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Pro Per

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Richard Riess,
Petitioner,

v.

Desiree Capuano,
Respondent.

Case No.: TD035397

**DECLARATION OF RICHARD RIESS IN
SUPPORT OF REQUEST TO MODIFY
CHILD VISITATION SCHEDULE**

I, Richard Riess, hereby declare under penalty of perjury that I am the Petitioner in the captioned matter and that all statements made herein are true and correct to the best of my knowledge.

1. I am the biological father of Gabriel Riess.
2. Desiree Capuano is the biological mother of Gabriel Riess.
3. I have sole physical custody of Gabriel, as ordered by this Court on December 6, 2011.
4. Desiree has visitation with Gabriel during the summer, winter and spring school breaks, and alternating long weekends, as ordered by this Court on December 6, 2011.
5. During Desiree's periods of visitation, Gabriel stays at her residence in Arizona for the duration of the visitation period.
6. Desiree and I resided together from January 2000 until October 2001.

7. I do not currently use, nor have I at any time during the course of my relationship with Desiree used, illegal drugs.
8. Prior to becoming pregnant with Gabriel in 2000, Desiree regular used marijuana and methylenedioxymethamphetamine (MDMA). I personally witnessed Desiree smoke marijuana on numerous occasions and have witnessed her under the influence of MDMA.
9. In March 2000 Desiree was arrested in Santa Monica, on the 3rd Street Promenade, for being under the influence of a controlled substance in a public place (CPC 647(F)). Desiree falsely provided and was booked under the name Virginia Tomlin.
10. On March 17, 2000 Desiree was found guilty of the charge of being under the influence of a controlled substance (case no. SM0SM00882-01). She was subsequently confined, by court order, to a psychiatric hospital, due to her behavior in the courtroom. Desiree falsely provided the Court the name Virginia Tomlin.
11. Desiree's drug use prior to her pregnancy with Gabriel was repeatedly the source of tension between her and I, and on one occasion in March 2000 resulted in the brief termination of our relationship and my insistence she move out. Later that day Desiree promised me that she would stop using drugs.
12. I have no knowledge of, or reason to believe, Desiree used any illegal drugs during her pregnancy with Gabriel or for the first nine months following Gabriel's birth.
13. In the summer of 2001 I became aware that Desiree had started using drugs again when I noticed changes in her behavior and attitudes.
14. Desiree's relapse into drug use in the summer of 2001 was the catalyst for our separation and my

subsequent petition for dissolution of our marriage, and for custody of Gabriel.

15. In October 2001, after we had separated, Desiree admitted to me that she had been using marijuana again. She stated that since we had separated she didn't have to hide her marijuana use anymore and that she was an adult and could do what she wanted.
16. When I established contact with Desiree in January 2011, after having no significant contact for nine years, I assumed, based on the statements in her letters, that she was no longer using drugs.
17. In a letter Desiree wrote me in the spring of 2011, after she had been in contact with Gabriel, she alluded to her continued and present use of marijuana. However, when I asked her about it directly she denied that she was still using marijuana or any other drugs.
18. Based on my conversations and dealings with Desiree from August 2011 through the present, I have suspected she has been using marijuana and crystal methamphetamine because her behavior was often irrational, she would become easily agitated and very hostile from the smallest provocation, and she would repeatedly make preposterous and grandiose claims and allegations. However, because she insisted she was not using drugs and I had no further evidence to support my suspicions I provided her the benefit of the doubt.
19. On December 30, 2011 Desiree drove from Phoenix, Arizona to Carson, California to pick Gabriel up for her period of visitation. She left Phoenix at approximately midnight and drove all night, arriving at my residence at approximately 7:00 am. Upon her arrival she did not appear tired, or show any signs of fatigue. She was very alert, rambled about irrelevant, disparate topics and continually paced back and forth. I suspected she was under the influence of a stimulant but had no evidence to support my suspicions. I asked Desiree if she was sure she was alright to

drive back to Phoenix without first resting and she assured me she was fine. Gabriel called me at 2:00 pm to inform me they had arrived at Desiree's house.

