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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In Re the Matter of:

LAURA OWENS,

Petitioner,

And

CLAYTON ECHARD,

Respondent.

Case No.: FC2023-052114

RESPONSE/OBJECTION TO PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS AND RENEWED MOTION TO DISMISS

(Assigned to the Honorable Julie Mata)

Defendant/Respondent, **CLAYTON ECHARD**, by and through counsel undersigned, hereby files his Response and objects to Plaintiff/Petitioner, **LAURA OWENS**, *Motion for Judgment on the Pleadings and Renewed Motion to Dismiss,* filed May 10, 2024.

I. **General availability of attorney fees and sanctions.**

Before addressing the balance of the Motion on its face, the Court must be aware that Laura's entire argument presents a *false choice fallacy* in an attempt to artificially limit both the scope of the pleadings and the Court's authority. Rule 26 is not, and has never been, the exclusive source of the Court's authority to award attorney fees and it does not govern

Clayton's substantive claims for relief raised in the pleadings. Therefore, the question before the Court is *not* whether it can award sanctions under Rule 26 or no sanctions at all (as Laura falsely frames her argument). Rather, the question is whether Clayton is entitled to adjudication on his claims for fees and sanctions under any authority invoked in the pleadings or inherent to the Court by virtue of its statutorily mandated duties. The answer to that question is **clearly yes**. Laura knows—or at least should know based on the plethora of written communications and filings about this issue—that her proffered "Rule 26 or dismiss the action" dichotomy is *both* frivolous and misleading.

Title 25 contains at least three (3) statutes that expressly instruct the Court to award attorney fees and sanction a party in response to unreasonable conduct in the litigation: A.R.S. § 25-324 (attorney fees in actions under §§ 25-401 through 25-417 for unreasonable conduct); A.R.S. § 25-415 (sanctions for presenting false claims or violating orders compelling discovery in family law actions); and A.R.S. § 25-809(G) (attorney fees for unreasonable positions in paternity proceedings). Clayton has already articulated in several filings—including in his Motion for Leave to Amend, Amended Response, Response/Objection to Petitioner's Motion to Dismiss, and Motion to Withdraw the Motion for Sanctions Pursuant to Rule 26—the statutory basis for his claims for relief. Moreover, those provisions apply to **all proceedings** brought under the relevant chapters of Title 25 (of which this paternity action is one example).

Every litigant has notice of the Court's duty and authority to sanction unreasonable conduct in family court actions. Rule 26 is a procedural mechanism for sanctioning a party for the contents of their filings at any time—even before final resolution and notwithstanding

the prevailing party in the action—and does not replace, supersede, or otherwise affect the statutory claims for relief whatsoever.[1] Arizona courts have repeatedly recognized that when a substantive statute conflicts with a procedural rule, the statute prevails. *Albano v. Shea Hoes Ltd. Partnership*, 227 Ariz. 121, 127, ¶ 26 (2011); *see also In re Marriage of Waldren*, 217 Ariz. 173, 177, ¶ 20 (2007) ("Court rules may not 'abridge, enlarge, or modify substantive rights of a litigant.' A.R.S. § 12-109(A) (2003)").

Rule 26 governs relief *pursuant to Rule 26* and nothing more. Even if Laura's arguments interpreting Rule 26 were correct—a conclusion Clayton certainly opposes—the net result on the posture of the case would be *absolutely no change at all* from the existing trial scheduled on the merits of the pleadings. Accordingly, her prayer for relief, improperly styled as a "Motion for Judgment on the Pleadings and Renewed Motion to Dismiss," was already moot before it was even filed because Rule 26 is not at issue. The motion has no bearing on the resolution of this case. As detailed in prior filings, by withdrawing his Rule 26 motion, Clayton hoped to avoid Laura's noxious agenda of papering the court with dozens of pages of meaningless debate on this topic, but Laura appears determined to have this purely theoretical argument regardless.

II. Response to Motion for Judgment on the Pleadings.

As and for his Response/Objection, Clayton states as follows:

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[1] To crystallize this point even further, Rule 26 is not even the exclusive source of sanctions in the procedural rules themselves. The Court can sanction a party for service violations (Rule 43.1), discovery violations (Rules 51 and 65), and failure to participate in various aspects of the proceeding (Rules 66, 67, 71, 76.2), to name a few.

1. **Clayton provided written notice as required by Rule 26, *Arizona Rules of Family Law Procedure* through emails and filings.**[2] As addressed in depth in his *Motion to Withdraw*, Clayton's *Motion for Leave to Amend* (filed December 12, 2023) **(Exhibit 1)**, provided notice of his intent to seek sanctions against Laura and cited Rule 26. The Court granted leave to amend and accepted the Amended Response (also citing Rule 26 and indicating an intent to seek sanctions against Laura) on January 25, 2024. On December 28, 2023—more than 10 days *after* being notified of Clayton's intent to seek Rule 26 sanctions via the Motion for Leave to Amend—Laura moved to Dismiss her Petition because she was (*cryptically*) "*no longer pregnant.*" Clayton timely objected.

On January 25, 2024, the Court deliberately indicated it was not dismissing the action because Clayton is entitled to resolution of his claims for a finding of non-paternity, attorney fees and sanctions. *See* Minute Entry dated 1/25/2024; *See* Minute Entry dated 2/14/2024 (**IT IS ORDERED** denying Petitioner's Motion to Dismiss). *See also* Rule 46(a)(1)(B), (prohibiting voluntary dismissal without court approval after an answer is filed and permitting the court to dismiss a petition on such terms and conditions the court deems proper, including the resolution of any claims by the responding party); *Holgate v. Baldwin,* 325 F. 3d 671, 678 (9th Cir. 2005) (The Court upheld an award of sanctions despite the **parties not sending a separate notice of their intent** to seek Rule 11 sanctions, finding that the "safe harbor" period commenced when the parties' **filed their initial joinder motion evidencing an intent to seek sanctions**) (emphasis added).

[2] This is all addressed *ad nauseam* in Clayton's *Motion to Withdraw*, which is provided as an Exhibit for the Court's convenience, as a litany of unnecessary filings designed with the overt goal of delaying or otherwise avoiding trial (as here, with the Motion for Judgment on the Pleadings) have followed.

2. **Even if this Court finds Clayton did not provide proper notice, Rule 26 is just one avenue for sanctions.** If the Court treats Clayton's *Response to Petition for Paternity* as true and correct (as Laura now requests), there are independent statutory claims for attorney's fees and sanctions that have *nothing* to do with Rule 26 sanctions and have no "safe harbor provision" (e.g., A.R.S. § 25-324(A)). Statutes are superior when it comes to *substantive* claims and rules are superior when it comes to *procedural* matters, and the statutes (A.R.S. §§ 25-325, -415, -809) provide substantive claims for relief separate and apart from Rule 26. Rule 26 is a carryover from the Rules of Civil Procedure as a remedial measure for frivolous claims and filings during the pendency of the proceedings, not a mechanism for defeating substantive statutory claims for relief as Laura suggests.

