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5 *Attorneys for Defendant*

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

8 R.L. WHITMER an individual,

9 Plaintiff,

10 vs.

11 HILTON CASITAS HOMEOWNERS
12 ASSOCIATION, also known as HILTON
13 CASITAS COUNCIL OF HOMEOWNERS,
14 also known as COUNCIL OF CO-OWNERS,
15 also known as HILTON CASITAS COUNCIL
16 OF CO-OWNERS, an Arizona nonprofit
17 corporation,

18 Defendant.

Case No. CV2022-014709

**MOTION TO DISMISS AMENDED
PETITION FOR A SHOW
CAUSE HEARING RE CONTEMPT**

(Hon. Joseph P. Mikitish)

19 Respondent Hilton Casitas Council of Homeowners Association, pursuant to Rule
20 12(b)(6), *Ariz.R.Civ.P.*, hereby submits its Motion to Dismiss Plaintiff R.L. Whitmer's Amended
21 Petition For a Show Cause Hearing Re Contempt (the "Amended Petition"). Plaintiff has failed to
state a claim upon which relief may be granted and dismissal is therefore appropriate at this time.

1 This Motion is supported by the accompanying Memorandum of Points and Authorities, the
2 pleadings, motions, exhibits,¹ and all other documents of record in this action.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. Factual Background**

5 The Association is a condominium subject to the Arizona Nonprofit Corporation Act
6 (A.R.S. §10-3101, *et seq.*) and the Arizona Condominium Act (A.R.S. §33-1201, *et. seq.*).
7 Plaintiff brings his Amended Petition as co-owner of one percent (1%) of a single unit in the
8 Association. Plaintiff seeks the following forms of relief: 1) a finding that the Association is in
9 civil contempt of the Administrative Law Judge’s Decision in Office of Administrative Hearings
10 Case No. 14F-41415004-BFS (the “Administrative Decision”); 2) an injunction that the
11 Association must comply with the Administrative Decision by amending its future budgets within
12 thirty (30) days of exceeding or knowing it will exceed its adopted budget’s authorized
13 expenditures, and 3) for any judgment to include the officers and directors in their official and
14 personal capacities. *See* Amended Petition at 4. Plaintiff seeks relief that is not supported in the
15 record.

16 This motion is based primarily on the allegations in Plaintiff’s Amended Petition and is
17 taken as true for the purposes of this Motion only. If this matter proceeds, the Association reserves
18 the right to challenge any or all of Plaintiff’s factual allegations.

19
20

¹ Counsel for the Association notes that Plaintiff did not file any of his exhibits with his
21 Amended Petition, including but not limited to any of the new Exhibits to which he cites for
support.

1 **II. Legal Standard of Review**

2 In reviewing a motion to dismiss for failure to state a claim, the allegations of the claim are
3 assumed to be true, and the Court gives Plaintiff the benefit of all reasonable inferences which can
4 be inferred from the Complaint. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, 189 P.3d
5 344, 346 (2008). However, Courts should not “accept as true allegations consisting of conclusions
6 of law, inferences or deductions that are not necessarily implied by well-pleaded facts,
7 unreasonable inferences or unsupported conclusions from such facts, *or legal conclusions alleged*
8 *as facts.*” *Jeter v. Mayo Clinic Arizona*, 211 Ariz. 386, 389, ¶4 (App. 2005) (Emphasis added).

9 **III. Legal Arguments**

10 Plaintiff’s request to hold the Association in contempt of court is based on the faulty
11 assumptions that (1) the Administrative Decision is valid; and (2) the Administrative Decision
12 established a timeline for amending budgets within the statutory requirements of A.R.S. §33-
13 1243(D). As explained more fully below, the Administrative Decision is invalid as a matter of law
14 and cannot form the basis for contempt of court. In addition, the plain language of A.R.S. §33-
15 1243(D) does not require amendments to fully ratified budgets within any specific period of time.

16 **a) The Administrative Process Lacked Authority to Grant Injunctions.**

17 The Administrative Decision is invalid to the extent that it exceeded the authority of the
18 Office of Administrative Hearings and issued an “obey the law” injunction, ordering the
19 Association to adhere to A.R.S. 33-1243(D) “moving forward.” Pursuant to A.R.S. §41-2198.02
20 (2015), relief through the Administrative Process was limited to an order that a party “abide by
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1 the statute, condominium documents, community documents or contract provision at issue” in
2 addition to a permissible civil penalty and recovery of the filing fee.

