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Attorney for Petitioner
Laura Owens

MARICOPA COUNTY SUPERIOR COURT

STATE OF ARIZONA

In Re Matter of: **LAURA OWENS,** **Petitioner,** **And** **CLAYTON ECHARD,** **Respondent.**	Case No: FC2023-052114 **MOTION TO VACATE JUDGMENT; MOTION FOR NEW TRIAL; ALTERNTIVETLY, MOTION TO ALTER/AMEND JUDGMENT; MOTION FOR LEAVE TO EXCEED PAGE LIMITS** **(Assigned to Hon. Julie A. Mata)**

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Pursuant to Rules 83 and 85, Rules of Family Law Procedure, Petitioner Laura Owens ("Laura" or "Petitioner") moves for an order vacating the judgment entered in this matter on June 17, 2024 (filed June 18, 2024; the "Judgment"). In addition, Laura further seeks a new trial pursuant to Rule 83(b), as well as other relief as stated herein.

I. INTRODUCTION

As the docket in this case reflects, on July 8, 2024 Laura filed a Notice of Change of Judge for Cause. As of the date of the instant motion, that notice remains pending.

Per Family Law Rule 6.1(d)(4), although this matter currently remains assigned to the noticed judge, Hon. Julie A. Mata, if the matter is reassigned, the present motion will be decided by a new judge who is not familiar with the *extremely* complicated procedural and factual history of this case.

At the same time, while this matter is temporarily on hold due to the Notice of Change of Judge, the 25-day time limit to bring a motion under Rule 83(c)(1) continues to run. That deadline (which expires on July 13, making the last day July 15, 2024) also necessarily controls Laura's time to appeal and it "may not be extended by stipulation or court order …." Accordingly, although she would prefer not to do so until the issue of disqualification is resolved, Laura has no choice but to bring the instant motion.

A. Factual History

Because this motion may ultimately be decided by a new judge who is not familiar with the case, some brief remarks are necessary before specific issues are discussed. First, assuming this motion is heard by a new judge, to understand the complicated factual and procedural history, the Court may wish to review a few key pleadings including:

- Laura's Notice of Change of Judge & Supporting Affidavit (Filed 7/8/24)
- Both Parties' Pretrial Statements (Filed 6/3/24)
- Laura's Request for Findings of Fact & Conclusions of Law (filed 6/3/2024)
- Laura' Motion for Judgment on the Pleadings (Filed 5/10/24)
- Laura's Motion for Extension of Time to Respond To Respondent's Motion to Compel (Filed 4/1/24)
- Laura's Motion to Dismiss With Prejudice (Filed 12/28/23)

These pleadings generally explain the story and, despite appearances, most (but certainly not all) of the material facts were undisputed. In short, Laura claimed she had a one-night sexual encounter with Respondent Clayton Echard ("Clayton") on May 20, 2023. Laura claims sexual intercourse occurred, while Clayton claims only oral sex and genital-to-genital "grinding or rubbing" took place.

Laura claims she tested positive for pregnancy on May 31, 2023, and on multiple other occasions including at Banner Urgent Care on June 1, and an unannounced surprise test given to her by Clayton on June 19, 2023. After the parties were unable to reach any agreements, Laura filed a *pro se* petition to establish paternity on August 1, 2023.

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Clayton filed a *pro se* answer denying paternity on August 21, 2023 in which he denied having sex with Laura. Clayton's answer further alleged the petition was "made up" by Laura (i.e., Clayton claimed Laura was never actually pregnant).

Laura claims she and Clayton agreed to submit samples for DNA testing through a company called RavGen. After some initial delay, testing was done in late September/early October 2023. Unfortunately, the results were "inconclusive", with RavGen reporting there was "little to no fetal DNA found".

Laura claims she had a blood test done at a lab on October 16, 2023 which showed an HCG level of 102 confirming, yet again, she was pregnant. As explained by the U.S. Food & Drug Administration, "hCG is a hormone produced by your placenta when you are pregnant … . You produce this hormone only when you are pregnant." *See* https://www.fda.gov/medical-devices/home-use-tests/pregnancy (last accessed July 10, 2024). However, at that point in her pregnancy, Laura's HCG level of 102 was extremely low. This showed the pregnancy was likely non-viable (meaning it would probably end in miscarriage). About a month later, on November 14, 2023, Laura was seen at an OB/GYN facility called MomDoc, where it was confirmed she was no longer pregnant.

After learning the pregnancy had failed, Laura filed nothing further in this case, and she took no actions to keep the litigation active. As a result, on December 4, 2023, court administration issued a notice placing this matter on the inactive calendar and scheduling the matter for dismissal on February 2, 2024.

Shortly before the case was due to be dismissed for inactivity, Clayton retained counsel, Gregg Woodnick, who appeared in this matter for the first time on December 12, 2023. Mr. Woodnick immediately filed several pleadings including a Motion to Amend Clayton's Answer (filed on December 12, 2023), and a Motion for Rule 26 Sanctions (filed on January 2, 2023). Notably, Mr. Woodnick filed these pleadings without making any attempt to meet and confer with Laura as required by Family Law Rule 9(c), and he moved for Rule 26 sanctions without ever providing written notice to Laura of her right to amend or withdraw her petition as required by Family Law Rule 26(c)(2)(B).

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Shortly thereafter, Laura retained counsel, Alexis Lindvall, who appeared on December 22, 2023 and filed a Motion to Dismiss *With Prejudice* on December 28, 2023. Days later, Ms. Lindvall withdrew from this matter, with Laura's consent, on January 2, 2024.

Confusingly, on January 25, 2024, Judge Mata issued an order *granting* Laura's Motion to Dismiss. In that ruling, the court indicated: "Petitioner advises she is no longer pregnant and has filed a Motion to Dismiss. While the Court will grant the Motion, the issue of sanctions and attorney's fees remain." Judge Mata then set an evidentiary hearing on those issues for June 10, 2024.

The undersigned was first retained to represent Laura on March 25, 2024. After appearing in this case, undersigned counsel quickly discovered Mr. Woodnick filed the Rule 26 Motion for Sanctions (among many other pleadings) without first consulting with Laura (or her counsel), and the sanctions motion was filed *without* giving the mandatory 10-day written warning required by providing written notice to Laura of her right to withdraw her petition as required by Family Law Rule 26(c)(2)(B). After counsel discussed these problems, and despite initially refusing to do so, on April 3, 2024, Mr. Woodnick filed a motion to withdraw his Rule 26 Motion for Sanctions. Unfortunately, that request was not timely ruled on by the Court, resulting in the undersigned filing a Motion for Judgment on the Pleadings as to the issue of sanctions on May 10, 2024.

On May 29, 2029, a minute entry order was issued explaining the Court had intended to *grant* Clayton's request to withdraw his Motion for Sanctions, but "due to a clerical error, the acceptance was not remitted to the parties …." Despite the Motion for Sanctions being withdrawn, and despite no other sanctions or fees motions pending, the case proceeded to trial on June 10, 2024.