As a broader legal point, case law interpreting the limitations of the court's authority to sanction improper filings in a civil matter is not directly analogous to Rule 26, insofar as Rule 26 exists in a completely different environment of statutory claims under Title 25, allowing different relief such as sanctions and attorney fees by statute. Interpreting Rule 26 as an analogue to Rule 11, *Arizona Rules of Civil Procedure* makes sense in the context of the language of the rule itself, but once the analysis moves beyond that and onto the question of whether there are alternative grounds for the same relief, Title 25 is tremendously broader and more remedial than the legal authorities relevant to the various cases interpreting Rule 11.

3. **Regarding the "safe harbor notice" provision, that portion of Rule 26 permits a party to correct or withdraw a filing within the notice period, but it is not an absolute right to withdraw the entire action.** As previously addressed in his *Motion to Withdraw*, if Laura's theory that she was denied an absolute right to withdraw her entire action

were true, no party would ever move for Rule 26 sanctions. Under Laura's view, that would hand the other side a Monopoly style "Get Out of Jail Free" card to avoid consequences regardless of the extent of the frivolous, inflammatory, and impermissible claims in their filings, or the outrageousness of their conduct after filing[3] (which is an independent basis for statutory relief entirely independent of Rule 26, e.g., A.R.S. §§ 25-324, 25-415, 25-809(G)). Laura's *Motion for Judgment on the Pleadings* seeks the legally extraordinary and practically inexplicable relief of *dismissing the entire action that she improperly brought.*

4. **Even assuming, *in arguendo*, that Laura was entitled to a 10-day "miracle cure" period to undo her past bad acts, she has already been given those opportunities and did not accept them.** Yes, she moved to dismiss her petition *eventually*, but it was well *after* 10 days from Clayton's *Motion for Leave to Amend* and was denied because Clayton has material statutory claims entitled to resolution on the merits. There is simply no reason to believe there was ever a time that Laura would have voluntarily withdrawn her claims even if she was given that opportunity with no strings attached. Instead, her antics continued, including alleging that a prior victim fabricated *her* medical records (which she now appears to be claiming *she does not "remember"* creating the allegedly fabricated medical records).

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[3] Here, Laura's conduct in this action (and the other two protective order proceedings) clearly fall within all of these categories as Laura (allegedly) frivolously brought the underlying action alleging she was pregnant after non-intercourse with Clayton's "twins" and continued to perpetuate alleged fraud upon the court by submitting knowingly fabricated medical records. Laura has behaved inflammatorily by continuing to present herself as "24 weeks pregnant" with "boy and girl twins" and repeatedly testifying to actively being seen by physicians (who have since disclaimed ever seeing Laura as a patient) and by engaging in toxic diatribe on Twitter and blog posts including attempting to intimidate witnesses. Nearly all of Laura's filings have contained legally impermissible claims, for limited example: Laura's Motion to Communicate and this Motion for Judgment on the Pleadings. Lastly, her conduct in this litigation has been extremely outrageous to wit: admittedly fabricating medical records, baselessly accusing others of fabricating the records she herself tampered with, and (allegedly) committing perjury in *multiple* filings and in statements before this Court (notably, Laura bizarrely appears to continue to allege the sonogram that she admitted to doctoring and that did not originate in *either* location she alleged is legitimate despite mountains of evidence to the contrary).

Moreover, Clayton even offered, *several times*, for Laura to walk away from this litigation if she apologized and admitted that she was never pregnant by him with "twins". Laura rejected every effort to resolve this matter and even engaged in overt efforts to intimidate witnesses into not participating in the process by threatening to have them arrested. As referenced in **Exhibit 2** she (through counsel) mentioned having Mr. Maraccini arrested for attending the hearing (his subpoena is attached). Then, she conveniently failed to mention in her recent *Reply in Support of Laura's Motion in Limine* that she *has* been in contact with Mr. Marraccini and his attorney, and he has clearly indicated his desire to have his voice heard at trial. **Exhibit 3.** Moreover, **on April 22, 2024**, Laura (via counsel) stated:

> *"I am happy to discuss settlement, but I also need to be honest – when Laura prevails in this case, she is going to sue Clayton and many other people for defamation and other torts. We can certainly avoid that if you want, but it's going to involve someone writing a very large check to Laura.* ***If you offered $1 million right now, I'd advise her to reject that offer*****"** (emphasis added). **Exhibit 4.**

It is tremendously convenient for Laura to announce, here at the proverbial eleventh hour, that she would have withdrawn the petition months ago if given the chance. The well-documented history of this case—and the companion order of protection cases where her conduct *under oath* was even more outrageous—necessitates a different conclusion.

5. **Again, even if Laura had attempted to withdraw from the action entirely, that was only subject to the Court's approval and Clayton's right to object consistent with Rule 46.** Rule 46 must be read harmoniously with Rule 26 and the Title 25 statutes. A harmonious reading of Rules 46 and 26 tells us that a pleading can be withdrawn voluntarily before a responsive pleading is filed, but after a responsive pleading is filed, it can *only* be

withdrawn with the Court's permission after consideration of the opposing party's right to have their responsive claims and counter claims adjudicated. *Laura has already tried this and was denied by this Court.*

The Rule 26 notice would allow a party to correct a pleading or withdraw a claim but not to dismiss the action without the Court's permission after an answer is filed. The Court should not grant permission if, as here, the respondent asserted substantive claims entitled to adjudication in their responsive pleading. This is the only way to read Rule 26, Rule 46, and Title 25 together that does not subordinate one procedural rule to another or nullify statutory claims (that cannot be abridged by procedural rules).

6. **Notwithstanding all of this, a Motion for Judgment on the Pleadings makes absolutely no sense in this case's context.** Judgment on the pleadings would require the Court to find Clayton's allegations in the Response that Laura was never pregnant with his "twins" as *true* and therefore find her subsequent representations to three (3) different Judges under oath were maliciously fraudulent. That kind of conduct is *exactly* why A.R.S. §§ 25-324, 25-415 and 25-809 exist. Her position here would turn Rule 26 into an escape hatch for any litigant wishing to avoid the consequences of their own actions. If Laura now concedes that her claims were always fraudulent (as Clayton believes) or just (according to her counsel) "*misstatements*," then the Court can proceed just in determining the appropriate sanctions and attorney fees to award. It still must award them pursuant to statute.

