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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDUARDO DACUMOS,

Plaintiff,

CIV S-10-854 FCD KJM PS

v.

WORLD SAVINGS, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /
This action was referred to the undersigned pursuant to Local Rule 72-302(c)(21).
Plaintiff is proceeding pro se and in forma pauperis.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

1 Plaintiff alleges a claim under the Truth in Lending Act (“TILA”) arising out of
2 plaintiff’s attempts to secure a loan by refinancing a previously existing loan. Plaintiff asserts he
3 decided to not go through with the refinancing and attempted to rescind the loan contract. In the
4 first amended complaint, plaintiff alleges a full reconveyance and note was recorded on April 11,
5 2007. This action was filed April 12, 2010. Because it appeared that plaintiff’s claims were
6 barred by the statute of limitations, the first amended complaint was dismissed with leave to
7 amend. Plaintiff was cautioned that the second amended complaint could allege only claims that
8 were not time barred.

9 Plaintiff has now filed a second amended complaint. The second amended
10 complaint does not cure the pleading deficiencies of the first amended complaint. Any claim
11 under TILA for monetary damages is barred by the one year statute of limitation (15 U.S.C.
12 § 1640(e)) and any claim for rescission is similarly barred by the three year statute (15 U.S.C.
13 § 1635(f)). Because plaintiff’s claims are time barred, this action should be dismissed.

14 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
17 days after being served with these findings and recommendations, plaintiff may file written
18 objections with the court. Such a document should be captioned “Objections to Findings and
19 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
20 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
21 Cir. 1991).

22 DATED: November 19, 2010.

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U.S. MAGISTRATE JUDGE