See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3.

United States Court of Appeals, Ninth Circuit.

Trina R. PATTERSON, Plaintiff-Appellant,
v.
SELECT PORTFOLIO SERVICING, INC.; et al., Defendants-Appellees.

No. 18-55134
Submitted May 21, 2019* Filed May 29, 2019

Attorneys and Law Firms

Trina R. Patterson, Pro Se
Steven M. Dailey, Esquire, Attorney, Kutak Rock LLP, Irvine, CA, for Defendant - Appellee Select Portfolio Servicing, Inc.
Matthew B. Learned, Esquire, Attorney, McCarthy & Holthus LLP, San Diego, CA, for Defendant - Appellee Quality Loan Service Corporation

Appeal from the United States District Court for the Central District of California, Philip S. Gutierrez, District Judge, Presiding, D.C. No. 5:17-cv-01049-PSG-PLA

Before: THOMAS, Chief Judge, LEAVY and FRIEDLAND, Circuit Judges.

MEMORANDUM**

Trina R. Patterson appeals pro se from the district court's judgment dismissing her action alleging Fair Debt Collection Practices Act ("FDCPA") and state law claims. 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 claim. *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093 (9th Cir. 2017). We affirm.

The district court properly dismissed Patterson's FDCPA claim under 15 U.S.C. § 1692f(6) because Patterson failed to allege facts sufficient to show that defendants' conduct in enforcing a security interest was unfair or unconscionable. *See* 15 U.S.C. § 1692f(6) (prohibiting unfair or unconscionable conduct in enforcing a security interest); *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, 129 S.Ct. 1937, 173 L.Ed.2d 868 (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 did not abuse its discretion by declining to exercise supplemental jurisdiction over Patterson's state law claims after dismissing Patterson's FDCPA claims. *See Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087, 1091 (9th Cir. 2008) (standard of review); *Gini v. Las Vegas Metro. Police Dep't*, 40 F.3d 1041, 1046 (9th Cir. 1994) (explaining that when "federal-law claims are eliminated before trial, the balance of factors ... will point toward declining to exercise jurisdiction over the remaining state law claims").

The district court did not abuse its discretion by denying Patterson's motion to alter or amend judgment because Patterson failed to establish any basis for such relief. *See* *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Fed. R. Civ. P. 59(e)).

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.

Footnotes

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

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

10/17/2018

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 18-55134

TRINA R. PATTERSON, Plaintiff-Appellant,

v.

SELECT PORTFOLIO SERVICING, INC.; et al., Defendants-Appellees.

D.C. No. 5:17-cv-01049-PSG
Central District of California,
Riverside

ORDER

Proceedings in this case shall be held in abeyance pending issuance of the Supreme Court's decision in No. 17-1307, Obduskey v. McCarthy & Holthus LLP, et al., or further order of the court.

FOR THE COURT:

MOLLY C. DWYER

CLERK OF COURT

United States District Court
for the Central District of California

Trina R. PATTERSON
v.
SELECT PORTFOLIO SERVICING, INC., Quality Loan Service Corp.

Case No. 17-1049 PSG (PLAx)

Filed 01/03/2018

Attorneys and Law Firms

Trina R. Patterson, Rancho Cucamonga, CA, pro se.
Rebecca L. Wilson, Steven M. Dailey, Kutak Rock LLP, Irvine, CA, for Select Portfolio Servicing, Inc.

Proceedings (In Chambers): The Court DENIES Plaintiffs' Motion to Alter or Amend Judgment

Philip S. Gutierrez, United States District Judge

Before the Court is Plaintiff Trina R. Patterson's ("Plaintiff") motion to alter or amend the Court's November 13, 2017 order granting Select Portfolio Servicing, Inc. and Quality Loan Service Corp.'s ("Defendants") motion to dismiss Plaintiff's claims. *See* Dkt. # 54 ("*Mot.*"), Dkt. # 50 ("*Order*"). Defendant timely opposed the motion, *see* Dkt. # 55 ("*Opp.*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. After considering the moving papers, the Court DENIES the motion.

