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

Attorney for Petitioner
Laura Owens

MARICOPA COUNTY SUPERIOR COURT

STATE OF ARIZONA

In Re Matter of:	Case No: FC2023-052114
LAURA OWENS,	**MOTION FOR JUDGMENT ON THE PLEADINGS AND MOTION TO DISMISS**
Petitioner,	
And	**(Assigned to Hon. Julie Mata)**
CLAYTON ECHARD,	**(ORAL ARGUMENT REQUESTED)**
Respondent.	

Pursuant to Rule 29(c), Ariz. R. Fam. L. P., Petitioner Laura Owens ("Ms. Owens" or "Petitioner") moves the Court for an order granting judgment on the pleadings with respect to the Rule 26 Motion for Sanctions (the "Rule 26 motion") filed on January 3, 2024 by Respondent Clayton Echard ("Mr. Echard" or "Respondent"). In short, the Rule 26 motion claim Ms. Owens lied about every material fact in this case, and he seeks sanctions on that basis.

Even if the Court found that Ms. Owens lied, as Mr. Echard claims, the Court cannot award Rule 26 sanctions on that basis due to Mr. Echard's failure to follow the "strict" requirements of that rule. The law is clear—strict compliance is mandatory, not optional, and where strict compliance is not shown, the inquiry ends. Accordingly, there is no need for an evidentiary hearing or trial on the Rule 26 motion; the Court may (indeed, must) dispose of that issue as a matter of law and dismiss this matter.

I. INTRODUCTION

The Court is familiar with the facts, so they will only be briefly summarized. Ms. Owens claims she had sex with Mr. Echard in May 2023. She claims a test showed she was pregnant in June 2023, and after Mr. Echard refused to discuss the situation with her, Ms. Owens filed this action on August 1, 2023.

The parties agreed to submit to DNA testing in late September/early October 2023. Those tests were inconclusive, and Ms. Owens claims her pregnancy ended with a miscarriage shortly thereafter. Because the paternity issues in this case were moot, on December 28, 2023, Ms. Owens moved to dismiss the case under Rule 36.

On January 3, 2024, just 13 court days after his counsel first appeared, Mr. Echard filed a Rule 26 Motion for Sanctions. The motion claimed Ms. Owens fabricated her pregnancy and thus violated Rule 26(b)(3)'s requirement that her claims "have evidentiary support". The Rule 26 motion is currently set for an evidentiary hearing on June 10, 2024, but that hearing must be vacated, and the Rule 26 motion denied, because Mr. Echard simply did not follow the requirements of the rule. That point forecloses his right to seek Rule 26 sanctions, and it precludes this Court from granting them.

Although there are certainly *other* hypothetical ways in which a party can seek fees or sanctions (i.e., a motion made under A.R.S. § 25–809(g) or A.R.S. § 12–349), Mr. Echard's Rule 26 motion was limited and it was specific—he cited only Rule 26 as the basis for sanctions, not A.R.S. § 12–329 and not A.R.S. § 25–809(g). Thus, the only question to decide is whether Rule 26 sanctions are available.

As this motion shows, these sanctions are not available, and cannot be awarded. This is true even if Ms. Owens lied about being pregnant. That is so because there is no dispute—Mr. Echard failed to follow any of Rule 26's mandatory technical requirements which this Court is required to "strictly enforce".

That error is the end of the discussion. Ms. Owens is entitled to judgment in her favor on that basis. No hearing is needed to reach that result because none of the facts requiring this result are contested. The issue is purely a matter of law.

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

II. DISCUSSION

a. Rule 29(c) Standards

Rule 29(c) provides: "A party may move for judgment on the pleadings within such time so as not to delay trial." When considering this motion, the Court must assume all well-pleaded factual allegations in the challenged pleading (i.e., the Rule 26 motion) are true, and if those facts do not permit relief as a matter of law, "judgment should be entered for the [adverse party]." *Giles v. Marce*, 195 Ariz. 358, 359 (App. Div. 2 1999) (emphasis added) (citing *Shannon v. Butler Homes, Inc*., 102 Ariz. 312, 428 P.2d 990 (1967); *In re One Single Family Residence and Real Property Located at 15453 N. Second Ave*., 185 Ariz. 35, 912 P.2d 39 (App. 1996)); *see also American Fed'n of State, County & Mun. Employees, Council 97 v. Lewis*, 165 Ariz. 149, 151 (App. Div. 1 1990) (explaining standards for such motions).

