

JUN 30 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN G. MILLETT, on behalf of
himself and all others similarly situated,

Plaintiff - Appellant,

and

MELODY J. MILLETT, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

EXPERIAN INFORMATION
SOLUTIONS, INC.;
CONSUMERINFO.COM, INC., an
Experian Company,

Defendants - Appellees.

No. 09-55958

D.C. No. 8:05-cv-00879-JVS-RNB

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Argued and Submitted June 8, 2010
Pasadena, California

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

Before: TROTT and W. FLETCHER, Circuit Judges, and BREYER, District Judge.**

Steven Millett appeals the district court’s order granting summary judgment in favor of Experian Information Solutions, Inc. and Consumerinfo.com (collectively, “Experian”), the Defendants in the district court. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

The district court did not err by withdrawing its order granting Millett’s motion to amend because the district court issued its order before it received and reviewed Experian’s opposition to the motion. See City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper, 254 F.3d 882, 885–86 (9th Cir. 2001). The district court did not abuse its discretion by denying Millett’s motion to amend because the motion was based on consumer survey evidence that the district court had previously rejected. See Sch. Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993).

The district court properly granted summary judgment for Experian on Millett’s Consumer Legal Remedies Act (“CLRA”) claims. Experian’s advertisements were primarily aimed at credit report monitoring; the identity-theft

** The Honorable Charles R. Breyer, United States District Judge for the Northern District of California, sitting by designation.

protection benefit advertised by Credit Manager is clearly tied to daily credit report monitoring. Based on the information properly before it, the district court did not err in concluding that a reasonable consumer would not be misled about the level of identify-theft protection offered by Credit Manager. See Colgan v. Leatherman Tool Group, Inc., 38 Cal. Rptr. 3d 36, 48 (Cal. App. 2006). Finally, the Experian trademark at the top of the advertisements truthfully reflects Consumerinfo.com's status as a subsidiary of Experian North America. Moreover, Credit Manager must operate in conjunction with Experian because Experian provides the credit reporting services that Credit Manager utilizes. Accordingly, a reasonable consumer would not be misled about the source of the services offered by Credit Manager. See Williams v. Gerber Prods. Co., 552 F.3d 934, 938 (9th Cir. 2008).

We have considered and reject all other arguments raised on appeal.

AFFIRMED.