

2021 MAY 27 PM 1:39

1 R. L. Whitmer
6333 N. Scottsdale Rd.
2 Casita 21
Scottsdale, Arizona 85250
3 602.531.2615

4 Pro Per

5
6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MARICOPA**

8
9 R. L. WHITMER,

10 Plaintiff.

11 v.

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
known as HILTON CASITAS
COUNCIL OF CO-OWNERS

17 Defendant.

CV2021-050888

**MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT**

(Assigned to the
Honorable Sara Agne)

Accelerated Consideration
Requested

18
19 Because of inadequate disclosure and discovery, the Plaintiff in preparing
20 exhibits to meet the accelerated hearing date has discovered another violation of
21 A.R.S. §§ 33-1243(D) and 33-1255. Accordingly, to avoid filing another complaint
the Plaintiff hereby submits his motion to amend his complaint.

22 Pursuant to Rule 15(a) Ariz.R.Civ.P., "Leave to amend shall be freely given
23 when justice requires." *MacCollum v. Perkinson*, 185 Ariz. 179, 185, 913 P.2d
24 1097, 1103 (App. 1996). Unless there is specific cause, such as futility, delay or
25 prejudice, motions to amend should be granted. *Id.* No such cause exists here.

26 The amended complaint adds an additional violation of A.R.S. § 33-1255
27 which demonstrates a clear and definite pattern of behavior.
28

1 Also, for clarity, it is expressly stated that this case and the requested relief
2 does not arise out of contract, but rather is a matter of statutory compliance.
3 Specifically, the requested relief is for the enforcement of statute.

4 This Court has subject matter jurisdiction and can grant relief pursuant to
5 A.R.S. § 12-1801 et seq and A.R.S. § 32.2199.02(B). Therefore, the Petitioner
6 requests a leave to amend their complaint as requested in the attached Exhibit
7 "A".

8 Dated this 27th day of May, 2021.

9
10 

11 R. L. Whitmer

12
13 ORIGINAL filed this
14 27th day of May, 2021,
15 with the Clerk of the Court;

16 and a COPY hand-delivered this same date to:
17 Tim Butterfield
18 Carpenter Hazelwood
19 1400 E. Southern Ave., Ste. 400
20 Tempe, AZ 85282
21
22
23
24
25
26
27
28

Exhibit A

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,

10 Plaintiff.

11 v.

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;

19 Defendant.

**FIRST AMENDED
VERIFIED COMPLAINT**

**FOR ENFORCEMENT OF AN
ADMINISTRATIVE LAW ORDER
No. 14F-H1415004-BFS,
AND INJUNCTIVE RELIEF**

20
21 Plaintiff R. L. Whitmer for his amended verified complaint for his cause of
22 action against the Defendant, the Hilton Casitas Homeowners Association
23 ("HOA"), (changes shown in bold and underline alleges the following:

24 **PARTIES AND JURISDICTION**

25 1. Plaintiff is a resident of Maricopa County, Arizona and co-owns a
26 condominium unit in the Hilton Casitas Condominium.

27
28 2. The Defendant is a condominium unit owners association with its

1 principal place of business in Maricopa County, Arizona.

2 3. The Maricopa County Superior Court has jurisdiction pursuant to the
3 Ariz. Constitution, A.R.S Title 12, Chapter 10, Article 1 and, and ARCP Rule 65.

4 **FACTUAL BACKGROUND**

5
6 4. The Hilton Casitas Condominium was created by the May 22, 1972
7 recordation of the Declaration of Horizontal Property Regime for Hilton Casitas
8 ("Declaration") pursuant A.R.S 33-531 "the Horizontal Property Regime Act."¹

9 5. The Plaintiff co-owns Casita 21 within the Hilton Casitas
10 Condominium.

11 6. The Association is subject to A.R.S § 33-1201 et seq.

12 7. The Association's fiscal year is a January 1st to December 31st
13 calendar year.

14 8. A.R.S. § 33-1255 requires that the "annual" assessment be based on
15 an "annual" budget, and A.R.S § 33-1243.D prescribes the method that the
16 Association's board is required to use to adopt an "annual" budget.

17 9. The Association is under an administrative law order to fully comply
18 with A.R.S § 33-1243.D pursuant to Administrative Law Judge Decision No. 14F-
19 H1415004-BFS.

20 10. The Association's board is required by A.R.S § 33-1243.J to conduct
21 an "annual" audit, review or compilation by a CPA no later than one hundred
22 eighty days after the end of the fiscal year and make the financial audit, review or
23 compilation available upon a request of a unit owner within thirty days after its
24 completion.

25
26
27
28 ¹ "The Horizontal Property Regime Act" was superseded in 1985 by A.R.S § 33-1201 et
seq. "the Uniform Condominium Act."

1 ///

2 **COUNT ONE**

3 **INJUNCTIVE RELIEF RE: A.R.S § 33-1258**

4 11. The Plaintiff incorporates each and every allegation in the foregoing
5 paragraphs as if set forth fully herein.

