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| STATE OF NORTH CAROLINA COUNTY OF \_\_\_\_ |   | IN THE GENERAL COURT OF JUSTICEDISTRICT COURT DIVISIONFILE NO.: \_\_\_\_\_-CVD-\_\_\_ |
| \_\_\_\_\_\_\_\_,Plaintiff v. \_\_\_\_\_\_\_\_\_\_\_Defendant | ))))))) | EQUITABLE DISTRIBUTION AND ALIMONY JUDGMENT ORDER |

THIS CAUSE coming on to be heard and being heard before the undersigned District Court Judge presiding at the\_\_\_\_\_, 20\_\_\_ Domestic Session of District Court of Wake County, North Carolina for trial on the issue of Equitable Distribution and Alimony. At the call of the action for trial, the Plaintiff was present in Court with her counsel, \_\_\_\_\_, Esq., and Defendant was not present in Court, although Defendant contacted the Case Coordinator and also faxed in a letter stating his intention not to appear. After reviewing the record and after receiving evidence and testimony from Plaintiff, the Court makes the following findings of fact and applies the law accordingly:

1.                  This action was instituted on\_\_\_\_\_, 20\_\_ by the filing of a Complaint and issuance of Summons. The Defendant was served with a copy of the Summons and Complaint in a timely manner pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.

2.                  In apt time, the Defendant served an Answer and Counterclaim. In the Counterclaim, the Defendant asserted claims for child custody, child support, and equitable distribution. The Plaintiff timely served a Reply to the Counterclaim.

3.                  Plaintiff is a citizen and resident of\_\_\_\_\_ County, Florida. Upon information and belief Defendant is a citizen and resident of the state of Florida. The Plaintiff and Defendant were both citizens and residents of \_\_\_\_\_\_\_County, North Carolina for the six months preceding the filing of this action.

4.                  Plaintiff and Defendant were lawfully married to each other on\_\_\_\_\_\_, \_\_\_\_. They lived together as husband and wife until \_\_\_\_\_, 20\_\_\_\_\_, when they separated.

5.                  There was one child born of the marriage of Plaintiff and Defendant, to wit:\_\_\_\_\_\_\_\_, born \_\_\_\_\_\_\_

6.                  On\_\_\_\_\_, 20\_\_\_, a Judgment of Absolute Divorce was entered which dissolved the bonds of matrimony between Plaintiff and Defendant.

7.                  During the course of the marriage, the Plaintiff was the sole care giver to the parties’ minor child, as well as the care taker for the marital home.

8.         During the marriage, Plaintiff and Defendant acquired a house and lot located at\_\_\_\_\_\_, \_\_\_\_\_\_\_ County, North Carolina, which was titled in the joint names of Plaintiff and Defendant as tenants by the entirety. After the date of separation, this house and lot were sold by agreement, and the net proceeds were divided evenly, with each party receiving $\_\_\_\_\_.

9.         As of the date of separation, Plaintiff and Defendant owned the following vehicles:

a.                   A 2002 Chevy Malibu with a date of separation value of $7,000.00 and date of distribution value of $0.00; the present value is not due to passive depreciation but rather due to acts of the Defendant.

b.                  A 1991 Chevy Van with a date of separation value of $500.00 and a present value of $\_\_\_. The reduction in value is due to passive depreciation.

8.                  As of the date of separation, Defendant had the exclusive use and possession of the Wachovia Premium Savings account (account number \_\_\_\_\_\_\_\_\_\_\_\_\_\_) with a date of separation value of $\_\_\_\_. On  \_\_\_\_\_, 20\_\_\_\_ this Court found that the money contained in this account was money that was transferred into the Wachovia Premium Savings account from the Florida Prepaid College Plan. (account number \_\_\_\_\_\_\_\_.).  Pursuant to a Temporary Restraining Order and Preliminary Injunction, Defendant was ordered on \_\_\_\_, 20\_\_\_  to replace these funds so that the Wachovia Premium Savings account should have contained $\_\_\_\_\_\_\_.

9.                  In the event the Wachovia Premium Savings account is no longer in existence, the Defendant should pay to Plaintiff the sum of $\_\_.

10.              Pursuant to the Preliminary Injunction entered on \_\_\_, 20\_\_, Defendant was to replace the $\_\_\_\_\_ removed from the Florida Prepaid College Plan (account number \_\_\_\_\_\_\_\_\_\_\_).  On \_\_\_\_\_\_\_, 20\_\_, this Court found that Defendant used these monies to pay child support arrearages, attorney’s fees, and his individual income taxes.