II. Legal Standard

Two legal standards govern Plaintiffs' Motion for Reconsideration: Federal Rules of Civil Procedure 59(e) and 60(b), and Local Rule 7-18.

A. Federal Rules of Civil Procedure 59(e) and 60(b)

The Federal Rules of Civil Procedure do not expressly recognize a "motion for reconsideration." *Clough v. Rush*, 959 F.2d 182, 186 n. 4 (10th Cir. 1992). Instead such a motion is typically treated as a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) or a motion for relief from judgments or orders under Federal Rule of Civil Procedure 60(b). *See Computerized Thermal Imaging, Inc. v. Bloomberg, L.P.*, 312 F.3d 1292, 1296 n. 3 (10th Cir. 2002).

Rules 59(e) and 60(b) both provide a number of grounds for relief. *See Chase v. Valenzuela*, No. CV 15-9558 BRO (FFMx), 2016 WL 1714878, *1-2 (C.D. Cal. Mar. 11, 2016). "The Ninth Circuit has held that reconsideration is appropriate under Rule 59(e) if (1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in controlling law." *Id.* at *1 (citing *School Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). Among the grounds for relief provided by Rule 60(b) are mistake, surprise, or excusable neglect; newly discovered evidence that, with reasonable diligence, could not have been discovered in time; fraud, misrepresentation, or misconduct; that the judgment is void; that the judgment has been satisfied, released, or discharged; and "any other reason that justifies relief." Fed. R. Civ. P. 60(b). However, courts routinely deny motions for reconsideration when the motion presents

"no arguments that had not already been raised." *See* *Buckland v. Barhart*, 778 F.2d 1386, 1388 (9th Cir. 1985).

B. Local Rule 7-18

Local Rule 7-18 provides:

> A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

Plaintiff states that the Court should alter or amend its judgment pursuant to ground three, to prevent manifest injustice and to correct an error of fact or law. She argues that the Court committed a manifest error of law in its analysis of whether Defendants are "debt collectors" under the Fair Debt Collection Practices Act ("FDCPA"). *Mot.* 4-7.

Plaintiff repeats the same argument she brought in her complaint, her first amended complaint, and her opposition to Defendants' motion to dismiss: that non-

judicial foreclosure activities constitute debt collection under the FDCPA. *Mot.* 4-7; *see also* Dkt. # 1, *Complaint*; Dkt. # 17, *First Amended Complaint*; Dkt. # 31, *Opposition to Defendant's Motion to Dismiss*, Dkt. # 31. The Court has already spoken at length on this issue in its November 13 order, and agrees with Defendants that "Plaintiff does not submit any newly discovered evidence, nor does she demonstrate the Court committed clear error in any manner." *Opp.* 6.

The Court therefore **DENIES** the motion to alter and/or amend its judgment dismissing Plaintiff's case.

IT IS SO ORDERED.

United States District Court
for the Central District of California

Trina R. PATTERSON
v.
SELECT PORTFOLIO SERVICING, et al

Case No. 17-CV-01049 PSG (PLA)
Filed 11/13/2017

Attorneys and Law Firms

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Rebecca L. Wilson, Steven M. Dailey, Kutak Rock LLP, Irvine, CA, Leticia C. Butler, Melissa Robbins Coutts, McCarthy and Holthus LLP, San Diego, CA, for Select Portfolio Servicing, et al.

Proceedings (In Chambers): The Court GRANTS Defendants' Motion to Dissmiss

Philip S. Gutierrez, United States District Judge

Before the Court is Defendant Select Portfolio Servicing, Inc.'s second amended motion to dismiss Plaintiff's first amended complaint and each claim therein (Dkt. #39), and second amended motion to strike allegations regarding punitive damages and attorneys' fees. Dkt. #40. Defendant Quality Loan Service Corporation joins in the motion to dismiss (Dkt. # 43). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. After considering the moving papers, the Court GRANTS the motion to dismiss.

