

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.

CAUSE NO. _____

PLAINTIFF

v.

DEFENDANT

§ IN THE JUSTICE COURT
§
§
§ PRECINCT NO. 6
§
§
§ MATAGORDA COUNTY, TEXAS

PETITION: DEBT CLAIM CASE

Defendant(s) address: _____

COMPLAINT: The basis for the claim which entitles Plaintiff to seek relief against Defendant _____ is:

RELIEF: Plaintiff seeks damages in the amount of \$ _____

SERVICE OF CITATION: Service is requested on Defendant(s) by: personal service at home or work, registered mail, certified mail, return receipt requested. If required, Plaintiff requests alternative service as allowed by the Texas Rules of Civil Procedure. Other addresses where Defendant(s) may be served are:

ADDITIONAL INFORMATION (CASE BASED ON CREDIT CARD, REVOLVING ACCOUNT, OR OPEN ACCOUNT):

Account/Credit Card Name: _____
Account Number (may be masked):

Date of _____ of _____ Issue/Origination:

Date of Charge-Off/Breach: _____

Amount Owed: \$ _____ as of _____

ADDITIONAL INFORMATION (CASE BASED ON PROMISSORY NOTE OR OTHER PROMISE TO PAY PERSONAL OR BUSINESS LOAN):

Date/Amount of Original Loan: _____
\$ _____

Repayment Accelerated? _____

Date Final Payment Due: _____

Amount Due on Final Payment Date: \$ _____

Amount Owed: \$ _____ as of _____

ONGOING INTEREST: Plaintiff does or does not seek ongoing interest. If so, this interest is based on the following contractual/statutory reason:

_____ and should be at _____%.

\$ _____ of interest was due as of _____

ASSIGNMENT OF CLAIM: Plaintiff was or was not assigned or otherwise transferred this claim. If so, the original claimant/creditor was _____

Subsequent holders were _____

The date the debt was assigned/transferred to Plaintiff was _____

I hereby request a jury trial. The fee is \$22 and must be paid at least 14 days before trial.

I hereby consent for the answer and any other motions or pleadings to be sent to my email _____ address _____ as _____ follows:

Plaintiff's Printed Name

Signature of Plaintiff
or Plaintiff's Attorney

Defendant's Information (if known):

Date of birth: _____

Last three digits of Driver License: _____

Last three digits of Soc. Sec. No.: _____

Phone No.: _____

Address of Plaintiff or Plaintiff's Attorney

City State Zip

Phone & Fax No. of Plaintiff
or Plaintiff's Attorney

Case Number _____

Plaintiff Vs. Defendant

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)

<https://scra.dmdc.osd.mil/>

Before me the undersigned notary or clerk of the Justice Court on this day personally appeared the undersigned affiant whose identity is known to me. After I administered an oath to such affiant, he or she upon oath and under penalty of perjury (fine and/or up to one year in jail), stated the following:

My name is _____ I am (check one)

- Plaintiff in the above cause
 Authorized agent for the plaintiff in the above cause

I am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.

CHECK OR FILL IN AS APPLICABLE

- The defendant is not in the military
 Defendant is on active duty in the U.S. Military
 Defendant has been deployed by the U.S. Military to a foreign country.
 Plaintiff / Agent for Plaintiff are not able to determine whether defendant is with the U.S. Military.
 Plaintiff / Agent for Plaintiff are not able to determine whether defendant who is in the U.S. Military has been deployed to a foreign country
 Defendant has signed, while on active duty, a separate written waiver or a written lease containing a waiver of his or her rights under the U.S. Service-Members Civil Relief Act of 2003.

Signature of Plaintiff / Agent for Plaintiff

Sworn and subscribed before me by _____ on the _____ day of

_____, 20____.

Court Clerk or Notary Public