

H. Gearhart
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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 Entities

Respondents.

CV2016-055080

**RESPONSE TO THE
RESPONDENTS' MOTION TO
STRIKE**

(Assigned to the Honorable
Cynthia Bailey)

Oral Argument Requested

The Respondents' motion to strike ignores and fails to address the introduction of new arguments in their reply in support of their motion to dismiss.

The Respondents wrongly claim that "the Surreponse does not contain any additional information that has not been already discussed..." (Motion to strike p.1:27-28). It is simply incorrect as the exhibits to surreponse counter the Respondents' new arguments and were just now introduced in the surreponse; One which was sworn and notarized, and another is a pleading signed by the Respondents' general counsel. The Petitioner's Surreponse Exhibits should be considered in the Respondents' motion to dismiss as the Federal court concluded

1 in **Powell v. Miles**, No. CV 03-1819-PHX-JAT., at *1 n.3 (D. Ariz. Aug. 30, 2006)
2 "Plaintiff's evidence is attached to a sur-response, which Defendants move to
3 strike on various grounds... But the Court finds that the sur-response is not
4 redundant or immaterial as Defendants allege, and the affidavits to which
5 Defendants object are sworn and notarized. The Court also recognizes Plaintiff's
6 pro se status, and will therefore deny Defendants' motion to strike." citing **Hearns**
7 **v. Terhune**, 413 F.3d 1036, 1040 (9th Cir. 2005)

8 Accordingly, the motion to strike should be denied, as the motion to dismiss
9 should also be denied in its entirety, and the Court should hold an evidentiary
10 hearing to determine the nature of the violation and appropriate remedy for the
11 multiple acts of contempt.

12 Dated this 22nd day of January 2018.

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15 R. L. Whitmer

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18 ORIGINAL filed this
19 22nd day of January 2018,
20 with the Clerk of the Court;

21 and a COPY hand delivered this same date
22 directly to Augustus Shaw:

23 Augustus Shaw
24 Shaw & Lines Law Firm
25 4523 E. Broadway Rd.
26 Phoenix, AZ 85040
27
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