

## FILING A SMALL CLAIMS SUIT

### JURISDICTION:

#### Small Claims Cases:

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 \$10,000.00, excluding statutory interest and court costs but including attorney fees, if any. Small claims cases are governed by Rules 500-507 of Part V of the Rules of Civil Procedure.

#### Debt Claim Cases:

A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any. Debt claim cases in justice court are governed by Rules 500-507 and 508 Part V of the Rules of Civil Procedure.

### VENUE:

General Rule. Generally, a defendant in a small claims case or a debt claim case is entitled to be sued in one of the following venues:

1. The county and precinct where the defendant resides;
2. The county and precinct where the incident, or the majority of incidents, that gave rise to the claim occurred
3. The county and precinct where the contract or agreement, if any, that gave rise to the claim was to be performed; or
4. The county and precinct where the property is located, in a suit to recover personal property.

### FILING SUIT:

The responsibility for filling out your petition and civil case information sheet rests with you. Court clerks will assist you if you have procedural questions. The filing fee is fifty-one (\$51.00) and the service fee is eighty (\$80.00) per defendant to be served in Caldwell County, for a total of one hundred thirty-one (\$131.00). If the defendant(s) resides outside of Caldwell County, contact the court for service fees of other counties. **\*\*Payment must be in the form of a MONEY ORDER or CASHIER'S CHECK payable to CALDWELL COUNTY TREASURER.\*\***

Effective 9/1/2017

Office of Judge Shanna Conley, Pct 2  
505 E Fannin St. Luling, TX 78648  
(830) 875-5260 (830) 875-6449 Fax

**CITATION:**

The citation is sent to the Caldwell County Constable for service. Out of County service is sent to the Sheriff or Constable of the county in which the defendant(s) reside or any manner authorized for service of citation in district, county or justice court. **You as Plaintiff are responsible for providing a correct address for service.**

**DISCOVERY:**

*Pretrial Discovery.* Pretrial discovery is limited to that which the judge considers reasonable and necessary. Any request for pretrial discovery must be presented to the court for approval by written motion. The motion must be served on the responding party. The discovery request must not be served on the responding party unless the judge issues a signed order approving the request. Failure to comply with a discovery order can result in sanctions.

**REPRESENTATION:**

You as an individual may represent yourself in Justice Court or you may have an attorney represent you. The Rules of Evidence do not apply in Justice Court.

**ANSWER:**

The defendant in the suit is commanded to answer the Court, **in writing**, which is due by the end of the fourteen (14) day after the date the citation is served upon him/her.

**TRIAL BY JUDGE OR JURY:**

If the defendant in your suit files a written answer, the court will set a trial date no less than 45 days (however always at the judge's discretion). Notice will be mailed to the Plaintiff and Defendant stating the date and time to appear.

If the defendant in your suit fails to file a written answer, a plaintiff who seeks a default judgment against a defendant must request a hearing, orally or in writing. The purpose of this hearing is for you to prove up your damages in the suit.

Any party is entitled to a trial by jury. A written demand for a jury must be filed no later than 14 days before the case is set for trial. A party demanding a jury must pay a fee of \$22.00. If the demand is not timely, the right to a jury trial is waived.

**AFTER JUDGMENT:**

**THIS COURT DOES NOT COLLECT THE JUDGMENT FOR YOU.**

If you receive a judgment and the defendant does not make a motion for a new trial within *14 days* or appeal the case within *21 days* after the judgment is signed, the following remedies are available:

- **ABSTRACT OF JUDGMENT:**

The fee is \$5.00 for the JP Court to prepare. You should then record the Abstract of Judgment in the County where the defendant resides.

- **WRIT OF EXECUTION**

If you are granted a judgment against the defendant AND if the defendant does not appeal within 21 days, you may request a Writ of Execution any time after the 30<sup>th</sup> day after the judgment is signed. A Writ of Execution allows a Sheriff or Constable in the State of Texas to seize nonexempt property from the defendant in order to satisfy the judgment.

The cost of filing a Writ of Execution is \$200.00 for filing and service in Caldwell County.

You may have other remedies available, but they are more complicated and are not covered here. Please consult an attorney for any other remedies you may have to collect your judgment.

If your address changes within a 10 year period following the judgment, it is your responsibility to notify the court of your new address.

