

CIVIL PLEADINGS PACKET

COMANCHE NATION TRIBAL COURT DISTRICT COURT

The forms in this packet are to be used as a **template**, please re-type the forms and **do not** fill in the blanks. Please read the instructions carefully before completing the forms. The Court Clerks **CANNOT** accept documents that do not conform to the instructions in this packet.

You should refer to the Comanche Nation Tribal Court Codes prior to filing any petition or pleadings for a complete understanding of the rules and procedures governing your case. Should you need assistance in preparing any documents, you must consult with an attorney at your own expense. This court does not have legal aid. The Court Clerks are prohibited by Ethical Code and Court Rules to provide legal advice and help parties prepare or type court documents. Different situations may require special procedures and the Court Clerks **CANNOT** advise you on how to proceed or what forms may be necessary in specific situations.

INSTRUCTIONS FOR FILING

IMPORTANT INFORMATION PLEASE READ!!!

1. Documents must be typed DOUBLE-SPACED and on LETTER SIZE PAPER (8 ½” x 11”).
2. Documents must be signed in front of the Court Clerk or a notary public when you are ready to file.
3. Filing fees, copy fees, etc. must be made in the form of a CASHIER’S CHECK or MONEY ORDER and must be payable to “Comanche Nation Tribal Court”. Filing fees MUST be paid at the time of filing your petition. If you are unsure of the amount of the filing fees, contact the Court Clerk.
4. Submit original Documents and one (1) copy for each party to be served, and an additional copy if you want a copy of the document for your records. If the Court Clerk makes your copies, you will be charged a copy fee of \$0.50 PER PAGE.
5. Documents must have the FULL ADDRESS including street, city, state & zip of the parties to be served. Obtaining this information is **your** responsibility.
6. The forms are a guide to use in preparing the documents. DO NOT fill in the blanks and submit for filing. IT MUST BE RE-TYPED.
7. Petitions filed MUST have a copy of the relevant birth certificate and tribal enrollment card/CDIB and be submitted with the petition when filed. Obtaining these documents is **YOUR** responsibility.
8. Proof of Service of a Petition is MANDATORY for your case to proceed. Obtaining proof of service is **your** responsibility. If you request the Court Clerks to serve the documents on your behalf, service fees MUST be paid at the time of submitting Request of Service.

Court Clerks WILL NOT accept documents

that do not conform to these Instructions.

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Pleadings

INTRODUCTORY COMMENT—PLEADINGS

Allowable Pleadings. Pleadings are statements by the parties of their respective claims and defenses. Pleadings serve the important purpose of informing an adverse party of the nature of the claim or defense asserted and the relief demanded.

Pleadings include:

1. A petition and answer;
2. A reply to a counterclaim denominated as such;
3. An answer to a cross-claim if the answer contains a cross-claim denominated as such;
4. A third-party petition, if a person not an original party is summoned; and
5. A third-party answer.

No other pleadings are allowed, except that the court may, in its discretion, order a reply to an answer or third-party answer. Motions and responses to motions are not "pleadings".

A claim for relief whether an original claim, counterclaim, cross claim or third-party claim must contain:

1. A short and plain statement of the claim showing that the pleader is entitled to relief, and
2. A demand for the relief to which the pleader deems himself entitled. It is not necessary for the petition to identify the particular theory or theories of recovery under the notice system of pleading.

Except in actions sounding in contract, every pleading demanding money damages in excess of the amount required for diversity of citizenship jurisdiction specified in 28 U.S.C. § 1332 must set forth only that the amount of damages sought are in excess of the jurisdictional amount without demanding any specific amount of money. If the amount demanded is less than the jurisdictional amount, the pleading must specify the amount of money damages sought. The jurisdictional amount specified in 28 U.S.C. § 1332 is \$75,000, exclusive of interest and costs. If the amount the plaintiff specifies is less than the jurisdictional amount, the defendant may file a motion to clarify damages prior to the pretrial order.

A pleading may set forth two or more statements of a claim or defense alternatively either in one count or defense or in separate counts or defenses. A pleading may also state as many separate claims or defenses as a party may have regardless of the consistency of such claims and whether based on legal or equitable grounds. Each claim founded upon a separate transaction or occurrence and each defense, other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth. All claims and defenses shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.

The claim for relief must be signed by the claimant, or the claimant's attorney, in accordance with the signature and verification requirements. If the court determines that a pleading is signed in violation of the rule, it may impose sanctions on the pleader, including the imposition of costs and reasonable attorney's fees. The relief granted to the plaintiff, if there is no answer, cannot exceed the relief demanded in the petition, but in any other case, the court may grant the plaintiff any relief consistent with the facts or matters pleaded.

Statements in a pleading may be adopted by reference in a different part of the same pleading, in another pleading, or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Petitions

INTRODUCTORY COMMENT

A petition must contain only a short and plain statement of the claim that shows the plaintiff's entitlement to relief and a demand for judgment. The petition should be simple, concise and direct, and it should give fair notice of the nature of the plaintiff's claim and the grounds on which it is based. It need not have detailed factual allegations, except with respect to the circumstances that constitute fraud or mistake and the nature of special damages, which must be stated with particularity. Specificity in pleading is no longer necessary, because of the availability of discovery.

It is not necessary for the petition to identify the particular theory or theories of recovery under the notice system of pleading. There may be differences in the standard of proof and the statutes of limitation for various theories of recovery, so, when plaintiffs file their petitions, they should be aware of the elements and limitations for every theory of recovery upon which they rely. As long as the petition gives the defendant fair notice of the claim and the grounds on which it is based, these elements and limitations need not be stated in the petition.

Jurisdiction and Venue. Tribal courts are courts of general jurisdiction. A petition also does not need to contain allegations that venue is proper or that the court has territorial jurisdiction, because these are affirmative defenses that are waived if not raised in the answer or a pre-answer motion. Although allegations concerning subject matter jurisdiction, territorial jurisdiction, or venue are often found at the beginning of petitions, they are not included in the forms that follow.

Signature. Like other papers filed in a case, petitions must be signed by at least one attorney of record, or if the plaintiff is unrepresented by an attorney, by the party. Petitions do not need to be verified, unless verification is required by a specific statute.

