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9 **MARICOPA COUNTY SUPERIOR COURT**
10 **STATE OF ARIZONA**

11
12 **In Re Matter of:**

13 **LAURA OWENS,**

14 **Petitioner,**

15 **And**

16 **CLAYTON ECHARD,**

17 **Respondent.**

Case No: FC2023-052114

**REQUEST FOR FINDINGS OF FACT
& CONCLUSIONS OF LAW AND
PROPOSED FINDINGS**

(Assigned to Hon. Julie Mata)

18
19 Pursuant to Rule 82(a)(1), Ariz. R. Fam. L.P., Petitioner Laura Owens (“Laura” or
20 “Petitioner”) hereby requests findings of fact and conclusions of law with respect to all
21 issues submitted for decision in this matter, including, but not limited to, any issues
22 resolved at the evidentiary hearing set for June 10, 2024. Ms. Owens submits proposed
23 findings below.

24 **A. PROPOSED FINDINGS OF FACT**

25 1. Laura Owens and Respondent Clayton Echard (“Clayton” or
26 “Respondent”) first met on May 17, 2023 when Laura sent Clayton a message on
27 LinkedIn to ask Clayton if he could help her locate some investment properties in
28 Scottsdale.

1 2. Clayton, who is a Realtor, responded and told Laura he would be glad to
2 help.

3 3. Between May 18-20, Clayton and Laura viewed some properties in
4 Scottsdale.

5 4. On the evening of May 20, 2023, Clayton invited Laura over to his home
6 in Scottsdale, which she accepted.

7 5. After Laura arrived, Clayton told her he was “high” on cannabis
8 “gummies” and he offered one to her, which she accepted.

9 6. During the late evening of May 20, 2023 and early morning of May 21,
10 both parties agree that certain sexual activity occurred between Clayton and Laura,
11 including oral sex.

12 7. Laura claims she told Clayton she did not want to have sexual
13 intercourse, but that Clayton “stuck it in” briefly despite her statement.

14 8. Clayton denies this allegation.

15 9. Laura’s expert, Dr. Michael Medchill, a retired OB/GYN with over 30
16 years of experience, testified that pregnancy is entirely possible even without sexual
17 intercourse.

18 10. The Court finds Dr. Medchill’s testimony credible and helpful. The Court
19 further finds, as a matter of medical fact, pregnancy can occur even without sexual
20 intercourse as long as a male sperm and female egg are in sufficient proximity to result in
21 fertilization.

22 11. For the purposes of this case and based on the evidence presented, it is
23 not necessary for the Court to determine whether sexual intercourse did, or did not, occur
24 between Laura and Clayton.

25 12. By Clayton’s own admission, the *other* sexual contact between him and
26 Laura was sufficient to result in pregnancy, even if sexual intercourse never occurred.

27 13. On May 24, 2023, Laura asked Clayton to prepare written purchase
28 offers for two properties Laura wanted to purchase in Scottsdale – one was located at

1 [REDACTED] in Scottsdale (offer amount was [REDACTED] and the other was
2 located at [REDACTED] in Scottsdale (offer amount was [REDACTED]

3 14. Laura asked Clayton, as her Realtor, to prepare these purchase offers and
4 to submit them to the seller or the seller's agent.

5 15. Clayton prepared the purchase offers, which Laura signed on or around
6 May 24th, but Clayton never submitted them to the seller or the seller's agent.

7 16. Laura later asked Clayton whether he had heard anything from the seller
8 in response to Laura's offers.

9 17. Clayton falsely informed Laura that he had submitted the offers to the
10 seller (which he knew was false at the time).

11 18. When asked if he had received any response, Clayton told Laura that he
12 had not, but he never told Laura the reason why no response had been received – i.e.,
13 because the offers had never been submitted.

14 19. Based on the undisputed evidence, the Court finds, as a matter of fact,
15 that Clayton made two knowingly false statements to Laura about the real estate purchase
16 offers, and that these false statements were made to Laura before she told Clayton she
17 had tested positive for pregnancy.