On June 17, 2024 (filed June 18, 2024), Judge Mata issued an order finding in favor of Clayton as to substantially all issues in the case, and awarding attorney's fees in an amount to be determined by later application. The post-trial order also purported to find Laura lied about being pregnant in this case, as well as two other matters, and that

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she may have committed perjury in this case, or elsewhere (the order is not entirely clear). Based on those findings, Judge Mata referred this matter to the Maricopa County Attorney's Office.

II. STRUCTURAL ERROR DISCUSSION

As explained in detail in the Notice of Change of Judge filed in this matter on July 8, 2024, clear and convincing evidence shows Judge Mata violated Laura's due process rights (and the Code of Judicial Conduct) by conducting a secret, undisclosed investigation into the facts of this matter. Worse, Judge Mata not only reviewed social media posts about this case, she literally made at least one key factual finding (or more) based on those posts and not on the evidence admitted at trial.

The consequences of this are both simple and clear – Laura is entitled to an order vacating Judgment in its entirety, and she is entitled to a new trial before a different judge pursuant to Family Law Rules 6.1 and 83(a)(1). Rule 83(a) provides in relevant part:

> (1) **Grounds for Altering or Amending a Judgment.** The court may on its own or on motion alter or amend all or some of its rulings on any of the following grounds materially affecting a party's rights:
>
> (A) the court did not properly consider or weigh all of the admitted evidence;
>
> (B) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;
>
> (C) misconduct of the other party;
>
> (D) accident or surprise that could not reasonably have been prevented;
>
> (E) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
>
> (F) error in the admission or rejection of evidence, or other errors of law at the trial or during the action;
>
> (G) mistakenly overlooked or misapplied uncontested facts, including mathematical errors, which were necessary to the ruling; or
>
> (H) the decision, findings of fact, or judgment is not supported by the evidence or is contrary to law.

When grounds exist to do so, Rule 83(b) provides: "The court may vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment."

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Here, multiple grounds exist for relief under Rule 83. However, because the improper conduct of the trial judge deprived Laura of her most basic right to fundamental fairness, it is not necessary to consider any issues but one – the independent investigation into the facts undertaken by the trial judge, Julie Mata. That single event, standing alone, invalidates the judgment in its entirety, without regard to the *other*, lesser (but still significant) errors of both fact and law committed by Judge Mata.

As such, that issue will be discussed first. Assuming the Court agrees and orders a new trial, it is unnecessary to consider or resolve any other issues at this time. Those *other* issues will still be briefly addressed solely to preserve the appellate record.

A. Judge Mata's Undisclosed Independent Investigation Into The Facts Was Structural Error Requiring Automatic Reversal Of The Judgment And A New Trial Before A New Judge

Before addressing other issues, pursuant to Family Law Rules 83(a)(1)(B) and 85(b)(6), Laura moves for an order that the Judgment be vacated in its entirety, and a new trial ordered before a different judge, on the basis of misconduct committed by the trial judge. Specifically, as explained below and in the Notice of Change of Judge For Cause filed concurrently herewith (which is incorporated by reference herein), there is clear and convincing evidence proving Judge Mata violated, *inter alia*, Rule 2.9(c) of the Arizona Code of Judicial Conduct which provides: "Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed." (emphasis added). Laura has separately reported this misconduct to the Judicial Conduct Commission.

Here, irrefutable evidence demonstrates Judge Mata violated Rule 2.9(c) by conducting her own "Internet research" into the facts of this case. She did so by reviewing information posted online regarding this case, and, even worse, she adopted one or more statements of fact into the Judgment which were not based on the evidence at trial, but rather were based solely on statements published on the Internet by Clayton's supporters.

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A. Legal Standard

Few legal rules, if any, are clearer than this: "Both federal and state constitutions guarantee that no person shall be deprived of life, liberty or property without due process of law." *Mecham v. Gordon*, 156 Ariz. 297, 302 (Ariz. 1988). And, of course, "The touchstone of due process under both the Arizona and federal constitutions is fundamental fairness." *State ex rel. Mitchell v. Palmer*, ___ Ariz. ___, 546 P.3d 101, 105, 2024 WL 1561618 (Ariz. 2024) (emphasis added) (quoting *State v. Melendez*, 172 Ariz. 68, 71, 834 P.2d 154 (Ariz. 1992)). *Ergo*, "A [party's] right to a fundamentally fair trial is critically important because it preserves both the appearance and reality of fairness, generating the feeling, so important to a popular government, that justice has been done." *Palmer*, *supra*, 546 P.3d at 105 (cleaned up) (quoting *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)).

Fundamental fairness in the context of due process has many different facets, but the key one is this – all litigants, in all courts, are entitled to have their cases heard and decided by a judge who is fair, neutral, unbiased and impartial; "Although the right to a trial before an impartial judge is not specifically enumerated in the Constitution, this principle has long been recognized by the United States Supreme Court." *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005) (noting, "to maintain public trust and confidence in the judiciary, judges should avoid the appearance of impropriety and should act to assure that parties have no reason to think their case is not being judged fairly.") (citing *Rose v. Clark*, 478 U.S. 570, 577 (1986); *Tumey v. Ohio*, 273 U.S. 510 (1927); *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004) ("Impartiality is the very foundation of the American judicial system.")); *see also Crime Victims R.S. v. Thompson*, 251 Ariz. 111, 117 (Ariz. 2021) (explaining, "[T]he denial of due process is a denial of fundamental fairness, shocking to the universal sense of justice … .") (quoting *Oshrin v. Coulter*, 142 Ariz. 109, 111, 688 P.2d 1001 (1984)).

Although Arizona case law on this exact issue is sparse (because instances of judicial misconduct in this state are thankfully rare), the United States Supreme Court has

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repeatedly agreed the Due Process Clause requires trial judges to be fair and unbiased, and that requirement is *not* illusory. The deprivation of a fair and unbiased judge is a structural error requiring *automatic* reversal of the judgment. *See Neder v. United States*, 527 U.S. 1, 9 (1999) (discussing difference between harmless error and structural errors, and explaining "we have found an error to be structural, and thus subject to automatic reversal, only in a very limited class of cases … such defects as the complete deprivation of counsel or trial before a biased judge." (emphasis added) (cleaned up) (citing *Tumey v. Ohio*, 273 U.S. 510 (1927) (biased trial judge constitutes structural error)).

As it must, the Arizona Supreme Court embraces the same standard:

> In cases involving trial error, we consider whether the error, so assessed, was harmless beyond a reasonable doubt. If so, we uphold the verdict entered. In a limited number of cases, however, structural error occurs. In such instances, *we automatically reverse the guilty verdict entered*. Unlike trial errors, structural errors deprive defendants of basic protections without which a … trial cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no … punishment may be regarded as fundamentally fair.

State v. Ring, 204 Ariz. 534, 552 (Ariz. 2003) (emphasis added) (cleaned up) (quoting *Neder*, 527 U.S. at 8–9).

