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**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY**

**PRESENT:
HON. PAUL J. BAISLEY, JR., J.S.C.**

INDEX NO.: 17730/2003

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JOHN E. CRUZ,

MOTION DATE: 01/18/2007

MOT. NO.: 003 MG

Plaintiff,

-against-

TOYOTA MOTOR CREDIT CORPORATION and
LEXUS FINANCIAL SERVICES,

Defendants.

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PLAINTIFF'S ATTORNEY:
LAW OFFICE OF CORY J. COVERT, P.C.
1775 Expressway Drive North
Hauppauge, New York 11788

DEFENDANTS' ATTORNEY:
SIMMONS, JANNACE & STAGG, L.L.P.
By: Debra L. Wabnik, Esq.
75 Jackson Avenue
Syosset, New York 11791-3139

Upon the following papers numbered 1 to 54 read on this motion for leave to renew and reargue: Notice of Motion and Affirmation 1 to 5 and supporting papers; Memorandum of Law 6 to 30; Affirmation and Affidavit in Opposition 31 to 36 and supporting papers; Memorandum of Law 37 to 44; Reply Memorandum of Law 45 to 54; it is;

ORDERED that the motion (motion sequence no. 003) of defendants TOYOTA MOTOR CREDIT CORPORATION and LEXUS FINANCIAL SERVICES for an order pursuant to CPLR R. 2221 granting defendants' motion to renew and reargue defendants' prior motion for summary judgment dismissing plaintiff's complaint and plaintiff's cross-motion for leave to amend the complaint (incorrectly denominated as a motion to reargue the Court's February 14, 2005 order determining the motions), and, upon renewal/reargument, denying plaintiff's motion to amend and granting defendants judgment dismissing plaintiff's complaint, is granted.

Defendants' submissions establish that the Court overlooked certain matters of fact and law in rendering its determination upon the prior motions. Moreover, defendant's submissions contain new facts not offered on the prior motion that would change the prior determination. In particular, it is conceded by plaintiff that §1681s-2(a) of the Fair Credit Reporting Act ("FCRA") (15 U.S.C. §1681s-2(a)) does not provide a private right of action. 15 U.S.C. §1681s-2(d); *Prakash v. Homecomings Fin.*, 2006 U.S. Dist. LEXIS 62911 (E.D.N.Y. Sept. 5, 2006). Moreover, plaintiff does not allege that he notified the consumer reporting agencies ("CRAs") of his claims that defendants furnished false information to the CRAs, or that the CRAs contacted defendants about plaintiff's claims. Accordingly, plaintiff cannot state a claim under FCRA §1681s-2(b). *Id.* In light of the foregoing, the Court should not have granted plaintiff's cross-motion for leave to amend the complaint to assert a cause of action under FCRA §1681s-2.

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In addition, the Court is constrained to agree with defendants, upon a careful review of the submissions, that all of plaintiff's state law claims are preempted by the FCRA. 15 U.S.C. §1681t(b)(1)(F), 15 U.S.C. §1681h(e).

In light of the foregoing, the Court grants defendants' motion for renewal and reargument and, upon such renewal and reargument, denies plaintiff's motion for leave to amend the complaint and grants defendants' motion for summary judgment dismissing the complaint in its entirety.

Settle judgment.

Dated: April 9, 2007 HON. PAUL J. BAISLEY, JR.
J.S.C.