

Example Motions

Example 1

CAUSE NO. 12345

ABC Servicing, LLC., <i>Plaintiff</i>	§	IN THE JUSTICE COURT
	§	
v.	§	PRECINCT NO. 1
	§	
May Winter, <i>Defendant</i>	§	
	§	CAPITAL COUNTY, TEXAS

MOTION FOR JUDGMENT NIHIL DICIT

COMES NOW ABC SERVICING, LLC., Plaintiff in the above-numbered cause, by and through attorney, John Doe, and requests the court render judgment nihil dicit for the Plaintiff.

1. Parties

Movant is the Plaintiff in the above-styled suit.

This Motion is against May Winter, Defendant. Defendant has been served according to law on October 25, 2019 and entered an appearance in this suit on November 5, 2019.

2. Nature of Action

Plaintiff's cause of action is for the breach of a contract, plus interest, attorney fees, and costs of court as pleaded in Plaintiff's Original Petition which is on file in this cause. Plaintiff incorporates by reference the petition as if the same was duly recited verbatim at length in this motion.

3. Grounds

Plaintiff's Motion for Judgment Nihil Dicit embraces its entire claim against Defendant.

The Defendant's Answer, dated 11/5/2019, shows as a matter of law that Plaintiff is entitled to a Judgment against Defendant in the amount of \$2,150.00, since the Plaintiff has delivered goods and services to Defendant as set forth in Exhibit A-1 to the Plaintiff's Original Petition, incorporated herein.

The Defendant admitted that she owes Plaintiff \$2150.00 for air conditioner repair services and parts provided at her residence on August 5, 2018. Furthermore, the monies have not been paid to the Plaintiff by the Defendant even though Plaintiff has made demand on the Defendant to pay the same.

4. Attorney's Fees

Due to the Defendant's refusal to pay the Plaintiff the monies referred to in Exhibit "A", Plaintiff has been required to employ the services of John Doe, an attorney licensed with the State of Texas.

Plaintiff is entitled to recover reasonable attorney fees pursuant to Civil Practice & Remedies Code, Section 38.001, et seq., 31.004, 31.005, 105.001 et seq. because the Plaintiff

presented its claim to the Defendant more than thirty (30) days before judgment will be entered in this cause.

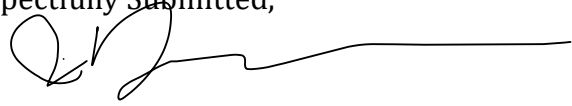
Attached in Exhibit C is the Affidavit of John Doe, which shows as a matter of law that Plaintiff is entitled to recover \$[Amount] as reasonable attorney fees in this cause.

PRAYER

Plaintiff requests that:

1. This matter be set for a hearing twenty-one (21) days after the Defendant receives notice of this Motion and upon completion of this hearing;
2. The Court grant Plaintiff's Motion for Judgment Nihil Dicit against May Winter, Defendant;
3. Plaintiff be awarded a Judgment against the Defendant for \$2150.00 on the debt owed to the Plaintiff.
4. Plaintiff be awarded attorney fees against the Defendant in the amount of \$750. Plaintiff prays in the alternative that, the court set and hold a hearing on the matter of the attorney fees immediately. Plaintiff further prays the Court thereafter enter an order stating the amount of attorney fees to be awarded to Plaintiff;
5. Plaintiff be awarded post judgment interest against Defendant at the rate five percent (5%) from the date of Judgment until the entire Judgment is paid in full;
6. Plaintiff be awarded any other and further relief, special or general, legal or equitable, to which Plaintiff may be justly entitled.

