

## Instructions for Using these “Motion to Dismiss” Forms

### **What is a Motion to Dismiss?**

A Motion to Dismiss is a request to the court to throw out a lawsuit.

This Motion says that the eviction should be thrown out because the landlord should not have filed the eviction because of the CARES Act.

**You should only use these forms if you know that your rental unit is covered under the CARES Act.** If you need information about whether your rental unit is covered, [click here](#).

The CARES Act says that landlords may not give a notice to vacate starting March 27, 2020 until July 26, 2020 or file an eviction until August 26, 2020, if the rental unit is a **covered property** under the CARES Act. The CARES Act is only for non-payment of rent cases. Also, if the rental unit is covered under the CARES Act, then the landlord has to give at least a 30-day notice to vacate.

The Order is what the Judge signs – either agreeing or disagreeing with your request to throw out the lawsuit. If the Judge agrees, then the lawsuit will be thrown out. If the judge disagrees, then the eviction trial will happen immediately. The Judge may use his/her own form.

Please note that if you have not paid rent, when the CARES Act ends, the landlord can still file an eviction for non-payment of rent.

### **How to complete these forms:**

- 1) Fill in the cause number. You will get this number from the eviction papers the constable gave you.
- 2) Fill in the plaintiff’s name. This is the landlord’s name.
- 3) Fill in the defendant’s name. This is your name.
- 4) Fill in the precinct and place numbers. You will get this information from the eviction papers the constable gave you.
- 5) Repeat Steps 1-4 for the same spaces at the top of the “Order” on page 6.
- 6) Fill in your signature, date, name, address, and your email address and fax number (if you have one) at the end of the “Motion” on page 4. If you are using a computer, you can type your signature as /s/ Your Name, ex: /s/ Jane Smith.
- 7) Fill in the “Notice of Hearing” blanks on page 5. Call the court to get a date and time for the hearing on your Motion. If you can’t get an answer or the court doesn’t give you a day and time, put your eviction trial date and time from the eviction papers the constable gave you.
- 8) Fill in the “Certificate of Service” section on page 5. You are required to give a copy of this paperwork to the landlord or whoever filed the eviction for the landlord (you can see who filed the lawsuit for the landlord by looking at the “Petition” in the paperwork from the constable). The options for the way to give the paperwork to the landlord are listed in this section. This section tells the Judge how you gave the paperwork to the landlord.

- 9) Add the proof that your rental unit is covered under the CARES Act. You can write “Exhibit A” on the first page of the document. For information that counts as proof, [click here](#).

### **Next Step - Filing these forms:**

There are several options for filing your forms.

- 1) Efile using <https://efile.txcourts.gov/ofswab>. There are instructions on the website.
- 2) Fax the forms to the court. Check the paperwork from the constable, call the court, or check the court’s website at <http://www.jp.hctx.net/> (make sure you have the correct court).
- 3) Take them to the courthouse – either before your court date or to your trial. Be sure to make a copy for yourself. If you have chosen to deliver the forms to the landlord in open court, you need to have another copy.
- 4) Email them to the court. Find your court’s email address at <http://www.jp.hctx.net/> (make sure you have the correct court).

Call the court to make sure they received the documents.

### **Attend the hearing/trial:**

- 1) When your case is called, tell the judge that you have filed a Motion to Dismiss.
- 2) When it is your turn to talk, tell the judge that: (*you can read the following statements to the judge*)
  - a. Your honor, I have filed a Motion to Dismiss.
  - b. I live in a property that is covered under the CARES Act.
  - c. The CARES Act says that a landlord cannot give a notice to vacate before July 26, 2020 or file an eviction for nonpayment of rent before August 26, 2020 if the rental unit is a covered property.
  - d. I have proof that I live in a covered property. It is Exhibit A.
  - e. Please dismiss this lawsuit because the rental unit is covered under the CARES Act.
  - f. Thank you, your honor.

