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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSS SHADE,

Plaintiff - Appellant,

v.

BANK OF AMERICA CORPORATION;  
et at.,

Defendants - Appellees.

No. 10-15383

D.C. No. 2:08-cv-01069-LKK-  
JFM

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence K. Karlton, District Judge, Presiding

Submitted February 15, 2011\*\*

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Ross Shade appeals pro se from the district court's judgment dismissing his action alleging Fair Debt Collection Practices Act and state law claims arising from defendants initiation of state court proceedings to collect on a credit card debt. We

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Knieval v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). We affirm.

The district court properly dismissed Shade's fraud claim because he did not allege facts suggesting that an assignment of and attempts to collect on his overdue credit card debt constituted fraud. *See Lazar v. Superior Court*, 909 P.2d 981, 984 (Cal. 1996) (listing elements of a fraud claim under California law).

Shade's contentions that he was denied due process and that the magistrate judge was biased are not supported by the record. *See SEC v. McCarthy*, 322 F.3d 650, 659 (9th Cir. 2003) (due process requires notice and an opportunity to be heard); *Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381, 1388 (9th Cir. 1988) (a judge's legal decisions are insufficient to show bias).

The district court did not abuse its discretion by dismissing Shade's third amended complaint without leave to amend because amendment would be futile. *See Chaset v. Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002).

The district court did not abuse its discretion by denying Shade's motion to appoint counsel because the case did not present exceptional circumstances. *See Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004).

Shade's remaining contentions are unpersuasive.

**AFFIRMED.**