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11 Attorneys for Defendant Hilton Casitas
12 Homeowners Association

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

14 **IN AND FOR THE COUNTY OF MARICOPA**

15 R.L. WHITMER,

16 Plaintiff,

17 vs.

18 HILTON CASITAS HOMEOWNERS
19 ASSOCIATION, also known as HILTON
20 CASITAS COUNCIL OF
21 HOMEOWNERS, also known as HILTON
22 CASITAS COUNCIL OF CO-OWNERS,

23 Defendant.

Case No. CV2021-050888

**OBJECTION TO PLAINTIFF'S
REQUEST FOR A RULE 16(d),
ARIZ.R. CIV.P. SCHEDULING
CONFERENCE AND VACATING THE
EVIDENTIARY HEARING SCHEDULED
FOR JUNE 11, 2021**

(Assigned to Honorable Sara Agne)

24 Defendant Hilton Casitas Homeowners Association (the "Association") by and through
undersigned counsel, hereby objects to Plaintiff R. L. Whitmer's Request for an ARCP Rule
16(d) Scheduling Conference and Vacating the Evidentiary Hearing Scheduled for June 11,
2021 ("Motion").

Plaintiff alleges counsel for the Association, Timothy Butterfield, has "refused" to
communicate with him and, as a result, that he is unable to complete disclosure and discovery.
However, Plaintiff's obligations to disclose information and documentation is not dependent
upon receiving any information from the Association. Plaintiff bears an independent

1 responsibility to disclose his evidence as required pursuant to Arizona Rules of Civil Procedure
2 26 and 26.1.

3 Pursuant to this Court's Order dated April 29, 2021, the Association provided its Initial
4 Disclosure Statement to Plaintiff on May 14, 2021. Said Disclosure Statement included the basis
5 for the Association's position and its defenses to Plaintiff's claims. *See*, Timothy Butterfield's
6 Declaration ("Declaration"), attached hereto as Exhibit 1 and incorporated herein by this
7 reference. As set forth in the Declaration at ¶¶2-4, Plaintiff demands that the Association's
8 counsel provide its legal research to him. Plaintiff should conduct his own legal research in
9 support of his claims. Plaintiff's refusal to do his own legal research should not form the basis
10 of a Rule 16 conference nor postponement of the evidentiary hearing currently scheduled for
11 June 11, 2021.

12 Furthermore, as Mr. Butterfield states in his Declaration, during the return hearing for the
13 Order to Show Cause on April 23, 2021, the Association set forth the actions it intends to take
14 to resolve Plaintiff's complaint and the anticipated timeline for completing those actions. *See*,
15 Declaration, ¶¶7-8. The Association continues diligently to work toward completing those
16 actions, which it anticipates will resolve Plaintiff's claims and result in the voluntary dismissal
17 of this action prior to June 11, 2021, resulting in the Court vacating the evidentiary hearing.

18 Therefore, the Association objects to vacating the evidentiary hearing at this time or
19 scheduling a Rule 16 conference. The Association respectfully requests that this Court deny
20 Plaintiff's request for a Rule 16 Scheduling Conference. The Association further requests that
21 this Court deny Plaintiff's request to vacate the evidentiary hearing in favor of allowing the
22 Association to complete the actions it began prior to Plaintiff's action being filed; i.e., conducting
23 the special meeting on May 19, 2021 to ratify its budget and to retain the services of an
24 accountant to provide the very services demanded by Plaintiff. *See*, Declaration, ¶¶7-8.

25 The Association provides a proposed form of Order for the convenience of the Court.

1 RESPECTFULLY SUBMITTED this 19th day of May, 2021.

2 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

3 By: /s/ 

4
5 Edith I. Rudder, Esq.
6 Timothy Butterfield, Esq.
7 1400 East Southern Avenue, Suite 400
8 Tempe, Arizona 85282-5691
9 *Attorneys for Defendant*

10 **ORIGINAL** of the foregoing e-filed
11 this 19th day of May, 2021.

