

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

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**STACY D. ROBINSON, on behalf of herself  
and all others similarly situated,**

**Plaintiff,**

v.

**FIRST FRANKLIN FINANCIAL CORP.,  
LENDERS EDGE SETTLEMENT  
SERVICES, LLC, and LAWYERS TITLE  
INSURANCE CORP.**

**Defendants.**

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**CIVIL ACTION  
NO. 05 - 6652**

**DuBOIS, J.**

**AUGUST 31, 2006**

**MEMORANDUM**

**I. INTRODUCTION**

Presently before the Court is defendant First Franklin Financial Corporation's Motion to Dismiss Plaintiff's Complaint. Defendant First Franklin Financial Corp. ("First Franklin") argues that the Federal Truth-in-Lending Disclosure Statement, which forms the basis of plaintiff Stacy D. Robinson's allegations, complies with both the Federal Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, et seq. and Regulation Z, 12 C.F.R. Pt. 226, and, as a result, plaintiff has failed to state a cause of action upon which relief can be granted. For the reasons set forth below, the Court agrees and will grant First Franklin's Motion to Dismiss.

## **II. BACKGROUND**

On behalf of herself and all others similarly situated, plaintiff has asserted claims arising out of a consumer credit transaction that occurred on August 9, 2005. Am. Compl. ¶ 9. On that date, plaintiff secured a mortgage on her home. Id. First Franklin was the lender, defendant Lawyers Title Insurance Corporation (“Lawyers Title”) was the underwriter, and defendant Lenders Edge Settlement Services, LLC (“Lenders Edge”) was the title agent of Lawyers Title during this transaction. Id. ¶¶ 5-7.

### **A. Allegations Against First Franklin**

In connection with the transaction, First Franklin provided plaintiff with a document entitled the Federal Truth-In-Lending Disclosure Statement (the “Disclosure Statement”).<sup>1</sup> Id. ¶ 14. Plaintiff contends that the Disclosure Statement contains “confusing, misleading, and contradictory disclosures of the terms of credit.” Id. ¶ 16. In support of this argument, plaintiff points to the fact that the Disclosure Statement includes both an “Annual Percentage Rate” (APR) of 9.8438% and a “Note Rate” of 7.8750%, and both an “Amount Financed” of \$99,178.42 and a “Loan Amount” of \$105,300.00. Id. ¶¶ 16-17. The Note Rate and Loan Amount are described as being “directly underneath, in a larger font [than] . . . and juxtaposed [to]. . .” the APR and Amount Financed, respectively. Id. ¶ 16. These are the facts that underlie the relevant portions of plaintiff’s Amended Complaint.

Plaintiff alleges that the Disclosure Statement violates both TILA and Regulation Z<sup>2</sup>

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<sup>1</sup> Plaintiff attached the Disclosure Statement to the Amended Complaint as Exhibit A.

<sup>2</sup> Congress has authorized the Federal Reserve Board (“FRB”) to “prescribe regulations to carry out the purposes” of TILA. 15 U.S.C. § 1604. As a result, the FRB has promulgated Regulation Z to implement TILA. Porter v. NationsCredit Consumer Discount Co., 2006 WL

because the APR is not disclosed more conspicuously than the Note Rate and because the Amount Financed is not disclosed more “clearly and conspicuously” than the Loan Amount. Am. Compl. ¶¶ 18-19. Plaintiff further avers that the Disclosure Statement violates TILA and Regulation Z because it does not comply with the Federal Reserve Board’s (“FRB”) model loan form set forth in Appendix H to Regulation Z. Id. ¶ 20. The Amended Complaint summarizes the TILA/Regulation Z violations as follows:

The Disclosure Statement issued to Plaintiff in connection with the consumer credit transaction of August 9, 2005 violated TILA and Regulation Z by failing to provide clear, conspicuous and accurate disclosures of the annual percentage rate and the amount financed prior to the consummation of the transaction, in violation of 15 U.S.C. §§ 1632, 1638 and 12 C.F.R. § 226.17.

Am. Compl. ¶ 39.

