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10 **MARICOPA COUNTY SUPERIOR COURT**

11 **STATE OF ARIZONA**

12 **In Re Matter of:**

13 **LAURA OWENS,**

14 **Petitioner,**

15 **And**

16 **CLAYTON ECHARD,**

17 **Respondent.**

Case No: FC2023-052114

**EMERGENCY MOTION TO STRIKE
AND
REQUEST FOR IMMEDIATE
TELEPHONIC SCHEDULING
CONFERENCE**

(Assigned to Hon. Julie Mata)

18 Pursuant to Rule 35(a)(3), Ariz. R. Fam. L.P., Petitioner Laura Owens (“Ms.
19 Owens” or “Petitioner”) respectfully moves the Court for an expedited order striking the
20 pleading filed on April 30, 2024 by Respondent Clayton Echard (“Mr. Echard” or
21 “Respondent”) entitled: Reply to Petitioner’s Response to Respondent’s Amended Motion
for Relief Based on Fraud.

22 Separate and apart from that issue, Ms. Owens respectfully requests an immediate
23 telephonic scheduling conference pursuant to Rule 76.1(a) for the purpose of discussing a
24 potential change in trial dates based on Respondent’s recent disclosure of new (and
25 untimely) information which he has never previously disclosed. In addition, at the
26 scheduling conference Ms. Owens will raise a potential motion *in limine* seeking to
27 exclude three newly-disclosed witnesses (one of whom is the basis for the request to
28 strike Mr. Echard’s Reply brief).

1 Regarding the Reply, the Court should strike the Reply brief in its entirety on the
2 basis that it grossly violates the plain language of Rule 35(a)(3). That rule provides in all
3 motion practice: “The reply may address only those matters raised in the response.”
4 (emphasis added).

5 Here, Mr. Echard’s Reply brief violates Rule 35(a)(3) because it contains
6 *extensive* new allegations and information which were not raised in either in Ms. Owens’
7 response or in Mr. Echard’s original pleading. Specifically, Mr. Echard’s original motion
8 sought relief on the basis of “fraud” because, *inter alia*, he claimed “Plaintiff [sic] was
9 never pregnant by Defendant [sic].” *Amended Mot.* at 2:10–11. In addition, the
10 motion argued Ms. Owens “committed fraud (intrinsic and extrinsic) when she testified
11 before Judge Doody regarding a sonogram on October 25, 2023, leading Judge Doody to
12 uphold the Order of Protection.” *Amended Mot.* at 7:23–25.

13 In her Response, Ms. Owens directly and properly addressed those specific issues
14 and allegations raised in the original and amended motions.

15 Now, in his Reply filed earlier today, Mr. Echard, offers *entirely new arguments*
16 *and evidence, including new evidence literally disclosed for the first time today.*
17 Specifically, the Reply contains the following new arguments/evidence:

- 18 • An assertion that Ms. Owens fabricated *other* medical records (records
19 NOT previously mentioned in Mr. Echard’s original or amended motions);
20 *see* Reply at 2:3–14 (discussing, for the first time, “via medical records
21 from 2016 (which are also dubious) Laura claims she had ovarian cancer
22 and that she had an ovary removed – information that is patently missing
23 from any of the “medical records” provided by Laura...”
- 24 • An assertion that Ms. Owens *concealed* information from her expert, Dr.
25 Medchill, by failing to disclose a prior cancer diagnosis and removal of her
26 ovary (something Ms. Owens flatly denies); *see* Reply at 2:8–14 (alleging,
27 “There is no mention [in Ms. Owens’ expert report] of John Chung Kail
28 Chan, MD’s records for Laura who reportedly diagnosed her with ““real

1 ovarian cancer, not something that just ‘may’ be there” or Rebecca Yee,
2 MD’s records for Laura who said “Yesterday (8/30/16) you received ovary
3 removal surgery (oophorectomy) of your right ovary as well as a surgical
4 abortion.”)

- 5 • An assertion that Ms. Owens fabricated *three* ultrasounds; *see* Reply at
6 4:8–9 (asserting, “To be clear, there are three (3) ultrasounds that have
7 been altered: one image used in the OOP/current proceeding, one video,
8 and one 21 week sonogram.”)

9 In addition to these completely new claims/theories, Mr. Echard’s motion is
10 supported by dozens of pages of new documents which he only disclosed for the first
11 time today, April 30, 2024. Of course, none of this new information was contained in Mr.
12 Echard’s original Motion For Relief Based on Fraud, nor the *Amended* version of that
13 pleading filed only days ago. Thus, Ms. Owens could not and did not address any of this
14 material in her opposition brief.

15 That is precisely why Rule 35 expressly prohibits this sharp practice of belated
16 “sandbagging” – because, unless corrected by striking the offending pleadings, Ms.
17 Owens will have no opportunity to address any of the serious allegations which were
18 raised for the first time in the Reply.

19 Mr. Echard’s conduct in attempting to raise new issues and new evidence for the
20 first time in his Reply is improper and inexcusable. Indeed, the violation is so egregious,
21 it would constitute reversible error standing alone. *See Faraji v. City of Phoenix*, 2018
22 Ariz. App. Unpub. LEXIS 620, *9-10 (App. Div. 1 2018) (reversing judgment on
23 basis of new material raised for the first time in a reply) (citing Ariz. R. Civ. P.
24 7.1(a)(3) (“[T]he moving party may file a reply memorandum, which may address
25 only those matters raised in the responsive memorandum.”) (emphasis added); *Evans*
26 *Withycombe, Inc. v. W. Innovations, Inc.*, 215 Ariz. 237, 240, ¶ 15, 159 P.3d 547
27 (App. 2006) (noting unfairness of considering argument to which opposing party had
28 no opportunity to respond); *Varsity Gold, Inc. v. Porzio*, 202 Ariz. 355, 357, ¶ 9, 45

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P.3d 352 (App. 2002) (noting arguments on appeal first raised in reply brief improperly deprive opposing party of opportunity to respond)).

Raising new issues for the first time in a Reply brief, as Mr. Echard has so clearly done here, is a *per se* violation of Rule 35. For those reasons, Ms. Owens respectfully moves for an order striking Mr. Echard’s Reply brief in its entirety.

In addition, pursuant to Rule 76.1(a), Ms. Owens requests that the Court set this matter for an immediate telephonic (or in-person) scheduling conference. Among other things, the purpose of the scheduling conference will be to discuss whether or not Mr. Echard will be permitted to call several untimely-disclosed witnesses (Ms. Owens intends to file a separate Motion *In Limine* on that issue within the next day). Also, assuming the Court does not preclude Mr. Echard from using untimely disclosed witnesses and documents, it may be necessary for Ms. Owens to request a continuance of the trial in order to allow sufficient time to investigate and respond to the new, and extremely late disclosures, by Mr. Echard.

DATED April 30, 2024.

GINGRAS LAW OFFICE, PLLC

David S. Gingras
Attorney for Petitioner
Laura Owens

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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. Specifically, on April 30, 2024, the undersigned contacted Respondent’s counsel via email to request a time to meet and confer regarding the instant motion. Respondent’s counsel did not respond to this request, but did indicate, via email, that Respondent disagreed with Petitioner’s position.

EXECUTED ON April 30, 2024.



David S. Gingras

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1 **Original** e-filed
2 and **COPIES** e-delivered April 30, 2024 to:

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