

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:

_____,
Debtor.

_____,
Plaintiff,

v.

_____,
Defendant.

Case No. _____
Chapter _____

Adv. No. _____

[FORM] REQUEST FOR ENTRY OF DEFAULT BY THE CLERK

Pursuant to Federal Rule of Civil Procedure 55(a), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055, Plaintiff _____ (the "Plaintiff") respectfully requests Entry of Default by the Clerk against Defendant _____ (the "Defendant") for failure to plead or otherwise defend in this adversary proceeding as required by law. In support of this request, the Plaintiff states as follows:

1. The Plaintiff filed the Complaint against the Defendant on _____. A Summons was duly issued to the Defendant by the Clerk of the Bankruptcy Court on _____.

2. As evidenced by the Return of Service filed on _____, the Defendant was properly served with the Summons and Complaint on _____.

3. *[If the Defendant is also the debtor and represented by counsel in the underlying bankruptcy case]* As evidenced by the Return of Service filed on _____, _____, the attorney of record for the Defendant in the underlying bankruptcy case, was properly served with a

copy of the Summons and Complaint on _____.

4. The time for Defendant to answer or otherwise respond to the Complaint expired on _____.

5. The Defendant has not filed an answer or other responsive pleading.

6. The Defendant [is/is not] a minor [and/or] an incompetent person. [*If applicable*]

7. [Insert statement regarding compliance with the Servicemembers Civil Relief Act, 50 U.S.C.A. App. § 521, *if applicable*.]

8. The Affidavit of _____ [Plaintiff's counsel] is attached hereto in support of this Request.

Dated this ____ day of _____, 20__.

Attorney Signature
[Insert Information Required by Local Rule 9004-1(C)]

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

_____,
Debtor.

_____,
Plaintiff,

v.

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Defendant.

Case No. _____
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[SAMPLE] **AFFIDAVIT OF** _____ [Plaintiff's Attorney]

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, _____, being of lawful age and having first been duly sworn upon oath, state:

1. I am an attorney of record for Plaintiff _____ (the "Plaintiff") in the above-referenced adversary proceeding. I am authorized to make this Affidavit and have personal knowledge of the facts stated herein.

2. The Plaintiff filed the Complaint against Defendant _____ (the "Defendant") on _____. A Summons was duly issued to the Defendant by the Clerk of the Bankruptcy Court on _____.

3. As evidenced by the Return of Service filed on _____, the Defendant was properly served with the Summons and Complaint on _____.

4. As evidence by the Return of Service filed on _____, _____, the attorney of record for the Defendant in the underlying bankruptcy case, was properly served with a copy of the Summons and Complaint on _____.¹

¹ If the Defendant is also the debtor and represented by counsel in the underlying bankruptcy case, service on the debtor's attorney is required by Fed. R. Bankr. P. 7004(g) and Bankr. N.D. Okla.

5. Pursuant to Federal Rule of Bankruptcy Procedure 7012, the Defendant had ____ days to answer the Complaint. The time for the Defendant to answer or otherwise respond to the Complaint has now expired.² The Defendant has not filed an answer or otherwise responded to the Complaint.³

6. The Defendant [is not] a minor [nor] an incompetent person.⁴

7. [Insert statement pursuant to the Servicemembers Civil Relief Act, “(A) stating whether or not the defendant is in the military service **and showing necessary facts to support the affidavit**; or (B) if the plaintiff is unable to determine whether or not the defendant is in the military service, stating that the plaintiff is unable to determine whether or not the defendant is in the military service.” 50 U.S.C.A. App. § 521. See *In re Templehoff*, 339 B.R. 49, 2005 WL 3781936 (Bankr. S.D.N.Y. 2005).]⁵

FURTHER, AFFIANT SAITH NOT.

[Plaintiff’s Attorney]

Subscribed and sworn to before me, the undersigned Notary Public, on this ____ day of _____, 20____.

[SEAL]

Notary Public

My Commission Expires: _____

Local Rule 7004-1(D).

² Statement of whether the court fixed a deadline for serving an answer or motion, or whether the 30 (or 35) day time limit applies.

³ Statement that no answer or motion has been received within the time limit fixed by the court or by Fed. R. Bankr. P. 7012(a).

⁴ Statement that the party against whom default is requested is not an minor or incompetent person, as required by Fed. R. Civ. P. 55(b)(1), is applicable only when the Defendant is a natural person.

⁵ Statement pursuant to the Servicemembers Civil Relief Act is applicable only when the Defendant is a natural person.