An attorney is provided a lien on the client's recovery in an action. An attorney who wishes to assert a lien on the client's claim must either endorse the petition or counterclaim with the words "Lien claimed" or else serve a notice setting forth the nature and extent of the lien being claimed on the opposing parties.

Petition—Breach of contract

[Court Caption]

PETITION FOR BREACH OF CONTRACT

Plaintiff alleges:

1. On or about *[Date]*, Plaintiff, *[Name]*, and Defendant, *[Name]*, entered into a written contract whereby Plaintiff agreed to *[specify terms]* and Defendant agreed to *[specify terms]*. A copy of the contract is attached as Exhibit A.
2. Defendant has breached the contract by *[specify Defendant's breach]*.
3. Plaintiff has performed all conditions precedent to recover under the contract and has not excused Defendant's breach.
4. As a result of Defendant's breach of the contract, Plaintiff has sustained damages in the sum of \$_____.

Accordingly, Plaintiff demands Judgment against Defendant for the sum of _____ dollars (\$_____), interest, and costs including reasonable attorney's fees.

[Signed] _____
[Typed Name]
Attorney for Plaintiff
[Bar Association Number]
[Address]
[Telephone Number]

Notes

It is not necessary to attach a copy of the contract to the petition, though; instead, the contract may be set out verbatim in the petition or its substance may be provided by stating its legal effect.

A plaintiff is not required to specify each condition precedent to the defendant's performance that has occurred. A general allegation that the conditions precedent for the defendant's obligation to perform have been satisfied, such as that found in Paragraph 3 of the above Petition for Breach of Contract, is allowed.

Petition—Account stated

[Court Caption]

PETITION FOR ACCOUNT STATED

Plaintiff alleges:

1. During the period from *[Date]* to *[Date]*, Plaintiff, *[Name]*, sold on account to Defendant, *[Name]*, the following: *[specify items sold]*.
2. On *[Date]*, Plaintiff delivered a statement of account to Defendant, a copy of which is attached as Exhibit A.
3. Defendant did not object to the balance in the statement of account.
4. Defendant owes Plaintiff the sum of \$_____ on the account together with interest from *[Date]* at the rate of _____ per year.

Accordingly, Plaintiff demands Judgment against Defendant in the amount of \$_____, plus interest and costs, including reasonable attorney's fees.

[Signed] _____

[Typed Name]

Attorney for Plaintiff

[Bar Association Number]

[Address]

[Telephone Number]

Petition—Goods sold and delivered

[Court Caption]

PETITION FOR GOODS SOLD AND DELIVERED

Plaintiff alleges:

1. On or about *[Date]*, Defendant, *[Name]*, ordered the following goods from Plaintiff, *[Name]*: *[describe goods]*. A copy of the purchase order is attached as Exhibit A.
2. On or about *[Date]*, Plaintiff delivered the goods to Defendant, and on or about *[Date]*, Defendant accepted the goods as tendered.
3. Plaintiff has demanded payment in the amount of \$_____ for the goods sold and delivered, but Defendant has refused payment.
4. Plaintiff has performed all conditions precedent for payment, and Plaintiff has not excused Defendant's failure to pay for the goods.

Accordingly, Plaintiff demands Judgment against Defendant in the amount of \$_____, plus interest and costs, including reasonable attorney's fees.

[Signed] _____
[Typed Name]
Attorney for Plaintiff
[Bar Association Number]
[Address]
[Telephone Number]

Petition—Third-party beneficiary for breach of contract

[Court Caption]

PETITION FOR BREACH OF CONTRACT (THIRD-PARTY BENEFICIARY)

Plaintiff alleges:

1. Defendant, *[Name]*, is an [architect].
2. On or about *[Date]*, Defendant entered into a contract with *[Name of Contractor]* for the design of a building that *[Name of Contractor]* had agreed to build for Plaintiff, *[Name]*. A copy of the contract is attached as Exhibit A.
3. Defendant and *[Name of Contractor]* intended the contract to be for the primary benefit of Plaintiff.
4. *[Name of Contractor]* has performed all conditions precedent under the contract with Defendant, and neither Plaintiff nor *[Name of Contractor]* has excused Defendant's failure to perform under the contract.
5. Defendant breached the contract by failing to design the building properly, by failing to provide complete plans for the construction of the building, and by failing to provide plans that were sufficiently detailed to enable construction workers to read and follow them.
6. On or about *[Date]*, Plaintiff notified Defendant of its breach of the contract and demanded that Defendant provide Plaintiff with complete and proper plans, as the contract required.
7. Defendant refused to provide complete and proper plans.
8. Because of Defendant's breach of the contract, Plaintiff has incurred various expenses, including the services of a second architect, to obtain complete and proper plans.
9. Plaintiff has demanded payment from Defendant for these expenses, but Defendant refuses to pay Plaintiff any amount.

Accordingly, Plaintiff demands Judgment against Defendant in the amount of \$_____, plus interest and costs, including reasonable attorney's fees.

[Signed] _____

[Typed Name]

Attorney for Plaintiff

[Bar Association Number]

[Address]

[Telephone Number]

Petition—Rescission of contract

[Court Caption]

PETITION FOR RESCISSION OF CONTRACT

Plaintiff alleges:

1. On or about *[Date]*, Plaintiff, *[Name]*, purchased a certain model 580K Case backhoe from Defendant, *[Name]*, for the sum of \$_____.
2. At the time of the sale, Plaintiff and Defendant mutually believed the backhoe was a 1990 model.
3. In fact, the backhoe is a 1987 model.
4. On or about *[Date]*, Plaintiff discovered that the backhoe was a 1987 model.
5. On or about *[Date]*, Plaintiff notified Defendant that the backhoe was a 1987 model and demanded a rescission of the contract of sale and a return of the purchase price. At the same time, Plaintiff offered to return possession of the backhoe to Defendant.
6. Defendant has refused to rescind the contract or to return the purchase price to Plaintiff.
7. Plaintiff continues to offer to return possession of the backhoe to Defendant.

Accordingly, Plaintiff demands Judgment against Defendant to rescind the contract, and a Judgment in the amount of \$_____, and costs.

