

2021 MAY 21 PM 3:43

1 R. L. Whitmer  
2 6333 N. Scottsdale Rd.  
3 Casita 21  
4 Scottsdale, Arizona 85250  
5 602.531.2615  
6 Pro Per

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 R. L. WHITMER,

CV2021-050888

10 Plaintiff.

11 v.

**REPLY IN SUPPORT OF  
PLAINTIFF'S REQUEST FOR AN  
ARCP RULE 16(d) SCHEDULING  
CONFERENCE AND VACATING  
THE EVIDENTIARY HEARING  
AND DEADLINES**

12 HILTON CASITAS HOMEOWNERS  
13 ASSOCIATION, also known as  
14 HILTON CASITAS COUNCIL OF  
15 HOMEOWNERS, also known as  
16 COUNCIL OF CO-OWNERS, also  
17 known as HILTON CASITAS  
18 COUNCIL OF CO-OWNERS;

(Assigned to the  
Honorable Sara Agne)

19 Defendant.

Accelerated Consideration  
Requested

20  
21 The HOA's objection to the Plaintiff's request for a scheduling conference  
22 lacks legal foundation and merit.

23 **THE HOA FAILED TO PROVIDE REQUESTED DISCOVERY.**

24 On April 30, 2021 the Plaintiff, pursuant to ARS §33-1258, requested the  
25 HOA to provide the following (Ex. 1):

- 26 1. All Board meeting notices from August 1, 2020 to April 29, 2021;  
27 2. All Board meeting agendas from August 1, 2020 to April 29, 2021;  
28 3. All Board meeting minutes from August 1, 2020 to April 29, 2021;

1           4. All Board meeting Zoom Video recordings from August 1, 2020 to  
2 April 29, 2021.

3           ARS §33-1258 required the HOA to deliver the requested documents/  
4 records on or before May 12, 2021.

5           In disregard to the Court's April 23, 2021 order "*that the parties work*  
6 *together on disclosure and discovery in preparation for this hearing*" the HOA did  
7 not provide the documents/records nor even a response to the Plaintiff's request.  
8 The documents the Plaintiff needs to prove his case are in the possession of the  
9 HOA. The HOA's refusal to provide the requested documents and records has  
10 clearly frustrated the Court's accelerated deadlines.

11           **DEFENDANT'S DISCLOSURE STATEMENT IS INCOMPLETE**

12           In their objection to the scheduling conference the Defendant's attorneys  
13 attached their May 14, 2021 disclosure statement as Exhibit 2. Their disclosure  
14 statement lacks factual or material information that relates to or refutes the  
15 statutory violations raised in the complaint, nor were any documents requested by  
16 the Plaintiff attached or any that relate to or refute the statutory violations raised in  
17 the complaint.

18           **DEFENDANT'S ATTORNEY USED OFFER TO SETTLE TO AVOID DISCOVERY**

19           Just as the HOA's attorney told the Court at the hearing to show cause that  
20 it was the HOA's intention to stipulate to a voluntary dismissal, in their objection to  
21 the scheduling conference Mr. Butterfield admitted to telephoning the Plaintiff on  
22 April 23, 2021 after the hearing to show cause and proposing a "potential  
23 resolution to the instant case—including, but not limited to, what actions Plaintiff  
24 would require in order to voluntarily stipulate to dismiss the case."

25           Mr. Butterfield represented that board had authorized his settlement  
26 discussions. Based on the Plaintiff's agreement to settle, he indicated that he  
27 would send the Plaintiff a draft stipulation and seek quick board approval of same.  
28 However, he mailed the Plaintiff a "voluntary stipulated dismissal" meant for a

1 different HOA and Defendants. The Plaintiff emailed inquiring as to whether it  
2 was "mix up" and to let him know if it was a mix up or not (Ex. 2). Mr. Butterfly  
3 never responded to the Plaintiff's email request.

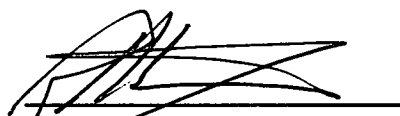
4 During the April 23<sup>rd</sup> phone call Mr. Butterfield proffered that he had  
5 successfully litigated the A.R.S. § 33-1243(J) issue and that the legislative intent  
6 is not to require an independent audit, review, or compilation of HOA annual  
7 financial statements. Consistent with Court's April 23, 2021 order "*that the parties*  
8 *work together on disclosure and discovery in preparation for this hearing*", on April  
9 23, 2021 and again on May 1, 2021, the Plaintiff requested "Please send me the  
10 court's findings from your case regarding ARS § 33-1243.J." Mr. Butterfield has  
11 failed to disclose the requested court findings.

