

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 17 2019

FOR THE NINTH CIRCUIT

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

JOHN MANOS; et al.,

No. 18-55587

Plaintiffs-Appellants,

D.C. No. 8:16-cv-01142-CJC-KES

v.

MEMORANDUM*

MTC FINANCIAL, INC.; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted May 21, 2019**

Before: THOMAS, Chief Judge, LEAVY and FRIEDLAND, Circuit Judges.

John Manos, Tara Borrelli, and Jessie Manos appeal from the district court's judgment dismissing their action alleging federal and state law claims arising out of a foreclosure and mortgage loan secured by their property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P.

* 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).

12(b)(6) for failure to state a claim. *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093 (9th Cir. 2017). We affirm.

The district court properly dismissed plaintiffs' Racketeer Influenced and Corrupt Organizations Act ("RICO") claims against MTC Financial Inc. dba Trustee Corps ("Trustee Corps"); Malcolm Cisneros, ALC; CitiMortgage, Inc.; and Federal National Mortgage Association because plaintiffs failed to allege facts sufficient to show a predicate act. *See Howard v. Am. Online Inc.*, 208 F.3d 741, 751 (9th Cir. 2000) ("Plaintiffs cannot claim that a conspiracy to violate RICO existed if they do not adequately plead a substantive violation of RICO."); *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1400 (9th Cir. 1986) (elements of a civil RICO claim based on mail and wire fraud; explaining that the circumstances of the underlying fraud must be pleaded with particularity).

The district court properly dismissed plaintiffs' Fair Debt Collection Practices Act ("FDCPA") claims because as alleged, Trustee Corps and Malcolm Cisneros are not debt collectors under the general provisions of the FDCPA, and plaintiffs failed to allege facts sufficient to show that these defendants' conduct was unfair or unconscionable under 15 U.S.C. § 1692f(6). *See Obduskey v. McCarthy & Holtus, LLP*, 139 S. Ct. 1029, 1038 (2019) ("[B]ut for § 1692f(6), those who engage in only nonjudicial foreclosure proceedings are not debt collectors within the meaning of the [FDCPA]."); *Dowers v. Nationstar Mortg.*,

LLC, 852 F.3d 964, 970 (9th Cir. 2017) (explaining that “while the FDCPA regulates security interest enforcement activity, it does so *only* through Section 1692f(6)” and discussing protections for borrowers set forth in § 1692f(6)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (to avoid dismissal, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face” (citation omitted)).

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

This case remains administratively closed as to appellee Ditech Financial, LLC. *See* Docket Entry No. 38. We therefore do not reach plaintiffs’ contentions regarding dismissal of their claims against Ditech Financial, LLC.

Appellants’ request for oral argument, set forth in their opening brief, is denied.

Appellants’ request for remand or, in the alternative, for leave to file a supplemental brief (Docket Entry No. 39) is denied.

AFFIRMED.