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

DEBORAH CURTIS, an individual,)	1:09-CV-1982 AWI SMS
)	
Plaintiff,)	ORDER VACATING JUNE 28, 2010
)	HEARING
v.)	
)	ORDER REQUIRING PLAINTIFF
OPTION ONE MORTGAGE CORP., a)	TO DEFINE THE MEANING OF
suspended California corporation, and)	THE WORD "PROPERTIES" AS
DOES 1 through 50 inclusive,)	USED IN THE COMPLAINT BY
)	JULY 2, 2010
Defendant.)	

BACKGROUND

On July 22, 2009, Plaintiff filed a complaint in the Superior Court of the State of California, County of Stanislaus. On November 10, 2009, Defendant removed the complaint to the Eastern District of California, Fresno Division, because this court has federal question jurisdiction over the complaint pursuant to 28 U.S.C. § 1331. On April 28, 2010, the court 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 May 7, 2010, Plaintiff filed a first 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 subject properties as required under 15 U.S.C. § 1635(b).”

1 On May 20, 2010, American Home Mortgage Servicing, Inc. filed a motion to dismiss.¹
2 On May 21, 2010, Option One Mortgage Corporation filed a motion to dismiss. These
3 Defendants contend that the complaint still does not allege Plaintiff is capable of tendering the
4 loan proceeds. These motions are set for oral argument to be heard on June 28, 2010.

5 On June 3, 2010 and June 9, 2010, Plaintiff filed oppositions to the motions to dismiss.
6 Plaintiff contends that because the complaint states she is capable and willing to tender the
7 “properties”, nothing more is required under TILA.

8 Defendants filed reply briefs. Defendants contend that Plaintiff must allege her financial
9 ability to return the net loan proceeds received, and not the properties securing the loans.

10 DISCUSSION

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

13 When an obligor exercises his right to rescind . . . under subsection (a) of this
14 section, he is not liable for any finance or other charge, and any security interest
15 given by the obligor, including any such interest arising by operation of law,
16 becomes void upon such a rescission. Within 20 days after receipt of a notice of
17 rescission, the creditor shall return to the obligor any money or property given as
18 earnest money, downpayment, or otherwise, and shall take any action necessary or
19 appropriate to reflect the termination of any security interest created under the
20 transaction. If the creditor has delivered any property to the obligor, the obligor
21 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.

22 15 U.S.C. § 1635(b) (emphasis added).

23 Plaintiff contends that she has stated a claim under Section 1625(b) because she is able
24 and willing to tender the subject “properties”. However, Plaintiff does not define what is meant

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27 ¹ This motion appears to be unnecessary as American Home Mortgage Servicing, Inc. is
not named as a Defendant.

1 by the terms “properties” as used in the complaint. It is unclear if “properties” refers to the real
2 properties that secure the loans or the loan proceeds Plaintiff received from Defendants. The
3 court believes that a definition of the terms “properties” is necessary for the court to resolve the
4 pending motions to dismiss. Thus, the court will allow Plaintiff to specify her definition of term
5 “properties” as used in the complaint.

6 **ORDER**

7 Accordingly, the court ORDERS that:

- 8 1. By July 2, 2010, Plaintiff SHALL file an amendment to the complaint that
9 includes her definition of the term “properties” as used in paragraph 25 of the
10 complaint;
11 2. The June 28, 2010 hearing date is VACATED; and
12 3. As of July 2, 2010, the court will take Defendants’ motions to dismiss under
13 submission and thereafter issue a decision.
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15 IT IS SO ORDERED.

16 Dated: June 24, 2010

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19 CHIEF UNITED STATES DISTRICT JUDGE
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