

1 “absolute right” to withdraw her pleading without consequence or further proceedings.  
2 *Response to Motion to Compel* at 16-17.

3  
4 10. Further, Laura appears to believe she should have had the right to withdraw her  
5 entire Petition by virtue of Clayton moving for Rule 26 sanctions without the “safe harbor”  
6 notice<sup>1</sup> notwithstanding Rule 46.

7  
8 11. She bases her renewed objection to complying with discovery orders and  
9 disclosure obligations on this notion: “The only current remaining issue in this case is Mr.  
10 Echard’s Motion for Rule 26 Sanctions ... which is presently set for evidentiary hearing on  
11 June 10, 2020. The pending Motion to Compel seeks evidence which is only, and could only,  
12 be relevant to the issue of sanctions (because there are no other pending issues for this Court  
13 to address). Thus, the only *fact of consequence* necessary to determine this matter is the  
14 question of whether Ms. Owens lied about ever being pregnant in the first place. [...] Mr.  
15 Echard has no right to this discovery (or indeed, to any discovery) because none of the  
16 discovery is relevant to any of the remaining issues of consequence in the case.” (Emphasis  
17 in original).

18  
19  
20 12. This untenable position completely ignores the Court’s trial setting order and  
21 Clayton’s Amended Response. Clayton has requested relief to which he is entitled under Title  
22 25, including a finding of non-paternity and attorney fees and costs, that are entirely  
23 independent from the Rule 26 Motion. The applicable statutes, including A.R.S. §§ 25-324  
24 (attorney fees and costs for filing in bad faith, filing without grounding in fact or law, filing  
25  
26

27  
28 <sup>1</sup> As articulated more fully below, Clayton believes the Motion for Leave to Amend operates  
as sufficient written notice consistent with precedent Laura’s counsel cited.

1 for improper purpose in legal decision-making and parenting time proceedings), -415  
2 (sanctions for litigation misconduct related to claims made under § 25-403, -403.03, or -  
3 403.04) and -809(G) (attorney fees for unreasonableness in paternity proceedings), provide  
4 independent remedies that have no grounding in Rule 26. Based on the Court's comments on  
5 the record at the most recent status conference and the order setting trial, the Court intends to  
6 hear those claims for attorney fees and sanctions notwithstanding the Rule 26 Motion. That is  
7 why the Court did not dismiss the action in its entirety: the Court must first resolve Clayton's  
8 claims for relief.  
9

10  
11 13. Laura's current counsel's communications on this topic are tremendously  
12 aggressive and counsel has taken to Twitter, posting pleadings and medical documents  
13 contrary to the Court Order, all of which the Court will have to determine the propriety of  
14 reasonableness under A.R.S. § 25-324 come trial. These communications include declaring  
15 that Clayton refusing to withdraw the motion would itself be sanctionable under Rule 26,  
16 promising to litigate the issue to higher courts at great expense to both parties, threatening to  
17 seek personal sanctions against Clayton's attorneys, threatening new bar complaints (Laura  
18 having already filed two (2) against undersigned counsel and at least two (2) prior attorneys)  
19 and so on.  
20  
21  
22

23 14. In one example, counsel estimates \$35,000 in "risk" if Clayton does not  
24 withdraw his Motion for Sanctions: *"If I was in your position, I would seriously stop and think*  
25 *about that before telling me to GF myself. You can literally avoid about \$35,000 in risk simply*  
26 *by admitting you made a mistake, then doing the right thing. If you decide NOT to take that*  
27 *safe harbor, it's your decision....but a pretty freaking bad one."* It is not clear whether the  
28

1 \$35,000 is a prediction of legal fees for both parties, a possible attorney fees award to Laura  
2 for acts not yet undertaken, an amount expected as a sanction, etc., but what is clear is that  
3 Laura's scorched Earth approach to this litigation remains the same as always: to threaten and  
4 drive up costs in an attempt to exhaust Clayton's remedies and willingness to defend himself  
5 and seek affirmative relief to which he is entitled under Title 25.  
6

7 15. The emails also concede, however, that "There are *other* options available to  
8 you if you want to seek fees. But you have not made any other motions seeking fees under  
9 those other authorities. If you think you have a factual/legal basis to do so, GO FOR IT."  
10 (Emphasis in original). Clayton has already invoked those claims in his Response, Amended  
11 Response, and various other filings and positions in open court. Laura's position self-  
12 contradicts in that it simultaneously declares Clayton has no avenue for relief other than Rule  
13 26 (and therefore should have no discovery) but also that he can bring claims for relief under  
14 other authorities.  
15  
16  
17

