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NOTE: If for any reason you do not wish the other party to know your physical address, you must still provide a mailing address so that the court and the other party can serve you by mail.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT FAIRBANKS**

TERESSA GARDINER n/k/a
TERESSA FAUVER,

Plaintiff,

vs.

JERRY GARDINER, JR.,

Defendant.

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

MOTION TO VACATE JULY 18, 2017
ORDER MODIFYING CUSTODY & TO
STRIKE RELATED PLEADINGS THERETO &
TO RE-AFFIRM ORIGINAL CUSTODY
ORDER(S)

I. RELIEF REQUESTED

COMES NOW the Plaintiff, Teresa Fauver-Hernandez, and hereby moves this Court for an order vacating its July 18, 2017 order modifying custody, to strike all previously filed pleadings relating thereto, and to re-affirm original custody order(s). The history of this matter is fully disclosed below, followed by legal arguments in support of this motion.

II. FACTS

A. Initial Custody Order Granted at Anchorage, Alaska in 2004

Plaintiff Ms. Teresa (Tess) Fauver-Hernandez and defendant Mr. Jerry Gardiner, Jr. appeared at Anchorage Superior Court for a divorce and custody trial in December, 2003. The

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Court awarded Ms. Fauver (19 years old at the time) primary physical custody and sole legal custody of their child, Krystin Gardiner (n/k/a Krystin Fauver, DOB: 02/02/2002). *See* Declaration of Teressa Fauver in Support of Motion to Vacate July 18, 2017 Order Modifying Custody (hereinafter “Plaintiff Dec.”), Ex. 1, § 2. The defendant, Mr. Gardiner, Jr. (22 years old), was given restricted rights of visitation via a professional supervisor, occurring one (1) time per week for up to two (2) hours. *Id.* at § 3. He was also ordered to enroll in and complete a state-certified domestic violence intervention program lasting at least seven (7) months, and additionally required to complete three (3) age-appropriate (with relation to the child’s age) parenting courses. *Id.* at § 4. Lastly, Mr. Gardiner was to provide proof of enrollment and completion, and to regularly provide release of information documentation to Plaintiff’s counsel (Alaska Legal Services Corporation, “ALSC”) to allow confirmation of participation. *Id.*

B. Initial Custody/Decree Affirmed, Plaintiff & Child Relocate to Washington

Later that year, the original custody order was revisited and reaffirmed; the only changes being the addition of the Court’s express permission for Ms. Fauver to move out of state with the minor child, Krystin, and the supervised visitation was changed from Anchorage, AK to Seattle, WA. Plaintiff Dec., Ex. 2. In the seventeen (17) weeks between the time of trial and the time Plaintiff’s motion for modification was made, the defendant failed to verify enrollment in either the domestic violence intervention program or any parenting class. *Id.* at § 4.

C. Defendant Fails to Adhere to Custody Order; Violent Behavior & Lack of Parenting Skills Remain Unaddressed

Uncontradicted testimony at the December 2003 custody trial revealed Mr. Gardiner had perpetrated severe physical abuse on Ms. Fauver and knowingly jeopardized Krystin's safety (*Id.*, p. 9, 2), which resulted in his obligations to the court. To date, over thirteen (13) years later, there has not been a single indication that he has taken any steps to acknowledge and address his behavioral issues or lack of parenting experience, by adhering to the court's order or otherwise. Additionally, not a single visitation with Krystin has been set up or inquired about in this thirteen (13) year time period, telephonically or otherwise.

Mr. Gardiner did make contact with Krystin on one (1) occasion (to Ms. Fauver's knowledge), via Facebook's messenger application, without contacting Ms. Fauver prior to, during, or after his communication. In his messages, he told Krystin that her mother was lying to her about their history in Alaska, when Krystin was only weeks old. Learning of this, Ms. Fauver had Krystin cease communications with Mr. Gardiner. Ms. Fauver continues to believe that the defendant should have let her know of his desire to communicate with Krystin, and that he should have kept any topics of discussion, especially initially, strictly to learning about the child.

D. Unsettling Changes in Seattle

Ms. Fauver and Krystin relocated to Seattle in 2004. Since then, they regularly were able to secure stable housing in a family-friendly, low-crime neighborhood with an above-average school within the enrollment area. Plaintiff Dec., Ex. ___ <<ATTACH leases(?),

OR attach schools & school report card ratings for John Hay, Campbell Elementary, Center School, McClure Middle School, Spanaway Middle [mebbe]>>.

