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10 Attorneys for *Respondents*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF MARICOPA**

13 R.L. WHITMER,

14 Petitioner,

15 v.

16 HILTON CASITAS HOMEOWNERS
17 ASSOCIATION, also known as HILTON
18 CASITAS COUNCIL OF HOMEOWNERS,
19 also known as COUNCIL OF CO-
20 OWNERS, also known as HILTON
21 CASITAS COUNCIL OF CO-OWNERS;
22 and MICHAEL BENGSON, President of the
23 Hilton Casitas Homeowners Association,

24 Respondents.

25 Case No. CV2016-055080

26 **RESPONDENTS' REPLY IN**
27 **SUPPORT OF MOTION AND**
28 **APPLICATION FOR AWARD OF**
 ATTORNEY FEES

1 Hilton Casitas Homeowners Association and Michael Bengson, President of the
2 Hilton Casitas Homeowners Association (collectively, the "Respondents"), by and
3 through counsel undersigned, hereby reply to Petitioner, R.L. Whitmer's (the
4 "Petitioner") Objection to Defendants' Motion and Application For An Award of
5 Attorney Fees and Costs and to Their Proposed Form of Judgment. The Respondents'
6 request is supported fully by the fact that (1) the Association is entitled to an award of
7 fees in this action pursuant to the Court's March 20, 2017 Minute Entry (the "Minute
8 Entry") A.R.S. § 12-349, 12-350, and Ariz.R.Civ.P. 11, and (2) the fees requested are

1 reasonable under all applicable standards. This Reply is supported by the attached
2 Memorandum of Points and Authorities.

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. Petitioner fails to argue with specificity that Respondents attorney's**
6 **fees and costs sought are unreasonable or not properly incurred.**

7 Petitioner's Response fails to address or provide support regarding the
8 reasonableness of the attorney's fees incurred by Respondents and merely attempts to
9 continue to litigate this matter with irrelevant and immaterial assertions. Petitioner's
10 Response further fails to demonstrate why time spent by counsel for Respondents was
11 unnecessary or unreasonable and makes general allegations regarding why fees incurred
12 by Respondent should not be granted, which, pursuant to Arizona case law, is
13 insufficient in opposing a fee application. *See Ponderosa Plaza v. Siplast*, 181 Ariz.
14 128, 133, 888 P.2d 1315, 1320 (App. 1993).
15
16

17 General allegations pertaining to the attorney's fees incurred by a party are
18 insufficient as a matter of law. *Nolan v. Starlight Pines Homeowners Association*, 216
19 Ariz. 482, 490-91, ¶38, 167 P.2d 1277, 1285-86 (App. 2007). In determining the
20 reasonableness of the fees, this Court can look to the reasonableness of the attorneys'
21 billing rate and then multiply that rate by the time reasonably expended. *See ABC*
22 *Supply, Inc. v. Edwards*, 191 Ariz. 48, 952 P.2d 286 (App.1996)
23
24

25 Respondents are entitled to an award of reasonable attorney's fees and costs
26 pursuant to the Court's March 20, 2017 Minute Entry. Every effort expended in this
27 action was in compliance with the requisite ethical standards, and pursued as efficiently
28

1 as possible to minimize the fees incurred. The billing rate for Respondents' counsel is
2 reasonable and has not been challenged or opposed by Petitioner.

3
4 Based on the overall circumstances of this matter, the amount of fees sought by
5 Respondents is completely reasonable. In defending this matter, Respondents were
6 forced to respond to numerous pleadings filed by Petitioner and address Petitioner's
7 baseless claims contained therein.

8
9 The fees incurred by Respondents and requested in their Application for an
10 Award of Attorneys' Fees and Statement of Costs are reasonable under the
11 circumstances and due to the nature of the proceeding. Respondents, as the prevailing
12 party in this matter, are entitled to an award of attorneys' fees pursuant to the Court's
13 Minute Entry and Arizona law. As stated above, Petitioner has not challenged the
14 billing rate of Respondents' counsel and has failed to adequately and specifically
15 demonstrate why the fees incurred were unreasonable. The time expended on this matter
16 was dictated by the events that transpired.

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19 Therefore, the Respondents are entitled to their attorney's fees and costs.

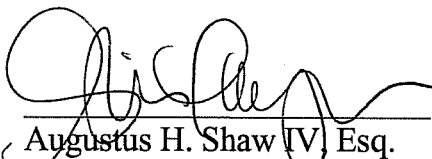
20
21 **II. The Court previously granted Respondents an award of attorney fees
and costs, therefore Petitioner's objections are moot.**

22 Pursuant to the Court's March 20, 2017 Minute Entry ("Minute Entry") the
23 Respondents' Motion to Dismiss Petitioner's Complaint ("Motion") was granted for lack
24 of subject matter jurisdiction pursuant to Ariz. R. Civ. P. 12(b)(1). In the Minute Entry,
25 specifically states:
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27
28

1 the reasonable amount of fees incurred by Respondents as the prevailing party in this
2 matter. Respondents request an additional award of fees in the amount of \$250.00
3 incurred in drafting this instant reply to Petitioner's Response.
4

5 DATED this 9th day of May, 2017.

6 **SHAW & LINES, LLC**

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8 
9 Augustus H. Shaw IV, Esq.
10 Nicole D. Payne, Esq.
11 4523 E. Broadway Rd.
12 Phoenix, Arizona 85040
13 *Attorney for Respondents*

13 ORIGINAL submitted for electronic filing
14 this 10th day of May, 2017, with:

15 Clerk of the Maricopa County Superior Court

16 ORIGINAL hand-delivered
17 this 10th day of May, 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

22 COPY of the foregoing mailed
23 this 10th day of May, 2017, to:

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

28 ...

1 Paige Martin & Bob Anderson
2 Clark Hill, PLC
3 14850 North Scottsdale Road, Suite 500
4 Scottsdale, Arizona 85254
5 *Prior Counsel of Record for Respondents*

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