

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLENE M. REYNOLDS and)	
BRIAN E. REYNOLDS,)	
)	
Plaintiffs,)	
)	CIVIL ACTION
v.)	NO. 07-cv-11862-DPW
)	
E-LOAN, INC. and)	
E*TRADE BANK,)	
)	
Defendants.)	

MEMORANDUM AND ORDER
November 14, 2008

Plaintiffs Charlene and Brian Reynolds bring this complaint against defendants E-Loan, Inc. and E*Trade Bank for violations of the federal Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., and its Massachusetts counterpart, the Massachusetts Consumer Credit Cost Disclosure Act ("MCCCDCA"), Mass. Gen. Laws ch. 140D §§ 1-35. The Reynolds claim they received inadequate notice of their statutory rescission rights in connection with a loan they obtained from the defendants. They now seek rescission of the loan as well as monetary damages. The defendants have moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), on grounds that adequate notice of rescission rights was received by the Reynolds. I will deny the motion because the facts as alleged do not establish adequate notice.

I. FACTUAL BACKGROUND AS ALLEGED

On or about September 21, 2005, the Reynolds obtained a loan from defendant E-Loan, Inc. The loan was for personal, family or

household purposes, and it was secured by the Reynolds' home. (2d Am. Compl. ¶ 10.) The loan was later assigned to defendant E*Trade Bank. (2d Am. Compl. ¶ 9.)

In connection with this loan, Charlene and Brian Reynolds were each provided with a copy of a Notice of Right to Cancel ("the notices"). (2d Am. Compl. ¶ 11.) In pertinent part, the notices stated:

Your Right to Cancel: We have agreed to establish an open-end credit account for you, and you have agreed to give us a security interest in your home as security for the account. You have a legal right under federal law to cancel the account, without cost, within three business days after the latest of the following events.

1. the opening date of your account which is _____; or
2. the date you received your Truth-in-Lending disclosures; or
3. the date you received this notice of your right to cancel the account.

* * *

If you cancel by mail or telegram, you must send the notice no later than midnight of _____ (date) (or midnight of the third business day following the latest of the three events listed above).

(2d Am. Compl. Ex. A.) According to the Reynolds, the two spaces in the notices where dates could be inserted were left blank on the copies provided to them.¹ (2d Am. Compl. ¶ 16.)

¹ The defendants, on the other hand, claim that the notices specifically included in the appropriate spaces both the date when the Reynolds' account was opened and the date on which the

On or about September 21, 2007, and March 18, 2008, the Reynolds sent notices of rescission for the loan to the defendants. (2d Am. Compl. ¶ 12.) The Reynolds claimed that because they had been given incomplete and defective notice of their rescission rights, they could properly exercise their rights under the TILA and the MCCCDA to rescind the loan some two years after it was consummated. (2d Am. Compl. Ex. B.) The defendants refused to comply with the Reynolds' notices of rescission.

II. STANDARD OF REVIEW ON MOTION TO DISMISS

On a motion to dismiss, the court must take as true all well-pleaded facts in the operative pleading (here, the Second Amended Complaint) and draw all reasonable inferences arising from them in the plaintiffs' favor. See *Phoung Luc v. Wyndham Mgmt. Corp.*, 496 F.3d 85, 88 (1st Cir. 2007). A complaint should be dismissed for failure to state a claim only if the complaint, so viewed, presents no set of facts justifying recovery. See *Cooperman v. Individual, Inc.*, 171 F.3d 43, 46 (1st Cir. 1999).

III. FACTUAL DISPUTE REGARDING THE CONTENT OF THE NOTICES PROVIDED TO THE REYNOLDS

At the outset, I must address the parties' dispute as to the content of the notices provided to the Reynolds, an issue which surfaced in the simultaneous briefing. The Second Amended

rescission period would expire. This dispute regarding the content of the notices is addressed in Section III, *infra*.

Complaint expressly alleges that the notices received by the Reynolds had blank spaces where the opening date for their account and the expiration date for their rescission rights should have been inserted. (2d Am. Compl. ¶ 16.) To support this assertion, the Reynolds attached to their complaint an unsigned and undated copy of one of the notices. (2d Am. Compl. Ex. A.)

