

**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 PROCEEDINGS³

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).

Revised 12/2016

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).

³ Pursuant to amendments to the Federal Rules of Bankruptcy Procedure which became effective on December 1, 2016, procedures applicable to “core proceedings” should be used where the Plaintiff has consented to final determination by the Bankruptcy Court.

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. The Plaintiff does does not consent to entry of final order by the Bankruptcy Court (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.

7. The time to answer, plead or otherwise defend expired on _____, 2_____, said date being _____ days after issuance of the Summons.
8. Defendant has not appeared in this action and the time to appear has expired.
OR
Defendant has appeared but has not answered or otherwise defended; Defendant's appearance is more fully described as follows: _____
_____.
9. Defendant is not an infant or incompetent person.
10. Pursuant to 50 U.S.C. Appx. § 521, I have made an investigation to ascertain whether Defendant is in the military service of the United States. The results of my investigation are as follows¹: _____

_____.
From the foregoing facts, I am convinced that Defendant is not in the military service of the United States, as defined by 50 U.S.C. Appx. § 521 [Suggested Form D-101, "Affidavit of Non-Military Service," is attached.]
11. The Defendant is not the Debtor ².
12. Plaintiff hereby requests that the Clerk of Court enter the Fact of Default of Defendant, pursuant to Bankruptcy Rule 7055(a).

Dated: _____

By: _____
Attorney for Plaintiff or Plaintiff pro se

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

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.

² If the Defendant is the Debtor, Judgment by Default must be sought by Notice of Motion and Motion, pursuant to Bankruptcy Rule 9014. See, In Re Emmerling, 223 B.R. 860 (B.A.P. 2d Cir. N.Y. 1997).

**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)]**

Plaintiff(s),

vs.

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:

**APPLICATION
FOR ORDER GRANTING
JUDGMENT BY DEFAULT
AND AFFIDAVIT OF
AMOUNT DUE
[Bankruptcy Rule 7055(b)]
(Core Proceeding)**

Debtor(s).

BK Case No. _____

Plaintiff(s),

AP Case No. _____

vs.

Defendant(s).

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

1. I am an attorney admitted to practice in this Court and am the attorney to Plaintiff in this Adversary Proceeding or Plaintiff pro se.
2. Defendant, _____ (“Defendant”), has failed to answer or otherwise appear in this action. Defendant is not an infant or incompetent person, nor is Defendant in the military service of the United States. In addition, Defendant is not the Debtor.¹
3. Pursuant to Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule”) 7055(a), the Clerk of Court entered and certified the Fact of Default of Defendant, on _____, 2____.

¹ If the Defendant is the Debtor, Judgment by Default must be sought by Notice of Motion and Motion, pursuant to Bankruptcy Rule 9014. See, In Re Emmerling, 223 B.R. 860 (B.A.P. 2d Cir. N.Y. 1997).

4. Pursuant to Bankruptcy Rule 7055(b), Plaintiff hereby requests that the Court² enter Judgment by Default in favor of Plaintiff and against Defendant for the relief demanded in the Complaint, as follows: the principal sum of \$_____, plus interest³ in the amount of \$_____, pursuant to 28 U.S.C. § 1961 (at the rate of _____% per-annum for the period from _____ through _____), together with costs in the sum of \$_____, for a total amount due in the sum of \$_____.

Dated: _____

Attorney for Plaintiff or Plaintiff pro se

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

Notary

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

³ To be computed by Plaintiff.

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

In Re:

Debtor(s).

**ORDER GRANTING
JUDGMENT BY DEFAULT
[Bankruptcy Rule 7055(b)(2)]
(Core Proceeding)**

Plaintiff(s),

BK Case No. _____

AP Case No. _____

vs.

Defendant(s).

The Fact of Default was certified and entered by the Clerk of Court against Defendant, _____ (“Defendant”), on _____, 2_____, pursuant to Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule”) 7055(a). Plaintiff has made application to this Court for the entry of a Judgment by Default, pursuant to Bankruptcy Rule 7055(b)(2). It appears from the Application submitted by Plaintiff that: (1) Defendant is not an infant or incompetent person; (2) Defendant is not in the military service of the United States; and (3) Defendant is not the Debtor. It further appears from the Complaint that Plaintiff has stated a cause of action for which relief can be granted by this Court.

Therefore, pursuant to Bankruptcy Rule 7055(b)(2), on application of the Plaintiff, it is hereby:

ORDERED, ADJUDGED AND DECREED, that Judgment by Default be and is hereby, granted and shall be entered against Defendant in the principal amount of \$_____, plus pre-judgment interest in the amount of \$_____, calculated at the rate of _____% per-annum from _____ through _____, together with costs in the amount of \$_____, for a Judgment by Default in the total amount of \$_____. This Judgment by Default will bear post-judgment interest at the rate of _____% per-annum (rate to be set by the Court) from the date of entry of this Judgment by Default until paid in full.

Dated: _____

United States Bankruptcy Judge