IN THE CIRCUIT COURT OF THE \_\_\_\_\_\_\_ JUDICIAL CIRCUIT,

IN AND FOR \_\_\_\_\_\_\_\_\_ COUNTY, FLORIDA

CASE NO.: \_\_\_\_\_\_\_\_\_\_\_\_

FAMILY DIVISION

, Petitioner

and

, Respondent.

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**MOTION FOR ORDER REQUESTING FLORIDA DEPARTMENT OF REVENUE, DIVISION OF CHILD SUPPORT ENFORCEMENT TO INITIATE STEP(S) TO SUSPEND/DENY RESPONDENT’S PASSPORT PURSUANT TO 42 U.S.C. § 652**

COMES NOW, the Petitioner, \_\_\_\_\_\_\_\_\_\_\_\_, by and through the undersigned counsel, and moves this Honorable Court to enter an order to request the Florida Department of Revenue, Division of Child Support Enforcement to initiate steps to suspend or deny Respondent’s passport and in support shows as follows:

1. Respondent has a child support obligation pursuant to his/her Final Judgment for Dissolution of Marriage entered on \_\_\_\_\_\_\_. The monthly support obligation amount is $\_\_\_\_\_\_\_\_.
2. Respondent has failed to pay obligation from \_\_\_\_\_\_\_\_ through \_\_\_\_\_\_\_. This results in \_\_\_\_\_\_\_ months of delinquency multiplied by the support per month and a resulting arrearage of $\_\_\_\_\_\_\_\_.[[1]](#footnote-1)
3. In order to achieve or obtain an order to request the Florida Department of Revenue, Division of Child Support Enforcement to initiate steps to suspend or deny Respondent’s passport, there is a multi-step process:
   1. First, the Florida Department of Revenue, Division of Child Support Enforcement must report to the Secretary of the U.S. Department of Health and Human Services, Office of Child Support Enforcement that Respondent is delinquent $2,500.00 or more in child support payments.
   2. Next, the U.S. Department of Health and Human Services must certify that Respondent is $2,500.00 or more in arrears and provide the Secretary at the U.S. Department of State with such certification.
   3. Finally, the Secretary at the U.S. Department of State shall deny, revoke, or limit Respondent’s passport.
4. This multi-step process is set forth at 42 U.S.C. § 652(k) which states in pertinent part:

“If the Secretary [of the U.S. Department of Health and Human Services] receives a certification by a State agency in accordance with the requirements of [section 654(31)](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=42USCAS654&originatingDoc=N698AC3306E7811E4BBA28619CFE16305&refType=RB&originationContext=document&transitionType=DocumentItem&contextData=(sc.Folder*cid.7c04cd6a769440a2923d636fa3439434*oc.UserEnteredCitation)#co_pp_e55f000000452) of this title that an individual owes arrearages of child support in an amount exceeding $2,500, the Secretary [of the U.S. Department of Health and Human Services] **shall** transmit such certification to the Secretary of State for action (with respect to denial, revocation, or limitation of passports) pursuant to paragraph (2) … The Secretary of State **shall**, upon certification by the Secretary [of the U.S. Department of Health and Human Services] transmitted under paragraph (1), refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual.” (emphasis added).

1. In this case, Respondent owes over $2,500.00 and Petitioner respectfully submits that he/she should be entitled to an order to request the Florida Department of Revenue, Division of Child Support Enforcement as the initial step required to obtain suspension of revocation of Respondent’s passport. The fact that Petitioner is represented by private counsel (as opposed to a State Agency) should not prevent Petitioner from the relief sought in this motion. This is consistent with the legislative intent set forth in footnote one (1) of this motion.
2. In *Blessing v.* Freestone, 520 U.S. 329 (1997) “five Arizona mothers whose children [were] eligible for state child support services under Title IV-D of the Social Security Act,” claimed that “they properly applied for child support services; that, despite their good faith efforts to cooperate, the agency never took adequate steps to obtain child support payments for them; … and that these systematic failures violated their individual rights under Title IV-D to have all mandated services delivered in substantial compliance with the title and its implementing regulations.” *Blessing*,520 U.S. 329 at 329. The U.S. Supreme Court explained that the state does not need to be 100% compliant with the requirements of Title IV-D to be “substantially compliant” and therefore any individual plaintiff might still be among the 10 to 15% whose needs go unmet. The U.S. Supreme Court also explained,

“A plaintiff must assert the violation of a federal *right*, not merely a violation of federal *law*. … There are three factors when determining whether a particular statutory provision gives rise to a federal right. First, Congress must have intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so ‘vague and amorphous’ that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation on the states.” *Blessing*,520 U.S. 329 at 339.

