STATE OF NORTH CAROLINA                              IN THE GENERAL COURT OF JUSTICE

                                                                                                DISTRICT COURT DIVISION

COUNTY OF\_\_\_\_\_\_                                                             FILE NO. \_\_ CVD\_\_\_\_

\_\_\_\_\_\_\_\_\_,                                       )

                                    Plaintiff,                        )

                                                                        )

                                    v.                                 )

|  |
| --- |
| **MOTION TO MODIFY CUSTODY AND/OR VISITATION ORDER AND MOTION FOR TEMPORARY CUSTODY** |

                                                                        )

\_\_\_\_\_\_\_\_\_,                           )

                                    Defendant.                    )

NOW COMES Plaintiff, by and through counsel, pursuant to Chapter 50A and N.C.G.S. 50-13.7, and hereby moves the Court to modify a prior child custody Order consented to and entered on \_\_\_\_\_, 20\_\_\_\_\_. Plaintiff sets forth the following allegations in support of his motion:

1.                 Plaintiff is a citizen and resident of \_\_\_\_\_ County, North Carolina, and has been a resident of North Carolina for more than six months preceding the filing of this action.

2.                 Defendant is a citizen and resident of \_\_\_\_\_ County, North Carolina.

3.                  Plaintiff and Defendant were married on or about \_\_\_\_\_, \_\_\_\_\_\_, and separated on or about \_\_\_\_\_\_, 20\_\_\_\_.

4.                  There were three children born of the marriage, namely: \_\_\_\_\_\_\_, born \_\_\_\_\_\_\_, \_\_\_\_\_\_\_, born \_\_\_\_\_\_\_, and \_\_\_\_\_\_, born \_\_\_\_\_\_\_,\_\_\_\_\_.

5.                  The parties entered into a Consent Order regarding child custody and support \_\_\_\_, 20\_\_\_, which is incorporated by reference.

6.                  A  substantial change in circumstances has occurred since the previous order, in that:

a.       On or about \_\_\_, 20\_\_\_\_\_, Defendant obtained new employment with IBM. Previous to this date, Defendant was laid off and unemployed.

b.      Upon information and belief, when Defendant began his new employment, he no longer could provide for the before and after school care for the children. Defendant also informed Plaintiff that he could not afford or find funds to place the children in appropriate after school care.

c.      Upon information and belief, Defendant left at least one of the minor children alone at home when she returned from school without any care or supervision.

d.      Defendant voluntarily relinquished the minor children to the Plaintiff on or about\_\_\_\_, 20\_\_\_\_.

e.      The children began school on\_\_\_\_\_, 20\_\_\_\_\_.

f.       The parties began a new custodial schedule where Plaintiff exercises the primary care and custody of the minor children, provides for their before and after school care, ensures they reach and attend all activities, and provides for the children basic needs. The Defendant visits with the minor children every Wednesday evening for an overnight visit and then from Friday when the Defendant gets home from work through Monday morning when the children return to school on alternating weekends.

g.      The Defendant has failed to follow the court order with regards to the child support terms and has not made one timely payment since the date of entry of the court order for any amounts due and owing under the order, despite his full-time employment.

h.      Plaintiff has been solely burdened with the costs of caring for the three (3) minor children and received some, but not all, of the support due to her.

i.        Other changes which shall be disclosed in discovery and/or at a hearing of this matter.

7.                  Due to the factual allegations as set forth above as well as other facts to be revealed at trial, a substantial change in circumstances has occurred warranting the court to consider modifying custody based on the best interests of the minor children.

8.                  That pending a final child custody hearing that the court order the temporary care and custody of the minor children to the Plaintiff so that the parties may maintain the children in their current living situation and maintain the status quo for the benefit of the children.

WHEREFORE, Defendant prays the Court grant the following relief:

1.                  The Court take this verified motion as an affidavit of the Plaintiff.

2.                  Modify the original child custody order according to what the parties have been implementing since the Defendant voluntarily relinquished the minor children.

3.                  Grant the Plaintiff the primary legal and physical care and custody of the minor children and grant the Defendant visitation of the minor children.

4.                  Grant any other modifications to the custodial schedule, as necessary and appropriate given the actions and behaviors of the parties, as well as the best interests of the minor children.

5.                  Award the temporary care and custody of the minor children to the Plaintiff pending a final hearing on custody.

6.                  Any other further such relief the Court deems just and proper.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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