property securing the loan.

7 DISCUSSION

8 Plaintiff contends that she is entitled to rescission of her loan because Defendants failed
9 to provide accurate material disclosures. Title 15 U.S.C. § 1635(b) provides that:

10 When an obligor exercises his right to rescind . . . under subsection (a) of this
11 section, he is not liable for any finance or other charge, and any security interest
12 given by the obligor, including any such interest arising by operation of law,
13 becomes void upon such a rescission. Within 20 days after receipt of a notice of
14 rescission, the creditor shall return to the obligor any money or property given as
15 earnest money, downpayment, or otherwise, and shall take any action necessary or
16 appropriate to reflect the termination of any security interest created under the
17 transaction. If the creditor has delivered any property to the obligor, the obligor
18 may retain possession of it. ***Upon the performance of the creditor's obligations
under this section, the obligor shall tender the property to the creditor, except
that if return of the property in kind would be impracticable or inequitable, the
obligor shall tender its reasonable value. Tender shall be made at the location
of the property or at the residence of the obligor, at the option of the obligor.*** If
the creditor does not take possession of the property within 20 days after tender by
the obligor, ownership of the property vests in the obligor without obligation on
his part to pay for it. The procedures prescribed by this subsection shall apply
except when otherwise ordered by a court.

19 15 U.S.C. § 1635(b) (emphasis added).

20 Plaintiff contends that she has stated a claim under Section 1625(b) because she is able
21 and willing to tender "the property". However, Plaintiff does not define what is meant by
22 "property". It is unclear "property" refers to the real property that secures the loan or the loan
23 proceeds Plaintiff received from Defendants. The court believes that a definition of the term
24 "property" is necessary for the court to resolve the pending motions to dismiss. Thus, the court
25 will allow Plaintiff to specify her definition of term "property" as used in the complaint and
26 opposition brief within ten days.

ORDER

Accordingly, within ten days of this order's date of service, Plaintiff is ORDERED to file an amendment to the complaint that includes her definition of the term "property" as used in paragraph 21 of the complaint.

IT IS SO ORDERED.

Dated: June 21, 2010



CHIEF UNITED STATES DISTRICT JUDGE

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