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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RONALD M. OSBURN, et al.,

Plaintiffs,

v.

OCWEN LOAN SERVICING LLC, et al.,

Defendants.

Case No. 1:18-cv-00310-LJO-SAB

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND GRANTING  
DEFENDANTS' MOTION TO DISMISS  
AND GRANTING IN PART PLAINTIFFS'  
MOTION TO AMEND COMPLAINT

(ECF Nos. 29-30, 42, 45, 47, 50)

TEN DAY DEADLINE

Plaintiffs filed the complaint in this action on March 3, 2018. (ECF No. 1.) Defendants filed a motion to dismiss on April 9, 2018. (ECF No. 29-30.) On June 6, 2018, Plaintiffs filed a motion to amend the complaint. (ECF No. 42.) The matters were referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. (ECF No. 36.)

On June 22, 2018, the magistrate judge filed findings and recommendations. The findings and recommendations recommended granting Defendants' motion to dismiss and granting in part Plaintiffs' motion to amend. The findings and recommendations were served on the parties and contained notice that any objections to the findings and recommendations were to be filed within fourteen days (14) days from the date of service. The period for filing objections

1 has passed and no objections have been filed.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
3 a de novo review of this case.

4 The Court agrees that Plaintiffs lack standing to pursue pre-foreclosure causes of action  
5 for fraud, wrongful foreclosure, quiet title, negligent misrepresentation, and unfair business  
6 practices predicated on the theory that their loans were improperly assigned. As to the motion  
7 for leave to amend those claims, the Court agrees that amendment would be futile under any  
8 framework that does not involve actual foreclosure.

9 The Court further believes that the current complaint does not make out a breach of  
10 contract claim because it unclear whether the default occurred before or after the fluctuations in  
11 monthly payment amounts that allegedly gave rise to a breach of contract. As to the motion for  
12 leave to amend the breach of contract claims, the Court agrees with the magistrate judge that  
13 Plaintiffs should be granted leave to amend to clarify the nature and timing of the alleged breach  
14 relative to Plaintiffs' default. The findings and recommendations appear to reflect that proposed  
15 amended complaint still does not clarify this aspect of the breach of contract claim with  
16 sufficient specificity. Having carefully reviewed the entire file, the Court finds the findings and  
17 recommendations to be supported by the record and by proper analysis.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The findings and recommendations, filed June 22, 2018, are ADOPTED IN  
20 FULL;
- 21 2. Defendants' motion to dismiss, filed April 9, 2018, is GRANTED;
- 22 3. Plaintiffs' cause of action for fraud, wrongful foreclosure, quiet title, cancellation  
23 of instruments, negligent misrepresentation, and unfair business practices are  
24 DISMISSED WITHOUT LEAVE TO AMEND;

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- 4. Plaintiffs’ motion to amend, filed June 6, 2018, is GRANTED IN PART AND DENIED IN PART; and
- 5. Plaintiffs shall file a first amended complaint to cure the deficiencies in the TILA and breach of contract causes of action within ten (10) days from the date of entry of this order.

IT IS SO ORDERED.

Dated: July 27, 2018

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE