

1 David S. Gingras, #021097
2 **Gingras Law Office, PLLC**
3 4802 E Ray Road, #23-271
4 Phoenix, AZ 85044
5 Tel.: (480) 264-1400
6 Fax: (480) 248-3196
7 David@GingrasLaw.com

8 Attorney for Petitioner
9 Laura Owens

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

12
13 **In Re Matter of:**

14 **LAURA OWENS,**

15 **Petitioner,**

16 **And**

17 **CLAYTON ECHARD,**

18 **Respondent.**

Case No: FC2023-052114

REQUEST FOR JUDICIAL NOTICE

(Assigned to Hon. Julie Mata)

19
20 To support her position either at trial and/or in future dispositive motions, pursuant
21 to Ariz. R. Evid. 201(c)(2), Petitioner Laura Owens respectfully asks the Court to take
22 notice of certain records reflected in the table below. Because Ms. Owens has supplied
23 the Court with the “necessary information” to support this request, judicial notice is
24 mandatory, not optional; “[the court] ... must take judicial notice if a party requests it and
25 the court is supplied with the necessary information.” Ariz. R. Evid. 201(c)(2).

26 Judicial notice of these documents is proper because the records all relate to
27 another matter filed in the Maricopa County Superior Court. It is well-settled “a court
28 may properly take judicial notice of its own records.” *State v. Rhome*, 235 Ariz. 459, 461,

1 333 P.3d 786, 788 (App. 2014); *see also Briggs v. Montgomery*, 2019 WL 2515950, *5
2 (D.Ariz. 2019) (“The Court ‘may take judicial notice of court filings, as they are matters
3 of public record, and ‘[i]t is also well established that a ... court can take judicial notice
4 of its own records.’”) (quoting *Baca ex rel. Nominal Defendant Insight Enterprises, Inc.*
5 *v. Crown*, 2010 WL 2812712, *2 (D.Ariz. 2010)).

6 Also, to avoid any misunderstanding about what this request means and what the
7 Court is being asked to do, Ms. Owens merely asks the Court to take notice of a prior
8 proceeding, *Owens v. Gillespie*, CV2021–052893 in which she was a party. In doing so,
9 the Court may take notice of the *existence* of the allegations in that case and how those
10 allegations were resolved. At the same time, the Court is *not* being asked to find that any
11 of those allegations were true (or false) because doing so would be improper; “While
12 matters of public record, such as prior court proceedings, are proper subjects of judicial
13 notice, a court may take notice only of the authenticity and existence of a particular order
14 or pleading, not the veracity or validity of its contents.” *Ramirez v. Medtronic Inc.*, 961 F.
15 Supp. 2d 977, 983 (D.Ariz. 2013) (emphasis added).

16 To summarize, Ms. Owens asks the Court to take judicial notice of the following
17 points based on the information provided:

- 18 1. On August 21, 2021, Ms. Owens filed a civil action in Maricopa County
19 Superior Court against an individual named Gregory Gillespie.
- 20 2. In her Complaint, Ms. Owens alleged she and Mr. Gillespie dated briefly, she
21 became pregnant with Mr. Gillespie’s child, and after learning of the
22 pregnancy Mr. Gillespie subsequently used “verbal and emotional abuse” to
23 coerce Ms. Owens into terminating the pregnancy, which she later did.
- 24 3. Mr. Gillespie denied Ms. Owens’ claims and he further alleged Ms. Owens
25 lied about being pregnant. Based on that allegation, Mr. Gillespie asserted
26 counterclaims for fraud and intentional infliction of emotional distress.
- 27 4. On July 26, 2023, both parties filed simultaneous motions for summary
28 judgment.

5. On November 9, 2023, the court issued a minute order entry granting both motions for summary judgment, thereby terminating the action.
6. The court made no findings as to whether Ms. Owens was telling the truth or lying about her pregnancy.
7. The court did not find Ms. Owens lied about being pregnant.
8. Mr. Gillespie later applied for an award of taxable costs claiming he was the prevailing party.
9. On February 15, 2024, the court issued a minute entry order denying Mr. Gillespie's request for costs. In that order, the court made a finding that "neither party prevailed under the unique circumstances of this case"

REQUEST - DENIED

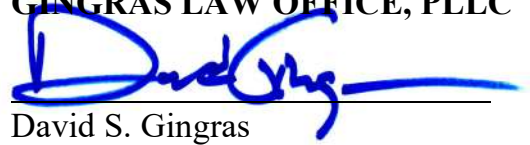
The Court has reviewed Gregory Gillespie's Verified Statement of Costs filed December 15, 2023, wherein he requests an award of taxable costs in connection with his lodged judgment. The Court finds that neither party prevailed under the unique circumstances of the case and neither party is entitled to taxable costs.

Accordingly, the request is denied.

Exhibit	Description	Date
A	Complaint; <i>Owens v. Gillespie; CV2021-052893</i>	8/21/2021
B	Answer And Counterclaim; <i>Owens v. Gillespie; CV2021-052893</i>	1/4/2022
C	Plaintiff's Motion for Summary Judgment <i>Owens v. Gillespie; CV2021-052893</i>	7/26/2023
D	Defendant's Motion for Summary Judgment <i>Owens v. Gillespie; CV2021-052893</i>	7/26/2023
E	Order Granting Both Summary Judgment Motions <i>Owens v. Gillespie; CV2021-052893</i>	11/9/2023
F	Order Denying Costs; <i>Owens v. Gillespie; CV2021-052893</i>	2/15/2024

1 DATED April 12, 2024.

GINGRAS LAW OFFICE, PLLC



David S. Gingras
Attorney for Petitioner
Laura Owens

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GINGRAS LAW OFFICE, PLLC
3941 E. CHANDLER BLVD., #106-243
PHOENIX, ARIZONA 85048

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Original e-filed
and **COPIES** e-delivered April 12, 2024 to:

Gregg R. Woodnick, Esq.
Isabel Ranney, Esq.
Woodnick Law, PLLC
1747 E. Morten Avenue, Suite 505
Phoenix, AZ 85020
Attorneys for Respondent



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

GINGRAS LAW OFFICE, PLLC
3941 E. CHANDLER BLVD., #106-243
PHOENIX, ARIZONA 85048

Exhibit A

PLAINTIFF(S) ATTORNEY INFORMATION:

Laura Owens

[REDACTED]

Scottsdale, AZ 85254

[REDACTED]

Name/Address/Phone

____ Superior Court of Arizona in Maricopa County, 201 W Jefferson St.,
Phoenix, AZ 85003____
(Court Name, Address and Phone Number)

Laura Owens

[REDACTED]

Scottsdale, AZ 85254

[REDACTED]

Plaintiff(s) Name/Address/Phone

V.

Case Number CV2021-052893

**COMPLAINT
CIVIL**

Gregory Gillespie

[REDACTED]

Scottsdale, AZ 85028

[REDACTED]

Defendant(s) Name/Address/Phone

Plaintiff(s) alleges:

1. This claim arises from: Tort Contract Debt

2. Venue in this precinct is proper because:

The defendant(s) reside(s) or does business in this precinct.

The debt or obligation that resulted in this claim occurred in this precinct
at the following location: _____

[] Other: _____ (pursuant to A.R.S. § 12-401).

3. The defendant(s) owes the sum of \$ 45,000. The defendant(s) owe the plaintiff(s) this amount because: (State the facts in support of your claim. You may attach an additional page to your complaint, if necessary.)

The Plaintiff became pregnant with the Defendant's child on either June
4) Plaintiff became pregnant on her second date with Defendant on or around June 30 2021 after only 2 dates.

5) Plaintiff informed Defendant of the pregnancy and he denied it, after which he forced Plaintiff to have multiple pregnancy tests and a doctor's appointment.

6) Once Defendant finally learned the pregnancy was real, Defendant employed false promises, and verbal and emotional abuse to coerce Plaintiff into getting an abortion.

7) Upon Plaintiff's first attempt to terminate the pregnancy, Defendant blocked Plaintiff from all communication.

8) When Plaintiff informed Defendant of her failed attempt at termination,
Defendant again employed false promises, and verbal and emotional abuse to coerce Plaintiff again.

9) During this entire time, Plaintiff clearly expressed her desire to not terminate the pregnancy. (See attachment for more)

1) - ARS 13-3601

3. The victim or the defendant is pregnant by the other party.

6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship.

L. If a person is convicted of an offense involving domestic violence and the victim was pregnant at the time of the commission of the offense, at the time of sentencing the court shall take into consideration the fact that the victim was pregnant and may increase the sentence.

- ARS 36-2153:

G. A person shall not intimidate or coerce in any way any person to obtain an abortion.

- Intentional tort: Intentional Infliction of Emotional Distress

- The person's conduct or actions were extreme or outrageous;
- The person intended to inflict distress, or the person recklessly disregarded that their conduct would result in the victim's emotional distress; and,
- The person's conduct resulted in the victim's severe emotional distress

4. Plaintiff(s) is also claiming:

Attorney's fees

Prejudgment interest

Case Number: _____

Postjudgment interest

Court costs

Other (specify): _____

5. I state under penalty of perjury that the foregoing is true and correct.

Date: 8/10/21

Laura Owens
Plaintiff

PLAINTIFF(S) ATTORNEY INFORMATION:

Laura Owens

[REDACTED] Street Scottsdale, AZ 85254

[REDACTED]

Plaintiff(s) Name/Address/Phone

Name/Address/Phone

Superior Court of Arizona in Maricopa County, 201 W Jefferson
St., Phoenix, AZ 85003

(Court Name, Address and Phone Number)

Laura Owens

Case Number:

[REDACTED] Scottsdale,
AZ 85254

[REDACTED]

Plaintiff(s) Name/Address/Phone

V.

Gregory Gillespie

[REDACTED] Scottsdale, AZ 85028

[REDACTED]

Defendant(s) Name/Address/Phone

The following pages are copies of relevant notes and text messages from July and August of 2021 between the Plaintiff and the Defendant.

12:20

5G



Document 32497265



15210 N Scottsdale Road - Suite 275 Scottsdale, AZ 85254
ph: 888-663-6331 fax: 602-218-4076

July 16, 2021

Laura Owens, DOB

To Whom It May Concern:

Patient was evaluated in the office today and was determined to be in early stages of pregnancy. Patient was on insecure medication that decreased the effectiveness of her oral contraceptives. Please contact our office for any further questions.

Sincerely,

John Jones, DO
NPI: 1768826796

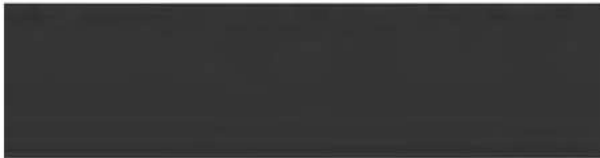


1:03

LTE



Document 32505914



one medical

John Jones, DO
15210 N Scottsdale Road Suite 275
Scottsdale, AZ 85254
p: 888-683-6331 f: 602-218-4676

Procedure Performed at One Medical

Date: Jul 15, 2021

Patient

Legal Name: Laura Owens

Goes By: Laura

Birth Date: [REDACTED]

Phone:

Is patient pregnant:

See attached for complete demographic and insurance information.

Procedure

Urine pregnancy test, 81025

Indication

Amenorrhea (ICD-10CM: N91.2)

Procedure Summary

Result: 2 lines - positive

Thank you,

John Jones
(NPI: 1760826796)
johnjones@onemedical.com



otes and records from Ms. Laura Owens visits to One Medical on 1

6:17

< 201



someone you can't be for a week. We need to get our lives back and healthy. And then we can get to know our true selves. This is damaging both of us severely with every hour that continues to pass. I know that I liked you very much when this wasn't on our minds and over our heads. I know that it is damaging each of us. I want this to be over with. Do you? Can we take care of it this week and try for this weekend. The timing is perfect. I don't want to go into the week next week with this on our minds any longer. I should be almost healthy, this will be beyond us. Hopefully have a nice weekend going into the week and we can get back to being ourselves.

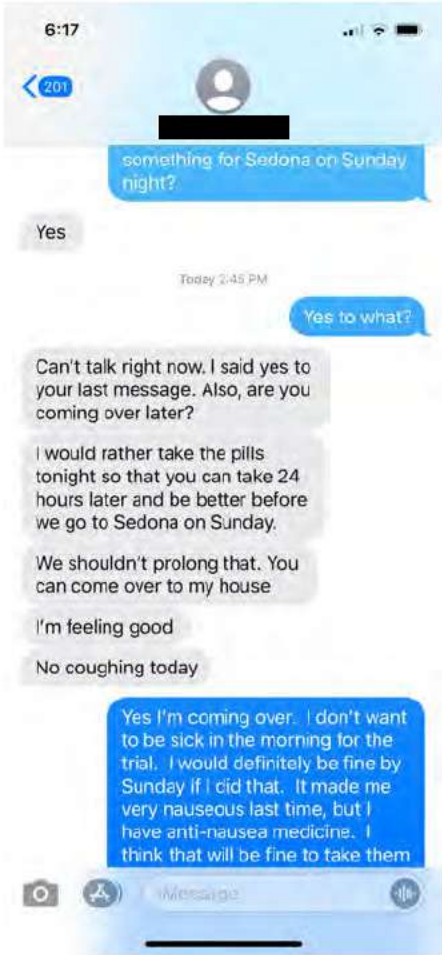
I promise this to you. I will support you after this, I will grow with you get to know our real selves and we can begin our relationship in the tight foot.

I need the same from you. To see that you support what I'm trying to do here also. Get back to healthy.



Message





... foundation for something more mea

Will you take the pills tonight? I don't want to have a baby this way

That would mean you can take the others tomorrow. And Friday. And by the weekend, I will be hopefully 100%, this will be past us and we can plan to go to Sedona maybe Sunday? I have PTO also, if you can get off work, we could go Sunday Monday?

I need to relax after all this. I know you do also.

And I can't with everything going on. This should have been completed this time last week.

Neither of us had handled it well. I'm sorry I got upset, I'm sorry I blacked you, I'm sorry I am sick and can't be myself at the moment.

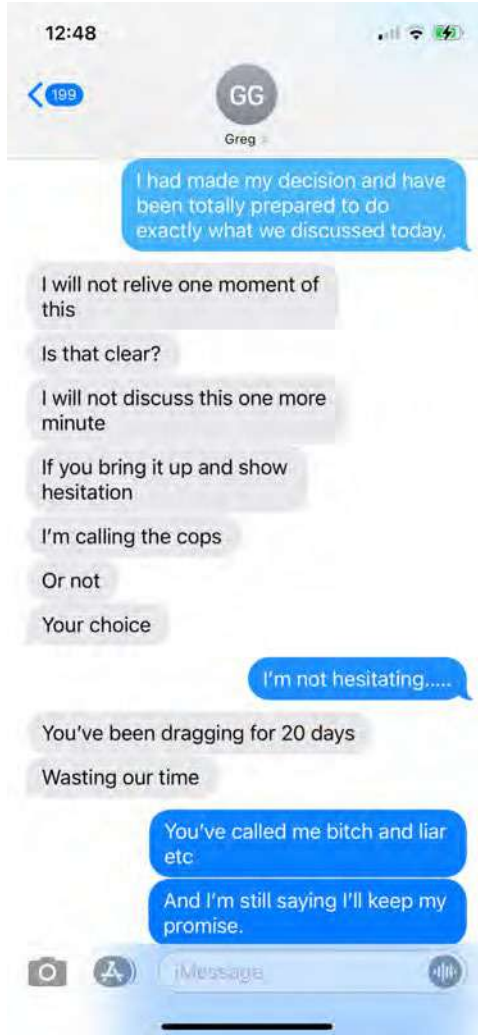
I promised you We would continue to see one another (assuming you want to?!), grow with each other, use this as a reason to be stronger and build a foundation. We moved way too fast, I said this then and I say it now. We need to get to know one another and not on this stressing

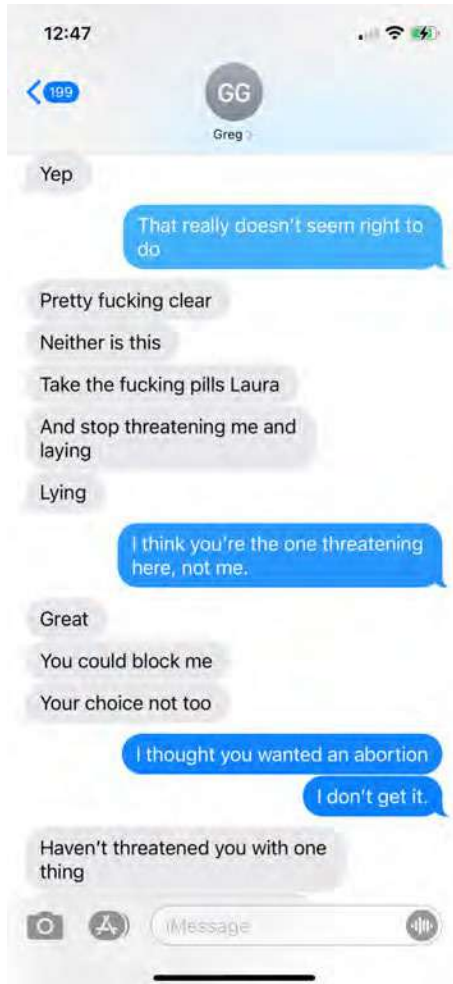
Stressor.

