

1 WO

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9

Mena Bishara,

) No. CV 11-1905-PHX-JAT

10

Plaintiff,

) **ORDER**

11

vs.

12

U.S. Bank Home Mortgage; a Corporation;  
13 MERS; US Bank NA; Does I through X  
inclusive,

14

Defendants.

15

16

Pending before the Court is Defendants' U.S. Bank NA d/b/a U.S. Bank Home  
17 Mortgage's ("U.S. Bank") and Mortgage Electronic Registration Systems, Inc.'s ("MERS")  
18 Motion to Dismiss (Doc. 4) and Plaintiff's Motion to Amend (Doc. 19). The Court now rules  
19 on the Motions.

20

**I. BACKGROUND**

21

In or around April 2008, Plaintiff executed a promissory note in the amount of  
22 \$830,231.00, in connection with a loan from U.S. Bank (Amended Complaint, Doc. 1-1 at  
23 5). The promissory note was secured by a Deed of Trust recorded against the property  
24 located at 17422 North 100th Place, Scottsdale, Arizona 85255 (the "Property"). (*Id.*).  
25 Plaintiff alleges that he signed a Deed of Trust intended to secure the promissory note on the  
26 Property, but the Deed of Trust that was recorded was not, in its entirety, the same Deed that  
27 he signed. (*Id.* at 3, ¶ 10 and 2, ¶6b). Plaintiff alleges that he was never given a copy of the  
28 Deed of Trust that he actually signed. (*Id.* at 3, ¶ 10). Plaintiff alleges that his signature on

1 pages 20 and 23 of the Deed of Trust and his initials on pages 19 and 23 of the Deed of Trust  
2 were forged on the Deed of Trust that was recorded.<sup>1</sup> (*Id.* at 2, ¶ 6b and Exhibit B, Doc. 1-1  
3 at 82-85).

4 On May 6, 2010, a Notice of Trustee’s Sale was recorded, which set the Trustee’s sale  
5 of the Property for August 5, 2010. (Doc. 1-1 at 75). Exhibit A to the Notice of Trustee’s  
6 Sale was a Statement of Breach or Non-Performance, stating that Plaintiff had failed to make  
7 monthly payments on the loan from May 1, 2009 through May 6, 2010 (the date of the  
8 Notice). (Doc. 1-1 at 77). Plaintiff admits that he fell behind on his mortgage payments. (*Id.*  
9 at 7).

10 Plaintiff alleges that, after the Trustee’s Sale was scheduled, he attempted to secure  
11 a loan modification agreement with U.S. Bank. (*Id.* at 7). Plaintiff alleges that U.S. Bank  
12 instructed the Trustee to postpone the sale of the Property several times while they attempted  
13 to negotiate a loan modification. (*Id.*). Plaintiff alleges that “Defendants drag the process  
14 for a long time to exhaust Plaintiff effort to modify the loan,” so he “gave up on Defendants  
15 modification and decided to secure new loan to pay Defendants but in the process of getting  
16 a copy of the Deed of Trust . . . Plaintiff discovered the fabricated recorded deed of trust  
17

---

18  
19 <sup>1</sup> The Court notes that these page numbers do not actually correspond to page  
20 numbers on the Deed of Trust that Plaintiff attached to his Complaint. The document that  
21 Plaintiff refers to as the “Deed of Trust” attached to the Complaint contains the following  
22 documents: Deed of Trust, 15 pages; Exhibit A, 1 page; Initial Interest and Adjustable Rate  
23 Rider, 4 pages; and Planned Unit Development Rider, 3 pages. The Court notes that these  
24 documents have hand-written sequential numbering in the lower right hand corner.

25 Accordingly, the Court will assume for the purposes of this Order that Plaintiff  
26 disputes the signature on page 4 of 4 of the Initial Interest Adjustable Rate Rider (page 20  
27 when counting sequentially and bearing handwritten number “20” in the lower right hand  
28 corner), page 3 of 3 of the Planned Unit Development Rider (page 23 when counting  
sequentially and bearing handwritten number “20” in the lower right hand corner), and the  
initials on page 3 of 4 of the Initial Interest Adjustable Rate Rider (page 19 when counting  
sequentially and bearing handwritten number “19” in the lower right hand corner). Although  
Plaintiff alleges the “initials” on page 23 are also a forgery, there are no initials on page 23  
of the document provided by Plaintiff.

1 which prevented Plaintiff ability to secure a loan on the property.” (*Id.* at 7).

