David S. Gingras, #021097
Gingras Law Office, PLLC
4802 E Ray Road, #23-271
Phoenix, AZ 85044
Tel.: (480) 264-1400
Fax: (480) 248-3196
David@GingrasLaw.com

Attorney for Petitioner
Laura Owens

MARICOPA COUNTY SUPERIOR COURT

STATE OF ARIZONA

In Re Matter of: **LAURA OWENS,** **Petitioner,** **And** **CLAYTON ECHARD,** **Respondent.**	Case No: FC2023-052114 **REPLY IN SUPPORT OF MOTION TO COMPEL LUNCH AND FOR ALTERNATIVE RELIEF** **(Assigned to Hon. Julie Mata)**

GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

I. INTRODUCTION

The question for the Court is easy — for nearly two weeks, Respondent's counsel Gregg Woodnick has refused to speak with Petitioner's counsel, David Gingras, by phone. This has made it impossible to have any meaningful discussion regarding the *large* number of legal, factual, and evidentiary issues present in this unusual case. This impasse is particularly prejudicial with a trial just 60 days away, and it has needlessly expanded and (if not promptly addressed) it could delay this proceeding. *See* A.R.S. § 12–349(A)(3) (explaining: don't do that).

While the reasons for his position are somewhat disputed and mostly irrelevant, there is no dispute about this — Mr. Woodnick's refusal to speak with the undersigned is not acceptable. It is contrary to mandatory rules which *require* counsel to meet and confer. Mr. Woodnick's refusal is also contrary to the mandatory professionalism standards of the Arizona Supreme Court. *See*, *e.g.,* Sup. Ct. R. 41(c)(3)(C)(2) (establishing duty for all lawyers to "*communicate with opposing counsel* in an effort to avoid litigation and to resolve litigation that has actually commenced…") (emphasis added).

OK, so the rules require lawyers to talk, but Mr. Woodnick won't talk. What, if anything, should the Court do about this?

Petitioner's motion offered two pragmatic, if slightly unusual,[1] solutions:

1.) Order counsel to meet for lunch, hoping the meeting would help increase communication and decrease the level of contentiousness;

and/or

2.) In the alternative, waive the in-person conferral requirements of Rule 9(c) (which Mr. Woodnick has recently ignored anyway).

If it was not clear in the motion, undersigned counsel *strongly* believes the meet-and-confer requirement is a *good thing*. Indeed, that process has already produced significant benefits in this case.

Specifically, on January 3, 2024, Respondent filed a Rule 26 Motion for Sanctions asking the Court to punish Ms. Owens for "fabricating" her pregnancy claim. That motion and the assertions contained therein largely dominated this proceeding for the last three months, resulting in both sides incurring many thousands of dollars (if not tens of thousands) in attorney's fees and costs even though all other paternity issues in this case are moot.

[1] In his 23+ years of *vigorous* litigation practice involving many cases far more contentious than this, undersigned counsel has never encountered a situation where opposing counsel refused to talk by phone.

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Oddly and inexplicably, before filing the Rule 26 motion, Mr. Woodnick failed to provide the mandatory 10-day notice and safe harbor period required by Rule 26(c)(2)(B). In other words, in his motion furiously attacking Ms. Owens and demanding sanctions for her alleged violation of Rule 26, Mr. Woodnick *himself* violated Rule 26 by filing a pleading that failed to comply with the mandatory procedural steps of that rule.

That ironic error (which is non-waiveable and non-curable) meant the Court was literally *without authority* to even consider Mr. Echard's request for Rule 26 sanctions. *See Westerkamp v. Mueller*, 2023 U.S. Dist. LEXIS 96531 *7 n.1; 2023 WL 3792739, *7 n.1 (D.Ariz. 2023) (discussing identical requirements of Fed. R. Civ. P. 11, and explaining, when a party fails to follow the strict notice and safe-harbor requirements of the rule, a trial court literally "lacks the power to impose Rule 11 sanctions …." (emphasis added); *see also Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir. 2005) ("We must reverse the award of sanctions when the challenging party failed to comply with the safe harbor provisions, *even when the underlying filing is frivolous*." (emphasis added).

The law on this issue was (and is) so clear, upon discovering the problem, undersigned counsel immediately asked to meet and confer with Mr. Woodnick to get his side of the story. Mr. Woodnick initial response was extreme resistance (and a refusal to concede the mistake). That caused Ms. Owens to incur significant additional fees drafting a motion to resolve the Rule 26 issue as a matter of law (which, if filed, would have included a request for sanctions against Mr. Woodnick based on his clear violation of the rule). That process, while admittedly not the friendliest experience, ended with Mr. Woodnick withdrawing the deficient Rule 26 motion on April 3, 2024.

This shows the conferral process *can* and *does* work. At the same time, the meet-and-confer process is only effective and efficient when the lawyers can talk about the issues in real time, either face to face or on the phone. This is why the rule expressly warns email communications cannot, standing alone, satisfy the duty to confer.

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4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

This Court should not tolerate Mr. Woodnick's refusal to comply with the rules. At the very least, if Mr. Woodnick is permitted to remain mute, the Court should waive the requirements of Rule 9(c) for the remainder of this proceeding.

II. DISCUSSION

a. Ms. Owens Has Complied With Her Disclosure Obligations

In his brief, rather than addressing the merits of the problem, Mr. Woodnick begins with a straw man argument — he says he should not be required to comply with Rule 9(c) because he claims Ms. Owens has not produced the information required by the order granting Mr. Echard's Motion to Compel. This argument is both pointless and wrong.

First, Mr. Woodnick's duty to confer exists *independently* of Ms. Owens' duty to disclose information. Even if Ms. Owens was derelict in her disclosure duties (which she absolutely is not), that would not give Mr. Woodnick free reign to ignore other rules of this proceeding.

Second, the order granting the Motion to Compel was not filed until yesterday, April 10, 2024, and it states Ms. Owens was not required to produce any information until April 18, 2024. Thus, Ms. Owens' disclosure is *not even due yet*.

Despite this, Ms. Owens fully complied with the order the same day it was issued. Thus, even if a lack of disclosure on Ms. Owens's part somehow allowed Mr. Woodnick to ignore all other rules, that excuse no longer exists.

b. Strongly-Worded Remarks Do Not Excuse The Duty To Confer

In his brief opposing the request for lunch, Mr. Woodnick cites a handful of emails and online comments from the undersigned. In effect, his argument is: "Gingras said mean things to me. I don't like it, so I should not have to talk to him."

To be fair, Mr. Woodnick *is correct*, but only partially. Some degree of invective exists in some emails exchanged between counsel, and in some online comments (few, if any, of which were actually directed to Mr. Woodnick). That much is true.

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4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

What is missing from Mr. Woodnick's objection is context. Although he provides copies of emails buried in his 60+ pages of exhibits and selectively quotes a few choice examples, Mr. Woodnick never explains to the Court *why* these strongly-worded remarks were made.

Because that point is key to understanding the undersigned's unusually strong tone. Being mean/rude/argumentative for *no reason* is one thing. Being mean/rude/argumentative for good reason is entirely different.

Since Mr. Woodnick fails to offer any context, this Reply will do so. Here's the genesis of the problem: there is clear and compelling proof Mr. Woodnick lied to this Court in the Motion to Compel. That is a serious allegation, so let's look at exactly what that claim is based on.

In the Motion to Compel filed on March 11, 2024, Mr. Woodnick accused Ms. Owens of essentially ignoring her Rule 49 disclosure obligations. Specifically, on page 6 of the motion, Mr. Woodnick made the following representation to this Court:

> **Petitioner has willfully and wantonly failed to disclose information pursuant to Rule 49.** After the Status Conference before this Court, Petitioner provided minimal disclosure after evading *any* compliance with Rule 49 for over eight (8) months. (all emphasis in original).

As previously explained in Ms. Owens' motion seeking additional time to respond to the Motion to Compel, when he was first retained by Ms. Owens, undersigned counsel did not have a complete copy of Ms. Owens' file and thus was not in a position to directly respond to Mr. Woodnick's allegations regarding disclosure. Unfortunately, this Court denied the undersigned's request for additional time, resulting in the Motion to Compel being granted essentially by default without allowing a full (or any) response.

Of course, the truth *always* comes out in the end. Ms. Owens' former counsel (Cory Keith) finally provided a copy of Ms. Owens' file to the undersigned on Tuesday, April 2, 2024 at 4:33 PM. Due to the *massive* size of the file (10+GB), the file took approximately an hour to download. Literally while the file was downloading, this Court

GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

denied Ms. Owens' request for an extension at 5:01 PM on April 2, 2024 – before undersigned counsel had any opportunity to review the materials provided by Mr. Keith.

What Mr. Woodnick failed to tell this Court, and what undersigned counsel did not know at the time, is that Mr. Woodnick's representations were knowingly false. Contrary to Mr. Woodnick's representations, Mr. Keith did, in fact, provided a detailed Rule 49 disclosure statement on February 23, 2024, before the Motion to Compel was filed.

