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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

CV2022-014709

R. L. WHITMER, an individual,

Case No.:

Plaintiff

**PLAINTIFF'S MOTION FOR ORDER TO
SHOW CAUSE**

vs.

**HILTON CASITAS HOMEOWNERS
ASSOCIATION, also known as HILTON
CASITAS COUNCIL OF
HOMEOWNERS, also known as
COUNCIL OF CO-OWNERS, also known
as HILTON CASITAS COUNCIL OF CO-
OWNERS, an Arizona nonprofit
corporation,**

Defendant.

Upon the declaration of R. L. Whitmer (“**Whitmer**” or “**Plaintiff**”) sworn to on November 4, 2022, the accompanying Memorandum of Law in Support of his Motion for Order to Show Cause, and the complaint filed in this action, Whitmer respectfully requests the Court enter an Order to Show Cause for Hilton Casitas Homeowners Association’s (“**HOA**” or “**Defendant**”) failure to comply with Administrative Law Judge Decision No. 14F-H1415004-BFS, specifically relating to its compliance with their approved budget for attorneys’ fees.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. Introduction**

3 In 2014, Plaintiff filed an action before the Office of Administrative Hearings alleging
4 Defendant violated A.R.S. § 33-1243(D) by overspending more than the budgeted legal expenses
5 in 2013 and 2014. *See* Administrative Law Judge Decision (dated January 7, 2014) at ¶ 4 in Case
6 No. 14F-H1415004-BFS, attached hereto as **Exhibit A**. The claim specifically alleged that the
7 Defendant had budgeted legal expenses in 2013 and 2014 for \$2,500 and \$1,000, respectively, but
8 spent \$9,250 in legal expenses without proper ratification. *See* Exhibit A, at ¶ 4. The ALG ruled
9 in favor of Plaintiff and ordered the Defendant to “fully comply with the applicable provisions of
10 A.R.S. § 33-1243(D) in the future.” *See* Exhibit A, at 4. On February 18, 2015, the ALJ Decision
11 was certified as the final administrative decision pursuant to A.R.S. § 41-1092.08(D) and the
12 Defendant did not appeal.

13 Now, the Defendant has violated this continuing order by spending nearly three times its
14 budgeted legal expenses in 2021. This action seeks to enforce the continuing order against the
15 Defendant and ensure further compliance in the future.

16 **II. Factual Allegations**

17 On May 19, 2021, the Defendant held a special meeting of the homeowners to ratify its
18 2021 Fiscal Year Budget, which sought authorization of \$50,000 in legal expenses. *See* Hilton
19 Casitas Council of Homeowners Budget Summary, attached hereto as **Exhibit B**. On January 10,
20 2022, Whitmer received the HOA’s 2021 monthly financial statements pursuant to A.R.S. § 33-
21 1258. The financial statements showed enormous legal expenses, far in excess of the authorization
22 the homeowners authorized.

23 In July 2021, HOA spent \$49,635.30 in legal expenses. *See* Hilton Casitas Council of
24 Homeowners Budget comparison Income Statement for July 2021, attached hereto as **Exhibit C**.
25 In August 2021, HOA spent \$55,185.20 in legal expenses. *See* Hilton Casitas Council of
26

1 Homeowners Budget comparison Income Statement for August 2021, attached hereto as **Exhibit**
2 **D**. In November 2021, HOA spent \$67,195.50 in legal expenses. *See* Hilton Casitas Council of
3 Homeowners Budget comparison Income Statement for November 2021, attached hereto as
4 **Exhibit E**.

5 Pursuant to the ALJ Decision, HOA was required to amend its budget by presenting a
6 budget amendment to the Homeowners. *See* Exhibit A at 4; *see also* A.R.S. § 33-1243(D). HOA
7 has failed to comply with this order and statute.

