

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

OCT 26 2018

FOR THE NINTH CIRCUIT

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

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VERNON DECK,

Plaintiff-Appellant,

v.

WELLS FARGO BANK, N.A., National
Association, as Trustee for Option One
Mortgage Loan Trust 2003-1, Asset-Backed
Certificates, Series 2003-1; et al.,

Defendants-Appellees.

No. 17-16680

D.C. No. 2:17-cv-00234-MCE-KJN

MEMORANDUM*

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Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted October 22, 2018**

14 Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

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16 Vernon Deck appeals pro se from the district court’s judgment dismissing
17 his action alleging violations of the Fair Debt Collection Practices Act, the
18 California Homeowner Bill of Rights Act (“HBOR”), and other state law claims

* 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).

1 arising out of foreclosure proceedings. We have jurisdiction under 28 U.S.C.
2 § 1291. We review de novo a dismissal for lack of statutory standing. *Nat'l*
3 *Council of La Raza v. Cegavske*, 800 F.3d 1032, 1039 (9th Cir. 2015). We review
4 for clear error the district court's underlying factual determinations. *Am.-Arab*
5 *Anti-Discrimination Comm. v. Thornburgh*, 970 F.2d 501, 506 (9th Cir. 1991). We
6 reverse and remand.

7 The district court did not commit clear error in finding, following an
8 evidentiary hearing, that Deck did not sign the note relating to a refinance loan.
9 *See id.* at 506. The district court erred, however, in finding that Deck lacked
10 standing to sue for violations of HBOR because he was not a signatory to the note.
11 HBOR defined a "borrower" as "any natural person who is a mortgagor or trustor
12 and who is potentially eligible for any federal, state, or proprietary foreclosure
13 prevention alternative program offered by, or through, his or her mortgage
14 servicer." Cal. Civ. Code § 2920.5 (repealed Jan. 1, 2018). Because it is
15 undisputed that Deck is a trustor under the deed of trust securing the refinance
16 loan, we reverse and remand for further proceedings on Deck's claims under
17 HBOR only.

18 We do not consider defendants' alternative arguments concerning the merits
19 of Deck's claims under the HBOR, or the effect, if any, of the 2018 repeal of the
20 specific statutory violations alleged.

1 We do not consider matters not raised before the district court, or matters not
2 specifically and distinctly raised and argued in the opening brief. *See Padgett v.*
3 *Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

4 Deck's request for judicial notice (Docket Entry No. 26) is granted.

5 **REVERSED and REMANDED.**