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2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4

5  
6 ING BANK, fsb,

7 Plaintiff,

8 v.

9 CHANGSEOB AHN and SOOKHEE  
10 AHN,

11 Defendants.

NO. C09-00995 TEH

ORDER GRANTING  
COUNTERCLAIMANTS'  
MOTION FOR SUMMARY  
JUDGMENT

12  
13 CHANGSEOB AHN and SOOKHEE  
14 AHN,

15 Counterclaimants,

16 v.

17 ING BANK, fsb and BONA  
FINANCIAL GROUP, Inc.

18 Counterdefendants.  
19

20  
21 This matter is before the Court on the motion for summary judgment filed by  
22 Defendants and Counterclaimants Changseob Ahn and Sookhee Ahn (“the Ahns”). The  
23 Court, finding oral argument unnecessary, VACATES the motion hearing currently  
24 scheduled for May 17, 2010.<sup>1</sup> This motion requires the Court to resolve a single question:  
25 whether Counterdefendant Bona Financial Group, Inc. (“Bona”) violated California Civil  
26 Code section 1632 by failing to furnish the Ahns with a Korean translation of a loan  
27 agreement that had been negotiated entirely in Korean. For the reasons set forth below, the

28 <sup>1</sup> The matter remains on calendar for a case management conference at 10:00am.

1 Court answers that question in the affirmative, and the Ahns' motion is therefore  
2 GRANTED.

3

4 **BACKGROUND**

5 In 2007, the Ahns refinanced two mortgages on their single-family house at 2917  
6 Spanish Bay Drive in Brentwood, California with a loan from Plaintiff and Counterdefendant  
7 ING Bank, FSB ("ING"). They negotiated the loan with Bona, a loan broker, and had no  
8 direct contact with ING during the negotiation. Negotiations were conducted in Korean  
9 between the Ahns and Kathy Park, a loan officer with Bona. Korean is the Ahns' first  
10 language; they chose Bona as their loan broker because of its Korean-language capabilities.  
11 On April 27, 2007, the Ahns executed an adjustable rate note for \$728,000 in favor of ING,  
12 secured by a deed of trust on the property. The loan documents were all in English, and no  
13 Korean translations were provided.

14 The Ahns ceased making loan payments in October 2008, and went into default. ING  
15 filed suit on March 6, 2009, alleging that the Ahns made fraudulent misrepresentations in  
16 their loans applications by overstating their income and declaring an intent to reside in the  
17 house as their principal residence when they meant in fact to "flip" the house for a profit.<sup>2</sup>  
18 The loan documents listed the Ahns' joint monthly income as \$14,600, or \$175,200 annually.  
19 ING alleges that their true income was less than 60 percent this amount in 2006, and less  
20 than half the stated amount the following year.

21 The Ahns filed a counterclaim against ING and Bona on May 15, 2009, alleging  
22 violations of California Civil Code section 1632 and California's unfair competition law.  
23 Although the Ahns admit that their income was misstated, they claim that Bona inflated their  
24 income on the loan documents after receiving accurate income disclosures from the Ahns.  
25 They also allege that Bona violated section 1632 by failing to provide them with Korean-  
26 language translations of the loan documents.

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27 <sup>2</sup> ING filed a first amended complaint on March 20, 2009, which is the currently operative  
28 complaint.

1 The Ahns moved for summary judgment on January 20, 2010, on the limited question  
2 of whether Bona violated California Civil Code section 1632. After continuing the motion  
3 hearing to allow for settlement negotiations, the parties stipulated to a May 17, 2010 hearing  
4 date. The Court has vacated that hearing and now considers the motion on the papers.

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6 **LEGAL STANDARD**

7 Summary judgment is appropriate when there is no genuine dispute as to material  
8 facts and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
9 Material facts are those that may affect the outcome of the case. *Anderson v. Liberty Lobby,*  
10 *Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is “genuine” if there is  
11 sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.* The  
12 Court may not weigh the evidence and must view the evidence in the light most favorable to  
13 the nonmoving party. *Id.* at 255.