8 **III. Legal Standard**

9 “An action alleging a wrong done by the association shall be brought against the
10 association and not against any unit owner.” A.R.S. § 33-1251(A). The association may adopt
11 “and amend budgets for revenues, expenditures and reserves and collect assessments for common
12 expenses from unit owners.” A.R.S. § 33-1242(A)(2). The Superior Court has proper jurisdiction
13 to consider an enforcement action to enforce an ALJ’s order by contempt. *Whitmer v. Hilton*
14 *Casitas Homeowners Association*, 425 P.3d 253, 257, ¶ 15 (Ariz. App. 2018).

15 **IV. Legal Argument**

16 HOA is required to abide by its Declaration and the statutes, which require compliance
17 with its annual adopted budget. Further, the Administrative Law Judge ordered HOA to “fully
18 comply with the applicable provisions of A.R.S. § 33-1243(D) in the future.”

19 In 2021, HOA adopted a budget setting a maximum expenditure of \$50,000 for legal
20 expenses for the fiscal year. HOA failed to comply with this budget, and instead spent \$172,016.00
21 in legal expenses over July, August, and November 2021. HOA did not amend its adopted budget,
22 as required by the Declaration and A.R.S. § 33-1242(A)(2). HOA’s failure to comply with the
23 Declaration, statutes, and the continuing ALJ Order demonstrates a blatant violation.



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EXHIBIT A

1 The [Hilton Casitas] consists of twenty-nine (29) homes located
2 behind the Scottsdale Hilton. In large part, the majority of the
3 maintenance and management of the Casitas is taken care of by
4 the hotel. The Association adopts its proposed budget at the
5 annual meetings and adopted a proposed budget for 2013 at the
6 annual meeting. The proposed budget was insufficient because
7 Mr. Whitmer has made multiple legal challenges requiring the
8 Association's counsel to respond.

7 TESTIMONY

8 **Testimony of Michael Bengson**

9 6. Michael Bengson (hereinafter "Mr. Bengson") testified that he was elected to be a
10 member of the Board for Hilton Casitas in October 2014. Mr. Bengson stated that there
11 has been no Board meeting since October 15, 2014. Mr. Bengson testified that he
12 retained Respondent's counsel, Robert Anderson, Esq., as a friend to help Hilton
13 Casitas out. Mr. Bengson stated that he wanted to resolve the chaos that Hilton Casitas
14 was currently involved in. Mr. Bengson testified that Hilton Casitas' prior counsel had
15 resigned and that he felt it was imperative for Hilton Casitas to have legal representation
16 at the hearing.

17 7. Mr. Bengson testified that he had been a member of the association since May
18 2011. Mr. Bengson stated that there had not been a meeting of the Board since his
19 election to the Board on October 15, 2014. Mr. Bengson testified that the Board was
20 aware of the budget problems and intended to meet soon to adopt an amended budget.

21 8. Mr. Bengson testified that the amended budget would ratify the increased legal
22 expenses incurred by Hilton Casitas. Mr. Bengson stated that he and the new Board
23 wanted to "get everything on the right track."

24 **Testimony of Esther Sue Karatz**

25 9. Esther Sue Karatz (hereinafter "Mrs. Karatz") testified that she had previously been
26 president of the Board for Hilton Casitas. Mrs. Karatz stated that Hilton Casitas' prior
27 legal counsel was hired on January 31, 2013. Mrs. Karatz acknowledged that there was
28 no record of the Board's decision to retain legal counsel.

29 10. Mrs. Karatz testified that Hilton Casitas had suffered a computer crash and that
30 there were no records for meetings or actions of the Board for Hilton Casitas after

1 January 10, 2013, and that there were no records regarding the retention of Hilton
2 Casitas' prior legal counsel. Mrs. Karatz said that the majority of the Board approved
3 the hiring of the prior legal counsel by "a telephone vote."