2 Plaintiff filed suit in Maricopa County Superior Court on May 3, 2011. (*Id.* at 58).  
3 On August 22, 2011, Plaintiff amended his Complaint. (*Id.* at 5). The Amended Complaint  
4 raises claims for unjust enrichment, fraudulent reconveyance, breach of good faith and fair  
5 dealing, and seeks damages of: a Declaratory Judgment that Defendants are in violation of  
6 Arizona law by recording a forged deed of trust with the Maricopa County Recorder, a  
7 preliminary injunction stopping the foreclosure and sale of the Property until production of  
8 the original deed of trust, an Order that Defendants return all monies received from Plaintiff  
9 under a forged deed of trust, and emotional and punitive damages. (*Id.* at 5-9).

10 On September 1, 2011, Plaintiff filed an Application for Temporary Restraining Order  
11 seeking to enjoin the Trustee’s Sale scheduled for September 16, 2011 at 10:00 a.m. (*Id.* at  
12 114). On September 20, 2011, Judge Michael R. McVey of the Maricopa County Superior  
13 Court entered the following Minute Entry:

14 On September 1, 2011, Plaintiff filed an Application for  
15 Temporary Protective Order. The Court was unwilling to issue  
16 a temporary restraining order based on the application.  
17 However, at the direction of the Court, court staff advised  
18 Plaintiff that it would set an Order to Show Cause Hearing.  
19 Plaintiff was advised to provide the Court with an Order to  
20 Show Cause for the signature of the Court. The Court has heard  
21 nothing from Plaintiff since then. Presumably the trustee sale  
22 scheduled for September 16, 2011, has either occurred, or has  
23 been postponed. No further action will be taken at this time.

24 (*Id.* at 118).

25 The case was removed to this Court on September 27, 2011. (*Id.*).

26 On October 4, 2011, Defendants filed a Motion to Dismiss Plaintiff’s Amended  
27 Complaint. (Doc. 4). Defendants argue that Plaintiff’s claims should be dismissed pursuant  
28 to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can  
be granted and because Plaintiff’s claims for forgery are time barred, were waived, or are in  
the nature of fraud and not adequately pled as required by Federal Rule of Civil Procedure  
9(b). (Doc. 4 at 1).

## II. LEGAL STANDARD

1                   **A.     Rule 12(b)(6) of the Federal Rules of Civil Procedure**

2                   To survive a Rule 12(b)(6) motion for failure to state a claim, a complaint must meet  
3 the requirements of Rule 8. Rule 8(a)(2) requires a “short and plain statement of the claim  
4 showing that the pleader is entitled to relief,” so that the defendant has “fair notice of what  
5 the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
6 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

7                   Although a complaint attacked for failure to state a claim does not need detailed  
8 factual allegations, the pleader’s obligation to provide the grounds for relief requires “more  
9 than labels and conclusions, and a formulaic recitation of the elements of a cause of action  
10 will not do.” *Id.* (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The factual  
11 allegations of the complaint must be sufficient to raise a right to relief above a speculative  
12 level. *Id.*

13                   Rule 8’s pleading standard demands more than “an unadorned, the-defendant-  
14 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, \_\_\_, 129 S. Ct. 1937,  
15 1949 (2009) (citing *Twombly*, 550 U.S. at 555). A complaint that offers nothing more than  
16 blanket assertions will not suffice. To survive a motion to dismiss, a complaint must contain  
17 sufficient factual matter, which, if accepted as true, states a claim to relief that is “plausible  
18 on its face.” *Iqbal*, 129 S. Ct. at 1949. Facial plausibility exists if the pleader pleads factual  
19 content that allows the court to draw the reasonable inference that the defendant is liable for  
20 the misconduct alleged. *Id.* Plausibility does not equal “probability,” but plausibility  
21 requires more than a sheer possibility that a defendant has acted unlawfully. *Id.* “Where a  
22 complaint pleads facts that are ‘merely consistent’ with a defendant’s liability, it ‘stops short  
23 of the line between possibility and plausibility of entitlement to relief.’” *Id.* (quoting  
24 *Twombly*, 550 U.S. at 557).

25                   Further, in deciding a motion to dismiss under Rule 12(b)(6), the Court must construe  
26 the facts alleged in a Complaint in the light most favorable to the drafter of the Complaint,  
27 and the Court must accept all well-pleaded factual allegations as true. *Shwarz v. United*  
28 *States*, 234 F.3d 428, 435 (9th Cir. 2000). Nonetheless, the Court does not have to accept

1 as true a legal conclusion couched as a factual allegation, *Papasan*, 478 U.S. at 286, or an  
2 allegation that contradicts facts that may be judicially noticed by the Court, *Shwarz*, 234 F.3d  
3 at 435.