12 **CONCLUSION**

13 Proper discovery and disclosure were required to meet the Court's  
14 expedited scheduling. The documents and records that HOA has failed to  
15 produce supports the Plaintiff's complaint. Mr. Butterfield's misconduct has  
16 deprived the Plaintiff adequate discovery and demonstrates bad faith.

17 The Plaintiff is entitled under Rule 16(d) to a scheduling conference and  
18 adequate discovery and disclosure to support his complaint. Accordingly, the  
19 Plaintiff requests the Court to schedule an ARCP Rule 16(d) scheduling  
20 conference and to vacate the June 11, 2021 evidentiary hearing and associated  
21 deadlines.

22 Respectfully submitted, this 21<sup>st</sup> day of May 2018.

23  
24 

25 R. L. Whitmer, Pro per

26  
27 ORIGINAL filed this  
28 21<sup>st</sup> day of May 2021,  
with the Clerk of the Court;

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and a COPY mailed this same date to:  
Tim Butterfield  
Carpenter Hazelwood  
1400 E. Southern Ave., Ste. 400  
Tempe, AZ 85282

# Exhibit 1

**R. L. Whitmer**

---

**From:** R. L. Whitmer <rlw@fulcrumgroup.biz>  
**Sent:** Thursday, April 29, 2021 4:13 PM  
**To:** 'Joanna O'Neal'; 'john.brooke@oracle.com'; 'Steve Pollock'  
**Cc:** Quentin T. Phillips  
**Subject:** ARS §33-1258 documents/records request

To the Hilton Casitas HOA board of directors,

Pursuant to ARS §33-1258 I am requesting the following documents/records in an electronic format:

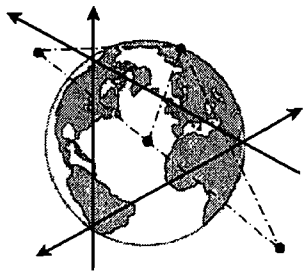
1. All Board meeting notices from August 1, 2020 to April 29, 2021;
2. All Board meeting agendas from August 1, 2020 to April 29, 2021;
3. All Board meeting minutes from August 1, 2020 to April 29, 2021;
4. All Board meeting Zoom Video recordings from August 1, 2020 to April 29, 2021.

ARS §33-1258 requires that you deliver the requested documents/records on or before May 12, 2021. Hopefully, we will not need to litigate your compliance.

R. L. Whitmer

Fulcrum Group

*FORTUNA PREPARATIS - AUDACES FORTUNA IUVAT*



Scottsdale, Arizona

602.531.2615

# Exhibit 2

**R. L. Whitmer**

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**From:** R. L. Whitmer <rlw@fulcrumgroup.biz>  
**Sent:** Saturday, May 1, 2021 4:37 PM  
**To:** 'Tim.Butterfield@carpenterhazlewood.com'  
**Cc:** 'Joanna O'Neal'  
**Subject:** CV2021-00451 Sundance Ranch HOA filing  
**Attachments:** CV2021-00451 Sundance Ranch HOA filing.pdf

Tim,

Your office mailed me the attached filing from CV2021-00451 Sundance Ranch HOA. Hopefully, they did not send correspondence intended for me to Sundance Ranch HOA. If there was mix-up, please let me know if there was or was not a mix-up. If there was go ahead and email it to me.

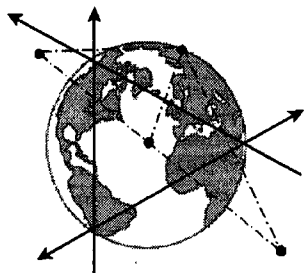
Additionally, please send me the court's findings from your case regarding ARS § 33-1243.J.

