

Cause No. \_\_\_\_\_

WILBANKS & MACKAY, LLC	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
VS.	§	OF HARRIS COUNTY, TEXAS
	§	
ELIZABETH PETERSEN	§	
	§	
Defendant.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND**

TO THE HONORABLE COURT:

COMES NOW, Plaintiff, WILBANKS & MACKAY, LLC, complaining of Defendant, ELIZABETH PETERSEN, and for cause of action does hereby respectfully show the Court the following:

**I.**  
**DISCOVERY PLAN**

Discovery in this case shall be conducted pursuant to Discovery Level 2.

**II.**  
**VENUE**

Venue is proper in Harris County, Texas, as the transactions, made the basis of this case, were performed in Harris County, Texas, and the parties are all located in, reside, and do business primarily in Harris County, Texas, respectively.

**III.**  
**PARTIES**

Plaintiff, WILBANKS & MACKAY, LLC, (hereinafter “Wilbanks & Mackay” or “Plaintiff”) is a Texas company located and doing business in Houston, Harris County, Texas.

Defendant, ELIZABETH PETERSEN, (hereinafter “Petersen” or “Defendant”), is an individual residing in Harris County, Texas. Elizabeth Peterson may be personally served with process at 2164 Chilton Road, Houston, Texas 77019; or anywhere else she may be found.

**IV.**  
**BACKGROUND**

On or about February 4, 2021, Petersen entered into a contract, (the “Contract”), with Wilbanks & Mackay to order, deliver, and install furniture to her newly purchased home located at 2164 Chilton Road, Houston, Texas, (the “House”). At the same time, Petersen paid Wilbanks & MacKay a retainer of 259,000.00. A true and correct copy of the signed Contract is attached hereto as **Exhibit A**. During the Contract period/term, Wilbanks & MacKay sent Petersen several invoices, which are listed in detail below.

In or about November of 2021, Wilbanks & MacKay ordered, delivered and installed the furniture and items in the House that Petersen requested. Subsequently, on or about November 5, 2021, Wilbanks & MacKay issued invoice 21-0004-01, (the “Initial Invoice”), to Petersen which reflected the items referenced above. This Initial Invoice reflects the retainer applied, a true and correct copy of which is attached hereto as **Exhibit B**.

As a bit of background, prior to moving into the House, Petersen visited the same when it was staged and requested several of the pieces of furniture from the same be ordered and installed at the House. Wilbanks & MacKay provided Petersen an invoice with those items and the cost for the same on or about November 9, 2021, (“Invoice 1136”). To date, Petersen has not paid this Invoice 1136. A true and correct copy of Invoice 1136 is attached hereto as **Exhibit C**.

Following the delivery and installation of the items listed in the Initial Invoice and Invoice 1136, Petersen requested that Wilbanks & MacKay procure additional items for delivery and

installation in the House. On or about November 18, Wilbanks & Mackay provided Petersen with an open items proposal listing those requested items, (the “Open Items Proposal”). While the Open Items Proposal was not signed by Petersen, she sent a wire to Wilbanks & MacKay for the full amount of the Open Items Proposal on or about December 2, 2021. Based on the same, Wilbanks & MacKay assumed and understood that Petersen agreed to the amount invoiced as she wired the full amount of the Open Items Proposal. A true and correct copy of the Open Items Proposal is attached hereto as **Exhibit D.**

Following the delivery and installation of the items referenced above, Wilbanks & MacKay sent Petersen a second invoice which reflected the items listed in the Open Items Proposal, (the “Second Invoice”). Page 7 of the Second Invoice, evidences that Wilbanks & MacKay applied the funds from the December 2, 2021 wire to the amount billed, leaving \$55,877.46 due and owing to Wilbanks & MacKay for the items listed in the Second Invoice. Of note, the date of the Second Invoice evidences the completion of the project, made the basis of the Contract. Also, in the Second Invoice, Wilbanks & MacKay included the invoices it received from the moving company, which total around \$4,000.00. To date, Petersen has failed and refused to pay and/or make any payment plan toward the Second Invoice. A true and correct copy of the Second Invoice is attached hereto as **Exhibit E.**

