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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

1 In re: )  
2 JAMES AMAR SINGH, )  
3 Debtor. )  
4 )  
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BAP No. NC-17-1217-FBTa  
Bk. No. 4:15-bk-40917  
Adv. Pro. 4:16-ap-04026

JAMES AMAR SINGH,  
Appellant,  
v. **MEMORANDUM\***  
WELLS FARGO BANK, N.A.,  
Appellee.

Argued and Submitted on May 25, 2018  
at San Francisco, California

Filed - June 5, 2018

Appeal from the United States Bankruptcy Court  
for the Northern District of California

Honorable William J. Lafferty, Bankruptcy Judge, Presiding

Appearances: Appellant James Amar Singh, pro se, on the brief;  
James Z. Margolis argued on behalf of appellant;  
Robert Collings Little of Anglin Flewelling  
Rasmussen Campbell & Trytten LLP argued for  
appellee Wells Fargo Bank, N.A.

Before: FARIS, BRAND, and TAYLOR, Bankruptcy Judges.

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\* This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have, see Fed. R. App. P. 32.1, it has no precedential value, see  
9th Cir. BAP Rule 8024-1.

1 **INTRODUCTION**

2 Appellant James Amar Singh's nine-year quest to stave off  
3 foreclosure of his home has engendered at least ten bankruptcy  
4 cases and four lawsuits. In this latest iteration, Mr. Singh  
5 sought chapter 13<sup>1</sup> bankruptcy protection and filed an adversary  
6 proceeding against appellee Wells Fargo Bank, N.A. ("Wells  
7 Fargo"), seeking a declaration that Wells Fargo lacked any rights  
8 in his real property due to an earlier foreclosure that a state  
9 court jury found to be improper. In a thoroughly reasoned  
10 decision, the bankruptcy court granted Wells Fargo's motion to  
11 dismiss the adversary proceeding with prejudice.

12 On appeal, Mr. Singh largely ignores the bankruptcy court's  
13 analysis and continues to insist, incorrectly, that the jury  
14 verdict in his favor permanently bars Wells Fargo's interest in  
15 his property. We AFFIRM.

16 **FACTUAL BACKGROUND**

17 **A. Prelitigation events**

18 In January 2006, Mr. Singh obtained a \$500,000 loan from  
19 Wells Fargo's predecessor, which was secured by a deed of trust  
20 encumbering his residential real property located in Oakland,  
21 California (the "Property"). (We will refer to Wells Fargo and  
22 its predecessors collectively as "Wells Fargo.") Mr. Singh  
23 defaulted on the loan in December 2009, and Wells Fargo recorded  
24 a notice of default. The foreclosure sale of the Property was

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26 <sup>1</sup> Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all  
28 "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, and all "Civil Rule" references are to the Federal  
Rules of Civil Procedure.

1 scheduled for August 8, 2010.

2 **B. State and federal litigation**

3 In the span of five years, Mr. Singh initiated ten  
4 bankruptcy cases, most of which were quickly dismissed for  
5 failure to file documents. He filed his first petition on  
6 August 5, 2010, which stayed the pending foreclosure sale and  
7 allowed him to begin prosecuting his string of civil cases.

8 **1. The first lawsuit**

9 In October 2011, Mr. Singh filed suit (the "First Lawsuit")  
10 in state court against Wells Fargo to challenge the foreclosure.  
11 He asserted six causes of action: (1) elder financial abuse,  
12 (2) wrongful foreclosure, (3) breach of contract, (4) intentional  
13 infliction of emotional distress, (5) violation of business and  
14 professions code, and (6) quiet title. Wells Fargo removed the  
15 First Lawsuit to federal district court. After the district  
16 court denied Mr. Singh's motion for an injunction barring Wells  
17 Fargo from conducting a foreclosure sale, Mr. Singh voluntarily  
18 dismissed the First Lawsuit pursuant to Civil Rule 41(a).

19 In July 2012, Wells Fargo purchased the Property at a  
20 foreclosure sale and recorded a trustee's deed upon sale  
21 ("Trustee's Deed"). Mr. Singh contends that the foreclosure sale  
22 was invalid. He claims that the sale was cancelled when the  
23 auctioneer received copies of Mr. Singh's eighth bankruptcy  
24 petition that was filed earlier that day. (Mr. Singh had filed  
25 four bankruptcy petitions in the year preceding the foreclosure  
26 sale.) Mr. Singh claims that, nevertheless, Wells Fargo  
27 "illegally" purchased the Property after all other bidders had  
28 left.

1           **2.     The second lawsuit**

2           In December 2012, Mr. Singh filed another lawsuit (the  
3 "Second Lawsuit") against Wells Fargo in state court. He alleged  
4 seven causes of action: (1) quiet title, (2) declaratory relief,  
5 (3) preliminary and permanent injunction, (4) cancellation of  
6 instruments, (5) wrongful foreclosure, (6) unjust enrichment, and  
7 (7) fraud.

8           Wells Fargo again removed the case to the federal district  
9 court. The district court dismissed Mr. Singh's complaint  
10 without leave to amend for failure to state a claim upon which  
11 relief could be granted. Mr. Singh appealed the decision to the  
12 Ninth Circuit Court of Appeals, which affirmed the dismissal in  
13 December 2016.

14           **3.     The unlawful detainer action**

15           Following the foreclosure sale, Wells Fargo filed an  
16 unlawful detainer action (the "Unlawful Detainer Action") in  
17 state court. Mr. Singh apparently challenged the propriety of  
18 the sale on grounds that the record does not disclose. A jury  
19 determined that Wells Fargo did not purchase the Property "at a  
20 properly conducted trustee sale" and that Wells Fargo "shall take  
21 nothing by [its] Complaint" (the "Unlawful Detainer Judgment").

22           Wells Fargo then recorded a notice of rescission of the  
23 Trustee's Deed ("Notice of Rescission") as a first step toward a  
24 second foreclosure sale.

25           **4.     The third lawsuit**

26           In March 2015, Mr. Singh filed yet another lawsuit (the  
27 "Third Lawsuit") in state court, alleging that Wells Fargo had no  
28 right to resume the foreclosure process because the Unlawful

1 Detainer Judgment had claim preclusive effect. He asserted  
2 claims for: (1) conversion, (2) slander of title, (3) fraud,  
3 (4) infliction of emotional distress, (5) elder abuse,  
4 (6) declaratory relief, and (7) preliminary and permanent  
5 injunction. He alleged that he owned the Property free and clear  
6 of Wells Fargo's encumbrances. After Wells Fargo removed the  
7 Third Lawsuit to federal district court, Mr. Singh voluntarily  
8 dismissed it.

9 **C. The chapter 13 bankruptcy case and adversary proceeding**

10 Also in March 2015, Mr. Singh filed the underlying  
11 chapter 13 bankruptcy case. This was his tenth bankruptcy  
12 filing.

13 Mr. Singh initiated an adversary proceeding against Wells  
14 Fargo, alleging that the Unlawful Detainer Judgment conclusively  
15 established that Wells Fargo had no right to record the Trustee's  
16 Deed following the July 2012 foreclosure sale and, therefore, had  
17 no right to pursue further foreclosure actions. He also alleged  
18 that Wells Fargo did not properly rescind the Trustee's Deed.  
19 The amended adversary complaint asserted nine causes of action:  
20 (1) injunctive relief, (2) declaratory relief, (3) turnover of  
21 unlawfully conveyed real property, (4) slander of title,  
22 (5) financial elder abuse fraud, (6) quiet title, (7) fraud,  
23 malice, and oppression, (8) violation of business and professions  
24 code section 17200, and (9) accounting.

25 **D. The motion to dismiss**

26 Wells Fargo moved to dismiss the adversary proceeding under  
27 Civil Rule 12(b)(6), made applicable to bankruptcy by Rule  
28

1 7012(b) ("Motion to Dismiss").<sup>2</sup> It argued that the complaint  
2 failed to state a claim upon which relief could be granted  
3 because, among other things, Mr. Singh voluntarily dismissed  
4 similar claims twice before in the First and Third Lawsuits,  
5 which barred further adjudication under Civil Rule 41(a)(1)(B),  
6 made applicable in bankruptcy by Rule 7041; he failed to make a  
7 valid tender of the outstanding debt, thereby precluding  
8 equitable relief; the Unlawful Detainer Judgment did not preclude  
9 Wells Fargo from continuing its foreclosure efforts; and the  
10 Notice of Rescission was proper.