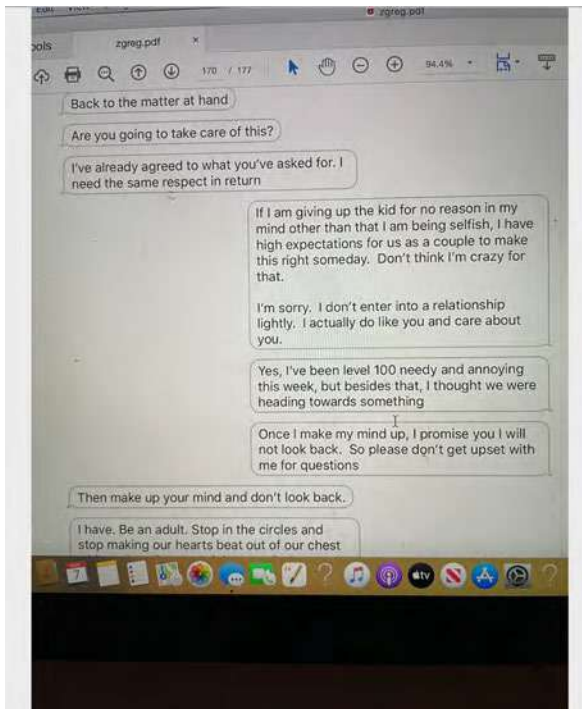
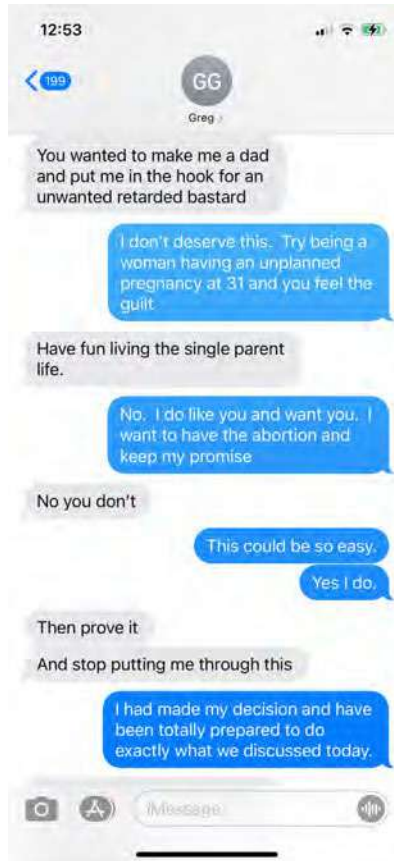
Neither one of us had been ourself. And there's no chance we will be until this is beyond us. I want to get yo know you, not this version that no normal couple would ever have to face. We haven't handled it well until now and we won't until this is behind us. We are human. We have feelings and this stressed us

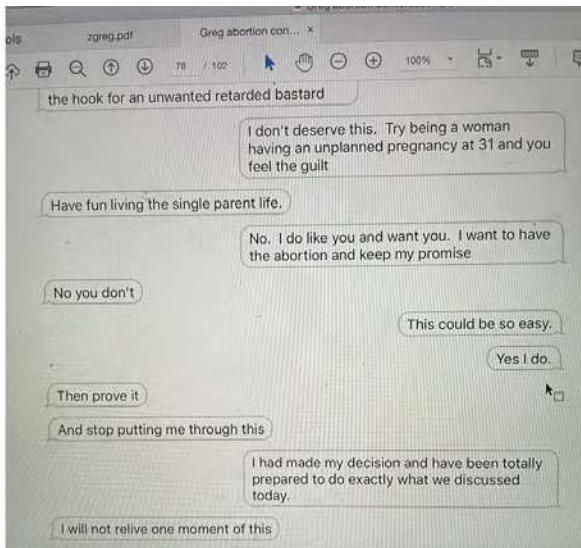
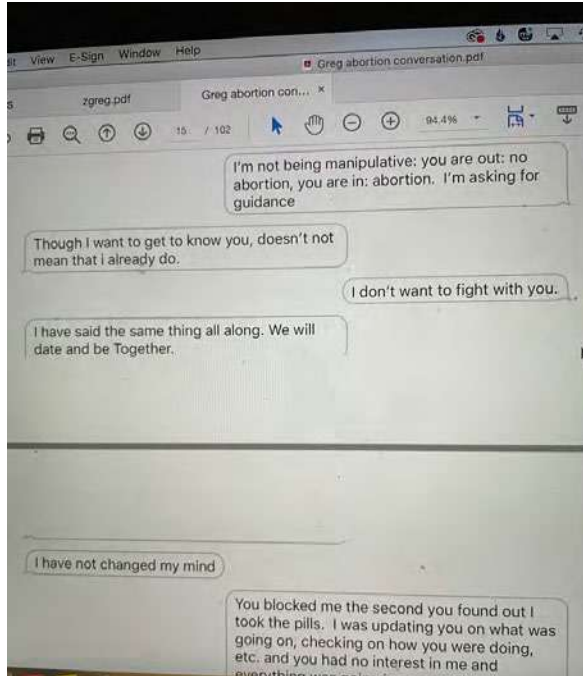
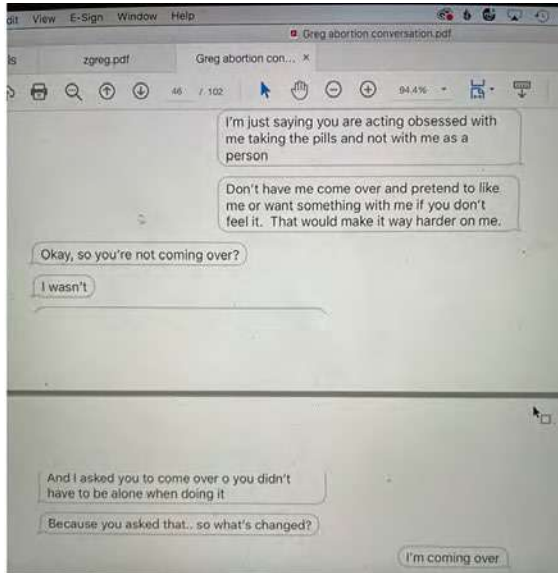
to the Max. I want to do everything I can to move past, heal get to know one another. Under "normal" circumstances. We wanted to take care of this weeks ago and not another

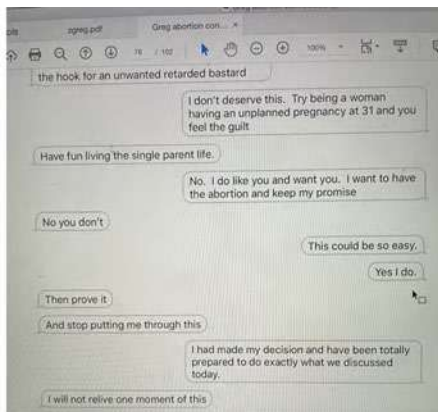
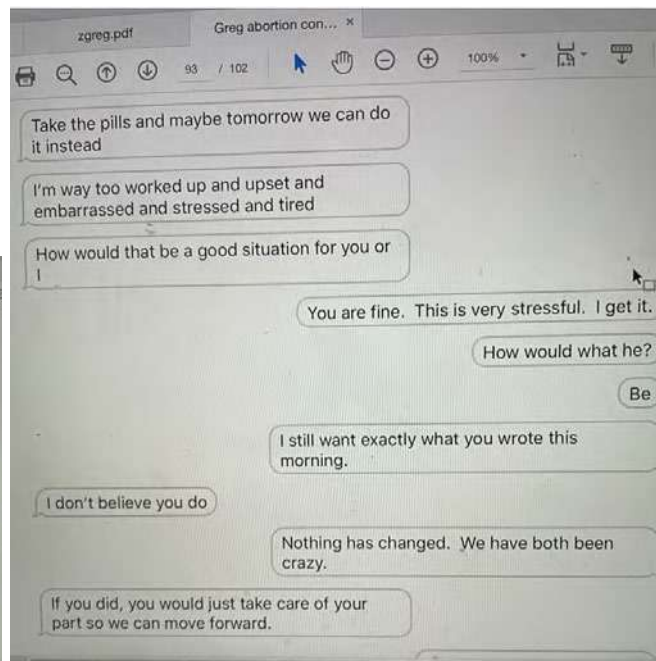
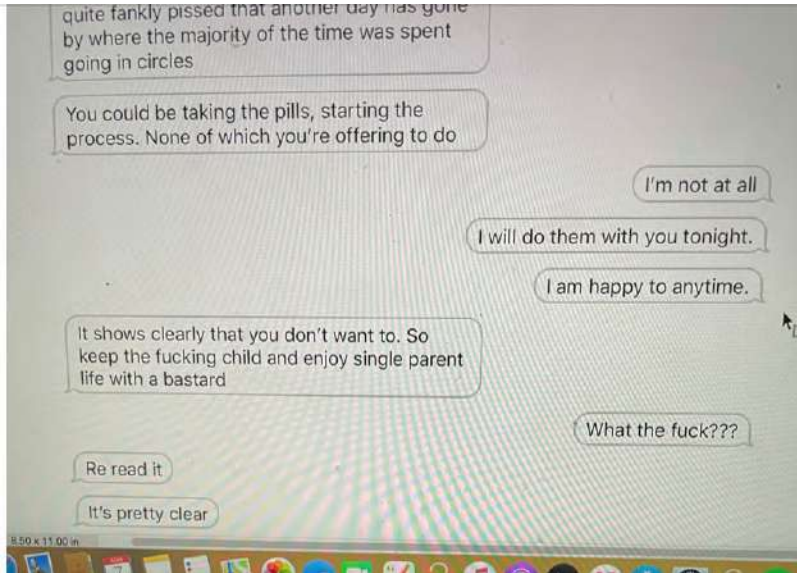
Text messages from Mr. Gillespie expressing his desire to have a relationship after Ms. Owens would have an abortion from the week of August 4, 2021

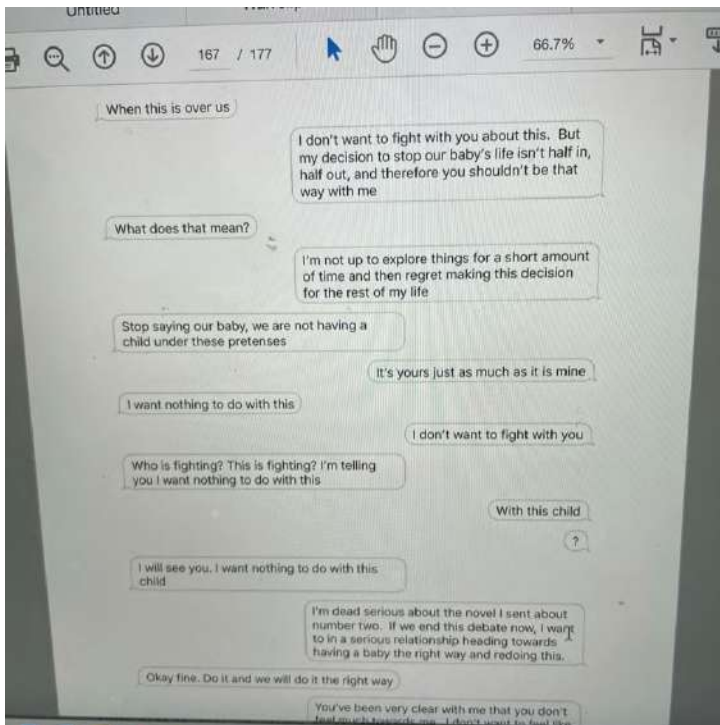
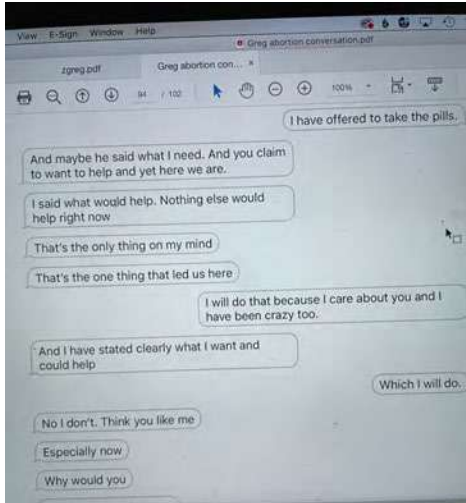


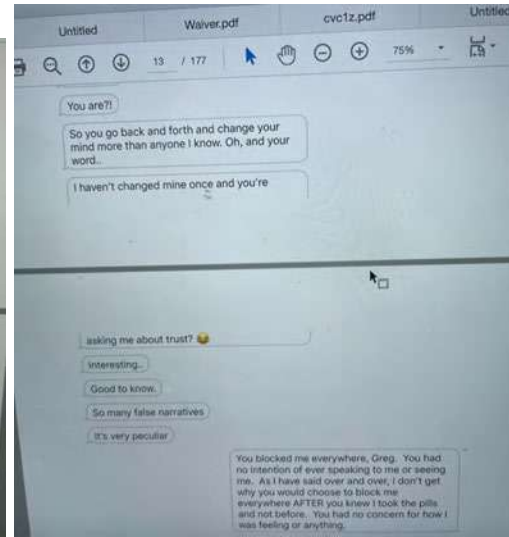
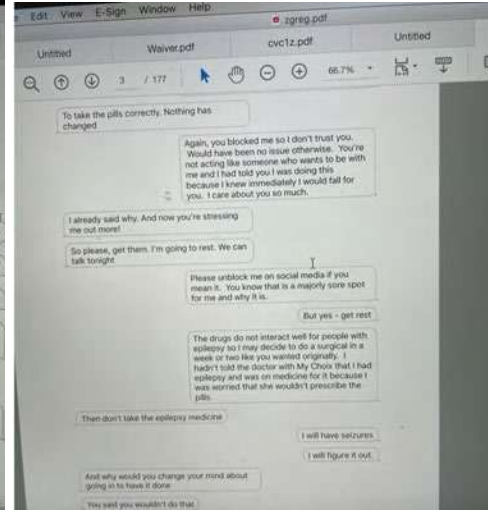
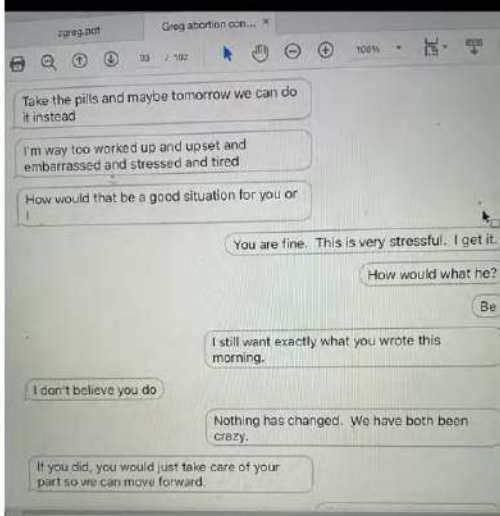