18 20. The Court finds pursuant to Ariz. R. Evid. 608(b) the false statements
19 made by Clayton to Laura are relevant to Clayton's honesty and credibility.

20 21. On May 31, 2023, Laura took a home pregnancy test which showed a
21 faint positive result.

22 22. On June 1, 2023, Laura went to Banner Urgent Care at Greenway and
23 64th Street, she informed the nurse that she believed she may be pregnant, and she asked
24 for a test to determine whether she was, in fact, pregnant.

25 23. The test result from Banner Urgent Care was positive for pregnancy.

26 24. Laura testified that for more than six months prior to May 2023, she was
27 not sexually active with any other man. Based on this, Laura believed that if she was
28 pregnant, Clayton was the only potential father.

1 25. Laura’s expert, Dr. Medchill, testified that a home pregnancy test can
2 detect pregnancy 11 days after conception, and that there is no medical basis to conclude
3 that 11 days post-conception was “too soon” for Laura to determine she was pregnant.

4 26. The Court finds Dr. Medchill’s testimony credible and helpful. The Court
5 further finds, as a matter of fact, a positive pregnancy test 11 days post-conception is
6 medically plausible, and that the duration of this time period is not impossibly short to
7 allow for an accurate determination of pregnancy to occur.

8 27. After she received multiple positive pregnancy tests, Laura tried to
9 discuss the situation with Clayton to determine his intentions.

10 28. In response, Clayton was hostile and dismissive. Clayton claimed it was
11 “impossible” for Laura to be pregnant because “we never had sex”, despite the fact that
12 Clayton also admitted engaging in other sexual conduct which was sufficient to create the
13 possibility of pregnancy, as Clayton later admitted.

14 29. On June 19, 2023, Clayton agreed to meet with Laura at his home in
15 Scottsdale to discuss the situation.

16 30. After Laura arrived at Clayton’s home, he presented her with a home
17 pregnancy test he had purchased. Clayton asked Laura to take the test immediately in
18 front of him, while he watched.

19 31. In response to Clayton’s request, Laura took the test provided to her by
20 Clayton in front of him while he watched.

21 32. That test result was also positive for pregnancy.

22 33. Two days later, on June 21, 2023, Clayton sent Laura an email entitled
23 “Something to Consider”. In this email, Clayton made the following statements, among
24 others:

25 Even after seeing a positive pregnancy test, I still had doubts in my head.
26 Something was telling me to look deeper into things. So, I did and came
27 up with a theory that could potentially be realistic.
28

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

6 34. Attached to the “Something to Consider” email were two photos of home
7 pregnancy tests – one photo was labeled “Day 11” which reflects the test Laura took on
8 May 31, 2023, and the second was labeled “Day 21” which referred to the test Laura took
9 in front of Clayton on June 19, 2023.

10 35. In the “Something to Consider” email, Clayton stated: “something else I
11 found interesting was that the test you first sent me on Day 11 and the test you took on
12 Day 21 with me looked identical, as far as the test line goes.”

13 36. Assuming Laura became pregnant on May 20, 2023, the photo of the test
14 she took on May 31, 2023 would accurately be described as “Day 11”, meaning 11 days
15 post-conception. However, the test she took in front of Clayton on June 19, 2023 would
16 *not* be accurately described as “Day 21” because there are thirty (30) days between May
17 20th and June 19th, not 21 days.

18 37. By Clayton’s own admission in the “Something to Consider” email,
19 Laura presented him with at least two positive pregnancy tests in May/June 2023,
20 including one test which was purchased by Clayton and taken by Laura in front of
21 Clayton, without any advance notice.

22 38. At no time in the “Something to Consider” email did Clayton ever
23 suggest Laura had “faked” these pregnancy tests or done anything to affect their results.

24 39. Instead, in the “Something to Consider” email, Clayton presented a
25 theory that Laura may have received “false positive” test results due to medication she
26 was taking, potentially due to her prior epilepsy diagnosis.

27 40. Laura’s expert, Dr. Medchill, testified certain medications can produce
28 false positive pregnancy test results.

