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

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9 Michael Grady; Jennifer Grady, )

No. CV 11-2060-PHX-JAT

10 Plaintiffs, )

**ORDER**

11 vs. )

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13 Bank of Elmwood; Elmwood Financial  
Corporation; Jonathan Levin; Sarah Levin, )

14 Defendants. )

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Tri City National Bank, )

16 Counterclaimant, )

17 vs. )

18 Michael Grady and Jennifer Grady, )

19 Counterdefendant. )

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The Federal Deposit Insurance )  
Corporation as Receiver for Bank of )  
21 Elmwood, )

22 Intervenor. )

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24 On July 12, 2012, the Levin Defendants claim to have sent Plaintiffs requests for  
25 admissions. Plaintiffs claim that they never received these requests for admissions. Several  
26 motions are now pending before the Court relating to this issue.

27 The Levin Defendants have moved for summary judgment on the premise that  
28 Plaintiffs failure to timely respond to the requests for admissions cause those requests to be

1 deemed admitted. Plaintiffs oppose summary judgment claiming those facts are not  
2 admitted; and, in addition to responding to the motion for summary judgment, Plaintiffs  
3 responded to the requests for admissions.

4       Thereafter the Levin Defendants moved to strike the responses to the requests for  
5 admissions as untimely and have moved for summary disposition of the motion to strike  
6 claiming Plaintiffs have not opposed the motion to strike. Plaintiff opposed summary  
7 disposition arguing that they fully briefed this issue in their opposition to the motion for  
8 summary judgment.

9       The Levin Defendants main argument for not allowing Plaintiffs' late responses to the  
10 requests for admissions is that Plaintiffs' counsel's avowal that he did not receive them is not  
11 credible. Further the Levin Defendants argue that their July 25, 2012 notice of service put  
12 Plaintiffs on inquiry notice that they were supposed to have been served with requests for  
13 admissions back on July 12, 2012.

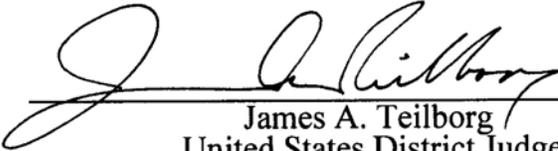
14       Given (1) that this Court cannot conclude that the July 25, 2012 notice of service is  
15 equal to service on July 12, 2012, and (2) that this Court has no basis to conclude that  
16 Plaintiffs' counsel's avowal is false; the Court will allow Plaintiffs' late responses to the  
17 requests for admissions. Therefore,

18       **IT IS ORDERED** that the motion for summary judgment (Doc. 85) is denied.

19       **IT IS FURTHER ORDERED** that the motion to strike (Doc. 99) is denied.

20       **IT IS FURTHER ORDERED** that the motion for summary disposition (Doc. 109)  
21 is denied.

22       DATED this 13th day of December, 2012.

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26       James A. Teilborg  
27       United States District Judge  
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