UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ALFREDO OBINIANA and MIRAFLOR OBINIANA,

Plaintiffs,

v.

WELLS FARGO BANK, N.A., WACHOVIA MORTGAGE, CAL-WESTERN RECONVEYANCE CORP., GOLDEN WEST SAVINGS ASSOCIATION SERVICE COMPANY, WOLD SAVINGS BANK, FSB,

Defendants.

Case No. 12-cv-03738 NC

ORDER GRANTING MOTION FOR LEAVE TO FILE LATE OPPOSITION; AND GRANTING EXTENSION OF TIME FOR FILING OF REPLY

Re: Dkt. No. 19

This order addresses plaintiffs' "Request for Leave to File a Late Opposition to the Motion to Dismiss," which was combined in docket entry 19 with a declaration and plaintiff's opposition to the pending motion to dismiss. First, plaintiffs' filing violates procedural requirements set forth in Federal Rule of Civil Procedure 7(b) and NDCA Civil Local Rule 7. A request for a court order must be made by a duly noticed motion, and that motion must be accompanied by a proposed order. Second, the excuse provided by plaintiffs' counsel for missing a deadline by 29 days – that his assistant failed to calendar the due date – is unimpressive. Counsel received electronic notice of the motion to dismiss and it is counsel's responsibility, not his administrative assistant's, to comply with applicable court deadlines.

Here, defendants have not been obviously prejudiced by the late filing, as long as they are provided an opportunity to respond. Accordingly, plaintiffs' request for late filing is GRANTED, and defendants may file a reply to the motion to dismiss by September 14.

Finally, plaintiffs' opposition requests, in the alternative, that the case be dismissed without prejudice. As Wells Fargo notes, Dkt. No. 20 at n.1, if that is plaintiffs' intention, all they need to do is file a notice of dismissal under Fed. R. Civ. P. 41(a)(1)(A). The case will be dismissed without prejudice, and without court order.

Plaintiffs' counsel is ordered to provide a copy of this order to each of the plaintiffs by September 12 and to certify to this court that counsel has done as ordered.

IT IS SO ORDERED.

Date: September 7, 2012

NATHANAEL M. COUSINS
United States Magistrate Judge