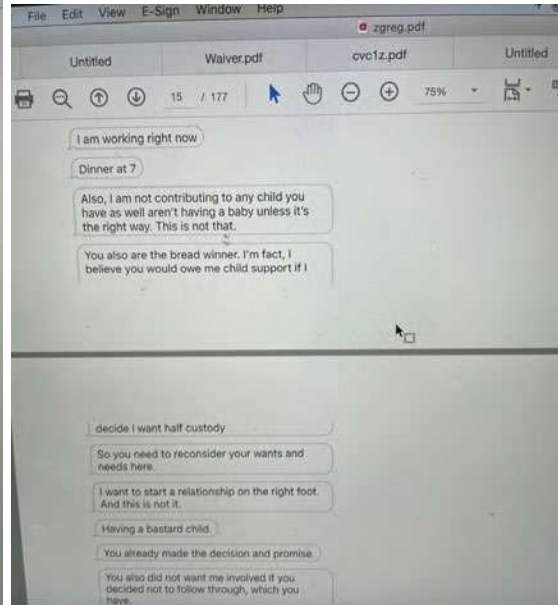
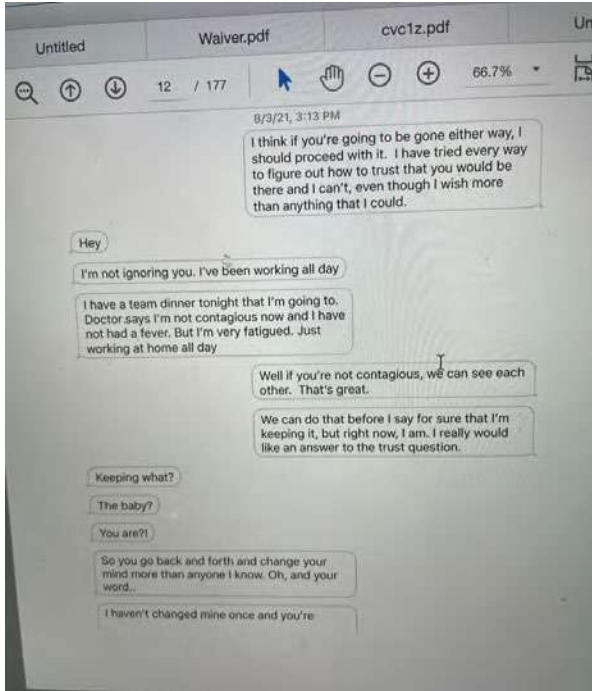


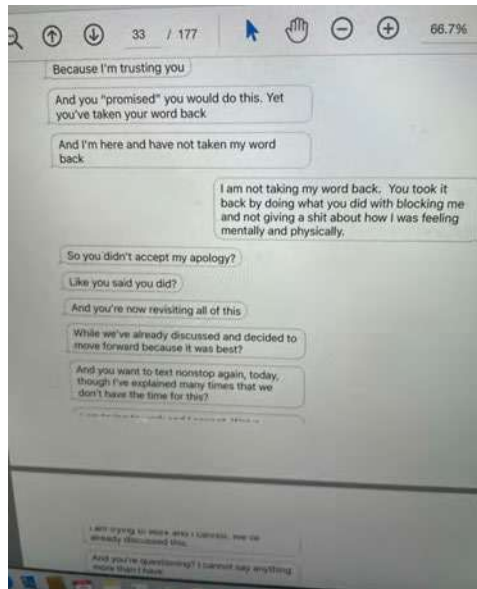
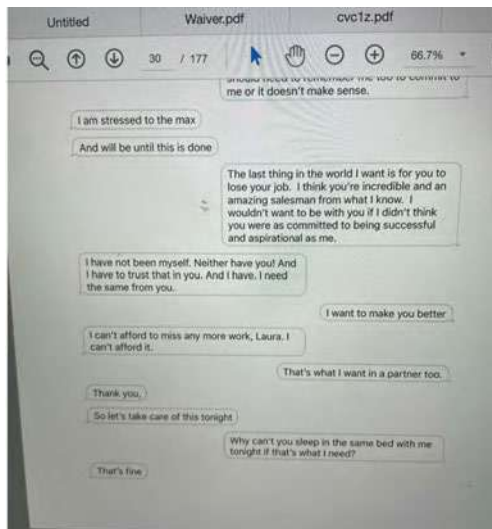
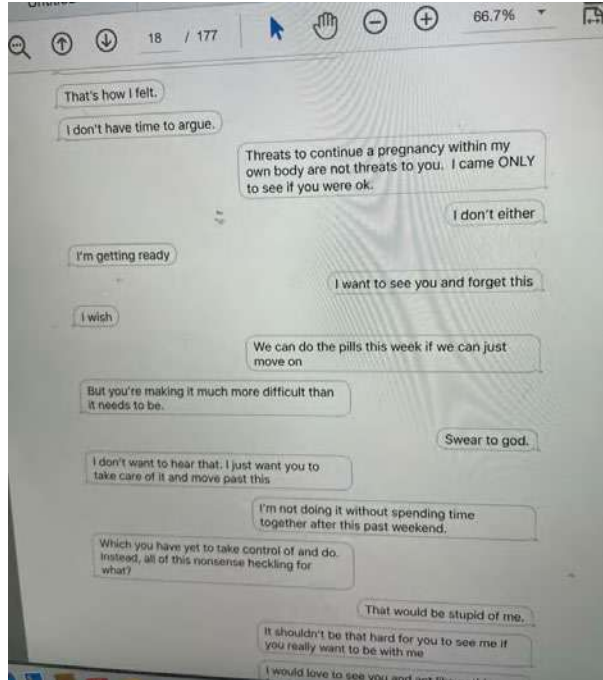
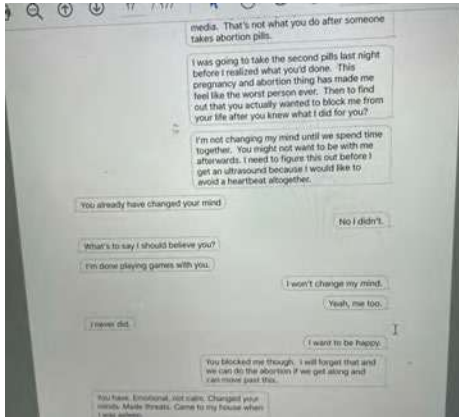












You have driven me nuts with the circles and harassing

You are a terrible person

Oh my god are you serious?

You can enjoy your bastard child and all your money in your own

Did you see what the church says about abortion??????

Yeah I'm serious. I don't give a fuck

I would keep my promise to you.

Church is a belief. One belie.

You already lied to me on many fronts. I will never believe you

Then why do you care about a bastard child?

I have changed my mind because I have felt tortured on this

Until you fucking prove it with actions. You are all talk. Immature. child

I am ready to do that...

No no no you would

Wouldn't

Yes I would.

I can't speak another word about this

I need to work!!!

I need to get my life back

And you won't let me

We can have this done.

I wanted to tonight...

Then fucking do it

I made a promise to the guy who sent me those messages above who is clearly not who you are right now

I am not going back on the promise I made to who you seemed to be then.

And stop with the manipulation. The big lie.

I am ready to do that...

No no no you would

Wouldn't

Yes I would.

I can't speak another word about this

I need to work!!!

I need to get my life back

And you won't let me

We can have this done.

I wanted to tonight...

Then fucking do it

I made a promise to the guy who sent me those messages above who is clearly not who you are right now

I am not going back on the promise I made to who you seemed to be then.

And stop with the manipulation. The big lie.

You're the one changing your mind.

Stop fucking saying it and do it

I can't take this

You've pushed me

I can be over by 8 and do it...wtf is wrong

You

That's what's wrong

I am keeping my cool here.

You. Telling me im responsible for a bastard child

You

I don't think you'd be proud of these texts another day.

Yeah. First time. You only are bc im not.

Now you know how the fuck it feels

Thanks for nothing the last 20 days other than sickness and stress

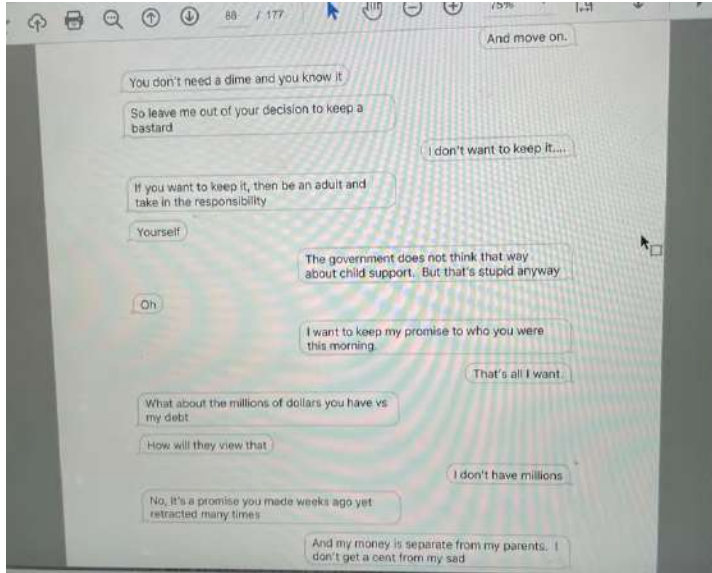
I have felt the same way going through this

Wish the roles had been reversed

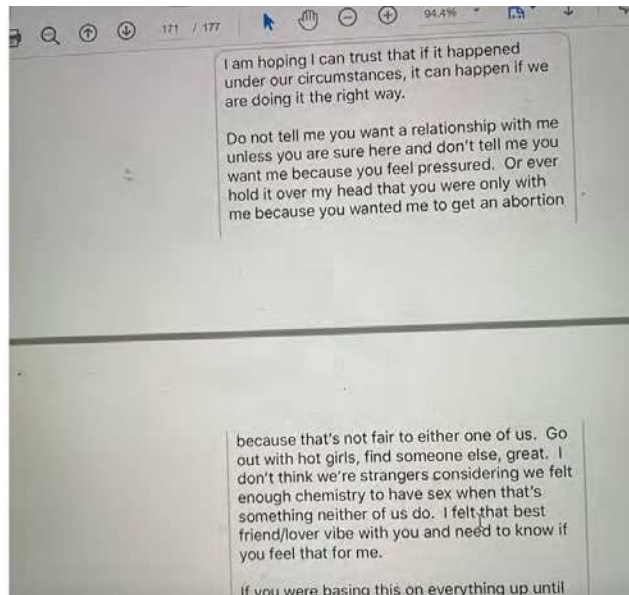
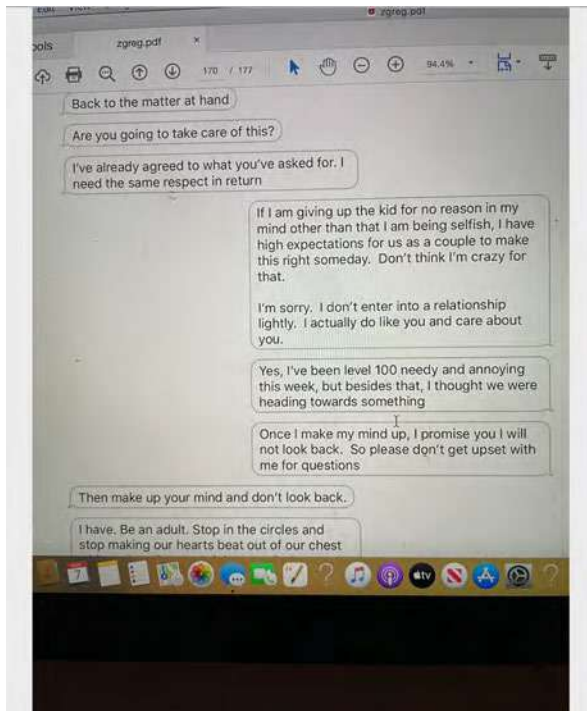
Reversed

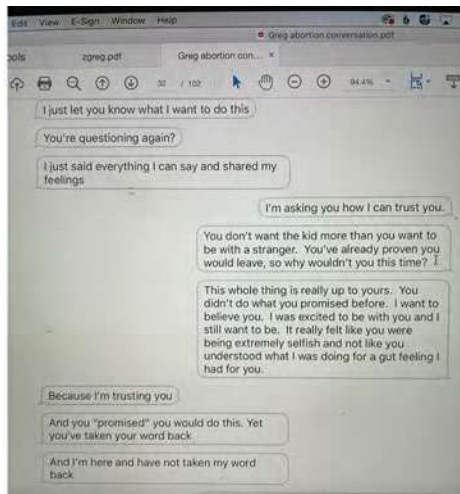
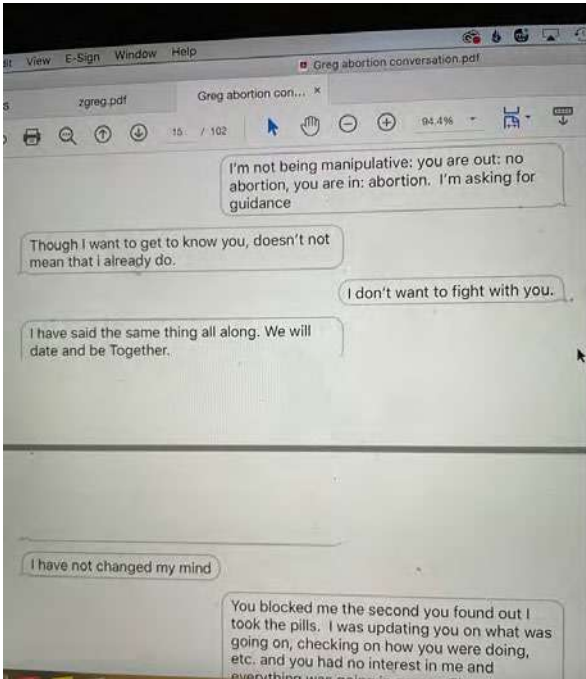
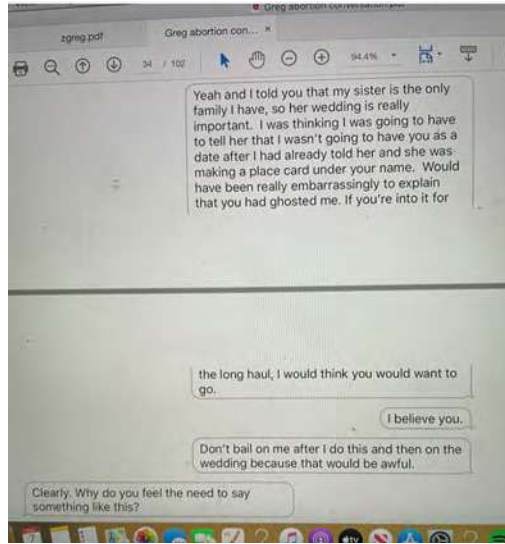
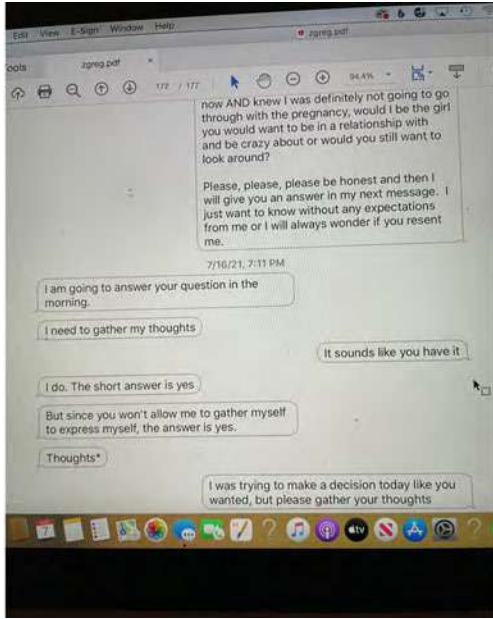
You should have taken care of it the fucking moment you found out and never told me

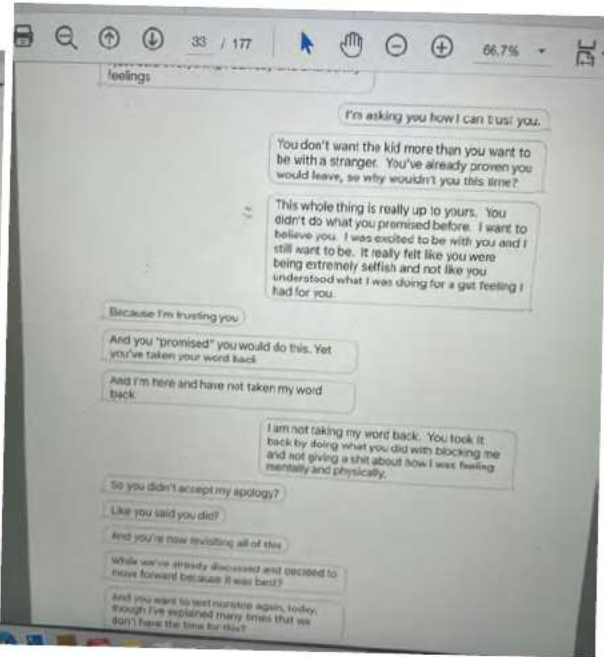
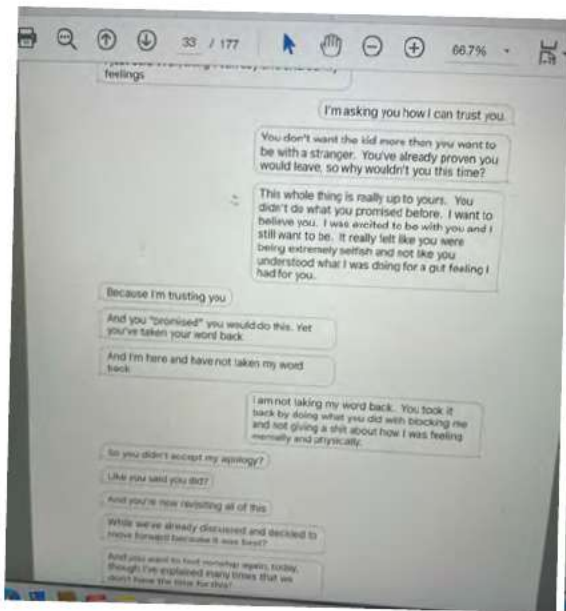
Selfish.

