NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERVIN MIDDLETON, Jr.; ANN GATES MIDDLETON, Plaintiffs-Appellants, v. GUARANTEED RATE, INC.; WELLS FARGO BANK, NA, DBA Wells Fargo Home Mortgage, Inc., Defendants-Appellees.	No. 16-15151 D.C. No. 2:15-cv-00943-RCJ-GWF MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

Ervin and Ann Middleton appeal pro se from the district court's order denying their second motion for reconsideration. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

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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).

In their opening brief, the Middletons fail to challenge the district court's order denying their second motion for reconsideration, and they have therefore waived any such challenge. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[O]n appeal, arguments not raised by a party in its opening brief are deemed waived."); *see also Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for an appellant . . . .").

The filing of the second motion for reconsideration did not toll the time to appeal the underlying judgment. *See Swimmer v. IRS*, 811 F.2d 1343, 1344-45 (9th Cir. 1987), *abrogated on other grounds by Briones v. Riviera Hotel & Casino*, 116 F.3d 379 (9th Cir. 1997). Thus, we do not consider the Middletons' contentions regarding the merits of the district court's order dismissing their action, or the district court's order denying their first motion for reconsideration, because the Middletons failed to file a timely notice of appeal as to those orders. *See* Fed. R. App. P. 4(a)(1)(A) (notice of appeal must be filed within 30 days of judgment); *Stephanie-Cardona LLC v. Smith's Food & Drug Ctrs., Inc.*, 476 F.3d 701, 703 (9th Cir. 2007) ("A timely notice of appeal is a non-waivable jurisdictional requirement."); *Swimmer*, 811 F2.d at 1344-45.

The Middletons' request for judicial notice, set forth in their reply brief, is denied.

AFFIRMED.