

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

AUG 26 2019

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

MICHAEL HELMS,  
  
Plaintiff-Appellant,  
  
v.  
  
WELLS FARGO BANK, N.A.; et al.,  
  
Defendants-Appellees.

No. 18-56559

D.C. No. 2:17-cv-03183-CBM-SK

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Consuelo B. Marshall, District Judge, Presiding

Submitted August 19, 2019\*\*

Before: SCHROEDER, PAEZ, and HURWITZ, Circuit Judges.

Michael Helms appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims arising from the foreclosure sale of his property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a

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\* 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).

claim. *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093 (9th Cir. 2017). We affirm.

The district court properly dismissed Helms's Fair Debt Collection Practices Act ("FDCPA") claim because Helms failed to allege facts sufficient to state a plausible claim. *See* 15 U.S.C. § 1692a(6)(F)(ii) (excluding from the definition of debt collector a creditor collecting debts on its behalf); *Obduskey v. McCarthy & Holtus, LLP*, 139 S. Ct. 1029, 1038 (2019) ("[B]ut for § 1692f(6), those who engage in only nonjudicial foreclosure proceedings are not debt collectors within the meaning of the [FDCPA]."); *Dowers v. Nationstar Mortg., LLC*, 852 F.3d 964, 971 (9th Cir. 2017) (discussing protections for borrowers set forth in § 1692f(6)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (to avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" (citation and internal quotation marks omitted)).

The district court properly dismissed Helms's Real Estate Settlement Procedures Act ("RESPA") claim because Helms failed to allege facts sufficient to show he suffered damages as a result of defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") failure to respond to his Qualified Written Requests ("QWR"), which Helms submitted after the foreclosure sale had already occurred. *See* 12 U.S.C. § 2605(f)(1) (explaining damages available under RESPA for failure to respond to a QWR); *Iqbal*, 556 U.S. at 681 (in reviewing a complaint, conclusory

allegations are not entitled to a presumption of truth).

The district court properly dismissed as time-barred Helms's Truth in Lending Act ("TILA") rescission claim because Helms failed to exercise timely his right to rescission within the applicable three-year period under 15 U.S.C. § 1635(f). *See* 15 U.S.C. § 1635(f) (under TILA, a borrower's right of rescission expires three years after the date of the loan's consummation or upon the sale of the property, whichever comes first); *Jesinoski v. Countrywide Home Loans, Inc.*, 574 U.S. 259 (2015) (a borrower may exercise right of rescission by notifying the lender of borrower's intent to rescind within three years after the transaction is consummated).

The district court properly dismissed Helms's wrongful foreclosure claim against defendants Wells Fargo and Bank of America, N.A. because Helms failed to allege facts sufficient to show that Bank of America was not the entity entitled to enforce the debt. *See Sciarratta v. U.S. Bank Nat'l Assn*, 202 Cal. Rptr. 3d 219, 226 (Ct. App. 2016) (elements of wrongful foreclosure claim); *see also Iqbal*, 556 U.S. at 678.

The district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Helms's remaining state law claims after dismissing Helms's federal claims. *See Parra v. PacifiCare of Ariz., Inc.*, 715 F.3d 1146, 1156 (9th Cir. 2013) (explaining that once the district court dismisses the only

claims over which it has original jurisdiction, it does not abuse its discretion in also dismissing the remaining state claims) (citing 28 U.S.C. § 1367(c)(3)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

MICHAEL HELMS,  
Plaintiff,  
vs.

Case No.: 2:17-CV-03183 CBM (SKx)  
Hon. Consuelo B. Marshall  
Ctrm. 8B (First St.)

WELLS FARGO BANK, N.A.;  
FIDELITY NATIONAL TITLE  
INSURANCE COMPANY; FIRST  
AMERICAN TRUSTEE SERVICING  
SOLUTIONS, LLC; BANK OF  
AMERICAN, N.A.; DOES 1 TO 10,  
Defendants.

