

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT

UNITED WHOLESALE MORTGAGE, LLC,

Plaintiff,

v

Case No. 24-210469-CB  
Hon. Michael Warren

TONIA GORDON,

Defendant.

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OPINION AND ORDER GRANTING UNITED WHOLESALE MORTGAGE, LLC'S  
MOTION FOR SUMMARY DISPOSITION AND JUDGMENT

At a session of said Court, held in the  
County of Oakland, State of Michigan  
May 12, 2025

PRESENT: HON. MICHAEL WARREN

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OPINION

I  
Overview

The instant action is before the Court on United Wholesale Mortgage, LLC's ("United Wholesale") Motion for Summary Disposition and Judgment; the Court having entered a Scheduling Order on January 17, 2025 requiring a responsive brief to be filed by April 23, 2025, which further states *inter alia*, that, "[if] briefs are not timely filed, the Court SHALL assume that the party, whether or not represented by counsel, does not have any authority for his/her/its position(s). Failure to timely file briefs also will result

in that party's waiver of oral argument" (emphasis in original); no responsive brief having been filed; the Court recognizing its authority to issue orders establishing times for events pursuant to MCR 2.116(G), MCR 2.119 and MCR 2.401; *Kemerko Clawson LLC v RXIV Inc*, 269 Mich App 347 (2005), and additional authorities *infra*; the Court finding that oral argument would not aid it in rendering a decision (the Court's Scheduling Order also providing that the failure of a party to respond results, *inter alia*, in that party's waiver of oral argument); and the Court being otherwise advised in the premises:

THE COURT HEREBY GRANTS the Motion for the following independent reasons:

## II The Court is Entitled to Enforce its Scheduling Orders

As stated in this Court's Scheduling Order "[if] briefs are not timely filed, the Court SHALL assume that the party, whether or not represented by counsel, does not have any authority for his/her/its position(s)." The Court has authority to issue orders establishing times for events pursuant to MCR 2.116(G), MCR 2.119 and MCR 2.401. See *People v Grove*, 455 Mich 439, 465 (1997) ("[t]he court rules provide for and encourage the use of scheduling orders to promote the efficient processing of civil and criminal cases); SCAO 2013-12; LAO 2015-03. In fact, the Michigan Supreme Court has affirmed summary disposition granted on the basis of a trial court enforcing its summary disposition scheduling order. *EDI Holdings LLC v Lear Corp*, 469 Mich 1021 (2004) (summarily reversing the Court of Appeals' determination that the trial court abused its discretion by

refusing to accept a brief filed after the deadline established by the trial court's summary disposition scheduling order: "The Court of Appeals clearly erred in finding that the Oakland Circuit Court abused its discretion when it enforced the summary disposition scheduling order").

Applying this precedent, our Court of Appeals has reaffirmed a court's power to enforce its scheduling orders, and in so doing, upheld this Court in enforcing its summary disposition scheduling order in both *Moore v Whiting*, unpublished per curiam opinion of the Court of Appeals, issued November 10, 2015 (Docket No. 323697) and *Thigpen v Besam Entrance Solutions*, unpublished per curiam opinion of the Court of Appeals, issued September 16, 2014 (Docket No. 316696). See also *Kemerko*, 269 Mich App at 351-353 (trial courts have authority to establish and enforce scheduling order deadlines in connection with summary disposition motions); *Bergin Financial, Inc v Delsean Littlejohn*, unpublished per curiam opinion of the Court of Appeals, issued September 16, 2008 (Docket No. 278088) ("A trial court has no obligation to consider whether enforcing a scheduling order is just under the circumstances").

In the present matter, Defendant Tonia Gordon ("Gordon") failed to timely submit a responsive brief to this Court despite ample opportunity to do so and there has been no timely attempt to show good cause to extend the deadline for responsive briefing as set forth in the Court's Scheduling Order - a deadline beyond the time otherwise provided by the Rules of Court. Indeed, Gordon had nineteen (19) weeks to prepare and file a

response.<sup>1</sup> Under Michigan jurisprudence, the Court need not await or accept an untimely filing. See e.g., *EDI Holdings*, 469 Mich at 1021; *Alken-Ziegler*, 461 Mich at 224 (1990). See also *Henning v Verizon Wireless*, unpublished per curiam opinion of the Court of Appeals, issued January 25, 2005 (Docket No. 251241) (affirming this Court’s reliance on MCR 2.401(B), and MCR 2.116(G)(1)(a)(ii) in striking an untimely reply submitted in support of a motion for summary disposition). See also *Master Beat v Skill*, unpublished per curiam opinion of the Court of Appeals, issued February 29, 2024 (Docket No. 363340) (“in light of the lack of a properly and timely filed responsive brief, the trial court did not err by granting plaintiffs’ motion for summary disposition”); *INXS V LLC v Kathelene’s Compassionate Adult Day Care*, unpublished, per curiam opinion of the Court of Appeals, issued February 29, 2024 (Docket No. 365939) (“Defendants failed to respond to plaintiff’s motion [for summary disposition] and did not present any documentary evidence establishing the existence of a material factual dispute. In so doing, defendants failed to meet their burden. The trial court, therefore, did not err by granting plaintiff’s unopposed motion for summary disposition”). To hold otherwise in the instant circumstances effectively renders meaningless the power afforded by MCR 2.401 to enforce scheduling orders in an effort to promote the efficient management of court dockets. This is the first basis to grant the Motion.

