

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 12 2018

FOR THE NINTH CIRCUIT

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

ANDY JANG, on behalf of himself and
others similarly situated,

Plaintiff-Appellant,

v.

ASSET CAMPUS HOUSING, INC.; et al.,

Defendants-Appellees.

No. 17-55757

D.C. No.

2:15-cv-01067-JAK-PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Submitted October 10, 2018**
Pasadena, California

Before: HURWITZ and OWENS, Circuit Judges, and PRESNELL,*** District
Judge.

Andy Jang appeals from the district court's summary judgment in his

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

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

*** The Honorable Gregory A. Presnell, United States District Judge for
the Middle District of Florida, sitting by designation.

putative class action alleging that a fee charged when he paid his rent using a credit card violated California Civil Code § 1748.1. As the parties are familiar with the facts, we do not recount them here. We affirm.

Jang argues that the district court erred in determining that section 1748.1, as applied here, violated the First Amendment. However, this issue is controlled by our intervening decision in *Italian Colors Restaurant v. Becerra*, 878 F.3d 1165, 1179 (9th Cir. 2018), which held that section 1748.1, as applied to those plaintiffs, violated the First Amendment. Contrary to Jang's contention, *Italian Colors* is not distinguishable.

Because we affirm the district court's summary judgment, we do not reach Jang's arguments concerning the denial of class certification. *See Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1039 (9th Cir. 1999).

AFFIRMED.