1 41. Dr. Medchill further testified as part of his review of this matter, he
2 requested and received copies of approximately 200 pages of Laura’s medical records
3 from Barrow Neurological Institute in Phoenix, all of which were previously disclosed to
4 Clayton’s counsel.

5 42. Dr. Medchill testified Laura’s medical records from Barrow contain
6 summaries of all of Laura’s reported medications, and none of those medications would
7 cause a false positive home pregnancy test.

8 43. Laura testified that on November 14, 2023, she sought OB/GYN services
9 from a facility called “MomDoc” to determine whether she was still pregnant. At that
10 appointment, Laura was given two pregnancy tests, both of which were negative.

11 44. Laura testified that between May and November 2023, she did not
12 change her epilepsy medication, nor did she begin any new meds or stop taking any
13 medications other than as reported to her doctor at Barrow Neurological Institute.

14 45. Based on the evidence presented, the Court finds as a matter of fact that
15 Laura did not take any medications that could plausibly have caused a false positive
16 pregnancy test in 2023, and that to the extent Clayton has claimed otherwise, he has
17 failed to provide any credible evidence to support that conclusion.

18 46. Laura testified that at no time did she do anything whatsoever to tamper
19 with these pregnancy tests, or do anything to alter their results.

20 47. Laura’s expert, Dr. Medchill, testified home pregnancy tests are
21 generally accepted to be scientifically accurate and reliable indicators of pregnancy, with
22 an accuracy rate of 98-99% when used as instructed.

23 48. The Court finds Dr. Medchill’s testimony credible and helpful. The Court
24 further finds, as a matter of fact, home pregnancy tests are generally accepted to be
25 scientifically accurate and reliable indicators of pregnancy, with an accuracy rate of 98-
26 99% when used as instructed.

27 49. The Court finds that to the extent Clayton claims the two home
28 pregnancy tests referenced in the “Something to Consider” email were either “faked” or

1 otherwise tampered with in some manner, Clayton has failed to provide any credible
2 evidence to support that conclusion.

3 50. The Court finds, as a matter of fact, that Laura did not tamper with or
4 otherwise “fake” either the home pregnancy test she took on May 31, 2023 or the test she
5 took in front of Clayton on June 19, 2023.

6 51. The Court further finds, as a matter of fact, that Laura did not tamper
7 with or otherwise “fake” the pregnancy test she took at Banner Urgent Care on June 1,
8 2023, and that to the extent Clayton has claimed otherwise, he has failed to provide any
9 credible evidence to support that conclusion.

10 52. Laura testified that on July 23, 2023, she experienced bleeding and
11 passed two small fleshy objects that were “much **smaller than any hand**”.

12 53. Believing that she might have miscarried, Laura testified she took photos
13 of the objects she passed and sought medical advice from a telehealth provider.

14 54. In response, the telehealth provider informed her it was “hard to tell”
15 whether she had miscarried, and that she should continue to monitor the situation and
16 seek further care as needed.

17 55. Two days later, on July 25, 2023, Laura took another home pregnancy
18 test in order to determine whether she was still pregnant. That test was positive.

19 56. On August 1, 2023, Laura took another home pregnancy test. That test
20 was also positive.

21 57. Prior to August 1, 2023, Laura and Clayton had various communications
22 about the situation, but they were not able to reach an agreement on any issues.

23 58. After May 20, 2023, Laura stopped having her normal menstrual period.
24 Her period did not resume until November 2023.

25 59. Between May 20, 2023 and November 2023, Laura gained weight and
26 experienced significant swelling in her abdomen.

27 60. Between May 20, 2023 and early November 2023, Laura testified she
28 “felt like she was pregnant”.

1 61. Laura filed an establishment petition on August 1, 2023. At that time,
2 Laura had a reasonable factual basis to believe she might be pregnant and that Clayton
3 may be the father.

4 62. At the time Laura filed this case, she was not represented by counsel.

5 63. At the time he first appeared in this case, Clayton was not represented by
6 counsel.

7 64. In August 2023, Laura asked Clayton to agree to a DNA test to be
8 performed by a company called Ravgen.

9 65. Clayton initially told Laura he would participate in this test.