### 18 Clayton's Positions

#### 19 Interaction between Rule 26, Rule 46, and Title 25

20 16. As a threshold matter, the policy implications of Laura's position that Rule 26's  
21 10-day notice and "safe harbor" language grant an "absolute right" to withdraw a petition and  
22 defeat the responding party's entire case are both severe and obvious. A party who has already  
23 filed a response and brought counterclaims for relief would never invoke Rule 26 if doing so  
24 would give the petitioner *carte blanche* to withdraw their pleading with no limitations.  
25  
26

27 17. Rule 46 expressly prohibits voluntary dismissal of a petition after a responsive  
28 pleading is filed or evidence is taken, particularly when the responding party alleges

1 affirmative claims for relief as Clayton did here. The suggestion that the Rule 26 10-day notice  
2 supersedes Rule 46 is illogical and would deter parties from seeking Rule 26 relief at all,  
3 *especially* in cases of the most egregious conduct Rule 26 is meant to prevent. Rule 46 “locks  
4 in” the party’s petition once a response is filed and guarantees the respondent the opportunity  
5 to present their claims for relief even if the petitioner changes their mind and wants to opt out  
6 of the litigation.  
7

8  
9 18. Laura is correct that failure to comply with Rule 26 results in relief *for that*  
10 *motion* being denied, but to suggest that failure to comply with Rule 26 results in effective  
11 waiver of all claims in the litigation would interpret a procedural provision of one rule in a  
12 way that swallows the entirety of another. A harmonious reading of Rules 26 and 46 is simple:  
13 failure to comply with Rule 26 results in not receiving Rule 26 sanctions for that motion. It  
14 does not prohibit a subsequent Rule 26 filing with a new 10-day notice, nor does it afford a  
15 party who violated Rule 26 an opportunity to dismiss the entire litigation during the 10-day  
16 notice period. Laura’s interpretation would render Rule 26 practically useless because no  
17 party with valid claims for relief would risk waiving their right to resolution of those claims—  
18 a right guaranteed by Rule 46.  
19

20  
21 19. Rule 26’s procedural requirements do not supersede independent claims for  
22 relief given by law, including claims under A.R.S. §§ 25-324, -415, and -809. Nothing in Rule  
23 26 indicates, nor could it given the supremacy of statutes over procedural rules, that a party  
24 waives their right to bring their statutory claims by invoking Rule 26. This would create an  
25 absurd result and exalt form over function in a most problematic way.  
26  
27

28 //



1 sanctions under the court’s statutory authority was unavailing, and they brought no  
2 substantive legal basis to request those sanctions except under their flawed Rule 11 motion.  
3 *Holgate v. Baldwin*, 425 F.3d 671, 680-81 (9<sup>th</sup> Cir. 2005). It should also be noted the *Holgate*  
4 decision **expressly declines to award sanctions for a Rule 11 notice error or for opposing**  
5 **a plaintiff’s motion for voluntary dismissal**, stating the appropriate remedy is to denial the  
6 request for Rule 11 sanctions, not award “counter-sanctions” as Laura threatens to request.  
7 *Holgate* at 680. Clayton denies his Rule 26 Motion for Sanctions lacked proper notice, but  
8 even if it did, **Laura’s threats are contrary to the very precedent on which she relies to**  
9 **make them.**

10  
11  
12         24. Of relevance here, there was no alternative basis for the claim for attorney fees  
13 and sanctions under applicable federal law in *Holgate*, so the court could not sanction on its  
14 own motion without finding bad faith. Rule 11 was an exclusive remedy in that context, but  
15 Rule 26 is not the exclusive remedy or basis for Clayton’s requests for fees and sanctions  
16 under Title 25 of Arizona Revised Statutes. **Notably, under Rule 26, the Court can move**  
17 **for sanctions on its own motion, which is likely appropriate given the exorbitant amount**  
18 **of fraud perpetuated by Laura in this and the collateral matters.**