6
7 12. The Administrative Law Judge Decision No. 14F-H1415004-BFS was
8 entered on January 7, 2015 and certified on February 18, 2015 by the Arizona
9 Department of Fire, Building and Life Safety, ordering that the Association "shall
10 fully comply with the applicable provisions of A.R.S. § 33-1243(D) in the future."
11 (P4:27-28):

12 A.R.S. § 33-1243(D) Except as provided in the
13 declaration, within thirty days after adoption of any
14 proposed budget for the condominium, the board of
15 directors shall provide a summary of the budget to all the
16 unit owners. Unless the board of directors is expressly
17 authorized in the declaration to adopt and amend budgets
18 from time to time, any budget or amendment shall be
19 ratified by the unit owners in accordance with the
20 procedures set forth in this subsection. If ratification is
21 required, the board of directors shall set a date for a
22 meeting of the unit owners to consider ratification of the
23 budget not fewer than fourteen nor more than thirty days
24 after mailing of the summary. Unless at that meeting a
25 majority of all the unit owners or any larger vote specified
in the declaration rejects the budget, the budget is ratified,
whether or not a quorum is present. If the proposed
budget is rejected, the periodic budget last ratified by the
unit owners shall be continued until such time as the unit
owners ratify a subsequent budget proposed by the board
of directors.

26 13. There is no provision in the Declaration that expressly authorizes the
27 board of directors on its own to adopt or amend budgets. Accordingly, the board
28 and its officers are required by statute and by the administrative law order to

1 secure ratification from the unit owners.

2 **14. On March 5, 2020 the HOA board mailed the 2020 summary**
3 **budget to the homeowners to be ratified at a March 24, 2020 meeting. The**
4 **March 24, 2020 meeting was canceled and to procedure proscribed in A.R.S.**
5 **§ 33-1243(D) abandoned, to which no budget for 2020 was officially adopted**
6 **and ratified.**

7
8 **15.** As of the date of filing this complaint, the Association has failed to
9 adopt the 2021 “annual” budget. Pursuant to A.R.S. § 32.2199.02(B). Article 6, §
10 14 of the Arizona Constitution, A.R.S. §12-864 and Rule 65(f) Ariz. R. Civ. P., the
11 Plaintiff is entitled to finding that Association is in contempt of court².

12 **COUNT TWO**

13 **INJUNCTIVE RELIEF RE: A.R.S § 33-1255.A**

14 **16.** The Plaintiff incorporates each and every allegation in the foregoing
15 paragraphs as if set forth fully herein.

16
17 **17.** The Association is mandated by A.R.S § 33-1255.A to set the
18 assessment annually based on the “annual” budget adopted pursuant to A.R.S §
19 33-1243.D:

20 A.R.S § 33-1255.A. Until the association makes a
21 common expense assessment, the declarant shall pay
22 all common expenses. After any assessment has been
23 made by the association, assessments shall be made at
24 least annually, based on a budget adopted at least
25 annually by the association. (Emphasis added).

26 **18. The Association has failed to adopt a budget in 2020 in order to**
27 **set the 2020 “annual” assessment.**

28 ² *Whitmer v. Hilton Casitas Homeowners Ass'n*, 425 P.3d 253 (Ariz. Ct. App. 2018)
¶15, A.R.S. § 12-864 (describing civil contempts to include failure to obey the superior
court's order as well as “all other contempts not specifically embraced within this article”)

1 **25.** On March 3, 2020 pursuant to A.R.S § 33-1258, the Plaintiff
2 requested copies of the Association's 2017 and 2018 "annual" financial audits,
3 reviews or compilations. On March 20, 2020 the Association's former general
4 counsel responded sending financial worksheets prepared by the Association's
5 community manager and not a CPA.

6 **26.** The Association financial spreadsheets are laced with inaccuracies
7 and misstatements such as:

8 a. The 2019 financial spreadsheet failed to show a current
9 liability of \$10,000 of attorney fees awarded against the Association to the
10 Plaintiff and his spouse in the Association's appeal of CC2016-164084SC
11 (LC2017-000273).

12 b. The Association's 2017 financial spreadsheet shows a total
13 2017 legal expenses of \$27,112.50 versus the actual total of \$45,464.76³
14 which is the sum of \$33,982 from the Association's payable ledger to Shaw
15 & Lines for 2017 legal services, \$8,051.50 for the Association's attorneys'
16 Clark Hill's 2017 china doll affidavit, and the \$3,431.26 JP case (CC2016-
17 164084SC) supersedeas bond as referenced in the December 15, 2017
18 documents request which was paid by the justice court to the Plaintiff in
19 2017.

20 c. The 2016 provided spreadsheet shows legal expenditures of
21 \$15,000 versus the actual total of \$19,049.20 of 2016 legal services
22 invoices, and that the Association allegedly made a \$10,000 land lease
23 payment. However, the Association is not a party to any land leases, nor
24 does it have any leasehold interests.
25

26 *///*

27 ³ The \$45,622.81 does not include the unreported \$4,049.20 of Clark Hill's 2016 legal
28 services that if not paid in 2016 should have been reported as being a payable to be
carried forward into the 2017 fiscal year budget.

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

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

VERIFICATION

Pursuant to **Rule 80(i)** of the Arizona Rules of Civil Procedure, I,
R. L. Whitmer, declare under the penalty of perjury that the preceding Complaint
is true and correct to the best of my information, knowledge and belief.

Dated this ____ day of June, 2021.

R. L. Whitmer