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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Michael Grady; Jennifer Grady,)

No. CV 11-2060-PHX-JAT

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Plaintiffs,)

ORDER

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vs.)

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

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Defendants.)

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Tri City National Bank,)

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Counterclaimant,)

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vs.)

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Michael Grady and Jennifer Grady,)

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Counterdefendant.)

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

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Intervenor.)

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Pending before the Court is a motion to strike two claims from Plaintiffs' Second Amended Complaint. Defendant Tri City National Bank (TCNB) argues that all claims against it should be dismissed because the Court, on futility grounds, denied Plaintiffs' motion to amend to add additional claims against TCNB (the Court allowed amendment as to other claims). Thus, TCNB argues that the Second Amended Complaint, which includes

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1 claims against it, runs afoul of the Court's order.

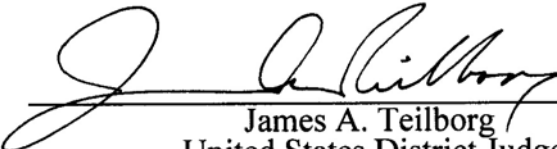
2 Plaintiffs respond and argue that the First Amended Complaint had claims against
3 TCNB. Plaintiffs argue that the Second Amended Complaint reasserts those claims from the
4 First Amended Complaint, but does not add new claims that the Court did not allow when
5 the Court denied leave to amend. Plaintiffs go on to argue that the Court denying leave to
6 amend to add new claims against TCNB did not operate to dismiss the claims against TCNB
7 that were listed in the First Amended Complaint.

8 TCNB replies and argues that the claims in the First Amended Complaint which
9 Plaintiffs argue survived the motion to amend were claims against Bank of Elmwood. TCNB
10 acknowledges that it acquired some of the Bank of Elmwood's assets from the Federal
11 Deposit Insurance Company (FDIC) after the FDIC took the Bank of Elmwood into
12 receivership, but TCNB denies that it and Bank of Elmwood are one and the same for
13 pleading and liability purposes.¹ Further, TCNB notes that the FDIC, not TCNB, moved to
14 be substituted for the Bank of Elmwood.

15 The Court finds that Bank of Elmwood and TCNB are not one and the same. Thus,
16 any claims against Bank of Elmwood in the First Amended Complaint do not continue to the
17 Second Amended Complaint as claims against TCNB.

18 Accordingly, **IT IS ORDERED** that the claims against TCNB listed in the Second
19 Amended Complaint are dismissed, and TCNB is dismissed as a Defendant. Thus, the
20 motion to strike (Doc. 57) is granted as to TCNB only.

21 DATED this 13th day of December, 2012.

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25 James A. Teilborg
United States District Judge

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28 ¹ The Court has reviewed the First Amended Complaint (Doc. 1-2 at 1) and notes that
TCNB is not named as a Defendant.