7. **Whether Clayton filed for Sanctions under Rule 26 or not, trial would still occur.** Even assuming this Court agrees with Laura's (highly contested) interpretation of Rule 26, the parties would still be heading to trial. Clayton is entitled to a hearing on his

counterclaim for a finding of non-paternity and attorney fees and costs. As Laura has repeatedly indicated in her filings, emails, blog posts, and Tweets, she has no interest in conceding what Clayton has alleged since the beginning: that she was never pregnant by Clayton with "twins" after their non-intercourse. Had Clayton never mentioned Rule 26, Laura would have no "safe harbor" to withdraw her claims and the Court would proceed to trial under any of the half-dozen or more other sources of authority to adjudicate the claims before it and sanction misconduct. Interpreting Rule 26 and the "safe harbor" period as a necessary precedent condition for the Court to sanction a party under any other source of authority at law or in equity would be the most absurd result imaginable. The Court cannot read a rule as requiring an absurd result unless that is the only plausible reading, and that is clearly not the situation presented here.

8. **Oral argument is an unnecessary and expensive distraction on the eve of trial.** Efforts to delay and avoid this trial are over the top. This is a bench trial that is set to take place in less than a month. If Laura desires to use this Motion or her limited time at trial to argue about procedural rules that have no bearing on the substantive issues of this case, that is her prerogative and should count against her limited time. Clayton should not be forced to participate in such futility because his analysis of the "Rule 26 issue" has been thoroughly explained on the record—twice. This is the "Conor McGregor" litigation that was promised by Laura's counsel and is only exemplified by the personal tweets, blogs and what this court may see as efforts to intimidate for no reason other than to dissuade just resolution of claims. It needs to stop.

9. **Clayton is entitled to his reasonable attorney's fees and costs under A.R.S. §§ 25-324, 25-415, and 25-809 incurred in this entire proceeding, including in filing this *Response.*** Clayton exhaustively outlined in his *Motion to Withdraw* most, if not all, of the factual and legal bases outlined in this *Response*. Laura did not even reply to Clayton's Motion – instead, she *agreed with it* and filed a Notice of Non-Objection. The withdrawal was filed to avoid more of the toxic litigation, threats of appeals and personal sanctions and bullying efforts. It did not work. Still, Laura seeks yet *another* impossible form of relief in a motion designed to increase expenses and avoid trial. She requests Oral Argument on the matter despite already knowing—constructively if not actually—that her argument is not well-grounded in law. Clayton requests that he be permitted to submit a *China Doll Affidavit* that includes all of the prior unwarranted and legally inappropriate filings he has had to defend himself against in this litigation.

WHEREFORE, Clayton respectfully requests the Court:

A. Deny the Motion for Judgment on the Pleadings and Renewed Motion to Dismiss;

B. Grant Clayton leave to submit a *China Doll Affidavit*;

C. Grant other relief this Court deems just and proper.

RESPECTFULLY SUBMITTED this 15th day of May, 2024.

WOODNICK LAW, PLLC

Gregg R. Woodnick
Isabel Ranney
Attorneys for Defendant

ORIGINAL of the foregoing e-filed this 15th day of May, 2024 with:

Clerk of the Court
Maricopa County Superior Court

COPY of the foregoing document delivered this same day to:

The Honorable Julie Mata
Maricopa County Superior Court

COPY of the foregoing document emailed this same day to:

David Gringas
Gringas Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85004
[redacted]

By: */s/ MB*

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 *Response/Objection To Petitioner's Motion For Judgment On The Pleadings And Renewed Motion To Dismiss* 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 (May 15, 2024 11:49 PDT)

CLAYTON ECHARD

05/15/2024

Date

EXHIBIT "1"

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In Re the Matter of: **LAURA OWENS,** Petitioner, And **CLAYTON ECHARD,** Respondent.	Case No.: FC2023-052114 **MOTION TO WITHDRAW MOTION FOR SANCTIONS PURSUANT TO RULE 26** (Assigned to the Honorable Julie Mata)

Respondent, Clayton Echard, moves to withdraw only his *Motion for Sanctions Pursuant to Rule 26* dated January 3, 2024 based on the following:

Although Clayton believes he more than complied with Rule 26, ARFLP, and that the Court already overruled Laura's objection, it is clear she intends to pursue more toxic litigation predicated on threats as a rouse to avoid this Court reaching the heart of this matter (the overwhelming fraud). Clayton's claims for fees and sanctions exist independently of the Rule 26 Motion and have *already* been set for trial. Clayton would rather avoid the "$35,*000*" sideshow repeatedly threatened by Laura's new counsel and overt efforts to delay adjudication on the facts. Because the Rule 26 Motion is not the substantive pleading basis for his claims

against Laura, there is no reason to participate in the pointless litigation over this issue (and threats to appeal to further delay justice) notwithstanding Clayton's disagreement with Laura's legal positions on Rule 26. Moreover, Laura's threat to seek personal sanctions against Clayton's counsel based on her proffered Rule 26 violation, while frivolous, will only draw more attention and animus to this case. Subjecting the Court to this collateral circus, which is intended only to increase legal fees and prevent resolution on the merits, would be a waste of judicial (and other) resources.

Accordingly, Clayton hereby moves to withdraw the Rule 26 *Motion for Sanctions* filed January 3, 2024. He does not withdraw his counterclaims and other relief afforded and any other relief appropriate and available to him under A.R.S. §§ 25-324, 25-415, 25-809, etc.

He also, for completeness of record, provides the following:

Background and Procedural History

1. This matter is before the Court on Petitioner Laura Owens's *Petition to Establish* filed August 1, 2023 and Clayton's *Amended Response to Petition to Establish Paternity* filed December 12, 2023 (relating back to original filing date of August 21, 2023 under ARFLP 28(c)).

2. On December 12, 2023, Clayton moved for leave to amend his Response. In the Amended Response, Clayton cited Rule 26 and provided notice of intent to seek sanctions for statements made in Laura's Petition. *See* Amended Response, pp. 5-6, §§ 25-26. The Court granted leave to amend and accepted the Amended Response on January 25, 2024.

3. On December 28—more than 10 days after notice of Clayton's intent to seek Rule 26 sanctions via the motion for leave to amend—Laura moved to dismiss her Petition based on her assertion she was "no longer" pregnant. Her motion to dismiss sought to dismiss the entire action with prejudice. Clayton objected because, inter alia, he had alleged counterclaims seeking an affirmative finding of non-paternity, attorney fees, and sanctions for Laura bringing the action in bad faith, for improper purpose, etc. On January 25, the Court granted Laura's motion, in part, by dismissing her Petition, but the Court did not dismiss the action because Clayton is entitled to resolution of his claims for a finding of non-paternity, attorney fees, and sanctions. *See* Minute Entries dated January 25, 2024 ("While the Court will grant the *Motion* [to Dismiss], the issue of sanctions and attorney's fees remain. [...] The Court will set an evidentiary hearing on the issues of sanctions and attorney fees by separate minute entry."); *see also* ARFLP 46(a)(1)(B) (prohibiting voluntary dismissal without court approval after an answer is filed and permitting the court to dismiss a petition on such terms and conditions the court deems proper, including the resolution of any claims by the responding party).

