

1 **\*\* E-filed April 3, 2012 \*\***

2

3

4

5

6

7 NOT FOR CITATION

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 RENE AGUINALDO; ET AL.,  
Plaintiffs,

No. C12-01393 HRL

12 v.

13 OCWEN LOAN SERVICING LLC; ET AL.,  
Defendants.

14 \_\_\_\_\_/

**ORDER DENYING DEFENDANT'S  
REQUEST FOR REASSIGNMENT  
AND SETTING DEADLINE FOR  
CONSENT OR DECLINATION TO  
PROCEED BEFORE A UNITED  
STATES MAGISTRATE JUDGE**

15

16 Plaintiffs Rene and Grace Aguinaldo sued OCWEN Loan Servicing, LLC ("OCWEN") in

17 Santa Clara County Superior Court for breach of contract, fraud, negligence and emotional distress

18 arising out of defendant's foreclosure of plaintiffs' residence. Dkt. No. 1, Exh. A ("Complaint").

19 OCWEN removed the action to this court on March 20, 2012, and consented to the undersigned's

20 jurisdiction on March 23. Dkt. Nos. 1 ("Notice of Removal"); 4 ("Consent"). On March 30, it filed a

21 motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). Dkt. No. 6. Simultaneously,

22 OCWEN also filed a "request for reassignment," allegedly pursuant to Civil L. R. 73-1(a), because

23 plaintiffs have not yet filed either a consent or declination form. Dkt. No. 9.

24 OCWEN's Request for Reassignment is denied. Civil Local Rule 73-1 states that "unless the

25 magistrate judge has set a different deadline," the parties shall "either file written consent to the

26 jurisdiction of the magistrate judge, or request reassignment to a district judge" within 7 days of the

27 filing of a motion requiring consent to proceed before a magistrate judge. Civ. L.R. 73-1(a). Here,

28 defendant consented to magistrate judge jurisdiction on March 23, filed a motion to dismiss on

1 March 30 and simultaneously requested reassignment based on plaintiffs' failure to file a consent or  
2 declination form. Defendant apparently misreads Local Rule 73-1(a)(2). The rule requires each party  
3 to *either* consent to the magistrate's jurisdiction *or* request reassignment (i.e. decline the magistrate  
4 judge's jurisdiction). Thus, each party need only consent *or* decline. OCWEN does not need to  
5 request reassignment based on the fact that plaintiffs have not yet consented or declined, and even if  
6 it did need to make such a request, plaintiffs' statutory time to consent has not yet elapsed. Civil L.  
7 R. 73-1(a)(2) gives the parties 7 days from the date the motion is filed to consent or decline. That 7  
8 day period has not yet elapsed. Accordingly, the request is DENIED as untimely and unnecessary.

9 In addition, the court now sets a new deadline for plaintiffs to consent or decline the  
10 undersigned's jurisdiction. All parties who have not yet done so shall, **no later than April 13, 2012**,  
11 file either (1) a Consent to Proceed before a United States Magistrate Judge or (2) a Declination to  
12 Proceed before a Magistrate Judge and Request for Reassignment to a United States District Judge.  
13 See N.D. Cal. Civ. R. 73-1. The consent and declination forms are available at the Clerk's Office  
14 and may also be obtained from the court's website at <http://www.cand.uscourts.gov>.

15  
16 **IT IS SO ORDERED.**

17 Dated: April 3, 2012

18   
19 \_\_\_\_\_  
20 HOWARD R. LLOYD  
21 UNITED STATES MAGISTRATE JUDGE  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**C12-01393 HRL Notice will be electronically mailed to:**

Mimi Trieu                    mimi@trieucounsel.com  
Christian Chapman        cchapman@houser-law.com  
Eric Houser                   ehouser@houser-law.com

**Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.**