3 Injunctions are a form of equitable relief reserved to the courts rather than administrative
4 bodies. *State ex rel. Corbin v. Portland Cement Ass’n*, 142 Ariz. 421, 425 (App. 1984) (“An
5 injunction is a decree in equity.”); *see also* A.R.S. §12-1801 (authorizing superior courts to grant
6 injunctions); A.R.S. §41-1001 et seq. (setting forth the rules for administrative procedure which
7 do not include any authority to grant injunctions). The coercive power of injunctions cannot be
8 employed absent specific procedural safeguards. *See e.g.*, A.R.S. §12-1803 (“An injunction shall
9 not be granted on the complaint unless it is verified by the oath of the plaintiff...” *See also* *Leiva-*
10 *Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (describing injunctions as an “extraordinary
11 remedy...by which a court directs the conduct of a party...with the backing of its full coercive
12 powers.” (Internal quotations omitted)).

13 Furthermore, “obey the law” injunctions have been held invalid by the United States
14 Supreme Court, as parties are always required to obey the law. *See NLRB v. Express Pub. Co.*,
15 312 U.S. 426, 435-36 (1941) (“[T]he mere fact that a court has found that a defendant has
16 committed an act in violation of a statute does not justify an injunction broadly to obey the
17 statute...”); *see also West Valley View, Inc. v. Maricopa Cnty. Sheriff’s Office*, 216 Ariz. 225, 228,
18 ¶11 (App. 2007) (observing that “courts are generally hesitant to order a defendant to obey a law
19 in the future”). In the Administrative Decision, the ALJ simply included a “broad” and non-
20 specific order for the Association to obey A.R.S. §33-1243(D) “moving forward.” Not only did
21

1 the ALJ lack the authority and procedural safeguards to issue such an injunction, but such an order
2 is in conflict with both Arizona and Federal law. The Court should instead read the Administrative
3 Decision in the context of A.R.S. §41-2198.02 and limit it to the specific facts and circumstances
4 of the 2014 dispute. Plaintiff cannot use the Administrative Decision to seek a contempt order
5 against the Association seven (7) years after the OAH issued the Administrative Decision under
6 distinct factual circumstances.

7 In the Administrative Decision, it simply included a “broad” and non-specific order for the
8 Association to obey A.R.S. §33-1243(D) moving forward. The Association is already required to
9 comply with Arizona’s Condominium Act, which includes this statute. Although a number of
10 factual findings were made within the Administrative Decision, those findings differ from the
11 facts before the Court in this matter. *See* Section (b), *infra*. For all the foregoing reasons, the
12 Administrative Decision should be held invalid and the Amended Petition denied and dismissed
13 with prejudice.

14 **b) A.R.S. §33-1243(D) Does Not Obligate the Association to Amend the Budget.**

15 Even if the Court finds that the Administrative Decision is valid, which the Association
16 does not concede for the purposes of this Motion, Plaintiff fails to state a claim upon which this
17 Court might grant relief. He has failed to allege any facts which, taken as true, are sufficient to
18 state a claim that the Association violated A.R.S. §33-1243(D), as referenced in the Administrative
19 Decision. A.R.S. §33-1243(D) states:

20 Except as provided in the declaration, within thirty days after adoption of any
21 proposed budget for the condominium, the board of directors shall provide a

1 summary of the budget to all the unit owners. *Unless the board of directors is*
2 *expressly authorized in the declaration to adopt and amend budgets from time to*
3 *time, any budget or amendment shall be ratified by the unit owners in accordance*
4 *with the procedures set forth in this subsection.* If ratification is required, the board
5 of directors shall set a date for a meeting of the unit owners to consider ratification
6 of the budget not fewer than fourteen nor more than thirty days after mailing of the
summary. Unless at that meeting a majority of all the unit owners or any larger
vote specified in the declaration rejects the budget, the budget is ratified, whether
or not a quorum is present. If the proposed budget is rejected, the periodic budget
last ratified by the unit owners shall be continued until such time as the unit owners
ratify a subsequent budget proposed by the board of directors. (Emphasis added).

