

**PROCEDURES FOR REQUESTING
JUDGMENT BY DEFAULT PURSUANT TO BANKRUPTCY RULE 7055
In the UNITED STATES BANKRUPTCY COURT, WESTERN DISTRICT OF NEW YORK**

Prior to requesting either that the Clerk of Court enter the “Fact of Default,” pursuant to Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule”) 7055(a), or that the Court grant Judgment by Default, pursuant to Bankruptcy Rule 7055(b)(2)¹, Plaintiff’s attorney must ensure that: (1) the Summons and Complaint has been timely and properly served on the Defendant as required by Bankruptcy Rule 7004; and (2) an accurate and complete Certificate of Service has been filed with the Court. If the Defendant has not answered, appeared or otherwise defended the action within the time required by the Bankruptcy Rules, Plaintiff’s attorney may seek entry of the “Fact of Default” [Bankruptcy Rule 7055(a)] and “Judgment by Default” [Bankruptcy Rule 7055(b)] by submitting the appropriate Application and supporting documents to the Court, as noted below. Counsel must submit either Suggested Forms D100-D104 [Core Proceeding] or Suggested Forms D100-D102 and D105-D107 [Non-Core Proceeding], or the equivalent.

If the Debtor is the Defendant, Plaintiff must seek Judgment by Default by proper service of a “Notice of Motion” and “Motion,” pursuant to Bankruptcy Rule 9014, even if the Debtor/Defendant has failed to answer or otherwise plead in the Adversary Proceeding.²

JUDGMENT BY DEFAULT IN CORE PROCEEDINGS

Where the Adversary Proceeding is a Core Proceeding [28 U.S.C. § 157(b)(2)], and Defendant has failed to answer, appear or otherwise defend, Plaintiff’s attorney may seek Judgment by Default by filing with the Court:

- “Affidavit in Support of Application for Entry of Fact of Default” [Bankruptcy Rule 7055(a)] (Suggested Form D100);
- “Affidavit of Non-Military Service” [50 U.S.C. Appx. § 521] (Suggested Form D101);
- “Entry of Fact of Default” [Bankruptcy Rule 7055(a)] (Suggested Form D102);
- “Application for Order Granting Judgment by Default and Affidavit of Amount Due” [Bankruptcy Rule 7055(b)] (Suggested Form D103);
- “Order Granting Judgment by Default (Core Proceeding)” [Bankruptcy Rule 7055(b)] (Suggested Form D104).

¹ NOTE: The authority of the Clerk of Court in this District to enter Judgment by Default, pursuant to Rule 7055(b)(1), is limited to actions involving post-petition accounts receivable. In all other instances, the Court requires that Judgment by Default be sought from and granted by the Court, pursuant to Rule 7055(b)(2).

² See, In Re Emmerling, 223 B.R. 860 (B.A.P. 2d Cir. N.Y. 1997).

JUDGMENT BY DEFAULT IN NON-CORE PROCEEDINGS
(NOT FOR USE IN ROCHESTER DIVISION)

Where the Adversary Proceeding is a Non-Core Proceeding [28 USC § 157(c)] and Defendant has failed to answer, appear or otherwise defend, the Bankruptcy Judge may “recommend” to the District Court that Judgment by Default be entered. However, in Non-Core Proceedings, Judgment by Default must be entered in and by the District Court for the Western District of New York.

Where the Adversary Proceeding is a Non-Core Proceeding [28 USC § 157(c)], and Defendant has failed to answer, appear or otherwise defend, Plaintiff’s attorney may seek a Recommendation from the Bankruptcy Court to the District Court that Judgment by Default be entered, by filing with the Court:

- “Affidavit in Support of Application for Entry of Fact of Default” [Bankruptcy Rule 7055(a)] (Suggested Form D100);
- “Affidavit of Non-Military Service” [50 USC Appx. § 521] (Suggested Form D101);
- “Entry of Fact of Default” [Rule 7055(a)]; (Suggested Form D102);
- “Affidavit of Amount Due” (Suggested Form D105);
- “Order to Transmit Record to District Court, Combined with Findings of Fact, Conclusions of Law and Recommendation Regarding Plaintiff’s Request for Entry of Judgment by Default” (Suggested Form D106);
- “Order Granting Judgment by Default (Non-Core Proceeding)” (Suggested Form D107).

