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6 Pro Per

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FILED  
BY J. Carroccio, DEP

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 HILTON  
14 CASITAS COUNCIL OF HOMEOWNERS,  
15 also known as COUNCIL OF CO-  
16 OWNERS, also known as HILTON  
17 CASITAS COUNCIL OF CO-OWNERS,

18 Defendant.

CV2021-050888

MOTION TO STRIKE  
DEFENDANT'S MOTION TO  
DISMISS

(Assigned to Honorable  
Sara Agne)

Accelerated consideration  
requested

18 The Defendant's motion to dismiss, filed on May 26, 2021, claims a  
19 defense of unconstitutionality without following the procedures proscribed in  
20 A.R.S. § 12-1841:

21 A.R.S. § 12-1841(A) "... In any proceeding in which a  
22 state statute, ordinance, franchise or rule is alleged to be  
23 unconstitutional, the attorney general and the speaker of  
24 the house of representatives and the president of the  
25 senate shall be served with a copy of the pleading,  
26 motion or document containing the allegation at the  
27 same time the other parties in the action are served and  
28 shall be entitled to be heard."

Further while A.R.S. § 12-1841(A) require service, A.R.S. § 12-1841(B)  
requires the Defendant to also file a notice of claim:

1 A.R.S. § 12-1841B. "If a pleading, motion or document containing  
2 the allegation is served on the attorney general and the speaker  
3 of the house of representatives and the president of the senate  
4 pursuant to subsection A, a notice of claim of unconstitutionality  
5 shall be attached to the pleading, motion or document as the  
6 cover page and shall state the following information:

7 1. The name, address and telephone number of the attorney for  
8 the party alleging that a state law is unconstitutional or the  
9 name, address and telephone number of the party if the party is  
10 not represented by an attorney.

11 2. The case name, court name, caption and case number of the  
12 proceeding.

13 3. A brief statement of the basis for the claim of  
14 unconstitutionality.

15 4. A brief description of the proceeding, with copies of any court  
16 orders in the proceeding if the claim of unconstitutionality is  
17 asserted in a pleading, motion or document other than the  
18 pleading, motion or document that initiated the proceeding.

19 5. The date, time, location, judge and subject of the next hearing  
20 in the proceeding, if any."

21 The Defendant's attorneys did not serve the attorney general and the  
22 speaker of the house of representatives and the president of the senate, and did  
23 not file a notice of claim as required by A.R.S. § 12-1841. Their motion to dismiss  
24 ignores A.R.S. § 12-1841. Rule 12(b)(6) does not apply here. Requesting the  
25 Court to find the "administrative process" unconstitutional is a claim for  
26 declaratory relief which cannot be sought through a motion to dismiss.

27 Accordingly, pursuant to ARCP 12(f)2 the Plaintiff requests the Court to  
28 strike the Defendant's motion to dismiss.

The Court should consider imposing sanctions on the Defendant's  
attorneys for filing such an improper motion to dismiss and attempting to abridge  
the judicial process.

///

Dated this 4<sup>th</sup> day of June, 2021.



R. L. Whitmer  
Pro per

ORIGINAL filed this  
4<sup>th</sup> day of June, 2021, with the Court;  
and a COPY hand-delivered this same date to:

Tim Butterfield  
Carpenter Hazelwood  
1400 E. Southern Ave., Ste. 400  
Tempe, AZ 85282

Courtesy copies to:

Arizona Attorney General  
Hon. Mark Brnovich  
2005 N Central Ave  
Phoenix, AZ 85004

Speaker of the Arizona House of Representative  
Hon. Russel Bowers  
1700 W. Washington St.  
Phoenix AZ 85007

President of the Arizona State Senate  
Hon. Karen Fann  
1700 W. Washington St.  
Phoenix AZ 85007

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

9 R. L. WHITMER,  
10 Plaintiff,

CV2021-050888

11 v.

**[PROPOSED] ORDER STRIKING  
DEFENDANT'S MOTION TO  
DISMISS**

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

(Assigned to Honorable  
Sara Agne)

18 Defendant.

19 The Court has considered the Plaintiff's motion to strike the Defendant's  
20 motion to dismiss and Defendant's response. For reasons set forth in the  
21 Plaintiff's motion and good cause appearing;

22 IT IS ORDERED granting the Plaintiff's motion to strike.

23 IT IS FURTHER ORDERED that the Defendant shall file an answer to the  
24 Plaintiffs complaint by \_\_\_\_\_, \_\_\_\_, 2021

25 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

26 \_\_\_\_\_  
27 Hon. Sara Agne  
28 Arizona Superior Court, Maricopa County