4. On January 3, 2024, Clayton filed a Motion for Sanctions Pursuant to Rule 26 (hereafter the "Motion for Sanctions"). The Motion for Sanctions came more than 10 days after the Motion for Leave to Amend—in which Clayton gave written notice of intent to seek Rule 26 sanctions from Laura's complaint—and after Laura moved to dismiss her Petition.

5. Laura responded to the Motion for Sanctions on January 23, 2024. In her response, she argued, inter alia, that the Motion was deficient because of lack of notice

required by Rule 26(c)(2)(B). The Court did not expressly rule on the Motion for Sanctions but set the matter for trial on attorney fees and sanctions.

Changes of Counsel and Rule 26 Dispute

6. At the time she filed her motion to dismiss, Laura was represented by Alexis Lindvall. At the time she responded to the Motion for Sanctions, she was represented by Cory Keith. Again, Laura brought this same argument relating to Rule 26's 10-day notice requirement in her response to the Motion for Sanctions, albeit with less force, and the Court still set the case for trial (ostensibly because even if she is correct and Clayton's Rule 26 Motion is denied, there remain other claims that must be resolved before the case concludes).

7. Her current attorney (as of the time of this filing), David S. Gingras, began aggressively asserting various claims, positions, and legal threats in emails to Clayton's counsel after entering appearance on or about March 25.

8. Several of these unpleasant emails pertain to the Motion for Sanctions under Rule 26. Laura asserts that the Motion was improperly brought because of lack of written notice required by Rule 26(c)(2)(B) (hereafter referenced as the "safe harbor" notice). This argument is partly articulated beginning on page 14 of her *Motion for Extension of Time to Respond to Respondent's Motion to Compel* filed April 1, 2024. (Properly denied by the Court on April 2, 2024).

9. According to her argument, Clayton did not provide sufficient written notice to comply with the rule. Laura interprets Rule 26(c)(2)(B) as providing the party against whom sanctions are sought a 10-day grace period in which to withdraw or appropriately correct the alleged violation. She interprets "withdraw or appropriately correct" as giving her an

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

10. Further, Laura appears to believe she should have had the right to withdraw her entire Petition by virtue of Clayton moving for Rule 26 sanctions without the "safe harbor" notice[1] notwithstanding Rule 46.

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

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

[1] 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.

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

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

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

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

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

Clayton's Positions

Interaction between Rule 26, Rule 46, and Title 25

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

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

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

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

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

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Differences between ARFLP 26 and ARCP/FRCP 11

20. Laura's position relies on case law interpreting Rule 11 of both the Arizona and Federal Rules of Civil Procedure. Although Rule 26 is based on Rule 11 and case law interpreting Rule 11 is instructive, it is not dispositive. Of relevance to this case, Rule 26 exists in the context of remedial statutes present in Title 25 that are not available in other civil proceedings at either the state or federal levels.

21. Laura herself believes—correctly—that attorney fees and sanctions are available under A.R.S. § 25-809(G) independent of Rule 26. Clayton has already identified this statute and at least two others in Title 25 that similarly require the Court to consider reasonableness of positions, bad faith, improper purpose, etc. as part of this action. None of these statutes apply to general civil matters in the state or federal courts. Put another way, Rule 11 precedent exists in a completely different legal context where awards of attorney fees are more limited, such as fees provisions in contracts under A.R.S. § 12-341.01, damages not to exceed $5,000 for frivolous claims, delay, or discovery abuses under A.R.S. § 12-349, liability for excessive costs under 28 U.S.C. § 1927 (relevant to the *Holgate* decision discussed below), etc.

22. Clayton denies that these cases, or indeed any Rule 11 case at the state or federal level, categorically disposes of analogous issues under Rule 26. That said, to the extent they provide persuasive authority, he will address the primary cases Laura cites on their merits.

23. In the *Holgate* matter Laura's counsel cites and argues in support of her position, the trial court could not award sanctions under 28 U.S.C. § 1927 because it did not find bad faith required under that statute. Accordingly, the movant's alternative claim for

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

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

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

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

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

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

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

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

Sufficiency of Clayton's Notice and Authority to Sanction

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

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

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

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

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

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

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

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

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

//

Withdrawal of Rule 26 Motion

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

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

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

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

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

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

WHEREFORE, Respondent respectfully requests the Court:

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

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

RESPECTFULLY SUBMITTED this 3rd day of April, 2024.

WOODNICK LAW, PLLC

Gregg R. Woodnick
Isabel Ranney
Attorneys for Respondent

ORIGINAL of the foregoing e-filed this 3rd day of April, 2024 with:

Clerk of the Court
Maricopa County Superior Court

COPY of the foregoing document delivered this same day to:

The Honorable Julie Mata
Maricopa County Superior Court

COPY of the foregoing document emailed this same day to:

David Gingras
Gringas Law Office, PLLC
[redacted]

Attorney for Petitioner

By: */s/ MB*

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.

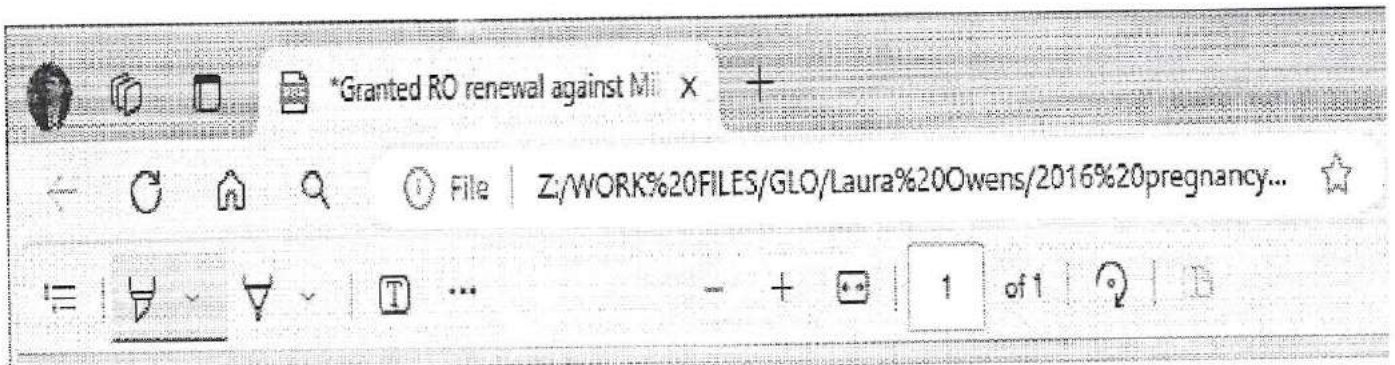
NOTE – Rule ER 3.4(f) of the Arizona Rules of Professional Conduct provides a lawyer shall not: "request a person other than a client to refrain from voluntarily giving relevant information to another party...."