If the Bankruptcy Judge, on the basis of Plaintiff’s “Recommendation for Judgment by Default,” determines that a hearing is necessary, the Court will inform the parties of the date for the hearing. For example, if the Defendant appeared but did not answer or otherwise defend the action, the Defendant may have the right to be heard on the issue of damages. Following the hearing, if the Court grants the relief requested, Plaintiff’s attorney is to submit a revised “Order to Transmit” (Suggested Form D106) based upon the hearing, a revised “Affidavit of Amount Due” (Suggested Form D105) consistent with the hearing and an “Order Granting Judgment by Default (Non-Core Proceeding)” (Suggested Form D107) for execution by the United States District Judge.

Dated: January 2013

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

Debtor(s).

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR ENTRY
OF FACT OF DEFAULT
[Bankruptcy Rule 7055(a)]**

Plaintiff(s),

BK Case No. _____

AP Case No. _____

vs.

Defendant(s).

The undersigned, being duly sworn, deposes and states that:

1. I am an attorney admitted to practice before this Court and am the attorney to the Plaintiff in this action (or, in the alternative, I am the Plaintiff in the above captioned Adversary Proceeding and appear *pro se*).
2. I make this Affidavit in support of Plaintiff's request that the Clerk of Court certify and enter the "Fact of Default" of Defendant, _____, ("Defendant"), pursuant to Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule") 7055(a).
3. This Adversary Proceeding is a Core Non-Core Proceeding (check appropriate box).
4. On _____, 2_____, a copy of the Summons and Complaint was served on Defendant pursuant to Bankruptcy Rule 7004.
5. A Certificate of Service detailing the date, time and manner of service on Defendant was filed with the Court on _____, 2_____.
6. Defendant has failed to answer, plead or otherwise defend this action.

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re: _____

Debtor(s).

**AFFIDAVIT OF
NON-MILITARY SERVICE
[Bankruptcy Rule 7055(a)]**

Plaintiff(s),

BK Case No. _____

vs.

AP Case No. _____

Defendant(s).

The undersigned is the attorney for the Plaintiff in the above-captioned action or, in the alternative, the undersigned is the Plaintiff pro se in this action.

Pursuant to 50 U.S.C. Appx. § 521, I have made an investigation to ascertain if Defendant, _____ ("Defendant"), is in the military service of the United States. The results of my investigation are as follows¹: _____

From the facts set forth above, I am convinced that Defendant is not in the military service of the United States as defined in the Service Members' Civil Relief Act of 1940, 50 U.S.C. Appx. § 521.

Dated: _____

By: Attorney for Plaintiff or Plaintiff pro se

Sworn to before me
this _____ day of _____, 20____.

Notary

¹To properly complete the "Affidavit of Non-Military Service" required to be submitted in connection with a request for judgment by default, the requesting party is strongly encouraged to verify military status through the Defense Manpower Data Center ["DMDC"] Military Verification Service. The DMDC has a 24-hour website, and verification of military status can be printed from the website in a form document that contains the Department of Defense seal and the signature of the Director of the DMDC. A password to the DMDC website can be obtained by making a request on company letter to: DMDC, Military Verification, 1600 Wilson Blvd., Suite 400, Alexandria, VA 22209 or fax to 703-696-4156.

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re: _____

Debtor(s).

**ENTRY OF FACT OF
DEFAULT
[Bankruptcy Rule 7055(a)]**

vs. Plaintiff(s),

BK Case No. _____

AP Case No. _____

Defendant(s).

Plaintiff has requested entry of the Fact of Default by the filing of an "Affidavit in Support of Application for Entry of Fact of Default," pursuant to Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule") 7055(a).

It appears from the record that Defendant, _____, ("Defendant"), has failed to plead or otherwise defend this Adversary Proceeding as required by the Federal Rules of Bankruptcy Procedure.