12 **COPY** of the foregoing mailed/e-mailed
13 This 19th day of May, 2021, to:

14 R.L. Whitmer
15 rlw@fulcrumgroup.biz
16 6333 N. Scottsdale Road, Casita 21
17 Scottsdale, Arizona 85250
18 *Plaintiff Pro Per*


19 By: /s/ 



Exhibit 1



1 **CARPENTER, HAZLEWOOD,**
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18 Defendant.

Case No. CV2021-050888

**DECLARATION OF
TIMOTHY D. BUTTERFIELD**

(Assigned to Honorable Sara Agne)

17 I, Timothy D. Butterfield, hereby declare and state as follows:

18 1. I am an attorney with the law firm of Carpenter, Hazlewood, Delgado & Bolen,
19 LLP, and I am one of the attorneys of record for the Hilton Casitas Homeowners Association
20 (the “Association”).

21 2. On April 23, 2021, following the Order to Show Cause Hearing via Court
22 Connect, I personally called and spoke with Plaintiff R. L. Whitmer regarding potential
23 resolution to the instant case—including, but not limited to, what actions Plaintiff would require
24 in order to voluntarily stipulate to dismiss the case.

Exhibit A

1 **CARPENTER, HAZLEWOOD,**
2 **DELGADO & BOLEN, LLP**
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23 Defendant.

Case No. CV2021-050888

**HILTON CASITAS HOMEOWNERS
ASSOCIATION'S INITIAL DISCLOSURE
STATEMENT**

(Assigned to Honorable Sara Agne)

24 Defendant Hilton Casitas Homeowners Association (the "Association") hereby submit
its initial Disclosure Statement in compliance with Arizona Rules of Civil Procedure 26.1.
This Disclosure Statement and its contents represent the product of the investigation to date.
Further investigation and discovery may bring to light additional information that may have a
bearing on the Association' theories of defense. Accordingly, the Association do not intend
this Disclosure Statement to represent their complete presentation of his case, but is merely a
preliminary Disclosure Statement until further information is obtained regarding the specific
claims against the Association. This Disclosure Statement is subject to supplementation,
amendment, explanation, change and amplification. The Association incorporates into this
Disclosure Statement all information contained in pleadings, discovery, depositions taken or
to be taken, documents and/or samples identified and/or produced during discovery.

1 The Association reserves the right to supplement this Disclosure Statement as the
2 litigation continues. The Association also reserves the right to offer as an exhibit any document
3 fitting within the following categories:

- 4 A. All transcripts of depositions and any document marked as a deposition exhibit;
- 5 B. All parties' responses to requests for discovery, including documents listed and/or
6 produced in their discovery responses;
- 7 C. Any document listed by any party in their disclosure statements, supplements
8 and/or amendments thereto, formal and/or informal, whether or not withdrawn;
- 9 D. All documents and exhibits listed in each party's list of witnesses and exhibits,
10 and all amendments and/or supplements thereto;
- 11 E. All answers to uniform interrogatories, non-uniform interrogatories, and requests
12 for admissions in this matter;
- 13 F. Any document listed by any party in their discovery responses;
- 14 G. All pleadings and motions filed with this cause of action, and all exhibits
15 amended therewith;
- 16 H. All correspondence between counsel;
- 17 I. Any applicable statutes, codes or ordinances;
- 18 J. Reports of all parties' experts, and all supporting documentation, data, video
19 presentations, learned treatises, publications, studies, and relevant materials;
- 20 K. Enlargements of graphs, photographs and/or other exhibits; and
- 21 L. All exhibits identified throughout continued disclosure and discovery.

22 **I. FACTUAL BASIS OF DEFENSE**

23 In 2020, there was a complete change in the Association's Board of Directors based, at
24 least in part, to litigation and/or the threat of litigation from Plaintiff. The new Board has and
25 continues to work as expeditiously as possible to ensure that the Association complies with all
26 requirements of the governing documents and Arizona law. The Association is in the process
of obtaining owner approval for the 2021 annual budget. Further, without admission or

1 agreement to the requirement to do so, the Association voluntarily agreed to retain a Certified
2 Public Accountant (“CPA”) to complete the Association’s annual financial audit, review or
3 compilation. The Association anticipates that the financial audit, review or compilation
4 will be completed on or around the end of May 2021.

