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11 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**
12 **AT FAIRBANKS**
13

14 TERESSA GARDINER n/k/a
15 TERESSA FAUVER,

16 Plaintiff,

17 vs.
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19 JERRY GARDINER, JR.,

20 Defendant.
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Case No.(s): 4FA 17-02257 CI,
3AN-03-11696 CI (Original)

MOTION TO SET ASIDE JULY 18, 2017
ORDER & STRIKE RELATED PLEADINGS
THERETO (RE: JURISDICTION) & TO RE-AFFIRM
ORIGINAL CUSTODY ORDER(S)

22 **I. RELIEF REQUESTED**

23 COMES NOW the plaintiff, Teresa (aka "Tess") Fauver-Hernandez, and hereby moves
24 this Court for an order setting aside its July 18, 2017 order regarding custody modification and
25 striking all related pleadings thereto for lack of jurisdiction. In addition, Ms. Fauver seeks to
26 re-affirm the original custody order(s) in this matter, true and correct copies of which are
attached to her declaration in support of this motion and incorporated by reference herein as
Exhibit 1.

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MOTION TO SET ASIDE JULY 18, 2017 ORDER & STRIKE RELATED PLEADINGS THERETO (RE: JURISDICTION) & TO
RE-AFFIRM ORIGINAL CUSTODY ORDER(S)

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II. FACTS

Krystin Fauver's custody is the focus of this matter. She is the minor child of the plaintiff and the defendant Jerry Gardiner, Jr. She is currently 15 years of age and will be 16 in less than 3 months, or in February 2018. She is the plaintiff's only child.

a. History of the Parties & Prior Custody Issues

When Krystin was less than six weeks old, her mother Tess (plaintiff, and only 17 years old at the time) brought Krystin with her when she departed Anchorage, Alaska and life with the defendant, which had become replete with escalating and recurring incidences of domestic violence. *See* Affidavit of Tess Fauver-Hernandez in Support of Motion to Set Aside July 18, 2017 Order & Strike Related Pleadings Thereto (Re: Jurisdiction) & to Re-Affirm Original Custody Order(s), hereinafter "TF Aff." Ex. 2 § 1(a), 1(e).

The plaintiff had tolerated the defendant's physical attacks prior to Krystin's birth. *Id.* & Ex. 3 (¶ 2). She was only 16 years old when she learned of her pregnancy, but definitively declared to Mr. Gardiner that she would not raise the baby in a home where violence was a pattern, and that she and the baby would leave if the behavior pattern continued after the child was born.

A few weeks after Krystin was born, Jerry was pulled over and arrested for another violent attack upon the plaintiff. He had left their apartment with the tiny infant Krystin after Tess escaped to a neighbor's house to phone the police. TF Aff. Ex. 4 (¶ 7). Two police officers brought the newborn back to the 17-year old mother in the middle of a February blizzard. Mr. Gardiner was charged with assault (DV), malicious destruction of property, and family violence for the incident that occurred that night. TF Aff. Ex. 5.

1 The defendant continued his pattern of domestic abuse shortly after being released from
2 jail. During the incident that caused the plaintiff to flee the home, she had become so afraid that
3 she had sustained real physical damage from Mr. Gardiner that she convinced him to bring her
4 to the nearest E.R. (*Id.* 7 & TF Aff. Ex. 2 1(c)). Before they left for the hospital, Jerry told
5 the young, new mother that he was going to tie her to the bed, then leave the country and
6 disappear so that she would never see her daughter again. *Id.* Tess took Krystin relocated to
7 Oregon about a week later. TF Aff. Ex. 4 8. Mr. Gardiner continued to contact the plaintiff
8 despite the protective order she obtained in Oregon. *Id.*

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13 **b. Krystin's Custody & Home State Residency Held in Washington State**

14 Krystin has been in her full custody and care of her mother, Tess, since their separation
15 from the defendant over 15 years ago. Over the decade and a half that has passed, the defendant
16 has made no effort to establish a parent-child relationship with Krystin through the courts or by
17 any other means. TF Aff. Ex. 1 (p. 12 2, p. 14-15), Ex. 2 (§ 1(b)), Ex. 3, Ex. 4 (§ 14 & 18); TF
18 Aff. Ex. 6 (§ 7).

19 Jerry also completely shunned his court-ordered obligations; requirements detailed in
20 the custody orders and put in place specifically to protect his daughter's physical and emotional
21 wellness. TF Aff. Ex. 1 (p. 2 4, p. 6 4, p. 10, p. 12 3, p. 14, p. 15).

