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11 AFI.HILTONC.01

12 Attorneys for Defendant Hilton Casitas
13 Homeowners Association

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

15 **IN AND FOR THE COUNTY OF MARICOPA**

16 R.L. WHITMER,

17 Plaintiff,

18 vs.

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

24 Defendant.

Case No. CV2021-050888

**RESPONSE TO PLAINTIFF'S NOTICE
OF FAILURE TO TIMELY FILE A
RESPONSE TO PLAINTIFF'S
MOTION TO STRIKE**

(Assigned to Honorable Sara Agne)

Defendant Hilton Casitas Homeowners Association (the "Association") hereby responds to Plaintiff's Notice of Failure to Timely File a Response to Plaintiff's Motion to Strike (the "Notice"). Plaintiff represents to the Court that he hand-delivered his Motion to Strike upon undersigned counsel on June 4, 2021. Plaintiff's representation is false. See Declaration of Timothy D. Butterfield ("Declaration"), attached hereto as Exhibit 1. Indeed, it was not until the Notice that undersigned counsel became aware that Plaintiff believed he was completing service via personal delivery.



1 Arizona Rules of Civil Procedure 5 governs services of pleadings and other
2 documents. Pursuant to Ariz. R. Civ. P. 5(c)(2)(A-E), service upon the Association may be
3 made by A) handing it to the person (i.e. to undersigned counsel), B) leaving it at
4 CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP (“CHDB”) office with a clerk or other
5 person in charge, or, if the CHDB office is closed, at undersigned counsel’s dwelling with
6 someone of suitable age and discretion who resides there, C) mailing it to the CHDB address
7 listed on each pleading, D) via electronic means other than TurboCourt, or E) via
8 TurboCourt. The date and manner of service must be noted on the last page of each served
9 document.

10 On Plaintiff’s Motion for Leave to File First Amended Complaint, Motion to Strike
11 Defendant’s Motion to Dismiss, and Notice of Failure to Timely File a Response to
12 Plaintiff’s Motion to Strike, Plaintiff indicates a copy was “handed-delivered” to undersigned
13 counsel. As stated above, this is false. *See* Exhibit 1. To be sure, Plaintiff served the
14 Association copies of each motion in some fashion, but at no point did Plaintiff hand-deliver
15 any of the motions to undersigned counsel. *Id.*

16 Pursuant to Rule 5(c)(3), “If the precise manner in which service **has actually been**
17 **made** is not so noted, it will be presumed that the document was served by mail.” (Emphasis
18 added). Because Plaintiff has not hand-delivered any documents upon undersigned counsel as
19 indicated in various filings, undersigned counsel has treated all documents filed by Plaintiff
20 as if the documents were served by mail. Pursuant to Rule 6(c), “5 calendar days are added
21 after the specified period would otherwise expire under Rule 6(a)” when service is made by
22 mail. Plaintiff’s calculation of the Association’s responsive deadline is incorrect.

23 Moreover, even if the Association’s response was late, which the Association
24 disputes, nothing within Rule 7.1 implies that a failure to timely file waives a defense or
25 should be deemed consent as argued by Plaintiff. Rather, Rule 7.1(b)(2) allows the Court to

1 summarily grant or deny a motion if the opposing party does not file a responsive
2 memorandum at all. The Association did file a responsive memorandum which the Court
3 should consider in ruling on Plaintiff's Motion to Strike Defendant's Motion to Dismiss.

4 RESPECTFULLY SUBMITTED this 7th day of July, 2021.

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

6
7 By: /s/ Timothy D. Butterfield
8 Edith I. Rudder, Esq.
9 Timothy Butterfield, Esq.
10 1400 East Southern Avenue, Suite 400
11 Tempe, Arizona 85282-5691
12 *Attorneys for Defendant*

13 **ORIGINAL** of the foregoing e-filed
14 Via TurboCourt this 7th day of July, 2021.

15 **COPY** of the foregoing mailed/e-mailed
16 this 7th day of July, 2021, to:

17 R.L. Whitmer
18 6333 N. Scottsdale Road, Casita 21
19 Scottsdale, Arizona 85250
20 rlw@fulcrumgroup.biz

21 *Pro Per*

22 By: /s/ Suzanne Hilborn

Exhibit 1



1 **CARPENTER, HAZLEWOOD,**
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24 Defendant.

Case No. CV2021-050888

DECLARATION OF
TIMOTHY D. BUTTERFIELD

(Assigned to Honorable Sara Agne)

I, Timothy D. Butterfield, hereby state:

1. I am an attorney with the law firm of Carpenter, Hazlewood, Delgado & Bolen, LLP, and I am one of the attorneys of record for Defendant Hilton Casitas Homeowners Association (the "Association").

2. All of my conversations with Plaintiff R.L. Whitmer have been over the telephone.

3. I have never personally met Plaintiff and/or any of Plaintiff's agents in connection with the above captioned matter. This includes, but is not limited to, the following dates:

- 1 a. Plaintiff did not hand-deliver the Motion for Leave to File First Amended
2 Complaint to me on or about May 27, 2021;
3 b. Plaintiff did not hand-deliver the Exhibits for Evidentiary Hearing to me on or
4 about June 2, 2021;
5 c. Plaintiff did not hand-deliver the Motion to Strike Defendant’s Motion to
6 Dismiss to me on or about June 4, 2021;
7 d. Plaintiff did not hand-deliver the Notice of Failure to Timely File a Response
8 to Plaintiff’s Motion to Strike to me on or about June 21, 2021.

9 4. Upon information and belief, Plaintiff may have served some or all of the above
10 referenced documents by leaving them under the front door at CARPENTER, HAZLEWOOD,
11 DELGADO & BOLEN, LLP’S (“CHDB”) office after the CHDB office was closed.

12 5. Pursuant to Arizona Rules of Civil Procedure 80(c), I declare under penalty of
13 perjury that the foregoing is true and correct.

14 EXECUTED this 7th day of March, 2021.

15 By: /s/ Timothy D. Butterfield, Esq.
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