

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

CLERK OF THE
SUPERIOR COURT
RECEIVED NE LOBBY
DOCUMENT DEPOSITORY

21 JUL -6 PM 3:50

FILED
BY J. Carro

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.

12 **REPLY IN SUPPORT OF**
13 **PLAINTIFF'S REQUEST FOR AN**
14 **EXTENSION TO RESPOND TO**
15 **DEFENDANT'S MOTION TO**
16 **DISMISS**

17 HILTON CASITAS HOMEOWNERS
18 ASSOCIATION, also known as
19 HILTON CASITAS COUNCIL OF
20 HOMEOWNERS, also known as
21 COUNCIL OF CO-OWNERS, also
22 known as HILTON CASITAS
23 COUNCIL OF CO-OWNERS

24 Defendant.

(Assigned to the
Honorable Sara Agne)

Accelerated Consideration
Requested

25 The Defendant's attorney is attempting to use its objection to the Plaintiff's
26 request for extension as a supplement to its late filed response to the Plaintiff's
27 motion to strike. In its objection to the extension, the Defendant repeats that the
28 Plaintiff's motion to strike is precluded under Rule 7.1(f)(1).

However, the Defendant's motion to dismiss improperly seeks dismissal
based on the alleged unconstitutionality of the statute giving administrative law
powers to an Executive Branch department of state government. The
Defendant's motion to dismiss, filed on May 26, 2021, claims a defense of
unconstitutionality without following the mandatory procedures proscribed in
A.R.S. § 12-1841.

Further A.R.S. § 12-1841(A) requires service, A.R.S. § 12-1841(B) also

1 requires the Defendant to also file a notice of claim.

2 Since the Defendant's attorneys failed to file a notice of claim and to serve
3 the attorney general and the speaker of the house of representatives and the
4 president of the senate as required by A.R.S. § 12-1841, the Defendant's motion
5 to strike is permitted by Rule 7.1(f)(1) as it seeks to strike on the grounds that
6 A.R.S. § 12-1841 requires the Defendant's compliance, and therefore without
7 compliance the motion to dismiss is prohibited by statute.

8 Because the Defendant has improperly raised the issue of constitutionality
9 in its motion to dismiss, the Plaintiff's response, if required by the Court, will be
10 affected by the Court decision on the motion to strike and an extension to respond
11 is justified.

12 Accordingly, as the Defendant will not suffer any harm or prejudice from the
13 Court granting the extension, the Court should grant the requested extension that
14 the Plaintiff's response shall be due after the Court decides the motion to strike.

15
16 Dated this 6th day of July, 2021.

17 

18 R. L. Whitmer

19 ORIGINAL filed this
20 6th day of July, 2021,
21 with the Clerk of the Court;

22 and a COPY mailed this same date to:

23 Tim Butterfield
24 Carpenter Hazelwood
25 1400 E. Southern Ave., Ste. 400
26 Tempe, AZ 85282
27
28