

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

3                   1400 East Southern Avenue, Suite 400  
4                   Tempe, Arizona 85282-5691

5                   P. 480-427-2800; F. 480-427-2801

6                   [minuteentries@carpenterhazlewood.com](mailto:minuteentries@carpenterhazlewood.com)

7                   (Edith I. Rudder - SBN 020650)

8                   [eadie.rudder@carpenterhazlewood.com](mailto:eadie.rudder@carpenterhazlewood.com)

9                   (Timothy D. Butterfield - SBN 033257)

10                  [tim.butterfield@carpenterhazlewood.com](mailto:tim.butterfield@carpenterhazlewood.com)

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

**DEFENDANT'S RESPONSE IN  
OPPOSITION TO PLAINTIFFS MOTION  
TO STRIKE**

(Assigned to Honorable Sara Agne)

24                  Defendant Hilton Casitas Homeowners Association (the "Association") hereby  
responds in opposition to Plaintiff's Motion to Strike Defendant's Motion to Dismiss (the  
"Motion"). Plaintiff's Motion violates Arizona Rules of Civil Procedure 7.1(f) as it is not  
authorized by statute or rule and does not seek to strike the Association's argument on the  
basis that the Association's arguments is prohibited by statute, rule, or court order. Plaintiff's  
position is that the Association failed to comply with a procedural service requirement rather  
than that the Association's argument is prohibited. As such, Plaintiff's Motion is improper  
and should not be considered by the Court.

1 Further, Plaintiff’s Motion is premised on the assumption that Arizona Revised Statute  
2 § 12-1841 required the Association to file a notice of claim and serve the attorney general,  
3 speaker of the house of representatives, and president of the senate in order to challenge the  
4 constitutionality of the Administrative Order. However, as made abundantly clear in the  
5 Motion to Dismiss, the process the Association alleges is unconstitutional is a *defunct*  
6 process, amended by the Arizona Legislature in 2016. *See* STATE AGENCIES—  
7 GEOLOGY AND GEOLOGISTS—MINES AND MINERALS, 2016 Ariz. Legis. Serv. Ch.  
8 128 (S.B. 1530) (WEST) (transferring the administrative process from the Department of  
9 Fire, Building, & Life Safety to the Arizona Department of Real Estate.) As the Arizona  
10 legislature already has amended the administrative process under which the Administrative  
11 Order was issued, Ariz. Rev. Stat. § 12-1841 is inapplicable to the present dispute.

12 Moreover, even if the Court agrees that Ariz. Rev. Stat. § 12-1841 is applicable, it  
13 would still be inappropriate to strike the argument in its entirety. Rather, the Court can  
14 require that the Association serve the attorney general, speaker of the house of  
15 representatives, and president of the senate before addressing the constitutionality argument.  
16 *See Merrill v. Merrill*, 238 Ariz. 467, 469, ¶ 13, 362 P.3d 1034, 1036 (2015), *cert. granted*,  
17 *judgment vacated on other grounds*, 137 S. Ct. 2156, 198 L. Ed. 2d 228 (2017) (“[I]f a court  
18 discovers that a party failed to comply with § 12–1841, the court can require compliance  
19 before addressing the constitutionality of a statute.”) Failure to comply with § 12-1841 does  
20 not waive the unconstitutionality argument. *Id.*

21 Finally, Plaintiff’s Motion fails to even address the remainder of the Motion to  
22 Dismiss. The Constitutionality argument is only one argument directed at Plaintiff’s Count  
23 One. Nothing within Plaintiff’s Motion addresses the remaining arguments on Count One or  
24 any of the arguments for Count Two and Three. The Court can address the constitutionality  
25 argument separate from the remaining arguments.

1 For all the reasons stated above, the Association requests that the Court deny  
2 Plaintiff's Motion. Even if the Court agrees that Ariz. Rev. Stat. § 12-1841 applies, the  
3 Association requests that the Court direct the Association to comply with § 12-1841 rather  
4 than striking that portion of the Association's argument. In any event, the Association's  
5 remaining arguments in the Motion to Dismiss should not be adversely effected.

6 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of June, 2021.

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

8 By: /s/ Timothy D. Butterfield  
9 Edith I. Rudder, Esq.  
10 Timothy Butterfield, Esq.  
11 1400 East Southern Avenue, Suite 400  
12 Tempe, Arizona 85282-5691  
13 *Attorneys for Defendant*

13 **ORIGINAL** of the foregoing e-filed  
14 Via TurboCourt this 18<sup>th</sup> day of June, 2021.

15 **COPY** of the foregoing mailed/e-mailed  
16 this 18<sup>th</sup> day of June, 2021, to:

17 R.L. Whitmer  
18 6333 N. Scottsdale Road, Casita 21  
19 Scottsdale, Arizona 85250  
20 [rlw@fulcrumgroup.biz](mailto:rlw@fulcrumgroup.biz)

21 *Pro Per*

22 By: /s/ Suzanne Hilborn