

**UNITED STATES OF AMERICA  
DISTRICT OF MAINE**

**PHILIP O’HEARN**

**Plaintiff,**

**v.**

**NATIONWIDE MUTUAL INSURANCE  
COMPANY,**

**Defendant.**

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**Civil No. 2:11-337-GZS**

**ORDER ON MOTION TO DISMISS**

Before the Court is Defendant’s Motion to Dismiss (Document # 8). As explained herein, the Motion is DENIED.

As to the breach of contract claim (Count I), the issue raised by Defendant’s Motion is a defense more appropriate for summary judgment or trial. Therefore, the Court finds that the Complaint states a plausible claim for breach of contract and denies the Motion as to Count I.

As to Count II, Defendant waives its right to seek to enforce the loan in question. Therefore, without objection, Judgment shall enter for Plaintiff on Count II.

SO ORDERED.

/s/George Z. Singal  
George Z. Singal  
Judge, United States District Court

Dated this 3rd day of November, 2011.