Presumably due to the high ethical standards of most Arizona jurists, comparable instances of a judge conducting an undisclosed investigation into the facts of a case and then adopting findings based on that investigation, as occurred here, are essentially non-existent. However, courts in other states, applying the same legal standards, are in unanimous agreement – it is structural error, requiring automatic reversal, when a trial judge conducts an independent investigation into the facts of a case. This is so because the bedrock due process requirement of fairness: "requires that conclusions reached by the trier of fact be based upon the facts in evidence, and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court." *Dorsey*, 701 N.W.2nd 238, 249–50 (Minn. 2005) (emphasis added) (citing *Johnson v. Hillstrom*, 37 Minn. 122, 123, 33 N.W. 547, 548 (1887)).

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Thus, if a judge (especially in a bench trial) undertakes a personal investigation into the facts of a dispute, or makes findings based on his/her own independent research or knowledge (rather than based on evidence admitted at trial), this conduct is a *per se* violation of the Due Process Clause which constitutes structural, not harmless, error:

> First, the judge--sitting as the finder of fact--indicated by her comments during Worthy's testimony that she believed, based on facts not in evidence, that Worthy's statements about the date of Paige's death were likely false. These comments disregarded the judge's duty as the finder of fact to make factual determinations solely on the basis of evidence in the record.
>
> Second, the judge independently investigated a fact not introduced into evidence, violating her obligation as the finder of fact to refrain from seeking or obtaining evidence outside that presented by the parties during the trial. In *Price Bros. Co. v. Phila. Gear Co*., the Sixth Circuit Court of Appeals stated: "Unquestionably, it would be impermissible for a trial judge to deliberately set about gathering facts outside the record of a bench trial over which he was to preside."

Dorsey, 701 N.W.2nd at 250 (emphasis added) (cleaned up) (reversing defendant's conviction and ordering new trial, upon finding trial judge violated defendant's due process rights by conducting improper *ex parte* investigation into the facts of the case) (quoting *Smith v. State*, 64 Md. App. 625, 498 A.2d 284, 285–86 (Md. Ct. Spec. App. 1985) (citing *People v. Wallenberg*, 24 Ill. 2d 350, 181 N.E.2d 143, 145 (Ill. 1962) (ordering new trial where judge in bench trial considered facts not admitted into evidence in reaching his conclusion)).

The law on this point could not be any clearer – judges are absolutely forbidden, both as a matter of due process and judicial ethics, to conduct independent investigations into the facts of a case, and they are absolutely forbidden from making factual determinations based on the results of those investigations; findings of fact may only be based on evidence admitted at trial *or* matters which may properly be judicially noticed. *See* Ariz. Sup. Ct. R. 81, *Code of Judicial Conduct*, Rule 2.9(c) ("a judge shall not investigate facts in a matter independently, and shall consider only the evidence

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presented and any facts that may properly be judicially noticed."), and comment 6 ("The prohibition against a judge independently investigating the facts in a matter extends to information available in all mediums, including electronic."); *see also* American Bar Ass'n Formal Opinion 478, *Independent Factual Research by Judges Via the Internet*, Dec. 8, 2017 (explaining a judge may not use an Internet search to determine hours of operation, nor are business hours properly subject to judicial notice; This [internet] search violates Rule 2.9(C) of the Model Code of Judicial Conduct because the restaurant's hours of operation are key to whether the plaintiff could prevail ….")

When a judge ignores these most basic principles and conducts an independent investigation, the result is structural error requiring *automatic* reversal, regardless of whether the *ex parte* evidence found by the judge is true, false, or completely accurate:

> We conclude that Dorsey was deprived of the basic protection of an impartial judge and finder of fact when the judge independently investigated a factual assertion made by a key defense witness and revealed the results of her investigation to counsel. This deprivation constituted a structural error, which precludes harmless-error analysis and requires that we reverse *without regard to the evidence* in Dorsey's particular case.

Dorsey, 701 N.W.2nd at 253 (emphasis added) (cleaned up) (citing/quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)); *see also A.W. v. L.M.Y.*, 457 P.23d 216 (Kan.App. 2020) (reversing, in a family law case, trial court's order vacating stalking order where judge investigated facts independently; "an improper *ex parte* investigation by a district court is prejudicial when it bases its ruling, even in part, on the investigation and a fact that it inferred from that investigation.") (citing *Marriage of DePriest*, 422 P.3d 687, 2018 WL 3485722, at *4 (Kan. App. 2018)); *State v. McCorquodale*, 2021 WL 5446915 (Minn. App. 2021) (reversing conviction, and ordering a new trial before different judge where: "the district court made an important finding of fact that is not based on any evidence introduced at trial but, rather, is based on facts otherwise known or believed by the district court judge …. The district court's error is a structural error [that] requires automatic reversal of the conviction and a new trial.")

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B. Structural Error Occurred Here

On page 10 of the Judgment, Judge Mata made the following finding of fact which was purportedly based on testimony from Clayton's medical expert, Dr. Samantha Deans:

> She [Dr. Deans] testified that Planned Parenthood does not accept anonymous patients. They do not accept patients using an alias. Patients are required to provide a government issued form of identification. She further testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023. (emphasis added)

The underlined text quoted above proves, conclusively, that Judge Mata committed structural error by performing a secret, undisclosed *ex parte* investigation into the facts of this case. This necessarily included the judge reviewing information posted on the Internet by Clayton's followers which she then adopted as a finding of "fact". That conclusion is supported by two things.

First, attached to the Notice of Change of Judge is a true and correct copy of the transcript for the trial held in this matter on June 10, 2024. As reflected in this transcript, Dr. Deans never testified "Planned Parenthood is not open on Sundays." Nothing remotely approaching this was ever stated by Dr. Deans or any other trial witness. Indeed, the word "Sunday" appears *nowhere* in the trial transcript.

This leads to the second point – if the conclusion that "Planned Parenthood is not open on Sundays" did *not* come from the testimony of Dr. Deans (or any other trial witness), it begs the question – where did that finding come from?