Plaintiff originally asserted two claims against First Franklin – claims in Counts I and V – but only Count I remains for the Court’s consideration.<sup>3</sup> Count I purports to state a claim on behalf of a putative class of individuals who received disclosure statements identical in form to the one plaintiff received at the closing for her loan. Id. In Count I, plaintiff has requested, inter alia, a declaratory judgment that First Franklin’s actions violated TILA and Regulation Z, an injunction that prohibits First Franklin from continuing to engage in the illegal practices alleged, and statutory damages pursuant to 15 U.S.C. § 1640(a)(2)(B). Am. Compl. ¶¶ 39(b) - (d).

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851307, at \*3 (E.D. Pa. Mar. 31, 2006) (citing Rossman v. Fleet Bank (R.I.) Nat’l Ass’n, 280 F.3d 384, 389 (3d Cir. 2002)).

<sup>3</sup> Under Count V, which plaintiff asserted individually, plaintiff sought rescission of the loan pursuant to 15 U.S.C. § 1635(a). Am. Compl. ¶¶ 59-65. Count V was dismissed by stipulation on April 7, 2006.

## **B. Procedural History**

On December 20, 2005, plaintiff filed suit against First Franklin. On January 17, 2006, plaintiff filed an Amended Complaint in which she added defendants Lawyers Title and Lenders Edge and asserted separate claims against those two entities.<sup>4</sup> Subsequently, First Franklin and Lawyers Title both filed motions to dismiss the Amended Complaint. During a Preliminary Pretrial Telephone Conference on April 25, 2006, plaintiff and defendants Lawyers Title and Lenders Edge reported to the Court that they had reached a settlement. On June 2, 2006, the Court received Plaintiff's Motion for Preliminary Approval of Settlement and Notice to Class. By Order dated August 30, 2006, the Court granted the motion.

## **III. DISCUSSION**

### **A. Standard of Review**

In analyzing First Franklin's Motion to Dismiss Plaintiff's Complaint, the Court accepts as true the facts alleged in the Amended Complaint and draws all reasonable inferences in favor of plaintiff. In re Merck & Co., Inc. Securities Litig., 432 F.3d 261, 266 (3d Cir. 2005); Lum v. Bank of America, 361 F.3d 217, 223 (3d Cir. 2004). The Court will grant the motion to dismiss only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations in the Amended Complaint. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). In evaluating First Franklin's Motion to Dismiss, the Court may consider documents that are attached to or submitted with the Amended Complaint. Delaware Nation v.

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<sup>4</sup> Counts II-IV of the Amended Complaint are asserted against Lawyers Title and Lenders Edge. These claims are brought under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq., and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Con. Stat. § 201-1 et seq.

Pennsylvania, 446 F.3d 410, 412 n.2 (3d Cir. May 4, 2006); Pryor v. Nat’l Collegiate Athletic Ass’n, 288 F.3d 548, 559 (3d Cir. 2002)).

**B. The Parties’ Arguments**

First Franklin asserts two principal arguments in support of its contention that the Court should dismiss Count I of the Amended Complaint as a matter of law.<sup>5</sup> First, it asserts that the disclosures of the APR and the Amount Financed for plaintiff’s loan complied with TILA and Regulation Z. Second, First Franklin argues that TILA does not permit statutory damages for defects in the form of disclosures required by 15 U.S.C. § 1632(a), and, as such, plaintiff is not entitled to any relief based on the violations alleged in the Amended Complaint.

Plaintiff responds that First Franklin’s motion should be denied because the Amended Complaint alleges violations of TILA and Regulation Z, statutory damages are available for the violations alleged, and First Franklin failed to oppose plaintiff’s claim for injunctive or declaratory relief under Count I. In its reply, First Franklin argues that plaintiff is not entitled to declaratory or equitable relief.<sup>6</sup>

**C. The Amended Complaint Fails to State a Claim upon which Relief Can Be Granted**

The purpose of TILA is to ensure that consumers receive meaningful disclosures regarding the terms and costs of credit. 15 U.S.C. § 1601; Thomka v. A.Z. Chevrolet, Inc., 619

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<sup>5</sup> The Court notes that First Franklin’s Motion to Dismiss Plaintiff’s Complaint is incorrectly titled. Plaintiff filed an Amended Complaint (Document No. 4, filed January 17, 2006) prior to First Franklin’s submission of its Motion to Dismiss Plaintiff’s Complaint (Document No. 9, filed February 23, 2006).

<sup>6</sup> Because the Court concludes that plaintiff has failed to state a claim under either TILA or Regulation Z, the Court declines to rule upon the parties’ arguments relating to the availability of remedies for the types of violations alleged by plaintiff.