In August 2016, the Plaintiff signed a year-long lease for a newly remodeled condo in Magnolia, the same neighborhood they were already living in, and one of Seattle's quietest residential neighborhoods, made up of high-income families with one of the lowest crime rates in the city. Plaintiff Dec., Ex. ___ <<<ATTACH info re Magnolia/statistical data on income, crime rates, education, home values>>>>

Prior to the lease taking legal effect on September 1 (the Plaintiff has documented examples of the condo owner's unshakeable insistence that the Plaintiff take residence early, despite repeated protests), the landlord sent two strangers to illegally enter the locked, newly-leased unit with a key and attempt to scare the new residents away. Ms. Fauver was served three (3) different types of eviction notices just days later, received on the lease's official date of legal effect and the day prior. After studying the lease she had signed, Ms. Fauver did not find any lease terms had been broken on the part of the lessee, despite the accusations presented by the lessor in the notices, and she proceeded to defend their home to the end. The case was set for trial after a pre-hearing conference, where Ms. Fauver represented herself in a two (2)-day trial (finances and the fast-moving litigation timeframe judicially allotted to eviction matters did not allow her the ability to hire an attorney for trial representation). Unfortunately, the condo owner called upon her family's go-to lawyer, a seasoned litigation attorney (he passed the bar exam in 1978), who utilized an onslaught of objections (to prevent

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the admittance of most of Ms. Fauver's evidence), unleashed a myriad of unrelated and/or untrue accusations at Ms. Fauver (causing her distraction from what her defensive actions needed to specifically address to allow for the highest potential for success in her arguments), and coached the condo owner's "witnesses" in outright testimonial perjury (also clearly documented and reflected when comparing written declarations to trial testimony). Plaintiff Dec., Ex. ___ <<<ATTACH: Complaint & Answer>>>> As a result of the unfair trial outcome (and sudden loss of a perfect rental history), quite suddenly Ms. Fauver was unable to locate a residence managed by a company that would approve her lease application, much less a comfortable space located in a safe, family-friendly neighborhood. <<ATTACH: Rejected application, articles on evictions>>

In December, Plaintiff and Krystin left the condo. They began living at vacation-type rentals in the safer neighborhoods of Seattle for approximately a month at a time. Plaintiff Dec., Ex. ___ <<<Plaintiff Dec., Ex. ___ ATTACH: Airbnb Printouts>>>> At the end of April, 2017, Plaintiff's main income source ceased to exist. Within a week, it also became obvious that her husband (separated since 2014), whom she had filed jointly with on their tax return, would not be providing her with what was her share of the 2016 return (about \$2,000). Plaintiff Dec., Ex. _ <<ATTACH tax things that I have re docs from Alfred, communication with Alfred about return, etc.>>>> Ms. Fauver began to look at their limited options for survival and opted to match funds with an ex-boyfriend who was in a similar situation, except with regular income.

This appeared to be the best short-term option for her family when faced with homelessness in the city. Ms. Fauver has no family in Washington State, and neither of her parents have ever been able to provide her with substantial financial assistance (Ms. Fauver's mother had been able to provide \$200 in a few especially dire situations, particularly when Ms. Fauver was younger and paid much less than she was paid after gaining experience in her career). Most of the Plaintiff's friends have a partner, roommate, or both, and therefore are at maximum occupancy in their homes. Countless assistance programs and shelters were contacted in attempts at finding options for support and resolutions for her family, but frustratingly she was most often offered a referral or told there was no assistance available for her unique situation. Too many times, the referrals given to her directed the family to life in an "urban encampment," the official term for a government-run tent city. Plaintiff Dec., Ex. ___ <<<ATTACH 211 referral(s)(?) to urban encampments). In early May, 2017, Plaintiff, her ex-boyfriend, and Krystin rented a 3-bedroom together, and old relationship patterns surfaced, but Plaintiff and Krystin had nowhere to go to escape the increasingly hostile environment, and by the end of the week, Plaintiff and Krystin decided to call the police on Plaintiff's ex-boyfriend.