The finding was based on statements published on social media by Clayton's followers. This is how we know Judge Mata conducted an improper investigation into the facts of this case – because her "finding" regarding Planned Parenthood's hours of operation was *not* based on any admitted evidence at trial; it was copied *verbatim* from social media comments, including an anonymous comment posted the day of trial on the personal website of undersigned counsel: [redacted]

[redacted]

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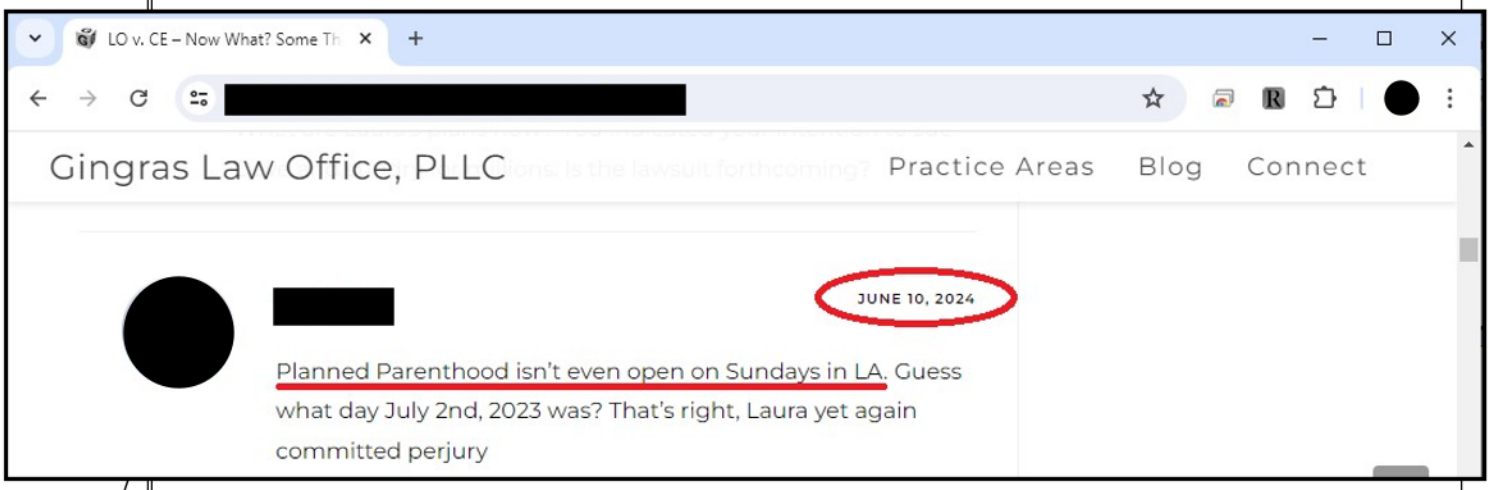

This evidence is, standing alone, sufficient to prove structural error. As a result, Laura is entitled to an order vacating the Judgment in its entirety, and ordering a new trial before a different judge pursuant to Family Law Rules 6.1 and 83(b).

II. OTHER ERRORS WARRANT CORRECTION/REVERSAL

Assuming structural error occurred, nothing else matters; automatic reversal is the only permissible option. However, to ensure a complete record, Laura also raises various other arguments regarding factual and legal errors contained in the judgment and the pre-trial proceedings.

A. Legal Errors

To prevent this brief from exceeding 100 pages or more, a full discussion of all legal errors committed by the trial judge is impossible. Instead, each point is only raised in the shortest format possible, to ensure non-waiver for appeal.

i. Sanctions Were Unavailable As A Matter Of Law

On May 10, 2024, Laura filed a Motion for Judgment on the Pleadings and Renewed Motion to Dismiss. That motion explained it was undisputed Clayton's counsel ignore the "safe harbor" requirements of Family Law Rule 26(c)(2)(A) and 26(c)(2)(B) (i.e., Mr. Woodnick never made any attempt to meet and confer with Laura before seeking sanctions, and Laura was never provided with the 10-day written notice regarding her safe harbor rights). Because of that undisputed error, the motion explained the trial judge was not permitted to "fix" Mr. Woodnick's mistake by granting sanctions under other authority (i.e., *sue sponte*).

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As is true of substantially every other legal issue, the trial judge simply ignored this argument and awarded sanctions without any legal grounds to do so. This was clear error as a matter of law.

ii. The Bench Trial Violated Laura's Right To A Jury Trial Under Arizona's Constitution

Just days ago, the United States Supreme Court issued a decision explaining that litigants cannot be denied their constitutional right to a jury trial simply because the rules of a forum do not permit a jury trial. In that case, *SEC v. Jarkesy*, 2024 U.S. LEXIS 2847 (June 27, 2024), the Supreme Court explained the right to a jury trial does not depend on the type of forum or the specific label of the claim(s) at issue; what matters is whether the "remedy" sought is "legal in nature". If so, the constitutional right to a jury trial attaches, no matter what forum the case may be in, or how the claims are framed:

> The Seventh Amendment extends to a particular statutory claim if the claim is legal in nature … . What determines whether a monetary remedy is legal is if it is designed to punish or deter the wrongdoer, or, on the other hand, solely to "restore the status quo." As we have previously explained, "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment [and therefore requires a jury trial]."

Jarkesy, 2024 U.S. LEXIS 2847, *21 (quoting authorities).

To be clear – *Jarkesy* only addressed the *federal* jury trial right under the Seventh Amendment, and that specific provision of the Bill of Rights does *not* apply in state court. *See Fisher v. Edgerton*, 236 Ariz. 71, 81 (App. Div. 1 2014) (explaining, "the Seventh Amendment right to a jury trial does not apply to the states …") (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 757 n.13 (2010)). This point is irrelevant, however, because "both Article 2, Section 23, and Article 6, Section 17, of the Arizona Constitution provide in pertinent part that the right to a jury trial 'shall remain inviolate' … and [courts] interpret Arizona's constitutional provisions protecting the right to a jury trial consistent with the Seventh Amendment." *Fisher*, 236 Ariz. at 81–82.

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To be fair, in *Fisher*, the Court of Appeals *rejected* the appellant's argument that Ariz. R. Civ. P. 77 (providing for an award of attorney's fees in certain appeals from compulsory arbitration) violated her right to a jury trial under Arizona's constitution. But that finding was based on two materially different facts; "The possibility of a fee award here does not act as an unreasonable or significant burden impairing the right to a jury trial. Rule 77 and A.R.S. § 12-133(I) both provide safeguards to ensure that *the right to have a jury decide ultimate issues is not significantly burdened or impaired*. The superior court is limited to awarding reasonable attorneys' fees and expert fees, *and may decline to award such fees if it would create a significant economic hardship on the appellant*." *Fisher*, 236 Ariz. at 82 (emphasis added).

Here, both of these safeguards were entirely absent. First, as an initial matter, unlike *Fisher*, here the ultimate issues were *not* decided by a jury; they were decided solely by the court. That fact, standing alone, explains why this case is completely different from *Fisher*. Second, Clayton has requested an award of more than $150,000 in fees, and there is no provision for the court to "decline" to award those fees based on economic hardship. Third, Clayton asked the Court to find (and it actually did find) that Laura engaged in fraud and other conduct that would be tortious and actionable in a civil proceeding (assuming it was true, which it was not).

In effect, unlike the outcome in *Fisher*, what occurred in this case is that a single judge was permitted to decide all ultimate issues in the case, and then award an unlimited amount of fees to punish Laura as a result. This outcome clearly and directly violated Laura's right to a jury trial under Arizona's constitution.

iii. The Court Lacked Subject Matter Jurisdiction Over Tort Claims Such As Defamation, Fraud And Extortion

In her very first substantive filing after retaining counsel, on December 28, 2023, Laura moved to dismiss this matter, with prejudice. In that motion, Laura asserted the Court had subject matter jurisdiction pursuant to A.R.S. § 25-801 "to establish maternity or paternity." Because Laura acknowledged she was no longer pregnant, the motion

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asserted the case was moot, and the court no longer had subject matter jurisdiction over any issue other than attorney's fees (while noting Clayton was not entitled to fees because he failed to comply with *any* of the procedural requirements of Rule 26).

