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2 **NOT FOR PUBLICATION**

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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 ISRAEL GARCIA-VALENCIA; )  
10 JESSENIA M. GARCIA, )

No. CV-09-1146-PHX-GMS

11 Plaintiffs, )

**ORDER**

12 vs. )

13 AURORA LOAN SERVICES, LLC; )  
14 QUALITY LOAN SERVICE )  
15 CORPORATION; MORTGAGE )  
16 ELECTRONIC REGISTRATION )  
17 SYSTEMS INC., )

18 Defendants. )

19 Pending before the Court is the Motion to Dismiss of Defendants Aurora Loan  
20 Services and Mortgage Electronic Registration Systems. (Dkt. # 10.) The Motion, filed  
21 pursuant to Federal Rule of Civil Procedure 12(b)(6), was filed on June 11, 2009, along with  
22 a certificate of service. (*Id.*) In the Motion, Defendants seek dismissal with prejudice of all  
23 relevant claims and an order quashing a notice of *lis pendens*. (*Id.*)

24 Local Rule 7.2(c) states that, “[t]he opposing party shall . . . have ten (10) days after  
25 service in a civil or criminal case within which to serve and file a responsive memorandum.”  
26 On July 6, 2009, the Court informed Plaintiffs that they had failed to comply with Local Rule  
27 7.2(c) and extended the time in which Plaintiffs could respond to Defendants’ Motion to and  
28 including July 22, 2009. (Dkt. # 14.) Plaintiffs were warned that failure to file a response



1 claims. Plaintiffs failure to respond and violation of the Local Rules, if permitted to  
2 continue, would only frustrate Defendants' efforts and force Defendants to expend additional  
3 time and resources in defending the claims.

4 In their motion to dismiss, Defendants seek dismissal of the Complaint with prejudice  
5 and an order quashing the *lis pendens* filed by Plaintiffs. (Dkt. # 10.) Defendants argue that  
6 Plaintiffs' claims "fail . . . because they are vague and generic, refuted by judicially  
7 noticeable documents, and contrary to Arizona's nonjudicial foreclosure laws." (*Id.*) These  
8 arguments are fairly and timely raised in this action and deserve a timely response by  
9 Plaintiffs. The Court has been flexible in ensuring Plaintiffs had an opportunity to be heard  
10 in response to Defendants' motions. To continue to permit Plaintiff to engage in delay and  
11 silence would be to significantly prejudice those defendants actively seeking to clarify and  
12 narrow this action.

13 Therefore, factor 3 weighs in favor of dismissal.

#### 14 **Factor 5 – Availability of Less Drastic Sanctions**

15 Factor 5 "involves consideration of three subparts: whether the court explicitly  
16 discussed alternative sanctions, whether it tried them, and whether it warned the recalcitrant  
17 party about the possibility of dismissal." *Valley Eng'rs*, 158 F.3d at 1057. While less drastic  
18 sanctions are certainly available, they are not appropriate here. The Court has granted  
19 Plaintiffs ample time to respond to Defendants' motion and has explicitly warned them that  
20 failure to do so could result in granting of the motion and "could result in the dismissal of all  
21 claims against Defendants Aurora Loan Services and Mortgage Electronic Registration  
22 Systems." (Dkt. # 14 at 2.) Plaintiffs nonetheless failed to respond or take any other action  
23 to prosecute their claim. Additionally, given the arguments raised by Defendants, it is  
24 unclear that any of Plaintiffs' claims are properly pled or are legally cognizable.

25 With four factors weighing in favor of dismissal and one factor weighing against,  
26 dismissal is appropriate here. *See, e.g., Wystrach v. Ciachurski*, 267 F. App'x 606, 607-08  
27 (9th Cir. 2008) (upholding dismissal under Local Rule 7.2(i) where the first three factors all  
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1 weighed in favor of dismissal); *Ghazali*, 46 F.3d at 53-54 (upholding summary dismissal of  
2 a pro se plaintiff's action for failure to follow the court's local rules)

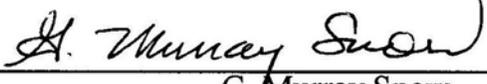
3 **IT IS THEREFORE ORDERED** that the Motion to Dismiss of Defendants Aurora  
4 Loan Services and Mortgage Electronic Registration Systems (Dkt. # 10) is **GRANTED**.

5 **IT IS FURTHER ORDERED** that Defendants Aurora Loan Services and Mortgage  
6 Electronic Registration Systems are **DISMISSED WITH PREJUDICE**.

7 **IT IS FURTHER ORDERED** that the Notice of *Lis Pendens* filed by Plaintiffs in  
8 conjunction with this lawsuit is **QUASHED**.

9 **IT IS FURTHER ORDERED** that Plaintiffs show cause as to why the Court should  
10 not dismiss Defendant Quality Loan Service Corporation pursuant to Federal Rule of Civil  
11 Procedure 4(m) for failure to timely serve. Plaintiffs are directed, before **5:00 P.M. on**  
12 **August 20, 2009**, to either file proof of service upon Defendant Quality Loan Service  
13 Corporation or a memorandum demonstrating good cause why Defendant Quality Loan  
14 Service Corporation has not yet been served. Failure to respond may be considered as  
15 consent to the dismissal of Defendant Quality Loan Service Corporation.

16 DATED this 31st day of July, 2009.

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20 G. Murray Snow  
21 United States District Judge  
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