



1 movant to establish the existence of material fact. *Id.* The non-movant “must do more  
2 than simply show that there is some metaphysical doubt as to the material facts” by  
3 “com[ing] forward with ‘specific facts showing that there is a *genuine* issue for trial.’”  
4 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (quoting  
5 Fed. R. Civ. P. 56(e) (1963) (amended 2010)). A dispute about a fact is “genuine” if the  
6 evidence is such that a reasonable jury could return a verdict for the nonmoving party.  
7 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-movant’s bare  
8 assertions, standing alone, are insufficient to create a material issue of fact and defeat a  
9 motion for summary judgment. *Id.* at 247–48.

### 10 **III. Count I of the Amended Complaint**

11 Following the Court of Appeals reversal (*In re Mortgage Elec. Registration Sys.*,  
12 *Inc.*, 754 F.3d 772 (9th Cir. 2014) at Doc. 1820) of this Court’s dismissal of the  
13 consolidated amended complaint in this case, there is one Count remaining. The  
14 remaining Count is a cause of action under A.R.S. § 33-420(A). Another Court in this  
15 district has summarized this cause of action as follows:

16 ...A.R.S. § 33-420(A) [] penalizes persons claiming an interest or lien in  
17 real property for knowingly recording a document that is “forged,  
groundless, contains a material misstatement or false claim or is otherwise  
invalid”:

18  
19 A. A person purporting to claim an interest in, or a lien or  
20 encumbrance against, real property, who causes a document  
21 asserting such claim to be recorded in the office of the county  
22 recorder, knowing or having reason to know that *the*  
23 *document is forged, groundless, contains a material*  
24 *misstatement or false claim or is otherwise invalid* is liable to  
25 the owner or beneficial 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.

(Emphasis added.) The broader statutory section, A.R.S. § 33-420, is  
entitled “False documents; liability; special action; damages; violation;  
classification.”

*David A. Kester v. CitiMortgage*, CV 15-365, Doc. 37 (D. Ariz. March 31, 2016).

1 **IV. Scope of the Mandate (Forgery)**

2 As to their claims, this Court previously recounted,

3 [Plaintiffs'] amended complaint was dismissed on October 3, 2011. (Doc.  
4 1602). Plaintiffs appealed dismissal of Counts I-VI to the Ninth Circuit  
5 Court of Appeals. The Court of Appeals reversed the dismissal of Count I  
6 and affirmed the dismissal of Counts II-VI. *In re Mortgage Elec.*  
7 *Registration Sys., Inc.*, 754 F.3d 772, 786 (9th Cir. 2014). Specifically, the  
8 Court of Appeals held that: (1) A.R.S. § 33-420 applies to Notices of  
9 Trustee Sale, Notices of Substitution of Trustee, and Assignments of a  
Deed of Trust, documents which Plaintiffs alleged to be fraudulent in the  
CAC; (2) Plaintiffs' claims are not timebarred; (3) Plaintiffs have standing  
to sue under A.R.S. § 33-420; and (4) Plaintiffs pleaded their robo-signing  
claims with sufficient particularity to satisfy Federal Rule of Civil  
Procedure 8(a). *In re Mortgage Elec. Registration Sys., Inc.*, 754 F.3d at  
781-784.

10 Doc. 2005 at 2.

11 More specifically, the Court of Appeals held that Plaintiffs had stated a claim that  
12 "the documents at issue are invalid because they are 'robo-signed (forged).'" *In re*  
13 *Mortgage Elec. Registration Sys., Inc.*, 754 F.3d at 783.<sup>1</sup> As this Court discussed at  
14 length in the order denying class certification (Doc. 2005), this claim is the only claim of  
15 the 18-page Count One that was remanded to this Court. Indeed, the Court of Appeals  
16 confirmed that all other theories potentially embedded in Count One were waived by  
17 Plaintiffs by not raising them in their first appeal. (Doc. 2047) Thus, Plaintiffs must  
18 survive summary judgment on this single claim.