DESERT LEGAL GROUP, PLLC
Cory B. Keith – SBN 035209
20 E. Thomas Rd. Suite 2200
Phoenix, Arizona 85012
Phone: (480) 932-1112
Cory@desertlegalgroup.com
Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In Re the Matter Of:	Case No. FC2023-005914
LAURA OWENS, Petitioner,	**PETITIONER'S INITIAL RULE 49 DISCLOSURE STATEMENT**
-and-	(Assigned: Hon. Julie Ann Mata)
CLAYTON ECHARD, Respondent.	

proceeding as set forth in the pleadings and as disclosed in these proceedings on matters for which she has personal knowledge of and about which they are competent to testify.

2. **Respondent;** will testify as to the factual basis underlying the issues in the proceeding as set forth in the pleadings and as disclosed in these proceedings on matters for which he has personal knowledge of and about which they are competent to testify.

RESPECTFULLY submitted this 23rd day of February 2024.

DESERT LEGAL GROUP, PLLC

/s/ Cory B. Keith
Cory B. Keith
Attorney for Petitioner

COPY emailed even date to:
Gregg R. Woodnick
Isabel Ranny
Woodnick Law, PLLC
1747 E. Morton Ave, Suite 205
Phoenix, Arizona 85020
office@woodnicklaw.com
Attorneys for Respondent

GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

Having now reviewed the files from Mr. Keith, it is clear Mr. Woodnick lied to this Court when he claimed Ms. Owens "evaded" her Rule 49 disclosure obligations and had refused to provide any disclosure for "over eight (8) months". Now we know why Mr. Woodnick would not agree to a voluntary extension of time – he was trying to hide this fact from the Court and from undersigned counsel.

This also explains why the conferral certificate attached to the motion was so vague – it suggested Mr. Woodnick talked about disclosures with Mr. Keith on February 2 and February 21 (just days *before* Ms. Owens' disclosures were served). The conferral certificate also references a single email sent on March 8, 2024 requesting a meet and confer, without any further in-person follow up as the rule requires.

Upon seeing this information, undersigned counsel was shocked and, to be candid, pretty angry. A lawyer who lies that specifically and that willfully is rightly subject to verbal criticism, if not significant other professional consequences.

As noted in the request for additional time to respond to the motion, Mr. Woodnick also made *other* representations about the state of discovery which later were found to be false. For instance, Mr. Woodnick informed undersigned counsel, before he had a copy of Ms. Owens' file, that the file contained "no medical records" to support Ms. Owens' claims, and that <u>all</u> medical providers named by Ms. Owens had confirmed she was never a patient. Both of those statements were later found to be completely false.

<u>That dishonesty is what caused the breakdown in communication between the undersigned and Mr. Woodnick</u>. This has nothing to do with any social media comments, and it has nothing to do with the timing of Ms. Owens' compliance with the order compelling disclosure. The problem is that undersigned counsel does not like being lied to, and neither should this Court.

Here, the breakdown in communication occurred *immediately* after undersigned counsel brought these issues up and asked for an explanation. Rather than explaining himself, Mr. Woodnick simply clammed up and refused to respond. That is, perhaps, an admission of guilt—why provide an explanation *when you don't have one*?

GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

To summarize – as explained above, undersigned counsel believes Mr. Woodnick lied to this Court, and he did so for the express purpose of trying to gain a tactical advantage in this case. Sorry if that's harsh, but it is what the facts conclusively show.

Undersigned counsel admits being upset about this. Any lawyer who cares about justice would be. Willful dishonesty has no place in this profession. Under these circumstances, undersigned counsel believes his strongly worded remarks to Mr. Woodnick were fully justified and appropriate.

At the same time, we still have a case to resolve, and there is still much to discuss. So long as that remains the case, undersigned counsel has no choice but to put his anger and disappointment aside (for now) and move forward as best he can. To move forward, the lawyers must talk…not because they want to, but because the rules require them to.

No problem can be solved without the parties talking to each other. For that reason, this Court should follow Judge Gaines' wise example and require the lawyers to talk. If that's too much to ask….we really do have a problem.

III. CONCLUSION

For the reasons stated above, the Motion to Compel Lunch should be granted.

DATED April 12, 2024.

GINGRAS LAW OFFICE, PLLC

David S. Gingras
Attorney for Petitioner
Laura Owens

GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

Original e-filed
and **COPIES** e-delivered April 12, 2024 to:

Gregg R. Woodnick, Esq.
Isabel Ranney, Esq.
Woodnick Law, PLLC
1747 E. Morten Avenue, Suite 505
Phoenix, AZ 85020
Attorneys for Respondent

GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044