10 66. On August 15, 2023, Laura paid \$725 to Ravgen for the DNA test, but
11 Clayton refused to provide a sample for the test.

12 67. On August 18, 2023, Laura contacted Ravgen to cancel the test on the
13 basis that Clayton had refused to participate in the test.

14 68. In July and August 2023, Laura made multiple appointments to see an
15 OB/GYN named Dr. Makhoul. She scheduled four separate appointments, rescheduled
16 three of those, and then cancelled the final appointment after reporting that she had tested
17 positive for COVID.

18 69. Dr. Makhoul's office has produced 44 pages of records confirming that
19 Laura contacted the office multiple times, scheduled numerous appointments, and
20 provided the office with other records relating to her pregnancy.

21 70. Later, in late September/early October, both Clayton and Laura
22 submitted samples to Ravgen for testing.

23 71. A representative from Ravgen later informed both parties the initial tests
24 were "inconclusive" because there was "little to no fetal DNA found" and therefore there
25 was insufficient information available for Ravgen to reach a conclusive result that either
26 included or excluded Clayton as the father.

27 72. On October 16, 2023, Laura had a blood test done which showed an
28 HCG level of 102.

1 73. According to the testimony of Dr. Medchill, an HCG level of 102 is
2 strong proof of pregnancy, but at this stage, it is indicative of a *non-viable* pregnancy
3 (meaning a pregnancy that was unlikely to result in the birth of a healthy child or,
4 alternatively, a pregnancy that was likely to end with a miscarriage).

5 74. A woman who is currently carrying a non-viable pregnancy is still, by
6 definition, pregnant.

7 75. According to the testimony of Dr. Medchill, HCG in a woman’s blood is
8 typically evidence that the woman is, or recently was, pregnant. HCG in a woman’s
9 blood can also come from other unrelated medical conditions such as tumors and certain
10 types of medications, but there is no evidence to show that the HCG in Laura’s blood was
11 the result of anything other than pregnancy.

12 76. On November 14, 2023, Laura had a gynecological visit with a provider
13 at MomDoc, an OB/GYN service provider. At that time, Laura was given two pregnancy
14 tests, both of which were negative. This means Laura was no longer pregnant as of mid-
15 November 2023.

16 77. According to Dr. Medchill, the facts and evidence in this case suggest
17 that Laura became pregnant on May 20, 2023, that her pregnancy progressed for some
18 period of time, and that the pregnancy ended with a “spontaneous abortion” or “SAB” at
19 some point in or around late October or early November 2023 or possibly sooner.

20 78. According to Dr. Medchill, although some miscarriages end with a
21 woman expelling tissue from her body, this is not always the case, and it is not
22 uncommon for a woman to have a miscarriage in which the fetus and other tissue (the
23 placenta, etc.) remain inside the mother’s body and are absorbed into her body.

24 79. The unique facts and circumstances of this case make it impossible to
25 determine when, precisely, Laura’s pregnancy ended via SAB, except to say this
26 happened some time prior to November 14, 2023.

27 80. According to Dr. Medchill, the facts of this case do not support a claim
28 that Laura was required to file a death certificate under Arizona law. This is due to the

1 fact that “In Arizona, a death certificate is required if the gestational age, at the time of
2 fetal death, occurs after 20 weeks estimated gestational age or weighs more than 350
3 grams (about $\frac{3}{4}$ pound)” and in Dr. Medchill’s opinion, fetal death in this case occurred
4 before 20 weeks and likely much earlier.

5 81. The Court finds Dr. Medchill’s testimony credible and helpful. The Court
6 further finds, as a matter of fact, Laura was pregnant during the early stages of this case,
7 but that her pregnancy ended in a miscarriage at some point before November 2023, and
8 that due to the circumstances, Laura was not required to file a fetal death certificate.

9 82. Due to the unique circumstances of this case, the Court finds as a matter
10 of fact that it is impossible to determine the exact date that Laura’s pregnancy ended, but
11 that this determination is not necessary to resolve any issues in this case.

