

Information & Instructions: Petition for a breach of contract

PREVIEW

1. The Petition is the document which commences litigation.
2. It may be filed in a justice, county, or district court.
3. This form may be used for a cause of action based upon a breach of lease or contract.
4. A copy of the contract should be attached and incorporated by reference in the Petition.
5. Procedure

a. After obtaining the facts from the client and inserting them in the forms, contact the appropriate clerk of the court for filing fees and service of process requirements.

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b. Upon filing the Petition, obtain either a default judgment if the debtor fails to answer within the prescribed time period, or commence discovery procedures.

6. Post judgment rate

a. All judgments of Texas state courts based on a contract that provides for a specific rate of interest shall earn interest at a rate equal to the lesser of (a) the rate specified in said contract or (b) the maximum allowed by law.

b. Except as provided for above, all judgments of Texas state courts shall earn interest at the rate published by the Consumer Credit Commission.

THIS DOCUMENT

c. All petitions in which post judgment interest is requested should reflect the revised interest rates allowable for post judgment interest. Accordingly, requests for interest rates lower than that specified above should be deleted from the petition.

d. It is recommended that the petition pray for prejudgment and post judgment interest at the maximum rate allowed by law.

Form: Petition for a breach of contract

CAUSE NUMBER

THANK YOU

[Name],
PLAINTIFF

IN THE [Type of Court] COURT

[Court number]

vs.

[Name],
DEFENDANT

OF [NAME], COUNTY, TEXAS

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PLAINTIFF'S ORIGINAL PETITION

[Names], Plaintiffs, complain of [Names] Defendants, and for cause of action would respectfully show the Court as follows:

PREVIEW

1. DISCOVERY CONTROL PLAN

1.1 Plaintiff requests a Level [1, 2 or 3] discovery plan.

2. PARTIES

2.1 Plaintiff is [Name], an [individual who resides in [state the type of entity such as corporation etc. who does business in] [city], County, Texas

2.2 Defendant, [select the appropriate clause]

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Individual Defendant:

[Name], is an individual who resides in [city], [County, Texas] and may be served with Citation at [his or her] residence, located at [Address], or at [his or her] business, located at [Address].

Texas Corporate Defendant:

Defendant [Name] is a Texas corporation purportedly duly organized under the laws of Texas, and may be served with process by serving its registered agent, [Name], at the corporation's registered address, [Address].

THIS DOCUMENT

Texas Limited Liability Company Defendant:

Defendant [Name] is a Texas Limited Liability Company purportedly duly organized under the laws of Texas, and may be served with process by serving its registered agent or managing partner, [Name], at the company's registered address, [Address].

Foreign Corporation Defendant- Long Arm Statute Service:

Defendant [Name] is a foreign corporation, nonresident of Texas, which has no Certificate of Authority for doing business in the State of Texas.

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Although [Name] engages in business in Texas, no agent has been designated for service of citation, and it has no regular place of business in Texas.

PREVIEW

As set forth in this petition, [Name] [described business done in Texas]. Because this lawsuit arises out of [Name]’s purposeful acts in Texas, the assumption of jurisdiction by this Court does not offend traditional notions of fair play and substantial justice.

Service of citation on [Name] may be accomplished by serving the Secretary of State of Texas who will forward such citation by certified mail, return receipt requested, to [Name] at [Name’s mailing address use registered agent at home state].

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Foreign Individual Defendant- Long Arm Statute Service:

Defendant [Name] is a nonresident who engages in business in Texas. This defendant does not maintain a regular place of business in Texas or a designated agent for service of process.

This lawsuit, in which [Name] is a party, arises out of the business done by [Name] in Texas. For these reasons, citation should be served on the Secretary of State of Texas.

THIS DOCUMENT

A copy of the citation and petition should be mailed by the Secretary of State to this defendant at [Name’s mailing address].

Limited Partnership Defendant:

Defendant [Name] is a limited partnership chartered and existing under the laws of [state: i.e. Texas], and may be served with process by serving one of its general partners, [Name] at [Address] and may be served by serving another general partner [Name] at [Address].

THANK YOU

3. VENUE AND FACTS

3.1 The subject matter of this suit arose in [Name] County. The Defendant resides in said county and Plaintiff maintains a place of business and does business in said County. Accordingly venue is proper in [Name] County, Texas.

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3.2 In the usual course of business, Plaintiff [described activity, such as: sold] to Defendant the items as shown in Exhibit [A], which is attached and incorporated by reference.

3.3 Defendant accepted the items identified and described in Exhibit [A] and therefore became obligated to pay to Plaintiff the price stated in Exhibit [A]. This price constitutes the agreed to and/or customary reasonable charge for the items.

3.4 Exhibit [A] constitutes an enforceable contract between the parties to this action and represents a sworn account of which a systematic record has been kept.

4. PERFORMANCE

4.1 Plaintiff would show this the Court that it has performed its obligations owed Defendant and all conditions precedent have been complied with by Plaintiff.

