

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANCISCO GAITAN, et al.,

No. C-10-2788 EDL

Plaintiffs,

v.

**ORDER RE: DEFENDANTS' MOTION
TO DISMISS AND PLAINTIFFS'
REQUEST FOR DISMISSAL**

AMERICA'S SERVICING COMPANY,
et al.,

Defendants.

On May 20, 2010, Plaintiffs Francisco and Aida Gaitan filed a complaint in the Alameda County Superior Court against Defendants America's Servicing Company, US Bank National Association and Cal-Western Reconveyance Corporation, alleging twelve federal and state law claims arising out of the foreclosure of their home in San Leandro, California in January 2010. Defendant America's Servicing Company removed this matter on June 24, 2010.

On July 1, 2010, Defendants America's Servicing Company and US Bank National Association filed a motion to dismiss Plaintiffs' complaint, seeking dismissal of all claims without leave to amend. Defendant Cal-Western Reconveyance filed a Declaration of Non-Monetary Status. Plaintiffs, who are proceeding pro se, failed to oppose the motion. On August 10, 2010, the Court held a hearing on Defendants' motion. Plaintiffs failed to appear the hearing. As stated at the hearing, the Court intended to issue a Report and Recommendation to grant Defendants' Motion to Dismiss with prejudice and have this case reassigned because Plaintiffs have not consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636.

The Court subsequently learned, however, that in the afternoon of August 9, 2010, Plaintiffs

1 filed a Request for Dismissal of this case without prejudice. The Request for Dismissal was not
2 efiled, and was not docketed by the court's clerk until after business hours on August 10, 2010.
3 Because there has been no answer or motion for summary judgment filed in this case, the Request
4 for Dismissal was self-executing and operated to dismiss this case as of August 9, 2010. See Fed. R.
5 Civ. P. 41(a)(1)(A). Accordingly, Defendants' Motion to Dismiss is moot, and the Court will close
6 this case.

7 **IT IS SO ORDERED.**

8 Dated: August 12, 2010

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge

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