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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARTHUR FULFORD, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

LOGITECH, INC.,

Defendant.

No. C-08-2041 MMC

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT'S  
MOTION TO DISMISS**

Before the Court is defendant Logitech, Inc.'s ("Logitech") "Motion to Dismiss Plaintiff's Second Amended Complaint," filed February 20, 2009. Plaintiff Arthur Fulford ("Fulford") has filed opposition, to which Logitech has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.

1. Contrary to Fulford's argument, to the extent Fulford's Second Cause of Action ("Violation of Cal. Civil Code § 1710 Deceit and Common Law Fraud") alleges claims of "deceit based on fraudulent concealment/nondisclosure" (*see* SAC ¶¶ 97-109), such cause of action is subject to dismissal. Fulford's reliance on *LiMandri v. Judkins*, 52 Cal. App. 4th 326 (1997), is unavailing. In particular, as *LiMandri* makes clear, no duty to disclose can arise in the absence of either a fiduciary duty or a transaction between the parties. *See id.* at 336-37 (holding, where fiduciary duty does not exist, "circumstances in which nondisclosure may be actionable presuppose[ ] the existence of some other relationship

1 between the plaintiff and defendant in which a duty to disclose can arise”; noting “such a  
2 relationship can only come into being as a result of some sort of transaction between the  
3 parties”) (emphasis in original). Here, Fulford has neither argued nor alleged that Logitech  
4 owed him any fiduciary duty, nor has Fulford argued or alleged that he entered into any  
5 transaction with Logitech. (See SAC ¶ 22 (alleging Fulford purchased his H1000 Remote  
6 from a friend).)<sup>1</sup>

7 2. In all other respects, for the reasons stated by Fulford in his opposition at 8:19-  
8 9:5, 10:20-17:17, 21:6-22:17, and 23:17-25:6, Logitech’s motion will be denied.<sup>2</sup>

9 **CONCLUSION**

10 For the reasons stated above, Logitech’s Motion to Dismiss is hereby GRANTED in  
11 part and DENIED in part, as follows:

12 1. To the extent Fulford’s Second Cause of Action alleges claims of “deceit based  
13 on fraudulent concealment/nondisclosure” (see SAC ¶¶ 97-109), such cause of action is  
14 DISMISSED without leave to amend.

15 2. In all other respects, the motion is DENIED.

16 **IT IS SO ORDERED.**

17 Dated: March 26, 2009

  
MAXINE M. CHESNEY  
United States District Judge

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21 <sup>1</sup>Fulford’s reliance on Stickrath v. Globalstar, Inc., No. C07-1941 TEH, 2008 WL  
22 344209 (N.D. Cal. Feb. 6, 2008), likewise is unavailing. In Stickrath, unlike here, each of  
the plaintiffs had entered into a purchase agreement with the defendant. See id. at \*1.

23 <sup>2</sup>In its reply, Logitech argues for the first time that Fulford lacks standing to pursue  
24 his claims under California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et  
25 seq., and California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq., on  
the ground Fulford is not entitled to restitution. (See Order filed Nov. 14, 2008, at 5:2-10.)  
26 In support of such argument, Logitech cites to Walker v. Geico Gen. Ins. Co., --- F.3d ---,  
Nos. 07-15357, 07-15424, 2009 WL 595563 (9th Cir. Mar. 10, 2009), which, Logitech  
27 points out, was not decided until after Fulford had filed his opposition to the instant motion.  
Walker, however, contains no analysis of the UCL’s standing provision and, in concluding  
28 the plaintiff therein lacked standing under the UCL, relies on Buckland v. Threshold Enters.,  
Ltd., 155 Cal. App. 4th 798 (2007), a decision issued prior to the inception of the instant  
action. Accordingly, the Court declines to consider Logitech’s new argument at this time.