[Signed] _____
[Typed Name]
Attorney for Plaintiff
[Bar Association Number]
[Address]
[Telephone Number]

Notes

Grounds for rescission of a contract include mistake, duress, fraud, undue influence, and failure of consideration. The party seeking rescission must do so promptly and must offer to restore everything of value received from the other party under the contract. As an alternative remedy under the Uniform Commercial Code, a buyer who receives nonconforming goods may retain the goods and recover damages based on the lower value of the nonconforming goods.

Petition—Guaranty of loan

[Court Caption]

PETITION ON GUARANTY OF LOAN

Plaintiff alleges:

1. On or about *[Date]*, Plaintiff, *[Name]*, loaned *[Name of Borrower]*, the amount of \$_____, which was to be repaid on *[Date]* with interest at the rate of _____%. A copy of the loan agreement is attached as Exhibit A.
2. In consideration of Plaintiff making the loan to *[Name of Borrower]*, Defendant, *[Name]*, executed a guaranty of the loan. A copy of the guaranty is attached as Exhibit B
3. On or about *[Date]*, Plaintiff demanded payment from *[Name of Borrower]*, but *[Name of Borrower]* failed to make any payment to Plaintiff.
4. On or about *[Date]*, Plaintiff notified Defendant of the default by *[Name of Borrower]*, and Plaintiff demanded that Defendant pay the amount of \$_____ with interest at the rate of _____% in accordance with the guaranty.
5. Defendant failed to make any payment to Plaintiff.

Accordingly, Plaintiff demands Judgment against Defendant in the amount of \$_____, plus interest and costs, including reasonable attorney's fees.

*[Signed]*_____

[Typed Name]

Attorney for Plaintiff

[Bar Association Number]

[Address]

[Telephone Number]

Petition—Subrogation

[Court Caption]

PETITION FOR SUBROGATION

Plaintiff alleges:

1. Plaintiff, *[Name]*, is an insurance company with authority to transact business in Oklahoma.
2. On or about *[Date]*, Plaintiff issued an automobile liability insurance policy to *[Name of Insured]*, covering the period from *[Date]*, to *[Date]*. The policy included uninsured/underinsured motorist coverage in the amount of \$_____. A copy of the policy is attached as Exhibit A.
3. On or about *[Date]*, while the policy was in effect, *[Name of Insured]* was involved in an automobile accident with Defendant *[Name]*. *[Name of Insured]* was driving her automobile north through the intersection of *[specify location]*, when Defendant, *[Name]*, failed to stop at a stop sign and negligently drove Defendant's automobile west through the intersection and collided with the automobile of *[Name of Insured]*.
4. As a result of Defendant's negligence, *[Name of Insured]* suffered pain and injury to *[Name of Insured]*'s body for which *[Name of Insured]* incurred expenses for medical attention and hospitalization. *[Name of Insured]* has also suffered temporary and permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.
5. On or about *[Date]*, Plaintiff paid *[Name of Insured]* the amount of \$_____ in accordance with Plaintiff's obligations under the policy for uninsured/underinsured motorist coverage.
6. Under the terms of the policy, Plaintiff became subrogated to all rights that *[Name of Insured]* had against other persons for personal injuries covered by the policy.

Accordingly, Plaintiff demands Judgment against Defendant in the amount of \$_____, plus interest and costs.

[Signed] _____

[Typed Name]

Attorney for Plaintiff

[Bar Association Number]

[Address]

[Telephone Number]

Petition—Breach of covenant not to compete

[Court Caption]

PETITION FOR BREACH OF COVENANT NOT TO COMPETE

Plaintiff alleges:

1. On or about *[Date]*, Plaintiff, *[Name]*, and Defendant, *[Name]*, entered into an employment contract in which Plaintiff agreed to employ Defendant for an indefinite term. A copy of the employment contract is attached as Exhibit A.
2. In the employment contract, Defendant promised if Defendant ceased employment with Plaintiff for any reason, Defendant would not solicit or attempt to solicit any of Defendant's customers for a period of one year within *[specify reasonable geographic range]*.
3. On or about *[Date]*, Defendant voluntarily terminated employment with Plaintiff and, on or about *[Date]*, Defendant began working for *[Name of Competitor]*, a competitor of Defendant.
4. While working for *[Name of Competitor]*, Defendant has breached, and continues to breach, Defendant's promise not to solicit or attempt to solicit Defendant's current customers within *[specify reasonable geographic range]*.
5. Defendant's breach has caused, and continues to cause, irreparable injury to Plaintiff's business. Plaintiff has no adequate remedy at law.

Accordingly, Plaintiff demands Judgment against Defendant as follows:

1. An injunction against Defendant from soliciting, or attempting to solicit, any of Defendant's current customers for a period of one year within *[specify reasonable geographic range]*; and
2. Damages in the amount of \$_____ and costs.

[Signed] _____

[Typed Name]

Attorney for Plaintiff

[Bar Association Number]

[Address]

[Telephone Number]

Petition—Negligence

[Court Caption]

ATTORNEY LIEN CLAIMED PETITION FOR NEGLIGENCE

Plaintiff alleges:

1. On or about *[date of incident]*, Plaintiff, *[name of plaintiff]*, was driving Plaintiff's car on *[specification of location]*.
2. At the same time Defendant, *[name of defendant]*, was driving a truck on the same street in the same direction as Plaintiff and a short distance in front of Plaintiff's car.
3. Without signaling, Defendant negligently stopped the truck, causing Plaintiff's car to collide with the rear end of Defendant's truck.
4. As a result of the collision, Plaintiff suffered damage to Plaintiff's car and pain and injury to Plaintiff's body for which Plaintiff has incurred expenses for medical attention and hospitalization. Plaintiff has also suffered temporary and permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.

Accordingly, Plaintiff demands Judgment against Defendant in excess of Seventy-Five Thousand Dollars (\$75,000), interest, and costs including reasonable attorney's fees.

[Name of attorney]

Attorney for Plaintiff

[Bar Association Number]

[Address of attorney]

[Phone Number of attorney]

Notes

This form includes an endorsement for an attorney lien. An attorney who wishes to assert a lien on the client's claim must either endorse the petition or counterclaim with the words "Lien claimed" or else serve a notice setting forth the nature and extent of the lien being claimed on the opposing parties.