20. On January 26, 2012 I discovered, through my own independent research, that Desiree had been arrested by the Scottsdale Police Department for possession of marijuana (ARS 13-3405) and possession of drug paraphernalia (ARS 13-3415) on September 27, 2011. The Maricopa County Attorney's Office filed a Direct Complaint in the Superior Court of Arizona, against Desiree (case no. CR2012-103751) on January 18, 2012. The case is currently pending before the Court.
21. September 27 is Gabriel's birthday and Gabriel was in Desiree's custody and care at the time of her arrest for possession of a controlled substance. That was the first time Desiree had been present for any of Gabriel's birthdays.
22. On January 20, 2012 Desiree admitted that after her arrest on September 27, 2011 she applied for and obtained an Arizona Medical Marijuana Program ID card. She obtained the card on November 7, 2011.
23. Arizona law requires a person to suffer from a debilitating condition in order to qualify for a medical marijuana card (ARS 36-2801). When I asked Desiree what debilitating condition she is suffering from she became defensive and refused to tell. I believe that information is relevant because it may affect her ability to care for Gabriel when he is with her.
24. Desiree's current boyfriend, Kristopher Lauchner, lives at Desiree's home in Peoria, Arizona.
25. Lauchner has an extensive, violent criminal history which includes multiple convictions, in multiple states, for Attempted Aggravated Assault; Theft of Means of Transportation; Shoplifting; Possession of Dangerous Drugs; Receiving and Transferring Stolen Vehicles;

Assault with a Deadly Weapon; Petit Larceny; Trespassing; Conspiring to Commit Grand Larceny; Conspiring to Commit Burglary, as well as arrests for Unlawful Flight from Law Enforcement; Taking Identity of Another; Obstructing Public Officer; Attempted Murder with a Deadly Weapon; Manufacture or Importation of Dangerous Weapons; Unlawful Possession of a Controlled Substance; Burglary; and Grand Larceny.

26. Desiree copied onto Gabriel's iPod two photographs of Lauchner and her other son, Sage who was eight years old at the time, handling/aiming a pistol. The pistol did not have an orange muzzle. I believe the pistol to be real. Due to Lauchner's felony convictions he is prohibited from possessing or controlling a firearm.
27. On November 8, 2011 this Court ordered Desiree to immediately return Gabriel to California and to my custody. The Court ordered Desiree and me to work out the details of Gabriel's return in such a way that each party would bear half the burden.
28. Following the Court's order to return Gabriel I attempted to communicate by telephone and email with Desiree to execute his return as soon as possible. Desiree refused to cooperate or to return Gabriel at that time.
29. On November 9, 2011 Desiree was still refusing to return Gabriel as directed by the Court. After a number of telephone calls and emails to her I received a telephone call from Lauchner. Lauchner told me that if I called Desiree again he would "come to LA and take care of [me] [himself]". Lauchner was hostile, yelled, and repeatedly used profanities, and menacing tones.
30. I later learned that while they were refusing to return Gabriel on November 8 and 9, 2011 Desiree and Lauchner were actively contacting attorneys to try to find a way to not have to return Gabriel.

31. At approximately noon on November 9, 2011 Desiree was advised by her new attorney to comply with the Court's order to immediately return Gabriel to me.
32. Desiree continued to refuse to comply with the Court's order to bear half the burden of Gabriel's return and she further refused to speak to me. Lauchner addressed me on Desiree's behalf. They refused to meet me half way and insisted I drive all the way to Arizona to pick up Gabriel. I ultimately purchased Gabriel a plane ticket for that evening and Lauchner escorted Gabriel to Sky Harbor Airport in Phoenix.
33. In late November I received a telephone call from Lauchner. The purpose of the call was to attempt to sell me an XBox 360 console he claimed he and Desiree had purchased Gabriel for Christmas. I informed Lauchner that I had no interest in communicating with him or purchasing anything from him.
34. On November 11, 2011 I sent Desiree an email requesting her medical insurance information for the purpose of Gabriel's coverage. She responded that Gabriel's coverage would commence on January 1, 2012. She did not provide the requested information.
35. On January 9, 2012 I sent another email to Desiree requesting the medical insurance information for Gabriel. Desiree did not respond.
36. On January 16, 2012 I sent a third email to Desiree requesting the medical insurance information for Gabriel. Desiree responded, refusing to provide her medical insurance information. I attempted to express to Desiree that she had a legal and moral obligation to provide the information for Gabriel's benefit. Shortly thereafter I received a threatening email from Lauchner, stating that he has "resources [I] couldn't possibly imagine" and that if I mentioned his

