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

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John R. Piccini, an individual,

No. CV-08-8125-PCT-DGC

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Plaintiff,

**ORDER**

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vs.

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Wells Fargo Auto Finance, Inc., a  
California corporation; and Transunion  
LLC, a business entity domiciled in  
Delaware,

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Defendants.

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Defendant Wells Fargo Auto Finance, Inc. has filed a motion for attorney’s fees and costs. Dkt. #28. The motion has been fully briefed. Dkt. ##30, 32. The Court will deny the motion.

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Plaintiff’s complaint asserts claims for violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, and defamation. Dkt. #1. Plaintiff claims that Defendants published false credit information about him after he entered a truck lease agreement with Wells Fargo. *Id.* Wells Fargo invoked an arbitration clause in the lease agreement to prevail on its motion to compel arbitration. Dkt. ##21, 25. Wells Fargo now moves for attorney’s fees and costs incurred in enforcing its right to arbitration.

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Under Arizona law, “[i]n any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees.” A.R.S. § 12-

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1 341.01(A). “This statute allows attorney’s fees only in the case of breach of contract, express  
2 or implied.” *Ford v. Revlon, Inc.*, 734 P.2d 580, 587-88 (Ariz. 1987). Plaintiff’s complaint  
3 does not allege a breach of contract, nor can it be said that the statutory and tort claims  
4 alleged in the complaint would not have arisen but for breach of the lease agreement. Wells  
5 Fargo argues that its arbitration motion (Dkt. #21) was based on the lease agreement, but that  
6 is not the test under A.R.S. § 12-341.01(A). The question is whether the claims in this  
7 lawsuit arose out of contract. Because they did not, attorney’s fees are not available under  
8 the statute.

9 **IT IS ORDERED** that Defendant Wells Fargo’s motion for attorney’s fees (Dkt. #28)  
10 is **denied**.

11 DATED this 6th day of April, 2009.

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David G. Campbell  
United States District Judge