11 In response, Mr. Singh argued that Wells Fargo "stole [his]  
12 Property through a fraudulent sale" and filed "a Bogus Notice of  
13 Rescission of Trustee's Deed Upon Sale[.]" He argued that claim  
14 preclusion did not apply to the slander of title claim, which he  
15 alleged for the first time in the adversary complaint. In the  
16 alternative, he asked that the bankruptcy court allow him leave  
17 to amend the complaint.

18 At the hearing on the Motion to Dismiss, counsel for Wells  
19 Fargo reminded the court that, in the time that the Motion to  
20 Dismiss was pending, the Ninth Circuit affirmed the district  
21 court's dismissal of the Second Lawsuit; as a result, claim  
22 preclusion barred relitigation of the claims raised in the Second  
23 Lawsuit. In response, Mr. Singh's counsel argued briefly that  
24 claim preclusion was inapplicable because "the matters that we're  
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26 <sup>2</sup> The bankruptcy court dismissed the underlying bankruptcy  
27 case in May 2016 but retained jurisdiction over the adversary  
28 proceeding. Mr. Singh later filed his eleventh bankruptcy  
petition in April 2018.

1 raising in this case are matters that came about after [the  
2 Unlawful Detainer Judgment].”

3 Following the hearing, the bankruptcy court issued its Order  
4 Granting Motion to Dismiss First Amended Complaint (“Dismissal  
5 Order”).

6 First, the bankruptcy court held that claim preclusion  
7 applied to all of the causes of action except the quiet title  
8 claim, “because the Second Lawsuit was fully adjudicated  
9 adversely to the Plaintiff by both the District Court and the  
10 United States Court of Appeals for the Ninth Circuit . . . and  
11 contained claims based on the same underlying facts as alleged in  
12 the [adversary complaint].”

13 Second, the bankruptcy court held that the “Two Dismissal  
14 Rule” of Civil Rule 41(a)(1)(B) barred relitigation of the claims  
15 previously asserted (and dismissed) in the First and Third  
16 Lawsuits.

17 Third, the bankruptcy court held that Mr. Singh’s failure to  
18 tender payment of the debt mandated dismissal of the equitable  
19 claims - injunctive relief, declaratory relief, quiet title,  
20 unfair competition, and accounting.

21 Finally, the bankruptcy court considered the merits of the  
22 individual claims and determined that none stated a claim upon  
23 which relief could be granted. The bankruptcy court therefore  
24 dismissed the adversary complaint with prejudice.

25 Mr. Singh timely appealed.

#### 26 **JURISDICTION**

27 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
28 §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C.

1 § 158.

2 **ISSUE**

3 Whether the bankruptcy court erred in dismissing the  
4 complaint without leave to amend.

5 **STANDARDS OF REVIEW**

6 We review de novo a bankruptcy court's decision to grant a  
7 motion to dismiss a complaint under Civil Rule 12(b)(6). See  
8 Barnes v. Belice (In re Belice), 461 B.R. 564, 572 (9th Cir. BAP  
9 2011). De novo review is independent and gives no deference to  
10 the trial court's conclusion. Roth v. Educ. Credit Mgmt. Agency  
11 (In re Roth), 490 B.R. 908, 915 (9th Cir. BAP 2013).

12 A decision to dismiss a complaint without leave to amend and  
13 with prejudice is reviewed for abuse of discretion. See Tracht  
14 Gut, LLC v. L.A. Cty. Treasurer & Tax Collector (In re Tracht  
15 Gut, LLC), 836 F.3d 1146, 1150 (9th Cir. 2016). To determine  
16 whether the bankruptcy court has abused its discretion, we  
17 conduct a two-step inquiry: (1) we review de novo whether the  
18 bankruptcy court "identified the correct legal rule to apply to  
19 the relief requested" and (2) if it did, whether the bankruptcy  
20 court's application of the legal standard was illogical,  
21 implausible, or without support in inferences that may be drawn  
22 from the facts in the record. United States v. Hinkson, 585 F.3d  
23 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).

24 **DISCUSSION**

25 **A. Civil Rule 12(b)(6) requires Mr. Singh to state a claim upon**  
26 **which relief can be granted.**

27 Under Civil Rule 12(b)(6), a court must dismiss a complaint  
28 if it fails to state a claim upon which relief can be granted.