4 11. Mrs. Karatz acknowledged that Hilton Casitas' legal fees in 2014, substantially
5 exceeded the amount of money that had been budgeted for legal fees in 2014. Mrs.
6 Karatz testified that the increased legal expenses were incurred because Petitioner had
7 filed two or three law suits against Hilton Casitas and that the law suits necessitated
8 increased legal fees. Mrs. Karatz stated that the increased legal fees had not been
9 anticipated by Hilton Casitas.

10 **PROVISIONS OF LAW REFERENCED AT HEARING**

11 1. A.R.S. § 33-1243(D) provides as follows:

12 Except as provided in the declaration, within thirty days after
13 adoption of any proposed budget for the condominium, the board
14 of directors shall provide a summary of the budget to all the unit
15 owners. Unless the board of directors is expressly authorized in
16 the declaration to adopt and amend budgets from time to time,
17 any budget or amendment shall be ratified by the unit owners in
18 accordance with the procedures set forth in this subsection. If
19 ratification is required, the board of directors shall set a date for a
20 meeting of the unit owners to consider ratification of the budget
21 not fewer than fourteen nor more than thirty days after mailing of
22 the summary. Unless at that meeting a majority of all the unit
23 owners or any larger vote specified in the declaration rejects the
24 budget, the budget is ratified, whether or not a quorum is present.
25 If the proposed budget is rejected, the periodic budget last ratified
26 by the unit owners shall be continued until such time as the unit
27 owners ratify a subsequent budget proposed by the board of
28 directors.

29 **CONCLUSIONS OF LAW**

30 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to
file a petition with the Department for a hearing concerning violations of planned
community documents or violations of statutes that regulate planned communities. That
statute provides that such petitions will be heard before the Office of Administrative
Hearings.

1 2. The burden of proof at an administrative hearing falls to the party asserting a
2 claim, right, or entitlement and the standard of proof on all issue in this matter is by a
3 preponderance of the evidence. See A.A.C. R2-19-119.

4 3. Proof by "preponderance of the evidence" means that it is sufficient to persuade
5 the finder of fact that the proposition is "more likely true than not." *In re Arnold and*
6 *Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994).

7 4. A.R.S. § 33-1243(D) provides that within thirty days after adoption of any
8 proposed budget for the condominium, the Board shall provide a summary of the budget
9 to all the unit owners and that unless the Board is expressly authorized in the declaration
10 to adopt and amend budgets from time to time, any budget or amendment shall be
11 ratified by the unit owners in accordance with the procedures set forth in this subsection.
12 Mrs. Karatz acknowledged that Hilton Casitas' legal fees in 2014 exceeded the amount
13 of money that had been budgeted for legal fees in 2014. Mr. Bengson stated that there
14 had not been a meeting of the Board since his election to the Board on October 15,
15 2014. Mr. Bengson testified that the Board was aware of the budget problems and
16 intended to meet soon to adopt an amended budget. Mr. Bengson stated that the
17 amended budget would ratify the increased legal expenses incurred by Hilton Casitas.
18 Hilton Casitas has not ratified the increased expenses and adopted an amended budget
19 as required by applicable statute. This Tribunal concludes that Hilton Casitas failed to
20 comply with the applicable provisions of A.R.S. § 33-1243(D).

21 **RECOMMENDED ORDER**

22 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing
23 party in this matter.

24 It is further ORDERED that Hilton Casitas shall fully comply with the applicable
25 provisions of A.R.S. § 33-1243(D) in the future.

26 It is further ORDERED that Hilton Casitas shall pay Petitioner his filing fee of
27 \$550.00, to be paid directly to Petitioner within thirty (30) days of this Order.