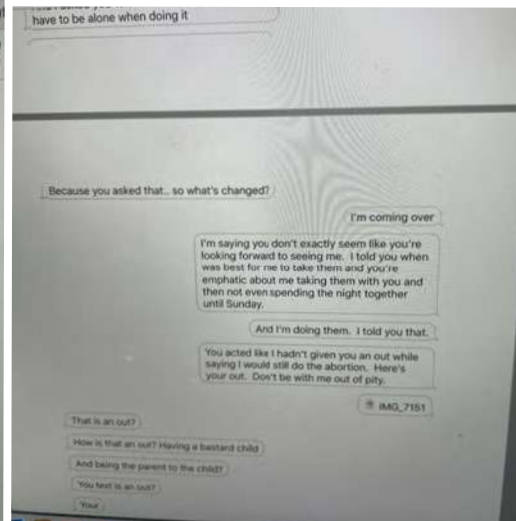
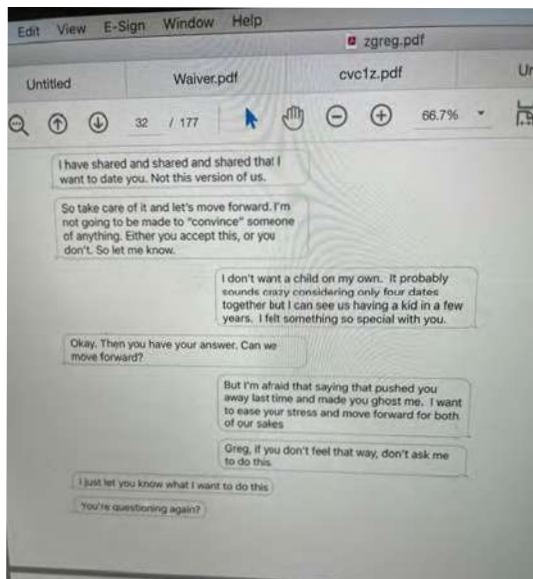
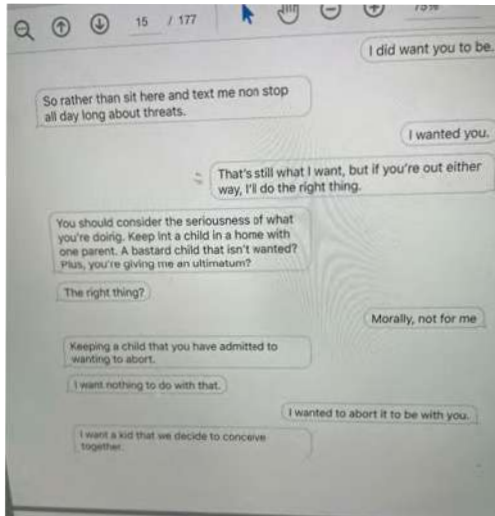
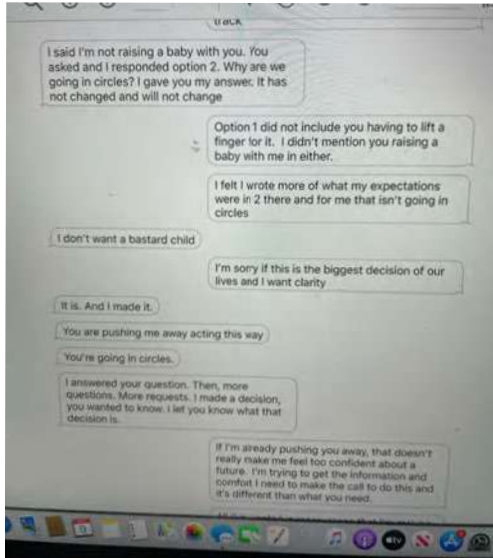


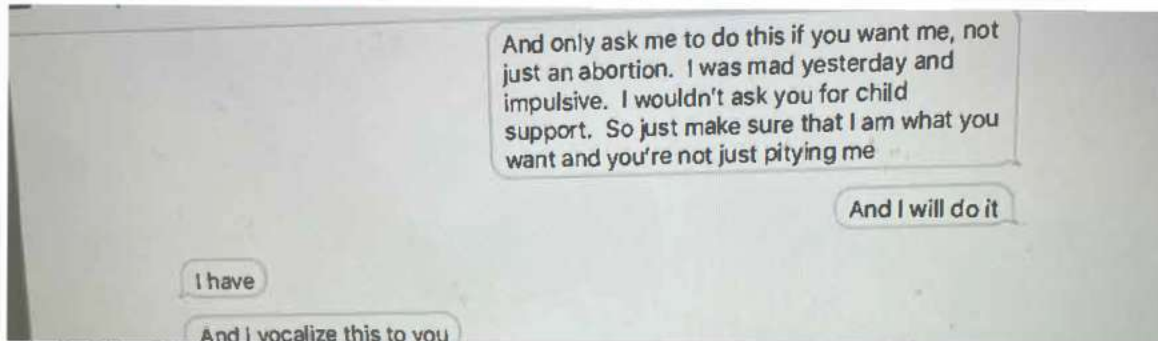
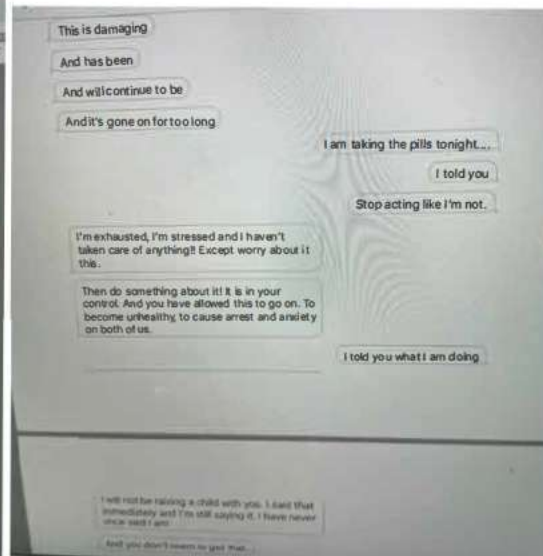
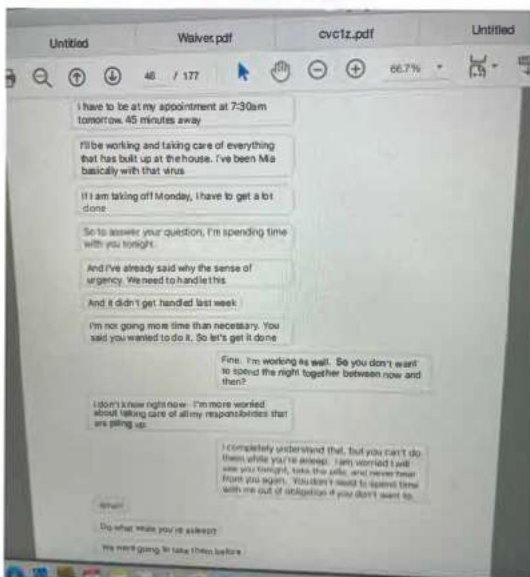
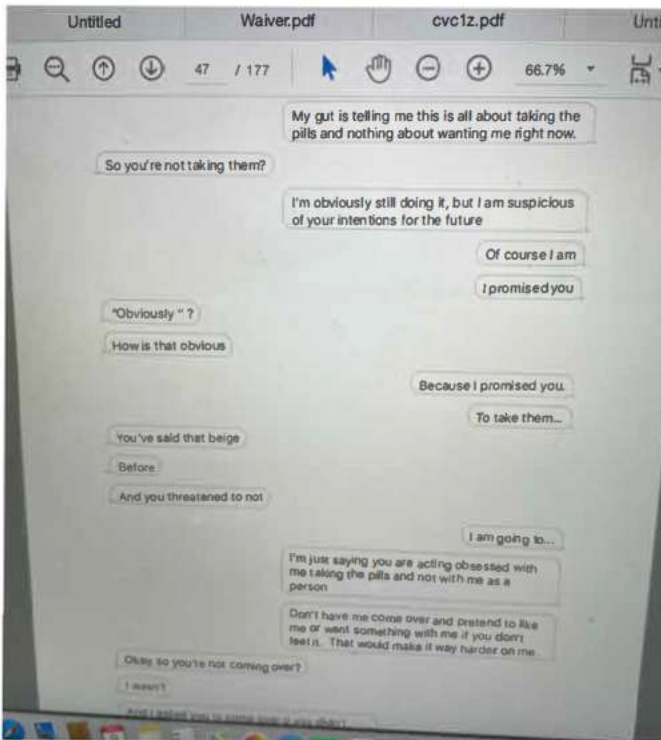
Text messages from Mr. Gallespie coercing Ms. Owens into an abortion











Text messages from Ms. Owens expressing her expectations for the relationship if she were to have an abortion and his responses

PLAINTIFF(S) ATTORNEY INFORMATION:

Laura Owens

[REDACTED]

Scottsdale, AZ 85254

Name/Address/Phone

**Superior Court of Arizona in Maricopa County, 201 W Jefferson
St., Phoenix, AZ 85003**

(Court Name, Address and Phone Number)

Laura Owens

[REDACTED]

Case Number:

Scottsdale, AZ 85254

[REDACTED]

Plaintiff(s) Name/Address/Phone

V.

Gregory Gillespie

[REDACTED]

Scottsdale, AZ 85028

[REDACTED]

Defendant(s) Name/Address/Phone

STATEMENT OF FACTS AND BREACH (CONT)

11. Defendant was steadfast in his viewpoint that the pregnancy be terminated immediately because he did not want a “bastard child” and said he would have no involvement in its life, nor pay child support.
12. Plaintiff did not wish to give up the pregnancy from a spiritual or moral standpoint and planned to proceed with it, even if she was doing it alone.
13. Defendant’s false promises included comments regarding a great opportunity for them to work towards eventual marriage and to have a child ‘the right way’ in the future.
14. Plaintiff indicated to Defendant that she did not expect him to be involved in the rearing and support of this child and did not need to speak with her again if that is what he desired.
15. Defendant refused and instead indicated that he wanted a relationship but he refused to see her or contribute to the relationship until Plaintiff had terminated the pregnancy.
16. Despite Arizona’s five-week pregnancy limit in order to terminate a pregnancy, Defendant found this unacceptable and coerced Plaintiff into obtaining abortion pills using an unorthodox method.
17. Although Plaintiff was reluctant to administer the pills because she felt that she was financially, emotionally, and physically able to create an environment where their child would thrive, Defendant was insistent that she proceed immediately so that they could move on with their future.
18. On July 28, 2021, at around 10pm Plaintiff administered the first pill while over the phone with Defendant.
19. During that conversation Plaintiff reiterated that she did not expect him to participate in the child rearing and support if she were to make the decision to continue her pregnancy.
20. Defendant pleaded with her and said she needed to believe him.
21. On July 29, 2021, Plaintiff administered the second pill incorrectly.
22. After receiving instructions on how to properly administer the second pill, Plaintiff attempted to contact Defendant to administer the second pill over the phone with him, but he was unreachable.
23. Once Plaintiff finally reached Defendant on July 31, 2021, Defendant scolded her for waiting to administer the second pill.

24. On July 31, 2021, Plaintiff correctly administered the second pill after Defendant's persistent insistence that it must be done; however, the termination did not pass as it should.
25. On August 1, 2021, Plaintiff discovered from her doctor that it was a "failed abortion" and that the development of the fetus may not have stopped, but it was uncertain.
26. After attempting to contact Defendant during this time, Plaintiff discovered that Defendant had blocked her from all forms of traditional communication.
27. Upon discovery of the "failed abortion", Defendant panicked and attempted to persuade Plaintiff not only that he had not blocked her from communication, but also that he wanted to stay with her if she followed through with the termination.
28. At that point, Plaintiff indicated that she would let God decide what happened to the fetus at that point regardless of whether she ended up passing it or not.
29. Defendant indicated that he "did not want a retarded bastard child" while also promising that he would attend a wedding with Plaintiff, wanted to start a family with her, and wanted to be introduced to Plaintiff's father (who is suffering from many medical issues) once the pregnancy was terminated.
30. Defendant also indicated that Plaintiff needed to stop playing games with him and that if she wanted a relationship with him, she needed to follow through with the termination.
31. Plaintiff explained that the decision to end a human life was much more serious than any decision she had made before and that she would have to live with the consequences of this for the rest of her life.
32. On August 4, 2021 in text messages sent between Plaintiff and Defendant, Defendant indicated that he wanted to continue the relationship if "we take care of it this week and try for this weekend", and that he promises to "support [her] after this" and they can "begin their relationship" in exchange for terminating the pregnancy. See exhibit [number here].
33. Relying on these representations, Plaintiff was convinced that Defendant's intentions were pure.
34. When the time came for Plaintiff to administer her termination pills, she hesitated and contacted Defendant.
35. Defendant used verbally and emotionally abusive manipulations, even threatening to call the police if she hesitated in terminating the pregnancy. See exhibit [number here].