1 To survive a motion to dismiss, the plaintiff must allege "enough  
2 facts to state a claim to relief that is plausible on its face."  
3 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is  
4 facially plausible when the plaintiff pleads facts that "allow[ ]  
5 the court to draw the reasonable inference that the defendant is  
6 liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S.  
7 662, 678 (2009) (citation omitted). While courts do not require  
8 "heightened fact pleading of specifics," a plaintiff must allege  
9 facts sufficient to "raise a right to relief above the  
10 speculative level." Twombly, 550 U.S. at 555, 570.

11 In deciding whether the complaint states a claim upon which  
12 relief can be granted, the court accepts the allegations as true  
13 and draws all reasonable inferences in favor of the plaintiff.  
14 See Usher v. City of L.A., 828 F.2d 556, 561 (9th Cir. 1987).  
15 But the court is not required to accept as true "allegations that  
16 are merely conclusory, unwarranted deductions of fact, or  
17 unreasonable inferences." In re Gilead Scis. Sec. Litig.,  
18 536 F.3d 1049, 1055 (9th Cir. 2008).

19 **B. Mr. Singh's basic argument - that the Unlawful Detainer**  
20 **Judgment destroyed Wells Fargo's deed of trust - is wrong.**

21 The crux of Mr. Singh's arguments on appeal is that the  
22 Unlawful Detainer Judgment stripped Wells Fargo of its rights in  
23 the Property and precludes it from taking any further action to  
24 foreclose on the Property. He is mistaken.

25 Mr. Singh argues that Wells Fargo lacks the authority to  
26 foreclose on the Property "because Wells Fargo lost the unlawful  
27 detainer action[.]" He also contends that the claims that rely  
28 on the wrongful foreclosure claims (such as the elder abuse

1 claim, quiet title claim, and slander of title claim) should have  
2 survived the Motion to Dismiss for the same reason.

3 But Mr. Singh's position rests on a false premise: that the  
4 Unlawful Detainer Judgment extinguished Wells Fargo's rights in  
5 the Property. The jury's finding that a procedural deficiency  
6 voided the July 2012 foreclosure sale does not mean that Wells  
7 Fargo is forever barred from conducting a proper foreclosure.  
8 Therefore, all of the claims that rely on his wrongful  
9 foreclosure argument necessarily fail.<sup>3</sup>

10 Similarly, Mr. Singh contends that the bankruptcy court  
11 erred because the Unlawful Detainer Judgment should have been  
12 given claim preclusive effect in his favor. But the jury only  
13 found that the July 2012 foreclosure sale was defective. The  
14 Unlawful Detainer Judgment does not provide, for example, that  
15 Mr. Singh is entitled to a judgment quieting title in him free of  
16 the deed of trust. It has a more narrow effect than Mr. Singh  
17 believes and does not support his claims in the adversary  
18 proceeding.<sup>4</sup> The Ninth Circuit was similarly unswayed by this  
19 argument in deciding the appeal of the judgment in the Second  
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21 <sup>3</sup> Perhaps relatedly, Mr. Singh argues that Wells Fargo could  
22 not foreclose because it violated the conditions precedent to a  
23 foreclosure under the deed of trust. It is not clear that he  
24 made this argument in the bankruptcy court; if he did not, the  
25 argument is waived. But even if he did, he does not explain this  
26 argument. He cites a lengthy paragraph purportedly from the deed  
27 of trust but does not state how Wells Fargo allegedly violated  
28 it. We can discern no error based on this argument.

26 <sup>4</sup> In his reply brief, Mr. Singh complains that Wells Fargo  
27 refused to agree to a loan modification. He offers no authority  
28 for the proposition that Wells Fargo had any legal obligation to  
modify the terms of the loan.

1 Lawsuit, stating that it "reject[s] without merit . . . Singh's  
2 contentions regarding . . . the preclusive effect of the parties'  
3 state unlawful detainer action." We are bound by the Ninth  
4 Circuit's rejection of Mr. Singh's preclusion arguments.

