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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 **MOTION AND APPLICATION FOR**
27 **AWARD OF ATTORNEY FEES**

28 Respondents, by and through counsel undersigned, hereby move this Court for an
award of attorney fees in an amount not less than \$4,775.00. Respondents' Response to
Petitioner's Motion to Vacate Judgment and Grant A New Trial specifically alleges
Respondents' entitlement to and specific request for attorney fees.

Pursuant to the Court's June 21, 2017 Minute Entry ("Minute Entry") the
Petitioner's Motion to Vacate Judgment and Grant A New Trial ("Motion") was denied.
In the Minute Entry, the Court instructed the Respondents to submit a request for an
award of fees and costs incurred herein.

...

1 **I. RESPONDENTS ARE ENTITLED TO ATTORNEY’S FEES PURSUANT**
2 **TO A.R.S. §12-349, A.R.S. §12-350 AND RULE 11(A), ARIZ. R. CIV. P.**

3 As a starting point, it is important to note that pro per litigants, such as the
4 Petitioner, are held to the same standards as attorneys regarding procedures, statutes,
5 rules, and legal principles. *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134,
6 138 (App.1999). As such, the Petitioner should be held responsible for knowing and
7 understanding the relevant Statutes and Rules of Civil Procedure regarding the award of
8 attorney’s fees and costs.

9 Based on the above, the Respondents are entitled to a full award of attorney’s fees
10 pursuant to relevant statutory law and the Arizona Rules of Civil Procedure.

11 Pursuant to A.R.S. §12-349:

12 In any civil action commenced or appealed in a court of record in this state, the
13 court *shall* assess reasonable attorney fees, expenses. . .” Emphasis added.

14 In addition, Rule 11(a), Ariz. R. Civ. P. Provides, in part:

15 The signature ...of a party constitutes a certificate by the signer that the signer
16 has read the pleading, motion, or other paper; that to the best of the signer’s
17 knowledge, information, and belief formed after reasonable inquiry it is well
18 grounded in fact... and is not interposed for any improper purpose, such as to
19 harass or to cause unnecessary delay or needless increase in the cost of
litigation.

20 Based on the undisputed facts applied to the above law, it is clear that the
21 Respondents are entitled to an award of all of its fees and costs incurred.

22 It is clear that the Petitioner did not fully research or analyze whether his request
23 to vacate the Judgment and grant a new trial was warranted under the governing rules of
24 civil procedure and/or law. This may be seen by the fact that the Petitioner “failed to
25 show that [the] Court’s prior ruling was manifestly unjust; or presented any evidence of
26 an intervening change in the controlling law occurred...”
27
28

1 This fact, in concert with the Petitioner's other actions and filings, supports an
2 award of *all* fees and costs incurred by the Respondents.

3 Additionally, the undersigned certifies that the fees requested herein are
4 reasonable and were necessarily incurred in securing this judgment. The total fees
5 requested constitute fair and reasonable fees, and are in compliance with the requisite
6 elements set forth in *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d
7 927 (App. 1983). Respondents' undersigned counsel has submitted the requisite
8 affidavit and exhibit detailing the specific work performed, billing rates, time billed and
9 the intricacy of legal work performed.
10


11 Additionally, Respondents' counsel avows that efforts expended in this action (as
12 set forth in specific detail in the undersigned's affidavit detailing all such fees) are in
13 compliance with the requisite ethical standards, and pursued as efficiently as possible to
14 minimize the fees incurred.

15 **II. CONCLUSION.**

16 For the foregoing reasons, the Association respectfully submits that it is entitled
17 to an award of all its legal fees as requested herein, and that the amount requested is
18 reasonable.

19 DATED this 28th day of June, 2017.

20 **SHAW & LINES, LLC**

21 

22 _____
23 Nicole D. Payne, Esq.
24 4523 E. Broadway Rd.
25 Phoenix, Arizona 85040
26 *Attorney for Respondents*

27 ///
28 ///

1 ORIGINAL submitted for electronic filing
2 this 28th day of June, 2017, with:

3 Clerk of the Maricopa County Superior Court

4 ORIGINAL hand-delivered
5 this 28th day of June, 2017, to:

6 Hon. Aimee Anderson
7 Maricopa County Superior Court,
8 Northeast Regional Court Center
9 18380 North 40th Street
Phoenix, Arizona 85032

10 COPY of the foregoing mailed
11 this 28th day of June, 2017, to:

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13 6333 North Scottsdale Road, Casita 21
14 Scottsdale, Arizona 85250
Petitioner, Pro Per

15 Lisa Borowski
16 Scottsdale Law Group, P.C.
17 7150 E. Camelback Road, Suite 444
18 Scottsdale, Arizona 85251
Plaintiffs' Counsel

19 By: 
20 _____