

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2023

FOR THE NINTH CIRCUIT

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

KEITH J. PONTHEIUX; CHRIS DUENAS;
MARIA DUENAS,

Plaintiffs-Appellants,

v.

NATIONSTAR MORTGAGE, LLC;
AZTEC FORECLOSURE CORPORATION,

Defendants-Appellees.

No. 22-16603

D.C. No. 2:18-cv-00608-TLN-DB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted November 14, 2023**

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

Keith J. Ponthieux, Chris Duenas, and Maria Duenas appeal pro se from the district court's summary judgment in their action alleging claims under the Fair Debt Collection Practices Act ("FDCPA") and state law. We have jurisdiction

* 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).

under 28 U.S.C. § 1291. We review de novo the district court’s ruling on cross-motions for summary judgment. *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011). We affirm.

The district court properly granted summary judgment for defendants on plaintiffs’ FDCPA claim because plaintiffs failed to raise a genuine dispute of material fact as to whether defendants lacked authority to initiate foreclosure proceedings. *See* 15 U.S.C. § 1692f(6) (prohibiting the “[t]aking or threatening to take any nonjudicial action to effect dispossession or disablement of property if . . . there is no present right to possession of the property”); *Siliga v. Mortg. Elec. Registration Sys., Inc.*, 161 Cal. Rptr. 3d 500, 506 (Ct. App. 2013) (“California courts have held that a trustor who agreed under the terms of the deed of trust that MERS, as the lender’s nominee, has the authority to exercise all of the rights and interests of the lender . . . is precluded from maintaining a cause of action based on the allegation that MERS has no authority to exercise those rights.”), *disapproved of in part on other grounds by Yvanova v. New Century Mortg. Corp.*, 365 P.3d 845 (Cal. 2016); *Debrunner v. Deutsche Bank Nat’l Tr. Co.*, 138 Cal. Rptr. 3d 830, 835 (Ct. App. 2012) (party need not possess promissory note to foreclose); *Far W. Sav. & Loan Ass’n v. McLaughlin*, 246 Cal. Rptr. 872, 875-76 (Ct. App. 1988) (a deed of trust recorded outside the chain of title is a “wild” document and does not create any defect in the record title of another).

The district court properly granted summary judgment for defendants on plaintiff's state law claims because plaintiffs failed to raise a genuine dispute of material fact as to whether defendants violated any state law. *See* Cal. Civ. Code § 1788 *et seq.*; *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1100 (9th Cir. 2012) (“The Rosenthal Act mimics or incorporates by reference the FDCPA’s requirements”); *see also* Cal. Civ. Code § 2934a(a)(1)(A) (a substitution of trustee may be executed and acknowledged by the beneficiary under the deed of trust); Cal. Civ. Code § 2934a(d)(4) (“Once recorded, the substitution [of trustee] shall constitute conclusive evidence of the authority of the substituted trustee or his or her agents to act pursuant to this section”); Cal. Civ. Code §§ 2924.17, 2924(a)(6) (setting forth requirements for initiating foreclosure proceedings); Cal. Bus. & Prof. Code § 17200 (prohibiting “any unlawful, unfair or fraudulent business acts”).

The district court did not abuse its discretion in considering the declaration of Fay Janati. *See SEC v. Phan*, 500 F.3d 895, 912-13 (9th Cir. 2007) (setting forth standard of review and explaining that “a proper foundation [for documentary evidence submitted on summary judgment] need not be established through personal knowledge but can rest on any matter permitted by Federal Rule of Evidence 901(b) or 902” (citation and internal quotation marks omitted)).

AFFIRMED.