

PLAINTIFF

v.

Case No. _____

DEFENDANT

SUFFICIENCY OF CONSUMER CREDIT COMPLAINT CHECKLIST

This checklist is intended to prevent the failure of consumer credit complaints to meet the full requirements of Wisconsin Statute § 425.109. The intent of § 425.109 is to provide a consumer “with all the information necessary to compute how the creditor arrived at the amount claimed.” *Household Fin. Corp. v. Kohl*, 173 Wis.2d 798, 801, 496 N.W.2d 708, 710 (Ct. App. 1993). If a complaint fails to comply fully with this statute, judgment may NOT be entered on the complaint. The pleading requirements may NOT be waived (*Bank One v. Ofojebe*, 284 Wis.2d 510, 702 N.W.2d 456 (Ct. App. 2005)). The pleading requirements currently do not apply to a complaint filed by any assignee of the original creditor. *Rsidue v. Michaud*, 295 Wis.2d 585, 496 N.W.2d 708 (Ct. App. 2006).

_____ IDENTIFY THE TRANSACTION. Indicate the date, type of transaction, purpose of the transaction and any other identifying information.

_____ FACTS CONSTITUTING DEFAULT. Specify the facts or occurrences that constitute the alleged default by the consumer.

_____ AMOUNT OF ESTIMATED RECOVERY. State the actual or estimated amount of U.S. dollars or of a named foreign currency that the creditor alleges he or she is entitled to recover.

_____ FIGURES NECESSARY TO COMPUTE. Include all the figures necessary for computation of the amount claimed, including any amount received from the sale of any collateral;

- For other than open-end credit plans, this should include the original amount of the loan, finance charges, and payments made on the balance. *Household*, 173 Wis.2d at 802, 496 N.W.2d at 710.
- No reported case has defined “figures necessary” for open-end credit plans. Therefore, this determination is still within the trial court’s discretion.

_____ AMOUNT TO CURE. If the defendant still has the right to cure a default under § 425.105 pursuant to a notice given under § 425.104, provide:

- the total payment or other performance necessary to cure the alleged default and
- the exact date by which it must be made or done.

_____ COPY OF WRITINGS. If the complaint is regarding something **other than an open-end credit plan**, provide an *accurate* copy of the writings, if any, evidencing the transaction.

If the complaint regards an **open-ended credit plan**, provide:

- A statement in the complaint that on or before the return date or the date on which the consumer’s answer is due, the consumer may make a written request to the creditor

for accurate copies of the “writings evidencing any transaction” upon which its claim is based sent to the court and to the consumer. In *Newgard*, the reviewing court decided that account statements showing individual transactions satisfied this requirement.

If there is **collateral** for the debt:

_____ COLLATERAL DESCRIPTION. Provide a description of the collateral or leased goods, if any, which the creditor seeks to recover or has recovered.

_____ RIGHT TO REDEEM. Except in an action to recover goods subject to a consumer lease, provide:

- a statement that the customer has the right to redeem any collateral as provided in § 425.208(1), and
- the actual or estimated amount of U.S. dollars or of a named foreign currency that is required for the redemption.
- NOTE: This statement must be itemized in accordance with § 425.208(1)(a) through (d).

_____ ESTIMATED DEFICIENCY CLAIM. Except in an action to recover goods subject to a consumer lease, provide:

- the estimated amount of U.S. dollars or of a named foreign currency of any deficiency claim which may be available to the creditor following the disposition of any collateral recovered, subject to the limitations of § 425.209, or which the creditor seeks to recover and which the creditor intends to assert, subject to the limitations of § 425.210, if the consumer fails to redeem the collateral.

Venue for Consumer Actions (Wis. Stat. § 421.401):

_____ An appropriate venue for the claim is:

- where the consumer resides or is personally served,
- where the collateral is located,
- where the consumer sought or acquired the property, credit, etc.,

OR

- where the consumer signed the documents evidencing the obligation.
- If there are several defendants, and if venue is based on residence, venue may be in the county of residence of any of them.

NOTE: A judgment entered in an action governed by the Consumer Act is void if there was improper venue and the defendant did not waive the defect. *Kett v. Cmty. Credit Plan, Inc.*, 228 Wis.2d 1, 596 N.W.2d 786 (1999).

BY THE COURT

Dated: _____

Circuit Court Judge