

## **Consumer Debt Litigation Index**

## Top Recommendations for Reform in California

## California's Score: 28/100

## California's National Rank: 13th

Consumer debt lawsuits <u>dominate civil court dockets</u> across the country. In an overwhelming number of cases—<u>more than 70% in many places</u>—the people sued do not respond or defend themselves. As a result, courts often enter default judgments without determining whether the defendant even knows about it, it is timely, or has merit. In turn, people face high fees and interest, onerous payment plans, seizure of wages and possessions, and potential imprisonment. States across the country have established laws and practices aimed at reducing unjust lawsuits and producing fairer outcomes. To support states in their respective efforts, the National Center for Access to Justice in 2024 created the <u>Consumer Debt Litigation Index</u> in consultation with a panel of experts. The Index ranks the states on their progress in adopting 24 best policies ("benchmarks") for fairness. See our Top Recommendations and Complete Findings, below.

#### 1. Establish Pleading Requirements (Benchmark 6)

**Why:** People facing debt collection lawsuits often have difficulty understanding the claim against them. Lax pleading requirements also invite illegitimate lawsuits. Requiring complaints to name the original creditor, demonstrate ownership of the debt, and itemize specific amounts sought can deter meritless filings and enable defendants to assert legitimate defenses, promoting fairness. Delaware, New Mexico, New York, and Washington, D.C. all require consumer debt complaints to include all three key elements. California does not require acute care hospitals to plead the basis of their standing, it does not require private education lenders or private education loan collectors (seeking to collect a private education loan) to identify the name of the original creditor, and it does not require claims brought by all other creditors to plead (a) the name of the original creditor or (b) the basis of plaintiffs' standing.

**How:** California should adopt a law or practice that requires plaintiffs in all consumer debt cases to allege: (a) the name of the original creditor; (b) the plaintiff's standing (e.g. the chain of ownership of

the debt); and (c) an itemization of the amount sought, including debt principal, interest, fees, costs, and other charges to date. If it does so, the state's score would increase 10 points.

#### 2. Require Authenticated Business Records for A Default (Benchmark 7)

**Why:** Creditors too often bring legally insufficient cases, relying on the likelihood that many defendants will not respond (or "default") and that the merits of the creditors' claims will never be assessed by a court. Requiring creditors to establish -- before a default judgment may be entered -- (a) proof of service, (b) validity of the debt using authenticated business records, and (c) itemized amounts sought, also with authenticated business records, promotes fairness, as these elements deter lawsuits that lack merit and lower the number of unjust default judgments. Alaska, Maine, New York, Washington, D.C., Washington State, and Wisconsin all require creditors to prove these essential elements before a court may enter a default judgment. California does not meet the benchmark because although it does require proof of service for all creditors, and does require debt buyers to establish with authenticated business records both the validity of the debt and, also, the itemized amount, it does not require private education lenders and their loan collectors to allege the name of the original creditor, and it also does not require conventional creditors (other than debt buyers and collectors for hospitals) to itemize the amounts sought in claims filed in the courts of general jurisdiction.

**How:** California should adopt a law or practice that requires all creditors in all consumer debt cases to establish the following before a court may enter a default judgment: (a) proof of service; (b) validity of the debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation); and (c) amount of the judgment through authenticated business records, itemizing damages, court fees, attorneys' fees, and interest. If it does so, the state's score would increase 10 points.

