

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 26 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOSTER TAFT,

Plaintiff-Appellant,

v.

NABISCO; et al.,

Defendants-Appellees,

and

ALTRIA GROUP INC.; et al.,

Defendants.

No. 15-56218

D.C. No. 2:15-cv-02685-DSF-  
MRW

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Dale S. Fischer, District Judge, Presiding

Submitted January 18, 2017\*\*

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

Foster Taft appeals pro se from the district court's judgment dismissing his

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

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

diversity action alleging a strict liability claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court’s dismissal under Federal Rule of Civil Procedure 12(b)(6). *Ileto v. Glock Inc.*, 349 F.3d 1191, 1199 (9th Cir. 2003). We affirm.

The district court properly dismissed Taft’s claims against defendants Mondelez International, Inc., Kraft Foods Group, Inc., and General Mills, Inc., because Taft failed to allege facts sufficient to “state a claim 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)); see *Barker v. Lull Eng’g Co.*, 573 P.2d 443, 446 (Cal. 1978) (product design is defective if “product has failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner,” or (2) “the benefits of the challenged design do not outweigh the risk of danger inherent in such design”).

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

Taft’s request to augment the record, filed on May 10, 2016, is denied.

**AFFIRMED.**