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MARICOPA COUNTY SUPERIOR COURT

STATE OF ARIZONA

In Re Matter of: **LAURA OWENS,** **Petitioner,** **And** **CLAYTON ECHARD,** **Respondent.**	Case No: FC2023-052114 **MOTION TO COMPEL LUNCH AND FOR ALTERNATIVE RELIEF** **(Assigned to Hon. Julie Mata)**

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Various procedural rules (e.g. Rule 9(c)) require lawyers to talk, in person or by phone, before they may file motions. Email discussions are not enough.

But what if a lawyer refuses to talk with you? How can counsel complete the mandatory pre-filing conference requirements of Rule 9(c) when opposing counsel won't accept your calls?

The answer was provided nearly 20 years ago in a classic decision from the irreplaceable Hon. Pendleton Gaines (deceased) in *Physicians Choice of Ariz., Inc. v. Miller*, Case No. cv2003–020242, a copy of which is attached hereto as Exhibit A. In *Miller*, plaintiff's counsel wanted to speak with defense counsel about a potential settlement. Defendant counsel refused to talk, citing various concerns.

Undaunted, Plaintiff's counsel filed a *Motion to Compel Acceptance of Lunch Invitation* asking the Court to order recalcitrant defense counsel to meet for lunch. In his order granting the motion, Judge Gaines explained:

> The Court has rarely seen a motion with more merit. The motion will be granted.
>
> The Court has searched in vain in the Arizona Rules of Civil Procedure and cases, as well as the leading treatises on federal and Arizona procedure, to find specific support for Plaintiff's motion. Finding none, the Court concludes that motions of this type are so clearly within the inherent powers of the Court and have been so routinely granted that they are non-controversial and require no precedential support.

Physicians Choice of Ariz., Inc. v. Miller, Case No. cv2003–020242, minute entry order dated July 16, 2006 at 1 (emphasis added).

By this same authority, undersigned counsel for Petitioner Laura Owens moves the Court for an order requiring Respondent's counsel, Gregg Woodnick, to accept an invitation to meet for lunch. Without needlessly delving into the details, there has been a communication breakdown between counsel, resulting in Mr. Woodnick refusing to speak with undersigned counsel by phone.

Mr. Woodnick may offer some explanation for why this has occurred, but that is mostly beside the point. If Mr. Woodnick chooses to describe his reasons, it would ultimately be counterproductive since it would only lead undersigned counsel to offer a detailed rebuttal. This would only expand the conflict, not narrow it.

So, instead of detailing the reasons leading to the communication breakdown, the undersigned offers some simple avowals to the Court:

1. Undersigned counsel has now obtained a complete copy of Ms. Owens's file from her former attorney Cory Keith. No further response has been received from Ms. Lindvall's firm, but due to her brief participation in this matter, this is not a problem. The level of detail in Mr. Keith's files is sufficient to prepare this matter for trial.

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2. Upon reviewing Mr. Keith's files, and looking at recent disclosures provided by Mr. Echard's side, it is clear this case is *extremely* complicated and there are many factual and legal issues counsel need to discuss, urgently.

3. To offer some specific examples:

   a. Just days ago, on March 29, 2024, Mr. Echard provided a Second Supplemental Disclosure Statement. In this document, Mr. Echard disclosed, for the first time, that he intends to call nine (9) witnesses at trial, including three experts who were not previously disclosed. Despite this, Mr. Echard has disclosed no expert reports of any kind, nor has he disclosed the substance of each expert's testimony, the opinions to be offered by the experts (if any), and the bases upon which the experts' opinions were formed. All of that information is mandatory under not only Rule 49(j), but also Ariz. R. Evid. 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993).

   b. Mr. Echard's extremely late, and thus far incomplete, expert disclosures raises the possibility (and likelihood) that Ms. Owens will need to retain her own experts and/or possibly bring a *Daubert* motion to exclude Mr. Echard's experts. However, due to Mr. Echard's failure to disclose sufficient information about *what*, if anything, his experts plan to say, it is impossible to know if a *Daubert* motion would be appropriate.

   c. Given that this matter is set for a 2-hour evidentiary hearing, Mr. Echard's extremely late disclosure of *nine* anticipated trial witnesses raises the possibility that Ms. Owens may need to ask the Court to designate this matter as a complex case under Rule 50.

