

No. _____

FROST BANK,

Plaintiff,

VS.

DAVID PETTUS, ATTORNEY AT LAW,
P.C., and DAVID L. PETTUS,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION WITH REQUESTS
PURSUANT TO RULES 194, 196, 197, AND 198, TEX. R. CIV. P.**

A. PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, FROST BANK (formerly The Frost National Bank), Plaintiff in the above numbered cause and hereinafter referred to as "Plaintiff," complaining of DAVID PETTUS, ATTORNEY AT LAW, P.C., and DAVID L. PETTUS, Defendants herein and hereinafter referred to as "Defendants," and for its causes of action and claims for relief would respectfully show the court the following:

I.

DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 1 of Rule 190, TEX. R. CIV. P. Plaintiff affirmatively pleads, pursuant to Rule 47, Tex. R. Civ. P., that it seeks only monetary relief of \$100,000.00 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees.

II.

2.01 Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C., is a Texas professional corporation, which may be served by serving its President, David Pettus, at 5523 Louetta Road, Suite C, Spring, Harris County, Texas 77379.

2.02 Defendant DAVID L. PETTUS is a natural person residing in Harris County, Texas, who may be served at 5523 Louetta Road, Suite C, Spring, Harris County, Texas 77379.

2.03 The amount in controversy is within the jurisdictional limits of this honorable court.

2.04 Venue is proper in Harris County, Texas, pursuant to Chapter 15 of the Texas Civil Practice and Remedies Code.

III.

3.01 On or about January 29, 2009, Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C., as maker, executed and delivered to Plaintiff a Promissory Note in the original principal amount of \$98,653.13 (hereinafter referred to as the "Note"). A true and correct copy of the Note is attached hereto as Exhibit "A" and is incorporated herein by reference for all purposes as if set forth herein verbatim.

3.02 To induce Plaintiff to extend credit, and to secure its performance, Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C., executed and delivered to Plaintiff a Commercial Security Agreement in which it granted Plaintiff a security interest in and to its accounts. A true and correct copy of the Commercial Security Agreement is attached hereto as Exhibit "B" and is incorporated herein by reference for all purposes as if set forth herein verbatim.

3.03 To induce Plaintiff to extend credit, and to secure Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C.'s performance, Defendant DAVID PETTUS executed and delivered to Plaintiff a Commercial Guaranty in which he guaranteed payment of Defendant DAVID PETTUS,

ATTORNEY AT LAW, P.C.'s indebtedness to Plaintiff. A true and correct copy of the Commercial Guaranty is attached hereto as Exhibit "C" and is incorporated herein by reference for all purposes as if set forth herein verbatim.

3.04 The Note has matured on its express terms. The Note matured on January 31, 2014.

3.05 As of the date of filing, the principal amount of \$3,785.77, plus accrued interest, remains due and owing on the Note. As of May 6, 2014, interest in the amount of \$40.31 had accrued on the Note and had not been paid, and interest continues to accrue on the unpaid principal balance from and after such date at the contract rate of 18.00% per annum.

3.06 On June 4, 2014, Plaintiff, by and through the undersigned attorneys, made written demand of Defendants to pay the sums which are due and owing. Defendants, however, failed and refused, and continue to fail and refuse, to pay the sums demanded by Plaintiff.

IV.

BREACH OF CONTRACT
AGAINST DAVID PETTUS, ATTORNEY AT LAW, P.C.

Plaintiff would show that a contract was formed by and between Plaintiff and Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C.; that Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C., has breached the contract; and that Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C.'s breach of contract has damaged Plaintiff in the principal amount of \$3,785.77, plus accrued interest. Plaintiff would show that all conditions precedent for recovery for breach of contract have been satisfied.

V.

BREACH OF CONTRACT
AGAINST DAVID PETTUS

Plaintiff would show that a contract was formed by and between Plaintiff and Defendant DAVID PETTUS; that Defendant DAVID PETTUS has breached the contract; and that Defendant DAVID PETTUS's breach of contract has damaged Plaintiff in the principal amount of \$3,785.77, plus accrued interest. Plaintiff would show that all conditions precedent for recovery for breach of contract have been satisfied.

VI.