When a claim is based on a personal injury, the injured person's spouse and children may assert loss of consortium claims.

Petition—Loss of consortium

[Court Caption]

PETITION FOR NEGLIGENCE

Plaintiffs allege:

COUNT ONE—PERSONAL INJURY OF PLAINTIFF *[name of plaintiff 1]*

[Allegation of personal injury claim of plaintiff 1]

COUNT TWO—LOSS OF CONSORTIUM CLAIM OF PLAINTIFF *[name of plaintiff 2]*

1. Plaintiff, *[name of plaintiff 2]*, is the spouse of Plaintiff *[name of plaintiff 1]*, and was so on *[date of Accident]*.
2. Plaintiff, *[name of plaintiff 2]*, repeats the allegations in Paragraphs *[indication of paragraph numbers]* of Count One.
3. On account of the injuries to Plaintiff *[name of plaintiff 1]*, Plaintiff *[name of plaintiff 2]* has suffered the loss of consortium and services of Plaintiff *[name of plaintiff 1]*.

Accordingly, Plaintiffs demand Judgment against Defendant in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

ATTORNEY LIEN CLAIMED

[Name of attorney]
Attorney for Plaintiffs
[Bar number of attorney]
[Address of attorney]
[Phone number of attorney]

Petition—Wrongful death

[Court Caption]

PETITION FOR WRONGFUL DEATH

Plaintiffs allege:

1. Plaintiff, *[name of executor]*, is the duly appointed executor/executrix of the estate of *[name of decedent]*, deceased.
2. Plaintiff, *[name of plaintiff]*, is the *[husband/wife/child]* of *[name of decedent]* and was so on *[date of accident]*.
3. On or about *[date of accident]*, Decedent, was driving *[his/her]* car *[description of location of decedent's car]*. Defendant, *[name of defendant]*, was driving *[his/her]* car eastbound on *[specification of location]*. While crossing the intersection of *[specification of location]*, Defendant negligently drove his/her car through a red light and struck the right front part of Decedent's car. Decedent died as a result of the collision.
4. As a result of Defendant's negligence which caused Decedent's death, the estate has incurred medical and hospital expenses, and funeral and burial expenses.
5. As a further result of Defendant's negligence which caused Decedent's death, Plaintiff, *[name of plaintiff]*, has suffered the loss of the value of Decedent's earnings for the balance of *[his/her]* lifetime and the loss of Decedent's services, care, love, affection, and consortium, which were and are of great value to *[him/her]*.

Accordingly, Plaintiffs demand Judgment against Defendant in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs including reasonable attorney's fees.

[Name of attorney]
Attorney for Plaintiffs
[Bar number of attorney]
[Address of attorney]
[Phone number of attorney]

Petition—Premises liability (slip and fall)

[Court Caption]

PETITION FOR PREMISES LIABILITY

Plaintiff alleges:

1. Defendant, *[name of defendant]*, owns a grocery store located at *[address of store]*.
2. On or about *[date of incident]*, Plaintiff, *[name of plaintiff]*, was a customer in Defendant's store and slipped and fell on a wet and slippery floor in the store.
3. Defendant negligently failed to maintain a clean and safe floor in the store and failed to warn Plaintiff of a hidden dangerous condition on the floor, even though Defendant knew or reasonably should have known of that condition.
4. As a result of Defendant's negligence, Plaintiff has suffered pain and injury for which Plaintiff has incurred expenses for medical attention and hospitalization. Plaintiff has also suffered temporary and permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.

Accordingly, Plaintiff demands Judgment against Defendant in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of attorney]

Attorney for Plaintiff

[Bar number of attorney]

[Address of attorney]

[Phone number of attorney]

Petition—Products liability

[Court Caption]

PETITION FOR PRODUCTS LIABILITY

Plaintiff alleges:

COUNT ONE—STRICT LIABILITY

1. On or about *[date of purchase]*, Plaintiff purchased an aluminum step ladder from Defendant *[name of retailer]* at its store in *[name of county]*, Oklahoma. The ladder was manufactured by Defendant *[name of manufacturer]* and sold to Defendant *[name of distributor]* who in turn sold it to Defendant *[name of retailer]*.
2. On or about *[date of incident]*, Plaintiff attempted to use the ladder to clean windows on the second story of *[his/her]* home. When Plaintiff rested the ladder against a wall and began climbing to the top of the ladder, it slipped away from the wall, causing Plaintiff to fall to the ground.
3. The ladder was designed by Defendant *[name of manufacturer]* in a manner that made it defective and unreasonably dangerous, because the feet on the ladder caused it to slip away from the wall on which it was resting. The ladder was also defective and unreasonably dangerous because it did not have an adequate warning of the risk that it might slip when resting. The risk of the ladder slipping was not one that an ordinary user would expect.
4. The ladder was unreasonably defective at the time that it left the possession and control of each of the Defendants.
5. As a result of the ladder's defects, Plaintiff has suffered severe physical and mental pain and injury for which Plaintiff has incurred expenses for medical attention and hospitalization. Plaintiff has also suffered temporary and permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.

COUNT TWO—NEGLIGENCE

7. Plaintiff re-alleges Paragraphs 1 through 3 as set forth above.
8. Defendant *[name of manufacturer]* was negligent in designing the ladder, because it failed to design the ladder so that the feet on the ladder would not slip away when the ladder was leaned against a wall. Defendant *[name of manufacturer]* was also negligent in failing to warn Plaintiff that the feet of the ladder would slip away when the ladder was leaned against a wall.
9. As a result of the Defendants' negligence, Plaintiff has suffered severe physical and mental pain and injury for which Plaintiff has incurred expenses for medical attention and hospitalization. Plaintiff has also suffered temporary and permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.

COUNT THREE—BREACH OF WARRANTY

10. Plaintiff re-alleges Paragraphs 1 through 3 as set forth above.

11. By selling the ladder to Plaintiff, Defendants impliedly warranted that the ladder was merchantable and reasonably fit for Plaintiff's intended use.

12. The ladder was not merchantable or fit for Plaintiff's intended use, because of the defects set forth in Paragraph 3 above.

13. As a result of the Defendants' breach of warranty, Plaintiff has suffered severe physical and mental pain and injury for which Plaintiff has incurred expenses for medical attention and hospitalization. Plaintiff has also suffered temporary and permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.