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

Clerk stamps date here wh

FIL
San Francisco Count
SEP 1 1 2
CLERK OF THE
BY:

Fill in court name and street

Superior Court of Calif
SAN FRANCISCO
SAN FRANCISCO SU
400 McAllister
San Francisco C

Fill in case number:

Case Number:
FDV-18-813693

(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: [redacted]
City [redacted] State: [redacted] Zip [redacted]
Telephone: Fax:
E-Mail Address:

(2) Name of Restrained Person:
Michael Marraccini

Description of restrained person:
Sex: [x] M [ ] F Height: [redacted] Weigh [redacted] Hair Color [redacted] Eye Col
Race: [redacted] Age [redacted] Date of
Mailing Address *(if known)*:
City: State: Zi
Relationship to protected person:

(3) Hearing
There was a hearing on *(date)*: 9/11/2020 at *(time)*: 8:00 [ ] a.m. [ ] p.m. Dept. 18
These people were at the hearing:
a. [x] The person in (1) c. [ ] The lawyer for the person in (1) *(name)*:
b. [x] 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. [x] 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
[redacted]

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
[redacted]

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

SUPERIOR COURT OF ARIZONA

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

Your Duties In Responding To This Subpoena

ATTENDANCE AT A TRIAL: If this subpoena commands your attendance at a deposition, hearing, or trial, you must appear at the place, date and time designated in the subpoena unless you object (see below, procedures for objecting). Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial.

ATTENDANCE AT A HEARING OR DEPOSITION: If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either:

(1) you timely object (see below, the procedures for objecting); or

(2) you are not a party or a party's officer and this subpoena commands you to travel to a place other than:

  (1) the county where you reside or you transact business in person; or

  (2) the county in which you were served with the subpoena or within forty (40) miles from the place of service; or

  (3) such other convenient place fixed by a court order.

PRODUCTION OF DOCUMENTARY EVIDENCE: If this subpoena commands you to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. You may timely object to the production of documentary evidence (see below, the procedures for objecting).

You may object to the production of electronically stored information from sources that you identify as not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the past good-faith operation of an electronic information system or good faith or consistent application of a document retention policy.

If this subpoena does not specify a form for producing electronically stored information, you may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person, but you need not produce the same electronically stored information in more than one form.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena.

INSPECTION OF PREMISES: If this subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a timely, good faith written objection to the party or attorney who served the subpoena.

COMBINED SUBPOENA: You should note that a command to produce certain designated materials, or to

You do not, however, need to appear in person at the place of production or inspection unless the subpoena also states that you must appear for and give testimony at a hearing, trial, or deposition.

Your Right To Object To This Subpoena

I. If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The Superior Court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

- You may object to this subpoena if you feel that you should not be required to respond. You must make any objection within 14 days after the subpoena is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena. *
- If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. *

Unless otherwise ordered by the Court for good cause, the party seeking discovery from you must pay your reasonable expenses incurred in responding to a subpoena seeking the production of documents, electronically stored information, tangible things, or an inspection of premises.

- If you seek payment of expenses other than routine clerical and per-page costs as allowed by A.R.S. §12-351, you must object on the grounds of undue burden to producing the materials without the subpoenaing party's payment, and send an advanced estimate of those expenses to the subpoenaing party before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *
- You need not comply with those parts of the subpoena that are the subject of the objection, unless the Court orders you to do so. The court may enter an order conditioning your response to the subpoena on payment of your additional expenses, including ordering payment of those expenses in advance. *

II. PROCEDURE FOR OBJECTING TO A SUBPOENA FOR ATTENDANCE AT A HEARING, TRIAL OR DEPOSITION:

A. Form and Time for Objection.

(i) A person commanded to comply with a subpoena may object to the subpoena in writing on the basis that the information requested is not reasonably accessible or because complying with the subpoena would cause an undue burden or expense. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's attorney, serving the objection. The objection must be served on the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served,

whichever is earlier.

(i) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial, may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of Rule 52.

B. Procedure After Objecting.

(i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with those parts of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court.

(ii) The party serving the subpoena may move under Rule 65(a) to compel compliance with the subpoena. The motion must be served on the subpoenaed person and all other parties under Rule 43.

(iii) Any court order to compel must protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

C. Claiming Privilege or Protection.

(i) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work-product material must promptly identify in writing the information, document, or electronically stored information withheld and describe it in a manner that, without revealing information that is privileged or protected, will enable other parties to assess the claim.

(ii) If information subject to a claim of privilege was accidentally produced in response to a subpoena, the party who accidentally produced the information may notify any other party that the information was privileged. After being notified of such a claim, a party who received the information has several obligations. They must promptly return, sequester, or destroy the information and any copies they have. They must not disclose the information until the claim is resolved, and if they have already disclosed it, they must take reasonable steps to retrieve the information. They must also present the information to the court under seal for a decision as to whether it is subject to privilege. The party who accidentally disclosed the information must preserve it until the privilege claim is resolved.

*See Arizona Rules of Family Law Procedure (A.R.F.L.P.) Rule 52, and the "Your Right to Object to this Subpoena" section.

III. COURT MODIFIES or VOIDS (quashes) CIVIL SUBPOENA

A. The court must quash or modify a subpoena if . . .

(1) the subpoena does not provide a reasonable time for compliance;

(2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place other than:

a. the county in which you reside or transact business in person;

b. the county in which you were served with a subpoena, or within forty (40) miles from the place of service; or

c. such other convenient place fixed by a court order; or

(3) the subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(4) the subpoena subjects you to undue burden.

B. The court may quash or modify a subpoena if . . .

(1) the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;

(2) you are an unretained expert and the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;

(3) you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense; or

(4) the court determines that justice requires the subpoena to be quashed or modified.

In these last four circumstances a court may instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if:

a. the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship; and

b. the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated for those expenses.

ADA Notification

Requests for reasonable accommodation for persons with disabilities must be made to the division assigned to the case by the party needing accommodation or his/her counsel at least three (3) judicial days in advance of a scheduled proceeding.

Interpreter Notification

Requests for an interpreter for persons with limited English proficiency must be made to the division assigned to the case by the party needing the interpreter and/or translator or his/her counsel at least ten (10) judicial days in advance of a scheduled court proceeding.

