

IN THE \_\_\_\_\_ *(Name of Court)* COURT OF  
\_\_\_\_\_  
*(Name of County),* \_\_\_\_\_  
*(Name of State)*

\_\_\_\_\_  
*(Name of Petitioner)* PETITIONER

V. CAUSE NO. \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
*(Name of Respondent)* RESPONDENT

**Petition to Vacate Judgment due to Failure to Acquire Jurisdiction**

COMES NOW \_\_\_\_\_ *(Name of Petitioner)*,  
Petitioner in the above-styled and numbered cause, by and through his attorney, and files  
this his Complaint against Respondent, \_\_\_\_\_ *(Name of*  
***Respondent)***, and in support thereof would show unto the Court the following matters  
and facts:

**1.**

Respondent, \_\_\_\_\_ *(Name of Respondent)*, by  
and through its attorney, \_\_\_\_\_ *(Name of Attorney*  
***for Respondent)***, with offices at \_\_\_\_\_  
\_\_\_\_\_  
*(street address, city,*  
***county, state, zip code)***, did on \_\_\_\_\_ *(date)* file  
its Complaint at law in an action for damages against Petitioner as Defendant. Said cause  
of action was docketed as Cause No. \_\_\_\_\_ *(case number)* in  
the records of the \_\_\_\_\_  
***(title of trial court)***.

**2.**

Petitioner, who was named as Defendant in Cause No. \_\_\_\_\_  
***(case number)***, was a non-resident of \_\_\_\_\_ ***(name of***  
***forum state)*** at all times material, as was the Plaintiff in the action. The facts as to non-

residence of both Plaintiff and Defendants in Cause No. \_\_\_\_\_  
(*case number*), affirmatively appear in Plaintiff's Complaint filed in the Cause.

3.

On \_\_\_\_\_ (*date*), the \_\_\_\_\_  
\_\_\_\_\_ (*title of trial court*), acting  
at the insistence and request of \_\_\_\_\_ (*Name  
of attorney for Plaintiff*), counsel for Plaintiff in the Cause, entered the default of  
Defendant in the Cause and entered judgment in the cause in favor of Plaintiff and  
against Defendant, the Petitioner in this proceeding, in the amount of \$ \_\_\_\_\_  
(*dollar amount of judgment*) and costs. That Judgment was docketed in record \_\_\_\_\_  
\_\_\_\_\_ (*record designation*), page \_\_\_\_\_ (*page number*), in  
the office of the \_\_\_\_\_  
(*title of trial court*).

4.

This Petition is filed by the Petitioner in this proceeding, being the same person  
named as Defendant in Cause No. \_\_\_\_\_ (*case number*), to set  
aside as completely void the Judgment entered against him on \_\_\_\_\_  
\_\_\_\_\_ (*date*) in that cause. This Petition is filed in accordance with the  
provisions of (*cite statute*) \_\_\_\_\_ of  
\_\_\_\_\_ (*name of forum state*). Petitioner alleges that there was  
irregularity in the obtaining and entry of the judgment referred to above, in that the  
\_\_\_\_\_ (*title of court*)  
had not obtained jurisdiction of Defendant in the cause. By virtue of such lack of  
jurisdiction, the Court was without power to enter Judgment against Petitioner, and  
therefore any purported judgment is null and void and of no force and effect whatever.

5.

Plaintiff in the cause wholly failed to acquire jurisdiction of Defendant and failed  
to make any good and sufficient service of notice on Defendant or to make a good and  
sufficient return of service of an original notice on Defendant in the Cause. The \_\_\_\_\_  
\_\_\_\_\_ (*title of trial court*), by  
reason of such failure of Plaintiff, had no jurisdiction whatever of Defendant in the cause,

and, therefore, the Judgment entered on \_\_\_\_\_ (*date*)  
in the Cause against Defendant referred to above was void and is of no effect whatever.

6.