19  
20  
21         25. Similarly, Laura relies on *Gallagher v. Surrano Law Offices, P.C.*, a trial court  
22 decision summarizing applicable Rule 11 precedent. Although *Gallagher* is not precedential,  
23 Clayton finds the same problem with the analysis in that case: the party seeking sanctions  
24 cited A.R.S. §§ 12-349 and -250 as an alternative basis but did not prove the required factors,  
25 including bad faith, subjective intent, financial positions of the parties, etc. Critically, the  
26 court considered awarding fees and sanctions under authority unrelated to Rule 11  
27  
28

1 notwithstanding the movant's failure to comply with Rule 11's 10-day notice requirement.  
2 This case does not stand for the proposition that Rule 11 is the exclusive mechanism for  
3 seeking fees and sanctions. The court declined to award the statutory remedies, but the fact it  
4 considered them belies Laura's position that the 10-day notice in Rule 26 gives her an  
5 "absolute right" to withdraw her petition and thereby dismiss all Clayton's claims. Title 25 is  
6 far more remedial and contains numerous mechanisms for fees and sanctions that do not exist  
7 in the Rule 11 context, warranting a much broader interpretation of Rule 26 and the  
8 availability of other remedies.  
9

10  
11         26. Laura also cites *Barber v. Miller*, another Ninth Circuit case involving an appeal  
12 from FRCP 11 sanctions without the 10-day notice. 146 F.3d 707 (9<sup>th</sup> Cir. 1998). The primary  
13 issue in *Barber* is whether a party received sufficient notice and opportunity to withdraw or  
14 correct their offending filing when the movant moved for sanctions after the complaint had  
15 already been dismissed. 146 F.3d at 710. The movant also failed to serve a copy of the motion  
16 before filing (under a prior version of Rule 11 that required service of a motion for sanctions  
17 and a 21-day waiting period before filing). *Id.* The *Barber* court reversed the sanctions  
18 because a party cannot wait until after summary judgment to move for sanctions under Rule  
19 11. *Id.*  
20  
21

22  
23         27. In *Barber*, the court also devoted significant attention to the difference between  
24 Rule 11 sanctions imposed by motion of a party and imposed *sua sponte* by the court. *Barber*  
25 states that sanctions imposed upon motion of a party and those imposed by show-cause order  
26 on the court's initiative are substantively and procedurally different. Critically, the version of  
27 Rule 11 the *Barber* court interpreted only allowed an order for payment of attorney fees  
28

1 directly to the movant **if imposed on motion**, not on the court’s own initiative. *Barber* at 711.  
2 The *Barber* court could not interpret the sanctions award as “the equivalent of an election by  
3 the court to impose sanctions on its own motion” because the rule did not substantively allow  
4 that form of award except by motion of a party under the version of Rule 11 then-existing. *Id.*  
5 (contrast with Rule 26, allows “the court—**on motion or on its own**—[to impose] an  
6 appropriate sanction, which may include an order to pay the other party or parties the amount  
7 of the reasonable expenses incurred because of the filing of the document, including a  
8 reasonable attorney fee”) (emphasis added).  
9

10  
11 28. Rule 26 does not distinguish between party motions and *sua sponte* sanctions  
12 in the same way Rule 11 did **when that case was decided in 1998**. ARFLP did not even exist  
13 at the time, and it allows the same form of sanctions regardless of whether the sanctions are  
14 upon motion of a party or the court’s own initiative. *Barber* tells nothing meaningful about  
15 Rule 26 in this context.  
16

17  
18 Sufficiency of Clayton’s Notice and Authority to Sanction

19 29. Clayton asserts the notice he gave in his Motion for Leave to Amend and the  
20 Amended Response complied with Rule 26(c)(2)(B). The Amended Response specifically  
21 identifies the pleading and conduct that he believes violates Rule 26(b). Clayton filed his  
22 Motion for Sanctions separately several weeks later (i.e., long past the 10-day “safe harbor”  
23 period Laura claims she did not receive).  
24

25 30. In *Holgate*, one of the parties, the Newells, has their sanctions award upheld on  
26 appeal despite **not sending separate notice** of their intention to seek Rule 11 sanctions.  
27 Instead, they filed a motion to join in the sanctions motion of another party and served their  
28



1 joinder motion the same day they filed it. *Holgate*, 425 F.3d at 678. The joinder motion was  
2 the first notice the opposition had of their intention to seek sanctions against him. *Id.* They  
3 filed a second motion requesting sanctions months later. *Id.* The *Holgate* court found the safe  
4 harbor period commenced when the Newells filed their initial joinder motion and the second  
5 motion for sanctions supported an award of sanctions. *Id.* In summary, “because Levinson  
6 had prior notice of the frivolousness of the complaint (from the Baldwin motion), and notice  
7 of a second forthcoming motion for sanctions, we conclude the district court did not abuse its  
8 discretion by awarding sanctions to the Newell defendants”). *Id.*

11 31. Nothing in Rule 26 suggests the safe harbor notice is not satisfied by filing and  
12 serving an earlier motion that provides the opposition with notice of the conduct alleged to  
13 violate the rule. Rule 26 does not reference a form or provide specific language that must be  
14 included in the notice like many other rules and statutes do; rather, it requires the party to be  
15 sanctioned has actual notice of the allegedly offending conduct and an opportunity to  
16 withdraw or correct the filing.

19 32. In fact, Laura *did* try to withdraw her petition after Clayton’s Motion for Leave  
20 to Amend, and the Court declined to award the complete dismissal she now asserts she had  
21 an “absolute right” to receive. (Recall *Holgate*, 425 F.3d at 680, in which the court declined  
22 to sanction a party for opposing a plaintiff’s voluntary motion to dismiss, just as Clayton did  
23 here).

26 33. Laura’s present-day assertion that she would have withdrawn her petition upon  
27 receiving Rule 26 notice is not persuasive of anything because her actions would not have  
28 changed whatsoever. She was not prejudiced. She asserts that she did not receive proper notice

1 and therefore had no opportunity to withdraw her petition, but the fact she **changed position**  
2 **in response to the Motion for Leave to Amend by moving to dismiss her petition**, albeit  
3 after the 10-day window before Clayton could file the Motion for Sanctions. Laura was not  
4 prejudiced because she would not have done anything differently had she received a separate  
5 notice in whatever form she believes would have been proper. She had actual written notice,  
6 changed position in response to that notice in an attempt to withdraw her petition, and the  
7 Court denied her that relief because it must resolve Clayton's claims before disposing of the  
8 action.  
9

10  
11 34. Even if the Court finds Clayton's notice insufficient, the remedy is to deny the  
12 request for sanctions based on his Rule 26 motion. *Holgate*, 425 F.3d at 680. Rule 26 sanctions  
13 for improper procedure in seeking Rule 26 sanctions would create an illogical cascade of  
14 motions and countermotions akin to two mirrors facing one another.  
15

16 35. Nothing in Rule 26 would prevent: (1) Clayton issuing a new notice and filing  
17 for sanctions after the new 10-day "safe harbor" period; (2) the Court issuing sanctions on its  
18 own motion (which the Rule expressly allows); (3) Laura filing a motion for sanctions, if she  
19 believes one is appropriate, after following the procedures; or (4) the Court awarding attorney  
20 fees, costs, and other appropriate awards under any of the numerous statutes allowing (or  
21 requiring) such relief with no relationship to Rule 26. Indeed, the Court must resolve the  
22 statutory claims for relief notwithstanding whether Clayton or Laura ever filed anything  
23 pertaining to Rule 26, and the denial of Rule 26 sanctions has no impact on the substantive  
24 claims the parties have brought.  
25  
26  
27

28 //

**Withdrawal of Rule 26 Motion**

1  
2           36.     Ultimately, although Clayton believes he complied with Rule 26 and that the  
3 Court already overruled Laura’s objection, it is clear she intends to continue her established  
4 pattern of threatening her way through the litigation, refusing to comply with her discovery  
5 obligations, and seeking to avoid the merits of the case through any means necessary.  
6

7           37.     Clayton’s claims for fees and sanctions exist independently of the Rule 26  
8 Motion and have already been set for trial. With or without the Rule 26 Motion, those claims  
9 require resolution (as the Court already found when it preserved them while dismissing  
10 Laura’s Petition).  
11

12           38.     Clayton would rather avoid the “\$35,000” sideshow Laura intends to use to  
13 distract from and avoid the merits of the claims against her. Because the Rule 26 Motion is  
14 not the substantive pleading basis for his claims against Laura, there is no reason to participate  
15 in the pointless litigation of this issue notwithstanding Clayton’s disagreement with Laura’s  
16 positions on Rule 26.  
17