Here, for the limited purposes of this motion, the Court may assume every factual allegation in Mr. Echard's Rule 26 motion is true. The Court may assume Ms. Owens was never pregnant. The Court may assume she filed this action knowing she was not pregnant. The Court may assume Ms. Owens filed this action *purely* for non-legitimate reasons. The Court may assume Ms. Owens is crazy and evil.

Under the clearly established legal standards of Rule 26, none of that matters, because Mr. Owens failed to comply with the strict procedural requirements of Rule 26. That error ends the issue. If this Court granted sanctions despite that error, the ruling would be erroneous as a matter of law and would be reversed on appeal. Ms. Owens is thus entitled to judgment as a matter of law in her favor as to the question of Rule 26 sanctions.[1]

[1] For obvious reasons, cases interpreting Family Law Rule 26 are scant, whereas authority interpreting Civil Rule 11 is abundant. Thus, this brief will primarily cite state and federal cases dealing with Rule 11, which is functionally identical to Family Law Rule 26. *See James, Cooke & Hobson, Inc. v. Lake Havasu Plumbing & Fire Protection*, 177 Ariz. 316, 318-19, 868 P.2d 329, 331–32 (App. 1994) (explaining Arizona courts look to federal case law construing and interpreting a state rules' federal counterpart); *Smith v. Lucia*, 173 Ariz. 290, 297, 842 P.2d 1303, 1310 (App. 1992) (same).

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

b. Summary of Rule 11/26's Technical Requirements

As the Court will recall, many years ago the standards for sanctions under Rule 11 (before the Family Law Rules of Procedure existed) were burdensome and onerous. Before seeking sanctions, a party was required to: 1.) draft a proposed motion for sanctions, 2.) serve the motion on the opposing party, and 3.) wait 21 days before the motion could be filed. During that 21 day "safe harbor" period, the party accused of the violation had an absolute right to cure the problem, and escape sanctions, by correcting or withdrawing the offending pleading. If they invoked the safe harbor, the motion for sanctions could not be filed and sanctions could not be granted. *See*, *e.g.*, *Sneller v. City of Bainbridge Island*, 606 F.3d 636, 638-639 (9th Cir. 2010) (discussing former version of Rule 11, and explaining, "Rule 11 authorizes a court to impose a sanction on any attorney, law firm, or party that brings a claim for an improper purpose or without support in law or evidence. Rule 11(c), however, provides a 21-day safe harbor period. Under this provision, Rule 11 sanctions may not be imposed if the challenged claim is withdrawn within 21 days after service of the sanctions motion.") (emphasis added).

That burdensome 21 calendar day (now less burdensome 10 court day) waiting period has *always* been, and still is, absolutely mandatory without exception. When a party fails to follow the strict requirements of the rule, a trial court literally "lacks the power to impose Rule 11 sanctions …." *Westerkamp v. Mueller*, 2023 U.S. Dist. LEXIS 96531 *7 n.1; 2023 WL 3792739, *7 n.1 (D.Ariz. 2023) (emphasis added). By extension, if a trial court awards sanctions when the safe harbor requirements have not been strictly followed, the result is reversible error, even if the underlying filing is completely frivolous; "We must reverse the award of sanctions when the challenging party failed to comply with the safe harbor provisions, *even when the underlying filing is frivolous*." *Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir. 2005) (emphasis added).

The purpose of Rule's 11's "safe harbor" process is easy to understand. People (even the best lawyers) sometimes make mistakes. Whether a violation is intentional, malicious, or just accidental, Rule 11 was structured to encourage lawyers and parties to

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

promptly acknowledge their mistakes by "correcting or withdrawing" the offending pleading. If that happens (which is obviously a good thing for the parties, the court, and the public), the law rewards the responsible party by giving them a "safe harbor" from further punishment.