## 3. Update Garnishment and Attachment Exemptions (Benchmark 15) and Require Prior Notice of Garnishment (Benchmark 16)

**Why:** Without sufficient protections, garnishment and attachment orders to seize money or assets from a debtor to pay a creditor can leave people unhoused, unable to keep a car to drive to work, and stuck in cycles of poverty. Federal law exempts some funds from garnishment and some property from attachment, but debtors often do not learn what funds and property are exempt or how to assert exemptions. Further, the federal exemptions are out of date and inadequate to preserve even a very basic standard of living. Some states have increased garnishment and asset exemptions (Benchmark 15). For example, in consumer debt cases Texas has adopted garnishment exemptions that protect 100% of a person's wages, and attachment exemptions that protect a home (of any value) and personal property (including a car) up to a value of \$100,000 for a family or \$50,000 for an individual. Some states—including Indiana, Massachusetts, New Jersey, New Mexico, and Ohio—require that notice be sent to a debtor prior to actual garnishment that explains exemptions, how to challenge the garnishment or attachment, and how to assert the exemptions (Benchmark 16). California, however, has not yet increased its garnishment and attachment exemptions sufficiently to protect a car for at least the first \$15,000 in value. California also has not yet required that creditors send notice to the debtor of an impending garnishment or attachment before it begins.

**How:** California should update and expand its garnishment and attachment provisions so that it also protects a car valued up to at least \$15,000. Further, it should require notice to a debtor before garnishment or attachment begins that explains (a) potential exemptions; (b) how to challenge the order; and (c) how to assert exemptions. If it does so, the state's score would increase 10 points.

## What Would Happen if California were to Implement these Recommendations?

These three recommendations, if adopted by the state, would substantially increase California's score and ranking. For more on how California can do better, see the complete findings below and visit NCAJ's <u>Consumer Debt Litigation Index</u> at https://ncaj.org/state-rankings/consumer-debt or reach out to NCAJ at NCAJ@fordham.edu.

# Complete Consumer Debt Litigation Index Findings for California

I. Issue Area: Help people know when they are being sued and where to find help.

#### **1 - Government Notice of Lawsuits**

Does the state respond to the problem of ineffective or fraudulent ("sewer") service in consumer debt lawsuits by: a. Public Official Service - requiring that a public official (e.g. the court or the sheriff) handle service? or, b. Court Supplemental Notice - requiring the court to send the defendant, by first class mail, supplemental notice of a new consumer debt lawsuit and deny default judgment if that notice is returned as undeliverable?

California does not meet this benchmark because it does not meet either sub-benchmark 1a or 1b. First, it does not meet sub-benchmark 1a because California does not distinguish between consumer debt lawsuits and other types of civil actions for purposes of commencement of lawsuits and permits service of process by several methods including personal service by a person who is at least 18 years of age and not a party to the action. See Cal. Civ. Pro. Code § 415.10. Second, California does not meet benchmark 1b because it does not require the court to mail the defendant supplemental notice of a new consumer debt lawsuit and to deny default judgment if such notice is returned as undeliverable.

#### 2 - Guidance on Finding Help

Does the state require that notice to the defendant in a consumer debt lawsuit include guidance on where to seek help, including free legal assistance?

**Score: 0/5** 

No

California does not meet the benchmark because California does not require that notice in a consumer debt lawsuit provide guidance to defendants on where to find help. Instead, it requires only that notice include a statement advising the defendant that they "may seek the advice of an attorney in any matter connected with the complaint or this summons." See Ca. Civ. Pro. § 412.20(a)(5). Notably, California does have an extensive self-help website designed to assist unrepresented defendants in consumer debt cases, although it does not require that notice be provided to the defendant of this resource. See https://selfhelp.courts.ca.gov/debt-lawsuits.

## II. Issue Area: Make it easier to respond to a lawsuit.

3 - Simplified Answer	Score: 2/2
Does the state provide a simple Answer process by making available an Answer form for use by unrepresented persons in consumer debt lawsuits?	Yes
California meets this benchmark because the California courts website offers Answer forms for use in contract cases which can be used by consumer debt defendants. See PLD-C-010. California also has an extensive self-help website designed to assist unrepresented defendants in consumer debt cases, which among other information, contains links to the answer form and instructions for completing and filing it. See https://selfhelp.courts.ca.gov/debt-lawsuits.	
4 - No Notarization Requirement to Answer	Score: 2/2
Does the state make it easier to respond to consumer debt lawsuits by never requiring defendants to have an Answer notarized before filing?	Yes
California meets this benchmark because, although California requires that "[w]hen the complaint is verified, the answer shall be verified," Cal. Civ. Proc. Code § 446(a), verification in California does not require notarization. "A person verifying a pleading need not swear to the truth or his or her belief in the truth of the matters stated therein but may, instead, assert the truth or his or her belief in the truth of those matters 'under penalty of perjury," Cal. Civ. Proc. Code § 446(a) (West 2023).	
5 - No Fee to Answer	Score: 0/5
Does the state permit the filing of an Answer in consumer debt lawsuits without charging a filing fee?	No
California does not meet the benchmark because there is a fee for filing answers in civil cases. Superior Court of California: Statewide Civil Fee Schedule, Initial Filing Fees in Civil Cases (effective January 1, 2022)(charging between \$181 and \$435 for filing initial answer). https://www.courts.ca.gov/documents/StatewideCivilFeeSchedule-01012022.pdf	
Issue Area: Require the creditor to provide evidence of a valid on the second sec	debt