12 83. According to the docket in this case, of which the Court may take judicial
13 notice, Laura filed no further pleadings in this action after she learned she was no longer
14 pregnant in or around early November 2023 until such time as Mr. Echard retained
15 counsel who first appeared in this case on December 12, 2023.

16 84. On December 22, 2023, Laura retained counsel to represent her in this
17 matter, and on December 28, 2023, Laura’s counsel filed a motion seeking to voluntarily
18 dismiss this case with prejudice.

19 85. On January 2, 2024, after Laura’s motion for voluntary dismissal was
20 filed, Clayton, through counsel, filed a motion for Rule 26 sanctions. That motion was
21 later withdrawn, and as of the date of trial in this matter, there are no other pending
22 motions for sanctions.

23 **B. PROPOSED CONCLUSIONS OF LAW**

24 1. The Court finds, as a matter of law, that the establishment petition filed by
25 Laura on August 1, 2023 is moot as the result of her miscarriage which occurred at an
26 unknown time prior to November 14, 2023.

27 2. Laura is no longer pregnant, and there are no other issues of paternity for
28 the Court to decide. Accordingly, Laura’s petition is hereby dismissed as moot.

1 3. To the extent Clayton has requested a “judgment of non-paternity”, the
2 Court finds there is insufficient evidence to grant such relief.

3 4. Arizona law provides various ways in which paternity may be established,
4 and various presumptions that may apply in an establishment action.

5 5. Among other things, A.R.S. § 25-814(A)(2) provides a man is presumed
6 to be the father of the child if: “Genetic testing affirms at least a ninety-five per cent
7 probability of paternity.”

8 6. Per A.R.S. § 25-814(C) a presumption of paternity based on DNA testing
9 (like all other presumptions under A.R.S. § 25-814(A)) may be rebutted only by “clear
10 and convincing evidence”.

11 7. By necessary implication, the Court finds as a matter of law that in a
12 disputed paternity establishment action such as this, a judgment or finding of “*non-*
13 *paternity*” requires clear and convincing evidence to show the alleged father is *not* the
14 father. Such clear and convincing evidence *may* include genetic testing that *excludes* the
15 alleged father to at least a ninety-five per cent probability.

16 8. Here, although DNA testing was performed, the results of those tests were
17 “inconclusive” meaning Clayton was neither proven to be genetically included as the
18 potential father, nor was he proven to be excluded as the potential father.

19 9. Based on these inconclusive results and a lack of any other clear and
20 convincing evidence, the Court cannot determine, as a matter of law, that Clayton has
21 met his burden of proving non-paternity by clear and convincing evidence.

22 10. Clayton’s request for a judgment of non-paternity is denied.

23 11. To the extent Clayton has asked the Court to find that Laura “lied about
24 being pregnant” or that she “made the whole thing up” or that she filed this action with
25 any improper motives beyond establishing paternity, the Court finds those allegations
26 implicate civil claims and civil causes of action such as defamation, abuse of process,
27 and/or malicious prosecution, for which both parties would have a Constitutional right to
28 trial by jury.

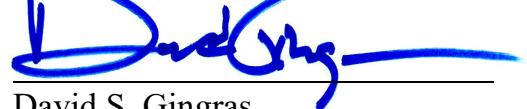
1 12. The Court finds, as a matter of law and pursuant to A.R.S. § 25-801, that it
2 lacks subject matter jurisdiction to adjudicate civil claims and causes of action between
3 the parties other than matters of paternity.

4 13. The Court further finds, as a matter of law, that Laura did not engage in
5 any unreasonable litigation conduct in this matter from the date the action was filed on
6 August 1, 2023 until the date Laura moved to dismiss the case on December 28, 2023.

7 14. The Court further finds, as a matter of law, that to the extent Clayton
8 incurred attorney's fees on or after December 28, 2023, those fees were incurred solely
9 because Clayton objected to Laura's request to dismiss this action, and to the extent
10 Clayton continued to incur fees after December 28, 2023, those fees were not caused by
11 any unreasonable litigation position taken by Laura.

12 DATED June 3, 2024.

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

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A handwritten signature in blue ink, appearing to read "D. Woodnick", is written over a horizontal line.

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