After that, Plaintiff and Krystin were in a hotel for a few days, but still could not find a steady place to go, and with no income, Plaintiff couldn't afford hotels on her own, and saw no option but to try and team up with her ex again while seeking a more satisfactory arrangement. They were able to obtain three (3) to five (5) – star hotels nightly, but usually a different

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location every night. All three stayed one night at a hotel together when Plaintiff asked Krystin if she had a friend she could stay with for a day or two while she attempted to secure a more stable and less potentially hostile situation.

E. Krystin's Surprise Journey to Fairbanks, Alaska

In May, 2017, Krystin expressed interest in meeting her father (Fauver Dec., Ex. 8, p. 9), despite a loving relationship with her mother. Plaintiff Dec., Ex. 8 & 17. Simultaneously, Ms. Fauver learned that a CPS worker had established contact with the defendant (allegedly two weeks prior (Plaintiff Dec., Ex. 3, p. 3 at § 3)), and had acted as an intermediary between he and Krystin. Further, and also without Ms. Fauver's knowledge, Mr. Gardiner and the CPS employee had decided that Krystin, an only child, "belonged" in Fairbanks (as told by defendant to Krystin, Plaintiff Dec., Ex. 15, p. 5-7, 9-12) in a residence packed with total strangers, including the defendant, his fiancée, her three children, and her eldest's boyfriend, totaling six adult-sized individuals Krystin had never before met or even spoken with. Plaintiff Dec., Ex. 4, p. 2. In addition, both adults have criminal records (Plaintiff Dec., Ex. 5), questionably low income to support a household of their size (Mr. Gardiner receives State cash and/or food assistance, *see* Plaintiff Dec., Ex. 6.), and *as of September 24, 2017 Mr. Gardiner owed \$5,544.56 to Plaintiff for child support.* Plaintiff Dec., Ex. 7, p. 2. In contrast, Krystin's mother, has no criminal record, only one dependent (Krystin), is in possession of Krystin's belongings and items acquired over fifteen (15) years which have made up their home, and has built a career in the legal field as a paralegal with over nine (9) years of experience.

Although she had not viewed or been provided with a single piece of paperwork, Ms. Fauver felt reasonable in assuming that Krystin's situation in Fairbanks would be closely monitored by Washington's Children's Administration, and that those responsibilities would most likely be immediately delegated to a similar administrative branch in Fairbanks, Alaska. Therefore, after lengthy discussion, Ms. Fauver did not further argue against Krystin's decision to go to Fairbanks. Plaintiff Dec., Ex. 8.

F. Defendant Silently Files for Custody, Fails to Give Notice to Plaintiff

Krystin arrived in Fairbanks, Alaska, where the defendant currently resides, on May 20. Plaintiff Dec., Ex. 10. The original custody order regarding Krystin's parental custody remained unchanged. Ms. Fauver had no reason to anticipate that it would be changed. However, on July 3, 2017, the defendant filed in Anchorage for primary legal and sole physical custody. Plaintiff Dec., Ex. _____. He also filed a motion to change venue. Plaintiff Dec., Ex. ____ (was ex. 12,) p. 2. Mr. Gardiner entirely failed to address the filing with Ms. Fauver until he made threats to obtain no-contact orders against her, her mother, and her uncle around mid-August, 2017. Plaintiff Dec., Ex. ____ (Ex. 3), p. 4.

Ms. Fauver initiated contact with the defendant in June, 2017. *Id.* at p. 1. Shockingly, Mr. Gardiner didn't ask Ms. Fauver about Krystin's needs physically and/or medically (Krystin underwent major surgeries on her spine in 2013, which took up at least ¼ of the year to prepare for and recover from(See Plaintiff Dec., Ex. ____ <<<ATTACH medical things this is an attempt to not type negative *crap* about them stuffs?>>>)), her emotional needs (Krystin had been

receiving individual counseling and therapy support services provided by the Seattle School District at least one (1) time per week yielding excellent results for approximately two (2) years prior to her sudden departure to Fairbanks), potential shipment of her belongings/comfort items, or otherwise.

Mr. Gardiner has not, at any time in the past fifteen (15) years, contacted the Plaintiff for information regarding Krystin's well being, or to provide any information about her (despite requests), and still has not. *Id.* She has not at any time been contacted by any individual or entity with regard to defendant's modification motion or service thereof.

