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**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.: CV2022-014709

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

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 Amended Petition for a Show Cause Hearing, supported by 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 nonprofit corporation and the homeowners association for the Hilton Casitas in Phoenix, Arizona.

JURISDICTION AND VENUE

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

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

FACTUAL BACKGROUND

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

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

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

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

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

10. The HOA’s is governed by a Board of Directors, which has all powers necessary for the administration of the affairs of the Council.

11. The HOA and its Board of Directors have failed to amend its budgets that were adopted in 2021 and 2022, after the HOA exceeded its budgets.

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

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

14. Pursuant to A.R.S. § 33-1258, Plaintiff received HOA’s 2021 monthly financial

1 statements on January 10, 2022.

2 15. After reviewing the 2021 monthly financial statements, Plaintiff realized HOA had
3 failed to comply with the ALJ Decision.

4 16. In July 2021, the HOA had spent \$49,635.30 in legal expenses for the year. *See*
5 Hilton Casitas Council of Homeowners Budget comparison Income Statement for July 2021,
6 attached hereto as **Exhibit C**.

7 17. In August 2021, the HOA had spent \$55,185.20 in legal expenses for the year,
8 exceeding the 2021 Budget. *See* Hilton Casitas Council of Homeowners Budget comparison
9 Income Statement for August 2021, attached hereto as **Exhibit D**.

10 18. In November 2021, HOA had spent \$67,195.50 in legal expenses for the year,
11 exceeding the 2021 Budget. *See* Hilton Casitas Council of Homeowners Budget comparison
12 Income Statement for November 2021, attached hereto as **Exhibit E**.

13 19. HOA did not amend the 2021 Budget.

14 20. HOA’s failure to abide by the 2021 Budget and its failure to amend the 2021 Budget
15 constitutes a violation of the ALJ Decision.

16 21. In 2022, the HOA approved a legal budget of \$20,000 (“**2022 Budget**”). *See* Hilton
17 Casitas Council of Homeowners Budget Comparison Income Statement for September 2022,
18 attached hereto as **Exhibit F**.

19 22. In September 2022, the HOA had spent \$39,968.60 in legal expenses for the year,
20 exceeding the 2022 Budget. *See* Exhibit F.

21 23. In October 2022, the HOA had spent \$40,430.60 in legal expenses for the year,
22 exceeding the 2022 Budget. *See* Hilton Casitas Council of Homeowners Budget Comparison
23 Income Statement for October 2022, attached hereto as **Exhibit G**.

24 24. In November 2022, the HOA had spent \$46,591.60 in general legal expenses for the
25 year, exceeding the 2022 Budget. *See* Hilton Casitas Council of Homeowners Budget Comparison
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1 Income Statement for November 2022, attached hereto as **Exhibit H**.

2 25. In 2022, the HOA more than doubled their allocated and approved spending for
3 general legal expenses.

4 26. The HOA has not amended their 2022 Budget, despite requests from Plaintiff and
5 the ALJ Decision.

6 **PRAYER FOR RELIEF**

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

9 A. That HOA be found in civil contempt;

10 B. The HOA be ordered by this Court to comply with the ALJ Decision and to amend
11 its future budgets within thirty (30) days of exceeding or knowing the HOA will exceed its adopted
12 budget's authorized expenditures.

13 C. That judgment be entered against HOA pursuant to Rule 65(f)(6), Ariz. R. Civ. P.,
14 in the amount of Plaintiff's attorneys' fees in bringing this action, with interest accruing from the
15 date of the hearing;

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

18 E. That as the contempt cannot be purged, to prevent further contempt the Court, in its
19 judgment, includes the officers and directors in their official and personal capacities as included
20 for future acts of contempt;

21 F. That HOA be ordered to pay any and all Court costs and fees in bringing this action
22 to the Court's attention;

23 G. That this Court order any and all additional relief as deemed just and proper under
24 the circumstances.