#### 4 **B. Rule 9(b) of the Federal Rules of Civil Procedure**

5 With respect to Plaintiffs' allegations of fraud, Rule 9(b) governs the pleading  
6 standard. "In alleging fraud or mistake, a party must state with particularity the  
7 circumstances constituting fraud or mistake." Fed.R.Civ.P. 9(b). Rule 9(b) requires  
8 allegations of fraud to be "specific enough to give defendants notice of the particular  
9 misconduct which is alleged to constitute the fraud charged so that they can defend against  
10 the charge and not just deny that they have done anything wrong." *Bly-Magee v. California*,  
11 236 F.3d 1014, 1019 (9th Cir. 2001). "While statements of the time, place and nature of the  
12 alleged fraudulent activities are sufficient, mere conclusory allegations of fraud are  
13 insufficient." *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

14 Further,

15 Rule 9(b) does not allow a complaint to merely lump multiple  
16 defendants together but requires plaintiffs to differentiate their  
17 allegations when suing more than one defendant and inform  
18 each defendant separately of the allegations surrounding his  
19 alleged participation in the fraud. In the context of a fraud suit  
20 involving multiple defendants, a plaintiff must, at a minimum,  
21 identify the role of each defendant in the alleged fraudulent  
22 scheme.

23 *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007) (quotations and citations  
24 omitted).

#### 25 **III. ANALYSIS**

26 Plaintiff's Complaint includes three causes of action: (1) unjust enrichment, (2)  
27 fraudulent reconveyance, and (3) breach of good faith and fair dealing. All three of these  
28 Counts arise from the alleged forgery of Plaintiff's Deed of Trust and Plaintiff's allegation  
that Defendants failed to give him a loan modification.

To survive a Rule 12(b)(6) motion to dismiss for failure to state a claim, a complaint  
must meet the requirements of Rule 8. Plaintiff has failed to plead enough facts in his

1 Complaint to state a claim upon which relief can be granted and the facts pleaded in the  
2 Complaint do not support theories of liability for the claims that Plaintiff has alleged against  
3 Defendants. Further, Plaintiff has failed to individualize Defendants by identifying which  
4 wrongdoing was committed by which Defendant. This has left Defendants and the Court  
5 with the impossible task of guessing which claims are asserted against which Defendant.  
6 Rather than attempting to cure this problem in his Response to Defendants' Motion to  
7 Dismiss, Plaintiff simply repeats and elaborates on facts originally alleged in his Complaint.  
8 The Court will discuss these facts in more detail below.

9 **A. The Loan Modification**

10 The Court is unable to determine if any of the Counts in the Complaint relate to  
11 Plaintiff's failure to obtain a loan modification. However, in his Response to Defendants'  
12 Motion to Dismiss, Plaintiff argues that he "filed the original action against Defendants to  
13 get a loan Modification." (Doc. 9 at 1). This is not an appropriate use of the judicial process  
14 unless Plaintiff is able to allege some wrongdoing on Defendants' part that would entitle him  
15 to a loan modification. Plaintiff has failed to do so.

16 Plaintiff alleges that he "fell behind on his mortgage payment," and "attempted to  
17 secure a loan modification with US Bank Home Mortgage," but due to Defendants' alleged  
18 "dragging out" of the modification process, "Plaintiff gave up on Defendants [sic]  
19 modification and decided to secure [sic] new loan to pay Defendants." (Doc. 1-1 at 7). The  
20 Court can ascertain no viable cause of action from Plaintiff's allegations relating to his  
21 failure to obtain a loan modification.

22 **B. The Forgery**

23 All three of the Counts of Plaintiff's Complaint appear to arise from the alleged  
24 forgery of Plaintiff's signature on the Deed of Trust.<sup>2</sup> Plaintiff has failed to plead enough  
25 facts linking this alleged forgery to Plaintiff's claims against Defendants. Plaintiff

---

26  
27 <sup>2</sup> The Court notes that the signatures and initials that Plaintiff actually alleges are  
28 forgeries are not contained in his Deed of Trust, but are rather contained in documents  
recorded with or supplementary to the Deed of Trust. (*See* Footnote 1).

