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6 **SUPERIOR COURT OF ARIZONA**

7 **MARICOPA COUNTY**

9 R. L. WHITMER
10 Plaintiff,

11 vs.

12 HILTON CASITAS HOMEOWNERS
ASSOCIATION, also known as HILTON
13 CASITAS COUNCIL OF HOMEOWNERS,
also known as COUNCIL OF CO-OWNERS
14 also known as HILTON CASITAS
COUNCIL OF CO-OWNERS, and
15 MICHAEL BENGSON, President of the
Respondent.

16 Defendants.
17

Case No.: CV2016-055080

**DEFENDANTS' ANSWER TO
COMPLAINT**

(Assigned to Hon. Aimee Anderson)

18 Defendants, Hilton Casitas Homeowners Association, also known as Hilton
19 Casitas Council of Homeowners, also known as Council of Homeowners, also known as
20 Hilton Casitas Council of Co-owners (the "Association"), and Michael Bengson,
21 President of the Association ("Bengson") (collectively referred to as the "Defendants"),
22 by and through their undersigned counsel, hereby answer the Complaint ("Complaint")
23 with the following admissions, denials and affirmative defenses.

24 **Parties, Jurisdiction and Venue**

25 1. Defendants admit the allegations contained in Paragraphs 1, 2, and 3 of the
26 Complaint.

27 2. Answering Paragraph 4 of the Complaint, Defendants admit there is no
28 provision in the Declaration expressly authorizing the Board of Directors to adopt or

1 amend budgets on its own. In response to the remaining allegations in Paragraph 4 of
2 the Complaint, the documents speak for themselves.

3 3. Defendants admit the allegations contained in Paragraph 5 of the
4 Complaint.

5 4. Defendants admit the allegations contained in Paragraph 6 of the
6 Complaint.

7 5. Defendants admit the allegations contained in Paragraph 7 of the
8 Complaint that the only Board meeting held prior to the annual unit owners meeting was
9 held on February 16, 2016. Defendants deny the remaining allegations in Paragraph 7.

10 6. Defendants deny the allegations contained in Paragraph 8 of the
11 Complaint. Defendants affirmatively allege that the budget was circulated to all unit
12 owners.

13 7. Defendants admit the allegation contained in Paragraph 9 of the Complaint
14 that the unit owners have been assessed \$125.00 for services provided by Safeguard
15 Security. Defendants admit the allegation contained in Paragraph 9 of the Complaint
16 that the Board sent out a notice on August 22, 2016, announcing that the Safeguard
17 Security agreement had been amended and that any savings would be put in a reserve
18 account. Defendants deny the remainder of the allegations contained in Paragraphs 9 of
19 the Complaint.

20 8. Defendants deny the allegations contained in Paragraphs 10 of the
21 Complaint.

22 9. Defendants affirmatively assert the referenced Administrative Order
23 referenced in Paragraph 11 of the Complaint speaks for itself. Defendants admit that
24 Mr. Bengson affirmed the 2014 budget would be amended and ratified. Defendants
25 deny the remaining allegations in Paragraph 11.

26 10. Defendants expressly deny all allegations contained in the Complaint that
27 are not expressly admitted in this Answer.

1 **Affirmative Defenses**

2 11. Defendants affirmatively allege that the Complaint fails to state a claim for
3 which relief may be granted.

4 12. Defendants affirmatively allege that the Court lacks jurisdiction in this
5 action because the Plaintiff is not a member of the Hilton Casitas Homeowners
6 Association.

7
8 13. In order that such defenses are not waived, Defendants allege the
9 following affirmative defenses: estoppel, waiver, and any other defenses enumerated in
10 Rules 8(c) or 12, Arizona Rules of Civil Procedure, that may be disclosed or discovered
11 in the course of this litigation.

12 14. Defendants are entitled to recover its costs and attorney’s fees incurred in
13 defending this cause under applicable rule of law.

14 WHEREFORE, having fully answered the Complaint, Defendants request:

- 15 A. the Complaint be dismissed with prejudice;
16 B. Plaintiff take nothing thereby; and
17 C. Defendants be awarded its taxable costs and reasonable attorneys’ fees.

18 RESPECTFULLY SUBMITTED this 18th day of January, 2017.

19 **CLARK HILL PLC**

20 By: /s/ Robert G. Anderson
21 Robert G. Anderson
22 Andrew B. Turk
23 Attorneys for Defendants

24 *Electronically filed* this 18th day of January, 2017, with the:

25 Clerk of Superior Court for
26 Maricopa County Superior Court
27 Northeast Regional Court Center
28 18380 North 40th Street
Phoenix, AZ 85032

1 And *e-served* to:

2 The Honorable Aimee Anderson
3 Maricopa County Superior Court
4 Northeast Regional Court Center
5 18380 North 40th Street
6 Phoenix, AZ 85032

7 A COPY of the foregoing mailed this 18th day of January, 2017 to:

8 R. L. Whitmer
9 6333 N. Scottsdale Road, Casitas 21
10 Scottsdale, AZ 85250

11 By: /s/ Karen Jones

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