

OCT 13 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERNEST MILLER,

Plaintiff - Appellant,

v.

KING HARRIS PUBLICATIONS
MAGAZINE,

Defendant - Appellee.

No. 08-15854

D.C. No. 1:07-CV-01152-LJO-
GSA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted September 14, 2009

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

California prisoner Ernest Miller appeals pro se from the district court's dismissal of his 42 U.S.C. § 1983 action seeking damages from King Harris Publications Magazine, a private magazine publisher. Miller contends that King

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

Harris Publications failed to provide him either with his one-year magazine subscription after he placed and paid for the order or a refund of \$12.00. Miller contends that King Harris Publications treated him in this manner because he is a black male.

We affirm for the reasons stated in the magistrate judge's findings and recommendations, filed on March 3, 2008, and adopted by the district court on March 12, 2008.¹

AFFIRMED.

¹All pending motions are denied as moot.