SIGNED AND SEALED this 7th day of May, 2024

[redacted]

[redacted]

By: The State Bar of Arizona on behalf of the clerk pursuant to ARCP 45(a)(2)

Gregg R Woodnick, State Bar Number: [redacted]
Woodnick Law PLLC
1747 E Morten Ave Ste 205
Phoenix, AZ 85020-4691
[redacted]

Representing: Respondent

SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY

In the matter of:

LAURA OWENS
Petitioner(s)

CLAYTON ECHARD
Respondent(s)

Case No.: FC2023-052114

AFFIDAVIT OF SERVICE FOR SUBPOENA in a Family Case

Arizona Rules of Family Law Procedure, Rule 52

I received the subpoena addressed to: MICHAEL MARACCINI, c/o Randy Sue Pollock, Attorney at Law [redacted]
which was dated 05/07/2024 I personally served the subpoena as follows:

On this date: _____ At this time: _____

At this location: _____

To (Name): _____

Manner of Service: _____ (how served)

☐ I was over the age of 18 at the time the subpoena was served. I am not a party to the case.

UNDER PENALTY OF PERJURY:
By signing below, I state to the Court under penalty of perjury that the contents of this document are true and correct.

Date: _____ _____
Signature:

Printed Name: _____

Street Address: _____

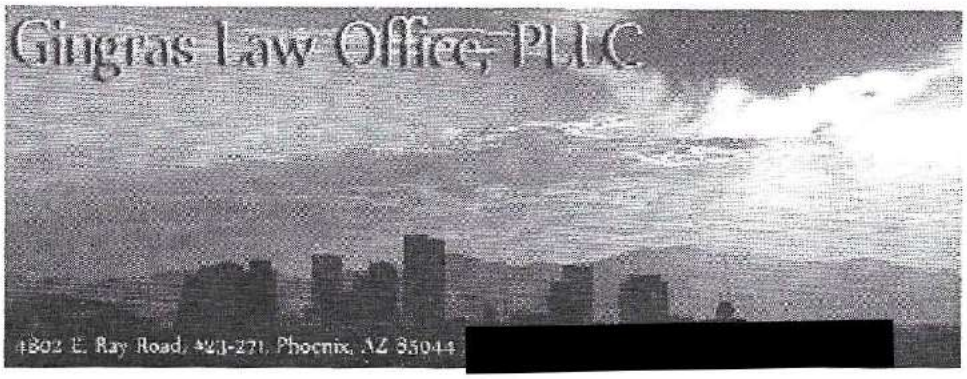
City, State, Zip Code: _____

Telephone Number(s): _____

FEES: $ _____ OTHER: $ _____

MILEAGE CHARGES: $ _____ **TOTAL:** $ _____

EXHIBIT "3"



From: Michael Marraccin
Sent: Thursday, May 9, 2024 8:15 AM
To: David Gingras
Subject: Owens v Echard

Mr. Gingras,

Gregg Woodnick reached out to me and gave me your contact number because you have expressed a desire to speak to me. I want you to know that I was about to call you and tell you about my harrowing experience with Laura Owens and all the lies she told including, but not limited to, lying about being pregnant with twins, telling me she had cancer, threatening suicide, and emotionally terrorizing me to coerce me into a relationship with her. But before I could pick up the phone, I saw that you tweeted out a photograph of me and Laura and audio from a radio show we did together from that traumatic time in my life. I cannot express to you how inappropriate and offensive that action was. You have accused me of fabricating evidence and lying which led me to take my laptop directly to an expert for analysis.

I had moved on with my life and had no interest in opening up old wounds that have so injured me but you made it impossible for me to sit quietly. You posted my deposition online to accuse me of lying and you humiliated me purposefully. I deeply resent the allegations, which is why I decided to turn over my laptop as evidence in the Clayton Echard case against Laura. We both know that she sent those doctored medical records to me and now you have the proof. I could not in good conscience remain quiet and watch Laura use this same playbook against another innocent man.

I have decided that I will not speak with you on the phone. I will speak in a court of law on June 10th, under oath, and I will tell the truth about the horrors that Laura visited on my life. You may ask me any question you want and I will answer with the whole truth. You do not understand, or willfully refuse to accept, how traumatizing my interaction with Laura Owens has been. She has destroyed my reputation and ruined background checks by taking out a fraudulent order of protection against me based on lies that have affected me personally & professionally. She accused me of horrific acts of domestic abuse that never happened. She fabricated medical evidence and held threats of suicide over my head to keep me locked in a relationship that was toxic and deeply disturbing.

But perhaps the worst thing you have done is to suggest that I should talk to Laura, the woman who attempted to, and in many ways did, destroy me. This is the same woman who continues to renew the false order of protection against me and pretends to be terrified I'll be in the same courtroom as she. Why would someone so afraid of me want to speak to me and violate that order she insists she needs? This, just a day after you threatened to have me arrested if I showed up at the courthouse to be a witness. The fact you would suggest such an inappropriate call between me and my abuser proves to me you have no idea how inappropriate it would be to speak to the woman who fabricated

wild tales about me and turned them into a TedX talk and an entry in Chicken Soup for the Soul that will live on forever.

This letter, which has been painful for me to write, has addressed everything you wanted to speak to me about by phone.

All the best,

Michael Marraccini

Maribeth Burroughs

From: David Gingras [redacted]
Sent: Thursday, May 9, 2024 9:27 AM
To: Gregg Woodnick
Cc: Isabel Ranney
Subject: FW: Owens v Echard

Gregg,

See the email below from Marraccini. I haven't responded to him, since I still don't know if he's represented by counsel. I don't really consider Randy Pollock to be representing him with respect to the AZ case since she's not licensed in AZ and hasn't done anything to appear in the case on his behalf. Still, I don't want to communicate directly with Mike unless/until someone confirms he is not represented, or if he is, that I have consent from counsel to talk to him.

I realize Mike isn't actually your "client" (to my knowledge), so I don't know how much control you have with him, but I'm hopeful maybe you can get Mike to change his mind.

He's apparently unhappy about something I tweeted yesterday (which I removed after seeing his email). This doesn't seem fair – Laura is being attacked relentlessly on a daily (virtually constant) basis by people on Clayton's side, but somehow if I say or do *anything* to respond, this is somehow deemed outrageous. It's really frustrating. There are two sides to the story here, and one side seems to be monopolizing the narrative, often with less than total candor.

Anyway, I want to keep the lines of communication open with you, and I promise to keep things on the same professional level as the conversation yesterday, but I just need to let you know – if Mike won't speak to me, then I have to go back to my previous position that I'm going to ask the court to exclude him from the trial. That's just what the rules require here, so if Mike it's willing to be flexible, then neither can I.

Again, this is NOT any sort of criticism directed at you. It's just hard when I'm dealing with people who demand that ONLY their side of the story can be told.

Because time is so short, I need to know ASAP if Mike is standing on this position. If he is, I will need to file another short MIL seeking to exclude him for nondisclosure.

P.S. I sincerely do appreciate you talking the time to talk yesterday, and I'm hopeful that if you need anything or want to talk further, you can just pick up the phone and give me a call. Those direct conversations are so helpful; emails just don't have the same benefits.