F.2d 246, 248 (3d Cir. 1980); Johnson v. McCrackin-Sturman Ford, Inc., 527 F.2d 257, 262 (3d Cir. 1975). “In pursuit of these aims, the statute requires a series of disclosures that must be made before the consummation . . . of the underlying credit agreement . . . .” Rossman v. Fleet Bank (R.I.) Nat’l Ass’n, 280 F.3d 384, 389 (3d Cir. 2002). Because of TILA’s remedial purpose, courts, in evaluating claims, must construe the provisions strictly against creditors and liberally in favor of consumers.<sup>7</sup> Id. at 390 (citing Ramadan v. Chase Manhattan Corp., 156 F.3d 499, 502 (3d Cir. 1998)). Minor or technical violations impose liability even if the consumer “was not misled and was given a meaningful and correct disclosure of crucial credit terms.” Huff v. Steward-Gwinn Furniture Co., 713 F.2d 67, 69 (4th Cir. 1983).

#### **1. Section 1632(a) of TILA**

Plaintiff alleges that the Disclosure Statement violates TILA and Regulation Z because the APR is not disclosed more conspicuously than the other terms and because the APR and Amount Financed are not clearly and conspicuously disclosed. The Court will address each allegation in turn.

##### **i. The APR is more conspicuously disclosed than other terms**

Section 1632(a) requires that the terms “annual percentage rate” and “finance charge” be disclosed “more conspicuously than other terms, data, or information provided in connection with a transaction, except information relating to the identity of the creditor.” 15 U.S.C. § 1632(a). In the Disclosure Statement at issue, the APR is displayed more conspicuously than other terms because it appears in a bolded box and is highlighted by all capital and bolded letters.

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<sup>7</sup> It should be noted that violations of Regulation Z give rise to liability to the same extent as do violations of TILA’s statutory provisions. See, e.g., In re Armstrong, 288 B.R. 404, 413 (Bankr. E.D. Pa. 2003).

See, e.g., In re McElvaney, 98 B.R. 237, 241 (Bankr. W.D. Pa. 1989) (holding that lender did not violate TILA where APR was placed in black box); compare Brown v. C.I.L., Inc., 1996 WL 164294, at \*7 (N.D. Ill. Apr. 1, 1996) (concluding that plaintiff stated a claim where all terms were written in bold capital letters). Plaintiff emphasizes that the size of the type font for the Note Rate (the non-required disclosure) is larger than the size of the type font for the APR. The relative size of the numerals does not affect the Court's conclusion because the APR is set off in a bolded box and the words "Annual Percentage Rate" are written with all capital letters and in bolded text.

Plaintiff also tries to equate the disclosure statement in this case to the one at issue in Herrera v. First Northern Savs. & Loan Assn., 805 F.2d 896 (10th Cir. 1986). In Herrera, however, the disclosure statement contained 30 terms and phrases printed in the identical size, style, and boldness of type as the APR. Id. at 898. The Disclosure Statement at issue in this case bears no resemblance to the one described in Herrera and, therefore, that case is distinguishable.

ii. The APR and Amount Financed are clearly and conspicuously disclosed

Section 1632(a) of TILA also requires that the APR and Amount Financed, like all other required information, be "disclosed clearly and conspicuously." 15 U.S.C. § 1632(a). Plaintiff alleges that the presence of the Note Rate and Loan Amount creates confusion and misleads the consumer because these terms contradict the APR and Amount Financed, respectively. The Court disagrees and concludes that the APR and the Amount Financed are clearly and conspicuously disclosed as required.

To start, the APR and the Note Rate are not contradictory terms. In Smith v. Anderson, 801 F.2d 661 (4th Cir. 1986), the Fourth Circuit explained that the APR "differs from the general

definition of interest rate because it considers, by definition, a broader range of finance charges when determining the total cost of credit as a yearly rate.” Id. at 663 (citing 15 U.S.C. §§ 1605, 1606). Thus, the APR and the Note Rate are simply different calculations of the interest rate. Likewise, the Amount Financed and the Loan Amount are not contradictory. As explained in Smith, “[a]mount financed’ is derived by making certain adjustments to the principal loan amount, most notably the subtraction of any prepaid finance charge.” Id. (citing 12 C.F.R. § 226.18(b)). As such, the Disclosure Statement does not contain contradictory terms; instead, it discloses alternative terms that reflect different calculations of the amount of the loan and the interest rate.<sup>8</sup>