The above-entitled court did not acquire jurisdiction of Defendant, Petitioner in this proceeding, on \_\_\_\_\_ (*date trial commenced*), or at any other time. Plaintiff in the cause wholly failed to acquire jurisdiction or vest the court with jurisdiction of Defendant for each and all of the following reasons:

A. Plaintiff in Cause No. \_\_\_\_\_ (*case number*) failed to file, prior to taking a default judgment, any return of personal service of an original notice on Defendant;

B. Plaintiff in the cause failed to serve or cause to be served on Defendant a notice of suit as provided by (*cite statute or rule of civil procedure*) \_\_\_\_\_  
\_\_\_\_\_;

C. Plaintiff wholly failed to file any proof of service of an original notice, as required in an action against non-residents pursuant to (*cite statute or rule of civil procedure*) \_\_\_\_\_;

D. Plaintiff wholly failed to file any proof of personal service on Defendant in the manner provided by (*cite statute or rule of civil procedure*) \_\_\_\_\_  
\_\_\_\_\_;

E. Plaintiff wholly failed to file proof of mailing or personal delivery of notification to Defendant in the manner provided by (*cite statute or rule of civil procedure*) \_\_\_\_\_;

G. Plaintiff wholly failed to file in the cause any proof of actual service within the State of \_\_\_\_\_ (*name of state*) on Defendant as

provided by (*cite statute or rule of civil procedure*) \_\_\_\_\_;  
and

H. Plaintiff wholly failed to file the restricted certified mail return receipts as provided by (*cite statute or rule of civil procedure*) \_\_\_\_\_.

7.

Defendant in the cause did not receive any notice of the pendency of the cause in which he was named a Defendant. The first knowledge that Defendant had of the pendency of the cause was on \_\_\_\_\_ (*date*), by (*a letter from name and title, if any, of correspondent*) \_\_\_\_\_

\_\_\_\_\_ ,  
advising that a Judgment had been obtained in the cause in the amount of \$ \_\_\_\_\_ (*dollar amount of judgment*) in favor of Plaintiff and against Defendant. By reason of such delayed knowledge of the entry of the Judgment in the cause, Petitioner could not proceed under the provisions of (*cite statute or rule of civil procedure*) \_\_\_\_\_.

8.

Petitioner, who was named Defendant in the cause, states and alleges that he has a meritorious defense to the claims asserted in the Complaint filed in the Cause. An affidavit in support of this allegation is attached, marked **Exhibit A**, and by this reference made a part of this Petition.

WHEREFORE, Petitioner requests that the Judgment previously entered by the \_\_\_\_\_ (*title of trial court*) in Cause No. \_\_\_\_\_ (*case number*), in which \_\_\_\_\_ (*name of Respondent in trial court*) was Plaintiff and \_\_\_\_\_ (*name of Petitioner in trial court*) was Defendant, which judgment was entered on \_\_\_\_\_ (*date*), be held void and of no force and effect whatever, and that such Judgment be vacated and set aside.

Petitioner further requests that Respondent/Plaintiff be enjoined from issuing any execution on the alleged judgment or from taking any other steps to enforce the alleged judgment.

Respectfully submitted this \_\_\_\_\_ *(date)*.

\_\_\_\_\_  
*(Name of Petitioner)*

By: \_\_\_\_\_

\_\_\_\_\_  
*(Name & Signature of Petitioner's Attorney)*  
State Bar No. \_\_\_\_\_

Attorney for Petitioner

## Certificate of Service

This is to certify that I, \_\_\_\_\_ (*Name of Attorney*), attorney for Petitioner \_\_\_\_\_ (*Name of Petitioner*), have this date served a true and correct copy of the above and foregoing **Petition to Vacate Judgment due to Failure to Acquire Jurisdiction** by U.S. Mail, postage fully prepaid, to the following counsel of record for Respondent:

\_\_\_\_\_  
(*Name of Attorney*)

Post Office Box \_\_\_\_\_

\_\_\_\_\_  
*City, State, Zip Code*

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Respectfully Submitted,**

\_\_\_\_\_  
(*Name of Attorney*)

State Bar No. \_\_\_\_\_  
Attorney for Petitioner

OF COUNSEL:

\_\_\_\_\_  
(*Name of Petitioner's Attorney*)

Post Office Box \_\_\_\_\_

\_\_\_\_\_  
*City, State, Zip Code*

Telephone: \_\_\_\_\_