Therefore, the Fact of Default is entered against Defendant as authorized by Bankruptcy Rule 7055(a).

Dated: _____

Clerk of Court

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re: _____

**AFFIDAVIT OF AMOUNT DUE
(Non-Core Proceeding)**

Debtor (s).

BK Case No. _____

Plaintiff (s),

AP Case No. _____

vs.

Defendant (s).

In support of the Plaintiff's request that the Bankruptcy Court recommend and the District Court enter Judgment by Default against the Defendant, _____ ("Defendant"), Plaintiff submits the following itemization of damages sought:

Principal amount prayed for in Complaint	\$ _____
Pre-judgment interest ¹	\$ _____
Cost	\$ _____
Attorney's Fees ²	\$ _____
TOTAL DAMAGES	\$ _____
Plus per diem of \$ _____	\$ _____
since the date of the filing	
Plaintiff's request for default	
TOTAL DEFAULT JUDGMENT REQUESTED	\$ _____

Date: _____

Attorney for Plaintiff or Plaintiff pro se

Sworn to before me
this _____ day of _____, 2_____

Notary

¹ Based on 28 U.S.C. § 1961; at the rate of _____ % since _____, through the date of the filing of the request (to be computed by Plaintiff).

² See, 28 U.S.C. § 1923.

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re: _____

Debtor(s).

**ORDER TO TRANSMIT
RECORD TO DISTRICT
COURT COMBINED WITH
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION
REGARDING PLAINTIFF'S
REQUEST FOR ENTRY
OF JUDGMENT BY DEFAULT
(Non-Core Proceeding)**

vs. Plaintiff (s),

BK Case No. _____

AP Case No. _____

Defendant (s).

The Clerk of Court is directed to transmit this Adversary Proceeding to the District Court for consideration of the following, pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984).

TO THE DISTRICT COURT:

Having examined the record in this Adversary Proceeding and having found it to be a Non-Core Proceeding, the Bankruptcy Court is without authority to enter a final or dispositive Order or Judgment. (See, 28 U.S.C. § 157(c)). Plaintiff has requested entry of Judgment by Default against Defendant, _____ (“Defendant”).

This Court has determined that:

No hearing was necessary.

A hearing was necessary, which hearing was held on _____ at _____, on notice to _____ at which hearing there appeared _____ who was heard.

FINDINGS

This Court now finds that the Complaint was filed by the Plaintiff on _____; that an Affidavit of Service was filed attesting to service of the Summons and a copy of the Complaint upon the Defendant on _____; that the Defendant failed to plead or otherwise defend within the time prescribed by law and rule; that the Plaintiff has duly and timely requested entry of Judgment by Default by application or affidavit filed with this Court on _____ and that the Clerk of Court has certified and entered the Fact of Default on _____ pursuant to Rule 7055(a) of the Federal Rules of Bankruptcy Procedure.

CONCLUSIONS

The Plaintiff is entitled under applicable law to entry of Judgment by Default.

RECOMMENDATION

WHEREFORE, it is hereby recommended that the District Court award Judgment by Default to the Plaintiff and against Defendant in the total amount of \$ _____ (plus the allowed per diem amount of \$ _____ from the application for default), which amount is fully itemized in the attached "Affidavit of Amount Due (Non-Core Proceeding)" (Suggested Form D105) duly sworn to by Plaintiff's attorney or Plaintiff pro se and dated _____.

Date: _____

United States Bankruptcy Judge

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

In Re: _____

Debtor(s).

**ORDER GRANTING
JUDGMENT BY DEFAULT
(Non-Core Proceeding)**

Plaintiff(s),

BK Case No. _____

AP Case No. _____

vs.

Defendant(s).

Based on the annexed "Order and Recommendation" of the Hon. _____,
U.S.B.J., it is hereby:

ORDERED, ADJUDGED AND DECREED, that Judgment by Default, pursuant to Rule
55 of the Federal Rules of Civil Procedure, be entered in favor of Plaintiff and against Defendant,
_____, in the amount of \$ _____.

Dated: _____

UNITED STATES DISTRICT JUDGE