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10 COUNSEL FOR RESPONDENTS/APPELLEES

11 **IN THE COURT OF APPEALS**

12 **STATE OF ARIZONA**

13 **DIVISION ONE**

14 R.L. WHITMER, an individual,

15 Petitioner/Appellant,

16 v.

17 HILTON CASITAS HOMEOWNERS
18 ASSOCIATION, also known as HILTON
19 CASITAS COUNCIL OF
20 HOMEOWNERS, also known as
21 COUNCIL OF CO-OWNERS, also known
22 as, HILTON CASITAS COUNCIL OF
23 CO-OWNERS; and MICHAEL
24 BENGSON, President of the named
25 Respondent,

26 Respondents/Appellees.

Case No.: 1 CA-CV 17-0543

**RESPONDENTS'/APPELLEES'
RESPONSE AND OBJECTION TO
R.L. WHITMER'S STATEMENT OF
COSTS**

From the Maricopa County Superior Court
Case No. CV2016-055080

(Assigned to Hon. Aimee L. Anderson)

27 Respondents/Appellees, Hilton Casitas Homeowner's Association and Michael
28 Bengson (the "Association" and "Bengson", collectively the "Respondents"), hereby
submit their Response objecting to R.L. Whitmer's Statement of Costs.

The Statement of Costs fails to include any accompanying legal basis and/or
justification for the Court to award him his mileage and/or postage "costs" for filing.¹

¹ "Mileage to and from Court of Appeals for filing" totals \$106.29 and "Postage" charges total \$15.37. Pursuant to Rule 21(b)(3), ARCAP, the cost of preparing paper briefs must not exceed the sum of two dollars per page.

1 These alleged taxable costs are inconsistent with A.R.S. §12-331 and Rule 21, Arizona
2 Rules of Civil Appellate Procedure.

3 An application or statement for fees and costs is required to contain the legal
4 basis and justification for such an award. Whitmer's Statement of Costs fails to set forth
5 any statutory or contractual provisions as support for his request of taxable costs. Such
6 an omission prevents this Court from awarding the same. *County Mutual Ins. Co. v.*
7 *Fonk*, 198 Ariz. 167, 7 P.3d 973 (App. 2000).

8 There is no legal basis that would entitle Whitmer to his superfluous mileage and
9 postage costs. A.R.S. §12-331 outlines taxable costs *in the Supreme Court* to include:

- 10 1. The amount paid to the clerk of that court.
- 11 2. The amount paid to the clerk of the superior court for certified copies
12 of the record and for transmitting it.
- 13 3. The cost of printing or typing the abstract of record and briefs.
- 14 4. The amount paid for the transcript of the notes of the reporter of the
15 superior court.
- 16 5. Such other disbursements as may have been incurred pursuant to an
17 order of the court or agreement of the parties.

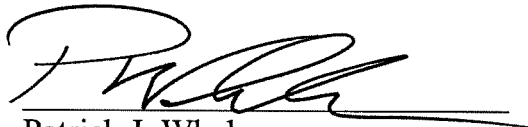
18 The Statement of Costs, submitted by Whitmer, is devoid of any legal or practical
19 justification for the request of travel costs or postage. The requested reimbursements are
20 not "charges incurred during the course of litigation necessary to obtain and present
21 evidence". *See*, Ariz. Op. 95-01; *see also*, A.R.S. §12-332 (listing various taxable costs).
22 Therefore, his claims for such taxable costs cannot stand.

23 **Conclusion**

24 Other than the \$280 filing fee as a "court cost" or "expense of litigation",
25 Whitmer is not entitled to his requested "costs" pursuant to A.R.S. §12-331 or Rule 21,
26 Arizona Rules of Civil Appellate Procedure. Accordingly, Respondents respectfully
27 submit that this Court deny Whitmer's Statement of Costs.
28

1 DATED this 25th day of July 2018.

2 SHAW & LINES, LLC

3 

4 Patrick J. Whelan
5 Augustus H. Shaw, IV
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8 *Counsel for Respondents/Appellees*

9 ORIGINAL submitted for electronic filing
10 this 25 day of July, 2018, with:

11 Clerk of the Court
12 Arizona Court of Appeals
13 Division One

14 ORIGINAL hand-delivered
15 this 25 day of July, 2018, to:

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

21 COPY of the foregoing mailed
22 this 25 day of July, 2018, to:

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

27 By: 