I. Background

On July 26, 2017, Plaintiff Trina Patterson ("Plaintiff") filed a First Amended Complaint ("FAC") against Defendants Select Portfolio Servicing, Inc., Quality Loan Service Corporation, and Does 1-10 ("Defendants"). Dkt. # 17. The FAC asserts claims for (1) Violation of the Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. § 1692, et. seq.; (2) violation of 15 U.S.C. § 1692f(6); (3) cancellation of instruments; and (4) violation of California Business & Professions Code § 17200, et. seq. *See generally FAC.*

Defendants filed a motion to dismiss and a motion to strike portions of the Plaintiff's FAC on July 27, 2017. Dkts. # 26, 27. On September 18, 2017, the Court denied Defendants' motions to dismiss for failure to comply with Local Rule 7-3. Dkt. # 38. Defendant Select Portfolio Servicing, Inc. ("SPS") filed a renewed motion to dismiss the FAC, in which Quality Loan Service ("QLS") joins, and a renewed motion to strike Plaintiff's allegations regarding attorneys' fees and punitive damages on September 26, 2017. Dkts. # 39, 43, 40.

Plaintiff alleges she is the owner of the real property located at 13066 Norcia Drive, Rancho Cucamonga, CA 90017 ("Property"). *FAC* 3. On January 31, 2006, she obtained a loan in the amount of $1,000,000.00 from Homecomings Financial Network, Inc., which was secured by the Property. *Id.* 8. A Deed of Trust was recorded for that loan on February 6, 2006, with MERS as the beneficiary and Landamerica Lawyers Title Company as the trustee. *Id.* 9. On April 23, 2008, a Notice of Default was recorded on the Property. *Defendant's Motion to Dismiss* ("*Mot*") 2. The Deed of Trust was assigned to LaSalle Bank N.A.;

on June 5, 2008, QLS was substituted as successor trustee. *Id.*

In 2007, Plaintiff stopped making payments on her loan and fell into default. *FAC* 9. Plaintiff alleges that Defendant SPS began servicing her loan in October 2013. *FAC* 9; *Mot.* 2. By December 18, 2014, Plaintiff was in default on the loan in the amount of $349,651.03. *FAC* Ex. D.

Plaintiff began receiving correspondence from SPS regarding the debt, including mortgage statements, acknowledgments of her correspondence, information relating to the planned foreclosure sale, and home retention options—communications she deems "harassment." *See generally FAC; id.* 9. She further alleges that Defendant QLS executed and recorded a Notice of Default on the Property followed by a Notice of Trustee's Sale. *FAC* 11. Plaintiff's claims stem from her allegation that SPS and QLS are not legally entitled to collect on the debt, service the debt, or foreclose on her home. *Id.*

II. Legal Standard

To survive a motion to dismiss under Rule 12(b)(6), a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In assessing the adequacy of the complaint, the court must accept all pleaded facts as true and construe them in the light most favorable to the plaintiff. *See Turner v. City & Cty. of San Francisco*, 788 F.3d 1206, 1210 (9th Cir. 2015); *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). The court then determines whether the complaint "allows

the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

Where, as here, a plaintiff proceeds *pro se*, the Court has an obligation to construe his complaint liberally. *See Bernhardt v. Los Angeles Cty.*, 339 F.3d 920, 925 (9th Cir. 2003) ("Courts have a duty to construe *pro se* pleadings liberally including *pro se* motions as well as complaints.").

III. Discussion

Defendants raise multiple grounds for dismissal, including failure to state a claim, res judicata, lack of standing, and judicial estoppel. *See generally Mot.* The Court determines that Plaintiff's U.S.C. § 1692 claims fail as a matter of law, so it need not reach the merits of Defendants' other arguments.

A. Violation of 15 U.S.C. § 1692 (First Cause of Action)

Plaintiff claims that "Defendants SPS and QLS are debt collectors that are attempting to collect a debt," which puts its actions within the FDCPA. *Opp.* 6; *see generally FAC.*. She argues that Defendants' correspondence, alleged debt collection attempts, and foreclosure activity are therefore "debt collection" and in violation of the FDCPA. *See generally FAC.*

The purpose of the FDCPA is to eliminate abusive debt collection practices, including the harassment and abuse of consumers. 15 U.S.C. § 1692(e). "To state a claim for violation of the FDCPA, a plaintiff must allege that the defendant is a 'debt collector' collecting a 'debt.' " *Izenberg v. ETS Servs., LLC.*, 589 F. Supp. 2d 1193, 1198 (C.D. Cal. 2008); 15

U.S.C. §§ 1692d–1692f. The FDCPA defines a "debt collector" as "any business the principal purpose of which is the collection of any debts, or [one] who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." *Izenberg*, 589 F. Supp. 2d at 1198–99; 15 U.S.C. § 1692a(6).