The defendants claim, contrary to these allegations, that the notices provided to the Reynolds specifically indicated the month, day, and year when the loan account was opened, as well as the month, day, and year when the Reynolds' right to rescind would expire. (Doc. 31 at 5.) As evidence, the defendants have attached to their motion to dismiss what they describe as the "true and correct copies" of the notices. (Doc. 31 at 5.) These copies include the dates in question, as well as the Reynolds' signatures.² (Doc. 31 Ex. 1.) The defendants have also filed an affidavit from the notary public present at the closing of the Reynolds' loan, who asserts that it has always been his practice to provide each customer at the closing copies of the Notice of Right to Cancel with the pertinent dates filled in. (Doc. 32.)

On a motion to dismiss, the court ordinarily may not consider any documents that are not attached to the complaint or

² At the motion hearing, plaintiffs' counsel did not contest that the signatures on these copies of the notices were, in fact, the Reynolds' signatures. He asserted, however, that the Reynolds would contend the dates were not filled in when they received the notices.

are not expressly incorporated therein. See *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993). There are, however, narrow exceptions to this principle. A district court may consider "documents the authenticity of which are not disputed by the parties . . . documents central to plaintiffs' claim; or . . . documents sufficiently referred to in the complaint." *Id.*³

The copies of the notices attached to the defendants' motion do not fall within any of these exceptions. There is a clear factual dispute whether the notices produced by the defendants accurately depict the notices the Reynolds received. The Reynolds claim that the copy of the notices filed with their complaint - with blank spaces where the relevant dates should have been inserted - represents the notices that were actually provided to them. It is this copy of the notices that is "central" to the Reynolds' claims and to which they refer in their complaint. By contrast, the copies of the notices attached to the motion to dismiss may be "central" to the defense, but they are not likewise "central" to the claims as made by the Reynolds. I therefore find that the defendants' disputed copies of the notices, as well as the notary's affidavit, cannot

³ There is also an exception for "official public records." *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993); see also *Andrew Robinson Int'l, Inc. v. Hartford Fire Ins. Co.*, No. 08-1255, 2008 WL 4838129, at *2 (1st Cir. Nov. 10, 2008) (noting that a federal court "may consider matters fairly incorporated within the complaint and matters susceptible of judicial notice," including the record in a state court action). That exception is not relevant here.

properly be considered on a motion to dismiss. See *Reese v. Hammer Fin. Corp.*, No. 99-C-0716, 1999 WL 1101677, *3 (N.D. Ill. Nov. 30, 1999) (holding that a similar disputed notice attached to the defendant's motion to dismiss "merely raises questions regarding the factual circumstances surrounding the delivery of the Notice of Right to Cancel to the [plaintiffs] - questions which would be inappropriate for this Court to pursue in this motion to dismiss").

The defendants alternatively suggest that the court consider these materials by converting their motion to dismiss into a motion for summary judgment. See Fed. R. Civ. P. 12(d) ("If . . . matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."); *Greene v. Rhode Island*, 398 F.3d 45, 48 (1st Cir. 2005). At the motion hearing, I inquired of plaintiffs' counsel whether the plaintiffs would in fact contest defendants' factual submission that plaintiffs had received a notice with the opening date and rescission expiration date included.⁴ He responded that they would. I will take him at his word, rather than requiring a formal Rule 56 response at this time, and consequently consider defendants' motion now only under Rule 12.

⁴ Given the simultaneous briefing schedule I established, plaintiffs had not had a formal opportunity to contest defendants' factual submission prior to the motion hearing.

IV. ADEQUACY OF THE NOTICE OF RESCISSION RIGHTS AS ALLEGED

Turning to consider whether only the notices the Reynolds claim to have received - with blank spaces where the opening date and the rescission expiration date should have been inserted - nonetheless provided sufficient notice of the Reynolds' rescission rights to satisfy the TILA and the MCCCDA, I find that they do not.

