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9 **MARICOPA COUNTY SUPERIOR COURT**
10 **STATE OF ARIZONA**

11 **In Re Matter of:**

12 **LAURA OWENS**

13 **Petitioner,**

14 **And**

15 **CLAYTON ECHARD,**

16 **Respondent.**

Case No: FC2023-052114

**REPLY IN SUPPORT OF
EMERGENCY MOTION TO STRIKE
AND
REQUEST FOR IMMEDIATE
TELEPHONIC SCHEDULING
CONFERENCE**

(Assigned to Hon. Julie Mata)

(ORAL ARGUMENT REQUESTED)

17
18 This case is quickly spiraling out of control into an unwieldy, confusing mess. The
19 purpose of the present motion is to *stop* this, and to help restore some order to the
20 proceedings.

21 In short, all Ms. ~~OWENS~~ asks is that Mr. Echard follow the rules of procedure.
22 Because he has not done so, the Court should strike his Reply filed April 30, 2024 in
23 support of his Motion for Relief Based on Fraud. In addition, the Court should set an
24 immediate Rule 76.1 scheduling conference to permit the parties to discuss the
25 implications of newly (and untimely) disclosed evidence from Mr. Echard; evidence
26 which Ms. Owens claims is false and wholly fabricated. Both of these things—striking
27 the Reply and holding a scheduling conference—are needed to ensure this case stays on
28 track, rather than flying off the rails.

1 I. INTRODUCTION

2 To recap, the issue for the Court is VERY simple—does Mr. Echard’s Reply brief
3 contain *new* material that goes beyond the scope of Ms. Owens’ Response? If so, that
4 material should be stricken. Before explaining *why* the Reply should be stricken, it is
5 important to understand the posture in which Mr. Echard’s Motion for Relief arose.

6 On March 25, 2024, Mr. Echard filed a motion in the companion case — the Order
7 of Protection matter (FC2023-052771; the “OOP case”). In that motion, Mr. Echard
8 asked for relief from the order of protection obtained by Ms. Owens on the basis of
9 “fraud”. That same day, Mr. Echard filed a motion in *this* case (the paternity matter)
10 asking for a “joint hearing” on the OOP motion for relief. This Court granted the request
11 for a joint hearing in a minute entry order dated April 26, 2024. Thus, Mr. Echard’s
12 Motion for Relief is now effectively before this Court.

13 Notably and importantly, more than a month after it was filed, Mr. Echard’s initial
14 Motion for Relief was *amended* on April 26, 2024.¹ After the motion was amended on
15 April 26, 2024, Ms. Owens filed her response later that same day.

16 Four days later, on April 30, 2024, Mr. Echard filed a Reply in support of his
17 amended motion. In that Reply, Mr. Echard raised *new* arguments based on *new* evidence
18 which was neither mentioned in his original motion nor disclosed prior to that date. Ms.
19 Owens now moves to strike this new information on the basis it violates Rule 35(a)(3).

20 _____
21 ¹ For context, what the Court may not understand is *why* the Motion for Relief was amended. In its second
22 paragraph, the amended motion suggests, “This Motion is Amended solely in an effort to streamline
23 litigation and focus on the upcoming trial.” That explanation (which is inaccurate and misleading, at best)
24 fails to explain what actually occurred. Specifically, after undersigned counsel was retained, it quickly
25 became clear the Motion for Relief contained numerous false statements of fact which appeared to violate
26 Rule 26(b)(3). While a full discussion of these matters is beyond the scope of this brief, one key issue was
27 Mr. Echard’s representation to the Court that: “To date, every obstetrician and gynecologist ... have
28 indicated they have no records as she was never seen as a patient.” Mot. at 2:18–21. That representation
was, and is, entirely factually false. Based on this, and as required by Rule 26(c)(2)(B), the undersigned
sent a letter to Mr. Echard’s counsel demanding the Motion for Relief be either withdrawn or amended
within 10 days, and that if no action was taken, Ms. Owens would seek sanctions under Rule 26. Rather
than facing sanctions for making a false statement this Court, Mr. Echard amended the Motion for Relief.
While such an amendment is permitted by the rules, it is worth nothing this decision was essentially an
admission by Mr. Echard that his original motion did contain false statements, some (but not all) of which
were removed in the amended version.