18           39.     Subjecting the Court to this collateral chaos, which is intended only to increase  
19 legal fees and prevent resolution on the merits, would be a waste of judicial resources.  
20 Moreover, Laura’s threat to seek personal sanctions against Clayton’s counsel based on her  
21 proffered Rule 26 violation, while considered frivolous, will only draw more attention and  
22 animus to this case.  
23

24           40.     Withdrawing the Rule 26 Motion will not affect the Court’s duty to resolve the  
25 claims Clayton properly brought under Title 25. It will, however, prevent the wholesale  
26 wasting of judicial resources and attorney fees on this meaningless procedural issue.  
27  
28

1 Accordingly, he moves to withdraw the Rule 26 Motion for Sanctions filed January 3,  
2 2024. He does not withdraw his counterclaims for a finding of non-paternity, attorney fees,  
3 costs, sanctions, and any other relief appropriate and available to him under A.R.S. §§ 25-  
4 324, 25-415, 25-809, etc.  
5

6 **WHEREFORE, Respondent respectfully requests the Court:**

7 A. Withdraw Respondent's *Motion for Sanctions Pursuant to Rule 26* filed January  
8 3, 2024.  
9

10 B. Order such further relief as the Court deems just.

11 **RESPECTFULLY SUBMITTED** this 3<sup>rd</sup> day of April, 2024.

12 **WOODNICK LAW, PLLC**

13 

14  
15 \_\_\_\_\_  
16 Gregg R. Woodnick  
17 Isabel Ranney  
18 *Attorneys for Respondent*

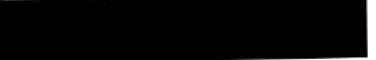
19 **ORIGINAL** of the foregoing e-filed  
20 this 3<sup>rd</sup> day of April, 2024 with:

21 Clerk of the Court  
22 Maricopa County Superior Court

23 **COPY** of the foregoing document  
24 delivered this same day to:

25 The Honorable Julie Mata  
26 Maricopa County Superior Court

27 **COPY** of the foregoing document  
28 emailed this same day to:

David Gingras  
Gingras Law Office, PLLC  




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

**VERIFICATION**

I, **CLAYTON ECHARD**, declare under penalty of perjury that I am the Respondent in the above-captioned matter; that I have read the foregoing *Motion To Withdraw Motion For Sanctions Pursuant To Rule 26* and I know of the contents thereof; that the foregoing is true and correct according to the best of my own knowledge, information and belief; and as to those things stated upon information and belief, I believe them to be true.

  
\_\_\_\_\_  
Clayton Echard / Apr 3, 2024 14:25 PDT  
**CLAYTON ECHARD**

04/03/2024  
Date



If Mr. Marraccini does not want to comply with the procedural rules, that's 100% OKAY. I am more than happy if he wants to stay home (assuming he hasn't been lawfully summoned). But if he comes within 100 yards of Laura without being compelled to appear by valid subpoena, then he will risk arrest and prosecution for violating the restraining order.

NOTE – Rule ER 3.4(f) of the Arizona Rules of Professional Conduct provides a lawyer shall not: “request a person other than a client to refrain from voluntarily giving relevant information to another party....”

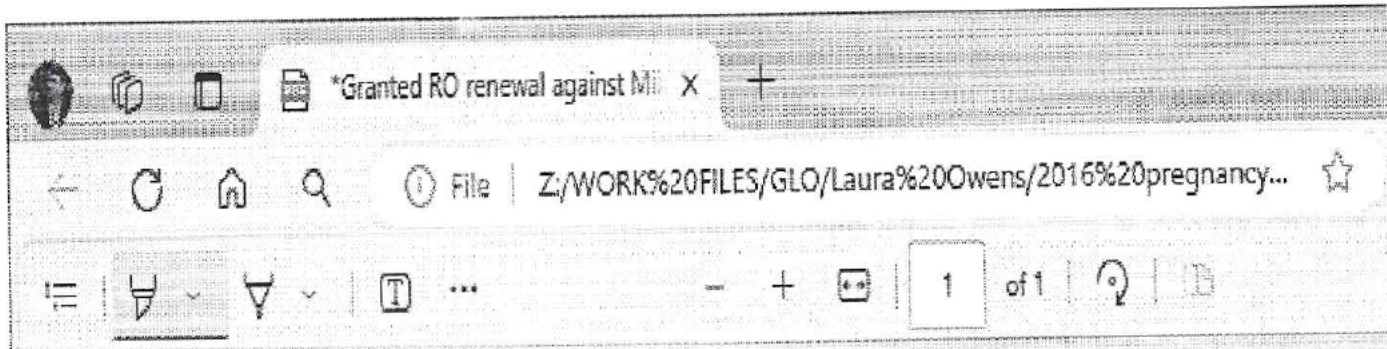
Based on this rule, I *assume* Mr. Woodnick has not instructed you or Mr. Marraccini to refrain from speaking to me. If that has occurred, it would be a *per se* violation of the ethical rules.

