

JAN 29 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD WHITMORE,

Plaintiff - Appellant,

v.

RECONTRUST COMPANY, NA;  
WELLS FARGO BANK, NA, as Trustee  
for the Holders of the Merrill Lynch  
Mortgage Investor Trust, Mortgage Loan  
Asset-Backed Certificates, Series 2006-  
WMCI,

Defendants - Appellees.

No. 12-35504

D.C. No. 3:12-cv-00226-MO

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Michael W. Mosman, District Judge, Presiding

Submitted January 20, 2016\*\*

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Richard Whitmore appeals pro se from the district court's judgment

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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).

dismissing his diversity action alleging foreclosure-related 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). *In re Mortg. Elec. Registration Sys., Inc.*, 754 F.3d 772, 780 (9th Cir. 2014). We affirm.

We do not consider the claims raised in Whitmore’s opening brief because they were not raised before the district court. *See Solis v. Matheson*, 563 F.3d 425, 437 (9th Cir. 2009) (arguments made for the first time on appeal and supported by facts not before the district court are waived). Moreover, Whitmore failed to address the district court’s dismissal of the claims alleged in his complaint in his opening brief, and has therefore waived his appeal of the district court’s dismissal order. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[A]rguments not raised by a party in its opening brief are deemed waived.”).

**AFFIRMED.**