11.              In the event the Florida College Plan has not been replenished, Defendant should pay to Plaintiff the sum of $\_\_\_\_.

12.              In the event the Florida College Plan has not been replenished, there should be an Order to Show Cause issued.

13.              In the event the Defendant has transferred funds into an account owned by someone other than the Defendant, those accounts should be frozen to secure the funds owed to the Plaintiff.

14.              As of the date of separation and date of distribution, there were five (5) credit cards opened in Plaintiff’s sole name by Defendant, without the knowledge or consent of Plaintiff, as follows:

a.                   Chase (account ending in xxxx, formerly ending in xxxx) with a date of separation balance of $\_\_\_\_\_\_, and the most recent known value, as of the date of distribution is $\_\_\_\_\_\_.

b.                  GM (account ending in xxxx) with a date of separation balance of $\_\_\_\_\_\_, and the most recent known value, as of the date of distribution is $\_\_\_\_\_\_\_.

c.                   Bank of America (account ending in xxxx) with a date of separation balance of $\_\_\_\_\_\_\_, and the most recent known value, as of the date of distribution is S\_\_\_\_\_\_\_\_.

d.                  Citi Platinum Select (account ending in xxxx) with a date of separation balance of $\_\_\_\_\_\_, and the most recent known value, as of the date of distribution is $\_\_\_\_\_.

e.                   AT&T (account ending in xxxx) with a date of separation balance of $\_\_\_\_\_ which is the most recent known value, as of the date of distribution.

The Court finds that the aforementioned credit cards were used to purchase items for Defendant’s sole use and enjoyment, and that neither the Plaintiff, nor the minor child had any use or benefit from these purchases. The purchases included, but were not limited to: women’s clothes that were not purchased for the Plaintiff, but rather worn by the Defendant himself, golf clubs, and a large television set. These credit cards have all been submitted to collections agencies. Only Plaintiff has been contacted by said agencies because of Defendant's fraud in procuring said credit cards.

15.              Since the date of separation the Plaintiff has not had any use of the aforementioned credit cards.

16.              Plaintiff only learned of the existence of the aforementioned credit cards when creditors began contacting her upon running a credit report.

17.              All purchases made on the aforementioned credit cards were for the Defendant’s sole use and benefit.

18.              Defendant has charged at least one big ticket item, which was a television, at a cost of $\_\_\_\_\_\_.

19.              The total credit card debt, existing of the date of separation was twenty-six thousand, eight hundred, seventy-nine dollars and sixty-two cents. ($26, 879.62). This debt is designated as the separate debt of the defendant.

20.              Husband shall indemnify and hold the Plaintiff harmless from all obligations related to the five aforementioned credit cards.

21.              After the date of separation, in 20\_\_\_ the Defendant filed 20\_\_\_ state and federal income tax return electronically, and without the Plaintiff’s knowledge. Defendant filed with status as "Married Filing Jointly".

22.              The Plaintiff and Defendant were entitled to a refund from the federal government in the amount of $\_\_\_\_\_\_, and a refund from the state of North Carolina in the amount of $\_\_\_\_\_. The total refund amount was $\_\_\_\_\_ and was directly deposited into Defendant's account without Plaintiff's knowledge.   Defendant did not disburse any of these funds to Plaintiff at any time.

23.              The Plaintiff received various items of furniture and other personal property from the residence after the date of separation; the items the Plaintiff received have a value of $\_\_\_\_\_\_\_.

24.              The Defendant received various items of furniture and other personal property from the residence after the date of separation; the items the Defendant received have a value of at least $\_\_\_\_\_\_\_.

25.              The following distributional factors have been considered:

a.                   The present income, estates, and health of the Plaintiff and Defendant. The Defendant has historically earned and presently earns substantially more income than the Plaintiff.

b.                  Acts of the Defendant which have negatively affect the marital estate.

i.                     The Defendant removed property from the marital estate, which he has failed to replace.

ii.                   The Defendant has had all martial property within his control for the duration of the marriage, and since the date of separation.

iii.                  The Plaintiff was in need of items from the martial residence to care for the parties’ minor child, and those items were in the custody and control of the Defendant.

iv.                 The Plaintiff contributed to the Defendant’s career when she agreed to move with the Defendant from Iowa to Georgia, to Florida and to North Carolina.

26.              Plaintiff was a homemaker throughout the majority of the marriage. Plaintiff was also the primary caretaker of the minor child. Plaintiff was the dependent spouse during the marriage.

27.              Defendant was the primary wage-earner during the majority of the marriage. Defendant was the supporting spouse.

