

1 **Shaw & Lines, LLC**

2 4523 E. Broadway Road
3 Phoenix, AZ 85040

4 Phone (480) 456-1500
5 Facsimile (480) 456-1515

6 www.shawlines.com

7 Mark E. Lines - #020553
8 Augustus H. Shaw, IV - #021593
9 Patrick J. Whelan - #030994

10 *Counsel 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
19 HOMEOWNERS, also known as
20 COUNCIL OF CO-OWNERS, also
21 known as HILTON CASITAS COUNCIL
22 OF CO-OWNERS; and MICHAEL
23 BENGSON, solely in his capacity as
24 President of the named Respondent, and
25 not personally,

26 Respondents.

Case No.: CV2016-055080

**RESPONSE TO
PETITIONER'S REQUEST FOR AN
ORDER TO COMPEL THE
PRODUCTION OF DOCUMENTS
AND SCHEDULING OF
DEPOSITIONS**

(Assigned to the Hon. Cynthia Bailey)

27 Respondents, through counsel undersigned, hereby responds to the Petitioner's
28 Request for an Order to Compel The Production of Documents and Scheduling of
29 Depositions (hereafter, the "Request"). The Request is completely inappropriate for a
30 number of reasons which, will be more fully and briefly discussed below. Therefore, the
31 Respondents respectfully request that the Request be denied.

32 ////

33 ////

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **a. The Request for an Order to Compel the Production of Documents is in**
3 **violation of Rule 26(d)(2) of the Arizona Rules of Civil Procedure.**

4 Rule 26(d)(2) of the Arizona Rules of Civil Procedure discuss the dispute
5 resolution process when it comes to discovery disputes regarding the production of
6 documents. Pursuant to Rule 26(d)(2), Arizona Rules of Civil Procedure:

7 (2) *Joint Statement of Discovery or Disclosure Dispute.* When the parties
8 have a dispute that could properly be addressed under... Rule 37(a)
9 (**Motions to Compel Disclosure**), they must file with the court a joint
10 statement of discovery or disclosure dispute. The joint statement must not
11 exceed 3 pages of explanatory text, with each party entitled to submit one
12 and one-half pages of that text. The parties must also attach a good faith
13 consultation certificate complying with Rule 7.1(h) and may not attach
14 exhibits. The purposes of the joint statement are to notify the court of the
dispute, and to make a record of the discovery or disclosure sought. Briefing
on the dispute is permitted only if ordered by the court.

15 When it comes to the Petitioners request for an Order to Compel the production of
16 documents, Rule 26(d)(2), Arizona Rules of Civil Procedure applies.

17 The Petitioner has not consulted with the Respondent pursuant to Rule 7.1(h) of the
18 Arizona Rules of Civil Procedure. The Petitioner has not engaged in a telephone
19 conversation or in-person consultation as is required by Rule 7.1(h) of the Arizona Rules
20 of Civil Procedure. Moreover, the Petitioner has not allowed the Respondent to jointly file
21 as is required by Rule 26(d)(2) of the Arizona Rules of Civil Procedure.

22 Therefore, the Petitioner's request must be denied in favor of the dispute resolution
23 process found in Rule 26(d)(2), Arizona Rules of Civil Procedure.

24 Petitioner made is request for documents on January 16, 2019. Pursuant to Rule
25 34(b)(3), Arizona Rules of Civil Procedure:

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

1 The Respondent will provide the documents requested in full compliance with Rule
2 34(b)(3), Arizona Rules of Civil Procedure.

3 **b. Deposition of Michael Bengson**

4 Petitioner fails to inform the Court that the deposition of Michael Bengson was
5 held on January 15, 2019 (Enclosed as Exhibit A is the Notice of Deposition). The
6 transcripts for said deposition have not been released as of the date of the Request.
7 Therefore, the Request as to the deposition of Michael Bengson should be denied as a
8 deposition has already occurred.

