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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

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

Hilton Casitas Homeowners Association and Michael Bengson, President of the
Hilton Casitas Homeowners Association (collectively, the "Respondents"), by and
through counsel undersigned, hereby reply to Petitioner, R.L. Whitmer's (the
"Petitioner") Objection to Defendants' Motion and Application For An Award of
Attorney Fees and Costs and to Their Proposed Form of Judgment. The Respondents'
request is supported fully by the fact that (1) the Association is entitled to an award of
fees in this action pursuant to the Court's March 20, 2017 Minute Entry (the "Minute
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.
17
18

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:
26
27
28

1 IT IS FURTHER ORDERED granting Respondents request for an
2 award of their costs and attorneys' fees incurred herein against
3 Petitioner.

4 The Court further ordered the Respondents to submit a request for an award of fees and
5 costs incurred. Respondents' submitted said motion and application supported by the
6 affidavits required under the relevant rules of civil procedure.

7 Moreover, it is clear based on the documents submitted by Petitioner in his
8 Motion to Reconsider, that he filed this lawsuit without substantial justification because
9 he did not conduct a reasonable inquiry as to whether he had legal grounds to file the
10 lawsuit he filed or where his lawsuit should be filed. Moreover, Petitioner did not
11 submit an inquiry to the Office of Administrative Hearings until March 21, 2017, nearly
12 four months *after* filing this lawsuit and *after* Respondents filed their Motion to Dismiss
13 and *after* the Court issued its Minute Entry dismissing the Petitioner's Complaint.
14 (Emphasis added).

15 As such, Petitioner's arguments that Respondents are not entitled to fees and/or
16 costs are moot, because the Court has already ordered that Respondents are entitled to
17 attorney fees and costs in this matter. Unless and until the Court rules in favor of the
18 Petitioner on the Motion to Reconsider, the Respondents are entitled to recover their
19 attorney's fees and costs.

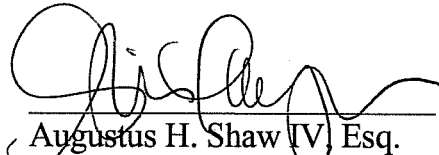
20 **III. Conclusion.**

21 Therefore, for the aforementioned reasons, and those set forth in Respondents'
22 Application, Respondents request this Court enter, as part of the judgment in
23 Respondents' favor, an award of attorneys' fees in the amount of \$23,176.50, which is

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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10 Augustus H. Shaw IV, Esq.

11 Nicole D. Payne, Esq.

12 4523 E. Broadway Rd.

13 Phoenix, Arizona 85040

14 *Attorney for Respondents*

15 ORIGINAL submitted for electronic filing
16 this 10th day of May, 2017, with:

17 Clerk of the Maricopa County Superior Court

18 ORIGINAL hand-delivered
19 this 10th day of May, 2017, to:

20 Hon. Aimee Anderson

21 Maricopa County Superior Court,

22 Northeast Regional Court Center

23 18380 North 40th Street

24 Phoenix, Arizona 85032

25 COPY of the foregoing mailed
26 this 10th day of May, 2017, to:

27 R.L. Whitmer

28 6333 North Scottsdale Road, Casita 21

Scottsdale, Arizona 85250

Petitioner, Pro Per

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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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