- name again he would get personally involved. Lauchner further insisted that Desiree and I are not now, nor ever were married, and ordered me to never refer to Desiree as my wife again.
37. Based on Lauchner's criminal history and his illegal possession of at least one firearm I considered his threats very credible.
 38. On January 20, 2012 I filed a request for a Temporary Restraining Order against Lauchner. The Court granted the Order, prohibiting Lauchner from attempting to contact me or to be within 100 yards of me (case no. TS015675).
 39. Upon receiving the Temporary Restraining Order I contacted Desiree by telephone to inform her. She became very hostile, yelled at me and made numerous irrational, unfounded allegations against me. Desiree then demanded to speak to Gabriel. She asked Gabriel if he wanted to continue seeing her and said "everything would be so much easier for [her] if he just said no".
 40. Shortly thereafter I received a telephone call from Lauchner but I did not answer it. That evening I received another derogatory and threatening email from Lauchner. I did not respond.
 41. When Gabriel left with Desiree, for his eight day visit in Phoenix, on December 30, 2011 he had a suitcase packed with six clean outfits to wear while in Phoenix.
 42. Upon Gabriel's return from his eight day visit with Desiree, on January 7, 2012, I noticed the clothes he was wearing were dirty and stained and his hair was oily. Later that evening I noticed a picture of Gabriel, Desiree had posted on her Facebook page on January 5, 2012 wherein Gabriel was wearing the same clothes. I pointed that out to Gabriel and he admitted he had been wearing the clothes and had not showered since January 4, 2012.
 43. Gabriel recently told me that when he was living with Desiree in Phoenix (August 2011 to

November 2011) she told him that she uses marijuana.

44. Since Desiree has been present in Gabriel's life (March 2011), she has frequently made him promises which she has failed to follow through on. In particular:
- A. For the first couple of months that Desiree was in contact with Gabriel she consistently assured him that she would not “take him from the only home he has ever know” and that it was not her intention to take him to Phoenix. She further assured him that she would not pressure him and that she would only move as fast as he was comfortable with. In June 2011 Desiree then told Gabriel that she was going to bring him to live with her in Phoenix regardless of what he wanted. In August Desiree showed up with no notice and took Gabriel to Phoenix in spite of his pleas not to do so.
 - B. When Desiree took Gabriel to Phoenix in August 2011 she told him she would take him to visit me in Eloy, AZ (when I was still in Administrative Detention). However, she failed to make any attempt to do so.
 - C. In September 2011 Desiree, Gabriel and I came to an agreement regarding custody and visitation (essentially the same agreement entered by this Court on December 6, 2011). But on the following day Desiree sought and obtained a restraining order barring me from having any visitation with Gabriel pending the outcome of the proceedings in Arizona (FC 2011-093719).
45. In June 2011 Desiree informed Gabriel of her intention to take him to San Diego for a one week vacation in July. Desiree failed to inform me of the trip. The day before she was planning to pick Gabriel up to take him to San Diego I told her I could not agree to it because I had received no

notice and her withholding the information from me made her intentions seem very questionable. Also, she had only been in Gabriel's life for less than four months at that point and had only visited him twice. Desiree became incredibly hostile toward both me and Gabriel and accused me of trying to keep Gabriel from her. She also called Gabriel directly and accused him of "ruining Sage's birthday" and messing up her plans. Gabriel was very upset and hurt by her behavior and accusations. Desiree's next contact with Gabriel was when she came to Carson to take him to Phoenix in August.

46. Desiree has stated that Sage has had numerous problems at school due to violent and/or aggressive behavior and that one time he tried to strangle another child in his class.
47. Desiree has stated that when she was with her ex-husband, Michael Capuano (2001 – 2009), they used to get into physical fights which often resulted in both parties hitting and throwing objects at the other.
48. Since Gabriel's return from Phoenix on January 7, 2012 Desiree has not contacted him either by telephone, email or otherwise.
49. Desiree has still not provided the information for Gabriel's dental or vision insurance.
50. In January 2012 I learned that Desiree had been giving Gabriel's clothes, which were purchased by me, to her other son, Sage. When I requested she return them to me she stated they had been donated to Goodwill.
51. I believe Desiree's recent arrest for possession of a controlled substance demonstrates that she has had a very long drug problem which started in her childhood and has continued all through her adult life.

52. I believe Desiree is currently using drugs including marijuana and crystal methamphetamine (based on her erratic behavior, grandiose allegations/claims, ability to stay awake for long periods, and her live-in boyfriend's admitted and documented history with it). And that her drug use places Gabriel in danger of being harmed and/or neglected when he is in her care.
53. I believe Desiree's current live-in boyfriend has the capacity for extreme violence.
54. I believe Desiree's repeated failure to keep her promises to Gabriel is, or will be, harmful to his psychological and emotional well-being if it continues.

Dated this 2nd day of February 2012.

Richard Riess