36. On August 5, 2021, Plaintiff went to Defendant's house where she anticipated he would be there to support her in her emotionally distraught condition due to taking the termination pill on the previous day.
37. Instead, Defendant's behavior was extreme cold and bizarre, as he was telling Plaintiff that she was toying with him and that he could not relax in their relationship until the abortion was done.
38. He further questioned and criticized every action Plaintiff made that night, including making Plaintiff show Defendant that she was properly administering the second pill by showing the inside of her cheek to Defendant because he did not believe that she was taking the pill; Defendant's actions were clear that he cared more about making sure the abortion was done than he did about wanting a future with Plaintiff.
39. Defendant acted disgusted and disrespectful and refused to provide any verbal, emotional, or physical comfort to Plaintiff during this traumatic process until he was convinced that the pregnancy was terminated, causing Plaintiff to leave his house at 1:00AM.
40. By that point Plaintiff had already administered the second pill in Defendant's presence.
41. On August 6, 2021 Plaintiff again discovered that Defendant blocked her from all forms of traditional communication and social media.
42. Plaintiff is physically, emotionally and psychologically distraught to have gone through the tedious and traumatic process of terminating a pregnancy for the sake of a relationship with Defendant, whom had no intention of having one but used the false promises and abuse to manipulate Plaintiff into believing he did.
43. Defendant continued to call Plaintiff names, including "psychopath", and criticized her participation in Apple Podcast's "Nobody Told Me!" as a "joke".
44. Defendant also threatened to go public with Plaintiff's abortion knowing that Plaintiff would lose respect as an advocate for domestic violence and victim's rights and insisted on recording their phone conversations so that he could repeatedly say that Plaintiff "murdered [his] child".
45. Simply put, Defendant did not want a child to be born under any circumstances and was willing to say or do whatever it took to get Plaintiff to terminate the pregnancy without consideration for the fetus or Plaintiff.
46. Plaintiff is suffering from a complete state of shock, depression, and guilt over a needless decision that she made for the sake of Defendant's empty promises.

Exhibit B

1 **WOODNICK LAW, PLLC**
1747 E. Morten Avenue, Suite 205
2 Phoenix, Arizona 85020
Telephone: (602) 449-7980
3 Facsimile: (602) 396-5850
Office@WoodnickLaw.com

4 **Gregg R. Woodnick, #20736**
5 **Kaci Y. Bowman, #023542**
6 *Attorneys for Defendant*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 In Re the Matter of:

10 **LAURA OWENS,**

11 Plaintiff,

12 v.

13 **GREGORY GILLESPIE,**

14 Defendant.

Case No.: CV2021-052893

15 **ANSWER AND COUNTERCLAIM**

(Assigned to the Hon. Alison Bachus)

16 Defendant, Gregory Gillespie, by and through undersigned counsel, hereby files
17 his Answer and Counterclaim to Plaintiff's Complaint and admits, denies, and alleges as
18 follows:
19

20 **ANSWER**

21 1. In responding to Paragraph 1 of Plaintiff's Complaint, Defendant admits
22 that Plaintiff has plead, in part, tort allegations. However, Plaintiff's Complaint also cites
23 to a criminal statute and, to the extent her civil claim is based on the criminal statute,
24 must fail as the criminal statute does not authorize a private cause of action.
25
26
27
28

1 2. Plaintiff filed her Complaint on August 11, 2021 alleging that she became
2 pregnant with Defendant’s child on their second date.

3 3. Prior to filing her Complaint, Plaintiff provided sonographic images to
4 Defendant on August 6 and August 8 of 2021.

5 4. However, a reverse Google Images search revealed that the sonographic
6 images were identical to a sonogram found on a blog post from 2014.

7 5. Upon information and belief, Plaintiff altered the images by adding her
8 name, date of birth, alleged location of the sonogram, and altered the appearance of the
9 image to distinguish it from the one located on the aforementioned blog post.

10 6. To further this fictitious pregnancy, Plaintiff sent Defendant a fabricated
11 email exchange dated August 19, 2021 and August 22, 2021 between herself and
12 California attorneys Alison E. Cordova and Joe Cotchett of Cotchett, Pitre and McCarthy,
13 LLP. Toni Stevens, believed to be a legal assistant at the firm, is also cc’d on the email
14 dated August 19, 2021.

15 7. In the fraudulent email dated August 19, 2021, Associate, Alison E.
16 Cordova, allegedly emailed Plaintiff, in pertinent part, the following (with the subject line
17 of RE: SENT ON BEHALF OF JOE COTCHETT RE: LAURA OWENS
18 PREGNANCY):

19 *“Everything you told us about – pregnancy test and ultrasounds – aligned
20 with the timing you provided us. There were no past pregnancies on your
21 record and the three obstetricians you saw felt that pregnancy was very
22 consistent with intercourse that took place between June 30 and July 1st.
23 [...] It must feel like you have the weight of the world on you, but I have no
24 doubt that the jury will sympathize with your situation. The next step is to
25 fill out the attached retention agreement”*

1 8. Subsequently, Joe Cotchett allegedly emailed Plaintiff, in pertinent part, the
2 following on August 22, 2021 (with the subject line of SENT ON BEHALF OF JOE
3 COTCHETT RE: LAURA OWENS PREGNANCY):
4

5 *“I’m ready to get started on this the second you give me the go ahead [...] I’m always here for you (and the whole Owens family!) whenever you need me and if you want me to go after this guy, I will make this case a top priority (shhh...) because I really feel for you right now. Allison sent me over the retention agreement and medical files [...] This may be very needy and we could make this a public interest story with the snap of a finger.”*
6
7
8
9

10 9. In response, Plaintiff allegedly emailed Joe Cotchett back on August 22,
11 2021 stating, in pertinent part, as follows:

12 *“I think the best call is to pursue alternative service and try to get him twice: once by posting on his house door and the other by calling his company and finding a co-worker to serve him. I think you’re right that you would be better at making those phone calls than me. I texted you the co-workers who we could ask to serve.”*
13
14
15

16 10. Plaintiff’s alleged email exchange with Alison E. Cordova and Joe Cotchett
17 was emailed to Defendant on August 22, 2021 (with the subject line, Urgent: copy of
18 conversation with Joe Cotchett & contract) along with a manufactured/fabricated
19 Contingent Fee Agreement between Plaintiff and Cotchett, Pitre, and McCarthy, LLP,
20 dated August 23, 2021.
21

22 11. Upon information and belief, neither Alison E. Cordova nor Toni Stevens is
23 currently employed at the firm, nor were they employed at the firm as of August 19 and
24 August 22, 2021.
25

26 12. Believing that there was fraud in Plaintiff’s underlying Complaint,
27 undersigned counsel reached out to the purported attorneys in California who appear to
28

1 completely disavow any connection to this cause as an email dated August 24, 2021
2 SENT ON BEHALF OF JOSEPH W. COTCHETT indicated the firm does not
3 represent Plaintiff in this matter. All subsequent emails from undersigned counsel
4 requesting to speak with Joseph Cotchett about the seemingly fraudulent emails
5 purportedly authored by Joseph Cotchett and lawyers that have not worked at the firm for
6 quite some time, went without any substantive response.
7

8 13. In addition to fabricating documents, Plaintiff has refused to take a non-
9 invasive prenatal paternity test.
10

11 14. Plaintiff stated she was “willing to take a paternity test to prove that the
12 child’s is Greg’s [sic]” but that it would be possible that she would **not** be pregnant, as
13 “I’m unsure what the purpose is because if the pregnancy is not viable, that proves that
14 his coercion did result in the end of the pregnancy.” Essentially, Plaintiff has fabricated
15 the abortion coercion allegation to explain why a paternity test would show that she is not
16 pregnant. Additionally, as of filing, Plaintiff has not taken a paternity test despite
17 Defendant’s repeated offers to pay for the test.
18

19 15. Upon information and belief, Plaintiff’s allegations of abortion coercion,
20 intentional infliction of emotional distress and domestic violence are, quite simply,
21 blatant fabrications that underly her real intention – to force Defendant into a relationship
22 with her (in an email with undersigned counsel on August 23, 2021, Plaintiff stated “he
23 can contact me at [REDACTED] if he **rethinks his decision regarding a relationship**
24 and if he would like to be a part of pregnancy decisions going forward.” (Emphasis
25 added).).
26
27
28

1 16. Plaintiff's knowingly fraudulent representations to Defendant have caused
2 Defendant consequent and proximate injury and Defendant is therefore entitled to recover
3 consequential damages in an amount to be determined by trier of fact.
4

5 **II. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

6 1. Defendant hereby incorporates by reference all allegations of paragraphs 1-
7 16 of Counterclaim I Fraud, above, as if fully set forth herein.
8

9 2. In doing so, Defendant hereby alleges that Plaintiff's fraudulent conduct
10 was extreme and outrageous, must either have been intended to cause Defendant
11 emotional distress or recklessly disregarded the near certainty that such distress would
12 result from her conduct and that Defendant has suffered from severe emotional distress as
13 a result of her conduct.
14

15 3. In turn, Defendant is entitled to recover compensatory damages in an
16 amount to be determined by trier of fact.
17

18 **WHEREFORE**, Defendant having fully answered Plaintiff's Complaint and
19 stated his counterclaims, hereby respectfully requests the following:
20

- 21 A. That this Court deny Plaintiff's Complaint in its entirety with prejudice;
22 B. That this Court grant Defendant's counterclaims and award Defendant
23 damages in an amount to be determined by trier of fact;
24 C. That this Court award Defendant his attorneys' fees and costs pursuant to
25 A.R.S. §§ 12-341, 12-349, and Rule 11, *Arizona Rules of Civil Procedure*; and
26 D. That this Court grant such other and further relief as deemed appropriate.
27
28

Exhibit C

1 Fortify Legal Services
2 3707 E Southern Avenue Mesa, AZ 85206
3 Phone: (602) 529-4777 | www.FortifyLS.com
4 Kyle O'Dwyer (036095); [REDACTED]
5 *Attorney for Plaintiff*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MARICOPA**

8 Case No: CV2021-052893

9 Laura Owens,

10 Plaintiff,

11 vs.

12 Gregory Gillespie,

13 Defendant.
14

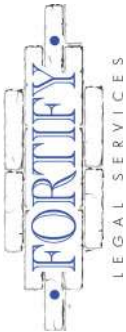
**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
OF ALL DEFENDANT'S
COUNTERCLAIMS**

15 Plaintiff hereby files this motion for partial summary judgment, requesting that the
16 Court issue an order dismissing Defendant's counterclaims for fraud and intentional
17 infliction of emotional distress. The counterclaims must be dismissed because, as to the
18 fraud claim, there are no genuine issues of material fact as to the issues that Defendant did
19 not suffer a consequent proximate injury and did not suffer any damages stemming from
20 his allegations and, as to the claim for intentional infliction of emotional distress, there are
21 no genuine issues of material fact regarding the issues that he did not suffer severe
22 emotional distress and did not suffer damages. He did not provide any information
23 regarding these issues in his disclosure statements in any fashion and therefore is
24 precluded from providing any evidence regarding the same.

25 This motion is supported by the statement of facts and the Court file generally.
26

INTRODUCTION





1 This case concerns the relationship between Plaintiff and Defendant and the
2 communications they had with each other that led to Defendant coercing Plaintiff into
3 having an abortion and the severe emotional distress the parties allegedly suffered during
4 that time. Defendant alleges that although he was present on a video call with Plaintiff's
5 nurse, has seen medical records of a urine test showing that Plaintiff was pregnant, and
6 although he virtually witnessed Plaintiff administer to herself abortion pills, his
7 counterclaim is that she was never pregnant to begin with and that he suffered severe
8 emotional distress as a result of what he calls a fraud. Defendant claims that he missed
9 work as a result of severe emotional distress, but never disclosed any actual facts in
10 support of his claim that he suffered "severe emotional distress." He further never
11 disclosed any documentation or information regarding the work he allegedly missed and
12 damages he allegedly incurred thereby. He further never disclosed any facts or
13 information regarding what damages he would be seeking at all. Due to these complete
14 failures, and the fact that Defendant's failures thereby preclude him from providing any
15 evidence regarding these essential issues of his claims, he cannot succeed on his
16 counterclaims and the Court should grant Plaintiff's motion for summary judgment.

17 **I. FACTS**

18 Defendant filed a counterclaim against Plaintiff, alleging that Plaintiff intentionally
19 inflicted emotional distress on Defendant and committed fraud against Defendant.
20 Answer and Counterclaim. In his Second Supplemental Disclosure Statement, which was
21 his final disclosure statement, Defendant gave no specific factual support for his claims.
22 Plaintiff's Statement of Facts Supporting Her Motion for Partial Summary Judgment
23 ("PSOF"), ¶¶ 1, 3. Instead, he referenced his motions to dismiss and answer and
24 counterclaim. *See* Exhibit A to PSOF, at 2. None of the documents cited in his Second
25 Supplemental Disclosure Statement contained any information regarding the alleged
26 emotional distress Defendant suffered or the alleged injury he suffered. *See generally*



1 Exhibit A to PSOF, Answer and Counterclaim, Motion to Dismiss, filed 9/24/2021, and
2 Motion to Dismiss/Motion for Judgment on the Pleadings, filed 2/15/2022. Further,
3 Defendant’s Second Supplemental Disclosure Statement contained no actual disclosure
4 of what damages Defendant would seek at the arbitration hearing or how Defendant
5 calculated those specific damages. PSOF, ¶¶ 2, 4.

6 **II. LEGAL ANALYSIS**

7 **A. Summary Judgment Standard**

8 The legal standard for summary judgment is well known: “[t]he court shall grant
9 summary judgment if the moving party shows that there is no genuine dispute as to any
10 material fact and the moving party is entitled to judgment as a matter of law.” Ariz. R.
11 Civ. P. 56(a). Further, metaphysical doubts as to the facts do not suffice to deny summary
12 judgment; summary judgment should be granted if no rational trier of fact could find in
13 favor of the party opposing the motion if the case were at trial; and the non-moving party
14 may not rest upon mere allegations or denials in pleadings but must show from the record
15 that there are specific facts presenting genuine issue for trial. *Matsushita Elec. Indus. Co.,*
16 *v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

17 For a moving party to prevail on a motion for summary judgment regarding the
18 non-moving party’s claim, the moving party

19 need merely point out by specific reference to the relevant
20 discovery that no evidence existed to support an essential
21 element of the claim. Conclusory statements will not suffice
22 but the movant need not affirmatively establish the negative of
23 the element. If the party with the burden of proof on the claim
24 or defense cannot respond to the motion by showing that there
is evidence creating a genuine issue of fact on the element in
question, then the motion for summary judgment should be
granted.

25 *Orme School v. Reeves*, 166 Ariz. 301, 309-10, 802 P.2d 1000, 1008-09 (1990)
26 (internal citations omitted).



1 **B. Defendant’s counterclaim for fraud must be dismissed because**
2 **Defendant cannot assert and/or prove a consequent proximate injury and**
3 **damages when he did not disclose any information or documentation**
4 **showing that he suffered any injury or damages.**

4 “[C]harging fraud is a serious matter, and it should never be alleged routinely, as a
5 makeweight or as a hoped-for panacea for an otherwise imperfectly perceived remedy.”
6 *Trollope v. Koerner*, 106 Ariz. 10, 19 (1970). A plaintiff cannot prevail on its fraud claim
7 absent proof of clear and convincing evidence of all nine required elements. *Servs.*
8 *Holding Co., Inc. v. Transamerica Occidental Life Ins. Co.*, 180 Ariz. 198, 208 (Ct. App.
9 1994). The elements of a fraud claim are “(1) a representation; (2) its falsity; (3) its
10 materiality; (4) the speaker’s knowledge of its falsity or ignorance of its truth; (5) his
11 intent that it should be acted upon by and in the manner reasonably contemplated; (6); the
12 hearer’s ignorance of its falsity; (7) his reliance on its truth; (8) his right to rely thereon;
13 and (9) his consequent proximate injury.” *Id.* The “failure to prove any one of the
14 essential elements is fatal to the cause of action.” *Fridenmaker v. VNB*, 23 Ariz. App. 565,
15 569 (Ct. App. 1975). “Fraud may never be established by doubtful, vague, speculative,
16 or inconclusive evidence.” *Enyart v. Transamerica Ins. Co.*, 195 Ariz. 71, 77, 985 P.2d
17 556, 562 (App. 1998).

