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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 **RESPONSE TO PETITIONER'S**
27 **MOTION FOR LEAVE TO FILE**
28 **FIRST AMENDED COMPLAINT**

 Hilton Casitas Homeowners Association and Michael Bengson, President of the
Hilton Casitas Homeowners Association (collectively, the "Respondents"), by and
through counsel undersigned, hereby respond to Petitioner's Motion For Leave to File
First Amended Complaint (hereafter, the "Motion").

 For purposes of judicial and administrative efficiency, Continental does not
oppose or take issue with the Court allowing leave to Plaintiff to clarify its allegations in
its First Amended Complaint, pursuant to Rule 15(a), *Ariz. R. Civ. P.*

 Respondents, however desire to respond to the Petitioner's allegation that
Respondent's counsel refused "to honor agreement from October 17, 2018 Status

1 Conference to meet and reach a settlement regarding Defendant's [potential] Motion to
2 Dismiss Michael Bengson and its counsel's admission that he has no settlement
3 authority."

4 As usual, the Petitioner seeks to mislead this honorable Court. Attached hereto as
5 **Exhibit A** is an e-mail chain between the attorney for the Respondents and the Petitioner
6 where the attorney for the Respondents attempted to set up a conference call to meet and
7 confer with the Petitioner regarding the potential Motion to Dismiss Michael Bengson.
8

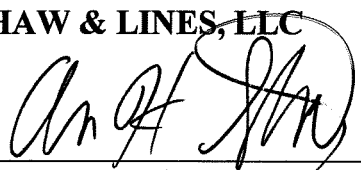
9 The first line of the most recent e-mail (Exhibit A, Page 1) reads "[M]r. Whitmer,
10 [C]an you please give me a call to chat about this." Instead of calling or further
11 conferring via phone or e-mail, Petitioner filed his Motion.
12

13 Also, at no time did Respondents' counsel ever state that he did not have
14 settlement authority. Rather, Respondents' counsel stated "[S]ubsequent to the
15 conference call referenced in number 3 above, I will consult with my clients and
16 determine whether to file the Motion to Dismiss." (Exhibit A, Page 3, Item #4)
17

18 Respondents request that if this Court grants Petitioner's Motion, the
19 Respondents be allowed to immediately file a Motion to Dismiss Respondent Bengson
20 and that the Respondents be awarded all attorney's fees and costs incurred in this matter.
21

22 DATED this 23rd day of October, 2018.

23
24 SHAW & LINES, LLC

25 
26 _____
27 Augustus H. Shaw IV, Esq.
28 4523 E. Broadway Rd.
Phoenix, Arizona 85040
Attorney for Respondents

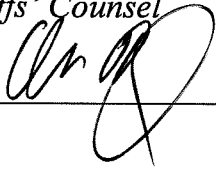
1 ORIGINAL submitted for electronic filing
2 this 23rd day of October, 2018, with:

3 Clerk of the Maricopa County Superior Court

4 COPY of the foregoing mailed
5 this 23rd day of October, 2018, to:

6 R.L. Whitmer
7 6333 North Scottsdale Road, Casita 21
8 Scottsdale, Arizona 85250
9 rlw@fulcrumgroup.biz
10 *Petitioner, Pro Per*

11 Lisa Borowski
12 Scottsdale Law Group, P.C.
13 7150 E. Camelback Road, Suite 444
14 Scottsdale, Arizona 85251
15 *Plaintiffs' Counsel*

16 By:  _____

From: ashaw@SHAWLINES.com
Sent: Thursday, October 18, 2018 2:42 PM
To: 'R L Whitmer'
Cc: 'Michael Bengson'; 'Evon Potocki'; 'Patrick Whelan'
Subject: RE: Rule 8.1(f)(4) Motion to Dismiss Conference
Attachments: Motion to Dismiss Defendant Michael Bengson.pdf; Rule 8.1.pdf; Scheduling Order Minute Entry.pdf

Mr. Whitmer,

Can you please give me a call to chat about this.

I again reiterate my suggested procedures pursuant to Rule 8.1(f)(4), Experimental Rules of Civil Procedure, as listed in my previous e-mail.

Also, I refer you to Rule 7.1(h), Arizona Rules of Civil Procedure, which states:

Good Faith Consultation Certificate. When these rules require that a “good faith consultation certificate” accompany a motion or that the parties otherwise consult in good faith, the movant must attach to the motion a separate statement certifying and demonstrating that the movant has tried in good faith to resolve the issue by conferring with—or attempting to confer with—the party or person against whom the motion is directed. **The consultation required by this rule must be in person or by telephone, and not merely by letter or email.** (Emphasis Added)

I can attend a conference call with you, pursuant to Rule 8.1(f)(4), Experimental Rules of Civil Procedure and Rule 7.1(h), Arizona Rules of Civil Procedure, on the following dates and times:

October 26, 2018 at 11:00am – 1 hour

October 22, 2018 between 11:00am and 5:00pm – 1 hour

October 23, 2018 between 11:00am and 5:00pm – 1 hour

October 24, 2018 between 11:00am and 5:00pm – 1 hour

October 26, 2018 between 11:00am and 5:00pm – 1 hour

October 29, 2018 between 11:00am and 5:00pm – 1 hour

If a conference call is not good enough for you, then I will file a Good Faith Consultation Certificate with the Court pursuant to Rule 8.1(f)(4), Experimental Rules of Civil Procedure and Rule 7.1(h), Arizona Rules of Civil Procedure and file the Motion to Dismiss.