### **After the trial:**

- 1) If you lose, [click here](#) for information about appealing. The deadline to appeal is five (5) days after the trial. If you wait too long, you cannot appeal.
- 2) If you win and you still owe rent, talk to your landlord about a payment plan or moving out. Call 211 to find agencies offering rental assistance.

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

V.

\_\_\_\_\_  
Defendant.

§ IN THE JUSTICE COURT

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§ HARRIS COUNTY

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§ PRECINCT \_\_\_\_, PLACE \_\_\_\_

**DEFENDANT’S MOTION TO DISMISS FOR LACK OF JURISDICTION OR DISMISS  
BASELESS CAUSE OF ACTION**

NOW COMES Defendant, in the above-entitled and numbered cause, and files this Motion to Dismiss for Lack of Jurisdiction or Dismiss Baseless Cause of Action.

**BACKGROUND**

1. On March 27, 2020, the president signed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) into law. The law includes a moratorium on some residential evictions. Sec. 4024.

2. The eviction moratorium operates by restricting lessors of covered properties from filing new eviction actions for non-payment of rent, and also prohibits “charg[ing] fees, penalties, or other charges to the tenant related to such nonpayment of rent.” Sec. 4024(b).

3. The federal moratorium also provides that a lessor (of a covered property) may not evict a tenant after the moratorium expires except on 30 days’ notice—which may not be given until after the moratorium period. See Sec. 4024(c).

4. The eviction moratorium applies to “covered dwellings,” which includes those dwellings on or in “covered properties.” Sec. 4024(a).

5. The Act defines a “covered property” as a property that: (1) participates in a “covered housing program” as defined by the Violence Against Women Act (VAWA) (as

amended through the 2013 reauthorization); (2) participates in the “rural housing voucher program under section 542 of the Housing Act of 1949”; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan. See Sec. 4024(a)(2).

6. This case was filed on or after March 27, 2020 which is the day the moratorium went into effect, and on or before August 25, 2020, which is thirty days after the moratorium expires, or the Plaintiff did not provide a notice to vacate that was at least 30 days.

7. This case involves or alleges non-payment of rent.

8. **The property that is the subject of this dispute (the “Property”) is covered as a covered property as defined by the CARES Act.** See Exhibit A.

#### **LACK OF JURISDICTION**

9. The purpose of a plea to the jurisdiction is to dismiss a cause of action without regard to whether the claim has merit. *Bland Indep. Sch. Dist. V. Blue*, 34 S.W.3d 547, 554 (Tex. 2000).

10. The Court must decide whether plaintiff has affirmatively demonstrated this Court’s jurisdiction to hear this suit, based on the facts alleged by plaintiff and, when necessary to resolve jurisdictional facts, on evidence submitted by the parties. See *State v. Holland*, 221 S.W.3d 639, 642-43 (Tex. 2007); *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004); *Bland Indep. Sch. Dist. V. Blue*, 34 S.W.3d at 555; *State v. Sledge*, 36 S.W.3d 152, 155 (Tex. App.—Houston [1<sup>st</sup> Dist.] 200, pet. denied) (trial court conducted hearing and received oral testimony, affidavits, exhibits, and stipulations).

11. This Court does not have jurisdiction over this suit because plaintiff has no standing to bring the suit. *M/D. Anderson Cancer Ctr. V. Novak*, 52 S.W.3d 704, 710-11 (Tex. 2001); see *Vernco Constr., Inc. v. Nelson*, 460 S.W.3d 145, 149 (Tex. 2015). Because standing is

a component of subject-matter jurisdiction, plaintiff's lack of standing deprives the Court of jurisdiction over the claims asserted in plaintiff's petition. *See Tex. Ass'n of Bus. V. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993).

12. Plaintiff does not have standing to assert this claim, and therefore this court lacks jurisdiction to hear this claim, because plaintiff may not bring this claim pursuant to the CARES Act as the Property plaintiff seeks to recover is covered under the CARES Act.