Having reached this conclusion, the Court notes that the cases relied upon by plaintiff are unavailing. Unlike the instant case, plaintiff points to cases in which the lenders provided disclosure statements that included clearly contradictory information. For example, in Varner v. Century Finance Co., Inc., 738 F.2d 1143 (11th Cir. 1984), the lender disclosed two different dollar amounts under the same heading of “loan fee.” Id. at 1147-48; see also Rodash v. AIB Mortgage Co., 16 F.3d 1142 (11th Cir. 1994) (holding that disclosure of right to rescind along with waiver of that right constituted a violation due to contradiction).<sup>9</sup>

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<sup>8</sup> The Disclosure Statement at issue specifically explains that the APR and the Note Rate are distinct terms. See Am. Compl., Ex. A (“The Annual Percentage Rate (APR) is not the same as the interest rate (Note Rate) of the mortgage for which you applied. . .”).

<sup>9</sup> The decisions in Jenkins v. Landmark Mortgage Corp. of Va., 696 F. Supp. 1089, 1093-94 (W.D. Va. 1988), Wiggins v. AVCO Financial Services, 62 F. Supp. 2d 90 (D.D.C. 1999), and In re Apaydin, 201 B.R. 716 (Bankr. E.D. Pa. 1996) analyzed the same problem and reached the same conclusion as the Eleventh Circuit in Rodash v. AIB Mortgage Co., 16 F.3d 1142 (11th Cir. 1994). Therefore, those decisions are distinguishable. Also, the decision in Schmidt v. Citibank N.A., 677 F. Supp. 687 (D. Conn. 1987) pertained to an open-end credit transaction, which requires the application a different subsection of TILA. Thus, the Schmidt decision is

The Court's conclusion is also supported by a Bankruptcy Court decision in this district with facts similar to the case at bar. See In re Lewis, 290 B.R. 541 (Bankr. E.D. Pa. 2003). In that case, the debtor alleged TILA and Home Ownership and Equity Protection Act ("HOEPA") violations based on, inter alia, the disclosure of (1) a "note rate" and the APR; and (2) the "loan amount" and "amount financed." Id. at 548-49. The Bankruptcy Court concluded that the inclusion of additional information did not violate TILA and HOEPA as a matter of law. Id. at 548. With respect to the disclosure of the APR and note rate, the Bankruptcy Court explained, "[d]isclosure of the note rate . . . does not rise to the level of confusion caused by the disclosure infractions" such as "a situation in which the borrower was given information that directly contradicted other information" or when "the lender [labeled] two items identically." Id. (citing cases relied upon by plaintiff). Regarding the disclosure of the loan amount, the Bankruptcy Court concluded that the difference in the "loan amount" on the HOEPA form and the "amount financed" on the TILA form was due, in part, to the way the terms were defined by federal regulations and that, therefore, the numerical difference did not amount to a contradiction. Id. at 549. The Court agrees with the rationale of the court in In re Lewis.<sup>10</sup>

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distinguishable as well.

<sup>10</sup> The Court notes that the Amended Complaint also alleges that the APR and Amount Financed were inaccurately disclosed. Plaintiff, however, has not averred that the actual numbers disclosed were wrongly calculated. Instead, the inaccuracy allegation is another iteration of plaintiff's contention that the presence of the Note Rate and Loan Amount create TILA and/or Regulation Z violations. The presence of additional information, however, does not render the required disclosures inaccurate, unless the additional disclosures were to contradict or otherwise undermine the required disclosures, and they do not do so. See, e.g., Rodash, 16 F.3d 1142 (11th Cir. 1994).

## 2. Section 1638(a) of TILA

Plaintiff alleges that the Disclosure Statement violates section 1638(a). In making this claim, plaintiff highlights the following provisions:

### (a) Required disclosures by creditor

For each consumer credit transaction . . . , the creditor shall disclose each of the following:

\* \* \*

(2)(A) The “amount financed,” using that term, which shall be the amount of credit of which the consumer has actual use.

\* \* \*

(4) The finance charge express as an “annual percentage rate,” using that term.

