

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 25 2018

FOR THE NINTH CIRCUIT

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

AMANY SIMMONDS,

Plaintiff-Appellant,

v.

WELLS FARGO BANK, N.A.; DOES, 1-  
100, inclusive,

Defendants-Appellees.

No. 17-56061

D.C. No. 8:17-cv-00337-DOC-JEM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
David O. Carter, District Judge, Presiding

Submitted June 12, 2018\*\*

Before: RAWLINSON, CLIFTON and NGUYEN, Circuit Judges.

Amany Simmonds appeals from the district court's order dismissing for failure to prosecute her diversity action arising from foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1063 (9th Cir. 2004). We affirm.

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\* 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 district court did not abuse its discretion by dismissing Simmonds's action because Simmonds failed to file an amended complaint or indicate that she intended to stand by her complaint. *See id.* at 1065 (“The failure of the plaintiff eventually to respond to the court’s ultimatum - either by amending the complaint or by indicating to the court that it will not do so - is properly met with the sanction of a Rule 41(b) dismissal.”); *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (listing factors to be considered in dismissing a case as a sanction for failure to prosecute).

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.**