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BY *J. Sutton* DEP
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R. L. Whitmer
6333 N. Scottsdale Rd.
Casita 21
Scottsdale, Arizona 85250
602.531.2615
Pro Per

**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, as President of
the named Respondent

Respondents.

CV2016-055080

**REQUEST FOR AN ORDER TO
COMPEL THE PRODUCTION OF
DOCUMENTS AND
SCHEDULING OF
DEPOSITIONS**

(Assigned to the Honorable
Cynthia Bailey)

Accelerated Consideration
Requested

In their motion to dismiss, the Respondents failed to disclose any factual support for their claim that the HOA was in compliance in 2017 with the Administrative Law Order that requires that HOA comply with ARS § 33-1243.D.
The Respondents do not deny that their reported 2017 legal expenses do not reflect the legal services incurred in 2017. When the Petitioner requested the HOA's 2017 legal expenses that the HOA had incurred (pursuant to ARS § 33-1258), their general counsel, Mr. Shaw, claimed that the billings related to litigation are attorney-client privileged and would not be disclosed.

1 Now that those billings are subject to discovery, the Respondents are
2 unreasonably delaying the production of the document until after the deposition of
3 the HOA president, Mr. Bengson, and stalling Mr. Bengson's deposition to
4 exhaust the Petitioner's ability to perform discovery, which ends on March 1,
5 2019. Most telling is the Respondents' counsel letter that he proposed production
6 of the requested documents after the deposition of Mr. Bengson (Ex. A).

7 To move the discovery process along in reasonable timeframe, the
8 deposition of Mr. Bengson should be conducted no later than February 6, 2019
9 and the requested documents produced no later than January 31, 2019. In
10 addition, since the HOA counsel, Mr. Shaw, has made himself a participant in
11 concealing his billing for legal expenses, Mr. Shaw should be deposed no later
12 than February 6, 2019 for the limited purpose of discovering the accurate amount
13 of legal expenses incurred and when they were incurred.

14 The requested documents are:

- 15 1. All HOA board of directors meeting requests for 2016, 2017 and
16 2018;
- 17 2. All HOA board of directors meeting notices for 2016, 2017 and 2018;
- 18 3. All HOA board of directors meeting agendas for 2016, 2017 and
19 2018;
- 20 4. All HOA board of directors meeting minutes for 2016, 2017 and 2018
- 21 5. All HOA annual unit meeting notices for 2016, 2017 and 2018;
- 22 6. All HOA annual unit meeting agendas for 2016, 2017 and 2018;
- 23 7. All HOA annual unit meeting minutes for 2016, 2017 and 2018;
- 24 8. All Shaw Lines billing time sheets for CC20166164084-RC;
- 25 9. All Shaw Lines billing time sheets fo LC2017-000273-001 DT;
- 26 10. All Shaw Lines billing time sheets for 1 CA CV 17-0543
- 27 11. All email and written communications of Mr. Bengson, Ms. Potocki,
28 Ms. Bercuson, Mr. Randolph and Mr. Pollock to and from Safeguard

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Security Co. regarding the 2016 renegotiations of the Safeguard security contract;

12. All email and written communications of Ms. Potocki to and from any all HOA board members regarding calling board meeting and unit owner meeting.

With the possible exception of the email communication of the former board members Ms. Bercuson, Mr. Mr. Randolph and Mr. Pollock, the requested documents are readily available, and does not pose a hardship to the HOA to produce and should not take more than a few days to complete.

Accordingly, the Petitioner respectfully requests that the Court order (Ex. B) the Respondent HOA to produce the requested documents no later than **January 31, 2019**, Respondent Bengson to be ordered to be deposed no later than **February 6, 2019**, and that the HOA's counsel Mr. Shaw be ordered to be deposed for the limited purpose regarding his 2017 billing records in the various lawsuits he was engaged by the HOA to defend and his billing practices to HOA regarding the same no later than **February 6, 2019**.

Dated this 17th day of January 2019.