19 As indicated above, the statute at issue creates a cause of action when someone  
20 files a document that is: 1) forged; 2) groundless; 3) contains a material misstatement or  
21 false claim; or 4) is otherwise invalid. A.R.S. § 33-420(A). However, the Court of  
22 Appeals' mandate could be construed as permitting Plaintiffs to prove only "forgery" as

23 <sup>1</sup> Specifically, with respect to the Bilyeas, the Court of Appeals stated: "For example, the  
24 CAC alleges that notice of the trustee's sale of the property of Thomas and Laurie Bilyea  
25 was 'notarized in blank prior to being signed on behalf of Michael A. Bosco, and the  
party that is represented to have signed the document, Michael A. Bosco, did not sign the  
document, and the party that did sign the document had no personal knowledge of any of  
the facts set forth in the notice.'" (Doc. 1820-1 at 24).

1 the means by which this statute was violated. (Doc. 1820). Indeed in a subsequent  
2 decision, the Court of Appeals stated

3 “This court’s reversal of Count I was limited to petitioners’ claims of  
4 robosigning *and* forgery. To the extent petitioners now seek to challenge  
5 the MDL Court’s dismissal of Count I as to allegations beyond robosigning  
6 *and* forgery, that challenge is waived because it was not raised in the appeal  
7 in *MERS I*.”

8 (Doc. 2047 at 2) (emphasis added).

9 Accordingly, the Court will analyze “forgery”<sup>2</sup> specifically because it is possibly  
10 the only claim remaining before this Court. The Court will then attempt to determine  
11 whether Plaintiffs are claiming A.R.S. § 33-420 was violated by Defendants in some  
12 other way.

## 13 **V. MERS’ motion for summary judgment**

### 14 **A. Forgery**

15 MERS has identified Tonya Hill as the person who signed the Bilyeas’ assignment  
16 and Lou Ann Howard as the person who signed the Bilyeas’ corrective assignment.  
17 (Doc. 1987 at 7). With respect to the allegations that either of these signatures was  
18 “forged”, Plaintiffs have failed to create a disputed issue of fact. Specifically, Plaintiffs  
19 rely on their handwriting expert as the basis for this allegation; however, the expert did  
20 not examine either Ms. Hill’s signature or Ms. Howard’s signature. (Doc. 1987 at 10).  
21 Additionally, Ms. Howard testified that the signature on the corrective action was in fact  
22 hers. (Doc. 1987 at 11). Plaintiffs offer no evidence to rebut these facts, which are  
23

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24 <sup>2</sup> Arizona’s Criminal Statutes define forgery (as is relevant here) as follows: “A person  
25 commits forgery if, with the intent to defraud, the person: 1) Falsely makes, completes or  
alters a written instrument...” A.R.S. § 13-2002. While A.R.S. § 33-420 is not a  
criminal statute, it does include a criminal penalty; thus this Court will use this definition.

1 deemed admitted.<sup>3</sup> On this record, Plaintiffs have no evidence of forgery and MERS is  
2 entitled to summary judgment.

3 **B. Plaintiffs' allegations against MERS**

4 The Court having concluded there is no disputed issue of fact on the only issue the  
5 Court of Appeals reversed, namely forgery, the Court could enter judgment in favor of  
6 MERS. However, the Court will address "robo signing" because it was specifically  
7 mentioned by the Court of Appeals and it is arguably within the scope of the mandate.

8 Reading Plaintiffs response to MERS' motion for summary judgment, it would  
9 appear Plaintiffs believe "robo signing" is, by and of itself, a way to violate A.R.S. § 33-  
10 420. *See* (Doc. 2013 at 7). It is not. The statute lists four distinct and specific ways it  
11 can be violated, and Plaintiffs' "robo signing" allegation must fall within one of these four  
12 categories to even state a claim.<sup>4</sup>

13 Plaintiffs define robo signing as, "the actual process where people either forge  
14 signatures on high volumes of foreclosure documents, or the actual person signing lacks  
15 knowledge of the facts being attested to, and/or the documents are pre-notarized  
16 (notarized in blank) or post-notarized (the notary didn't actually witness the signature)."  
17 (Doc. 2013 at 7).<sup>5</sup> Only one of these means of robo signing, namely forgery, overlaps with  
18 the ways to violate A.R.S. § 33-420.