Courts have consistently held that loan servicers are not debt collectors under the FDCPA. *Bank of N.Y. Mellon Tr. Co., N.A. v. Henderson*, No. 15-5186, 2017 WL 2883744, at *2 (D.C. Cir. July 7, 2017) (finding that the bank is not a debt collector under the FDCPA); *Niborg v. CitiMortgage, Inc.*, No. C 17-5155 BHS, 2017 WL 3017633, at *2 (W.D. Wash. July 17, 2017) ("[A] holder on a note and deed of trust does not constitute a 'debt collector' under the FDCPA."); *Altenburg v. Caliber Home Loans, Inc.*, No. RDB 16-3374, 2017 WL 2733803, at *2 (D. Md. June 26, 2017). Plaintiff argues that if a debt is assigned for servicing after default has occurred, the service provider is a debt collector. *FAC* 15; *Opp.* 7–8. The cases she cites to, however, have been abrogated by the United States Supreme Court in *Henson v. Santander Consumer USA, Inc.*, 137 S. Ct. 1718 (2017). The Court did not distinguish between those who purchased the debt before it was in default and those who purchased it afterward, and held that the purchaser of a defaulted loan may collect on that loan without becoming a debt collector under the FDCPA. *See id.* at 1724.

Furthermore, the FDCPA governs only those activities that comprise "debt collection." *See* § 1692 (the FDCPA was enacted "to protect consumers against debt collection abuses."). District courts in the Ninth Circuit "have consistently concluded that nonjudicial foreclosure actions do not constitute debt

collection under the FDCPA to the extent that a defendant's actions are limited to those necessary to effectuate the nonjudicial foreclosure." *Fitzgerald v. Bosco Credit, LLC*, No. CV 16-01473 MEJ, 2016 WL 3844333, at *5 (N.D. Cal. July 15, 2016). That is because "[f]oreclosing on a trust deed is distinct from the collection of the obligation to pay money... [p]ayment of funds is not the object of the foreclosure action. Rather, the lender is foreclosing its interest in the property." *Lobato v. Acqura Loan Servs.*, No. 11-cv-2601 WQH (JMA), 2012 WL 607624, at *5 (S.D. Cal. Feb. 23, 2012); *see also Landayan v. Washington Mutual Bank*, No. C–09–00916 RMW, 2009 WL 3047238, at *2 (N.D. Cal. Sept. 18, 2009) ("A claim cannot arise under the FDCPA based upon the lender enforcing its security interest under the subject deed of trust because foreclosing on a mortgage does not constitute an attempt to collect a debt for purposes of the FDCPA."); *Barry v. Wells Fargo Home Mortg.*, No. CV 15-04606 BLF, 2017 WL 1133516, at *4 (N.D. Cal. Mar. 27, 2017) (noting that "a non-judicial foreclosure does not constitute debt collection under the FDCPA"); *Jelsing v. MIT Lending*, No. 10-CV-416 BTM (NLS), 2010 WL 2731470, at *5 (S.D. Cal. July 9, 2010) (holding that sending a Notice of Trustee's Sale is not actionable under the FDCPA because "foreclosing on [a] property pursuant to a deed of trust is not the collection of a 'debt' within the meaning of the FDCPA") (citations omitted).

The Ninth Circuit itself has held that lenders and servicers who are engaged in foreclosure proceedings pursuant to a deed of trust are not engaged in debt collection within the meaning of the FDCPA. *See, e.g., Dowers v. Nationstar Mortg., LLC*, 852 F.3d 964, 969–70 (9th Cir. 2017); *Ho v. ReconTrust Co., NA*,

858 F.3d 568, 571–72 (9th Cir. 2016) ("[A]ctions taken to facilitate a non-judicial foreclosure, such as sending the notice of default and notice of sale, are not attempts to collect 'debt' as that term is defined by the FDCPA.").