DEMAND FOR RELIEF

Accordingly, Plaintiff demands Judgment against Defendants, and each of them, in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs, including reasonable attorney's fees.

[Name of attorney]

Attorney for Plaintiff

[Bar number of attorney]

[Address of attorney]

[Phone number of attorney]

Petition—Wrongful discharge

[Court Caption]

PETITION FOR WRONGFUL DISCHARGE

Plaintiff alleges:

1. Between *[date of commencement of employment]*, and *[date of final employment]*, Plaintiff, *[name of plaintiff]*, was employed by Defendant, *[name of defendant]*, as the manager of Defendant's credit department.
2. In the course of *[his/her]* employment, Plaintiff's supervisor, *[name of supervisor]*, directed Plaintiff to file a number of lawsuits against its customers who had delinquent accounts for amounts substantially more than the customers actually owed.
3. Plaintiff refused to execute the affidavits required for these lawsuits, because doing so would constitute perjury.
4. On or about *[date of discharge]*, Defendant discharged Plaintiff from employment for Plaintiff's refusal to commit perjury.
5. Plaintiff's discharge was against the public policy of the Comanche Nation.
6. As a result of the discharge, Plaintiff has and will continue to suffer lost earnings and employment benefits and damages for mental and emotional distress.

Accordingly, Plaintiff demands Judgment against Defendant for actual and punitive damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of attorney]
Attorney for Plaintiff
[Bar number of attorney]
[Address of attorney]
[Phone number of attorney]

Notes

Generally speaking, an at-will employee may be discharged “without recourse, in good or bad faith, with or without cause.”

A claim for wrongful discharge may arise if an employee is discharged for “(a) refusing to participate in an illegal activity; (b) performing an important public obligation; (c) exercising a legal right or interest; (d) exposing some wrongdoing by the employer; [or] (e) performing an act that public policy would encourage or, for refusing to do something that public policy would condemn, when the discharge is coupled with a showing of bad faith, malice or retaliation.”

A claim implied from an employee handbook should be pleaded as a breach of an employment contract.

This form is an example of a wrongful discharge claim for refusal to violate public policy. The following form for retaliatory discharge for filing a Workers' Compensation claim is an example of a wrongful discharge claim for performing an act that is consistent with public policy.

Petition—Fraud

[Court Caption]

PETITION FOR FRAUD

Plaintiff alleges:

1. On or about *[date of advertisement]*, Defendant, *[name of defendant]*, ran an advertisement in *[name of newspaper]* offering a hardware business for sale. Defendant stated in the advertisement that the business had an annual net profit of *[\$dollar amount of annual net profit]*.
2. After reading the advertisement, Plaintiff, *[name of plaintiff]*, began negotiations for the purchase of the business. During the negotiations, Defendant represented to Plaintiff that the business was steadily increasing in both sales and profitability, and that the monthly net profits exceeded *[\$dollar amount of minimum monthly net profits]*.
3. On or about *[date of purchase]*, Plaintiff, in reliance on Defendant's representations and believing them to be true, purchased the business for *[\$dollar amount of purchase price]*.
4. On or about *[date of discovery of actual worth]*, Plaintiff, learned that at the time of the negotiations with Defendant, the business was and had long been declining, it had never earned more than *[\$dollar amount of maximum earnings per month]* per month, and it was not worth as much as Defendant represented during the negotiations.
5. On information and belief, Plaintiff alleges that Defendant made the representations to Plaintiff knowing them to be false and fraudulent with the intent to deceive Plaintiff and induce Plaintiff to purchase the business.
6. As a result of Defendant's fraud, Plaintiff has suffered actual damages in the amount of *[\$dollar amount of actual damages]*.

Accordingly, Plaintiff demands Judgment against Defendant for actual and punitive damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of attorney]
Attorney for Plaintiff
[Bar number of attorney]
[Address of attorney]
[Phone number of attorney]

Notes

Fraud must be pled with particularity.

Petition—Assault and battery

[Court Caption]

PETITION FOR ASSAULT AND BATTERY

Plaintiff alleges:

1. On or about *[date of incident]*, Defendant, *[name of defendant]*, approached Plaintiff, *[name of plaintiff]*, with a two foot iron bar.
2. Defendant then intentionally swung the bar at Plaintiff, striking Plaintiff on the head.
3. As a result of Defendant's conduct, Plaintiff suffered severe mental and physical pain and injury to Plaintiff's body for which Plaintiff has incurred expenses for medical attention and hospitalization. Plaintiff has also suffered temporary and permanent physical impairment, which has resulted in loss of wages and loss of future earning capacity.

Accordingly, Plaintiff demands Judgment against Defendant for actual and punitive damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of attorney]
Attorney for Plaintiff
[Bar number of attorney]
[Address of attorney]
[Phone number of attorney]

Notes

This form alleges a claim for both assault and battery. Dean Prosser differentiates a battery from an assault as follows: "The difference between them is that between physical contact and the mere apprehension of it. One may exist without the other. It is a battery to strike a man while he is asleep, although he does not discover it until afterward; it is an assault to shoot at him, frighten him and miss him."

Petition—Libel

[Court Caption]

PETITION FOR LIBEL

Plaintiff alleges:

1. On or about *[date of advertisement]*, Defendant, *[name of defendant]*, placed an advertisement in *[name of newspaper]* which falsely and maliciously stated that Plaintiff, *[name of plaintiff]*, had acted fraudulently with respect to the purchase of certain real property located at *[address of property]*. A copy of the advertisement is attached as Exhibit *[designation of exhibit]*.
2. At the time that Defendant caused the advertisement to be published, Defendant either knew that it was false or entertained serious doubts concerning its truthfulness.
3. As a result of Defendant's conduct, Plaintiff has suffered damage to *[his/her]* reputation in the community and has suffered severe mental and emotional distress.

Accordingly, Plaintiff demands Judgment against Defendant for actual and punitive damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of attorney]

Attorney for Plaintiff

[Bar Association Number]

[Address of attorney]

[Phone number of attorney]

Notes

Libel is defined as a defamatory statement recorded in writing or some other permanent form. Slander is any other type of defamatory statement.