In this way, Rule 11 operates with a "carrot and stick" design. Even if a party flagrantly violates the rule by intentionally filing a groundless pleading, the Rule encourages and rewards self-ownership. It does this by granting absolution to all who confess their sins, provided they repent within the rule's safe harbor period.

c. Respondent Failed To Comply With Rule 26's Requirements

i. Respondent Failed To Provide Written Notice Of His Intent To Seek Sanctions And Of Ms. Owens' Absolute Right To Withdraw Her Petition

In this case, there is no question—NONE—that Mr. Echard filed his Rule 26 motion on January 3, 2024 without complying with *either* of that Rule's two central requirements. First, we know Mr. Echard did not give a written 10-day warning to Ms. Owens because his motion never claims such notice was given. That same issue was also mentioned on page 3 of Ms. Owens' Response to the Rule 26 motion, as shown here:

> Counsel for Respondent certified that he met and conferred with Petitioner on August 16, 2023, and with Petitioner's previous counsel, Alexis Lindvall, on December 27, 2023. However, Respondent's Motion did not include evidence demonstrating that Petitioner, or Petitioner's previous counsel were provided *written notice* of specific conduct alleged to have violated Rule 26(b), *ARFLP*. Written notice is required under subpart (c)(2)(B) of Rule 26, *ARFLP*. Without such written notice, Petitioner was not afforded time to cure any alleged deficiencies prior the filing of Respondent's Motion.

Because Mr. Echard failed to give the required written notice, on that point alone, this Court "lacks authority" to even consider, much less award, Rule 26 sanctions.

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

ii. Respondent Failed To Provide The Mandatory 10 Court Day Safe Harbor Period

A second fatal problem exists. Even if Mr. Echard had given the required written notice (which he did not), he *also* failed to give Ms. Owens the mandatory safe harbor period in which she had an absolute right to withdraw her petition and avoid sanctions. That fact precludes any award of Rule 26 sanctions, particularly given that Ms. Owens did, in fact, *try* to terminate this matter by moving to voluntarily dismiss the case on December 28, 2023 – before Mr. Owens' Rule 26 motion was filed.

In this way, Mr. Echard's bizarre actions are very similar to those described in *Westerkamp v. Mueller*, 2023 U.S. Dist. LEXIS 96531; 2023 WL 3792739 (D.Ariz. 2023), *supra*. In *Westerkamp*, like here, the party who initiated the action (plaintiff) sent an offer to the defendant on March 2, 2023, offering to dismiss the case.

Like here, the party who did *not* initiate the action (defendant) rejected the plaintiff's offer to dismiss. This is essentially the same thing that happened here – where Ms. Owens moved to voluntarily dismiss *before* Mr. Echard's Rule 26 motion was filed.

In *Westerkamp*, unlike this case, after the defendant rejected plaintiff's offer to voluntarily dismiss the case, but before any sanctions motion was filed, the defendant sent a proper written notice to the plaintiff warning of his intent to seek sanctions. Eight days later, the plaintiff filed a motion to voluntarily dismiss the case which (like this case) the defendant opposed. Despite the plaintiff's clear attempt to end the dispute by offering (and then moving) to dismiss, the defendant filed a motion asking for Rule 11 sanctions.

Given the posture, the District Court rightly explained, "This bizarre backdrop means that Defendant's motion for sanctions must be denied." *Id*. 2023 WL 3792739, *9. The Court explained "Defendant's basis for even threatening to seek Rule 11 sanctions based on the [allegedly frivolous pleading]—let alone formally moving for such sanctions—evaporated on March 2, 2023, when Counsel offered to stipulate to a dismissal of the entire case with prejudice." *Id*. (emphasis added).

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

Because the alleged wrongdoer (plaintiff) offered to withdraw his complaint and dismiss the action *before* the defendant moved for Rule 11 sanctions, the Court held it was powerless to even consider, much less grant, sanctions; "once Plaintiff moved for voluntary dismissal, Defendant was precluded from filing the Rule 11 motion." *Id.* at 10 (emphasis added) (citing *Great Dynasty Int'l Fin. Holdings Ltd. v. Haiting Li*, 2014 U.S. Dist. LEXIS 94658, 2014 WL 3381416, *6 (N.D. Cal. 2014) ("[T]he underlying purpose of the safe harbor precludes [a movant's] ability to move for sanctions given the offending pleading had already been withdrawn [via voluntary dismissal].")

