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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'
OBJECTION AND MOTION TO
STRIKE**

**WHITMER'S MOTION TO PERMIT
THE FILING OF AN AMENDED
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 (collectively, the "Respondents"), hereby object to R.L. Whitmer's improper
Motion to Permit the Filing of An Amended Statement of Costs (hereinafter, the
"Motion").

Notwithstanding the fact that Whitmer's requested taxable costs are inconsistent
with A.R.S. §12-331 and Rule 21, Arizona Rules of Civil Appellate Procedure, there is
no legal, legitimate, or rational justification that would entitle Whitmer leave to amend
(and further inflate) his request for taxable costs.

1 Whitmer's Motion fails to set forth any legal or practical basis as support for his
2 request to amend his already excessive Statement of Costs. In an effort to avoid
3 redundancy from Respondents' previous Response/Objection, Rule 21, ARCAP, plainly
4 states the following:

5 **(b) Statement of Attorneys' Fees and Costs; Timing; Objections.**

6 (3) *Costs*. The statement of costs must itemize taxable costs. The cost of
7 preparing paper briefs must not exceed the sum of two dollars per page.

8 (4) *Objections and Determination*. Objections to the statement of
9 attorneys' fees and costs must be filed within 10 days after service of
10 the statement. If no objections are timely filed, the appellate court may
11 award attorneys' fees and costs. ***If objections are timely filed, the
12 requesting party may reply within 5 days after service of the
13 objections. The appellate court will then determine the amount of
14 attorneys' fees and costs without a hearing or additional filings.***

15 (*Emphasis added*)

16 Rule 21 does not allow for amendments, let alone, leave to amend. To the extent
17 the Court considers Whitmer's Motion to be a reply, the Motion was not filed within five
18 (5) days after service of the Respondents' Response/Objection (filed on July 25th).
19 Moreover, the Rule clearly indicates that the "[C]ourt will then determine the...costs
20 without a hearing or additional filings."

21 Furthermore, Whitmer's *Statements* of Costs* are both devoid of any legal or
22 rational justification that would justify such an excessive award of taxable costs. Other
23 than the \$280 filing fee as a "court cost" or "expense of litigation", Whitmer is not
24 entitled to such further requested costs under A.R.S. §12-331 or Rule 21, ARCAP. *See,*
25 *Ahwatukee Custom Estates Mgmt. Ass'n., Inc. v. Bach*, 193 Ariz. 401, 402, ¶6, 973 P.2d
26 106, 107 (1999) (unrecoverable litigation expenses include expenses incurred for
27 photocopying, long-distance telephone calls, messenger and delivery charges, postage
28 and telecopier or fax charges).

Accordingly, Respondents respectfully request the Court to strike Whitmer's
Motion, deny his any requests for excessive "costs", impose Rule 11 sanctions against
Whitmer for filing a frivolous/excessive Motion, and award the Respondents their
attorneys' fees and costs in bringing this instant Objection and Motion to Strike.

1 RESPECTFULLY SUBMITTED this 15th day of August, 2018.

2 SHAW & LINES, LLC

3
4 /s/ Augustus H. Shaw, IV
5 Augustus H. Shaw, IV
6 Patrick J. Whelan
7 4523 E. Broadway Road
8 Phoenix, Arizona 85040
9 *Counsel for Respondents/Appellees*

10 ORIGINAL submitted for electronic filing
11 this 15th day of August, 2018, with:

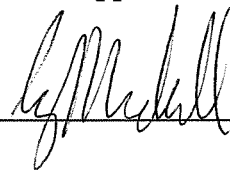
12 Clerk of the Court
13 Arizona Court of Appeals
14 Division One

15 ORIGINAL hand-delivered
16 this 15th day of August, 2018, to:

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

22 COPY of the foregoing mailed
23 this 15th day of August, 2018, to:

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

28 By:  _____