#### **6 - Pleading Requirement**

Does the state require consumer debt complaints to allege all of the following: a. Name of original creditor; b. Basis of plaintiff's standing (e.g. chain of ownership of debt); and c. Itemization of amount sought including debt principal, interest, fees, costs, and other charges to date?

California does not get credit for this benchmark, because although it satisfies certain aspects of the benchmark for certain type of debt collection actions, it does not meet the requirements of the benchmark for all consumer debt collection Complaints. Specifically, California meets this benchmark with respect to pleading requirements for debt buyers, as a debt buyer's complaint in California must allege (a) the name of the original creditor, (b) the basis of plaintiffs' standing, and (c) an itemization of amount sought. See Cal. Civ. Code 1788.58(a). With respect to actions commenced by debt collectors for debt that originated with a general acute care hospital, California does not meet this benchmark, because although California requires such complaints to contain (a) the name of the original creditor, and (c) an itemization of amount sought, it does not require an allegation as to (b) the basis of plaintiffs' standing. See Cal. Civ. Code § 1788.185. With respect to actions commenced by a private education lender or private education loan collector to collect a private education loan, California does not meet this benchmark, because although California requires that such complaints allege (b) the basis of plaintiffs' standing, and (c) an itemization of amount sought, it does not require an allegation as to (a) the name of the original creditor. See Cal. Civ. Code § 1788.202; Cal. Civ. Code § 1788.205(a)(1) (cross-referencing Section 1788.202 in establishing pleading requirements. In all other consumer debt collection cases, California does require an itemization of amount sought for debt collection actions brought in small claims court in satisfaction of subbenchmark (c), see Cal. Code Civ. P. § 116.222; however, California does not satisfy the benchmark because it does not have special pleading requirements for claims brought by conventional creditors to itemize the amounts sought in claims filed in the courts of general jurisdiction. See Cal. Code Civ. P. § 425.10 (establishing general pleading requirements).

#### 7 - Authenticated Records for Default

NoDoes the state require the following be established before a default judgment can be granted: a. Proof of Serviceb. Validity of debt through authenticated business records (e.g. contract, account statements, or other evidenceof obligation); and c. Amount of judgment through authenticated business records, itemizing damages, courtfees, attorneys' fees, and interest?

California does not meet this benchmark because, in cases where the plaintiff is not a debt buyer, the state does not meet sub-benchmarks (b) (validity of debt through authenticated business records) or (c) (amount of judgment through authenticated business records). Only in cases brought by a debt buyer does Cal. Civ. Code § 1788.60 (2014) require authenticated business records to establish the validity of the debt and the amount of the judgment before granting a default judgment. In all other consumer debt cases, California courts may grant default judgments pursuant to California Rule 585 of Civil Procedure which does not impose the requirements in sub-benchmarks (b) (validity of debt through authenticated business records) or (c) (amount of judgment through authenticated business records). Cal. Civ. Proc. Code § 585 (West 2023). With respect to sub-benchmark (a) (proof of service), in all cases a party seeking entry of default must file a written application, and the application needs to provide proof of the service of summons. Id.