19 \_\_\_\_\_  
20 <sup>3</sup> The Court has cited MERS' motion and accompanying statement of facts for the "facts"  
21 recounted in this paragraph because Plaintiffs did not respond to MERS's argument that  
the documents are not forged and did not present any facts on this issue. Accordingly  
MERS' facts are undisputed.

22 <sup>4</sup> The Court notes that the Court of Appeals found Plaintiffs stated a claim as to  
23 "robo signing (forgery)". This Court is aware that it is bound by that decision. However  
24 the Court of Appeals never suggested that robo signing standing alone, with no evidence  
of forgery or some other means of violating the actual language of the statute, would state  
a claim.

25 <sup>5</sup> MERS takes issue with Plaintiffs' definition of "robo signing" arguing that it has no  
basis in Arizona law. (Doc. 2043 at 7). This Court has previously recounted the  
problems that arise from the use of the word "robo signing", which does not appear to

1 In their response to MERS' motion for summary judgment in the section on  
2 robo signing (Doc. 2013 at 7-8), Plaintiffs' counsel make no claims specific to the  
3 Bilyeas.<sup>6</sup> Accordingly, with Plaintiffs having no facts to support this claims, MERS is  
4 entitled to summary judgment.

5 **C. "False Assignment"**

6 In this Court's Order on the Robinson and Silvas cases, this Court analyzed  
7 whether "robo signing" could violate A.R.S. § 33-420 as a kind of "false claim" (as  
8 discussed above, a false claim is a specific way to violate the statute). In responding to  
9 MERS motion for summary judgment as to the Bilyeas, Plaintiffs specifically argue that  
10 they are not pursuing a theory of forgery, or a theory of robo signing, but instead a  
11 completely different theory. Plaintiffs argue:

12 "... the document is still false, whether it was robo signed or not.  
13 The documents that were borne out of the false assignment are invalid,  
14 whether they are robo signed or not. *Steinberger v. McVey ex rel. Cnty of*  
15 *Maricopa*, 318 P.2d 419 [sic] (Ariz. Ct. App. 2014) (finding that mortgagor  
had standing to challenge authority of defendants to conduct a trustee's sale  
based on allegations that documents recorded in connection with the sale  
were false). (additional citation omitted)."

16 (Doc. 2013 at 8, n. 4).

17 Preliminarily, the Court notes that (like robo signing) a "false assignment" is not a  
18 way to violate the statute. However, assuming Plaintiffs intended to fit this argument  
19 into one of "invalidity" (which is specifically listed in the statute), this new theory is  
20 beyond the scope of the mandate. (Docs. 1820-1 at 20-25 and 2047). The Court of

21  
22 have a uniformly accepted legal definition. (Doc. 2005 at 8, n.3). Plaintiffs' citation for  
23 their proposed definition comes from a case in the District of Columbia. (Doc. 2013 at  
7). MERS appears to be correct that this citation would have no relevance to the law of  
Arizona.

24 <sup>6</sup> In responding to the motion for summary judgment against the Bilyeas, Plaintiffs'  
25 counsel included the response of another person, Mr. DeBaggis, to a different motion for  
summary judgment. For purposes of ruling on the Bilyeas' case, the Court has  
disregarded the arguments that were specific to Mr. DeBaggis.

1 Appeals reversed only this Court’s dismissal of count one as to “robosigned (forged)”;<sup>7</sup> it  
2 did not revive every conceivable way A.R.S. § 33-420 might have been implicated in  
3 Plaintiffs’ 18-page count one. *See* (Doc. 2047). Accordingly, the Court will grant  
4 summary judgment to MERS on this theory.