4 **II. LEGAL THEORIES OF DEFENSE**

5 The Association asserts the following defenses at this time:

6 **A. The Administrative Law Judge Decision is not Effective or Binding**

7
8 The Department of Fire, Building and Life Safety Dispute Process is an
9 unconstitutional violation of the Separation of Powers Doctrine. *Gelb v. Dep’t of Fire, Bldg.*
10 *& Life Safety*, 225 Ariz. 515, 516, 241 P.3d 512, 513 (Ct. App. 2010), review denied and
11 ordered republished sub nom. *Gelb v. Dept. of Fire Bldg. & Life/Sedona Casa*, 2011 WL
12 2028520 (Ariz. May 24, 2011) (finding administrative process violated separation of powers
13 when applied to disputes involving planned communities). As such, Plaintiff cannot rely upon
14 the Administrative Law Judge Decision as the basis for his claims.

15 Moreover, even if the administrative dispute process was valid, the administrative law
16 judge was limited in the relief that he could provide to an order that, “any party to abide by the
17 statute, condominium documents, community documents or contract provision at issue and
18 may levy a civil penalty on the basis of each violation.” A.R.S. § 41-2198.02 (2015). That is,
19 the Administrative Law Judge did not have authority to issue an injunction against any future
20 conduct of the Association.

17 **B. Arizona Revised Statute § 33-1243(J)**

18 By its plain language, A.R.S. § 33-1243(J) merely requires that the board of directors
19 provide for an annual financial audit, review or compilation of the association. There is no
20 requirement that the annual financial audit, review or compilation be completed by a CPA,
21 “[u]nless any provision in the condominium documents requires an annual audit by a
22 certified public accountant.” *Id.*

23 The Complaint goes to great lengths to specify that the Complaint does not arise out
24 of contract—i.e., the governing documents—and is purely a matter of statutory
25 compliance. In taking this position, Plaintiff concedes that the governing documents do not
26 require the Association to use a CPA because, in fact, the governing documents make no
such requirement.

1 **C. Other Defenses**

2 The Association raises all of those defenses set forth in Arizona Rules of Civil
3 Procedure 8 and 12(b), as applicable. Additional defenses when known or discovered through
4 discovery will be asserted and this section will be supplemented. Although the Association
5 does not presently have specific facts in support of the additional defenses, the Association
6 hereby place opposing counsel on notice that they raise the following affirmative defenses
7 which, through subsequent discovery may, indeed, be supported by the facts: privilege and/or
8 immunity, abatement, lack of jurisdiction over the subject matter, lack of jurisdiction over the
9 person, arbitration and award, accord & satisfaction, discharge in bankruptcy, duress,
10 estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res
11 judicata, statute of frauds, insufficiency of process and insufficiency of service of process and
12 waiver.

13 **III. ANTICIPATED TRIAL WITNESSES**

- 14 1. R.L Whitmer
15 6333 North Scottsdale Road, Casita 21
16 Scottsdale, Arizona 85250
17 *Plaintiff Pro Per*

18 Without waiving objections, Plaintiff may be called to testify regarding the allegations
19 in the Complaint. Plaintiff is expected to testify consistent with his discovery responses and
20 deposition testimony, if any.

- 21 4. Representatives of Defendant Hilton Casas Homeowners Association
22 c/o CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP
23 1400 E. Southern Avenue, Suite 400
24 Tempe, Arizona 85282-5691
25 *Attorneys for Defendants*

26 Representatives of Defendant Hilton Casas Homeowners Association, including but
not limited to Board President Joanna O’Neal, may be called to testify regarding the
allegations in the Complaint and the facts and circumstances surrounding the Board’s actions
related to the allegations in the Complaint. Representatives may testify as needed to lay
foundation as required for any information or documents presented.