Respectfully Submitted,

By: 

John Doe
Texas Bar No. XXXXXXXX
Doe & Doe LLP.
1 Row
Capital, TX 12345
(123) 456-1111
(123) 456-1110 (fax)
johndoe@doeattys.com

ATTORNEY FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Motion for Judgment Nihil Dicit was served on: May Winter, pursuant to Texas Rule of Civil Procedure 501.4 by USPS mail and email at maywinter1@yahoo.com on



John Doe, Attorney for the Plaintiff
Doe & Doe LLP.
1 Row
Capital, TX 12345
(123) 456-1111
(123) 456-1110 (fax)
johndoe@doeattys.com

Exhibit C: Affidavit

THE STATE OF TEXAS

COUNTY OF CAPITAL

Before me, the undersigned authority, on this day personally appeared [name of attorney], who being by me duly sworn did state as follows:

1. My name is John Doe and I have personal knowledge of the facts set out in this Affidavit. I am making this Affidavit in support of Plaintiff's Motion for Summary Judgment in Cause no. 12345 entitled, ABC Servicing, LLC vs. May Winter, which is currently pending in the Justice Court of Capital County, Precinct 1, Texas.

2. I am a duly licensed attorney in the State of Texas, and I practice in the Courts of this county. I have appeared as attorney of record in cases similar to this one in which attorney fees have been awarded by the Court on a Motion for Judgment Nihil Dicit. I am also familiar with the attorney fees customarily awarded by the Courts of this county.

3. On December 15, 2018, more than thirty (30) days prior to the hearing of this suit, written demand was made upon Defendant for payment of the indebtedness forming the basis of Plaintiff's cause of action. Because of Defendant's failure to pay as demanded, Plaintiff retained the firm of Doe & Doe, LLP., to file this suit and collect from Defendant the debt owing to Plaintiff. This is an action based upon a claim for monies owed to Plaintiff by Defendant for certain goods and services which were sold to defendant at the usual, customary and reasonable price and for which Defendant failed to pay, although Defendant had promised to pay Plaintiff for the same. Accordingly, Plaintiff has requested recovery of reasonable attorney fees according to Civil Practice & Remedies Code, Sections 38.001, et seq., 31.004, 31.005, 105.001 et seq. According to the requirements of these sections, Plaintiff did make a written demand on Defendant for payment of the sums on which this lawsuit is based more than thirty (30) days prior to the execution of this Affidavit.

4. I have read Civil Practice & Remedies Code, Sections 38.001, et seq., 31.004, 31.005, 105.001 et seq. which state: "any person, corporation, partnership, or other legal entity having a valid claim against a person or corporation for services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express, or stock killed or injured or suits founded upon a sworn account or accounts, or suits founded on oral or written contracts, may present the same to such persons or corporation or to any duly authorized agent thereof; and if at the expiration of thirty (30) days thereafter, payment for the just amount owing has not been tendered, the claimant may, if represented by an attorney, also recover, in addition to this claim and cost, a reasonable amount of attorney's fees."

5. On August 15, 2019, Plaintiff employed me to collect the claim on which this suit is based. Between then and the date of this Affidavit, I have performed three (3) hours of work on this matter, including doing or causing to be done the following:
 - a. Review of client's file in this matter;
 - b. Opening a litigation file in this law office;
 - c. Preparing and sending out a demand letter
 - d. Preparing and filing the Plaintiff's Original Petition;
 - e. Numerous telephone calls and other communication required in the exercise of due diligence to obtain service of process on the Defendant;
 - f. Receiving and analyzing Defendant's Original Answer;


g. Communication with Plaintiff regarding the status of the case and possible acceptance of offers of settlement; numerous telephone calls to the parties and/or their attorneys in this matter which may have included but were not limited to proposed settlement offers and possible acceptance by Plaintiff;

h. Preparation of Plaintiff's Motion for Judgment Nihil Dicit; and

i. Preparation of an Affidavit for attorney fees.

6. Due to the amount in controversy, the nature of this case, the amount of time spent in this cause, and due to the probability that once a judgment is awarded, additional services may be required in order to secure payment, it is my opinion that reasonable attorney fees in this case total at least \$1500.