22 Krystin and her mother have lived in Seattle, Washington for most of their lives, or at
23 least 12 years, and most recently for four consecutive years, or since 2013. TF Aff. Ex. 7.
24 Krystin has expressed that she would like to continue living in Seattle finish high school at the
25 Center School, a small arts and college preparatory public school on the grounds of the Seattle
26

Center, where she attended her freshman year and was supported with tutoring, individual counseling, and participated in extracurricular activities.

c. July 18, 2017 Order Modifying Custody

On July 18, 2017, an order naming the defendant as Krystin's sole legal and primary physical custodian was granted, clarifying "No opposition has been filed." TF Aff. Ex. 8. However, Tess was not given notice of the filing or served with a copy. The defendant was entirely aware that Ms. Fauver had not been served or given notice, a detail he shared with officers of the Fairbanks Police Department at his place of employment in August. TF Aff. Ex. 9 (p. 8). Jerry did not directly say anything to Ms. Fauver until August 9, when he accused her of harassment and declared himself "hav[ing] full legal custody..." of Krystin. TF Aff. Ex. 10 (p. 2).

d. Defendant's Claims Lack Merit & Standing

There are many issues that require legal attention due to Mr. Gardiner's sudden, unexpected appearance in the lives of Krystin and her mother. His unsettling presence has brought with it serious assertions and allegations against Krystin's mother, which he brazenly declared under oath and penned for this court's review with an obvious and almost youthful hostility. TF Aff. Ex. 11. However, the defendant actually has no direct knowledge or supporting evidence of the claims he asserts.

e. Expeditious Review Requested Re: Jurisdiction & Tortious Concealment

Of the number of motions that will be presented to address the problems created in the wake of the defendant's unexpected arrival, this motion is one of the first filed because of its dispositive nature, an attribute that this filing is centered upon and of the utmost importance

1 due to pressing concern for Krystin, who the defendant has kept concealed since on or about
2 July 7, 2017. TF Aff. Ex. 12. Additionally, his motion's jurisdictional issues lend to it an
3 expeditious nature, as set forth specifically in the plaintiff's accompanying motion for expedited
4 consideration.
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7 **f. Documented Issues of Concern Prior to Krystin's Concealment**

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9 Prior to her disappearance from the life she had in Seattle, Krystin actively and regularly
10 participated in and contributed to many social networks online, as many of her locally-located
11 friends and acquaintances do. On July 7, Krystin's voice and other contributions were entirely
12 silenced. Upon review, it is obvious that she was participating less frequently in the weeks
13 following May 20 (the date of her arrival in Fairbanks), in and contributed to, Krystin expressed
14 that she felt unhappy and uncomfortable in the bizarre situation in Fairbanks (*see* TF Aff. Ex.
15 13) that she had been lured to despite her surprise and hesitation, and then abruptly discarded at.
16 TF Aff. Ex. 14. No individual or entity was assigned to even minimal follow-up of the situation
17 Krystin had been heavily pressured and "guilt tripped" (*Id.* (p. 3)) into, a questionably
18 motivated effort initiated by an alleged employee of a large, powerful, and intimidating
19 organization (Children's Administration (C.A.) of Washington State).
20

21 Several complicated and life-changing matters unexpectedly happened for Krystin's
22 mother during the last fall, winter and early spring season, which the plaintiff can only guess are
23 the explanation for the chaotic and detrimental interference spitefully and unnecessarily made
24 by the defendant. Krystin's exploited situation in late May was, at a minimum, heavily
25 influenced by one individual from Washington's C.A., who removed Krystin from school (*see*
26 TF Aff. Ex. 15) and isolated her from the outside world for the better part of at least two days,

1 not allowing her to contact anyone while she was manipulated mentally and emotionally (“guilt
2 tripped,” as Krystin described, *see* TF Aff. Ex. 13 (p. 15, Messages w/Friend), TF Aff. Ex. 14
3 (p. 3)) into doing the “right thing,” and told she had no choice in what was happening (*Id.*:
4 Krystin stating “I don’t have a choice” at p. 1-4.).

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7 Simultaneously, this alleged C.A. employee was discreetly coordinating with the
8 defendant on suggestively pressuring Krystin into at least temporarily believing that a
9 previously unimagined life in Fairbanks, stuffed into a house already filled with total strangers
10 of a very different lifestyle, was the best decision possible for her life and future. TF Aff. Ex.
11 16.

