

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Action No. 10-cv-01945-PAB-MEH

LORRAINE M. MOLLER,

Plaintiff,

v.

ONEWEST BANK, FSB,

Defendant.

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**ORDER**

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On November 30, 2010, the Court reconvened the hearing on plaintiff's motion for preliminary injunction [Docket No. 3]. The Court also heard arguments on the defendant's motion to dismiss [Docket No. 37]. At the conclusion of the evidentiary portion of the hearing, the Court addressed the motion to dismiss.

The Court found it was undisputed that plaintiff received two Notices of Right to Cancel at her two closings, the first on August 7, 2007 and the second on August 14, 2007. See First Am. Compl., ¶¶ 9-11. The Court applied the standard from *Melfi v. WMC Mortgage Corp.*, 568 F.3d 309, 312 (1st Cir. 2009), for determining the adequacy of disclosure under the Truth in Lending Act and found that, based on the notices of right to cancel given to plaintiff at the closings, a reasonable person would have understood the deadline for his or her right of rescission. See *id.* Therefore, given that the disclosures did not violate TILA or its implementing regulations, plaintiff's right to rescind was not extended from three days to three years. See 12 C.F.R. §

226.23(a)(3). The Court found it was undisputed that plaintiff did not give notice of her rescission within the required three day period. See First Am. Complt., ¶ 13. As a result, the Court granted defendant's motion to dismiss and denied plaintiff's motion for a preliminary injunction as moot.

Accordingly, it is

**ORDERED** that defendant's Motion to Dismiss Plaintiff's First Amended Complaint [Docket No. 37] is **GRANTED**. Furthermore it is

**ORDERED** that plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction [Docket No. 3] is **DENIED** as moot. Furthermore it is

**ORDERED** that this case is **DISMISSED**. Judgment shall enter in favor of defendant and against plaintiff.

DATED December 1, 2010.

BY THE COURT:

s/ Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge