

United States Bankruptcy Court
District of _____

In re

Bankruptcy Case No.

Debtor

Plaintiff

v.

Adversary Proceeding No.

Defendant

ENTRY OF DEFAULT

It appears from the record that the following defendant failed to plead or otherwise defend in this case as required by law.

Name:

Therefore, default is entered against the defendant as authorized by Bankruptcy Rule 7055.

Clerk of the Bankruptcy Court

Date

Deputy Clerk

ENTRY OF DEFAULT

Pertinent Law and Rules

1. Bankruptcy Rule 7012(a) provides that the defendant to an adversary proceeding must serve an answer within 30 days of the issuance of the summons by the court, unless the court prescribes a different time. If the United States or an officer or agency of the United States is the defendant, an answer must be served within 35 days of the issuance of the summons. (Bankruptcy Rule 9006 provides that if the last day is a Saturday, Sunday or legal holiday, the deadline is extended to the next business day following the Saturday, Sunday, or legal holiday.)
2. Bankruptcy Rule 7012(b) incorporates by reference Rule 12(b)-(h) of the Federal Rules of Civil Procedure. These provisions permit the defendant to file several types of motions, including a motion to dismiss the complaint, a motion for a more definite statement, and a motion to strike, in lieu of filing an answer.
3. If the defendant serves neither an answer or one of the motions described in Bankruptcy Rule 7012(b) within the time fixed by Bankruptcy Rule 7012(a), the defendant is to be in default.
4. Bankruptcy Rule 7055 incorporates by reference Rule 55 of the Federal Rules of Civil Procedure. This rule provides that when the defendant is in default, the plaintiff may seek to have the clerk enter the default on the court docket. This entry of default is accomplished by the execution of form B260.

Instructions

Affidavit

The clerk is permitted to enter a default only upon being presented with an affidavit or affirmation setting forth the facts. These facts should normally include:

1. Date of issuance of the summons;
2. Statement of whether the court fixed a deadline for the filing of an answer or motion, or whether the 30 (or 35) day time limit applies;
3. Date of Service of the complaint;
4. Date of filing of an affidavit of service; and
5. Statement that no answer or motion has been received within the time limit fixed by the court or by Bankruptcy Rule 7012(a).
6. Statement that the defendant is not in the military service, as required by 50 U.S.C. Appendix §520. If the defendant is, or may be, in the military service, the defendant is afforded certain

protections which must be addressed prior to the entry of a default.

The affidavit or affirmation should be attached to form B260 and filed with the court.

Caption

1. Identify the Judicial District in which the bankruptcy case was filed. Example: Eastern District of California.
2. “In re”: Insert the name of the debtor as it appears in the bankruptcy petition. Then insert the names of the plaintiff(s) and defendant(s) as they appear on the original complaint.
3. “Bankruptcy Case No.”: Insert the bankruptcy case number assigned by the court at the time of filing.
4. “Adversary Case No.”: Insert the number assigned by the court to the adversary case at the time of the filing of the complaint.

Box

The name of the defendant who is in the default must be set forth in the space provided. This is particularly important in an adversary proceeding where there is more than one defendant, and the entry of a default is not sought against all defendants.

Setting Aside the Entry of Default

Rule 55(c) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rule 7055, states that “For good cause shown the court may set aside an entry of default. . .” The usual practice is to request an order from the court setting aside the default.

Bankruptcy Rule 9013 provides that “A request for an order . . . shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion. . . shall be served by the moving party on the trustee or debtor in possession and on [the plaintiff].”