Doe & Doe, LLP

By: 

John Doe

John Doe, being by me duly sworn upon his oath states that he is the attorney for the Plaintiff in the above cause, that he has personal knowledge of the facts set forth in the foregoing Affidavit and is duly authorized to make such affidavit, and that all of the facts stated in the Affidavit are true and correct.

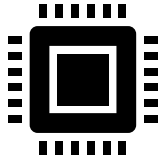
State of Texas
County of Capital

Subscribed and sworn to before me on the 15th day of December, 2019.



Fake Notary, Notary Public

My commission expires: January 1, 2021



Example 4

LONESTAR PRECINCT 1 JUSTICE COURT,

A fictitious foreign corporate entity, an ens legis¹ being used to conceal fraud,

John Doe;

Plaintiff

Tkt. # 123456789

Magistrate Judy Judge

- against -

VERIFIED ACTION

Bob Badge [Lonestar Badge Number 123456];

Complainer

JURISDICTION IS BARRED

COURT LACKS PERSONAL JURISDICTION

I, John Doe, one of the people² of Texas, hereinafter plaintiff accepts the oaths³, and bonds of all the officers of this court and by the opening of plaintiff's court of record moves this nisi prius⁴ court to quash for lack of authority⁵ of personal jurisdiction⁶, considering that this courts'

¹ **ENS LEGIS. L. Lat. [Blacks 4th]** A creature of the law; an artificial being, as contrasted with a natural person. Applied to corporations, considered as deriving their existence entirely from the law.

² **PEOPLE.** People are supreme, not the state. [**Waring vs. the Mayor of Savannah, 60 Georgia 93**]; The state cannot diminish rights of the people. [**Hertado v. California, 100 US 516**]; Preamble to the US and NY Constitutions - We the people ... do ordain and establish this Constitution...; ...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves... [**CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455, 2 DALL (1793) pp471-472**]; The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. [**Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am. Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.**] * **CONSTITUTION FOR THE UNITED STATES OF AMERICA:** We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. * **STATE OF NEW YORK CONSTITUTION:** We, the People of the State of New York, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution. Both constitutions (and the constitution of any real republic) the operative word is "establish." The People existed in their own individual sovereignty before the constitution was enabled. When the People "establish" a constitution, there is nothing in the word "establish" that signifies that they have yielded any of their sovereignty to the agency they have created. To interpret otherwise would convert the republic into a democracy (Republic vs. Democracy;).

³ **Oaths: Article VI:** "This Constitution, and the laws of the United States... shall be the supreme law of the land; and the judges in every State shall be bound thereby; anything in the Constitution or laws of any State to the contrary notwithstanding... All executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution."

⁴ **NISI PRIUS.** (Bouvier's Law, 1856 Edition) Where courts bearing this name exist in the United States, they are instituted by statutory provision. Black's Law Dictionary, 5th - "Prius" means "first." "Nisi" means "unless." A "nisi prius" procedure is a procedure to which a party FIRST agrees UNLESS he objects. A rule of procedure in courts is that if a party fails to object to something, then it means he agrees to it. A nisi procedure is a procedure to which a person has failed to object A "nisi prius court" is a court which will proceed unless a party objects. The agreement to proceed is obtained from the parties first.

⁵ **AUTHORITY.** [Black's Law 4th edition, 1891] Permission. [People v. Howard, 31 Cal.App. 358, 160 P. 697, 701]. Control over, jurisdiction. [State v. Home Brewing Co. of Indianapolis, 182 Ind. 75, 105 N.E. 909, 916].

jurisdiction is barred⁷ because this is a nisi prius court, not a court of record⁸, which will proceed unless a party objects, plaintiff object's to these proceedings and proceeds obsta principiis⁹, thereby this court is barred jurisdiction.

