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2 NOT FOR PUBLICATION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 Federal Home Loan Mortgage Corporation, ) No. CV-09-01508-PHX-GMS

10 Plaintiff, ) **ORDER**

11 vs. )

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13 Sherryl L. Madison, )

14 Defendant. )

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17 Pending before the Court is Plaintiff Federal Home Loan Mortgage Corporation's  
18 Motion For: Statutory Penalties and Fees and Costs And Notice of Lodging Proposed Form  
19 of Judgment (Doc. 52). For the reasons set forth below that motion is denied without  
20 prejudice.

21 Arizona Revised Statutes ("A.R.S.") § 33-420(A) specifies that:

22 A person purporting to claim an interest in, or a lien or  
23 encumbrance against, real property, who causes a document  
24 asserting such claim to be recorded in the office of the country  
25 recorder, knowing or having reason to know that the document  
26 is forged, groundless, contains a material misstatement or false  
27 claim or is otherwise invalid is liable to the owner or beneficial  
28 title holder of the real property for the sum of not less than five  
thousand dollars, or for treble the actual damages caused by the  
recording, whichever is greater, and reasonable attorney fees and  
costs of the action.

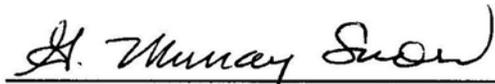
28 This Court has already determined that Defendant has filed at least two documents,

1 her notice of lis pendens, and the Deed of Release and Reconveyance that were, at the least,  
2 groundless (Doc. 40). Although Defendant has filed several motions for reconsideration of  
3 this determination, all such motions have been denied. *See, e.g.*, Docs. 51, 56.

4 What the Court has not yet determined, however, is whether the Federal Home Loan  
5 Mortgage Corporation is the owner of the property or beneficial title holder thereto.  
6 According to the statute, only the owner or the beneficial title holder is entitled to the award  
7 of statutory damages. The Federal Home Loan Mortgage Corporation, has yet to establish  
8 that it is in such a position, and Defendant clearly contests it. Therefore, Plaintiff's motion  
9 for the award of statutory penalties and fees and costs is denied without prejudice until such  
10 time as the Plaintiff establishes that it was/is entitled to enforce the Note and Deed of Trust  
11 in this case pursuant to A.R.S. § 47-3309 and other possibly applicable Arizona law.

12 **IT IS THEREFORE ORDERED** denying the Motion for Judgment without  
13 prejudice (Doc. 52).

14 DATED this 5th day of October, 2010.

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17 G. Murray Snow  
18 United States District Judge  
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