15 U.S.C. §§ 1638(a)(2)(A), 1638(a)(4).

The Court concludes that the Amended Complaint does not state a claim under section 1638(a) because First Franklin has complied with both § 1638(a)(2)(A) and § 1638(a)(4). Simply put, the Disclosure Statement disclosed the Amount Financed and the Annual Percentage Rate and used those exact terms. See Amended Complaint, Ex. A. The presence of non-required terms does not undermine the fact that the required information is disclosed.

## 3. Section 226.17(a)(1) of Regulation Z

Plaintiff also alleges that the additional information also violates 12 C.F.R. § 226.17. While lenders are not prohibited from including additional information on the disclosure forms, there are restrictions on how the additional information can be disclosed. In re Lewis, 290 B.R. at 548. Section 226.17(a)(1) of Regulation Z provides that: “The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not

directly related to the disclosures under § 226.18.” 12 C.F.R. § 226.17(a)(1) (emphasis added).

The Court notes that Regulation Z does not require the disclosure of the “Note Rate” or the “Loan Amount.” See 12 C.F.R. § 226.18.

Regulation Z does not define the term “directly related.” Official Staff Commentary from the FRB provides a non-exhaustive list of directly related information and neither “Note Rate” nor “Loan Amount” are included in this list. See 12 C.F.R. Pt. 226, Supp. I, ¶ 17(a)(1)-5. The Staff Commentary also provides an explanation of the means of segregating disclosures. “[T]he disclosures may appear on a separate sheet of paper or may be set off from other information on the contract or other documents: [b]y outlining them in a box; [b]y bold print dividing lines; [b]y a different color background; [or] [b]y a different type style.” Id. ¶ 17(a)(1)-2. The Court concludes that plaintiff has failed to state a claim under Section 226.17(a)(1) because the Note Rate and Loan Amount disclosures are both segregated from and directly related to the required disclosures.

First, because the Note Rate and Loan Amount appear below the bolded boxes containing the APR and Amount Financed and above another bold box containing the schedule of payments, they are clearly segregated from the required disclosures. See 12 C.F.R. Pt. 226, Supp. I, ¶ 17(a)(1)-2. Second, the Note Rate and APR as well as the Loan Amount and Amount Financed are directly related terms. As noted above, while the FRB’s Staff Commentary provides a list of “directly related” information, it is not exhaustive. In Goldberg v. Delaware Olds, Inc., 670 F. Supp. 125 (D. Del. 1987), aff’d, 845 F.2d 1011 (3d Cir.), the district court concluded that a bank’s right of set-off was “directly related” to the required disclosures regarding method of payment, even though it was not included in the FRB’s list, because, in part, it was information

that was “helpful and important to consumers.” *Id.* at 129. The disclosure of the Note Rate and the Loan Amount is “helpful and important” because it enables consumers to compare figures on other closing documents with the statutorily-mandated APR and Amount Financed. Moreover, these figures are alternative methods of calculating the same information – the interest rate and the loan amount – and thus bear close relationships to each other. *See Smith*, 801 F.2d at 663.

#### **4. Section 226.17(a)(2) of Regulation Z**

Plaintiff also cites 12 C.F.R. 226.17(a)(2) as a source of alleged violations. Section 226.17(a)(2) provides:

The terms finance charge and annual percentage rate, when required to be disclosed under section 226.18(d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor’s identity under 226.18(a).

12 C.F.R. § 226.17(a)(2). The Court has already explained that the APR is displayed more conspicuously than any other disclosure, excepting the creditor’s identity. As such, plaintiff’s reference to Section 226.17(a)(2) is merely a restatement of her claim under 15 U.S.C.

§ 1632(a).<sup>11</sup> Thus, the Court concludes that plaintiff has failed to state a claim under 12 C.F.R. § 226.17(a)(2).<sup>12</sup>

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<sup>11</sup> Plaintiff has not complained of any problems with the finance charge disclosure. As a result, the Court concludes that, in referring to 12 C.F.R. § 226.17(a)(2), plaintiff is referring to the APR disclosure requirement only. Even if the plaintiff were have included the finance charge disclosure in her list of alleged violations, the Court’s conclusion would remain the same. The finance charge is disclosed in the same manner as the APR – in a bolded box with the term written in bolded and all capital letters.