A. *Rescission Rights under the TILA and the MCCCDA*

The TILA is a federal consumer protection statute with "the broad purpose of promoting 'the informed use of credit' by assuring 'meaningful disclosure of credit terms' to consumers." *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 559 (1980) (quoting 15 U.S.C. § 1601(a)). The MCCCDA is a Massachusetts statute modeled after the TILA. *See In re Fidler*, 226 B.R. 734, 736 (Bankr. D. Mass. 1998). Aside from a minor difference in the limitations period, which is not relevant here, the MCCCDA mirrors its federal counterpart, and it is common ground that its terms should be construed in accordance with the TILA. *See McKenna v. First Horizon Home Loan Corp.*, 475 F.3d 418, 422 (1st Cir. 2007) (citing *In re Desrosiers*, 212 B.R. 716, 722 (Bankr. D. Mass. 1997); *Mayo v. Key Fin. Servs., Inc.* 424 Mass. 862, 864 (1997)). Therefore, although the lending disclosures at issue in this case are formally governed by the MCCCDA,⁵ both parties

⁵ Lending transactions in Massachusetts are governed by the MCCCDA because the Federal Reserve Board has granted

acknowledge that the TILA supplies the applicable rules of decision.

Under the TILA, a consumer acquires certain rescission rights in connection with any credit transaction where the creditor acquires a security interest in the consumer's principal dwelling. See 15 U.S.C. § 1635(a). Ordinarily, the consumer has the right to rescind until midnight of the third business day after either the consummation of the transaction, or the delivery of the disclosure forms required by the statute, whichever is later. See *id.* If, however, the creditor fails to provide adequate notice of the consumer's statutory rescission rights, the rescission period is extended until three years after the transaction date. See 12 C.F.R. § 226.23(a)(3).⁶ The Reynolds claim the extended rescission period was in effect when, roughly two years after consummating their loan, they sent their first notices of rescission to the defendants. (2d Am. Compl. ¶ 17.)

Massachusetts an exemption from the TILA's disclosure requirements. See *Belini v. Wash. Mut. Bank, FA*, 412 F.3d 17, 26-27 (1st Cir. 2005); *Rodrigues v. Members Mortgage Co., Inc.*, 323 F. Supp. 2d 202, 210-11 (D. Mass. 2004); see also 12 C.F.R. § 226.29(a)(1) (permitting exemptions to the TILA for states whose laws are substantially similar to federal law). The relevant rescission provisions of the TILA and the MCCCDA are "substantively identical." *Belini*, 412 F.3d at 27.

⁶ Under the applicable Massachusetts regulation, when a creditor provides insufficient notice, the limitations period for exercising rescission rights under the MCCCDA is extended to four years after the transaction date. See 209 CMR 32.23(1)(c). This difference from the federal limitations period has no bearing on the present case.

The defendants, for their part, contend the original three day rescission period applied, and the Reynolds' rescission rights had therefore long since expired.

Determining which rescission period applies depends on whether a creditor has made an adequate disclosure of the consumer's rescission rights. The creditor's disclosure obligations are described in "Regulation Z," 12 C.F.R. 226, which was promulgated by the Federal Reserve Board to elaborate and expand upon the legal framework of the TILA.⁷ See *Ford Motor Credit Co.*, 444 U.S. 555 at 559-60. Regulation Z requires, *inter alia*, that creditors deliver to each consumer entitled to rescind two copies of a document that "clearly and conspicuously" discloses not only the existence of the consumer's rescission rights, but also information about how to exercise those rights and the date on which the rights expire. See 12 C.F.R. § 226.23(b)(1).

The First Circuit has identified two significant guiding principles for determining whether a particular disclosure of rescission rights is sufficiently "clear and conspicuous" to satisfy Regulation Z. *First*, the applicable standard is

⁷ Congress specifically designated the Federal Reserve Board as the primary source for interpretation and application of the TILA. See *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 566 (1980). It is clear, therefore, that Regulation Z's requirements apply to the lending transaction in this case; the question at issue is whether or not the defendants sufficiently met those requirements.

objective, and is not based on "plaintiffs' descriptions of their subjective understandings." *Palmer v. Champion Mortgage*, 465 F.3d 24, 28 (1st Cir. 2006). Reviewing courts "must evaluate the adequacy of TILA disclosures from the vantage point of a hypothetical average consumer - a consumer who is neither particularly sophisticated nor particularly dense." *Id.* A court may presume that "the average consumer" is a "reasonably alert person." *Id.* at 29.