7 The only thing this statutory provision requires is ratification of an Association's budget in
8 the event the Governing Documents do not address the ability to adopt and amend budgets. This
9 statute does not state any requirement to amend an already ratified budget in the event it is
10 overspent in the fiscal year. The permissive reading of the amendment language is further
11 supported by the fact the statute fails to specify a timeline for amending a budget. In fact, the
12 statute is silent on that issue altogether aside from requiring ratification in the absence of authority
13 in a declaration, which suggests the legislature did not intend to impose this additional obligation
14 upon associations.

15 Even if this Court does read this statute to suggest that amending the budget is necessary,
16 the plain language of the statute seemingly allows an association to address any discrepancies in
17 the prior year's budget in a subsequent annual budget, so long as the subsequent annual budget is
18 ratified. This permissive reading is supported by the legislature, who noted in a Committee Report
19 pertaining to this statute that "[t]he Board has several enumerated statutory authorities, including
20 *the ability* to adopt and amend budgets for revenues, expenditures, reserves and collect
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1 assessments for common expenses from unit owners.” 2015 Arizona Senate Bill No. 1091,
2 Arizona Fifty-Second Legislature - First Regular Session. (Emphasis added). The “ability” to
3 amend a budget is not the same as an “obligation” to do so, as Plaintiff is trying to represent.

4 Specific findings of fact were made within the Administrative Decision after a hearing took
5 place in December 2014, which included the following:

6 [T]here was no record of the Board’s decision to retain legal counsel.

7 Mrs. Karatz testified that Hilton Casitas had suffered a computer crash and that
8 there were no records for meetings or actions of the Board for Hilton Casitas after
9 January 10, 2013, and that there were no records regarding the retention of Hilton
10 Casitas’ prior legal counsel. Mrs. Karatz said that the majority of the Board
11 approved the hiring of the prior legal counsel by telephone vote.

12 Mr. Bengson testified that the Board was aware of the budget problems and
13 intended to meet soon to adopt an amended budget. Mr. Bengson stated that the
14 amended budget would ratify the increased legal expenses incurred by Hilton
15 Casitas.

16 Original Petition at **Exhibit B**, Pages 2-3, ¶¶9-10 and Page 4, ¶4.²

17 These facts substantially differ from those before the Court in this matter, partially due to
18 the fact there is no suggestion that membership did not ratify the 2021 and 2022 budgets. At the
19 2015 hearing, the Association failed to produce records dating back nearly two (2) years, failed to
20 produce evidence showing proper retention of its legal counsel on which it overspent, and had
21 specifically indicated an intent to amend the budget. *See* original Petition at Exhibit B, Pages 2-3,

20 ² Because Plaintiff did not attach any Exhibits to the Amended Petition, please refer to Plaintiff’s
21 original Petition for Order to Show Cause, filed on November 4, 2022, at Exhibit B, pages 2-3,
¶¶9-10 and Page 4, ¶4.

1 ¶¶9-10 and Page 4, ¶4.³ None of those factors are present in the instant case. Instead, Plaintiff has
2 cited to and attached the financial records properly maintained by the Association. Nowhere in
3 those records does it indicate the Association intended to amend a budget prior to the next fiscal
4 year, or that the budget referenced was not ratified. Accordingly, even if the Court finds the
5 Administrative Decision is valid, the circumstances presented in this case are entirely different.

6 Furthermore, the remaining provisions of A.R.S. §33-1243 support this interpretation. The
7 board of directors is expressly permitted to adopt and amend the budget within subsection (D).
8 However, subsection (B) specifically prohibits the board of directors from taking certain actions,
9 such as “amend[ing] the declaration, terminat[ing] the condominium, elect[ing] members of the
10 board of directors or determin[ing] the qualifications, powers and duties or terms of office of board
11 of directors members.” A.R.S. §33-1243(B). Reading these two provisions in context of the statute
12 as a whole, it is evident that the legislature was concerned with prohibiting certain actions by a
13 board of directors, and overspending a budget was not one of those actions. Such an action on the
14 part of a board of directors can certainly be addressed in a subsequent annual budget given the
15 nature of condominium associations and the maintenance of reserve funds in the event
16 overspending takes place.

17 In this case, the only individual who is likely able to foresee the Association’s substantial
18 legal expenses in a fiscal year is Plaintiff himself. In a separate challenge to the 2021 budget,
19 Maricopa County Superior Court specifically held the 2021 annual budget had been ratified by
20

21 ³ See Footnote 2, *supra*.

1 Plaintiff's own admission. *See* Order entered on August 19, 2021 in CV2021-050888, attached
2 hereto as **Exhibit A**.⁴ Any alleged overspend in the 2021 and 2022 budgets are a direct result of
3 Plaintiff himself continuing to file various actions against the Association, thereby causing the
4 very problem of which he complains. *See* Judge Duncan's Order designating R.L. Whitmer as a
5 vexatious litigant in CV2019-052885, dated March 9, 2022, attached hereto as **Exhibit B**; *see also*
6 CV2021-050888; OAH Docket No. 22F-H2222043-REL; McDowell Mountain Justice Court
7 Case No. CC2022-193839; Arizona Department of Real Estate Petition filed on December 27,
8 2022 under Case No. 23F-H036. Plaintiff has succeeded in forcing the Board of the Directors into
9 a position where no matter what action it takes, he will file an action alleging a violation of A.R.S.
10 §33-1243(D) (and possibly other statutes within the Condominium Act), the Declaration, and/or
11 a court order/administrative decision, thereby forcing the Association to incur additional legal fees
12 in its defense.

13 For all of the foregoing reasons, A.R.S. §33-1243(D) does not obligate the Association to
14 amend its budget, much less within a thirty (30) day period as requested by Plaintiff. As such,
15 Plaintiff fails to state a claim for contempt for which the requested relief can be granted. On this
16 ground, the Association requests that the Amended Petition be denied.

17
18 _____
19 ⁴ References to these various Court documents does not convert this into a motion for summary
20 judgment as they are a matter of public record. *See Coleman v. City of Mesa*, 230 Ariz. 352, 356
21 [(i.e., the allegation the Association overspends the previously ratified legal budget)], are not
"outside the pleading," and courts may consider such documents without converting a Rule
12(b)(6) motion into a summary judgment motion.)

1 **c) The Members of The Board are Not Personally Liable for Acts of the**
2 **Corporation.**

3 Pursuant to A.R.S. §§10-3830(A) and 10-3842(A), the individual board members of the
4 Association are presumed to have acted in good faith, with the care an ordinarily prudent person
5 in a like position would exercise under similar circumstances, and in a manner the board member
6 reasonably believes to be in the Association’s best interest. *See* A.R.S. §§10-3830(A) and (D) and
7 A.R.S. §§10-3842(A) and (D). Plaintiff bears the burden to show by “clear and convincing
8 evidence” facts which support an allegation that a board member failed to comply with their duties.
9 A.R.S. 10-3830(D). Here, Petitioner fails to establish such facts.

10 It is clear from the various legal proceedings initiated by Plaintiff himself that the
11 Association, through reasonably prudent board members, would incur legal expenses on the
12 Association’s behalf to defend against such actions, even if such expenditures exceeded the
13 budgeted amounts. This is especially true in light of the vexatious litigant order, which indicates
14 Plaintiff has filed numerous actions for the sole purpose of harassment. *See Exhibit B*, at Page 2.
15 Aside from Plaintiff’s numerous legal actions against the Association, overspending the legal
16 budget in order to protect the Association from a potentially larger judgment in a legal context
17 represents board members acting in good faith, with the care of reasonably prudent persons in
18 their position, and in what they believe to be the Association’s best interests.

19 Thus, Plaintiff has failed to state a claim for which the relief requested against board
20 members in their “individual” capacity can be granted.

1 **IV. Conclusion**

2 In light of the foregoing, the Association respectfully requests that this Court dismiss
3 Plaintiff’s Amended Petition in its entirety and with prejudice because Plaintiff fails to state a
4 claim upon which relief can be granted. The Association further requests it be awarded its
5 attorneys’ fees and costs incurred in defending this action pursuant to A.R.S. §§12-349, 12-341
6 and 12-341.01.

7 RESPECTFULLY SUBMITTED this 18th day of January 2023.

8 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

9 By: /s/ Maria G. McKee, Esq.
10 Edith I. Rudder, Esq.
11 Maria G. McKee, Esq.
12 1400 E. Southern Avenue, Suite 400
13 Tempe, Arizona 85282
14 *Attorneys for Respondent Hilton Casitas*
15 *Homeowners Association*

13 **ORIGINAL** of the foregoing e-filed
14 this 18th day of January 2023 with:

14 Clerk of Court
15 Maricopa County Superior Court

16 **COPY** of the foregoing emailed and
17 served via the TurboCourt system
18 this 18th day of January 2023, to:

18 Ross P. Meyer
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21 By: /s/ Suzanne Hilborn

Exhibit A



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Homeowners Association*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

R.L. WHITMER,

Plaintiff,

vs.

