

SMALL CLAIMS CASES
INSTRUCTIONS AND INFORMATION REGARDING FILING SUIT

(PLEASE READ CAREFULLY BEFORE COMPLETING THE PETITION.)

1. A Small Claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$20,000.00 excluding statutory interest and court costs but including attorney fees, if any.
2. In all civil suits, the Defendant has the right to be sued in the county and precinct in which he resides. You must have a physical address (not just a post office box) for the Defendant in order for him to be served in person. The last three numbers of the Defendant's driver's license and the last three numbers of the Defendant's social security number needs to be furnished if available.
3. In order for any potential judgment you may receive to be valid, it is necessary that you sue the Defendant in his/their legal capacity as listed below:

Personally: An individual is responsible to you for damage he may have caused you as an individual. (e.g. John Doe)

Proprietor or partnership: A business that is not incorporated but does have on file with the County Clerk an assumed name. (e.g. John Doe dba Greenhouse Supplies)

Corporation: The business which has allegedly caused you damage is incorporated, and therefore it is necessary to know the individual's name who is able to accept service on behalf of the corporation. You may obtain the name of the authorized agent for service from the Secretary of State at 1-800-252-1386. (e.g. Greenhouse, Inc. Serve: John Doe)

It is also possible for an incorporated entity to have an assumed name. (e.g. Greenhouse, Inc. dba Greenhouse Supplies. Serve: John Doe)

4. If as a Plaintiff, you are in the business of lending money and charging interest on that money, either primarily (banks, credit unions, savings & loans), or secondarily (credit cards), you must file a Debt Claim suit instead of a Small Claims suit. The same applies to suits brought by an assignee of a claim, by a person seeking to bring an action on an assigned claim, or by a collection agency.
5. When you file your suit, a Case Information Sheet and a Military Affidavit (for individual only) must be filed with the petition. Once you have filed a suit, this Court will give you a receipt and the office phone number so that you may call in periodically to determine your cause number and the progress of your case. **It is of utmost importance that you refer to your cause number when calling or transacting business with the Court.**

6. When you have completed the petition stating the facts and circumstances of your suit, a citation along with a copy of your petition will be served to the Defendant notifying him that a suit has been filed against him in this Court. The citation will order the Defendant to file a written answer with the Court no later than fourteen (14) calendar days following his receipt of the citation. If he fails to do so, you then become eligible for a default judgment up until the time an answer is filed.
7. If the Defendant answers the suit, a trial date will be set. The Plaintiff and the Defendant will be sent notice by mail of the court date. We discourage motions for continuance; however, if it becomes necessary, any requests for a continuance must be in writing and should be filed as soon as the need for continuance is known.
8. If you have witnesses to your suit who will not or cannot come to Court voluntarily, you may ask this Court to subpoena those individuals prior to trial. This request must be in writing and must include the names and addresses of all those you want to subpoena. The request should be filed as soon as possible allowing at least a week for service of subpoena.
9. This type of suit does not require hiring an attorney; however, you are free to do so if you wish.
10. **This Court does not collect the judgment for you, nor can we force the Defendant to pay the judgment.** If you receive a judgment for your claim against the Defendant, you may request an **Abstract of Judgment** and/or a **Writ of Execution** to help you in your collection of this judgment.

An **Abstract** puts a lien on any real property the Defendant may own in the county where the abstract is filed. Abstracts may be filed in more than one county. It is suggested that you wait until the appeal period has ended which is twenty-one (21) days after the judgment is signed.

A **Writ of Execution** may be obtained thirty (30) days after the judgment is signed. This document authorizes the Constable or Sheriff to seize any assets belonging to the Defendant **that are subject to this writ**. Those assets are then sold, and the proceeds are applied to the judgment. If your judgment is for recovery of a particular item, the Writ may specify that the item be seized and returned to you.
11. As a Plaintiff, **you** have the burden of proof to show by the weight of the evidence that the Defendant is the proximate cause of your damages in the capacity which the Defendant was sued. All damages and evidence necessary to meet your burden should be available at the time of filing.
12. It is imperative that you provide us with your day time phone number and notify us immediately of any changes in your number or address.

If you have any other procedural questions, please contact the Court, and we will try to answer them. **Any legal questions MAY NOT be answered by this Court.**

CAUSE NO. _____

_____	§	IN THE JUSTICE COURT
PLAINTIFF	§	
	§	
v.	§	PRECINCT THREE
	§	
_____	§	
DEFENDANT	§	FANNIN COUNTY, TEXAS

PETITION: SMALL CLAIMS CASE

I. DEFENDANT(S) ADDRESS:

II. COMPLAINT: Plaintiff files this suit against Defendant based upon the following facts:

III. RELIEF: Plaintiff seeks:

- ☐ damages in the amount of \$ _____,
☐ return of personal property as described as follows (*be specific*): _____

_____, which has a value of \$ _____.

Additionally, Plaintiff seeks the following:

IV. SERVICE OF CITATION: Service is requested on Defendant(s) by:

- ☐ Personal service at home or work,
☐ Registered mail, or
☐ Certified mail return receipt requested.