## IV. Issue Area: Require consumer debt collection actions to be brought within a reasonable time of non-payment.

#### Score: 0/10

No

Score: 0/10

5/11

8 - Burden on Plaintiff to Allege Timeliness	Score: 0/2
Does the state place the pleading burden on the consumer debt plaintiff to allege in the Complaint the timeliness of each claim, including each of the following: a. applicable statute of limitations; b. date that claim accrued; and c. date that statute of limitations expires?	No
California does not meet this benchmark because the statutes and rules of California do not place the burden of pleading timeliness on the plaintiff and do not require that a debt collection complaint include (a) the applicable statute of limitations, (b) the date that the claim accrued, or (c) the date that the statute of limitations expires. See, e.g., Pollock v. Tri-Modal Distrib. Servs., Inc. 491 P.3d 290, 305 (Cal. 2021) ("The statute of limitations is an affirmative defense, and as with any affirmative defense, the burden is on the defendant to prove all facts essential to each element of the defense.").	
9 - Four Year Statute of Limitations	Score: 5/5
Does the state require 4-year (or shorter) statute of limitations for the causes of action most commonly used to pursue consumer debt collection: breach of contract (written or oral), open account, account stated, unjust enrichment, conversion, bad check?	Yes
California meets this Benchmark because it imposes a 4-year (or shorter) statute of limitations for all consumer debt claims. In particular, California has the following limitations periods: • breach of written contract: 4-year limitations period (Cal. Civ. Proc. § 337 (2022)); • breach of oral contract: 2-year limitations period (Cal. Civ. Proc. 339 (2022)); • open account: 4-year limitations period (Cal. Civ. Proc. § 337(b) (2022); Pro. Collection Consultants Lauron, 8 Cal. App. 5th 958, 966 (2017) ("Under California law, a four-year statute of limitations applies to action for breach of contract, account stated, and open book account.")); • account stated: 4-year limitations period (Ca Civ. Proc. § 337(b) (2022); Pro. Collection Consultants v. Lauron, 8 Cal. App. 5th 958, 966 (2017) ("Under California law, a four-year statute of limitations applies to actions for breach of contract, account stated, and open book account.")); • account stated: 4-year limitations period (Ca Civ. Proc. § 337(b) (2022); Pro. Collection Consultants v. Lauron, 8 Cal. App. 5th 958, 966 (2017) ("Under California law, a four-year statute of limitations applies to actions for breach of contract, account stated, and open book account.")); • unjust enrichment: 2, 3 or 4-year limitations period, depending on the facts of the case (Maguire v. Hibernia Sav. & Loan Soc., 23 Cal. 2d 719, 733 (1944) ("the nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations under our code"); Diaz v. Wells Fargo Bank, N.A., 2015 Cal. Super. LEXIS 15695, *7 ("Under California law, the applicable statute of 1 limitations period of 3 years after dishonored more than three years earlier) (Cal. Com. Code § 3118(c) (2022)); and • suit on common count: 2, 3 or year limitations period, depending on the facts of the case (Maguire v. Hibernia Sav. & Loan Soc., 23 Cal. 2d 719, 733 (1944) ("the nature of the right sued upon and not the form of action row the relief demanded determines t	v. s al. a m 4- 4- S

#### 10 - Prohibit Revival of Time-Barred Claims

Does the state prohibit revival of time-barred consumer debt claims, even where defendant makes subsequent payment toward a debt?

#### Score: 2/2

Yes

California meets this benchmark because it does not make consumer debt claims subject to revival after the statute of limitations has run based on a payment toward the debt. Although CA Civ Pro Code § 360 provides that "[n]o acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this title, unless the same is contained in some writing, signed by the party to be charged thereby," payment on a debt alone does not revive the statute of limitations. CA Civ Pro Code § 360 ("no such payment of itself shall revive a cause of action once barred.").