Plaintiff alleges that Defendants are debt collectors attempting to collect mortgage payments, and in so doing engaged in unlawful collection practices in violation of the FDCPA. *See, e.g., FAC* 12–14. The abuse and harassment Plaintiff alleges include, *inter alia*, that "Defendant ... continuously threatens Plaintiff by scheduling foreclosure dates," *Opp.* 9; mailing her monthly mortgage statements, *FAC* 12; posting a foreclosure notice on her door, *FAC* ¶ 11; and sending her mortgage statements even after she asked them to stop, *FAC* 13. As the Ninth Circuit has held, actions taken in furtherance of foreclosure proceedings are not debt collection within the FDCPA.

B. Violation of § 1692f(6) (Second Cause of Action)

Plaintiff's second cause of action asserts a violation of section § 1692f(6), "by perpetrating as 'creditors' by threatening to proceed with a non judicial [sic] foreclosure action on Plaintiff's Property when they have no present right to possession of the Property claimed as collateral through an enforceable security interest and there is no present intention to take possession of the property." Thus, Plaintiff claims, § 1692f(6) "prohibits non-judicial action to dispossess Plaintiff from her home without a legal ability to do so." *FAC* ¶ 24. Section 1692f(6) states that such non-judicial action is prohibited "if there is not a security instrument used as collateral, if there is no intention to take possession, or if the property is exempt by law from dispossession or disablement." 15 U.S.C. 1692f(6). Plaintiff's allegation that Defendants are in violation of this section lacks merit. Defendants sought to foreclose

on the DOT based on Plaintiff's default on the Loan and nine years of non-payment. Therefore, there is (a) a security instrument used as collateral (*see FAC* 11); (b) Defendants did intend to take possession of the Property (*see FAC* 11); and (c) the Property is not exempt from dispossession. Even if Plaintiff could establish Defendants are debt collectors under the FDCPA, Plaintiff alleges no facts that would support a violation of § 1692f(6).

Plaintiff relies on the non-judicial foreclosure to allege violations of the FDCPA, but has failed to establish Defendants were debt collectors engaged in debt collection under the Act. As a matter of law, then, Plaintiff has failed to state a claim for violations of the FDCPA, and Defendants' motion to dismiss the first and second causes of action is GRANTED.

C. State-Law Claims

A district court "may decline to exercise supplemental jurisdiction" if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). "[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (citation omitted). Plaintiff's remaining actions for cancellation of instruments and violation of California Business and Professions Code § 17200 (California's Unfair Competition Law) arise under state law. *See generally FAC.* The court declines to exercise

jurisdiction over the supplemental state law claims pursuant to 28 U.S.C. § 1367(c)(3).

D. Leave to Amend

Whether to grant leave to amend rests in the sound discretion of the trial court. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). The Court considers whether leave to amend would cause undue delay or prejudice to the opposing party, and whether granting leave to amend would be futile. *See Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996). Generally, dismissal without leave to amend is improper "unless it is clear that the complaint could not be saved by any amendment." *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003).

As a matter of law, Defendants are not "debt collectors" under the FDCPA, so amendment to Plaintiff's first two causes of action would be futile. The Court therefore **GRANTS** Defendants' motions to dismiss those claims without leave to amend. Defendant's motion to strike the request for punitive damages and attorneys' fees is therefore rendered **MOOT**.

IT IS SO ORDERED.

9/6/2018

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 18-55134

TRINA R. PATTERSON, Plaintiff-Appellant,

v.

SELECT PORTFOLIO SERVICING, INC.; et al., Defendants-Appellees.

ORDER

Before: THOMAS, Chief Judge, LEAVY and FRIEDLAND, Circuit Judges.

The full court has been advised of the petition for rehearing en bane and no judge has requested a vote on whether to rehear the matter en bane. See Fed. R. App. P. 35.

Patterson's petition for panel rehearing and petition for rehearing en bane (Docket Entry No. 24) are denied.

No further filings will be entertained in this closed case.