20 *"It may be that it is the obnoxious thing in its mildest form; but illegitimate and unconstitutional practices get their first footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of persons and property should be liberally construed. A close and literal*
25 *construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizens, and against any stealthy encroachments thereon. Their motto should be Obsta Principiis."* Boyd v. United, 116 U.S. 616 at 635 (1885)

30 This court is NOT to construed this paper as an appearance¹⁰ or plea, but in fact as a denial of jurisdiction, a denial of consent, and a demand to restore counter plaintiff to his former state by releasing plaintiff from this unlawful constructive custody immediately; plaintiff speaks from his court of record, see Memorandum of "Law and Jurisdiction" incorporated by reference as though fully stated herein (attached).

⁶ **JURISDICTION.** [Bouvier's Law, 1856 Edition] A power constitutionally conferred upon a judge or magistrate, to take cognizance of, and decide causes according to law, and to carry his sentence into execution. [6 Pet. 591; 9John. 239]. "Jurisdiction over a defendant requires both personal and subject matter jurisdiction." [Boles v. State, 717 So.2d 877 (1998)]

⁷ **BARRED.** Obstructed by a bar; subject to hindrance or obstruction by a bar or barrier which, if interposed, will prevent legal redress or recovery; as, when it is said that a claim or cause of action is "barred by the statute of limitations." Wilson v. Knox County, 132 Mo. 387, 34 S.W. 45, 477.

⁸ **COURT OF RECORD** proceeds according to the course of common law [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689][Black's Law Dictionary, 4th Ed., 425, 426]

⁹ **OBSTA PRINCIPIIS. Lat.** Withstand begin-nings; resist the first approaches or encroach-ments. Bradley, J., Boyd v. U. S., 116 U.S. 635, 6 Sup.Ct. 535, 29 L.Ed. 746.

¹⁰ **APPEARANCE.** ...through appearance you have agreed to all the terms and condition of the presumptive due process hearing, which is nothing more than an administrative procedure. Nothing can change the fact that you're already guilty by reason of appearance. ..., "Where the very act of pleading to it [an indictment] admitted its genuineness as a record." Frisbie v. United States, 157, U.S. 160, 165 (1894) THE ACT OF "APPEARANCE".

35 Plaintiff is responding to this court, through his court and by special appearance¹¹, under the threat to suspend plaintiff's commercial license to drive a motor vehicle due to an unlawful summons given to plaintiff by Bob Badge, hereinafter complainer, acting under color of law, while traveling¹², in a non commercial automobile, which is an unalienable right¹³ that cannot be licensed.

40 *"No state may convert a secured liberty into a privilege". - Murdock v Pennsylvania*

An "appearance ticket is not accusatory instrument and its filing does not confer jurisdiction over defendant." People v. Gabbay, 670 N.Y.S.2d 962, 175 Misc.2d 421 678 N.Y.S.2d 26,92 N.Y.2d 879, 700 N.E.2d 564 (1997).

45 Plaintiff was not engaged in commercial trade at the time of the alleged infraction, and only produced said license upon the unconstitutional detention and "DEMAND" of the complainer, therefore the complainer has mistakenly filed a false claim.

50 *"'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo;" (emph. added) -U.S.C. Title 18 sec. 31*

55 Plaintiff has learned by experience not to resist demands from a corporate police officer because they are unlearned in the Law of the Land and have been unlawfully instructed by superiors that statutes apply to People, corrections to such an officer only seems to escalate their harassment upon the people while being unlawfully detained. It is for this reason plaintiff possess a drivers license under duress to prevent harassment and police brutality while traveling. If this municipal

¹¹ **SPECIAL APPEARANCE** is for the purpose of testing the sufficiency of service or the jurisdiction of the court; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction. State v. Huller, 23 N.M. 306, 168 P. 528, 534, 1 A.L.R. 170.

¹² "The right to travel on the public highways is a constitutional right." -Teche Lines v. Danforth, Miss. 12 So 2d 784, 787.

¹³ "Operation of a motor vehicle upon public streets and highways is not a mere privilege but is a right or liberty protected by the guarantees of Federal and State constitutions." -Adams v. City of Pocatello 416 P2d 46

court proceeds, unlawfully, this court, complainer, and all officers of this court are subject to collateral attack¹⁴ by plaintiff's court of record.