In this way, the posture of *Westerkamp* is not just "kinda/sorta similar" to this case; it is identical. In this case, like in *Westerkamp*, Ms. Owens sought to voluntarily terminate this case by moving to dismiss on December 28, 2023—several days *before* Mr. Echard's Rule 26 motion was filed. Exactly as the District Court wisely held in *Westerkamp*, the fact Ms. Owens sought to withdraw her petition caused the entire basis for Mr. Echard's motion to "evaporate", and Mr. Echard was thereafter precluded from even filing the Rule 26 motion, let along being awarded sanctions based on it.

This authority is clear and it is conclusive. If this Court allows this matter to proceed based solely on Mr. Echard's pending Rule 26 motion, it is violating both the letter and sprit of Rule 26. Mr. Echard not only ignored the plain requirements of the rule, he has caused Ms. Owens to needless incur tens of thousands of dollars in attorney's fees and costs purely for reasons of spite, rage and malice.

As a matter of law, nothing further is necessary for the Court to resolve the Rule 26 issue. Ms. Owens is entitled to judgment on the pleadings on that issue, and the failure to grant such request, or to award any relief to Mr. Echard under Rule 26, is plain reversible error. Accordingly, this Court should grant judgment in favor of Ms. Owens pursuant to Rule 29(c), and either dismiss this matter (as no further issues remain pending), or, at the very least, enter a partial final judgment in favor of Ms. Owens and against Mr. Echard as to the Rule 26 motion pursuant to Rule 78(b) (allowing the entry of a partial final judgment if other claims remain outstanding).

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4802 E RAY ROAD, #23-271
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iii. Additional Comments

To be clear, if the Court grants the instant motion, that does not mean Mr. Echard has no further remedies. If he believes he has grounds to do so, he may still seek relief under other authorities such as A.R.S. § 12–349 and/or A.R.S. § 25–809(g). He could even send a new (hopefully valid) 10-day warning under Rule 26 (which would be kind of odd, since Ms. Owens would immediately accept the safe harbor and dismiss the case).

But Mr. Echard has not brought any such motions, so it is premature to speculate about whether, and to what extent, those hypothetical motions would merit the Court's consideration, assuming they were filed on some future date.

Also, to be clear—even if the Court grants the instant motion, that will not resolve Ms. Owens' right to seek fees under *either* Rule 26 or A.R.S. § 12–349 and/or A.R.S. § 25–809(g). Ms. Owens has previously provided a written 10-day notice of her intent to seek sanctions against Mr. Echard based on his filing a patently groundless and frivolous Rule 26 motion, and assuming Mr. Echard does not avail himself of the safe harbor option (which he could still do), Ms. Owens will proceed with a separate Rule 26 motion once the 10 day window closes.

III. CONCLUSION

For all the reasons stated above, Petitioner moves the Court for an order granting judgment as a matter of law as to Mr. Echard's Rule 26 motion.

DATED April 3, 2024.

GINGRAS LAW OFFICE, PLLC

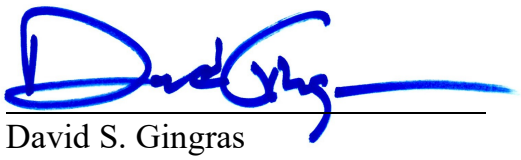
David S. Gingras
Attorney for Petitioner
Laura Owens

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

GOOD FAITH CONSULTATION CERTIFICATE

Pursuant to Rule 9(c) Ariz. R. Fam. L. P., the undersigned certifies that he has made a good faith attempt to resolve the issues in this motion by consulting with opposing counsel, but those efforts were not successful. Specifically {to be concluded}

EXECUTED ON April 3, 2024.



David S. Gingras

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

Original e-filed
and **COPIES** e-delivered April 3, 2024 to:

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

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