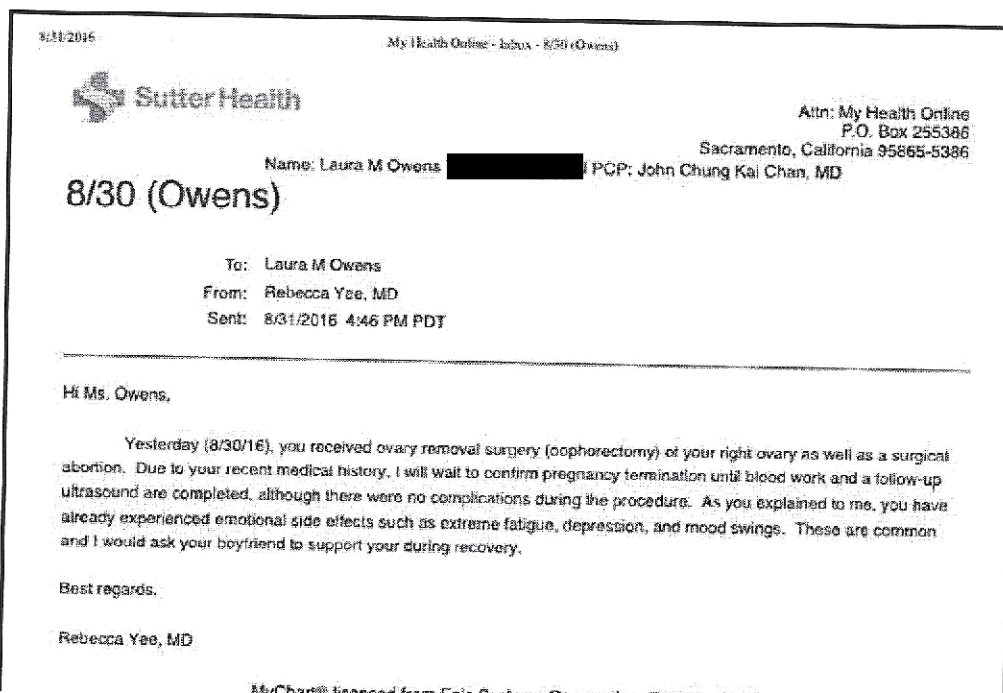
1 **II. DISCUSSION**

2 **a. Mr. Echard's Reply Contains New Evidence/Arguments Not**
3 **Present In His Original OR Amended Motions**

4 As explained in the Motion to Strike, the new information contained in Mr.
5 Echard's Reply includes an allegation Ms. Owens lied to her own expert, Dr. Medchill,
6 by withholding medical records showing she previously had ovarian cancer, and that as
7 result of that cancer, one of her ovaries was surgically removed. To support this claim,
8 Mr. Echard's Reply purports to quote new medical records (literally disclosed by Mr.
9 Echard the same day as his Reply) from a doctor named John Chung Kail Chan.

10 Mr. Echard claims these new records somehow separately support relief on the
11 basis of fraud because: "There is no mention of John Chung Kail Chan, MD's records for
12 Laura who reportedly diagnosed her with 'real ovarian cancer, not something that just
13 'may' be there" or Rebecca Yee, MD's records for Laura who said 'Yesterday (8/30/16)
14 you received ovary removal surgery (oophorectomy) of your right ovary as well as a
15 surgical abortion.'" Reply ISO Amended Motion for Relief at 2:9-14.

16 Despite quoting from these records in his Reply (which Mr. Echard disclosed as
17 part of his Seventh Supplemental Disclosure Statement dated April 30, 2024), the actual
18 records were not attached to the Reply. Accordingly, to help illustrate the problem, one of
19 these newly-disclosed records is shown below.



1 Mr. Echard claims this “new” evidence shows Ms. Owens lied to Dr. Medchill by
2 failing to disclose her history of ovarian cancer. But therein lies the problem—Ms.
3 Owens never disclosed this information to Dr. Medchill because this record is 100%
4 fake. Ms. Owens has never had ovarian cancer, nor has she had an ovary removed,

5 To eliminate any doubt on this issue, submitted herewith is an affidavit from Ms.
6 Owens in which she avows, unequivocally, the following points:

- 7
- 8 • The records disclosed by Mr. Echard as part of his Seventh Supplement
9 Disclosure Statement are Fake/False/Fraudulent. These are not Ms. Owens’
10 records.
 - 11 • Ms. Owens did not create these fake records and does not know who did;
 - 12 • Ms. Owens never had ovarian cancer and never had an ovary removed;
 - 13 • Ms. Owens was previously diagnosed with polycystic ovary syndrome
14 (PCOS), and in June 2022 she underwent a pelvic CT scan which confirmed
15 both the existence of PCOS and the presence of both ovaries;
 - 16 • Ms. Owens disclosed the PCOS diagnosis to her expert, Dr. Medchill, along
17 with medical records confirming the presence of both ovaries;
 - 18 • Ms. Owens did *not* disclose the existence of a prior ovarian cancer diagnosis
19 because that diagnosis never happened.

20 Given that information, the problem should be clear—Mr. Echard has asked this
21 Court for relief on the basis of fraud. But rather than playing by the rules and giving Ms.
22 Owens fair notice of his allegations and a fair chance to respond to those claims, Mr.
23 Echard did precisely what the rules forbid – he tried to sneak new and previously
24 undisclosed information and allegations into a *reply* brief. In doing so, Mr. Echard not
25 only violated Rule 35(a)(3), he violated one of the most fundamental rules of basic
26 fairness in litigation.

