

DEC 27 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS PACHECO, an individual,

Plaintiff - Appellant,

v.

HOMECOMINGS FINANCIAL, LLC, a
Delaware limited liability company; et al.,

Defendants - Appellees,

and

MORTGAGEIT, INC.,

Third-party-plaintiff,

v.

RELC, INC., DBA Real Estate Loan
Center; et al.,

Third-party-defendants.

No. 10-16734

D.C. No. 5:08-cv-03002-JF

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeremy D. Fogel, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Argued and Submitted November 18, 2011
San Francisco, California

Before: FARRIS, NOONAN, and BEA, Circuit Judges.

Carlos Pacheco appeals the district court's order granting summary judgment in favor of lender defendants on his claim for rescission under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* Reviewing the district court's order de novo, *see Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790, 796 (9th Cir. 2011), we affirm.

Because the parties contest Pacheco's ability to tender the loan proceeds, this court's holding in *Yamamoto v. Bank of New York*, 329 F.3d 1167 (9th Cir. 2003) controls. Pacheco failed to produce any admissible evidence showing his ability to tender. The district court properly sustained objections to statements in Philip Lewis's declaration. Thus, Pacheco did not meet his burden of showing the existence of a triable issue of fact as to his ability to tender, a necessary element for the remedy of rescission. Accordingly, the district court properly granted summary judgment. *See Yamamoto*, 329 F.3d at 1173.

AFFIRMED.