

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 KIM KERRIGAN,

10 Plaintiff,

11 v.

12 QUALSTAR CREDIT UNION, *et al.*,

13 Defendants.  
14

CASE NO. C16-1528-JCC

ORDER DENYING PLAINTIFF'S  
MOTION FOR POST-JUDGMENT  
RELIEF

15 This matter comes before the Court on Plaintiff Kim Kerrigan's motion for post-  
16 judgment relief (Dkt. No. 27). Having thoroughly considered the parties' briefing and the  
17 relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for  
18 the reasons explained herein.

19 On December 6, 2016, the Court granted Defendants Bayview and Qualstar's motions to  
20 dismiss and dismissed Plaintiff's complaint with prejudice. (Dkt. Nos. 25, 26.) In response to the  
21 motions to dismiss, Plaintiff argued that the Washington Supreme Court has not decided the  
22 issue of whether nonjudicial foreclosures toll the statute of limitations on foreclosure actions and  
23 that, therefore, the Court should certify the question to the Washington Supreme Court instead of  
24 granting the motion to dismiss. (Dkt. No. 22 at 7.) The Court denied Plaintiff's request because  
25 there is no controlling authority that overrules *Bingham v. Lechner*, 45 P.3d 562, 566 (Wash. Ct.  
26 App. 2002), which held that nonjudicial foreclosures toll the statute of limitations, and there is no

1 indication from the Washington Supreme Court that *Bingham* was wrongly decided. (Dkt. No. 25  
2 at 5–6.) Relying on *Bingham*, the Court found that the claims should be dismissed with  
3 prejudice. (*Id.* at 7.)

4 Plaintiff now asks the Court to amend or alter its judgment pursuant to Federal Rule of  
5 Civil Procedure 59(e) or Federal Rule of Civil Procedure 60(b)(3) and 60(b)(6). A judgment  
6 should not be amended “absent highly unusual circumstances, unless the district court is  
7 presented with newly discovered evidence, committed clear error, or if there is an intervening  
8 change in the controlling law.” *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890  
9 (9th Cir. 2000) (internal quotations omitted). Plaintiff claims that the Court “abused its discretion  
10 in refusing to follow controlling precedent requiring the Court to predict how the Supreme Court  
11 would rule” on Plaintiff’s claims. (Dkt. No. 27 at 4–9.) Plaintiff also argues that her newly  
12 submitted expert report demonstrates new evidence that the nonjudicial foreclosures were  
13 fraudulent. (*Id.* at 9–10.) Finally, Plaintiff asks that the Court allow her to amend her complaint  
14 after altering the judgment. (*Id.* at 10–11.)

15 Plaintiff’s first argument is without merit. Although the Court is only bound by the  
16 decision of a state’s highest court when considering state law claims, “where there is no binding  
17 precedent from the state’s highest court, [courts] ‘must predict how the highest state court would  
18 decide the issue *using intermediate appellate court decisions*, decisions from other jurisdictions,  
19 statutes, treatises, and restatements as guidance.’” *In re NCAA Student-Athlete Name & Likeness*  
20 *Licensing Litig.*, 724 F.3d 1268, 1278 (9th Cir. 2013) (quoting *In re Kirkland*, 915 F.2d 1236,  
21 1239 (9th Cir.1990)) (emphasis added). Therefore, the Court’s reliance on and adoption of  
22 *Bingham* as persuasive authority to dismiss Plaintiff’s claims was proper and not a clear error.  
23 The Court reasonably relied on a 14 year-old intermediate appellate court decision that has  
24 neither been overturned nor questioned by the Washington Supreme Court and this does not  
25 entitle Plaintiff to an amended judgment.

26 Second, neither Plaintiff’s new expert report nor any of Plaintiff’s supporting declarations

1 make any indication that the evidence of alleged fraud was not previously available when she  
2 filed the complaint or her response to the motion to dismiss. This attempt to create an entirely  
3 new liability is improper and does not warrant an amended judgment. *See Kona Enterprises, 229*  
4 *F.3d at 890* (“A Rule 59(e) motion may *not* be used to raise arguments or present evidence for  
5 the first time when they could reasonably have been raised earlier in the litigation.”).

6 Therefore, the Court DENIES Plaintiff’s request to amend the judgment (Dkt. No. 27).  
7 The Court also DENIES Plaintiff’s request to amend the complaint because Plaintiff has failed to  
8 show there is a legitimate reason to amend the judgment.

9 DATED this 27th day of January 2017.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE