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Attorneys for Respondents

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

R.L. WHITMER,

Petitioner,

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; and MICHAEL BENGSON, President of the Hilton Casitas Homeowners Association,

Respondents.

Case No. CV2016-055080

**AFFIDAVIT OF
AUGUSTUS H. SHAW IV
IN SUPPORT OF
APPLICATION FOR AWARD
OF ATTORNEY FEES**

STATE OF ARIZONA)
)ss.
County of Maricopa)

Augustus H. Shaw IV, being first duly sworn, says:

1. I am one of the attorneys for Respondents in the above-entitled action. I am the managing partner in Respondents' counsel's law firm, overseeing all defense litigation. The firm's practice is dedicated exclusively to the representation of community associations in practicing litigation and defense. All attorneys from this firm that worked on this matter are in good standing with the Arizona State Bar and have

1 several years of collective experience dedicated in the area of community association
2 law and litigation.

3 2. Based upon the records maintained by my law firm, legal services have
4 been rendered, or will be rendered, for Respondents in the amount of \$15,125.00, as
5 more fully described in Exhibit "A", attached hereto, which also provides the identifying
6 initials of each attorney who performed any such legal services, including hourly rates,
7 time billed and a detailed description of the work performed as legal services for
8 Respondents in this action.


9
10 3. The charges incurred on behalf of Respondents were incurred pursuant to a
11 fee agreement between Respondents and my law firm, the amounts were charged in
12 accordance therewith; and all amounts charged have been paid, or continue and remain
13 the obligation of Respondents to pay.

14 4. I have reviewed the records and file maintained by my firm, as well as the
15 substantive pleadings and legal services necessary in order to prosecute this matter, and I
16 avow to this Court that the total charges incurred, as set forth above, as and for attorney
17 fees constitutes a fair and reasonable fee, and in compliance with the requisite elements
18 set forth in *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927 (App.
19 1983).

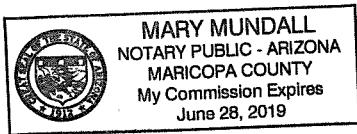
20 5. The character of the work performed, billing rates, time billed, requisite
21 billing discretion, the intricacy of legal work performed, importance, and required skill
22 is duly reflected in the detailed exhibit attached hereto, detailing all work performed in
23 the defense of this action.


24 6. I have also reviewed the records and files in the above-referenced action
25 with respect to the advancement and payment of costs and disbursements, and avow that
26 costs of \$113.70 have been expended on behalf of Respondents, all of which is billed to
27 Respondents, and is Respondents' obligation to pay pursuant to the fee agreement
28 between Respondents and this law firm.

1 DATED this 13 day of April, 2017.

2
3
4 
5 Augustus H. Shaw IV
6 Attorneys for Defendant

7 SUBSCRIBED AND SWORN to before me this 13 day of April, 2017, by Augustus
8 H. Shaw IV.



11 
12 Notary Public

13 ORIGINAL submitted for electronic filing
14 this 13 day of April, 2017, with:

15 Clerk of the Maricopa County Superior Court

16 ORIGINAL hand-delivered
17 this 14 day of April, 2017, to:

18 Hon. Aimee Anderson
19 Maricopa County Superior Court,
20 Northeast Regional Court Center
21 18380 North 40th Street
22 Phoenix, Arizona 85032

23 COPY of the foregoing mailed
24 this 14 day of April, 2017, to:

25 R.L. Whitmer
26 6333 North Scottsdale Road, Casita 21
27 Scottsdale, Arizona 85250
28 *Petitioner, Pro Per*

Paige Martin & Bob Anderson
Clark Hill, PLC
14850 North Scottsdale Road, Suite 500
Scottsdale, Arizona 85254
Prior Counsel of Record for Respondents

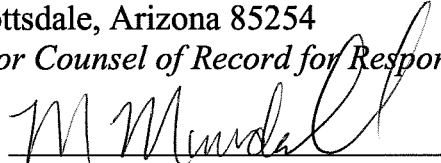
By: 

EXHIBIT A

DATE TIME ATTORNEY DESCRIPTION OF ATTORNEY FEES
INCURRED

02/16/2017	0.4	AHS	Draft e-mails to Michael Bengson and manager regarding representation. Provide advice.
02/16/2017	0.3	AHS	Conference with Mr. Anderson and Ms. Martin regarding transition of representation and requested documents.
02/16/2017	0.3	AHS	Conference with Michael Bengson regarding representation and facts of the case.
02/16/2017	2.4	AHS	Review pleadings and documents sent by client regarding litigation. Contemplate same.
02/16/2017	0.3	AHS	Conference with manager regarding facts of the case. Obtain additional information.
02/17/2017	0.2	NDP	Draft e-mail to Ms. Martin and convey Notice of Appearance and Stipulation for Substitution of Counsel and proposed Order. Review responses to same.
02/17/2017	0.2	NDP	Revise Notice of Appearance of Counsel and Stipulation for Substitution of Counsel and proposed Order as requested by Ms. Martin.
02/17/2017	1.0	AHS	Draft and send Litigation Strategy Letter to client.
02/17/2017	0.4	NDP	Draft Notice of Appearance of Counsel and Stipulation for Substitution of Counsel and proposed Order.
02/17/2017	2.5	NDP	*No Charge Entry – Savings of \$625.00* Review Documents and assist attorney Shaw regarding the litigation.
02/17/2017	0.4	NDP	Obtain copy of Administrative Law Judge Order involved in the litigation; save same to file.
02/17/2017	0.2	NDP	Continue revisions on Stipulation for Substitution of Counsel and proposed Order requested by Ms. Martin.
02/17/2017	0.8	NDP	Draft Expedited Motion to Continue Evidentiary Hearing and Proposed Order.
02/21/2017	0.2	NDP	Receive revised and signed Stipulation to Substitution of Counsel with proposed Order; save to file; electronically file same and send with runner to be hand delivered to judge.
02/22/2017	0.2	NDP	E-mail to Clark Hill requesting copies of the Plaintiff's exhibits for the Evidentiary Hearing set for February 28, 2017; receive response that Plaintiff has not yet submitted his actual exhibits.

1	02/22/2017	0.2	NDP	E-mail to Mr. Whitmer requesting copies of exhibits listed in his Exhibit List for the Evidentiary Hearing set for February 28, 2017; save e-mail to file.
2				
3	02/22/2017	0.2	NDP	Telephone call to Judge Anderson's assistant; no answer; left voicemail requesting call back to confirm expedited motion to continue Evidentiary Hearing has been received and check status of same.
4				
5				
6	02/22/2017	0.4	AHS	Receive e-mail from manager requesting A.R.S. 33-1260(A)(3)(g) Disclosure Statement. Send requested A.R.S. 33-1260(A)(3)(g) Disclosure Statement to manager.
7				
8	02/23/2017	0.2	NDP	Second telephone call to Judge Anderson's assistant; no answer; left voice mail requesting call back to confirm expedited Motion to Continue Evidentiary Hearing has been received and check status of same.
9				
10				
11	02/23/2017	0.5	AHS	Conference with Mr. Whitmer regarding status of case, postponement of upcoming hearing and potential settlement negotiations.
12				
13	02/23/2017	0.4	AHS	Draft e-mail to client regarding conversation with Mr. Whitmer and potential settlement. Provide advice.
14				
15	02/23/2017	0.2	AHS	Draft e-mail to client regarding potential "mini-mediation."
16				
17	02/23/2017	1.0	AHS	Review Whitmer's Evidentiary Hearing Memo. Contemplate same.
18				
19	02/23/2017	0.2	AHS	Review Order to reschedule Hearing. Calendar dates.
20				
21	02/23/2017	0.2	AHS	Draft e-mail to client regarding temporary cancellation of settlement negotiations.
22				
23	02/23/2017	1.0	AHS	Review list of Exhibits for Evidentiary Hearing filed by Mr. Anderson. Contemplate same.
24				
25	02/23/2017	0.3	AHS	Meeting with manager to discuss ratification of 2016 budget and effects on litigation. Provide advice.
26				
27	02/23/2017	1.4	AHS	Review list of Exhibits for Evidentiary Hearing filed by Mr. Whitmer. Contemplate same.
28				
	02/24/2017	0.5	AHS	Review Casita #21 – Sublease – Whitmer to determine whether Plaintiff Whitmer has standing to assert his claims.
	02/24/2017	0.2	AHS	Review Special Warranty Deed conveying 1% interests to Whitmer and contemplate whether same conveys a membership interest to Whitmer.
	02/24/2017	0.3	AHS	Review Association governing documents to determine definition of Member.
	02/24/2017	0.2	AHS	Draft e-mail to client providing advice concerning the Membership Status of Whitmer.

1	02/24/2017	0.3	AHS	Conference with Mr. Bengson regarding Membership of Whitmer and trial strategy. Provide advice.
2	02/24/2017	0.4	NDP	Conference with manager regarding 2017 ballot cover letter; review cover letter provide recommendation for revisions; discuss same with manager.
3	02/27/2017	0.1	AHS	Conference with Mr. Whitmer regarding Stipulation to Reschedule Evidentiary Hearing. Explain additional rational for extension being considered for settlement offer and vacation of potential witness.
4	02/27/2017	0.3	AHS	Teleconference with Board regarding status of case and how best to move forward. Provide advice.
5	02/27/2017	0.6	AHS	Draft Stipulation and Order to Extend Evidentiary Hearing date to accommodate Bengson. Send same to opposing party for signature.
6	02/27/2017	0.2	AHS	Receive e-mail from Whitmer denying request to execute Stipulation and Order to Extend Evidentiary Hearing date to accommodate Bengson.
7	02/27/2017	1.6	NDP	Review relevant statutes and case law in preparation for drafting Motion to Dismiss.
8	02/28/2017	5.7	NDP	Draft Motion to Dismiss.
9	02/28/2017	1.0	NDP	Review Motion to Dismiss. Finalize same for filing.
10	02/28/2017	0.5	AHS	Review Settlement offer from Whitmer. Discuss same with client. Respond to settlement offer and present counter-offer.
11	02/28/2017	0.2	NDP	E-mail to manager requesting Association governing documents; response from manager providing same; save to file.
12	02/28/2017	0.2	NDP	E-mail from manager providing 2016 financial statement in preparation for ratifying the 2016 budget; save to file.
13	03/01/2017	0.2	AHS	Receive e-mail from Whitmer changing his contact e-mail address. Respond to same and verify contact e-mail address.
14	03/01/2017	0.2	AHS	Receive e-mail from Whitmer regarding witness notification concerning upcoming Hearing. Respond to same.
15	03/02/2017	0.2	NDP	E-mail from previous counsel regarding status of file being sent to firm for takeover of files.
16	03/02/2017	0.3	NDP	E-mails with owner regarding serving the witnesses and clarification regarding same.
17	03/02/2017	0.2	AHS	Review e-mail from Whitmer regarding request for meeting. Respond to same.
18				

1	03/03/2017	0.4	NDP	Review exhibit list from Mr. Whitmer; e-mail Mr. Whitmer requesting actual exhibits filed.
2	03/03/2017	2.7	NDP	Gather documents in preparation for submitting Exhibit list to court and opposing party; draft exhibit list; file same.
3	03/03/2017	1.3	NDP	Meeting with manager regarding status of documents requested and provide specific instructions on what is needed.
4	03/03/2017	0.2	NDP	Telephone conference with Judge Anderson's assistant regarding submission of the Respondents' List of Exhibits.
5	03/03/2017	0.2	NDP	E-mail to Mr. Whitmer forwarding Respondents' List of Exhibits with Exhibits attached; save same to file.
6	03/05/2017	0.2	AHS	Receive e-mail from Owner regarding allegations of Rule 11 violations; contemplate same.
7	03/06/2017	0.2	NDP	Receive and review Minute Entry from the Superior Court Vacating the Evidentiary Hearing regarding the Petition for Order to Show Cause; save same to file.
8	03/06/2017	0.2	NDP	E-mail to Board of Directors and Manager forwarding the Minute Entry from the Superior Court Vacating Evidentiary Hearing regarding the Petition for Order to Show Cause; save to file.
9	03/06/2017	0.2	NDP	E-mail to Mr. Whitmer forwarding the Minute Entry from the Superior Court Vacating Evidentiary Hearing regarding the Petition for Order to Show Cause; save to file.
10	03/06/2017	0.2	NDP	Respond to Owner regarding Rule 11 violation allegations; save same to file.
11	03/06/2017	0.6	NDP	Receive and review Plaintiff's Exhibits for Evidentiary Hearing; save to file.
12	03/06/2017	0.2	NDP	Receive and review letter from the Office of Administrative Hearings to Mr. Whitmer regarding the proper jurisdiction over an enforcement of an Administrative Law Order; contemplate same and save to file.
13	03/06/2017	0.2	NDP	E-mail to client forwarding the letter from the Office of Office of Administrative Hearings to Mr. Whitmer regarding the proper jurisdiction over an enforcement of an Administrative Law Order.
14	03/10/2017	0.2	NDP	Review file and send client e-mail providing case update; save same to file.
15	03/12/2017	1.0	AHS	Review and analyze Response to Motion to Dismiss.
16	03/14/2017	0.2	NDP	Receive and review Notice of Errata filed by Plaintiff regarding his Response to the Motion to Dismiss; contemplate same.

1	03/16/2017	4.4	NDP	Review relevant Arizona Law. Draft Reply in Support of Motion to Dismiss.
2	03/16/2017	1.0	AHS	Review and finalize Reply in Support of Motion to Dismiss. File same.
3	03/20/2017	0.6	AHS	Review e-mails from client regarding potential settlement. Propose a potential settlement to client. Send same.
4	03/20/2017	0.8	AHS	Draft proposed settlement letter for client approval. Receive requests for revisions. Revise same and seek Association approval to convey.
5	03/21/2017	0.2	NDP	Receive authorization from the Board to send Mr. Whitmer the settlement letter; confirm same via e-mail and e-mail settlement letter to Mr. Whitmer.
6	03/21/2017	0.3	AHS	Receive and review Minute Entry Dismissing lawsuit for lack of subject matter jurisdiction; save same to file.
7	03/21/2017	0.2	AHS	Receive and review minute entry regarding the release of exhibits provided for Order to Show Cause Hearing; save same to file.
8	03/21/2017	0.4	AHS	Draft e-mail to client regarding the Order Dismissing the lawsuit and the potential changes to the settlement offer to Whitmer; send same and request conference call with Board as soon as possible.
9	03/21/2017	0.2	NDP	E-mail to Clark Hill regarding the Superior Court Minute Entry Dismissing the lawsuit and requesting an estimate of attorney fees and costs for potential settlement with Mr. Whitmer.
10	03/21/2017	0.2	NDP	Telephone call with Paige Martin of Clark Hill regarding the Superior Court Minute Entry dismissing the lawsuit and requesting an estimate of attorney fees and costs for potential settlement with Mr. Whitmer; Ms. Martin advised this may take some time due to only one billing matter set up for all Whitmer matters.
11	03/21/2017	0.5	NDP	Conference call with attorney Shaw regarding the Dismissal of the Superior Court lawsuit and what settlement steps and continued resolution options the Association has available.
12	03/21/2017	0.2	NDP	Calendar deadline to submit Proposed Form of Order for Superior Court lawsuit.
13	03/21/2017	0.5	AHS	Conference call with Barrie and Steve regarding Dismissal Order. Explain procedure for obtaining attorney fees through the court fees. Discuss potential global settlement options.
14	03/21/2017	0.4	NDP	Revise settlement proposal based on discussion with Board

