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| NORTH CAROLINA |   | GENERAL COURT OF JUSTICE |
| \_\_\_\_\_\_\_COUNTY |   | DISTRICT COURT DIVISION |
|   |   | \_\_\_\_ CVD \_\_\_\_\_ |
|   |   |   |
| \_\_\_\_\_\_\_\_ | ) |   |
| PLAINTIFF, | ) |   |
|   | ) |   |
|   | ) | **MOTION TO MODIFY CUSTODY,** |
| v. | ) | **MOTION FOR TEMORARY CUSTODY,** |
|   | ) | **MOTION FOR EMERGENCY CUSTODY** |
| \_\_\_\_\_\_\_\_\_\_\_\_ | ) | **MOTION TO MODIFY CHILD** |
| DEFENDANT. | ) | **SUPPORT** |
|   | ) |   |

Plaintiff, \_\_\_\_\_\_\_\_, by and through the undersigned counsel, and complains of the Defendant by alleging:

JURISDICTIONAL ALLEGATIONS

                            1.        Plaintiff is a citizen and resident of \_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_

2.                  Defendant is a citizen and resident of \_\_\_\_, \_\_\_\_\_ County, North Carolina; and has been for more than six months preceding the institution of this action.

3.                  The parties were married on \_\_\_\_\_, \_\_\_\_, were separated and divorced in \_\_\_\_\_ County, \_\_\_ on \_\_\_\_\_\_, \_\_\_\_\_\_.

4.                  There were \_\_\_\_\_children born of their marriage: namely, \_\_\_\_\_\_\_, born\_\_\_\_\_, \_\_\_\_\_and\_\_\_\_\_\_\_, born\_\_\_\_\_\_\_\_,\_\_\_\_\_.

5.                  The minor children have resided with the defendant pursuant to a consent order entered by the parties in \_\_\_\_\_\_County District Court since \_\_\_\_\_, 20\_\_\_.

6.                  Neither Plaintiff nor Defendant has participated as a party, witness, or in any other capacity in any other litigation concerning the custody of said minor children in this or any other state.

7.                  Neither the Plaintiff nor the Defendant has any information of any other custody proceeding concerning the said minor children pending in a court of this or any other jurisdiction.

8.                  Plaintiff knows of no other person not a party to these proceedings who has physical custody of the said minor children.

FIRST CLAIM FOR RELIEF TEMPORARY

AND PERMANENT CHILD CUSTODY

9.         The Jurisdictional Allegations are incorporated by reference as if fully set forth herein.

10.       In order to avoid controversy between the parties hereto with regard to custody, visitation privileges and child support, it is in the best interest of both parties and of the said minor children that this Court make an award of custody, as well as providing for visitation privileges and child support.

            Pursuant to N.C.G.S. Section 50A-203, there exist facts justifying this Court to assume jurisdiction to determine custody of the said minor children, and, pursuant to N.C.G.S. Section 50A-209, Plaintiff respectfully shows unto the Court the following required information:

                  a. The minor children presently reside with their maternal grandparents \_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_, North Carolina.

                  b. From \_\_\_\_\_\_, 20\_\_\_\_ through \_\_\_\_\_, 20\_\_\_\_\_ the minor children were in \_\_\_\_\_\_\_\_ with their father visiting their paternal grandparents.

            c.   From \_\_\_\_\_\_,\_\_ until \_\_\_\_\_, 20\_\_\_\_ the minor children resided primarily         with the Defendant \_\_\_\_\_\_\_ Court, \_\_\_\_\_\_\_, North Carolina.

11.       Plaintiff is a fit and proper person to have the primary care, custody and control of the said minor children, with all the rights and privileges attached thereto including, *to wit*, all medical, legal and educational decision making.

12.       It is in the best interests of the said minor children that their primary care, custody and control be placed with Plaintiff, subject to reasonable visitation privileges being granted to Defendant,  under such conditions and limitations as the court may deem just and proper.

13.       It is in the best interests of said minor children and would promote their general welfare and stability if temporary care, custody and control were to be granted to Plaintiff herein, pending further orders of the Court in this action and a full hearing on the merits.