Please let me know when you can conduct a conference call regarding this matter.

Augustus H. Shaw IV†*

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†Licensed in Arizona and Nebraska

*Member, College of Community Association Lawyers

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THIS FIRM MAY ACT AS A DEBT COLLECTOR. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

From: R L Whitmer <rlw@fulcrumgroup.biz>
Sent: Thursday, October 18, 2018 2:08 PM
To: ashaw@SHAWLINES.com
Subject: RE: Rule 8.1(f)(4) Motion to Dismiss Conference

You stated to the court that you did not wish to have phone calls or emails. Now in act of bad faith you are reversing yourself after the Judge brokered an agreement that I would meet you at your office. If you cannot meet on the 26th, then send me a few dates and times that you can meet.

From: ashaw@SHAWLINES.com [<mailto:ashaw@SHAWLINES.com>]
Sent: Thursday, October 18, 2018 1:21 PM
To: 'R L Whitmer'
Cc: 'Patrick Whelan'; 'Michael Bengson'; 'Evon Potocki'
Subject: Rule 8.1(f)(4) Motion to Dismiss Conference

Mr. Whitmer,

I believe we should follow the Commercial Court Rules of Civil Procedure regarding this matter.

Pursuant to the recent Court Minute Entry and Rule 8.1(f)(4), Experimental Rules of Civil Procedure (attached), I formally request that you correct the procedure defects in the Complaint by dismissing Defendant Michael Bengson.

Pursuant to the recent Minute Entry (third attached), the enclosed Motion to Dismiss must be filed by October 31, 2018. Pursuant to the recent Court Minute Entry and Rule 8.1(f)(4), Experimental Rules of Civil Procedure, I propose the following:

1. That you review the attached Motion to Dismiss.

2. If you agree with the analysis in the Motion to Dismiss, I will draft the required Stipulation and Order to Dismiss Michael Bengson.
3. If you disagree with the analysis as stated in the attached Motion to Dismiss, I suggest we conduct a conference call on October 26, 2018 at 11:00am (unfortunately, I am not available for an in-person meeting on October 26, 2018). The conference call shall last no longer than 1 hour. During the Conference call, we can discuss the applicable law and facts. If you desire, you may provide a written response to the Motion to Dismiss prior to the conference call (by no later than 5:00pm on October 25th, 2018). A written statement may help narrow the issues and concerns.
4. Subsequent to the conference call referenced in number 3 above, I will consult with my client and determine whether to file the Motion to Dismiss.

I believe following Rule 8.1(f)(4), Experimental Rules of Civil Procedure and the above procedures is the most efficient way to address this matter. Please let me know if you agree to the above.

Augustus H. Shaw IV†*
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From: R L Whitmer <rlw@fulcrumgroup.biz>
Sent: Thursday, October 18, 2018 11:54 AM
To: ashaw@SHAWLINES.com
Subject: RE: meeting

Mr. Shaw,

Thank you for your quick response. As we agreed at the status conference with Judge Bailey, per your objections to telephone calls and emails, that I will come to your office for a face to face meeting. Accordingly, I am looking forward to seeing you on the 26th at 11am.

From: ashaw@SHAWLINES.com [<mailto:ashaw@SHAWLINES.com>]
Sent: Thursday, October 18, 2018 10:39 AM

To: 'R L Whitmer'
Cc: 'Patrick Whelan'
Subject: RE: meeting

Mr. Whitmer,

I am available for a conference call on Friday, October 26, 2018 at 11:00am. If this works for you, please call the number listed below.

Augustus H. Shaw IV†*
Shaw & Lines, LLC
4523 E. Broadway Road
Phoenix, AZ 85040
Phone 480-456-1500
Fax 480-456-1515
e-mail ashaw@shawlines.com
web site www.shawlines.com

†Licensed in Arizona and Nebraska

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From: R L Whitmer <rlw@fulcrumgroup.biz>
Sent: Thursday, October 18, 2018 9:19 AM
To: ashaw@shawlines.com
Subject: meeting

Mr. Shaw,

Are you available to meet in your office next Friday at 11am in your office? If this does not work for you, please send a few alternate dates and time.

R. Lamar Whitmer
Scottsdale, Arizona
602-531-2615



FORTUNA PREPARATIS - AUDACES FORTUNA IU VAT