5 **D. Conclusion on MERS’ motion for summary judgment**

6 Because the Court has determined that MERS is entitled to summary judgment on  
7 all claims advanced by Plaintiffs in this member case, the Court need not reach MERS  
8 additional arguments for summary judgment in its favor including: 1) that, on the merits,  
9 the Corrective Assignment was not “False or Otherwise Invalid” (Doc. 1987 at 6); 2) that  
10 MERS did not cause the documents to be recorded (Doc. 1987 at 13-14); 3) that any  
11 “misrepresentations” in the documents were not material<sup>7</sup> (Doc. 1987 at 11-13); 4) that  
12 MERS is a valid beneficiary under Arizona law (Doc. 1987 at 4-6); and 5) that MERS  
13 did not know or have reason to know the documents were “false” (Doc 1987 at 14-15).  
14 MERS will be granted summary judgment as to the Bilyeas.

15 **VI. Central Mortgage Motion for Summary Judgment**

16 Central Mortgage moves for summary judgment on four bases: 1) that no  
17 documents are forged or robosigned; 2) no material misrepresentations were made; 3) the  
18 MERS system is not invalid; and 4) A.R.S. § 33-420(d) is inapplicable to a claim under  
19 A.R.S. § 33-420(A). (Doc. 2049).

20  
21  
22  
23  
24 <sup>7</sup> Plaintiffs mischaracterize both the Ninth Circuit’s opinion and this Court’s prior Order  
25 by stating that both courts held that Plaintiffs do not need to prove materiality here.  
(Doc. 2013 at 8-9). This Court did not hold this, and indeed could not, as the statute  
itself expressly requires that if the theory under which a plaintiff is proceeding is a  
“misstatement or false claim” such misstatement must be “material”. A.R.S. § 33-420.

1           **A.     Forgery and Robosigning**

2                   **1.     Forgery**

3           In responding to Central Mortgage’s motion for summary judgment, Plaintiffs  
4 concede they have no evidence of forgery. (Doc. 2066 at 2). Accordingly, Central  
5 Mortgage is entitled to summary judgment on this theory.

6                   **2.     Robosigning**

7           In responding to Central Mortgage’s motion for summary judgment, Plaintiffs  
8 claim they have evidence of robosigning. (Doc. 2066 at 2). However, in the section of  
9 the response discussing robosigning, Plaintiffs make no factual allegation (nor offer any  
10 evidence) of robosigning. After repeating the definition of robosigning from the District  
11 of Columbia quoted above, Plaintiffs’ entire argument is:

12                           Defendant’s argument that the lack of personal knowledge does not  
13 equate with robosigning misstates Plaintiffs’ position related to  
14 robosigning. The robosigners admit that they had no knowledge as to the  
assignment of the note as being a statement contained in the document.  
(PSOF ¶¶ 11, 19; see also Doc. 2012 ¶ 10).

15 (Doc. 2066 at 6). These two sentences represent the totality of Plaintiffs’ robosigning  
16 argument.

17           First, Plaintiffs cite no Arizona law explaining their argument that “they had no  
18 knowledge as to the assignment of the note as being a statement contained in the  
19 document.” Further the Court does not know what this allegation means, nor against  
20 whom it is being made.

21           Moreover, regarding Plaintiffs’ citations to their statement of facts, Plaintiffs’  
22 statement of fact 11 states as follows:

23                           Lou Ann Howard conceded that the statement that MERS was  
24 assigning the note, which was made on the Corporate Assignment she  
25 signed (attached as Exhibit 37 to the CAC), was not true. See transcript of  
deposition of Lou Ann Howard taken August 13, 2015 filed as  
Consolidated Exhibit 36, 23:6-27:4. Ms. Howard’s investigation of the

1 facts set forth in the Corporate Assignment were limited to looking at the  
2 Deed of Trust. See transcript of deposition of Lou Ann Howard taken  
3 August 13, 2015 filed as Consolidated Exhibit 36, 24:25-13.

4 CV 10-1550, Doc. 69 at 4.

5 First the Court will note that the statement of facts is not the appropriate place to  
6 make arguments in response to a motion for summary judgment. Plaintiffs' bizarre  
7 decision to make their arguments only in their statement of facts is highlighted by the fact  
8 that neither Lou Ann Howard nor Janice Davis, who is the topic of statement of fact 19,  
9 is ever mentioned in the actual response. Nonetheless, the Court has found and reviewed  
10 the 4 pages of deposition testimony of Ms. Howard cited to by Plaintiffs.<sup>8</sup> Ms. Howard  
11 testified that, although she had no specific recollection of the Bilyeas' assignment, her  
12 typical practice was to review all pertinent documents to any assignment and to verify all  
13 information in that particular assignment. (Howard Depo at 25, lines 5-9). Therefore,  
14 whatever "lack of knowledge" claim Plaintiffs are asserting is belied by the only  
15 evidence they cite.

16 As to the citation to statement of fact 19, statement of fact 19 is:

17 Janice Davis did no investigation as to the accuracy of the  
18 representation that Central was the beneficiary as stated on the Substitution  
19 of Trustee recorded against the Bilyea property other than to check the  
20 servicing system electronic notes to see if there was an assignment  
21 recorded. (Transcript of Deposition of Janice Davis taken August 13, 2015,  
22 attached hereto as Exhibit 3 ("Davis depo."), 31:22-33:4).

23 CV 10-1550, Doc. 69 at 5.

24 To begin, Plaintiffs do not mention who Janice Davis is, or whether she signed  
25 any document in the Bilyeas' case. Nonetheless, the Court has reviewed her testimony.  
26 In her testimony she states that before she signed documents related to a nonjudicial

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<sup>8</sup> To aid any reviewing court, Plaintiffs failed to attach their exhibits to their statement of facts. The exhibits can be found at MD 09-2119, Doc. 2023; Ms. Howard's deposition specifically is at Doc. 2023-8, pages 69-70.

1 foreclosure proceeding she would: review the mortgage to determine the original balance,  
2 the borrower's name, the address, the date of the mortgage, the date it was recorded, the  
3 recording information, and the legal description. (CV 10-1550, Doc. 69-3 at 10). She  
4 would also review the serving system to see if an assignment of the mortgage had been  
5 recorded. (*Id.*). Based on this testimony, the Court again finds that whatever Plaintiffs  
6 are attempting to argue about lack of knowledge, it is belied by the very evidence they  
7 cite. In other words, the Court does not know what additional knowledge or investigation  
8 Plaintiffs claim would be required (assuming Plaintiffs could cite an Arizona case that  
9 says such personal knowledge or investigation was even required).

10         Against this record, the Court will grant summary judgment to Central Mortgage  
11 on Plaintiffs' claims of robo signing. Plaintiffs have offered no law or evidence to  
12 support this theory of liability.<sup>9</sup>

13             **B. Plaintiffs' other allegations against Central Mortgage**

14         Plaintiffs argue that "[T]he Assignments and Substitution of Trustee are still false,  
15 whether robo signed or not. The documents that were borne out of false assignments are  
16 invalid, whether they were robo signed or not." Doc. 2066 at 6. Thus, Plaintiffs are now  
17 attempting to survive summary judgment on a theory (presumably invalidity) other than  
18 robo signing (forgery). As discussed above, the mandate limited Plaintiffs claims in  
19 Count I to robo signing (forgery). As further discussed above, the Court of Appeals  
20 confirmed this Court's interpretation of the mandate.

21         Plaintiffs' dispute the Court of Appeals' interpretation of its own mandate.  
22 Specifically, as quoted above, the Court of Appeals stated,

23  
24 \_\_\_\_\_  
25 <sup>9</sup> The Court has declined to address Plaintiffs' citation to Doc. 2012 at § 10 because that  
citation relates only to documents in the Robinsons' case, and has nothing to do with the  
Bilyeas.

1 “This court’s reversal of Count I was limited to petitioners’ claims of  
2 robo-signing and forgery. To the extent petitioners now seek to challenge  
3 the MDL Court’s dismissal of Count I as to allegations beyond robo-signing  
4 and forgery, that challenge is waived because it was not raised in the appeal  
5 in *MERS I.*”

6 (Doc. 2047 at 2). Plaintiffs’ argue to this Court that the Court of Appeals misinterpreted  
7 its own mandate, stating:

8 “As to Plaintiffs’ arguments supporting the fact that Plaintiffs did not waive  
9 other claims related to the documents complained of in the CAC, see  
10 Motion for Reconsideration filed in Ninth Circuit Case No. 16-80001,  
11 incorporated herein by this reference. A copy of the motion is attached  
12 hereto as Exhibit 2 for this Court’s and the parties’ convenience.

13 (Doc. 2066 at 2, n.1).<sup>10</sup> Central Mortgage points out in its Reply that the Motion for  
14 Reconsideration was denied by the Court of Appeals before Plaintiffs filed their  
15 Response. (Doc. 2069 at 1, n. 2).

16 First, this Court agrees with the Court of Appeals interpretation of its mandate as  
17 explained above and in the Order at Doc. 2005. Second, regardless of this Court’s  
18 agreement, this Court cannot ignore the decision of the Court of Appeals, even if  
19 Plaintiffs believe it is wrong. Therefore, this new theory of the case on which Plaintiffs  
20 now wish to proceed, namely invalidity, is beyond the scope of the mandate and Central  
21 Mortgage is entitled to summary judgment on this theory.

22 Moreover, even if this claim was properly before this Court, Plaintiffs cannot  
23 prove invalidity. Specifically, Plaintiffs argue that MERS attempted to assign a note,  
24 which Plaintiffs argue MERS could not do. Doc. 2066 at 5. But in *Sitton v. Deutsche*  
25 *Bank Nat’l Trust Co.*, 311 P. 237, 243 ¶ 28 (Ariz. Ct. App. 2013), the Arizona Court of  
Appeals held that MERS could assign the note and deed of trust. Therefore, Plaintiffs’  
argument fails.

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<sup>10</sup> The Court notes that the Motion for Reconsideration is not attached at Exhibit 2, and as far as the Court can tell, is not in this record.

1 Plaintiffs attempt to distinguish *Sitton* by arguing that *Sitton* premised its holding  
2 on a finding of lack of materiality; then Plaintiffs argue that materiality does not have to  
3 be shown in this case. (Doc. 2066 at 5). However, as this Court has already explained in  
4 its Order of April 20, 2016 (Doc. 2056 at 2, n.1), the Court did not “waive” the  
5 materiality requirement identified by *Sitton* for this case as a whole. Instead the Court  
6 found, only, that if the theory on which Plaintiffs were proceeding was a forgery, the  
7 statute does not require that the forgery be material.

8 Another Judge in this district in interpreting this same statute agreed that the word  
9 materiality grammatically modifies only misstatement and false claim in A.R.S. § 33-  
10 420; however, he went on to hold that the statute as a whole requires that any kind of  
11 violation be effectively material to be actionable. *David A. Kester v. CitiMortgage, CV*  
12 *15-365, Doc. 37 (D. Ariz. March 31, 2016)*. Specifically, the Court stated:

13 Plaintiff reads the statutory text as allowing a penalty for *immaterial* flaws  
14 in a recorded document—that is, flaws that do not affect him. He notes that  
15 the statute lists various flaws disjunctively and that the word “material”  
16 only appears next to the words “misstatement or false claim,” not the words  
17 “forged,” “groundless,” or “otherwise invalid.” Plaintiff infers that  
18 materiality is not a necessary element of § 33-420(A) claims that a  
19 document is “forged,” “groundless,” or “otherwise invalid.” Plaintiff’s  
20 reading defies ordinary principles of statutory interpretation and common  
21 sense. The words “forged,” “groundless,” and “invalid” each imply a sense  
22 of materiality. One does not “forge” a document to no effect. A document  
23 cannot be “groundless” or “invalid” without reference to a meaningful  
24 external standard of “ground” or “validity.” The reason the word “material”  
25 does not appear next to each of these words is that such drafting would be  
unnecessary and awkward. In contrast, the words “misstatement” and “false  
claim” do not imply a sense of materiality. Both words refer to innumerable  
communications within a document that the legislature would have no  
reason to punish, such as a “false claim” that the third page of a document  
is page two. For those words, “material” is a useful qualifier.

Context underscores the need for materiality here. This is a punitive and  
criminal statute. Subsection A imposes a penalty of \$5,000 or treble actual  
damages for each illegal document. Subsection C imposes an additional  
penalty of \$1,000 or treble actual damages for willful failure to correct such  
documents upon request. Perhaps most gravely, subsection E classifies a  
violation of subsection A as a class 1 misdemeanor. These subsections  
“must be interpreted consistently” to the extent they use identical language.  
*Wyatt v. Wehmuller*, 167 Ariz. 281, 285, 806 P.2d 870, 874 (1991). Thus,

1 Plaintiff's interpretation would make the recording of a document with  
2 inconsequential flaws not only unlawful and expensive, but criminal.

3  
4 *Id.* at 7. The Court went on to state:

5 The most relevant case is *Sitton v. Deutsche Bank National Trust Co.*, 233  
6 Ariz. 215, 311 P.3d 237 (Ct. App. 2013). There, like here, the plaintiff  
7 brought an action under § 33-420 based on recorded documents relating to  
8 the trustee's sale of her home. *Id.* at 216 ¶ 2, 311 P.3d at 238. She alleged,  
9 among other things, that assignments of a note and deed of trust contained  
10 misstatements and other defects. *Id.* at 217 ¶¶ 6-8, 311 P.3d at 239. The  
11 court agreed that the assignments misrepresented certain dates and the  
12 assignor's identity and that these misrepresentations "could be material" to  
13 certain future assignees. *Id.* at 221 ¶ 32, 311 P.3d at 243. But these  
14 misrepresentations were immaterial to *the plaintiff* because, as explained  
15 below, they "could have had no effect on [her] choice of actions." *Id.*  
16 Because the plaintiff "could not show that the assignments contained a  
17 *material* misstatement or false claim, she could not prevail on her § 33-  
18 420(A) claims." *Id.* at 222 ¶ 34, 311 P.3d at 244 (emphasis in original).

19 Plaintiff contends *Sitton's* emphasis on materiality applies only to the  
20 "material misstatement or false claim" prong of § 33-420(A), not the  
21 "forged," "groundless," or "otherwise invalid" prongs. But the opinion  
22 itself is not expressly limited to any statutory prong. In fact, part of the  
23 opinion characterized the plaintiff as attacking the original lender's  
24 "authority to make *valid* assignments." *Id.* at 220 ¶ 27, 311 P.3d at 242  
25 (emphasis added). And the opinion includes broad statements that seem  
applicable to the entire statute. *See, e.g., id.* at 216 ¶ 2, 311 P.3d at 238  
("We affirm because . . . A.R.S. § 33-420(A) does not support relief in  
favor of a person who could not have been harmed by a recorded  
misrepresentation."). *Sitton* thus suggests that materiality is a required  
element of any § 33-420(A) claim. Nothing in *Sitton* suggests that  
materiality is not a requirement.

17  
18 *Id.* at 8-9.

19 Here, Plaintiffs seek to circumvent the materiality requirement in the same way as  
20 the Plaintiff in *Kester*; specifically by stating that the document is invalid, and arguing  
21 that a claim of invalidity circumvents any requirement of materiality. As discussed  
22 above, as least as to forgery, this Court has agreed largely because the showing required  
23 for forgery under Arizona law is even higher than materiality. *See* footnote 2 above. As  
24 to invalidity, this Court is persuaded by Judge Wake's opinion that invalidity requires an  
25 impact on Plaintiffs for Plaintiffs to have a claim under the statute.