27 To be clear—Ms. Owens is *not* claiming Mr. Echard or his counsel fabricated
28 these fake records (although at this point, she cannot rule that out). But that lack of clarity
is exactly the point. Ms. Owens has no idea what these records are, how Mr. Echard
obtained them, and/or who originally created them. Ms. Owens has none of that

1 information because these records were disclosed for the first time in a reply brief, and
2 because Mr. Echard failed to timely disclose this information as required by Rule
3 49(b)(2)(B) (requiring supplemental disclosures be made “in a timely manner, but in no
4 event more than 30 days after the information is discovered by, or revealed to, the
5 disclosing party.”)

6 In any “normal” case, investigating this strange new development would be
7 fairly easy—undersigned counsel would simply pick up the phone and call Mr.
8 Echard’s counsel to ask where these new records came from and what, if anything,
9 Mr. Echard intends to do with them. But as explained in other pleadings (Ms. Owens
10 Motion to Compel Lunch), this normal dialogue is impossible. This is so because Mr.
11 Echard’s counsel has continued refusing to speak to the undersigned by phone for
12 weeks, which *severely* restricts any collaborative discussion. Unfortunately, this Court
13 declined to require Mr. Echard’s counsel to speak with the undersigned, leaving the
14 severe communication problem unresolved.

15 For each of these reasons, it is fundamentally unfair and improper to permit Mr.
16 Echard to engage in this obvious act of “sandbagging”. Mr. Echard’s actions violate
17 the rules of motion practice, and his failure to disclose this information in a timely
18 manner violates the rules of disclosure. Taken as a whole, Mr. Echard’s conduct also
19 violates the most basic principles of due process—the idea of fair notice and a
20 reasonable opportunity to be heard.

21 So now, the question for the Court is easy to see: *what should be done about this?*
22 There are really only two options. The first and most obvious choice is to require Mr.
23 Echard to follow the rules. This means the Court should strike the Reply on the basis it
24 violates Rule 35(a)(3) and, furthermore, on the basis that the information contained in the
25 motion was not timely disclosed under Rule 49(b)(2)(B).

26 Of course, that may not permanently resolve the problem. Mr. Echard may still
27 choose to bring a *new* motion for relief under Rule 85(b)(2) on the basis of “newly
28 discovered evidence” based on these same fake records. Alternatively, even if he does not

1 bring a separate motion seeking to place these new fake records before the Court,
2 presumably Mr. Echard may still attempt to offer them at trial.

3 Under these circumstances, to ensure a *permanent* solution, the Court should
4 immediately set this matter for a scheduling conference for the purpose of asking Mr.
5 Echard to explain his intentions regarding these records. Depending on his position, Ms.
6 Owens must have a fair chance to respond, which may include seeking a continuance of
7 the current trial date. To avoid confusion, Ms. Owens' position is as follows – as
8 explained in the Motion *In Limine* filed on April 30, 2024, Mr. Echard is trying to
9 establish Ms. Owens' guilt in this case by offering "prior acts" or "propensity" evidence
10 from previous relationships, and these newly-disclosed records (while fake) relate only to
11 that same argument (i.e., proof of prior acts).

12 Evidence from Ms. Owens' past relationships is simply inadmissible in this case
13 under Rule 404(b), and also because it is entirely irrelevant. For those reasons, among
14 others (including the fact this evidence was not timely disclosed), the best solution is for
15 the Court to preclude this evidence in its entirety. If the Court agrees with that view, Ms.
16 Owens would be fully prepared for this case to proceed to trial on June 10th.

17 On the other hand, if the Court is inclined to allow Mr. Echard to use evidence of
18 alleged prior acts, including fake medical records disclosed by Mr. Echard for the first
19 time just *days* before the existing disclosure cutoff, Ms. Owens must be allowed a full
20 and fair opportunity to investigate, perform discovery, and develop a full response. That
21 would necessarily require continuing the current trial date by at least 60-90 days.

22 Ms. Owens does not want to move the current date, but that may be unavoidable
23 depending on how far afield Mr. Echard is allowed to go with respect to evidence of Ms.
24 Owens' past relationships. That is why a scheduling conference is so clearly necessary.

25 III. CONCLUSION

26 For the reasons stated above, the Court should strike the Reply filed by Mr. Echard
27 on April 30, 2024 in support of his Amended Motion for Relief Based on Fraud. In
28 addition, pursuant to Rule 76.1(a), the Court should set this matter for an immediate

1 scheduling conference at the earliest possible date “to formulate a plan for trial, including
2 procedures for facilitating the admission of evidence”

3 DATED May 3, 2024.

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1 **Original e-filed**
2 **and COPIES e-delivered May 3, 2024 to:**

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