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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT PALMER,

Plaintiff - Appellant,

v.

E\*TRADE MORTGAGE  
CORPORATION,

Defendant - Appellee.

No. 10-55679

D.C. No. 09-0856 JVS MLGx

MEMORANDUM\*

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

Argued and Submitted December 9, 2011  
Pasadena, California

Before: B. FLETCHER, SILVERMAN, and WARDLAW, Circuit Judges.

In 2003, Robert Palmer entered into a contract to purchase a home in Laguna Niguel, California. E\*TRADE provided financing for the purchase. Several years later, after discovering material defects in the home, Palmer filed suit against

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

E\*TRADE, alleging that various statements made by E\*TRADE's representatives incident to his purchase of the home were misrepresentations. At issue in this appeal are Palmer's claims for negligent and intentional misrepresentation. Palmer also appeals the district court's denial of his motion to file a third amended complaint to add a claim for fraudulent concealment.

Under California law, the general rule is that a lender owes no duty to a borrower with respect to an appraisal procured for its purposes as a lender. *See Nymark v. Heart Fed. Sav. & Loan Ass'n*, 283 Cal. Rptr. 53 (Cal. Ct. App. 1991). The district court correctly found that the statements made by E\*TRADE's representatives were either true or opinions that did not rise to the level of actionable misrepresentations.

Palmer already had two opportunities to amend his complaint and cannot show good cause to file a third amended complaint. Therefore, the district court properly denied Palmer's motion to file a third amended complaint.

**AFFIRMED.**