18 In this case, there are no genuine issues of material fact as to the fact that Defendant
19 did not suffer consequent proximate injury and in fact cannot assert any damages because
20 he failed to disclose any calculation of the damages he would assert. Defendant failed to
21 disclose the amount he would seek at trial, or how to calculate that amount, in violation
22 of Ariz. R. Civ. P. 26.1(a)(7), which is clearly incorporated into the arbitration proceeding
23 by Rule 74(b). Failing to disclose what damages you are seeking is fatal to any attempt
24 to collect those damages. *SWC Baseline & Crismon Investors, L.L.C. v. Augusta Ranch*
25 *Ltd. Partnership*, 228 Ariz. 271, 284-85, 265 P.3d 1070 (App. 2011) (reversing the denial
26 of a motion for directed verdict when the damages asserted and awarded after a trial were



1 not specifically disclosed in violation of Rule 26.1(a)(7)); *see also Hoffman v.*
2 *Construction Protective Services, Inc.*, 541 F.3d 1175, 1179-80 (9th Cir. 2008) (affirming
3 the district court’s grant of a motion in limine to preclude evidence of damages for
4 plaintiffs for which no damages calculation was disclosed under the Federal Rules of Civil
5 Procedure, and indicating the appropriateness of the “even when a litigant’s entire cause
6 of action... [will be] precluded.”).

7 Defendant further did not disclose any facts, circumstances, documentation or
8 information regarding work that he allegedly missed as alleged in the counterclaim, which
9 assumedly would have included W-2s, pay stubs, emails, text messages, actual dates
10 missed, hourly pay, etc. He similarly failed to disclose any facts or information regarding
11 what alleged emotional distress he suffered from. In sum, he disclosed nothing regarding
12 his alleged damages and therefore cannot seek them.

13 Based on his failure to properly disclose any documentation or information in
14 accordance with the disclosure Rules, Defendant cannot meet his burden of proof of
15 proving that he suffered any consequent proximate injury or any damages at all and
16 summary judgment on this claim is appropriate.

17 **C. Defendant’s counterclaim for intentional infliction of emotional**
18 **distress must be dismissed because Defendant did not disclose any**
19 **calculation of damages and did not disclose any facts that would support**
20 **his contention that he suffered severe emotional distress.**

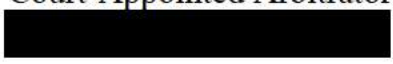
21 The elements for a claim of intentional infliction of emotional distress are “*first* the
22 conduct by the defendant must be ‘extreme’ and ‘outrageous’; *second*, the defendant must
23 either intend to cause emotional distress or recklessly disregard the near certainty that such
24 distress will result from his conduct; and *third*, severe emotional distress must indeed
25 occur as a result of defendant’s conduct.” *Ford v. Revlon*, 153 Ariz. 38, 43, 734 P.2d 580,
26 585 (1987) (citing *Watts v. Golden Age Nursing Home*, 127 Ariz. 255, 258, 619 P.2d 1032,
1035 (1980)) (emphasis in original).

1 Fabian Zazueta
2 Garret Respondek
3 Zazueta Law Firm, PLLC
4 2633 East Indian School Road, Suite 370
5 Phoenix, Arizona 85016



6 With COPY to the following by email:

7 Devina Jackson
8 Court-Appointed Arbitrator



9
10 By: Kyle O'Dwyer



11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 Fortify Legal Services
2 3707 E Southern Avenue Mesa, AZ 85206
3 Phone: (602) 529-4777 | www.FortifyLS.com
4 Kyle O'Dwyer (036095); [REDACTED]
5 Attorney for Plaintiff

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MARICOPA

8 Case No: CV2021-052893

9 Laura Owens,

10 Plaintiff,

11 vs.

12 Gregory Gillespie,

13 Defendant.
14

15 **PLAINTIFF'S STATEMENT OF
16 FACTS SUPPORTING HER MOTION
17 FOR PARTIAL SUMMARY
18 JUDGMENT**

19 Plaintiff hereby files this statement of facts in support of her motion for partial
20 summary pursuant to Arizona Rules of Civil Procedure Rule 56(c)(3)(A).

21 1. Defendant did not suffer a consequent proximate injury due to the alleged
22 fraud. *See* Exhibit A, Defendant/Counterclaimant Gregory Gillespie's Second
23 Supplemental Rule 26.1 Disclosure Statement, dated March 4, 2022, at 2 (noting that the
24 factual bases for the defenses and counterclaims can be found in the Motion to Dismiss
25 filed 9/24/2021, Answer and Counterclaim filed 1/4/2022, and Motion to Dismiss/Motion
26 for Judgment on the Pleadings of Plaintiff's Abortion Coercion Claim, filed 2/15/2022.
None of these documents refer to any specific consequent proximate injury allegedly
suffered by Defendant but only contain a conclusory statement of such).

2. Defendant did not incur damages due to the alleged fraud. *See* Exhibit A,
at 5 (showing no calculation of damages).



1 3. Defendant did not suffer from severe emotional distress. *See* Exhibit A, at
2 2 (noting the pleadings referenced therein, none of which discuss any facts or
3 circumstances showing what emotional distress Defendant suffered from, severe or
4 otherwise).

5 4. Defendant did not incur any damages due to the alleged intentional
6 infliction of emotional distress. *See* Exhibit A, at 5 (showing no calculation of damages).

7
8 RESPECTFULLY SUBMITTED this 26th day of July, 2023.

9 **FORTIFY LEGAL SERVICES**

10 /s/ Kyle O'Dwyer
11 Kyle O'Dwyer
12 3707 E Southern Avenue
13 Mesa, AZ 85206
14 (602) 529-4777
15 Attorney for Plaintiff



14 Filed this 26th day of July 2023
15 with Maricopa County Clerk of Court and
16 served this 26th day of July 2023
by TurboCourt on the following:

17 Fabian Zazueta
18 Garret Respondek
19 Zazueta Law Firm, PLLC
20 2633 East Indian School Road, Suite 370
Phoenix, Arizona 85016

21 [REDACTED]

22 With COPY to the following by email:


23 Devina Jackson
24 Court-Appointed Arbitrator

25 [REDACTED]

26 By: Kyle O'Dwyer

EXHIBIT A

1 **WOODNICK LAW, PLLC**
1747 E. Morten Avenue, Suite 205
2 Phoenix, Arizona 85020
Telephone: (602) 449-7980

3 
4 **Gregg R. Woodnick, #20736**
5 **Kaci Y. Bowman, #023542**
6 *Attorneys for Defendant*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 In Re the Matter of:

10 **LAURA OWENS,**

11 Plaintiff,

12 v.

13 **GREGORY GILLESPIE,**

14 Defendant.

Case No.: CV2021-052893

DEFENDANT/COUNTERCLAIMANT
GREGORY GILLESPIE'S SECOND
SUPPLEMENTAL RULE 26.1
DISCLOSURE STATEMENT

(Additions in bold)

(Assigned to the Hon. Alison Bachus)

15
16
17 Pursuant to Rule 26.1, *Arizona Rules of Civil Procedure*,
18 Defendant/Counterclaimant, (hereinafter "Mr. Gillespie"), by and through undersigned
19 counsel, hereby submits his **Second Supplemental** Rule 26.1 Disclosure Statement. Mr.
20 Gillespie reserves the right to supplement his disclosure statement as discovery progresses,
21 and as the parties continue to disclose information pursuant to Rule 26.1, *Arizona Rules of*
22 *Civil Procedure*.
23
24

25 ///

26 ///

27 ///

1 **I. FACTUAL BASIS OF DEFENSES AND COUNTERCLAIMS**

2 *See* Motion to Dismiss filed 09/24/21, Answer and Counterclaim filed 01/04/22
3 and Motion to Dismiss/Motion for Judgment on Pleadings of Plaintiff's Abortion
4 Coercion Claim filed 02/15/22. **In addition, and critically notable, Plaintiff has**
5 **reportedly fabricated a pregnancy and subsequent abortion in the past during a**
6 **relationship with Michael Marraccini in 2016.**

7
8 **II. LEGAL THEORIES UPON WHICH DEFENSES AND**
9 **COUNTERCLAIMS ARE BASED**

10
11 *See* Motion to Dismiss filed 09/24/21, Answer and Counterclaim filed 01/04/22
12 and Motion to Dismiss/Motion for Judgment on Pleadings of Plaintiff's Abortion
13 Coercion Claim filed 02/15/22.

14
15 **III. NAMES, ADDRESSES AND TELEPHONE NUMBERS OF WITNESSES**
16 **DEFENDANT/COUNTERCLAIMANT EXPECTS TO CALL AT TRIAL**

- 17 1. Gregory Gillespie
18 c/o Gregg R. Woodnick
19 WOODNICK LAW, PLLC
20 1747 E. Morten Avenue, Suite 205
Phoenix, AZ 85020
(602)449-7980

21 Mr. Gillespie is expected to testify regarding the extent of his relationship with
22 Plaintiff, all communications with Plaintiff and the emotional distress and monetary
23 damages he has suffered as a result.

- 24
25 2. Laura Owens
26 [REDACTED]
27 Scottsdale, AZ 85254
28 [REDACTED]

1 Plaintiff is expected to testify regarding her allegations against Mr. Gillespie and
2 the alleged damages she has suffered as a result.

3 3. Plaintiff's current and former medical providers.

4 4. Any other witness found to have relevant information regarding the subject
5 matter of this lawsuit.
6

7 5. In the absence of an agreement about the admissibility of documents, any
8 and all custodians of records, and any other witnesses required to authenticate or lay
9 proper foundation for documents presented.
10

11 6. Without waiving any objections, any and all experts, if any, listed by any
12 party.
13

14 **IV. PERSONS WHOM DEFENDANT/COUNTERCLAIMANT BELIEVES**
15 **MAY HAVE KNOWLEDGE OR INFORMATION RELEVANT TO THE**
16 **EVENTS THAT GAVE RISE TO THIS ACTION**

17 1. Joseph W. Cotchett, Alison E. Cordova, Toni Stevens and Patrice O'Malley
18 of Cotchett, Pitre & McCarthy, LLP, 840 Malcolm Road, Suite 200, Burlingame, CA
19 94010, [REDACTED] are believed to have knowledge or information regarding Plaintiff's
20 seemingly fraudulent emails purportedly authored by Joseph Cotchett and lawyers that
21 have not worked at the firm for quite some time.

22 2. Michael Marraccini, [REDACTED] San Carlos, CA 94070,
23 [REDACTED] is believed to have knowledge or information
24 regarding allegations Plaintiff lodged against him in the past and alleged emotional distress
25 and damages Plaintiff allegedly sustained as a result (as alleged in FDV-18-813693) and
26 Plaintiff's admissions regarding her fabrication of a pregnancy and subsequent
27
28

1 **abortion during their relationship in 2016. Stephanie Marraccini and Colin Scanlon**
2 **are also believed to have knowledge or information regarding allegations Plaintiff**
3 **lodged against Michael Marraccini in FDV-18-813693 and Plaintiff's admissions**
4 **regarding her fabrication of a pregnancy and subsequent abortion during her**
5 **relationship with Michael Marraccini in 2016. Upon information and belief,**
6 **Stephanie Marraccini and Colin Scanlon live in San Francisco, California.**

8 3. Plaintiff's family members including, but not limited to, Ronn Owens, Jan
9 Black, Sarah Navarro and Christian Navarro may have knowledge or information relevant
10 to the allegations that gave rise to this action as well as Plaintiff's actions against Michael
11 Marraccini and defendants in Case No. CGC-19-575032 and alleged resulting damages.
12 Upon information and belief, Mr. Owens and Ms. Black live in San Francisco, California
13 and Sarah and Christian Navarro live in New York, New York.

16 Any and all persons identified through on-going discovery and/or disclosure. Mr.
17 Gillespie reserves the right to supplement as discovery progresses.

19 **V. NAMES OF ALL PERSONS WHO HAVE GIVEN STATEMENTS**

21 1. **Stephanie Marraccini gave a written statement under penalty of**
22 **perjury on or about March 26, 2018 in FDV-18-813693 indicating knowledge of**
23 **Plaintiff's admissions regarding her fabrication of a pregnancy and subsequent**
24 **abortion during her relationship with Michael Marraccini in 2016.**

25 2. **Colin Scanlon gave a written statement under penalty of perjury on or**
26 **about March 27, 2018 in FDV-18-813693 indicating knowledge of Plaintiff's**

1 **admissions regarding her fabrication of a pregnancy and subsequent abortion**
2 **during her relationship with Michael Marraccini in 2016.**

3 Any and all persons identified through on-going discovery and/or disclosure. Mr.
4 Gillespie reserves the right to supplement as discovery progresses.
5

6 **VI. ANTICIPATED SUBJECT AREAS OF EXPERT TESTIMONY**

7 Mr. Gillespie reserves the right to supplement as discovery progresses.

8 **VII. DAMAGES**

9
10 Mr. Gillespie has sustained significant monetary damages as a result of being unable
11 to work due to the extreme amount of emotional distress he experienced while being
12 subjected to Plaintiff's fraudulent representations and intentional infliction of emotional
13 distress and is therefore seeking to be compensated for the same in addition to an award of
14 his attorneys' fees and costs pursuant to A.R.S. §§ 12-341, 12-349 and Rule 11, *Arizona*
15 *Rules of Civil Procedure.*
16

17 **VIII. EXHIBITS**

- 18
19 1. Text messages between parties' cell phones from 06/29/21 through
20 08/24/21 [GG0001-GG0216];
21
22 2. Communications between Plaintiff's work phone and Mr. Gillespie's cell
23 phone dated 08/02/21 [GG0217-GG0217];
24
25 3. Communications between Plaintiff ([REDACTED]@gmail.com) and
26 Mr. Gillespie's cell phone dated 08/02/21 [GG0218-GG0218];
27
28

- 1 4. Communications between Plaintiff ([REDACTED]@aol.com) and Mr.
2 Gillespie's cell phone dated 08/02/21 through 08/05/21 [GG0219-
3 GG0343];
- 4 5. Communications between Plaintiff [REDACTED]) and
5 Mr. Gillespie's cell phone dated 08/06/21 [GG0344-GG0352];
6
- 7 6. Communications between Plaintiff
8 [REDACTED]) and Mr. Gillespie's cell phone
9 dated 08/06/21 [GG0353-GG0353];
10
- 11 7. Communications between Plaintiff [REDACTED]@gmail.com) and Mr.
12 Gillespie's cell phone dated 08/06/21 [GG0354-GG0355];
13
- 14 8. Communications between Plaintiff [REDACTED] and
15 Mr. Gillespie's cell phone dated 08/07/21 through 08/08/21 [GG0356-
16 GG0401];
- 17 9. Communications between Plaintiff [REDACTED]@gmail.com) and Mr.
18 Gillespie's cell phone dated 08/09/21 through 08/10/21 [GG0402-
19 GG0403];
20
- 21 10. Communications between Plaintiff [REDACTED]@gmail.com) and Mr.
22 Gillespie's cell phone dated 08/16/21 [GG0404-GG0404];
23
- 24 11. Letter from Plaintiff to Mr. Gillespie [GG0405-GG0412];
- 25 12. Email from Plaintiff to Mr. Gillespie dated 08/22/21 regarding Urgent:
26 copy of conversation with Joe Cotchett & contract [GG0413-GG0420];
27
- 28 13. Plaintiff's Instagram posts [GG0421-GG0431];

1 14. Email from Plaintiff to undersigned counsel dated 02/06/22 and attached
2 screenshot [GG0432-GG0433];

3 15. Plaintiff's Complaint for Damages Based Upon: Negligence, Negligent
4 Entrustment, Negligent Hiring, Supervision or Retention in Case No. CGC-
5 19-575032 [GG0434-GG0449];
6

7 16. 'Vanishing' blogpost on I Still Believe - Our story and journey after the
8 stillbirth of our son and our faith in the Lord [GG0450-GG0452];
9

10 17. https://www.youtube.com/watch?v=UIOX-_VDIfo (The Lifesaving Power
11 of Kindness to Strangers | Laura Owens | TEDxMercerIslandHSWomen -
12 YouTube);

13 18. **All public records obtained regarding FDV-18-813693 [GG0453-**
14 **GG0672];**
15

16 19. Plaintiffs' current and former medical records from all providers (*will*
17 *supplement*);
18

19 20. Without waiving available objections, any and all transcripts of depositions
20 or statements taken of any person in this matter and any exhibits or attachments thereto.

21 21. Without waiving available objections, any and all admissible portions of
22 discovery responses and disclosure statements served by any party in this matter and any
23 exhibits or attachments thereto.
24

25 22. Without waiving available objections, any and all expert reports and
26 attachments thereto provided in this matter.
27
28

1 23. Without waiving available objections, any and all exhibits and or evidence
2 disclosed and/or listed by Plaintiffs.