9
10 Petitioner has requested a subsequent deposition of Mr. Bengson. As a courtesy,
11 Mr. Bengson is willing to attend a second deposition, although, under the Rules of
12 Arizona Civil Procedure, he is not required to. Mr. Bengson, however, cannot attend a
13 subsequent deposition until February 12th.

14 Since Mr. Bengson is under no obligation to attend a second deposition, forcing
15 him to attend one when he cannot is onerous. As such, the Petitioner's Request should be
16 denied.

17 **c. Deposition of Augustus H. Shaw IV, Esq.**

18 Regarding the deposition the Respondent's attorney Augustus H. Shaw IV, as has
19 been explained to the Petitioner (see Exhibit A of the Reply), Mr. Shaw is not a party to
20 this lawsuit and as such, may not be deposed pursuant to a Notice of Deposition.

21 Pursuant to Rule 30(a)(4), Arizona Rules of Civil Procedure, non-parties must be
22 subpoenaed in order to be required to attend a deposition. To date, the Petitioner has not
23 subpoenaed Mr. Shaw.

24 Therefore, any Notice of Deposition regarding Augustus H. Shaw IV, Esq. is
25 inappropriate and a deposition based on a Notice of Deposition should not be ordered.

26 Moreover, if the Petitioner seeks to subpoena Augustus H. Shaw IV, Esq., said
27 subpoena will be objected to because the Petitioner is soliciting testimony that involves
28

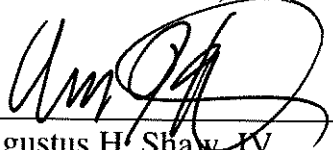
1 the Association's attorney-client privilege. The Association has not waived its attorney
2 client privilege regarding attorney Augustus H. Shaw IV, Esq.

3 **Conclusion.**

4 For the reasons above and obvious, Respondents respectfully request that the Court
5 deny Petitioner's instant motion in its entirety. The Respondents also request an award of
6 attorney's fees and costs regarding responding to the instant motion.

7 DATED this 18th day of January, 2019.

8
9
10 **SHAW & LINES, LLC**

11 

12 Augustus H. Shaw, IV
13 Patrick J. Whelan
14 4523 E. Broadway Road
15 Phoenix, Arizona 85040
Counsel for Respondents

16 ORIGINAL submitted for electronic filing
17 this 18th day of January, 2019, with:

18 Clerk of the Maricopa County Superior Court

19 COPY of the foregoing mailed
20 this 18th day of January, 2019, to:

21 R.L. Whitmer
22 6333 North Scottsdale Road, Casita 21
23 Scottsdale, Arizona 85250
Petitioner, Pro Per

24
25 By: 
26
27
28

EXHIBIT A

1 R. L. Whitmer
2 6333 N. Scottsdale Rd.
3 Casita 21
4 Scottsdale, Arizona 85250
5 602.531.2615
6 Pro Per

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 R. L. WHITMER,

10 Petitioner.

11 v.

12 HILTON CASITAS HOMEOWNERS
13 ASSOCIATION, also known as
14 HILTON CASITAS COUNCIL OF
15 HOMEOWNERS, also known as
16 COUNCIL OF CO-OWNERS, also
17 known as HILTON CASITAS
18 COUNCIL OF CO-OWNERS; and
19 MICHAEL BENGSON, as President of
20 the named Respondent

21 Respondents.

CV2016-055080

**NOTICE OF DEPOSITION OF
MICHAEL BENGSON**

(Assigned to the Honorable
Cynthia Bailey)

22 Pursuant to the Arizona Rules of Civil Procedure, you are hereby noticed
23 that the deposition will be taken upon oral examination of the person whose name
24 is stated below at the time and place stated below before an officer authorized by
25 law to administer oaths.

26 **PERSON TO BE EXAMINED:**


Michael Bengson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATE AND TIME OF DEPOSITION: **January 15, 2019**
9:00am

PLACE OF DEPOSITION: **Ottmar & Associates**
3770 N. 7th Street, Ste 150
Phoenix, Arizona 85014

Dated this 31st day of December 2018.



R. L. Whitmer

COPY hand delivered and emailed
this 31st day of December 2018:

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