Along these same lines, notwithstanding the fact that the Court did have jurisdiction to decide issues of paternity, it is equally clear this Court lacked subject matter jurisdiction over *all* the ultimate claims and issues decided at trial. That is particularly true given that *paternity* was not a disputed issue that was ever actually or necessarily litigated (the final judgment *does* purport to make a finding of "non-paternity", but this relief is not provided for in any subpart of Title 25, Chapter 6).

In short, while presenting his primary claims as a request for sanctions, the substance of Clayton's arguments at trial were (and always have been), that Laura lied about being pregnant, that Laura published false statements about Clayton to the media, and that Laura attempted to use the fabricated pregnancy claim as a means to "extort" Clayton into dating her. All of these tort claims/theories would support causes of action, if they had a valid factual basis (which they did not), but Clayton could not have litigated those tort claims within the limited jurisdiction of the Family Court, and he could not have invoked the family court's jurisdiction as to those claims under Title 26, Chapter 6.

Traditional civil tort theories such as defamation, fraud, and civil extortion surely *could* be pursued in the normal civil department of this Court, in which both parties would have a mandatory right to have the ultimate issues decided by a jury, and where the available remedies would be *vastly* different. For instance, if Clayton had sued Laura for defamation and won, he would *not* be entitled to an award of attorney's fees since legal fees are unavailable as a matter of law in civil defamation cases. *See*, *e.g.*, *Gitman v. Simpson*, 2021 WL 1885008, *5 n.1 (App. Div. 1 2021) (attorney's fees are not available in defamation actions as a general rule).

Indeed, not only could such tort claims be *properly* brought in (and only in) the normal civil division, as explained in Laura's Request for Judicial Notice filed on April 12, 2024, Clayton's counsel, Gregg Woodnick, previously tried exactly that approach –

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by bringing civil tort claims against Laura for *fraud* and *intentional infliction of emotional distress* in *Owens v. Gillespie*, CV2021–052893. As shown in the Request for Judicial Notice, Mr. Woodnick lost that case, with the court granting summary judgment as to the counterclaims. This helps explain Mr. Woodnick's decision to bring essentially the identical tort claims in a different court, *knowing* this court lacked subject matter jurisdiction over claims of this nature.

iv. The Court Applied The Wrong Legal Standard

As a general rule, parties who come to Court seeking judicial assistance are not subject to a strict-liability evidentiary standard. Parties who bring claims, made *before* discovery has begun, are never required to exhaust every possible avenue to confirm, verify, and double or triple-check the veracity of their allegations before filing suit.

On the contrary, the Arizona Supreme Court (like essentially every court in the United States) merely requires that litigants conduct *some* reasonable investigation into the facts, and that they have an objective basis to believe their claims *may* be colorable:

> A claim is colorable … when it has some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim. The question is whether a reasonable attorney could have concluded that facts supporting the claim *might be established*, not whether such facts actually *had been established*.

Boone v. Superior Court, 145 Ariz. 235, 240 (Ariz. 1985) (emphasis in original).

To restate the correct legal standard, the question is NOT whether an allegation made in a pleading *has actually been established* before the case is brought (which is the incorrect legal rule applied here). Rather, the question is whether the party asserting the claim has *some plausible basis* to believe their factual allegations *might be established*.

Again, the Arizona Supreme Court has repeatedly and consistently found sanctions are NOT justified simply because a litigant asserted a claim that ultimately was not successful. That is not the proper standard, and never has been. Instead:

> [E]ven under the more stringent provisions of the recent revision to Rule 11(a), counsel is required only to make an investigation which is

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> reasonable under the circumstances that exist at the time of filing the pleading. The new rule requires no more than a good faith belief, *formed on the basis of that reasonable investigation*, that a colorable claim exists. The rule is "not to be used to require [counsel] to offer proof of the [pleading] before discovery and before trial."

Boone, 145 Ariz. at 241 (underlining emphasis added; italics in original) (quoting *Chipanno v. Champion International Corporation*, 702 F.2d 827, 831 (9th Cir. 1983)).

Here, in the post-trial Judgment, the Court purported to find Laura filed this action "without substantial justification" because, in the trial judge's view, Laura failed to "act reasonably" in seeking pre-natal care and failed to take "reasonable" steps to "verify" her pregnancy; "Specifically, Petitioner acted unreasonably when she initiated litigation without basis or merit. Without an authentic ultrasound, sonogram, physical examination, and in conjunction with a belief she passed tissue in July 2023, the Court finds the underlying Petition premature at best."

Those findings, and the resulting award of sanctions, were based on a clearly erroneous application of the wrong legal standard. First, nothing in Arizona law requires a woman to have an "ultrasound, sonogram, [or] physical examination" or any other procedure before she may bring an establishment petition under A.R.S. § 25–806(A). That provision requires nothing more than "a verified petition that alleges that a woman is … pregnant with a child conceived out of wedlock and that the respondent is the father of the child or children."

Second, the correct legal standard is not whether Laura "acted unreasonably when she initiated litigation without basis or merit." That is a purely erroneous legal rule.

Instead, the question is whether at the time she filed this action on August 1, 2023, did Laura have *some basis* to think she *MIGHT be* pregnant and that Clayton *MIGHT be* the father? *See Boone*, 145 Ariz. at 240 ("The question is whether a reasonable attorney could have concluded that facts supporting the claim *might be established*, not whether such facts actually *had been established*.") (emphasis in original).

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Events which occurred *after* August 1, 2023 (such as the low 102 HCG test result some two and a half months later in mid-October 2023) are completely irrelevant to that issue. Again, the relevant question is whether Laura believed she *might be* pregnant on August 1, 2023, regardless of whether she miscarried later, and regardless of whether she was, in fact, never pregnant at all.

It is an undisputed fact that before this action as filed, Laura tested positive for pregnancy on multiple occasions including a surprise test taken at Clayton's residence. Clayton admitted, in writing, that the sexual contact with Laura might have resulted in pregnancy – he said this in his own words. It is also undisputed Laura asked Clayton to agree (privately) to a DNA test which would have confirmed (or not) both the existence of the pregnancy and the paternity of the father. After Clayton refused to voluntarily agree to testing, Laura filed this action to force Clayton to participate in a test.

Although Laura maintains that she was, in fact, pregnant, applying the correct legal standard here, it actually would not have mattered if Laura was *never pregnant at all*. Indeed, one of Clayton's arguments (albeit one which lacked any factual basis) is that Laura may have taken epilepsy medication that produced a false positive result. Although Clayton's medical expert offered no testimony to support this, and although Laura's medical expert directly rejected this theory, it is theoretically possible that Clayton was right – perhaps Laura was *never actually* pregnant, but unbeknownst to her, one or more of her medications caused her to receive multiple false positive pregnancy tests.

