

CAUSE NO. 2010-34873

VIRGIE ARTHUR

PLAINTIFF,

V.

HOWARD K. STERN

DEFENDANT.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127th JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE COURT:

Virgie Arthur, Plaintiff, files Plaintiff's First Amended Original Petition against and complaining of Howard K. Stern, Defendant, and for good and sufficient cause of action, Plaintiff would show the following:

I.

PARTIES

1. Plaintiff, Virgie Arthur ("Arthur") is an individual residing in Montgomery County, Texas. (TDL: XXX-XX-044 and SSN: XXX-XX-X593).
2. Defendant, Howard K. Stern ("Stern") is an individual resident of California and has entered a *pro se* Special Appearance in this matter.

II.

DISCOVERY PLAN

3. Discovery in this cause is intended to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure

III.

JURISDICTION AND VENUE

4. Venue is proper in Harris County, Texas, because all or a substantial part of the events or omissions giving rise to this claim occurred there. Specifically, Stern breached the contract by setting his special appearance in another case for hearing in Harris county.

5. Jurisdiction is proper in Texas and in this Court because this suit arises under the laws of the State of Texas, because Plaintiff has suffered damages within the jurisdictional limits of the Court, and because the breach occurred in Harris County, Texas.

IV.

FACTUAL BACKGROUND AND ALLEGATIONS

6. This case has to do with a breach of contract.

7. On or about November 11, 2008 Arthur and Stern, through their legal counsel, entered into a Rule 11 Agreement in Cause No. 2008-24181 in the 280th District Court, Harris County, Texas. The case now is in the 30th District Court, Harris County, Texas (Rule 11 Agreement was attached and incorporated as Exhibit "A" to Plaintiff's Original Petition.) The Agreement states that Plaintiff is allowed to take one deposition of Howard K. Stern at an unspecified date after Plaintiff has received discovery from the other defendants. In addition, it states that Defendant Howard K. Stern agrees not to urge his special appearance until his deposition has been taken.

8. Plaintiff has not had the opportunity to depose Stern because he refused to appear for his deposition, which Plaintiff set in Houston, Texas, pursuant to TEX R. CIV. PROC. 199.2(b)(2)(C). Nevertheless, on April 22, 2010 Stern sent out a notice that he had set his special appearance for a hearing on June 4, 2010. The hearing has been rescheduled at Stern's instigation for August 6, 2010.

9. Therefore, Defendant Stern has violated the Rule 11 agreement by setting his special appearance before his deposition has been taken.

10. In addition, all conditions precedent to Stern's performance have been performed, excused, waived or otherwise satisfied.

V.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Virgie Arthur requests Defendant Howard K. Stern be cited to appear and answer, and that on final trial Plaintiff have: (1) judgment against Defendant, for actual, compensatory and exemplary damages in accordance with the evidence; (2) pre-judgment and post-judgment interest as provided by law; (3) costs of court; (4) attorney's fees; (5) equitable relief; and (6) such other and further relief, general and special, to which Plaintiff may show herself justly entitled at law and in equity.

Respectfully submitted,

Dated, July 22, 2010

THE O'QUINN LAW FIRM

By: 


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**ATTORNEYS FOR PLAINTIFF
VIRGIE ARTHUR**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and forgoing instrument was forwarded to *pro se* Defendant Howard K. Stern as listed below, on this the 22nd day of July, 2010 in accordance with the Texas Rules of Civil Procedure.


Neil McCabe

Via CMRRR #7006 0810 0003 5459 0563

Howard K. Stern
3838 Dixie Canyon Avenue
Sherman Oaks, California 91423
pro se Defendant

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