1 acknowledges that he entered into a loan agreement with U.S. Bank and that he executed a  
2 Deed of Trust securing that mortgage. (Doc. 1-1 at 7). Plaintiff’s main allegation against  
3 Defendants is that, after he signed the Deed of Trust, Defendants allegedly recorded a  
4 different Deed of Trust and forged his signature on that Deed. (Doc. 1-1 at 7). Plaintiff  
5 alleges that the Property faces foreclosure “as a result of Defendants recording a deed of  
6 trust.” (*Id.*). However, Plaintiff fails to articulate any connection between the foreclosure  
7 proceedings and the allegedly forged Deed of Trust.

8 Further, aside from alleging that his signature and initials were forged on certain pages  
9 of the Deed of Trust that was recorded, Plaintiff has failed to allege the specific terms that  
10 were changed from the Deed of Trust that he signed and the Deed of Trust that was recorded.  
11 Although not alleged in his Complaint, in his Response to the Motion to Dismiss, Plaintiff  
12 argues that “The terms of the deed are not the original terms that Plaintiff signed on April  
13 2008.” (Doc. 9 at 2). However, this allegation is vague and Plaintiff does not provide any  
14 specifics about the terms that were changed. The only specific that Plaintiff provides is that  
15 certain signatures and initials on the recorded Deed of Trust “are like robot signing since the  
16 hand that signed is not shaking while doing so.” (Doc. 9 at 2).

17 While Defendants may be subject to criminal liability for allegedly forging Plaintiff’s  
18 signature on a Deed of Trust, Plaintiff has failed to identify any specific facts or causes of  
19 action that would entitle him to the relief he seeks in his Complaint as a result of such a  
20 forgery. Further, while Plaintiff names MERS as a Defendant in this action, Plaintiff has  
21 failed to assert any facts that relate to wrongdoing by MERS.<sup>3</sup>

22 **C. Plaintiff has Failed to State a Claim Upon Which Relief Can Be**  
23 **Granted**

24 Plaintiff alleges that Defendants forged his signature on a Recorded Deed of Trust.  
25 Plaintiff has failed to provide the Court with further facts that would allow the Court to

---

26  
27 <sup>3</sup> In his Reply in Support of his Motion to Amend and at Oral Argument on the  
28 Motion to Amend, Plaintiff conceded that MERS should be dismissed from this action.  
(Doc. 23 at 2). Accordingly, MERS will be dismissed with prejudice.

1 properly analyze Plaintiff's causes of action of unjust enrichment, fraudulent reconveyance,  
2 or breach of good faith and fair dealing. Further, Plaintiff has failed to connect this alleged  
3 forgery to the relief he is seeking. Accordingly, Plaintiff's Complaint fails to comply with:  
4 notice pleading requirements of Rule 8 of the Federal Rules of Civil Procedure, the  
5 heightened standard for pleading fraud required by Rule 9(b) of the Federal Rules of Civil  
6 Procedure, and has failed to state a claim upon which relief can be granted pursuant to Rule  
7 12(b)(6) of the Federal Rules of Civil Procedure.

#### 8 **IV. LEAVE TO AMEND**

9 Plaintiff filed a Motion to Amend his Complaint and attached a copy of his proposed  
10 Amended Complaint to that Motion. Defendants argue that the Court should deny Plaintiff  
11 leave to amend because allowing leave to amend would be futile. "Leave to amend need not  
12 be given if a complaint, as amended, is subject to dismissal." *Moore v. Kayport Package*  
13 *Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989) (internal citations omitted).

14 In his Amended Complaint, Plaintiff alleges fraudulent recording pursuant to Arizona  
15 Revised Statutes section 33-420(A) (Second Cause of Action) based on his allegations that  
16 Defendant recorded a Deed of Trust in which Plaintiff's signature and initials were forged.  
17 Plaintiff also asserts a claim for intentional infliction of emotional distress (Third Cause of  
18 Action) based on his allegations that Defendant blatantly disregarded Plaintiff's request that  
19 the non-judicial foreclosure be halted based on Plaintiff's discovery that the signatures on  
20 the Deed of Trust were forged. As a result of these alleged violations, Plaintiff seeks Quiet  
21 Title to the Property (First Cause of Action), damages, and reasonable costs and attorneys'  
22 fees.