G. Def. Failed to File Completed Certificates of Service

In his motion for modification of custody, on the very first page in the very first section, Mr. Gardiner wrote Plaintiff's name, then an incorrect date of birth (Plaintiff Dec., Ex. 11, p. 1). Every other entry space in the section, including a place for "[the *indicated party's*] mailing, residential and email addresses" were indicated as "unknown" as handwritten in response by defendant, although evidence shows he never tried to obtain any of the information requested.

In contrast, in the notice of motion document filed, Mr. Gardiner suddenly declared knowledge of a service address for Plaintiff and provided "**301 Union Street**" (Seattle) as her service address. *Id.* at p. 7. However, Mr. Gardiner did not fill out or sign the certificate of service found on the notice of motion document directly below his signature and address lines, which he did complete. *Id.*

The actual certificate of service document also presents characteristics suggesting incomplete and/or inaccurate information. The caption is void of content. *Id.* at p. 6. In addition, the defendant provided another new service address is provided for Plaintiff at ¶“Other Parent,” where “**301 Main Street**” (Seattle) is indicated as the mailing address he attempted to serve Ms. Fauver at. Both addresses provided by the defendant are non-residential addresses located in downtown Seattle. Additionally, *defendant again did not certify service* as he failed to indicate in the certificate of service document what service method he utilized. *Id.* According to the copy of July’s motion provided to Ms. Fauver by this Court, none of the service certifications were completed. *Id.* at p. 1, 6, 7. If service is not certified as being made, then legally the defendant never even claimed to have attempted service on Plaintiff. And, in the case that he argues that these errors are, in fact, only errors in paperwork, then the defendant be required to provide evidence of his attempt(s)? And, in the case he did attempt service, why did he not inform the Court of the bad address he had provided for service to Ms. Fauver, and that he had been unable to successfully serve her?

H. Order on Unopposed Motion for Custody Modification Granted in Anchorage, Alaska; Venue Changed to Fairbanks, Alaska

On July 18, 2017, Mr. Gardiner’s custody modification motion was granted by default. Plaintiff Dec., Ex. 13. Ms. Fauver still had not been served or provided notice, and therefore continued to have no idea that full custody of 15-year old Krystin had been coldly taken from her and signed to the defendant. The signed order uses language that borderlines on the bizarre

in its severity and finality, and seems inconsistent with the State's views on parenting and visitation rights. It provides: "*The court awards defendant sole legal and primary physical custody...Defendant has sole discretion over what visitation, if any, is to occur between plaintiff and Krystin.*" *Id.*

In addition to granting the modification order, the presiding judge also granted defendant's motion to change the venue from Anchorage to Fairbanks, Alaska. On July 18, defendant's custody modification order was signed in Anchorage, and immediately thereafter the file was closed and transferred/venue changed to Fairbanks, where the matter was given a new cause number, and assigned to a different judge. Plaintiff Dec., Ex. 12, p. 2.

I. Plaintiff Requests & Purchases Copies of July's Custody Modification Documentation

Once Plaintiff realized that the court would not be sending her a copy of the documents on record in the matter, and that asking or telling Mr. Gardiner to serve her would not convince him to provide her with a set of the documents, she ordered and paid for the 2017-filed custody modification documentation. Plaintiff Dec., Ex. 14. She had already directly requested that defendant serve her or otherwise provide a copy. Plaintiff Dec., Ex. 3, p. 10. The documents were e-mailed by Fairbanks Superior and received by Ms. Fauver the evening of September 7. Plaintiff Dec., Ex. 14. The documents produced were comprised of the defendant's notice form, motion to change custody, with attachments, signed order, and certificate of service. *Id.* No affidavits/declarations were included in the production to Plaintiff. *Id.*

J. Tortious Custodial Interference Maliciously Inflicted by Defendant

In May, 2017, Ms. Fauver was unaware of the absurd plot being set up and put into play about her, while the defendant enticed Krystin, plaintiff's only child, from her home state and away from her mother, friends, and all things familiar; with the intent to keep her over 5,000 miles away in Fairbanks, Alaska at his home for a protracted period, one it would appear he anticipated to last indefinitely. Plaintiff Dec., Ex. 15. The matter of Mr. Gardiner's outrageous custodial interference is detailed in a separate motion brought by the Plaintiff in this matter.

