

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

<p>JAMES RAY, <i>et al.</i>, Plaintiffs, v. CALIBER HOME LOANS, INC., <i>et al.</i>, Defendants.</p>	<p>: : : : :</p>	<p>Case No. 3:16-cv-364 JUDGE WALTER H. RICE MAGISTRATE JUDGE MICHAEL R. MERZ</p>
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ENTRY REJECTING REPORT AND RECOMMENDATIONS OF MAGISTRATE JUDGE MICHAEL R. MERZ ON MOTION TO DISMISS OF DEFENDANT CALIBER HOME LOANS, INC. (DOC. #18), AND VACATING IN PART NOTATION ORDER OF MAGISTRATE JUDGE MERZ GRANTING IN PART AND DENYING IN PART MOTION FOR EXTENSION OF TIME OF PLAINTIFFS JAMES RAY AND PATRICIA RAY (DOC. #20); PLAINTIFFS MAY FILE, NO LATER THAN OCTOBER 21, 2016, MEMORANDA CONTRA TO THE MOTIONS TO DISMISS OF CALIBER (DOC. #9) AND DEFENDANT NATIONSTAR MORTGAGE, LLC (DOC. #10)

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On April 28, 2016, Plaintiffs James Ray and Patricia Ray ("Plaintiffs") filed a *pro se* complaint against Defendants Caliber Home Loans, Inc. ("Caliber") and Nationstar Mortgage, LLC ("Nationstar"). No. 3:16-cv-163, Doc. #1. Caliber and Nationstar filed motions to dismiss pursuant to Rule 12(b)(6). No. 3:16-cv-163, Docs. #9, 10. On June 21, 2016, Plaintiffs voluntarily dismissed the lawsuit without prejudice, pursuant to Rule 41(a)(1)(A)(i), No. 3:16-cv-163, Doc. #11, and the case was closed.

On August 22, 2016, Plaintiffs refiled their lawsuit against Nationstar and Caliber. No. 3:16-cv-364, Doc. #2.<sup>1</sup> On September 6 and 7, 2016, Caliber and Nationstar, respectively, filed motions to dismiss pursuant to Rule 12(b)(6). No. 3:16-cv-364, Doc. #9, 10. On September 30, 2016, Plaintiffs filed a motion for extension of time to respond to the motions. However, the caption of their motion listed case number 3:16-cv-163, and the motion was docketed in that case. No. 3:16-cv-163, Doc. #12. On October 4, 2016, Magistrate Judge Michael R. Merz<sup>2</sup>, issued a Report and Recommendations on Caliber's motion to dismiss. No. 3:16-cv-364, Doc. #18. Magistrate Judge Merz noted that "[t]he Court *sua sponte* issued an order to Plaintiffs, who are proceeding *pro se* in this case, that they were required to respond to the Motion not later than September 30, 2016. No response has been filed and the Motion is therefore ripe for decision." *Id.*, PAGEID #139 (citing No. 3:16-cv-364, Doc. #15). Finding that Plaintiffs had failed to set forth a plausible claim for relief against Caliber, Magistrate Judge Merz recommended that Caliber's motion to dismiss be sustained. *Id.*, PAGEID #146.

On October 11, 2016, Plaintiffs filed a motion for extension of time until October 21, 2016, to respond to Caliber and Nationstar's motions to dismiss, using the correct case number, No. 3:16-cv-364, Doc. #19, and explaining that, initially, they "inadvertently placed the incorrect case number in the caption." No. 3:16-cv-364, Doc. #19-1. In a notation order dated October 12, 2016, Magistrate Judge Merz sustained

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<sup>1</sup> The refiled lawsuit raises, for the first time, claims against a new Defendant, Assurant, Inc., which timely answered the Complaint, No. 3:16-cv-364, Doc. #12, and which is not otherwise a subject of this Entry.

<sup>2</sup> Plaintiffs' initial lawsuit was assigned to Judge Walter H. Rice and Magistrate Judge Michael J. Newman, and the renewed lawsuit was originally referred to Magistrate Judge Newman as well. Subsequently, the renewed lawsuit was assigned to Magistrate Judge Merz. No. 3:16-cv-364, Doc. #14.

Plaintiffs' motion as to Nationstar, but denied their motion "as to Caliber Home Loans because a Report and Recommendations has already been filed as to Caliber's Motion to Dismiss." No. 3:16-cv-364, Doc. #20.

The Court notes that Plaintiffs timely filed a motion for extension of time, but merely used the wrong case number. Moreover, they promptly corrected their error upon becoming aware of it. Mindful of Plaintiffs' *pro se* status and the Court's strong preference in favor of resolving disputes on their merits, Plaintiffs should have opportunity to respond to Caliber's motion prior to their claim being dismissed.

Accordingly, pursuant to Rule 72(b), and based upon the reasoning and citations set forth above and a thorough *de novo* review of the applicable law, this Court REJECTS the Report and Recommendations. Further, the Court VACATES IN PART Magistrate Judge Merz's October 12, 2016, notation order. Plaintiffs shall have until October 21, 2016, to file memoranda *contra* to Caliber and Nationstar's motions to dismiss, Doc. #9, 10, which remain pending before the Court.<sup>3</sup>

Date: October 13, 2016



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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup> The notation order entered on October 11, 2016, by Magistrate Judge Newman in case number 3:16-cv-163, sustaining Plaintiffs' motion for extension of time, is stricken as moot.