28.              Plaintiff committed adultery in \_\_\_\_ both by Defendant catching her in bed with another man and by her own admission.

29.              Defendant forgave Plaintiff, condoned her acts of marital misconduct, and received Plaintiff back into the marriage for nine more years prior to separating.

30.              Plaintiff did not repeat the adulterous conduct. The marriage continued to have problems, including arguments which rose to the level of at least one incident of domestic violence committed by both parties.

31.              The marriage deteriorated to the point that the parties discussed separating and Plaintiff moved back to Florida, where the majority of Plaintiff's family is located and where the parties lived during part of the marriage.

32.              Defendant suffered from a heart attack in 1994 and received a heart transplant in 1996. Defendant is currently in excellent health and takes various medications to sustain his good health.

33.              Defendant did not work for \_\_\_ years after his heart attack and instead was receiving disability payments. During this period of time, the parties lived with Plaintiff's parents, who contributed to the support of Plaintiff and Defendant.

34.              Defendant returned to work in\_\_\_\_, moving from Florida to Iowa, Iowa to Georgia, and Georgia to North Carolina to further his career. Plaintiff made each of these moves with Defendant for his career.

35.              Plaintiff was not employed at the time of separation and lived with her parents, for three years after the date of separation.

36.              Plaintiff has since obtained employment, and currently earns $2,600 per month gross, and $\_\_\_ after taxes.

37.              Since the date of separation, Plaintiff has depended on the support of her parents and other family members.

38.              Plaintiff submitted a financial affidavit and testified that the expenses contained therein are current and actual expenses . The non pro-rated monthly expenses for Plaintiff are $\_\_\_per month. The Plaintiff is also the sole provider for the parties’ minor child; her expenses including expenses related to the minor child are $\_\_\_\_\_. The expenses presented did not represent the standard of living that the parties enjoyed during the marriage, but rather a far lower standard.

39.              The standard of living that the parties enjoyed during the marriage enabled the parties to pay bills on time, to enjoy activities such as going to the movies, going bowling, eating out at restaurants, buying new clothes and going on vacations.

40.              Since the date of separation, the Plaintiff has depended on her family to assist her with housing and attorney’s fees. The Plaintiff lived with her parents for approximately 3 years after the date of separation.

41.              The Plaintiff is actually and substantially dependant on the Defendant and is in need of support from the Defendant.

42.              In an order of this court dated \_\_\_\_\_, 20\_\_\_\_, the Defendant was ordered to pay the Plaintiff $\_\_\_\_ per month in post- separation support for twelve months.

43.               Defendant’s last known place of employment was \_\_\_\_\_\_\_\_ where he earned a gross income greater than $\_\_\_\_ per year.

44.              By order of this Court dated \_\_\_\_\_, 20\_\_\_, the Defendant was ordered to pay to the Plaintiff $\_\_\_\_\_ per month in child support.

45.              The Defendant has not paid child support to the Plaintiff in over a year.

46.              The Plaintiff has been solely responsible for the minor child.

47.              The Plaintiff is unable to meet her own monthly expenses

48.              Plaintiff is without sufficient means to defray the costs of bringing an action and unable to meet Defendant on equal footing as a litigant in this suit. Plaintiff was required to borrow funds from her parents and family in order to bring an appropriate action in the appropriate forum.

49.              Plaintiff has incurred attorney’s fees in bringing an action for alimony against the Defendant.

50.              The Plaintiff is entitled to alimony as the dependent spouse.

51.              The course and duration of these proceedings have been protracted in large part by the Defendant, as he has made himself unavailable, and has failed to appear for hearings.

52.              The Defendant has failed to make the required disclosure as promulgated by the 10th Judicial District Local Rules.

53.              The Defendant has not complied with issued orders to compel and orders to show cause related to disclosure.

54.              The Defendant failed to submit and Equitable Distribution Affidavit, as required by the local rules of the 10th Judicial District.

55.              The Defendant was served with a Notice of Hearing for December 4, 2006. The Defendant was served with the Notice of Hearing on October 11, 2006.

56.              Thereafter the Plaintiff’s attorney was notified by the family court office that the case was not on calendar for \_\_\_\_\_, 20\_\_\_\_.

57.              Plaintiff’s attorney contacted the Defendant by telephone and U.S. Mail on\_\_\_, 20\_\_\_, and informed him the case was not on the calendar for December 4, 2006.

58.              Thereupon this case was noticed for hearing on February 5, 2007.

59.              The Defendant was served with a calendar request and notice of hearing on\_\_\_\_, 20\_\_\_.

60.              The family court office prepared a calendar in early January of 2007, and the Defendant was served with said calendar.