To date, though she specifically requested a copy of the motion directly from the defendant (Plaintiff Dec., Ex. 3, p. 11), Plaintiff Fauver has yet to be served.

III. LEGAL ARGUMENT

A. Failure to Perform Due Diligence & Lack of Certificate(s) of Service

The Plaintiff and Mr. Gardiner had exchanged messages within days of his July filing. In fact, he messaged her after his alleged service of the documents to her and stated, "Wanted to let you know that I mailed some stuff to the union street post office for you for krys." Plaintiff Dec., Ex. 3, p. 2. At no time did Mr. Gardiner inquire Plaintiff to give notice of his motion for modification of custody request information to effectively give her notice. The defendant even shared his knowledge of the court rules governing service requirements with the Plaintiff, stating (relating to his alleged mailing/process service: "...I did send you the required paperwork, and told you that I'd sent paperwork that had to do with krys (which isn't required by the way)...") *Id.* at p. 4 (August 10 at 1:55 p.m.).

This blatant disregard for the most basic of court rules should be recognized by this Court; and weight given to the intentional failure to act in this instance moreso than in other matters, as this matter involves a child's safety and well-being, which have been at high risk since July 18.

CR 4(e)(1) states the following regarding diligent inquiry:

Diligent Inquiry. Inquiry as to the absent party's whereabouts shall be made by the party who seeks to have service made...The inquiry shall be undertaken in person or by letter, and the inquirer shall state that an action has been or is about to be commenced against the party inquired for, that the object of the inquiry is to give such party notice of the action in order that such party may appear and defend it...The affidavit of inquiry shall be made by the inquirer. It shall fully specify the inquiry made and of what persons and in what manner so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

Mr. Gardiner is and has been aware that Ms. Fauver was not served or given notice of with his motion to modify custody (Plaintiff Dec., Ex. 3, p. 11, Additional exhibit to be supplemented). He ignored Ms. Fauver's request that effective service be made.

Defendant's Fraudulent Misrepresentation

If Mr. Gardiner had attempted service to the address he provided to the court as Plaintiff's service address, it would have been returned as "Undeliverable." Indeed, this Court was alerted to the undeliverable status of the address defendant provided when its July 18 order

was returned from the same, and is reflected on this matter's docket. Plaintiff Dec., Ex. 12, p. 2. The defendant's failure to report the undeliverable status of his service to the Court and allowing its order to be issued was fraudulent misrepresentation of the facts.

Without the defendant's disclosure that the Plaintiff had not been served, the court would therefore believe the Plaintiff had been served according to the defendant's (incomplete) certificates of service (also either fraudulently misrepresented or negligently misrepresented). At the time he defendant had solid evidence that his service on Plaintiff (if alleged service was in fact attempted), he should have, at that point if none other, fulfilled his obligation under the due diligence inquiry clause and contacted the Plaintiff for correct service information. The defendant did not and has not inquired at any time with the Plaintiff as to an address at which service can be effected.

In fact, it was only by chance that, while performing research on Alaska's CourtView site, that Ms. Fauver learned the 2004 divorce/custody case had been reopened, transferred to a new venue, given a new cause number, and remained open after July's order to modify was granted without opposition.

Section 106 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which has been adopted by this State as AS 25.24.150, provides that:

A child-custody determination made by a court of this State that had jurisdiction under this [Act] binds all persons *who have been served* in accordance with the laws of this State *or notified* in accordance with Section 108...and who have been *given an opportunity to be heard.* (*Emphasis added.*)

Plaintiff Dec., Ex. 16, p. 7.

This statute plainly states that a decision made in a child custody case is binding to all persons legally served or notified as specified in the Act, AND given opportunity to be heard. **Plaintiff legally is not bound to the July 18 determination** as she was inarguably not effectively served, notice of the filing was not made in any manner, and she was most certainly not notified in accordance with UCCJEA §108, and therefore, until now, was not given an opportunity to be heard. If Plaintiff is not bound to the court's July 18 determination, as is what has been made plain by reviewing the above statute and Act, Ms. Fauver legally has full custody of Krystin Fauver.