<sup>12</sup> Plaintiff also references 12 C.F.R. §§ 226.18(b), 226.18(e) as sources of violations in her response to First Franklin’s Motion to Dismiss. These provisions pertain to the manner in which the “amount financed” and the “annual percentage rate” are disclosed. The Court concludes that plaintiff fails to state a claim under either provision. The Disclosure Statement clearly includes both the amount financed and the annual percentage rate as well as the exact

## 5. Plaintiff's Other Arguments

Plaintiff argues that First Franklin's unnecessary deviation from the FRB model forms has resulted in a violation of TILA and Regulation Z. The Court disagrees. First Franklin's failure to comply with FRB model forms does not automatically create liability. The use of the appropriate model form ensures compliance with TILA and Regulation Z. In re Porter, 961 F.2d 1066, 1076 (3d Cir. 1992). TILA, however, does not require that a creditor use the model disclosure forms published by the FRB. See 15 U.S.C. § 1604(b) ("Nothing in this title may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Board under this section."). Thus, plaintiff's allegations that First Franklin deviated from the FRB model forms do not state a claim under TILA or Regulation Z.

Plaintiff also argues that, when a lender makes additional, non-required disclosures, the burden of demonstrating compliance rests with the lender. In making this argument, plaintiff cites FRB Public Information Letter No. 832, as quoted in Wright v. Tower Loan of Mississippi, Inc., 679 F.2d 436, 444 (5th Cir. 1982). Plaintiff adds that, because First Franklin has not offered any justification for its inclusion of the additional terms, she has stated a claim under TILA.

Plaintiff's reliance on FRB Public Information Letter No. 832 and all of the cases that cite to it is unavailing. That determination is based on the fact that FRB Letter No. 832, which was originally published in 1974, is no longer applicable to Regulation Z. Supplement I to 12 C.F.R. Pt. 226 states, in relevant part:

All statements and opinions issued by the Federal Reserve Board and its staff interpreting previous Regulation Z remain effective until October 1, 1982, only insofar as they interpret that regulation. When compliance with revised Regulation Z becomes

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language suggested by the regulations.

mandatory on October 1, 1982, the Board and staff interpretations of the previous regulation will be entirely superseded by the revised regulation and this commentary except with regard to liability under the previous regulation.

12 C.F.R. Pt. 226, Supp. I, Intro.-3. Because plaintiff has provided no other support for this contention, the Court rejects plaintiff's "burden of proof" argument.

#### **IV. CONCLUSION**

For all of the aforementioned reasons, the Court concludes that the Amended Complaint fails to state a claim under TILA or Regulation Z. Therefore, the Court grants First Franklin's Motion to Dismiss Count I of the Amended Complaint.

An appropriate Order follows.

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

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**STACY D. ROBINSON, on behalf of herself  
and all others similarly situated,  
Plaintiff,**

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**FIRST FRANKLIN FINANCIAL CORP.,  
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SERVICES, LLC, and LAWYERS TITLE  
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Defendants.**

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**CIVIL ACTION  
NO. 05 - 6652**

**ORDER**

**AND NOW**, this 31st day of August, 2006, upon consideration of Defendant First Franklin Financial Corporation's Motion to Dismiss Plaintiff's Complaint<sup>1</sup> (Document No. 9, filed February 23, 2006), Answer to Defendant First Franklin Financial Corp.'s Motion to Dismiss Plaintiff's Complaint (Document No. 16, filed April 7, 2006), and Reply Brief in Support of the Motion to Dismiss of Defendant First Franklin Financial Corp. (Document No. 23, filed May 1, 2006), **IT IS ORDERED** that Defendant First Franklin Financial Corporation's Motion to Dismiss Plaintiff's Complaint is **GRANTED** with respect to Count I of Plaintiff's Amended Complaint, and, because the granting of the Motion leaves no claims against defendant First Franklin Financial Corporation, the action is **DISMISSED WITH PREJUDICE** as to defendant First Franklin Financial Corporation.<sup>2</sup>

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<sup>1</sup> Defendant First Franklin Financial Corporation's Motion to Dismiss is incorrectly titled because it is directed to plaintiff's Amended Complaint.

<sup>2</sup> By Stipulation and Order dated April 7, 2006, Count V of the Amended Complaint was dismissed without prejudice.

**IT IS FURTHER ORDERED** that the caption is **AMENDED** to remove reference to defendant First Franklin Financial Corporation.

**BY THE COURT:**

/s/ Honorable Jan E. DuBois  
**JAN E. DUBOIS, J.**