

2021 JUL 14 AM 11:20

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

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 R.L. WHITMER,

10 Plaintiff,

Case No. CV2021-050888

11 v.

12 HILTON CASITAS HOMEOWNERS
13 ASSOCIATION, also known as
14 HILTON CASITAS COUNCIL OF
15 HOMEOWNERS, also known as
16 COUNCIL OF CO-OWNERS, also
17 known as HILTON CASITAS
18 COUNCIL OF CO-OWNERS,

19 Defendant.

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

(Assigned to the Hon.
Sara Agne)

20 Defendant's response exclusively relies upon its attorney's parsed
21 Declaration that the "Plaintiff did not hand-deliver the Motion to Strike
22 Defendant's Motion to Dismiss to me on or about June 4, 2021;" (p.2, Ins. 5-
23 6)(Emphasis added). However, direct service to Mr. Butterfield was not required
24 as Rule 5(B)(i) requires only:

25 "(B) leaving it: "(i) at the person's office with a clerk or
26 other person in charge or, if no one is in charge, in a
27 conspicuous place in the office;"

28 Contrary to the Defendants' response and its attorney's Declaration, on
June 4, 2021 the Plaintiff hand-delivered his Motion to Strike to the receptionist at
the office of Defendant's attorney Mr. Butterfield (see Exhibit 1, Declaration of
R.L. Whitmer).

As the Motion to Strike was served on Mr. Butterfield's office receptionist
on June 4, 2021, the Defendant's attorney was required to respond by June 11,

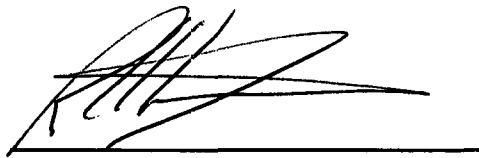
1 2021. However, the Defendant's attorney filed its response on June 18, 2021,
2 thus failing to timely respond or to object to the Plaintiff's Motion to Strike within
3 the 5-day time-period as mandated by the Ariz. R. Civ. P., Rule 7.1(f)(B).

4 Pursuant to Rule 7.1(b) and (a) the Court may consider a party's failure
5 to timely file and serve a responsive memorandum to be deemed a consent
6 to the granting of the motion to strike, and the court may dispose of the
7 motion summarily.

8 The Defendant's attorney did not even say when or how he actually
9 received the June 4, 2021 Motion to Strike, instead he attempts shift blame to
10 the Plaintiff through a baseless parsed Declaration¹.

11 Accordingly, the Court should consider the Defendant's response to the
12 Motion to Strike as untimely and grant the Plaintiff's Motion to Strike the
13 Defendant's Motion to Dismiss and further order the Defendant to answer the
14 Plaintiffs complaint. Additionally, the Court should consider sanctioning Mr.
15 Butterfield for his shameful attempt to mislead the Court.

16 RESPECTFULLY SUBMITTED this 14th day of July 2021.

17
18 

19 R.L. Whitmer
20 Pro Per

21 ORIGINAL submitted this 14th day of July, 2021, with:
22 Clerk of the Maricopa County Superior Court

23 COPY mailed this same date to:

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

28 _____
¹ Mr. Butterfield's Declaration appears to be signed on March 7, 2021, which was 89 days prior to the filing of the June 4, 2021 Motion to Strike.

Exhibit 1

1 R. L. Whitmer
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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 R.L. WHITMER,

10 Plaintiff,

11 Case No. CV2021-050888

12 v.

13 HILTON CASITAS HOMEOWNERS
14 ASSOCIATION, also known as
15 HILTON CASITAS COUNCIL OF
16 HOMEOWNERS, also known as
17 COUNCIL OF CO-OWNERS, also
18 known as HILTON CASITAS
19 COUNCIL OF CO-OWNERS,

20 Defendant.

21 **DECLARATION OF**
22 **R.L. WHITMER**

23 (Assigned to the Hon.
24 Sara Agne)

25 I am the Plaintiff in CV2021-050888 where the Defendant Hilton Casitas
26 Homeowners Association (the "HOA") is represented by attorney Mr. Butterfield.

27 All of my conversations with Mr. Butterfield have been over the telephone.
28 While in the course of serving the HOA, I have never personally met Mr.
Butterfield, and therefore his parsed declaration that I never served my filings "to
[him]" while not incorrect, is at best misleading because it was served to his
office.