SECOND CLAIM FOR RELIEF

EMERGENCY CUSTODY

            14.       Plaintiff realleges and incorporates by reference all of the allegations contained in the Jurisdiction Allegations and First Claim for Relief as if fully set forth herein.

            15.       Pursuant to N.C.G.S. Section 50-13.5(d)(3), there are facts justifying this court to grant an Ex Parte Emergency Custody Order granting Plaintiff custody of the parties’ minor children.

                        a. The Defendant was arrested on or about \_\_\_\_\_, 20\_\_\_. On information and belief, the Defendant was arrested for Obtaining Property by False Pretenses.

                        b. At the time of the Defendant's arrest the minor children were in \_\_\_\_\_ on Spring Break with the Plaintiff.

                        c. After Defendant was arrested, she requested her parent's go to her residence to feed her two dogs. When the Defendant's parents entered the residence they found deplorable conditions.

                        d. The Defendant's parents found unsanitary conditions including dog feces on the floor, toilets with no water in them and garbage strewn about the house. The house was generally filthy and looked as if it had not been cleaned in quite some time. The house was full of clutter and many exit doors were blocked. The Defendant's parents were unable to enter the minor child \_\_\_\_\_\_ bedroom because the door was blocked by clutter and debris. There were no sheets on the minor child's bed. The kitchen was full of an excessive amount of food, there were dishes covering the counter and the stove and there were dozens of grocery store bags full of food covering the floor. There was a bird cage in the residence that was covered in bird droppings.

                        e. The living areas in the house were full of debris and did not provide an area to sit and do homework or sit and eat dinner.

                        f. This is at least the third time that the residence has been found in this condition. On both previous occasions the Defendant has been offered the opportunity to clean up the residence, but it has returned to the previous condition.

                        g. After the Defendant's parents saw the interior of the residence, they contacted the Department of Social Services. \_\_\_\_\_\_\_ from the Department of Social Services responded to the complaint and met the Defendant's parents at the Defendant's residence.

                        h. After viewing the conditions in the residence \_\_\_\_\_\_\_ told Defendant's parents that the minor children would have to stay with the Defendant's parents when then or the minor children's father.

                        i. On information and belief, when the Defendant was asked to provide toys and some other items for the minor children. The Defendant provided the Department of Social Services with several items of clothing that smelled of urine, food and a bag of onions.

                        j. There were eight bags of new unworn clothing for the minor children in the residence. However, when the Plaintiff arrived to pick up the minor children for his spring break vacation visitation, the Plaintiff had him delay picking up the minor children for approximately one hour, because she stated she needed to purchase clothing for the minor children. The Defendant informed the Plaintiff that the minor were home alone in the residence but had been instructed not to answer the door.

                        k. On information and belief, the Defendant has signed a parenting agreement with Child Protective Services that prohibits her from having any contact with the minor children.

                        l. The parties were in court regarding the condition of the Defendant's residence in \_\_\_\_\_ 20\_\_\_\_, but the Defendant was granted the opportunity to clean up the residence. The Defendant's residence has since returned to its previous condition.

                        m. On a previous occasion in \_\_\_\_\_\_ 20\_\_\_, Child Protective Services was called by the Defendant's sister regarding the condition inside the residence. Child Protective Services was involved in the case, but they were not allowed to see the residence until the Defendant had cleaned it up.

                        n. The Defendant has been violent in the past and Plaintiff believes if the children are allowed to remain in the area the minor children or the Defendant's parents may be in danger from the Defendant.

                        o. Family members of the Defendant believe that she may become violent if she loses custody of the minor children.

                        p. The minor children's teachers have noticed the children have become increasingly unkempt in recent months.

                        q. The Defendant was released from jail on or about \_\_\_\_\_\_\_, 20\_\_\_\_\_ and at that time contacted the Plaintiff and asked to meet with him and his new wife to discuss a plan to move the children to \_\_\_\_.

                        r. The Plaintiff remarried in \_\_\_\_\_ of 20\_\_\_\_\_ and his current spouse is a stay at home mom.