On or about November 18, 2021, the CFO of Wilbanks Mackay, Bijan Taghavi, (“Taghavi”), emailed Petersen with regard to her outstanding balance, which amounted to \$94,572.83, to which no response was received. In August of 2022, Taghavi, once again, sent an email to Petersen with a detailed accounting of the invoices along with all payments made. On or about August 18, 2022, Petersen, finally, responded to Taghavi’s emails, however, while the reply made little sense, she

clearly refused to pay the balance due Wilbanks Mackay, any otherwise, denied owing anything, despite living in the House and using the items procured and installed by Wilbanks & MacKay for well over a year. A true and correct copy of Petersen's email is attached hereto as **Exhibit F**.

In October 2022, Plaintiff retained counsel who, primarily as a courtesy, sent Petersen a demand letter, dated October 10, 2022, for the \$94,572.83 outstanding balance, and the attorney's fees that the Plaintiff had incurred, to date. Defendant has failed and refused to respond to the demand. A true and correct copy of the letter is attached hereto as **Exhibit G**. Plaintiff seeks to recover the amount requested herein and its attorney's fees necessary to pursue this matter.

Plaintiff has complied with all conditions precedent to its recovery in this case.

## **V. CAUSES OF ACTION**

Based upon the above and foregoing facts, all of which are incorporated herein as if set forth at length, Plaintiff asserts the following causes of action against Defendant:

- (1) breach of contract;
- (2) conversion;
- (3) failure to pay a debt;
- (4) claims made under the Theft Liability Act;
- (5) alternatively for quantum meruit; and
- (6) unjust enrichment.

## **VI. DAMAGES**

As a result of the Defendant's acts and omissions as set forth above, the Plaintiff has incurred damages in the amount of \$94,572.83, plus interest, including pre-judgment and post-judgment interest, on the same, as allowed by law, and any other damages to which the Plaintiff is entitled,

which are in excess of the minimum jurisdictional limits of this Court. Plaintiff seeks damages in an amount greater than \$100,000.00, but less than \$200,000.00, which amount does not include the attorneys' fees sought by the Plaintiff herein, the amount of which will increase during this course of this litigation.

**VII.**  
**ATTORNEYS' FEES**

Furthermore, as a result of the Defendant's acts and omissions, as set forth above, the Plaintiff has been forced to hire an attorney to enforce its right of recovery, for which the Plaintiff has incurred reasonable attorneys' fees, and which the Plaintiff also seeks to recover from the Defendant, as provided by law, as well as pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code and the Texas Property Code. The Plaintiff seeks its attorneys' fees through any trial, appeal to the court of appeals, and any appeal to the Texas Supreme Court.

**VIII.**  
**JURY DEMAND**

Plaintiff hereby asserts its right to a trial by jury under the Texas Constitution and makes this demand for trial by jury in accordance with Texas Rule of Civil Procedure 216.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, WILBANKS & MACKAY, LLC pray that Defendant, ELIZABETH PETERSEN, be cited to appear and answer herein, and that upon a trial of this cause, that it have a judgment of and from the Defendant for its actual damages, pre- and post judgment interest on all damages awarded to Plaintiff, costs of court, reasonable attorneys' fees, post-judgment interest on Plaintiff's attorneys' fees and costs of court, additional attorneys fees in the event of an appeal of the case to the Court of Appeals and/or the Texas Supreme Court, and any and all other relief under law or equity to which the Plaintiff is entitled.

Respectfully submitted,

DABNEY PAPPAS

By: /s/ Gus E. Pappas

Gus E. Pappas

State Bar No. 15454850

[gus@dabneypappas.com](mailto:gus@dabneypappas.com)

1776 Yorktown, Suite 425

Houston, Texas 77056

Telephone: (713) 621-2678

Facsimile: (713) 621-0074

ATTORNEY FOR PLAINTIFF  
WILBANKS & MACKAY, LLC

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Molly Sedbrook on behalf of Gus Pappas  
Bar No. 15454850  
molly@dabneypappas.com  
Envelope ID: 70099684  
Status as of 11/11/2022 11:33 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Gus EPappas		gus@dabneypappas.com	11/11/2022 11:20:12 AM	SENT

**From:** Selena Mackay [selena@the-wm.com](mailto:selena@the-wm.com)  
**Subject:** Fwd: Invoice 21-0004-02  
**Date:** August 29, 2022 at 12:33 PM  
**To:** Bijan Taghavi [admin@the-wm.com](mailto:admin@the-wm.com)



Begin forwarded message:

**From:** Elizabeth Petersen <[petersenelizabeth6@gmail.com](mailto:petersenelizabeth6@gmail.com)>  
**Subject:** Re: Invoice 21-0004-02  
**Date:** August 18, 2022 at 3:27:24 PM CDT  
**To:** Bijan Taghavi <[admin@the-wm.com](mailto:admin@the-wm.com)>  
**Cc:** Selena Mackay <[selena@the-wm.com](mailto:selena@the-wm.com)>, Myra Williams <[myra3250@icloud.com](mailto:myra3250@icloud.com)>

I also do not have the coffee table that I paid for for the media room - every time I church anything from y'all it just goes more to things I am owed - I'm confused frustrated and don't owe y'all money

Thank you

Elizabeth

Sent from my iPhone

On Aug 18, 2022, at 2:37 PM, Bijan Taghavi <[admin@the-wm.com](mailto:admin@the-wm.com)> wrote:

Dear Ms. Peterson:

I have not received any communication from your regarding the outstanding invoices. Selena has shared your communications with me. Your position is not factual nor tenable. We are prepared to provide you with anything you may need to investigate and verify the facts and figures for your self. Please take the time to let me know what you need and what your objections are. I will gladly work with you to set the record straight. I respectfully ask you to respond to me by Tuesday August 23rd. I will otherwise have to assume that you do not intend to pay the balance owed and will regrettably have to resort to collection measures. Thank you for your attention to this matter.

Regards  
Bijan Taghavi  
CFO





**CAUSE NO. 2022-74523**

<b>WILBANKS &amp; MACKAY, LLC,</b>	§	<b>IN THE DISTRICT COURT OF</b>
<i>Plaintiff,</i>	§	
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>ELIZABETH PETERSEN,</b>	§	
<i>Defendant.</i>	§	<b>129<sup>TH</sup> JUDICIAL DISTRICT</b>

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**DEFENDANT ELIZABETH PETERSEN’S ORIGINAL ANSWER  
AND JURY DEMAND**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant, ELIZABETH PETERSEN hereinafter, (“Petersen”), who files this Original Answer and Jury Demand. In support hereof, Petersen would respectfully show this Honorable Court as follows:

**I.  
GENERAL DENIAL**

1. As authorized by Rule 92 of the Texas Rules of Civil Procedure, Defendant Petersen generally denies all allegations contained in Plaintiff’s Original Petition and respectfully requests that Plaintiff be required to prove the charges and allegations against Defendant Petersen by a preponderance of the evidence as is required by the Constitution and laws of the State of Texas.

**II.  
STATUTORY NOTICES**

2. TRCP 193.7. Defendant Petersen hereby gives notice to all parties that she intends to use any and all documents that are produced by Plaintiff against Plaintiff in pretrial proceedings or at trial pursuant to TRCP 193.7.

3. TRCP 203. Pursuant to Rule 203(b), Defendant Petersen hereby gives notice to all parties that she intends to offer the deposition testimony of all witnesses at trial as rebuttal evidence in anticipation of each witnesses' expected testimony. Defendant Petersen reserves the right to introduce other documents as rebuttal evidence the anticipation for use of which cannot be made at this time.

**III.**  
**JURY DEMAND**

4. Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Defendant Petersen demands a jury trial. The appropriate jury fee has been paid or will be paid to the clerk of the court at the filing of the answer.

**IV.**  
**PRAYER**

5. Defendant Petersen asks the Court:
- a. To dismiss this suit or render judgment that Plaintiff takes nothing as against Defendant Petersen;
  - b. Award all other relief available, at law or in equity, both general and special, to which Defendant Petersen may be justly entitled.

Respectfully submitted,

**GREEN KLEIN & WOOD**

By: /s/ Robert D. Green  
ROBERT D. GREEN  
State Bar No.: 08368025  
[green@greentriallaw.com](mailto:green@greentriallaw.com)  
408 East 7<sup>th</sup> Street  
Houston, Texas 77007  
(713) 654-9222 - Telephone  
(713) 654-2155 - Fax  
**ATTORNEY FOR DEFENDANT ELIZABETH  
PETERSEN**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served in compliance of TRCP 21, 21a on December 19, 2022.

Gus E. Pappas  
DABNEY PAPPAS  
1776 Yorktown, Suite 425  
Houston, TX 77056  
(713) 621-0074 – Fax  
[gus@dabneypappas.com](mailto:gus@dabneypappas.com)  
**ATTORNEY FOR PLAINTIFF**

*Robert D. Green*  
\_\_\_\_\_  
**Robert D. Green**

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Andrea Galvan on behalf of Robert Green  
Bar No. 8368025  
agalvan@greentriallaw.com  
Envelope ID: 71120493  
Status as of 12/19/2022 11:38 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Andrea Galvan		agalvan@greentriallaw.com	12/19/2022 9:43:32 AM	SENT
Delaram Falsafi		falsafi@greentriallaw.com	12/19/2022 9:43:32 AM	SENT
Robert DGreen		green@greentriallaw.com	12/19/2022 9:43:32 AM	SENT
Samantha Galindo		galindo@greentriallaw.com	12/19/2022 9:43:32 AM	SENT
Veronica Garcia		vgarcia@greentriallaw.com	12/19/2022 9:43:32 AM	SENT

**CAUSE NUMBER: 2022-74523**

**WILBANKS & MACKAY, LLC  
PLAINTIFF**

**VS.**

**IN THE 129TH JUDICIAL DISTRICT  
COURT OF HARRIS COUNTY, TEXAS**

**ELIZABETH PETERSEN  
DEFENDANT**

**RETURN OF SERVICE**

My name is **DUSTIN W. TIERNEY**. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am in all ways competent to make this affidavit and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is: 1320 QUITMAN ST. STE 100, HOUSTON, HARRIS COUNTY, TX 77009, U.S.A.

**ON Thursday November 17, 2022 AT 12:31 PM - CITATION, PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND; EXHIBIT(S) A THROUGH G** came to hand for service upon **ELIZABETH PETERSEN**.

**On Tuesday November 22, 2022 at 10:10 AM -** The above named documents were hand delivered to: **ELIZABETH PETERSEN @ 2164 CHILTON ROAD, HOUSTON, TX 77019, in Person.**

**FURTHER AFFIANT SAYETH NOT.**

STATE OF TEXAS

DECLARATION

"My name is **DUSTIN W. TIERNEY**, my date of birth is 10/04/1970 my business address is **1320 QUITMAN STREET, HOUSTON, TX 77009**, and I declare under penalty of perjury that this affidavit is true and correct."

Executed in **Harris County, State of Texas on Wednesday November 23, 2022**



**PSC#10178 EXP. 02/28/23**

Declarant; Appointed in accordance with State Statutes.

2022.11.701781