#### 23 **A. Arizona Revised Statutes section 33-420 (Second Cause of Action)** 24 **and Quiet Title (First Cause of Action)**

25 Defendants argue that it would be futile to allow Plaintiff to amend his Complaint  
26 based on violations of section 33-420(A)<sup>4</sup> because the statute of limitations for such a claim

---

27 <sup>4</sup> Arizona Revised Statutes section 33-420(A) provides,  
28



1 has passed. The statute of limitations for violation of section 33-420(A) is one year. *See*  
2 Ariz. Rev. Stat. § 12-541(5) (“There shall be commenced and prosecuted within one year  
3 after the cause of action accrues, and not afterward, the following actions: . . . Upon liability  
4 created by statute, other than a penalty or forfeiture.”).

5 In this case, the Deed of Trust was recorded on April 18, 2008 and Plaintiff filed his  
6 Complaint in Maricopa County Superior Court on May 3, 2011. Plaintiff argues that, even  
7 if the one year statute of limitations applies to his claim, the statute of limitations was tolled  
8 because he did not discover the forgery until he looked up his Deed of Trust through the  
9 Maricopa County recorder within a year of filing his lawsuit. Even assuming the discovery  
10 rule<sup>5</sup> applies in this case, it is clear from the face of Plaintiff’s Complaint that he should have  
11 followed up on obtaining a copy of this Deed, either through further efforts to obtain a copy  
12 from Defendants or by searching the publicly recorded documents on the Property. Plaintiff  
13 acknowledges that he signed a Deed of Trust at the lender office in Las Vegas, but was never  
14 given a copy of the Deed of Trust. (Doc. 1-1 at 7). Plaintiff further acknowledges that he  
15 was told he would receive a copy in the mail, but a copy never arrived. (*Id.*). “Under the  
16 discovery rule, a plaintiff need not know *all* the facts underlying a cause of action to trigger  
17 accrual [of the statute of limitations], but the plaintiff must at least possess a minimum

---

18  
19 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 document  
23 is forged, groundless, contains a material misstatement or false  
24 claim or is otherwise invalid is liable to the owner or beneficial  
25 title holder of the real property for the sum of not less than five  
26 thousand dollars, or for treble the actual damages caused by the  
27 recording, whichever is greater, and reasonable attorney fees  
28 and costs of the action.

Ariz. Rev. Stat. § 33-420(A).

<sup>5</sup> Under the discovery rule, a cause of action begins to accrue when a plaintiff knew  
or should have known of the cause of action. *Cannon v. Hirsch Law Office, P.C.*, 213 P.3d  
320, 330 (Ariz. Ct. App. 2009) (internal citation omitted).

1 requisite of knowledge sufficient to identify that a wrong occurred and caused injury.”  
2 *Cannon v. Hirsch Law Office, P.C.*, 213 P.3d 320, 330-31 (Ariz. Ct. App. 2009) (internal  
3 quotations and citations omitted).

4 Under these circumstances, where Plaintiff simply needed to perform a search of the  
5 title of his Property to get a copy of the allegedly forged Deed of Trust and was told he  
6 would receive a copy of such Deed of Trust, but never did, it would have taken minimal  
7 effort and would have been reasonable for Plaintiff to search the contents of the public  
8 records on the Property. *See Transamerica Ins. Co. v. Trout*, 701 P.2d 851 (Ariz. Ct. App.  
9 1985) (“The discovery dates from the time that he, by exercise of reasonable diligence, might  
10 have discovered the fraud.”); *see also Serrano v. Serrano*, No. 1 CA-CV 10-0649, 2012 WL  
11 75639, at \*4 (Ariz. Ct. App. Jan. 10, 2012) (where quit claim deed was recorded containing  
12 an allegedly fraudulent signature, Court held that Plaintiff should have been aware of the  
13 need to investigate when the deed was recorded because “[h]ad [Plaintiff] conducted any  
14 reasonable investigation about the status of the title . . . she could have discovered the  
15 fraudulent conduct she now alleges” and thus, the statute of limitations would not be tolled).  
16 Here, it is clear from the face of Plaintiff’s Complaint that the statute of limitations would  
17 have begun to run within weeks of Plaintiff signing the Deed of Trust on the Property, after  
18 he realized that Defendants refused to provide him with a copy of the Deed of Trust that he  
19 signed.<sup>6</sup> Because over three years passed between the recording of the Deed of Trust and  
20 Plaintiff’s Complaint, the statute of limitations for his section 33-420 action has run and,  
21 thus, it would be futile to allow Plaintiff to amend his Complaint to allege a violation of  
22 section 33-420.

