

DEBT CLAIM CASES: CHECKLIST

- Is it a Debt Claim Case?**
 - Yes, if it is a suit to recover a debt by:**
 - An assignee of a claim; or**
 - A debt collector or collections agency; or**
 - A financial institution; or**
 - A person or entity primarily engaged in the business of lending money at interest.**
 - No, if none of the above; then it is a Small Claims Case (see Rule 500.3).**

- Is the case within the Court's jurisdiction?**
 - Yes, if the claim is for no more than \$10,000, excluding statutory interest and court costs, but including attorney's fees (and contractual interest).**
 - No, if the claim is for more than \$10,000 (as calculated above).**

- Has the defendant filed an answer (or attempted to answer) by the answer date?**
 - If yes, set the case for trial;**
 - If no, consider whether a default judgment should be rendered.**

- In considering a default judgment, is there proof of proper service of the citation on the defendant?**
 - Was the defendant served with the citation and a copy of the petition:**
 - By delivery to the defendant in person?**
 - By registered or certified mail, restricted delivery, with return receipt or electronic return receipt requested?**
 - If no, did the Court authorize alternative service of the citation with a copy of the petition by:**
 - Mailing them to the defendant by first class mail at a specified address and also leaving it at the defendant's residence or other place where the defendant can probably be found with any person found there who is at least 16 years of age; or**
 - Mailing them to the defendant by first class mail at a specified address and also serving them by any other method that the Court finds is reasonably likely to provide the defendant with notice of the suit.**
 - Is the return of service signed or verified (if service was made by a person other than a sheriff, constable or clerk of the court) and does it show how service was effected on the defendant and has it been on file with the clerk of the court for at least three days excluding the day of filing and the day of judgment?**

- In considering a default judgment, does the petition contain:
 - For a claim based upon a credit card, revolving credit, or open account:
 - The account name or credit card name; and
 - The account number (which may be masked); and
 - The date of issue or origination of the account (if known); and
 - The date of charge-off or breach of the account (if known); and
 - The amount owed as of a date certain; and
 - Whether the plaintiff seeks ongoing interest.
 - For a claim based upon a promissory note:
 - The date and amount of the original loan; and
 - Whether the repayment of the debt was accelerated (if known); and
 - The date final payment was due; and
 - The amount due as of the final payment date; and
 - The amount owed as of a date certain; and
 - Whether plaintiff seeks ongoing interest.
 - If plaintiff seeks ongoing interest, does the petition state:
 - The effective interest rate claimed; and
 - Whether the interest rate is based upon contract or statute; and
 - The dollar amount of interest claimed as of a date certain.
 - If the debt has been assigned or transferred, does the petition state:
 - That the debt claim has been transferred or assigned; and
 - The date of the transfer or assignment; and
 - The name(s) of any prior holders of the debt; and
 - The name or a description of the original creditor.
 - If no, then the Court may deny relief or require plaintiff to amend the petition (and re-serve defendant if appropriate).

- In considering a default judgment, is there proof of plaintiff's damages?
 - Attached to the petition and served on the defendant; or
 - Submitted to the Court after the defendant failed to answer by the answer date.

Note: This evidence may be offered in either a sworn statement or live testimony and may include documentary evidence.

- In considering a default judgment, has the plaintiff established the amount of damages by evidence:
 - That the account or loan was issued to the defendant and the defendant is obligated to pay it; and
 - That the account was closed or the defendant breached the terms of the account or loan agreement; and
 - Of the amount due on the account or loan as of a date certain after all payment credits and offsets have been applied; and
 - That the plaintiff owns the account or loan and how the plaintiff acquired the account or loan (if applicable).

- In considering a default judgment, has the plaintiff submitted documentary evidence? If so, is it attached to a sworn statement made by the plaintiff or its representative (other than the attorney of record in the case), a prior holder of the debt or its representative, or the original creditor or its representative, attesting that:
 - The documents were kept in the regular course of business; and
 - It was the regular course of business for an employee or representative with knowledge of the act recorded to make the record; and
 - The documents were created at or near the time or reasonably soon thereafter; and
 - The documents attached are the original or exact duplicates of the original.

- Is a lack of trustworthiness indicated by the source of the information or the method of preparation of the sworn statement or the documents attached thereto?
- If so, the Court is not required to accept the sworn statement.
Note: The Court may not reject a sworn statement solely because it was not made by the original creditor or because the documents attached to it were created by a third party and subsequently incorporated into and relied upon the business of the plaintiff.

- If the plaintiff has submitted sufficient written evidence of its damages as outlined above, then the Court may enter a default judgment without a hearing and should do so to avoid undue expense and delay.
- Otherwise, the plaintiff may request a default judgment hearing at which the plaintiff must appear, in person or by telephonic or electronic means, and prove its damages.

- If the plaintiff proves its damages, the Court must render judgment for the plaintiff in the amount proven.
- If the plaintiff is unable to prove its damages, the Court must render judgment in favor of the defendant.