IF YOU HAVE PROCEDURAL QUESTIONS, PLEASE CONTACT THE COURT

**LEGAL QUESTIONS WILL NOT BE  
ANSWERED BY THIS OFFICE**

**PETITION: SMALL CLAIMS CASE**

CASE NO. (court use only) \_\_\_\_\_

In the Justice Court, Precinct 2, Caldwell County, Texas

PLAINTIFF \_\_\_\_\_

VS.

DEFENDANT(S): \_\_\_\_\_

Defendant(s) address: \_\_\_\_\_

COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RELIEF: Plaintiff seeks damages in the amount of \$ \_\_\_\_\_, and/or return of personal property as described as follows (be specific): \_\_\_\_\_, which has a value of \$ \_\_\_\_\_.

Additionally, plaintiff seeks the following: \_\_\_\_\_

SERVICE OF CITATION: Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are:

\_\_\_\_\_

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: \_\_\_\_\_

\_\_\_\_\_  
Petitioner's Printed Name

\_\_\_\_\_  
Signature of Plaintiff or Attorney

DEFENDANT(S) INFORMATION (if known):

\_\_\_\_\_  
Address of Plaintiff's Attorney, if any, or Plaintiff if none

DATE OF BIRTH: \_\_\_\_\_

\_\_\_\_\_  
City State Zip

\*LAST 3 NUMBERS OF DRIVER LICENSE: \_\_\_\_\_

\*LAST 3 NUMBERS OF SOCIAL SECURITY: \_\_\_\_\_

DEFENDANT'S PHONE NUMBER: \_\_\_\_\_

\_\_\_\_\_  
Phone & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none

Small Claim Petition. 7/2013

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of the Court or Notary Public

PETITION: SMALL CLAIMS CASE

Sample

CASE NO. (court use only) \_\_\_\_\_

In the Justice Court, Precinct 2, Caldwell County, Texas

PLAINTIFF Your Name

VS.  
DEFENDANT(S): Their Name  
Defendant(s) contact info: Their Address

COMPLAINT: The basis for the claim which entitles the plaintiff to seek relief against the defendant is:

Short description of why Money is Owed.

RELIEF: Plaintiff seeks damages in the amount of \$ Amt. owed, and/or return of personal property as described as follows (be specific): Describe property if any, which has a value of \$ Amt property worth.  
Additionally, plaintiff seeks the following: Additional monies concerning this case

SERVICE OF CITATION: Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are: Their Employer address or other address

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: Your email address

Your Printed Name  
Petitioner's Printed Name

Your Signature  
Signature of Plaintiff or Attorney

Their Info if Available  
DEFENDANT(S) INFORMATION (if known):  
DATE OF BIRTH: ↓

Your Address  
Address of Plaintiff's Attorney, if any, or Plaintiff if none

\*LAST 3 NUMBERS OF DRIVER LICENSE: \_\_\_\_\_  
\*LAST 3 NUMBERS OF SOCIAL SECURITY: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

DEFENDANT'S PHONE NUMBER: \_\_\_\_\_

Your Phone #  
Phone & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none

WRITTEN NOTICE AND STATEMENT OF CLAIM

Date: \_\_\_\_\_

Return Address:

\_\_\_\_\_  
\_\_\_\_\_

Address To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_

You are hereby given notice that the amount of \$ \_\_\_\_\_

is due to be remitted for settlement of your obligation within 10 days of receipt of this notice.

You are advised that if payment or the return of (property) \_\_\_\_\_

\_\_\_\_\_ is not received within the time limit prescribed, that suit will be filed in a civil court of the law to recover set amount or property plus all necessary and reasonable expenses incurred by the undersigned in the preceding required to obtain payment hereof.

Sincerely,

\_\_\_\_\_

FORM 127 – SERVICEMEMBER'S CIVIL RELIEF ACT

CAUSE NO. \_\_\_\_\_

**AFFIDAVIT**  
**50 USC Sec. 520**

Plaintiff being duly sworn on oath deposes\* and says that defendant(s) is (are)

(CHECK ONE)

- not in the military
- not on active duty in the military and/or
- not in a foreign country on military service
- on active military duty and/or is subject to the Servicemembers Civil Relief Act of 2003
- has waived his/her rights under the Servicemembers Civil Act of 2003
- military status is unknown at this time

\_\_\_\_\_  
PLAINTIFF

(Select the applicable title under the signature for the jurat below)

Subscribed and sworn to before me no this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY / CLERK

Notary Public in and for the State of Texas

Clerk of the Justice Court

\_\_\_\_\_  
SEAL

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