Sincerely,

R. L. Whitmer

Fulcrum Group

*FORTUNA PREPARATIS - AUDACES FORTUNA IUVAT*



Scottsdale, Arizona

602.531.2615



1       **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**  
          Attorneys at Law  
          1400 E. Southern Ave., Suite 400  
2            Tempe, Arizona 85282-5691  
          (480) 427-2800, Facsimile (480) 427-2801  
3            minuteentries@carpenterhazlewood.com  
          Erin E. McManis - 026310  
          Michelle B. Wellnitz - 035833  
4            SDANCERCH.0144

5        *Attorneys for Plaintiff*

6                           **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7                           **IN AND FOR THE COUNTY OF MARICOPA**

8       **SUNDANCE RANCH HOMEOWNERS**  
9       **ASSOCIATION, an Arizona non-profit**  
10       **corporation,**

11                           **Plaintiff,**

12                           **vs.**

13       **ROBERT BROWN, JANE DOE**  
14       **BROWN; JOHN DOES I-X and JANES**  
15       **DOES I-X and their spouses; WHITE**  
16       **CORPORATIONS I-X; BLACK**  
17       **PARTNERSHIPS I-X; AND GRAY**  
18       **LIMITED LIABILITY COMPANIES I-**  
19       **X,**

20                           **Defendant(s).**

Case No. CV2021-000451

**NOTICE OF VOLUNTARY  
DISMISSAL WITHOUT PREJUDICE**

*(Assigned to the  
Honorable Randall Warner)*

NOTICE IS HERBY GIVEN by the Plaintiff that the Plaintiff, Sundance Ranch Homeowners Association, voluntarily dismisses the above-caption matter without prejudice pursuant to Rule 41(a) Ariz.R.Civ.P., no answer or other responsive pleading having been

1 filed by Defendant, Robert Brown. Each of the Parties to bear their own attorney's fees and  
2 costs incurred herein.

3 RESPECTFULLY SUBMITTED this 29th day of April 2021.

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

5  
6 By: /s/ Michelle B. Wellnitz

7 Erin McManis  
8 Michelle B. Wellnitz  
9 1400 E. Southern Avenue, Suite 400  
10 Tempe, Arizona 85282  
11 *Attorneys for Plaintiff*

12 ORIGINAL of the foregoing electronically filed  
13 this 29th day of April 2021 to:

14 The Clerk of the Court  
15 Maricopa County Superior Court

16 COPY of the foregoing mailed and emailed  
17 on this 29th day of April 2021 to:

18 Robert Brown  
19 8010 W. Hess Ave.  
20 Phoenix, AZ 85043  
21 rrbaz3@gmail.com  
*Defendant*

By: /s/ Vanessa Fort

1     **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**  
          Attorneys at Law  
2           1400 E. Southern Ave., Suite 400  
          Tempe, Arizona 85282-5691  
3           (480) 427-2800, Facsimile (480) 427-2801  
          minuteentries@carpenterhazlewood.com  
          Erin E. McManis – 026310  
4           Michelle B. Wellnitz - 035833  
          SDANCERCH.0144

5     *Attorneys for Plaintiff*

6                   **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7                   **IN AND FOR THE COUNTY OF MARICOPA**

8     **SUNDANCE RANCH HOMEOWNERS**  
9     **ASSOCIATION, an Arizona non-profit**  
10    **corporation,**

11                   **Plaintiff,**

12                   **vs.**

13     **ROBERT BROWN, JANE DOE**  
14     **BROWN; JOHN DOES I-X and JANES**  
15     **DOES I-X and their spouses; WHITE**  
16     **CORPORATIONS I-X; BLACK**  
          **PARTNERSHIPS I-X; AND GRAY**  
          **LIMITED LIABILITY COMPANIES I-**  
          **X,**

**Defendant(s).**

Case No. CV2021-000451

**ORDER OF DISMISSAL WITHOUT  
PREJUDICE**

*(Assigned to the  
Honorable Randall Warner)*

17           The Court, having reviewed Plaintiff's Notice of Voluntary Dismissal without  
18    Prejudice and good cause appearing;

19           **IT IS ORDERED** dismissing the above-captioned matter without prejudice, each  
20    party to bear its own attorneys' fees and costs.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
The Honorable Randall Warner



**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

**[This is not an official receipt.]**

**Case Number: CV2021000451**

**Keyword / Matter #: SDANCERCH.0144**

**Form Set #5662963**

**SUMMARY SHEET**

**ATTORNEY FILING:**

Michelle B Wellnitz

Bar Number: 035833, Issuing State: AZ

Email: [vanessa.fort@carpenterhazlewood.com](mailto:vanessa.fort@carpenterhazlewood.com)

**PLAINTIFF SUBMITTING FILING:**

Sundance Ranch Homeowners Association

**ATTACHED DOCUMENTS LIST:**

Notice of Dismissal