### V. Issue Area: Prohibit attorneys' fee shifting, and cap interest.

11 - Prohibit Attorneys' Fees Shifting	Score: 0/3
Does the state prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provision or reciprocity in fee shifting? California does not meet the benchmark because it does not prohibit attorneys' fee shifting in consumer debt lawsuits regardless of contractual provisions. See Cal. Civ. Code § 1032. ((b) Except as otherwise provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding. (c) Nothing in this section shall prohibit parties from stipulating to alternative procedures for awarding costs in the litigation pursuant to rules adopted under Section 1034), and § 1033.5 (Items allowable as costs. (a) The following items are allowable as costs under Section 1032: (10) Attorney's fees, when authorized by any of the following: (A) Contract.")	No
12 - Interest Caps	Score: 0/3
Does the state cap interest in consumer debt lawsuits (regardless of any contractual provision) as follows: a. Pre-judgment interest for debt buyers capped at an annual rate of 7% (or less); and b. Post-judgment interest for all creditors capped at 5% (or less) of the judgment? California does not meet this benchmark because it does not satisfy the requirements of sub-benchmarks (a) (pre-judgment) or (b)(post-judgment). Regarding (a)(pre-judgment interest), California law states that any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation. Furthermore, California law states that if a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10% per annum after a breach. CA Civ Code § 3289. Regarding (b)(post-judgment interest), California law states that interest accrues on an unpaid judgment amount at the legal rate of 10% per year (7% if the judgment debtor is a state or local government entity - CA Civ Code § 328) generally from the date of entry of the judgment except for judgments entered on or after January 1, 2023. Or where an application for renewal of judgment is filed on or after January 1, 2023, interest accrues at the rate of 5% per annum on the principal amount of a money judgment remaining unsatisfied in the following cases: (i) The principal amount of a money judgment of under \$200,000 remaining unsatisfied against a debtor for a claim related to medical expenses; (ii) The principal amount of a money judgment of under \$50,000 remaining unsatisfied against a	No

### VI. Issue Area: Reduce the likelihood that consumer debt collection

## actions leave people homeless, or perpetuate a cycle of debt.

13 - Require Court Order to Garnish or Attach	Score: 5/5
Does the state in consumer debt lawsuits require a court order for garnishment and attachment?	Yes
California meets the benchmark because a right to attach order and a writ of attachment are required for attachment. Cal. Code Civ. P. § 484.010. To levy and satisfy a money judgment, the clerk of the court issues a writ of attachment. Cal. Code Civ. P. § 699.510(a). In the case of wage garnishment, if a writ of execution has been issued, the judgment creditor may apply for the issuance of an earnings withholding order. Cal. Code Civ. P. § 706.102(a). Judgments in small claims courts may be enforced by the small claims court pursuant to the same writ of execution procedures described above. Cal. Code Civ. P. § 116.820(a).	
14 - Bank Account Garnishment Exemptions Are Self Executing	Score: 2/2
Does state law require in consumer debt lawsuits that garnishment exemptions for bank accounts are self- executing?	Yes
California meets the benchmark because Cal. Civ. Proc. Code § 704.220 requires a financial institution holding a debtor's deposit account to apply one or more exemptions pursuant to federal law or state law as long as it has actual knowledge that the debtor is entitled to claim the exemption(s).	
15 - Essential Exemptions	Score: 0/5
Does the state prevent people from becoming impoverished, unhoused, or unable to work by exempting income and assets from attachment and garnishment, as follows: a. Income of at least \$576.92 per week, the minimum to keep a family of four above the federal poverty level, as defined by the U.S. Federal Poverty Guidelines in 2023; b. Home, regardless of value, or at least the median price of a home in the state; and c. Car value, state exemption for, at least, the first \$15,000 in value?	No
California does not meet the benchmark because sub-benchmark (c) (car) is not met. California law provides as follows: (a) Income: California meets sub-benchmark (a) because it exempts the greater of 80% of a person's weekly disposable earnings or 60% of the amount by which a person's weekly disposable earnings exceed 48 times the state or local minimum hourly wage, whichever is greater, subject to a certain limited exception. Cal. Civ. Proc. Code §§ 706.050(a), 706.051(b) (exempting a greater percentage if a person can show that the person's earnings are necessary to support the person or the person's family who are supported in whole or in part by the person). Forty-eight times the state minimum wage (\$15.50 in California in 2023) is \$744 per week. State Minimum Wage Laws, U.S. Dep't of Labor (Sept. 30, 2023), https://www.dol.gov/agencies/whd/minimum-wage/state. (b) Home: California meets sub-benchmark (b) because a home is exempt up to the greater of \$313,200 (in 2023) or the countywide median price of a single-family home in the prior year up to a value of \$626,400. Cal. Civ. Proc. Code § 704.730(a) (amounts adjusted annually for inflation). (c) Car: California does not meet sub-benchmark (c) because a person's cars are exempt only up to an aggregate equity of \$7,500 or \$7,500 of proceeds of an execution sale of the vehicle. Cal. Civ. Proc. Code § 704.010(a). For more information on garnishment exemptions see Michael Best and Carolyn Carter, No Fresh Start 2023, National Consumer Law Center (Dec. 2023), https://www.nclc.org/wp-content/uploads/2023/12/2023_Report_No-Fresh-Start-3.pdf.	