5 In short, Wells Fargo's errors in its first attempt to  
6 foreclose do not entitle Mr. Singh to a free house.

7 **C. Mr. Singh fails to address the majority of the bankruptcy  
8 court's Dismissal Order.**

9 Mr. Singh utterly fails to address the bankruptcy court's  
10 major reasons for dismissing his complaint. As such, those  
11 arguments are waived. See Padgett v. Wright, 587 F.3d 983, 986  
12 n.2 (9th Cir. 2009) (per curiam) (an appellate court "will not  
13 ordinarily consider matters on appeal that are not specifically  
14 and distinctly raised and argued in appellant's opening brief");  
15 Smith v. Marsh, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[O]n  
16 appeal, arguments not raised by a party in its opening brief are  
17 deemed waived."); Greenwood v. Fed. Aviation Admin., 28 F.3d 971,  
18 977 (9th Cir. 1994) ("We will not manufacture arguments for an  
19 appellant, and a bare assertion does not preserve a claim  
20 . . . ."). While we liberally construe a pro se debtor's  
21 appellate brief, see Nordeen v. Bank of Am., N.A. (In re  
22 Nordeen), 495 B.R. 468, 483 (9th Cir. BAP 2013), we will not  
23 question the parts of the bankruptcy court's decision that  
24 Mr. Singh does not even discuss.

25 **1. Mr. Singh does not challenge the court's ruling that**  
26 **claim preclusion barred relitigation of all claims**  
**except for the quiet title claim.**

27 Mr. Singh ignores the bankruptcy court's first reason for  
28

1 dismissal: that claim preclusion<sup>5</sup> barred relitigation of the  
2 claims raised in the Second Lawsuit (other than the quiet title  
3 claim).

4 Under California law, claim preclusion "prevents  
5 relitigation of the same cause of action in a second suit between  
6 the same parties or parties in privity with them." Mycogen Corp.  
7 v. Monsanto Co., 28 Cal. 4th 888, 896 (2002). Claim preclusion  
8 requires that: (1) the second lawsuit must involve the same  
9 "cause of action" as the first lawsuit; (2) the first lawsuit  
10 must have resulted in a final judgment on the merits; and (3) the  
11 party to be precluded must have been a party, or in privity with  
12 a party, to the first lawsuit. See San Diego Police Officers'  
13 Ass'n v. San Diego City Emps.' Ret. Sys., 568 F.3d 725, 734 (9th  
14 Cir. 2008). Courts may inquire into fairness and public policy  
15 before applying the doctrine of claim preclusion, but that  
16 inquiry is not mandatory. See Roberts v. Andrews Family  
17 Revocable Tr. (In re Andrews), BAP No. EC-13-1385-JuTaKu, 2014 WL  
18 2547808, at \*8 (9th Cir. BAP June 5, 2014), aff'd, 668 F. App'x  
19 757 (9th Cir. 2016) (citing Kopp v. Fair Political Practices  
20 Comm'n, 11 Cal. 4th 607, 620-22 (1995)).

21 First, Wells Fargo established an identity of claims between  
22 the adversary proceeding and the Second Lawsuit. California  
23 courts employ the "primary rights theory" to determine if two  
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25 <sup>5</sup> Although the parties use the term "res judicata," we  
26 employ the term "claim preclusion," which has "supplanted the  
27 term 'res judicata' that was traditionally used in a  
28 now-obsolete, non-generic sense . . . ." The Alary Corp. v. Sims  
(In re Associated Vintage Grp., Inc.), 283 B.R. 549, 555 (9th  
Cir. BAP 2002).

1 actions constitute a single cause of action. “[A] ‘cause of  
2 action’ under the primary rights theory considers the broader  
3 question of the injury or harm suffered. ‘The most salient  
4 characteristic of a primary right is that it is indivisible: the  
5 violation of a single primary right gives rise to but a single  
6 cause of action.’” Id. at \*9 (quoting Mycogen Corp., 28 Cal. 4th  
7 at 904). Therefore, “[i]f an action involves the same injury to  
8 the plaintiff and the same wrong by the defendant then the same  
9 primary right is at stake even if in the second suit, the  
10 plaintiff pleads different theories of recovery, seeks different  
11 forms of relief and/or adds new facts supporting recovery.” Id.  
12 (quoting Eichman v. Fotomat Corp., 147 Cal. App. 3d 1170, 1174  
13 (1983)); see Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d  
14 708, 714 (9th Cir. 2001) (“The central criterion in determining  
15 whether there is an identity of claims between the first and  
16 second adjudications is ‘whether the two suits arise out of the  
17 same transactional nucleus of facts.’” (citations omitted)).