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

Defendant.

Case No. CV2021-050888

**ORDER FOR DISMISSAL, FOR
SUBMISSION OF FEES/COSTS
APPLICATION, AND FOR SUBMISSION
OF PROPOSED FORM OF JUDGMENT**

(Assigned to Honorable Sara J. Agne)

The Court has considered Defendant Hilton Casitas Homeowners Association’s
Motion to Dismiss, filed May 26, 2021; Plaintiff’s Motion for Leave to File First Amended
Complaint, filed May 27, 2021 (“Motion for Leave”); Plaintiff’s Motion to Strike
Defendant’s Motion to Dismiss, filed June 21, 2021 (“Motion to Strike”); Plaintiff’s Request
for an Extension of Time to Respond to Defendant’s Motion to Dismiss, filed June 9, 2021
 (“Request for an Extension”); Defendant’s Response in Opposition to Plaintiff’s Motion for
Leave to File First Amended Complaint, filed June 11, 2021; Defendant’s Response in
Opposition to Plaintiff’s Motion to Strike, filed June 18, 2021; Plaintiff’s Notice of Failure to



1 Timely File a Response to Plaintiff’s Motion to Strike, filed June 21, 2021; Defendant’s
2 Response in Opposition to Plaintiff’s Request for an Extension to Respond to Defendant’s
3 Motion to Dismiss, filed June 23, 2021; Plaintiff’s Reply in Support of Plaintiff’s Request for
4 An Extension to Respond to Defendant’s Motion to Dismiss, filed July 21, 2021;
5 Defendant’s Response to Plaintiff’s Notice of Failure to Timely File a Response to Plaintiff’s
6 Motion to Strike, filed July 7, 2021; the Parties’ Joint Report, filed July 9, 2021; and
7 Plaintiff’s Reply to Defendant’s Response to Notice of Failure to Timely File a Response to
8 Plaintiff’s Motion to Strike, filed July 14, 2021.

9 As an initial matter, Plaintiff’s Motion to Strike addresses and responds to the
10 constitutionality arguments in the Motion to Dismiss, and Plaintiff’s Request for an
11 Extension seeks additional time after the Court ruled on the Motion to Strike to further
12 respond to the Motion to Dismiss. The Court can determine the Motion to Dismiss without
13 addressing constitutionality issues, and the more prudent course, then, is for it to do so. *See*
14 *School Dist. No. 26 (Bouse Elem.) of Yuma Cty. V. Strohm*, 106 Ariz. 7, 9 (1970)
15 (“Constitutional issues will not be determined unless squarely presented in a justiciable
16 controversy . . . or unless a decision is absolutely necessary in order to determine the merits
17 of the suit.”). And Plaintiff has had more than sixty days and made more than three filings
18 during the time since he filed his Request for an Extension, but he has not elected to respond
19 further to the Motion to Dismiss.

20 **THE COURT FINDS** that allowing Plaintiff further response time would be futile.
21 Therefore,

22 **IT IS ORDERED denying as moot** Plaintiff’s Motion to Strike and Request for an
23 Extension.

24 Plaintiff’s Verified Complaint and proposed First Amended Verified Complaint allege
25 in their Counts One and Two that Defendant had failed to adopt the 2021 “annual” budget,

1 and possibly a 2020 annual budget as well—though it is unclear that Plaintiff makes that a
2 basis for his claims—and request a finding of contempt of court and prospective injunction
3 that Defendant comply with the law in the future. Plaintiff admits in the Parties’ Joint Report
4 that “the Association ratified a budget on May 19, 2021,” mooted Plaintiff’s claims in
5 Counts One and Two. And “obey the law” injunctions are presumptively invalid, as
6 Defendant is already required to follow the law. *See NLRB v. Express Pub. Co.*, 312 U.S.
7 426, 435-36 (1941). Therefore,