Also, and just to be clear – I am not, under any circumstances, suggesting Mr. Marraccini should *not* participate in the trial if he has relevant information. All I am saying is that if he WANTS to testify, he needs to do so in a manner that complies with the rules and the law. This is mandatory to ensure basic fairness to ALL sides.

Finally, please note that it is a felony under Arizona law for any person to unlawfully withhold testimony, to evade legal process to appear, and/or to fail to appear when legally summoned. For avoidance of any doubt, nothing in this email should be construed as an attempt to cause Mr. Marraccini *not* to appear. On the contrary, I would very much like him to appear, provided he does so in a manner that complies with the rules (including the rule that requires the prompt disclosure of the substance of his testimony, and the rule which entitles me to interview him prior to trial).

If you have any questions, please let me know.





**DV-730** Order to Renew Domestic Violence Restraining Order

① **Name of Protected Person:**  
Laura Owens  
 Your lawyer in this case (if you have one):  
 Name: In Pro Per State Bar No.: \_\_\_\_\_  
 Firm Name: \_\_\_\_\_  
 Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_

Clerk stamps date here with  
**FIL**  
 San Francisco Court  
 SEP 1 12  
 CLERK OF THE  
 BY: [Signature]

Fill in court name and street  
 Superior Court of Calif  
 SAN FRANCISCO  
 SAN FRANCISCO SU  
 400 McALLISTER  
 San Francisco C

② **Name of Restrained Person:**  
Michael Marraccini  
 Description of restrained person:  
 Sex:  M  F Height: \_\_\_\_\_ Weigh: \_\_\_\_\_ Hair Color: \_\_\_\_\_ Eye Col: \_\_\_\_\_  
 Race: \_\_\_\_\_ Age: \_\_\_\_\_ Date of B: \_\_\_\_\_  
 Mailing Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zi: \_\_\_\_\_  
 Relationship to protected person: \_\_\_\_\_

Fill in case number:  
 Case Number:  
 FDV-18-813693

③ **Hearing**  
 There was a hearing on (date): 9/11/2020 at (time): 9:00  am  pm Page 10:  
 These people were at the hearing:  
 a.  The person in ① c.  The lawyer for the person in ① (name): \_\_\_\_\_  
 b.  The person in ② d.  The lawyer for the person in ② (name): \_\_\_\_\_

④ **Renewal and Expiration**  
 The request to renew the attached restraining order, issued on (date): July 9, 2018  
 a.  GRANTED. The attached restraining order is renewed and will now be in effect for:

SUPERIOR COURT OF ARIZONA

Subpoena: MC0000071721 (05/07/2024 10:43 AM)

Gregg R Woodnick, State Bar Number [REDACTED]

Woodnick Law PLLC

1747 E Morten Ave Ste 205

Phoenix, AZ 85020-4691

Representing: Respondent

SUPERIOR COURT OF ARIZONA  
IN MARICOPA COUNTY

In the matter of:

LAURA OWENS

Petitioner

vs.

CLAYTON ECHARD

Respondent

Case No.: FC2023-052114

SUBPOENA IN A FAMILY CASE

TO: MICHAEL MARACCINI

c/o Randy Sue Pollock, Attorney at Law

For Attendance of Witness at Hearing or Trial:

YOU ARE ORDERED TO APPEAR in the Superior Court of Arizona in Maricopa County at the place, date, and time specified below to testify at a trial in the above-named case, before:

Judicial Officer: The Honorable Julie Mata

Place: Northeast Regional Center

18380 N 40th St

Phoenix, AZ 85032

Room: 102

Date: 06/10/2024

Time: 8:45 AM Arizona Time