1			members and Superior Court case dismissal.	
2	03/21/2017	0.3	NDP	Draft e-mail to Board and manager regarding Mr. Shaw's telephone conference with Board members and options to proceed; save same to file; awaiting Board decision.
3				
4	03/21/2017	0.2	NDP	Receive e-mail from Mr. Whitmer regarding filing a lawsuit in the Office of Administrative Hearings; save to file.
5				
6	03/21/2017	0.4	NDP	E-mail to client forward Mr. Whitmer's e-mail to the Office of Administrative Hearings and Association's options to proceed; save to file.
7				
8	03/22/2017	0.8	AHS	Review various e-mails regarding settlement positions. Respond to same with advised settlement position and provide advice.
9				
10	03/22/2017	0.5	AHS	Review e-mail from client conveying approval to convey settlement. Revise settlement letter and send same to client. Convey same to opposing party.
11				
12	03/23/2017	0.4	AHS	Review Whitmer's rejection of the Association's counter-offer. Contemplate same.
13				
14	03/23/2017	0.4	AHS	Draft e-mail to Association regarding Whitmer's rejection of settlement offer. Provide advice.
15				
16	03/27/2017	0.2	AHS	Review e-mails from client providing authorization to proceed with Attorney's Fees Application. Respond to same.
17				
18	03/27/2017	0.2	AHS	Conference with State Farm adjuster regarding potential insurance coverage. Provide summary of court fees case and current status.
19				
20	03/27/2017	0.3	NDP	E-mail from insurance representative requesting certain pleadings; review file; respond to insurance representative providing documents requested.
21				
22	03/27/2017	0.4	NDP	Receive and review Plaintiff's Motion to Reconsider with Exhibits, note second page illegible, save to file.
23				
24	03/29/2017	0.4	NDP	Receive Minute Entry from Court setting briefing deadlines for Motion to Reconsider; calendar same; save to file.
25				
26	03/29/2017	0.2	NDP	E-mail to manager forwarding Minute Entry from Court setting briefing deadlines for Motion to Reconsider and advising of deadlines to inform the Board of Directors regarding the same.
27				
28	03/29/2017	0.2	NDP	E-mail to Whitmer requesting legible copy of the Motion to Reconsider; save to file.
				Telephone conference with clerk of court regarding online access to court documents.

03/29/2017	0.2	NDP	Obtain access to online case filings; retrieve legible Motion to Reconsider; save to file in preparation for drafting response.
03/30/2017	2.7	NDP	Review and analyze attorney fees and costs; begin drafting Affidavit in Support of Application for Award of Attorney Fees pursuant to Court's Minute Entry.
03/30/2017	0.8	NDP	Draft Application for Award of Attorney fees.
04/04/2017	1.0	NDP	Review file and conduct legal research in preparation for drafting Response to Motion to Reconsider.
04/05/2017	1.0	AHS	Review and finalize Response to Motion to Reconsider.
04/05/2017	1.6	NDP	Draft Response to Motion to Reconsider and verify citations regarding same.
04/06/2017	0.2	NDP	E-mail from Paige with Clark Hill advising she is drafting fee Application and Affidavit to send to firm for filing. Responded advising I will follow up next week.
04/07/2017	0.3	NDP	Draft Notice of Lodging Proposed Judgment.
04/07/2017	0.4	NDP	Draft Statement of Costs.
04/07/2017	0.8	NDP	Review and finalize Affidavit of Attorney in Support of Attorney Fees Application.
04/07/2017	0.8	NDP	Draft Proposed Form of Judgment.
04/11/2017	0.2	NDP	E-mails with previous counsel regarding status of attorney fee application, affidavit and statement of costs.
04/12/2017	0.2	NDP	E-mail from Board President forwarding his direct communications with Clark Hill regarding the fee applications and instruction to contact Mr. Anderson directly. Respond to same.
04/12/2017	0.2	NDP	E-mails with Paige Martin regarding fee application and pending motion to reconsider.

ATTORNEY	HOURS	RATE	ATTORNEY TOTAL
AUGUSTUS H. SHAW IV (AHS)	22.6	\$250.00	\$5,650.00
NICOLE D. PAYNE (NDP)	37.9	\$250.00	\$9,475.00
NICOLE D. PAYNE (NDP)	2.5	\$0.00	\$0.00

ATTORNEY FEES INCURRED TOTAL: \$15,125.00