

1 WO

2 NOT FOR PUBLICATION

3

4

5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8

9 TAJUDEEN O. OLADIRAN; *et al.*,) No. CV-09-01471-PHX-GMS

10 Plaintiffs,) **ORDER**

11 vs.)

12)

13 SUNTRUST MORTGAGE, INC.; *et al.*,)

14 Defendants.)

15 The instant civil action was removed from Maricopa County Superior Court on July
16 16, 2009. (Dkt. # 1.) On July 27, 2009, Plaintiffs filed an amended complaint alleging a
17 violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) as well as
18 several state law claims. (Dkt. # 16.)

19 On September 23, 2009, Defendants filed a Motion to Dismiss several of Plaintiffs’
20 claims pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. # 40.) As of December
21 2, 2009, Plaintiffs have failed to file a response to the Motion. When Defendants filed their
22 Motion, Local Rule 7.2(c) provided that “[t]he opposing party shall . . . have ten (10) days
23 after service in a civil or criminal case within which to serve and file a responsive
24 memorandum” to a Motion to Dismiss.¹ Rather than file a response, however, Plaintiffs filed
25 a separate Motion to Strike. (Dkt. # 42.) The Motion to Strike does not address the specific

26

27

28 ¹On December 1, 2009, Local Rule 7.2(c) was amended to allow fourteen (14) days
to respond to a 12(b)(6) motion. *See* LRCiv. 7.2(c).

1 substantive arguments presented in Defendants' Motion to Dismiss. (*See id.*) Therefore, as
2 of December 2, 2009, Plaintiffs have not filed a timely responsive memoranda to the Motion
3 to Dismiss, nor have they sought extensions of time to do so.² Under the Local Rules,
4 Plaintiffs' failure "may be deemed a consent to the denial or granting of the motion[.]" *See*
5 LRCiv. 7.2(i). Thus, in the instant case, summary dismissal of Plaintiffs' claims could result
6 if the Motion to Strike is denied and Plaintiffs fail to file a response to the Motion to Dismiss.
7 Therefore,

8 **IT IS HEREBY ORDERED** that Plaintiffs shall file and serve a responsive
9 memorandum to the Motion to Dismiss **before 5:00 p.m. on December 17, 2009**. Should
10 Plaintiffs fail to comply, the Court may deem Plaintiffs' failure to oppose the Motion as a
11 waiver, and may grant the Motion on that basis.

12 **IT IS FURTHER ORDERED** that if Plaintiffs intend to file a reply memorandum
13 to the Motion to Strike, they shall also have until **5:00 p.m. on December 17, 2009** to do so.

14 DATED this 3rd day of December, 2009.

15
16 
17 _____
18 G. Murray Snow
19 United States District Judge
20
21
22
23
24

25 ²Plaintiffs' failure to file a response may be a result of the parties' October 15, 2009
26 stipulation in which they agreed not to file motions or pleadings prior to or during mediation.
27 (Dkt. # 51.) The Court has since learned that recent efforts towards mediation have failed.
28 Regardless, the Court took no action on the stipulation; thus, the time frame for filing
responsive memoranda has not been extended. (*See* Dkt. # 52.)