### 16 - Require Prior Notice of Garnishment Score: 0/5 Does the state require notice to debtor prior to actual garnishment that explains all of the following: a. potential No exemptions? b. how to challenge the order? and c. how to assert exemptions? California does not meet this benchmark for garnishment of wages because it does not require prior notice to judgment debtor of exemptions or how to assert them. A judgment debtor is not entitled to receive notice of wage garnishment prior to the creation of a lien upon their earnings. See Cal. Civ. Proc. Code § 706.104 (Deering 2023). Instead, the employer must provide relevant notice to the judgment debtor within 10 days from the date the employer is served with an earnings withholding order. See id. § 706.029. Additinally, even if its required notice was served in advance, California would not meet sub-benchmark (a) (potential exemptions) because the law designating provision of notice does not contain a complete list of exemptions or sub-benchmark (b) (how to challenge the order) because it does not explain the manner in which to contest the order, see id. at § 706.122. If served in advance, California would meet sub-benchmark (c) (how to assert exemptions) because the law describes service of a court form on which to assert exemptions. Id.; see Making a Claim of Exemption for Wage Garnishment, Cal. Cts. Self-Help Guide, https://selfhelp.courts.ca.gov/debt-lawsuits/judgment/claimexemption-wage-garnishment (last visited Nov. 10, 2023); Claim of Exemption (WG-006), Cal. Cts. Self-Help Guide, https://selfhelp.courts.ca.gov/jcc-form/WG-006 (last visited Nov. 10, 2023). California does not meet the benchmark for executions against property because a judgment debtor receives notice of the execution at the time of levy against their property and not prior to such time, see Cal. Civ. Proc. Code § 700.010 (Deering 2023), and the notice contains only a partial list of exemptions, and does not provide the manner in which to contest the order. Id. at §§ 700.010, 699.540. VII. Issue Area: Eliminate debtors' prison. 17 - Prohibit Incarceration for Failure to Obey a Court Order to Pay Score: 5/5 **Consumer Debt** Does the state prohibit incarceration for contempt for failure to obey a court order to pay all or part of a Yes consumer debt judgment? California meets the benchmark because the courts have long held that a person may not be incarcerated for contempt for failure to obey a court order to pay a debt. In Knutte v. Superior Ct. of City & Cnty. of San Francisco, 134 Cal. 660, 66 P. 875 (1901) the Supreme Court of California held that contempt proceedings for failure to pay a debt violated the state's constitution for imprisonment for debt when a man failed to make monthly payments on a home that was subject to foreclosure. 18 - Prohibit Incarceration for Failure to Obey a Court Order to Appear at a Score: 0/5 Debtor's Examination, Unless Nonappearance Was Willful Does the state prohibit arrest and/or incarceration for contempt for failure to appear at a debtor's examination No (i.e. a judgment enforcement proceeding), unless the person's failure to appear was willful?