8 **IT IS ORDERED granting** Plaintiff’s Motion for Leave, in that the Court considered
9 Plaintiff’s proposed First Amended Verified Complaint in issuing this ruling, but finding
10 Plaintiff’s requests for a contempt finding and a prospective injunction subject to dismissal
11 under Ariz. R. Civ. P. 12(b)(6). Taking all of Plaintiff’s facts as true, Counts One and Two
12 still state no claim for relief. Further, Plaintiff filed his Motion for Leave to Amend after the
13 ratification date of that 2021 budget, but he did not seek to amend the portions of his claims
14 alleging that the Association failed to adopt a 2021 budget; this lacks candor to the Court.
15 The Parties’ subsequent public-record filings “regarding matters referenced in a complaint,
16 are not ‘outside the pleading[s],’ and” the Court may consider them without converting the
17 Motion to Dismiss into a summary judgment motion. *See Strategic Dev. & Constr., Inc. v.*
18 *7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 63 ¶¶ 10, 14 (App. 2010).

19 As to Plaintiff’s Count Three, Plaintiff requests the Court to appoint a CPA to conduct
20 what is required by law to be carried out as an A.R.S. § 33-1243(J) audit; as Defendant
21 contends, this is in violation of the statute’s plain language and some of Plaintiff’s requested
22 relief is also time-barred. A.R.S. § 12-541. Essentially, Plaintiff seeks what amounts to Ariz.
23 R. Civ. P. 66 relief without complying with the same. Particularly, “[e]ven when the bill of
24 complaint states a cause of action in equity, the summary remedy of receivership, with the
25 attendant burdensome expense, should be resorted to only on a plain showing of some

1 threatened loss or injury to the property, which the receivership would avoid. Here no such
2 showing was made” *See Gordon v. Washington*, 295 U.S. 30, 39 (1935). Similar to
3 *Gordon*, even taking all Plaintiff’s claims as true, his Counts Three state no claims for relief.

4 Good cause appearing, given the foregoing discussion,

5 **IT IS FURTHER ORDERED granting** Defendant’s Motion to Dismiss with
6 prejudice (in so granting, the Court did not consider or rely upon any constitutionality
7 arguments and/or Section III.a. in the Motion to Dismiss) **and dismissing** the Parties’ Joint
8 Report and Proposed Scheduling Order as moot.

9 **IT IS FURTHER ORDERED granting** Defendant’s request to file an application for
10 reasonable attorney’s fees pursuant to A.R.S. §§ 12-341.01 and 12-349 and costs pursuant to
11 A.R.S. § 12-341; any requests for sanctions by Plaintiff in his filings are denied. Counsel for
12 Defendant shall file an Application for Reasonable Attorneys’ Fees and accompanying *China*
13 *Doll* affidavit within ten (10) days of this Order. If there is a failure to timely file the
14 application, then the application will be denied. If an application is filed that Plaintiff wishes
15 to contest, he must make a filing contesting the same within twenty (20) days of the
16 application’s service upon him. Defendant may not file a reply unless later so directed by the
17 Court.

18 **IT IS FURTHER ORDERED** that not later than twenty (20) calendar days after the
19 entry of this order, Defendant must also submit a proposed form of judgment, leaving blank
20 spaces for attorney’s fees and taxable costs. That form of judgment may incorporate by
21 reference from this minute entry ruling but otherwise should be confined to the amounts being
22 awarded, along with Rule 54(c), Ariz. R. Civ. P., language.

23 ///

eSignature Page 1 of 1

Filing ID: 13263064 Case Number: CV2021-050888
Original Filing ID: 12943277

Granted with Modifications



/S/ Sara Agne Date: 8/17/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2021-050888

SIGNATURE DATE: 8/17/2021

E-FILING ID #: 13263064

FILED DATE: 8/19/2021 8:00:00 AM

TIMOTHY D BUTTERFIELD

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Exhibit B



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

R.L. WHITMER,

Plaintiff,

v.

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,

Defendant.

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,

Counterclaimant,

v.

R.L. WHITMER, an individual; and
COLLEEN LONDON, an individual,

Counter-Defendants.

Case No.: CV2019-052885

ORDER

(Assigned to the Hon. Sally Duncan)

On August 24, 2021, this Court held oral argument on Defendant’s Motion for Designation of Plaintiff R.L. Whitmer as a Vexatious Litigant Pursuant to A.R.S. § 12-

1 3201, Plaintiff's Motion to Strike a Portion of Defendant's Reply to Motion for
2 Designation of Plaintiff R.L. Whitmer as a Vexatious Litigant Pursuant to A.R.S. § 12-
3 3201, and Plaintiff's Motion for ARCP Rule 11 Sanctions.