David Gingras, Esq.
Gingras Law Office, PLLC
[redacted]

EXHIBIT "4"

Maribeth Burroughs

From: David Gingras [redacted]
Sent: Monday, April 22, 2024 12:36 PM
To: Gregg Woodnick; Isabel Ranney
Cc: Maribeth Burroughs
Subject: RE: Owens v. Echard - Witness Stuff

Some comments back in RED...

From: Gregg Woodnick [redacted]
Sent: Monday, April 22, 2024 11:29 AM
To: David Gingras [redacted]; Isabel Ranney [redacted]
Cc: Maribeth Burroughs [redacted]
Subject: RE: Owens v. Echard - Witness Stuff

David,

1. Video testimony: I agree that all witnesses (not parties) can appear virtually if they are not local. That seems to work well with bench trials. To be clear, we are not stipulating to the admission of your expert's report but his testimony can certainly be done via video.

My preference is to have everyone testify in person, if possible, but I'm just not 100% sure about Dr. Medchill's travel plans. He lived in Phoenix for the last 30+ years and just recently retired and moved to Florida, but he has family here in AZ and he comes here regularly. Given a choice, I'd like him to appear personally at trial, but if he can't make it, I guess video will be fine assuming the court allows it. I don't object to you calling anyone by video, but again, I don't know Judge Mata's policy on this stuff (which is why I asked). To the extent it matters, I'll stipulate to video if you want it.

2. Trial Time: I will streamline my presentation to fit into our allotted hour. Laura invoked Rule 2 with one of her prior lawyers. *Maybe we can maximize our court time if we stipulate to proceeding without Rule 2?* I think that also helps keep costs down.

I always favor streamlining and simplification, but we need to follow the rules of evidence, so I won't agree to waive Rule 2. That just isn't appropriate in light of the allegations here. There is WAY too much inappropriate stuff being brought in by your side, so we need the evidentiary rules to help narrow things down.

3. Witnesses: [redacted] Mike, and Greg would (time permitting and consistent with the disclosure, will testify that they experienced false pregnancy claims, altered medical records, suicidal threats of breakups, behavior with their families and abortions contingent on relationship contracts etc.) Our disclosure statement is reattached for your convenience and includes a summary of their testimony. I am not sure what happened with your call with Randy but she likely did not recognize your name, as you are not the first attorney Laura has had in this melee. I have spoken to her but it was months ago and before your involvement. I have confirmation that Mike fully supports this process. Of course I can subpoena him, but that won't be necessary. If you call [redacted] she will confirm what happened with Mr. [redacted] I sent Greg Gillespie your contact information so hopefully you connected. If you feel you need more information per Rule 49j that is not included in the attached, let me know.

Just FYI – based on the comments above, I'm going to file a motion in limine to preclude the testimony of [redacted] Mike, and Greg. This is classic prior bad act evidence that is not admissible under 404(b). In addition, you have

never disclosed the substance of any of these people's expected testimony, and it's clear you had that information more than 30 days ago, so the MIL will argue both 404(b) and untimely disclosure (and, frankly, relevance – an unproven allegation from an angry ex boyfriend is literally meaningless in this situation).

4. Experts/Doctors: I forwarded your expert's draft to our experts. I am a little confused by your expert report and, while ours (forthcoming) will certainly not align and was delayed because we are giving planned parenthood a second chance at providing the ultrasound, I don't think your doctor's testimony (if accepted by the court) addresses the fundamental problem of your client's behavior in the litigation. Once we receive the final version we will be making specific content objections permitted by law. I am not going to engage in a debate over the facts as we can do that in court or with a mediator as was previously suggested. Parenthetically, I would point out that your theory about "weight gain" is quickly refuted by your client's own medical records (per her Banner record, she weighed 121 lbs on June 1st 2023).

I'm hoping to get you Medchill's final report today, and this will include more information that you don't yet have (such as an affidavit that Laura gave to Medchill, as well as my cover letter to him which explains the scope of the testimony I asked for, as well as some specific questions I asked him to consider). You obviously need that additional information to provide context, so this will be sent to you today, if possible.

Since I don't have your expert reports, I can't really speculate about what they are going to say, but based on the limited info in your 3rd disclosure statement, I'm probably going to bring a motion to exclude your experts based on 702/Daubert and relevance. I'll let you know once I see their reports and have a chance to discuss them with Dr. Medchill.

SIDE NOTE – your 3rd disclosure statement says Dr. Deans is going to testify that "HCG tests were never *dispositive* of pregnancy". Assuming she says this (which is hardly a contested issue), I think it's important to remind you that you are applying exactly the *wrong* standard here.

The ONLY remaining issue is whether Laura should be sanctioned for bringing a claim she knew was false. While you are going to lose that argument for other reasons, to obtain sanctions you seem to believe that Laura has some obligation to show to a 100.000000000% degree of medical certainty that she was pregnant. That is what the JFC crew has been claiming for weeks.

That is exactly backwards – Laura simply has to show she had SOME reason to think she MIGHT be pregnant. If she had that basis, she cannot be sanctioned, even if her belief was wrong. At no point is she obligated to establish the pregnancy was confirmed in some "dispositive" manner, whatever that even means.

This is just another reason why I will probably move to exclude Dr. Deans' testimony about HCG not being "dispositive". Who cares? That is simply not relevant to any issue in this case. Honestly, I'm guessing Dr. Deans would agree that a positive HCG test DOES give a woman a reason to believe she probably was pregnant, which would make her a strong witness for Laura's side.

I guess I'll ask her when I see her report.

5. Motion for Judgment on the Pleadings and intention to file for sanctions against me personally: If this is how you choose to litigate (and to relitigate things that have already been addressed and denied) then a phone call to discuss is not going to impact anything. It will be more posturing and I don't think it is helping our clients. File what you must and we will respond in kind.

I don't understand what you mean by this: "things that have already been addressed and denied". I think you must be referring to the fact that Laura's prior counsel ask the court to dismiss the case, and then the judge apparently granted that and then changed her mind?

Those are two completely different issues. My motion for judgment on the pleadings is going to argue that you cannot get sanctions as a matter of law because you didn't follow the rules. I don't believe that issue was fully raised before, which is why I'm going to raise it now. As for the ARS 12-349 issue, that pretty much speaks for itself.

6. Meet and Confer: The purpose of a meet and confer is to discuss possible resolution of issues. If you have a proposed settlement you would like to discuss over the phone, I am happy to coordinate the call but I am not interested in the scorched earth Conor McGregor stuff. You apologized previously but reverted to the same behavior online via Twitter and your blog. If you really think the call would be productive, I am happy to coordinate it but your mind seems very made up (at least from your Blogs and whatnot). If you think a call would change your perspective about what you are going to file, I will find time to talk with you this afternoon.

Did Dave Neal ever share that LONG email I sent? If you haven't seen it, let me know and I'm happy to share it with you. The point is you misunderstood what I meant about Conor McGregor.