Using this analysis, Petitioner is entitled to seek suspension/ denial of Respondent’s passport. First, 42 U.S.C. § 652(k) benefits the Petitioner because suspending Respondent’s passport is a coercive measure to obtain payment of past due child support. Second, 42 U.S.C. § 652(k) is not vague or amorphous because it specifies an arrears that must be exceeded and it entails the steps that the Secretary shall take in order to deny a passport. 42 U.S.C. § 652(k) unambiguously imposes a binding obligation on the states to provide a certification by a State agency to commence action to deny, revoke, or limit passports. Therefore, Petitioner qualifies for the relief sought herein due to violation of a federal right, not merely violation of a federal law.

1. Public policy concerns support a private Petitioner (rather than strictly a state agency) applying to the court to invoke child support enforcement to suspend or deny passports.

* The total caseload for the Florida Office of Child Support Enforcement staff in 2012 was 943,504 with only 2,996 employees, which is approximately 315 cases per employee. See FY2012 Preliminary Report - State Box Scores, Office of Child Support Enforcement.
* In 2012, there were also 59.71% of cases in arrearage. See FY2012 Preliminary Report - State Box Scores, Office of Child Support Enforcement.
* In 2009, there was over $100 billion owed in unpaid child support. See article, “Deadbeat parents cost taxpayers $53 billion.”
* In 2007, 26.3 percent of all children in America live with one parent while the other parent lives elsewhere. See “Quick Facts About Child Support in America from US Census Bureau Statistics.”
* In 2007, child support due nationally totals $34.1 billion; 63 percent of that amount was paid on time, averaging $3,350 per year per parent who was due child support. See “Quick Facts About Child Support in America from US Census Bureau Statistics.”
* In 2007, only 41.2 percent of custodial parents receive all of their support payments. See “Quick Facts About Child Support in America from US Census Bureau Statistics.”

1. Petitioner has retained the undersigned counsel and has agreed to pay to them a reasonable fee for their services for which Respondent should be liable for. Accordingly, Petitioner requests that Respondent reimburse undersigned counsel whom Petitioner retained for this matter in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Petitioner further requests an award of all taxable court costs.

WHEREFORE, based upon the foregoing facts, authorities, and record established to date and given the outstanding unpaid child support obligation, Petitioner requests that this Honorable Court enter an order to direct the Florida Child Support Enforcement Agency to take steps to suspend or deny Respondent’s passport. Petitioner also requests any other relief as may be just and proper and reasonable attorney’s fees and for costs.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed and/or emailed to Respondent \_\_\_\_\_\_\_\_, at \_\_\_\_\_\_\_\_\_\_\_\_, email (if known) \_\_\_\_\_\_\_\_\_\_\_ and the Florida Department of Revenue, Division of Child Support Enforcement at P. O. Box 8030, Tallahassee, FL 32314-8030, this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2015.

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1. Legislative intent regarding the need for enforcement of child support obligations is set out in Chapter 409 of the Florida Statutes, “Social and Economic Assistance.” The rationale pronounced by the legislature should hold equally true for Title IV cases as well as attempts to collect support undertaken by private litigants. See, Florida Statute 61.13015(1).

   **“Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent children by persons responsible for their support have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency.** The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by additional remedies directed to the resources of the responsible parents. In order to render resources more immediately available to meet the needs of dependent children, it is the legislative intent that the remedies provided herein are in addition to, and not in lieu of, existing remedies. **It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs.”** (Emphasis added). Fla. Stat. 409.2551 (2013). [↑](#footnote-ref-1)