7. Without waiving objection, any witnesses uncovered through future discovery.

8. All witnesses listed by Plaintiff in his Disclosure Statement and related
supplements, without waiving objections.

1 9. All witnesses and exhibits listed by Plaintiff in his list of Witnesses and Exhibits
2 filed in this matter, without waiving objections.

3 10. All witnesses listed and produced in response to written discovery, without
4 waiving objections.

5 11. Any Custodian of Records necessary to establish foundation of exhibits listed in
6 this matter.

7 12. Any and all witnesses whose statements have been taken or will be taken in this
8 action up to the date of trial.

9 The Association does not certify by listing a potential trial witness that all listed
10 witnesses will, in fact, be called upon to testify at trial. The decision on which witnesses the
11 Association will call at trial is dependent in great part upon matters raised during pre-trial
12 discovery, pre-trial rulings, the witnesses and evidence offered at trial by the other parties and
13 the nature of the claims being asserted by the other parties. At this time, the Association may
14 call as witnesses all of those persons named above to testify on those topics identified as
15 within their knowledge.

16 The Association reserve the right to supplement as discovery progresses.

17 **IV. PERSONS WHO MAY HAVE RELEVANT KNOWLEDGE**

18 See Section III above.

19 **V. PERSONS WHO HAVE MADE STATEMENTS**

20 The Association are unaware of any statements made in this matter.

21 **VI. EXPERT WITNESSES**

22 The Association has not yet retained any expert witnesses to testify at trial. In the event
23 the Association retains any experts, it will disclose the same pursuant to the Arizona Rules of
24 Civil Procedure and any applicable court order. The Association reserves the right to
25 supplement this section accordingly.

26 **VII. COMPUTATION AND MEASURE OF DAMAGES**

 The Association claims no damages, other the costs and fees incurred in defending this
 suit, and therefore offer no computation.

1 **VIII. ANTICIPATED TRIAL EVIDENCE**

- 2 1. Declaration of Horizontal Property Regime for Hilton Casitas [HCHA.0001-
3 0116];
4 2. Bylaws of Hilton Casitas Council of Co-owners [HCHA.0117-0148];
5 3. Rules and Regulations for Hilton Casitas Council of Homeowners
6 [HCHA.0149-0154];
7 4. Administrative Law Judge Decision in Office of Administrative Hearings Case
8 No. 14F-41415004-BFS [HCHA.0155-0159];
9 5. Certification of Decision of Administrative Law Judge [HCHA.0160-0162];
10 6. Studies, surveys, statistics, and reference materials relied upon by expert
11 witnesses or parties.
12 7. Demonstrative exhibits, including photographs, anatomic models, anatomic
13 charts, as needed.
14 8. Any and all depositions taken in this matter and all exhibits attached thereto.
15 9. All discovery exchanged in the case, including interrogatories and answers,
16 requests for admissions and responses, and requests for production and
17 responses.

13 **IX. OTHER RELEVANT DOCUMENTS**

- 14 1. See Section VIII above.
15 2. Any and all pleadings, discovery responses and other tangible documents
16 produced, served, exchanged or filed in the course of this litigation.

17 **X. INSURANCE POLICY**

18 Any and all applicable insurance policies disclosed by any party.

19 RESPECTFULLY SUBMITTED this 14th day of May, 2021.

20 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

21
22 By: /s/ Timothy D. Butterfield
23 Edith I. Rudder, Esq.
24 Timothy Butterfield, Esq.
25 1400 East Southern Avenue, Suite 400
26 Tempe, Arizona 85282-5691
Attorneys for Hilton Casitas
Homeowners Association

1 **COPY** of the foregoing e-mailed
2 This 14th day of May, 2021, to:

3 R.L. Whitmer
4 rlw@fulcrumgroup.biz
5 6333 N. Scottsdale Road, Casita 21
6 Scottsdale, Arizona 85250
7 *Pro Per*

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By: /s/ Timothy D. Butterfield