18 The bankruptcy court examined the claims adjudicated in the  
19 Second Lawsuit and determined that they were identical to the  
20 claims raised in the adversary proceeding, except for the quiet  
21 title claim. The only change between the Second Lawsuit and the  
22 adversary complaint was the Unlawful Detainer Judgment;  
23 therefore, “any cause of action that relies on facts surrounding  
24 the UD Lawsuit and Judgment[] would not be barred by the doctrine  
25 of claim preclusion because it does not rely on the same  
26 operative nucleus of facts.” We discern no error in the  
27 bankruptcy court’s careful comparison of the various claims.

28 Second, there is no dispute that the Second Lawsuit resulted

1 in a final judgment on the merits.

2 Third, Mr. Singh was the prosecuting party in both the  
3 Second Lawsuit and the adversary proceeding.

4 Accordingly, the bankruptcy court correctly decided that all  
5 of the claims raised in the adversary proceeding (except for the  
6 quiet title claim) are barred by claim preclusion.

7 **2. Mr. Singh does not challenge dismissal based on the**  
8 **two-dismissal rule.**

9 Similarly, the bankruptcy court correctly dismissed the  
10 slander of title claim, injunctive relief claim, fraud claim, and  
11 elder abuse claim because Mr. Singh had voluntarily dismissed  
12 those claims twice before.

13 Under Civil Rule 41(a)(1)(B), "if the plaintiff previously  
14 dismissed any federal- or state-court action based on or  
15 including the same claim, a notice of dismissal operates as an  
16 adjudication on the merits." This "two-dismissal rule" provides  
17 that "a voluntary dismissal of a second action operates as a  
18 dismissal on the merits if the plaintiff has previously dismissed  
19 an action involving the same claims." Commercial Space Mgmt. Co.  
20 v. Boeing Co., 193 F.3d 1074, 1076 (9th Cir. 1999).

21 The bankruptcy court correctly held that the two-dismissal  
22 rule barred those claims that Mr. Singh voluntarily dismissed in  
23 the First and Third Lawsuits.<sup>6</sup> Mr. Singh does not address this  
24

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25 <sup>6</sup> Although Mr. Singh gave different titles to the causes of  
26 action in the First and Third Lawsuits, the bankruptcy court  
27 properly determined that the claims arose out of the "same  
28 transactional nucleus of facts." For example, Mr. Singh asserted  
claims in the Third Lawsuit for slander of title and fraud, which  
(continued...)

1 reason for dismissal on appeal or discuss how the bankruptcy  
2 court erred.

3 **3. Mr. Singh fails to address many of the discrete reasons**  
4 **for dismissal.**

5 Mr. Singh largely fails to argue that the bankruptcy court  
6 erred in analyzing the individual causes of action. He  
7 completely ignores the court's reasons for dismissing: (1) First  
8 Cause of Action: Injunctive Relief; (2) Second Cause of Action:  
9 Declaratory Relief; (3) Third Cause of Action: Turnover of  
10 Property; (4) Seventh Cause of Action: Fraud; (5) Eighth Cause of  
11 Action: Violation of Business and Professions Code 17200; and  
12 (6) Ninth Cause of Action: Accounting. Accordingly, he has  
13 waived these issues on appeal.

14 **4. Mr. Singh did not explain how the bankruptcy court**  
15 **erred by denying leave to amend.**

16 Mr. Singh also fails to discuss the bankruptcy court's  
17 decision to dismiss his complaint without leave to amend.

18 The Ninth Circuit instructs that we must "consider five  
19 factors in assessing whether a district court abuses its  
20 discretion in dismissing a complaint without leave to amend: 'bad  
21 faith, undue delay, prejudice to the opposing party, futility of  
22 amendment, and whether the plaintiff has previously amended the  
23 complaint.'" Ecological Rights Found. v. Pac. Gas & Elec. Co.,  
24 713 F.3d 502, 520 (9th Cir. 2013) (quoting United States v.

25 \_\_\_\_\_  
26 <sup>6</sup>(...continued)  
27 were not explicitly asserted in the First Lawsuit. Nevertheless,  
28 the bankruptcy court found that "the causes of action which rely  
on the facts surrounding the wrongful foreclosure . . . can be  
dismissed pursuant to the Two Dismissal Rule."