Accordingly, in serving the HOA I have been to Mr. Butterfield's office
several times, including:

- a. On May 27, 2021 at approximately 4:30pm I hand-delivered the Motion for Leave to File First Amended Complaint. While serving the Motion I found the doors locked with a notice that the office was not open to visitors due to Covid and that deliveries should be left on the outside table or under the front door. I chose to place the Motion underneath the front door;

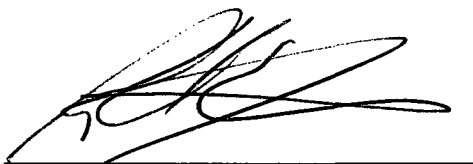
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b. I did not hand-deliver the Exhibits for Evidentiary Hearing on June 2, 2021 due to the Court, on June 1, 2021, vacating the June 11, 2021 Evidentiary Hearing;

c. After filing the June 4, 2021 Motion to Strike at 1:25 pm at the Northeast (see Exhibit A) I drove to Mr. Butterfield's office and handed the Motion to Strike Defendant's Motion to Dismiss directly to the office receptionist;

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

SIGNED this 14th day of July 2021.



R.L. Whitmer
Pro Per

Exhibit A

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

CLERK OF THE
SUPERIOR COURT
RECEIVED RE LOBBY
DOCUMENT DEPOSITORY

21 JUN -4 PM 1:25

6 Pro Per

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 R. L. WHITMER,

10 Plaintiff,

11 v.

12 HILTON CASITAS HOMEOWNERS
13 ASSOCIATION, also known as HILTON
14 CASITAS COUNCIL OF HOMEOWNERS,
15 also known as COUNCIL OF CO-
16 OWNERS, also known as HILTON
17 CASITAS COUNCIL OF CO-OWNERS,

18 Defendant.

CV2021-050888

19 **MOTION TO STRIKE**
20 **DEFENDANT'S MOTION TO**
21 **DISMISS**

(Assigned to Honorable
Sara Agne)

Accelerated consideration
requested

22 The Defendant's motion to dismiss, filed on May 26, 2021, claims a
23 defense of unconstitutionality without following the procedures proscribed in
24 A.R.S. § 12-1841:

25 A.R.S. § 12-1841(A) "... In any proceeding in which a
26 state statute, ordinance, franchise or rule is alleged to be
27 unconstitutional, the attorney general and the speaker of
28 the house of representatives and the president of the
senate shall be served with a copy of the pleading,
motion or document containing the allegation at the
same time the other parties in the action are served and
shall be entitled to be heard."

Further while A.R.S. § 12-1841(A) require service, A.R.S. § 12-1841(B)
requires the Defendant to also file a notice of claim:

1 A.R.S. § 12-1841B. "If a pleading, motion or document containing
2 the allegation is served on the attorney general and the speaker
3 of the house of representatives and the president of the senate
4 pursuant to subsection A, a notice of claim of unconstitutionality
5 shall be attached to the pleading, motion or document as the
6 cover page and shall state the following information:

7 1. The name, address and telephone number of the attorney for
8 the party alleging that a state law is unconstitutional or the
9 name, address and telephone number of the party if the party is
10 not represented by an attorney.

11 2. The case name, court name, caption and case number of the
12 proceeding.

13 3. A brief statement of the basis for the claim of
14 unconstitutionality.

15 4. A brief description of the proceeding, with copies of any court
16 orders in the proceeding if the claim of unconstitutionality is
17 asserted in a pleading, motion or document other than the
18 pleading, motion or document that initiated the proceeding.

19 5. The date, time, location, judge and subject of the next hearing
20 in the proceeding, if any."

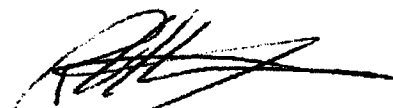
21 The Defendant's attorneys did not serve the attorney general and the
22 speaker of the house of representatives and the president of the senate, and did
23 not file a notice of claim as required by A.R.S. § 12-1841. Their motion to dismiss
24 ignores A.R.S. § 12-1841. Rule 12(b)(6) does not apply here. Requesting the
25 Court to find the "administrative process" unconstitutional is a claim for
26 declaratory relief which cannot be sought through a motion to dismiss.

27 Accordingly, pursuant to ARCP 12(f)2 the Plaintiff requests the Court to
28 strike the Defendant's motion to dismiss.

The Court should consider imposing sanctions on the Defendant's
attorneys for filing such an improper motion to dismiss and attempting to abridge
the judicial process.

///

1 Dated this 4th day of June, 2021.

2 

3 R. L. Whitmer
4 Pro per

5 ORIGINAL filed this
6 4th day of June, 2021, with the Court;
7 and a COPY hand-delivered this same date to:

8 Tim Butterfield
9 Carpenter Hazelwood
10 1400 E. Southern Ave., Ste. 400
11 Tempe, AZ 85282

12 Courtesy copies to:

13 Arizona Attorney General
14 Hon. Mark Brnovich
15 2005 N Central Ave
16 Phoenix, AZ 85004

17 Speaker of the Arizona House of Representative
18 Hon. Russel Bowers
19 1700 W. Washington St.
20 Phoenix AZ 85007

21 President of the Arizona State Senate
22 Hon. Karen Fann
23 1700 W. Washington St.
24 Phoenix AZ 85007
25
26
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