4. For these reasons, and *many* others, it is possible substantial additional motion practice may be needed in this case. Undersigned counsel is fully aware proceedings in the family law department are generally less formal than typical civil cases, and the rules are often more relaxed. *See*, *e.g.*, Rule 2.

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5. Nevertheless, because Mr. Echard is seeking to expand and aggressively litigate this case in the hopes of obtaining a substantial award of attorney's fees, Ms. Owens has no choice but to respond with an appropriate degree of care. That means Ms. Owens must bring certain matters to the Court's attention, despite having no desire to do so, if only to protect the appellate record.

For all these reasons, Mr. Woodnick's refusal to speak with undersigned counsel has created an impossible situation. This is an extremely complicated case, and it appears to be growing in complexity with each new (and belated) disclosure by Respondent.

If there is any hope of resolving this case, or even getting the case ready to be resolved in June, the lawyers have a lot to talk about. For that reason, just as Judge Gaines held in *Physicians Choice*, good cause exists for the Court, under its inherent authority, to order Respondent's counsel to meet Petitioner's counsel for lunch as soon as is reasonably practical – hopefully even later this week.

Although undersigned counsel is optimistic this request, if granted, will lead to more productive discussion between counsel thereby removing the need for further assistance from the Court, in the event the problem continues, Ms. Owens further respectfully asks the Court to *waive the requirements of Rule 9(c)* for the remainder of this proceeding. To support that request, Ms. Owens notes Respondent has recently filed motions in which he either ignored Rule 9(c) completely (such as Respondent's Motion to Withdraw Motion for Sanctions, filed 4.3.24) or which he ignored the rule in substantial part (such as Respondent's Motion to Compel, filed 3.11.24).

As a matter of fairness, it would clearly be inappropriate to allow Respondent's counsel to ignore Rule 9(c) (as he repeatedly has), by filing motions without first meeting and conferring in person, while Respondent's counsel simultaneous refuses to speak with Petitioner's counsel (as the rule requires). The rule should either be followed by both parties, or the rule should be waived for both. Of course, the undersigned acknowledges the present motion was filed without an in-person or telephone consultation (although several attempts were made to discuss the problem via email).

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For each of these reasons, Ms. Owens asks the Court to issue an order compelling Respondent's counsel to accept an invitation for lunch. In addition and in the alternative, if Respondent's counsel cannot or will not speak with Petitioner's counsel about pre-motion issues as required by Rule 9(c), Ms. Owens asks the Court to waive that rule for the duration of this proceeding.

DATED April 8, 2024.

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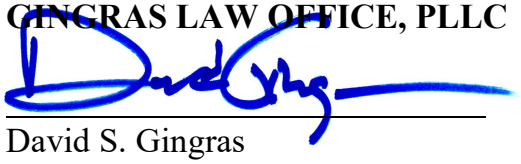

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Original e-filed
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Exhibit A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-020242 07/19/2006

JUDGE PENDLETON GAINES

CLERK OF THE COURT
A. Beery
Deputy

FILED: 07/21/2006

PHYSICIANS CHOICE OF ARIZONA INC DAVID A SELDEN

v.

MICKEY MILLER, et al. DOW GLENN OSTLUND

DAVID ROSENBAUM
ROSENBAUM & ASSOCIATES PC
650 DUNDEE RD
STE 380
NORTHBROOK IL 60062

RULINGS ON PENDING MOTIONS

The Court has reviewed the pending motions. Two will be granted. The others will be deferred.

Plaintiff's Motion to Compel Acceptance of Lunch Invitation

The Court has rarely seen a motion with more merit. The motion will be granted.

The Court has searched in vain in the Arizona Rules of Civil Procedure and cases, as well as the leading treatises on federal and Arizona procedure, to find specific support for Plaintiff's motion. Finding none, the Court concludes that motions of this type are so clearly within the inherent powers of the Court and have been so routinely granted that they are non-controversial and require no precedential support.

The writers support the concept. Conversation has been called "the socializing instrument par excellence" (Jose Ortega y Gasset, Invertebrate Spain) and "one of the greatest pleasures in life" (Somerset Maugham, The Moon and Sixpence). John Dryden referred to "Sweet discourse, the banquet of the mind" (The Flower and the Leaf).