1 Corinthian Colls., 655 F.3d 984, 995 (9th Cir. 2011)). “Although  
2 leave to amend should be given freely, a district court may  
3 dismiss without leave where a plaintiff’s proposed amendments  
4 would fail to cure the pleading deficiencies and amendment would  
5 be futile.” Cervantes v. Countrywide Home Loans, Inc., 656 F.3d  
6 1034, 1041 (9th Cir. 2011); see Civil Rule 15(a) (“The court  
7 should freely give leave when justice so requires.”).

8 The bankruptcy court determined that leave to amend would be  
9 futile because Mr. Singh could not plead any viable claim. We  
10 agree. As the bankruptcy court comprehensively explained, each  
11 of Mr. Singh’s claims failed as a matter of law for multiple  
12 reasons, and Mr. Singh did not propose any way in which he could  
13 amend his complaint to avoid the many hurdles.

14 In his briefs, Mr. Singh only states that “[t]he trial court  
15 erred in in [sic] dismissing the Adversary complaint without  
16 leave to amend.” He also baldly states that the complaint “can  
17 reasonably be amended to allege standing and to plead with  
18 sufficient particularity on each of SINGH’s claims[,]” but he  
19 does not explain how he would amend the complaint to cure the  
20 defects.

21 We do not consider arguments that are not specifically and  
22 distinctly argued in the appellant’s opening brief. See Padgett,  
23 587 F.3d at 986 n.2; Bolt v. Crake (In re Riverside-Linden Inv.  
24 Co.), 945 F.2d 320, 325 (9th Cir. 1991) (holding that a passing,  
25 conclusory statement “did not permit the issue to be ‘fully  
26 explored,’ . . . and we consider the issue waived”). Mr. Singh  
27 provides no analysis, legal authority, or facts supporting his  
28 assertion that he should be entitled to amend his complaint.



1 At oral argument, counsel for Mr. Singh argued that the  
2 bankruptcy court should have allowed Mr. Singh to amend his  
3 complaint to allege that Wells Fargo had to start the foreclosure  
4 process anew, presumably because the Unlawful Detainer Judgment  
5 voided all earlier actions to foreclose on the Property. But  
6 Mr. Singh did not articulate this theory to the bankruptcy court  
7 or in his briefs, so we will not consider it. See Ezra v. Seror  
8 (In re Ezra), 537 B.R. 924, 932 (9th Cir. BAP 2015).<sup>7</sup>

9 Accordingly, the bankruptcy court did not abuse its  
10 discretion in granting the Motion to Dismiss with prejudice.

11 \_\_\_\_\_

12 <sup>7</sup> Further, there is no reason to allow Mr. Singh to file an  
13 amended complaint based on his fear that Wells Fargo might err  
14 again. As far as we can tell from the record, Mr. Singh's serial  
15 bankruptcy filings have so far prevented Wells Fargo from  
16 foreclosing again. If Wells Fargo manages to get a new  
17 foreclosure off the ground, Mr. Singh could assert any proper  
18 challenges to that foreclosure at an appropriate time and in an  
19 appropriate forum. Any wrongs committed in that new foreclosure  
20 would not have any bearing on the bankruptcy case in which this  
21 adversary proceeding was brought (Mr. Singh's tenth bankruptcy  
22 case) because that bankruptcy case has been dismissed. Any  
23 claims arising out of the new foreclosure would be based on  
24 conduct occurring after that bankruptcy case was dismissed, and  
25 those claims would not be property of the estate in the dismissed  
26 bankruptcy case. Because the claims arising out of the new  
27 foreclosure would not affect the outcome of Mr. Singh's tenth  
28 bankruptcy case or the administration of his estate, the  
bankruptcy court likely would not have "related to" subject  
matter jurisdiction. Cf. Montana v. Goldin (In re Pegasus Gold  
Corp.), 394 F.3d 1189, 1193 (9th Cir. 2005) (stating that the  
"related to" test examines whether "the outcome of the proceeding  
could conceivably have any effect on the estate being  
administered in bankruptcy"); Linkway Inv. Co. v. Olsen (In re  
Casamont Inv'rs, Ltd.), 196 B.R. 517, 521 (9th Cir. BAP 1996)  
("An action is 'related to' a bankruptcy case if the outcome of  
the proceeding could conceivably alter the debtor's rights,  
liabilities, options or freedom of action (either positively or  
negatively) in such a way as to impact on the administration of  
the bankruptcy estate.").