Second, the TILA "do[es] not require perfect disclosure." *Santos-Rodriguez v. Doral Mortg. Corp.*, 485 F.3d 12, 18 (1st Cir. 2007). In *McKenna v. First Horizon Home Loan Corp.*, the court explained that Congress intended its 1995 amendments to the TILA "to provide higher tolerance levels for what it viewed as honest mistakes in carrying out disclosure obligations." 475 F.3d at 424. By passing these amendments, "Congress made manifest that although it had designed the TILA to protect consumers, it had not intended that lenders would be made to face overwhelming liability for relatively minor violations." *Id.* The First Circuit, in taking this position, expressly diverged from other courts that have adopted what the First Circuit has termed a "hyper-technical" view of the TILA's disclosure requirements. *Santos-Rodriguez*, 485 F.3d at 16 n.6.⁸

In the First Circuit, therefore, a disclosure does not

⁸ For example, the Seventh Circuit has held that "TILA does not easily forgive 'technical' errors." *Handy v. Anchor Mortgage Corp.*, 464 F.3d 760, 764 (7th Cir. 2006) (quoting *Cowen v. Bank United of Texas*, 70 F.3d 937, 941 (7th Cir. 1995)).

violate the TILA merely because it fails to conform to the model forms published by the Federal Reserve Board,⁹ or because it otherwise could have been more complete than it was. *Id.* at 18. Rather, "the only test for compliance is whether the notice actually given informed the consumer clearly and conspicuously of his rights and obligations, consistent with Regulation Z." *Id.* at 18 n.7. Such a disclosure will suffice even if it "requires the consumer to exercise some degree of care and study." *Id.* at 18 (quoting *Gambardella v. G. Fox & Co.*, 716 F.2d 104, 118 (2d Cir. 1983)).

B. Notice Provided to the Reynolds of the Expiration Date of their Rescission Rights

The only contested issue regarding the adequacy of the defendants' TILA disclosures is whether, without specific dates inserted for the opening date of the account and the rescission deadline, the notices "clearly and conspicuously disclose[d] . . . [t]he date the rescission period expires." 12 C.F.R. § 226.23(b)(1)(v). I find that the notices were insufficiently "clear and conspicuous" to satisfy Regulation Z because the average consumer could not readily calculate the rescission expiration date.

⁹ The First Circuit has held that a disclosure that "closely tracks the language of the model form . . . is, at the very least, prima facie evidence of the adequacy of the disclosure." *Palmer v. Champion Mortgage*, 465 F.3d 24, 29 (1st Cir. 2006). Failure to adhere to the model form, on the other hand, does not raise a presumption that the disclosure is inadequate. See *Santos-Rodriguez v. Doral Mortg. Corp.*, 485 F.3d 12, 18 n.7 (1st Cir. 2007).

The First Circuit recently examined the sufficiency of a creditor's disclosure of the expiration date for TILA rescission rights in *Palmer v. Champion Mortgage*. In *Palmer*, the plaintiff obtained a loan from the defendant, secured by a mortgage on her residence, on March 28, 2003. 465 F.3d at 25. She did not, however, receive copies of any documents related to the transaction at the loan's closing. *Id.* Several days later, the plaintiff received by mail, among other documents, a notice of her rescission rights. *Id.* at 26. This notice stated that the plaintiff had the right to cancel the transaction "within three (3) business days from whichever of the following events occurs last: (1) the date of the transaction, which is MARCH 28, 2003; or (date) (2) the date you received your Truth-in-Lending disclosures; or (3) the date you received this notice of your right to cancel." *Id.* The notice further provided: "If you cancel by mail or telegram, you must send the notice no later than midnight of APRIL 01, 2003 (or midnight of the third business day following the latest of the three (3) events listed above)." *Id.* The plaintiff alleged that the disclosure of the rescission expiration date was defective and confusing because the dates listed in the notice had already passed by the time she received the notice. *Id.* at 27. She claimed that Regulation Z's three year extended rescission period should apply to her loan instead. *Id.* The First Circuit rejected this argument. The court explained that "any reasonably alert person - that is, the average consumer" would not have relied on the specifically

enumerated dates "without also grasping the twice-repeated alternative deadlines." *Id.* at 29. The court held that the notice "clearly and conspicuously" disclosed the rescission expiration date for purposes of Regulation Z, and the original three day expiration period was applicable. *Id.* The plaintiff's rescission claim was therefore time-barred. *Id.*

The First Circuit's reasoning in *Palmer* provides guidance in this case. Although the notice in *Palmer* failed to specify the correct rescission expiration date by month, day, and year,¹⁰ the court held that the plaintiff could be expected to calculate the applicable deadline by first determining which of the three events enumerated in the notice had occurred last, and then counting three business days forward from that event.¹¹ The date

