WOODNICK LAW, PLLC
1747 E. Morten Avenue, Suite 205
Phoenix, Arizona 85020
Telephone: (602) 449-7980
Facsimile: (602) 396-5850
office@woodnicklaw.com

Gregg R. Woodnick, #020736
Isabel Ranney, #038564
Attorney for Respondent

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.

//

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 <u>1998</u>**. 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.

<u>Sufficiency of Clayton's Notice and Authority to Sanction</u>

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
David@GingrasLaw.com

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