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

8 Taloren Govan, an unmarried man,  
9  
10 **Plaintiff,**

No. CV-10-0057-PHX-DGC

**ORDER**

11 vs.

12 Security National Financial Corporation, a  
13 Utah corporation; Crystal Rose Funeral  
14 Home, Inc., an Arizona corporation; and  
Greer-Wilson Funeral Home, Inc., an  
Arizona corporation,

15 **Defendants.**

16 Plaintiff commenced this employment law action by filing a complaint against  
17 Defendants on January 8, 2010. Doc. 1. On May 16, 2011, the Court granted summary  
18 judgment in favor of Defendants and the Clerk entered judgment accordingly. Docs.  
19 92, 93. Plaintiff has appealed. Doc. 96.

20 Defendants have filed a motion for a cost bond on appeal in the amount of  
21 \$5,306.60. Doc. 99. The motion is fully briefed. Docs. 100, 104. Oral argument has not  
22 been requested. For reasons stated below, the motion will be denied.

23 Defendants estimate that their attorneys' fees on appeal will be not less than  
24 \$5,000. Pursuant to A.R.S. § 12-341.01(C), which requires an award of attorney fees  
25 where a claim is groundless and constitutes harassment, Defendants request an order  
26 requiring Plaintiff to post an appeal bond sufficient to cover their estimated attorneys'  
27 fees. Doc. 99 at 3-4.

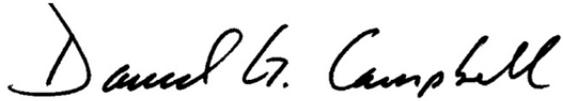
28 Plaintiff argues, correctly, that A.R.S. § 12-341.01(C) has no application in federal

1 court. Doc. 100 at 3. This Circuit has made clear that it is not proper to use an Arizona  
2 sanction statute, including A.R.S. § 12-341.01(C), in federal litigation. *In re Larry's*  
3 *Apartment, L.L.C.*, 249 F.3d 832, 838-40 (9th Cir. 2001). Defendants assert in their reply  
4 that Title VII is an applicable fee-shifting statute (Doc. 104 at 2), but it is well established  
5 that "courts will not consider arguments raised for the first time in a reply brief." *Bach*  
6 *v. Forever Living Prods. U.S., Inc.*, 473 F. Supp. 2d 1110, 1122 n.6 (W.D. Wash. 2007)  
7 (citing *Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 843 n.6 (9th Cir. 2004)); *see Gadda*  
8 *v. State Bar of Cal.*, 511 F.3d 933, 937 n.2 (9th Cir. 2007).

9 Defendants' motion will be denied with respect to the \$5,000 in estimated  
10 attorneys' fees. The Court also declines to grant the motion with respect to the \$306.06  
11 in estimated copying costs. Doc. 99 at 2. Defendants, consistent with applicable rules of  
12 procedure, may seek an award of fees and costs after the appeal has been resolved.

13 **IT IS ORDERED** that Defendants' motion for cost bond on appeal (Doc. 99) is  
14 **denied.**

15 Dated this 12th day of July, 2011.

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David G. Campbell  
United States District Judge