

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2018

FOR THE NINTH CIRCUIT

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

WAYNE R. LAKE; CYNTHIA A. LAKE,

No. 17-35625

Plaintiffs-Appellants,

D.C. No. 2:16-cv-01482-JLR

v.

MEMORANDUM*

DEUTSCHE BANK TRUST COMPANY
AMERICAS, as trustee for the Certificate
Holders of Dover Mortgage Capital 2005-A
corporation, Grantor Trust Certificate Series
2005-A,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Wayne R. Lake and Cynthia A. Lake appeal from the district court's
judgment dismissing their action alleging Fair Debt Collection Practices Act

* 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).

(“FDCPA”) 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) 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 the FDCPA claim under 15 U.S.C. § 1692f(6) because the Lakes failed to allege facts sufficient to show that defendant lacked a present right to possession of the property through an enforceable security interest. *See* 15 U.S.C. § 1692f(6); *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 and internal quotation marks omitted)).

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).

AFFIRMED.