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14 . Krystin and her mother were never offered assistance, and any inquiries into the
15 shockingly extreme situation and for documentation of the same went ultimately ignored. TF
16 Aff. Ex. 17. Krystin’s mother has submitted at least four formal file requests since May. The
17 most recent response received stated she will receive a partial copy of whatever is in the file by
18 March 9, 2018. *Id.*

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21 In addition to reporting feeling uncomfortable and unhappy staying at her biological
22 father’s newly moved-into residence (TF Aff. Ex. 13), Krystin also reported that there was not
23 enough food to eat (TF Aff. Ex. 18) and had/has to constantly ask the defendant for simple,
24 everyday food items. *Id.* She also relayed a belief that the defendant didn’t/doesn’t want her in
25 his life solely because she’s his daughter and he wants to get to know her, but as a way to get
26 revenge on her mother and to get out of paying child support. TF Aff. Ex. 13 (p. 2, Messages
w/Friend).

1 After review of Facebook messages between the defendant and Krystin, Tess discovered
2 that upon Krystin's arrival, the entire family left her at the residence without telling her they had
3 gone (TF Aff. Ex. 19), and that the defendant waited from May 20 until at least June 6, or 17
4 days, to purchase the shampoo and conditioner combination that Krystin requested, and on June
5 6, informed her that he could not provide her with a razor for shaving her legs because he didn't
6 have enough money. *Id.* at p. 4.

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10 The plaintiff also discovered that Jerry did not provide Krystin with an actual bed to
11 sleep on, but a used futon instead. ***Krystin reported directly to the defendant on June 4 that***
12 ***the sleeping arrangement he had provided was causing her physical injury*** and giving her
13 bruises on her legs. The defendant did not immediately offer to rectify the situation and did not
14 check to make sure she was not sustaining any other pain or injuries due to the thoughtful and
15 welcoming accommodations he had arranged (Krystin underwent neurosurgery and a major
16 fusion surgery on her spine in 2013). His only comment was that he and his girlfriend had
17 talked about getting Krystin an actual bed "soon." *Id.*

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22 On July 5, two days before she was cut off from all social interactions, she told her mom
23 that she believed Jerry was using her as a means of payback for a long-held grudge that had
24 previously been entirely unknown to the pair: **"I feel like the only reason he wants me here is**
25 **to get revenge on you and I hate it I feel like I'm being used...**He doesn't show that he cares
26 about me..." (**emphasis added.**) TF Aff. Ex. 13.

No one that Krystin has had in her life in any significant manner over the past 15 years
has heard from her since the first week of July (*Supra.*, Exhibit 12). Direct inquiries from

1 family members wishing to speak with Krystin have been presented to Jerry. All of them have
2 been denied. TF Aff. Ex. 10, 20 and 21.

3
4 Therefore, Ms. Fauver brings this motion alerting the court to Krystin's non-resident
5 status in the State of Alaska and the inability of any court in the state to rule on defendant's
6 motion as jurisdiction is not held anywhere in the far northern region, but in Washington State.
7 This issue directly affects the validity or invalidity of the July 18 order and requires expedited
8 consideration by the court.
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11 Legal arguments in support of this motion relating to jurisdiction and when jurisdiction
12 becomes legally effective follow.
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15 16 17 18 **III. LEGAL ARGUMENT**

19 Washington Has Legal Jurisdiction as the Minor's Home State

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21 Krystin arrived in Fairbanks, Alaska on May 20, 2017. She was and still is a permanent
22 resident of Washington State. To be considered a legal resident of the State of Alaska, an
23 individual must be present in the state at least six consecutive months. Krystin's arrival in
24 Alaska did not immediately give her resident status. She and her mother have lived in
25 Washington state for most of their lives; most recently since 2013 (*Supra*. Exhibit 7), and they
26 plan on continuing residency there indefinitely.

The government-run Alaska courts website provides many of the documents needed for common legal issues in the State, and even provides those documents in a template format to assist in simplifying legal processes for the public. The site includes direct information on

1 filing for custody or modification of custody and plainly states (underneath the heading: “Do the
2 children need to be in Alaska to file for custody?”) that a minor must be a resident of Alaska for
3 at least 6 months before filing a custody or custody modification case:¹
4

5 In order for the Alaska court to have jurisdiction or authority to
6 decide about child custody, a child normally must have been a
7 resident of the state for at least 6 months before filing the custody
8 case. Otherwise, the court may not have jurisdiction to decide
9 custody issues.

10 Sometimes there can be exceptions to the six month residency
11 requirement for children like if the child is less than six months old
12 or there is an emergency reason for the Alaska court to decide
13 custody.