This court proceeds according to summary proceedings¹⁵ and statutes, which are both barred by the Law of the Land, therefore the plaintiff will not make a personal appearance the day of the trial and thereby has denied consent¹⁶ to the Jurisdiction¹⁷ of this statutory court¹⁸, therefore no
60 sanction can be imposed¹⁹, and this court ordered to dismiss this case²⁰ and notify the defendant of the same immediately. Ignorance of the law by the officers of this nisi prius court will have consequences.

Plaintiff has unalienable rights protected under the Bill of rights, which the officers of this court
65 took an oath to protect, since this court operates under corporate charter the officers of this court would be acting outside their jurisdiction without the consent of the plaintiff and thereby under color of law and in violation of counter plaintiffs unalienable rights.

Common law is preserved under the Supremacy Clause that reads:

70 *"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the*

¹⁴ The decisions of a superior court may only be challenged in a court of appeal. The decisions of an inferior court are subject to collateral attack. In other words, in a superior court one may sue an inferior court directly, rather than resort to appeal to an appellate court. Decision of a court of record may not be appealed. It is binding on ALL other courts. SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973).

¹⁵ **SUMMARY PROCEEDING.** Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. In procedure, proceedings are said to be summary 'when they are short and simple in comparison with regular proceedings; e., in comparison with the proceedings which alone would have been applicable, either in the same or analogous cases, if summary proceedings had not been available. Sweet, Blacks Law 4th, and see Phillips v. Phillips, 8 N.J.L. 122.

¹⁶ "There, every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowman without his consent." Cruden v. Neale, 2 N.C. 338 (1796) 2 S.E.

¹⁷ **JURISDICTION** "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings" Hagans v. Lavine, 415 U.S. 528; "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Lantanav. Hopper, 102 F2d 188; Chicagov. New York, 37 F Supp 150.

¹⁸ "Trial court acts without jurisdiction when it acts without inherent or common law authority, ..." State v. Rodriguez, 725 A.2d 635, 125 Md.App 428, cert den 731 A.2d 971,354 Md. 573 (1999).

¹⁹ "No sanction can be imposed absent proof of jurisdiction" Stanard v. Olesen, 74 S. Ct.768.

²⁰ "Where the court is without jurisdiction, it has no authority to do anything other than to dismiss the case." Fontenot v. State, 932 S.w.2d 185.

authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” U.S. Constitution Article VI

75 “The judgment of a court of record whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it. Inferior courts are those whose jurisdiction is limited and special and whose proceedings are not according to the course of the common law. Criminal courts proceed according to statutory law. Jurisdiction and procedure is defined
80 by statute. Likewise, civil courts and admiralty courts proceed according to statutory law. **Any court proceeding according to statutory law is not a court of record** which only proceeds according to common law; it is an inferior court. Ex parte Watkins, 3 Pet., at 202-203. cited by SCHNECKLOTH v. BUSTAMONTE, 412 U.S. 218, 255 (1973).

85 “Due course of law, this phrase is synonymous with "due process of law" or "law of the land" and means law in its regular course of administration through courts of justice”. Kansas Pac. Ry. Co. v. Dunmeyer 19 KAN 542.

90 **WHEREFORE** plaintiff moves this court to quash for lack of personal jurisdiction.

John Doe

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John Doe

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²¹ “Allegations in affidavit in support of motion must be considered as true in absence of counter- affidavit.” -- Group v Finletter, 108 F. Supp. 327 Federal case of Group v Finletter, 108 F. Supp. 327

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NOTARY

Texas State, Lonestar County on this 3rd day of January 2022 before me Nancy Notary, the subscriber, personally appeared John Doe to me known to be the living man describe in and who executed the forgoing instrument and sworn before me that he executed the same as his free will act and deed.

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My commission expires: 12/31/2022

Nancy Notary

Notary

(Notary Seal)