Additionally, Section 205 of the UCCJEA provides simple language about notice required in a child-custody matter:

(a) Before a child-custody determination is made under this [Act], notice and an opportunity to be heard in accordance with the standards of Section 108 must be given to all persons entitled to notice...as in child-custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child...

(b) [T]his section simply indicates that persons entitled to seek custody should receive notice...Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. ..

Id. at p. 34, 35.

Additionally, the Parental Kidnapping Prevention Act (“PKPA”) also holds that a custody decision is not entitled to full faith and credit if notice has not been provided:

The Parental Kidnapping Prevention Act (PKPA)...[at Section 1738A(e)] requires that they be given notice in order for the custody determination to be entitled to full faith and credit under the Act...

Id.

Because Ms. Fauver was not served as required by CR 5(a), CR 5.2(d)(2)(B), or CR 77(a), or given notice as required in UCCJEA § 205(a), PKPA § 1738(A)(e), or served as described in UCCJEA § 106 or AS 25.24.150, *the child-custody determination issued July 18 is not binding* and therefore the ineffective order should be immediately vacated, as well as the pleadings thereto stricken from the record. Additionally, sole legal and primary physical custody should be restored to the Plaintiff. Finally, this Court should order, issuing a warrant for custody if necessary, and demand that the defendant immediately reveal the location of the child Krystin, who he has kept concealed from her family and restricted from any type of communication with her routine friends, family and social network for nearly three (3) months, since at least July 7, 2017. She should be provided immediate departure from her location and allowed to travel home unrestricted and without any further interaction with defendant or those in his household unless so desired.

B. Washington Has Legal Jurisdiction as the Minor’s Home State

At the time this motion was filed, Krystin had not been present in Alaska for six months, and therefore was not an Alaskan resident. <<<Court handout RE What am I supposed to do to file for custody?>>>> “If your child has not lived in Alaska for six months, you either need to wait to file, or file for custody in the state they previously resided in...If your ex has left state with the child, and you want custody to be handled in Alaska, you will need to file for custody before the child has been gone for 6 months.” Her arrival in the state took place approximately May 20, 2017. Ms. Fauver and Krystin maintained residency in Washington State since summer, 2013. Both the Fairbanks and Anchorage, Alaska judicial venues lack jurisdiction due to the minor’s lack of residency and of any ties to the State.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) § 202 provides that:

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

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

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

1. If a parent...remains in the original decree State, continuing jurisdiction is lost when neither the child, [or] the child and a parent...continue to have a significant connection with the original decree State and there is no longer substantial evidence

concerning the child's care, protection, training and personal relations in that State....If the relationship between the child and the person remaining in the State with exclusive, continuing jurisdiction becomes so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist.

Id. at p. _

Ms. Fauver and Krystin have lived in Washington State for the majority of their lives. Krystin has expressed that she would like to focus on obtaining a career in the music and/or entertainment industry and desires to attend a music-focused college in the lower-48 after graduation. Neither Krystin or Plaintiff have significant remaining connections to the State of Alaska. There is no substantial evidence available in Alaska relating to Krystin's care, protection, training, or personal relationships.

Therefore, in consideration of the facts above, this Court should recognize Washington as Krystin's home state and as having legal jurisdiction over this child-custody matter per UCCJEA § 202. The custody modification order filed in Alaska and dated July 18, 2017 should therefore be immediately vacated, and the pleadings thereto stricken from the record. Additionally, sole legal and primary physical custody should be restored to Ms. Fauver.

D. Additional Jurisdictional Matters: Inconvenient Forum

UCCJEA § 207 provides the following regarding the determination of a potentially inconvenient jurisdictional forum and the factors which the Court may consider when deciding the appropriate forum:

(a) A court of this State which has jurisdiction under this [Act] to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another State is a more appropriate forum...

(b) Before determining...an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall...consider all relevant factors, including:

(1) whether domestic violence has occurred...and which State could best protect the parties and the child;

(2) the length of time the child has resided outside this State;

(3) the distance between the court in this State and the court in the State that would assume jurisdiction....

(7) [and] the ability of the court of each State to decide the issue expeditiously...

(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum; it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.

[Comment]...*Subparagraph (1) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties.* For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. *If domestic violence or child abuse has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse...*

...The court is also authorized to impose any other conditions it considers appropriate...

Plaintiff Dec., Ex. 16, p. 16.