3 **IX. INSURANCE POLICIES**

4 Not applicable.
5

6 **X. RELEVANT DOCUMENTS**

7 Mr. Gillespie reserves the right to supplement as discovery progresses.

8 **DATED** this 4th day of March, 2022.
9

10 **WOODNICK LAW, PLLC**

11 

12 _____
13 Gregg R. Woodnick

14 Kaci Y. Bowman

Attorneys for Defendant

15 **COPY** of the foregoing document e-mailed
16 this 4th day of March, 2022 to:

17 Laura Owens

18 [REDACTED]
19 Scottsdale, AZ 85254

20 [REDACTED]@gmail.com

Plaintiff Pro Per

21 By: /s/Sara Seeburg
22
23
24
25
26
27
28

VERIFICATION

GREGORY GILLESPIE, being first duly sworn upon his oath, deposes and says:

That he is the Defendant/Counterclaimant in the foregoing cause of action; that as such, he is authorized to make this Verification; that he has read the foregoing *Second Supplemental Disclosure Statement* and knows the contents thereof to be true of his own knowledge, except as to those matters stated on information and belief, and as to such, he believes the same to be true.

DocuSigned by:

F68541EEEBEC422...

GREGORY GILLESPIE

3/4/2022

Date

Exhibit D

1 Fabian Zazueta, #032687
2 Garrett Respondek, #035465
3 **ZAZUETA LAW, PLLC**
4 2633 E. Indian School Rd., Ste. 370
5 Phoenix, AZ 85016
6 Office: (480) 761-4020

7 
8 *Attorneys for Gregory Gillespie*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 **LAURA OWENS,**

12 **Plaintiff,**

13 **v.**

14 **GREGORY GILLESPIE,**

15 **Defendant.**

16 **Case No.: CV2021-052893**

17 **MOTION FOR SUMMARY
18 JUDGMENT**

19 (Oral Argument Requested)

20 (Assigned to the Hon.
21 Michael Gordon)

22 Pursuant to Ariz.R.Civ.P. 56(a), Defendant Gregory Gillespie (“Defendant”), by
23 and through undersigned counsel, moves for summary judgment on Plaintiff Laura Owens
24 (“Plaintiff”) affirmative claims against Defendant. Summary judgment is proper because:

- 25
- 26 ➤ Plaintiff has not established a physical manifestation of symptoms as required for a claim of intentional infliction of emotional distress; and
 - Plaintiff has not made a requisite showing of damages to support her claim.

This Motion is supported by Defendant’s concurrently filed Statement of Facts and the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF FACTUAL BACKGROUND

This Motion concerns Plaintiff’s affirmative claim for intentional infliction of emotional distress. [See Defendant’s Statement of Facts (“SOF”) at ¶ 1]. Plaintiff’s

LAW

ZAZUETA

1 Complaint does not seek relief for any specific injuries associated with such a claim. [SOF
2 at ¶¶ 2–5]. Indeed, Plaintiff’s disclosure statement does not even allege that she suffered a
3 manifestation of physical symptoms associated with her alleged severe emotional distress.
4 [SOF at ¶¶ 7–9]. Plaintiff also does not seek any damages associated with a physical
5 manifestation of her alleged severe emotion distress. [SOF at ¶¶ 10–11]. Rather, Plaintiff
6 requests that the Court award her attorneys’ fees and costs, “billed at reasonable rates.”
7 [SOF at ¶ 12]. Even assuming such damages are recoverable in a pure tort action, Plaintiff
8 has not disclosed a computation of damages. [SOF at ¶ 13]. Likewise, Plaintiff has not
9 disclosed any documentation related to her alleged damages or claim for intentional
10 infliction of emotional distress that would otherwise constitute “severe” emotional distress.
11 [SOF at ¶¶ 14–15].

12 **II. LEGAL ARGUMENT**

13 **a. Standard of Review.**

14 Summary judgment is proper where there is no genuine dispute as to any material
15 fact and the moving party is entitled to summary judgment on the claim. *See* Ariz.R.Civ.P.
16 56(a). Summary judgment is also proper where “a party fails to make a showing sufficient
17 to establish the existence of an element essential to that party’s case, and on which that
18 party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
19 (1986). To defeat a motion for summary judgment the non-moving party “must show that
20 competent evidence is available which will justify a trial on that issue...; Hearsay or
21 speculation is not competent evidence.” *Cullison v. City of Peoria*, 120 Ariz. 165, 168, 584
22 P.2d 1156, 1159 (1978) (citing *Schock v. Jacka*, 105 Ariz. 131, 460 P.2d 185 (1969);
23 *Crocker v. Crocker*, 103 Ariz. 497, 446 P.2d 226 (1968); *Masden v. Fisk*, 5 Ariz. App. 65,
24 423 P.2d 141 (1967)).

25 Absent a factual basis for a party’s claims, legal theories on which said claims are
26 based, a list of witnesses, supporting documentation, or a computation of damages, there

1 exists no genuine issue of material fact that would preclude the Court from granting
2 summary judgment against Plaintiff.

3 **b. Absent a Manifestation of Physical Symptoms, Plaintiff Cannot Assert a**
4 **Claim for Intentional Infliction of Emotional Distress.**

5 Plaintiff simply has not alleged, or even disclosed, a physical manifestation of
6 symptoms associated with her claim for intentional infliction of emotional distress.
7 Accordingly, Plaintiff’s claim must fail as a matter of law. “Arizona courts apply a case-
8 by-case analysis to determine whether a plaintiff has offered sufficient proof of severe
9 emotional distress.” *Harding v. Sternsher*, No. 1 CA-CV 16-0127, 2017 WL 3138184, at
10 *3, ¶ 13 (Ariz. Ct. App. July 25, 2017), *as amended on reconsideration* (Oct. 25, 2017)
11 (citing *Lucchesi v. Frederic N. Stimmell, M.D., Ltd.*, 149 Ariz. 76, 79 (1986)).¹ However,
12 Arizona courts have observed that mere emotional distress and severe emotional distress
13 should be demarcated. *Id.* (internal citations omitted). As a result, “crying, being stressed
14 and upset, and having occasional trouble sleeping is not enough to establish severe
15 emotional distress.” *Id.* (citing *Midas Muffler Shop v. Ellison*, 133 Ariz. 194, 199 (App.
16 1982). Conversely, a claim for intentional infliction of emotional distress *may* be
17 established where severe emotional distress is result in physical symptoms, i.e., “high
18 blood pressure, a nervous tic, chest pains, fatigue, and dizziness...” *Id.* (citing *Ford v.*
19 *Revlon, Inc.*, 153 Ariz. 38, 43 (1987); *Pankratz v. Willis*, 155 Ariz. 8, 12; 17 (App. 1987)).
20 At a minimum, a claimant must show that their severe emotional distress manifested into
21 physical symptoms directly and proximately caused by the severe emotional distress. The
22 Arizona District Court followed step with this conclusion. *See Pierre-Canel v. American*
23 *Airlines*, 375 F.Supp.3d 1044, 1056 (D. Ariz. 2019) (...[T]he Court is not aware of any

24 _____
25 ¹ Pursuant to Ariz.Sup.Ct.R. 111(c), Defendant attaches this memorandum decision hereto
26 as **Exhibit “1”**.

1 Arizona Supreme Court authority that adopts a view that does not require a physical
2 manifestation of the emotional harm.”).

3 Based on existing authority, a claimant must, at a minimum, disclose a manifestation
4 of physical symptoms associated with the alleged severe emotional distress. Based on the
5 record, Plaintiff has not even alleged that she suffered physical symptoms associated with
6 her alleged severe emotional distress. Indeed, the Complaint makes no mention of physical
7 symptoms, and Plaintiff’s disclosure statement does not even allege that she suffered from
8 physical symptoms as a direct and proximate result of her claim. In sum, the record presents
9 nothing but conclusory, baseless claims pertaining to Plaintiff’s alleged damages. Plaintiff
10 has failed to meet her evidentiary burden to bring her claim to a jury and/or court.
11 Accordingly, Plaintiff’s claim for intentional infliction of emotional distress must fail as a
12 matter of law, and, as a result, the Court should grant Defendant’s Motion.

13 **c. Plaintiff Cannot Receive an Award of Attorneys’ Fees and Costs under**
14 **a Tort Claim, and Plaintiff Does Demonstrate Her Damages Sufficient**
15 **to Withstand a Motion for Summary Judgment.**

16 Incredibly, Plaintiff seeks attorney fees as part of her tort claim. As with any tort
17 claim, a claimant must demonstrate damages to prove a claim for intentional infliction of
18 emotional distress. *Citizen Publ'g Co. v. Miller*, 210 Ariz. 513, 516, ¶ 11, 115 P.3d 107,
19 110 (2005). As Plaintiff noted in her motion for summary judgment, “failure to disclose
20 what damages you are seeking is fatal to any attempt to collect those damages.” *See SWC*
21 *Baseline & Crismon Investors, L.L.C. v. Augusta Ranch Ltd. Partnership*, 228 Ariz. 271,
22 284–85, 265 P. P.3d 1070 (App. 2011) (internal citations omitted). *See also* Plaintiff’s
23 Motion for Summary Judgment at 4:23–5:6; Plaintiff’s Motion for Summary Judgment at
24 5:20–6:8.

25 Here, through her disclosures, Plaintiff only claims that she is entitled to an award
26 of attorneys’ fees and costs. However, a claimant in a tort action is not entitled to an award
of attorneys’ fees and costs. Indeed, the Arizona Court of Appeals has held that the failure

1 to comply with a standard of care, which does not arise out of contract, does not result in
 2 an award of attorneys’ fees and costs. *Lewin v. Miller Wagner & Co., Ltd.*, 151 Ariz. 29,
 3 36–37, 725 P.2d 736, 734–44 (App. 1986). This reasoning is consistent with the holding of
 4 *Sparks v. Republic Nat. Life Ins. Co.*, which held, in relevant part, that a claimant in a tort
 5 action, without a contract element, cannot recover their attorneys’ fees and costs. 132 Ariz.
 6 529, 543, 647 P.2d 1127, 1141 (1982).

7 Here, Plaintiff alleged damages are an unspecified, undisclosed accounting of all
 8 costs and fees associated with the matter. Notwithstanding Plaintiff’s failure to identify a
 9 statutory basis for recovery of attorneys’ fees and costs, Plaintiff cannot recover her any
 10 attorneys’ fees and costs. A claimant can never recover attorneys’ fees and costs in a tort
 11 action that is not interwoven with a contract action. Plaintiff has not identified any contract
 12 action that would support an award of attorneys’ fees and costs. Even if such an award is
 13 warranted, Plaintiff has not disclosed a computation of damages. *See* Ariz.R.Civ.P.
 14 26.1(a)(7); *see also* *County of La Paz v. Yakima Compost Co., Inc.*, 224 Ariz. 590, 607, ¶
 15 53, 233 P.3d 1169, 1187 (App. 2010) (holding, in relevant part, that an estimation of loss
 16 may not rest upon conjecture of speculation). Even assuming that Plaintiff’s damages are
 17 her attorneys’ fees and costs, such damages are inevitably speculative as the damages
 18 would require calculation after a judgment was rendered. In any event, attorney’ fees and
 19 costs are inapplicable to the Action. As a result, Plaintiff’s claim must be dismissed.

20 **III. CONCLUSION**

21 For the foregoing reasons, Plaintiff has failed to present evidence of a physical
 22 manifestation of injury resulting from her alleged emotional distress. Plaintiff also has
 23 failed to allege the appropriate damages for her tort claim, warranting dismissal as a result.
 24 Summary judgment is proper on Plaintiff’s claim.

25
 26

1 **RESPECTFULLY SUBMITTED** this 26th day of July 2023.

2 **ZAZUETA LAW, PLLC**

3
4 /s/ Fabian Zazueta
5 Fabian Zazueta, Esq.
6 Garrett Respondek, Esq.
7 2633 E. Indian School Rd., Ste. 370
8 Phoenix, AZ 85016

9 ████████████████████
10 ████████████████████
11 *Attorneys for Gregory Gillespie*

12 **ELECTRONICALLY** filed this same day
13 via AZTurboCourt.com.

14 **COPY** emailed this same day on:

15 Kyle O'Dwyer, Esq.
16 **FORTIFY LEGAL SERVICES**
17 3707 E. Southern Ave.
18 Mesa, AZ 85206

19 ████████████████████
20 *Attorney for Plaintiff*

21 /s/ Garrett Respondek



EXHIBIT 1



2017 WL 3138184

Only the Westlaw citation is currently available.

NOTICE: NOT FOR OFFICIAL PUBLICATION.

UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS
NOT PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

Court of Appeals of Arizona, Division 1.

Lee HARDING, et al., Plaintiffs/Appellants,

v.

David Nathan STERNISHER, dba Smart Smiles AZ, dba Great
Braces for Less, dba Great Braces 4 Less, Defendant/Appellee.

No. 1 CA–CV 16–0127

|

FILED 7/25/2017

|

AMENDED PER ORDER FILED 10/25/2017

|

Review Denied May 08, 2018

Appeal from the Superior Court in Maricopa County, No. CV2013–010869, The Honorable Christopher T. Whitten, Judge.
AFFIRMED IN PART; REVERSED IN PART AND REMANDED WITH INSTRUCTIONS

Attorneys and Law Firms

Law Offices of David W. Dow, Phoenix, By Carmen A. Chenal, Counsel for Plaintiffs/Appellants

Israel & Gerity, PLLC, Phoenix, By Michael E. Gerity, Counsel for Defendant/Appellee

Presiding Judge [Diane M. Johnsen](#) delivered the decision of the Court, in which Judge [Patricia K. Norris](#)¹ and Judge [Jay M. Polk](#) joined.²

MEMORANDUM DECISION

[JOHNSEN](#), Judge:

*1 ¶ 1 Plaintiffs Lee Harding, Julie Harding and Kidz Connexion, P.C., appeal the superior court's judgment in favor of defendant David Nathan Sternsher. For the following reasons, we reverse the court's summary judgment for Sternsher on conversion and remand for further proceedings solely on that claim. We affirm the remainder of the judgment.

FACTS AND PROCEDURAL BACKGROUND

¶ 2 Lee Harding owned Kidz Connexion, a dental practice specializing in pediatric dentistry that, until June 2012, employed dentist David Sternsher. Beginning in September 2012 and continuing through August 2013, several negative reviews of Kidz Connexion were posted anonymously on the internet. The online reviews complained about long wait times, poor customer service and unprofessional behavior at Kidz Connexion and alleged that employees improperly restrained patients. In addition, in December 2012, an unidentified person sent a letter to Phoenix Health Plan (“PHP”), a program that contracts with the

Arizona Health Care Cost Containment System (“AHCCCS”), alleging that Kidz Connexion was committing insurance fraud and abusing patients. In response to the letter, PHP suspended Kidz Connexion from treating any PHP patients and commenced an investigation. PHP ultimately reinstated Kidz Connexion's credentials.

¶ 3 After he left Kidz Connexion, Sternsher and five other former Kidz Connexion employees filed a complaint with the Arizona State Board of Dental Examiners in which they alleged Lee Harding and Kidz Connexion over-diagnosed and over-treated patients, and used improper material for restorations. They also alleged Kidz Connexion allowed dentists who were not credentialed by a patient's insurance plan to perform dental work, and then fraudulently billed the insurance plan by having a credentialed dentist sign the paperwork. Sternsher also sent a copy of this letter to AHCCCS and other AHCCCS service providers.

¶ 4 The plaintiffs filed this action against Sternsher and the other former Kidz Connexion employees who signed the Dental Board complaint, alleging they were responsible for the negative online reviews and the anonymous letter to PHP. The complaint alleged defamation, tortious interference with business relations, conversion, intentional infliction of emotional distress and negligent infliction of emotional distress. In his answer, Sternsher alleged a counterclaim for breach of contract.