¹⁰ It is not true, as the Reynolds argue, that the notice in *Palmer* contained a "precise accurate deadline to rescind." The rescission expiration date precisely identified in the notice was April 1, 2003, three days after the closing date. The entire basis of the plaintiff's claim in *Palmer* was that because she did not receive the notice until several days after the closing, April 1 was not the actual rescission deadline. Nor is it relevant that April 1 *would* have been the accurate deadline *if* the notice had been received by the plaintiff at the closing. The First Circuit has made it clear that "the only test for compliance is whether the notice *actually* given informed the consumer clearly and conspicuously of his rights and obligations, consistent with Regulation Z." *Santos-Rodriguez*, 485 F.3d at 18 n.7 (emphasis added).

¹¹ The Reynolds contend that a consumer should not bear the burden of counting three business days to determine the rescission expiration date. They correctly point out that Regulation Z has a definition of a "business day" that includes Saturdays. See 12 C.F.R. § 226.2(a)(6) ("Business day means . . . all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a)."). This inclusion of Saturday as a business day has been viewed as surprising by at least one

of the first enumerated event - "the date of the transaction" - was specifically and correctly identified in the notice. The dates of the other two events - the plaintiff's receipt of the Truth-in-Lending disclosures and the Notice of Right to Cancel - were not specifically identified. However, an average consumer, as a "reasonably alert person," *Palmer*, 465 F.3d at 29, could be relied on to know or easily discover the dates that he or she received these documents.¹² The plaintiff in *Palmer*, therefore, was in a position easily to determine which event had occurred last (the receipt of the Notice of Right to Cancel) and use that event as the reference point for calculating the rescission deadline.

judge. See *Aubin v. Residential Funding Co.*, 565 F. Supp. 2d 392, 397 (D. Conn. 2008) ("Indeed, it would likely surprise the average person (it certainly surprised this judge) to learn that 'Saturday' is included within TILA's definition of a 'business day.'"). To be sure, compared with rules familiar to judges, which do not anticipate that courts will be open on Saturdays, see, e.g., Fed. R. Civ. P. 6(a)(3) and Fed. R. App. 26(a)(3), treating Saturday as a business day may seem unusual. But given that banks, the traditional financial institutions that extend credit on residences, are generally open on Saturdays, it may not be so surprising that Regulation Z defines business days to include Saturdays. In any event, *Palmer*, which can only be read as holding that an average consumer is capable of counting forward three business days for financial institutions, appears to foreclose an argument that treating Saturday as a business day makes calculating the rescission expiration date unfairly difficult for the average consumer. Moreover, the Reynolds, who waited two years to exercise their rescission rights, are not in a position to contend they were misled by Regulation Z's treatment of Saturdays as business days.

¹² Neither the Federal Reserve Board's model Notice of Right to Cancel, nor the notices in this case or in *Palmer*, included blank spaces for the dates of the consumer's receipt of the Truth-in-Lending disclosures and the Notice of Right to Cancel.

Applying *Palmer's* reasoning to this case does not yield the same result. The notices provided to the Reynolds, like the notice in *Palmer*, indicated that the rescission rights would expire three business days following the last of three enumerated events. The Reynolds' notices, however, failed to include a specific date for the first enumerated event: "the opening date of [the] account." I construe this to refer to the date the consumer's loan is actually funded.¹³ This is not a date for which the average consumer could be expected to have independent knowledge. The consumer might not be present when an account is first opened, and he or she may not be notified until several days later that funds have been made available. A consumer who does not know, and cannot easily discover, the dates for all three enumerated events in the notice cannot readily determine which date to use as a reference point for calculating the rescission deadline. The Reynolds were thus missing a critical factor to the equation, because they could not reasonably be expected to count forward three business days from an unknown

¹³ Regulation Z provides that the three events that may serve as a reference point for determining the rescission expiration deadline are: "consummation, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last." 12 C.F.R. § 226.23(a)(3). It is not entirely clear whether, for an open-end line of credit such as the Reynolds received from the defendants (Doc. 31, Ex. 1), "the opening date of the account" is equivalent to the "consummation" of the transaction. If it is not, this alone may constitute a violation of Regulation Z. I will assume, however, for purposes of this analysis, that the transaction in this case was "consummated" when the account was funded, or "opened."

starting point. The notices provided to the Reynolds were consequently inadequate under Regulation Z.