4 Having considered Defendant's Motion, as well as Plaintiff's Response and
5 Defendant's Reply, the Court finds that Plaintiff R.L. Whitmer has engaged in the
6 following vexatious conduct:

7 1. **Repeated filings of court action solely for the purpose of harassment.** In
8 particular, he has filed several lawsuits as a *pro se* litigant, motivated by animus and are
9 solely for the purpose of harassment against Defendant, none of which have resulted in a
10 judgment in Plaintiff's favor.

11 2. **Unreasonable expansion or delay of proceedings.** Plaintiff has
12 unreasonably rejected Defendant's offers of settlement in bad faith resulting in an
13 unreasonable expansion or delay of proceedings.

14 3. **Court actions brought or defended without substantial justification.**
15 Plaintiff has brought several claims against the Defendant HOA, none of which have
16 resulted in judgment for Plaintiff, and several of which were dismissed by the Court as
17 having no substantial justification. The cases are as follows:

18 1. CV2012-051066, Shaffer, *et al.* v. Procaccianti AZ II, LP, in which the Court
19 entered a judgment in favor of Hilton Casitas against Mr. Whitmer, among others. Mr.
20 Whitmer appeared *pro se*.

21 2. CV2014-054346, Whitmer, *et al.* v. Hilton Casitas Council of Co-Owners, *et al.*,
22 in which the Court entered a judgment in favor of Hilton Casitas against Mr. Whitmer,
23 among others. Mr. Whitmer appeared *pro se*.

24 3. CV2015-053091, Whitmer, *et al.* v. Hilton Casitas Council of Co-Owners, *et al.*,
25 in which the Court entered a judgment in favor of Hilton Casitas against Mr. Whitmer,
26 among others. Mr. Whitmer appeared *pro se*.

27 4. CV2016-050379, Whitmer, *et al.* v. Hilton Casitas Council of Homeowners, in
28 which the Court entered a judgment in favor of Hilton Casitas against Mr. Whitmer, and
then consolidated the action with CV2012-000363, CV2012-051066, CV2014-054346,

1 and CV2015-053091, for the purpose of briefing, hearing, and orally arguing and ruling
2 on Whitmer's repeated motions for reconsideration. Mr. Whitmer appeared *pro se*.

3 5. CV2016-051727, Whitmer, *et al.* v. Hilton Casitas Council of Co-Owners, *et al.*,
4 in which the Court dismissed the action for Whitmer's failure to serve. Mr. Whitmer
5 appeared *pro se*.

6 6. CV2016-055080, Whitmer v. Hilton Casitas Homeowners Association, *et al.*, in
7 which the Court entered judgment in favor of Hilton Casitas and against Mr. Whitmer.
8 Mr. Whitmer appeared *pro se*.

9 7. CV2018-051832, Whitmer v. Hilton Casitas Homeowners Association, in which
10 the Court dismissed the action for Whitmer's failure to serve. Mr. Whitmer appeared *pro*
11 *se*.

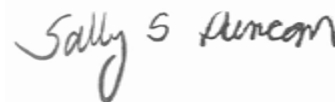
12 8. CV2019-052885, the present action. Mr. Whitmer agreed to settlement in
13 substance at the settlement conference, and refused to agree when he learned that the
14 HOA's counsel were all conferring to make sure the language of the settlement agreement
15 did not prejudice the HOA. This is the only reason the action is ongoing. Mr. Whitmer is
16 appearing *pro se*.

17 9. CV2021-050888, Whitmer v. Hilton Casitas Homeowners Association, which
18 was dismissed with an award of attorney fees being entered against Mr. Whitmer in the
19 amount of \$16,592.50. Mr. Whitmer appeared *pro se*.

20 4. **Unreasonable discovery requests.** Plaintiff has engaged in unreasonable
21 discovery requests related to issues already decided by this Court and the Court of
22 Appeals.

23 IT IS HEREBY ORDERED granting Defendant's Motion for Designation of
24 Plaintiff R.L. Whitmer as a Vexatious Litigant. Pursuant to A.R.S. § 12-3201(B), Plaintiff
25 R.L. Whitmer may not file a new pleading, motion or other document without prior leave
26 of the court.

27 DATED this 9th day of March, 2022.



28

Honorable Sally S. Duncan