### **BASELESS CAUSE OF ACTION**

13. Defendant files this motion to dismiss plaintiff's cause of action under the authority of Texas Rule of Civil Procedure 91a. Tex. R. Civ. P. 91a, 91a.2. Under Rule 91a, the court can dismiss a cause of action that has no basis in law or fact. Tex. R. Civ. P. 91a.1.

14. The Court should dismiss plaintiff's cause of action because it has no basis in law. Tex. R. Civ. P. 91a.1, 91a.2. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonable drawn from them, do not entitle the plaintiff to the relief sought. Tex. R. Civ. P. 91a.1; *see In re Essex Ins. Co.*, 450 S.W.3d 524, 527-28 (Tex. 2014).

15. Plaintiff's suit for eviction has no basis in law because the Plaintiff is not entitled to recover possession of the Property. The Property is a covered property under the CARES Act. See Exhibit A.

16. Under the CARES Act moratorium, which went into effect on March 27, 2020 and expires after 120 days (i.e. July 25, 2020), the Plaintiff may not 1) file an eviction for nonpayment of rent or other fees or charges. See. 4024(b). Also, under the CARES Act, the Plaintiff may not 1) issue a notice to vacate until after the expiration of the moratorium (i.e. not until July 26, 2020), and 2) the Plaintiff must provide at least a 30-day notice to vacate. See

4024(c). The Plaintiff is not entitled to recover because the Property is covered by the CARES Act and the case alleges the non-payment of rent. Furthermore, the Plaintiff is not entitled to recover because the case was filed on or after March 27, 2020 and on or before August 25, 2020 or the Plaintiff did not provide a notice to vacate that was at least 30 days.

**CONCLUSION**

17. Because is it clear from plaintiff’s pleadings and the evidence submitted with this motion that the plaintiff’s cause of action has no basis in law and the Court does not have jurisdiction to hear plaintiff’s cause of action, the Court should dismiss plaintiff’s suit.

**PRAYER**

18. For these reasons, defendant asks the Court to set this motion for a hearing and after a hearing to grant defendant’s motion dismissing plaintiff’s suit because it has no basis in law and the Court lacks subject-matter jurisdiction. Defendant further asks the Court to Grant this motion and sign an order dismissing the case and award all other relief to which defendant is entitled.

Respectfully submitted,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Email address (if available)

\_\_\_\_\_  
Fax (if available)

**NOTICE OF HEARING ON DEFENDANT’S MOTION TO DISMISS**

The attached Defendant’s DISMISS FOR LACK OF JURISDICTION OR DISMISS BASELESS CAUSE OF ACTION has been filed and will be submitted to the Court for consideration at a hearing on \_\_\_\_\_, 2020, at \_\_\_\_\_ A.M./P.M.

**CERTIFICATE OF SERVICE**

I certify that I delivered a copy of this document to each party in this case, or if a party is represented by a lawyer to the party’s lawyer by: *(Check one or more)*

- Hand delivery in open court
- Hand delivery to \_\_\_\_\_
- Email to \_\_\_\_\_
- Regular mail to \_\_\_\_\_
- Certified mail, return receipt requested to \_\_\_\_\_
- Commercial delivery service (ex: FedEx) to \_\_\_\_\_
- Fax to \_\_\_\_\_
- Electronic service though the electronic filing manager.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

CAUSE NO. \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

V.

\_\_\_\_\_  
Defendant.

§ IN THE JUSTICE COURT

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§ HARRIS COUNTY

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§ PRECINCT \_\_\_\_, PLACE \_\_\_\_

**ORDER ON DEFENDANT’S DISMISS FOR LACK OF JURISDICTION OR DISMISS  
BASELESS CAUSE OF ACTION**

After considering the Defendant’s motion to dismiss for lack of jurisdiction and for a baseless cause of action under Texas Rule of Civil procedure 91a, the response, and arguments, the Court

GRANTS the motion and order that plaintiff’s suit for eviction is dismissed in whole.

SIGNED on \_\_\_\_\_, 2020.

\_\_\_\_\_  
PRESIDING JUDGE