**JUDGMENT OF DISMISSAL  
WITH PREJUDICE**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

Defendant, FIRST AMERICAN TRUSTEE SERVICING SOLUTIONS, LLC  
("FATSS") Motion to Dismiss pursuant to Federal Rules of Civil Procedure, Rule  
12(b)(6) ("Motion") came on for hearing on September 14, 2018 at 10:00 a.m. in  
Courtroom 8B of the above-entitled Court located at 350 W. 1<sup>st</sup> Street, Courtroom #  
8B, 8th Floor, Los Angeles, CA 90012 before the Honorable Judge Consuelo B.  
Marshall. All appearances were noted on the record.

After considering the moving papers and arguments of the parties, the Court  
having read and considered the Motion on behalf of FATSS, the memorandum of  
points and authorities in support thereof, and any opposition and reply thereto, and

1 having heard argument from the parties, issued an Order dated October 10, 2018,  
2 granting FATSS' motion in its entirety, dismissing each of Plaintiff's causes of action  
3 asserted against FATSS with prejudice. (See, ECF No. 77.)


4 **THEREFORE, GOOD CAUSE APPEARING,**

5 **IT IS HEREBY ORDERED** that judgment be entered against Plaintiff  
6 MICHAEL HELMS, and in favor of Defendant, FIRST AMERICAN TRUSTEE  
7 SERVICING SOLUTIONS, LLC.

8 **IT IS FURTHER ORDERED** that the case is dismissed in its entirety with  
9 prejudice as to Defendant, FIRST AMERICAN TRUSTEE SERVICING  
10 SOLUTIONS, LLC. Plaintiff is to recover nothing from Defendant, FIRST  
11 AMERICAN TRUSTEE SERVICING SOLUTIONS, LLC.

12 **SO ORDERED.**

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15 DATED: November 5, 2018

  
16 Honorable Consuelo B. Marshall  
17 UNITED STATES DISTRICT JUDGE  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL HELMS,  
Plaintiff,

vs.

WELLS FARGO BANK, N.A.;  
FIDELITY NATIONAL TITLE  
INSURANCE COMPANY; FIRST  
AMERICAN TRUSTEE SERVICING  
SOLUTIONS, LLC; BANK OF  
AMERICA, N.A.; DOES 1 TO 10,  
Defendants.

Case No. 2:17-cv-03183-CBM-SK  
Hon. Consuelo B. Marshall  
Ctrm. 8B (First St.)

**~~PROPOSED~~ JUDGMENT OF  
DISMISSAL**

Action Filed: April 27, 2017  
Trial Date: None Set

1 The hearing on the Motion to Dismiss Plaintiff's Second Amended Complaint  
2 (the "Motion") filed by Defendants WELLS FARGO BANK, N.A. ("Wells Fargo")  
3 and BANK OF AMERICA, N.A. ("BANA") (collectively, "Defendants"), pursuant  
4 to Federal Rule of Civil Procedure 12(b)(6), came on regularly for hearing on  
5 September 14, 2018, at 10:00 a.m. in Courtroom 8B of the above-entitled Court, the  
6 Honorable Consuelo B. Marshall presiding. Appearances were as noted on the  
7 record.

8 The Court, having read and considered the Motion on behalf of Defendants,  
9 the memorandum of points and authorities in support thereof, and any opposition  
10 and reply thereto, and having heard argument from the parties, issued an Order  
11 dated October 10, 2018, granting Defendants' motion in its entirety, dismissing each  
12 of Plaintiff's causes of action asserted against Defendants with prejudice. (See, ECF  
13 No. 77.)

14 **THEREFORE, GOOD CAUSE APPEARING,**

15 **IT IS HEREBY ORDERED** that judgement be entered against Plaintiff  
16 MICHAEL HELMS, and in favor of Defendants Wells Fargo and BANA. **IT IS**  
17 **FURTHER ORDERED** that the case is dismissed in its entirety with prejudice as to  
18 Wells Fargo and BANA. Plaintiffs are to recover nothing from Wells Fargo and  
19 BANA.

20 **SO ORDERED.**

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22 DATED: 10/31, 2018

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25 Hon. Consuelo B. Marshall

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