61.              The Family Court Office indicated that the Defendant would not give the Family Court office his address, and would only provide the address of his sister, where he claimed to receive mail.

62.              The Defendant contacted the Family Court office the week of\_\_\_, 20\_\_, and reported that he had only received notice of the February 5 hearing on \_\_\_\_, 20\_\_\_\_.

63.              The Defendant claimed he had no time to prepare for hearing, despite the fact that he was served on \_\_\_\_, 20\_\_.

64.              The Defendant further stated that it was a burden for him to travel.

65.              The Plaintiff had traveled from Florida and was present and ready for trial on \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_.

66.              The Defendant faxed a letter to the Family Court office, and again stated that he had no notice and that travel would be burdensome.

67.              The family court office reminded the Defendant of the service he received on\_\_\_\_\_\_\_, 20\_\_ and directed the Defendant to appear, as he had been properly noticed and served.

**BASED ON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:**

1.                  This Court has jurisdiction of the parties to and subject matter of this action.

2.                  The parties are properly before the Court; that the Court has jurisdiction over the parties and the subject matter herein pursuant to N.C.G.S. Â§50, Â§50A and 28 U.S.C. 1738A et seq.;

3.                  Defendant is the supporting spouse as defined in N.C.G.S. Â§16.1A.

4.         Plaintiff is the dependent spouse as defined in N.C.G.S. Â§16.1A, and Plaintiff is actually substantially dependent upon Defendant for her support and maintenance.

5.         Defendant has the ability to pay such spousal support.

6.         Condonation of Plaintiff's adultery occurred by Defendant, and Plaintiff's acts were not sufficient to revive such adultery.

7.         The acts of marital misconduct by both Plaintiff and Defendant were considered in determining the amount and duration alimony.

8.         The Court considered Defendant's earning ability and health and Plaintiff's misconduct.

9.         The Court considered all evidence which was presented and gave due weight and consideration to every factor delineated in Â§50-20.

10.       The facts above entitle the parties to the relief granted below.

11.       Plaintiff is entitled to the relief as set forth herein.

12.       Plaintiff is without sufficient means to defray the costs of meeting Defendant on equal footing as a litigant.

13.              This order is a Final Equitable Distribution.

14.              Plaintiff and Defendant each have the ability to comply with the terms of this Order.

**IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:**

1.                  The Findings of Fact numbers 8 through 29 incorporated herein by reference and were considered by the Court in making the following distribution.

2.                  The following marital/divisible property shall be distributed to the Plaintiff:

a.             Proceeds from the sale of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_              $417.78

property

b.            1991 Chevy Van                                                          $ 500.00

c.             Wachovia Premium Savings Account                            $ 1,426.00

d.            Florida College Fund                                                  $   5, 194.00

e.             Furniture and personal items                                          $ 3,500.00

TOTAL

(Amount to be received from Defendant  to arrive at Equitable Distribution= $7,125.00)

3.                  The following marital/divisible property is distributed to the Defendant:

a.                   Proceeds from the sale of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

              $417.78

2002 Chevy Malibu                                                     $7, 000.00

b.                  Personal Property                                                         $10,000.00

c.                   2003 State and Federal Tax Refund                              $ 4, 192.00

TOTAL:

(Amount Owed to Plaintiff to arrive at Equitable Distribution- $7,125.00)

4.                  In the event the aforementioned Wachovia Premium Savings account, and the Florida College plan have not been replaced, the Defendant shall pay the Plaintiff a total distributive award of $13,745.00.

5.                  In the event these funds have been placed in an account owned by someone other than the Defendant, the bank and Defendant are ordered to transfer said funds to the Plaintiff, or in the alternative, freeze said account.

6.                  The Defendant shall pay to Plaintiff the sum of $1,250 per month as alimony beginning \_\_\_, 20\_\_\_, and continuing thereafter with the amount due on the first day of each subsequent month for a period of ninety-six months, or until alimony payments would cease in accordance with N.C.G.S. 50-16.9 (b).

7.                  The Plaintiff brought this action for alimony against the Defendant in good faith, and is unable to meet the Defendant on equal footing regarding her alimony claim.

8.                  The Plaintiff is awarded $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_- in attorney’s fees to be paid directly to the Plaintiff.

9.         The Court preserves jurisdiction to enter further orders as necessary and proper.

This the \_\_\_\_ day of \_\_\_\_\_20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Honorable \_\_\_\_\_\_\_\_\_

District Court Judge Presiding