¶ 5 Before trial, the plaintiffs dismissed their claims against all the defendants except Sternsher. The superior court granted Sternsher summary judgment on the claims alleging conversion, intentional infliction of emotional distress and negligent infliction of emotional distress. That left for trial Sternsher's counterclaim for breach of contract for failure to reimburse him for orthodontic supplies, and the plaintiffs' claims for defamation and tortious interference with business relations. The plaintiffs did not assert any damages arising out of the letter to the Dental Board and AHCCCS, but instead confined themselves to the online reviews and the PHP letter.

*2 ¶ 6 The jury found in favor of Sternsher on all claims, awarding him \$1,997 on his counterclaim. The plaintiffs timely appealed. We have jurisdiction pursuant to [Arizona Revised Statutes \(“A.R.S.”\) section 12–2101\(A\)\(1\) \(2017\)](#).³

DISCUSSION

A. Summary Judgment on the Plaintiffs' Tort Claims.

¶ 7 In reviewing a grant of summary judgment, this court will determine *de novo* whether any genuine issues of material fact exist and whether the superior court incorrectly applied the law. *L. Harvey Concrete, Inc. v. Agro Constr. & Supply Co.*, 189 Ariz. 178, 180 (App. 1997). We review the facts in the light most favorable to the parties against whom summary judgment was entered. *Id.* Summary judgment is appropriate “if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.” *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990).

1. Conversion.

¶ 8 In their claim for conversion, the plaintiffs alleged Sternsher stole dental supplies while he was working for Kidz Connexion.

¶ 9 “Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” *Miller v. Hehlen*, 209 Ariz. 462, 472, ¶ 34 (App. 2005) (citing *Restatement (Second) of Torts § 222A(1) (1965)*). To prove conversion, a plaintiff must show that the defendant improperly and intentionally exerted control and dominion over plaintiff's goods, thereby causing damage. *Focal Point, Inc. v. U–Haul Co. of Ariz.*, 155 Ariz. 318, 320 (App. 1986).

¶ 10 In his motion for summary judgment, Sternsher argued the plaintiffs had not produced any evidence to support their claim. In response, Lee Harding offered his declaration that Sternsher had access to Kidz Connexion's dental supplies before the

company terminated him and certain supplies and instruments that were particularly related to Sternsher's work disappeared at times that corresponded to his shifts at Kidz Connexion. The superior court ruled that the plaintiffs did not set forth any evidence that Sternsher took the dental supplies and Lee Harding's speculation that Sternsher was the most likely suspect was not sufficient to create a material question of fact.⁴

¶ 11 Contrary to the ruling of the superior court, the plaintiffs offered sufficient evidence to allow a reasonable jury to find that Sternsher converted the supplies. A party may support its conversion claim by circumstantial evidence, so long as it is not mere suspicion or conjecture. *Performance Sys., Inc. v. Kahl*, 24 Ariz. App. 92, 94 (1975). The evidence the plaintiffs offered went beyond speculation, as Lee Harding averred that he inventoried Kidz Connexion's dental supplies weekly and the discrepancies “always corresponded” to when Sternsher worked at Kidz Connexion. In addition, Lee Harding's declaration established that the missing supplies were specialized equipment that had “no value to anyone other than a dentist who owns a pediatric clinic” and disappeared at a time when Sternsher was opening his own clinic. The plaintiffs therefore offered not just suspicion and conjecture, but circumstantial evidence that established a motive and a pattern from which a reasonable jury could infer that Sternsher took the supplies. *Orme Sch.*, 166 Ariz. at 309 (summary judgment is only appropriate when reasonable people could not agree with the conclusion advanced by the non-moving party).

2. Emotional distress claims.

a. Intentional infliction of emotional distress.

*3 ¶ 12 The Hardings alleged Sternsher intentionally caused them severe emotional distress through extreme and outrageous conduct. The superior court ruled that because the Hardings had failed to produce any evidence of severe emotional distress, they could not recover on this claim. The Hardings argue the court erred because Sternsher's conduct aggravated Lee Harding's [blocked artery](#) condition and caused him insomnia for which his physician prescribed a sleep medication.⁵

¶ 13 To establish a claim for intentional infliction of emotional distress, a plaintiff must show that (1) the defendant's conduct was extreme and outrageous, (2) the defendant either intended to cause emotional distress or recklessly disregarded the near certainty that such distress would result from his conduct, and (3) the defendant's actions caused the plaintiff to suffer severe emotional distress. *Ford v. Revlon, Inc.*, 153 Ariz. 38, 43 (1987). Arizona courts apply a case-by-case analysis to determine whether a plaintiff has offered sufficient proof of severe emotional distress. *Lucchesi v. Frederic N. Stimmell, M.D., Ltd.*, 149 Ariz. 76, 79 (1986). “A line of demarcation should be drawn between conduct likely to cause mere 'emotional distress' and that causing 'severe emotional distress.'” *Midas Muffler Shop v. Ellison*, 133 Ariz. 194, 199 (App. 1982) (citation omitted); *see also Restatement (Second) of Torts* § 46 cmt. j (1965) (liability only arises when emotional distress is extreme; “Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people.”). Thus, crying, being stressed and upset, and having occasional trouble sleeping is not enough to establish severe emotional distress. *Midas Muffler Shop*, 133 Ariz. at 199. On the other hand, anxiety that results in physical symptoms such as [high blood pressure](#), a nervous tic, chest pains, fatigue and dizziness may constitute severe emotional distress. *Ford*, 153 Ariz. at 41; *see also Pankratz v. Willis*, 155 Ariz. 8, 12, 17 (App. 1987) (anger and depression coupled with physical ailments such as headaches and [hemorrhoids](#) supported claim for emotional distress).

¶ 14 In support of his claim for intentional infliction of emotional distress, Lee Harding submitted his own declaration that Sternsher's actions had aggravated his existing medical condition (a vertebral artery blockage) “to the point of [it] being an emergent condition,” but he did not explain how (or if) the supposed exacerbated condition had any physical manifestations or avow that he had received any medical treatment for it. Moreover, Harding claimed he suffered from insomnia due to “job stress and anxiety” but did not offer any evidence that it was Sternsher's conduct, and not other employment-related stressors, that caused the stress and anxiety leading to the insomnia.

¶ 15 This evidence did not create a material question of fact regarding whether Sternsher's actions caused Lee Harding severe emotional distress. *See Midas Muffler Shop*, 133 Ariz. at 199 (citing as examples of severe emotional distress cases in which

(1) plaintiff suffered [heart attack](#) and nervous exhaustion, (2) plaintiff's fright resulted in premature birth of a dead baby, (3) plaintiff was found writhing in bed in a state of extreme shock and hysteria, (4) plaintiff suffered severe headaches and stress and her state of anxiety ultimately required hospitalization, (5) plaintiff suffered from [multiple sclerosis](#), and stress caused by the defendant's conduct caused a [relapse](#) that resulted in permanent impairment of her condition).

b. Negligent infliction of emotional distress.

*4 ¶ 16 The Hardings likewise did not present sufficient evidence to create a material issue of fact regarding negligent infliction of emotional distress. To establish this claim, the plaintiff must prove that he or she “witnessed an injury to a closely related person, suffered mental anguish manifested as physical injury, and was within the zone of danger so as to be subjected to an unreasonable risk of bodily harm created by the defendant.” *Rodriguez v. Fox News Network, L.L.C.*, 238 Ariz. 36, 39, ¶ 7 (App. 2015). The Hardings did not present any evidence that they witnessed injury to a loved one or were in a zone of danger. In addition, as discussed, Lee Harding's declaration did not substantiate his claim that Sternsher's conduct caused him emotional distress of such severity that it resulted in physical manifestations. See also *Gau v. Smitty's Super Valu, Inc.*, 183 Ariz. 107, 109 (App. 1995) (transitory physical symptom such as insomnia does not support a claim for negligent infliction of emotional distress).

B. Exclusion of Audio Recordings.

¶ 17 The plaintiffs also argue the superior court abused its discretion at trial by excluding certain audio recordings of Sternsher that reflected his animus toward Lee Harding and Kidz Connexion. We review the court's exclusion of evidence for an abuse of discretion and will not disturb such a ruling “unless a clear abuse of discretion appears and prejudice results.” *Gemstar Ltd. v. Ernst & Young*, 185 Ariz. 493, 506 (1996).

¶ 18 In Spring 2013, Kidz Connexion employee Felix Lucero secretly recorded several conversations in which Sternsher asked him to gather evidence to support Sternsher's planned Dental Board complaint (the “Lucero recordings”). In the recordings, Sternsher repeatedly expressed his hostility toward Lee Harding, stating he wanted to “bury” him and put him and Kidz Connexion out of business. Sternsher moved *in limine* to exclude the audio recordings, arguing they were not relevant to any element of the defamation and tortious interference claims and their prejudicial effect would outweigh any probative value. The plaintiffs maintained the recordings were not unfairly prejudicial and showed Sternsher's malicious intent, a matter relevant to both claims and their request for punitive damages.

¶ 19 At the superior court's request, the plaintiffs designated the specific portions of the Lucero recordings they intended to introduce in evidence at trial. Sternsher objected to the admission of any portion of the Lucero recordings, but submitted counter-designations that he asserted also should be presented to the jury if the court allowed the recordings. On the first day of trial, the court excluded the Lucero recordings, ruling the proffered sections were confusing, misleading and unfair and that the recordings were more prejudicial than probative. Nevertheless, the court allowed the plaintiffs to impeach Sternsher with portions of the recordings several times during his testimony.

¶ 20 The plaintiffs argue the superior court abused its discretion by excluding the Lucero recordings because the probative value of the recordings (demonstrating Sternsher's malicious intent toward Lee Harding and Kidz Connexion) outweighed their prejudicial nature. The superior court may exclude relevant evidence under [Arizona Rule of Evidence 403](#) if its probative value is “substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” *State v. Hardy*, 230 Ariz. 281, 291, ¶ 49 (2012). The superior court has considerable discretion when weighing these factors, *State v. Gibson*, 202 Ariz. 321, 324, ¶ 17 (2002), and we will not disturb its ruling absent an abuse of discretion and resulting prejudice. *Yauch v. S. Pac. Transp. Co.*, 198 Ariz. 394, 404, ¶¶ 28–30 (App. 2000).

¶ 21 We conclude the superior court abused its discretion by ruling that the probative value of the Lucero recordings was outweighed by a danger of unfair prejudice and confusion. The recordings, which over and over captured Sternsher using profane

language to describe his disdain for Lee Harding and Sternsher's desire to put Kidz Connexion out of business, constituted powerful evidence of Sternsher's intent, which was relevant both to the plaintiffs' claim for defamation and their claim for tortious interference with business relations. *See, e.g., Reynolds v. Reynolds*, 231 Ariz. 313, 317, ¶ 8 (App. 2013); *Antwerp Diamond Exch. of America, Inc. v. Better Bus. Bureau of Maricopa County, Inc.*, 130 Ariz. 523, 529–30 (1981). Nevertheless, the court's ruling did not prejudice the plaintiffs because the court allowed them to use key portions of the recordings as impeachment during their cross examination of Sternsher. For example, the passages the plaintiffs used to impeach Sternsher included his statements that he wanted to “bury” Lee Harding by shutting down his business and leaving him “broke” and, possibly, in jail. The court also allowed the plaintiffs to impeach Sternsher with his statement that he expected his own business to benefit if he was able to “bury” Lee Harding and Kidz Connexion. These excerpts amply demonstrated Sternsher's animus toward Lee Harding and Kidz Connexion.

*5 ¶ 22 Accordingly, because the superior court's ruling excluding the Lucero recordings did not prejudice the plaintiffs, we will not reverse the jury's verdict on that ground. *Yauch*, 198 Ariz. at 404, ¶¶ 28–30.

C. Breach of Contract Claim.

¶ 23 Finally, the plaintiffs argue the superior court erred by granting judgment on the jury's verdict in favor of Sternsher on his counterclaim for breach of contract because no written contract existed. Arizona law permits the enforcement of an oral contract, *see* A.R.S. § 12–543 (2017), and Sternsher testified that Lee Harding agreed that Kidz Connexion would reimburse him for one-half of the costs of the orthodontic supplies and materials he used for Kidz Connexion patients, but it failed to pay the last invoice.

CONCLUSION

¶ 24 For the foregoing reasons, we reverse the superior court's summary judgment for Sternsher on the plaintiffs' conversion claim and remand for further proceedings solely on that claim. We affirm the remainder of the judgment.

¶ 25 Both parties request an award of attorney's fees on appeal pursuant to A.R.S. § 12–341.01 (2017), which allows a court to award the successful party reasonable attorney's fees in a contested action arising out of contract. In our discretion, we decline to award fees to either party. *See Munger Chadwick, P.L.C. v. Farwest Dev. & Const. of the Sw, LLC*, 235 Ariz. 125, 128, ¶ 14 (App. 2014). We also decline to award costs to either party. Although we are remanding the plaintiffs' conversion claim, we cannot know whether the plaintiffs ultimately will prevail on that claim. *See* A.R.S. § 12–342(A) (2017).

All Citations

Not Reported in Pac. Rptr., 2017 WL 3138184

Footnotes

- 1 The Honorable Patricia K. Norris, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to [Article VI, Section 3, of the Arizona Constitution](#).
- 2 The Honorable Jay M. Polk, Judge of the Arizona Superior Court, has been authorized to sit in this matter pursuant to [Article VI, Section 3, of the Arizona Constitution](#).

- 3 Absent material revision since the relevant events, we cite the current version of applicable statutes.
- 4 Sternsher argues the superior court rejected Lee Harding's declaration because it was produced after the discovery deadline and in response to Sternsher's motion for partial summary judgment. To the contrary, the superior court considered the declaration but found it insufficient to create a material question of fact, calling it “speculation.”
- 5 Julie Harding argues she “suffered as a result of [Sternsher's] outrageous conduct and the resulting consequence,” but does not identify the nature of her alleged suffering or any evidence in the record that supports her claim. Because she did not adequately develop this argument, we do not consider it. *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167 (App. 1996).

Exhibit E

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-052893

11/09/2023

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT
P. Kavanagh/C. Ladden
Deputy

LAURA OWENS

KYLE O'DWYER

v.

GREGORY GILLESPIE

FABIAN ZAZUETA

JUDGE GORDON

MINUTE ENTRY

NER – Courtroom 111

11:04 AM This is the time set for Oral Argument on Plaintiff/Counterdefendant's Motion for Partial Summary Judgment of all Defendant's Counterclaims filed on July 26, 2023 and Defendant/Counterclaimant's Motion for Summary Judgment filed on July 26, 2023. Plaintiff/Counterdefendant, Laura Owens, is not present and represented by counsel Kyle O'Dwyer. Defendant/Counterclaimant, Gregory Gillespie, is present and represented by counsel, Fabian Zazueta.

A record of the proceedings is made digitally in lieu of a court reporter.

Argument is presented.

Based on the matters presented,

IT IS ORDERED sustaining the objections to the late disclosures.

IT IS FURTHER ORDERED granting both cross Motions for Summary Judgment.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-052893

11/09/2023

THE COURT FINDS that the damage disclosure made by Defendant/Counterclaimant in the case with respect to the fraud are insufficient for both claims.

THE COURT FURTHER FINDS that the damages disclosure with respect to Plaintiff/Counterdefendant's claims, in addition to the Court's decision that the late disclosure will not be considered, is also inadequate.

IT IS FURTHER ORDERED directing counsel to submit a proposed form of Judgment with respect to the claims that they prevailed on and file any applications for attorneys' fees or costs shall be filed **no later than November 29, 2023**.

11:42 AM Matter concludes.

Exhibit F

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-052893

02/15/2024

HONORABLE MICHAEL D. GORDON

CLERK OF THE COURT
A. Delgado
Deputy

LAURA OWENS

KYLE O'DWYER

v.

GREGORY GILLESPIE

FABIAN ZAZUETA

DEVINA L JACKSON
JUDGE GORDON

REQUEST - DENIED

The Court has reviewed Gregory Gillespie's Verified Statement of Costs filed December 15, 2023, wherein he requests an award of taxable costs in connection with his lodged judgment. The Court finds that neither party prevailed under the unique circumstances of the case and neither party is entitled to taxable costs.

Accordingly, the request is denied.