28 It is further ORDERED that no civil penalty shall be imposed in this matter.
29
30



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EXHIBIT B

Budget Summary

Hilton Casitas Council of Homeowners

INCOME	Budgeted Amount	Total
Assessment Income	104,400.00	
Interest Income	50.00	
Late Fee Income	1,500.00	
Administrative Income	40.00	
Collection Cost Reimbursement	60.00	
		106,050.00
EXPENSE	Budgeted Amount	Total
Collections	1,050.00	
Collections - Late Notices	50.00	
Copies & Printing	300.00	
CPA Services/Tax Return	3,500.00	
Income Taxes - Federal	75.00	
Insurance	8,000.00	
Legal - General	50,000.00	
Mailings	75.00	
Management Contract	9,600.00	
Meeting Expenses	1,700.00	
Office Supplies	200.00	
Postage	150.00	
Storage Fees	1,200.00	
Gate Maintenance & Repairs	2,500.00	
Street Maintenance & Repair	1,500.00	
Irrigation Maint & Repair	500.00	
Landscape - Tree Maint.	1,194.00	
Landscape Enhancement	3,000.00	
Overseed	1,000.00	
Gate Maintenance Contract	1,780.00	
Landscape Contract	7,200.00	
Electric - Common Area	600.00	
Refuse	8,700.00	
Telephone - Gates	700.00	
Reserve Contribution	1,476.00	
		106,050.00
	NET INCOME	0.00

Budget Summary
Hilton Casitas Council of Homeowners

INCOME	Budgeted Amount	Total
Reserve Contribution	1,476.00	
		<hr/>
		1,476.00
	NET INCOME	1,476.00



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EXHIBIT C

Hilton Casitas Council of Homeowners Budget Comparison Income Statement

Posted 7/1/2021 To 7/31/2021 11:59:00 PM

Current Month Operating				Year to Date Operating					
Actual	Budget	\$ Var	% Var		Actual	Budget	\$ Var	% Var	Annual
1,038.58	1,000.00	(38.58)	(3.86)	5088 Insurance	8,191.12	4,000.00	(4,191.12)	(104.78)	8,000.00
9,065.60	4,167.00	(4,898.60)	(117.56)	5102 Legal - General	49,635.30	29,169.00	(20,466.30)	(70.16)	50,000.00
0.00	25.00	25.00	100.00	5110 Mailings	2.50	50.00	47.50	95.00	75.00
800.00	800.00	0.00	0.00	5112 Management Contract	4,800.00	5,600.00	800.00	14.29	9,600.00
0.00	142.00	142.00	100.00	5122 Meeting Expenses	135.00	994.00	859.00	86.42	1,700.00
0.00	0.00	0.00	0.00	5126 Meeting Minutes	717.00	0.00	(717.00)	0.00	0.00
12.50	17.00	4.50	26.47	5136 Office Supplies	77.00	119.00	42.00	35.29	200.00
26.77	13.00	(13.77)	(105.92)	5146 Postage	193.62	91.00	(102.62)	(112.77)	150.00
0.00	0.00	0.00	0.00	5148 Printing	62.48	0.00	(62.48)	0.00	0.00
450.00	0.00	(450.00)	0.00	5158 Reserve Study Update	450.00	0.00	(450.00)	0.00	0.00
40.00	100.00	60.00	60.00	5182 Storage Fees	407.38	700.00	292.62	41.80	1,200.00
11,604.70	6,377.00	(5,227.70)	(81.98)	TOTAL Administrative	70,218.11	45,089.00	(25,129.11)	(55.73)	75,900.00
				<u>Contracts</u>					
0.00	148.33	148.33	100.00	6010 Gate Maintenance Contract	895.00	1,038.31	143.31	13.80	1,780.00
600.00	600.00	0.00	0.00	6018 Landscape Contract	4,200.00	4,200.00	0.00	0.00	7,200.00
600.00	748.33	148.33	19.82	TOTAL Contracts	5,095.00	5,238.31	143.31	2.74	8,980.00
				<u>Landscaping</u>					
0.00	41.67	41.67	100.00	5824 Irrigation Maint & Repair	309.38	291.69	(17.69)	(6.06)	500.00
0.00	100.00	100.00	100.00	5828 Landscape - Tree Maint.	0.00	700.00	700.00	100.00	1,194.00
0.00	250.00	250.00	100.00	5830 Landscape Enhancement	0.00	1,750.00	1,750.00	100.00	3,000.00
0.00	0.00	0.00	0.00	5838 Overseed	0.00	0.00	0.00	0.00	1,000.00
1,220.00	0.00	(1,220.00)	0.00	5840 Palm Tree Trimming	1,220.00	0.00	(1,220.00)	0.00	0.00
1,220.00	391.67	(828.33)	(211.49)	TOTAL Landscaping	1,529.38	2,741.69	1,212.31	44.22	5,694.00
				<u>Repairs and Maintenance</u>					
635.00	208.33	(426.67)	(204.80)	5436 Gate Maintenance & Repairs	1,535.00	1,458.31	(76.69)	(5.26)	2,500.00



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EXHIBIT D

Hilton Casitas Council of Homeowners Budget Comparison Income Statement

Posted 8/1/2021 To 8/31/2021 11:59:00 PM

Current Month Operating				Year to Date Operating					
Actual	Budget	\$ Var	% Var		Actual	Budget	\$ Var	% Var	Annual
0.00	0.00	0.00	0.00		3,850.00	3,500.00	(350.00)	(10.00)	3,500.00
1,122.27	0.00	(1,122.27)	0.00	5056 CPA Services/Tax Return	1,122.27	0.00	(1,122.27)	0.00	0.00
0.00	0.00	0.00	0.00	5084 Income Taxes - Federal	50.00	75.00	25.00	33.33	75.00
1,038.58	1,000.00	(38.58)	(3.86)	5088 Insurance	9,229.70	5,000.00	(4,229.70)	(84.59)	8,000.00
5,549.90	4,167.00	(1,382.90)	(33.19)	5102 Legal - General	55,185.20	33,336.00	(21,849.20)	(65.54)	50,000.00
0.00	0.00	0.00	0.00	5110 Mailings	2.50	50.00	47.50	95.00	75.00
800.00	800.00	0.00	0.00	5112 Management Contract	5,600.00	6,400.00	800.00	12.50	9,600.00
212.50	142.00	(70.50)	(49.65)	5122 Meeting Expenses	347.50	1,136.00	788.50	69.41	1,700.00
0.00	0.00	0.00	0.00	5126 Meeting Minutes	717.00	0.00	(717.00)	0.00	0.00
0.00	17.00	17.00	100.00	5136 Office Supplies	77.00	136.00	59.00	43.38	200.00
38.56	13.00	(25.56)	(196.62)	5146 Postage	232.18	104.00	(128.18)	(123.25)	150.00
0.00	0.00	0.00	0.00	5148 Printing	62.48	0.00	(62.48)	0.00	0.00
0.00	0.00	0.00	0.00	5158 Reserve Study Update	450.00	0.00	(450.00)	0.00	0.00
40.00	100.00	60.00	60.00	5182 Storage Fees	447.38	800.00	352.62	44.08	1,200.00
9,248.06	6,352.00	(2,896.06)	(45.59)	TOTAL Administrative	79,466.17	51,441.00	(28,025.17)	(54.48)	75,900.00
				Contracts					
0.00	148.33	148.33	100.00	6010 Gate Maintenance Contract	895.00	1,186.64	291.64	24.58	1,780.00
0.00	600.00	600.00	100.00	6018 Landscape Contract	4,200.00	4,800.00	600.00	12.50	7,200.00
0.00	748.33	748.33	100.00	TOTAL Contracts	5,095.00	5,986.64	891.64	14.89	8,980.00
				Landscaping					
0.00	41.67	41.67	100.00	5824 Irrigation Maint & Repair	309.38	333.36	23.98	7.19	500.00
0.00	100.00	100.00	100.00	5828 Landscape - Tree Maint.	0.00	800.00	800.00	100.00	1,194.00
0.00	250.00	250.00	100.00	5830 Landscape Enhancement	0.00	2,000.00	2,000.00	100.00	3,000.00
0.00	0.00	0.00	0.00	5838 Overseed	0.00	0.00	0.00	0.00	1,000.00
0.00	0.00	0.00	0.00	5840 Palm Tree Trimming	1,220.00	0.00	(1,220.00)	0.00	0.00