FORECLOSURE OF LIEN

Plaintiff would show (A) that Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C., granted Plaintiff a security interest in the personal property that is described in the Security Agreement that is attached hereto as Exhibit "B;" (B) that Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C., has defaulted under the terms of the Security Agreement that is attached hereto as Exhibit "B;" (C) that, by virtue of Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C.'s default, Plaintiff is entitled to foreclose its lien on the property; (D) that Plaintiff is entitled to take possession of the property; and (E) that Plaintiff is entitled to dispose of the property pursuant to Chapter 9 of the Texas Business and Commerce Code.

VII.

INTEREST

Plaintiff would show that it is entitled to recover prejudgment interest in the amount of \$40.31 plus 18.00% per annum from and after May 6, 2014.

Plaintiff would show that it is entitled to recover post-judgment interest on the unpaid principal balance at the contract rate of 18.00% per annum.

Plaintiff would show that it is entitled to recover post-judgment interest on court costs and attorneys' fees at the statutory rate of 5.00 percent (5%) per annum.

VIII.

ATTORNEYS' FEES

Plaintiff, more than thirty (30) days prior to the trial of this action, made written demand of Defendants to pay the sums which are due and owing; however, Defendants have failed and refused, and continue to fail and refuse, to pay the sums demanded by Plaintiff. As a result of Defendants' refusal to pay the amounts which are due and owing to Plaintiff, Plaintiff has been forced to employ the undersigned attorneys to file this lawsuit, and Plaintiff is entitled to reasonable attorneys' fees associated with legal services rendered in the prosecution and collection thereof. Recovery of reasonable attorney's fees is authorized under the terms of the Note and/or the provisions of Chapter 38 of the Texas Civil Practice and Remedies Code.

WHEREFORE, PREMISES CONSIDERED, Plaintiff FROST NATIONAL BANK prays that Defendants DAVID PETTUS, ATTORNEY AT LAW, P.C., and DAVID PETTUS be cited to appear and answer herein, and that upon final hearing, Plaintiff have Judgment of, from and against said Defendants, jointly and severally, for the following:

1. for damages in the principal amount of \$3,785.77;

2. for lawful and contractual prejudgment interest in the amount of \$40.31 plus 18.00% per annum from and after May 6, 2014;
3. for reasonable attorneys' fees;
4. for costs of court herein expended;
5. for lawful post-judgment interest on the unpaid principal balance at the contract rate of 18.00% per annum;
6. for post-judgment interest on court costs and attorney's fees at the statutory rate of 5.00 percent (5%) per annum;
7. for foreclosure of its security interest in and to the subject collateral; and
8. for such other and further relief, general and special, at law or equity, to which Plaintiff may be entitled.

Respectfully submitted,

WELLS & CUELLAR, P.C.

By: 

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**B. REQUESTS PURSUANT TO RULES 194,
196, 197, AND 198, TEX. R. CIV. P.**

COMES NOW, Plaintiff FROST BANK, hereinafter referred to as "Plaintiff," pursuant to Rules 194, 196, 197, and 198, TEX. R. CIV. P., demanding the following of EACH Defendant served herewith:

I.

Pursuant to Rule 193.1, Tex. R. Civ. P., a party must respond to written discovery in writing within the time provided by court order or the Texas Rules of Civil Procedure. When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. The responding party's answers and other responses must be preceded by the request to which they apply.

II.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194, Tex. R. Civ. P., you are requested to disclose, within fifty (50) days after service of this request, the information or material described in Rule 194.2(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l), Tex. R. Civ. P. Such Rule requires the disclosure of the following:

- (a) the correct names of the parties to the lawsuit;
- (b) the name, address, and telephone number of any potential parties;
- (c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
- (d) the amount and any method of calculating economic damages;

- (e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
- (f) for any testifying expert:
- (1) the expert's name, address, and telephone number;
 - (2) the subject matter on which the expert will testify;
 - (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
 - (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (A) all documents, tangible things, reports, models, or data compilation that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (B) the expert's current resume and bibliography;
- (g) any discoverable indemnity and insuring agreements;
- (h) any discoverable settlement agreements;
- (i) any discoverable witness statements;
- (j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

- (k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; and
- (l) the name, address, and telephone number of any person who may be designated as a responsible third party.

III.

Pursuant to Rule 196, Tex. R. Civ. P., you are requested to respond to the Requests for Production which follow within fifty (50) days after service hereof. Plaintiff specifies 10:00 o'clock a.m. on the Monday next following the expiration of fifty (50) days from the date of your receipt hereof to be a reasonable time for the document production. Plaintiff hereby specifies the offices of Wells & Cuellar, P.C., 440 Louisiana, Suite 718, Houston, Texas 77002, to be a reasonable place for the document production.

IV.

Pursuant to Rule 197, Tex. R. Civ. P., you are requested to respond to the Interrogatories which follow within fifty (50) days after service hereof. A responding party must sign the answers under oath except that: (1) when answers are based on information obtained from other persons, the party may so state, and (2) a party need not sign answers to Interrogatories about persons with knowledge of relevant facts, trial witnesses, and legal contentions.

V.

Pursuant to Rule 198, Tex. R. Civ. P., you are requested to respond to the Requests for Admissions which follow within fifty (50) days after service hereof. If a response is not timely served, the request is considered admitted without the necessity of a court order.

VI.

Pursuant to Rule 193.5, Tex. R. Civ. P., you are under an affirmative duty to amend or supplement your response to any written discovery reasonably promptly upon learning that your previous response to such written discovery was incomplete or incorrect when made, or, although complete and correct when made, is no longer complete and correct (1) to the extent that the written discovery sought the identification of persons with knowledge of relevant facts, trial witnesses, or expert witnesses, and (2) to the extent that the written discovery sought other information, unless the additional or corrective information has been made known to the other parties in writing, on the record at a deposition, or through other discovery responses.

VII.

Pursuant to Rule 215, Tex. R. Civ. P., if you fail to comply with proper discovery requests, the Court may make such orders in regard to the failure as are just, including among others, an order rendering a default judgment against you in amounts as demanded and prayed for by Plaintiff, or an order requiring you or your attorney, or both, to pay reasonable expenses, including attorneys' fees, caused by the failure.

VIII.

The singular shall include the plural, and the plural the singular, whenever the effect of doing so is to increase the information responsive to these requests.

IX.

"Or" is intended to mean and/or.

X.

DEFINITIONS

A. "Document" and/or "documents" is intended to mean all written, recorded, or graphic matter within the scope of Rule 192.3(b), TEX. R. CIV. P., including but not limited to papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, data compilations, records, letters, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, workpapers, transcripts, minutes, reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of other meetings, affidavits, statements, summaries, opinions, studies, analyses, evaluations, contracts, agreements, jottings, agenda, bulletins, notices, announcements, advertisements, instructions, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, diaries, lists, tabulations, programs, data processing input and output, microfilm, books of account, records and invoices reflecting business operations, all records kept by electronic, photographic, or mechanical means, any notes or drafts relating to the foregoing, and all things similar to any of the foregoing, however denominated.

B. "Identify" is intended to have the following meanings:

(1) when used in reference to a natural person, it means to state the person's full name, business affiliation, title, and the person's telephone number, residence address, and business address; and

(2) when used in reference to an entity other than a natural person, it means to state its full name, form of organization, address of its principal office, and each of its present business addresses and telephone numbers.

C. "Note" means the promissory note that is attached hereto as Exhibit "A."

D. "Plaintiff" means Plaintiff FROST BANK, its parent corporations, subsidiaries, affiliates, partners, divisions, predecessors, successors, and the officers, directors, employers, employees, principals, and agents of the same, as well as all other persons acting or purporting to act on behalf of FROST BANK.

E. "You" and/or "your" means the particular Defendant served herewith.

Unofficial Copy Office of Marilyn Burgess District Clerk

INTERROGATORY NO. 1:

State your full name, residential address, and residential telephone number.

ANSWER:

REQUEST FOR ADMISSION NO. 1:

Admit that a duly authorized officer of DAVID PETTUS, ATTORNEY AT LAW, P.C., signed the promissory note that is attached hereto as Exhibit "A."

REQUEST FOR ADMISSION NO. 2:

Admit that the signature on the promissory note that is attached hereto as Exhibit "A" is genuine.

REQUEST FOR ADMISSION NO. 3:

Admit that the promissory note that is attached hereto as Exhibit "A" is an exact duplicate of the original.

REQUEST FOR PRODUCTION NO. 1:

Produce for photocopying and/or inspection your copy(ies) of the promissory note that is attached hereto as Exhibit "A."

REQUEST FOR ADMISSION NO. 4:

Admit that a duly authorized officer of DAVID PETTUS, ATTORNEY AT LAW, P.C., signed the commercial security agreement that is attached hereto as Exhibit "B."

REQUEST FOR ADMISSION NO. 5:

Admit that the signature on the commercial security agreement that is attached hereto as Exhibit "B" is genuine.

REQUEST FOR ADMISSION NO. 6:

Admit that the commercial security agreement that is attached hereto as Exhibit "B" is an exact duplicate of the original.

REQUEST FOR PRODUCTION NO. 2:

Produce for photocopying and/or inspection your copy(ies) of the commercial security agreement that is attached hereto as Exhibit "B."

REQUEST FOR ADMISSION NO. 7:

Admit that DAVID PETTUS signed the commercial guaranty that is attached hereto as Exhibit "C."

REQUEST FOR ADMISSION NO. 8:

Admit that DAVID PETTUS' signature on the commercial guaranty that is attached hereto as Exhibit "C" is genuine.

REQUEST FOR ADMISSION NO. 9:

Admit that the commercial guaranty that is attached hereto as Exhibit "C" is an exact duplicate of the original.

REQUEST FOR PRODUCTION NO. 3:

Produce for photocopying and/or inspection your copy(ies) of the commercial guaranty that is attached hereto as Exhibit "C."

REQUEST FOR ADMISSION NO. 10:

Admit that the promissory note that is attached hereto as Exhibit "A" has matured.

REQUEST FOR ADMISSION NO. 11:

Admit that the promissory note that is attached hereto as Exhibit "A" matured on January 31, 2014.

REQUEST FOR ADMISSION NO. 12:

Admit that the principal sum of \$3,785.77 is due and owing on the Note that is attached hereto as Exhibit "A."

INTERROGATORY NO. 2:

If you failed to answer "admit" to Request for Admission No. 12, state the following:

- (a) What amount, in dollars and cents, do you allege is the current unpaid principal balance of the Note that is attached hereto as Exhibit "A"?
- (b) What is the basis for your answer to subpart (a)?
- (c) Are there any documents in your possession which substantiate your answers to subparts (a) and/or (b)?

ANSWER:

REQUEST FOR PRODUCTION NO. 4:

If you answered "yes" to subpart (c) of Interrogatory No. 2, produce for photocopying and/or inspection each and every document to which reference is made.

REQUEST FOR ADMISSION NO. 13:

Admit that, as of May 6, 2014, interest in the amount of \$40.31 had accrued on the unpaid balance of the promissory note that is attached hereto as Exhibit "A," and that interest

continues to accrue on the unpaid principal balance from and after such date at the contract rate of 18.00% per annum.

REQUEST FOR ADMISSION NO. 14:

Admit that, by signing the commercial guaranty that is attached hereto as Exhibit "C," Defendant DAVID PETTUS guaranteed Defendant DAVID PETTUS, ATTORNEY AT LAW, P.C.'s payment of the indebtedness which is represented by the promissory note that is attached hereto as Exhibit "A."

REQUEST FOR ADMISSION NO. 15:

Admit that, more than thirty (30) days prior to the date this lawsuit was served on you, Plaintiff, by and through its attorneys, made written demand of you to pay the indebtedness which is the subject of this lawsuit.

REQUEST FOR ADMISSION NO. 16:

Admit that, in a letter dated June 4, 2014, Plaintiff, by and through its attorneys, made written demand of you to pay the indebtedness which is the subject of this lawsuit.

REQUEST FOR ADMISSION NO. 17:

Admit that all just and lawful offsets, credits, adjustments, or payments have been allowed and applied to the promissory note that is attached hereto as Exhibit "A."

INTERROGATORY NO. 3:

If you failed to answer "admit" to Request for Admission No. 17, state the following:

- (a) What offset or credit do you allege has not been allowed or applied?
- (b) Explain the circumstances which give rise to the offset or credit to which reference is made in subpart (a).
- (c) Are there any documents in your possession which evidence, prove, substantiate, or otherwise tend to support your answers to subparts (a) and/or (b)?

ANSWER:

REQUEST FOR PRODUCTION NO. 5:

If you answered "yes" to subpart (c) of Interrogatory No. 3, produce for photocopying and/or inspection each and every document to which reference is made.

INTERROGATORY NO. 4:

Specify with particularity each and every justification or excuse which you intend to rely upon as a defense in this lawsuit in connection with the allegations contained in Plaintiff's Original Petition.

ANSWER:

Respectfully submitted,

WELLS & CUELLAR, P.C.

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