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<sup>1</sup> On April 16, 2025, Gordon filed a 2-page letter (dated April 1, 2025) with several documents attached as exhibits. The letter bears no case caption, does not include the words “motion” or “response,” and does not address the arguments raised in the Motion. On April 30, 2025, United Wholesale filed a timely Reply.

### III Summary Disposition Under MCR 2.116(C)(9) is Warranted

MCR 2.116(C)(9) permits summary disposition when “the opposing party has failed to state a valid defense to the claim against him or her.” A motion for summary disposition under MCR 2.116(C)(9) tests the sufficiency of the defendant’s pleadings and is decided by the pleadings alone. *In re Smith Estate*, 226 Mich App 285, 288 (1997). All well-pled allegations must be accepted as true, and only if the non-moving party’s defenses are so clearly untenable as a matter of law that no factual development could possibly deny a plaintiff’s right to recovery, should the motion be granted. *Grebner v Clinton Charter Twp*, 216 Mich App 736, 740 (1996). “In deciding a motion under MCR 2.116(C)(9) a court may only look at the parties’s pleadings, including the complaint, cross-claim, counterclaim, third-party complaint, an answer to any of these, and a reply to an answer.” *Parks v Parks*, unpublished per curiam opinion of the Court of Appeals, Issued October 22, 2019 (Docket No. 343867), p 3.

In the instant action, United Wholesale alleges it created the Forgivable Loan and Restricted Stock Unit Program to provide employees with the ability to obtain an interest-bearing forgivable personal loan if the employee remains employed for three years from acceptance of the program:

4. As a benefit for its employees, UWM created the Forgivable Loan and Restricted Stock Unit Program (the “Program”), under which it provides selected employees “the ability to obtain an interest-bearing forgivable personal loan” in the amount of \$40,000. *See* Ex. 1, Program Participant Acknowledgement and Promissory Note, at p. 1.

5. If an employee elects to participate in the Program and obtain the loan, he or she must execute a Promissory Note relating to the loan.

6. If the participating employee “remains employed with UWM for three (3) years from [his or her] acceptance of the Program,” “UWM will forgive the Loan in its entirety.” *See Id.* 1 at p. 1.

7. Otherwise, if the participating employee’s “employment with UWM ends within three (3) years of entering the Program, [the employee] agrees to fully re-pay to UWM the outstanding balance of” the loan. *Id.*

[Complaint.]

United Wholesale alleges that Gordon elected to participate in the Program, but her employment was terminated thirteen (13) months later and the Defendant has failed to repay the loan:

8. Defendant elected to participate in the Program to obtain a \$40,000 loan (the “Loan”), and Defendant signed the Participant Acknowledgement for the Program on March 31, 2022. *Id.* at p. 2.

9. In the Participant Acknowledgement, Defendant acknowledged that Defendant “received a copy of the Program” and had “read it, understood it, and agree[d] to comply with it.” *Id.* at p. 1.

10. Defendant also “acknowledge[d] and underst[ood] that as a condition for receiving a forgivable Loan under the Program,” Defendant had to “execute the Promissory Note in the form attached as Appendix A, which evidences [Defendant’s] obligation to repay any outstanding Loan received under the Program if, within three years of entering the Program, [Defendant’s] employment with UWM ends (voluntarily or involuntarily).” *Id.* at p. 2.

11. On March 31, 2022, Defendant signed the Promissory Note referenced in the Program Participant Acknowledgment for the Loan. *See Id.* at pp. 3-4.

12. In the Promissory Note, Defendant agreed that “the entire unpaid balance of the Loan shall become immediately due and payable by [Defendant] without notice or demand if [Defendant’s] employment with UWM ends (voluntarily or involuntarily, and for any or no reason) before “three (3) years from the date of execution” of the Promissory Note. *Id.* at p. 3.

13. Defendant also agreed in the Promissory Note “to pay all actual expenditures incurred by UWM in collecting any amount due under this Promissory Note, including all costs of legal action and reasonable attorneys’ fees.” *Id.* at p. 4.

14. After Defendant signed the Program Participant Acknowledgement and Promissory Note, UWM issued a \$40,000 loan check to Defendant.

15. Defendant’s employment with UWM ended on April 11, 2023.

16. After Defendant's employment with UWM ended, Defendant failed to pay back the Loan, plus interest, in full as required under the Promissory Note.

[Complaint.]

Gordon did not file an answer to the Complaint. Instead, Gordon filed a 1-page letter on October 30, 2024 to “dispute the claim/lawsuit that [she] violated the contractual agreement reviewed in this case.” [Letter filed October 30, 2024.] The letter bears no case caption; the letter bears no signature in violation of MCR 1.109(E)(2); and the letter does not state an explicit admission or denial, plead no contest or state that the pleader lacks knowledge or information sufficient to form a belief as to the truth of each allegation in violation of MCR 2.111(C). Simply put, the letter is not a “pleading” under MCR 2.110 and Gordon has failed to state a valid defense to the claim of Breach of Contract against her. Accordingly, summary disposition under MCR 2.116(C)(9) is warranted.

**ORDER & JUDGMENT**

In light of the foregoing, United Wholesale Mortgage, LLC's Motion for Summary Disposition and Judgment is GRANTED. Judgment is hereby entered in favor of United Wholesale Mortgage, LLC in the amount of \$43,089.67 with interest continuing to accrue pursuant to MCL 600.6013 and MCL 600.6455.

THIS RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

/s/ Michael Warren

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**HON. MICHAEL WARREN  
CIRCUIT COURT JUDGE**

