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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

**RESPONSE TO MOTION FOR
RECONSIDERATION UNDER RULE
7.1(E)**

*(Assigned to the
Honorable Aimee L. Anderson)*

Respondents, by and through counsel undersigned, hereby respond to Petitioner's Motion to Reconsideration (hereafter, the "Motion"). Petitioner's Motion should be denied because the Petitioner has failed to present newly discovered evidence that would somehow confer jurisdiction to this Court; failed to show that the initial decision was manifestly unjust; nor presented any intervening change in controlling law has occurred. This Response is supported by the following Memorandum of Points and Authorities.

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1. Standard of Review

Generally, motions for reconsideration are appropriate only if: 1) the movant presents newly discovered evidence; 2) the Court committed clear error or the initial decision was manifestly unjust; or 3) an intervening change in controlling law has occurred. *School Dist. No. 1J, Multnomah County, Or. v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

A party should not file a motion to reconsider to ask the Court "to rethink what it has already thought." *Motorola, Inc. v. J.B. Rodgers Mechanical Contractors, Inc.*, 215 F.R.D. 581, 582 (D.Ariz.2003) (internal citations omitted). The Court will ordinarily deny a motion for reconsideration "absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence." *Id.*

2. There is no intervening change in controlling law that has occurred.

Petitioner offers Exhibit 2 of the Petitioner’s Motion (hereafter, “Exhibit 2”) to stand for the proposition that since a representative of the Office of Administrative Hearings (hereafter, the “OAH”) stated that the OAH does not have jurisdiction to hear a contempt action based on an alleged violation of an OAH Order, the Superior Court must have jurisdiction. This assertion is patently false and cannot be considered “an intervening change in controlling law.” *School Dist. No. 1J, Multnomah County, Or.* at 1263.

Petitioner's claim that Exhibit 2 somehow provides the Superior Court with jurisdiction is illogical and unfounded in the law. Petitioner offers no legal analysis or

theory as to why Exhibit 2 confers jurisdiction upon the Superior Court.

As previously stated in the Respondent's Motion to Dismiss and Reply in Support of Motion to Dismiss, Ariz. Rev. Stat. 12-861, 862, and 863 do not grant the Superior Court jurisdiction over this matter. Additionally, Rule 65(f)(1) of Ariz. R. Civ. P. stands for the proposition that the Superior Court does not have jurisdiction. Moreover, pursuant to R2-19-102(C), an Administrative Law Judge may issue a contempt order over contempt proceedings of the Administrative Orders, using the Arizona Rules of Civil Procedure and related local rules for guidance.

Petitioner provides no argument as to why the above Statutes and Rules should be ignored by the Court. Despite the assertion of the Petitioner, Exhibit 2 does not change the law of this case nor does it change the Arizona laws governing this matter.

Most importantly, Petitioner, fails to include in his Motion the appropriate information Exhibit 2 conveys to the Petitioner. Exhibit 2 states in pertinent part:

The administrative process for HOA cases envisioned under ARS § 32-2199.02 et. seq. provides that a petition "shall be filed with the *department*" (emphasis added), i.e. the Arizona Department of Real Estate, not the OAH. . . As I suggested in my March 6, 2017 letter to you, you should immediately seek the advice of an Arizona licensed attorney to assist you in deciding an appropriate course of action to take. . .

Exhibit 2 clearly directs Petitioner to the proper process of seeking relief with the Arizona Department of Real Estate by filing a new complaint and/or petition.

Based on the above, it is clear that the Petitioner's Motion does not provide "an intervening change in controlling law" and as such should be denied.

1 **3. The initial decision was not manifestly unjust.**

2 The allegations listed in Petitioner's Complaint regarding the supposed 2016
3 violations of the Arizona Revised Statutes have not yet been reviewed by an
4 Administrative Court. Denying Petitioner's Motion is therefore not unjust, because the
5 Petitioner has the ability to seek redress via the Arizona Department of Real Estate
6 regarding any alleged 2016 violations of the Arizona Revised Statutes. Therefore, the
7 Court's decision to dismiss this case was not manifestly unjust because the Petitioner has
8 an alternative and more appropriate method to seek relief.
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11 **4. Petitioner has not provided newly discovered evidence that would change the**
12 **analysis of the Court.**

13 Petitioner has not provided an argument regarding any newly discovered evidence
14 regarding this matter. Therefore the Motion would not be granted under this situation.
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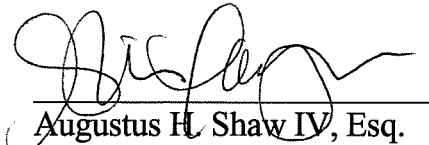
16 **5. Conclusion.**

17 In conclusion, the Petitioner's Motion for Reconsideration should be denied
18 because the Petitioner has failed to present newly discovered evidence that would change
19 the Court's decision; failed to show that the initial decision was manifestly unjust; nor
20 presented any intervening change in controlling law has occurred. As such, the Motion
21 to Reconsider should be denied. Respondents further request an award of their costs and
22 attorneys' fees incurred herein against Petitioner, including any other relief the Court
23 may deem proper, pursuant to A.R.S. §§12-341.01, 12-349, and 12-350.
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1 RESPECTFULLY SUBMITTED this 5th day of April, 2017.

2 SHAW & LINES, LLC

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5 Augustus H. Shaw IV, Esq.

6 Nicole D. Payne, Esq.

7 4523 E. Broadway Rd

8 Phoenix, Arizona 85040

Attorneys for Respondents

9 ORIGINAL submitted for electronic filing
10 this 5th day of April, 2017, with:

11 Clerk of the Maricopa County Superior Court

12 ORIGINAL hand-delivered
13 this 5th day of March, 2017, to:

14 Hon. Aimee Anderson
15 Maricopa County Superior Court,
16 Northeast Regional Court Center
17 18380 North 40th Street
Phoenix, Arizona 85032

18 COPY of the foregoing mailed
19 this 5th day of March, 2017, to:

20 R.L. Whitmer
21 6333 North Scottsdale Road, Casita 21
22 Scottsdale, Arizona 85250

Petitioner, Pro Per

23 By: 