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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LESLIE P. MARKS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>GREEN TREE SERVICING and DEFAULT RESOLUTION NETWORK,</p> <p>Defendants - Appellees.</p>
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No. 10-17478

D.C. No. 3:10-cv-03593-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Leslie P. Marks appeals pro se from the district court’s judgment dismissing her action arising out of foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court’s dismissal for failure to state

* 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).

a claim and for an abuse of discretion the denial of leave to amend. *Cervantes v. Countrywide Home Loans*, No. 09-17364, 2011 WL 3911031, — F.3d —, at *3-4 (9th Cir. Sept. 7, 2011). We affirm.

_____The district court properly dismissed Marks’s wrongful foreclosure claim because Marks failed to show that she was not in default on her mortgage loan. *See id.* at *6-7 (wrongful foreclosure claims are generally premised on allegations that borrower was not in default).

The district court did not abuse its discretion by denying Marks’s motion for leave to file a second amended complaint because amendment would have been futile. *See id.* at *4.

_____Marks’s remaining contentions, including those of judicial bias and unfairness, are unpersuasive.

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

Green Tree’s request for judicial notice is denied.

AFFIRMED.