As I explained to Dave Neal, I have been involved in MANY cases that were MUCH more contentious than this one. And in many of those cases, opposing counsel ended up losing their licenses and, in more than one case, the lawyers ended up in jail.

The Conor McGregor reference simply means I've been dragged into a LOT of really nasty fights (never by my choice), and in many of those fights, my adversaries have ended up self-destructing, while I'm still here standing (that's what Conor McGregor means to me). It was never a suggestion that I *enjoy* violent confrontation or that I am out to gratuitously hurt anyone. My point was to say that I am veteran of many tough battles, and while I would prefer to avoid messy conflicts, I am not afraid of going there if given no other choice.

Having said that, I do think we should talk because there are so many moving parts here. Among other things, I just want to get a clear understanding of WHO is really coming to trial, and WHAT they are going to say (bearing in mind I'm still going to seek to exclude pretty much all your witnesses based on lack of timely disclosure). It's hard to have that conversation via email...and YES – I'm more than happy to give you a verbal summary of everything on my side as well.

Speaking of which, now that I fully understand the case (from Laura's side), I would *really* find it helpful if you could give me additional detail from Clayton's side, especially with regard to this claim that Laura faked pregnancies with other men.

Let me give you an example – in talking to Laura about all this, I asked her to explain the story of Gillespie. I was curious to know exactly WHAT basis he had for claiming that she "faked" being pregnant.

Laura's response was (paraphrased):

- She had a brief relationship with Gillespie (I think she said they had sex twice and went on like roughly 6 dates over a period of a few weeks).
- Laura tested positive for pregnancy. Gillespie asked her to terminate the pregnancy medically, which she did about 4 weeks later (by taking pills in Gillespie's presence).
- According to Laura, that is the entire story (aside from the later litigation, which went nowhere). There was never any ultrasound (why would there be?) and there were basically no other medical records involved other than the initial pregnancy test and the later medical abortion.

Assuming Laura has accurately communicated the above facts, I'm guessing that Gillespie's only basis for claiming that Laura faked the pregnancy is because.....what?.....he just doesn't think she actually got pregnant?

Pure speculation like that is clearly inadmissible, and if you tried to call Gillespie as a witness and ask him whether he thinks Laura faked being pregnant with him, I'd object due to a lack of foundation and calls for speculation.

After this many years of legal practice, you should know this by now – you can't just call a witness and ask them to guess about whether something happened. The witness must first prove they have personal knowledge of the matter in question. I see no basis to establish that Gillespie has personal knowledge of Laura *NOT* being pregnant. Same thing with Marraccini (his lawyer also told me he is not testifying at trial). Same thing with [redacted].

7. Moving forward: I know Laura wants this to be over and candidly Clayton does too, but that requires her acknowledging how dishonest her behavior has been. I only speak for Clayton (via Rule 408) but he does not seem interested in more litigation both because Laura is probably judgment proof and because he has wanted the same thing since day one. He does not believe the pregnancy as they did not have sex and for all of the myriad reasons you already know, including the nearly identical stories from three (3) other men. All Clayton has ever wanted is an acknowledgment by Laura she has a pattern of lying about pregnancies to force relationships with guys who have rejected her. Even accepting (which we don't) that she was pregnant without intercourse and your expert's conclusion that she was pregnant with Clayton's twin children without *any* DNA testing and with a fabricated ultrasound, it does not change what has happened *since* her alleged miscarriage or her conduct predating this litigation. This ends either with trial in June or with Laura coming clean. This is her out.

I am happy to discuss settlement, but I also need to be honest – when Laura prevails in this case, she is going to sue Clayton and many other people for defamation and other torts. We can certainly avoid that if you want, but it's going to involve someone writing a very large check to Laura. If you offered $1 million right now, I'd advise her to reject that offer.

So yeah, happy to talk about settlement if you want, but I don't think that is likely to happen.

8. Progress: Assuming she wants to continue down this litigation path, are we agreeing that witnesses by video and no more Rule 2? (We can still preserve *Daubert*/702 issues with regard to the docs.)

I think we can at least agree on the video issue.

Gregg

From: David Gingras [redacted]
Sent: Friday, April 19, 2024 3:36 PM
To: Gregg Woodnick[redacted]; Isabel Ranney [redacted]
Cc: Maribeth Burroughs [redacted]
Subject: Owens v. Echard - Witness Stuff

Gregg,

We need to talk about witnesses. I'm asking because obviously it's not possible for you to call nine people in the 60 minutes your side has. I'm also asking because when I see newly disclosed witnesses (as here) and there isn't any disclosure about what the person is going to say (as here), I like to just pick up the phone and ask the witnesses.

So I just tried calling the contact person you had listed for Mike Marraccini (Randy Pollock). Randy really surprised me – she said she had never heard of this case, never heard of me, never heard of you, and as far as she was aware, Mr. Marraccini wasn't coming to testify as a trial witness.

I also tried calling the contact person you listed for [redacted] Got voicemail. Hopefully she will call me back.

I was going to call Greg Gillespie, but it's not clear to me whether he's represented by counsel (your disclosure does not say you're representing him, but I know you obviously had that prior relationship). So, please clarify whether it's OK for me to talk to him directly, or whether you want that to go through you.

If I don't get any response, I'm considering whether we should just depose these folks, but I'd like to avoid the extra costs if possible.

Anyway, the easiest thing to do here is for us to have a conversation about who you are actually planning to call at trial. Right now, my witnesses are 1.) Laura, 2.) Clayton, 3.) Laura's mom, and 4.) Dr. Medchill. I'm planning to send you an updated disclosure statement next week which includes summaries of all witnesses' expected testimony, plus all my trial exhibits, and if Dr. Medchill's report is ready by then, I will include it as well.

On that note, I'd also like your input on whether you are OK with having out-of-state folks appear by phone or Zoom or whatever. Medchill lives in Florida, but he has family in AZ so I think his first preference is appear remotely, but he can also be here in person if that's the only choice.

I'd appreciate getting the same info from you re: which people you actually plan to call, and what they are going to say. Obviously, it should come as no surprise that we are *not* expecting you to wait until the last minute (i.e., May 10th) to finally disclose the substance of what each witness is going to say. If that happens, I'll move to exclude all that info as untimely per Rule 49(b)(2)(B) since you didn't disclose it within 30 days of learning the information. I'm also considering a Rule 404(b) motion in limine as to Gillespie, Marracinni, and [redacted] but I can't really do that without knowing what you plan to have them talk about.

Look – despite all the animosity, there is still a lot of stuff we can do to get this thing ready for resolution. All I'm asking is for you guys to follow the rules. I'm trying to do that, and it's not unreasonable for me to ask the same from you.

David Gingras, Esq.
Gingras Law Office, PLLC
[redacted]