

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DELAINE M. HOFFMAN,

Plaintiff,

v.

INDYMAC BANK FSB, et al.,

Defendants

---

No. C-10-0802 MMC

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR ENLARGEMENT OF TIME;  
ORDER DIRECTING PLAINTIFF TO  
SHOW CAUSE WHY TWO CLAIMS  
SHOULD NOT BE DISMISSED;  
CONTINUING HEARING ON  
DEFENDANTS' MOTION TO DISMISS**

Before the Court is plaintiff's Motion for Enlargement of Time, filed June 18, 2010, by which plaintiff seeks an extension of the deadline to file opposition to defendants' motion to dismiss plaintiff's First Amended Complaint ("FAC"). Defendants have not filed opposition to plaintiff's motion. Having read and considered the moving papers, the Court rules as follows.

Good cause appearing for a limited extension, and there being no opposition to plaintiff's request for additional time to respond to defendants' motion, the Court will afford plaintiff an extension to file opposition.

Further, the Court, having reviewed the FAC, observes that the FAC, liberally construed, includes two claims not expressly addressed in defendants' motion to dismiss, each of which, as discussed below, appears to be subject to dismissal. Accordingly, the Court will direct plaintiff to show cause why those two claims should not be dismissed. See

1 Wong v. Bell, 642 F.2d 359, 361 (9th Cir. 1981) (holding “trial court may act on its own  
2 initiative to note the inadequacy of a complaint and dismiss it for failure to state a claim”).

3 First, plaintiff will be directed to show cause why her claim for rescission under the  
4 Truth in Lending Act (“TILA”) (see FAC ¶¶ 149-50), should not be dismissed, for the reason  
5 that plaintiff alleges the subject property has been sold at a Trustee’s Sale (see FAC ¶ 55).  
6 See Meyer v. Ameriquest Mortgage Co., 342 F.3d 899, 903 (9th Cir. 2003) (holding “right to  
7 rescind [under TILA] ends with the sale” of the property); Worthy v. World Wide Fin. Servs.,  
8 Inc., 347 F. Supp. 2d 502, 507 (E.D. Mich. 2004) (holding plaintiff has “no right to rescind  
9 the refinancing mortgage transaction after the foreclosure auction”).

10 Second, plaintiff will be directed to show cause why her claim that defendants  
11 deprived plaintiff of due process in violation of Article I, Section 7 of the California  
12 Constitution (see FAC ¶¶ 202-03), should not be dismissed, for the reason that such a  
13 claim requires a showing of “state action,” and the institution of nonjudicial foreclosure  
14 proceedings does not, as a matter of law, constitute “state action.” See Garfinkle v.  
15 Superior Court, 21 Cal. 3d 268, 281-82 (Cal. 1978) (holding “state action” required to  
16 establish claim for violation of Article I, Section 7 of California Constitution; finding  
17 “nonjudicial foreclosure of a deed of trust constitutes private action authorized by contract  
18 and does not come within the scope of the California due process clause”).

19 Accordingly, plaintiff’s motion for an enlargement of time is hereby GRANTED, and  
20 the Court hereby DIRECTS plaintiff to show cause why her claim for rescission and her  
21 claim based on Article I, Section 7 of the California Constitution should not be dismissed,  
22 as follows:

23 1. No later than July 16, 2010, plaintiff shall file any opposition to defendants’  
24 motion to dismiss, and shall include therein any argument as to why her claim for rescission  
25 and her claim based on Article I, Section 7 of the California Constitution should not be  
26 dismissed.

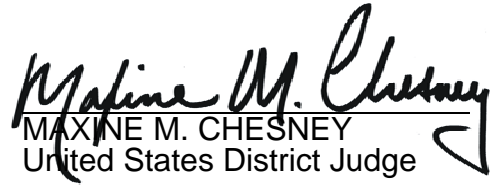
27 2. No later than July 23, 2010, defendants shall file any reply to plaintiff’s  
28 opposition.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. The hearing on defendants' motion to dismiss is hereby CONTINUED from July 9, 2010 to August 6, 2010, at 9:00 a.m., Courtroom 7.

**IT IS SO ORDERED.**

Dated: June 25, 2010

  
MAXINE M. CHESNEY  
United States District Judge