

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 29 2018

FOR THE NINTH CIRCUIT

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

DIANNA MONTEZ, on behalf of herself
and all others similarly situated,

Plaintiff-Appellant,

v.

CHASE HOME FINANCE, LLC;
JPMORGAN CHASE & CO.,

Defendants-Appellees.

No. 16-55226

D.C. No.

3:11-cv-00530-JLS-MDD

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submission Deferred December 7, 2017**
Resubmitted January 29, 2018
Pasadena, California

Before: REINHARDT and NGUYEN, Circuit Judges, and BLOCK,*** District
Judge.

* 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).

*** The Honorable Frederic Block, United States Senior District Judge for
the Eastern District of New York, sitting by designation.

Dianna Montez seeks review of the district court's order dismissing her Second Amended Complaint with leave to amend. However, we lack jurisdiction to review that order because it was not a final decision that ended the litigation on the merits. *See* 28 U.S.C. § 1291; *Lovell v. Chandler*, 303 F.3d 1039, 1047 (9th Cir. 2002). Moreover, the order did not merge into the district court's final order dismissing for failure to prosecute. *See Al-Torki v. Kaempfen*, 78 F.3d 1381, 1386 (9th Cir. 1996) (holding that dismissal for failure to prosecute "forfeits a litigant's right to appeal interlocutory orders prior to judgment"). We therefore decline to consider Montez's challenge to the district court's dismissal with leave to amend.

Although we have jurisdiction to review the dismissal for failure to prosecute, Montez has forfeited any challenge to it. *See Sharemaster v. SEC*, 847 F.3d 1059, 1070 (9th Cir. 2017) ("Ordinarily, we will not consider 'matters on appeal that are not specifically and distinctly argued in appellant's opening brief.'" (quoting *United States v. Ullah*, 976 F.2d 509, 514 (9th Cir. 1992))).

We have carefully considered Montez's remaining arguments, including her claim of judicial bias, and hold that they are without merit.

AFFIRMED.