If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are: _____

- V. **ONGOING INTEREST:** Plaintiff ☐ does or ☐ does not seek ongoing interest. If so:
The effective interest rate claimed is _____%; this interest rate is based upon
☐ contract ☐ statute and began accruing on _____; the dollar amount of
interest claimed as of _____ is \$_____.

VI. **JURY REQUEST**

☐ I request a jury trial. (*The fee is \$22 and must be paid at least 14 days before trial unless you file a Statement of Inability to Afford Payment of Court Costs in compliance with Rule 502.3.*)

☐ I do not request a jury at this time.

- VII. **SERVICE BY EMAIL** (*Normally, documents in this case are sent by mail. If it is easier for you, you can choose to get some of the documents sent by email. If you choose to get documents by email, you must have an email account where you can receive, open, and view large attachments, and it is important that you check this email account every day. **Even if you receive some documents by email, you will still receive some documents about the case by mail or personal service, so you must not ignore any documents from the court or other parties received by mail or personal service.***)

☐ Yes, I would like to receive documents related to this case by email at this email address: _____.

☐ No, I do not want to receive any documents by email.

VIII. **REMOTE PARTICIPATION**

Hearing by Phone Call: (*When a hearing happens by phone call, you will be able to talk to and hear the judge, Plaintiff, or any witnesses, but you will not be able to see them. Copies of any evidence to be used must be exchanged by the parties and sent to the judge before the hearing.*)

☐ Yes, I am able to have any hearings in this case, except a jury trial, by phone call with the judge and Plaintiff and understand that I must have a phone to use on the date and time of the hearing.

☐ No, I am not able to have hearings by phone call.

Hearing by Video Conference: (*When a hearing happens by video conference, you can hear, see, and talk to the judge, Plaintiff, and any witnesses. You will be able to see any evidence*

presented during the hearing. You will need to have a computer, a smartphone, or tablet that has a camera feature. You will also need access to the internet to be able to have a video conference.)

☐ Yes, I am able to have any hearings in this case, except a jury trial, by video conference. I understand that I am responsible for having the equipment and internet access needed to participate in a video conference on the date and time of the hearing.

☐ No, I am not able to have hearings by video conference.

NOTE: Your responses in this section do not guarantee that hearings will be held remotely, but rather they help the court know how you are able to participate.

Respectfully submitted,

Signature of Plaintiff

Printed Name: _____

Address: _____

Email: _____

Telephone: _____

Fax: _____

Signature of Attorney, if any

Printed Name: _____

Address: _____

Email: _____

Telephone: _____

Fax: _____

State Bar No.: _____

DOCKET NO. _____ DEFENDANT'S NAME: _____

AFFIDAVIT

SERVICE MEMBERS CIVIL RELIEF ACT SEC. 201 (b)

***To VERIFY Military Status go to website: <http://www.dmdc.osd.mil/appj/scra/scraHome.do>**

PLAINTIFF BEING DULY SWORN ON HIS OATH DEPOSES AND SAYS UNDER PENALTY OF PERJURY THAT
DEFENDANT: **(Please select ONE for DEFENDANT)**

___ IS IN THE MILITARY SERVICE AND ON ACTIVE DUTY IN A FOREIGN COUNTRY

OR

___ IS IN THE MILITARY SERVICE AND NOT ON ACTIVE DUTY IN A FOREIGN COUNTRY

OR

___ IS NOT IN THE MILITARY SERVICE *(In addition to this affidavit you MUST provide proof of military status before a default judgment can be rendered).

OR

___ HAS WAIVED HIS RIGHTS UNDER THE SERVICE MEMBERS RELIEF ACT OF 2003

OR

___ PLAINTIFF IS UNABLE TO DETERMINE WHETHER OR NOT DEFENDANT IS IN MILITARY SERVICE AT THIS TIME

*(In addition to this affidavit you MUST provide proof of military status before a default judgment can be rendered). ***I am not providing proof of military status from the governmental website because:**

SIGNATURE OF PLAINTIFF/AGENT/ATTORNEY FOR PLAINTIFF

SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF _____, 20____.

CLERK OF THE JUSTICE COURT

OR

NOTARY PUBLIC IN AND FOR STATE OF TEXAS

Penalty for making or using false affidavit – A person who makes or uses an affidavit knowing to be false, shall be fined as provided in title 18 United States Code, or imprisoned for not more than one year, or both.

****CERTIFICATE OF LAST KNOWN ADDRESS****

In strict compliance with Rule 503.1(d), Texas Rules of Civil Procedure, it is hereby certified that the last known mailing address of Defendant is as follows:

****DEFENDANT'S ADDRESS CITY, STATE, AND ZIP CODE**

SIGNATURE OF PLAINTIFF/AGENT/ATTORNEY FOR PLAINTIFF