5. DEFAULT

5.1 Defendant was required to [insert Defendant's contractual performance terms].

5.2 Defendant failed to perform those obligations as reflected by Exhibit [A] and therefore defaulted in the making of the following payments: [specify how payments should have been made].

5.3 Plaintiff has given Defendant credit for all just and lawful offsets, credits and payments in determining the monies owed to Plaintiff.

6. DEMAND

6.1 Plaintiff has made reasonable and just demand upon Defendant as follows: [state how the demand was made on defendant].

6.2 Notwithstanding the above just and reasonable demands, Defendant has failed to and continues to fail to pay Plaintiff the monies owed to Plaintiff.

6.3 [Add facts applicable to repossessing if that relief is requested.]

7. ATTORNEY FEES

7.1 As a result of Defendant's failure to meet its obligations to Plaintiff, and due to Defendant's default on those obligations, Plaintiff has been required to employ the undersigned attorney to file and prosecute this suit.

7.2 Plaintiff's claims have been timely presented to Defendant and the claims remain unpaid. Accordingly, Plaintiff is entitled to receive reasonable attorney fees pursuant to Civil Practice & Remedies Code, Sections 9.001, 9.002, 9.003, 9.004, 9.005, 9.006, 9.007, 9.008, 9.009, 9.010, 9.011, 9.012, 9.013, 9.014, 9.015, 9.016, 9.017, 9.018, 9.019, 9.020, 9.021, 9.022, 9.023, 9.024, 9.025, 9.026, 9.027, 9.028, 9.029, 9.030, 9.031, 9.032, 9.033, 9.034, 9.035, 9.036, 9.037, 9.038, 9.039, 9.040, 9.041, 9.042, 9.043, 9.044, 9.045, 9.046, 9.047, 9.048, 9.049, 9.050, 9.051, 9.052, 9.053, 9.054, 9.055, 9.056, 9.057, 9.058, 9.059, 9.060, 9.061, 9.062, 9.063, 9.064, 9.065, 9.066, 9.067, 9.068, 9.069, 9.070, 9.071, 9.072, 9.073, 9.074, 9.075, 9.076, 9.077, 9.078, 9.079, 9.080, 9.081, 9.082, 9.083, 9.084, 9.085, 9.086, 9.087, 9.088, 9.089, 9.090, 9.091, 9.092, 9.093, 9.094, 9.095, 9.096, 9.097, 9.098, 9.099, 9.100, 9.101, 9.102, 9.103, 9.104, 9.105, 9.106, 9.107, 9.108, 9.109, 9.110, 9.111, 9.112, 9.113, 9.114, 9.115, 9.116, 9.117, 9.118, 9.119, 9.120, 9.121, 9.122, 9.123, 9.124, 9.125, 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10.486, 10.487, 10.488, 10.489, 10.490, 10.491, 10.492, 10.493, 10.494, 10.495, 10.496, 10.497, 10.498, 10.499, 10.500, 10.501, 10.502, 10.503, 10.504, 10.505, 10.506, 10.507, 10.508, 10.509, 10.510, 10.511, 10.512, 10.513, 10.514, 10.515, 10.516, 10.517, 10.518, 10.519, 10.520, 10.521, 10.522, 10.523, 10.524, 10.525, 10.526, 10.527, 10.528, 10.529, 10.530, 10.531, 10.532, 10.533, 10.534, 10.535, 10.536, 10.537, 10.538, 10.539, 10.540, 10.541, 10.542, 10.543, 10.544, 10.545, 10.546, 10.547, 10.548, 10.549, 10.550, 10.551, 10.552, 10.553, 10.554, 10.555, 10.556,

7.3 Plaintiff is therefore entitled to receive [state amount plaintiff is seeking], and a sum which may be proved at trial for reasonable attorney fees.

PREVIEW

PRAYER

Plaintiff prays that:

1. Defendant be cited to appear and answer the allegations contained in this petition,
2. Plaintiff be awarded a judgment against Defendant in the amount of \$ [_____],
3. Plaintiff be awarded prejudgment interest at the rate of [percent] [per year or any such higher sum allowed by the agreement or law on this account], commencing from the [30th] day from the date this account was due and payable until the date of judgment,
4. Plaintiff be awarded a judgment for [_____] as reasonable attorney fees,
5. Plaintiff be awarded judgment for all costs of court incurred by Plaintiff,
6. Plaintiff be granted judgment for post judgment interest of [_____] percent per year until the total amount of the judgment is paid, and
7. Plaintiff be granted any other and further relief, special or general, legal or equitable, as Plaintiff may show [_____] [himself or herself] to be justly entitled to receive.

PLEASE DO NOT COPY

THIS DOCUMENT

Respectfully Submitted,

[Law Firm Name]

By _____

[Attorney's Name]

THANK YOU

Attorney for Plaintiff
[Attorney's Address]
[Telephone Number]
[Facsimile Number]
[Bar Card Number]

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