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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

**RESPONSE IN OPPOSITION TO
PLAINTIFFS MOTION FOR LEAVE TO
AMEND COMPLAINT**

(Assigned to Honorable Sara Agne)

24 Defendant Hilton Casitas Homeowners Association (the “Association”) hereby
responds in opposition to Plaintiff’s Motion for Leave to File First Amended Complaint (the
“Motion”). Plaintiff’s proposed First Amended Complaint does not add any additional claims
but merely provides allegations regarding the Association’s 2020 budget. *See* First Amended
Complaint ¶¶ 14, 18. Pending before this Court is the Association’s Motion to Dismiss.
Plaintiff’s Motion does not moot the Association’s Motion to Dismiss or alleviate Plaintiff’s
obligation to timely respond. Ariz. R. Civ. P. 15(a)(3). Plaintiff’s Motion does not cure the
deficiencies in the Complaint.

1 Notably, Plaintiff's Counts One and Two seek injunctive relief regarding the
2 Association's compliance with Arizona Revised Statutes §§ 33-1243 and 33-1255
3 respectively. Injunctive relief is designed to be preventive in nature. *Takiguchi v. State*, 47
4 Ariz. 302, 305, 55 P.2d 802, 803 (1936); *see also* Ariz. Rev. Stat. § 12-1801(1) ("Judges of
5 the superior court may grant writs of injunction: 1. When it appears that the party applying
6 for the writ is entitled to the relief demanded, and such relief or any part thereof requires **the**
7 **restraint of some act** prejudicial to the applicant.") (Emphasis added). Plaintiff's two new
8 allegations in his Motion are for conduct alleged to have occurred in 2020 and thus do not
9 support Plaintiff's application for injunctive relief.

10 Plaintiff's Motion does not alter the nature of Plaintiff's claims, add any additional
11 claims for the Court's consideration, or cure the deficiencies in the Complaint. As such, the
12 Association requests that the Court deny Plaintiff's Motion as futile.

13 RESPECTFULLY SUBMITTED this 11th day of June, 2021.

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

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1 **ORIGINAL** of the foregoing e-filed
2 Via TurboCourt this 11th day of June, 2021.

3 **COPY** of the foregoing mailed/e-mailed
4 this 11th day of June, 2021, to:

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