                        s. The Plaintiff and his new spouse had a child on \_\_\_\_\_\_, 20\_\_\_\_\_. The minor children in this case get along very well with their new sibling and have frequently expressed the desire to spend more time with their siblings.

                        t. The minor children get along well with the Plaintiff's new wife.

                        u. On information and belief, the Defendant has not registered her vehicle and does not have a vehicle she can legally drive.

                        v. On information and belief, the Defendant's electricity is scheduled to be turned on \_\_\_\_\_\_, 20\_\_\_\_\_ for non payment.

                        w. Officials at the minor children's school have noticed that the Defendant's appearance had deteriorated over the last year.

                        x. The Defendant has written a bad check to the minor children's school for the cost of attending field trips.

                        y. The minor children are currently attending \_\_\_\_\_\_\_\_\_ School, the Plaintiff has researched schools in his district in \_\_\_\_\_\_\_ and would be able to reenroll the minor children in school immediately.

                        z. The minor child \_\_\_\_\_ has expressed a desire to remain with the Plaintiff and has appeared anxious about returning to the Defendant's residence.

                        aa. The Defendant's parents have noticed a change in the children's demeanor and they appear to be more reserved with they are returned to the Defendant.

                        bb. The minor child \_\_\_\_\_\_ suffers from a mild version of Asberger's Syndrome.   As a result of this syndrome, he is prone to pacing and rocking. According to his teacher, \_\_\_\_\_\_ has been pacing more often than usual in recent months.

                        cc. On information and belief, the Defendant has been terminated from her employment for absenteeism.

THIRD CLAIM FOR MODIFICATION OF CHILD SUPPORT

            16.       Plaintiff realleges and incorporates herein by reference all of the allegations contained in the Jurisdictional Allegations and his First and Second Claims for Relief as if fully set forth herein.

            17.       Plaintiff is currently paying defendant as child support in the amount of $\_\_\_\_\_\_ per month, pursuant to the order entered by this court with the consent of the parties on \_\_\_\_\_\_, 20\_\_\_\_.

            18.       At the time of the entry of the order on \_\_\_\_\_\_\_, \_\_\_\_\_\_ Defendant had primary custody of the minor children.

            19.       Plaintiff's obligation for child support would cease if he is granted primary care custody and control of the minor children.

            WHEREFORE, Plaintiff prays the Court for the following relief:

            1.         That the verified Complaint of Plaintiff be allowed and taken as an affidavit upon which the Court may base all its Orders in this case;

            2.         That Plaintiff be granted exclusive care, custody and control of the said minor children \_\_\_\_\_\_\_and\_\_\_\_\_\_\_, subject to reasonable visitation privileges being granted to Defendant under such conditions and limitations as the Court may deem just and proper;

3.        That the Plaintiff be granted custody and control of the said minor children, with all the rights and privileges attached thereto including, *to wit*, all medical, legal and educational decision making.

            4.         That pending a full hearing on the merits in the above-entitled action, Plaintiff be awarded the immediate temporary care custody and control of the minor children;

            5.         That, pending a full hearing on the merits of the above-entitled action and service of the complaint, the Court should order ex parte emergency custody of the minor children to Plaintiff;

            6.         That Plaintiff shall be permitted to terminate all child support payments to the Defendant.

7.         That Plaintiff be granted such other and further relief as the Court may deem just and proper in this case.

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

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

                                                                                    Attorney for Plaintiff

**VERIFICATION**

\_\_\_\_\_\_\_, first being duly sworn, deposes and says that he is the Plaintiff in this action; that he has read the foregoing Complaint and the same is true to his own knowledge except as to those matters and things therein alleged upon information and belief, and as to those, he believes the same to be true.

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

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

SWORN TO and subscribed before me

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

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

Notary Public

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Affidavit has been served in the following manner:

{x}   By depositing a copy in the U.S. Mail in a properly addressed, postpaid envelope, addressed as follows:

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

Address

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

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

                                                                              Attorney for Plaintiff