23 Finally, Plaintiff acknowledges that his cause of action for quiet title is dependent on  
24 \_\_\_\_\_

25 <sup>6</sup> Further, although his allegations are somewhat inconsistent, it appears that Plaintiff  
26 only challenges signatures on documents that were recorded with or supplementary to the  
27 Deed of Trust, so that even if the Court were to declare those documents “void,” it does not  
28 appear that the Court could declare the Deed of Trust void and thus could not grant Plaintiff  
the relief he is seeking. However, the Court need not further address this because the statute  
of limitations has run.

1 obtaining relief under section 33-420, and thus, allowing Plaintiff to amend his cause of  
2 action for quiet title would be futile.

3 **B. Intentional Infliction of Emotional Distress**

4 Defendants argue that Plaintiff has failed to state a claim upon which relief can be  
5 granted based on intentional infliction of emotional distress because that claim is based on  
6 his forgery claim.

7 The elements of a cause of action for intentional infliction of emotional distress are  
8 (1) “the conduct by the defendant must be ‘extreme’ and ‘outrageous;” (2) “the defendant  
9 must either intend to cause emotional distress or recklessly disregard the near certainty that  
10 such distress will result from his conduct;” and (3) “severe emotional distress must indeed  
11 occur as a result of defendant’s conduct.” *Mintz v. Bell Atl. Sys. Leasing Int’l., Inc.*, 905 P.2d  
12 559, 562-563 (Ariz. Ct. App. 1995) (internal quotations and citations omitted).

13 Accepting as true that Defendants refused to halt the foreclosure when Plaintiff  
14 claimed signatures on the Deed of Trust were forged, the Court does not find that this  
15 conduct rises to the level of extreme and outrageous conduct needed to state a claim for  
16 intentional infliction of emotional distress. Accordingly, allowing Plaintiff to amend the  
17 cause of action for intentional infliction of emotional distress would be futile.

18 **V. CONCLUSION**

19 Based on the foregoing,

20 **IT IS ORDERED** that Defendants’ U.S. Bank NA d/b/a U.S. Bank Home Mortgage’s  
21 (“U.S. Bank”) and Mortgage Electronic Registration Systems, Inc.’s (“MERS”) Motion to  
22 Dismiss (Doc. 4) is granted with prejudice.<sup>7</sup>

---

23  
24 <sup>7</sup> In their Motion to Dismiss, Defendants requested attorneys’ fees pursuant to  
25 Arizona Revised Statutes sections 12-341, 12-341.01, 12-349, 28 U.S.C. section 1927, and  
26 Federal Rule of Civil Procedure 11. The Court finds that Defendants are not entitled to  
27 attorneys’ fees under 28 U.S.C. section 1927, Federal Rule of Civil Procedure 11 or Arizona  
28 Revised Statutes section 12-349. Further, it does not appear to the Court that this action  
arises out of contract so that attorneys’ fees would be appropriate under Arizona Revised  
Statutes section 12-341.01. *See In re Estate of Olson*, 224 P.3d 938, 943 (Ariz. Ct. App.

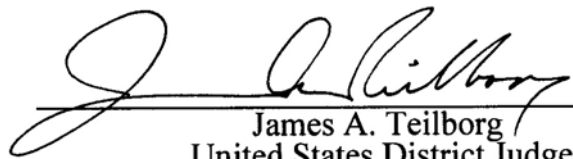
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS FURTHER ORDERED** that Plaintiff’s Motion to Amend (Doc. 19) is denied.

**IT IS FINALLY ORDERED** that any Motion for Attorneys’ Fees shall be filed within fourteen days of the date of this Order.

The Clerk of the Court shall enter judgment for Defendants.

DATED this 7th day of May, 2012.

  
\_\_\_\_\_  
James A. Teilborg  
United States District Judge

2010). However, to the extent that Defendants wish to pursue an award of attorneys’ fees and costs, the Court will consider whether such an award is appropriate upon Defendants’ filing of a motion for attorneys’ fees in compliance with LRCiv. 54.2. Any such motion shall be filed within fourteen days of the date of this Order. Further, to the extent that Defendants seek to recover taxable costs, compliance with LRCiv. 54.1 is mandatory. *See* LRCiv. 54.1; *see also Felix v. Pic-N-Run, Inc.*, No. CV 09-8015-PCT-JAT, 2012 WL 551645, at \*4 (D. Ariz. Feb. 21, 2012) (“Awarding taxable costs is governed by federal law.”) (internal citation omitted).