**STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE**

 **DISTRICT COURT DIVISION**

**COUNTY OF CHATHAM FILE NO.: XX CR XXXX**

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**STATE OF NORTH CAROLINA**

***EX PARTE* MOTION FOR APPOINTMENT OF EXPERT EXPERT**

 **v.**

**CLIENT NAME**

 **DEFENDANT.**

 COMES NOW Defendant, by and through undersigned counsel, XXXX, and hereby moves *ex parte* the Court to appoint an expert in drug analysis and, as grounds therefore, states as follows:

1. Defendant, CLIENT NAME, is charged with Possession of One-Half Ounce or Less of Marijuana in violation of N.C. Gen. Stat. § 90-95(A)(3) and Possession of Marijuana Paraphernalia in violation of N.C. Gen. Stat. § 90-113.22(A). Mr. CLIENT has previously been determined to be indigent, and undersigned counsel was appointed by Judge XXXX on DATE.
2. On information and belief, Mr. CLIENT was the passenger in a car that was pulled over by law enforcement officers. When asked by officers whether he had anything in his possession that they should know about, Mr. CLIENT stated that he had “CBD” purchased legally at a store selling hemp products. He provided the substance in an unmarked plastic bag to the officers. Officer XX with the North Carolina Alcohol Law Enforcement issued the citation for possession of marijuana and marijuana paraphernalia.
3. N.C. Gen. Stat. § 90-87(16) provides the statutory definition of marijuana, specifically excluding from its definition industrial hemp. Industrial hemp, as defined in Chapter 106 of the General Statutes, is not a controlled substance and therefore may be lawfully possessed by any citizen of North Carolina.
4. Hemp and marijuana are both members of the species Cannabis sativa. Both contain the chemicals THC (delta-9 tetrahydrocannabinol, the primary psychoactive compound in marijuana) and CBD (cannabidiol, a non-psychoactive substance which has been linked to health benefits. See generally State Bureau of Investigations, Industrial Hemp/CBD Issues at 2, https://www.sog.unc.edu/sites/www.sog.unc.edu/files/doc\_warehouse/NC%20SBI%20-%20Issues%20with%20Hemp%20and%20CBD%20Full.pdf (hereinafter known as Industrial Hemp/CBD Issues).
5. Hemp and marijuana may be distinguished by the differing amounts of CBD and THC contained within each plant. Ernest Small et al., Hemp: A New Crop with New Uses for North America, in Trends in New Crops and New Uses 284, (J. Janick & A. Whipkey eds., 2002), https://www.hort.purdue.edu/newcrop/ncnu02/v5-284.html. Marijuana plants typically contain lower amounts of CBD and higher amounts of the psychoactive THC, whereas hemp plants ordinarily contain low amounts of THC and higher amounts of CBD. See id. (noting the common inverse relationship between amounts of THC and CBD in Cannabis plants).
6. Because the identity of the substance possessed by Mr. CLIENT is an element the State must prove beyond a reasonable doubt, it is necessary in this case for the Defendant to call an expert in drug analysis to testify to the inability of any person to identify whether a substance is marijuana or hemp.
7. Dr. XXXX, has the knowledge, skill, expertise, training, and education to testify as to chemical makeup of marijuana and hemp and the difficulties of accurate identification thereof. He can also provide authenticated samples of hemp as demonstrative evidence for the Court to consider.
8. Dr. XXXX is willing and able to undertake this appointment. The costs associated with his services are as follows:
	1. $220 per hour for preparation, consultation, and trial; and
	2. $110 per hour for travel.
9. An indigent defendant is entitled to the assistance of an expert in preparation of his or her defense when she or he makes a “threshold showing of specific necessity.” *State v. Ballard*, 333 N.C. 515, 518 (1993). If such a defendant makes a particularized showing that either (1) he or she will be deprived of a fair trial without the expert assistance, or (2) there is a reasonable likelihood that an expert would materially assist him or her in the preparation of his or her case, then the court must appoint that expert. *Id.*
10. Mr. CLIENT will be deprived of a fair trial if he cannot rebut the State’s evidence as to the identification of the substance allegedly found in his possession. An expert is necessary to provide testimony and introduce evidence that will show that no law enforcement officer can identify that the substance allegedly possessed by Mr. CLIENT was marijuana and not hemp.
11. Mr. CLIENT alleges that the appointment of Dr. XXXX would be an expense necessary to the preparation of his defense and the costs should be borne by the State pursuant to N.C. Gen. Stat. § 7A-454.

**WHEREFORE**, Defendant respectfully requests the Court order:

1. That Dr. XXXX be appointed as an expert in drug analysis for Defendant in order to assist Defendant in the evaluation, preparation, and presentation of his defense;
2. That the North Carolina Administrative Office of the Courts pay for Dr. XXXX’s services and necessary expenses related to said appointment pursuant to N.C. Gen. Stat. § 7A-454 and IDS rules and procedures, in the amounts and at the rates described therein, subject to a ceiling set by the Court;
3. That this *ex parte* motion and order be sealed and held by the Clerk of Court unless and until Defendant calls Dr. XXXX as a witness; and
4. Such other conditions, provisions, and orders as the Court deems just or necessary.

**DATED** this the \_\_\_ day of \_\_\_\_.

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 Attorney