A "public figure" must prove the following to recover for defamation: "(1) the publication of a defamatory statement, (2) that was false, and (3) made with 'actual malice,' that is with knowledge that it was false or was made with reckless disregard of whether or not it was false." A plaintiff who is not a public figure may recover by proving only negligence, rather than actual malice, by the defendant.

In order to be defamatory, a statement must be factual in nature, rather than only opinionative. However, an expression of an opinion can be defamatory if it creates a reasonable inference that the opinion is justified by unexpressed defamatory facts.

Libel and slander are actionable *per se* if the alleged defamatory statements are susceptible of only a single meaning that is opprobrious. Otherwise, libel and slander are actionable *per quod*, and

extrinsic proof is required to show a defamatory meaning. Libel and slander *per quod* also require proof of actual damages.

There are a number of types of statements that are privileged, including statements in legislative and judicial proceedings and fair and true reports of legislative and judicial proceedings. In addition, damages against a newspaper or periodical are limited to actual damages if the defendant has published a retraction.

Petition—Slander of title

[Court Caption]

PETITION FOR SLANDER OF TITLE

Plaintiff alleges:

1. Plaintiff, *[name of plaintiff]*, is, and was on *[date of ownership]*, the owner of certain real estate (hereinafter the “Plaintiff's Property”), whose legal description is: *[description of property of plaintiff]*.
2. On or about *[date of purchase]*, Defendant, *[name of defendant]*, purchased certain real estate (hereinafter the “Defendant's Property”), whose legal description is: *[description of property of defendant]*. Defendant's Property adjoined Plaintiff's Property to the south.
3. On or about *[date of discovery]*, Plaintiff learned that Plaintiff did not have marketable title to Plaintiff's Property because the legal description in the deed to Defendant's Property incorrectly included a portion of Plaintiff's Property.
4. On or about *[date of request]*, Plaintiff requested Defendant to sign a quit claim deed to correct the problem, but Defendant refused to do so.
5. As a result of Defendant's refusal to sign the quit claim deed, Plaintiff was unable to sell Plaintiff's Property.

Accordingly, Plaintiff demands Judgment against Defendant for actual damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of attorney]
Attorney for Plaintiff
[Bar number of attorney]
[Address of attorney]
[Phone number of attorney]

Notes

Commentary

The elements of slander of title are: “1) a publication, 2) a false statement in the publication, 3) malice in the publication, 4) special damage by reason of the publication, and 5) ownership or possession of the property that is the object of the publication. The malice element in a slander of title action is satisfied by a showing of lack of good faith and absence of probable cause, and the standard is less than is needed for an award of punitive damages.

The nature of a slander of title action has been described as follows: “An action for slander of title is an action of tort, and is not properly for words spoken, or for a libel written or published, but an action in the nature of an action of trespass on the case for special damages sustained by reason of the speaking or publication of the slander of plaintiff's title.”

Slander of title actions are subject to the privileges, including the privilege for statements made in judicial proceedings, including notices of *lis pendens*.

Petition—Trespass on land

[Court Caption]

PETITION FOR TRESPASS ON LAND

Plaintiff alleges:

1. Plaintiff, *[name of plaintiff]*, is, and was on *[date of ownership of plaintiff]*, the owner of certain real estate (hereinafter the “Plaintiff's Property”), whose legal description is: *[description of property of plaintiff]*.
2. Defendant, *[name of defendant]*, is, and was on *[date of ownership of defendant]*, the owner of certain real estate (hereinafter the “Defendant's Property”), whose legal description is: *[description of property of defendant]*. Defendant's Property adjoins Plaintiff's Property to the south.
3. On or about *[date of placement of modular home]*, Defendant placed a modular home on Defendant's Property.
4. Defendant's modular home encroaches by *[number of feet]* feet on the *[description of encroachment]* of Plaintiff's Property, and it constitutes a continuing trespass on Plaintiff's Property.

Accordingly, Plaintiff demands Judgment against Defendant temporarily and permanently enjoining Defendant to remove Defendant's modular home from Plaintiff's Property and for damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of attorney]

Attorney for Plaintiff

[Bar number of attorney]

[Address of attorney]

[Phone number of attorney]

Petition—Interference with contractual rights

[Court Caption]

PETITION FOR INTERFERENCE WITH CONTRACTUAL RIGHTS

Plaintiff alleges:

1. On and before *[date of contract]*, Plaintiff, *[name of plaintiff]*, had a contract to sell certain goods to *[name of Buyer of Goods]* for *[specification of price]*.
2. On *[date of letter]*, Defendant, *[name of defendant]*, wrote a letter to *[name of buyer of goods]* in which Defendant offered to sell the goods to *[name of buyer of goods]* for *[specification of price]*, if *[name of buyer of goods]* would breach its contract with Plaintiff. The price offered was a special one not normally offered by Defendant and was substantially below Defendant's cost.
3. As a result of Defendant's letter, *[name of buyer of goods]* breached its contract with Plaintiff.

Accordingly, Plaintiff demands Judgment against Defendant in excess of Seventy Five Thousand Dollars (\$75,000) and costs.

[Name of attorney]
Attorney for Plaintiff
[Bar number of attorney]
[Address of attorney]
[Phone number of attorney]

Notes

In order to recover in such an action, a plaintiff must show:

1. That he or she had a business or contractual right that was interfered with.
2. That the interference was malicious and wrongful, and that such interference was neither justified, privileged nor excusable.
3. That damage was proximately sustained as a result of the complained-of interference.

Petition—Conversion

[Court Caption]

PETITION FOR CONVERSION

Plaintiff alleges:

1. On or about *[date of conversion]*, Defendant, *[name of defendant]*, converted to *[his/her]* own use *[specification of converted property]*, which was the property of Plaintiff, *[name of plaintiff]*.
2. To date, Defendant has failed and refused to return the *[specification of converted property]*.
3. *[specification of converted property]* had a value of *[\$dollar amount of value of converted property]*.
4. In converting the *[specification of converted property]*, Defendant has acted intentionally and with malice toward Plaintiff.

Accordingly, Plaintiff demands Judgment against Defendant for actual and punitive damages in excess of Seventy Five Thousand Dollars (\$75,000), interest, and costs.

[Name of attorney]
Attorney for Plaintiff
[Bar number of attorney]
[Address of attorney]
[Phone number of attorney]

Answers, Replies and Defenses

INTRODUCTORY COMMENT

Generally, every defense to a claim, counterclaim or third-party claim, must be asserted in a responsive pleading if one is required. The defendant may respond by filing an answer or a motion to dismiss.

In general, the first response to plaintiff's petition must be served within twenty days after service of the summons and petition. However, the plaintiff may elect to require the answer to be served within thirty-five days, rather than twenty days, after service of the summons and petition.

If the summons and petition are served by mail, the response is due twenty days after the defendant's receipt of the summons and petition.

A defendant may extend the time to respond to a petition by twenty days from the last date for the filing of an answer or the motion to dismiss by filing an appearance within this period. In exchange for the additional time to respond to the petition, a defendant who files an appearance waives the following defenses: lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, and lack of capacity of a party to be sued.

The answer should include the following components, if they exist:

1. Admissions and denials to the allegations contained in the petition;
2. Jurisdictional and Procedural Defenses, if these grounds for dismissal are not first set out in a motion to dismiss; and
3. Affirmative defenses to the plaintiff's claims for relief.

The defendant must also assert in the answer compulsory counterclaims against the plaintiff. In addition, the defendant may assert in the answer permissive counterclaims against the plaintiff and cross-claims against a co-defendant.

Specific Admissions and Denials. The answer must state in short and plain terms each defense to the claims asserted and shall admit or deny the averments set forth in the petition. If the defendant intends in good faith to deny each allegation in the petition, the defendant may do so by a general denial. If the defendant does not make a general denial, the defendant may (1) specifically deny designated averments or paragraphs, or (2) generally deny all averments except such designated averments and paragraphs which the defendant expressly admits.

If the defendant is without knowledge to form a belief as to the truth of the plaintiff's allegations, the defendant must so state and the statement will operate as a denial. When the defendant intends in good faith to deny only a part of the plaintiff's petition, the defendant must specify that part of the averment which is true and must deny the remainder. Averments which are not specifically denied, except those pertaining to the amount of damages, are deemed admitted. However, when no responsive pleading is required or permitted, averments will be taken as denied or avoided.

An answer should be simple, concise and direct, and no technical form of pleading is required. The answer may set forth two or more statements of defense alternatively or hypothetically, either in one defense or in separate defenses. Moreover, a pleading may also state as many separate defenses as the pleader has regardless of consistency and whether based on legal or equitable grounds.

Counterclaims and cross-claims, if filed in the same document as the answer, should follow the statement of affirmative defenses. These claims may also be stated in separate pleadings so long as the pleadings are filed concurrently with the answer. Defendant must comply with the filing and service requirements.

As in the case of the petition, the defendant may adopt by reference statements made in a different part of the same pleading or another pleading or motion. Incorporation by reference is intended to avoid confusion, redundancy and repetition; thus, it is necessary that such references be direct, clear and explicit in identifying the allegation of the pleading which is to be incorporated.

General Denials Not Favored. A general denial may be interposed only when the defendant, in good faith, intends to controvert each and every averment in the petition. A defendant should not plead a general denial if the defendant knows or believes some of the allegations in the petition are true in order to require the plaintiff to bear the burden and cost of establishing the truth of those allegations.

Effect of a Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Accordingly, great care should be taken to check a proposed answer against every allegation in the petition. A response must be made to each allegation. Failure to deny any averment will bar the defendant from introducing evidence which disproves that allegation at trial.

Signature and Service. The answer must be signed by the defendant or defendant's attorney. An attorney must state his or her name, address, telephone number and Bar Association identification number. A party who is not represented by an attorney should sign the answer and state his or her address.

The answer need not be verified or accompanied by an affidavit, but must be served upon all parties to the action.

Reply to Answer. A reply is allowed in two instances: (1) to a counterclaim denominated as such, and (2) if the trial court so orders. The court may order a reply to an answer or a third-party answer.

Reservation of time

[Court Caption]

RESERVATION OF TIME BY DEFENDANT *[NAME]*

Defendant, *[Name]*, files **his/her/its** reservation of time in this action and extends the time to respond to the petition for a period of 20 days, or until *[Date]*. *[This reservation of time is explicitly qualified to not waive the defenses of improper venue, lack of personal jurisdiction, and failure to state a claim, which are expressly reserved by Defendant, *[Name]*.]*

Dated: *[Date]*

[Signed] _____

[Typed Name]

Attorney for Defendant

[Bar Association Number]

[Address]

[Telephone Number]

Notes

A defendant must file an answer or a motion to dismiss the petition within twenty days after service. However, by filing a reservation of time within this period, a defendant may extend the time to respond to a petition by twenty days from the last date for the filing of an answer or the motion to dismiss. In exchange for the additional time to respond to the petition, a defendant who files a reservation of time waives the following defenses: lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, and lack of capacity of a party to be sued.

Although the filing of a reservation of time waives the defense of the plaintiff's failure to state a claim in the petition, a defendant may move for summary judgment before trial, demur to the evidence at trial, and move for a judgment notwithstanding the verdict after trial if the plaintiff is unable or has failed to prove every essential element of the claim.

Answer

[Court Caption]

ANSWER OF DEFENDANT *[NAME]*

Defendant *[Name]* alleges the following in response to the petition:

Admissions and Denials

1. Defendant admits the allegations of paragraph 1 of the petition.
2. Defendant denies the allegations of paragraph 2 of the petition.
3. Defendant admits that **he/she** signed the agreement alleged in paragraph 3 of the petition, and denies all other allegations therein.
4. Defendant has no knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 4 of the petition.
5. Defendant denies all other allegations of the petition, except that **he/she** admits that **he/she** has not paid any money to Plaintiff.

Jurisdictional Defenses

6. This Court has no jurisdiction over Defendant's person.
7. The venue of this action does not lie in this County.
8. The petition fails to state a claim against Defendant upon which relief can be granted.
9. On *[Date]*, Plaintiff filed a civil action entitled *[give name of action and case number]* in the *[specify Court]*, asserting the same claim as in this action, and that action remains pending.

Affirmative Defenses

10. On *[Date]*, after the alleged breach of the agreement and before the filing of this action, Defendant delivered to Plaintiff and Plaintiff accepted *[specify amount]* in full satisfaction of Plaintiff's claim.
11. The claim attempted to be stated in the petition is barred by the applicable statute of limitations in *[cite statute]*.
12. On *[Date]*, before Plaintiff reached the age of majority, Plaintiff disaffirmed the agreement alleged in the petition.

Demand for Judgment

Accordingly, Defendant demands that Plaintiff take nothing by this action, and that Defendant be awarded costs including reasonable attorney's fees.

[Signed] _____

[Typed Name]

Attorney for Defendant

[Bar Association Number]

[Address]

[Telephone Number]

Notes

The above form can be adapted or an answer to a third-party petition. For an answer to a cross-claim.

The above form contains an assortment of admissions, denials, jurisdictional and procedural defenses, and affirmative defenses to illustrate the variety of statements that may appear in an answer.

An answer should contain admissions, denials, and, if appropriate, affirmative defenses. A general denial should not be filed unless the defendant intends in good faith to deny every allegation in the petition, and the defendant should admit any allegations which he does not intend to contest. Any allegations, other than those as to the amount of damages, which are not denied are deemed admitted. To avoid inadvertent admissions, it is usually good practice to include a statement, such as that found in Paragraph 5, denying any allegations that are not specifically admitted. The statement of lack of information in Paragraph 4 is authorized and it has the same effect as a denial.

Denials should be forthright and unequivocal, and care should be taken to avoid denials that might be construed as evasive. Negative pregnant and conjunctive denials are two categories of denials that were ineffective at common law because they were deemed evasive. A negative pregnant is a denial of an allegation that contains qualifying language in the exact words of the denial so that the denial is "pregnant" with an implied admission. For example, a denial of an allegation that the defendant owes the plaintiff \$1,000 could be construed as an admission that the defendant owed the plaintiff some amount other than exactly \$1,000. To avoid the negative pregnant, the defendant should deny that the defendant owes the plaintiff \$1,000 or any other amount, if that is in fact the case. An example of a conjunctive denial would be a denial that the defendant executed and delivered a promissory note to the plaintiff. This could be construed as an admission that the defendant either executed or delivered the promissory note, and it can be avoided by using a disjunctive denial stating that the defendant denies either having executed or having delivered the promissory note. Although negative pregnant and conjunctive denials are not grounds for objecting to the sufficiency of the defenses in an answer, they lack precision and are unartful.

Special appearances are unnecessary. Defenses to jurisdiction and venue (Paragraphs 6 and 7 *supra*) may be joined with other defenses (such as those in Paragraphs 8 and 9), and they may be asserted either in the answer or in a pre-answer motion. Usually they are raised in a pre-answer

motion so that these preliminary matters can be resolved before the merits of the plaintiff's allegations are reached. While these defenses may be raised in the answer, they should also be the subject of a motion filed reasonably soon after the answer so that they can be determined before trial. A motion asserting any of these defenses should include greater specificity than is found in the answer.

Paragraphs 10 to 12 are examples of affirmative defenses.

Motion for reply to answer

[Court Caption]

MOTION FOR REPLY TO ANSWER

Defendant, *[Name]*, moves the Court, for an Order Requiring Plaintiff to Reply to Defendant's Answer.

1. This Motion is made on the grounds that on *[Date]*, Plaintiff filed a petition alleging injury as a result of Defendant's medical negligence on *[Date]*.
2. In the answer, Defendant stated an affirmative defense of statute of limitations as a result of Plaintiff's failure to bring the action within two years from the date of the injury.
3. Defendant asserts that the statute of limitations defense is a complete bar to the action.
4. Defendant will not be required to incur additional litigation expenses if Plaintiff is required to reply to the affirmative defense of statute of limitations.
5. This Motion is supported by the accompanying **brief/(list of authorities)**.

Dated: *[Date]*

[Signed] _____

[Typed Name]

Attorney for Defendant

[Bar Association Number]

[Address]

Reply to answer without counterclaim

[Court Caption]

REPLY OF PLAINTIFF, *[NAME]*, TO COUNTERCLAIM

Plaintiff, *[Name]*, alleges the following in response to the affirmative defense of statute of limitations stated in the answer of Defendant, *[Name]*:

1. Plaintiff has asserted a claim against Defendant for medical negligence.
2. Although Plaintiff's injury occurred on *[Date]*, Plaintiff did not discover the existence of the injury until Plaintiff visited another medical doctor on *[Date]*.
3. Plaintiff filed this action within two years of discovering the existence of the injury on *[Date]*.
4. Plaintiff could not have, in the exercise of reasonable care, discovered the existence of the injury earlier than *[Date]*.

Dated: *[Date]*

[Signed] _____

[Typed Name]

Attorney for Plaintiff

[Bar Association Number]

[Address]

[Telephone Number]

Affirmative defense—Introduction

The defendant's answer should state all of the defendant's affirmative defenses. Some of the affirmative defenses are: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, and waiver.

An "affirmative defense" is one upon which the defendant bears the burden of proof. To preserve an affirmative defense, the defendant must set forth the defense in an answer or amended answer either before or at the pretrial conference, or litigate the defense by express or implied consent of the parties.

If the pleading mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the trial court shall treat the pleading as if it contained a proper designation.

Affirmative defense—Examples

Accord and Satisfaction.

On [Date], after making the contract and the alleged breach, and before this action was commenced, defendant paid to the plaintiff the sum of [specify amount], which was accepted by the plaintiff in full satisfaction and discharge of the damages claimed in the petition.

Arbitration and Award.

On [Date], pursuant to an agreement between plaintiff and defendant, plaintiff's claim was submitted to [Name of Arbitrator] for arbitration and on [Date], the arbitrator made an award dismissing plaintiff's claim against the defendant.

[Or]

On [Date], pursuant to an agreement between plaintiff and defendant, plaintiff's claim was submitted to [Name of Arbitrator] for arbitration, and on [Date], the arbitrator awarded plaintiff the sum of [specify amount], which amount defendant paid to plaintiff on [Date].

Assumption of Risk.

Plaintiff knowingly and with full knowledge assumed the risk of her loss by [specify facts constituting an assumption of risk].