14 A party seeking summary judgment bears the initial burden of informing the court of  
15 the basis for its motion, and of identifying those portions of the pleadings and discovery  
16 responses that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v.*  
17 *Catrett*, 477 U.S. 317, 323 (1986). Where the moving party will have the burden of proof at  
18 trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than  
19 for the moving party. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).  
20 However, on an issue for which its opponent will have the burden of proof at trial, the  
21 moving party can prevail merely by “pointing out . . . that there is an absence of evidence to  
22 support the nonmoving party’s case.” *Celotex*, 477 U.S. at 325. If the moving party meets  
23 its initial burden, the opposing party must then “set out specific facts showing a genuine  
24 issue for trial” to defeat the motion. Fed. R. Civ. P. 56(e)(2); *Anderson*, 477 U.S. at 256.  
25 Questions of law are “suitable to disposition on summary judgment.” *Thrifty Oil Co. v. Bank*  
26 *of Am. Nat’l Trust & Sav. Ass’n*, 310 F.3d 1188, 1194 (9th Cir. 2002).

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1 **DISCUSSION**

2 California Civil Code section 1632 requires “[a]ny person engaged in a trade or  
3 business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,  
4 orally or in writing,” to provide the other party to the agreement with “a translation of the  
5 contract or agreement in the language in which the contract or agreement was negotiated.”  
6 Cal. Civ. Code § 1632(b). Section 1632 applies only to the negotiation of certain types of  
7 contracts and loans. *See id.* § 1632(b)(1)-(7). Although loans secured by real property are  
8 generally excluded from the statute, *id.* § 1632(b)(2), real property loans negotiated by a  
9 broker and “for use primarily for personal, family or household purposes” are covered, *id.* §  
10 1632(b)(4) (extending statute’s protection to loans subject to section 10240 of the California  
11 Business and Professions Code, which includes real property loans negotiated by real estate  
12 brokers); *see also Alvara v. Aurora Loan Servs., Inc.*, No. C09-1512 SC, 2009 U.S. Dist.  
13 LEXIS 50365, at \*9-10 (N.D. Cal. June 15, 2009) (“Put simply, real property transactions are  
14 excluded by Section 1632(b)(2), but brought back into the statute by Section 1632(b)(4), so  
15 long as they are negotiated by a broker.”).

16 Bona does not dispute that the transaction was negotiated by a broker in Korean, and  
17 acknowledges that the Ahns were not provided Korean-language translations of the loan  
18 documents. Section 1632 is therefore applicable here. However, Bona attempts to invoke an  
19 exception for loans negotiated through an interpreter. Section 1632 “does not apply to any  
20 person engaged in a trade or business who negotiates primarily in a language other than  
21 English” if “the party with whom he or she is negotiating . . . receives a loan or extension of  
22 credit, . . . [and] negotiates the terms of the contract, lease, or other obligation through his or  
23 her own interpreter.” Cal. Civ. Code § 1632(h). To qualify as an interpreter, one must be  
24 “able to speak fluently and read with full understanding both the English language” and the  
25 language in which the contract was negotiated. *Id.*

26 Bona presents evidence of Mr. Ahn’s fluency in English – including an excerpt from  
27 his Ph.D. dissertation in English and deposition testimony regarding his interest in  
28 simultaneous English-Korean translation – to argue that the interpreter exception applies

1 here. However, a party's fluency in English is irrelevant to section 1632, which makes no  
2 reference to a party's English-language proficiency. Section 1632 is triggered by the  
3 language in which a contract is negotiated, and applies here because the refinancing was  
4 negotiated in Korean. The interpreter exception requires one to act as an interpreter – i.e. to  
5 translate “from one language to another.” Black’s Law Dictionary 838 (8th ed. 2004).  
6 However, there is no evidence that Mr. Ahn acted as an interpreter. To the contrary, the  
7 Ahns and Park attested that the negotiations occurred entirely in Korean, facts to which Bona  
8 has stipulated.


9       The Ahns have carried their burden for summary judgment, and Bona has failed to  
10 show a genuine issue for trial regarding its violation of section 1632. Bona's evidence  
11 demonstrates Mr. Ahn's high degree of proficiency in English, but not his service as an  
12 interpreter. If the California legislature had sought to create exceptions to section 1632 based  
13 on a party's fluency in English, it could have done so. The fact that Mr. Ahn may be fluent  
14 in English is of no consequence where – as here – the negotiations occurred in Korean and he  
15 did not act as an interpreter. Bona's failure to provide Korean-language translations of the  
16 loan documents therefore violated section 1632.

## 17 18 **CONCLUSION**

19       As the Court finds that Bona violated section 1632 of the California Civil Code, the  
20 Ahns' motion for summary judgment on this narrow question is therefore GRANTED. The  
21 parties shall appear for case management conference on **Monday, May 17, 2010, at**  
22 **10:00am.**

23  
24 **IT IS SO ORDERED.**

25 Dated: 5/13/10

26   
27 THELTON E. HENDERSON, JUDGE  
28 UNITED STATES DISTRICT COURT