In that situation, there would be no basis to sanction Laura for *unknowingly* filing this action based on a freak medical scenario of which she was completely unaware. Indeed, the undisputed evidence at trial showed Laura attempted to investigate this possibility of a false positive test by discussing that issue with her doctor *before* this case was filed. *See* Judgment at 5–6 (noting, "Respondent suggested that the positive test was the result of Petitioner's epilepsy medication. Petitioner emailed Dr. Glynnis Zieman, MD from Barrow Concussion & Brain Injury Center on June 28, 2023. (Ex. A. 3). The subject of the email is "Pregnancy and Seizure Med?")

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Here, the undisputed facts are that Clayton made a written admission that he saw at least one positive pregnancy test (the one Laura took in front of him on June 19, 2023), leading him to question whether Laura may have taken medication that caused false positive results. Before this matter was filed, it is undisputed Laura discussed that exact issue with her doctor in an email sent on June 28, 2023.

Even if the medical advice Laura received from her doctor was *wrong* (and there is no basis to support such a conclusion), and even if Clayton's theory was *right* – i.e., that Laura's epilepsy medication caused a false positive result, and even if Laura was never actually pregnant at all, there is simply no evidence to show that she *knew all these things before this action was filed*. Thus, if the trial court had applied the correct legal standard, it could not have properly found Laura lacked a good faith basis to think she *might* be pregnant when this action was filed, even if that belief was incorrect.

v. The Court Misapplied A.R.S § 25–324

The final judgment awards fees under A.R.S. § 25–324 based on a finding of unreasonable litigation conduct on Laura's part. This is plain error because A.R.S. § 25–324 does not apply to paternity proceedings; it only applies to "the costs and expenses of maintaining or defending any proceeding under this chapter [3] or chapter 4, article 1 of this title." The correct statute for a fee award in a paternity action would have been A.R.S. § 25–809(g), which contains essentially the same standard: "the court may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this article."

But here, the Court erred as a matter of law because A.R.S. § 25–809(g) only permits an award where a party has engaged in *unreasonable* litigation conduct and such conduct necessarily caused the other party to incur unnecessary fees/costs; "For the purposes of this subsection, "costs and expenses" includes attorney fees, deposition costs, appellate costs and other reasonable expenses the court determines were necessary."

Here, essentially every penny of legal fees requested by Clayton involves work done *after* Laura moved to dismiss this matter with prejudice on December 28, 2023. By

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moving to dismiss with prejudice, Laura offered to give Clayton all the relief he was entitled to, thereby obviating any need for further litigation. As was explained in Laura's Motion for Judgment on the Pleadings (filed May 10, 2024), substantial legal authority supports the conclusion that sanctions (and fees) are not available as a matter of law once a party offers to withdraw their claims with prejudice; "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." *Westerkamp v. Mueller*, 2023 U.S. Dist. LEXIS 96531; 2023 WL 3792739, *9 (D.Ariz. 2023) (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].")

Here, once Laura moved to dismiss with prejudice, there was absolutely no need – NONE – for further litigation as to any paternity issues within the family court's jurisdiction. Of course, Clayton refused to accept this because he did not care about any paternity issues. Instead, he wanted to use this action to continue litigating tort claims that were effectively *identical* to those Mr. Woodnick brought and lost on behalf of Mr. Gillespie. But Clayton's decision to unlawfully misuse a family court proceeding to litigate a pseudo-civil tort claim does not mean that such work was "necessary" to resolve the paternity claims within the meaning of A.R.S. § 25–809(g).

B. Factual Errors

Multiple subparts of Rule 83(a)(1) permit mistakes in a judgment to be corrected for various reasons such as where the court "did not properly consider … admitted evidence" (Rule 83(a)(1)(A)), "mistaken overlooked or misapplied uncontested facts…" (Rule 83(a)(1)(G)), or where a finding of fact is "not supported by the evidence…". (Rule 83(a)(1)(H)). Here, the Judgment contains multiple factual errors which implicate one or more subparts of Rule 83(a)(1). Accordingly, those errors should be corrected as follows.

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1. Page 2 of the Judgment contains the following finding: "Laura Owens ("Petitioner") filed a pro per Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support on May 20, 2023."

This finding is factually incorrect; this matter was filed on August 1, 2023, not May 20, 2023 (May 20, 2023 is the date the parties engaged in sexual contact).

2. Page 2 of the Judgment contains the following finding: "On October 6, 2023, Petitioner filed for an ex parte Order of Protection ("OOP") in FC2023-052771. After a hearing, the OOP was affirmed. The same day the Ravgen results indicated "little to no fetal DNA."

As to the last sentence of this finding (i.e., that Ravgen results were received on "the same day" - October 6, 2023) the finding is unsupported by any admitted evidence.

3. Page 2 of the Judgment contains the following finding: "October 25, 2023, the parties appeared before Commissioner Doody to determine the validity of the contested OOP in FC2023-052771. Petitioner's abdomen again appeared swollen. During this hearing, she testified to the validity of the sonogram sent to Respondent, the media, and a Dropbox on Reddit, and further testified the parties were having a son. She later testified she believed she was having fraternal twins, one boy and one girl.

As to the finding, "she testified to the validity of the sonogram sent to Respondent, the media, and a Dropbox on Reddit," this finding is contrary to the evidence and is not supported by any admitted trial evidence. As to the last sentence of this finding (i.e., that Laura testified before Judge Doody that "she believed she was having fraternal twins, one boy and one girl…") the finding is factually unsupported by any admitted evidence because Laura never offered such testimony before Judge Doody.

4. Page 3 of the Judgment contains the following finding: "December 6, 2023, a second Ravgen test confirmed 'little to no fetal DNA.'"

As to the date of the second Ravgen test – December 6, 2023 – this finding is factually unsupported by any admitted evidence.

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5. Page 3 of the Judgment contains the following finding: "December 28, 2023, Petitioner filed a Motion to Dismiss Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support with Prejudice in conjunction with a Notice Requiring Strict Compliance with Arizona Rules of Evidence, thereby invoking A.R.F.L.P. Rule 2(a). Petitioner cited the basis for the dismissal that she "is not now pregnant with Respondent's children." (Dkt. No. 32 at 1). The motion was denied as the issue of attorney's fees, costs, and sanctions remained.

As to the last sentence of this finding (i.e., that the Motion to Dismiss filed by Laura on December 28, 2023 "was denied"), that finding is not supported by any admitted evidence and it overlooks or misapplies uncontested facts. The docket in this matter reflects that on January 25, 2024, the court issued an order *granting* Laura's December 28, 2023 Motion to Dismiss with the following language: "Petitioner advises she is no longer pregnant and has filed a Motion to Dismiss. While the Court will grant the Motion, the issue of sanctions and attorney's fees remain."

6. Page 4 of the Judgment contains the following finding: "At trial, Petitioner testified that the parties had sexual intercourse, and that it was rape."

