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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

J. MICHAEL SCHAEFER,

Plaintiff - counter-defendant -
Appellant,

v.

ROBBINS & KEEHN, APC,

Defendant - counter-claimant -
Appellee,

and

L. SCOTT KEEHN,

Defendant - Appellee.

No. 08-56448

D.C. No. 3:06-cv-00821-JLS-BLM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted October 25, 2011**

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

In this diversity action, J. Michael Schaefer appeals pro se from the district court's summary judgment for Robbins & Keehn, APC, on his fraud claim, and on Robbins & Keehn's counterclaim for unpaid legal fees. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Morrison v. Hall*, 261 F.3d 896, 900 (9th Cir. 2001), and we affirm.

The district court properly granted summary judgment on Schaefer's fraud claim because Schaefer failed to create a genuine dispute of material fact as to the elements of fraudulent concealment. See *Williamson v. Gen. Dynamics Corp.*, 208 F.3d 1144, 1156 n.3 (9th Cir. 2000) (setting forth requirements for fraudulent concealment under California law).

The district court properly granted summary judgment to Robbins & Keehn on its account stated claim because Robbins & Keehn showed that there was no genuine dispute of material fact as to any element of this claim, and Schaefer failed to create a triable dispute as to any defense to the claim. See *Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. La. Hydrolec*, 854 F.2d 1538, 1542-43 (9th Cir. 1988) (per curiam) (discussing account stated claim under California law); *Armendariz v. Found. Health Psychcare Servs., Inc.*, 6 P.3d 669, 689 (Cal. 2000) (addressing principles of unconscionability).

The district court did not abuse its discretion by denying Schaefer's ex parte application to continue the discovery deadline. *See Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087-88 (9th Cir. 2002) (setting forth standard of review and good cause requirement).

Schaefer's remaining contentions are unpersuasive.

Schaefer's "Request for Clarification," entered on October 17, 2011, is denied as moot.

AFFIRMED.