

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 24 2021

FOR THE NINTH CIRCUIT

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

MARK WADE McCUNE,

Plaintiff-Appellant,

v.

PHH MORTGAGE CORPORATION,

Defendant-Appellee.

No. 20-15839

D.C. No. 4:19-cv-00525-CKJ

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Cindy K. Jorgenson, District Judge, Presiding

Submitted August 17, 2021\*\*

Before: SILVERMAN, CHRISTEN, and LEE, Circuit Judges.

Mark Wade McCune appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims. We have jurisdiction under 28 U.S.C § 1291. We review de novo a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Dougherty v. City of Covina*, 654

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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).

F.3d 892, 897 (9th Cir. 2011). We affirm.

The district court properly dismissed McCune's action because McCune failed to allege facts sufficient to state any plausible claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (a plaintiff must present factual allegations sufficient to state a plausible claim for relief); *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (“[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.”); *see also* Fed. R. Civ. P. 9(b) (claims for fraud must be pleaded with particularity).

We reject as without merit McCune's contention that the district court was required to hold an evidentiary hearing prior to dismissing McCune's action.

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).

McCune's motions requesting oral argument (Docket Entry Nos. 35 and 36) are denied.

**AFFIRMED.**