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18 Homeowners Association

19 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
20 **IN AND FOR THE COUNTY OF MARICOPA**

21 R. L. WHITMER,

22 Plaintiff,

23 v.

24 HILTON CASITAS HOMEOWNERS
25 ASSOCIATION, also known as HILTON
26 CASITAS COUNCIL OF HOMEOWNERS,
also known as COUNCIL OF CO-OWNERS,
also known as HILTON CASITAS COUNCIL
OF CO-OWNERS,

Defendant.

Case No. CV2021-050888

JOINT REPORT

(Tier 2 Case)

(Assigned to Honorable
Sara Agne)

27 The parties signing below certify that they have conferred about the matters set
28 forth in Rule 16(b)(2) and (c)(3), and that this case is not subject to the mandatory
29 arbitration provisions of Rule 72 because Plaintiff is seeking non-monetary relief. With
30 regard to matters upon which the parties could not agree, they have set forth their

1 positions separately in item 13 below. The parties are submitting a Proposed Scheduling
2 Order with this Joint Report. Each date in the Joint Report and in the Proposed
3 Scheduling Order includes a calendar month, day and year.

4 **Optional Summary of Rule 16(d) Early Meeting** (not to exceed 4 pages of text),
5 split evenly between separate statements of the parties if they do not agree on the
6 summary's contents:

7 **1. Brief description of the case:**

8 **Plaintiff's Statement:**

9 Defendant Hilton Casitas Homeowners Association (the "Association")
10 Association failed in 2020 to adopt its annual budget as required by A.R.S. § 33-1243(D).
11 Without the adoption of the 2020 budget the assessment, while collected, was not lawfully
12 levied as required by A.R.S. § 33-1255. Without a lawfully adopted budget it is
13 impossible to complete a financial audit, review or compilation as required by A.R.S. §
14 33-1243(J).

15 While the Association claims to have now complied with A.R.S. § 33-1243(D) for
16 the 2021 budget on May 19, 2021, however the Association remains in violation of the
17 statutes for the following reasons:

18 A. While the Association ratified a budget on May 19, 2021, the board adopted
19 on April 6, 2021 (this complaint was filed on March 22, 2021) and transmitted it to the
20 homeowner on April 16, 2021. A.R.S. § 33-1243(D) requires "the board of directors shall
21 set a date for a meeting of the unit owners to consider ratification of the budget not fewer
22 than fourteen nor more than thirty days after mailing of the summary." However, May 19,
2021 was outside the required thirty days after the board mailed the budget.

23 B. The Association operates on calendar fiscal year basis and as its general
24 counsel recently admitted for the Association to lawfully collect an assessment from
25 homeowners the Association would need to adopt its budget in December prior to the start
26 of its fiscal year. Adopting a budget in May and collecting assessments paying expenses

1 starting January is clearly a violation of A.R.S. § 33-1255. The Association's 2020
2 budget was for the period starting January 1, 2020 and ending December 31, 2020.

3 C. The Association claims that A.R.S. § 33-1243(J) does not require the
4 Association to engage a CPA to perform its annual financial audit, review or compilation
5 of the association. The Association's recent engagement of a CPA to conduct a
6 compilation for fiscal years 2018, 2019 and 2020 underscores the fact that only a CPA is
7 qualified to render an opinion on Association's financial audit, review or compilation of
8 the Association's annual financial statements. The Arizona Legislature added the
9 requirement for audit, review or compilation of an association after it shown that
10 Association s had been the victim of embezzlement and independent financial review was
11 necessary. Only CPAs are licensed under A.R.S. Title 32, Chapter 9 to perform:
12 "Compilation services", and opine on "Financial statements". Under the Association's
13 unfounded reading of A.R.S. § 33-1243(J) any clerk at a local convenience store could
14 provide a financial audit, review or compilation.

15 As the Association has demonstrated pattern of willfully disregarding its statutory
16 duties an injunction for compliance is warranted.

17 **Defendant's Statement:** Plaintiff alleges the Association failed to adopt
18 and ratify a 2021 budget and seeks an injunction requiring the Association to retain a CPA
19 to perform annual financial audits. The Association disputes all of Plaintiff's claims.

20 **2. Current case status:** Every defendant has been served or dismissed: **Yes.**

21 Every party who has not been defaulted has filed a responsive pleading: **Yes.**

22 Explanation of a "no" response to either of the above statements: **N/A**

23 **3. Amendments:** A party anticipates filing an amendment to a pleading that
24 will add a new party to the case: **No.**

25 **4. Settlement:** The parties agree to engage in settlement discussions with a
26 settlement judge assigned by the court.

The parties will complete the settlement conference by **December 15, 2021.**

1 If the parties will not engage in a settlement conference or a private mediation,
2 state the reason(s): **N/A**

3 **5. Readiness:** This case will be ready for trial by no later than
4 **March 28, 2022.**

5 **6. Jury:** There is a right to a trial by jury: **No.**

6 If there is such a right, it has been waived by the parties. **No.**

7 **7. Length of trial:** The estimated length of trial is **2 days.**

8 **8. Summary jury:** The parties agree to a summary jury trial: **No.**

9 **9. Preference:** This case is entitled to preference for trial pursuant to the
10 following statute or rule: **N/A**

11 **10. Special requirements:** At a pretrial conference or at trial, a party will
12 require disability accommodations (specify): **No.**

13 An interpreter (specify language): **No.**

14 **11. Scheduling conference:** The parties request a Rule 16(d) scheduling
15 conference: **No.**

16 If requested, the reasons for having a conference are: **N/A**

17 **12. Other matters:** Other matters that the parties wish to bring to the court's
18 attention that may affect management of this case: _____

19 **13. Items upon which the parties do not agree:** The parties were unable in
20 good faith to agree upon the following items, and the position of each party as to each
21 item is as follows:

22 The Plaintiff and Association disagree that expert testimony is proper in this
23 matter. While the Association has agreed to include dates for expert disclosure in the
24 scheduling order to allow Plaintiff additional time to consider his position, this shall not
25 be considered a waiver of any of the Association's defenses or an acknowledgement that
26 expert testimony is appropriate to the issues.

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22 Defendant.

Case No. CV2021-050888

**GOOD FAITH CONSULTATION
CERTIFICATE**

(Assigned to Honorable
Sara Agne)

23 Pursuant to Arizona Rules of Civil Procedure 7.1(h) and 16(c)(2), Plaintiff and
24 undersigned counsel certify that they have conferred about the matters set forth in Rules
25 16(b)(2) and (c)(3) and have tried in good faith to resolve issues upon which the parties
26

1 disagree. The items upon which the parties could not agree are set forth in paragraph 13 of
2 the Joint Report.

3 Dated this 9th day of July, 2021.

4 /s/ R.L. Whitmer (with permission)
5 R. L. Whitmer
6 Plaintiff Pro Per

/s/ Timothy D. Butterfield
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Attorneys for Defendant

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