California does not meet the benchmark because failure to obey a court order to appear need not be willful to constitute contempt. The law provides that "disobedience of any lawful judgment, order, or process of the court" constitutes contempt. Cal. Code Civ. Pro. § 1209. If a person has been ordered to appear before the court

for an order of examination, the law specifically provides that the court may "have the person brought before the court to answer for the failure to appear and may punish the person for contempt." Cal. Code Civ. Pro. § 708.170.

708.170.			
19 - Provide Right to Counsel	Score: 5/5		
Does the state provide a lawyer without charge in any contempt or other proceeding in wh potential outcome in a consumer debt lawsuit? California meets the benchmark because the public defender statute in the state provides a every "contempt or offense" triable in superior court in the state. Cal. Gov't Code § 27706(a	for an attorney in		
VIII. Issue Area: Prevent government from undue intervention on behalf of creditor.			
20 - Prohibit Collaboration Between Creditors and Prosecutors	Score: 0/2		
Does the state prohibit relationships (including financial relationships) in which prosecute authority of their offices to facilitate the activities of debt collectors (e.g. payments by cred who threaten or bring criminal prosecutions in bad check cases)?			
California does not meet this benchmark because its bad check statute explicitly allows ea to contract with private entities to conduct bad check diversion classes. Cal. Penal Code §§	-		
21 - Prohibit Paying Bail/Bond to Creditor	Score: 0/2		
Does the state prohibit use of bail to pay the creditor in all contempt proceedings, or in oth consumer debt lawsuit in which incarceration is a possible outcome?	er proceedings in a <b>No</b>		
California does not meet the benchmark because the California rules of civil procedure do express prohibition on the use of bond or bail to pay a creditor. Further, in certain counties rules explicitly authorize the court at its option to use a portion of the bail proceeds to pay Ca. R. Sonoma Super. Ct. 5.2.	s, the local court		
22 - Limit Frequency of Examinations	Score: 0/5		
Does the state in consumer debt litigation schedule or otherwise limit financial examination once per year?	ons to no more than <b>No</b>		
California does not meet this benchmark because the law provides that a court "shall" order examination "if the judgement creditor has not caused the judgment debtor to be examine during the preceding 120 days." Cal. Code Civ. Proc. § 708.110. If the judgment debtor has b preceding 120 days, the court "shall make the order if the judgment creditor by affidavit or good cause for the order." Id.	d under this section een examined in the		

### IX. Issue Area: Collect data to improve the system.

### 23 - Data Collection: Number of Lawsuits Do state courts at least annually collect and publish statewide data on number of consumer debt lawsuits? California does not meet the benchmark because its state courts do not collect or publish statewide data on the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. According to the California Constitution, "Judges shall report to the council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned." The case flow management data contain the following case types: family law (marital, parentage, domestic violence, child support, other petitions); juvenile delinquency; civil (appeals, writs); criminal (appeals, habeas corpus, other writs); and small claims. Cal. Const. art. 6, § 6, cl. f. Note: Researchers have been able successfully to "scrape" consumer debt court data from the internet for 16 counties in California. See Claire Raba, One-sided litigation (July 2023), https://debtcollectionlab.org/research/one-sided-litigation. 24 - Data Collection: Disposition of Lawsuits Do state courts at least annually collect and publish statewide data on types of dispositions of consumer debt lawsuits? California does not meet the benchmark because its state courts do not collect or publish statewide data on the number of consumer debt lawsuits or the types of dispositions of consumer debt lawsuits. According to the California Constitution, "Judges shall report to the council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned." The case flow management data contain the following case types: family law (marital, parentage, domestic violence, child support, other petitions); juvenile delinquency; civil (appeals, writs); criminal (appeals, habeas corpus, other writs); and small claims. Cal. Const. art. 6, § 6, cl. f. Note: Researchers have been able successfully to "scrape" consumer debt court data from the internet for 16 counties in California. See

Claire Raba, One-sided litigation (July 2023), https://debtcollectionlab.org/research/one-sided-litigation. To learn more about the Consumer Debt Litigation Index, including how other states fared, visit <u>https://ncaj.org/state-rankings/consumer-debt</u>.

## **Download State Reports**

Score: 0/3

No

Score: 0/2

No