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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-5902 AHM (AGR <sub>x</sub> )	Date	August 14, 2009
Title	HENRY TIU v. FINANCE AMERICA, LLC, <i>et al.</i>		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE
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Stephen Montes Deputy Clerk	Not Reported Court Reporter / Recorder	Tape No.
Attorneys <b>NOT</b> Present for Plaintiffs:	Attorneys <b>NOT</b> Present for Defendants:	

**Proceedings:** IN CHAMBERS (No Proceedings Held)

The Court DENIES Plaintiff's Ex Parte Application for a Temporary Restraining Order Preventing Foreclosure and Order to Show Cause Why Preliminary Injunction Should Not Issue for the following reasons:

1) Plaintiff has provided no proof of service indicating that Defendants have received notice of the motion.

2) Plaintiff has not established a probability of success on the merits for his claims. His Truth in Lending Act (TILA), 15 U.S.C. § 1601 *et seq.*, claim for rescission appears to be barred by the three year absolute statute of limitations. 15 U.S.C. § 1635(f). Plaintiff has failed to attach the allegedly deficient Notice of Default on which his claim under Cal. Civ. Code § 2923.5 relies, and he has failed to provide any explanation for its absence. In addition, Plaintiff has not offered any support that Cal. Civ. Code § 2923.6 provides a basis for substantive relief given its purely hortatory language. As to the claim purportedly brought under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 *et seq.*, that claim relies on rescission, and Plaintiff has provided no authority to support the proposition that rescission is an available remedy under RESPA .

No hearing is necessary. Fed. R. Civ. P. 78; L. R. 7-15.

Initials of Preparer	: _____ SMO
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