A judicial venue located in Washington State presents as the most appropriate forum in this matter when considering the UCCJA section above and applying it to the facts of this matter. Krystin has been a Washington resident for the majority of her life. She has participated in the public education system in the City of Seattle for all but two of her ten years (she is now a sophomore and should be enrolled for 10th grade in a public school, as she expressed was definite preference when any alternative was suggested.

Adding to the conditions the UCCJA indicates as contributory to an inconvenient forum are the repeated acts of domestic violence perpetrated upon Krystin's underage mother (only 16 and 17 years old at the time) while she was with child and post-partum, and even against the near-term but unborn baby Krystin, by Mr. Gardiner (19 and 20 years old at the time), which were surprisingly absent any mention in the custody modification documentation he submitted in July.

Washington state is the most convenient, comfortable and safe forum for Ms. Fauver and child, especially when Mr. Gardiner's undisputed violent history and lack of accountability are taken into consideration, added to his current manipulation and abuse of any parental rights he possibly held when Krystin came to stay with him in late May 2017. Alaska is an

inconvenient forum for the Krystin and mother due to the defendant's criminal and violent history.

In consideration of the facts stated above, and Section 207 of the UCCJA (relevant parts summarized above) regarding child-custody proceedings and related potential inconvenient forums, the custody modification order granted by this Court and dated July 18, 2017 should immediately be vacated and the pleadings thereto stricken, and hereinafter, any motion the defendant/petitioner brings should be presented in King County, Washington.

Defendant's Failure to Adhere to Prior Custody Order

A court restricts visitation when a party presents reason for serious safety concerns. The defendant in this matter was given a severely restricted visitation schedule due to the extremely disturbing and violent facts he admitted to without argument in trial, including severe violence toward the plaintiff pre- and post-partum.

The defendant failed to fulfill his obligations as described in the April and May 2004 custody orders granted in Anchorage, which included a 28+ week course focusing on domestic violence intervention.

Given his violent history and failure to address the same, and obvious disregard for many court rules, defendant's July 2017 motion for modification of custody should not have been granted. He has not fulfilled his obligations to the issuing Court's requirements for visitation and after having approximately thirteen (13) years to do so. The custody order

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reflecting defendant as the full custodian with control over any and all visitation from anyone is unheard of, outrageous, and has endangered the child. Since Krystin's arrival in Fairbanks, Alaska near the end of May, the defendant has shamelessly abused any rights he may have had or hoped to obtain as the child's legal guardian, in his decision to keep her concealed for nearly three (3) months.

Mr. Gardiner has shown little to no consideration or empathy for Krystin and the situation he created for her in Fairbanks, Alaska. He has had a strong negative influence on Krystin's life, including doing all in his power to sever all of Krystin's emotional supports and personal relationships. He has kept her from attending public high school, her voiced preference as opposed to any alternatives, for her sophomore year. She has not had an internet presence for nearly three (3) months. She has been kept from any communication with anyone outside of her undisclosed location, believed to be in Fairbanks, for the same amount of time. The legal parental rights of Ms. Fauver-Hernandez have been outrageously and unconscionably interfered with to the extreme by the defendant and to the child's unimaginable and absolutely unnecessary detriment. The defendant has consistently refused and denied any demand or request made by Ms. Fauver to communicate with her only child for nearly three (3) months, despite daily demands/requests sent to the Mr. Gardiner by the Plaintiff, asserting her legal right to do so (Dec. of Fauver, Ex. ____). The defendant has also denied visits and/or conversations between the child and her grandmother, great uncle and cousin (Pl. Dec., Ex. 3, p. 4, 5). The

child's location should be revealed immediately and 100% custody returned to the Plaintiff, Ms. Fauver-Hernandez, who has been the child's sole caretaker and provider since her birth.

DATED this ___ day of September, 2017 at _____, Washington.

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

CERTIFICATE OF SERVICE

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

MOTION TO VACATE JULY 18, 2017 ORDER MODIFYING CUSTODY & TO STRIKE RELATED PLEADINGS THERETO & TO RE-AFFIRM ORIGINAL CUSTODY ORDER(S)

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
Fairbanks, AK 99708

DATED this ____ of September, 2017 at Seattle, Washington.

/s/Teresa Fauver-Hernandez
Teresa Fauver-Hernandez