Plaintiff's counsel extended a lunch invitation to Defendant's counsel "to have a discussion regarding discovery and other matters." Plaintiff's counsel offered to "pay for lunch." Defendant's counsel failed to respond until the motion was filed.

Defendant's counsel distrusts Plaintiff's counsel's motives and fears that Plaintiff's counsel's purpose is to persuade Defendant's counsel of the lack of merit in the defense case. The Court has no doubt of Defendant's counsel's ability to withstand Plaintiff's counsel's blandishments and to respond sally for sally and barb for barb. Defendant's counsel now makes what may be an illusory acceptance of Plaintiff's counsel's invitation by saying, "We would love to have lunch at Ruth's Chris with/on . . ." Plaintiff's counsel.[1]

Plaintiff's counsel replies somewhat petulantly, criticizing Defendant's counsel's acceptance of the lunch invitation on the grounds that Defendant's counsel is "now attempting to choose the location" and saying that he "will oblige," but Defendant's counsel "will pay for its own meal."

There are a number of fine restaurants within easy driving distance of both counsel's offices, e.g., Christopher's, Vincent's, Morton's, Donovan's, Bistro 24 at the Ritz-Carlton, The Arizona Biltmore Grill, Sam's Café (Biltmore location), Alexi's, Sophie's and, if either counsel has a membership, the Phoenix Country Club and the University Club. Counsel may select their own venue or, if unable to agree, shall select from this list in order. The time will be noon during a normal business day. The lunch must be conducted and concluded not later than August 18, 2006.[2]

Each side may be represented by no more than two (2) lawyers of its own choosing, but the principal counsel on the pending motions must personally appear.

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[1] Everyone knows that Ruth's Chris, while open for dinner, is not open for lunch. This is a matter of which the Court may take judicial notice.

[2] The Court is aware of the penchant of Plaintiff's counsel to take extended cruises during the summer months.

The cost of the lunch will be paid as follows: Total cost will be calculated by the amount of the bill including appetizers, salads, entrees and one non-alcoholic beverage per participant.[3] A twenty percent (20%) tip will be added to the bill (which will include tax). Each side will pay its pro rata share according to number of participants. The Court may reapportion the cost on application for good cause or may treat it as a taxable cost under ARS § 12-331(5).

During lunch, counsel will confer regarding the disputes identified in Plaintiff's motion to strike Defendant's discovery motion and Defendant's motions to quash, for protective order and for commission authorizing out-of-state depositions.[4] At the initiative of Plaintiff's counsel, a brief joint report detailing the parties' agreements and disagreements regarding these motions will be filed with the Court not later than one week following the lunch and, in any event, not later than noon, Wednesday, August 23, 2006.

Defendant's Motion to Strike Proposed Amended Complaint

To demonstrate to counsel that the Court has more on its mind than lunch, the Court has considered Defendant's motion to strike Plaintiff's proposed amended complaint. The motion will be granted.

Plaintiff's proposed amended complaint is 56 pages long and has 554 separately numbered paragraphs. It contains 19 counts. It is prolix and discursive in the extreme. It violates the Court's order of July 22, 2005, permitting the Plaintiff to file "an agreed-upon form of Amended Complaint to clean up housekeeping matters." It is not the "short and plain statement" required by Rule 8(a)(2). It is a pleading of a type specifically condemned in Anserv Insurance Services, Inc., vs. Albrecht, 192 Ariz. 48, 49-50 (1998) (trial court should have stricken 269-page, 1322-paragraph complaint). Most importantly, it violates the observation of French philosopher Blaise Pascal, who concluded a long letter with an apology, saying he "had not the leisure to make it shorter." Since this is a 2003 case with no end in sight, Plaintiff's counsel has the leisure to make his complaint shorter.

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[3] Alcoholic beverages may be consumed, but at the personal expense of the consumer.

[4] The Court suggests that serious discussion occur after counsel have eaten. The temperaments of the Court's children always improved after a meal.

ORDER

IT IS ORDERED:

1. Plaintiff's motion to compel Defendant's counsel's acceptance of lunch invitation is granted on the terms and conditions set forth above.

2. The parties are directed to file the joint report referred to above.

3. Further action on the parties' pending discovery motions is deferred pending receipt of the joint report.

4. Defendant's motion to strike Plaintiff's proposed amended complaint is granted.

5. The oral argument set in this division on August 2, 2006, at 9:15 a.m. is vacated.