I note that a different result may be appropriate where the first enumerated event in a disclosure notice is "the date of the transaction,"¹⁴ as it was in *Palmer*. I construe that phrase to

¹⁴Two recent cases in this Circuit have reached different conclusions when considering the adequacy of notices that left blank spaces for both the rescission expiration date and "the date of the transaction."

In *Carye v. Long Beach Mortgage Co.*, 470 F. Supp. 2d 3, 9 (D. Mass. 2007), Judge Young held that the notice was adequate under Regulation Z because "the average person would be aware that the rescission period expired three days after receiving the Notices." *Carye* cited *Palmer*, but it did not address the fact that the notice in *Palmer* had included the correct transaction date, making it easier for the consumer in that case first to determine which enumerated event occurred last and then to calculate the applicable rescission deadline. Judge Young may have concluded - as I have - that an average consumer could be expected to know the transaction date, but that conclusion does not expressly appear in the *Carye* opinion. See also *McMillian v. AMC Mortgage Servs., Inc.*, C.A. 07-0773-WS-M, slip op. (S.D. Ala. June 11, 2008) (relying on the rationale from *Palmer* to reach a similar conclusion).

By contrast, in *Bonney v. Washington Mutual Bank*, C.A. 08-30087-MAP, slip op. (D. Mass. July 30, 2008) (Report and Recommendation on Motion to Dismiss), now pending reconsideration before Judge Ponsor, Magistrate Judge Neiman reached a contrary conclusion. While acknowledging that the plaintiffs "may well have been in a position to know the date of the transaction," Magistrate Judge Neiman nonetheless found that the plaintiffs "had no firm transaction date (the first listed event) from which to count 'business days.'" He concluded that this omission rendered the notice inadequate under Regulation Z.

Judge Ponsor in *Megitt v. Indymac Bank, F.S.B.*, 547 F. Supp. 2d 56 (D. Mass. 2008) (Ponsor, J.), appeal docketed *sub nom*, *Megitt v. FDIC*, No. 08-1436 (1st Cir. April 28, 2008), dealt with a somewhat different factual scenario. In that case, as in *Palmer*, the notice did include the correct transaction date. Therefore, although the space for the rescission deadline was left blank, Judge Ponsor held that an average consumer could determine the applicable deadline simply by counting three days from the last enumerated event.

refer to the date of the loan closing, an event for which the consumer will necessarily be present, either in person or through a designated agent. In this respect, the "transaction date" is analogous to the date of the consumer's receipt of the TILA disclosures or of the Notice of Right to Cancel. For each of those events, the average consumer will either have personal knowledge of the correct date or could easily discover it. The same is not true for "the opening date of the account."

It was not, therefore, the mere failure of the defendants to fill in every blank on the disclosure forms that rendered the notices provided to the Reynolds inadequate.¹⁵ But where, as here, the notice failed to provide sufficient information for the average consumer to determine the applicable rescission deadline

¹⁵ I recognize, as the Reynolds point out, there are cases holding that failure to complete TILA disclosure notices fully is in and of itself a violation of the statute. See, e.g., *Reynolds v. D & N Bank*, 792 F. Supp. 1035, 1038 (E.D. Mich. 1992) (holding that failure to include a specific rescission date was a TILA violation "particularly when the notice provides for the date to be entered on a separate line which is left blank"). Such cases, however, evaluate TILA disclosures under the hypertechnicality standard expressly rejected by the First Circuit in *Santos-Rodriguez*. See, e.g., *Semar v. Platte Valley Fed. Sav. & Loan Ass'n*, 791 F.2d 699, 704 (9th Cir. 1986) ("Technical or minor violations of TILA or Reg Z . . . entitle the borrower to rescind."); *Williamson v. Lafferty*, 698 F.2d 767, 768 (5th Cir. 1983) ("[F]ailure properly to complete the right to rescission form automatically violates the Act. . . ."). In the First Circuit, the determinative question is not whether a disclosure could have been more complete, but only whether the notice actually given clearly and conspicuously disclosed the rescission deadline. *Santos-Rodriguez*, 485 F.3d at 18.

readily by reference to the three enumerated events, the notice is inadequate under Regulation Z.

CONCLUSION

For the reasons set forth more fully above, I DENY the defendants' motion to dismiss.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE