

## PETITION CLAIMING FRAUD

Plaintiff (Name) states the following claim for relief against the defendant, (Name):

1. On or about (date) plaintiff purchased the following goods and services from defendant (describe the transaction)
2. During the course of this transaction the defendant made the following false or untrue representations of material fact: (describe the false representations).
3. At the time of making the representations, defendant had knowledge that they were false or untrue.
4. Defendant made the representations with the intent that plaintiff would rely on the defendant's representations.
5. Plaintiff, being unaware that defendant's representations were false or untrue, did reasonably rely and act on defendant's representations
6. Plaintiff suffered the following loss due to plaintiff's reliance on the defendant's false or untrue representations: (describe damage suffered).

Wherefore, plaintiff demands judgment against defendant in the amount of \$ \_\_\_\_\_ together with interest, costs of this action, and other appropriate relief.

\_\_\_\_\_  
(Signature of Attorney)  
(Name), Attorney for (name of plaintiff)  
Bar Registration Number  
Address  
Telephone number  
[Facsimile number]  
[Email address]

## Authority

K.S.A. 60-208; K.S.A. 60-209(h); K.S.A. 60-210

## Notes on Use

Petitions are comprised of two basic elements: (1) a short, plain statement describing the relief sought and; (2) a demand for the appropriate relief sought. In cases of monetary relief, demands in an amount of \$75,000 or less are to be specific as to the amounts demanded. The same is true for petitions in contract, regardless of the amount demanded. In all other cases, a demand over \$75,000.00 may be made generally. K.S.A. 60-203(a). A party against whom relief is sought may also obtain a written statement of specific monetary damages pursuant to Supreme Court Rule 118. Pleadings should be written in short and plain terms. K.S.A. 60-208 (a) (1). Each assertion of a pleading should be simple, concise and direct. There are no technical forms of pleadings or motion required. K.S.A. 60-208 (e). Assertions of claim or defense should be made in numbered paragraphs, limiting the contents of each, as far as possible, to a statement of a single set of circumstances. A paragraph can be referred to by number in all succeeding paragraphs. Each claim based on a separate transaction or occurrence and each defense other than denials should be stated as separate count or defense. K.S.A. 60-210 (b) Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or motion. A copy of written instrument that is an exhibit to a pleading is a part of that pleading for all purposes. K.S.A. 60-210(c)

## Comment

Under K.S.A. 60- 208 petitions are to be liberally interpreted with an emphasis on substance rather than form. *Montoy v. State*, 275 Kan. 145, 62 P.3d 228 (2003). As such, it is not required that a petition cite the specific legal theory of relief sought so long as it contains enough information to apprise the responding party of the facts that support relief. *Dutoit v. Board of Johnson County Comm'rs*, 233 Kan. 995, 667 P.2d 879 (1983). To allow for the opportunity to shift theories as the facts develop, petitions that allege contradictory or alternative statements are acceptable. *Weaver v. Frazee*, 219 Kan 42, 547 P.2d 1005 (1976); *Oller v. Kincheloe's, Inc.*, 235 Kan. 440, 681 P.2d 630 (1984). Courts are under a duty to deny a motion to dismiss if an examination of the petition supports a claim for relief on any possible theory. *Monroe v. Darr*, 214 Kan. 426, 520 P.2d 1197 (1974).

Certain situations or causes of action require petitions to contain specific requirements:

- The circumstances supporting fraud and mistake must be pled with particularity. K.S.A. 60-209(b).
- Time and place allegations are material and must be cited. K.S.A. 60-209(f).
- Claims for special damages (*i.e.* medical costs, lost earnings, future earning capacity, etc.) excepting exemplary or punitive damages over \$75,000.00 which may be pled generally. K.S.A. 60-209(g).
- Suits over written instruments must either attach a copy as an exhibit or recite the document at length in the petition. K.S.A. 60- 209(h).

Normally, a petition need not be sworn to or verified; an attorney's signature is sufficient; however, the following actions do require verification:

- derivative action shareholder suits; K.S.A.60-223a
- perpetuation of testimony; K.S.A.60-227
- temporary injunction; K.S.A.60-905
- abatement of common nuisance; K.S.A.60-908
- vacating or modifying injunction order; K.S.A.60-910
- replevin; K.S.A.60-1005
- foreclosure of security interest (if no affidavit); K.S.A.60-1006
- habeus corpus; K.S.A.60-1502
- divorce and maintenance; K.S.A.60-1604
- enforcement of foreign judgments; K.S.A.60-3003
- protection from abuse; K.S.A. 60-3104
- protection from stalking; K.S.A.60-31a04

- filing amendment to plead to claim punitive damages; K.S.A.60-3703