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

CV2022-014709

Case No.:

R. L. WHITMER, an individual,

Plaintiff

vs.

**PETITION FOR A SHOW CAUSE
HEARING RE CONTEMPT**

**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.

Petitioner R. L. Whitmer (“**Whitmer**” or “**Plaintiff**”), through undersigned counsel, and pursuant to A.R.S. § 32-2199.02(B) and Ariz. R. Civ. P. Rule 65(f)(6) files this Petition for a Show Cause Hearing, supported by Whitmer’s declaration, attached hereto as **Exhibit A**, and the following allegations:

PARTIES

1. R. L. Whitmer is a member and owner of a condominium at Hilton Casitas in Phoenix, Arizona.

2. Hilton Casitas Homeowners Association (“**HOA**” or “**Defendant**”) is an Arizona

1 nonprofit corporation and the homeowners association for the Hilton Casitas in Phoenix, Arizona.

2 **JURISDICTION AND VENUE**

3 3. This Court has jurisdiction to enforce ALJ contempt orders pursuant to Ariz. Const.
4 art. 6, §14(1), A.R.S. § 12-864, and *Whitmer v. Hilton Casitas Homeowners Association*, 425 P.3d
5 253, 257, ¶ 15 (Ariz. App. 2018).

6 4. Venue is proper in this Court, as the parties and the actions reside and do business
7 in Maricopa County, Arizona.

8 **FACTUAL BACKGROUND**

9 5. On January 7, 2015, the Honorable Michael Douglas, Administrative Law Judge,
10 found that HOA had, without amending its budget, overspent its 2015 budget.

11 6. The ALJ, in Order 14F-H1415004-BFS (“**ALJ Decision**”), attached hereto as
12 **Exhibit B**, mandated that “Hilton Casitas shall fully comply with the applicable provisions of
13 A.R.S. § 33-1243(D) in the future.”

14 7. On February 18, 2015, the ALJ Decision was certified as the final administrative
15 decision pursuant to A.R.S. § 41-1092.08(D), and HOA did not appeal.

16 8. An ALJ order is enforceable through contempt of court proceedings. A.R.S. § 32-
17 2199.02(B).

18 9. HOA is aware of the ALJ Decision and has failed to continue in its compliance.

19 10. On May 19, 2021, HOA held a special meeting of its homeowners where it approved
20 its 2021 Fiscal Year Budget (“**2021 Budget**”).

21 11. The 2021 Budget set at annual expense for legal expenditures of \$50,000.

22 12. Pursuant to A.R.S. § 33-1258, Plaintiff received HOA’s 2021 monthly financial
23 statements on January 10, 2022.

24 13. After reviewing the 2021 monthly financial statements, Plaintiff realized HOA had
25 failed to comply with the ALJ Decision.



1 14. In July 2021, HOA spent \$49,635.30 in legal expenses. See Hilton Casitas Council
2 of Homeowners Budget comparison Income Statement for July 2021, attached hereto as **Exhibit**
3 **C**.

4 15. In August 2021, HOA spent \$55,185.20 in legal expenses. See Hilton Casitas
5 Council of Homeowners Budget comparison Income Statement for August 2021, attached hereto
6 as **Exhibit D**.

7 16. In November 2021, HOA spent \$67,195.50 in legal expenses. See Hilton Casitas
8 Council of Homeowners Budget comparison Income Statement for November 2021, attached
9 hereto as **Exhibit E**.

10 17. HOA did not amend the 2021 Budget.

11 18. HOA’s failure to abide by the 2021 Budget and its failure to amend the 2021 Budget
12 constitutes a violation of the ALJ Decision.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff respectfully requests the Court order HOA to appear before the
15 Court and show cause, if any, as to why the following relief should not be granted:

16 A. That HOA be found in civil contempt;

17 B. That judgment be entered against HOA pursuant to Rule 65(f)(6), Ariz. R. Civ. P.,
18 in the amount of Plaintiff’s attorneys’ fees in bringing this action, with interest accruing from the
19 date of the hearing;

20 C. That should HOA fail to appear at said hearing, an order granting all relief as
21 requested herein and a civil arrest order be issued;

22 D. That as the contempt cannot be purged, to prevent further contempt the Court, in its
23 judgment, includes the officers and directors in their official and personal capacities as included
24 for future acts of contempt;

25 E. That HOA be ordered to pay any and all Court costs and fees in bringing this action
26

1 to the Court's attention;

2 F. That this Court order any and all additional relief as deemed just and proper under
3 the circumstances.

4
5 **RESPECTFULLY SUBMITTED** this 4th day of November 2022.

6 **MEYER & PARTNERS, PLLC**

7 By /s/ Ross P. Meyer

8 Ross P. Meyer, Esq.

9 3104 E. Camelback Road, #2562

10 Phoenix, Arizona 85016

11 ross@meyerpllc.com

12 *Attorneys for Plaintiff*

13 **ELECTRONICALLY** filed
14 November 4, 2022, via
15 AZTurboCourt.com

16 By /s/ Ross P. Meyer





MEYER & PARTNERS, PLLC

EXHIBIT A



Ross P. Meyer, #028473
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Attorneys for Plaintiff

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

R. L. WHITMER, an individual,
Plaintiff

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.

Case No.:

DECLARATION OF R. L. WHITMER

I, R. L. Whitmer, make this Declaration of my own knowledge and I am competent to testify to the matters contained herein:

1. I, R. L. Whitmer, am over the age of 18 years of age and have personal knowledge of the matters set forth in this declaration, regarding the concurrently filed Petition for Order to Show Cause.

2. On January 7, 2015, the Honorable Michael Douglas, Administrative Law Judge, found that the Hilton Casitas Homeowners Association (“**HOA**”) had, without amending its budget, overspent its 2015 budget.



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EXHIBIT B

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 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
				Contracts					
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
				Landscaping					
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
				Repairs and Maintenance					
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



MEYER & PARTNERS, PLLC

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