This finding misstates the evidence. Laura asserted, both at trial and before, that Clayton briefly inserted his penis into her vagina without her consent, and that this conduct may fit the "technical" definition of rape, but that she did not intend to accuse him of rape and that she did not personally consider his conduct to be rape or any other crime.

7. Page 4 of the Judgment contains the following finding: "Petitioner testified she has been pregnant four times. Each time, the alleged father believed she fabricated the pregnancy, and doctored medical records.

As to the second sentence of this finding, the finding was not supported by any admitted evidence. In addition, the specific question regarding the beliefs of other third parties was the subject of an objection as to lack of foundation which was sustained.

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8. Page 5 of the Judgment contains the following finding: "In the 'Something to Consider' email Respondent maintains that the lack of sexual intercourse would preclude him from being the father of the fetuses. (Ex. A. 2)."

This finding is not supported by, and is directly contrary to, the admitted evidence. In the "Something to Consider" email (Petitioner's Exhibit A2), Respondent specifically stated exactly the opposite of the Court's finding; i.e., that the lack of sexual intercourse *would not* preclude him from being the father because Respondent admitted there was sufficient other sexual contact that pregnancy WAS possible, even though he believed the likelihood was "very low":

Except From Petitioner's Exhibit A2

> Considering you only performed oral sex on me (and no vaginal penetration occurred), the chances of you being pregnant seem considerably low. Although again, maybe rubbing up against one another allowed a sperm to make its way inside you, but it's a very low probability. Nonetheless, it is one.

9. Page 6 of the Judgment contains the following finding: "While she failed to provide records of any Planned Parenthood appointment, anonymous or under an alias, Respondent presumably sought records from all Mission Viejo Planned Parenthoods as that is where, up until today, Petitioner disclosed she sought care."

This finding is not supported by admitted evidence.

10. Page 6 of the Judgment contains the following finding: "The Court was not provided with evidence of the positive COVID test but maintains that the nature of her high-risk pregnancy would warrant a visit to the emergency room who would be equipped to care for a high-risk pregnancy wherein the Mother was COVID positive.

This finding is not supported by admitted evidence and further reflects the Court did not properly consider or weigh all of the admitted evidence. Specifically, the Court *assumed* (without any basis for doing so) that a "visit to the emergency room" was the only proper response to the events that occurred on July 23, 2023. There was no admitted

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medical testimony to support this speculative conclusion, and the Court's assertion further ignores the fact that Laura was considering terminating the pregnancy via medical abortion, in which case "care for a high-risk pregnancy" was entirely unnecessary.

11. Page 7 of the Judgment contains the following finding: "Petitioner admitted to changing an hCG test result to reflect 31,000. (Ex. B. 17)."

This finding is not supported by any admitted evidence.

12. Page 7 of the Judgment contains the following finding: "October 16, 2023, the Petitioner's blood was drawn, and the results were hCG levels of 102. (Ex. A. 9). Petitioner changed the results to reflect 102,000."

The second sentence of this finding is not supported by admitted evidence.

13. Page 7 of the Judgment contains the following finding: "Upon denial of her Request [for mediation], however, she did not file a Motion to Dismiss or make other arrangements to advise Respondent of the development.

This finding is not supported by any admitted evidence and is directly contrary to the undisputed facts; Ms. Owens, through counsel, filed a Motion to Dismiss With Prejudice on December 28, 2023.

14. Page 7 of the Judgment contains the following finding: "The Court finds this testimony uncredible and a misuse of judicial resources."

"Uncredible" is not a word, and to the extent the "misuse of judicial resources" finding referred to the immediately preceding finding that Laura "she did not file a Motion to Dismiss or make other arrangements to advise Respondent of the development[]", this finding is not supported by admitted evidence and it ignores the fact Ms. Owens could not "advise Respondent of the development" because he had blocked her ability to communicate with him, and, moreover, Respondent had sought and obtained an injunction against harassment prohibiting Laura from communicating with him.

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15. Page 7 of the Judgment contains the following finding: The Court finds failure to seek in person care for a high-risk pregnancy to be both unreasonable and uncreditable.

"Uncreditable" is not a word, and to the extent the Court found Laura's conduct to be "unreasonable", that finding is not supported by admitted evidence, and is based on an application of the incorrect legal standard (this was not a negligence case, and the reasonableness of Laura's healthcare decisions is not relevant to any fact at issue).

16. Page 7 of the Judgment contains the following finding: "The Court further finds that going to Banner for a pregnancy test, but not the passage of fetal tissue to be unreasonable and uncredible. A reasonable person, if seeking emergency room care to confirm a pregnancy, would not rely on telehealth to confirm the non-viability of the pregnancies.

"Uncredible" is not a word, and to the extent the Court found Laura's conduct to be "unreasonable", that finding is not supported by admitted evidence, and is based on an application of the incorrect legal standard (this was not a negligence case, and the reasonableness of Laura's healthcare decisions is not relevant to any fact at issue).

17. Page 9 of the Judgment contains the following findings: "The Court finds Dr. Medchill's testimony that .1% chance that Petitioner received a false positive due to several medications she is in fact taking, possible trigger shot for hCG, and a prior history of ovarian cancer to dimmish [sic] his creditability. Especially given that records that the Petitioner testified existed were not presented to her own expert for review and consideration.

"Dimmish" and "creditability" are not words. The finding that Laura had a "prior history of ovarian cancer" was not supported by any admitted evidence at trial. The finding "that records that the Petitioner testified existed were not presented to her own expert for review and consideration[]" was not supported by any admitted evidence at trial.

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18. Page 9 of the Judgment contains the following findings: "Dr. Medchill testified that a blood hCG level of 102 is proof of a non-viable pregnancy. While Dr. Medchill testified that a non-viable pregnancy is still a pregnancy, the Court finds that altering the number to reflect 102,000 which would be a viable pregnancy to indicate that she intended for the Respondent to believe that she was still pregnant with viable fetuses."

The finding that Laura altered an HCG test "to reflect 102,000" was not supported by any evidence admitted at trial.

19. Page 9 of the Judgment contains the following findings: "Dr. Medchill concluded that the Petitioner became pregnant on May 20, 2023, and ended with a "spontaneous abortion" late October, early November, or possibly sooner in 2023. Given the alterations of the only records to indicate pregnancy the Court does not accept this conclusion."

The finding that Laura altered "the only records to indicate pregnancy" misstates the evidence and was not supported by any admitted evidence at trial.

20. Page 10 of the Judgment contains the following findings: "the Court does not accept that twenty-four-week-old twin fetuses would be reabsorbed into a mother's body. The Court further finds a miscarriage at that stage of pregnancy would result in emergency medical care and corresponding death certificates of the twins. If what Dr. Medchill testified to is true, and she miscarried much sooner, negating the need for the death certificates, then Petitioner perjured herself at a prior hearing."

No aspect of the above finding was supported by any evidence at trial.

21. Page 10 of the Judgment contains the following finding regarding the testimony of Dr. Deans: "She further testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023."

