

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 29 2019

FOR THE NINTH CIRCUIT

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

JON M. ROSENTHAL,

Plaintiff-Appellant,

v.

WELLS FARGO BANK, N.A.; et al.,

Defendants-Appellees.

No. 18-55598

D.C. No. 2:17-cv-04570-GW-KS

MEMORANDUM*

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

Submitted May 21, 2019**

Before: THOMAS, Chief Judge, LEAVY and FRIEDLAND, Circuit Judges.

Jon M. Rosenthal appeals from the district court's judgment dismissing his action alleging Fair Debt Collection Practices Act ("FDCPA") and state law claims related to his home mortgage loan. 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

* 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).

failure to state a claim, and we may affirm on any ground supported by the record. *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093 (9th Cir. 2017). We affirm.

The district court properly dismissed Rosenthal's FDCPA claims against Wells Fargo Bank, N.A. because Rosenthal failed to allege facts sufficient to show that Wells Fargo was a debt collector rather than a creditor collecting a debt on its own behalf. *See* 15 U.S.C. § 1692a(6)(F)(ii) (excluding from the definition of debt collector a creditor collecting debts on its own behalf); *Afewerki v. Anaya Law Grp.*, 868 F.3d 771, 779, n.1 (9th Cir. 2017) ("Under the FDCPA, a creditor collecting debts on its own behalf is not a 'debt collector.'" (citation omitted)); *see also 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)).

The district court properly dismissed Rosenthal's FDCPA claims against Clear Recon Corporation because Rosenthal failed to allege facts sufficient to state plausible claims for relief. *See* 15 U.S.C. § 1692f(6) (prohibiting the taking of any nonjudicial foreclosure action without a present right to possession of the property claimed as collateral); *Obduskey v. McCarthy & Holtus, LLP*, 139 S. Ct. 1029, 1038 (2019) ("[B]ut for § 1692f(6), those who engage in only nonjudicial foreclosure proceedings are not debt collectors within the meaning of the [FDCPA]."); *Dowers v. Nationstar Mortg., LLC*, 852 F.3d 964, 970-971 (9th Cir.

2017) (explaining that “while the FDCPA regulates security interest enforcement activity, it does so only through Section 1692f(6)” and discussing protections for borrowers set forth in § 1692f(6) (emphasis omitted)); *see also Iqbal*, 556 U.S. at 678.

The district court properly dismissed Rosenthal’s claims for promissory estoppel, intentional misrepresentation, and negligent misrepresentation because Rosenthal failed to allege facts sufficient to show that defendants made a misrepresentation or that Rosenthal detrimentally relied on any clear and unambiguous promises. *See Daniels v. Select Portfolio Servicing, Inc.*, 201 Cal. Rptr. 3d 390, 406 (Ct. App. 2016) (elements of intentional and negligent misrepresentation claims under California law); *U.S. Ecology, Inc. v. California*, 28 Cal. Rptr. 3d 894, 905 (Ct. App. 2005) (elements of promissory estoppel claim under California law).

The district court properly dismissed Rosenthal’s claim under California’s Unfair Competition Law (“UCL”) because Rosenthal failed to allege facts sufficient to state a plausible claim for relief. *See Prakashpalan v. Engstrom, Lipscomb & Lack*, 167 Cal. Rptr. 3d 832, 856 (Ct. App. 2014) (“To state a cause of action based on an unlawful business act or practice under the UCL, a plaintiff must allege facts sufficient to show a violation of some underlying law.”); *Puentes v. Wells Fargo Home Mortg., Inc.*, 72 Cal. Rptr. 3d 903, 908 (Ct. App. 2008)

(defining “unfair,” “unlawful” and “fraudulent” practices under California’s UCL).

The district court did not abuse its discretion by exercising supplemental jurisdiction over Rosenthal’s state law claims after dismissing Rosenthal’s FDCPA claims. *See Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087, 1091 (9th Cir. 2008) (setting forth standard of review and discussing the factors that inform the district court’s decision to retain supplemental jurisdiction over the state law claims after the dismissal of all federal law claims).

We reject as without merit Rosenthal’s contention that the district court judge violated the Code of Conduct for United States Judges.

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

AFFIRMED.