14 Under the heading: “What if the children haven’t been in Alaska for 6 months?” it is set
15 forth that a person wishing to file a claim with regard to a custody issue prior to a child being
16 present in Alaska six months should wait until the child has been present for at least six months:
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18 If you file the custody case and the court finds that it does not have
19 jurisdiction to hear the case because the children haven’t been in
20 Alaska for six months, the case may be dismissed. If you are
21 deciding whether to file a custody case, there are a few options
22 depending on the situation. You can file for custody in the state
23 where the children last lived if they were there for six months.
24 You can wait until your children have been in Alaska for at least
25 six months to file in Alaska.
26

The judicial venues at Fairbanks and Anchorage, Alaska are unable to claim jurisdiction
because of Krystin’s non-resident status and the absence of any ties associating her to the State;
she doesn’t attend public or private school, and is not a participant in any kind of social
activities. In fact, up until Jerry removed Krystin’s ability to communicate with anyone outside
of his residence (on or about July 7, 2017), Google’s Location Tracker shows that Krystin rarely

¹ <http://www.courts.alaska.gov/shc/family/shccustody.htm>

1 even left the house. Her location data shows that upon her arrival in Fairbanks on May 20, she
2 didn't leave the residence for at least three days. TF Aff. Ex. 22.

3
4 Addressing jurisdiction issues involved in child-custody matters where more than one
5 state has potential to hold jurisdiction, the Uniform Child Custody and Jurisdiction Enforcement
6 Act (UCCJEA) § 202 provides that:
7

8 (a)...a court of this State which has made a child-custody
9 determination...has exclusive, continuing jurisdiction over the
10 determination until:

11 (1) a court of this State determines that neither the
12 child, nor the child and one parent...have a significant connection
13 with this State and that substantial evidence is no longer available
14 in this State concerning the child's care, protection, training, and
15 personal relationships...

16 [Comment]...The continuing jurisdiction of the original decree State
17 is exclusive. It continues until one of two events occurs:

18 1. If a parent...remains in the original decree State,
19 continuing jurisdiction is lost when neither the child, [or] the child
20 and a parent...continue to have a significant connection with the
21 original decree State and there is no longer substantial evidence
22 concerning the child's care, protection, training and personal
23 relations in that State....If the relationship between the child and the
24 person remaining in the State with exclusive, continuing jurisdiction
25 becomes so attenuated that the court could no longer find significant
26 connections and substantial evidence, jurisdiction would no longer
exist. (Emphasis added.)

TF Aff. Ex. 23 p. 12. The UCCJEA prioritizes home state jurisdiction at § 201. Krystin and her mother claim no present, relevant and/or significant connections to the State of Alaska. There is no substantial evidence available in Alaska relating to Krystin's care, protection, training, or personal relationships aside from the outrageous, disturbing and entirely unreasonable and unnecessary concealment of her person in the state by her Jerry Gardiner, Jr.

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IV. CONCLUSION

In consideration of the facts above and their relation to UCCJEA § 202, and pursuant to the laws of this State as they relate to the requirements for legal residency, this Court should recognize Washington as Krystin's home state and as having legal jurisdiction over this matter. The custody modification order dated July 18, 2017 should hereby be immediately vacated and the pleadings thereto stricken from the record. Additionally, sole legal and primary physical custody should be immediately declared as continued to be held by Ms. Fauver. The vacating order should specify that the July 18, 2017 has no authority in this matter and the defendant should be required to destroy any copies of the document he has in possession to prevent any potential misuse of the prior order not indicating today's ruling vacating it.

DATED this ____ day of November, 2017 at _____, Washington.

Teresa Fauver-Hernandez, Plaintiff
27606 Pacific Highway South, #A203
Federal Way, WA 98003

CERTIFICATE OF SERVICE

I, Teresa Fauver-Hernandez, certify under penalty of perjury under the laws of the State of Washington that on November ____, 2017, I coordinated legal process service of the foregoing documents in the manner described below as follows:

I mailed a copy of the foregoing document(s) to defendant at the following mailing address currently on file with the Clerk of Court:

Jerry A. Gardiner, Jr.
P.O. Box 81498

MOTION TO SET ASIDE JULY 18, 2017 ORDER & STRIKE RELATED PLEADINGS THERETO (RE: JURISDICTION) & TO RE-AFFIRM ORIGINAL CUSTODY ORDER(S)

1 Fairbanks, AK 99708

2 DATED this ____ of November, 2017 at Seattle, Washington.

3 /s/Teresa Fauver-Hernandez
4 Teresa Fauver-Hernandez
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