1 **D. Mr. Singh fails to allege any actual injury.**

2 The bankruptcy court held that Mr. Singh did not properly  
3 allege any injury, which is fatal to many of his claims.

4 Mr. Singh argues on appeal that he was damaged in an unspecified  
5 amount to be determined at trial. The court did not err.

6 As a general rule, a plaintiff must allege damages suffered  
7 due to the allegedly improper foreclosure. See generally  
8 Cervantes, 656 F.3d at 1044 (holding that plaintiffs failed to  
9 state a claim where they "have not identified damages"); Simmons  
10 v. Aurora Bank FSB, No. 13-cv-00482-HRL, 2016 WL 192571, at \*7  
11 (N.D. Cal. Jan. 15, 2016) (stating that, to state a claim for  
12 wrongful foreclosure, a plaintiff must allege that "she was  
13 prejudiced or harmed"). In this case, Mr. Singh alleges that he  
14 suffered prejudice because "he lost his home at a foreclosure  
15 sale," which "shows prejudice" in and of itself and would  
16 naturally cause anyone "emotional suffering." But aside from  
17 these vague statements, he still fails to allege how and to what  
18 extent he has been actually harmed. He also argued to the  
19 bankruptcy court that the property taxes on the Property had  
20 increased; but it is undisputed that he has not paid taxes since  
21 he defaulted on the mortgage loan.

22 Mr. Singh fails to articulate any actual injury or explain  
23 how he would cure this defect if he were allowed to amend his  
24 complaint. The bankruptcy court did not err in determining that  
25 he did not allege actual injury.

26 **E. We will not consider new arguments raised for the first time**  
27 **on appeal.**

28 Mr. Singh raises a number of new arguments on appeal that he

1 did not present to the bankruptcy court. For example, he makes  
2 references to Wells Fargo's alleged violations of the Equal  
3 Credit Opportunity Act and the California Homeowners' Bill of  
4 Rights. He also raises new factual arguments, detailing Wells  
5 Fargo's alleged misapplication or miscalculation of his mortgage  
6 payments, the "contrived" default, invalid assignment, and  
7 improper securitization.

8 We will not consider these new arguments in the first  
9 instance. We have stated that, "[o]rdinarily, federal appellate  
10 courts will not consider issues not properly raised in the trial  
11 courts. . . . An issue only is 'properly raised' if it is raised  
12 sufficiently to permit the trial court to rule upon it." In re  
13 Ezra, 537 B.R. at 932 (citations omitted); see Moldo v. Matsco,  
14 Inc. (In re Cybernetic Servs., Inc.), 252 F.3d 1039, 1045 n.3  
15 (9th Cir. 2001) (stating that the appellate court would not  
16 explore ramifications of argument because it was not raised in  
17 the bankruptcy court); Levesque v. Shapiro (In re Levesque),  
18 473 B.R. 331, 335 (9th Cir. BAP 2012) ("Ordinarily, if an issue  
19 is not raised before the trial court, it will not be considered  
20 on appeal and will be deemed waived.").

21 Accordingly, Mr. Singh has waived these arguments.<sup>8</sup>

22 \_\_\_\_\_  
23 <sup>8</sup> We have discretion to "consider an issue raised for the  
24 first time on appeal if (1) there are exceptional circumstances  
25 why the issue was not raised in the trial court, (2) the new  
26 issue arises while the appeal is pending because of a change in  
27 the law, or (3) the issue presented is purely one of law and the  
28 opposing party will suffer no prejudice as a result of the  
failure to raise the issue in the trial court." In re Ezra,  
537 B.R. at 932-33 (quoting Franchise Tax Bd. v. Roberts (In re  
Roberts), 175 B.R. 339, 345 (9th Cir. BAP 1994)). Mr. Singh has  
(continued...)

1 **CONCLUSION**

2 The bankruptcy court did not err when it dismissed  
3 Mr. Singh's adversary complaint with prejudice. We AFFIRM.<sup>9</sup>  
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22 <sup>8</sup>(...continued)  
23 not identified any exceptional circumstances excusing his failure  
24 to raise any of these issues below. He also does not identify  
25 any change in law, assert that the issue is purely one of law, or  
discuss prejudice Wells Fargo may face.

26 <sup>9</sup> As an additional justification for the dismissal of  
27 Mr. Singh's claims for equitable relief, the bankruptcy court  
28 held that he failed to tender payment of the debt. We do not  
reach this issue because we are affirming the decision on several  
other, independently sufficient grounds.