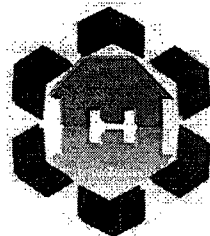


R. L. Whitmer

COPY hand delivered and emailed this 17th day of January 2019:

Augustus Shaw
Shaw & Lines Law Firm
4523 E. Broadway Rd.
Phoenix, AZ 85040

Exhibit A



SHAW & LINES, LLC

HOA & CONDO LAWYERS

Attorneys

Augustus H. Shaw IV*†

Mark E. Lines**†

Patrick J. Whelan***

*Also Licensed in Nebraska

**Also Licensed in Utah

***Also Licensed in Florida

† Member, College of Community Association Lawyers

Address

4523 E. Broadway Rd.

Phoenix, Arizona 85040

Phone/Fax/Web

p 480-456-1500

f 480-456-1515

www.shawlines.com

January 16, 2019

VIA E-MAIL TO RLW@FULCRUMGROUP.BIZ
AND U.S. MAIL

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

**RE: WHITMER V. HILTON CASITAS ET AL. - CV2016-055080
NOTICES OF DEPOSITION – REQUEST FOR PRODUCTION**

Dear R.L. Whitmer:

I am in receipt of your Notices of Depositions and Request for Production. This letter serves as a response.

Request for Production of Records

Pursuant to Rule 34(b)(3), Arizona Rules of Civil Procedure:

Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within 30 days after being served.

Therefore, the Association's response to your Request for Production of Records will be provided no later than February 15, 2019.

Deposition of Augustus H. Shaw IV, Esq., CCAL

Augustus H. Shaw IV, Esq., CCAL is not a party to the above referenced lawsuit and as such, may not be deposed pursuant to a Notice of Deposition.

Pursuant to Rule 30(a)(4), Arizona Rules of Civil Procedure, non-parties must be subpoenaed in order to be required to attend a deposition.

Therefore, your Notice of Deposition of Augustus H. Shaw IV, Esq., CCAL is hereby objected to and Augustus H. Shaw IV, Esq., CCAL will not attend the scheduled deposition.

January 16, 2019

Moreover, if you seek to subpoena Augustus H. Shaw IV, Esq., CCAL, said subpoena will be objected to because you are soliciting testimony that involves the Association's attorney-client privilege. The Association will not waive its attorney client privilege regarding attorney Augustus H. Shaw IV, Esq., CCAL.

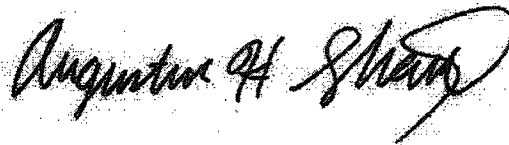
Deposition of Michael Bengson

Michael Bengson is unable to be deposed on February 1, 2018 due to prior commitments. Moreover, I have a prior Firm related conference that cannot be rescheduled.

Therefore, I suggest 1:00pm on February 12, 2019. Please let me know if this date and time works for you.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Augustus H. Shaw IV". The signature is written in a cursive, flowing style with a large loop at the end.

Augustus H. Shaw IV, Esq.
For the Firm

cc: HILTON CASITAS COUNCIL OF HOMEOWNERS

Exhibit B

1
2 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
3 **IN AND FOR THE COUNTY OF MARICOPA**

4
5 R. L. WHITMER,

6 Petitioner.

7 v.

8 HILTON CASITAS HOMEOWNERS
9 ASSOCIATION, also known as HILTON
10 CASITAS COUNCIL OF
11 HOMEOWNERS, also known as
12 COUNCIL OF CO-OWNERS, also
13 known as HILTON CASITAS COUNCIL
14 OF CO-OWNERS; and MICHAEL
15 BENGSON, solely in his capacity as
16 President of the named Respondent
17 Entities, and not personally;

18 Respondents.

CV2016-055080

**ORDER COMPELLING
PRODUCTION OF DOCUMENTS
AND SCHEDULING OF
DEPOSITIONS**

(Assigned to the Honorable
Cynthia Bailey)

19 Upon consideration of the Petitioner's motion, the Court orders as follows:

20 IT IS ORDERED that the Respondents shall deliver to the Petitioner the
21 following documents no later than **January 31, 2019**.

- 22 1. All HOA board of directors meeting requests for 2016, 2017 and 2018;
- 23 2. All HOA board of directors meeting notices for 2016, 2017 and 2018;
- 24 3. All HOA board of directors meeting agendas for 2016, 2017 and 2018;
- 25 4. All HOA board of directors meeting minutes for 2016, 2017 and 2018
- 26 5. All HOA annual unit meeting notices for 2016, 2017 and 2018;
- 27 6. All HOA annual unit meeting agendas for 2016, 2017 and 2018;
- 28 7. All HOA annual unit meeting minutes for 2016, 2017 and 2018;
8. All Shaw Lines billing time sheets for CC20166164084-RC;
9. All Shaw Lines billing time sheets for LC2017-000273-001 DT;