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EXHIBIT E

Hilton Casitas Council of Homeowners Budget Comparison Income Statement

Posted 11/1/2021 To 11/30/2021 11:59:00 PM

Current Month Operating				Year to Date Operating					
Actual	Budget	\$ Var	% Var	Actual	Budget	\$ Var	% Var	Annual	
0.00	0.00	0.00	0.00	5056 CPA Services/Tax Return	4,500.00	3,500.00	(1,000.00)	(28.57)	3,500.00
0.00	0.00	0.00	0.00	5070 Gate Remotes	1,122.27	0.00	(1,122.27)	0.00	0.00
0.00	0.00	0.00	0.00	5084 Income Taxes - Federal	50.00	75.00	25.00	33.33	75.00
849.57	1,000.00	150.43	15.04	5088 Insurance	11,778.39	8,000.00	(3,778.39)	(47.23)	8,000.00
3,359.30	4,167.00	807.70	19.38	5102 Legal - General	67,195.50	45,837.00	(21,358.50)	(46.60)	50,000.00
0.00	0.00	0.00	0.00	5110 Mailings	2.50	75.00	72.50	96.67	75.00
800.00	800.00	0.00	0.00	5112 Management Contract	8,000.00	8,800.00	800.00	9.09	9,600.00
0.00	142.00	142.00	100.00	5122 Meeting Expenses	347.50	1,562.00	1,214.50	77.75	1,700.00
220.50	0.00	(220.50)	0.00	5126 Meeting Minutes	1,062.50	0.00	(1,062.50)	0.00	0.00
7.25	17.00	9.75	57.35	5136 Office Supplies	91.50	187.00	95.50	51.07	200.00
16.22	10.00	(6.22)	(62.20)	5146 Postage	305.09	140.00	(165.09)	(117.92)	150.00
4.64	0.00	(4.64)	0.00	5148 Printing	67.12	0.00	(67.12)	0.00	0.00
0.00	0.00	0.00	0.00	5158 Reserve Study Update	900.00	0.00	(900.00)	0.00	0.00
92.11	100.00	7.89	7.89	5182 Storage Fees	658.02	1,100.00	441.98	40.18	1,200.00
5,449.59	6,399.00	949.41	14.84	TOTAL Administrative	98,653.47	70,569.00	(28,084.47)	(39.80)	75,900.00
				<u>Contracts</u>					
0.00	148.33	148.33	100.00	6010 Gate Maintenance Contract	895.00	1,631.63	736.63	45.15	1,780.00
600.00	600.00	0.00	0.00	6018 Landscape Contract	6,600.00	6,600.00	0.00	0.00	7,200.00
600.00	748.33	148.33	19.82	TOTAL Contracts	7,495.00	8,231.63	736.63	8.95	8,980.00
				<u>Landscaping</u>					
0.00	41.67	41.67	100.00	5824 Irrigation Maint & Repair	309.38	458.37	148.99	32.50	500.00
0.00	100.00	100.00	100.00	5828 Landscape - Tree Maint.	0.00	1,100.00	1,100.00	100.00	1,194.00
0.00	250.00	250.00	100.00	5830 Landscape Enhancement	0.00	2,750.00	2,750.00	100.00	3,000.00
0.00	0.00	0.00	0.00	5838 Overseed	1,784.25	1,000.00	(784.25)	(78.43)	1,000.00
0.00	0.00	0.00	0.00	5840 Palm Tree Trimming	1,220.00	0.00	(1,220.00)	0.00	0.00