

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 25 2018

FOR THE NINTH CIRCUIT

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

LOUIS C. NEMETH,

Plaintiff-Appellant,

v.

WELLS FARGO BANK, N.A., as Trustee
for Structured Adjustable Rate Mortgage
Loan Trust 2007-3; et al.,

Defendants-Appellees.

No. 17-55567

D.C. No. 8:16-cv-02096-AG-JCG

MEMORANDUM*

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

Submitted January 16, 2018**

Before: REINHARDT, TROTT, and HURWITZ, Circuit Judges.

Louis C. Nemeth appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims arising from foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a

* 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). To the extent that Nemeth requests oral argument in his opening brief, the request is denied.

district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011). We affirm.

The district court properly dismissed Nemeth's fraud claims because Nemeth failed to "state with particularity the circumstances constituting fraud" Fed. R. Civ. P. 9(b); *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are liberally construed, a plaintiff must allege facts sufficient to state a plausible claim).

The district court did not abuse its discretion by dismissing Nemeth's complaint without leave to amend because amendment would be futile. *See Cervantes*, 656 F.3d at 1041 (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

The district court did not abuse its discretion by denying Nemeth's Fed. R. Civ. P. 60(b) motion because Nemeth did not demonstrate any grounds warranting relief. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for relief from judgment).

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).

We reject as without merit Nemeth's contentions that the district court judge was biased and that Nemeth was held to a higher standard as a pro se litigant.

AFFIRMED.