This statement was not supported by any admitted evidence at trial.

22. Page 10 of the Judgment contains the following findings: "After reviewing the records, Dr. Deans determined that the hCG tests were never dispositive of pregnancy and that the related miscarriage timeline, *which included detailed analysis* of the likely origin of hCG in Petitioner's blood and urine was not indicative of human gestational norms." (emphasis in original)

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No part of this finding was supported by any admitted evidence at trial.

23. Page 10 of the Judgment contains the following finding: "Petitioner has a prior history of ovarian cancer that prompted the surgical removal of her right ovary."

No part of this finding was supported by any admitted evidence at trial.

24. Page 12 of the Judgment contains the following findings: "Petitioner provided Respondent with a sonogram that was posted on YouTube seven years ago. Petitioner admitted to this during her deposition (Ex. A. 28).

As to the finding that "Petitioner admitted to this during her deposition", no part of this finding was supported by any admitted evidence at trial.

25. Page 17 of the Judgment contains the following findings: "THE COURT FURTHER FINDS that Petitioner repetitively failed to comply with Rule 49, even on Order of this Court."

No part of this finding was supported by any admitted evidence at trial. Furthermore, the Court seems to have completely misunderstood and/or misinterpreted Rule 49 as requiring Laura to somehow *predict* information sought by Clayton and then disclose that information *without* Clayton ever asking for it.

In this regard, the Court's interpretation of Rule 49 was plainly erroneous as a matter of law. Nothing in Rule 49 required Laura to disclose ***any*** information about the names of doctors she had seen, or medical records of any kind. If Clayton wanted such information, he could have served interrogatories under Rule 60, or document requests under Rule 62 which asked for this information. Clayton did not do so. Instead, he simply took the position (baselessly) that Rule 49 required the automatic disclosure of any/everything Clayton believed was relevant, even if the information was not within any part of Rule 49's disclosure requirements.

In addition, Clayton's Motion to Compel was filed on March 10, 2024, and in that pleading he argued Laura had "willfully and wantonly failed to disclose information pursuant to Rule 49." Clayton's arguments were directly contrary to the minute entry

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order issued in this case on February 21, 2024 in which the Court stated: "IT IS FURTHER ORDERED the parties shall complete initial disclosure no later than (45) days from today's date."

45 days from February 21, 2024 meant that Laura's Rule 49 disclosures were not even due until Saturday, April 6, 2024. Of course, because the last day was a Saturday, that meant per the Court's own order, Laura's Rule 49 disclosures were not due until Monday, April 8, 2024. *See* Family Law Rule 4(a)(3).

Despite this, Clayton's Motion to Compel was file nearly a month before Laura's Rule 49 disclosures were even due, and the Motion to Compel further falsely stated that Laura had no previously made any disclosures at all under Rule 49 (a point which is 100% factually false).

The finding that Laura "repetitively failed to comply with Rule 49," was plainly erroneous, and the Court's finding in this request was directly contrary to law.

26. Page 18 of the Judgment contains the following findings: "the Court having determined that Laura Owens has a pattern of similar, if not identical behavior, and court involvement …"

No part of this finding was supported by any admitted evidence at trial.

III. ADDITIONAL RELIEF REQUESTED

Pursuant to Family Law Rule 85(b)(6), Laura further requests that he following prior orders be vacated:

- January 25, 2024 Order Granting Clayton's Motion for Leave to Amend;
- February 14, 2024 Order Denying Laura's Motion to Dismiss;
- April 3, 2024 order deny Laura's Request for Extension of Time to Respond to Clayton's Motion to Compel;
- April 9, 2024 Order Granting Clayton's Motion to Compel;
- May 1, 2024 Order Denying Laura's Motion to Compel Lunch;
- May 22, 2024 Order Denying Laura's Motion to Strike and Motion in Limine;
- May 29, 2024 Order Denying Laura's Motion for Judgment on the Pleadings

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First, many of the trial court's orders granted relief in favor of Clayton (i.e., his request for leave to amend, and his Motion to Compel), but in substantially every instance, Clayton's counsel, Gregg Woodnick, filed those motions without making any attempt to meet and confer as required by Family Law Rule 9(c). Compliance with that rule is not optional, but Mr. Woodnick repeatedly ignored it without any basis.

Mr. Woodnick further filed a Motion to Compel which did not contain the good faith consultation certificate required by Rule 65(a)(1), and, *incredibly*, the Motion to Compel did not ask for an order requiring Laura to respond to any specific discovery requests (because no discovery requests had been made regarding the information sought in the motion). *Incredibly*, the Motion to Compel was solely based on Laura's alleged failure to disclose under Rule 49, but the information sough (records from third parties) was not subject to any aspect of Rule 49's disclosure requirements.

As noted above, the Motion to Compel also contained knowingly false and fraudulent statements of fact and omissions including: 1.) a statement falsely claiming Laura had "willfully and wantonly failed to disclose information pursuant to Rule 49", and 2.) an intentionally deceptive omission which failed to remind the Court that per the Court's minute entry order issued February 21, 2024, Laura's initial Rule 49 disclosures were not due until nearly a *month* after the Motion to Compel was filed. These knowingly false representations and omissions by Clayton's counsel constituted fraud sufficient to entitle Laura to relief pursuant to Rule 85(b)(3).

In short, assuming this matter is assigned to a new judge, all orders issued in this case by the prior judge should be vacated on the basis that they were issued improperly, without factual or legal basis, often in direct disregard for the Rules of Procedure, by a judge with not only significant bias, but strong personal animus towards a party (which was, unfortunately, not possible to prove until just days ago).

Finally, pursuant to Family Law Rule 35(a)(2), Laura respectfully requests leave to exceed the 17-page limit of that rule. Good cause exists to submit a longer brief due to the large number of errors and issues discussed above. This is particularly true because as

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a matter of law, Laura cannot raise arguments for the first time on appeal, and most (though not all) of the problems described above occurred in such a manner (i.e., post trial) that Laura had no prior opportunity to present and preserve these objections.

IV. CONCLUSION

For the reasons stated above, Laura respectfully requests an order vacating the June 17, 2024 Judgment in its entirety, granting additional relief as requested above, and ordering a new trial before a new judge.

DATED July 12, 2024.

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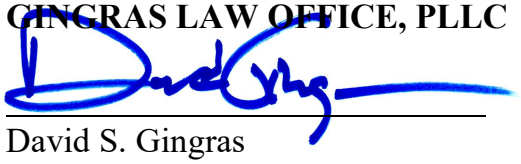

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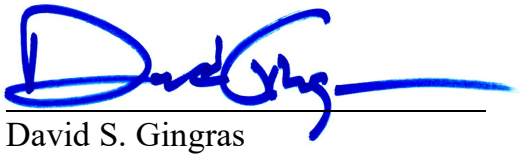
GOOD FAITH CONSULTATION CERTIFICATE

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.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United State of America and the State of Arizona that the foregoing is true and correct.

EXECUTED ON July 12, 2024.



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