1 Here, Plaintiffs' expert claims to have found certain discrepancies in the chain of  
2 title.<sup>11</sup> However, Plaintiffs make no argument that those discrepancies impacted them in  
3 any way. Thus, even assuming the discrepancies exist, Plaintiffs have not shown how,  
4 consistent with *Sitton* and *Kester*, they would be actionable. Therefore, even if this Court  
5 goes beyond the mandate and considers a claim of "invalidity" the Court finds that  
6 Central Mortgage is entitled to summary judgment.

7 **C. Conclusion on Central Mortgage Motion for Summary Judgment**

8 Because the Court has concluded that Central Mortgage Company is entitled to  
9 summary judgment for the reasons stated above, the Court need not reach Central  
10 Mortgage's additional arguments in favor of summary judgment, specifically: that the  
11 MERS system is not invalid; and that A.R.S. § 33-420(d) is inapplicable to a claim under  
12 A.R.S. § 33-420(A).

13 **VII. Result**

14 Based on the foregoing,

15 **IT IS ORDERED** that MERSCORP Holdings, Inc.'s and Mortgage Electronic  
16 Registration Systems, Inc.'s motion for summary judgment against the Bilyeas (Doc.  
17 1987 & 56) is granted.

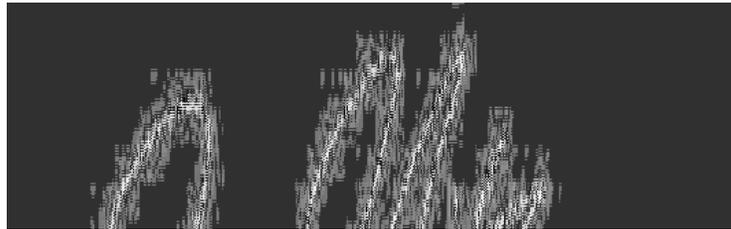
18 **IT IS FURTHER ORDERED** that Central Mortgage Company's motion for  
19 summary judgment (Doc. 2049 & 65) is granted.  
20  
21

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22 <sup>11</sup> Plaintiffs' expert report is at MD 09-2119, Doc. 2023-6 at 77-97. Unfortunately, the  
23 expert report is incomplete and not in an admissible or even reliable format. Specifically,  
24 the report claims to rely on (and include as exhibits) various documents from the public  
25 record. However, Plaintiffs' counsel did not file the complete report, and omitted all  
exhibits from the report. Therefore the Court cannot review the exhibits or confirm the  
findings/conclusions of the report. As far as the Court has discerned, the documents are  
not elsewhere in the record.

1           **IT IS FINALLY ORDERED** that the Clerk of the Court shall enter judgment<sup>12</sup> in  
2 favor of these Defendants and against the Bilyeas accordingly. The Clerk of the Court  
3 shall close CV 10-1550-PHX-JAT as a result of this Order. The Clerk of the Court shall  
4 file a copy of this Order in both the MD case number, and the member case number listed  
5 above.

6           Dated this 29th day of July, 2016.



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<sup>12</sup> This Court has previously been questioned for not using Rule 54(b) language when entering judgment in a case in this multi-district litigation. *Rollins v. Mortgage Electronic Registration Systems, Inc.*, 737 F.3d 1250 (9<sup>th</sup> Cir. 2013). The Court has diligently undertaken to attempt to determine whether such language is necessary at this time. First, the Court has presumed that all Defendants have moved for summary judgment relying on Plaintiffs' jurisdictional statement. (Doc. 2001-1). Second, the Court has reviewed the docket of the original member case filed at CV 10-0045-PHX-ROS (because neither party has given the Court any updates as to the status of that case), and determined that the case is closed. Based on these assumptions, the Court believes this Order completely resolves this member case. However, if either party disagrees, that party shall move for Rule 54(b) language within 3 days, and list for the Court what claims and parties remain in this case (either before this Court or before another Court).