

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 26 2017

FOR THE NINTH CIRCUIT

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

NIKI-ALEXANDER SHETTY, FKA Satish
Shetty,

No. 17-55342

Plaintiff-Appellant,

D.C. No. 2:16-cv-08774-GW-FFM

v.

MEMORANDUM*

THE BANK OF NEW YORK MELLON as
Trustee for the Certificateholders CWALT,
Inc. Alternative Loan Trust 2005-43
Mortgage Pass-Through Certificates, Series
2005-43, a fictitious entity formerly known
as The Bank of New York; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Niki-Alexander Shetty, FKA Satish Shetty, appeals pro se from the district

* 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).

court's judgment dismissing his diversity action alleging pre-foreclosure 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), and we may affirm on any basis supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008). We affirm.

Dismissal of Shetty's action was proper because Shetty failed to allege facts sufficient to "state a claim that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) (explaining that "[a] pleading that offers labels and conclusions" or "naked assertions devoid of further factual enhancement" is insufficient to survive a motion to dismiss (citation and internal quotation marks omitted)).

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

Appellee The Bank of New York Mellon's request for judicial notice (Docket Entry No. 15) is denied as unnecessary.

AFFIRMED.